New Hospital Staffing Requirements

Implementing HB 1155

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Objectives

- Provide overview of new requirements under HB 1155
- Discuss recommendations and next steps for hospitals to form their implementation strategy
- Provide high-level overview of WSHA's implementation support work

Ultimate goal: you are empowered to dive in to the law and start planning a compliance strategy for your organization

Background & Context

After 10 years, disappointing result - HB 1155 passed

- WA Hospitals were consistent advocates for patient safety, preserving professional autonomy of nurses and techs, and combatting fatigue with evidence-based solutions

WSHA significantly improved the final version:

- Additional flexibility to address patient care needs
- Avoiding overly burdensome data collection requirements
- Preserving ability to use on-call and overtime as important tools to address fluctuating demands on hospital staffing
- Delayed effective date for certain smaller facilities

What's at stake if hospitals fail?

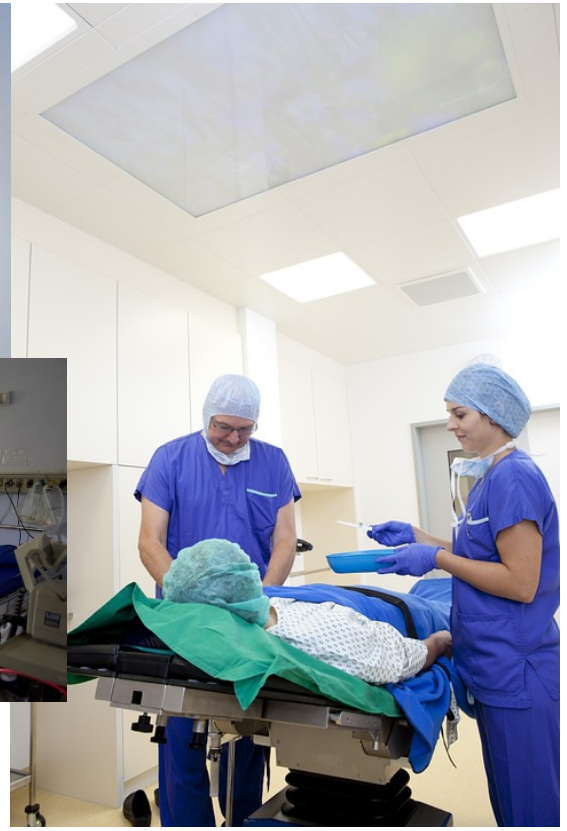
Financial sustainability on the line

Penalties + potential lawsuits

Patient safety issues

Hospital's reputation in the community

Unhappy staff = unhappy patients



More onerous requirements in the future

Even costlier to implement

Could restrict ability to meet patient needs in ways that are harmful to community's health

What Passed?

HB 1155 Overview

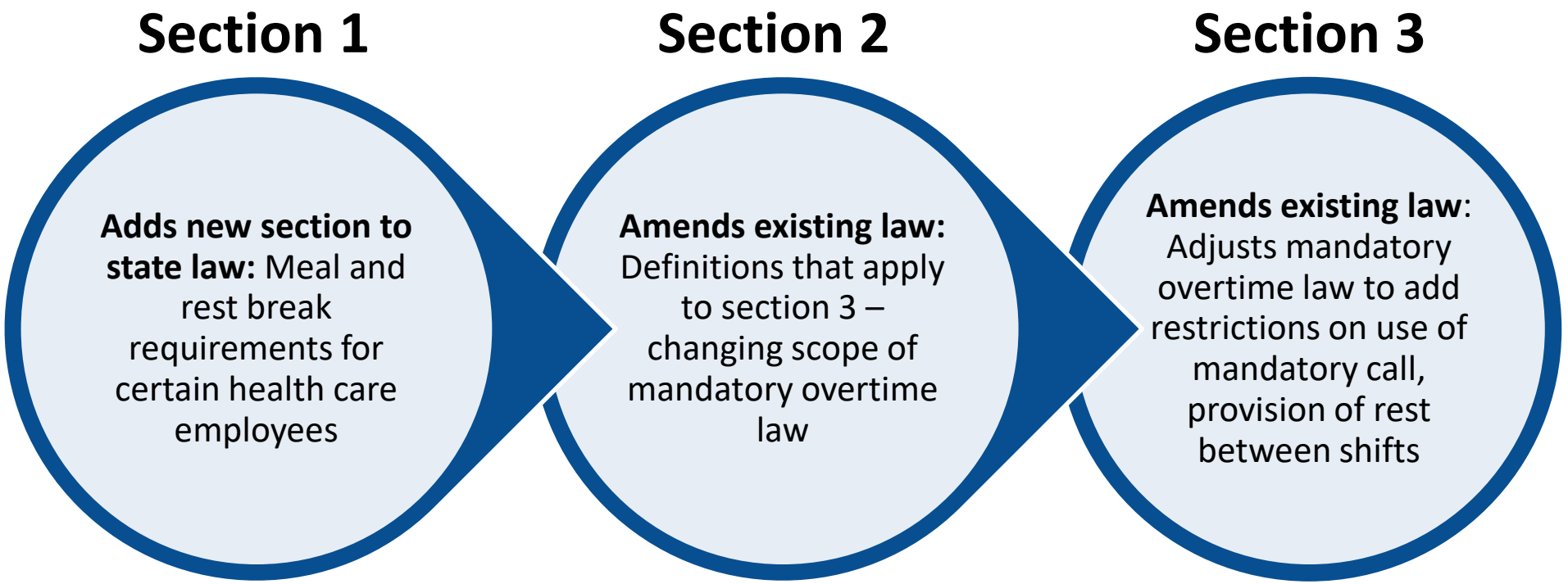
Uninterrupted Breaks

- Applies to nurses + techs
- Includes some exceptions
- Includes additional requirements for employers

Amendments to Mandatory Overtime Prohibition

- Impacts mandatory *overtime* for techs
- Impacts mandatory *on-call* for nurses + techs
- Impacts time off between shifts for nurses + techs

How to read the bill



Specific Provisions - Breaks

Which employers are subject to the new criteria?

Hospitals licensed under 70.41 RCW

- Does not include psychiatric hospitals licensed under 71.12 RCW
- ***Any facility that operates under the hospital license is subject to this law*** such as clinics, nursing homes, etc.

Which employees are subject to the new break requirements?

Any employee who meets the following four criteria:

1. Is employed by a health care facility;
2. Is involved in direct patient care activities or clinical services;
3. Receives an hourly wage or is covered by a collective bargaining agreement; and
4. Is a:
   - **Licensed practical nurse or registered nurse** registered under chapter 18.79 RCW
   - **Surgical technologist** registered under chapter 18.215 RCW
   - **Diagnostic radiologic technologist** certified under chapter 18.84 RCW
   - **Cardiovascular invasive specialist** certified under chapter 18.84 RCW
   - **Respiratory care practitioner** licensed under chapter 18.89 RCW; or
   - **Certified nursing assistant** as defined in RCW 18.88A.020

Basic requirements for breaks under the new law:

<u>Uninterrupted meal and rest breaks are required</u>, subject to some exceptions

- Can no longer be taken on an intermittent basis

Rest breaks must be scheduled

- "at any point during each work period"
- Supersedes current L&I guidance on when breaks need to be scheduled within a shift

Hospitals must provide a mechanism to record missed breaks

- Hospitals must also retain these records
- *Recommendation: Follow internal records retention policies*

Exceptions to uninterrupted breaks:

Unforeseen emergent circumstances, defined in RCW 49.28.130:

"(a) any unforeseen declared national, state, or municipal emergency; (b) when a health care facility disaster plan is activated; or (c) any unforeseen disaster or other catastrophic event which substantially affects or increases the need for health care services."

Clinical circumstance, defined within the bill:

"as determined by the employee, employer, or employer's designee, that may lead to a significant adverse effect on the patient's condition:

(A) Without the knowledge, specific skill, or ability of the employee on break; or

(B) Due to an unforeseen or unavoidable event relating to patient care delivery requiring immediate action that could not be planned for by an employer."

Additional rest break required in certain instances of missed rest breaks

If a rest interrupted by the employer or employers designee for a clinical circumstance before ten complete minutes, employee must be provided with an additional ten-minute break at earliest reasonable time during the work period.

If the additional break is provided, a rest break “shall be considered taken for the purposes of the minimum wage act as defined by chapter 49.46 RCW.”

Effective Dates - Breaks

January 1, 2020 for most hospitals licensed under 70.41 RCW

July 1, 2021 for certain small hospitals:

- Critical Access Hospitals under 42 U.S.C. Sec. 1395i-4;
- Hospitals with fewer than twenty-five acute care beds in operation; and
- Certain hospitals certified by the Centers for Medicare and Medicaid services (see legislation for specific definition)

Implications of new requirements on breaks

There is no language in the law directly requiring hospitals to hire additional staff

A successful compliance strategy will require assessment at the local level with your CNO, nursing leaders, compliance/legal, and finance

Questions to consider

- Do you have other facilities on your hospital license that may be impacted?
- How do teams currently ensure that nurses and other staff are able to take their breaks?
- What is included in hospital policy versus informal agreement amongst team members?
- What strategies are working well and where is improvement needed that might inform official policies?
- Does your facility already track missed breaks? What are your policies on retaining those records?
- What will your policy be to track when a break is interrupted and when an additional break is provided?

Three major changes to mandatory overtime law:

1. Extends the prohibition on mandatory overtime that exists for nurses to techs
2. Clarifications to the use of mandatory on-call that causes overtime
3. Provision of rest between shifts in certain circumstances

Which employers are subject to the changes to the mandatory overtime law?

Refer to definition of “health care facility” in Section 2 (3)(a):

"Health care facility" means the following facilities, or any part of the facility, including such facilities if owned and operated by a political subdivision or instrumentality of the state, that operate on a twenty-four hours per day, seven days per week basis:

(i) Hospices licensed under chapter 70.127 RCW;

(ii) Hospitals licensed under chapter 70.41 RCW*

(iii) Rural health care facilities as defined in RCW 70.175.020;

(iv) Psychiatric hospitals licensed under chapter 71.12 RCW; or

(v) Facilities owned and operated by the department of corrections or by a governing unit as defined in RCW 70.48.020 in a correctional institution as defined in RCW 9.94.049 that provide health care services

Definition notes that the following facilities are exempt from the changes to the mandatory overtime law until July 1, 2021:

(A) Hospitals certified as critical access hospitals under 42 U.S.C. Sec. 1395i-4; (B) Hospitals with fewer than twenty-five acute care beds in operation; and (C) Hospitals certified by the centers for medicare and medicaid services as sole community hospitals as of January 1, 2013, that: Have had less than one hundred fifty acute care licensed beds in fiscal year 2011; have a level III adult trauma service designation from the department of health as of January 1, 2014; and are owned and operated by the state or a political subdivision

Which employees are subject to the changes to the mandatory overtime law?

Any employee who meets the following four criteria:

1. Is employed by a health care facility;
2. Is involved in direct patient care activities or clinical services;
3. Receives an hourly wage or is covered by a collective bargaining agreement; and
4. Is a:
   - **Licensed practical nurse or registered nurse** registered under chapter 18.79 RCW
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*The addition of techs is effective July 1, 2020

1. Extends the prohibition on mandatory overtime that exists for nurses to techs

What the current prohibition on mandatory overtime for nurses says:

(1) No employee of a health care facility may be required to work overtime. Attempts to compel or force employees to work overtime are contrary to public policy, and any such requirement contained in a contract, agreement, or understanding is void.

(2) The acceptance by any employee of overtime is strictly voluntary, and the refusal of an employee to accept such overtime work is not grounds for discrimination, dismissal, discharge, or any other penalty, threat of reports for discipline, or employment decision adverse to the employee.

1. Extends the prohibition on mandatory overtime that exists for nurses to techs (cont.)

Still includes exceptions for overtime work due to:

- "Unforeseeable emergency circumstances"* (i.e. declared emergencies or when a hospital's disaster plan is activated)
- When the employer has documented that they have used "reasonable efforts"* to obtain staffing
- When a patient care procedure is already underway

No change to the use of voluntary overtime

**Refer to RCW 49.28.130 for definitions*

2. Clarifications to the use of mandatory on-call that causes overtime

Prescheduled on-call has been an exception to the ban on mandatory overtime

New law adds limits to when <u>mandatory</u> on-call can be used if it pushes an employee in to overtime – see Sec. 3 amending RCW 49.28.140:

(1) No employee of a health care facility may be required to work overtime [...]

(2) The acceptance by any employee of overtime is strictly voluntary […]

(3) This section does not apply to overtime work that occurs:

(a) Because of any unforeseeable emergent circumstance;

(b) Because of prescheduled on-call time<u>, subject to the following:</u>

<u>(i) Mandatory prescheduled on-call time may not be used in lieu of scheduling employees to work regularly scheduled shifts when a staffing plan indicates the need for a scheduled shift; and</u>

<u>(ii) Mandatory prescheduled on-call time may not be used to address regular changes in patient census or acuity or expected increases in the number of employees not reporting for predetermined scheduled shifts</u>;

3. Provision of rest between shifts in certain circumstances

If an employee accepts overtime, and works for more than twelve hours (including non-overtime hours), they must be given the option for at least eight hours of consecutive rest between shifts.

Effective dates – changes to mandatory overtime law

For the extension of the prohibition on mandatory overtime to techs:

- July 1, 2020 for techs at most hospitals
- July 1, 2021 for techs at certain small hospitals*

For the new laws dictating use of mandatory on-call and provision of rest between shifts:

- January 1, 2020 for nurses at most hospitals
- July 1, 2020 for techs at most hospitals
- July 1, 2021 for nurse + techs at certain small hospitals*

***Facilities with delayed implementation are:**

- Critical Access Hospitals under 42 U.S.C. Sec. 1395i-4;
- Hospitals with fewer than twenty-five acute care beds in operation; and
- Certain hospitals certified by the Centers for Medicare and Medicaid services (see legislation for specific definition)

Implications of the changes to mandatory overtime and on-call

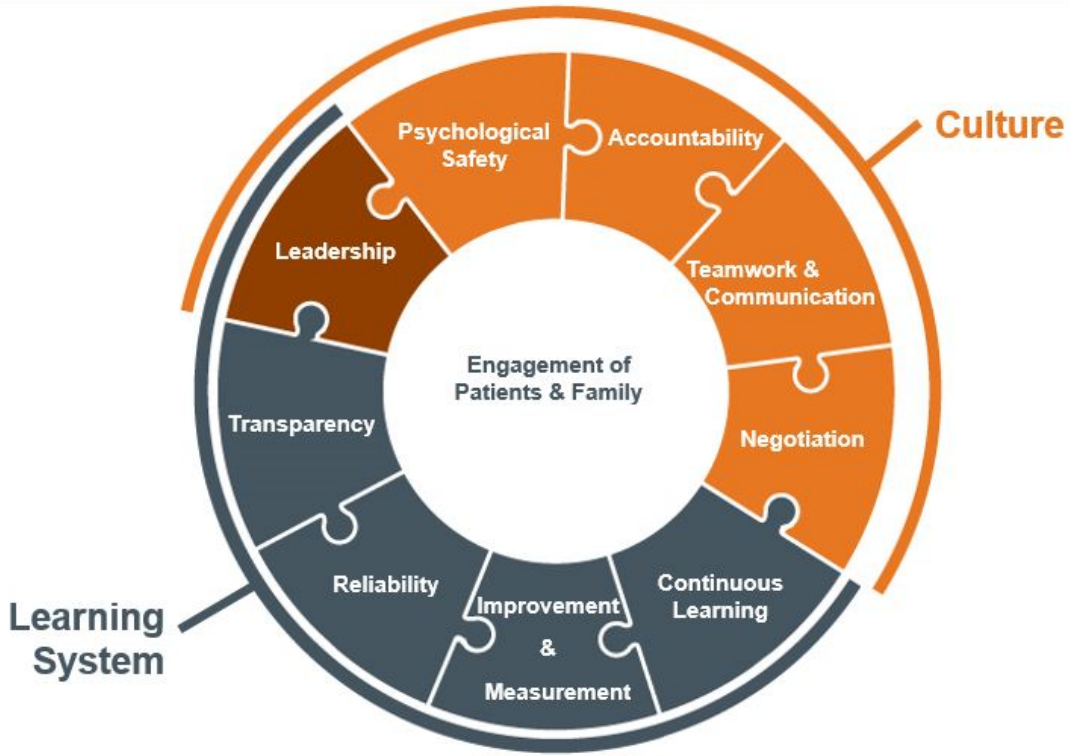
Questions to consider

- Again - do you have other facilities on your hospital license that may be impacted?
- Assess data on overtime – how often are employees working hours considered mandatory overtime?
- Assess data on mandatory call – which positions use this the most?
- How often are employees called in to work shifts while on-call? Who is assessing this to determine whether patterns emerge that could be considered “regular” changes to patient acuity or “expected increases” in call-outs?
- How will you ensure that your facility’s “staffing plan” includes the information it needs for techs as a reference for how mandatory call is used? What will the process be for finalizing this documentation?
- If staff routinely take call after shifts, how often would they also be scheduled to work with less than eight hours of rest?
- How will conversations about rest between shifts happen, and how will you track when rest is accepted or refused?

Implementation Support

Safety and quality approach to implementation

Framework for Safe, Reliable, and Effective Care



Source: Frankel A, Haraden C, Federico F, Lenoci-Edwards J. *A Framework for Safe, Reliable, and Effective Care*. White Paper. Cambridge, MA: Institute for Healthcare Improvement and Safe & Reliable Healthcare; 2017. (Available on ihi.org)

Safety and quality approach to implementation

Approach staffing and interventions from a safety and quality perspective

Leverage WSHA's RN Staffing Advisory Group

Identify areas of greatest need/opportunity for improvement

Provide education, tools, regional learning sessions and 1:1 coaching support

Benchmarking and measurement to help drive improvement

Implementation support timeline

We will have more time to work with CAHs – but that doesn't mean planning can wait

Looking at the bigger picture of hospital staffing

Hospital staffing committee considerations

- Is it meeting regularly?
- What are the trends for complaints being made to the committee?
- Is the hospital's up-to-date nurse staffing plan filed with DOH?

Hospital staffing metrics to track compliance and best practices

- Consider developing a dashboard to track progress over time, and share with your Board

General hospital metrics to look at the bigger picture

- Nurse-sensitive measures – clues for patient safety issues
- Staff turnover – are staff unhappy here? What are the causes of burnout?

Key takeaways

- There is increased public scrutiny on hospital staffing
- Complying with 2017 and 2019 laws is crucial to long-term success
- Will mean changes to staffing policies, may have immediate budget implications to comply by effective date for your facility
- Your hospital's staffing policies should take in to account compliance AND best practices – what supports your goals for quality, patient safety, patient experience?

WHSA IS HERE TO HELP!

Thank you!

Questions? Comments?

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