

2021



OHA NURSE STAFFING ADVISORY BOARD

2021 Legislative Report



Oregon
Health
Authority
PUBLIC HEALTH DIVISION

Acknowledgments

The Oregon Health Authority prepared this publication in collaboration with members of the Public Health Division Health Care Regulation and Quality Improvement Section, and the Oregon Nurse Staffing Advisory Board.

For more information contact:

Kimberly Voelker, MPH

Nurse Staffing Policy Analyst

Health Facility Licensing & Certification

Public Health Division

Oregon Health Authority

Email: Mailbox.nursestaffing@state.or.us

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Executive summary



Oregon nurse staffing laws require hospitals and direct care nursing staff to work together to promote safe patient care. These laws have been part of Oregon’s commitment to improving health care since 2001. In 2015, changes in the law expanded these requirements and created a Nurse Staffing Advisory Board (NSAB) within the Oregon Health Authority (OHA).

This report discusses:

- The NSAB’s key achievements in the last year
- Progress in conducting nurse staffing surveys and complaint investigations as well as implementing Plans of Correction at hospitals and special inpatient care facilities across Oregon
- Nurse staffing waiver requests
- How the funding appropriated in the 2021 legislative session will be used to help OHA ensure compliance with the nurse staffing law
- The NSAB’s committee work, including the Civil Monetary Penalties Committee, Rules Advisory Committee for HB 3016, Process Improvement Committee and Acuity Committee
- Areas of continued focus, including vacancies on the NSAB and hospital noncompliance with the nurse staffing requirements related to:
 - » Meal and rest breaks,
 - » Minimum numbers of nursing staff members as specified in the nurse staffing plan, and
 - » Patient acuity and nursing care intensity.

In early 2020 OHA completed all on-site nurse staffing surveys for the first three-year cycle set by the Legislature. Between 2017 and 2021, OHA’s limited survey resources delayed initiating complaint investigations and legislatively mandated revisit surveys.

In the 2021 legislative session, the legislature appropriated \$1,383,589 from the General Fund for 2021-2023 biennium. This additional funding will allow OHA to hire positions to help meet the program improvement goals.

Like other state work, OHA's nurse staffing regulatory activities have been affected by the COVID-19 pandemic. OHA prepared to begin the second three-year survey cycle in March 2020. However, OHA delayed nurse staffing surveys and complaint investigations to align with federal survey protocols and the Governor's Executive Orders as a result of the COVID-19 pandemic. OHA resumed complaint investigations in August 2020 and initiated the second three-year survey cycle in March 2021 with the board's support. The second survey cycle uses new processes created by the NSAB's Process Improvement Committee. The new processes streamline the survey while prioritizing key regulatory elements.

NSAB continues to provide valuable input to OHA. In April 2021, the NSAB formed the Civil Monetary Penalties (CMP) Committee. The CMP Committee will discuss priority elements of surveys and investigations and draft guidance to OHA on when OHA should seek CMPs for hospital noncompliance.

At its July 2021 meeting, the NSAB formed a Rules Advisory Committee for HB 3016, which was passed during the 2021 legislative session. HB 3016 creates requirements related to nurse staffing during the implementation of a hospital's facility disaster plan. The Rules Advisory Committee (RAC) will use its expertise in nurse staffing to advise OHA during the rulemaking process for HB 3016.

The NSAB also voted to approve the Hospital Nurse Staffing Interpretive Guidance on Staffing for Acuity & Intensity in April 2021. This interpretive guidance clarifies expectations for hospital nurse staffing plans as they relate to patient acuity and nursing care intensity. OHA sent the interpretive guidance to all Oregon hospital Chief Nursing Officers and Hospital Nurse Staffing Committee Co-chairs as well as over 6000 interested parties on its listserv. The interpretive guidance is also available on the hospital [nurse staffing website](#).

Finally, to ensure the success of Oregon's nurse staffing laws, NSAB strongly encourages the Governor:

- To fill the remaining vacancies in OHA's NSAB,
- Continue to fill vacancies as they arise, and
- Continue to re-appoint NSAB members eligible for a second term on the board.

The full legislative report is available at www.healthoregon.org/nursestaffing.

Key Achievements

In February 2020, the NSAB formed the Process Improvement Committee (PIC) to improve the nurse staffing survey and investigation process. The committee met four times in 2020 and identified opportunities to refocus survey and investigation tools and processes. This committee's goals included:

- Reviewing nurse staffing compliance requirements and recommending priority elements of nurse staffing surveys and complaint investigations;
- Advising on new and revised elements for tools that align with the priority requirements and streamlining the triennial nurse staffing surveys;
- Recommending survey process changes that streamline the triennial nurse staffing surveys, including pre-survey questionnaires and document submission, onsite review activities and exit interviews; and
- Recommending survey resolution process improvements. Examples include alternate formats for the survey report, the process for Plans of Correction and the process for the second audit which must occur after an accepted Plan of Correction is implemented.

The PIC presented its work to the board in October 2020, and the board recommended that OHA incorporate the PIC's proposals into the second survey cycle. OHA has adopted the new processes and tools proposed by the PIC for the second survey cycle, which began in March 2021. To support implementation of the new processes and tools, OHA hosted a webinar to answer questions about changes to the second survey cycle and published the tools on the nurse staffing website. The board will continue to advise OHA on the implementation of these new processes during quarterly NSAB meetings.

The NSAB and OHA have continued to provide guidance on staffing to Oregon's hospitals and nursing staff members during the COVID-19 pandemic. The NSAB will continue to seek feedback from Oregon's hospital-based direct care nurses, hospital administrators and nurse managers, and other stakeholders on the impact of the pandemic on nurse staffing in Oregon hospitals.

Survey reports and Plans of Correction

Between 2017 and 2019, OHA completed 70 on-site nurse staffing surveys of Oregon's hospitals and special inpatient care facilities (SICFs). The OHA survey team conducted all surveys within the three-year cycle set by the Legislature.

OHA was prepared to begin the second three-year survey cycle in March 2020, however, OHA delayed all nurse staffing surveys and complaint investigations due to the COVID-19 pandemic to March 2021. As of August 1, 2021, OHA has surveyed eight hospitals in the second three-year survey cycle.

After OHA completes a nurse staffing survey, the agency sends a report to the hospital with guidance on Plan of Correction (POC) requirements and processes. The hospital is then required to draft a POC that addresses how the hospital will correct the deficiencies cited during the survey. OHA reviews the POC, and if the hospital has not adequately explained how they will correct the cited deficiencies or if their plan does not correct the deficiencies, OHA will send the POC back to the hospital and request revisions.

Once OHA accepts a POC, the hospital has 45 days to implement the corrective actions in their plan. OHA is required to conduct a second audit after the POC is implemented to determine if the previously identified deficiencies are resolved.

First survey cycle (2017 – 2019):

- All 70 hospitals with nursing services surveyed in Oregon between 2017 and 2019 reports reflected numerous deficiencies at each hospital.
- As of August 1, 2021, all hospitals surveyed in 2017 and 2018 had an approved POC; three hospitals surveyed in 2019 were still in the process of submitting an acceptable POC to OHA.

Second survey cycle (2021 – 2024):

- As of September 1, 2021, eight hospitals have received a full nurse staffing survey. These nurse staffing surveys were combined with the second audit for the surveys conducted in the first survey cycle and any complaint investigations completed in that timeframe. OHA was unable to complete second audits for the first survey cycle due to workload and limited resources.
- All eight hospitals surveyed had deficiencies noted on the nurse staffing report, which required the hospital to submit a POC to OHA.
- As of July 27, 2021, one hospital has had its POC approved by OHA.

Waivers

As of May 21, 2021, OHA has received nurse staffing waiver requests from 51 hospitals. Nurse staffing waiver requests are active for 37 Oregon hospitals and 10 Oregon hospitals have a nurse staffing waiver that was approved and has since expired without requesting a renewal of the waiver. More than 90 percent of the waiver requests relate to the statutory requirement for minimum number of nursing staff members on duty in a unit when a patient is present. The requests also deal with which staff members can be used in lieu of a second nursing staff member; the second staff member is often a non-nursing, trained technician or technologist who participates in patient care. OHA continues to request board guidance on waiver criteria and provides regular updates to the board on the nature and status of requests.

Oregon hospitals that have requested a waiver between 2016 and 2021:

- 17 of Oregon's 18 large hospitals (> 150 licensed beds). 15 large hospitals have waivers that are currently active and two large hospitals have waivers that expired without submitting a renewal request.
- 20 of Oregon's 22 medium hospitals (26 – 150 licensed beds). 13 medium hospitals have waivers that are currently active and seven medium hospitals have waivers that expired without submitting a renewal request.
- 14 of Oregon's 25 Critical Access Hospitals (\leq 25 licensed beds). nine critical access hospitals have waivers that are currently active and one Critical Access Hospital has a waiver that expired without submitting a renewal request.

2021 Funding for nurse staffing

The 2015 amendment to the nurse staffing law significantly expanded nurse staffing requirements for hospitals and increased OHA regulatory activities and provided some limited funding for OHA's regulatory work. During the first survey cycle, the NSAB recognized the need for increased funding for the nurse staffing program and requested that the legislature appropriate funding to OHA for its nurse staffing work.

During the 2021 legislative session, the Oregon State Legislature appropriated \$1,383,589 from the General Fund for nurse staffing to provide additional staffing for Public Health to support the ongoing implementation of Oregon's nurse staffing law. The NSAB would like to thank the Legislature for their recognition of the work being done to promote safe nurse staffing and for their support in implementing this important law.

With this funding, OHA has begun the process of hiring two client care surveyors, whose work will involve conducting nurse staffing audits and complaint investigations and reviewing nurse staffing Plans of Correction. OHA and the NSAB will work together to prioritize among the other positions that were considered to improve nurse staffing including: a Compliance Specialist 3; a Public Health Nurse 2; a Research Analyst; and a Principal Executive/Manager D.

This additional funding will help OHA achieve its program improvement goals, including:

- Meeting timelines for survey revisits as required by statute and rule;
- Providing timelier feedback on nurse staffing survey results;
- Providing more consultation and dialogue during nurse staffing surveys;
- Prioritizing nurse staffing complaint investigations and reducing the time between receiving a complaint and initiating an investigation;
- Including targeted units during full routine surveys;
- Providing education to stakeholders on the impact of nurse staffing;
- Conducting nurse staffing research and analysis of the law and its outcomes; and
- Increasing consequences for hospital noncompliance.

The NSAB and OHA will work together to reach these program improvement goals and the NSAB will continue to advise on opportunities for further improvement.

Other board work in progress

Civil Monetary Penalties (CMP) Committee

The board formed the Civil Monetary Penalties (CMP) Committee in April 2021 to provide recommendations to OHA on when to seek CMPs. The committee first met in July 2021.

This committee's goals include:

- Reviewing the process for issuing CMPs, regulatory language associated with CMPs for nurse staffing, and the cost of issuing CMPs;
- Advising on the interpretation of the Civil Penalty Assessment Table and definition of safe patient care;
- Identifying criteria for the fair and consistent application of CMPs;
- Determining indicators in nurse staffing survey tools, survey reports and past survey performance that may be used to alert OHA that these criteria are present; and
- Considering prioritization of CMPs in relation to other nurse staffing compliance work.

At its first meeting, the CMP Committee approved its charter and committee goals. The committee plans to meet an additional four times and fulfill its charter by the end of 2021. In future meetings, the CMP Committee will discuss:

- The Civil Penalty Assessment Table and definition of safe patient care;
- Other nurse staffing compliance work, such as triennial surveys, complaint investigations, and revisit surveys; and
- Factors that influence the amount of CMPs.

The CMP Committee will also explore OHA's options to enforce the nurse staffing law and advise on what actions OHA should take when to address continued hospital noncompliance.

Rules Advisory Committee (RAC) for HB 3016

In July 2021, the NSAB formed a Rules Advisory Committee (RAC) to advise on the creation of rules to implement HB 3016. HB 3016 was passed by the Legislature in 2021 and creates new nurse staffing requirements related to implementation of facility disaster plans, including that:

- A hospital may suspend its nurse staffing plan in response to a national emergency or state emergency declaration requiring implementation of a facility disaster plan only if the facility must also implement crisis standards of care;
- Within 30 days after deviating from a hospital-wide nurse staffing plan in this type of emergency, hospital Incident Command must report to the nurse staffing committee co-chairs an assessment of the nurse staffing needs arising from the emergency;
- The nurse staffing committee must meet to develop a contingency nurse staffing plan to address the report from Incident Command, and the contingency nurse staffing report must include crisis standards of care; and
- An emergency deviation from the hospital-wide nurse staffing plan may not be in effect for more than 90 days without approval from the nurse staffing committee.

The RAC members will utilize their expertise to advise OHA on implementation of HB 3016 and will gather input from stakeholders. Committee meetings are open to members of the public and the RAC anticipates its first meeting for September 2021.

Acuity Committee

The Acuity Committee met four times between 2018 and 2020 to discuss patient acuity and nursing care intensity and review acuity and intensity factors. The committee developed guidance on how hospital nurse staffing plans incorporate methods, tools, and criteria to measure patient acuity and nursing care intensity as required by Oregon's nurse staffing laws. The Hospital Nurse Staffing Interpretive Guidance on Staffing for Acuity & Intensity was published in May 2021 and is currently available on OHA's Hospital Nurse Staffing website: www.healthoregon.org/nursestaffing.

Areas of continued focus

NSAB vacancies

NSAB members agree that the prompt appointment of direct care nursing staff members and nurse managers by the Governor to the board must remain a priority. The NSAB believes that a full board is necessary to ensure that it fulfills its mission of making recommendations to the OHA on the basis of trends, opportunities and concerns related to nurse staffing from across Oregon. The NSAB also believes that board members should reflect the diversity of nursing in Oregon by having members from different hospital sizes, hospital types, geographic areas of Oregon, and from hospitals that do and do not have union representation. The NSAB and the Governor also prioritize membership that reflects the different backgrounds, identities and experiences of Oregon's population.

As of August 1, 2021, the NSAB has five vacancies on the board:

- One direct care position that can be filled by a registered nurse (RN), licensed practical nurse (LPN) or certified nursing assistant (CNA). Although a RN, LPN, or CNA can be appointed to this position, OHA and the Governor's Office prioritize appointing LPNs and CNAs to this position because it is the only position a non-RN can be appointed to. This position has been vacant since November 2019.
- One direct care position that must be filled by an RN. The member who was most recently appointed to this position has agreed to continue to serve on the board until the Governor appoints a new member to his position. His term expired January 1, 2020, and he is ineligible to be reappointed because he has already served two terms.
- Three nurse manager positions. One nurse manager position expired on January 1, 2020, but the member who was most recently appointed to this position has continued to serve on the board until the Governor appoints a new member to her position. She is ineligible to be reappointed to the board because she has already served two terms. The other two nurse manager positions have been vacant since March 2021 and August 2021.

The terms of the NSAB's two cochairs will expire on January 1, 2022. To ensure continuing on the board and the success of Oregon's nurse staffing laws, the NSAB strongly recommends the Governor fill the remaining vacancies in OHA's NSAB and continue to quickly fill vacancies as they arise, while continuing to reappoint members eligible for a renewed term on the board.

Continuing challenges in nurse staffing

Meal and rest breaks

For the first survey cycle, 67 of 70 hospitals (96%) were found to be out of compliance with the requirement under Oregon Administrative Rule (OAR) 333-510-0110(2)(h), which requires hospital nurse staffing plans to “consider tasks not related to providing direct care, including meal breaks and rest breaks.” Under this rule, hospitals must have a process to ensure that minimum staffing is maintained on patient care units when nursing staff members (NSMs) take meal and rest breaks, that nursing staff members receive meal and rest breaks, that missed breaks are documented, and that the process the unit uses to ensure breaks are taken and documented is part of the nurse staffing plan approved by the hospital’s nurse staffing committee. As of August 9, 2021, OHA has surveyed eight facilities for the second survey cycle and completed written reports for four of those facilities; of the four facilities with completed survey reports, two of four (50%) were cited as being noncompliant with the requirement related to meal and rest breaks. The board supports the guidance OHA gives to stakeholders on the issue of meal and rest breaks and will continue to discuss opportunities to improve compliance with this issue.

Minimum numbers of nursing staff members (NSMs)

Under OAR 333-510-0110(2)(f), the nurse staffing plan approved by the hospital nurse staffing committee “must establish minimum numbers of nursing staff, including licensed practical nurses and certified nursing assistants, required on specified shifts, provided that no fewer than one registered nurse and one other nursing staff member is on duty in a unit when a patient is present.” There remains significant misunderstanding in hospitals of the requirement for minimum numbers. Some hospitals instead establish a ratio of registered nurses to patients instead of the minimum number of registered nurses (RNs), certified nursing assistants (CNAs) and licensed practical nurses (LPNs) required for the unit when the unit is at different censuses.

Hospitals must meet this requirement in two ways. First, the hospital must have a nurse staffing plan that establishes the minimum numbers of nursing staff for specified shifts. Second, the hospital must have a nurse staffing plan that establishes that there will be at least one RN and one other nursing staff member on the unit if there is at least one patient present. In the first survey cycle, 61 of 70 hospitals (87%) were found to be out of compliance with the first part of this requirement, and 48 of 70 hospitals (69%) were found to be out of compliance with the second part of this requirement.

Patient acuity and nursing care intensity

In the first survey cycle hospitals and hospital units struggled with the requirement under OAR 333-510-0110(2)(e), which requires the hospital nurse staffing plan to “recognize differences in patient acuity and nursing care intensity.” During a nurse staffing survey or complaint investigation, OHA determines whether the nurse staffing plan includes a process for measuring patient acuity and nursing care intensity on the unit and adjusting staffing based on that measurement.

In some instances hospitals measure patient acuity and nursing care intensity for individual patients without incorporating this information into unit-level staffing determinations. In addition, some hospitals follow a process for measuring patient acuity and nursing care intensity that is not incorporated into the nurse staffing plan approved by the hospital nurse staffing committee. In the first survey cycle, 67 of 70 hospitals (87%) were found to be out of compliance with the acuity and intensity requirement during their full nurse staffing survey.

Board plan to address continuing challenge areas

The NSAB and OHA received feedback from interested parties across the state regarding the continued compliance challenges with implementing nurse staffing rule requirements for meals and breaks, minimum numbers of nursing staff members on a unit, and patient acuity and nursing care intensity. The board will continue to advise OHA on the guidance needed to help improve understanding of the nurse staffing law. The board and OHA encourage interested parties across the state, particularly direct care nursing staff members, nurse managers and hospital administrators, to contact the OHA with questions about nurse staffing requirements at the nurse staffing mailbox, [mailbox.nursestaffing@state.or.us](mailto:nursestaffing@state.or.us).

The NSAB encouraged OHA to create Explanation Guides for survey tools used during nurse staffing surveys and complaint investigations. It is the board’s belief that these Explanation Guides will clarify what OHA measures during surveys and investigations and help facilitate understanding of requirements under Oregon’s nurse staffing rules, including requirements for meal and rest breaks, minimum numbers of nursing staff members and patient acuity and nursing care intensity. These Explanation Guides will be made available on OHA’s nurse staffing website by January 2022.

In 2018, the NSAB formed the Acuity Committee to draft guidance to hospitals that would clarify the requirements for nurse staffing plans to measure patient acuity and nursing care intensity. In January 2021, the NSAB voted to approve the guidance created by the Acuity Committee. OHA has published the Hospital Nurse Staffing Interpretive Guidance on Staffing for Acuity & Intensity on its hospital nurse staffing website and distributed the interpretive guidance to Oregon hospitals and other interested parties.

Continuing impact of COVID-19 pandemic

Nurse staffing surveys and complaint investigations

The second cycle of the triennial nurse staffing surveys was set to begin in March 2020. In early March 2020, the Centers for Medicare & Medicaid Services (CMS) suspended most federal surveys due to the novel coronavirus pandemic. This suspension resulted in a prioritization of investigations related to infection control and limited routine surveys to new facilities to increase acute care capacity. OHA postponed the beginning of the second survey cycle to align with the federal suspension and the Governor's request that the Health Care Regulation and Quality Improvement Section prioritize activities to facilitate hospitals' immediate COVID-19 response.

Throughout 2020 and 2021, the NSAB has advised OHA on options to safely conduct the nurse staffing surveys and complaint investigations during the COVID-19 pandemic. The NSAB endorsed OHA's proposal to initiate Cycle 2 of the triennial nurse staffing surveys in early 2021. OHA restarted complaint investigations in August 2020 and has conducted investigations remotely in 2021 due to the continued impact of the pandemic.

Board and committee meetings

Boards and committees previously held meetings in-person, with a call-in option available to members who cannot be physically present. Due to the COVID-19 pandemic, OHA moved all NSAB board and committee meetings to a virtual platform, such as Microsoft Teams and Zoom. All virtual meetings remain available to the public and comply with Oregon's Public Meetings Law Oregon Revised Statute (ORS) 192.610 through 192.710 and Public Records Laws (ORS 192.001 through 192.505). OHA and the board plan to provide remote meeting options adopted during the pandemic for future meetings.

Plan for the coming year

- NSAB will continue to provide feedback to OHA on administering the nurse staffing law and rules from:
 - » Hospital-based direct care nursing staff members,
 - » Hospital administrators and nurse managers, and
 - » Stakeholder organizations.
- The board will continue to accept public comment at each quarterly NSAB meeting.
- The COVID-19 pandemic requires the board to find new ways to be productive. OHA and the board will continue to clearly communicate the meeting's venue – whether it be online, via phone or some other method. The board encourages use of best remote meeting practices to foster productive discussions.
- As the COVID-19 pandemic continues and our understanding of this novel disease grows, OHA and the board will continue to discuss the pandemic's impact on nurse staffing. It will continue to consider how the board and OHA may best support Oregon's nurses and hospitals on emerging nurse staffing issues.
- To see these and already vacant positions, please visit the OHA Hospital Nurse Staffing Website at www.healthoregon.org/nursestaffing. The board will continue to encourage interested parties across the state to apply for these positions and ask the Governor to appoint members to the board in a timely manner.
- Through its committee work, NSAB will continue to address issues such as:
 - » Providing guidance to OHA on when to seek Civil Monetary Penalties (CMPs) against hospitals that are noncompliant with the nurse staffing rules.
- NSAB will form additional committees as new issues arise.
- NSAB and OHA will continue working closely together to build shared understanding of patient care issues, including staffing and scheduling of nursing staff members.

Conclusion

NSAB members continue to collaborate together and with OHA staff to promote safe patient care. Engagement from interested parties shows Oregon hospitals and direct care nursing staff members are working to understand and work within this regulatory framework.

NSAB members' commitment to safe patient care is their guide. Members recognize nurse staffing affects direct patient care. Nurse staffing regulations have safe patient care as its primary 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 this 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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Phone: 555-555-5555

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