

Testimony of the American Nurses Association  
Overtime Compensation for Registered Nurses  
Maryland Senate Finance Committee  
March 3, 2005

Mr. Chairman and Members of the Committee, I am Alice Bodley, General Counsel for the American Nurses Association. I want to thank you for the opportunity to appear before this Committee to provide testimony on behalf of the American Nurses Association and our constituent member the Maryland Nurses Association. I am here to support Senate Bill 307, as introduced by Senator Paula Hollinger, which would clarify that in the State of Maryland registered nurses providing direct patient care are entitled to receive overtime compensation. Senate Bill 307 is important to the registered nurses of Maryland because, if passed, it will minimize the negative impact flowing from the Department of Labor (DOL) revisions to the Fair Labor Standards Act overtime rules. I would like to address the Department of Labor rules and their impact on the delivery of health care services.

The American Nurses Association is the only full service professional organization representing the interests of registered nurses practicing in hospitals, nursing homes and a wide range of other health facilities. ANA has 150,000 members. To protect registered nurses and the patients they serve, ANA believes that it is essential to preserve the right to overtime compensation for registered nurses in all health care settings.

The controversy surrounding the U.S. Department of Labor's revised Fair Labor Standards Act (FLSA) rule has been fought primarily at the federal level for the last year. It is now moving to the state level. Illinois recently enacted a law to nullify any new DOL

overtime regulations as applied to employees in the state of Illinois. Legislators there expressed concerns about the potential impact that eliminating overtime pay for nurses would have on the delivery of health care services in Illinois.

At the federal level, ANA has worked hard to ensure that concerns about the potential impact of the revised rule on registered nurses were at the forefront of the debate. During the rule making process, ANA actively opposed the revised FLSA rule and supported efforts by Members of Congress to modify and to clarify changes to the rule. However, these efforts were not successful and the final rule went into effect on August 23, 2004

Part 541 of the final rule redefines which workers are categorized as salaried professionals, administrative staff, and executives, and, therefore, exempt from federal overtime protections. A worker can be exempted from overtime protections under one of these categories if he or she meets a two-pronged test:

1. Duties: her/his qualifications and duties must meet the standards outlined in the regulations;
2. Salary: and s/he must be paid on a salary basis an amount more than \$455 per week.

Although the Department of Labor correctly asserts that the status of salaried registered nurses remains unchanged under this new rule, it ignores the fact that most registered nurses are paid on an hourly basis. Registered nurses have long met the “duties test” to be considered learned professionals; however, because most registered nurses are

paid on an hourly basis, they do not meet the second prong of the existing rules, i.e., the salary component, and therefore are entitled to overtime compensation.

While the “duties test” remained essentially unchanged, the definition of a salaried employee has been altered to allow salaried compensation to be calculated on an hourly or a shift basis, on top of a guaranteed minimum. This creates a degree of legal ambiguity that employers may try to exploit. Creating doubt about registered nurses' right to overtime pay threatens ongoing efforts to retain and recruit nurses - particularly in a time when mandatory overtime is a common practice and RNs are in short supply.

At a time when, according to the U.S. Department of Health and Human Services, there already is a shortage of nearly 139,000 registered nurses in the United States, ANA believes federal and state pay guidelines should encourage the recruitment and retention of nurses. Raising doubts in the minds of hard-working RNs, as well as potential nurses, about whether they will qualify for overtime pay does not accomplish that goal.

ANA also is concerned that, if the economic disincentive of paying time-and-a-half is removed, employers are even more likely to rely on mandatory overtime as a regular nurse-staffing tool. ANA strongly opposes mandatory overtime as it is widely recognized as one of the major factors contributing to nurses' job dissatisfaction and the exodus of registered nurses from clinical settings. Mandatory overtime also increases the risk of medical errors and concerns for patient safety. While we recognize that Maryland has limitations on the use of mandatory overtime, Senate Bill 307 would support the intention of such limitations through financial disincentives.

Mr. Chairman, the American Nurses Association is pleased to join with the

Maryland Nurses Association in support of Senate Bill 307 which removes eligibility restrictions for overtime pay for registered nurses providing direct patient care in the State of Maryland. We urge you to vote to enact this important legislation, as it will provide one more tool in Maryland's efforts to establish a workplace environment that will attract and retain registered nurses, and as a result, promote safe patient care. We believe that failure to address these important issues will further exacerbate the nursing shortage by driving even more nurses away from clinical settings and discouraging students from entering the profession at all.

Mr. Chairman, thank you once again for this opportunity to speak to you on this important matter. I would be happy to answer any questions that you may have.