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Hospital Nurse Staffing During an Emergency: Interpretive Guidance

The guidance clarifies issues related to hospital nurse staffing during an emergency situation, including the 2021 changes to the nurse staffing law and administrative rules. The rules add new requirements for hospitals that deviate from their approved Nurse Staffing Plan during a declared emergency.

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.

Topics Covered by this Interpretive Guidance

[Deviating from the Approved Nurse Staffing Plan](#)

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[Deviating from the Approved Nurse Staffing Plan](#)

1. How are the new rules different from the rules implemented in 2016?

Answer: The new rules include additional requirements for a hospital that deviates from its approved Nurse Staffing Plan during a declared state or national emergency. The original requirement was that a hospital had to implement its facility disaster plan before deviating from the Nurse Staffing Plan approved by the hospital-wide nurse staffing

committee. The rule changes add implementation of crisis standards of care and new requirements for hospitals and nurse staffing committees.

Starting January 1, 2022, hospitals are required to have

- implemented their facility disaster plans and
- implemented crisis standards of care

before they can unilaterally deviate from their approved Nurse Staffing Plans.

When the hospital deviates in response to a declared emergency after implementing its facility disaster plan and crisis standards of care, the hospital is required to involve the nurse staffing committee in the incident response process. As part of this involvement, the hospital Incident Management Team (IMT) must report an assessment of the hospital's nurse staffing needs to both nurse staffing committee co-chairs. Then, the nurse staffing committee co-chairs call a meeting to develop a contingency plan. The nurse staffing committee is required to meet to develop a contingency Nurse Staffing Plan for the emergency and vote on the plan deviation. If the nurse staffing committee has not approved a contingency plan within 90 cumulative days of the hospital deviating from the original Nurse Staffing Plan, the hospital must return to the original Nurse Staffing Plan approved by the nurse staffing committee.

2. What is the difference between the changes in the nurse staffing emergency rules ([OAR 333-510-0140](#)) and the changes in the hospital licensing critical care and triage rule ([OAR 333-505-0036](#))?

Answer: Both of these rules relate to hospital operations during emergency situations, but they regulate different aspects of operations. It is possible that an emergency situation will require use of one rule without the other.

[OAR 333-510-0140](#) is a nurse staffing rule that requires the hospital to notify the nurse staffing committee co-chairs when it has deviated from its Nurse Staffing Plan after implementing its facility disaster plan and crisis standards of care. It also outlines additional actions for the hospital and nurse staffing committee once the hospital has deviated from the Nurse Staffing Plan.

[OAR 333-505-0036](#) is a temporary hospital licensing rule that creates documentation, communication, and notification requirements for hospitals when making decisions about allocation of care to patients during resource constrained events caused by staffing shortages. This rule does not directly address nurse staffing specifically, and the staffing shortage that causes implementation of [OAR 333-505-0036](#) may or may not include a shortage of nursing staff members. OHA is working towards a final rule that will continue to provide the same documentation, communication and notification requirements whenever crisis standards of care are implemented.

3. What are the hospital requirements during a staffing emergency impacting standard of care according to [OAR 333-505-0036](#)?

Answer: The OHA [Crisis Standards of Care Explanation Memo](#) provides information about requirements related to implementation of crisis standards of care and a link to OHA's online form that meets the notification requirements of [OAR 333-505-0036](#).

4. What kinds of emergencies are covered by the nurse staffing rule?

Answer: Under [OAR 333-510-0140](#), a hospital is not required to follow the Nurse Staffing Plan approved by the hospital nurse staffing committee if one of the following is true:

- a) There is a declared state or national emergency, and the hospital has implemented both its facility disaster plan and crisis standards of care; or
- b) There is sudden and unforeseen adverse weather conditions affecting the hospital; or
- c) There is an infectious disease epidemic suffered by hospital staff.

5. Can the hospital deviate from its Nurse Staffing Plan for any other types of emergencies?

Answer: No. The hospital can only unilaterally deviate from its approved Nurse Staffing Plan if one of the situations above true (see Question 4). If there are circumstances that do not meet any of the requirements listed above, the hospital must receive approval from the nurse staffing committee before making any changes to its Nurse Staffing Plan.

6. Who declares a state or national emergency?

Answer: State emergency declarations are made by the Governor of Oregon. National emergency declarations are made by the President of the United States. Both types of declarations are usually enacted through an Executive Order.

7. What is the hospital's facility disaster plan?

Answer: The facility disaster plan is the plan developed pursuant to the hospital's participation in Medicare and Medicaid reimbursement through the Centers for Medicare & Medicaid Services (CMS). Under CMS's federal regulations for emergency preparedness requirements, hospitals must have a facility disaster plan using an all-hazards approach and takes into account the hospital's unique circumstances, patient population, services offered when providing for continuity of operations in the event of a disaster. The CMS regulations for emergency preparedness including facility disaster plans are found at [42 CFR 482.15](#).

8. What are crisis standards of care?

Answer: Crisis standards of care are policies or standards related to rationing of patient care. They are adopted by a hospital and implemented during an emergency for:

- Objective prioritization of care – policies or standards determining which services the hospital will continue to provide in recognition that not all services will be provided during the emergency;

- Prioritization of patients – policies or standards determining which patients will receive treatment sooner and which patients, who would otherwise receive treatment, will not; and
- Limitations on services because of the declared emergency – policies or standards establishing changes in the way care is provided, including services that may be partially offered or discontinued entirely during the emergency.

9. What is considered a deviation from the Nurse Staffing Plan?

Answer: Deviating from the approved Nurse Staffing Plan means that due to the emergency, a hospital nursing unit is no longer following one or more of the elements of the approved Nurse Staffing Plan due to the emergency circumstance. Nurse Staffing Plans must include all elements of [OAR 333-510-0110\(2\)](#) and be approved by the hospital nurse staffing committee.

10. Is a hospital required to implement its facility disaster plan and crisis standards of care before unilaterally deviating from its approved Nurse Staffing Plan due to a state or national emergency?

Answer: Yes: The law requires that a hospital implement both its facility disaster plan and its crisis standards of care in response to a declared state or national emergency before it unilaterally deviates from the approved Nurse Staffing Plan. Implementation of the facility disaster plan and crisis standards of care is not required if the hospital is deviating from its Nurse Staffing Plan in the other specific circumstances described in [OAR 333-510-0140](#) or if the Hospital Nurse Staffing Committee approves a temporary or permanent change to the Nurse Staffing Plan.

11. What requirements must be met for a hospital to deviate from an approved Nurse Staffing Plan once the Governor has declared a state of emergency?

Answer: Under [OAR 333-510-0140](#), a hospital may unilaterally deviate from the approved Nurse Staffing Plan when the Governor has declared a state of emergency if both of the following requirements have both been met:

- a. The hospital has implemented its facility disaster plan. Facility disaster plans are defined and described in question 7 of this document.
- b. Crisis standards of care have been implemented. Crisis standards of care are defined in the rule and described in question 8 of this document.

A hospital should review the definitions for crisis standards of care in [OAR 333-510-0140](#) to determine if it has met this requirement.

12. What steps should a hospital take if it has met the requirements for nurse staffing during an emergency in [OAR 333-510-0140](#) and is unilaterally deviating from the approved Nurse Staffing Plan?

Answer: A hospital should take all of the following steps:

- Document clearly how each of the requirements in [OAR 333-510-0140](#) have been met. For more information on documentation see questions 17 and 18 of this document.

- Communicate and work with the hospital's nurse staffing committee to develop a contingency plan as described in questions 14-15, 21, and 25-31 of this document.
- Regularly assess for and document any changes in capacity that would allow for a return to the approved Nurse Staffing Plan.

13. Is the hospital required to have implemented its facility disaster plan and crisis standards of care for the entire time it is deviating from the Nurse Staffing Plan?

Answer: Yes. If the hospital has unilaterally deviated from the Nurse Staffing Plan due to a declared state or national emergency, the hospital must be operating under its facility disaster plan and using crisis standards of care for the duration of time when the Nurse Staffing Plan is not being followed.

14. If the hospital has implemented its facility disaster plan and crisis standards of care during a declared state or federal emergency, but has not deviated from its Nurse Staffing Plan, is it required to develop a contingency plan?

Answer: No. The hospital is only required to develop or implement a contingency Nurse Staffing Plan if it has also deviated from its Nurse Staffing Plan after implementing its facility disaster plan and crisis standards of care as a result of the declared state or federal emergency. The hospital nurse staffing committee may develop contingency Nurse Staffing Plans in advance of an emergency and then approve use of the plans at the time of the emergency.

15. What is the role of the nurse staffing committee after the hospital has unilaterally deviated from its approved Nurse Staffing Plan?

Answer: The rules allow the hospital to unilaterally deviate from its Nurse Staffing Plan for up to 90 cumulative days. During this time, the nurse staffing committee develops and votes on a contingency Nurse Staffing Plan. The hospital must revert to the approved Nurse Staffing Plan if there is no approved contingency plan by 90 cumulative days.

16. How is 90 cumulative days calculated?

Answer: Cumulative days refers to the total number of days the hospital has unilaterally deviated from its approved Nurse Staffing Plan under a declared emergency. If the hospital returns to functioning under the approved Nurse Staffing Plan and then unilaterally deviates from the approved plan again under the same emergency declaration, the 90-day count continues. The 90-day count stops once the hospital has an approved contingency plan for that emergency declaration.

Example: Big City Hospital has implemented its facility disaster plan and crisis standards of care in response to a declared federal emergency. The hospital unilaterally deviates from the Nurse Staffing Plan intermittently in multiple units as reflected below. In this example, Big City Hospital has deviated from its approved Nurse Staffing Plan four cumulative days.

January 27th - Day 1 of Deviation	January 28th - Day 2 of Deviation	January 29th - Day 3 of Deviation	January 30th - No Deviation	January 31st - Day 4 of Deviation
<ul style="list-style-type: none"> • ED deviates from plan • L&D follows plan • MedSurg follows plan 	<ul style="list-style-type: none"> • ED deviates from plan • L&D follows plan • MedSurg deviates from plan 	<ul style="list-style-type: none"> • ED follows plan • L&D deviates from plan • MedSurg deviates from plan 	<ul style="list-style-type: none"> • ED follows plan • L&D follows plan • MedSurg follows plan 	<ul style="list-style-type: none"> • ED follows plan • L&D follows plan • MedSurg deviates from plan

17. How does the hospital track deviations from the Nurse Staffing Plan?

Answer: The hospital is required to maintain documentation related to deviations from the approved Nurse Staffing Plan.

18. What documentation does the hospital need to maintain to show compliance with these rules?

Answer: The nurse staffing rules require hospitals to maintain all documentation necessary to demonstrate compliance with the nurse staffing rules. As it relates to these rules, it includes, but is not limited to:

- Which emergency is affecting the hospital;
- The date(s) the hospital implemented the facility disaster plan;
- The date(s) the hospital implemented crisis standards of care;
- The date that the first unit deviated from its approved Nurse Staffing Plan;
- Which unit(s) deviated from its approved Nurse Staffing Plan and the dates those unit(s) deviated from their plans;
- The IMT’s report to the nurse staffing committee co-chairs within 30 calendar days of the first deviation and the written assessment provided to the co-chairs;
- Nurse staffing committee meeting minutes reflecting the development of the contingency plan and voting related to the deviation.

Reporting to Nurse Staffing Committee Co-Chairs

19. Do the nurse staffing rules require a particular method of communication between the IMT and nurse staffing committee co-chairs?

Answer: No. The IMT may report to the nurse staffing committee co-chairs via email, an in-person meeting, remote meeting (e.g., Zoom, Microsoft Teams, conference call etc.). The IMT must provide the nurse staffing committee co-chairs a written assessment of the nurse staffing needs arising from the emergency. The hospital must maintain documentation that reflects, at minimum:

- The date the IMT reported to the co-chairs;
- Who received the information (if the reporting occurred via email, document who was reported to; if the reporting occurred via virtual or in-person meeting, document who was present at the meeting); and
- When the written assessment was provided to the co-chairs;
- A copy of the written assessment that was provided to the co-chairs.

20. The nurse staffing rules require the hospital to report to both co-chairs of the nurse staffing committee. What happens if one or both co-chairs are unavailable?

Answer: If a co-chair is not available to receive the written assessment (e.g., co-chair is on leave), the hospital reports to and provide the written assessment to the co-chair's designee.

If a co-chair position is vacant, the hospital documents the vacancy. If the vacancy is for the direct care co-chair, the direct care members of the nurse staffing committee will select a designee from among the direct care members.

21. Is the IMT required to report to both nurse staffing committee co-chairs at the same time?

Answer: The hospital must attempt to meet with both co-chairs at the same time; if this cannot be arranged, the hospital must ensure they receive the same information. The co-chairs are expected to communicate and coordinate with the nurse staffing committee to develop a contingency Nurse Staffing Plan.

22. When are the co-chairs informed of a deviation from the NSP?

Answer: The IMT must report to the nurse staffing committee co-chairs and provide the written assessment within 30 calendar days.

23. What information is in the IMT's written assessment include?

Answer: The written assessment must include the IMT's assessment of the nurse staffing needs arising from the emergency. Issues to address in the assessment include:

- Which units have deviated from their Nurse Staffing Plans due to the emergency?
- Are nurses being assigned to units for which they are not normally assigned? If so, which units are affected?
- Are there different "stages" of hospital response? What is expected to change for each response stage? How would changes in response stage be reported to the nurse staffing committee and other affected nurses?
- What is the hospital's crisis standards of care policy? How is care is being provided under this policy?

24. How often is the hospital IMT required to provide a written assessment to the nurse staffing committee co-chairs?

Answer: The hospital IMT is required to report a written assessment to both nurse staffing committee co-chairs within 30 days of the first deviation. The rules and statute

do not require subsequent reports. Hospitals and nurse staffing committees will benefit from continuing open and transparent communication between the IMT and the nurse staffing committee throughout the emergency.

Nurse Staffing Committee's Development and Approval of Contingency Plan

25. What is a contingency Nurse Staffing Plan?

The contingency Nurse Staffing Plan is the plan developed by the hospital nurse staffing committee to address nurse staffing during the emergency or crisis. It is used after the hospital has implemented its facility disaster plan and crisis standards of care, and the hospital has deviated from approved Nurse Staffing Plans. The contingency plan can be developed and approved by the staffing committee in advance of any emergency or after the emergency has begun.

26. Does the contingency Nurse Staffing Plan have all the elements of a regular Nurse Staffing Plan?

Answer: The contingency Nurse Staffing Plan is not required to have all the elements a regular Nurse Staffing Plan would contain because it governs nursing staffing during a time when the hospital is permitted to deviate from the staffing plan due to the emergency (see [OAR 333-510-0110\(2\)](#)). The contingency Nurse Staffing Plan addresses the nurse staffing needs arising from the emergency using the information provided in the written assessment. In particular the contingency plan would address the following factors in light of the emergency:

- Changes to minimum staffing numbers;
- Changes to how patient acuity and nursing care intensity information is used to staff the unit;
- Changes to the process for providing meal and rest breaks;
- Changes to the required trainings for nursing staff members, including changes to the timeline for completion and documentation of required qualifications, competencies and trainings; and
- Changes to the process for evaluating and initiating limitations on admission or diversion of patients.

27. How does the contingency Nurse Staffing Plan incorporate crisis standards of care?

Answer: The contingency Nurse Staffing Plan aligns with the nursing services required under crisis standards of care as implemented by the hospital. Crisis standards of care are comprehensive policies that affect the hospital as a whole and include instructions and policies that do not affect nursing staff members. The contingency Nurse Staffing Plan aligns with care that is being provided under the hospital's crisis standards of care policy.

28. Our hospital already has an emergency plan. Do we still have to develop a contingency plan?

Answer: The nurse staffing committee can vote to implement a previously developed emergency plan. Alternatively, the nurse staffing committee can modify the emergency plan to meet the expected needs arising from the emergency. Regardless of whether the nurse staffing committee chooses to develop a new plan, modify an existing plan, or adopt an existing plan, the nurse staffing committee must still vote to implement the contingency plan it chooses to use in response to the declared emergency.

29. Who calls the nurse staffing committee meeting to develop a contingency plan?

Answer: Either co-chair may call a meeting of the nurse staffing committee to develop the contingency plan. The meeting may be in-person, remote, or mixed (some members in-person, some members remote).

30. Is the nurse staffing committee required to have a quorum when it meets to develop the contingency Nurse Staffing Plan?

Answer: Yes, the nurse staffing committee must have a quorum of its members present (defined as half of all members + 1). All nurse staffing committee meetings must follow the requirements set forth in [OAR 333-510-0105](#) and [ORS 441.154](#).

31. Does the nurse staffing committee have to follow normal voting procedures to implement the contingency Nurse Staffing Plan?

Answer: Yes, the nurse staffing committee must comply with the voting requirements set forth in [OAR 333-510-0105](#) and [ORS 441.154](#).

Enforcement

32. How are these rules enforced by OHA?

Answer: Oregon's hospital nurse staffing laws, including the rule on nurse staffing during an emergency are enforced by the OHA in routine triennial surveys and in complaint investigations. When a survey or complaint investigation reflects that one or more units of a hospital have been impacted by an emergency, OHA's surveyors use the Facility Disaster Tool, which is available online in the [Sample Nurse Staffing Tool Kit](#), to gather additional information regarding the emergency and how it affected nurse staffing in the unit. Facilities found to be out of compliance with the nurse staffing law are required to submit a Plan of Correction, will be subject to a revisit, and may be subject to civil monetary penalties.