

OREGON ADMINISTRATIVE RULES
DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH DIVISION
CHAPTER 333

DIVISION 501

**HOSPITAL MONITORING, SURVEYS, INVESTIGATIONS, DISCIPLINE, AND
CIVIL PENALTIES**

333-501-0005

Complaints

- (1) Any person may make a complaint verbally or in writing to the Division regarding an allegation against a hospital of a violation of any health care facility licensing law or condition of participation.
- (2) The identity of a person making a complaint will be kept confidential.
- (3) An investigation will be carried out as soon as practicable after the receipt of a complaint in accordance with OAR 333-501-0010.
- (4) If the complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the Division will refer the matter to that agency.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.057

333-501-0010

Investigations

- (1) As soon as practicable after receiving a complaint, taking into consideration the nature of the complaint, Division staff will begin an investigation.
- (2) A hospital shall permit Division staff access to the facility during an investigation.
- (3) An investigation may include but is not limited to:
 - (a) Interviews of the complainant, patients of the hospital, patient family members, witnesses, hospital management and staff;
 - (b) On-site observations of patients, staff performance, and the physical environment of the hospital; and
 - (c) Review of documents and records.
- (4) Except as otherwise specified in 42 CFR § 401, Subpart B, the Division shall draft an investigation report and may make publicly available a copy of that report that does not contain any information that could lead to the identification of the complainant, a patient, or any other information that is confidential under state law.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.057

333-501-0015

Surveys

- (1) The Division may, in addition to any investigations conducted under OAR 333-501-0010, conduct at least one general survey of each hospital to determine compliance with

health care facility licensing laws during each calendar year and at such other times as the Division deems necessary.

(2) The Division, at its discretion, may accept a certificate of accreditation and deemed status for Medicare certification from the Joint Commission or the Committee on Hospitals of the American Osteopathic Association as evidence of compliance with health care facility licensing laws and conditions of participation in lieu of a survey.

(3) A hospital shall permit Division staff access to the facility during a survey.

(4) A survey may include but is not limited to:

- (a) Interviews of patients, patient family members, hospital management and staff;
- (b) On-site observations of patients, staff performance, and the physical environment of the hospital facility;
- (c) Review of documents and records; and
- (d) Patient audits.

(5) A hospital shall make all requested documents and records available to the surveyor for review and copying.

(6) Following a survey Division staff may conduct an exit conference with the hospital administrator or his or her designee. During the exit conference Division staff shall:

- (a) Inform the hospital representative of the preliminary findings of the inspection; and
- (b) Give the person a reasonable opportunity to submit additional facts or other information to the surveyor in response to those findings.

(7) Following the survey, Division staff shall prepare and provide the hospital administrator or his or her designee specific and timely written notice of the findings.

(8) If the findings result in a referral to another regulatory agency, Division staff shall submit the applicable information to that referral agency for its review and determination of appropriate action.

(9) If no deficiencies are found during a survey, the Division shall issue written findings to the hospital administrator indicating that fact.

(10) If the surveyor's written notice of findings indicates that the facility was in compliance with health facilities licensing laws and no deficiencies were cited, the facility administrator or administrator's designee shall sign the written notice and return it to the Department.

(11) If deficiencies are found, the Division shall take informal or formal enforcement action in compliance with OAR 333-501-0025 or 333-501-0030.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.060 & 442.015

333-501-0020

Violations

In addition to non-compliance with any health care facility licensing law or condition of participation, it is a violation to:

- (1) Refuse to cooperate with an investigation or survey, including but not limited to failure to permit Division staff access to the hospital, its documents or records;
- (2) Fail to implement an approved plan of correction;
- (3) Fail to comply with all applicable laws, lawful ordinances and rules relating to safety from fire;
- (4) Refuse or fail to comply with an order issued by the Division;

- (5) Refuse or fail to pay a civil penalty; or
- (6) Fail to comply with rules governing the storage of medical records following the closure of a hospital.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

333-501-0025

Informal Enforcement

- (1) If, during an investigation or survey Division staff document violations of health care facility licensing laws or conditions of participation, the Division may issue a statement of deficiencies that cites the law alleged to have been violated and the facts supporting the allegation.
- (2) A signed plan of correction must be received by the Division within 10 business days from the date the statement of deficiencies was mailed to the hospital. A signed plan of correction will not be used by the Division as an admission of the violations alleged in the statement of deficiencies.
- (3) A hospital shall correct all deficiencies within 60 days from the date of the exit conference, unless an extension of time is requested from the Division. A request for such an extension shall be submitted in writing and must accompany the plan of correction.
- (4) The Division shall determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Division, the Division shall notify the hospital administrator in writing and request that the plan of correction be modified and resubmitted no later than 10 working days from the date the letter of non-acceptance was mailed to the administrator.
- (5) If the hospital does not come into compliance by the date of correction reflected on the plan of correction or 60 days from date of the exit conference, whichever is sooner, the Division may propose to deny, suspend, or revoke the hospital license, or impose civil penalties.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.055 & 442.015

333-501-0030

Formal Enforcement

- (1) If, during an investigation or survey Division staff document substantial failure to comply with health care facility licensing laws, conditions of participation or if a hospital fails to pay a civil penalty imposed under ORS 441.170, the Division may issue a Notice of Proposed Suspension or Notice of Proposed Revocation in accordance with ORS 183.411 through 183.470.
- (2) The Division may issue a Notice of Imposition of Civil Penalty for violations of health care facility licensing laws.
- (3) At any time the Division may issue a Notice of Emergency License Suspension under ORS 183.430(2).
- (4) If the Division revokes a hospital license, the order shall specify when, if ever, the hospital may reapply for a license.

Stat. Auth.: ORS 441.055

Stats. Implemented: ORS 441.030, 441.037

333-501-0035

Nurse Staffing Audit Procedure

(1) The Department shall annually conduct random audits of not less than seven percent of all hospitals, to determine compliance with the requirements of ORS 441.162, 441.166 and 441.192.

(2) During an audit, the Department shall review:

(a) The hospital's written hospital-wide staffing plan for nursing services to ensure that the staffing plan addresses all the requirements in OAR 333-510-0045(3);

(b) The job descriptions and personnel files of the nursing staff, which includes the documentation of required licensure and indicates the specialized qualifications and competencies of the nursing staff;

(c) The list of qualified, on-call nursing staff and staffing agencies the hospital contacts for replacement staff;

(d) The hospital's process for obtaining replacement nursing staff, including efforts made to obtain replacement staff using all available resources;

(e) Documentation described in OAR 333-510-0045(2) and (4) through (7);

(f) The hospital's process for evaluating and initiating limitation on admission or diversion of patients to another acute care facility;

(g) The hospital's policy regarding mandatory overtime and the documentation of mandatory overtime pursuant to OAR 333-510-0045(9);

(h) The hospital's policy regarding education and training to ensure that hospital-mandated hours are included in time worked;

(i) The hospital's policy on maintenance, use and access to the on-call list for seeking replacement staff; and

(j) Documentation of the hospital's efforts to seek replacement staff when needed.

(3) In conducting an audit, the Department may interview:

(a) Appropriate hospital staff regarding:

(A) Implementation and effectiveness of the nurse staffing plan for nursing services;

(B) Input, if any that was provided to the nurse staffing plan committee;

(C) Whether the hospital has a formal procedure for admission and diversion of patients to another acute care facility when, in the judgment of the direct care registered nurses, there is an inability to meet patient care needs or a risk of harm to existing and new patients; or

(D) Any other subject or fact relating to hospital nursing services that is subject to the review of the Department under this rule.

(b) Hospital staff that does not voluntarily come forward for an interview during an audit; and

(c) Patients or family members regarding concerns or complaints with regard to nurse staffing in the hospital.

(4) Following an audit, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:

(a) A notice of violation requiring corrective action;

(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-501-0045.

(5) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied, in accordance with OAR 333-501-0035.

(6) The identity of witnesses providing evidence during an audit will be kept confidential to the extent permitted by state law. However, in the event witness testimony is needed in a hearing concerning a violation of a health care facility licensing law, the identity of a witness may be required to be disclosed.

Stat. Auth.: ORS 441.055, 441.170

Stats. Implemented: ORS 441.160 - 441.192

333-501-0040

Investigation Procedures for Investigation of Nurse Staffing Complaints

(1) As soon as possible after receiving a nurse staffing complaint, the Department shall interview the complainant and gather as much information as possible about the allegations.

(2) Following the review of the complaint and interview of the complainant, the Department will determine whether the allegations, if true, would constitute a violation of ORS 441.162 through 441.168. If the allegations constitute a violation of ORS 441.162 through 441.168, the Department will proceed with an on site complaint investigation.

(3) During an onsite complaint investigation, the Department may, as appropriate:

- (a) Review any documentation described in OAR 333-501-0035(2) or any other documentation that may be relevant to the complaint, including a review of patient files;
- (b) Interview any person described in OAR 333-501-0035(3) or any other person who may have information relevant to the type of complaint received; and
- (c) Review any current waivers of the nurse staffing rules that the hospital has been granted.

(4) In conducting interviews during a complaint investigation under section (3) of this rule, the Department shall interview both direct care nurses and nurse managers and hospital staff that did not come forward voluntarily for an interview during an investigation, but who may have information relevant to the complaint.

(5) The Department shall determine whether the notice required under ORS 441.180 is posted in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(6) In deciding whether there is a violation of ORS 441.162 through 441.168, the Department shall consider:

- (a) Whether there is objective evidence discovered during the investigation to substantiate a complaint;
- (b) The number of witnesses, and the credibility of the witnesses who will attest to an alleged violation of ORS 441.162 through 441.168; and
- (c) Whether witness statements are corroborated or refuted by other evidence.

(7) Nothing in section (6) of this rule requires that witness statements be corroborated in order for the Department to find a violation of ORS 441.162 or 441.166.

(8) Following an investigation, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:

- (a) A notice of violation requiring corrective action;
 - (b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-501-0035.
- (9) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.

(10) The identity of witnesses providing statements to the Department during an investigation will be kept confidential to the extent permitted by law. However, in the event witness testimony is needed in a hearing concerning a violation of ORS 441.162 through 441.168, the identity of a witness may be required to be disclosed.

(11) If during a complaint investigation, the Department has evidence that a hospital has engaged in a retaliatory act prohibited by ORS 441.174, the Department will advise the registered nurse, licensed practical nurse or certified nursing assistant to contact the Bureau of Labor and Industries regarding the concern.

Stat. Auth.: ORS 409.050, 441.055, 441.170

Stats. Implemented: ORS 441.160 - 441.192

333-501-0045

Civil Penalties for Violations of Nurse Staffing Laws

(1) For the purposes of this rule, "safe patient care" has the meaning given the term in OAR 333-510-0002.

(2) The Department may impose civil penalties in the manner provided in ORS 441.170 for a violation of any provision of ORS 441.162 or 441.166 if there is reasonable belief that safe patient care has been or may be negatively impacted.

(3) Each violation of a nursing staff plan shall be considered a separate violation.

(4) Civil penalties may be imposed for violations of ORS 441.162 and 441.166 in accordance with Table 1 in this rule.

(5) The Department shall consider all evidence in determining a violation of the hospital nurse staffing rule including but not limited to witness testimony, written documents and observations.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

(7) The Department shall maintain for public inspection records of any civil penalties imposed on hospitals penalized under this rule.

[ED. NOTE: Tables referenced are available from the agency.]

Stat. Auth.: ORS 409.050, 441.170

Stats. Implemented: ORS 441.162, 441.166, 441.170

333-501-0050

Civil Penalties for Violation of Smoking Prohibition

(1) If the Division determines that an administrator or person in charge of a hospital permits a person to smoke tobacco in a hospital or within 10 feet of a doorway, open window or ventilation intake of a hospital, the Division may assess a civil penalty of not more than \$500 per day against the administrator or the person in charge of a hospital.

(2) In determining whether an administrator or person in charge of a hospital has permitted a person to smoke tobacco in violation of ORS 441.815, the Division shall consider whether:

(a) A hospital administrator or person in charge of a hospital has taken steps to enforce the smoking prohibitions, including calling law enforcement to report a violation;

(b) The hospital administrator or person in charge of a hospital took affirmative action to address any complaints about smoking in a hospital or within 10 feet of a doorway, open window or ventilation intake of a hospital; and

(c) A hospital administrator or person in charge of a hospital has taken steps to educate the public and staff about the smoking ban.

(3) A civil penalty issued under this rule shall not exceed \$2,000 in any 30-day period.

(4) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 431.162; 441.055, 441.815

Stats. Implemented: ORS 431.162; 441.815

333-501-0055

Civil Penalties, Generally

(1) This rule does not apply to civil penalties for violations of ORS 441.162, 441.166, 441.815, or 435.254 or rules adopted to implement these statutes.

(2) A licensee that violates a health care facility licensing law, including OAR 333-501-0020 (violations), is subject to the imposition of a civil penalty not to exceed \$500 per day per violation.

(3) In determining the amount of a civil penalty the Division shall consider whether:

(a) The Division made repeated attempts to obtain compliance;

(b) The licensee has a history of noncompliance with health care facility licensing laws;

(c) The violation poses a serious risk to the public's health;

(d) The licensee gained financially from the noncompliance; and

(e) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(4) The Division shall document its consideration of the factors in section (3) of this rule.

(5) Each day a violation continues is an additional violation.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

Stat. Auth.: ORS 431.162, 441.055

Stats. Implemented: ORS 431.162