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ARCHIVES DIVISION

STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

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CHAPTER 333
OREGON HEALTH AUTHORITY
PUBLIC HEALTH DIVISION

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& LEGISLATIVE COUNSEL

FILING CAPTION: Hospital staffing procedures and requirements to comply with HB 2697 (2023)

EFFECTIVE DATE: 01/01/2024 THROUGH 06/28/2024

AGENCY APPROVED DATE: 12/21/2023

CONTACT: Health Care Regulation & Quality Improvement
Section
971-673-0540
publichealth.rules@odhsoha.oregon.gov

800 NE Oregon St. Suite
465
Portland, OR 97232

Filed By:
Public Health
Division
Rules Coordinator

NEED FOR THE RULE(S):

House Bill 2697 (Oregon Laws 2023, chapter 507), which went into effect on September 1, 2023, requires the Oregon Health Authority (OHA) to adopt administrative rules to implement the process for receiving complaints under ORS 441.171 and Section 12 of HB 2697 related to filing complaints about missed meal and rest breaks (Section 29). HB 2697 requires the agency to promulgate these rules by January 1, 2024. In addition, certain existing rules are no longer necessary or supported by the law given the legislative changes. To comply with the January 1 deadline for rulemaking, OHA is issuing temporary rules effective January 1, 2024. OHA will then take additional time to effectively engage a diverse group of partners for permanent rulemaking in early 2024.

JUSTIFICATION OF TEMPORARY FILING:

OHA finds that failure to act promptly will result in serious prejudice to the public interest, the OHA, and hospital staff (e.g. nursing staff members, professional/technical staff members and service staff members) in Oregon. These rules need to be adopted promptly so that the agency can comply with statutory requirements and provide hospital staff a mechanism for submitting complaints related to staffing issues. Without these rules, OHA lacks the necessary procedures for processing complaints, impairing OHA's ability to timely, consistently, and effectively review, investigate, and respond to complaints of staffing violations. These consequences will be suffered by hospital staff and hospital administration. Failing to adopt these rules immediately will cause these consequences because many requirements came into effect September 1, 2023 and complaints requiring processing have already been received. HB 2697 requires that OHA adopt rules by January 1, 2024. Adopting these temporary rules will provide the necessary procedures for OHA to process complaints, mitigating these consequences.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 2697: <https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureDocument/HB2697>
Oregon Revised Statutes Ch. 441, Health Care Facilities:

RULES:

333-501-0035, 333-501-0040, 333-501-0045, 333-503-0002, 333-503-0005, 333-503-0010, 333-503-0020, 333-503-0040, 333-503-0050, 333-503-0060, 333-510-0002, 333-510-0045, 333-510-0105, 333-510-0110, 333-510-0115, 333-510-0120, 333-510-0125, 333-510-0130, 333-510-0135, 333-510-0140

SUSPEND: 333-501-0035

RULE SUMMARY: 333-501-0035, Nurse Staffing Audit Procedure: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~333-501-0035~~

~~Nurse Staffing Audit Procedure~~

~~(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; and~~

~~(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.~~

~~Statutory/Other Authority: ORS 413.042, 441.157, 441.175~~

~~Statutes/Other Implemented: ORS 441.157~~

SUSPEND: 333-501-0040

RULE SUMMARY: 333-501-0040, Nurse Staffing Complaint Investigation Procedures: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 413.042, 441.025, 441.057, 441.171, 441.175~~

~~Statutes/Other Implemented: ORS 441.057, 441.171~~

SUSPEND: 333-501-0045

RULE SUMMARY: 333-501-0045, Civil Penalties for Violations of Nurse Staffing Laws: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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: Tables referenced are available from the agency.]~~

~~Statutory/Other Authority: ORS 413.042, 441.175, 441.185~~

~~Statutes/Other Implemented: ORS 441.175, 441.185~~

ADOPT: 333-503-0002

RULE SUMMARY: OAR 333-503-0002, Applicability: Specifying that the rules apply to hospital staffing pursuant to ORS 441.152 to 441.177 and Oregon Laws 2023, Chapter 507.

CHANGES TO RULE:

333-503-0002

Applicability

These rules apply to hospital staffing pursuant to ORS 441.152 to 441.177 and Oregon Laws 2023, chapter 507.

Statutory/Other Authority: ORS 413.042, ORS 441.151 - 441.177, OL 2023, Ch. 507

Statutes/Other Implemented: ORS 441.151 - 441.177, OL 2023, Ch. 507

ADOPT: 333-503-0005

RULE SUMMARY: OAR 333-503-0005, Definitions: OHA is including the following definitions in order to implement the hospital staffing regulations: Adopt, Allowed deviation, Hospital, Nursing staff, Valid complaint.

CHANGES TO RULE:

333-503-0005

Definitions

For the purposes of these rules, for determining whether a complaint is valid and determining whether there has been a violation identified in Oregon Laws 2023, chapter 507, section 20(2) or (3), the following definitions apply:¶

(1) "Adopt" for purposes of adopting a nurse staffing plan means that:¶

(a) A hospital staffing committee comprised of the members required in ORS 441.154 (as amended by Oregon Laws 2023, chapter 507, section 13) voted and approved a nurse staffing plan in accordance with the requirements of ORS 441.154 (as amended by Oregon Laws 2023, chapter 507); or¶

(b) An arbitrator selected in accordance with Oregon Laws 2023, chapter 507, section 9(3) issues a decision on a nurse staffing plan or the disputed parts of a plan in accordance with the requirements of section 9(3). ¶

(2) "Allowed deviation" means a deviation from a staffing plan that is permitted under Oregon Laws 2023, chapter 507, sections 3(12), 4(12) and 6(6), and the unit manager has provided written notice to the applicable committee within 10 days of the deviation. ¶

(3) "Hospital" includes a hospital as described in ORS 442.015 and an acute inpatient care facility as defined in ORS 442.470.¶

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

(5) "These rules" means OAR 333-503-0002 to 333-503-0060.¶

(6) "Valid complaint" has the meaning given that term in ORS 441.171, as amended by Oregon Laws 2023, chapter 507, section 18.

Statutory/Other Authority: ORS 413.042, ORS 441.151 - 441.177, OL 2023, Ch. 507

Statutes/Other Implemented: ORS 441.151 - 441.177, OL 2023, Ch. 507

ADOPT: 333-503-0010

RULE SUMMARY: OAR 333-503-0010, Filing Hospital Staffing Complaints: In accordance with HB 2697, OHA is adopting a process for filing complaints. This rule also addresses how those complaints will be processed which is in accordance with ORS 441.171 and OAR 333-503-0020.

CHANGES TO RULE:

333-503-0010

Filing Hospital Staffing Complaints

(1) Only a hospital staff person or an exclusive representative of a hospital staff person, as that term is defined in ORS 441.151, may submit a complaint. ¶

(2) Complaints must be submitted through the Oregon Health Authority (Authority)'s website, on a form prescribed by the Authority. Individuals that need an accommodation for filing a complaint can contact mailbox.nursestaffing@odhsoha.oregon.gov. ¶

(3) Once a complaint has been filed, the Authority will process complaints in the manner described in ORS 441.171 and OAR 333-503-0020.

Statutory/Other Authority: ORS 413.042, ORS 441.151 - 441.177, OL 2023, Ch. 507

Statutes/Other Implemented: ORS 441.151 - 441.177, OL 2023, Ch. 507

ADOPT: 333-503-0020

RULE SUMMARY: OAR 333-503-0020, Processing Complaints: In accordance with HB 2697, OHA is adopting a process for investigating complaints.

CHANGES TO RULE:

333-503-0020

Processing Complaints

(1) The Oregon Health Authority (Authority) will only investigate complaints that are:

(a) Valid complaints; and

(b) Submitted within 60 calendar days of the violation alleged in the complaint.

(2) Once the Authority has determined that a complaint is a timely valid complaint, the Authority will begin its investigation in accordance with ORS 441.171 and these rules.

(3) To establish it is not subject to civil penalty for a violation of a nurse staffing plan, professional and technical staffing plan, or a hospital service staffing plan, the hospital must submit, by no later than 20 days after receiving notice of an investigation under Oregon Laws, chapter 507, section 18(1)(c), documentation to the Authority demonstrating the actions it took, if any, described in Oregon Laws, chapter 507, section 19(4). The Authority will consider the documentation timely submitted by a hospital to determine whether the hospital is subject to civil penalty under Oregon Laws 2023, chapter 507, section 19(4) for a violation of a nurse staffing plan, a hospital professional or technical staffing plan, or a hospital service staffing plan.

Statutory/Other Authority: ORS 413.042, ORS 441.151 - 441.177, OL 2023, Ch. 507

Statutes/Other Implemented: ORS 441.151 - 441.177, OL 2023, Ch. 507

ADOPT: 333-503-0040

RULE SUMMARY: OAR 333-503-0040, Hospital Staffing Enforcement: OHA is adopting an enforcement process for violations listed in Section 20(2) of Oregon Laws 2023, Chapter 507.

CHANGES TO RULE:

333-503-0040

Hospital Staffing Enforcement

Each occurrence of an action or failure to act under Oregon Laws 2023, chapter 507, section 20(2) is a separate violation.

Statutory/Other Authority: ORS 413.042, ORS 441.151 - 441.177, OL 2023, Ch. 507

Statutes/Other Implemented: ORS 441.151 - 441.177, OL 2023, Ch. 507

ADOPT: 333-503-0050

RULE SUMMARY: OAR 333-503-0050, Hospital Staffing Plan Waiver: OHA is adopting a process by which hospitals may request a waiver to written hospital-wide staffing plans. Hospitals are not required to submit a waiver to OHA but may do so if the waiver is necessary to ensure that the hospital is staffed to meet the healthcare needs of its patients.

CHANGES TO RULE:

333-503-0050

Hospital Staffing Plan Waiver

(1) A hospital may request a waiver under ORS 441.164 to the written hospital-wide staffing plan requirements in ORS 441.152 to 441.177, if the 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 Oregon Health Authority (Authority) in writing;¶

(b) Identify the specific requirement requested to be waived;¶

(c) State the reason or reasons for which the hospital is seeking the waiver;¶

(d) Identify alternatives considered, if any, and why alternatives (including compliance) were not selected;¶

(e) Demonstrate that the waiver is necessary for the hospital to ensure the hospital is staffed to meet patient health care needs; and¶

(f) Explain whether the hospital notified the applicable staffing committee of the request for a waiver prior to its submission.¶

(3) Upon finding that the hospital has satisfied the conditions of this rule, the Authority may grant a waiver.¶

(4) A hospital may not implement a waiver under ORS 441.164 until it has received written approval from the Authority.¶

(5) This rule does not apply to variances under Oregon Laws 2023, chapter 507, section 14(6).

Statutory/Other Authority: ORS 413.042, ORS 441.164, OL 2023, Ch. 507

Statutes/Other Implemented: ORS 441.164, OL 2023, Ch. 507

ADOPT: 333-503-0060

RULE SUMMARY: OAR 333-503-0060, Nursing Staff Member Overtime: OHA is adopting a rule to determine compliance with ORS 441.166 and Oregon Laws 2023, Chapter 507, Section 20(2)(g) related to overtime requirements for nurses. To that end, OHA is adopting definitions for Emergency circumstances, Infectious disease epidemic, Nursing staff and Require.

CHANGES TO RULE:

333-503-0060

Nursing Staff Member Overtime

For purposes of determining hospital compliance with ORS 441.166, and whether a hospital has a violation under Oregon Laws 2023, chapter 507, section 20(2)(g):¶

(1) "Emergency circumstances" includes:¶

(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 percent 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.¶

(2) "Infectious disease 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.¶

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

(4) "Require" means to make compulsory 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.

Statutory/Other Authority: ORS 413.042, ORS 441.166

Statutes/Other Implemented: ORS 441.151 - 441.177, OL 2023, Ch. 507

AMEND: 333-510-0002

RULE SUMMARY: OAR 333-510-0002, Definitions: OHA is amending the rule to remove the following definitions because due to the legislative changes, the definitions are no longer necessary or supported by law. OHA is temporarily removing the following definitions: Direct Care Registered Nurse, Direct Care Staff, Direct Care Staff Member, Epidemic, Evidence Based Standards, Mandatory Overtime, Nurse care intensity, Nursing staff, Nursing staff member, On Call, On Call Nursing Staff, Patient acuity, Potential Harm or At Risk of Harm, Quorum, Safe Patient Care, Staffing Committee, Staffing Plan, Standby, and Waiver.

CHANGES TO RULE:

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 M|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. Statutory/Other Authority: ORS 413.042, ORS 441.151 - 441.177, ORS 441.055
Statutes/Other Implemented: ORS 441.165, 79 - 441.166, 441.179-92, ORS 441.055, ORS 441.025, ORS 441.064

AMEND: 333-510-0045

RULE SUMMARY: OAR 333-510-0045, Posting Requirements: OHA is amending the posting requirements to align with HB 2697. OHA is including posting requirements only related to retaliation and to amend the rule to temporarily remove requirements related to documentation under ORS 441.152 - 441.177.

CHANGES TO RULE:

333-510-0045

~~Nurse Staffing Posting and Record Posting 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.~~

Statutory/Other Authority: ORS 413.042, 441.155, 441.169, 441.173, ORS 441.185
Statutes/Other Implemented: ORS 441.155, 441.169, 441.173, 441.185

SUSPEND: 333-510-0105

RULE SUMMARY: 333-510-0105, Nurse Staffing Committee Requirement: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.

Statutory/Other Authority: ORS 413.042, 441.151, 441.154

Statutes/Other Implemented: ORS 441.154

SUSPEND: 333-510-0110

RULE SUMMARY: 333-510-0110, Nurse Staffing Plan Requirements: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 413.042, 441.155~~

~~Statutes/Other Implemented: ORS 441.155~~

SUSPEND: 333-510-0115

RULE SUMMARY: 333-510-0115, Nurse Staffing Plan Review Requirement: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 413.042, 441.156~~

~~Statutes/Other Implemented: ORS 441.156~~

SUSPEND: 333-510-0120

RULE SUMMARY: 333-510-0120, Nurse Staffing Plan Mediation: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 413.042, 441.154, 441.175~~

~~Statutes/Other Implemented: ORS 441.154~~

SUSPEND: 333-510-0125

RULE SUMMARY: 333-510-0125, Replacement Nurse Staffing Requirements: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 413.042, 441.155, 441.166~~

~~Statutes/Other Implemented: ORS 441.155, 441.166~~

SUSPEND: 333-510-0130

RULE SUMMARY: 333-510-0130, Nursing Staff Member Overtime: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~333-510-0130~~

~~Nursing Staff Member Overtime~~

- ~~(1) For purposes of this rule "require" means to make compulsory 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;¶¶~~
- ~~(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; or¶¶~~
- ~~(e) During the 10-hour period immediately following any agreed-upon and prearranged shift in which the nurse worked more than 12 hours in a 24-hour period.¶¶~~
- ~~(3) Time spent by the nursing staff member in required meetings or receiving education or training shall be included as hours worked for the purpose of section (2) of this rule.¶¶~~
- ~~(4) Time spent on call or on standby when the nursing staff member is required to be at the hospital shall be included as hours worked for the purpose of section (2) of this rule.¶¶~~
- ~~(5) Time spent on call or on standby when the nursing staff member is not required to be at the hospital may not be included as hours worked for the purpose of section (2) of this rule.¶¶~~
- ~~(6) Nothing in this rule precludes a nursing staff member from volunteering to work overtime.¶¶~~
- ~~(7) 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.¶¶~~
- ~~(8) Each hospital must have a policy and procedure in place to ensure, at minimum, that:¶¶~~
- ~~(a) Mandatory overtime, when required, is documented in writing; and¶¶~~
- ~~(b) Mandatory overtime policies and procedures are clearly written, provided to all new nursing staff and readily available to all nursing staff.¶¶~~
- ~~(9) 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.¶¶~~
- ~~(10) The provisions of sections (2) through (8) 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 percent 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.¶¶~~
- ~~(11) Nothing in section (10) of this rule relieves the Oregon State Hospital from contacting voluntary replacement staff as described in OAR 333-510-0125 and documenting these contacts.¶¶~~
- ~~(12) 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.¶¶~~
- ~~(13) 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.~~

~~Statutory/Other Authority: ORS 413.042, 441.166, 441.168~~

~~Statutes/Other Implemented: ORS 441.166, 441.168~~

SUSPEND: 333-510-0135

RULE SUMMARY: 333-510-0135, Nurse Staffing Plan Waiver: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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.~~

~~Statutory/Other Authority: ORS 413.042, 441.165~~

~~Statutes/Other Implemented: ORS 441.155, 441.165~~

SUSPEND: 333-510-0140

RULE SUMMARY: 333-510-0140, Nurse Staffing Plan During an Emergency: OHA is suspending this rule due to legislative changes. The rule is no longer necessary or supported by law.

CHANGES TO RULE:

~~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 emergency or state emergency declared under ORS 401.165 to 401.236 or 433.441 to 433.452 requiring the implementation of a facility disaster plan and crisis standards of care, as those terms are defined in section (7) of this rule;~~

~~(b) Sudden and unforeseen adverse weather conditions; or~~

~~(c) An infectious disease epidemic suffered by hospital staff.~~

~~(2) No later than 30 calendar days after any hospital unit or hospital department first deviates from a written nurse staffing plan under subsection (1)(a) of this rule, the hospital incident command shall report to both co-chairs of the hospital nurse staffing committee established under ORS 441.154 a written assessment of the nurse staffing needs arising from the national or state emergency declaration.~~

~~(3) Upon receipt of the report described in section (2) of this rule, either co-chair of the nurse staffing committee shall call a meeting of the staffing committee to develop a contingency nurse staffing plan to address the needs arising from the emergency. The contingency nurse staffing plan must align with the nursing services required under crisis standards of care as implemented.~~

~~(4) The hospital's deviation from the written hospital-wide staffing plan approved by the hospital nurse staffing committee may not be in effect for more than 90 cumulative days without approval of the hospital nurse staffing committee. If the hospital nurse staffing committee does not approve the deviation by the 90th cumulative day, the hospital must return to the written nurse staffing plan developed and approved by the hospital nurse staffing committee.~~

~~(5) The hospital shall maintain documentation showing compliance with subsection (1)(a) through section (4) of this rule.~~

~~(6) 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.~~

~~(7) For the purposes of this rule, the following definitions apply:~~

~~(a) "Crisis standards of care" are policies or standards adopted by a hospital to be implemented during an emergency for objective prioritization of care, prioritization of patients, and limitations on services because of the declared emergency. The crisis standards of care for purposes of this rule include only those policies or standards adopted by the hospital that change the nursing services.~~

~~(b) "Facility disaster plan" means a plan that is developed pursuant to 42 CFR 482.15 and is activated to meet the health, safety and security needs of the facility, its staff, patient population and community during a declared emergency.~~

~~Statutory/Other Authority: ORS 413.042, 441.165~~

~~Statutes/Other Implemented: ORS 441.155, 441.165~~