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DELAWARE STATE SENATE

142nd GENERAL ASSEMBLY

SENATE BILL NO. 133

AN ACT AMENDING TITLE 16 OF THE DELAWARE CODE RELATING TO THE PROVISION OF QUALITY MEDICAL CARE IN DELAWARE HOSPITALS BY PLACING LIMITS ON WORKING HOURS FOR PHYSICIAN RESIDENTS AND POSTGRADUATE TRAINEES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

1 Section 1. This Act may be cited as the "Hospital Patient Protection Act."

2 Section 2. Amend Title 16 of the Delaware Code by adding a new chapter thereto to read as follows:

3 "Chapter 102. WORKING HOURS AND CONDITIONS OF PHYSICIAN RESIDENTS AND  
4 POSTGRADUATE TRAINEES IN DELAWARE HEALTH CARE FACILITIES.

5 § 10201. FINDINGS.

6 (a) Physician-residents spend a significant amount of time while on duty performing  
7 activities not related to the educational mission of training competent physicians.

8 (b) The excessive number of hours worked by physician-residents in Delaware health  
9 care facilities is inherently dangerous for patient care and for the lives of physician-  
10 residents.

11 (c) Scientific literature has consistently demonstrated that the sleep deprivation of the  
12 magnitude seen in residency training programs leads to cognitive impairment. Being  
13 sleep deprived for twenty-four hours has the equivalent effect on impaired judgment  
14 as a .10 blood alcohol level.

15 (d) A substantial body of research indicates that excessive hours worked by physician-  
16 residents lead to higher rates of medical error, motor vehicle accidents, depression and  
17 pregnancy complications.

(e) The medical community has not adequately addressed the issue of excessive physician-resident work hours.

(f) Work hours of other industries have been regulated when the safety of employees or the public is at risk.

§ 10202. APPLICATION TO DELAWARE HOSPITALS AND HEALTH CARE FACILITIES.

This Chapter shall apply to all hospitals and health care facilities located in the State of Delaware that employ physician-residents and/or postgraduate trainees.

§ 10203. LIMITATIONS ON WORKING CONDITIONS AND WORKING HOURS OF PHYSICIANS AND POSTGRADUATE TRAINEES.

(a) For purposes of this Chapter, the term ‘postgraduate trainee’ includes a postgraduate intern, resident or fellow.

(b) In order that the working conditions and working hours of physicians and postgraduate trainees promote the provision of quality medical care in hospitals, each hospital and health care facility located within the State of Delaware shall establish the following limits on working hours for certain members of the medical staff and postgraduate trainees:

(1) Postgraduate trainees may work no more than a total of eighty hours per week and twenty-four hours per shift.

(2) Subject to subsection (c), postgraduate trainees –

1. shall have at least ten hours between scheduled shifts;
2. shall have at least one full day out of every seven days off and one full weekend off per month;
3. who are assigned to patient care responsibilities in an emergency department shall work no more than twelve continuous hours in that department; and
4. shall not be scheduled to be on call in the hospital more often than every third night.

(c) The Secretary of Health and Social Services shall promulgate such regulations as may be necessary to ensure quality of care is maintained during the transfer of direct patient care from one postgraduate trainee to another at the end of such twenty-four hour period referred to in subsection (a) and shall take into account cases of individual patient emergencies.

(d) The work hour limitations under subsection (a) and requirements of subsection (b) shall not apply to a hospital during a state of emergency declared by the Secretary that applies with respect to that hospital.

§ 10204. REGULATIONS.

The Secretary shall promulgate such regulations as may be necessary to monitor and supervise postgraduate trainees assigned patient care responsibilities as part of an approved medical training program, as well as to assure quality patient care.

§ 10205. NOTICE TO POSTGRADUATE TRAINEES.

Each hospital shall inform postgraduate trainees of –

- (a) their rights under this subsection, including methods to enforce such rights (including so-called whistle-blower protections); and
- (b) the effects of their acute and chronic sleep deprivation both on themselves and on their patients.

§ 10206. COMPLAINTS, GRIEVANCE RIGHTS AND ENFORCEMENT

(a) The Secretary of Health and Social Services shall designate an individual within the Department of Health and Human Services to handle all complaints of violations that arise from residents who report that their programs are in violation of this Act.

(b) A postgraduate trainee or physician resident may file a complaint with the Secretary of Health and Social Services concerning a violation of such requirements. Such a complaint may be filed anonymously. The Secretary may conduct an investigation and take such corrective action with respect to such a violation.

(c) Any hospital that violates such requirement is subject to a civil money penalty not to exceed \$100,000 for each resident training program in any six-month period.

(d) The individual designated under subsection (a) shall –

- 1) provide for annual anonymous surveys of postgraduate trainees to determine compliance with such requirements and for the disclosure of the results of such surveys to the public on a residency-program specific basis;
- 2) based on surveys, conduct appropriate on-site investigations;
- 3) provide for disclosure to the public of violations and compliance, on a hospital and residence-program specific basis, of such requirements; and
- 4) make an annual report to the General Assembly on the compliance of hospitals with such requirements, including providing a list of hospitals found to be in violation of such requirements.

#### §10207. WHISTLEBLOWER PROTECTIONS

(a) A hospital covered by the requirements of this section shall not penalize, discriminate, or retaliate in any manner against an employee with respect to compensations, terms, conditions or privileges of employment, who in good faith, individually or in conjunction with another person or persons—

- (1) reports a violation or suspected violation of such requirements to a public regulatory agency, a private accreditation body, or management personnel of the hospital;
- (2) initiates, cooperates or otherwise participates in an investigation or proceeding brought by a regulatory agency or private accreditation body concerning matters covered by such requirements;
- (3) informs or discusses with other employees, with a representative of the employees, with patients or patient representatives, or with the public, violations or suspected violations of such requirements; or
- (4) otherwise avails himself or herself of the rights set forth in such section or this subsection.

- 101 (b) For purposes of this section, an employee is deemed to act ‘in good faith’ if the  
102 employee reasonably believes—  
103 (1) That the information reported or disclosed is true; and  
104 (2) That a violation has occurred or may occur.”

#### SYNOPSIS

The quality of medical care is seriously jeopardized when patients are left in the care of physician-residents who have been sleep deprived due to work shifts routinely lasting thirty-six hours.

The Institute of Medicine released a report revealing nearly 100,000 annual deaths resulting from medical errors.

Resident-physicians work up to 120 hours a week, including 36 hour shifts for several weeks at a time.

The medical community has chosen not to adequately address this issue and is ill-equipped to enforce work hour rules. In addition, it cannot provide independent oversight on compliance with such rules.

After 24 hours of wakefulness, cognitive function deteriorates to a level equivalent to having a 0.1% blood alcohol level. These doctors would be considered too unsafe to drive, yet they could still treat patients for 12 more hours.

In a June 2001 survey of 4500 Ob/Gyn residents, 60% thought the hours they worked may compromise the quality of care their patients receive. 75% of Ob/Gyn Residents believe in the need for work hour limits.

Surveys show that between 30% and 40% of a resident's time is spent on non-educational activities.

Forty-one percent of resident-physicians attribute their most serious mistake in the previous year to fatigue. 45% of residents who sleep less than 4 hours per night report committing medical errors.

This Act would provide a needed safeguard in Delaware health care facilities by limiting the hours and conditions under which a physician-resident is forced to work.

Author: Senator Vaughn