



September 23, 2020

Ohio Senate Transportation, Commerce & Workforce Committee
Chairman McColley
1 Capitol Square
Columbus, Ohio 43215

RE: HB 144- Prohibit overtime work for nurses as a condition of employment

Good afternoon Chairman McColley, Vice Chair Johnson, Ranking Member Antonio, and Members of the Senate Transportation, Commerce & Workforce Committee. My name is Lisa Ochs and I am the Chief Executive Officer of the Ohio Nurses Association.

I am providing written testimony today to make you aware of an issue of grave concern to registered nurses and patients across the state, but more importantly I am offering a solution that will help make care safer. If you survey nurses on the issues that concern them most, which ONA regularly does, the issues that top the list time and time again are unsafe nurse staffing and nurse fatigue – two consequences of nurse mandatory overtime.

Mandatory overtime is a straightforward concept; but what does it mean in in healthcare? When a registered nurse who has a predetermined schedule, but then is ordered to work additional hours before or after their predetermined schedule, the safety of nurses and the patients in their care are often compromised. In order to ensure nurses comply with an order to work additional unscheduled hours, some employers will threaten a nurse with termination and, sometimes, even a referral to the Ohio Board of Nursing for patient abandonment. Given these threats to nurses' personal and professional livelihood, it is easy to see why they feel coerced into accepting additional hours even though they may feel incapable of safely delivering care. Systemically, nurses compelled to work additional hours lack the ability to stand up for themselves and for their patients when they feel unsafe to continue delivering high quality care.

When ONA advocated for passage of nurse-staffing legislation - House Bill 346 - in 2008, it was understood that this was a foundation to build upon. Some Ohio hospitals are mindful of the dangers of nurse fatigue when constructing nurse staffing patterns. It's important to note that since its enactment, ONA has remained engaged with Ohio's nurses to gauge the effectiveness of the 2008 law on nurse staffing. We have found that safe nurse staffing continues to be the top concern for Ohio's nurses, both as a patient safety and a workplace issue. Our members have conveyed this repeatedly, and comments on social media only reinforce this reality.

To be clear, there are a small number of hospitals in the state that have staffing plans that limit the number of hours a nurse can work in a 24-hour period. And ONA has negotiated provisions in collective bargaining agreements that do the same. Unfortunately, though, there are many facilities who lack detailed nurse staffing plans. And most of the nurses we hear from report that their staffing plans are not followed, and that their hospital employers knowingly create schedules with staffing gaps. The plan to fill these gaps includes coercing nurses into mandatory work beyond a scheduled shift.



In 2015, hundreds of Ohio nurses joined together and voted to commit our organization to combatting the epidemic of unsafe nurse staffing and nurse fatigue through the elimination of unsafe practices, like mandatory overtime. Make no mistake: safe nurse staffing is not simply a goal for addressing unsatisfactory working conditions in hospitals. Research has shown an inextricable link between safe nurse staffing and the safety and quality of care patients receive in a hospital. This is a public safety issue.

Nurses in our state are commonly mandated to work hours far in excess of what has been deemed safe for patient care, and fatigue-associated drops in performance are critical when a nurse is charged with the care of human beings. Fatigue has been proven to result in risk factors, like increased likelihood of errors, decline in memory, reduced ability to learn, and impaired communication skills. Even the most competent nurse can make a mistake when exhausted, a condition that can only contribute to data showing that medical errors are the third leading cause of preventable deaths in the United States.

Nurse fatigue presents a danger to nurses themselves, as well as to others once they venture outside the healthcare setting. One study showed impairment due to fatigue contributed to auto-accidents due to impaired eye-hand coordination, impaired balance and coordination, meaning a heightened risk for workplace injury- in a setting where injury rates are among the highest across all occupations. In fact, research has compared the impact of fatigue on performance to that of someone that is impaired due to high blood alcohol content. Studies also link fatigue to the tendency to nod off behind the wheel, and show that even routine activities, like driving home from work can be life-threatening.

ONA recognizes, as much as anyone, the intricacies of nurse staffing in a hospital. Hospitals are complex, fast-moving environments operating under tremendous economic and environmental pressures. We also know that adverse events and serious harm can result for patients when the stage isn't set for safe practice and clinical decision. Sound nurse staffing patterns are built upon the premise that patients are safe when nurses are safe; and nurses aren't safe when they are worked to the point of exhaustion. By design, standard shift lengths for nurses are a foundational and structural component of patient care in the hospital industry.

Though the title of this bill is 'Prohibit overtime work for nurses as a condition of employment', I want to make it clear that nurses will still have the ability to work additional hours if they feel safe to do so. We believe that overtime decisions need to take place as a conversation between highly-skilled and dedicated healthcare professionals. Nurses enter this profession devoted to helping others and it's never an easy decision to leave patients. However, nurses are ethically bound to assess their ability to care for patients and, in fact, the Ohio Nurse Practice Act also requires nurses by law to provide a safe environment for patient care. The Ohio Board of Nursing states:

“Working under conditions of fatigue may not be safe for the nurse or the patient. A nurse who fails to demonstrate competence or does not provide consistent performance within his or her nursing practice as a result of excessive work hours, or for any other reason, will not have met standards of safe practice.”

Too many Ohio nurses lack the ability to refuse unsafe situations, like being forced to work in an unsafe and fatigued state. Some employers allow nurses to fill out Assignment Despite Objection forms – which are pieces of paper where a nurse (usually covered by the protection of a union contract) documents an unsafe situation that he or she was forced to be part of, even when they expressed concerns to their employer. There are hundreds of these, and these only represent a small percentage of the situations that



occur across our state because most nurses don't have access to Assignment Despite Objection forms or really any recourse at all when they are forced to work when they are fatigued.

House Bill 144 will allow all bedside nurses to have a real conversation with their employer about whether they are in a condition that is safe to continue providing care to the patients who depend on them to be alert and attuned to their health needs. If the nurse feels safe to continue to provide care, he or she may do so. If the nurse does not feel safe providing care, House Bill 144 would provide that nurse the right to decline additional hours, therefore allowing the nurse to uphold her ethical obligation and to abide by the Ohio Nurse Practice Act without fear.

As previously mentioned, patient quality and outcomes can be linked to nurse staffing practices in a hospital. Studies and empirical evidence demonstrate that non-overtime nurse staffing decreases the odds of readmission rates in medical and surgical patients by approximately 50 percent and also reduces post-discharge emergency department visits. Additionally, a 2019 report performed by the Ohio Auditor of State showed through a detailed analysis of staffing models for six state psychiatric hospitals currently mandate nurses and other direct care employees and that if hospitals were to eliminate mandatory overtime, the hospitals would save the state money:

"[The] detailed analysis of the staffing model developed by OMHAS Hospital Services found that the model should be adjusted to reflect historical operational needs. Do so, in addition to updating scheduling practices, would reduce mandated overtime and help save OMHAS up to nearly \$1 million annually."

Moreover, between 210,000 and 440,000 patients per year suffer from preventable harm that contributes to their death. Tragically 44,000 to 98,000 patient deaths per year are directly attributed to medical errors, equivalent to a Boeing 747 jet going down every single day.

Incredibly, medical errors are the third leading cause of death in the United States. A hospital's reliance on mandatory overtime and other unsafe staffing practices place patients at increased risk of harm, and even death. We believe adoption of this proposal would go a long way toward mitigating those risks.

We believe it is time for Ohio to join 18 other states, including Texas, West Virginia, and Pennsylvania, in working toward combating nurse fatigue by prohibiting mandatory overtime. Additionally, this legislation would protect nurses from feeling coerced into working additional hours, beyond their regular shift, through the threat of termination or licensure sanction in non-emergency situations.

There are Ohio hospitals that do not use mandatory overtime as a tool to meet staffing needs and they are successful meeting the needs of their patients. Let's work together to ensure that ALL facilities do not use mandatory overtime.

On behalf of ONA and over 210,000 Ohio registered nurses, I want to thank you for the critically important work that you do. I am eager to provide additional information and would be happy to answer any questions you might have on this issue.

A handwritten signature in black ink that reads "Lisa Ochs".

Lisa Ochs, Chief Executive Officer
Ohio Nurses Association