ATTACHMENTS:

1. Mandatory Overtime Documentation Form – Part I and Part II
2. Mandatory Overtime Complaint Form

PURPOSE:

To promote the health, safety, and welfare of patients, residents, and clients as well as identified hourly wage employees by providing guidance on compliance with regulations governing the use of mandatory overtime.

QUALIFICATIONS:

1. The policy shall apply to hourly wage employees who provide direct patient care services at an RWJBarnabas Health (RWJ BH) facility.

2. The policy does not apply to the following:
   a. Physicians;
   b. Volunteers;
   c. Employees who volunteer to work overtime;
   d. Employees of assisted living facilities that are licensed who receive room and board as a benefit of employment and reside at the facility on a full-time basis;
   e. Employees who assume on-call duty;
   f. Employees participating in a surgical or therapeutic interventional procedure that is in progress, when it would be detrimental to the patient if the employee left. However, in the case of elective procedures, the rules do apply if the procedure was scheduled such that the length of time ordinarily required to complete the procedure would exceed the end of the employee’s scheduled shift; and
   g. Employees not involved in direct patient care activities or clinical services.

PROCEDURES:

1. Definitions:
   a. “Chronic short staffing” means a situation characterized by long standing vacancies in that portion of the facility’s master staffing plan applicable to the work unit of an employee who
files a complaint where such vacancies are the result of open positions that continually remain unfilled over a period of ninety (90) days or more despite active recruitment efforts.

b. “Direct patient care activities or clinical services” means activities/services in which an employee provides direct service to patients/residents in a clinical setting, including the emergency department, inpatient bedside, operating room, other clinical specialty treatment area, or, in the case of a patient served by a home health care agency or health service firm, the patient’s home.

c. “Employee” means an individual employed by RWJBH who is involved in direct patient care activities and receives an hourly wage, but shall not include a physician.

d. “On-call time” means time spent by an employee who is not currently working on the premises of RWJBH, but who is compensated for availability or as a condition of employment has agreed to be available to return to the premises of RWJBH on short notice if the need arises.

e. “Reasonable efforts” means that RWJBH shall: a) seek per diem staff; b) seek additional shifts from part time employees; c) seek employee volunteers; d) contact those who want to work overtime; e) use contracted temporary staff when such staff is permitted by law, regulation or applicable collective bargaining agreements.

f. “Unforeseeable emergent circumstances” means an unpredictable or unavoidable occurrence at unscheduled intervals relating to health care delivery that requires immediate action.

2. Except as provided for in (3) below, RWJBH shall not require an employee involved in direct patient care activities or clinical services to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, not to exceed 40 hours per week. The acceptance by any employee to accept such overtime in excess of this shall be strictly voluntary. The refusal of an employee to accept such overtime work shall not be grounds for discrimination, dismissal, discharge or any other penalty or employment decision adverse to the employee.

3. The requirements of (2) shall not apply in the case of an “unforeseeable emergent circumstance” when:

   a. The overtime is required only as a last resort, and is not used to fill vacancies resulting from chronic short staffing; and

   b. RWJBH has exhausted “reasonable efforts” to obtain staffing. However, exhaustion of reasonable efforts shall not be required in the event of any declared national, State or
municipal emergency or a disaster or other catastrophic event which substantially affects or increases the need for health care services or causes the facility to activate its emergency disaster plan.

4. In the event that RWJBH requires an employee to work overtime pursuant to subsection item # 3 above, the employer shall provide the employee with necessary time, up to a maximum of one hour, to arrange for the care of the employee’s minor children, or elderly or disabled family members.

5. On call time shall not be construed to permit an employer to use on-call time as a substitute for mandatory overtime.

6. Communication: The New Jersey Mandatory Overtime Restrictions For Health Care Facilities (N.J.S.A. 34:11-56a31) poster is required to be posted in all RWJBH facilities in a conspicuous place to notify hourly health workers of the mandatory overtime law and their rights under the law.

7. Recordkeeping Concerning Mandatory Overtime: RWJBH shall establish a system for keeping records of circumstances where employees are required to work in excess of an agreed to, predetermined and regularly scheduled daily work shift, or in excess of forty hours per week. The records shall include, but not be limited to:

   a. Employee’s name and job title;
   b. Name of employee’s work area and unit;
   c. Date overtime was worked, including start time;
   d. Number of hours of overtime mandated;
   e. Employee’s daily work schedule for any week in which the employee is required to work excess time;
   f. Reason why the overtime was necessary; and
   g. Description of the reasonable efforts that were exhausted prior to requiring overtime. This shall include:
      • the names of the employees contacted to work voluntary overtime;
      • a description of efforts to secure per diem staff;
      • a list of the temporary agencies contacted; and
      • signature of individual authorizing the required mandatory overtime.

8. The attached Mandatory Overtime Documentation Form shall be used to maintain this record.
9. RWJBH shall provide the employee with a copy of the documentation in accordance with the requirements set forth in the “Records; Dissemination of Information” section of the N.J.A.C. General Provisions section of the Mandatory Overtime guidelines upon requiring that the employee work overtime, except that the total number, rather than the names, of employees contacted in accordance with the “Records; Dissemination of Information” section of the N.J.A.C. General Provisions section of the Mandatory Overtime guidelines shall be provided.

10. Records as set forth in the “Records; Dissemination of Information” section of the N.J.A.C. General Provisions section of the Mandatory Overtime guidelines shall be kept a period of two (2) years.

11. Training Procedure: A facility shall develop, revise as necessary and implement policies and procedures for the purpose of training and educating staff on mandatory overtime. The policies and procedures shall include mandatory educational programs that address at least the following:
   
   a. the conditions under which an employer can require mandatory overtime;
   b. overtime procedures;
   c. employee rights; and
   d. complaint procedures.

12. RWJBH Complaint Procedure:
   
   a. An employee who believes that he/she has been wrongfully mandated to work overtime may file a written complaint with his/her Manager.
   b. The Manager will respond to the complaint within five (5) business days.
   c. If the employee is not satisfied with the response of the Manager, the employee may, within three (3) business days, file the complaint with the appropriate Vice President.
   d. The Vice President will respond to the complaint within ten (10) business days.
   e. If the employee is not satisfied with the response of the Vice President, the employee may within three (3) business days, file a complaint with the facility Vice President for Human Resources.
   f. The facility Vice President for Human Resources will respond to the complaint within ten (10) business days.
   g. The decision of the facility Vice President of Human Resources will be the final and binding decision of the complaint procedure.
   h. In the event that a collective bargaining agreement provides for grievances of mandatory overtime issues, the grievance procedure shall be the sole complaint from the employee covered by the collective bargaining agreement.
i. Employees will not be retaliated against for submitting a good faith complaint regarding a violation of the policy.

RWJBH STANDARDIZED ORIGINAL DATE: October 1, 2019
REVISED: