Mitigate the Harm to Healthcare from the Chicago Workweek Scheduling Mandate

On behalf of Chicago’s 42 hospitals and the communities they serve the Illinois Health and Hospital Association recommends essential changes to the proposed Fair Workweek Ordinance to strike some balance between preserving Chicagoans’ access to timely, quality healthcare and healthcare employees’ desire for more predictable schedules. Many Chicago hospitals — especially Safety Net hospitals — are financially struggling. Imposing additional administrative burden and costs further jeopardizes their survival and will force all hospitals to divert scarce resources from caring for their communities to complying with this mandate.

- **Clarify the Definition of Covered Employee:**
  - **Primary Location Threshold:** The definition of Covered Employees should be clarified to state that it applies to those who spend 75% or more of their typical working hours at an Employer’s Chicago-based location.
    - **Rationale:** There are instances when an employee from a location outside Chicago may work in Chicago – for example, to attend a staff training/orientation. It would be unfair and burdensome for an employer to be required to comply with this ordinance for such employees. We have included suggested language on Exhibit A attached.
  - **Exclude Exempt Employees and Definition of Low-Wage Healthcare Employees:** Exempt employees should be excluded from this ordinance. Healthcare employees covered under the ordinance should be those making an hourly wage of up to $15 (not including the generous health insurance and other benefits hospitals provide to low-wage healthcare workers).
    - **Rationale:** Including exempt employees could preempt Federal and state wage and hour laws and essentially convert exempt employees to non-exempt employees. A Fair Scheduling Ordinance should encourage employers to provide health insurance, PTO and other fringe benefits to low-wage workers. According to a 2018 University of Illinois study of hospital service workers in the Chicago region a $15 hourly wage threshold would cover more than 18,000 Chicago hospital workers under the ordinance.

- **Exception for Hospitals for Unforeseen Emergent Circumstances:**
  - **Rationale:** This ordinance should not apply to hospitals in an "unforeseen emergent circumstance" meaning (i) any declared national, State, or municipal disaster or other catastrophic event, or any implementation of a hospital’s disaster plan, that will substantially affect or increase the need for healthcare services; (ii) any circumstance in which patient care needs require specialized skills through the completion of a procedure; or (iii) any substantial increase in demand for healthcare due to large public events, severe weather, unexpected violence, or other circumstances beyond the hospital’s control.
• **Permit Employee Flexibility:**

  o **Allow Employees to Volunteer for Extra Shifts Through a “Voluntary Additional Hours List”:**
    - **Rationale:** Employees wishing to pick up additional shifts should be allowed to do so without having to fill out paperwork. Oregon’s scheduling law includes such a provision.

  o **Allow Clinical/Technical Healthcare Staff the Ability to Voluntarily Request a Decrease in Hours:**
    - **Rationale:** Employees involved in providing direct patient care and/or technicians and assistants who support the provision of healthcare should be allowed to request a reduction in hours worked in a current or future shift due to a reduction in patient volume. We have included suggested language on *Exhibit A* attached hereto.

  o **Clarify Predictability Pay Is Not Applicable to Certain On-Call Situations:**
    - **Rationale:** There are instances in which an employee who is on-call is not actually called into work. This should not be deemed a change in schedule triggering Predictability Pay because the employee was scheduled for on-call. Similarly, if an employee is actually called in and/or called in but then the employer releases them before the end of a shift, this should not be deemed a change in schedule triggering Predictability Pay since they were scheduled for on-call.

• **Improve Implementation and Reduce Burdens on Employees and Employers:**

  o **Remove Requirement Allowing Employees to Dictate Notification Requirements (Section 1-25-040 (b)(1)):**
    - **Rationale:** Employers should be permitted to use their ordinary methods for communicating schedule changes. In addition to this method already being known to the employee, it will allow employers to communicate with employees in a more timely manner.

  o **Delete Requirements Burdening Employees Who Want Additional Hours (Section 1-25-060 sections (b) (1) (2) (3) and (d)):**
    - **Rationale:** These provisions make it more difficult for part-time hospital employees to pick-up additional shifts and for hospitals to make additional shifts available. For example, typically an employee notifies a hospital of their unavailability only hours before the start of their scheduled shift. Therefore, the need for additional work hours is not known 24 hours in advance and requiring a 24-hour notice is not feasible and will not allow an employee who desires more hours the ability to get these types of shifts.
• **Legal and Technical Revisions:**

  o **Record Retention Period Should Correspond with Existing Illinois Wage and Hour Laws’ Requirements (Section 1-25-060 (e)).**
    ▪ **Rationale:** This ordinance requires a 3-year record retention policy. In order to efficiently administer their human resource functions, employers should be able to have consistent record retention requirements. Thus, this provision should mirror existing record retention requirements under state wage and hour law requirements. Additionally, if text, Facebook and similar communications are required, these types of communications are harder to maintain for longer periods of time.

  o **Remove Private Right-of-Action (Section 1-25-100(f)):**
    ▪ **Rationale:** An accidental delay in the submission of schedules could affect thousands of employees at a hospital and will be used by those wishing to harass the hospital for their own purposes or to recover attorney fees. Illinois’ excessively litigious environment already discourages job creation and the ordinance’s private right-of-action will only make it worse.

• **Minimize the Unintended Harm to Health Care:**

  o **Include 2-Year Sunset Provision for Hospitals and Require Independent Study of Effect on Hospital Workers:**
    ▪ **Rationale:** No scheduling ordinance in the U.S. applies to hospitals. Hospital workers initiate most of the changes in their individual work schedules. The likely unintended effect of this ordinance is to make their scheduling options less flexible and, potentially, negatively impact healthcare delivery. Thus, it is prudent to include a sunset provision for hospital workers, as well as require an independent study of the effects on hospital workers/health care delivery after one (1) year in order to assess the actual impact this ordinance has.

Without the above changes to the ordinance, there will be numerous **negative, unintended consequences,** including: (i) reduced patients’ access to timely, needed healthcare, e.g., increased instances of hospitals having to go on emergency bypass; (ii) substantial penalties paid by hospitals that would increase the cost of care for patients and reduce resources for programs that directly serve the community; and (iii) the loss of work flexibility for employees because hospitals would be forced to lock down schedules to avoid extra costs.
EXHIBIT A
Sample Language

Definition of Covered Employee:

"Covered Employee" means any Employee, other than an Employee who is deemed exempt under Federal and/or state wage and hours laws, who works in any of the industries regulated by this ordinance as defined herein and, in any particular two-week period, performs at least two hours of work for an Employer while physically present within the geographic boundaries of the City as their Primary Work Location. For purposes of this definition, time spent traveling in the City that is compensated time, including, but not limited to, deliveries, sales calls, and travel related to other business activity taking place within the City, shall constitute work while physically present within the geographic boundaries of the City; however, time spent traveling in the City that is uncompensated commuting time shall not constitute work while physically present within the geographic boundaries of the City. An Employee who is paid on a salary basis and whose rate of pay per week is greater than the current 40th percentile of weekly earnings of full-time non-hourly workers in the Midwest Census Region, exclusive of board, lodging, or other facilities, as determined by the U.S. Department of Labor, but never less than $50,000, per year, or $962 per week, shall not be considered a Covered Employee for the purposes of this Chapter. An Employee shall be considered to be paid on a "salary basis" if the Employee regularly receives each pay period on a weekly, or less frequent basis, a predetermined amount constituting all or part of the employee’s compensation, which amount is not subject to reduction because of variations in the quality or quantity of the work performed, and without regard to the number of days or hours worked. An Employee shall be a Covered Employee if the advance notice of his or her Work Schedule as required under Section 50(b) provides the Employee with the hours of work needed to be a Covered Employee. If there is any subsequent change in scheduled hours, a decrease in hours shall not cause an Employee to lose his or her status as a Covered Employee, and an increase in hours shall allow an Employee to be a Covered Employee, including those offered under Section 50. No other terms or conditions of employment, including the location of work performed, shall be required to determine who is a Covered Employee.

“Primary Work Location” means the location where a Covered Employee typically spends at least seventy-five percent (75%) or more of their work time.

Flexible Work Hours

(1) An Employer may maintain a standby list of employees whom the Employer will request to work additional hours to address unanticipated patient needs or unexpected employee absences if the listed employees have requested and/or agreed, in writing, to be included on the standby list and the Employer notifies each employee in writing:

   (a) That the list is voluntary and how an employee may request to be removed from the list;

   (b) How the Employer will notify a standby list employee of additional hours available and how an employee may accept the additional hours; and

   (c) That the employee is not required to accept the additional hours offered.

(2) Employees involved in providing direct patient care and/or technicians and assistants that support the provision of healthcare shall be allowed to request a reduction in hours worked in a current or future shift due to a reduction in patient volume.