



THE HOSPITAL & HEALTHSYSTEM ASSOCIATION OF PENNSYLVANIA

October 13, 2011

**TO:** Honorable Members of the Pennsylvania Senate Labor and Industry Committee

**FROM:** Kathleen C. Mebus, Vice President, State Legislation

**SUBJECT:** Legislation to Clarify Pennsylvania's Minimum Wage Act Regarding Payment for Overtime Hours—SB 1099

**Issue:** There is an inconsistency between Pennsylvania's Minimum Wage Act (MWA) and the Federal Fair Labor Standards Act, according to a ruling from the Philadelphia Court of Common Pleas.

**Background:** Health care employers calculated overtime pay for employees relying on a provision contained in the federal Fair Labor Standards Act. Section 7(j) explicitly permits hospitals and other specified institutions "primarily engaged in the care of the sick, the aged, or the mentally ill" to use an alternative method of calculating overtime, identified as the "8-80" period method, so long as it is done pursuant to an agreement or understanding between the employer and employees (e.g., a collective bargaining agreement). Under the 8/80 method, eligible non-exempt employees are paid overtime (at a rate of one and one-half times their regular rate of pay) for all hours worked in excess of eight hours in a single work day, as well as for all hours worked in excess of 80 hours in a 14 consecutive day work period, rather than 40 hours in a seven day work week, as defined in Pennsylvania's law. The 8/80 method allows greater flexibility in scheduling variable shifts for 24/7 health care facilities.

The Philadelphia Court of Common Pleas ruling last year (March 2010) negated Philadelphia hospitals' ability to rely on this provision of federal law. As a result, the remaining hospitals and nursing homes across the state are at risk for class action lawsuits for reliance on federal law. In an effort to address what Pennsylvania hospitals and nursing homes, as well as our Department of Labor, considered allowable practice under the Fair Labor Standards Act, Senator Pat Vance (R-Cumberland) introduced legislation to clarify that Pennsylvania law permits use of the federal waiver. Several hospitals have experienced significant court costs and settlement agreements for actions considered appropriate by Pennsylvania's Department of Labor and Industry's opinions prior to the court case. Without the legislature clarifying its intent, the courts will continue to interpret the law disallowing the flexibility previously considered usual practice. Senate Bill 1099 would allow health care facilities to maintain the status quo of an important aspect of scheduling for their institution and their employees.

**HAP Position:** HAP requests your affirmative vote for this clarifying legislation.

**For More Information:** If you have questions, please contact me at (717) 561-5351 or [kmebus@haponline.org](mailto:kmebus@haponline.org).

