

2020

>> OHA Nurse Staffing Advisory Board

2020 Legislative Report



Oregon
Health
Authority

Acknowledgments

The Oregon Health Authority prepared this publication in collaboration with members of the Public Health Division Health Care Regulation and Quality Improvement Section, and the Nurse Staffing Advisory Board.

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Executive summary

Oregon nurse staffing laws require hospitals and direct care nursing staff to work together to promote safe patient care. These laws have been part of Oregon's commitment to improving health care since 2001. In 2015, changes in the law expanded these requirements and created a Nurse Staffing Advisory Board (NSAB) within the Oregon Health Authority (OHA).

This report discusses:

- ▶ The board's key achievements
- ▶ Implementing nurse staffing surveys and plans of correction at hospitals and special inpatient care facilities across Oregon
- ▶ Nurse staffing waiver requests
- ▶ The board's committee work, including the Process Improvement Committee, Acuity Committee and Overtime Committee, and
- ▶ The pandemic's impact on the board's work and 2021 plan.

OHA has completed all on-site nurse staffing surveys within the three-year cycle set by the Legislature. However, limited survey resources have delayed initiating complaint investigations and legislatively mandated revisits. OHA was prepared to begin the second three-year survey cycle in March 2020. However, OHA delayed all nurse staffing surveys and complaint investigations in the wake of the COVID-19 pandemic. The board supports OHA's proposal to begin Cycle 2 in January 2021. In the interim, the board is working with OHA to redesign the survey process. The survey will focus on priority patient safety metrics and maximizing surveyor safety during the pandemic while still meeting OHA's regulatory duties.

Based on guidance from the facilitated work session in July 2019, NSAB formed the Process Improvement Committee in February 2020 to evaluate opportunities to improve nurse staffing surveys and complaint investigations. The committee's primary goal is to sharpen the focus of these audits. In turn, OHA and NSAB expect these streamlined processes to conserve valuable resources.

Two other committees met in 2020. The Overtime Committee clarified compliance requirements with Oregon’s mandatory overtime rules. The Acuity Committee is creating guidance on the evaluation of acuity and intensity in nurse staffing plans.

OHA continues to receive valuable input from the board. In April 2020, NSAB asked OHA to collect information from hospital nurse staffing committee co-chairs and chief nursing officers on how the COVID-19 pandemic has affected hospital nurse staffing. OHA presented this data to the board on July 29, 2020. The board will release further guidance to hospitals on nurse staffing issues during this public health emergency.

Finally, to ensure the success of Oregon’s nurse staffing laws, NSAB strongly encourages the Governor:

- ▶ To fill the remaining vacancies in OHA’s NSAB
- ▶ Continue to quickly fill vacancies as they arise, and
- ▶ Continue to prioritize OHA’s work on the Process Improvement Committee to ensure we jointly build a structure and process that prioritizes nurse staffing and safe patient care in Oregon hospitals.

The full legislative report is available at www.healthoregon.org/nursestaffing.

Key achievements

In July 2019, the NSAB and the Oregon Health Authority (OHA) held a facilitated work session to discuss the current and ideal state of Oregon's nurse staffing program. Since that time, the NSAB and OHA have worked together to reach the ideal state. The board provided recommendations and interpretive guidance on a range of nurse staffing issues from the documentation of mandatory overtime, to nurse staffing waivers, to sharpening the focus of nurse staffing surveys.

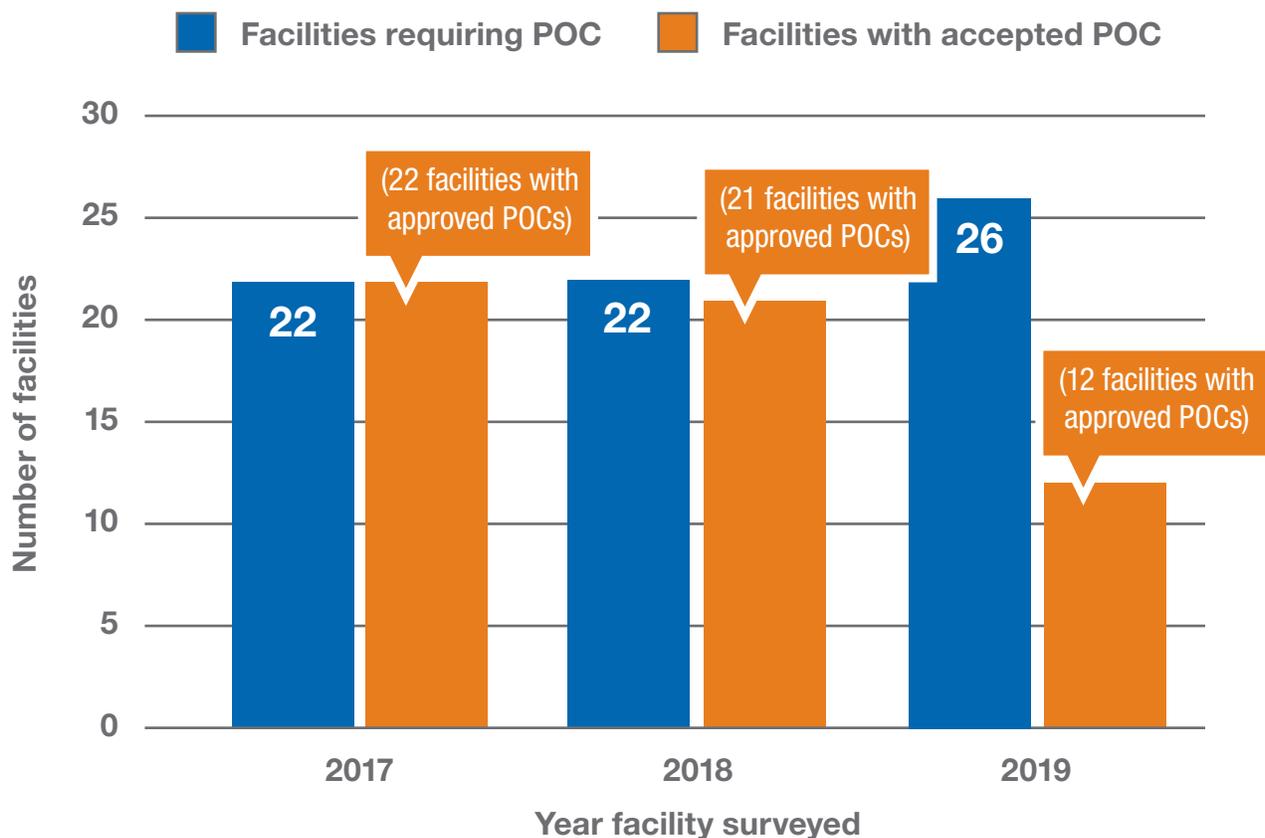
The NSAB and OHA have continued to provide guidance on staffing to Oregon's hospitals during the COVID-19 pandemic. NSAB formed the Process Improvement Committee in February 2020 to streamline the survey and focus more on critical elements of the rules related to patient care. The committee will identify opportunities to refocus the triennial nurse staffing survey and complaint investigation tools and processes. This will conserve valuable resources and help OHA and facilities complete the full survey and investigation process on time.

Survey reports and plans of correction

Between 2017 and 2019, OHA completed 70 on-site nurse staffing surveys of Oregon's hospitals and special inpatient care facilities (SICFs). The OHA survey team completed all surveys within the three-year cycle set by the Legislature.

After OHA completes a nurse staffing survey, the agency sends a report to the hospital with guidance on plan of correction (POC) requirements and processes. Each of the 69 hospitals and SICFs with nursing services surveyed in Oregon between 2017 and 2019 received a survey report with multiple deficiencies.

Accepted plans of correction (POCs) for Nurse Staffing Survey Cycle 1 (2017–2019)

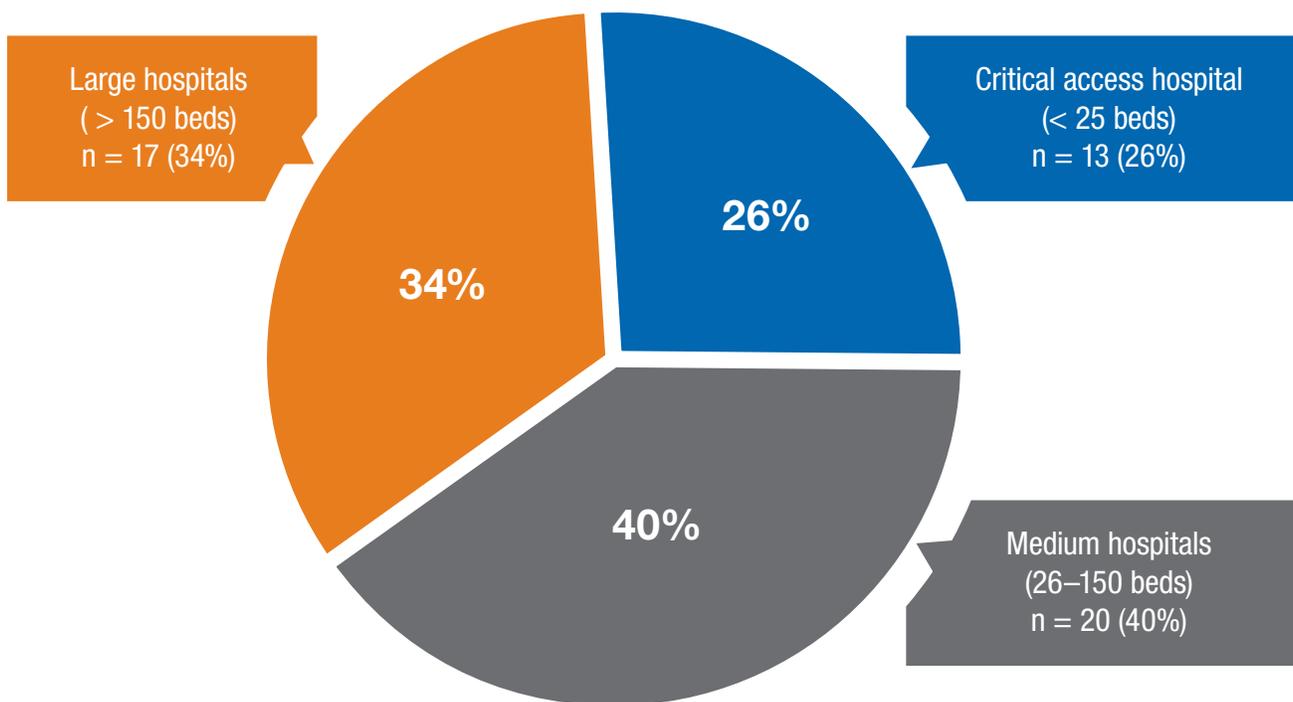


22 facilities were surveyed in 2017 and 2018; 26 facilities were surveyed in 2019. One facility (surveyed in 2019) closed; OHA is not seeking its POC.

Waivers

As of Aug. 1, 2020, OHA has nurse staffing waiver requests from 50 hospitals. More than 90 percent of the waiver requests relate to the statutory requirement for minimum number of nursing staff members on duty in a unit when a patient is present. The requests also deal with which staff members can be used; the second staff member is often a non-nursing, trained technician who takes part in patient care. OHA continues to request board guidance on waiver criteria and provides regular updates to the board on the nature and status of requests.

Size of hospitals requesting waivers



Other board work in progress

▶ **Process Improvement Committee**

The board formed the Process Improvement Committee in February 2020 to improve the current nurse staffing survey and investigation process. The committee first met in July 2020.

This committee's goals include:

- » Reviewing current nurse staffing compliance requirements and recommending priority elements of nurse staffing surveys and complaint investigations
- » Advising on new and revised elements for tools that align with the priority requirements and streamlining the triennial nurse staffing survey
- » Recommending survey process changes that streamline the triennial nurse staffing survey, including pre-survey questionnaires and document submission, onsite review activities and exit interviews, and
- » Recommending survey resolution process improvements. Examples include alternate formats for the survey report, the process for plans of correction and the process for the second audit completed after an accepted plan of correction.

At its first meeting, the Process Improvement Committee approved its charter and committee goals. The committee also provided recommendations on new and revised survey tools. The Process Improvement Committee is meeting several times between August and October. It will provide significant updates at the next meeting of the full board in October 2020.

▶ **Acuity Committee**

The Acuity Committee met four times between 2018 and 2020 to discuss patient acuity and review acuity factors. This committee is developing guidance on how hospitals should measure patient acuity and intensity to comply with

Oregon's nurse staffing laws. The Acuity Committee presented a draft of its guidance to the board at its July 2020 meeting and agreed to further develop the guidance. The acuity and intensity guidance will provide more specific recommendations on factors to consider in developing a staffing plan for patient care populations.

▶ **Overtime Committee**

The Overtime Committee met three times between 2018 and 2020 to clarify agency interpretations of hospital and nursing staff member documentation practices for nursing staff member overtime. The Overtime Committee discussed documentation a hospital must maintain to meet Oregon's mandatory overtime requirements and how it would demonstrate compliance with the state's overtime rules. This committee received significant feedback from members of NSAB, hospitals and nursing staff members. It recommended the following to facilities and OHA related to documenting and surveying mandatory overtime:

- » Facilities continue to document all voluntary and mandatory overtime in the aggregate.
- » Facilities must have a procedure to document each instance of overtime to which the nurse staff member did not agree.
- » 15 minutes of time or less beyond each agreed upon shift will not be considered mandatory overtime.
- » OHA will review results of the nurse staffing survey to assess mandatory overtime and may interview staff members about specific conditions or situations if their records indicate overtime.
- » This procedure will be piloted for a year.

The NSAB endorsed these recommendations at the February 2020 meeting.

Impact of COVID-19 pandemic

▶ **Nurse staffing surveys and complaint investigations**

The second cycle of the triennial nurse staffing surveys was set to begin in March 2020. In early March the Centers for Medicare & Medicaid Services (CMS) suspended most types of federal surveys due to the novel coronavirus pandemic. This prioritized investigations related to infection control and surveys of new facilities to increase acute care capacity. OHA postponed the beginning of the second survey cycle to align with the federal suspension and the Governor's request that the Health Care Regulation and Quality Improvement Section prioritize activities to facilitate hospitals' immediate COVID-19 response.

The NSAB endorsed this postponement at its April 29 meeting. At the July 29 board meeting, the NSAB endorsed OHA's proposal to initiate Cycle 2 of the triennial nurse staffing surveys in January 2021; the board intends to complete the survey process improvement recommendations prior to that date. The board will continue to advise OHA on options to continue the nurse staffing surveys and complaint investigations during the COVID-19 pandemic. Recommendations may include remotely conducting nurse staffing surveys and/or complaint investigations.

▶ **Board and committee meetings**

Boards and committees usually hold in-person meetings, with a call-in option available to members who can't be physically present. However, OHA has moved all NSAB board and committee meetings to a virtual platform, such as GoTo Meetings and Zoom. This action complies with Executive Order No. 20-12, which Governor Kate Brown issued March 23 to encourage Oregon to limit in-person gatherings. All virtual meetings remain available to the public and comply with Oregon's Public Meetings Law (ORS 192.610 through 102.710) and Public Records Laws (ORS 192.001 through 192.505). OHA and the board plan to hold all NSAB board and committee meetings virtually through December 2020.

▶ **Guidance for hospitals**

Per ORS 441.165 and OAR 333-510-0140, in a national or state emergency that requires a hospital follow a facility disaster plan, a hospital is not required to follow the staffing plan developed and approved by the nurse staffing committee. With the public health emergency (PHE) and national and state emergency declarations, many hospitals have implemented facility disaster plans. These plans allow the hospital to not follow the nurse staffing plan approved by the hospital's nurse staffing committee (NSC). Despite this, OHA and the NSAB encourage hospital NSCs to hold at least one meeting and discuss the facility's nurse staffing plan in both low patient census and surge scenarios.

In June 2020, the board recommended OHA survey hospital nurse staffing committee co-chairs and hospital chief nursing officers (CNOs) about how COVID-19 has been affecting hospital nurse staffing. OHA presented the results of this survey to the board on July 29, 2020. Based on this data, the board asked OHA to issue more guidance on nurse staffing committee functions, nurse staffing plan modifications and other emergency impacts on hospital nurse staffing to ensure compliance with Oregon's nurse staffing laws. OHA will present this to the board at its Oct. 28, 2020 meeting.

Plan for the coming year

- ▶ NSAB will continue to provide feedback to OHA on administering nurse staffing law and rules from:
 - Hospital-based direct care registered nurses (RNs)
 - Hospital administrators and nurse managers, and
 - Stakeholder organizations.
- ▶ The board will continue to accept public comment at each quarterly NSAB meeting.
- ▶ The board will continue to encourage members and partners from across the state to attend committee and board meetings. The COVID-19 pandemic requires the board to find new ways to be productive. OHA and the board will continue to clearly communicate the meeting's venue – whether it be online, via phone or some other method. The board encourages use of best remote meeting practices to foster productive discussions.
- ▶ As the COVID-19 pandemic continues and our understanding of this novel disease grows, OHA and the board will continue to discuss the pandemic's impact on nurse staffing. NSAB will continue to consider how the board and OHA may best support Oregon's nurses and hospitals on arising nurse staffing issues.
- ▶ The board will continue to ask statewide stakeholders for feedback on the nurse staffing surveys and complaint investigations.
- ▶ As of July 31, 2020, the board has three vacancies: one nurse manager position, one direct care RN position and one direct care non-RN (CNA or LPN) position. The board will continue to encourage interested parties across the state to apply for these positions and ask the Governor to appoint members to the board in a timely manner.

- ▶ Through its committee work, NSAB will continue to address issues such as:
 - Identifying opportunities to sharpen the focus of nurse staffing surveys and complaint investigations, thus decreasing the burden on hospitals and OHA surveyors while conserving valuable resources, and
 - Providing guidance to hospitals on the processes necessary to adequately address patient acuity and intensity in nurse staffing plans.
- ▶ NSAB will form additional committees as new issues arise.
- ▶ NSAB and OHA will continue to closely work together to build understanding of current patient care issues, including staffing and scheduling.

Conclusion

NSAB members agree there has been significant progress in implementing Oregon's revised nurse staffing laws. NSAB members continue to collaborate with one another and with OHA staff to ensure safe patient care. Stakeholder interest proves Oregon hospitals and direct care nursing staff members are diligently working to understand and work within this regulatory framework.

NSAB members use their commitment to safe patient care as their guide. Members recognize nurse staffing affects direct patient care. Nurse staffing regulation always has safe patient care as its primary priority.

While areas of ambiguity remain, NSAB members agree that future survey and complaint investigations are likely to produce valuable data. NSAB members and OHA can use this data to evaluate new trends in nurse staffing. Meanwhile, NSAB members will take the actions identified above and continue to advise OHA on administration of these rules.



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