

Assembly Bill No. 840

Passed the Assembly August 25, 2016

Chief Clerk of the Assembly

Passed the Senate August 22, 2016

Secretary of the Senate

This bill was received by the Governor this _____ day
of _____, 2016, at _____ o'clock ____M.

Private Secretary of the Governor

CHAPTER _____

An act to add Section 19851.2 to, and to add and repeal Section 19851.3 of, the Government Code, relating to state employees.

LEGISLATIVE COUNSEL'S DIGEST

AB 840, Ridley-Thomas. Nurses and certified nursing assistants: overtime.

The State Civil Service Act generally requires the workweek of state employees to be 40 hours, and the workday of state employees to be 8 hours. Under the act, it is the policy of the state to avoid the necessity for overtime work whenever possible.

This bill, commencing January 1, 2019, would prohibit a nurse or Certified Nursing Assistant (CNA), as defined, employed by the State of California in a specified type of facility from being compelled to work in excess of the regularly scheduled workweek or work shift, except under certain circumstances. The bill would authorize a nurse or CNA to volunteer or agree to work hours in addition to his or her regularly scheduled workweek or work shift, but the refusal to accept those additional hours would not constitute patient abandonment or neglect or be grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the nurse or CNA.

This bill would require such a facility to establish a 8-member joint labor management task force, with membership as prescribed, to meet quarterly to develop specific recommendations and a plan to reduce or eliminate mandatory overtime. The bill would require a task force, on or before November 1, 2018, to prepare and submit to the Legislature a report on its recommendations. Those task force and report provisions would be repealed on January 1, 2019.

The bill would make a related statement of legislative intent.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of the Legislature to ensure that there is a process that management and supervisors in a state health care facility are required to follow to avoid on-the-spot mandatory overtime of any nurse or certified nursing assistant (CNA) whose

regularly scheduled work shift is complete, and to prevent circumstances where an employee is stopped at the gate of, for example, a Department of Corrections and Rehabilitation and California Correctional Health Care Services facility, and is instructed to return to work at the end of the employee's regularly scheduled work shift. It is the intent of the Legislature to prohibit a state facility that employs nurses or CNAs from using mandatory overtime as a scheduling tool, or as an excuse for fulfilling an operational need that results from a management failure to properly staff those state facilities.

SEC. 2. Section 19851.2 is added to the Government Code, to read:

19851.2. (a) As used in this section:

(1) "Nurse" means all classifications of registered nurses represented by State Bargaining Unit 17, or the Licensed Vocational Nurse classifications represented by State Bargaining Unit 20.

(2) "CNA" means all Certified Nursing Assistant classifications represented by State Bargaining Unit 20.

(3) "Facility" means any facility that provides clinically related health services that is operated by the Division of Correctional Health Care Services of the Department of Corrections and Rehabilitation, the Department of Corrections and Rehabilitation, the State Department of State Hospitals, the Department of Veteran Affairs, or the State Department of Developmental Services in which a nurse or CNA works as an employee of the state.

(4) "Emergency situation" means any of the following:

(A) An unforeseeable declared national, state, or municipal emergency.

(B) A highly unusual or extraordinary event that is unpredictable or unavoidable and that substantially affects providing needed health care services or increases the need for health care services, which includes any of the following:

(i) An act of terrorism.

(ii) A natural disaster.

(iii) A widespread disease outbreak.

(iv) A warden-, superintendent-, or executive director-declared emergency, or severe emergency that necessitates the assistance of an outside agency.

(b) A facility shall not require a nurse or CNA to work in excess of a regularly scheduled workweek or work shift. A nurse or CNA may volunteer or agree to work hours in addition to his or her regularly scheduled workweek or work shift but the refusal by a nurse or CNA to accept those additional hours shall not constitute either of the following:

(1) Grounds for discrimination, dismissal, discharge, or any other penalty or employment decision adverse to the nurse or CNA.

(2) Patient abandonment or neglect, except under circumstances provided for in the Nursing Practice Act (Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code).

(c) This section shall not apply in any of the following situations:

(1) To a nurse or CNA participating in a surgical procedure in which the nurse is actively engaged and whose continued presence through the completion of the procedure is needed to ensure the health and safety of the patient.

(2) If a catastrophic event occurs in a facility and both of the following factors apply:

(A) The catastrophic event results in such a large number of patients in need of immediate medical treatment that the facility is incapable of providing sufficient nurses or CNAs to attend to the patients without resorting to mandatory overtime.

(B) The catastrophic event is an unanticipated and nonrecurring event.

(3) If an emergency situation occurs.

(d) Nothing in this section shall be construed to affect the Nursing Practice Act (Chapter 6 (commencing with Section 2700) of Division 2 of the Business and Professions Code), the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840) of Division 2 of the Business and Professions Code), or a registered nurse's duty under the standards of competent performance.

(e) Nothing in this section shall be construed to preclude a facility from hiring part-time or intermittent employees.

(f) Nothing in this section shall prevent a facility from providing employees with more protections against mandatory overtime than the minimum protections established pursuant to this section.

(g) This section shall become operative on January 1, 2019.

SEC. 3. Section 19851.3 is added to the Government Code, to read:

19851.3. (a) Each facility, as defined in paragraph (3) of subdivision (a) of Section 19851.2, shall establish a joint labor management task force to make recommendations and develop a plan to reduce or eliminate mandatory overtime. A joint labor management task force shall be composed of eight members, which shall consist of four representatives for the facility and four labor union representatives. The joint labor management task force shall meet quarterly to develop recommendations.

(b) The recommendations shall include the following:

(1) Patient and staff needs by tracking trends in patient acuity, overtime use, and overall staffing procedures.

(2) Training, for applicable employees, on core staffing principles, best practices, the appropriate use of overtime, and ways to avoid mandatory overtime.

(3) Assessment and staffing best practices, a contingency staffing system, avenues for staff engagement in the scheduling process, and creative scheduling solutions.

(c) (1) On or before November 1, 2018, the task force shall prepare and submit to the Legislature a report on its recommendations, including the following information:

(A) The number of voluntary and mandatory overtime hours at each facility for registered nurses, licensed vocational nurses, and certified nursing assistants. Each facility shall submit the total number of voluntary and mandatory overtime hours worked.

(B) The number of complaints investigated and complaints that resulted in a civil action or criminal prosecution.

(C) Recommendations for modifying, eliminating, or continuing the task force's activities.

(D) Recommendations for statutory or regulatory changes, or both, needed to better allow for enforcement.

(2) The report required by this subdivision shall be submitted to the Legislature pursuant to Section 9795 of the Government Code.

(d) This section shall remain in effect only until January 1, 2019, and as of that date is repealed.

Approved _____, 2016

Governor