

**OREGON ADMINISTRATIVE RULES
OREGON HEALTH AUTHORITY, PUBLIC HEALTH DIVISION
CHAPTER 333**

DIVISION 501

**HOSPITAL MONITORING, SURVEYS,
INVESTIGATIONS,
DISCIPLINE, AND CIVIL PENALTIES**

333-501-0035

Nurse Staffing Audit Procedures

(1) The Authority shall conduct an on-site audit of each hospital once every three years to determine compliance with the requirements of ORS 441.152 to 441.177 and 441.192. The Authority shall notify the hospital and both co-chairs of the hospital nurse staffing committee three business days in advance of the audit.

(2) During an audit, the Authority shall review any hospital record and conduct any interview or site visit that is necessary to determine that the hospital is in compliance with the requirements of ORS 441.152 to 441.177 and 441.192.

(3) In conducting an audit, the Authority shall interview:

- (a) Both co-chairs of the hospital nurse staffing committee; and
- (b) Any additional hospital staff members deemed necessary to determine compliance with applicable nurse staffing laws. Interviews may address, but are not limited to, the following topics:
 - (A) Implementation and effectiveness of the hospital-wide staffing plan for nursing services;
 - (B) Input, if any, provided to the hospital nurse staffing committee; or
 - (C) Any other fact relating to hospital nursing services subject to the Authority's review.

(4) In conducting an audit, the Authority may also interview:

- (a) Hospital staff that does not voluntarily come forward for an interview during an audit; and
- (b) Hospital patients or family members. Interviews may address, but are not limited to, any concerns or complaints related to nurse staffing in the hospital.

(5) Following an audit, the Authority shall issue a written survey report that communicates the results of the audit no more than 30 business days after the survey closes. This survey report:

- (a) Shall be issued to the hospital and both co-chairs of the hospital nurse staffing committee; and
- (b) May include a notice of civil penalties that complies with ORS 441.175 and OAR 333-501-0045.

(6) If the survey report identifies any area of noncompliance, the hospital shall submit a written plan to correct each identified deficiency. This plan:

- (a) Shall be called the plan of correction;
- (b) Shall be submitted no more than 30 business days after receiving the Authority's survey report; and
- (c) Shall be evaluated by the Authority for sufficiency.

(7) No more than 30 business days after receipt of the hospital's plan of correction, the Authority shall issue a written determination that communicates whether the plan of correction is sufficient. This determination:

- (a) Shall be issued to the hospital and both co-chairs of the hospital nurse staffing committee; and
- (b) Shall require the hospital to either:
 - (A) Revise and resubmit the rejected plan of correction no more than 30

business days after receiving the Authority's determination that the plan is insufficient; or

(B) Implement the approved plan of correction no more than 45 business days after receiving the Authority's determination that the plan is sufficient.

(8) Following the approval of the plan of correction, the Authority shall conduct a second audit of the hospital to verify that the hospital has implemented the approved plan of correction. This audit shall be conducted within 60 business days of the plan of correction approval date.

(9) The identity of an individual providing evidence during an audit will be kept confidential to the extent permitted by law.

Stat. Auth.: ORS 413.042, 441.157 & 441.175

Stats. Implemented: ORS 441.157

333-501-0040

Nurse Staffing Complaint Investigation Procedures

(1) The Authority shall conduct an unannounced on-site investigation of a hospital within 60 calendar days after receiving a valid complaint against the hospital for violating a provision of ORS 441.152 to 441.177. A complaint is valid when an allegation, if assumed to be true, would violate a requirement of ORS 441.152 to 441.177.

(2) During an investigation, the Authority shall review any hospital record and conduct any interview or site visit that is necessary to determine whether the hospital has violated a provision of ORS 441.152 to 441.177.

(3) In conducting an investigation, the Authority may:

(a) Review any documentation that may be relevant to the complaint, including patient records; and

(b) Interview any person who may have information relevant to the complaint, including patients and family members.

(4) In reviewing information collected during an investigation, the Authority shall consider:

(a) The amount and strength of objective evidence, if any, that substantiates or refutes the complaint; and

(b) The number and credibility of witnesses, if any, who attest to or refute an alleged violation.

(5) Following an investigation, the Authority shall issue a written investigation report that communicates the results of the investigation no more than 30 business days after the investigation closes. This investigation report:

(a) Shall be issued to the hospital and both co-chairs of the hospital nurse staffing committee; and

(b) May include a notice of civil penalties that complies with ORS 441.175 and OAR 333-501-0045.

(6) If the investigation report identifies any area of noncompliance, the hospital shall submit a written plan to correct each identified deficiency. This plan:

(a) Shall be called the plan of correction;

(b) Shall be submitted no more than 30 business days after receiving the Authority's investigation report; and

(c) Shall be evaluated by the Authority for sufficiency.

(7) No more than 30 business days after receipt of the hospital's plan of correction, the Authority shall issue a written determination that communicates whether the plan of correction is sufficient. This determination:

(a) Shall be issued to the hospital and both co-chairs of the hospital nurse staffing committee; and

(b) Shall require the hospital to either:

(A) Revise and resubmit the rejected plan of correction no more than 30 business days after receiving the Authority's determination that the plan is insufficient; or

(B) Implement the approved plan of correction no more than 45 business days after receiving the Authority's determination that the plan is sufficient.

(8) Following the approval of the plan of correction, the Authority shall conduct a second investigation of the hospital to verify that the hospital has implemented the approved plan of correction. This investigation shall be conducted within 60 business days of the plan of correction approval date.

(9) The identity of an individual providing evidence during an investigation will be kept confidential to the extent permitted by law.

Stat. Auth.: ORS 413.042, 441.025, 441.057, 441.171 & 441.175

Stats. Implemented: ORS 441.057 & 441.171

333-501-0045

Civil Penalties for Violations of Nurse Staffing Laws

(1) For the purposes of this rule, "safe patient care" has the meaning given to the term in OAR 333-510-0002.

(2) The Authority may impose civil penalties for a violation of any provision of ORS 441.152 to 441.177 and 441.185 if there is a reasonable belief that safe patient care has been or may be negatively impacted.

(3) Each violation of the written hospital-wide staffing plan shall be considered a separate violation.

(4) If imposed, the Authority will issue civil penalties in accordance with Table 1 of this rule.

(5) In determining whether to issue a civil penalty, the Authority will consider

all relevant evidence including, but not limited to, witness testimony, written documents and observations.

(6) A civil penalty imposed under this rule shall comply with ORS 183.745.

(7) The Authority shall maintain for public inspection records of any civil penalties imposed on hospitals penalized under this rule.

[ED. NOTE: Table referenced is not included in rule text. Click here for PDF copy of table.]

Stat. Auth.: ORS 413.042, 441.175 & 441.185

Stats. Implemented: ORS 441.175 & 441.185

TABLE 1 - CIVIL PENALTY ASSESSMENTS - OAR 333-501-0045

Type of Violation	First Violation	Repeat Violations
No written nurse staffing plan developed or implemented by facility and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$5,000	Not to exceed \$5000
Statement of deficiencies or letter of warning will be issued for all violations in addition to any civil penalty levied.	\$0	\$0
The hospital required a registered nurse, licensed practical nurse or certified nursing assistant to work: - beyond the agreed-upon and prearranged shift, regardless of the length of the shift; - more than 48 hours in any hospital-defined workweek; - more than 12 consecutive hours in a 24-hour period and, as a result, safe patient care has been or may be negatively impacted; or - 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.	Not to exceed \$2500	Not to exceed \$5000
The hospital willfully does not comply with the requirement to post notice to personnel and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$500	Not to exceed \$500

WRITTEN NURSE STAFFING PLAN

Type of Violation	First Violation	Repeat Violations
The written nurse staffing plan was not developed, monitored, evaluated or modified by the hospital staffing plan committee and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000
The committee does not have as its primary consideration the provision of safe patient care and adequate nursing staff and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000

REPLACEMENT STAFF

Type of Violation	First Violation	Repeat Violations
The hospital does not maintain and post a list of replacement staff and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000
The hospital does not make reasonable efforts to get replacement staff and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000

Factors which may influence the amount of penalty include, but are not limited to:

- Duration and extent of violation;
- Actual harm to one or more patients;
- Willfullness of violation;
- Number of patients harmed.

DIVISION 510

PATIENT CARE AND NURSING SERVICES IN HOSPITALS

333-510-0002

Definitions

As used in OAR chapter 333, division 510, the following definitions apply:

- (1) "Direct Care Registered Nurse" means a nurse who is routinely assigned to a patient care unit, who is replaced for scheduled and unscheduled absences and includes charge nurses if the charge nurse is not management services.
- (2) "Direct Care Staff" means registered nurses, licensed practical nurses and certified nursing assistants that are routinely assigned to patient care units and are replaced for scheduled or unscheduled absences.
- (3) "Direct Care Staff Member" means an individual who is a direct care registered nurse, licensed practical nurse or certified nursing assistant who is routinely assigned to a patient care unit and is replaced for a scheduled or unscheduled absences.
- (4) "Epidemic" means the occurrence of a group of similar conditions of public health importance in a community or region that are in excess of normal expectancy and that are from a common or propagated source.
- (5) "Evidence Based Standards" means standards that have been scientifically developed, are based on current literature, and are driven by consensus.
- (6) "Hospital" means a hospital as described in ORS 442.015 and an acute inpatient care facility as defined in ORS 442.470.
- (7) "Mandatory Overtime" is any time that exceeds those time limits specified in ORS 441.166 unless the nursing staff

member voluntarily chooses to work overtime.

(8) "Nurse Manager" means a registered nurse who has administrative responsibility 24 hours a day, 7 days a week for a patient care unit, units or hospital and who is not replaced for short-term scheduled or unscheduled absences.

(9) "Nursing care intensity" means the level of patient need for nursing care as determined by the nursing assessment.

(10) "Nursing staff" means registered nurses, licensed practical nurses and certified nursing assistants.

(11) "Nursing staff member" means an individual who is a registered nurse, licensed practical nurse or a certified nursing assistant.

(12) "On Call" means a scheduled state of availability to return to duty, work-ready, within a specified period of time.

(13) "On Call Nursing Staff" means individual nursing staff members or nursing service agencies maintained by a hospital that are available and willing to cover nursing staff shortages due to unexpected nursing staff absences or unanticipated increased nursing service needs.

(14) "Patient acuity" means the complexity of patient care needs requiring the skill and care of nursing staff.

(15) "Potential Harm" or "At Risk of Harm" means that an unstable patient will be left without adequate care for an unacceptable period of time if the assigned nursing staff member leaves the assignment or transfers care to another nursing staff member.

(16) "Quorum" means that a majority, or one-half plus one, of the staffing committee members are present during a staffing committee meeting.

(17) "Safe Patient Care" means nursing care that is provided appropriately, in a timely manner, and meets the patient's health care needs. The following factors may be, but are not in all circumstances, evidence of unsafe patient care:

- (a) A failure to implement the written nurse staffing plan;
- (b) A failure to comply with the patient care plan;
- (c) An error that has a negative impact on the patient;
- (d) A patient report that his or her nursing care needs have not been met;
- (e) A medication not given as scheduled;
- (f) The nursing preparation for a procedure that was not accomplished on time;
- (g) A nursing staff member who was practicing outside his or her authorized scope of practice;
- (h) Daily unit-level staffing that does not include coverage for all known patients, taking into account the turnover of patients;
- (i) The skill mix of employees and the relationship of the skill mix to patient acuity and nursing care intensity of the workload is insufficient to meet patient needs; or
- (j) An unreasonable delay in responding to a request for nursing care made by a patient or made on behalf of a patient by his or her family member.

(18) "Staffing Committee" means the hospital nurse staffing committee.

(19) "Staffing Plan" means the written hospital-wide staffing plan for nursing services developed by the hospital nurse staffing committee.

(20) "Standby" means a scheduled state of availability to return to duty, work-ready within a specified period of time.

(21) "Waiver" means a variance to the hospital-wide staffing plan requirements as described in ORS 441.164.

Stat. Auth.: ORS 413.042 & 441.151 – 441.177

Stats. Implemented: ORS 441.165, 441.166 & 441.179

333-510-0045 Nurse Staffing Posting and Record Requirements

(1) On each hospital unit, a hospital shall post a complaint notice that:

- (a) Summarizes the provisions of ORS 441.152 to 441.177;
- (b) Is clearly visible to the public; and
- (c) Includes the Authority's complaint reporting phone number, electronic mail address and website address.

(2) A hospital shall also post an anti-retaliation notice on the premises that:

- (a) Summarizes the provisions of ORS 441.181, 441.183, 441.184 and 441.192;
- (b) Is clearly visible; and
- (c) Is posted where notices to employees and applicants for employment are customarily displayed.

(3) A hospital shall keep and maintain all records necessary to demonstrate compliance with ORS 441.152 to 441.177. These records shall:

- (a) Be maintained for no fewer than three years;
- (b) Be promptly provided to the Authority upon request; and
- (c) Include, at minimum:
 - (A) The staffing plan;
 - (B) The hospital nurse staffing committee charter;
 - (C) Staffing committee meeting minutes;
 - (D) Documentation showing how all members of the staffing committee were selected;
 - (E) All complaints filed with the staffing committee;

- (F) Personnel files for all nursing staff positions that include, at minimum, job descriptions, required licensure and specialized qualifications and competencies required for the individual's assigned nurse specialty or unit;
- (G) Documentation showing work schedules for nursing staff in each hospital nurse specialty or unit;
- (H) Documentation showing actual hours worked by all nursing staff;
- (I) Documentation showing all work schedule variances that resulted in the use of replacement nursing staff;
- (J) Documentation showing how many on-call hours, if any, required nursing staff to be on the hospital premises;
- (K) Documentation showing how many required meeting, education and training hours, if any, were required of nursing staff;
- (L) The hospital's mandatory overtime policy and procedure;
- (M) Documentation showing how many, if any, overtime hours were worked by nursing staff;
- (N) Documentation of all waiver requests, if any, submitted to the Authority;
- (O) Documentation showing how many, if any, additional hours were worked due to emergency circumstances and the nature of those circumstances;
- (P) The list of on-call nursing staff used to obtain replacement nursing staff;
- (Q) Documentation showing how and when the hospital updates its list of on-call staff used to obtain replacement nursing staff and how the hospital determines eligibility to remain on the list;
- (R) Documentation showing the hospital's procedures for obtaining replacement nursing staff, including efforts made to obtain replacement staff;

- (S) Documentation showing the hospital's actual efforts to seek replacement staff when needed;
 - (T) Documentation showing each actual instance in which the hospital implemented the policy described in OAR 333-510-0110(2)(g) to initiate limitations on admission or diversion of patients to another hospital; and
 - (U) All staffing committee reports filed with the hospital administration following a review of the staffing plan.
- Stat. Auth.: ORS 413.042, 441.155, 441.169, 441.173 & 441.185
Stats. Implemented: ORS 441.155, 441.169, 441.173 & 441.185

**333-510-0105
Nurse Staffing Committee
Requirement**

- (1) Each hospital shall establish and maintain a hospital nurse staffing committee. The staffing committee shall develop a written hospital-wide staffing plan for nursing services in accordance with ORS 441.155 and OAR chapter 333, division 510 rules. In developing the staffing plan, the staffing committee's primary goal shall be to ensure that the hospital is adequately staffed to meet the health care needs of its patients.
- (2) The staffing committee shall meet:
 - (a) At least once every three months; and
 - (b) At any time and place specified by either co-chair of the staffing committee.
- (3) The hospital shall release a member of the staffing committee from his or her assignment to attend committee meetings and provide paid time for this purpose.
- (4) The staffing committee shall be comprised of an equal number of hospital nurse managers and direct care

staff. Direct care staff members shall be selected as follows:

(a) The staffing committee shall include at least one direct care registered nurse from each hospital nurse specialty or unit as the specialty or unit is defined by the hospital to represent that specialty or unit;

(b) In addition to the direct care registered nurses described in subsection (a) of this section there must be one position on the staffing committee that is filled by a direct care staff member who is not a registered nurse and whose services are covered by the staffing plan;

(c) If the direct care registered nurses working at the hospital are represented under a collective bargaining agreement, the bargaining unit shall coordinate voting to allow the direct care registered nurses who work at the hospital to select each direct care registered nurse on the staffing committee;

(d) If the direct care registered nurses working at the hospital are not represented under a collective bargaining agreement, the direct care registered nurses belonging to each hospital nurse specialty or unit shall select the direct care registered nurse to represent it on the staffing committee; and

(e) If the position that must be filled by a direct care staff member who is not a registered nurse and whose services are covered by the staffing plan is represented under a collective bargaining agreement, the bargaining unit shall coordinate voting to allow the direct care staff members who are not registered nurses to select the direct care staff member who is not a registered nurse to represent them on the staffing committee.

(f) If the position that must be filled by a direct care staff member who is not a registered nurse and whose services are covered by the staffing plan is not represented under a collective bargaining agreement, the direct care staff members who are not registered nurses shall select the direct care staff member who is not a registered nurse to represent them on the staffing committee.

(5) The staffing committee shall have two co-chairs. One co-chair must be a hospital nurse manager elected by a majority of the staffing committee members who are hospital nurse managers. The other co-chair must be a direct care registered nurse elected by a majority of the staffing committee members who are direct care staff.

(6) The staffing committee must develop a written charter that documents the policies and procedures of the staffing committee. At minimum, the charter must include:

(a) How meetings are scheduled;

(b) How members are notified of meetings;

(c) How agendas are determined;

(d) How input from hospital nurse specialty or unit staff is submitted;

(e) Who may participate in decision-making;

(f) How decisions are made; and

(g) How the staffing committee shall monitor, evaluate and modify the staffing plan over time.

(7) Staffing committee meetings must be conducted as follows:

(a) A meeting may not be conducted unless a quorum of staffing committee members is present;

(b) Except as set forth in subsection (c) of this section, a meeting must be open to all hospital nursing staff as observers and to any other individual as either

observer or presenter by invitation of either co-chair of the staffing committee;

(c) Either co-chair of the staffing committee may temporarily exclude all non-members from a meeting during staffing committee deliberations and voting; and

(d) Each staffing committee decision must be made by majority vote; however, if a quorum consists of an unequal number of hospital nurse managers and direct care staff, only an equal number of hospital nurse managers and direct care staff may vote.

(8) The staffing committee must document meeting proceedings by keeping written meeting minutes that include, but are not limited to, the following information:

(a) The name and position of each staffing committee member in attendance;

(b) The name and position of each observer or presenter in attendance;

(c) Motions made;

(d) Outcomes of votes taken;

(e) A summary of staffing committee discussions; and

(f) Instances in which non-members have been excluded from staffing committee meetings.

(9) The staffing committee shall approve meeting minutes prior to or during the next staffing committee meeting.

(10) The staffing committee shall provide meeting minutes to hospital nursing staff and other hospital staff upon request no more than 30 calendar days after the meeting minutes are approved by the staffing committee.

Stat. Auth.: ORS 413.042, 441.151 & 441.154

Stats. Implemented: ORS 441.154

333-510-0110

Nurse Staffing Plan Requirements

(1) Each hospital shall implement a written hospital-wide staffing plan for nursing services that is developed and approved by the hospital nurse staffing committee established in accordance with ORS 441.154 and OAR chapter 333 division 510 rules.

(2) The staffing plan:

(a) Must be based on the specialized qualifications and competencies of the nursing staff and provide for the skill mix and level of competency necessary to ensure that the hospital is staffed to meet the health care needs of patients;

(b) Must be based on a measurement of hospital unit activity that quantifies the rate of admissions, discharges and transfers for each hospital unit and the time required for a direct care registered nurse belonging to a hospital unit to complete admissions, discharges and transfers for that hospital unit;

(c) Must be based on total diagnoses for each hospital unit and the nursing staff required to manage that set of diagnoses;

(d) Must be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations such as, but not limited to: The American Association of Critical Care Nurses, American Operating Room Nurses (AORN), or American Society of Peri-Anesthesia Nurses (ASPAN);

(e) Must recognize differences in patient acuity and nursing care intensity;

(f) 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;

- (g) Must include a formal process for evaluating and initiating limitations on admission or diversion of patients to another hospital when, in the judgment of a direct care registered nurse or a nurse manager, there is an inability to meet patient care needs or a risk of harm to patients;
- (h) Must consider tasks not related to providing direct care, including meal breaks and rest breaks;
- (i) May not base nursing staff requirements solely on external benchmarking data;
- (j) May not be used by a hospital to impose upon unionized nursing staff any changes in wages, hours or other terms and conditions of employment unless the hospital first provides notice to and, upon request, bargains with the union; and
- (k) May not create, preempt or modify a collective bargaining agreement or require parties to an agreement to bargain over the staffing plan while a collective bargaining agreement is in effect.

Stat. Auth.: ORS 413.042 & 441.155
Stats. Implemented: ORS 441.155

333-510-0115

Nurse Staffing Plan Review Requirement

- (1) The staffing committee shall:
 - (a) Review the staffing plan at least once per year; and
 - (b) At any other time specified by either co-chair of the staffing committee.
- (2) In reviewing the staffing plan, the staffing committee shall consider:
 - (a) Patient outcomes;
 - (b) Complaints regarding staffing, including complaints about a delay in

direct care nursing or an absence of direct care nursing;

- (c) The number of hours of nursing care provided through a hospital unit compared with the number of patients served by the hospital unit during a 24-hour period;
- (d) The aggregate hours of mandatory overtime worked by nursing staff;
- (e) The aggregate hours of voluntary overtime worked by nursing staff;
- (f) The percentage of shifts for each hospital unit for which staffing differed from what is required by the staffing plan;
- (g) Any other matter determined by the committee to be necessary to ensure that the hospital is staffed to meet the health care needs of patients; and
- (h) Any report filed by a nursing staff member stating the nursing staff member's belief that the hospital unit engaged in a pattern of requiring direct care nursing staff to work overtime for nonemergency care.

(3) Following its review of the staffing plan, the staffing committee shall issue a written report to the hospital that indicates whether the staffing plan ensures that the hospital is adequately staffed and meets the health care needs of patients. If the report indicates that it does not, the staffing committee shall modify the staffing plan as necessary to accomplish this goal.

Stat. Auth.: ORS 413.042 & 441.156
Stats. Implemented: ORS 441.156

333-510-0120

Nurse Staffing Plan Mediation

- (1) If the staffing committee is unable to reach an agreement on the staffing plan, either co-chair of the staffing committee may invoke a waiting period of 30 business days.

(a) During the 30-day waiting period, the staffing committee shall continue to develop the staffing plan; and

(b) The hospital shall promptly respond to any reasonable requests for data that is related to the impasse and is submitted by either co-chair of the staffing committee.

(2) If at the end of the 30-day waiting period, the staffing committee remains unable to reach an agreement on the staffing plan, one of the staffing committee co-chairs shall notify the Authority of the impasse. This notification shall include:

(a) Documentation that the staffing committee voted on the provision or provisions in question and a deadlock resulted;

(b) Documentation that either co-chair of the staffing committee formally invoked a 30-day waiting period;

(c) Documentation that during the 30-day waiting period, the staffing committee continued to develop the staffing plan including documentation of options the staffing committee considered after invoking the 30-day waiting period;

(d) Documentation of any reasonable requests for data submitted to the hospital by either staffing committee co-chair and the hospital's response, if any; and

(e) Documentation that the staffing committee voted on the provision or provisions in question again after the 30-day waiting period formally ended and another deadlock resulted.

(3) No more than 15 business days after receiving notice of an impasse, the Authority shall assign the staffing committee a mediator to assist the staffing committee in reaching an agreement on the staffing plan.

(a) Mediation shall be consistent with requirements for implementing and reviewing staffing plans set forth in ORS 441.155 and 441.156 and OAR chapter 333 division 510 rules; and

(b) Mediation shall be provided for no more than 90 calendar days.

(4) The Authority may impose civil monetary penalties against a hospital, if the staffing committee is unable to reach an agreement on the staffing plan after 90 days of mediation.

Stat. Auth.: ORS 413.042, 441.154 & 441.175

Stats. Implemented: ORS 441.154

333-510-0125

Replacement Nurse Staffing Requirements

(1) A hospital must maintain and post or publish a list of on-call nursing staff that may be contacted to provide qualified replacement or additional nursing staff in the event of a vacancy or unexpected shortage. This list must:

(a) Provide for sufficient replacement nursing staff on a regular basis; and

(b) Be available to the individual who is responsible for obtaining replacement staff during each shift.

(2) When developing and maintaining the on-call list, the hospital must explore all reasonable options for identifying local replacement staff and these efforts must be documented.

(3) When a hospital learns about the need for replacement nursing staff, the hospital must make every reasonable effort to obtain adequate voluntary replacement nursing staff for unfilled hours or shifts before requiring a nursing staff member to work overtime and these efforts must be documented. Reasonable efforts include, but are not limited to:

(a) The hospital seeking replacement nursing staff at the time the vacancy is known; and

(b) The hospital contacting all available resources on its list of on-call nursing staff as described in this rule.

Stat. Auth.: ORS 413.042, 441.155 & 441.166

Stats. Implemented: ORS 441.155 & 441.166

333-510-0130

Nursing Staff Member Overtime

(1) For purposes of this rule "require" means hours worked as a condition of employment whether as a result of a previously scheduled shift or hours actually worked during time spent on call or on standby.

(2) A hospital may not require a nursing staff member to work:

(a) Beyond the agreed-upon and prearranged shift, regardless of the length of the shift;

(b) More than 48 hours in any hospital-defined work week;

(c) More than 12 hours in a 24-hour period; or

(d) 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.

(3) Nothing in this rule precludes a nursing staff member from volunteering to work overtime.

(4) A hospital may require an additional hour of work beyond the hours authorized in section (2) of this rule if:

(a) A staff vacancy for the next shift becomes known at the end of the current shift; or

(b) There is a potential harm to an assigned patient if the nursing staff member leaves the assignment or

transfers care to another nursing staff member.

(5) Each hospital must have a policy and procedure in place to ensure, at minimum, that:

(a) Mandatory overtime, when required, is documented in writing;

(b) Mandatory overtime policies and procedures are clearly written, provided to all new nursing staff and readily available to all nursing staff;

(c) Time spent by the nursing staff member in required meetings or receiving education or training will be included as hours worked for the purpose of section (2) of this rule;

(d) Time spent on call or on standby when the nursing staff member is required to be at the hospital will be included as hours worked for the purpose of section (2) of this rule; and

(e) Time spent on call or on standby when the nursing staff member is not required to be at the hospital will not be included as hours worked for the purpose of section (2) of this rule.

(6) If a nursing staff member believes that a hospital unit is engaging in a pattern of requiring direct care nursing staff to work overtime for nonemergency care, the nursing staff member may report that information to the staffing committee. The staffing committee shall consider the information when reviewing the staffing plan as described in OAR 333-510-0115.

(7) The provisions of sections (2) through (5) of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan; or

(b) In emergency circumstances that include:

- (A) Sudden and unforeseen adverse weather conditions;
 - (B) An infectious disease epidemic suffered by hospital staff;
 - (C) Any unforeseen event preventing replacement staff from approaching or entering the premises; or
 - (D) Unplanned direct care staff vacancies of 20% or more of the nursing staff for the next shift hospital-wide at the Oregon State Hospital if, based on the patient census, the Oregon State Hospital determines the number of direct care staff available hospital-wide cannot ensure patient safety.
- (8) Nothing in section (6) of this rule relieves the Oregon State Hospital from contacting voluntary replacement staff as described in OAR 333-510-0125 and documenting these contacts.
- (9) A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon scheduled shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing OAR, chapter 851.
- (10) Until the Authority defines “other nursing staff” as that term is described in ORS 441.166(1), this rule applies only to “nursing staff member” as that term is defined in these rules.

Stat. Auth.: ORS 413.042, 441.166 & 441.168

Stats. Implemented: ORS 441.166 & 441.168

333-510-0135

Nurse Staffing Plan Waiver

- (1) At a hospital’s request, the Authority may waive any staffing plan requirement set forth in ORS 441.155 provided that a waiver is necessary to ensure that the

hospital is staffed to meet the health care needs of its patients.

- (2) All requests for a waiver must:

- (a) Be submitted to the Authority in writing;
- (b) State the reason or reasons for which the hospital is seeking the waiver;
- (c) Explain how the waiver is necessary for the hospital to meet patient health care needs; and
- (d) Include verification that the hospital notified the staffing committee of the request for a waiver prior to its submission.

Stat. Auth.: ORS 413.042 & 441.164
Stats. Implemented: ORS 441.155 & 441.164

333-510-0140

Nurse Staffing Plan During an Emergency

- (1) A hospital is not required to follow the staffing plan developed and approved by the staffing committee in the event of:
- (a) A national or state emergency requiring the implementation of a facility disaster plan;
 - (b) Sudden and unforeseen adverse weather conditions; or
 - (c) An infectious disease epidemic suffered by hospital staff.
- (2) In the event of an emergency circumstance not described in section (1) of this rule, either co-chair of the staffing committee may specify a time and place to meet to review and potentially modify the staffing plan in response to the emergency circumstance.

Stat. Auth.: ORS 413.042 & 441.165
Stats. Implemented: ORS 441.155 & 441.165

OREGON REVISED STATUTES

HOSPITAL NURSING SERVICES

441.151 “Hospital” defined for ORS 441.152 to 441.177. As used in ORS 441.152 to 441.177, “hospital” includes a hospital as described in ORS 442.015 and an acute inpatient care facility as defined in ORS 442.470.
[Formerly 441.160]

Note: 441.151 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.152 Nurse Staffing Advisory Board. (1)(a) The Nurse Staffing Advisory Board is established within the Oregon Health Authority, consisting of 12 members appointed by the Governor.

(b) Of the 12 members of the board:

(A) Six must be hospital nurse managers;

(B) Five must be direct care registered nurses who work in hospitals; and

(C) One must be either a direct care registered nurse who works in a hospital or a direct care staff member who is not a registered

nurse and whose services are covered by a written hospital-wide staffing plan that meets the requirements of ORS 441.155.

(c) To the extent practicable, board members shall be appointed to ensure that the board is represented by members from hospitals where direct care staff are represented under a collective bargaining agreement and hospitals where direct care staff are not represented by a collective bargaining agreement and by hospitals of different sizes, types and geographic location.

(d) The term of office of each board member is three years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins January 1 next following. A member is eligible for reappointment, but may not serve more than two consecutive terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(2) The board shall:

(a) Provide advice to the authority on the administration of ORS 441.152 to 441.177;

(b) Identify trends, opportunities and concerns related to nurse staffing;

(c) Make recommendations to the authority on the basis of those trends, opportunities and concerns; and

(d) Review the authority's enforcement powers and processes under ORS 441.157, 441.171 and 441.177.

(3)(a) Upon request, the authority shall provide the board with written hospital-wide staffing plans implemented under ORS 441.155, reviews conducted under ORS 441.156, information obtained during an audit under ORS 441.157 and complaints filed and investigations conducted as described in ORS 441.171.

(b) The authority may not provide the board with any information under paragraph (a) of this subsection that is identifiable with a specific hospital unless the information is publicly available.

(c) Hospital-wide staffing plans provided to the board under this section are confidential and not subject to public disclosure.

(4) A majority of the members of the board constitutes a quorum for the transaction of business.

(5) The board shall have two cochairs selected by the Governor. One cochair shall be a hospital nurse manager and one cochair shall be a direct care registered nurse.

(6) Official action by the board requires the approval of a majority of the members of the board.

(7) The board shall meet:

(a) At least once every three months; and

(b) At any time and place specified by the call of both cochairs.

(8) The board may adopt rules necessary to for the operation of the board.

(9) The board shall submit a report on the administration of ORS 441.152 to 441.177 in the manner provided in ORS 192.245 to an interim committee of the Legislative Assembly related to health no later than September 15 of each year. The board may include in its report recommendations for legislation.

(10) Members of the board are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the authority for purposes of the board. [2015 c.669 §2]

Note: 441.152 to 441.177 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 441 or any series therein

by legislative action. See Preface to Oregon Revised Statutes for further explanation.

Note: Section 3, chapter 669, Oregon Laws 2015, provides:

Sec. 3. Notwithstanding the term of office specified by section 2 of this 2015 Act [441.152], of the members first appointed to the Nurse Staffing Advisory Board:

(1) Four shall serve for a term ending January 1, 2017;

(2) Four shall serve for a term ending January 1, 2018; and

(3) Four shall serve for a term ending January 1, 2019. [2015 c.669 §3]

441.153 [1985 c.153 §14(3); 2001 c.716 §29; 2013 c.717 §14; 2014 c.117 §12; renumbered 441.419 in 2015]

441.154 Hospital nurse staffing committee. (1)(a) For each hospital there shall be established a hospital nurse staffing committee. Each committee shall:

(A) Consist of an equal number of hospital nurse managers and direct care staff;

(B) For that portion of the committee composed of direct care staff, consist entirely of direct care registered nurses, except for one position to be filled by a direct care staff member who is not a registered nurse and whose

services are covered by a written hospital-wide staffing plan that meets the requirements of ORS 441.155; and

(C) Include at least one direct care registered nurse from each hospital nurse specialty or unit.

(b) If the direct care registered nurses who work at a hospital are represented under a collective bargaining agreement, the bargaining unit shall conduct a selection process by which the direct care registered nurses who work at the hospital select the members of the committee who are direct care registered nurses.

(c) If the direct care staff member who is not a registered nurse who works at a hospital is represented under a collective bargaining agreement, the bargaining unit shall use the selection process conducted pursuant to paragraph (b) of this subsection to select that member of the committee.

(d) If the direct care registered nurses who work at a hospital are not represented under a collective bargaining agreement, the direct care registered nurses belonging to a hospital nurse specialty or unit shall select each member of the committee who is a direct care registered nurse from that specialty or unit.

(2) A hospital nurse staffing committee shall develop a written hospital-wide staffing plan in

accordance with ORS 441.155. The committee's primary goals in developing the staffing plan shall be to ensure that the hospital is staffed to meet the health care needs of patients. The committee shall review and modify the staffing plan in accordance with ORS 441.156.

(3) A majority of the members of a hospital nurse staffing committee constitutes a quorum for the transaction of business.

(4) A hospital nurse staffing committee shall have two cochairs. One cochair shall be a hospital nurse manager elected by the members of the committee who are hospital nurse managers and one cochair shall be a direct care registered nurse elected by the members of the committee who are direct care staff.

(5)(a) A decision made by a hospital nurse staffing committee must be made by a vote of a majority of the members of the committee. If a quorum of members comprises an unequal number of hospital nurse managers and direct care staff, only an equal number of hospital nurse managers and direct care staff may vote.

(b) If the committee is unable to reach an agreement on the staffing plan, either cochair of the committee may invoke a 30-day period during which the committee shall continue to develop the

staffing plan. During the 30-day period, the hospital shall respond in a timely manner to reasonable requests from members of the committee for data that will enable the committee to reach a resolution. If at the end of the 30-day period, the committee remains unable to reach an agreement on the staffing plan, one of the cochairs shall notify the Oregon Health Authority of the impasse.

(c) Upon receiving notification under paragraph (b) of this subsection, the authority shall provide the committee with a mediator to assist the committee in reaching an agreement on the staffing plan. Mediation conducted under this paragraph must be consistent with the requirements for implementing and reviewing staffing plans under ORS 441.155 and 441.156.

(d) If the committee is unable to reach an agreement on the staffing plan after 90 days of mediation, the authority may impose a penalty against the hospital as described in ORS 441.175.

(6) A hospital nurse staffing committee shall meet:

(a) At least once every three months; and

(b) At any time and place specified by either cochair.

(7)(a) Subject to paragraph (b) of this subsection, a hospital nurse

staffing committee meeting must be open to:

(A) The hospital nursing staff as observers; and

(B) Upon invitation by either cochair, other observers or presenters.

(b) At any time, either cochair may exclude persons described in paragraph (a) of this subsection from a committee meeting for purposes related to deliberation and voting.

(8) Minutes of hospital nurse staffing committee meetings must:

(a) Include motions made and outcomes of votes taken;

(b) Summarize discussions; and

(c) Be made available in a timely manner to hospital nursing staff and other hospital staff upon request.

(9) A hospital shall release a member of a hospital nurse staffing committee described in subsection (1)(a) of this section from the member's assignment, and provide the member with paid time, to attend committee meetings. [2015 c.669 §1]

Note: See note under 441.152.

Note: Sections 17 and 18 (2), chapter 669, Oregon Laws 2015, provide:

Sec. 17. (1) For purposes of this section, "hospital" has the

meaning given that term in ORS 441.160 [renumbered 441.151].

(2) A hospital nurse staffing committee shall be established for each hospital in accordance with section 1 of this 2015 Act [441.154] on or before January 1, 2016.

(3) Each hospital shall post material as described in section 7 of this 2015 Act [441.169] on or before January 1, 2016.

(4) The Oregon Health Authority shall adopt rules required by section 8 of this 2015 Act [441.173] on or before July 1, 2016.

(5) Each hospital nurse staffing committee established pursuant to section 1 of this 2015 Act shall develop a written hospital-wide staffing plan in accordance with ORS 441.162 [renumbered 441.155] as amended by section 4 of this 2015 Act on or before January 1, 2017. [2015 c.669 §17]

Sec. 18. (2) A hospital-wide staffing plan for nursing services implemented under ORS 441.162 [renumbered 441.155] before the effective date of this 2015 Act [July 6, 2015] shall continue to be in effect until a hospital nurse staffing committee established under section 1 of this 2015 Act [441.154] implements a new written hospital-wide staffing plan for nursing services pursuant to ORS 441.162 as amended by

section 4 of this 2015 Act. [2015 c.669 §18(2)]

441.155 Written staffing plan for nursing services. (1) Each hospital shall implement the written hospital-wide staffing plan for nursing services that has been developed and approved by the hospital nurse staffing committee under ORS 441.154.

(2) The staffing plan:

(a) Must be based on the specialized qualifications and competencies of the nursing staff and provide for the skill mix and level of competency necessary to ensure that the hospital is staffed to meet the health care needs of patients;

(b) Must be based on a measurement of hospital unit activity that quantifies the rate of admissions, discharges and transfers for each hospital unit and the time required for a direct care registered nurse belonging to a hospital unit to complete admissions, discharges and transfers for that hospital unit;

(c) Must be based on total diagnoses for each hospital unit and the nursing staff required to manage that set of diagnoses;

(d) Must be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations;

(e) Must recognize differences in patient acuity;

(f) Must establish minimum numbers of nursing staff, including licensed practical nurses and certified nursing assistants, required on specified shifts, provided that at least one registered nurse and one other nursing staff member is on duty in a unit when a patient is present;

(g) Must include a formal process for evaluating and initiating limitations on admission or diversion of patients to another hospital when, in the judgment of a direct care registered nurse or a nurse manager, there is an inability to meet patient care needs or a risk of harm to patients;

(h) Must consider tasks not related to providing direct care, including meal breaks and rest breaks; and

(i) May not base nursing staff requirements solely on external benchmarking data.

(3) A hospital must maintain and post a list of on-call nursing staff or staffing agencies to provide replacement nursing staff in the event of a vacancy. The list of on-call nursing staff or staffing agencies must be sufficient to provide for replacement nursing staff.

(4)(a) An employer may not impose upon unionized nursing staff any changes in wages, hours or other terms and conditions of

employment pursuant to a staffing plan unless the employer first provides notice to and, upon request, bargains with the union as the exclusive collective bargaining representative of the nursing staff in the bargaining unit.

(b) A staffing plan does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect. [Formerly 441.162]

Note: See note under 441.152.

441.156 Annual review of nurse staffing plan. (1) A hospital nurse staffing committee established pursuant to ORS 441.154 shall review the written hospital-wide staffing plan developed by the committee under ORS 441.155:

(a) At least once every year; and

(b) At any other date and time specified by either cochair of the committee.

(2) In reviewing a staffing plan, a hospital nurse staffing committee shall consider:

(a) Patient outcomes;

(b) Complaints regarding staffing, including complaints about a delay in direct care

nursing or an absence of direct care nursing;

(c) The number of hours of nursing care provided through a hospital unit compared with the number of patients served by the hospital unit during a 24-hour period;

(d) The aggregate hours of mandatory overtime worked by the nursing staff;

(e) The aggregate hours of voluntary overtime worked by the nursing staff;

(f) The percentage of shifts for each hospital unit for which staffing differed from what is required by the staffing plan; and

(g) Any other matter determined by the committee to be necessary to ensure that the hospital is staffed to meet the health care needs of patients.

(3) Upon reviewing a staffing plan, a hospital nurse staffing committee shall:

(a) Report whether the staffing plan ensures that the hospital is staffed to meet the health care needs of patients; and

(b) Modify the staffing plan as necessary to ensure that the hospital is staffed to meet the health care needs of patients.

[2015 c.669 §5]

Note: See note under 441.152.

441.157 Audits. (1) For the sole purpose of verifying compliance with the requirements of ORS 441.152 to 441.177 and 441.192, the Oregon Health Authority shall audit each hospital in this state once every three years, at the time of conducting an on-site inspection of the hospital under ORS 441.025.

(2) When conducting an audit pursuant to this section, the authority shall:

(a) If the authority provides notice of the audit to the hospital, provide notice of the audit to the cochairs of the hospital nurse staffing committee established pursuant to ORS 441.154;

(b) Interview both cochairs of the hospital nurse staffing committee;

(c) Review any other hospital record and conduct any other interview or site visit that is necessary to verify that the hospital is in compliance with the requirements of ORS 441.152 to 441.177 and 441.192; and

(d) Within 60 days after issuing an order requiring a hospital to implement a plan to correct a violation of ORS 441.152 to 441.177 or 441.192, conduct an investigation of the hospital to ensure compliance with the order.

(3) Following an investigation conducted pursuant to subsection (2) of this section, the authority shall provide in writing a report of

the authority's findings to the hospital and the cochairs of the hospital nurse staffing committee.

(4) The authority shall compile and maintain for public inspection an annual report of audits and investigations conducted pursuant to this section.

(5) The costs of audits required by this section may be paid out of funds from licensing fees paid by hospitals under ORS 441.020. [2015 c.669 §9]

Note: See note under 441.152.

441.160 [2001 c.609 §1; renumbered 441.151 in 2015]

441.162 [2001 c.609 §2; 2005 c.665 §2; 2015 c.669 §4; renumbered 441.155 in 2015]

441.164 Variances to staffing plan requirements. Upon request of a hospital, the Oregon Health Authority may grant a variance to the written hospital-wide staffing plan requirements described in ORS 441.155 if the variance is necessary to ensure that the hospital is staffed to meet the health care needs of patients. [2001 c.609 §3; 2009 c.595 §733; 2015 c.669 §12]

Note: See note under 441.152.

441.165 Modification of nurse staffing plan in case of emergency or epidemic. (1) For purposes of this subsection, “epidemic” means the occurrence of a group of similar conditions of public health importance in a community or region that are in excess of normal expectancy and that are from a common or propagated source.

(2) Notwithstanding ORS 441.155 and 441.156, a hospital is not required to follow a written hospital-wide staffing plan developed and approved by the hospital nurse staffing committee under ORS 441.154 upon the occurrence of a national or state emergency requiring the implementation of a facility disaster plan, or upon the occurrence of sudden unforeseen adverse weather conditions or an infectious disease epidemic suffered by hospital staff.

(3) Upon the occurrence of an emergency circumstance not described in subsection (2) of this section, either cochair of the hospital nurse staffing committee may require the hospital nurse staffing committee to meet to review and potentially modify the staffing plan in response to the emergency circumstance. [2015 c.669 §5a]

Note: See note under 441.152.

441.166 Need for replacement staff. (1) For purposes of this section, “nursing staff” includes registered nurses, licensed practical nurses, certified nursing assistants and other hospital nursing staff members as defined by the Oregon Health Authority by rule.

(2) When a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain nursing staff for unfilled hours or shifts before requiring a nursing staff member to work overtime.

(3)(a) Except as provided in subsection (4) of this section, a hospital may not require a nursing staff member to work:

(A) Beyond the agreed-upon and prearranged shift, regardless of the length of the shift;

(B) More than 48 hours in any hospital-defined work week;

(C) More than 12 hours in a 24-hour period; or

(D) During the 10-hour period immediately following the 12th hour worked during a 24-hour period.

(b) For purposes of paragraph (a)(D) of this subsection, a nursing staff member begins to work when the nursing staff member begins a shift.

(4) A hospital may require an additional hour of work beyond the work authorized under subsection (3) of this section if:

(a) A staff vacancy for the next shift becomes known at the end of the current shift; or

(b) There is a potential harm to an assigned patient if the nursing staff member leaves the assignment or transfers care to another nursing staff member.

(5) If a nursing staff member agrees to work overtime, the nursing staff member is accountable for the nursing staff member's competency in practice and is responsible for notifying the nursing staff member's supervisor when the nursing staff member's ability to safely provide care is compromised.

(6)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (3) of this section.

(b) Time spent on call or on standby when the nursing staff member is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (3) of this section.

(c) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (3) of this section.

(7) If a nursing staff member believes that a hospital unit is engaging in a pattern of requiring direct care nursing staff to work overtime for nonemergency care,

the nursing staff member may report that information to the hospital nurse staffing committee established for the hospital pursuant to ORS 441.154. The hospital nurse staffing committee shall consider the information when reviewing the written hospital-wide staffing plan as required by ORS 441.156.

(8) The provisions of this section do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan; or

(b) In emergency circumstances identified by the authority by rule. [2001 c.609 §4; 2005 c.665 §1; 2009 c.595 §734; 2015 c.669 §6]

Note: See note under 441.152.

441.168 Leaving a patient care assignment. A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed upon extended shift without authorization from the appropriate supervisory personnel. [2001 c.609 §5]

Note: See note under 441.152.

441.169 Public notice. On each hospital unit, a hospital shall post a notice summarizing the provisions of ORS 441.152 to 441.177 in a place that is clearly visible to the public that includes a phone number for purposes of reporting a violation of the laws. [2015 c.669 §7]

Note: See note under 441.152.

441.170 [2001 c.609 §6; 2009 c.595 §735; 2015 c.669 §13; renumbered 441.175 in 2015]

441.171 Complaint investigations. (1) For purposes of ensuring compliance with ORS 441.152 to 441.177, the Oregon Health Authority shall:

(a) Within 60 days after receiving a complaint against a hospital for violating a provision of ORS 441.152 to 441.177, conduct an on-site investigation of the hospital; and

(b) Within 60 days after issuing an order requiring a hospital to implement a plan to correct a violation of ORS 441.152 to 441.177, conduct an investigation of the hospital to ensure compliance with the plan.

(2) When conducting an investigation of a hospital to ensure compliance with ORS 441.152 to 441.177, the authority shall, if the authority provides

notice of the investigation to the hospital, provide notice of the investigation to the cochairs of the hospital nurse staffing committee established pursuant to ORS 441.154.

(3) Following an investigation conducted pursuant to this section, the authority shall provide in writing a report of the authority's findings to the hospital and the cochairs of the hospital nurse staffing committee.

(4) When conducting an investigation of a hospital to ensure compliance with ORS 441.152 to 441.177, the authority may:

(a) Take evidence;

(b) Take the depositions of witnesses in the manner provided by law in civil cases;

(c) Compel the appearance of witnesses in the manner provided by law in civil cases;

(d) Require answers to interrogatories; and

(e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation. [2015 c.669 §10]

Note: See note under 441.152.

441.172 [2001 c.609 §9; renumbered 441.179 in 2015]

441.173 Hospital to maintain records; rules. A hospital shall keep and maintain records necessary to demonstrate compliance with ORS 441.152 to 441.177. For purposes of this section, the Oregon Health Authority shall adopt rules specifying the content of the records and the form and manner of keeping, maintaining and disposing of the records. A hospital must provide records kept and maintained under this section to the authority upon request. [2015 c.669 §8]

Note: See note under 441.152.

441.174 [2001 c.609 §10; renumbered 441.181 in 2015]

441.175 Civil penalties; suspension or revocation of license; rules; records. (1) The Oregon Health Authority may impose civil penalties in the manner provided in ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS 441.152 to 441.177. The authority shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a violation of ORS 441.152 to 441.177 when there is a reasonable belief that safe patient care has been or may be negatively impacted, except that a

civil penalty may not exceed \$5,000. Each violation of a written hospital-wide staffing plan shall be considered a separate violation. Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030.

(2) The authority shall maintain for public inspection records of any civil penalties or license suspensions or revocations imposed on hospitals penalized under subsection (1) of this section. [Formerly 441.170]

Note: See note under 441.152.

441.176 [2001 c.609 §11; renumbered 441.183 in 2015]

441.177 Posting of audit reports and civil penalties. The Oregon Health Authority shall post on a website maintained by the authority:

(1) Reports of audits described in ORS 441.157;

(2) Any report made pursuant to an investigation of whether a hospital is in compliance with ORS 441.152 to 441.177;

(3) Any order requiring a hospital to implement a plan to correct a violation of ORS 441.152 to 441.177;

(4) Any order imposing a civil penalty against a hospital or suspending or revoking the license

of a hospital pursuant to ORS 441.175; and

(5) Any other matter recommended by the Nurse Staffing Advisory Board established under ORS 441.152. [2015 c.669 §11]

Note: See note under 441.152.

441.178 [2001 c.609 §12; 2001 c.609 §12a; renumbered 441.184 in 2015]

441.179 Definitions for ORS 441.179 to 441.186. As used in ORS 441.179 to 441.186:

(1) "Affiliated hospital" means a hospital that has a business relationship with another hospital.

(2) "Hospital" means:

(a) An acute inpatient care facility, as defined in ORS 442.470; or

(b) A hospital as described in ORS 442.015.

(3) "Manager" means a person who:

(a) Has authority to direct and control the work performance of nursing staff;

(b) Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or

(c) Has been designated by a hospital to receive the notice described in ORS 441.181 (2).

(4) "Nursing staff" means a registered nurse, a licensed practical nurse, a nursing assistant or any other assistive nursing personnel.

(5) "Public body" has the meaning given that term in ORS 30.260.

(6) "Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff, or other adverse action taken against a nursing staff in the terms or conditions of employment of the nursing staff, as a result of filing a complaint. [Formerly 441.172]

Note: 441.179 to 441.192 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 441 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

441.180 [2001 c.609 §13; 2009 c.595 §736; 2015 c.669 §15; renumbered 441.185 in 2015]

441.181 Retaliation prohibited. (1) A hospital may not take retaliatory action against a nursing staff because the nursing staff:

(a) Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(b) Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;

(c) Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe,

dangerous or potentially dangerous care.

(2) Except as provided in subsection (3) of this section, the protection against retaliatory action in subsection (1) of this section does not apply to a nursing staff, unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in subsection (1)(a) of this section:

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(3) A nursing staff is not required to comply with the provisions of subsection (2) of this section if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of

providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime. [Formerly 441.174]

Note: See note under 441.179.

441.182 [2001 c.609 §14; renumbered 441.186 in 2015]

441.183 Remedies for retaliation. (1) A nursing staff aggrieved by an act prohibited by ORS 441.181 may bring an action in circuit court of the county in which the hospital is located. All remedies available in a common law tort action are available to a nursing staff if the nursing staff prevails in an action brought under this subsection and are in addition to any remedies provided in subsection (2) of this section.

(2) In an action brought under subsection (1) of this section, a circuit court may do any of the following:

(a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a continued violation of ORS 441.181.

(b) Reinstate the nursing staff to the same or equivalent position that the nursing staff held before the retaliatory action.

(c) Reinstate full benefits and seniority rights to the nursing staff as if the nursing staff had continued in employment.

(d) Compensate the nursing staff for lost wages, benefits and other remuneration, including interest, as if the nursing staff had continued in employment.

(e) Order the hospital to pay reasonable litigation costs of the nursing staff, including reasonable expert witness fees and reasonable attorney fees.

(f) Award punitive damages as provided in ORS 31.730.

(3) Except as provided in subsection (4) of this section, in any action brought by a nursing staff under subsection (1) of this section, if the court finds that the nursing staff had no objectively reasonable basis for asserting the claim, the court may award costs, expert witness fees and reasonable attorney fees to the hospital.

(4) A nursing staff may not be assessed costs or fees under subsection (3) of this section if, upon exercising reasonable and diligent efforts after filing the action, the nursing staff moves to dismiss the action against the hospital after determining that no issue of law or fact exists that supports the action against the hospital. [Formerly 441.176]

Note: See note under 441.179.

441.184 Unlawful employment practices; civil action for retaliation. (1) A hospital that takes any retaliatory action described in ORS 441.181 against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of ORS 441.181 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. Except for the provisions of ORS 659A.870, 659A.875, 659A.880 and 659A.885, violation of ORS 441.181 is subject to enforcement under ORS chapter 659A.

(3) Except as provided in subsection (4) of this section, a civil action under ORS 441.183 must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under ORS 659A.820.

(4) The nursing staff who has filed a complaint under ORS 659A.820 must commence a civil action under ORS 441.183 within 90 days after a 90-day notice is mailed to the nursing staff under this section.

(5) The commissioner shall issue a 90-day notice to the nursing staff:

(a) If the commissioner dismisses the complaint within one year after the filing of the complaint and the dismissal is for any reason other than the fact that a civil action has been filed.

(b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under paragraph (a) of this subsection or the matter has been resolved by the execution of a settlement agreement.

(6) A 90-day notice under this section must be in writing and must notify the nursing staff that a civil action against the hospital under ORS 441.183 may be filed within 90 days after the date of mailing of the 90-day notice and that any right to bring a civil action against the hospital under ORS 441.183 will be lost if the action is not commenced within 90 days after the date of mailing of the 90-day notice.

(7) The remedies under this section and ORS 441.183 are supplemental and not mutually exclusive. [Formerly 441.178]

Note: See note under 441.179.

441.185 Hospital posting of notice. (1) A hospital shall post a

notice summarizing the provisions of ORS 441.181, 441.183, 441.184 and 441.192 in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed \$500. Civil penalties under this section shall be imposed by the Oregon Health Authority in the manner provided by ORS 183.745. [Formerly 441.180]

Note: See note under 441.179.

441.186 Rights, privileges or remedies of nursing staff. (1)

Except as provided in subsection (2) of this section, nothing in ORS 441.183 and 441.184 shall be deemed to diminish any rights, privileges or remedies of a nursing staff under federal or state law or regulation or under any collective bargaining agreement or employment contract.

(2) ORS 441.183 and 441.184 provide the only remedies under state law for a nursing staff for an alleged violation of ORS 441.181 committed by a hospital. [Formerly 441.182]

Note: See note under 441.179.

441.192 Notice of employment outside of hospital.

(1) A hospital, as defined in ORS 441.179, may require a registered nurse who is receiving full employment benefits from the hospital to provide notice of any outside employment that may reasonably impede the ability of the nurse to fulfill the nurse's obligation to the hospital in providing nursing services to patients under the hospital's care.

(2) If a hospital determines that the outside employment causes a risk to patients receiving services in the hospital, the hospital may require the nurse to discontinue the outside employment.

(3) A hospital may not unreasonably restrict the outside employment of nurses and may restrict outside employment only if the hospital provides in writing to the nurse an explanation of the hospital's documentation that the outside employment creates a risk to patients in the hospital. A nurse who does not discontinue outside employment if required by the hospital may be disciplined or terminated from employment by the hospital.

(4) A nurse who does not provide notice as required by a hospital pursuant to this section

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may be disciplined or terminated from employment by the hospital if the failure to provide notice creates a risk to a patient in the hospital. [2001 c.609 §18]

Note: See note under 441.179.