

HOUSE No. 2362

The Commonwealth of Massachusetts

PRESENTED BY:

Elizabeth A. Malia

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to strengthen the worker voice in hospital care planning.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>2/16/2021</i>
<i>Kip A. Diggs</i>	<i>2nd Barnstable</i>	<i>2/26/2021</i>
<i>Peter Capano</i>	<i>11th Essex</i>	<i>2/26/2021</i>
<i>John J. Lawn, Jr.</i>	<i>10th Middlesex</i>	<i>2/26/2021</i>
<i>Daniel J. Ryan</i>	<i>2nd Suffolk</i>	<i>2/26/2021</i>
<i>Brandy Fluker Oakley</i>	<i>12th Suffolk</i>	<i>2/26/2021</i>
<i>Steven C. Owens</i>	<i>29th Middlesex</i>	<i>2/26/2021</i>
<i>Carmine Lawrence Gentile</i>	<i>13th Middlesex</i>	<i>2/26/2021</i>
<i>Steven Ultrino</i>	<i>33rd Middlesex</i>	<i>2/26/2021</i>
<i>Jack Patrick Lewis</i>	<i>7th Middlesex</i>	<i>2/26/2021</i>
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>2/26/2021</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>2/26/2021</i>
<i>Carol A. Doherty</i>	<i>3rd Bristol</i>	<i>2/26/2021</i>
<i>Jon Santiago</i>	<i>9th Suffolk</i>	<i>2/26/2021</i>
<i>Nika C. Elugardo</i>	<i>15th Suffolk</i>	<i>2/26/2021</i>
<i>Lindsay N. Sabadosa</i>	<i>1st Hampshire</i>	<i>3/2/2021</i>
<i>Rob Consalvo</i>	<i>14th Suffolk</i>	<i>3/2/2021</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>3/2/2021</i>

<i>Russell E. Holmes</i>	<i>6th Suffolk</i>	<i>3/3/2021</i>
<i>David Biele</i>	<i>4th Suffolk</i>	<i>3/3/2021</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>3/3/2021</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>3/4/2021</i>
<i>Brian W. Murray</i>	<i>10th Worcester</i>	<i>3/14/2021</i>
<i>Walter F. Timilty</i>	<i>Norfolk, Bristol and Plymouth</i>	<i>3/17/2021</i>
<i>Michael P. Kushmerek</i>	<i>3rd Worcester</i>	<i>3/19/2021</i>
<i>Edward R. Philips</i>	<i>8th Norfolk</i>	<i>3/19/2021</i>
<i>Gerard J. Cassidy</i>	<i>9th Plymouth</i>	<i>3/22/2021</i>
<i>Erika Uyterhoeven</i>	<i>27th Middlesex</i>	<i>3/23/2021</i>
<i>Julian Cyr</i>	<i>Cape and Islands</i>	<i>3/30/2021</i>
<i>Maria Duaine Robinson</i>	<i>6th Middlesex</i>	<i>4/1/2021</i>
<i>Michelle L. Ciccolo</i>	<i>15th Middlesex</i>	<i>4/7/2021</i>
<i>William J. Driscoll, Jr.</i>	<i>7th Norfolk</i>	<i>5/7/2021</i>
<i>Patricia A. Haddad</i>	<i>5th Bristol</i>	<i>5/11/2021</i>
<i>Danillo A. Sena</i>	<i>37th Middlesex</i>	<i>6/16/2021</i>
<i>Tami L. Gouveia</i>	<i>14th Middlesex</i>	<i>7/20/2021</i>
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>7/21/2021</i>
<i>Natalie M. Higgins</i>	<i>4th Worcester</i>	<i>9/5/2021</i>
<i>Jacob R. Oliveira</i>	<i>7th Hampden</i>	<i>4/21/2022</i>

HOUSE No. 2362

By Ms. Malia of Boston, a petition (accompanied by bill, House, No. 2362) of Elizabeth A. Malia and others relative to health care worker overtime and maximum hours of working. Public Health.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

An Act to strengthen the worker voice in hospital care planning.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 111 of the Massachusetts General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out section 226, and inserting in place thereof the
3 following section:-

4 Section 226. (a) For the purposes of this section the following words shall, unless the
5 context clearly requires otherwise, have the following meanings:

6 "Facility" shall mean a hospital licensed under section 51 of this chapter, the teaching
7 hospital of the University of Massachusetts medical school, any licensed private or state-owned
8 and state-operated general acute care hospital, an acute psychiatric hospital, an acute care
9 specialty hospital, any acute care unit within a state operated healthcare facility, or a medium-
10 security state correctional facility for male inmates located in Plymouth County that is operated
11 and maintained by a private company under contract with the Department of Corrections. For

12 purposes of this section, facility shall not include rehabilitation facilities, skilled nursing
13 facilities, other long-term care facilities, or any other Massachusetts correctional facilities.

14 "Health Care Workforce" shall mean personnel employed by or contracted to work at a
15 facility who have an effect upon the delivery of quality care to patients, including but not limited
16 to registered nurses, licensed practical nurses, unlicensed assistive personnel, service,
17 maintenance, clerical, professional and technical workers, and all other health care workers. For
18 purposes of this section, doctors, interns, residents and facility management personnel, as well as
19 any correctional facility security personnel not providing health care services, shall not be
20 considered the health care workforce.

21 "Mandatory Overtime" shall mean any hours worked by a member of the health care
22 workforce in a facility to deliver patient care, beyond the predetermined and regularly scheduled
23 number of hours that the hospital and a member of the health care workforce have agreed that the
24 employee shall work, provided that in no case shall such predetermined and regularly scheduled
25 number of hours exceed 12 hours in any 24-hour period.

26 (b) Notwithstanding any general or special law to the contrary, a facility shall not require
27 a member of the health care workforce to work mandatory overtime except in the case of an
28 emergency situation where the safety of the patient requires its use and when there is no
29 reasonable alternative.

30 (c) Under subsection (b), whenever there is an emergency situation where the safety of a
31 patient requires its use and when there is no reasonable alternative, the facility shall, before
32 requiring overtime, make a good faith effort to have such hours covered on a voluntary basis.

33 Mandatory overtime shall not be used as a regular practice for providing appropriate staffing for
34 the level of patient care required.

35 (d) Under subsection (c), the health policy commission established under section 2 of
36 chapter 6D, shall further develop guidelines and procedures to determine what constitutes an
37 emergency situation for the purposes of allowing mandatory overtime. In developing those
38 guidelines, the commission shall consult with those employees and employers who would be
39 affected by such a policy. The commission shall solicit comment from those same parties
40 through a public hearing.

41 (e) Facilities shall report all instances of mandatory overtime and the circumstances
42 requiring its use to the department of public health or, in the case of the aforementioned state
43 correctional institution, by the contracting management company and to the department of
44 corrections. Such reports shall be public documents.

45 (f) A member of the health care workforce shall not be allowed to exceed 16 consecutive
46 hours worked in a 24-hour period. In the event a member of the health care workforce works 16
47 consecutive hours, that member of the health care workforce must be given at least 8 consecutive
48 hours of off-duty time immediately-after the worked overtime.

49 (g) This section is intended as a remedial measure to protect the public health and the
50 quality and safety of patient care and shall not be construed to diminish or waive any rights of
51 the member of the healthcare workforce under other laws, regulations or collective bargaining
52 agreements. The refusal of a member of the healthcare workforce to accept work in excess of the
53 limitations set forth in this section shall not be grounds for discrimination, dismissal, discharge
54 or any other employment decision.

55 SECTION 2. Said chapter 111 of the Massachusetts General Laws, as so appearing, is
56 hereby further amended by adding the following new section:-

57 Section 226A: (a) For the purposes of this section the following words shall, unless the
58 context clearly requires otherwise, have the following meanings:

59 "Facility" shall mean a hospital licensed under section 51 of this chapter, the teaching
60 hospital of the University of Massachusetts medical school, any licensed private or state-owned
61 and state-operated general acute care hospital, an acute psychiatric hospital, an acute care
62 specialty hospital, or any acute care unit within a state operated healthcare facility. For the
63 purposes of this section, a facility shall not include rehabilitation facilities or long-term care
64 facilities.

65 "Health Care Workforce" shall mean personnel employed by or contracted to work at a
66 facility that have an effect upon the delivery of quality care to patients, including but not limited
67 to registered nurses, licensed practical nurses, unlicensed assistive personnel, service,
68 maintenance, clerical, professional and technical workers, and all other health care workers.

69 (b) Notwithstanding any special or general law to the contrary, each facility shall
70 establish and develop a health care workforce care planning committee within 90 days of the
71 effective date of this section. The membership of the planning committee shall include at least
72 one registered nurse, one unlicensed assistive personnel, one service or maintenance worker, one
73 professional or technical worker, one clerical worker, and one representative for each labor
74 organization representing bargaining units at the facility. The membership of the planning
75 committee shall include no more than the same number of management representatives relative
76 to the number of appointed members of the health care workforce.

77 (c) The committee shall participate in at least one meeting of labor management
78 committee training. Such training shall be provided by an outside training vendor with
79 demonstrated experience in labor-management training. The training vendor shall be selected by
80 majority vote of the planning committee and the facility shall pay for costs of this training

81 (d) Each facility's health care workforce planning committee shall develop, implement,
82 monitor and regularly adjust a comprehensive care team plan that accounts for each unit or other
83 facility division in which direct patient care is provided. The care team plan shall be developed
84 to ensure that the assigned health care workforce members are sufficient to ensure a safe working
85 environment and to provide quality care to the facility's patients. Further, the care team plan
86 shall account for all anticipated variables that can influence a facility's delivery of quality patient
87 care including but not limited to the development of a comprehensive acuity-based classification
88 system. The care team plan shall include policies and staffing systems that account for (i) the
89 numbers and skill mix of needed health care workforce members to be assigned to patients, (ii)
90 anticipated patient volume, (iii) the time needed to complete expected care tasks, (iv) the need
91 for specialized equipment and technology, (v) the physical environment of the facility; (vi) the
92 necessity of ensuring a safe working environment; and (vii) all quality and safety data submitted
93 on a unit-by-unit basis for each facility through PatientCareLink or any similar system.

94 (e) As a condition of licensure, each facility shall submit the care team plan developed
95 under subsection (b) and (c) to the department of public health and the health policy commission
96 on at least an annual basis. Such submission shall include a certification from each member of
97 the health care workforce planning committee that the care team plan submitted accurately
98 represents the consensus decisions of the planning committee.

99 (f) The department of public health, in consultation with the health policy commission,
100 shall promulgate rules and regulations as needed to implement this section.

101 SECTION 3. Section 8 of chapter 6D of the Massachusetts General Laws, as appearing in
102 the 2018 Official Edition, is hereby amended in subsection (e) by inserting after the words “the
103 impact of price transparency on prices”, in lines 47-48, the following:-

104 , the impact of new and existing laws and regulations on the provider’s incumbent
105 workforce, wages, labor costs and labor supply, new hiring including the use of part-time,
106 temporary, per diem or subcontracted staff, redeployments, retraining, layoffs or reductions in
107 force, reassignment of former acute hospital workers to clinics and other outpatient settings, and
108 other significant workforce changes implemented during the reporting year

109 SECTION 4: Said section 8 of chapter 6D of the Massachusetts General Laws, as so
110 appearing, is hereby further amended in subsection (g) by inserting after the second sentence the
111 following sentence:-

112 The report shall also include an analysis of any available information on ongoing
113 provider efforts and initiatives reported on under subsection (e) of this section that demonstrate
114 planning and investment in worker readiness, including maintaining the engagement of the
115 workforce and information on the workforces’ labor representatives in joint implementation.

116 SECTION 5: Section 2 of this act shall take effect within 90 days of passage of this act.

117 SECTION 6: The department of public health, in consultation with the health policy
118 commission, shall promulgate rules and regulations as needed to implement section 2 of this act
119 within 90 days of passage of this act.