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 Health Care Regulation and Quality Improvement Section  
 Health Facility Licensing and Certification Program  
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## House Bill 2697, Hospital Staffing Rules Advisory Committee

November 29, 2023, 9:30a PT  
 Meeting Minutes

### RAC Member Attendees

Name	Organization
Andi Easton	Hospital Association of Oregon (HAO)
Becky Kopecky	Providence Health & Services
Chris Carpenter	Oregon Federation of Nurses & Healthcare Professionals (rep)
Erin Williams	Oregon Department of Justice
Hannah Winchester	Oregon Federation of Nurses & Healthcare Professionals (OFNHP)
Jenn Forester	SEIU 49
Jenni Word	NSAB / Wallowa Memorial
Joel Hernandez	NSAB / St Charles Bend
Kerry Kilgore	Samaritan Lebanon
Kitty Rogers	NSAB / Legacy Good Samaritan
Lisa Ketchum	Salem Health
Mariah Hayes	NSAB / Oregon Health Sciences University (OHSU)
Matt Calzia	Oregon Nurses Association (ONA)
Meghan Slotemaker	Hospital Association of Oregon (HAO)
Odalis Aguilar	AFSCME
Paige Spence	Oregon Nurses Association (ONA)
Samantha ("Sam") Claudio	St Alphonse Ontario
Sarah Curtis	Oregon Health Sciences University (OHSU)
Shannon Edgar	NSAB / St Charles - Prineville

Taisia Heyerman	Asante Ashland Community Hospital
Uzo Izunagbara	NSAB / Kaiser Westside

**Note:** NSAB indicates member of the Nurse Staffing Advisory Board

<b>OHA Staff Attendees</b>	
Dana Selover	Anna Davis
Kimberly Voelker	Ilana Kurtzig

<b>Other Attendees</b>	
Heidi White	Salem Health
Katy King	Oregon ACEP
Josh Nasbe	Oregon BOLI
Michael Gay	Salem Health
Shauna Kline	St. Alphonsus

These meeting notes that the presentation given during the meeting will be posted on the [Health Care Regulation and Quality Improvement rulemaking website](#) under “Rulemaking Advisory Committees in Progress.”

## Meeting notes

### Welcome and Overview

Welcome and Overview of HB 2697 and the rulemaking process provided by Dana Selover.

Overview included:

- RAC member introductions
- Notification that this RAC is also for permanent rulemaking which will start early 2024.
  - The temporary rules are a starting-off point from which OHA can adjust as more information comes from implementing the law.
- Notification that the RAC membership may change based on availability of organizational representatives and in compliance with HB 2993 (2021) which requires inclusion of those who are most likely affected by the rules.

- Rules must be in place by January 1, 2024, therefore OHA will issue temporary rules and will begin permanent rulemaking to ensure that permanent rules are in place within 180 days of issuing the temporary rules.
- HB 2697 makes significant changes to Oregon’s hospital staffing laws.
  - OHA has limited rulemaking authority under the new law.
  - The new law expands application beyond nursing and now includes hospital service staff and professional/technical staff.

## Discussion of draft proposed rules

### Overview

OHA staff provided an overview of the planned updates and which administrative rules the agency plans to leave in place.

### Repeal rules no longer supported by HB 2697:

- OAR 333-501-0035 to 0045, Audit Procedures and Civil Penalties for Nurse Staffing Violations.
- OAR 333-510-0105 to 0140, Nurse Staffing Committee, Nurse Staffing Plan and Review, Nurse Staffing Plan Mediation, Replacement Staff, Nurse Staffing Member Overtime, Nurse Staffing Waiver, Nurse Staffing Plan During Emergency.

### Keep rules still valid for non-hospital staffing:

- OAR 333-501-0005 to 0030 and -0050 to -0060, General Health & Safety rules for hospital monitoring, surveys, investigations and enforcement.
- OAR 333-510-0001 to 0060, General Health & Safety rules for hospital patient care and nursing services.

### Revise existing rules needed for non-hospital staffing:

- OAR 333-510-0002, Definitions
- OAR 333-510-0045, Posting Requirements

### Insert new rules to implement changes to HB 2697 (Division 503):

- OAR 333-503-0002 and -0005, Applicability and Definitions
- OAR 333-503-0010 and -0020, Filing and Processing Complaints
- OAR 333-503-0040, Enforcement

- OAR 333-503-0050 and -0060, Hospital Staffing Plan waiver and Nurse Staffing Member Overtime

### **Amendments to current rules**

#### **Definitions (333-510-0002)**

- Concern from a RAC member about “safe patient care” being removed from definitions. OHA staff noted that OHA is removing these definitions from rule because they are no longer supported by the law. “Safe patient care” is one of those definitions no longer supported.

#### **Posting requirements (333-510-0045)**

- No comments

### **New hospital staffing rules**

#### **Applicability (333-503-0002)**

- No comments

#### **Definitions (333-503-0005)**

- OHA confirmed that the definitions are a starter list and there is an expectation that the definitions will be expanded as the permanent rulemaking process moves forward.
- RAC member request that OHA clarify which types of plans “adopt” applies to – nurse staffing vs. service and prof/technical staff or whether “adopt” needs to be defined at all in the rules.
  - OHA staff noted the inconsistency in terms throughout the bill itself. OHA noted that it’s important for OHA to address this in rule for some clarity about what adopting a staffing plan means in terms of whether an adopted plan itself is sufficient or implemented.
- Request from RAC member about intro language to this rule itself to make the language more specific by using the word “listed” to describe the definitions that follow.
- RAC member request to have more time to discuss and come up with definitions for “create” and “adopt” related to the different types of staffing plans. OHA has flagged this issue for permanent rulemaking.

- RAC member brought up concerns about “allowed deviations” and whether unit manager written notice should be required for the deviations, with the concern being specific to how the notice is documented. This comment was supported by two other RAC members in the chat.
  - OHA agreed that in order to implement the law, the agency needs some way of tracking or understanding when allowed deviations take place.

### **Filing complaints (333-503-0010)**

- Request by a RAC member for OHA to check statutory authority listing for this rule as it may be incorrect. OHA will check and update, as needed.

### **Processing complaints (333-503-0020)**

- RAC member question about why OHA is repeating statutory language in the rule. OHA recognizes it can go either way and allows people to look just at the rules rather than going back to the statute.
- RAC member noted that “valid complaint” and “complaints” in sections (2) and (2) (which should be (3)) seem to mean different things so clarification would be helpful. OHA noted that yes, in fact “complaints” refer to any health and safety complaints, not just hospital staffing, thus why it doesn’t read “valid complaint.” RAC member requested OHA clarify that.
- Question from RAC member regarding “burden to establish” language related to OHA’s proposal to require hospitals to provide OHA the information needed to understand whether hospitals have taken actions listed in Section 19. RAC member expressed concern about proposed rule language as burden of proof rather than a requirement to produce documentation. RAC member request/recommendation is to change language to separate those concepts so that to clarify that hospitals have a requirement to produce documentation to show actions under Section 19. Preference is to use this language rather than that hospitals have a burden of proof, which the RAC member sees as a different concept.

### **Hospital staffing enforcement (333-503-0040)**

- RAC member concerns about OHA’s statutory authority for language about separate, daily violations with a request to remove this language until permanent rulemaking.

- RAC member discussion about imposition of violations prior to June 1, 2025, based on warnings that have been issued prior to June 1, 2025.
  - RAC members expressed differing interpretations on whether OHA has the authority to include warnings for violations prior to June 1, 2025, when imposing penalties for violations after June 1, 2025. Some RAC members expressed verbally and in chat that they interpret the statute as OHA has written it in the proposed rule - that warnings are included; other RAC members expressed verbally and in the chat that they interpret the statute that the warnings are not included.

### **Hospital staffing plan waiver (333-503-0050)**

- Confusion from RAC member about what waiver OHA is referring to given that Type A and Type B hospitals don't need OHA approval for waivers.
  - OHA clarified that this rule doesn't apply to the Type A and Type B waiver/variance. Agreed that this is a topic for permanent rulemaking conversations.
- Question from RAC member related to waiver language vs. variance language. It could be confusing to continue to use "waiver." Request to OHA to consider using clearest language possible and recommendation to refer to ORS 441.164 in order to further clarify the rule.

### **Nurse staff member overtime (333-503-0060)**

- OHA clarified the agency's limited rulemaking authority related to member overtime.
- Question from RAC member request to reintroduce the definition of "epidemic" to support this section. Many RAC members indicated (mainly in the chat) support for reintroducing a definition.
  - Request from a RAC member for OHA to consider what "excess of normal expectancy" means or to allow hospitals to decide what that might mean.

### **Wrap-up and Next Steps**

- OHA will take all of the comments under advisement, including tabling some of the issues for permanent rulemaking, as necessary.
  - Generally, for the permanent rulemaking, OHA will start with the temporary rules and RAC members may send any additional issues for the permanent rulemaking to OHA if they'd like. RAC members may also bring ideas directly to subsequent RAC meetings.
- Request to RAC members to provide any additional feedback to OHA no later than end of day Monday, December 4.
- Temporary rules will be in place on January 1, 2024.

Meeting adjourned at 11:40a