

Post COVID-19 Transition

Ruby R. Jason, MSN, RN
Executive Director
Oregon State Board of Nursing



The Emergency Declaration

- Declared in March 2020
- Workforce expansion needed to care for increased census in facilities due to COVID and respond to the staffing inefficiency due to infection control procedures.
- Governor used her emergency declaration authority to allow rapid deployment of license healthcare workers including nurses and certified nursing assistants.
- Board wrote rule in response to the emergency declaration. The issuing of Emergency Authorizations began.
- These rules were in response to an emergency declaration and not authorized by Oregon Revised Statute (678).
- Why does this matter?

The Difference Between Rule and Statute

- The Board obtains its authority through statutory language. Oregon Revised Statute (ORS) 678 is the statute providing the Board with the legal authority to develop standards of safe practice and authorizes the Board to act on the licenses of those who do not meet the standards.
- An emergency declaration authorizes the Governor to bypass legislative authority during a time of crisis when a rapid response is needed.
- However, rules written by the Board in response to a declaration are not statutorily authorized and can last only as long as the declaration is in force.
- The rules for EA provide for a “license” to practice in Oregon but because EAs were not statutorily authorized, the Board could not hold these individuals accountable to the state practice act nor discipline the EA to work. Over 9000 EAs were issued and not a one was accountable to Oregon’s Practice Act.

So now what?

- Due to the impact of the pandemic on nurses and nursing assistants in all environments of care, there is currently a staffing crisis.
- EAs, intended to be used to address the influx of patients, are now being used to make up for short staffing and allowing facilities to “catch up” on procedures and admissions cancelled due to the COVID surge.
- The Board has no legal authority to address short staffing issues. The legislature did not write staffing into the authority of the Board, the authority for staffing laws was provided to the Oregon Health Authority (OHA).
- Once the emergency declaration in response to COVID is lifted, so does the Board’s authority to issue EAs.
- But the staffing crisis continues...

What the Board Can Do.

- The Board recognizes that there are too many EAs working for the healthcare system to tolerate ending the EAs all at once on April 1.
- In initially passing the Emergency rules, the Board authorizes a 2-week extension be allowed to give facilities time to fill the gaps left by the EAs.
- Clearly two weeks is not enough. The Board voted to expand the rule to 90 days.
- 90 days is also not enough in response to the staffing crisis but what the Board could do based upon rule promulgated by an Emergency Declaration. This declaration will no longer exist on April 1, 2022.

RNs, LPNs, NPs, CRNAs, and CNSs currently working under an EA and are not applying for permanent Oregon License

- The CNO or senior organization/facility nurse is accountable for development and implementation of a process to assure that these rules are being followed.
- The authority for nurses to work under an emergency authorization and do not wish to apply for permanent Oregon license will end at 11:59 pm June 30, 2022. To accommodate night shift workers, the Emergency Authorizations will be expired at 7a.m. July 1, 2022. After that time, all EAs will expire and EAs will no longer be used to authorize nurses the ability to work anywhere in Oregon.
- Must be taken off the schedule and no longer utilized in staffing after 7a.m. July 1, 2022. Regardless of when the nurse started their shift their authority to work in Oregon ends a 7a.m. Anyone working after that time is working in violation of Oregon statute.

Certified Nursing Assistant staff working under EA and are not applying for permanent Oregon certification.

- The CNO or senior organization/facility nurse is accountable for development and implementation of a process to assure that these rules are being followed
- The authority for a CNA to work in Oregon under an EA will be valid until 11:59 pm June 30, 2022. To accommodate night shift workers, the Emergency Authorizations will expire at 7a.m. July 1, 2022. After that time, all EAs issued in the state of Oregon will expire and EAs will no longer be a method used to authorize CNAs the ability to work anywhere in Oregon.
- Must be taken off the schedule and no longer utilized in staffing after 7a.m. July 1, 2022. Regardless of when the CNA started their shift their authority to work in Oregon ends a 7a.m. Anyone being used after that time is working in violation of Oregon statute.

RNs, LPNs, NPs, CRNAs, and CNSs
working under an EA who are applying or intend to apply for permanent Oregon
license

- The CNO or senior organization/facility nurse is accountable for development and implementation of a process to assure that these rules are being followed.
- While all EAs will expire 7 a.m. 1 July, 2022, nurses who have applied for licensure by endorsement prior to the expiration of the EAs and have not yet been issued a license, the Chief Nursing Officer or senior nurse within the organization may request an exception to licensing requirements per ORS 678.034.
- Having an application on file is not enough to warrant an exemption, statute requires a request to be matched to an application.
- **Requirements:**
- A completed endorsement application is on file with the OSBN office prior to the start of the nurse's first shift. A completed application is one where all application information is included, the application is signed by the applicant and the license fee is paid. If the nurse has worked under an EA, the completed application must be received prior to June 30, 2022

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license.

Requirements (continued):

In addition to the requirements in section 1, prior being placed on the work schedule, the Chief Nursing Officer or most senior nurse within the organization must request the use of temporary staff due to short staffing not related to a labor action, such as a strike or work slowdown. The information required is found in OAR 851-031-0040 (1) (a) through (e). The exception request form is located here: <https://www.oregon.gov/osbn/Pages/LTC-EmergencyExceptions.aspx>. It is the responsibility of the organization to determine if their facility is licensed as per the requirements of HB 4003. Should an organization not be included in the language of the bill, the OSBN will immediately deny or rescind the ability of the nurses(s) to work in the facility.

- HB 4003 language:
- Hospital, long term care facility
- An adult or juvenile residential behavioral health treatment facility;
- An opioid treatment program;
- A withdrawal management program;
- A sobering center;
- A primary care facility; or
- A behavioral health home, as defined in ORS 414.025

RNs, LPNs, NPs, CRNAs, and CNSs
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license.

Requirements (continued):

- In addition to the name of the organization or facility, required information is as follows:
 - Date the nurse(s) will be placed on staff. If the individual already has an EA and is waiting to receive full licensure, the date will be 1 July, 2022.
 - Name of each nurse. Each nurse either continuing to work or those that are being brought in must be named. Even if the nurse has been working under an EA for months, the OSBN must have a name to match to an endorsement application.
 - The last four digits of the Social Security Number of the nurse to be employed. This allows Board staff to identify the nurse within our database and in NURSYS.
 - Jurisdiction of current licensure of nurse so hired indicating evidence used to determine current unencumbered licensure. EAs were approved by the OSBN reviewing the NURSYS database for licensure status. Statute requires that for this authorization the employer MUST review the NURSYS database to assure that the requested nurse has unencumbered licensure. The Board will double-check.
 - Nature of the staffing shortage.
 - Verify that there is no labor dispute affecting nurses at the place of employment.

RNs, LPNs, NPs, CRNAs, and CNSs
working under an EA who are applying or intend to apply for permanent Oregon
license.

Requirements (continued):

- Once **approval from the OSBN is received and the nurse is listed on the exemption list** (link to be developed), the nurse may be on staff for 90 calendar days from the date of approval. To approve a request, the OSBN will determine if a completed endorsement application has been received. The approval will also contain the last day of the authorization. If there is no active endorsement application found, the request is denied, and the requested staff will be prohibited from practicing nursing in Oregon. If after 90 days the nurse has not been issued a permanent license, the Chief Nursing Officer or senior nurse may request a 30- day extension by utilizing the request form <https://www.oregon.gov/osbn/Pages/LTC-EmergencyExceptions.aspx>. If no license is issued after the 30-day extension, the nurse must be removed from the schedule and are prohibited to practice nursing in Oregon until a permanent license has been issued. There are no exceptions.
- Once the permanent license is issued, the temporary authorization is rescinded.

RNs, LPNs, NPs, CRNAs, CNSs Contracted or Hired after April 1, 2022, to meet a temporary staffing shortage.

- The CNO or senior organization/facility nurse is accountable for development and implementation of a process to assure that these rules are being followed.
- A licensing exception can be requested for a period of 90 days with a one-time extension of 30 days. Please follow the requirements listed in paragraph C: 1,2,and 3.
- Nurses cannot be placed on the schedule or work until the exception approval has been received by the Board. Since there was no previous EA, there is no an EA to “dove-tail” authorization to work.
- Board staff will verify that an application has been received prior to notifying the CNO or senior nursing officer of approval.
- Rules require the request come from the CNO or senior nurse, not the staffing office or individual managers.

Certified Nursing Assistants who wish to apply for permanent Oregon Certification

- The Oregon legislature has not authorized the OSBN to allow CNAs to continue to work in Oregon after 7 a. m on July 1, 2022. If the CNA has not received a permanent certification, even if a completed application is on file with the OSBN, the CNA must be taken off the schedule and is not authorized to work in Oregon.
- Utilization of these staff in a non-CNA capacity is not within the jurisdiction of the Board. A non-certified CNA is considered a non-regulated staff member. To utilize these staff:
 - They may not be identified as CNAs.
 - The duties and tasks they are authorized to perform is per organizational or facility policy, not the authorized duties of CNAs found in the practice act.
 - The organization or facility validates the competency of the individual. Previous certification as a CNA may not be used to validate competency. The organization must test and certify competency of the individual.
- Organizations will need to review their own licensing criteria for utilization of unregulated staff.

Questions?

