



**HB 4106 Surgical Technologist Education
Requirements Rule Advisory Committee
August 30, 2022
1:00 – 4:00 p.m. via Zoom**

RAC MEMBER ATTENDEES	
Amy Aldus	Mt. Hood Community College
Ben Price	NBSTSA
Carrie Norris	Samaritan Health Services
Chris Skagen	Oregon Ambulatory Surgery Center Association
Dana Van Laeys	National Center for Competency Testing
Don Dreese	Oregon Association of Surgical Technologists
Erin Lowrie	Lane Surgery Center
Katie Harris	Oregon Association of Hospital and Health Systems
Kayla Ryneerson	Wallowa Memorial Hospital
Lynn Anderson	International Joint Commission on Allied Health Personnel in Ophthalmology (JCAHPO)
Maureen McGee	Concorde Career College
Paula Smith	Eye Health NW Eastside Surgery Center
Randy Hubbard	Mercy Health – Roseburg
Sabrina Riggs	Oregon Academy of Ophthalmology
Samantha Miles	River Road Surgery Center
Tammy Spohn	Surgery Center of Southern Oregon
Timothy Pimentel (for Ron Woita)	Sky Lakes Hospital
OTHER INTERESTED PARTIES	
Bill Bouska	Samaritan Health Services
Colleen Leard	ABHES Surgical Technology Board Member
Doug Riggs	OASCA
Josephine Colacci	Association of Surgical Technologists
Montana Lewellen	Association of Surgical Technologists
Ruth Miles	Salem Health
Troy Duker	Oregon Association of Hospital and Health Systems
Wade Delk	JCAHPO
OHA and BOLI Staff	
Anna Davis	Oregon Health Authority, PHD-Health Facility Licensing & Certification
Erin Seiler	Oregon Bureau of Labor and Industries
Lisa Ransom	Oregon Bureau of Labor and Industries
Mellony Bernal	Oregon Health Authority, PHD-Health Care Regulation & Quality Improvement

Welcome, Housekeeping and Agenda Review

Mellony Bernal introduced self and welcomed attendees to the HB 4106 Surgical Technologist Education Requirements Rule Advisory Committee (RAC). The following housekeeping items were reviewed:

- Attendees were asked to enter their name and organization into the Chat and identify whether a RAC member, member of public, OHA employee or BOLI employee.
- Attendees were asked to keep devices muted until called upon.
- RAC members were asked to type the word "Comment" to indicate they want to speak to a particular issue or ask questions. RAC members who do not necessarily want to speak but want the agencies to consider information were asked to type into the Chat "For Your Information" or "For the Record" and include the information they wish to share. Persons will be called upon in the order appearing on the Chat.
- Attendees were asked not to use the Chat feature to talk amongst themselves.
- Information typed into the Chat is a matter of public record and will be considered for purposes of drafting rules or education requirements.
- Per the Oregon Health Authority's (OHA) policy, members of the public may attend but may not participate or offer public comment during the meeting. Members of the public who wish provide comments or information should email those comments to mellony.c.bernal@dhsoha.state.or.us.
- After the RAC process has concluded, there will be an opportunity to provide oral public comments at a public hearing or to send written public comments during the public comment period. Information about the notice of proposed rulemaking and public hearing will be shared by email using the GovDelivery ASC and Hospital Listservs. The link to join the listserv was shared via Chat:
https://public.govdelivery.com/accounts/ORDHS/subscriber/new?qsp=ORDHS_16
- The RAC meeting will be recorded for purposes of generating written meeting notes.

The agenda was reviewed by M. Bernal.

Rulemaking Advisory Committee Overview and Scope

Overview

M. Bernal noted the following:

- Agencies convene RACs for a variety of reasons including when the legislature passes laws that require rules be adopted, when the legislature delegates broad statutory authority and the agency must interpret those laws by rule, and amending, repealing or suspending existing rules.
- Agency drafts the rule text and convenes the RAC to seek input and suggestions on the rule text and consider possible changes, concerns, issues, etc. Additionally, the RAC will review the Statement of Need and Fiscal Impact (SNFI) with also includes an equity impact statement.
- The RACs role is advisory only and consensus is not necessary. The agency retains the final decision on final rule text.

- Considering information provided by the RAC, the agency will finalize proposed rule text and submit notice of proposed rulemaking to the Secretary of State along with the SNFI.
- A public hearing will be scheduled where persons can present oral testimony or submit written comments.
- The agency reviews and considers all of the testimony and comments received and determines whether additional changes to the rule are necessary based on the comments received.
- The agency finalizes rule text and determines effective date and files permanent rulemaking notice with the Secretary of State.

Scope

- The purpose of this RAC is to consider proposed revisions to OAR 333-076-0137 for Ambulatory Surgery Centers (ASCs) and OAR 333-520-0050 for Hospitals due to passage of HB 4106 from the 2022 legislative session. Rule have been revised to add the apprenticeship education and training model as a route to qualify to practice as a surgical technologist.
- The RAC will be asked to consider the possible fiscal impact to ASCs, hospitals, the public, units of local government, state agencies and small businesses as well as consider the equity impact to Oregon.
- The agency will consider information provided during this RAC meeting to determine whether any additional amendments to rule text are necessary.
- Depending on the comments received, there are two possible scenarios for filing rules:
 - 1) File final proposed rules with the Public Health Division's rule coordinator by September 23, 2022, post in the October 1 Oregon Bulletin and hold a public hearing on or after October 15, 2022.
 - 2) File final proposed rules with the Rule's Coordinator by October 21, 2022, post in the November 1 Oregon Bulletin, and hold a public hearing on or after November 15, 2022.
- Regardless of public hearing date, the intent will be to have rules effective January 1, 2023.

HB 4106 and ORS 676.870 through .80 Highlights

M. Bernal provided an overview of current statutes and the legislation that passed.

- In 2015, HB 2876 (2015 Oregon Laws, Chapter 373) was passed and provided that a person practicing surgical technology in a health care facility must meet certain education standards.
 - ORS 676.870 defines health care facility, surgical technology and rural or medically underserved areas.
 - ORS 676.875 describes the educational requirements.
 - ORS 676.880 exempts persons that are licensed by a regulatory board who perform within scope.
 - ORS 676.885 allows a rural hospital or ASC to allow an individual to practice while attending an education program.
 - ORS 676.890 gives the OHS authority to issue civil penalties.
- HB 4106 revised ORS 676.875 by:
 - Including the OSA certification by the Joint Commission on Allied Health Personnel in Ophthalmology.

- Allowing an individual who completes a registered apprenticeship approved under ORS chapter 660 and who obtains certification by the NCCT to practice as a surgical technologist.
- Requiring that an apprentice is provided adequate direct supervision at all times while performing surgical technology during training.
- HB 4106 further prescribed that the State Apprenticeship and Training Council study registered surgical technologist apprenticeship programs including graduation and placement rates and submit findings to the legislature by September 1, 2025.
- The legislation has a January 1, 2023 effective date.

Before proceeding to the rule review, M. Bernal asked RAC members whether they had any comments or feedback.

- RAC member expressed concern that information about the curriculum standards for an apprenticeship have not been posted. The Association of Surgical Technologists is uncertain how the same education standards currently met by the community colleges can be met by an apprenticeship program. Dr. Lisa Ransom with the Bureau of Labor and Industries responded that one of the main components of developing a registered apprenticeship program is meeting with the industry subject matter experts to identify the certified curriculum and related training that must be agreed upon by the apprenticeship training committee and that will be a sustainable standard that meets minimum requirements agreed by identified partners.
- It was noted that there are meeting notes from the May 25, 2022 Community Partners Meeting that provide more information about the process of developing curriculum standards. **Follow-up: These meeting notes can be found at <http://healthoregon.org/hcrgirules>.**
- RAC member noted that [ORS 660.137](#) identifies the structure of the local joint apprenticeship committee and ensuring that there is adequate education and training and oversight of students. Additionally, there are quality control measures to ensure adequate supervision.
- RAC member shared similar concerns about adequate curriculum standards.
 - Throughout the legislative process, the importance of the educational components was shared with the legislature including what's necessary to protect patient safety.
 - Both the lecture and lab components need to be equivalent to the education provided through other pathways recognized by the two accrediting bodies, Commission on Accreditation of Allied Health Education Programs (CAAHEP) and the Accrediting Bureau of Health Education Schools (ABHES).
 - Since the specific curriculum and education requirements will be developed through BOLI, both OHA and BOLI staff need to carefully consider whether the proposed rule language as drafted aligns with [2022 OL Chapter 65](#), Section 1, Subsection (1)(a)(A). It is believed that this section requires equivalence for education which is not reflected in the current proposed rules.
 - Ensuring that education standards must be equivalent will alleviate concerns raised and provide additional guidance in working with the interested parties in developing an apprenticeship program that meets education requirements to protect patient safety.
- Staff questioned whether the information shared meant that the apprentice would have to complete both a two-year degree as well as the apprenticeship which was not believed to be the intent of the legislation.

- RAC member stated via chat that there are many current certified surgical technologist programs that are shorter than two years and noted that an apprenticeship program allows diverse populations to achieve training that can be inclusive, complete and safe in their communities.
- BOLI staff noted that the intent of an apprenticeship program is to provide a parallel pathway that is equivalent to the certified curriculum currently in use.
- RAC member clarified that the education received through the apprenticeship must be equivalent to the ABHES/CAAHEP curriculum standards and that there is not an expectation that an apprentice complete both a two-year degree and the apprenticeship. It was noted that Section 1, Subsection (1)(a)(A) of legislation specifies that a person must complete an educational program accredited by a national accreditation organization approved by OHA. The two national, accrediting bodies for surgical technologist education programs are CAAHEP an ABHES. These two accrediting bodies have been working collaboratively and more frequently with different entities that are looking to establish an apprenticeship model and developing practical apprenticeship models that would meet national accreditation requirements.
- Several RAC members concurred with information noted above via Chat.

M. Bernal thanked RAC members for information and staff will consider the legislation and information shared.

OAR 333-076-0137 and OAR 333-520-0050 Rule Review

M. Bernal noted that the two rules affected by the legislation are OARs 333-076-0137 relating to ambulatory surgery centers and 333-520-0050 relating to hospitals. The amendments proposed in each rule set are the same.

M. Bernal provided a brief overview of how to reference sections and paragraphs in rule and noted that the 'chapter' number 333 is assigned to all Public Health Division rules, the 'division' number is assigned based on topic, so all ASC rules will fall under 333-076; and the last four numbers are the rule number. In the rule text, (1) = section, (a) = subsection, (A)= paragraph.

The following changes to OAR 333-076-0137, sections (7) and (8) were noted:

- Section (7) and subsection (7)(a) - Minor changes were made for clarification.
- Subsection (7)(b) – Changes in this subsection were made to align with HB 4106 which includes persons who hold and maintain a subspecialty surgical assistant or subspecialty surgical technologist certification such as the Ophthalmic Surgical Assistant (OSA) certification issued by the Joint Commission on Allied Health Personnel in Ophthalmology (JCAHPO). The rule specifies the three certifying bodies NBSTSA, NCCT and JCAHPO.
- Section (8) – This is a new section that adds the apprenticeship pathway which specifies that the surgical technologist apprenticeship program must:
 - Comply with ORS chapter 660;
 - Be registered with the Bureau of Labor and Industries; and
 - Have its education standards approved by the Oregon State Apprenticeship and Training Council.

The rule further states that the apprentice must have received a Journey Certificate and must obtain certification by the NCCT.

Discussion:

- RAC member reiterated concerns stated previously and asked staff to carefully consider Section 1, subsection (1)(a)(A) of HB 4106 specifically with respect to use of term 'notwithstanding' in section (8) of the rule. The legislation specifies that the person 'has completed an education program for surgical technologists accredited by a national accreditation organization approved by the OHA **and** holds and maintains a surgical technologist certification. All pathways, including the apprenticeship pathway, must be accredited by either CAAHEP or ABHES. Use of term notwithstanding would contradict the legislation. RAC member further reiterated intent that the education curriculum for all pathways is equivalent.
- Several RAC members concurred with above statement.
- RAC member stated via Chat that ORS chapter 660 demonstrates BOLI has legal authority for educational standards.

M. Bernal thanked RAC members for information and indicated staff will consider further.

The following changes to OAR 333-076-0137, sections (9) through (11) were noted:

- Section (9) – Additional text clarifies that the NCCT, NBSTSA, and JCAHPO must be accredited by the National Commission for Certifying Agencies (NCCA).
- Section (10) – Minor changes were made for clarification.
- Section (11) – Text was added clarifying that an apprentice receiving education and training and who is not yet certified by the NCCT may practice surgical technology but only for purposes of obtaining training on the job. The apprentice must be actively enrolled in an apprenticeship program, have a written agreement as defined in ORS chapter 660, and must be supervised at all times by the operating room physician or dentist who must be physically present at all times, who directs delegated tasks and who can personally respond to any emergency until the patient is removed from the operating room or procedure room.

Discussion:

- RAC member stated that the legislation requires that an apprentice "is at all times provided adequate direct supervision while performing surgical technology." It was noted that the existing OHA rules already require an operating room to be supervised at all times by an experienced registered nurse or physician, and as such, it is uncertain what having this rule adds. It was further stated that operating room physicians serve in a different role than the surgical technologist and many have not been trained as a surgical technologist nor will physicians have the capacity to assist an apprentice in an emergency. In career colleges, the student must be overseen by a preceptor who is someone trained, proficient and regularly serves in the same role as the student when with live patients. It is believed the intent of the legislation is to have someone supervise that is trained in the same role within the operating room as the apprentice. The RAC member asked that the text be modified.
- RAC members concurred with comments above and one RAC member noted that an apprentice in training needs to have a preceptor or be supervised by someone who plays the same role.
- RAC member stated via Chat that direct supervision is unlikely as most of the tasks performed by surgical technologists are performed independently in preparation for the procedure. Physicians trust the surgical technologist to be adequately trained.
- RAC member stated via Chat, that direct supervision is defined elsewhere in Oregon statute and thus the proposed language is repetitive and may be confusing. ORS 676.870 already specifies that the surgical technologist performs tasks 'as directed' in the operating room. It

was further stated via Chat that a surgical technologist always works under the supervision of the appropriate member of the operating room team.

- RAC member noted that much of the time prepping for a case is supervised by the circulating nurse as the surgeon may not enter the room until the patient is in the room or until the patient is asleep. The surgeon is therefore trusting that the person prepping for the surgery is highly trained not just in the procedure but everything that leads up to it, such as checking and maintaining sterilization. This cannot be achieved with an 'accelerated apprenticeship program.'
- RAC member questioned reference to an 'accelerated apprenticeship' and staff responded that the rule does not reference an accelerated program. The apprenticeship is an alternate pathway from the traditional community college pathways to achieve the same result.
- RAC member asked what the estimated timeframe is for completing an apprenticeship. OHA staff noted that the training and education standards for an apprenticeship will be worked on through the Bureau of Labor and Industries. RAC member further questioned the apprenticeship model for health careers where there is a risk to patient safety.
- Staff asked RAC member who commented on supervision whether the comment was about the apprenticeship model or a general comment about those with less experience and supervision. RAC member responded that for students in a career college that are moving into training with actual patients, the student must be supervised by a preceptor who is a person trained in and who regularly performs the same role in an operating room and should apply to apprenticeship model as well.
- Additional comments by RAC members via Chat:
 - Any student or employee should have direct supervision by someone in the same role.
 - A surgical technologist student is under the supervision of a qualified surgical technologist and both the student, and the CST set up the cases and are side by side during the surgery.
 - Surgeons are expertly trained in instruments, equipment, and infection control. They determine in each case what is used for their procedures including drapes, instruments, sponges, and suture through their preference cards. To say otherwise is contrary to their training and education.
 - Healthcare has successful apprenticeship programs (such as medical assisting), where direct patient care under supervision occurs. No-where in the apprenticeship program, is it suggested that someone unsupervised should be scrubbing into cases.

Staff thanked RAC members for their comments which will be considered further for possible edits to subsection (11)(c).

The following changes to OAR 333-076-0137, section (12) was noted:

- Minor edits for purposes of clarity.

Staff noted that the OAR 333-520-0050 has the same edited text as 333-076-0137 and unless RAC member had specific comments, the same comments received will be applied to 333-520.

- RAC members had no additional comments.

Statement of Need and Fiscal Impact

M. Bernal shared the following information regarding the Administrative Procedures Act and HB 2993 relating to the equity impact statement:

- An agency must seek the RACs recommendation on the fiscal impact statement;
- If the RAC indicates there will be a significant adverse fiscal impact on small businesses, what suggestions does the RAC have on mitigating costs of compliance;
- An agency must identify and consult with the RAC on how adoption of rule will affect racial equity in Oregon;
- Oregon's racial equity vision:
 - Dismantle institutional and structural racism in Oregon state government, and by doing so have resounding impacts on the communities of our state;
 - Build a more equitable Oregon where everyone has the opportunity to thrive, and everyone's voice is heard;
 - Ensure an inclusive and welcoming Oregon for all by celebrating our collective diversity of race, ethnicity, culture, color, disability, gender, gender identity, marital status, national origin, age, religion, sex, sexual orientation, socio-economic status, veteran status, and immigration status
- The following definitions were shared via Chat:
 - Equity. An acknowledgement that not all people, or all communities, are starting from the same place due to historic and current systems of oppression. Equity is the effort to provide different levels of support based on an individual's or group's needs in order to achieve fairness in outcomes. Equity actionably empowers communities most impacted by systemic oppression and requires the redistribution of resources, power, and opportunity to those communities.
 - Institutional Racism. A form of racism that occurs within institutions that reinforces systems of power. It is often more difficult to name or witness because it is more deeply embedded in practices and policies, often presenting as a norm. Institutional racism refers to the discriminatory policies and practices of particular institutions (schools, workplaces, etc.) that routinely cause racially inequitable outcomes for people of color and advantages for white people. Individuals within institutions take on the power of the institution when they reinforce racial inequities.
 - Structural Racism. A system in which public policies, institutional practices, cultural representations and other norms work in various, often reinforcing ways to perpetuate racial group inequities. It is a feature of the society in which we all exist.

RAC members were asked to keep these definitions in mind during the review of the equity impact statement and think about the following questions:

- What racial/ethnic populations are affected or most harmed by the rule from a racial equity perspective?
- How or in what specific ways are racially/ethnically specific communities affected?
- How should the agency engage the populations identified?

Staff noted via Chat that the Oregon's Diversity, Equity and Inclusion Action Plan can be found at: https://www.oregon.gov/das/Docs/DEI_Action_Plan_2021.pdf

RAC member shared via Chat NCCT's position in brief:

- 1) NCCT does not seek to introduce legislation but will support fair and equitable legislation that mandates credentialing by a "certification program" (i.e., with examination) holding accreditation by the National Commission for Certifying Agencies (NCCA).

- 2) Certification examination programs are designed to assess whether examinees meet defined entry level standards based upon a formal job analysis.

RAC members via Chat shared the following comments:

- Legislators clearly believe that the current program is discriminatory and intentionally locks out BIPOC individuals from surgical technology. That is one reason that this new, more equitable process was established by the Legislature by such overwhelming margins.
- Providing education and training in an employed model provides the most inclusive opportunity for underserved. Many employees in entry level positions that are identified as exemplary could have the opportunity to enter the apprenticeship program, including all populations identified in the racial equity statement.
- Agree with the importance of allowing exemplary employees an opportunity to enter the apprenticeship program.
- OASCA will have a specific plan to reach out to BIPOC communities.
- LPNs have had to be trained on how to scrub to bridge the gap because of inability to recruit a single CST since 2015.
- In Southern Oregon the Latina community in particular will have access to a living wage and opportunity for continued education and training through this apprenticeship that in some cases can change the trajectory for future generations. This community can find it more difficult to relocate and not earn a wage while in a formal educational setting.
- CSTs are one of our fastest growing needs
- The apprenticeship program is an exciting way to open the doors to getting the proper people in the role of surgical technology and helping alleviate the burden of filling the staffing voids. Some of the best surgical technologists are the legacy surgical technologists that never went through a formal program. With proper guidance and support, individuals can thrive in the position.

M. Bernal reviewed the Statement of Need and Fiscal (SNFI) Impact and the equity impact statement. RAC members were asked to consider the questions indicated previously relating to impacted communities.

- RAC members had no further comments or suggested edits to the SNFI.

M. Bernal shared that the information provided from RAC members will be considered further. Specifically, sections (8) and (11) will be considered for edits. M. Bernal noted that rather than convening another meeting, notes from this meeting and proposed edits will be shared with the RAC via email. RAC members were asked for feedback.

- RAC members had no further comments

M. Bernal noted that depending on how quickly staff can meet and consider information the following timelines will apply:

- October 1 Oregon Bulletin posting, public hearing would occur on or after October 15
- November 1 Oregon Bulletin posting, public hearing would occur on or after November 15

A. Davis thanked RAC members for their participation and taking time to provide feedback.

RAC member via Chat indicated that they would like to see some required minimum or parallel education standards within the rule as a guideline for the Apprenticeship Training Council. 435

nationally accredited surgical technology programs incorporate the following components and clock hours into their curriculum and the first 800 hours are completed before students work directly with surgical patients.

- Anatomy and Physiology – 150
- Pathophysiology – 45
- Pharmacology - 30
- Microbiology – 45
- Medical Terminology – 30
- Introduction to Surgical Technology – 90
- Skills Labs – 225
- Surgical Procedures – 157
- Clinical Rotation – 540
- Certification Exam Review – 15
- Capstone Project – 30
- Total - 1357

RAC member further stated via Chat the following: "These are not technologists who work on machines – patient safety should come first in considerations of abbreviated education programs. Careful consideration by SMEs will need to be given to how to create a program that offers the same education as a formal program in an apprenticeship setting, and any decision to abbreviate training should only be taken with potential affect on patient lives taken into account. Further, adequate supervision in the clinical setting is going to be of the utmost importance to safe delivery of patient care during these training programs."

RAC member noted via Chat to have OHA's legal counsel consider the proposed rules including suggested revisions.

Public comment received via Chat

The following comments were shared by members of the public on the Chat:

- ABHES recognizes the NCCT certification exam as an approved outcomes measure for their surgical technology programs.
- The beauty of this program, is that the geographic areas in the most need, can develop surgical technologists in their own communities. Standards will be set, using a quality educational template, and a Nationally Accredited Certification Program through the NCCT. It is a win-win.