Concerns With A01199, A4975

The New York Organization of Nurse Executives, urges the Assembly Labor Committee to use caution as they consider A01199. While understanding the intent, to reduce the likelihood of error associated with fatigue, we would point out serious issues with the proposed legislative language.

- Requiring overtime to be based on a 40 hour week. The healthcare industry that must operate on a seven (7) day 24 hour basis is the typical industry for which the 8 and 80 hour exemption of the 40 hr. week was written into labor law. In order to cover seven days per week, the 80 hour biweekly schedule is the preferred option of nurses. Without this mechanism, staff would be scheduled for duty more than five days in a row on a routine basis. Most staff prefer to restrict their normal schedule to no more than 4 - 5 consecutive days on duty in order to avoid exhaustion.

- The bill seeks to prevent a charge of patient abandonment against a nurse who refuses to work overtime. In 2002 NYONE, NYSNA and The State Board for Nursing, issued a joint statement that has already accomplished that objective. It is the stated position of the regulatory body responsible, that refusal of an assignment due to the inability to continue on duty longer than the assigned shift DOES NOT CONSTITUTE PATIENT ABANDONMENT. Our organization also conducted statewide education on this very issue to assure that employers were aware of the position and the interpretation of the regulatory department charged with reviewing such cases. No legislation is required to assure that nurses are not faced with this as a potential charge.

- The bill language does not address on call staff such as operating room nurses who are routinely scheduled and paid for call duty. This type of professional responsibility should be exempted from the exclusion.

- It is the belief of the membership of NYONE that mandatory overtime should not be utilized as a routine staffing methodology. However the need for periodic means to cover unanticipated or emergent needs cannot be restricted to time of declared “Health Care Disaster” described in the bill, (01199) “affecting the county in which the ...employee is employed”. The timeliness of such a declaration could, indeed probably would, prove problematic for an organization. Or if a disaster hasn’t been declared for the county but the agency experienced an internal disaster such a need for overtime could present itself.
While we understand that the bill's intent is good, the language, without clarification of these issues, may complicate the scheduling of nurses in a manner that assures their satisfaction and the safety of their patients.