

# **WORKING HOURS & CONDITIONS**

## **POST-GRADUATE TRAINEES**

### ***ANNUAL COMPLIANCE ASSESSMENT***

***A Summary Report Documenting  
Surveillance Activities for the  
Period of 10/1/01-9/30/02***

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## ***EXECUTIVE SUMMARY***

In the face of increased state and national interest in issues related to working hour limitations, considerable attention has focused on New York State where regulations governing the working hours of post-graduate trainees have been in place since 1989. With the Health Care Reform Act of 2000 (HCRA 2000), Governor Pataki and the New York State Legislature committed funding for a three year surveillance program. The legislation carries a mandate for annual reviews and sets forth penalties for non-compliance.

In conjunction with the three year commitment to conduct annual compliance reviews at teaching hospitals in New York State, the Department of Health through its contract with the Island Peer Review Organization (IPRO), completed reviews to assess compliance with resident working hour regulations at 118 hospitals across the state. The contract, following a formal RFP process, was effective October 1, 2001. IPRO as the department's review agent, maintains a full time statewide workforce made up of three onsite review teams along with technical and administrative personnel necessary to carry out a coordinated statewide oversight program.

With approximately 15,000 of the nation's 100,000 post-graduate trainees working within New York State, New York's surveillance and compliance findings merit careful consideration. In summary, under current State requirements, working hours are limited to an average over four weeks of 80 hours each week. In addition, working assignments are limited to no more than 24 consecutive hours, required non-working periods must follow scheduled assignments and each resident must have one 24 hour off period each week.

With the completion of one full year of oversight through the Resident Working Hour Compliance Assessment Program, the following findings are reported:

- 64% of the hospitals reviewed evidenced some level of non-compliance with State requirements
  - Seven percent (7%) of the hospitals surveyed evidenced a citation(s) in each teaching program reviewed at that site
  - 88% of the facilities cited were found in full compliance in at least 50% of the teaching programs reviewed
- 45% of visits conducted reported residents working more than 24 consecutive hours
- 28% of visits completed documented working hours in excess of 80 hours each week
- 18% of visits reported working assignments not separated by required non-working time
- 14% of visits completed reported residents not receiving one full 24 hour off period each week

To foster compliance and promote collaboration in achieving program goals, the Department and/or IPRO conducted training and information sessions throughout the State. Program goals include working with hospitals, hospital associations, special interest groups and with professional accreditation organizations to share interpretative guidance, review protocols, best practices, and surveillance experience.

## ***Summary of Exhibits \****

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***\*Data reported reflects a compilation of information and data collected through routine surveillance activities. The information is based upon a sample of post-graduate trainees in New York State***

## ***BACKGROUND***

The New York State Department of Health (DOH) is responsible for the oversight of hospital operations and monitoring for compliance with all pertinent laws, rules and regulations. In conjunction with the Health Care Reform Act of 2000 (HCRA), Governor Pataki committed funds for use by the DOH to contract for surveillance of facility compliance with the regulations specific to the working hours and conditions of post-graduate trainees. Further, the legislation required facilities to have plans in place to ensure compliance with resident working hour requirements, set forth responsibilities for monitoring compliance, and delineated penalties for non-compliance.

In January 2001, the DOH published a Request for Proposals (RFP) to conduct annual compliance visits at all teaching hospitals in New York State. The RFP outlined oversight responsibilities, a standardized surveillance protocol and the criteria for selection. In conjunction with that formal process, proposals were reviewed, a bidders' conference was held to respond to questions raised and to clarify contractor expectations and responsibilities and a contract was awarded to the Island Peer Review Organization (IPRO) effective October 1, 2001.

Based upon the review functions/responsibilities set forth in the RFP, IPRO implemented the surveillance program to conduct annual compliance surveys, and to assess compliance through the investigation of complaints, and in conjunction with facility follow-up/monitoring visits. Implementation of the contract has been characterized by a close and collaborative working relationship between the DOH and IPRO. The DOH has maintained an active role in the operations of the program, as well as providing oversight of the program as a key aspect of hospital surveillance responsibilities. Compliance assessments were conducted pursuant to DOH rules and regulations governing the working hours and conditions of post-graduate trainees in teaching hospitals in New York State. The regulations, effective since 1989, were intended to protect patients from medical errors due to sleep deprived and overworked physicians.

The regulations in summary set forth the following limitations:

- Limit working hours to an average over four weeks of 80 hours each week. On-call duty for surgical residents is not included in the 80 hour limit when there is evidence that adequate rest time is available and the number of interruptions are infrequent.
- Assigned work periods should not exceed 24 consecutive hours. The on-call duty of surgical residents in hospitals is not included in the 24-hour limit when there is evidence that sleep/rest time is adequate and interruptions are infrequent.
- For hospital emergency departments with more than 15,000 unscheduled visits per year, the on-duty assignment of residents shall not exceed 12 consecutive hours.
- Dual employment or moonlighting by residents must be monitored by hospitals and the hours devoted to such employment must be considered as part of the working hour limitations.
- Non-working periods following scheduled on-duty or on-call periods, and one 24-hour period of scheduled non-working time per week must be provided.
- The working conditions of residents must provide for the access and availability of appropriate levels of supervision, and, the provision of ancillary support services.

## ***PROGRAM OVERVIEW***

At the onset of the contract, IPRO put in place staffing and resources to implement a statewide surveillance initiative. IPRO committed three full time teams to this project. Each team is comprised of a team leader and a review team of two - ten reviewers, as needed based upon facility size. IPRO also committed a wide range of administrative staff to the program with the statewide director, administrative assistant, QI/QA analyst and data analyst located in IPRO's regional office in Albany. In addition, a project manager is located in IPRO's Lake Success office and provides support to the downstate teams and hospitals. IPRO and the DOH collaborate on program implementation. DOH provides ongoing oversight of the program, conducts training, assists in the development and implementation of onsite review activities, identifies data needs, and provides guidance on program requirements. This close interaction is facilitated by the placement of IPRO's statewide program director and administrative assistant within the DOH.

The contract with IPRO includes responsibility for conducting onsite compliance reviews, complaint investigations, and periodic re-visits to assure full implementation of facility plans of correction. IPRO analyzes all data and submits findings to the Department for review, and in conjunction with the DOH, develops and prepares management reports and provides pertinent training and technical assistance to facilities.

The DOH conducted intensive training of IPRO staff and participated in training and information sessions for teaching hospitals across the state. In total, 18 separate training programs were carried out by IPRO and/or DOH. All training built upon the ongoing collaboration between the DOH and IPRO, in close coordination with the statewide provider associations and the hospitals. IPRO developed and made available to providers a pamphlet for residents outlining working hour requirements in the State, and addressing questions frequently asked by trainees and facilities. A supply of the pamphlets was made available to every facility.

Through its contract with the DOH, IPRO completed 118 annual compliance reviews, 26 complaint investigations and 14 re-visits during the first year of the contract. A total of 158 surveillance visits were conducted and 103 statements of deficiency/plans of correction were processed. Key components of the program's operations were measured through ongoing quality improvement review activities. Of particular note are the following performance measures:

- Average time frame (reported in business days) from facility exit conference to date the letter of findings was sent to facility = 21 Days
- Average time for submission of required plans of correction from facilities = 29 Days
- Average time from receipt of acceptable plan of correction to facility notification = 5 Days
- Average time to initiate a complaint investigation from receipt of complaint = 19 Days
- Average time from completing complaint investigation to notifying facility of outcome = 22.3 Days

Key aspects of implementation, program performance and compliance findings are highlighted in the compliance assessment/exhibits. To ensure the accuracy and integrity of the survey process and data, over half the residents in the state were interviewed during the last year. All data reported reflects a compilation of the information and data collected through routine surveillance activities. Compliance findings are based upon data collected from each facility and are a sample of the total number of residents in New York State.

## **COMPLIANCE ASSESSMENT**

### ***Exhibits 1 – 4 / Hospital Demographics***

New York's Health care system supports a total of nearly 15,000 residents in training. Of the 118 teaching programs/sites throughout the state, **Exhibit 1** reflects the distribution of programs by geographic region. For program purposes, data is collected and reported by five regions. The five regions include the counties/boroughs where the teaching hospitals are located, as shown below:

<b>Region</b>	<b>Counties/Boroughs with Teaching Hospitals</b>
New York City (NYC)	Bronx, Kings, New York Richmond, Queens
Lower Hudson Valley & Long Island (LHVLI)	Nassau, Rockland, Suffolk, Ulster, Westchester
Central	Broome, Jefferson, Oneida, Onondaga
Western	Cattaraugus, Erie, Monroe, Niagara, Steuben
Northeastern (NE)	Albany, Clinton, Otsego, Schenectady

**Exhibit 2** identifies the percentage of teaching programs in specified specialties. For surveillance purposes, the programs most directly impacted by current requirements include: anesthesia, family practice, internal medicine, OB/GYN, pediatrics, surgery and hospital emergency departments. For reporting purposes, findings associated with specific subspecialties are included with one of the primary service categories. Data reported for a facility's cardiac surgery program, for example, would be reported under surgery. **Exhibit 3** distributes the total number of the State's residents by region, with 72% of the residents located in New York City. **Exhibit 4** identifies a range for facility bed size and indicates how teaching programs in the State are distributed by facility size. Fifty-one percent (51%) of the State's teaching programs are in facilities with a bed size between 201-400 beds.

### ***Exhibits 5 – 6 / Implementation***

With the onset of the contract October 1, 2001, the month of October was dedicated to intense staff training. Site visits were initiated in November 2001, and as shown on **Exhibit 5**, all 118 annual reviews for the first year of the contract were conducted between November and August 2002. Over 50% of the visits were carried out during the months of February, March, April and May. **Exhibit 6** illustrates by quarter how the visits were distributed by region across the State.

### ***Exhibits 7 – 8 / Statewide & Regional Compliance***

Based upon 118 annual compliance visits, 64% of the facilities evidenced some level of non-compliance at the time of the annual onsite review. **Exhibits 7 & 8** report compliance/non-compliance on a statewide and regional basis respectively. For reporting purposes, non-compliance means that one or more deficiency/finding was identified during the onsite review. Each deficiency/finding cited could report an issue associated with one program or multiple programs within the facility.

### ***Exhibits 9 & 10 / Statewide Compliance – Distribution of Non-Compliance by Month & Bed Size***

Considerable attention throughout the implementation of the program focused on the impact the scheduling of on-site visits could have on facility compliance. Specifically, concerns were raised regarding the scheduling of onsite visits in July and during the holiday season. While it is recognized that throughout the year there are dates and periods of time where routine scheduling for hospitals may be more difficult, due to the large number of surveys to be conducted, annual compliance surveys were carried out throughout the contract year. The exception, as noted on the implementation schedule was in October 2001, the initial month of the contract, which was reserved for training, All 118 annual compliance surveys were completed between November and August 2002. No annual surveys were conducted in September 2002, the close of the contract year.

**Exhibit 9** illustrates the distribution of annual visits to the distribution of non-compliance documented for visits completed each month. The information provided reflects a fairly consistent correlation throughout the year between visits conducted and facilities found to be out of compliance with current requirements. Upon review, the data does not appear to indicate that the time period the survey was conducted had a significant impact on whether a facility was found in compliance. In July, for example, the distribution of surveys conducted to findings of non-compliance does not indicate that survey outcome was significantly influenced by survey scheduling.

**Exhibit 10** presents a very detailed assessment of compliance by bed size. Each facility is identified by its bed size, and is evaluated by the percent of non-compliance, as evidenced by the percentage of facility programs that were cited for non-compliance. For example, a facility review that included four teaching programs, surgery, internal medicine, OB/GYN, and pediatrics, and was found out of compliance in only one program, would be out of compliance for 25% of the programs reviewed. For analysis purposes, all sub-specialties were included under the primary program category. Seven percent (7%) of the annual visits conducted evidenced some level of non-compliance in every teaching program reviewed at that site. In contrast, 88% of the facilities surveyed were found in full compliance with at least 50% of the teaching programs reviewed. The distribution of survey results for the survey period supports that non-compliance is not solely related to certified bed size.

### ***Exhibits 11 – 16 / Compliance Assessment – Statewide & Regional Distribution of Findings***

New York State requirements limit working hours to an average over four weeks of 80 hours each week. In addition, working assignments are limited to no more than 24 consecutive hours, required non-working periods must follow scheduled assignments and each resident must have one 24 hour off period each week. For hospitals surveyed during year one of the contract, 64% of facilities evidenced



some level of non-compliance with requirements. **Exhibits 11-16** demonstrates statewide and regional distribution of findings based upon current program requirements. Findings include:

- **> 24 consecutive hours** – regulations limit scheduled assignments to no more than 24 consecutive hours. In 45% of visits conducted, residents were found to be working more than 24 consecutive hours.
- **> 80 Hours per week** – on average over a four week period, the workweek is limited to 80 hours per week. Twenty-eight percent (28%) of visits completed documented working hours in excess of 80 hours each week.
- **Proper Separation** – assigned work periods must be separated by non-working time. Eighteen percent (18 %) of visits reported working assignments not separated by required non-working time.
- **< 24 Hour Off Period** – scheduling must include one full 24-hour off period each week. Fourteen percent (14%) of visits completed reported residents not receiving a full 24-hour off period during each week.
- **Working Conditions** - Working conditions include consideration for sleep/rest accommodations, the availability of ancillary and support services, and the access to and availability of supervising physicians to promote quality supervision. Eight percent (8 %) of facilities were cited for failing to meet expected working conditions for residents.
- **Working Limitations** – This category reflects documented inconsistencies in working hour information collected during interview and through observation when compared to a review of documentation. To validate interview data, review staff screen medical records and/or operating room logs or operative reports, to document the date/time certain services are provided and recorded. Five percent (5%) of visits conducted evidenced violations in this area.
- **Moonlighting** – Regulations place responsibility with each hospital to limit and monitor the working hours associated with moonlighting or dual employment situations. Trainees who have worked the maximum number of hours permitted in regulation are prohibited from working outside the facility as physicians providing professional patient care services. Four percent (4%) of facilities were cited for violations pertaining to moonlighting or dual employment requirements.
- **QA** –Each hospital is required to conduct and document ongoing quality assurance/quality improvement (QA/QI) activities for the identification of actual or potential problems in accordance with requirements set forth in statute. One percent (1%) of facilities reviewed were cited for deficiencies in their QA/QI performance.
- **Emergency Department (ED)** – For hospitals with more than 15,000 unscheduled emergency department visits, the ED assignments of trainees shall be limited to no more than twelve consecutive hours. For the period of review, no violations were identified for this program area.
- **Governing Body** – the responsibility for the conduct and obligations of the hospital including compliance with all Federal, State and local laws, rests with the hospital Governing Body. During year one of the contract, Governing Body was not cited as an area of non-compliance.

The most notable areas of non-compliance statewide and on a regional basis include working hours in excess of 24 consecutive hours (>24), and working hours on average of more than 80 hours each week (>80). These two specific areas are discussed in detail below.

### ***Exhibits 17 – 20 / Compliance Assessment – Working Hours > 24 Consecutive Hours***

New York State regulations limit scheduled assignments to no more than 24 consecutive hours. In applying this standard and for determining compliance, an additional unscheduled transition period of up to three hours may be utilized by facilities to provide for the appropriate transfer of patient information. Hospitals have some flexibility in utilizing the three hour transition period to carry out rounds, academics, and/or the transfer of patient information. New patient care responsibilities may not be assigned during the transition period, and the 3 hour period, if used, would be counted toward the weekly work hour limit of 80 hours.

For all surveys conducted in year one of the contract, this area was the most frequently cited. Statewide, non-compliance was documented in 45% of the surveys conducted. **Exhibits 17 –20** further illustrate this finding by region, facility bed size, program size, and by specialty. **Exhibit 17** - In New York City, 54% of facilities were found to be out of compliance in this program area. This finding is similarly found in the Northeast Region where, within a much smaller number of facilities, 50% were cited in this area. In the Western Region, 17% of facilities were cited for working hours in excess of 24 consecutive hours. **Exhibits 18 & 19** correlate findings to facility bed size and with program size/number of residents in a facility teaching program. While facilities with more than 600 beds were cited most frequently, the highest percentage of findings for this area was found in facilities with between 301-500 residents in the facility teaching program. As reported in **Exhibit 20**, surgery and internal medicine were the most frequently cited specialty areas, with 40% and 35% of the findings, respectively. This can in part be attributed to the fact that each category includes findings associated with numerous subspecialties and are programs most frequently found in teaching hospitals throughout the state.

### ***Exhibits 21 – 25 / Compliance Assessment – Working Hours > 80 Hours/Week***

Consistent with current State requirements, work hours are limited to an average over four weeks of 80 hours per week. Considerable attention during the onsite compliance visit is given to collecting detailed interview data, reviewing schedules and scheduling patterns to determine if the workweek reviewed reflects an average/typical workweek. In addition, a plus or minus 5 hours is applied in determining compliance to allow for weekly fluctuations and to best assure accuracy in the information collected/reported.

In total, 28% of visits conducted documented working hours in excess of 80 hours per week in one or more programs. **Exhibits 21 – 25** highlight findings associated with this area and include a distribution of non-compliance by region, facility bed size, program size/number of residents, by specialty and by post-graduate year. In comparison to the 28% of non-compliance evidenced by all 118 hospitals reviewed during year one of the review contract, New York City facilities were found to be just above the statewide finding at 34%, **Exhibit 21**. Six percent (6%) of the hospitals reviewed in the Western Region of the state were found to have residents working more than 80 hours each week. Of particular interest is the distribution of findings by facility bed size and by program size/number of residents. **Exhibit 22** identifies the percent of hospitals for each bed size category cited for work hour violations of > 80 hours per week. While bed size appears to be a factor in frequency of violation, the size of a facility's teaching program/number of residents at each facility appears to be a more significant indicator, **Exhibit 23**. Hospitals with between 301-500 residents in training programs were

most frequently cited at 89% for violations of working more than 80 hours. By comparison, facilities with 500 or more residents were cited for residents working more than 80 hours in 45% of facility visits. The specialty most frequently cited for working hours in excess of 80 is surgery at 53% of the citations, with internal medicine programs at 21%, **Exhibit 24**. Statewide compliance assessments identify trainees in their first year of training, PGY 1, as most frequently violating the 80-hour work week rule, **Exhibit 25**. This would tend to demonstrate that facilities have significantly committed to adhering to work hour limitations and have over time been able to improve scheduling and support services to allow senior resident to comply with work hour limitations. Increased attention to orientation and training of new residents, improved education as to working hour requirements and a clear understanding of each facility's responsibility and commitment to compliance could serve to significantly improve compliance for residents in their first year of training and positively impact overall compliance.

### ***Exhibits 26 – 27 / Compliance Assessment – Statewide for Complaint Visits and Re-Visits***

In accordance with program requirements, IPRO also evaluated and investigated complaints received by the DOH specific to resident working hours. In total, for year one of the contract, the DOH received 26 working hour complaints. On average, the time from receipt of a complaint to the time of the onsite review was 19 days. Following completion of the survey, findings were issued to the facility within 22.3 days, for a total, on average, of 41.3 days to process a complaint. Of the working hour complaints investigated, **Exhibit 26** illustrates that 85% of complaints were validated following review.

In addition, follow-up visits or re-visits were conducted for a sample of facilities to monitor each facility's implementation of its plan of correction. Annual compliance visits conducted resulted in one or more finding of non-compliance at 64% of the hospitals reviewed. At re-visit, a focused review of previously identified issues, 57% of facilities were found in full compliance and 43% of facilities continued to evidence at least one element of non-compliance (**Exhibit 27**) at the time of the re-visit.

### ***STRATEGIES FOR IMPROVEMENT / NEXT STEPS***

The program and funding to conduct the focused review of working hours in teaching hospitals across New York State is supported by legislation and program funding. The first contract year was completed September 30, 2002.

During year two of the contract:

- DOH and IPRO staff will continue to work with the provider community to clarify program requirements and assist facilities in the development and implementation of strategies for ensuring compliance. An updated Question/Answer document will be distributed to further clarify issues/questions raised.
- Particular attention in the review process will be given to ensuring that previously identified problems have been corrected. Data will be collected to evaluate facility QA/QI initiatives and assess the effectiveness of such measures. Review activities will recognize facilities that have exhibited a commitment to ensuring compliance. In addition, attention will focus on the obligations of each hospital's Governing Body to assure compliance and to address previously identified problems.

- Efforts will focus on identifying facility processes that improve compliance levels, while continuing to meet accreditation requirements. State requirements will be evaluated in the context of other national or accreditation requirements to identify potential areas of inconsistency or concern.
- A staggered survey schedule will be used to ensure that scheduling alone does not impact compliance findings. In addition, efforts will be made to respond to issues raised by facilities that the first hours of the unannounced survey are not effective due to difficulties of locating key hospital personnel, affording adequate space to the review team and of compiling/providing current schedules to support review activities. Review staff will continue to evaluate the effectiveness of the unannounced visit by documenting actions taken during the first several hours of the survey.
- Alternative onsite review protocols will be developed and implemented to promote the accuracy and legitimacy of survey findings.

Facilities have asked for guidance in regard to identifying best practices and strategies for improvement. In evaluating data collected at the time of onsite reviews, actual survey findings, and facility plans of correction, statewide reviews support the following:

- The orientation and training of new residents should include an increased emphasis on State working hour limitations. Trainees must understand each hospital's obligation and commitment to compliance. Expectations for compliance must be clearly delineated and each trainee must retain a level of responsibility to adhere to program standards. The higher level of non-compliance noted among PGY 1 trainees, **Exhibit 25**, could indicate that hospitals have over time improved training, scheduling and support services to promote compliance with work hour limitations among senior residents. Attention to enforcing and monitoring compliance among first year residents could significantly impact overall compliance levels.
- Facilities should carefully review and amend policies, as appropriate, to ensure consistency with current regulations and to accurately reflect current facility practices. Review findings have demonstrated that, in some instances, facility policies misrepresent requirements and/or outline a hospital policy that is not fully consistent with State requirements. In addition, it should be noted that while facilities may set forth policies that are more stringent/restrictive than State requirements, careful attention must be given to ensuring that such policies reflect actual practice. Each facility is responsible for meeting official requirements, and, similarly accountable for adhering to its own established policies.
- The distribution of assignments and patient care responsibilities among teams of residents can provide an opportunity to distribute workload, promote continuity of patient care, and encourage group/team initiatives.
- Alternative scheduling options should be considered in developing work hour policies and in responding to identified problems. A night float system, for example, may be a feasible alternative. The flexibility of scheduling coverage to include on-call at home assignments, may also work for some facilities. Any scheduling pattern, however, should be carefully considered to

ensure that it meets facility needs. Scheduling options can be part of an appropriate solution. If, however, the merits of such initiatives are not fully considered, the impact of implementation may actually create other problem areas.

- Findings for one full year of compliance reviews indicate that the area most frequently cited is working hours in excess of 24 consecutive hours with working over 80 hours/week placing second. This finding is in contrast to previous surveillance findings that identified the most frequent area of non-compliance as working greater than 80 hours during a work week. This would appear to demonstrate that facilities have taken steps to reduce total working hours, thus improving compliance with the 80 hour work week requirement. In practice, therefore, greater attention to limiting scheduled assignments to 24 consecutive hours and reinforcing the need for trainees to complete assignments/transition patient care responsibilities, could notably improve compliance in the over 24 hour category. In addition, with improved compliance in this area, the impact would extend to improved compliance with working over 80 hours and in assuring that trainees have the proper separation between scheduled assignments.
- Ongoing assessment of facility staffing levels, access to support services and ancillary personnel are key factors in assuring compliance. Work load assessments specific to areas such as phlebotomy, IV therapy, etc., to identify peak periods of need, may assist facilities in deploying resources more efficiently. Where feasible the hiring and assignment of professional support staff may significantly improve a facility's ability to respond to work hour issues.