

2017

>> Nurse Staffing Advisory Board

September 2017 Legislative Report



Oregon
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PUBLIC HEALTH DIVISION

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Executive summary



Oregon nurse staffing laws encourage hospitals and direct care nursing staff to work together to promote safe patient care. Since 2001, these laws have been part of Oregon's commitment to improve health care. Statutory changes in 2015 expanded the requirements. This provided for creation of a Nurse Staffing Advisory Board (NSAB) within the Oregon Health Authority (OHA).

NSAB members received their appointment in January 2016. NSAB members support and give advice on OHA's implementation of nurse staffing regulations. NSAB members take an active role in OHA's administrative rulemaking. In addition, they provide advice on the agency's survey practices. They also explore complex issues of rule interpretation. NSAB members work collaboratively to balance competing stakeholder needs and advise OHA of changing nurse staffing realities.

To ensure the success of Oregon's nurse staffing laws, NSAB recommends the following actions.

- The Governor to fill the remaining vacancy in OHA's NSAB.
- The Governor to reappoint current NSAB members, prior to the January 2018 end of their terms.
- NSAB to support OHA's continuing outreach efforts.
- NSAB to continue to watch and evaluate waivers of the minimum staffing requirement.

To learn more about Oregon hospital nurse staffing and to read the full report, go to www.healthoregon.org/nursestaffing.

Oregon nurse staffing history

In 2001, the Oregon Legislature put into law requirements for direct care Registered Nurse (RN) staffing in hospitals. The original terms of the law:

- Limited the number of hours hospitals could require direct care registered nurses (RNs) to work in a 24-hour period.
- Required hospitals to post summary notices about hospital nurse staffing laws.
- Mandated that Oregon Health Authority (OHA) randomly survey at least seven percent of Oregon hospitals each year to verify that hospitals.
 - » Had a written plan for nurse staffing services.
 - » Could get replacement-nursing staff.
 - » Provided notice to nursing staff about employment outside of the hospital.
- Mandated that OHA prepare summary annual reports of nurse staffing survey results.
- Authorized assessment of civil penalties, when fitting.
- Provided whistle-blower protection to complainants.

The Health Care Regulation and Quality Improvement section of OHA is responsible for the licensure and regulation of all hospitals in Oregon. In 2001, OHA charged this section with drafting the administrative rules to carry out the new nurse staffing laws.

In 2005, the legislature amended the nurse staffing statutes in several key areas:

- Expanded nurse staffing laws to cover the following nursing staff members, along with RNs:
 - » Licensed practical nurses (LPNs)
 - » Certified nursing assistants (CNAs)
- Required establishment of a hospital nurse staffing committee (HNSC) in each hospital that would include equal numbers of the following:
 - » Direct care RNs
 - » Nurse managers

- Defined the composition and administrative processes of HNSCs.
- Included factors for HNSCs to consider when creating nurse staffing plans.
- Further limited the number of hours hospitals could require nursing staff members to work:
 - » In a 24-hour period and within one workweek.
- Treated time nursing staff members spent in meetings, required training and some on-call time as hours worked.

Based on these statutory revisions, OHA engaged stakeholders in a second rulemaking process and revised administrative rules.

In 2015, the Oregon Legislature passed Senate Bill (SB) 469. The Legislature considered input from the Oregon Nurses Association (ONA) and the Oregon Association of Hospitals and Health Systems (OAHHS). The intent of the law was to continue to refine and improve Oregon's nurse staffing laws. SB 469 made the following changes to Oregon's nurse staffing laws:

- Clarified that hospitals must implement the nurse staffing plans approved by their respective HNSCs.
- Amended language to clarify that nursing staff members could not be required to work more than 12 hours in total during any 24-hour period.
- Mandated the composition and record-keeping requirements of HNSCs.
- Provided additional factors for HNSCs to consider when creating nurse staffing plans.
- Defined a mediation process to for use when a HNSC reaches an impasse.
- Created a 12-member statewide NSAB.
- Defined specific timelines for nurse staffing complaint investigations.
- Increased the frequency of standard nurse staffing surveys from once every 13 years to once every three years.
- Required follow-up evaluations of deficiencies found in standard surveys and complaint investigations.
- Expanded hospital record-keeping requirements.
- Clarified OHA posting requirements for public records related to nurse staffing.

The legislature allocated around \$484,000 to OHA to fund three staff positions during the 2015-2017 biennium. OHA dedicated these new positions to carry out:

- 2015 changes to the nurse staffing laws.
- Supporting nurse staffing regulation.
- Supporting NSAB.

Nurse Staffing Advisory Board

NSAB provides advice to OHA about nurse staffing regulations. In January 2016, the Governor appointed 11 of 12 NSAB members, including two co-chairs. These individuals represent the diversity of nursing staff and leadership within Oregon's hospitals. At the end of 2016, two board members resigned. In March 2017, the Governor appointed two new board members. The board awaits appointment of a nurse manager member. This member will replace the nurse manager member who resigned in 2016.

Nursing staff member overtime rulemaking

In response to concerns raised by NSAB members and nurse staffing partner organizations, OHA reopened rulemaking in the fall of 2016. OHA held two Rule Advisory Committee meetings involving NSAB members, members of nurse staffing partner organizations and other stakeholders. Discussions at the Rule Advisory Committee meetings clarified the areas of stakeholder agreement. Based on discussions, OHA moved forward new rule language:

- Allows nursing staff members who voluntarily work over 12 hours in a 24-hour period to claim the 10-hour rest period after the final hour worked in the last shift.
- Simplified the meaning of the word “require” in the rule and moved the language that guides calculation of hours worked.

In December 2016, OHA held a public hearing was the proposed rule change. In January 2017, OHA amended the rule, as proposed.

Education activities and outreach



In 2016 and 2017, staff prioritized activities to tell stakeholders about new nurse staffing requirements. Beginning in 2016, OHA hosted nurse staffing open house webinar events. The first two events were in 2016. These webinars focused on statutory and administrative rule changes. During each webinar, OHA staff responded to questions from stakeholders across the state.

In January 2017, OHA hosted another webinar with a focus on technical details of nurse staffing surveys.

In addition, OHA posted the survey tools surveyors use in the field to measure compliance on the nurse staffing webpage. Hospitals and nurse staffing stakeholders have used these materials to run mock surveys and gauge their own compliance.

Besides the Open House webinars, OHA presented at stakeholder events:

- Conferences
- Webinars
- Meetings

These helped spread information about nurse staffing regulation.

OHA presents at the quarterly meetings of the Oregon Nurse Staffing Collaborative (ONSC). These presentations allow OHA to provide detailed information to engage direct care nursing staff members and nurse managers. It also allows OHA to gather information on new issues as they arise.

OHA presented at a daylong nurse staffing conference hosted by the ONSC. There was an opportunity to reach a large audience of direct care nursing staff members and nurse managers from around the state. Presenters and stakeholders both shared strategies to resolve frequent nurse staffing problems.

OAHHS held two conference calls to address more nurse staffing issues after the ONSC conference. OHA staff presented during both conference calls and answered questions. In addition, recently surveyed hospitals presented about their experiences. They told what happened during survey and answered participant questions.

OHA keeps the website updated to include:

- Archived Open House webinars
- New nurse staffing FAQ
- Details about how hospital surveyors measure nurse staffing compliance.

OHA keeps a nurse staffing listserv. Use of this list helps to spread information quickly about changes to nurse staffing regulations and new resources from OHA.

Nurse staffing law implementation

Survey timelines and results

The 2015 changes to Oregon's nurse staffing laws increased the frequency of hospital nurse staffing surveys. The frequency changed from once every thirteen years to once every three years. This, combined with the new regulations prompted OHA to prepare standardized survey tools. These tools allow surveyors to conduct a thorough, yet streamlined, survey or complaint investigation. As part of OHA's survey preparation efforts, NSAB also reviewed the survey tools and OHA staff presented the tools to stakeholders in several forums to call for feedback.

Beginning in April 2017, OHA began conducting standard onsite surveys using the completed survey tools. As of Sept. 1, 2017, OHA has conducted 12 onsite surveys. A delay of three months was necessary to ensure OHA had enough records to review at each hospital surveyed. OHA will complete 22 surveys in 2017.

Following each survey:

- Hospital administrators and both HNSC co-chairs receive a written report that details the survey findings:
- The hospital has 30 business days to submit a Plan of Correction to address any deficiencies.
- Once there is approval and implementation of a Plan of Correction, OHA conducts a second survey to confirm resolution of all deficiencies.

The survey report and correction period is a lengthy process. However, all reports are on track for timely completion.

NSAB receives regular updates on the survey progress. NSAB has begun to consider which data points are likely to provide useful information about statewide trends going forward. Based on anecdotal feedback from OHA staff and surveyed hospitals, completed surveys have been both cordial and educational. However, some continuing concerns exist about interpretation and operationalization of rules.

Complaint investigation timelines and results

Complaint investigations focus on the specific allegations raised in a complaint. From Jul. 1, 2016 to Aug. 31, 2017, OHA received 14 nurse staffing complaints. These were about events at 10 hospitals. By statute, OHA must begin onsite complaint investigations within 60 calendar days after receiving a complaint.

The process for complaint investigation reports mirrors that of survey reports.

- After an onsite investigation, surveyors prepare a written report.
- The hospital then has 30 business days to submit a Plan of Correction to address any deficiencies.
- Once there is approval and implementation of a Plan of Correction, OHA conducts a second survey to confirm resolution of all deficiencies.

There has been resolution of two of 14 nurse staffing complaints investigated under OHA's new nurse staffing rules. The remaining investigations are in process. As with surveys, NSAB is considering which data points are likely to give useful information about statewide trends in nurse staffing complaints going forward.

Nurse staffing waiver requests and results

The 2015 legislative changes narrowed the scope and standards for nurse staffing waivers. OHA may still grant waivers for nurse staffing plan requirements. However, for OHA to consider it, each hospital that requests a waiver must first show that the waiver is necessary to meet patient care needs.

As of August 31, 2017, OHA has received 37 nurse staffing waiver requests. More than half of the licensed hospitals in Oregon have submitted these. This number of waiver requests far exceeds prior requests. In addition, each waiver requested may include multiple hospital units. Therefore, the number of units impacted by waiver requests is significantly larger than the number of requests received.

Of waiver requests received, 92 percent relate to the minimum staffing requirements. RNs, LPNs, and CNAs count toward the minimum number of nursing staff members required for safe patient care. In keeping with national practice standards, many hospital procedural units employ teams of RNs and technicians or technologists (techs) to provide patient care. The 2015 statutory changes clear up application of the nurse staffing laws to these procedural units. This necessitates waiver requests for hospitals that use techs instead of nursing staff members.

In May 2017, NSAB discussed these waiver requests and the information provided by hospitals requesting waiver. NSAB members worked collaboratively to provide guidance to OHA on statewide standards for waivers, which includes the following:

- General expectations on required education and competency for techs working instead of nursing staff members.
- Prevalence and acceptability of using techs in specific hospital departments.

OHA has incorporated NSAB guidance into the information provided to hospitals. OHA continues to answer questions from hospitals considering or requesting a waiver.

OHA has responded to 100 percent of the waiver requests received. OHA has resolved 76 percent of waiver requests. NSAB has made waivers a standing agenda item so it can stay abreast of trends and issues in this area.

Nurse staffing laws: areas of continuing development

Definition of nursing staff members and the use of techs in procedural units

As discussed in the section on waiver requests, most nurse staffing waiver requests received relate to the use of techs instead of nursing staff members (i.e., RNs LPNs or CNAs). A cause of this trend could be increased awareness of the narrow statutory definition of nursing staff members for purposes of establishing minimum staffing. In addition, there was extensive outreach provided to ensure stakeholders and licensees understand current staffing requirements. NSAB has noted the increased awareness coupled with the large number of waiver requests. This will be a continuing topic of discussion.

NSAB members agree that techs are a widespread and highly valued resource in hospital settings. NSAB members also agree that in certain settings techs may have better training to provide specific types of patient care services than LPNs or CNAs. However, the current statutory definition of nursing staff members does not include techs.

NSAB members continue to explore the use of techs in hospitals and focus on several specific points:

- Which units and specialties techs are better suited to provide specific patient care services than LPNs or CNAs.
- Whether there should be a change to the statutory definition of nursing staff members to include techs in minimum nurse staffing calculations.
- How the use of techs in a unit impacts the determination of whether nursing services are regularly provided in that unit.
- How to account for the impact of other care team members that are not nursing staff members, under the current statutory definition, but assume meaningful functions in patient care.

Variations among hospitals in designating nursing units

During the 2016 administrative rulemaking process, NSAB served as OHA's Rule Advisory Committee. NSAB discussed extensively the possibility of drafting a definition of hospital units covered by nurse staffing regulations. In light of varied practices across the state, the Rule Advisory Committee recommended against the creation of this definition. OHA adopted a rule that allows each hospital to determine which units regularly provide nursing care services. Under current nurse staffing rules, units that provide nursing care services must have a nurse staffing plan. In addition, these units must have representation on the hospital-wide nurse staffing committee.

In surveys conducted before 2015, OHA has issued citations when units that regularly provided nursing services are not on the hospital's nurse staffing plan or not represented on HNSC.

Hospitals make the determination of unit status under the current administrative rules. Therefore, it is likely that differences between hospitals will continue.

NSAB has interest in gathering more information through the survey and complaint investigation process about unit designations. This will help to determine whether to recommend standardization of the designations.

Interpretations of nurse staffing rules

The pace of legislation, rulemaking and rule implementation has brought to light certain gaps in the collective and individual understanding of hospital nurse staffing regulations. Although rulemaking is complete, differences in opinion on the meaning of statutory and rule language remain. In addition, regulatory language cannot plan for all scenarios. Furthermore, stakeholders regularly contact OHA to request guidance regarding unique situations. As the agency continues to interpret and apply the nurse staffing regulations, NSAB will remain a key source for the agency. NSAB helps in anticipating the impact of rule interpretations on hospitals and direct care nursing staff members statewide.

Differentiation between mandatory overtime and voluntary overtime

During both the spring and fall 2016 rulemaking processes, NSAB members expressed concern regarding the overtime provisions in Oregon Revised Statutes (ORS) 441.166. The statutory overtime provisions state, in part:

- That “a hospital may not require a nursing staff member to work:”

- » Over specific daily and weekly limits.
- » During the 10-hours, following the 12th hour of worked in a 24-hour period.

NSAB members expressed different interpretations of the statutory term “require” and its application in rule. In keeping with the overtime limits listed in statute, OHA has clarified that overtime that is agreed-upon and prearranged by a direct care nursing staff member is not mandatory overtime.

NSAB members continue to express concern about the potential impact of the overtime provisions in ORS 441.166 on call requirements. NSAB members have expressed different interpretations of when call shifts are voluntary. In addition, NSAB nurse manager members have expressed concern that hospitals may define “mandatory” overtime differently from other types of overtime. This includes “voluntary” and “non-voluntary” overtime. NSAB nurse manager members also have continuing concerns about the significant documentation burden related to overtime.

As OHA conducts more surveys, the range of hospital practices will likely become clearer. Opportunities to create more uniform expectations for both hospitals and direct care nursing staff members may develop.

Documentation requirements under nurse staffing laws

NSAB members continue to express concern about nurse staffing documentation requirements. Oregon Administrative Rule (OAR) 333-510-0045 requires hospitals to maintain certain nurse staffing records for no fewer than three years. This is in order to demonstrate compliance with applicable nurse staffing laws during standard surveys and complaint investigations. The burden of documentation falls on each hospital as a licensed entity.

During nurse staffing surveys and complaint investigations surveyors rely on hospital documentation to show that HNSC and the hospital administration comply with nurse staffing regulations. Documents reviewed during surveys and investigations:

- Standard business records, such as schedules and payroll.
- Specialized nurse staffing records such as nurse staffing plans and HNSC meeting minutes.

NSAB members agree the new rules increased the administrative burden on hospitals to show compliance with Oregon’s nurse staffing rules. NSAB encourages OHA’s efforts to provide educational opportunities and materials on documentation requirements so hospitals can become familiar before receiving an onsite survey.

NSAB acknowledged efforts by individual hospitals to develop and share staffing related resources. For example, a number of collaborative groups shared documentation templates. Stakeholders have also shared innovative ways to use existing technology to capture nurse staffing data for use by both HNSCs and OHA.

NSAB expects the collaboration and innovation to continue as stakeholders observe the use of documentation by both HNSCs and OHA. In addition, NSAB will continue to review documentation requirements and consider whether the information required provides measurable and useful information.

NSAB's agenda for the next year

Reviewing nurse staffing administrative rules for efficacy and clarity

In keeping with its duty to provide advice to OHA on the administration of nurse staffing statutes, NSAB commits to continuing the discussion of the nurse staffing administrative rules and the impact on hospitals and direct care staff. NSAB has a particular interest in measuring whether the rules have had the intended effect. Also, whether there is a continued need for any given rule. In addition, NSAB would like to look for opportunities to improve rule interpretation, implementation and language.

NSAB is aware that statutory language underlies most of the nurse staffing administrative rule language. Thus, if research reveals statutory changes may be necessary, NSAB may recommend them to the legislature.

Gathering feedback from surveyed hospitals and nurse staffing committee co-chairs

The number of hospitals that have completed a nurse staffing survey under the new regulations continues to increase. NSAB members have interest in feedback from both the hospital administration, nursing leadership, HNSC co-chairs and direct care nursing staff. Feedback from surveyed hospitals can be used to:

- Refine the survey process.
- Highlight areas where regulations or survey expectations are unclear.

Emerging issues in nurse staffing laws

Hospital nurse staffing is in a dynamic regulatory environment. NSAB embraces its role to identify trends, opportunities, and concerns and looks forward to the year ahead. Areas of expected interest:

- Documentation of best practices.
- Using best practices for on-call shifts.
- Mandatory overtime considerations.

- Utilization of various roles as nursing staff members.
- Units providing nursing services trends.

NSAB recommendations

Secure Appointment of the Final NSAB Member

NSAB members agree the final vacancy on the board needs to be filled immediately. NSAB awaits an appointment of a nurse manager member to replace the one who resigned in November 2016. NSAB believes that this final member is necessary to ensure NSAB remains balanced. In addition, to make sure NSAB accurately reflect the diversity and variety among Oregon hospitals and nursing staff members.

Reappoint current NSAB members

The terms of five NSAB members will expire on Jan. 1, 2018. Current NSAB members are building an effective advisory board. NSAB members agree that expiring members play a vital role in this endeavor. NSAB members would like to continue to collaborate on various issues.

Continued support of OHA outreach efforts

NSAB members support continuing OHA's outreach to help all Oregon hospitals be compliant with the staffing rules. NSAB looks to OHA to select topics for outreach based on survey and complaint investigation results. Also, to provide more training and information on these topics.

Monitor and evaluate the waivers of the minimum staffing rule

NSAB is closely monitoring the waiver requests. There is a specific focus on waivers of the minimum staffing rule in situations that use technicians and technologists instead of a second nursing staff member. NSAB will continue to evaluate application of the statutory definition of nursing staff member for minimum staffing, to decide whether to recommend statutory changes.

Conclusion



OHA and NSAB members agree that there has been significant progress in implementing Oregon’s revised nurse staffing laws. NSAB members continue to work collaboratively with one another and with OHA staff. Stakeholder interest proves that Oregon hospitals and direct care nursing staff members are diligently working to understand and carry out the new regulatory framework.

NSAB members use their commitment to safe patient care as their guide. Members recognize that nurse staffing impacts direct patient care. Also, that nurse staffing regulation must always make patient care the chief priority.

While areas of ambiguity remain, NSAB members agree that future survey and complaint investigations are likely to produce valuable data. NSAB members and OHA can use the data to evaluate new trends in nurse staffing. Meanwhile, NSAB members will take the actions identified above and continue to advise OHA on administration of these rules.



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