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Public Comments:

Temporary Health Care Staff Rate Setting Program: revises annual rates and adds clarifying language.

Rulemaking for OAR 409-039

RULES PROPOSED:

409-039-0010, 409-039-0020, 409-039-0040, 409-039-0050, 409-039-0070, 409-039-0080, 409-039-0100, 409-039-0110

Public Comment Period: October 1, 2026, to October 21, 2026

Contact: HB2665.Implementation@odhsoha.oregon.gov

Program: Temporary Health Care Staff Rate Setting Program (HB 2665)

Brief Reason for Rule Changes:

The amendments update the maximum bill rates for calendar year 2027 and add clarifying language. They clarify how the 25 or fewer exception is calculated, add a definition of Work Stoppage with a shortened Non-Emergency Waiver timeline for requests arising from a Work Stoppage, update Non-Emergency Waiver submission and review timelines, and require a temporary staffing agency to coordinate with its suppliers and subcontractors when responding to a data request.

Public Comments

Oregon Health Authority (OHA) expresses no views on the substance of these comments. They are published for transparency and not as an endorsement by OHA of the views expressed. Public comment has been summarized for clarity. A complete record of all submitted public comment is available upon request by emailing HB2665.Implementation@odhsoha.oregon.gov

Number of Public Comments Received: 8

Summary of Written Public Comment

AMN Healthcare:

Comment: **Add a third Registered Nurse rate category for RNs with specialty certifications or working in specialty units, such as ICU, labor and delivery, operating room, NICU, PACU, PICU and CVICU. (OAR 409-039-0040)**

Reply: OHA will consider it in future rate reviews.

Comment: **Add the need for RNs in specialty areas as a basis for a Non-Emergency Waiver. (OAR 409-039-0050(2))**

Reply: OHA thanks AMN Healthcare for this feedback.

Comment: **Reduce the Non-Emergency Waiver submission lead time to seven business days. (OAR 409-039-0070(8))**

Reply: A Non-Emergency Waiver authorizes rates above the maximum before the start date listed on the waiver. The existing ten (10) business day submission period allows time for OHA to review a complete request before the requested start date. OHA is retaining this requirement and encourages applicants to submit as early as possible.

Comment: **Keep the data request obligation with each employer of record rather than requiring agencies to obtain data from suppliers and subcontractors, citing duplicate reporting, confidential compensation data and administrative burden. (OAR 409-039-0100(3))**

Reply: OAR 409-039-0100(3) ensures rate data is captured for personnel placed through supplier and subcontractor arrangements, which supports accurate rate setting and compliance review. OHA will account for these arrangements to avoid counting the same personnel twice and is retaining the provision as proposed.

Salem Health Hospitals & Clinics:

Comment: **Explain the methodology behind a second consecutive decrease in RN maximum rates, including how it relates to the cost of employing health care professionals in Oregon and the available labor pool. (OAR 409-039-0040)**

Reply: ORS 676.716 directs OHA to set maximum rates that bear a reasonable relationship to the most recent wage data and to evaluate them annually, which means that rates may rise or fall as that data changes. OHA reviewed the CY2027 rates with its Technical Advisory Group and is maintaining them as proposed. The methodology overview is available on the program website:

https://www.oregon.gov/oha/HPA/HP-PCO/HB2665Documents/HB2665_Rate_Setting_Methodology_Overview.pdf

Comment: **Clarify that localized events, such as a mass casualty event in a small area, qualify as emergencies for waiver purposes, and give examples. (OAR 409-039-0050)**

Reply: The Emergency Waiver is available when there is an event that meets the definition of Emergency in ORS 401.025(1). A localized event that meets the definition may be addressed through the Emergency Waiver process.

Comment: **Consider an expedited process for acute incidents other than work stoppages, since a decision could arrive on the requested start date with no time to seek reconsideration. (OAR 409-039-0070)**

Reply: The ten (10) business day submission period allows OHA to review a complete request before the start date listed on the waiver, and OHA issues decisions as soon as its review is complete. Emergencies may be addressed through the Emergency Waiver process, and Work Stoppages follow a shortened timeline.

Comment: **Add a maximum rate differential for RNs with specialty training, experience and certifications. (OAR 409-039-0040)**

Reply: OHA will consider it in future rate reviews.

American Staffing Association (ASA):

Comment: **Maintain the 2027 RN maximum rates, including holiday and overtime rates, at no less than 2026 levels. (OAR 409-039-0040, Table 1)**

Reply: ORS 676.716 directs OHA to set maximum rates that bear a reasonable relationship to the most recent wage data and to evaluate them annually, which means that rates may rise or fall as that data changes. OHA reviewed the CY2027 rates, including holiday and overtime rates, with its Technical Advisory Group and is maintaining them as proposed.

Comment: **Reduce the Non-Emergency Waiver submission lead time to five business days. (OAR 409-039-0070(8))**

Reply: A Non-Emergency Waiver authorizes rates above the maximum before the start date listed on the waiver, and the ten (10) business day submission period allows OHA to review a complete request before the requested start date. OHA is retaining this requirement and encourages applicants to submit as early as possible.

Comment: **Strike the supplier and subcontractor data requirement so that each agency reports only on the personnel it directly employs and places,**

citing confidentiality, duplicate reporting, antitrust risk and the experience in Illinois. (OAR 409-039-0100(3))

Reply: OAR 409-039-0100(3) ensures rate data is captured for personnel placed through supplier and subcontractor arrangements, which supports accurate rate setting and compliance review. OHA will account for these arrangements to avoid counting the same personnel twice and is retaining the provision as proposed.

CoreMedical Group:

Comment: **Does the 25 or fewer exception apply to both hospital and non-hospital placements, and does "collectively" mean across every hospital an agency works with? (OAR 409-039-0020(2))**

Reply: The exception applies only to a temporary staffing agency engaged by a hospital, not to placements with other facilities such as in-home care agencies. For hospitals, it is calculated for each agency in each single licensed care setting, not across all of an agency's hospital clients.

Comment: **Are placements made as a subcontractor through a managed service provider, which holds the contract with the facility and bills it, subject to the maximum rates?**

Reply: The maximum bill rates apply to the amounts a temporary staffing agency charges to or receives from a hospital or facility for covered personnel, however the arrangement is structured. Where personnel are placed through a managed service provider or another temporary staffing agency that charges the hospital or facility, that agency's rates must be within the maximum bill rates. A temporary staffing agency that supplies personnel through another agency remains subject to these rules, including data requests under OAR 409-039-0100.

Medical Solutions:

Comment: **Supports the American Staffing Association's recommendation to maintain RN maximum rates at no less than 2026 levels. (OAR 409-039-0040)**

Reply: See OHA's reply to the American Staffing Association on this topic.

Comment: **Supports the American Staffing Association's recommendation to reduce the Non-Emergency Waiver lead time. (OAR 409-039-0070(8))**

Reply: See OHA's reply to the American Staffing Association on this topic.

Comment: **Supports the American Staffing Association's recommendation to remove the supplier and subcontractor data requirement. (OAR 409-039-0100(3))**

Reply: See OHA's reply to the American Staffing Association on this topic.

Oregon Health Care Association (OHCA):

Comment: **Strike the language calculating the 25 or fewer exception separately for each temporary staffing agency and keep the current text, which OHCA reads as applying collectively across all agencies supplying a hospital. (OAR 409-039-0020(2))**

Reply: ORS 676.719 provides that a temporary staffing agency engaged by a hospital may charge rates above the maximum when those rates apply to 25 or fewer personnel in a single licensed care setting. OHA's rules and guidance have tied the exception to the temporary staffing agency engaged by the hospital, consistent with this statutory language, and the CY2027 rules state the calculation explicitly. Applying the exception to each agency keeps it within the limits the statute sets while maximum rates continue to apply across the market. Temporary staffing agencies report their placements and rates to OHA, so each agency can determine whether the exception applies to its own engagements, and OHA can review compliance using the data it receives. The statute's penalties apply to temporary staffing agencies, which aligns accountability with the party that reports and controls those engagements. OHA is retaining the per-agency calculation in the final rules.

Comment: **Make clear that the exception applies only to hospitals, replacing "licensed care facility" and "licensed facility" with "licensed care setting." (OAR 409-039-0020(2))**

Reply: OHA agrees that the exception in ORS 676.719 applies only to hospitals. In response, the final rules revise OAR 409-039-0020(2) to state that the exception applies only to hospitals and does not apply to facilities, and use the term "licensed care setting" in place of "licensed care facility" and "licensed facility" to further align with the language in ORS 676.719.

Asante:

Comment: **Classify a Work Stoppage as an Emergency eligible for an Emergency Waiver. (OAR 409-039-0050(1))**

Reply: A Work Stoppage is preceded by advance notice, so the rules address it through the Non-Emergency Waiver process with a shortened timeline built around that notice. In response to public comment, the final rules also provide

that a notice of Work Stoppage may satisfy the criteria in OAR 409-039-0050(2)(a) through (c).

Comment: **Withdraw the requirement to submit Non-Emergency Waiver requests before the requested start date, and the bar on approval once that date has passed. (OAR 409-039-0070(8))**

Reply: A Non-Emergency Waiver authorizes rates above the maximum before the start date listed on the waiver and cannot be retroactively applied to approve services that began before the request was received. The advance submission period allows OHA to review a complete request first, and OHA is retaining these requirements.

Comment: **If Work Stoppages remain in the Non-Emergency Waiver process, remove any submission deadline for those requests and allow filing after the stoppage begins. (OAR 409-039-0070(8)(a))**

Reply: A Work Stoppage request may be submitted as late as four (4) business days before the start date or, when less time remains, within one (1) business day after notice, and OHA will decide it within two (2) business days of receipt. As with all Non-Emergency Waivers, a waiver cannot be approved for services that already began.

Comment: **Provide a documented process for curing a deficient or incomplete application. (OAR 409-039-0070)**

Reply: A request that is missing required information is denied, and the denial identifies what is missing so the applicant can submit a new request with that information. A denied request may also be reconsidered under OAR 409-039-0080.

Comment: **Reconsider the RN maximum rate reduction and the methodology behind it, and consider whether an increase is warranted. (OAR 409-039-0040)**

Reply: ORS 676.716 directs OHA to set maximum rates that bear a reasonable relationship to the most recent wage data and to evaluate them annually, and rates for each personnel type move with that data. OHA reviewed the CY2027 rates with its Technical Advisory Group and is maintaining them as proposed. The methodology overview is available on the program website: https://www.oregon.gov/oha/HPA/HP-PCO/HB2665Documents/HB2665_Rate_Setting_Methodology_Overview.pdf

Hospital Association of Oregon (HAO):

Comment: **Supports the revisions to the 25 or fewer exception. (OAR 409-039-0020)**

Reply: OHA thanks the Hospital Association of Oregon for its support of the revisions to OAR 409-039-0020.

Comment: **Share the rate methodology with Rules Advisory Committee members, reconsider it, and assess whether an increase is appropriate. (OAR 409-039-0040)**

Reply: Rates are recalculated each year from the most recent wage data, so they may rise or fall as that data changes. OHA reviewed the CY2027 rates with its Technical Advisory Group and is maintaining them as proposed. The methodology overview and Foundational Equations are now posted on the program website: https://www.oregon.gov/oha/HPA/HP-PCO/HB2665Documents/HB2665_Rate_Setting_Methodology_Overview.pdf

Comment: **Allow hospitals to use the Emergency Waiver process during a Work Stoppage. (OAR 409-039-0050)**

Reply: A Work Stoppage is preceded by advance notice, so the rules address it through the Non-Emergency Waiver process with a shortened timeline built around that notice. In response to public comment, the final rules also provide that a notice of Work Stoppage may satisfy the criteria in OAR 409-039-0050(2)(a) through (c).

Comment: **Remove the requirement to show the applicant has exhausted all other possibilities to stay within the maximum bill rates. (OAR 409-039-0050(2)(b))**

Reply: OHA is retaining the Non-Emergency Waiver criteria, which have applied since the program began. In response to comments on Work Stoppages, the final rules provide that a notice of Work Stoppage may satisfy the criteria in OAR 409-039-0050(2)(a) through (c), so a separate showing under (2)(b) may not be needed in that case. An applicant must ensure the notice of Work Stoppage provides all the information needed to satisfy the criteria of (2)(a) through (c).

Comment: **Remove the 10 business day submission requirement, or allow exceptions when the applicant provides a reasonable explanation. (OAR 409-039-0070(8))**

Reply: The ten (10) business day submission period allows OHA to review a complete request before services begin, and OHA issues decisions as soon as its review is complete. Emergencies may be addressed through the Emergency Waiver process, and Work Stoppages follow a shortened timeline.

Comment: **Exempt waiver requests arising from a Work Stoppage from advance submission timelines. (OAR 409-039-0070(8)(a))**

Reply: A Work Stoppage request may be submitted as late as four (4) business days before the start date or, when less time remains, within one (1) business day after notice, and OHA will decide it within two (2) business days of receipt. As with all Non-Emergency Waivers, a waiver cannot be approved for services that already began.

Summary of Oral Public Comment

Public Hearing – OAR Chapter 409, Division 039

Temporary Health Care Staff Rate Setting Program Rule Updates

Oregon Health Authority Health Policy and Analytics held a public hearing on October 15, 2026, regarding proposed updates to OAR Chapter 409, Division 039 related to the Temporary Health Care Staff Rate Setting Program. The hearing began at 2:04 p.m. and adjourned at 3:01 p.m.

Only one individual provided comment during the hearing. Libby Batlan, on behalf of the Oregon Health Care Association, asked OHA to strike the language calculating the 25 or fewer exception separately for each temporary staffing agency, and to make clear in the rule that the exception applies only to hospitals. The Oregon Health Care Association submitted the same comments in writing on October 21, 2026.

No additional oral comments, concerns, or recommendations regarding the proposed rule language were provided during the hearing.

The hearing remained open for written public comment through October 21, 2026.

- Hearing held October 15, 2026, from 2:04 p.m. to 3:01 p.m.
- One public comment received.
- Comment addressed the 25 or fewer exception in OAR 409-039-0020(2).
- Written public comment period remained open following the hearing.

OHA has made the following changes to the rule text in response to public comment:

Agreed to revise OAR 409-039-0020(2) to state that the 25 or fewer exception applies only to hospitals and does not apply to facilities, and to use the term "licensed care setting" in place of "licensed care facility" and "licensed facility," as submitted by OHCA. Agreed to revise OAR 409-039-0050(4) so that a notice of Work Stoppage may satisfy the Non-Emergency Waiver criteria in OAR 409-039-0050(2)(a) through (c), in response to comments submitted by HAO and Asante.

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