

# Regulatory Analysis Form

(Completed by Promulgating Agency)

INDEPENDENT REGULATORY  
REVIEW COMMISSION

2012 JUN 26 PM 3: 57

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(All Comments submitted on this regulation will appear on IRRC's website)

(1) Agency: Department of Labor and Industry

(2) Agency Number:

Identification Number: 12-91

IRRC Number: 2957

(3) PA Code Cite: 34 Pa.Code, Part XII, Chapter 225

(4) Short Title: Prohibition of Excessive Overtime in Health Care Act Regulations

(5) Agency Contacts (List Telephone Number and Email Address):

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(6) Type of Rulemaking (check applicable box):

Proposed Regulation

Final Regulation

Final Omitted Regulation

Emergency Certification Regulation;

Certification by the Governor

Certification by the Attorney General

(7) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

The Department is required to promulgate regulations to implement the Prohibition of Excessive Overtime in Health Care Act, the Act of October 9, 2008 (P.L. 1376, No. 102) (Act) (43 P.S. §§ 932.1-932.6). This regulation implements the Act's complaint and investigation procedures, and administrative penalty assessment provisions.

(8) State the statutory authority for the regulation. Include specific statutory citation.

This regulation is promulgated and required under section 5 of the Prohibition of Excessive Overtime in Health Care Act (43 P.S. § 932.5).

(9) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, section 5 of the Prohibition of Excessive Overtime in Health Care Act (43 P.S. § 932.5) provides: "The department shall, within 18 months of the effective date of this section, promulgate regulations to implement this act."

(10) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The regulation is required and necessary to implement and clarify the complaint, investigation procedures, and administrative penalty assessment provisions.

The Act's purpose is to provide for better patient safety at health care facilities by prohibiting a health care facility from requiring employees to work more than agreed to, predetermined and regularly scheduled work shifts. It does not prohibit overtime for on-call time, unforeseeable emergent circumstances; highly unusual or extraordinary events affecting the need for health care services; or unexpected absences discovered at or before the commencement of a scheduled shift which could not be prudently planned. Employees may voluntarily work any overtime.

This regulation establishes the complaint and investigation procedures. It also includes the procedure to notify parties of violations and the appeals and hearing procedures.

(11) If data is the basis for this regulation, please provide a description of the data, explain in detail how the data was obtained, and how it meets the acceptability standard for empirical, replicable and testable data that is supported by documentation, statistics, reports, studies or research. Please submit data or supporting materials with the regulatory package. If the material exceeds 50 pages, please provide it in a searchable electronic format or provide a list of citations and internet links that, where possible, can be accessed in a searchable format in lieu of the actual material. If other data was considered but not used, please explain why that data was determined not to be acceptable.

N/A

(12) Describe who and how many people will be adversely affected by the regulation. How are they affected?

Certain Commonwealth agencies, health care facilities and certain employees of those healthcare facilities and those commonwealth agencies as defined in section 2 of the Act (43 P.S. § 932.2), will be affected by this regulation. The health care facilities and agencies affected include general or special hospitals, psychiatric hospitals, rehabilitation hospitals, hospices, ambulatory surgical facilities, long-term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis, inpatient drug and alcohol treatment facilities, facilities which provide clinically-related health services and which are operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare, and mental retardation facilities operated by the Department of Public Welfare.

Employees affected are those who are involved in direct patient care activities or clinical care services and who receive an hourly wage or are classified as a nonsupervisory employee for collective bargaining purposes. Employees include individuals employed through a personnel agency that contracts with a health care facility to provide personnel.

These regulations will affect these individual only to the extent they are involved in the complaint and hearing process for alleged violations committed under the Act.

(13) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

Certain Commonwealth agencies and health care facilities as defined in section 2 of the Act (43 P.S. § 932.2), will be affected by this regulation. The health care facilities and agencies affected include general or special hospitals, psychiatric hospitals, rehabilitation hospitals, hospices, ambulatory surgical facilities, long-term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis, inpatient drug and alcohol treatment facilities, facilities which provide clinically-related health services and which are operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare, and mental retardation facilities operated by the Department of Public Welfare.

Also, employees covered by the Act who submit complaints for violations of the Act will be required to comply with complaint submission timeframe and procedure.

(14) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

These entities throughout the Commonwealth have been required to comply with the Act since July 1, 2009. This regulation only affects complaints, investigations and appeals from decisions concerning violations. The Department does not have adequate experience with complaints, violations and appeals to make any estimate of costs.

(15) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Local governments, if operating health care facilities, have been required to comply with the Act since July 1, 2009. This regulation only affects complaints, investigations and appeals from decisions concerning violations. The Department does not have adequate experience with complaints, violations and appeals to make any estimate of costs.

(16) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

No separate budget was established for enforcement of the Prohibition of Excessive Overtime in Health Care Act or the regulations. Therefore the costs associated with its enforcement are included in the budget for the Bureau of Labor Law Compliance. The Budget for the current fiscal year is \$3,560,091.

(17) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	<b>Current FY Year</b>	<b>FY +1 Year</b>	<b>FY +2 Year</b>	<b>FY +3 Year</b>	<b>FY +4 Year</b>	<b>FY +5 Year</b>
<b>SAVINGS:</b>	\$ N/A	\$	\$	\$	\$	\$
<b>Regulated Community</b>	N/A					
<b>Local Government</b>	N/A					
<b>State Government</b>	N/A					
<b>Total Savings</b>	N/A					
<b>COSTS:</b>	N/A					
<b>Regulated Community</b>	N/A					
<b>Local Government</b>	N/A					
<b>State Government</b>	N/A					
<b>Total Costs</b>	N/A					
<b>REVENUE LOSSES:</b>	N/A					
<b>Regulated Community</b>	N/A					
<b>Local Government</b>	N/A					
<b>State Government</b>	N/A					
<b>Total Revenue Losses</b>	N/A					

(17a) Provide the past three year expenditure history for programs affected by the regulation.

<b>Program</b>	<b>FY -3</b>	<b>FY -2</b>	<b>FY -1</b>	<b>Current FY</b>
BLLC budget	\$3,272,376	\$3,247,903	\$3,328,419	\$3,560,091

(18) Explain how the benefits of the regulation outweigh any cost and adverse effects.

The Act requires the Department to promulgate a regulation. This regulation sets forth the complaint, investigation and appeal procedures. The benefits of providing clarity guidance on these processes to those affected by it outweigh the costs to the regulated community which are already required to comply with the Act.

(19) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

On December 3, 2009, the Department held a public stakeholders meeting in which it provided information regarding the regulatory process and received testimony from stakeholders affected by the Act and its regulations.

The following organizations presented testimony at the stakeholders meeting: Pennsylvania Association of Staff Nurses & Allied Professions; Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities; The Hospital & Healthsystem Association of Pennsylvania; Service Employees International Union; and, Bruce Ludwig, Esquire.

The following groups provided written comments: Pennsylvania Department of Public Welfare; Pennsylvania Department of Corrections; Pennsylvania State Education Association; Department of Military and Veterans Affairs; the Pennsylvania Association of Staff Nurses & Allied Professions; the Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities; The Hospital & Healthsystem Association of Pennsylvania; Service Employees International Union; and, Bruce Ludwig, Esquire.

The Department reviewed this proposed rulemaking with the following Commonwealth agencies: Department of Public Welfare; Department of Corrections; Department of Military and Veterans Affairs; and Office of Administration.

(20) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

Because this is the first regulation promulgated under the Prohibition of Excessive Overtime in Health Care Act, no alternative regulatory provisions were considered.

(21) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

There is no comparable federal statute or regulations that address prohibition of excessive overtime in the health care industry.

(22) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Approximately 15 states have some form of statute or regulations regarding restrictions on overtime for nurses and/or health care workers, including New York, New Jersey, Maryland and West Virginia. This regulation is comparable. This regulation will not place Pennsylvania at a competitive disadvantage to other states.

(23) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

The statute and regulation apply to state agencies that fall under the definition of "health care facility" and govern employees (hourly wage employees or those classified as non-supervisory for collective bargaining purposes) of the Commonwealth and other political subdivisions who provide direct patient care and clinical care services, defined under section 2 of the Act (43 P.S. § 932.2). This includes the Departments of Correction, Health, Public Welfare, and Military and Veterans Affairs. It does not impact any other regulation promulgated by another state agency.

(24) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

The regulation will not significantly change existing reporting, record keeping or other paperwork requirements. Current forms for complaints will be updated, if necessary, following enactment of the regulation.

(25) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

No special provisions were developed to meet the particular needs of the groups indicated above and none are needed.

(26) Include a schedule for review of the regulation including:

- A. The date by which the agency must receive public comments: \_\_\_\_\_
- B. The date or dates on which public meetings or hearings will be held: \_\_\_\_\_
- C. The expected date of promulgation of the proposed regulation as a final-form regulation: \_\_\_\_\_
- D. The expected effective date of the final-form regulation: \_\_\_\_\_
- E. The date by which compliance with the final-form regulation will be required: \_\_\_\_\_
- F. The date by which required permits, licenses or other approvals must be obtained: \_\_\_\_\_

(27) Provide the schedule for continual review of the regulation.

The regulation will be reviewed and updated as needed.



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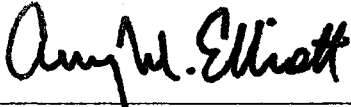
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FACE SHEET  
FOR FILING DOCUMENTS  
WITH THE LEGISLATIVE REFERENCE  
BUREAU  
  
(Pursuant to Commonwealth Documents Law)

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to form and legality. Attorney General

By

  
(Deputy Attorney General)

**JUN 19 2012**

Date of Approval

→ Check if applicable.  
Copy not approved. Objections  
attached.


Copy below is hereby certified to be a true and correct copy of a document issued, prescribed or promulgated by:

Department of Labor and Industry  
(AGENCY)

DOCUMENT/FISCAL NOTE NO. 12-91


DATE OF ADOPTION: \_\_\_\_\_

BY:

  
Julia K. Hearthway  
TITLE: Secretary  
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to form and legality. Executive or Independent Agencies

BY:

  
Megan L. Consedine

**APR 02 2012**

DATE OF APPROVAL

(DEPUTY GENERAL COUNSEL)  
(~~CHIEF COUNSEL, INDEPENDENT AGENCY~~)  
(~~STRIKE INAPPLICABLE TITLE~~)

→ Check if applicable. No Attorney General approval or objection within 30 days after submission.

PROPOSED RULEMAKING

DEPARTMENT OF LABOR AND INDUSTRY

31 Pa. Code, Chapter 225

Prohibition of Excessive Overtime in Health Care Act Regulations

**PROPOSED RULEMAKING**

**DEPARTMENT OF LABOR AND INDUSTRY**

**BUREAU OF LABOR LAW COMPLIANCE**

**[34 Pa. Code, Chapter 225]**

**Prohibition of Excessive Overtime in Health Care Act Regulations**

Under section 5 of the Prohibition of Excessive Overtime in Health Care Act (Act 102), 43 P.S. §932.5, the Department of Labor of Industry (Department) is submitting proposed rulemaking for regulations to the Act.

***Statutory Authority***

Act 102 was signed by Governor Edward G. Rendell on October 9, 2008, and took effect on July 1, 2009. The Department is required to promulgate regulations to implement the Act's provisions. 43 P.S. § 932.5.

***Background***

The Act prohibits health care facilities or employers that provide clinical care services from requiring its employees to work in excess of an agreed to, predetermined, and regularly scheduled daily work shift. The Act allows for mandating overtime for unforeseeable emergent circumstances and requires health care facilities or employers to use reasonable efforts to obtain staff before overtime may be mandated. The Act prohibits retaliation against employees for refusing to work in excess of its limitation and provides for the Department to hold hearings, implement administrative fines and order corrective action for violations of the Act's provisions. The Bureau has enforced the Act since it took effect on July 1, 2009.

***Regulatory Review and Promulgation***

Since October of 2008, the Department has met with numerous organizations whose members would be affected by Act 102 and its proposed regulations. Additionally on December 3, 2009, the Department held a public stakeholders meeting in which it provided information regarding the regulatory process and received testimony from stakeholders affected by the Act and its regulations.

The following organizations presented testimony at the stakeholders meeting: Pennsylvania Association of Staff Nurses & Allied Professions; Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities; The Hospital & Healthsystem Association of Pennsylvania; Service Employees International Union; and, Bruce Ludwig, Esquire.

The following groups provided written comments: Pennsylvania Department of Public

Welfare; Pennsylvania Department of Corrections; Pennsylvania State Education Association; Department of Military and Veterans Affairs; the Pennsylvania Association of Staff Nurses & Allied Professions; the Pennsylvania Advocacy and Resources for Autism and Intellectual Disabilities; The Hospital & Healthsystem Association of Pennsylvania; Service Employees International Union; and, Bruce Ludwig, Esquire.

The Department reviewed this proposed rulemaking with the following Commonwealth agencies: Department of Public Welfare; Department of Corrections; Department of Military and Veterans Affairs; and Office of Administration.

### ***Purpose***

The proposed rulemaking is necessary to set forth the complaint and hearing process for alleged violations committed under the Act.

### ***Summary of Proposed Rulemaking***

#### *Section 225.1. Definitions.*

This section provides the following new definitions necessary to interpret the Act and the regulations: "Act", "Bureau", "Employer", and "Secretary." It also reiterates and places in the regulation the definitions for "Department", "Employee", and "Health care facility" which are already contained in section 2 of the Act 43 P.S. § 932.2.

#### *Section 225.2. Purpose and scope.*

This section states that the purpose of this chapter is to implement the Act's complaint and investigation procedures, and administrative penalties assessment provisions.

#### *Section 225.3. Complaint and investigation procedure.*

This section enumerates the complaint and investigation procedure for alleged violations of the Act. Under this section aggrieved employees may file a complaint with the Department within 60 days of the alleged violation of the Act. Complaints must be in writing and signed. This section details the information which must be contained in the complaint and the procedure to correct an insufficient complaint. It also allows the Department to dismiss a complaint that does not comply with the requirements.

#### *Section 225.4. Administrative penalties.*

This section enumerates the factors the Department will consider when imposing penalties under section 6 of the Act (43 P.S. § 932.6). The factors which will be considered include the size of business, history of previous violations and good faith attempts by the health care facility or employer to address the violation at issue.

#### *Section 225.5. Administrative notice of violation and proposed penalty.*

This section enumerates the notice of violation and penalty procedure. Under this section the Bureau will issue an administrative decision containing findings and proposed penalties which will be served by first class mail upon the violating health care facility or employer. A health care facility or employer served with an administrative decision and proposed penalty may accept the notice and pay the penalty, request a reduction in penalty or contest the administrative decision and proposed penalty. The request for reduction in penalty must be made within 10 days of the mailing date of the administrative decision and must propose an alternative penalty and set forth mitigating circumstances. The filing of a request for reduction does not toll or extend the 30-day period appeal period.

*Section 225.6. Contesting an administrative decision and proposed penalty.*

This section enumerates the procedure to be used by a health care facility or employer to contest an adverse administrative decision. The health care facility or employer contesting the administrative decision must file a written request for a hearing with the Bureau within 30 days of the mailing date of the administrative decision. The Bureau will notify the complainant of any hearing requests. The section provides that untimely request for a hearing may be dismissed. A request for a hearing acts as a supersedeas of the administrative decision.

*Section 225.7. Hearing.*

This section sets out the hearing process. The process begins with the Secretary assigning a hearing officer to schedule a de novo proceeding. The parties to the hearing are the Bureau and the health care facility or employer. The Bureau has the burden of proof that the health care facility violated the Act and that the proposed penalty is appropriate.

*Section 225.8. Petition to intervene.*

This section sets out the manner in which a third party may request to intervene in the hearing. A petition to intervene must be filed with the hearing officer and the existing parties. The existing parties may file an answer to the petition.

*Section 225.9. Adjudications.*

This section states that the Secretary will issue a written adjudication including relevant findings and the rationale for the adjudication. The adjudication will be served on all parties of record and include notification of appeal rights.

*Section 225.10. Further appeal rights.*

This section notifies parties that an appeal to the Secretary's adjudication may be filed to Commonwealth Court.

### ***Affected persons***

Certain Commonwealth agencies, health care facilities and certain employees of those healthcare facilities and those commonwealth agencies as defined in section 2 of the Act (43 P.S. § 932.2) may be affected by this regulation. The health care facilities and agencies affected include general or special hospitals, psychiatric hospitals, rehabilitation hospitals, hospices, ambulatory surgical facilities, long-term care nursing facilities, cancer treatment centers using radiation therapy on an ambulatory basis, inpatient drug and alcohol treatment facilities, facilities which provide clinically-related health services and which are operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare, and mental retardation facilities operated by the Department of Public Welfare.

Employees affected are those who are involved in direct patient care activities or clinical care services and who receive an hourly wage or are classified as a nonsupervisory employee for collective bargaining purposes. Employees include individuals employed through a personnel agency that contracts with a health care facility to provide personnel.

These regulations will affect the complaint and hearing process for alleged violations committed under the Act.

### ***Fiscal Impact***

It is anticipated that there will be costs to the Department as a result of this proposed rulemaking. The Department cannot anticipate the costs of investigating and adjudicating alleged violations because there is no basis for comparison for this activity. It is not expected that the levying of administrative fines will demonstrably offset costs. The Bureau has enforced the Act since July 2009.

### ***Paperwork Requirements***

The Bureau has already prepared and posted information and complaint forms on its website ([www.dli.state.pa.us](http://www.dli.state.pa.us)). The Act contains no record keeping requirement for employers.

### ***Sunset Date***

A sunset date is not appropriate for this proposed rulemaking. The Bureau will periodically monitor this proposed rulemaking and submit amendments as needed.

### ***Effective Date***

The proposed rulemaking will be effective upon publication of a final-form regulation in the *Pennsylvania Bulletin*.

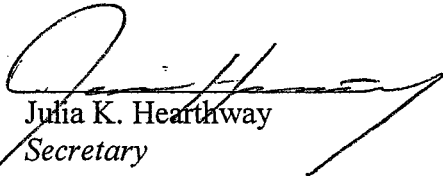
**Contact person**

Interested persons are invited to submit written comments, suggestions or objections regarding the proposed rulemaking to: Karen Galli, Deputy Chief Counsel, 651 Boas Street, 10th Floor, Harrisburg, PA 17120, Fax: 717-783-5027, e-mail: [kgalli@pa.gov](mailto:kgalli@pa.gov) within 30 days after publication of this proposed rulemaking in the *Pennsylvania Bulletin*.

**Regulatory Review**

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on 6/26/12, 2012, the Department submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the House and Senate Labor and Industry Committees. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey any comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections must specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Department, the General Assembly and the Governor of comments, recommendations or objections raised.

  
Julia K. Heathway  
Secretary

**Fiscal Note**

Annex A

TITLE 34. LABOR AND INDUSTRY

PART XII. BUREAU OF LABOR STANDARDS

CHAPTER 225. PROHIBITION OF EXCESSIVE OVERTIME IN  
HEALTH CARE ACT REGULATIONS

- 225.1 Definitions
- 225.2 Purpose and scope.
- 225.3 Complaint and investigation procedure.
- 225.4 Administrative penalties.
- 225.5 Administrative notice of violation and proposed penalty.
- 225.6 Contesting an administrative decision and proposed penalty.
- 225.7 Hearing.
- 225.8 Petition to intervene.
- 225.9 Adjudications.
- 225.10 Further appeal rights.

**§ 225.1. Definitions.**

(a) Terms used in this chapter shall have the same meaning and be defined in the same manner as the Act.

(b) In addition to the provisions of subsection (a), the following words and terms, when used in this chapter, have the following meanings unless the context clearly indicates otherwise:

*Act* - The Prohibition of Excessive Overtime in Health Care Act (43 P.S. §§ 932.1-932.6).

*Bureau* – The Bureau of Labor Law Compliance or its successor bureau within the Department assigned enforcement of the Act.

*Department* - The Department of Labor and Industry of the Commonwealth.

*Employee*- An individual employed by a health care facility or by the Commonwealth or a political subdivision or instrumentality of the Commonwealth who is involved in direct patient care activities or clinical care services and who receives an hourly wage or is classified as a nonsupervisory employee for collective bargaining purposes. The term includes an individual employed through a personnel agency that contracts with a health care facility to provide personnel. The term does not include a physician, physician assistant, dentist or worker involved in environmental services, clerical, maintenance, food service or other job classification not involved in direct patient care and clinical care services.

*Employer* – A health care facility defined in section 2 of the Act (43 P.S. § 932.2 (definition of *Health care facility*) or the Commonwealth, a political subdivision or an instrumentality of the Commonwealth engaged in direct patient care activities or clinically-related services.

*Health Care Facility* - A facility which provides clinically related health services, regardless of whether the operation is for profit or nonprofit and regardless of whether operation is by the private sector or by State or local government.

(1) The term includes all of the following:

- i. A general or special hospital, a psychiatric hospital, a rehabilitation hospital, a hospice, an ambulatory surgical facility, a long-term care nursing facility, a cancer treatment center using radiation therapy on an ambulatory basis and an inpatient drug and alcohol treatment facility.
- ii. A facility which provides clinically related health services and which is operated by the Department of Corrections, the Department of Health, the Department of Military and Veterans Affairs or the Department of Public Welfare.
- iii. A mental retardation facility operated by the Department of Public Welfare.

(2) The term does not include any of the following:

- i. An office used primarily for private or group practice by a health care practitioner.
- ii. A facility providing treatment solely on the basis of prayer or spiritual means in accordance with the tenets of a church or a religious denomination.
- iii. A facility conducted by a religious organization for the purpose of providing health care services exclusively to clergy or other individuals in a religious profession who are members of the religious denomination conducting the facility.

*Secretary*- The Secretary of the Department or the Secretary's designee.

## **§ 225. 2. Purpose and scope.**

The purpose of this chapter is to implement the Act's complaint and investigation procedures, and administrative penalties assessment provisions.

## **§ 225.3. Complaint and investigation procedure.**

(a) Upon receipt of a complaint or upon its own initiative, the Bureau will investigate alleged violations of the Act.

(b) An aggrieved employee who believes there is a violation of this Act against him by a health care facility may file a complaint, within 60 days of the violation, with the Department.

(c) The complaint shall be in writing, signed and shall set forth the grounds for the complaint. Complaints must contain:



- (1) The name and address of complainant.
- (2) The name and address of the employer against whom the complaint is filed.
- (3) A statement of the facts forming the basis of the complaint or conclusion that there has been a violation of the act including the date, time and place of the alleged violation.
- (4) The name of any witnesses and other information that may be pertinent to an investigation.

(d) The Bureau will prepare complaint forms that will be available on the Department's website ([www.dli.state.pa.us](http://www.dli.state.pa.us)).

(e) The Bureau will accept complaints that are not placed on the complaint form.

(f) The Bureau will record the date of receipt on all complaints. If a complaint does not provide all of the information required by subsection (c), the Bureau shall advise the complainant in writing of the procedures necessary to comply with subsection (c) and will allow the party 15 days from the date of the Bureau's letter to provide the required missing information. If the party fails to provide information fully conforming to the requirements of subsection (c), the Bureau may dismiss the complaint and will notify the complainant in writing of the dismissal.

#### **§ 225.4. Administrative penalties.**

(a) The Department may impose any and all of the following penalties under section 6 of the Act (43 P.S. § 932.6):

(1) A fine of \$100 to \$1,000 per violation. A violation is comprised of each discrete time that a health care facility or employer does not comply with the Act and this chapter.

(2) Order a health care facility or employer to take an action which the Department deems necessary to correct a violation of section 3 of the Act (43 P.S. § 932.3) or this chapter. Actions ordered may include: payment of restitution to employees; directives for compliance with the Act such as changes to policy and procedures to insure future compliance; and non-retaliation orders. Such orders shall be based on the facts of each individual complaint and practices of the health care facility and employer.

(b) The Department may base administrative penalties on the following factors:

(1) Size of business. The Department will take into consideration the number of employees of the health care facility on the date the violation occurred.

(2) History of previous violations. The Department will take into consideration the number of assessed violations for the health care facility in a preceding 12 month period. Only violations for which penalties were assessed and which are not subject to further appeal will be included.

(3) Good faith of health care facility or employer. The Department will take into consideration the health care facility's good faith attempts to abate the violation at issue in the complaint and any attempts the facility has made to abate future violations

**§ 225.5. Administrative notice of violation and proposed penalty.**

(a) After the completion of an investigation on an alleged violation of the Act and upon finding that the Act has been violated, the Bureau will issue an administrative decision containing findings and proposed penalties.

(b) The Bureau will serve by first class mail upon the violating health care facility or employer a copy of its administrative decision and proposed penalty.

(c) A health care facility or employer served with an administrative decision and proposed penalty may accept the notice and pay the penalty, request a reduction in penalty or contest the administrative decision and proposed penalty pursuant to § 225.6 (relating to contesting an administrative decision and proposed penalty).

(d) A request for a reduction in the penalty shall be made in writing to the Bureau within 10 days of the mailing date of the administrative decision and shall propose an alternative penalty for Bureau's consideration setting forth mitigating circumstances. The Bureau shall expeditiously act on the request for reduction of penalty within 10 days of receipt. The filing of a request for reduction does not toll or extend the 30-day period for requesting a hearing under § 225.6.

(e) After the completion of an investigation of alleged violations of the Act and upon no findings that the Act has been violated, the Bureau will provide written notice to the complainant and the health care facility or employer that the investigation has been closed.

**§ 225.6. Contesting an administrative decision and proposed penalty.**

(a) A health care facility or employer may contest an adverse administrative decision by requesting a hearing.

(b) The health care facility or employer contesting the administrative decision shall file an original and two copies of a written request for a hearing with the Bureau within 30 days of the mailing date of the administrative decision. The hearing request shall be mailed to the Bureau at the address listed on the administrative decision.

(c) The Bureau will notify the complainant of any request made for hearing under this section.

(d) An untimely request for a hearing may be dismissed without further action by the Bureau.

(e) Filing of a request for a hearing shall act as a supersedeas of the administrative decision on the violation and proposed penalties.

**§ 225.7. Hearing.**

(a) The Secretary will assign the request for a hearing to a hearing officer who will schedule a de novo proceeding. All parties will receive reasonable notice of the hearing date, time and place.

(b) The hearing will be conducted in a manner to provide all parties the opportunity to be heard. The hearing officer will not be bound by strict rules of evidence. All relevant evidence of reasonably probative value may be received into evidence. Reasonable examination and cross-examination of witnesses will be permitted.

(c) The parties may be represented by legal counsel, but legal representation at the hearing is not required.

(d) Testimony will be recorded and a full record kept of the proceeding.

(e) All parties will be provided the opportunity to submit briefs addressing issues raised at the hearing.

(f) The Bureau and the health care facility or employer shall be the parties at the hearing.

(g) The Bureau shall have the burden of proving by a preponderance of the evidence that the health care facility violated the Act and that the proposed penalty is appropriate under the factors listed in section 225.4(b).

(h) To the extent not covered by this chapter, hearings shall be governed by 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).

**§ 225.8. Petition to intervene.**

(a) The Bureau and the health care facility or employer shall be the parties at the hearing.

(b) A person other than the Bureau and the health care facility or employer may request to intervene in a hearing under the following conditions:

(1) He or she can demonstrate any of the following:

(i) A right conferred by law.

(ii) An interest which may be so directly affected that it may be bound by the Department's action and its interest is not adequately represented by existing parties in the hearing.

(2) The party files a petition to intervene with the presiding officer and the existing parties in the hearing under 1 Pa. Code § 35.29 (relating to form and contents of petition to intervene) no later than 30 days before the scheduled hearing unless the party shows good cause and there is no prejudice to the existing parties from the late filing. Existing parties may file an answer under 1 Pa. Code § 35.36 (relating to answers to petitions to intervene) within 20 days or other time set by the presiding officer.

(c) As soon as possible after the time set for filing of answers, the hearing officer will rule on the petition and may grant or deny intervention in whole or in part, or may limit the intervenor's participation in the hearing. The hearing officer may tentatively grant intervention before the hearing only to avoid detriment to the public interest and if the hearing officer issues a final ruling on intervention before the hearing commences.

(d) A hearing officer may not grant a petition to intervene during a hearing unless good cause is shown for the late filing, all parties have the opportunity to respond or object, and the petition complies with this section.

#### **§ 225.9. Adjudications.**

(a) The Secretary will issue a written adjudication. The adjudication will include all relevant findings and conclusions, and the rationale for the adjudication.

(b) The adjudication will include a notification to all parties of appeal rights to Commonwealth Court.

(c) The adjudication will be served upon all parties, intervenors and counsel of record.

#### **§ 225.10. Further appeal rights.**

Any party aggrieved by an adjudication rendered pursuant to § 225.9 (relating to adjudications) may file an appeal to Commonwealth Court within 30 days from mailing of the decision as prescribed by law or rule of court.



COMMONWEALTH OF PENNSYLVANIA  
DEPARTMENT OF LABOR AND INDUSTRY  
HARRISBURG, PENNSYLVANIA 17120

THE SECRETARY

June 26, 2012

The Honorable Silvan B. Lutkewitte, III  
Chairman, Independent Regulatory Review Commission  
333 Market Street, 14<sup>th</sup> Floor  
Harrisburg, PA 17101

**Re: Notice of Proposed Rulemaking  
Department of Labor and Industry  
31 Pa. Code, Chapter 225  
Prohibition of Excessive Overtime in Health Care Act  
Document No. 12-91**

Dear Chairman Lutkewitte:

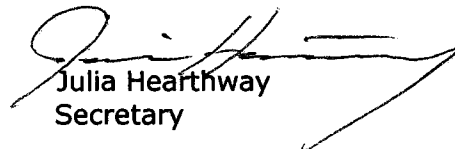
Enclosed is a proposed rulemaking package consisting of a Face Sheet, Preamble, Annex A and Regulatory Analysis Form.

The Department of Labor & Industry is submitting this rulemaking to implement the complaint, hearing and appeals procedures for the Prohibition of Excessive Overtime in Health Care Act (Act 102) (43 P.S. §932.5) and section 2205 of the Administrative Code. (71 P.S. §565).

Comments, suggestions or questions should be directed to Karen Galli, Deputy Chief Counsel, Office of Chief Counsel, Department of Labor & Industry, 10<sup>th</sup> Floor, Labor and Industry Building, 651 Boas Street, Harrisburg, PA 17121; Telephone: (717) 787-4186; Fax: (717) 783-5027. The email address is: [kgalli@pa.gov](mailto:kgalli@pa.gov).

The Department's staff will provide your staff with any assistance required to facilitate your review of this proposal.

Sincerely,

  
Julia Hearthway  
Secretary

cc w/encl: Arthur F. McNulty, Chief Counsel  
J. Scott Robinette, Deputy Secretary for Safety and Labor-Management Relations  
David Greineder, Director of Legislative Affairs  
Eric Kratz, Executive Policy Specialist, Office of Policy, Planning & Development  
Karen Galli, Deputy Chief Counsel  
Richard Lengler, Deputy Chief Counsel  
Jennifer Peterson, Special Assistant to the Secretary

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE  
REGULATORY REVIEW ACT**

I.D. NUMBER: 12-91

SUBJECT: PROHIBITION OF EXCESSIVE OVERTIME IN HEALTH CARE ACT  
REGULATIONS

AGENCY: DEPARTMENT OF LABOR AND INDUSTRY

2012 JUN 26 PM 3: 57

RECEIVED  
IRRC

**TYPE OF REGULATION**

- |   |   |                      |
|---|---|----------------------|
| X | Proposed Regulation   |                      |
|   | Final Regulation  |                      |
|   | Final Regulation with Notice of Proposed Rulemaking Omitted |                      |
|   | 120-day Emergency Certification of the Attorney General     |                      |
|   | 120-day Emergency Certification of the Governor             |                      |
|   | Delivery of Tolled Regulation                               |                      |
|   | a. With Revisions   | b. Without Revisions |

**FILING OF REGULATION**

DATE	SIGNATURE	DESIGNATION
		HOUSE COMMITTEE ON LABOR RELATIONS
6/26/12	<u>[Signature]</u>	MAJORITY CHAIRMAN <u>Ron Miller</u>
6/26/12	<u>[Signature]</u>	MINORITY CHAIRMAN <u>William R. Keller</u>
		SENATE COMMITTEE ON LABOR RELATIONS
6/26/12	<u>[Signature]</u>	MAJORITY CHAIRMAN <u>John R. Gordner</u>
6/26/12	<u>[Signature]</u>	MINORITY CHAIRMAN <u>Christine M. Tartaglione</u>
6/26/12	<u>[Signature]</u>	INDEPENDENT REGULATORY REVIEW COMMISSION
		ATTORNEY GENERAL (for Final Omitted only)
6/26/12	<u>[Signature]</u>	LEGISLATIVE REFERENCE BUREAU (for Proposed only)