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Hospital Nurse Staffing Interpretive Guidance

The purpose of this document is to clarify issues that generate frequent questions from around the state as Oregon implements the 2015 changes to the nurse staffing law and the 2016 and 2017 changes to the administrative rules. Each hospital is required to follow the laws and administrative rules currently in place.

Topics Covered by this Interpretive Guidance

DISCLAIMER: The following questions and answers are provided for general information only and may not be relied upon for purposes of regulatory compliance. The questions and answers are not legal advice and are not intended to be legally binding on the Oregon Health Authority when conducting a survey or complaint investigation.

Hospital Nurse Staffing Committees (HNSCs)

1. **Can a tech serve as the non-RN on the HNSC?**
   Answer: No. A tech is an employee who is trained to do practical work in a health care setting. Techs may be trained to work in a specific unit and in some specialties certification is available or required. Techs may provide input to unit-based committees that in turn provide input to the HNSC. The non-RN position must be filled by an LPN or a CNA.
2. **Does the hospital administration appoint the non-RN on the HNSC?**
   Answer: No. The selection of the non-RN position of the HNSC must be done in accordance with OAR 333-510-0105(4)(e) and (f), depending on whether the staff person is represented under a collective bargaining agreement. All LPNs and CNAs who work in units covered by a nurse staffing plan must have the opportunity to participate in the selection of the non-RN HNSC member.

3. **Is the non-RN a voting member of the HNSC?**
   Answer: Yes. The non-RN, who must be an LPN or CNA, is a voting member of the HNSC.
4. **Can the non-RN on the HNSC be the one who doesn't vote if non-equal members of the HNSC are present for a vote?**
   Answer: Maybe. The direct care members of the HNSC should decide together which members will not vote if unequal numbers of direct care and nurse manager members of the HNSC are present for a vote. The HNSC's plan for this eventuality may be included in the HNSC charter.
5. **Who does the non-RN on the HNSC represent?**
   Answer: The non-RN represents the non-RNs who primarily provide direct care services and work in units covered by nurse staffing plans. The non-RN on the HNSC is selected in addition to the RNs.
   For example: City Hospital has four units: ED, ICU, L&D, Med/Surg

Units at City Hospital	Hospital Nurse Staffing Committee	
	Direct care members	Nurse Manager members
ED	RN Archuleta	Manager Ziya
ICU	RN Blaine	Manager Ydstie
L&D	RN Camden	Manager Xiang
Med/Surg	RN Dakota	Manager Wyeth
	CNA Marvel	Manager Vaughn

6. **Is there a specific process for how nurse managers are selected to serve on the HNSC?**
   Answer: No. The statute does not specify the selection method for nurse managers. A hospital administration may determine its own process for selecting nurse managers. Managers who are not nurses may not serve on the HNSC.
7. **How are the agendas created for HNSC meetings?**
   Answer: The HNSC charter should specify the process for setting agendas for HNSC meetings. When drafting the charter, the HNSC may consider whether the chairs individually or jointly set agendas and how HNSC members and nursing staff members at large may have input in setting the agenda.
8. **Does a hospital need to release all direct care HNSC members from work in order to allow them to attend HNSC meetings?**
   Answer: Yes. All direct care HNSC members working at the time of a HNSC meeting must be released from work in order to attend the meeting.
9. **Is there a specific way a hospital needs to document the selection of HNSC members?**
   Answer: No. The statute and rules describe the HNSC direct care member selection process. Hospitals, unions, and non-unionized nursing staff units at

each hospital can determine how best to document that the selection complied with the statute and rules.

10. **Can a hospital combine multiple units for representation by a single RN on the HNSC?**
    Answer: Yes. A hospital may combine similar or related working groups into a single unit for HNSC convenience. During a survey or complaint investigation a hospital that combines units for this purpose may be required to show how feedback from all units is reflected in HNSC proceedings and how RNs on the HNSC have sufficient familiarity to represent the designated groupings.
    For example: Big Hospital has 10 units: CTU, ED, ICU 1, ICU 2, L&D, Med/Surg 1, Med/Surg 2, Med/Surg 3, PACU, Psych

Units at Big Hospital	Hospital Nurse Staffing Committee	
	Direct care members	Nurse Manager members
CTU	RN Archuleta	Manager Ziya
ED	RN Blaine	Manager Ydstie
ICU 1 & 2	RN Camden	Manager Xiang
L&D	RN Dakota	Manager Wyeth
Med/Surg 1, 2 & 3	RN Earhart	Manager Vaugn
PACU	RN Fierro	Manager Uribe
Psych	RN Gao	Manager Thatcher
	CNA Marvel	Manager Sharma

11. **Can separately licensed hospitals within the same hospital system share a single HNSC to create a staffing plan for all of its hospitals?**
    Answer: No. Each hospital must have its own HNSC comprised of nursing staff members and nurse managers employed at that hospital. Multiple hospitals may bring their HNSCs together for training or collaborative problem-solving, but plans must be formulated and voted on by only the HNSC members of the hospital whose plan is the subject of the vote.
12. **What should HNSC minutes show about the results of votes?**
    Answer: At a minimum HNSC minutes should state how many direct care members and how many nurse managers voted for or against any motion. Minutes should also reflect which members were present at the meeting and which members participated in the vote.
13. **If there are uneven numbers of direct care staff members and nurse manager members at an HNSC meeting can they all vote?**
    Answer: No. Only equal numbers of direct care and nurse manager members vote. For example: City Hospital has four units: ED, ICU, L&D, Med/Surg

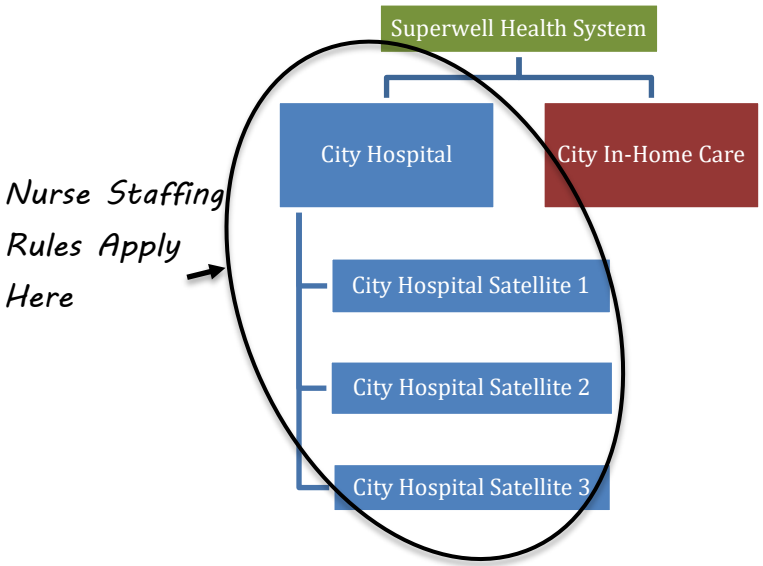
Units at City Hospital	Hospital Nurse Staffing Committee	
	Direct care members	Nurse Manager members
ED	RN Archuleta	Manager Ziya (absent)
ICU	RN Blaine (absent)	Manager Ydstie
L&D	RN Camden	Manager Xiang
Med/Surg	RN Dakota	Manager Wyeth (absent)
	CNA Marvel	Manager Vaughn

In the scenario above three nurse managers may vote and three direct care members may vote. The HNSC charter may specify which direct care members will vote or the direct care members will need to decide for themselves which members will vote.

14. **Can a hospital have alternate members of the HNSC who attend and vote if a HNSC member is absent?**
    Answer: Hospitals may decide to have alternate members substitute for HNSC members. The use and authority of alternate members should be reflected in the HNSC charter. The selection of alternate members should comply with the regular HNSC member selection processes.
15. **When can a nurse staffing committee request mediation?**
    Answer: The hospital can request mediation when the hospital-wide committee is at an impasse and unable to approve a Nurse Staffing Plan. An impasse is a very specific situation in which the hospital-wide committee voted on a plan, the vote was a tie, one of the co-chairs invoked a 30-day waiting period during which the committee continued to work on a plan, and at the end of the 30-days there was a second vote that also resulted in a tie. The hospital-wide committee can request that the OHA provide a mediator only after the second tie vote. If a proposed plan never reached the hospital-wide committee or if either vote did not result in a tie, then there is not an impasse.
16. **What is the scope of nurse staffing mediation?**
    Answer: The nurse staffing law allows a hospital to request that OHA provide a mediator to assist the committee in reaching an agreement on the staffing plan. Mediation addresses the aspects of the plan that are in dispute.
17. **Are HNSC meetings open to non-members?**
    Answer: Yes with one exception. Any hospital nursing staff, other individuals either an observer or presenter by invitation of either co-chair may observe a HNSC meeting. Non-members may be briefly excluded when the HNSC is deliberating prior to voting or actually voting.

Nurse Staffing Plans

1. **Are units that operate for less than 12 hours/day covered by the nurse staffing laws?**
   Answer: Yes. Any hospital inpatient and outpatient care unit is covered if the nursing staff members in that unit primarily provide direct patient care services.
2. **Do units at hospital satellites need nurse staffing plans?**
   Answer: Maybe. The need for a nurse staffing plan is based on whether the nursing staff members at the location are primarily engaged in providing direct patient care services. The location of the unit does not determine whether a nurse staffing plan is necessary.
3. **Are teams that move around the hospital providing services required to have a nurse staffing plan?**
   Answer: Maybe. If the nursing staff members in that unit regularly provide direct patient care, then the unit must have a nurse staffing plan. If the patients served by a mobile unit/team are assigned to and receiving direct care services from a nursing staff member in a non-mobile unit/team while they are being treated by a member of the mobile unit/team, the mobile unit/team is less likely to need a nurse staffing plan.
   For example: City Hospital has an IV/PICC team that is called in to the ICU to insert a PICC line. Throughout the procedure, Patient remains in the ICU and under the care of ICU Nurse Archuleta. Once the line is inserted the team leaves. The IV/PICC team has performed a discrete service for Patient and if this is the type of care this team generally provides it is unlikely that the IV/PICC team needs a nurse staffing plan.
4. **Do outpatient services require a nurse staffing plan?**
   Answer: Maybe. The need for a nurse staffing plan for a unit is based on whether the nursing staff members of that unit are primarily engaged in providing direct patient care services. HNSCs should analyze whether the nursing staff members in an outpatient care unit are primarily engaged in providing direct patient care services. Oregon Health Authority (OHA) surveyors will make the same analysis when conducting a survey or complaint investigation.
5. **Is a related service run by the same health system that is licensed separately from the hospital covered by the nurse staffing regulations?**
   Answer: No. A service that is not covered by the hospital license is not covered by hospital nurse staffing regulations.
   Example: SuperWell Health System has a hospital license for City Hospital and its three satellite clinics. Superwell has an In-Home Care agency license for City In-Home Care. City Hospital and its three satellites are covered by Oregon hospital nurse staffing regulations. City In-Home Care is not covered by Oregon hospital nurse staffing regulations.



6. **Does a hospital running an overflow unit need a nurse staffing plan for that unit?**
   Answer: Yes. When a hospital opens an overflow unit to serve a surge of patients the nursing staff members in that unit must be covered by a nurse staffing plan. The staffing plan may be created solely for the overflow unit or the unit's staff may be covered by the staffing plan of a related unit. In all situations, the overflow unit should be staffed to meet the health care needs of the patients currently in the overflow unit.
   For example: City Hospital opens an overflow med/surg unit to deal with a surge in patients. The hospital could have a specific overflow unit nurse staffing plan or the overflow unit could be covered by the regular med/surg unit staffing plan.
7. **Does a hospital running an overflow unit need to maintain minimum staffing numbers in the overflow unit?**
   Answer: Yes. An overflow unit that is physically remote from the unit which provides its nursing staff members must maintain minimum staffing numbers at the remote location whenever a patient is present at the overflow location.
8. **Are nurse staffing plans required to address limitations on admission or divert status?**
   Answer: Yes. Nurse staffing plans must include a formal process for evaluating and initiating limitations on admission or going on divert status when, in the judgment of a direct care RN or nurse manager there is an inability to meet patient care needs or a risk of harm to patients. The statute and rules do not prescribe a specific process; the regulations require that a formal process for initiating limitations on admission or divert status be part of the hospital nurse staffing plan. The hospital should document use of the formal process regardless

of whether the specific instance when the process was used actually resulted in limitations on admission or going on divert status.

9. **How should nurse staffing plans measure acuity?**
   Answer: Acuity is one of the factors that must be considered in formulating a staffing plan. Because no single acuity measurement tool applies to all patients, nurse staffing plans should include a measurement system that best fits the patient population cared for by the nursing staff members working under that plan. The plan should include measurable criteria for how acuity will be assessed for each patient and how decisions are made using measurement data.
10. **How is total diagnosis different from acuity?**
    Answer: Total diagnosis reflects the general population of the unit over time, while acuity measures the nursing care needs of the patients currently in the unit and adjusts staffing based on those needs.
11. **How many diagnoses need to be included in the list of total diagnoses?**
    Answer: Total diagnoses refer to the most commonly seen diagnoses on a unit. In a nurse staffing plan, the total diagnoses list describes the patient population that is usually seen on the unit. The list of total diagnoses does not need to include every diagnosis ever seen or potentially seen on the unit. The nurse staffing committee with the assistance of unit-based nursing staff members and nurse managers can determine how many diagnoses are commonly seen on a specific unit. Different units within a hospital often have different numbers of diagnoses listed in their plans, based on the differing patient populations served by those units. The list of total diagnoses in a unit may need to be updated when the services provided in the unit change. In all units, including procedural units, the total diagnoses are the underlying condition; a list of procedures performed on the unit may be helpful in development a nurse staffing plan, but the procedures list is not a substitute for the total diagnoses.
12. **Can a hospital have a matrix or grid separate from the nurse staffing plan that determines the number of nursing staff members on a shift?**
    Answer: No. The nurse staffing plan must include minimum numbers of nursing staff members required on specified shifts. These minimum staffing numbers must be part of the plan that is approved by the HNSC. Changes to approved minimum numbers must be considered and approved by the HNSC.
13. **Which types of patient care providers are covered by the law and rules?**
    Answer: RNs, LPNs and CNAs who are primarily assigned to provide direct patient care in hospitals are covered by the nursing staffing law and rules.
14. **Which types of patient care providers are required for the minimum staffing requirements?**
    Answer: Minimum staffing requirements can only be filled by RNs, LPNs and CNAs unless the hospital receives a waiver from the OHA to use any other type of staff member in lieu of nursing staff members in a specific unit or specialty.

15. **Are CNAs covered by nurse staffing laws and rules when they are working as techs?**
    Answer: A tech is an employee who is trained to do practical work in a health care setting. Techs may be trained to work in a specific unit and in some specialties certification is available or required. The nurse staffing laws and rules apply to direct care staff members. The definition for direct care staff members is made up of a licensure status component (RNs, LPNs and CNAs) and a job duty component (routinely assigned to patient care units and replaced in case of absence). Individuals who meet only half of this definition would not be covered by the rules. If the tech is not required by the hospital to have CNA certification, then the tech would not be covered by the nurse staffing laws and rules.
16. **Are RN care coordinators part of the direct care staff covered by nurse staffing rules?**
    Answer: Maybe. Whether any specific nursing staff member or unit is covered will depend on an analysis of the duties typically performed by that nursing staff member or unit. OHA surveyors consider both the licensure status component and whether nursing staff members are primarily engaged in providing direct patient care services when looking at whether a nursing staff member or unit is covered by the nurse staffing rules.
17. **Can an advance practice nurse (CRNA, NP, CNM, or similar) count as one of the nursing staff members to maintain minimum staffing numbers in a unit?**
    Answer: Yes. An advance practice RN can qualify as one of the nursing staff members when that advance practice RN is:
    - Assigned to provide direct patient care in the capacity of a nursing staff member in accordance with the job description for that unit; and
    - The advance practice RN has the experience, qualifications and competencies to work as a nursing staff member in that unit.

    During the time the advance practice RN is working as a nursing staff member, the advance practice nurse:
    - May not work as a member of the medical / allied health staff;
    - Functions as a member of the nursing staff;
    - Is under the direction of the nurse managers; and
    - Should not perform services that require advance practice licensure.
18. **Does the HNSC send its annual plan review report to the OHA? To the NSAB?**
    Answer: No. The HNSC should send its annual plan review to the hospital administration. OHA surveyors may request a copy of the annual plan review as part of a survey or complaint investigation.

19. **Can a staffing plan incorporate a professional organization's recommendations for nurse staffing if that professional organization is not a nursing organization?**
    Answer: A HNSC is required to have a staffing plan that is consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations if such standards exist. A committee may also consider relevant nurse staffing standards from other professional medical organizations. In some specialties there are no nursing specialty organizations, and medical organizations may provide the only relevant standards. In other situations, nursing specialty organizations and medical organizations may both provide relevant nationally recognized evidence-based standards. When considering or adopting any standards, the HNSC should document what standards were considered and why the selected standards were adopted. If no organization's standards are adopted the HNSC should document efforts to find relevant standards and reasons any relevant standards were not adopted.
20. **Can a nurse staffing plan use a break coverage system in which an on-duty nursing staff member takes on the patients or any patient care duties of another on-duty nursing staff member during a break?**
    Answer: Maybe. The nurse staffing plan must consider tasks not related to providing direct care, including meal breaks and rest breaks. The plan can include using on-duty nursing staff members to cover for breaks if the number of nursing staff members on duty in a unit remains at or above the minimum number established by the nurse staffing plan throughout the break. The hospital violates the nurse staffing plan if the number of on-duty nursing staff members falls below the minimum number established in the plan during the break. The viability of a break coverage system is determined by whether the coverage complies with the unit's nurse staffing plan, and not whether a covering nursing staff member takes on some or all of the other nursing staff member's patient care duties.
    For example: The unit B-6 nurse staffing plan states that the minimum number of nursing staff members for a specific 12-hour shift is 4 RNs and 2 CNAs. Nurse Camden and Nurse Dakota are working that 12-hour shift with 2 other RNs and 2 CNAs. Nurse Dakota takes on Nurse Camden's patients during Camden's break. During the break the unit has only 3 RNs and 2 CNAs. The unit does not have the minimum staffing required under its nurse staffing plan during Camden's break. The unit could be cited for failure to staff according to the plan during a survey or complaint investigation.

21. **When formulating a nurse staffing plan, can HNSCs consider factors not listed in OAR 333-510-0110?**
    Answer: Yes. HNSCs may consider additional factors. HNSC minutes should document the additional factors that were considered and also document consideration of the factors required in the administrative rules.

Overtime

DISCLAIMER: The overtime questions and answers are provided for general information only and may not be relied upon for purposes of regulatory compliance. Determining what is or is not mandatory overtime is very fact specific and may involve a review of applicable collective bargaining agreements. The nurse staffing rules do not create, preempt, or modify any collective bargaining agreement. The questions and answers are not legal advice and are not intended to be legally binding on the Oregon Health Authority when conducting a survey or complaint investigation.

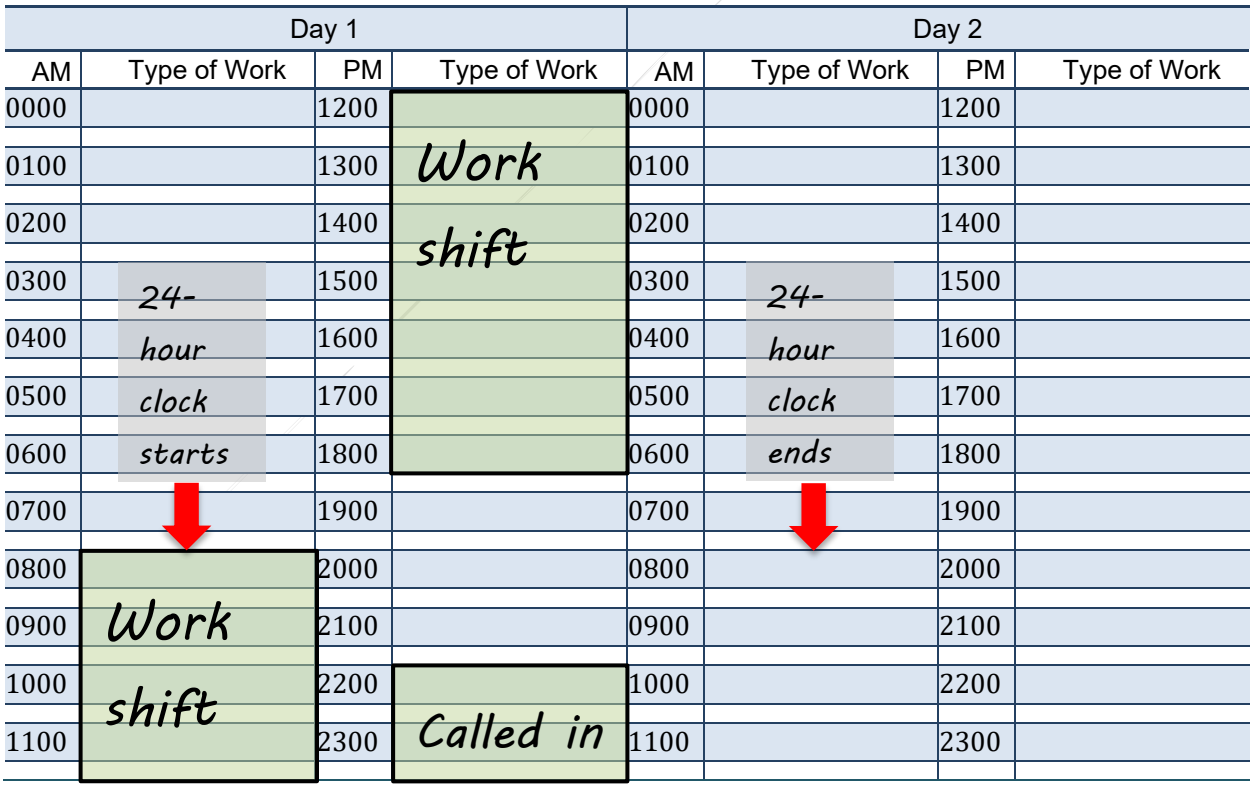
When used in this section the phrase "call shift" refers to set period of time included in a nursing staff member's schedule when the nursing staff member is required by the hospital to report for work when summoned by the hospital. A nursing staff member may or may not be required to be at the hospital while waiting to be summoned for work.

1. **What are the maximum number of hours a hospital can require nursing staff members:**
   Answer: Under OAR 333-510-0130(2), a hospital may not require a nursing staff member to work:
   - Beyond the agreed-upon and prearranged shift, regardless of shift length;
   - More than 48 hours in any hospital-defined work week;
   - More than 12 hours in a 24-hour period;
   - During the 10-hour period immediately following the 12th hour worked during a 24-hour period. This work period begins when the nursing staff member begins a shift; or
   - During the 10-hour period immediately following any agreed-upon and prearranged shift in which the nurse worked more than 12 hours in a 24-hour period.
2. **What is mandatory overtime under the nurse staffing laws?**
   Answer: Under OAR 333-510-0002(7), mandatory overtime is any time that exceeds the maximum number of hours a hospital **requires** a nursing staff member to work, as described in OAR 333-510-0130(2). Overtime that is agreed-upon and prearranged is not treated as mandatory overtime.

3. **Can a hospital get a waiver to authorize mandatory overtime if it is necessary for safe patient care?**
   Answer: No. Hospitals can only get waivers of nurse staffing plan requirements described in OAR 333-510-0110; the law does not give the OHA the authority to temporarily or permanently waive mandatory overtime limitations.
4. **Does the implementation of its facility disaster plan allow a hospital to require nursing staff members to work mandatory overtime?**
   Answer: Maybe. ORS 441.166(8)(a) and OAR 333-510-0130(10)(a) state that mandatory overtime rules do not apply "In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan." The OHA has narrowly interpreted "circumstances requiring implementation of a facility disaster plan" to include only those events that are equivalent to a disaster for the given facility. A disaster is a calamitous event, especially one that occurs suddenly and causes a great loss of life, damage or hardship. A hospital that implements its facility disaster plan in response to a lesser event is still subject to mandatory overtime limits.
   Examples of such circumstances include:
   - An event that causes an overwhelming and prolonged increase in a unit's patient population. An overwhelming increase is one that significantly exceeds the maximum census contemplated by both the nurse staffing plan and the hospital's Plan for Provision of Patient Care Services, Scope of Services, or similar document;
   - An unexpected and prolonged hospital-wide power outage during which the hospital does not have use of a generator or backup power source; or
   - An unexpected and prolonged systems failure that interrupts access to electronic health records (e.g., a ransomware attack).
5. **If a hospital delays the start of the shift, but the length of the shift remains the same, are the hours after the shift was originally supposed to end mandatory overtime?**
   Answer: Maybe. The original beginning and end times of the shift as well as the length of shift are the agreed-upon and prearranged shift. A nursing staff member may agree to change the hours of his/her shift to accommodate the hospital's request. If the nursing staff member agrees to change the beginning and end times of the shift and maintain the length of shift, then the new hours become the agreed-upon and prearranged shift.
6. **If on-call, standby, or call back time is agreed upon by the nursing staff member and the hospital, do the maximum hour requirements apply?**
   Answer: No. The maximum daily hour requirements do not apply to hours worked during agreed-upon and prearranged shifts.

7. **Is there a maximum number of hours of voluntary overtime that a nursing staff member may take on?**
   Answer: No. The nurse staffing law does not include a limitation on voluntary overtime that a nursing staff member may take on.
8. **What is the maximum time allowed for a prescheduled shift?**
   Answer: If the unit allows nursing staff members to select from shift lengths that include shifts of 12 hours or less in addition to the shifts that are in excess of 12 hours, then longer shifts are likely not required and would not violate the maximum daily hours. An agreed-upon and prearranged shift can be any length provided that nursing staff members have the option of selecting shifts that comply with the hour limits in both statute and rule.
   For example: A unit has both 10-hour and 14-hour shifts as standard options; any nursing staff member can select either 10 or 14-hour shifts. The 14-hour shifts do not violate the regulations in this unit. If a unit only has 14-hour shifts, then the shifts would violate the maximum daily hour requirements.
9. **What proof do hospitals need to show that shifts are prearranged?**
   Answer: A nurse staffing schedule will generally provide evidence that a schedule was prearranged and should include evidence of agreement of the nursing staff members. Changes to a written schedule should:
   - Be in writing;
   - Indicate when the change was made; and
   - Show acceptance of the change by the nursing staff member(s) whose schedule has been changed prior to the beginning of the changed shift.
10. **Should hospitals track voluntary shift pickups?**
    Answer: Yes. Hospitals should track these pickups for purposes of determining how much voluntary overtime was worked and considering that overtime in the annual plan review.
11. **What is the meaning of "at the end of the current shift" for purposes of determining when a hospital may require an additional hour of work due to a staff vacancy in the next shift?**
    Answer: The agency has not defined "at the end of the current shift." HNSCs may set hospital or unit standard definition. If these situations are reviewed as part of a survey or complaint, surveyors determine the reasonableness of a definitions by considering when the hospital became aware of the vacancy, efforts the hospital made to fill the vacancy both before and after requiring the additional hour of work, and how often the hospital requires an additional hour of work due to a staff vacancy or potential harm to a patient.
12. **Is all overtime voluntary if it occurs as a result of a call shift when the nursing staff member agreed to take a position in a unit that requires call?**
    Answer: No. Whether specific overtime is voluntary depends on whether the time actually worked occurred during the hours of the agreed-upon and prearranged call shift.

13. **When is a nursing staff member eligible to claim the 10-hour rest period after 12 hours of work?**
    Answer: The 10-hour rest period follows the end of the shift that included the 12th hour of work.
    For example: Nurse Dakota works a 10-hour shift from 0800 to 1830 and then works an agreed-upon and prearranged call shift. During the call shift Dakota is called in at 2200 and works for 2 hours. Dakota can claim the 10-hour rest period after completing the call shift.
14. **Does a nursing staff member need to use Paid Time Off / Earned Time Off or other compensated time for the 10-hour rest period?**
    Answer: The nurse staffing statutes are silent on this issue. Nursing staff members covered by a collective bargaining agreement may have contract provisions that address this issue.
15. **When does the 24-hour period begin for a nursing staff member who is called in from the call schedule after working the day shift?**
    Answer: The 24-hour period begins when the nursing staff member begins any shift or call response.
    For example: Nurse Camden works a 10-hour shift from 0800 to 1830 and then is on call. Camden is called in at 2200 and works for 2 hours. The 24-hour period began at 0800 and Camden has worked 12 hours in the 24-hour period.



16. **Does the 24-hour period for counting hours worked restart when a nursing staff member leaves the hospital?**
    Answer: No. The 24-hour period does not restart if the nursing staff member leaves the hospital.
    Example: At City Hospital Nurse Blaine works an eight-hour shift from 0800 to 1630 and then goes home. Blaine is on call after her shift from 1630 to 0800. At 2100 Blaine responds to call and works for four hours until 0100. Blaine has now worked 12 hours in the 24-hour period beginning at 0800. Blaine can claim the 10-hour rest period after the call shift ends.
17. **Should hospitals postpone elective procedures during a weather emergency to avoid forcing nursing staff to work mandatory overtime?**
    Answer: The determination of whether to postpone elective procedures during a weather emergency involves a variety of factors, including the risks of mandatory overtime. The OHA expects hospitals to make decisions in emergency situations based on an individual analysis of circumstances in order to prioritize patient safety.

Replacement Staffing

1. **Where does the list of replacement staff have to be posted?**
   Answer: The replacement staff list should be accessible to the individuals who are responsible for using the list to obtain replacement staff.
2. **Does the list of replacement staff have to include the names of nursing staff members who work for staffing agencies the hospital uses?**
   Answer: No. If the hospital uses staffing agencies to provide replacement staff, the list can include the contact information for the staffing agency rather than individual nurses who may be provided as replacements by the staffing agency.
3. **Do the rules say who has to contact replacement staff in the event of a vacancy?**
   Answer: No. The nurse staffing rules do not specify who must obtain replacement staff. Hospitals will set up a replacement staffing process based on hospital size and administrative practices. The hospital-wide nurse staffing plan can include the replacement process or reference the location of the replacement process among general hospital policies and procedures.

Complaints and surveys

1. **Does the OHA evaluate nurse staffing complaints before an on-site investigation?**
   Answer: Yes. OHA surveyors review the complaint and seek any additional information they need. Once surveyors have a completed complaint intake, they consider whether the complaint, if true, would raise the possibility that a nurse staffing regulation was violated. Surveyors will only proceed with a nurse staffing

complaint investigation if the complaint indicates that there are nurse staffing regulations at issue.

2. **Is a nurse staffing survey like a survey by an Accrediting Organization like the Joint Commission or DNV?**
   Answer: No. Nurse staffing surveys are intended to determine compliance with Oregon's nurse staffing laws using nurse staffing survey tools developed by the OHA. Surveys focus on several key areas including:
   - Nurse staffing committee operations;
   - Nurse staffing plan requirements under ORS 441.155;
   - Nurse staffing postings and record keeping; and
   - Nursing staff member meals, breaks and overtime.

   The purpose of a survey is to ensure that a hospital is complying with nurse staffing laws and the focus is not on reviewing specific patient outcomes. HNSCs are encouraged to use patient outcome data in their annual review of nurse staffing plans to determine whether plans are sufficient to meet patient care needs.
3. **Are HNSC co-chairs interviewed for all surveys?**
   Answer: Yes. Co-chair interviews are required for surveys.
4. **Are HNSC co-chairs interviewed for all complaint investigations?**
   Answer: No. Surveyors interview an HNSC co-chair during a complaint investigation if the surveyor determines that the co-chair may have information relevant to the specific facts of the complaint.
5. **What happens if an HNSC co-chair is not present when surveyors are at a hospital for a survey?**
   Answer: Beginning in 2017 surveyors will provide hospitals and HNSC co-chairs with notice three business days before a survey begins. If a co-chair is unavailable during a survey, the surveyor will arrange to interview an alternate designated for that purpose by the absent co-chair or will interview the co-chair at a later date.
6. **What rules do surveyors apply to investigations of incidents that occurred prior to nurse staffing law/rule changes?**
   Answer: New administrative rules took effect on July 1, 2016. New nurse staffing plans must be in place by January 1, 2017. Surveyors use the rules that were in place at the time of an incident when conducting a complaint investigation. For incidents that occurred prior to July 1, 2016, surveyors apply the rules that were in place prior to the 2016 rules changes.
7. **Do complaint investigations impact the timing a standard survey? Do standard surveys impact the timing of a complaint investigation?**
   Answer: Complaint investigations occur following a specific complaint made to the OHA. Standard surveys are randomized to occur once in a three-year cycle.

Having a complaint investigation in any given year does not change the likelihood of the hospital having a standard survey in the same year.

8. **Once a survey or complaint investigation report is sent to the hospital, does the nurse staffing committee need to approve the hospital Plan of Correction?**
   Answer: No. The hospital is responsible for drafting and submitting the Plan of Correction (POC). Some specific corrections may require the involvement and cooperation of the HNSC, but the POC itself does not require HNSC approval. Each hospital is encouraged to work collaboratively with its HNSC to develop a POC that effectively addresses any deficiencies cited in the report.
9. **What is reviewed during a nurse staffing revisit?**
   Answer: Nurse staffing revisits are a second audit of the hospital after the hospital has implemented an approved POC to correct any deficiencies cited in a survey or complaint investigation. The revisit is focused specifically on determining whether cited deficiencies have been remedied. For example, if one of the citations was for failure to ensure that HNSC meeting minutes included the motions made and the outcomes of votes taken, then the revisit would include a review of minutes from HNSC meetings after the POC was approved to determine compliance.
10. **How is the revisit conducted?**
    Answer: Revisits from the first survey cycle and complaint investigations during that time period are being incorporated into the second survey cycle in 2020. One or more units cited for non-compliance during the first survey cycle or during a complaint investigation in that timeframe will be selected for revisit review during the second survey cycle. The revisit will use the same survey tools as a regular survey. Surveyors may focus more attention on specific issues of previously cited non-compliance. Surveyors will also select one or more units that were not surveyed in the first survey cycle for review in the second cycle. Second cycle findings and revisit findings will be combined in a single report; the report will note whether findings relate to the second cycle survey or the revisit.
11. **Does the nurse staffing revisit cover the same units as the original survey/complaint investigation?**
    Answer: Yes. The revisit looks at some of the units that were previously cited for deficiencies.
    For example: A survey at City Hospital included reviews of ED, ICU, L&D and Med/Surg. The survey report cited deficiencies in the nurse staffing plans of the ED and ICU. During a revisit the surveyors would review the nurse staffing plan of either the ED and ICU.
12. **Which complaints go to OHA? Which complaints go to OSBN?**
    Answer: Complaints regarding the action of a hospital should be made to the OHA. Complaints regarding the nursing practice of an individual nursing staff member should be made to the Oregon State Board of Nursing (OSBN). OHA investigates complaints regarding nurse staffing in hospitals. The agency has

jurisdiction over hospitals. The OHA does not license or govern individual nursing staff members or nurse managers. The OSBN licenses and has jurisdiction over individual nursing staff members and nurse managers. The OSBN ensures that its licensees practice in accordance with the limits of the Nurse Practice Act and other applicable state and federal laws, rules, and regulations. The OHA and the OSBN will refer complaints to one another as appropriate. In some situations, both the OHA and the OSBN have a basis to investigate; in those circumstances both agencies will investigate and may share information and resources as needed.

General Questions

1. **Can nurse staffing records be kept in electronic format using nurse staffing software?**
   Answer: Yes. Records must be accessible to hospital administration and retrievable for a survey or complaint investigation.
2. **Are hospitals required to notify the OHA of an emergency circumstance requiring either use of mandatory overtime or suspension of the nurse staffing plan altogether?**
   Answer: No. Hospitals are not required to notify the OHA of mandatory overtime or suspensions of the nurse staffing plan at the time those incidents occur. OHA surveyors may request information about these incidents as part of a nurse staffing audit or complaint investigation.
3. **Are nurse staffing waivers that were granted under the old law still in effect?**
   Answer: No. Waivers issued prior to 2015 changes to the law expired on or before January 1, 2017. Any hospital seeking a waiver of one or more aspects of the nurse staffing plan requirement must submit a new waiver request to the OHA. Waiver request forms are available on the OHA nurse staffing website and can be submitted to mailbox.nursestaffing@state.or.us.
4. **How can a hospital get a waiver?**
   Answer: In order to request a waiver a hospital must
   - Notify its HNSC that the hospital intends to submit a waiver request to the OHA; and
   - Submit a waiver request to the OHA.

   The waiver must explain:
   - Why the hospital is seeking the waiver; and
   - Why the waiver is necessary for the hospital to meet patient care needs.

   After receiving the request the OHA will determine whether the request fits within the guidelines of the rule and statute and then grant or deny the waiver as appropriate.

5. **What does a waiver cover?**
   Answer: A waiver is available for any of the nurse staffing plan requirements as described in ORS 441.155 and OAR 333-510-0110. Waivers are not available for other nurse staffing statutory or rule requirements.
6. **How many waivers can a hospital get?**
   Answer: A hospital may request waivers for any number of units in a single waiver request. For each unit to be covered by a waiver the hospital must explain:
   - Why the hospital is seeking the waiver; and
   - Why the waiver is necessary for the hospital to meet patient care needs.
7. **Are techs working in a unit covered by a nurse staffing waiver considered nursing staff members under nurse staffing laws?**
   Answer: No. The OHA has the authority to waive elements of nurse staffing plan requirements, and one frequent area of waiver requests is for the minimum number of nursing staff members. The definition of nursing staff members only includes RNs, LPNs and CNAs. The waiver does not expand the definition of nursing staff members, and instead waives the requirement for a minimum of two nursing staff members by allowing the hospital to use a non-nursing staff member in lieu of a second nursing staff member. The waiver request describes the qualifications and competencies of the non-nursing staff members in question. Because the definition of nursing staff members is unchanged, non-nursing staff members are not required to be covered by the other provisions of nurse staffing regulations like the anti-retaliation provisions. A hospital can apply the regulations to non-nursing staff members, but is not required to do so.
8. **Can a nurse staffing plan include techs in order to describe how patient care is provided in the unit?**
   Answer: If the unit has a waiver the permits the use of techs in lieu of nursing staff members, the nurse staffing plan can refer to the waiver and describe how techs fill patient care roles on the unit. Generally, OHA surveyors look for clear statements in the nurse staffing plan indicating whether positions are held by nursing staff members (RNs, LPNs and CNAs). Surveyors review plans and nursing staff member personnel records for compliance with staffing plan requirements.
9. **What is the wording of the complaint and retaliation notices required under OAR 333-510-0045?**
   Answer: The notices must summarize the law and include any contact information required under the rules or statute. The agency has not drafted sample language. Hospitals are encouraged to collaborate and share resources to draft compliant postings.
10. **What does the Nurse Staffing Advisory Board (NSAB) do?**
    Answer: NSAB members are appointed by the governor to
    - Provide advice to the OHA on the administration of Oregon's nurse staffing laws;
    - Identify trends, opportunities and concerns related to nurse staffing;

- Make recommendations to the OHA on the basis of those trends, opportunities and concerns; and
- Review the enforcement powers and processes under Oregon's nurse staffing laws.

NSAB members meet quarterly to fulfill these duties. Their meeting schedule, agendas, and minutes from prior meetings are available at www.healtheoregon.org/nursestaffing.

11. **Who are the OHA mediators if a HNSC reaches an impasse?**
    Answer: Mediators are chosen from a list of certified professional mediators who have been vetted by the Oregon Department of Justice.

If you have additional questions about nurse staffing, please send them to mailbox.nursestaffing@state.or.us.

If you need this information in an alternate format, please call our office at (971) 673-0540 or TTY 711.