



PUBLIC HEALTH DIVISION, Center for Health Protection  
 Health Care Regulation and Quality Improvement Section  
 Health Facility Licensing and Certification Program  
 Kate Brown, Governor



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## Nurse Staffing Advisory Board – Ad Hoc Meeting on Civil Monetary Penalties

Presiding Co-Chair: Uzo Izunagbara  
 Meeting Registration: [https://www.zoomgov.com/meeting/register/vJltduysqzsoHM0844EYrPDbM3hLH4\\_Hle8](https://www.zoomgov.com/meeting/register/vJltduysqzsoHM0844EYrPDbM3hLH4_Hle8)  
 Date: December 2, 2022  
 Time: 3:00 PM – 5:00 PM

**Note for virtual meetings:** OHA will open the Zoom meeting 15 minutes prior to the meeting’s official start time. You may be required to wait in the Zoom waiting room or receive a message that the meeting has not yet started if you attempt to join the meeting before this time. If you are unable to join the meeting after this time, please contact the meeting host at the email or phone number provided below.

The time and order of agenda items are subject to change at the discretion of the Board Co-Chairs

Time	Agenda Item	Materials Provided	Presenter
3:00 PM	<b>Item 1 – Call to Order</b>		
3:00 PM – 3:05 PM	<b>Item 2 – Review meeting agenda, items available in ad hoc board packet</b>	<ul style="list-style-type: none"> <li>• CMP Committee Meeting Notes:               <ul style="list-style-type: none"> <li>○ July 26, 2021</li> <li>○ September 10, 2021</li> </ul> </li> </ul>	Kimberly Voelker

		<ul style="list-style-type: none"> <li>○ October 1, 2021</li> <li>○ November 1, 2021</li> <li>○ November 19, 2021</li> <li>○ June 8, 2022</li> <li>○ August 10, 2022</li> </ul>	
3:05 PM – 3:20 PM	<p><b>Item 3 – CMP Committee: Recap</b></p> <ul style="list-style-type: none"> <li>• Committee Background &amp; Role of NSAB in providing guidance to OHA</li> <li>• Definition of safe patient care (OAR 333-510-0002(17)) and reasonable person standard</li> <li>• Table 1 – Civil Penalty Assessments (OAR 333-501-0045)</li> <li>• CMP’s Committee guidance on objective measurements of unsafe patient care &amp; CMP factors</li> <li>• CMP Decision-making tool</li> </ul>	<ul style="list-style-type: none"> <li>• CMP Committee Recap Slides</li> <li>• CMP Decision-making tool</li> <li>• CMP Committee Summary Report</li> </ul>	Kimberly Voelker & Anna Davis
3:20 PM – 3:25 PM	<p><b>Item 4 – NSAB Reviews Written Public Comments Received to Date</b></p>	<ul style="list-style-type: none"> <li>• Public comments received</li> </ul>	Uzo Izunagbara
3:25 PM – 4:00 PM	<p><b>Item 5 – Public Comment</b></p> <ul style="list-style-type: none"> <li>• Members of the public may speak for up to two minutes on nurse staffing civil monetary penalties</li> </ul>		

4:00 PM – 4:55 PM	<b>Item 6 – NSAB Discusses Written &amp; Oral Public Comment, and Recommendations to OHA on CMP Process</b> <ul style="list-style-type: none"> <li>• Vote on current CMP Decision-making tool</li> <li>• Vote on additional recommendations generated by NSAB</li> </ul>		Uzo Izunagbara
4:55 PM – 5:00 PM	<b>Item 7 – Summarize meeting, discuss next steps</b>		Kimberly Voelker
5:00 PM	<b>Item 8 – Meeting adjourned</b>		

**Upcoming Meetings**

- *Rules Review Committee Meetings*
  - *December 7, 2022: 10:00 AM – 11:30 AM. Register here:*  
[https://www.zoomgov.com/meeting/register/vJltf-yoqjkqGMCd6OLFgT\\_2tMVRvcRjEtA](https://www.zoomgov.com/meeting/register/vJltf-yoqjkqGMCd6OLFgT_2tMVRvcRjEtA)
  - *January 18, 2023: 1:30 PM – 3:00 PM. Register here:*  
<https://www.zoomgov.com/meeting/register/vJlsc-ioqjMjHGOlxfnDOY32PzytBk3akd4>
  - *February 10, 2023: 1:30 PM – 3:00 PM. Register here:*  
[https://www.zoomgov.com/meeting/register/vJlsc6hgD8vGT0xP3JzsoYzdcI\\_CtML61o](https://www.zoomgov.com/meeting/register/vJlsc6hgD8vGT0xP3JzsoYzdcI_CtML61o)
  - *March 8, 2023: 10:00 AM – 11:30 AM. Register here:*  
[https://www.zoomgov.com/meeting/register/vJldeutrjMqHJtLsOa\\_Sa8CPIJroUgEgHE](https://www.zoomgov.com/meeting/register/vJldeutrjMqHJtLsOa_Sa8CPIJroUgEgHE)
  - *March 24, 2024: 2:00 PM – 3:30 PM. Register here:*  
[https://www.zoomgov.com/meeting/register/vJlsc-2grTorHx4\\_Hd1Aj98b\\_9ByoB6BToc](https://www.zoomgov.com/meeting/register/vJlsc-2grTorHx4_Hd1Aj98b_9ByoB6BToc)
  - *April 14, 2023: 1:30 PM – 3:00 PM. Register here:*  
<https://www.zoomgov.com/meeting/register/vJlSfuuvqDloGNZXV7pFJfKWgaiqYvQiINk>

Everyone has a right to know about and use Oregon Health Authority (OHA) programs and services. OHA provides free help. Some examples of the free help OHA can provide are:

- Sign language and spoken language interpreters
- Written materials in other languages
- Closed captioning
- Braille
- Large print
- Audio and other formats

If you need help or have questions, please contact Kimberly Voelker at 971-803-0914, 711 TTY or [kimberly.n.voelker@state.or.us](mailto:kimberly.n.voelker@state.or.us) at least 48 hours before the meeting.

For additional information about NSAB or OHA's Nurse Staffing Program contact [mailbox.nursestaffing@odhsoha.oregon.gov](mailto:mailbox.nursestaffing@odhsoha.oregon.gov).

Oregon Nurse Staffing Advisory Board (NSAB) Civil Monetary Penalties (CMP) Committee Charter – VERSION 1	
<b>Background Leading to CMP Committee</b>	<p>In 2017, the Oregon Health Authority (OHA) began the first 3-year cycle of Nurse Staffing Surveys under the 2016 amendments to the nurse staffing administrative rules. Since that time, OHA has regularly updated the NSAB on the status of nurse staffing surveys and complaint investigations, including the breadth of noncompliance with nurse staffing requirements found during the first nurse staffing survey cycle. Both OHA and the NSAB have received input from stakeholders across the state about areas of continued noncompliance.</p> <p>Under Oregon Revised Statutes (ORS) 441.175(1) – (2); 441.177(4); and 441.185(1) – (2), OHA may issue a civil monetary penalty for violations of the nurse staffing law. OHA has not issued a civil monetary penalty for violations of the nurse staffing law since before the 2016 amendments.</p> <p>Members of the board have requested OHA to explore use of civil monetary penalties as a tool to improve compliance with the nurse staffing law. In April 2021, the NSAB formed the Civil Monetary Penalties (CMP) to provide guidance to OHA on issuing CMPs.</p>
<b>Purpose</b>	The Committee will provide input to OHA about criteria and process for implementation of CMPs
<b>Primary Committee Goals</b>	<ol style="list-style-type: none"> <li>1. Background review process for issuing CMPs, and ORS 441.177, ORS 183 and OAR 333-501-0045 with Table 1. Review the cost of issuing a CMP.</li> <li>2. Advise on interpretation of the Civil Penalty Assessment Table and definition of safe patient care</li> <li>3. Identify criteria for the fair and consistent application of CMPs</li> <li>4. Determine indicators in current nurse staffing survey tools, survey reports and past survey performance that may be used to alert OHA that these criteria are present</li> <li>5. Consider prioritization of CMPs in relation to other nursing staffing compliance work.</li> </ol>

Nurse Staffing Advisory Board  
 Civil Monetary Penalties Committee  
 Charter

<b>NSAB Participants</b>	<ul style="list-style-type: none"> <li>• Debbie Robinson (Nurse Manager Co-Chair)</li> <li>• Uzo Izunagbara (Direct Care Nurse)</li> <li>• Rob Campbell (Direct Care Nurse)</li> <li>• Kelsey Betts (Direct Care Nurse)</li> <li>• Jenni Word (Nurse Manager)</li> <li>• Barb Merrifield (Nurse Manager)</li> </ul>
<b>OHA Facilitators</b>	<ul style="list-style-type: none"> <li>• Dana Selover (HCRQI Section Manager)</li> <li>• Anna Davis (Survey &amp; Certification Manager)</li> <li>• Matt Gilman (Facilities Planning &amp; Safety Manager)</li> <li>• Kimberly Voelker (Nurse Staffing Policy Analyst)</li> </ul>
<b>Timeline</b>	<p><i>Meeting 1 – Committee Introductions</i></p> <ul style="list-style-type: none"> <li>• Introductions and committee overview</li> <li>• Review and approve the committee charter</li> <li>• Review current statutory and rule language for CMPs, history of imposing CMPs for nurse staffing</li> <li>• Discuss role of NSAB in providing guidance to OHA on CMPs</li> </ul> <p><i>Meeting 2 – Civil Penalty Assessment Table and Definition of Safe Patient Care</i></p> <ul style="list-style-type: none"> <li>• Brief overview of previous meeting and status of action items</li> <li>• Review how Nurse Staffing Committee operations, mandatory overtime, and nurse staffing plan review requirements are measured during nurse staffing surveys</li> <li>• Discuss the definition of safe patient care provided under OAR 333-510-0002(17) and advise on what existing survey measurements represent unsafe patient care</li> <li>• Discuss Table 1 – Civil Penalty Assessments under OAR 333-501-0045 and advise on objective measurements for the following elements:             <ul style="list-style-type: none"> <li>○ Willfully not complying with the requirement to post notice to personnel</li> <li>○ Safe patient care has been or may be negatively impacted</li> <li>○ The committee does not have as its primary consideration the provision of safe patient care and adequate nursing staff</li> <li>○ The hospital does not make reasonable efforts to get replacement staff</li> <li>○ Factors which influence the amount of penalty</li> </ul> </li> </ul> <p><i>Meeting 3 – Nurse Staffing Pillars: Triennial Surveys, Complaint Investigations, and Revisit Surveys</i></p> <ul style="list-style-type: none"> <li>• Brief overview of previous meeting and status of action items</li> <li>• Review process and key differences between triennial nurse staffing surveys, complaint investigations, and revisit surveys</li> </ul>

- Discuss the survey resolution process and the role of Plans of Correction (POCs) and CMPs
- Advise on how CMPs fit into the survey resolution process and whether this differs for triennial nurse staffing surveys, complaint investigations, and revisit surveys

*Meeting 4 – Civil Monetary Penalties Factors*

- Brief overview of previous meeting and status of action items
- Advise on factors that may impact the size of CMP imposed, including:
  - Repeated noncompliance and in-between noncompliance
  - Priority tags identified by the Process Improvement Committee
  - Number of licensed beds
  - Survey type and combined surveys

*Meeting 5 – Advising on Workload Priorities*

- Brief overview of previous meeting and status of action items
- Review process map for imposing CMPs and discuss estimated resources required and financial and impacts for OHA
- Propose process for determining which situations represent the most severe and egregious noncompliance for imposing CMPs
- Prioritize elements of nurse staffing regulatory activities

*Meeting 6 – Finalize Proposal from CMP Committee*

- Brief overview of previous meeting and status of action items
- Finalize guidance from the committee that addresses:
  - Clarification on how to measure elements of the Civil Penalty Assessment Table and definition of safe patient care
  - How CMPs fit into the survey resolution process
  - Factors that may impact the size of CMPs
  - Process to determine which noncompliance represents the most severe and egregious
- Discuss timeline for drafting recommendations and presenting it to the board

**Approved by the Civil Monetary Penalties Committee  
on July 26, 2021**

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**Oregon NSAB Civil Monetary Penalties Committee**  
*Monday, July 26, 2021*  
 10:00 AM – 11:30 AM

Meeting Summary

Members present	Uzo Izunagbara, RN; Jenni Word, RN; Barbara Merrifield, MSN, RN; Rob Campbell, CP, ADN, RN; Debbie Robinson, RN, MSN
Members absent	Kelsey Betts, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH

Guests present	Rick Rhoton (Samaritan North Lincoln Hospital); Nancy Mitchell (Santiam Memorial Hospital); Danielle Meyer (OAHHS); Stacy Youngs (Legacy Emanuel Medical Center)
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<b>Agenda Item 1</b>	<i>Introductions and review the committee agenda</i>
The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present introduced themselves. K. Voelker reviewed the agenda with the committee’s members.	

<b>Agenda Item 2</b>	<i>Review the committee charter and discuss committee priorities</i>
K. Voelker presented the draft committee charter and solicited comments from committee members. Committee members expressed satisfaction with the draft and stated that it appropriately captured the goals of the committee. Committee members discussed their priorities for the committee and noted that the charter could be updated in the future if there were additional areas the committee wanted to explore.	
Motion to approve the CMP Committee charter and update in the future as needed: Rob Campbell Seconded: Debbie Robinson Motion passed	



OHA staff and members of the committee expressed a desire to complete the committee priorities prior to the end of the year and stated their preference to have five long meetings rather than six shorter meetings. K. Voelker will solicit member availability and schedule additional committee meetings.

<b>Action Item(s)</b>	<ul style="list-style-type: none"> <li>• OHA to convert the draft committee charter to Version 1.0. This version will be sent via email to the committee and other members of the board</li> <li>• OHA to request member availability for future meetings and schedule meetings based on member availability</li> </ul>
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<b>Agenda Item 3</b>	<i>Discuss the role of NSAB in providing guidance to OHA on Civil Monetary Penalties</i>
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A. Davis discussed the role of the Nurse Staffing Advisory Board (NSAB) in providing guidance to OHA on imposing civil monetary penalties (CMPs). She explained that because the NSAB is an advisory board, the board is tasked with helping OHA create guidelines that OHA can use when it determines whether to impose a sanction. She explained that OHA is responsible for implementing and operationalizing the board's guidance and stressed the importance of the committee expertise when drafting this guidance. She stated that nurse staffing waivers are a similar situation, in which the board helped OHA determine the parameters for what might represent an acceptable waiver, and OHA was then responsible for reviewing and approving or denying waivers.

The committee did not have any questions or comments arising from this discussion.

<b>Agenda Item 4</b>	<i>Review statutory and rule language for CMPs and history of imposing CMPs for nurse staffing</i>
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A. Davis reviewed the history of imposing CMPs for nurse staffing and explained how CMPs had not been imposed for nurse staffing since the 2015 statutory changes. She stated that CMPs were not assessed in all surveys or complaint investigations and showed a matrix that OHA used under the prior nurse staffing rules to help determine when to assess a penalty for nurse staffing. She stated that the committee would need to identify new factors but that the matrix could be a helpful framework to conceptualize CMP work.

Committee members supported using the matrix as a framework to begin the work and agreed that different factors would be needed to assess when it would be appropriate to impose CMPs. Committee members discussed the correlation between patient harm and patient safety and noted that it could be difficult to assess causality versus correlation. A. Davis presented the rule language that ties CMPs to unsafe patient care and committee members asked questions about the rule language. K. Voelker reminded the committee that the committee will review the definition of safe patient care and the CMP table in rule language at the committee's second meeting. K. Voelker asked the committee whether there was anything OHA could provide that would help the committee prepare for that discussion

and committee members requested that OHA send out rule language for CMPs prior to the second meeting. D. Selover stated that it would be helpful for committee members to think about nurse staffing requirements that are more directly related to patient care and A. Davis stated that OHA could send committee members a list of all possible nurse staffing violations. Committee members also requested that OHA send the matrix OHA previously used when imposing CMPs.

<b>Action Item(s)</b>	<ul style="list-style-type: none"> <li>• OHA to send committee members rule language related to CMPs for nurse staffing</li> <li>• OHA to send committee members list of possible violations for nurse staffing</li> <li>• OHA to send committee members matrix previously used to impose CMPs</li> </ul>
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<b>Agenda Item 5</b>	<i>Summarize action items, next steps</i>
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K. Voelker summarized the action items from the meeting, which included finalizing the committee charter and sending the finalized charter to the committee and NSAB. OHA staff will also provide the following documents to the committee in advance of the next meeting: nurse staffing rule language related to CMPs; matrix OHA previously used to assess nurse staffing CMPs; and list of possible nurse staffing violations. K. Voelker asked that the committee members send her a list of times with members' availability which she will use to schedule future meetings, and she added that the next meeting will likely be in August.

<b>Action Item(s)</b>	<ul style="list-style-type: none"> <li>• OHA to send materials to members in advance of next meeting</li> <li>• OHA to request committee member availability and schedule future meetings</li> </ul>
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<b>Agenda Item 6</b>	<i>Meeting Adjourned</i>
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**Oregon NSAB Civil Monetary Penalties Committee**  
 September 10<sup>th</sup>, 2021  
 1:30 PM – 3:30 PM

Meeting Summary

Members present	Jenni Word, RN; Barbara Merrifield, MSN, RN; Debbie Robinson, RN, MSN; Kelsey Betts, RN
Members absent	Uzo Izunagbara, RN; Rob Campbell, CP, ADN, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH

Guests present	Donell Owens (Kaiser Sunnyside Medical Center); Nancy Mitchell (Santiam Hospital);
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<b>Agenda Item 1</b>	<i>Review the meeting agenda and summary from July 26<sup>th</sup> meeting</i>
The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves. K. Voelker reviewed the agenda with the committee members and summary from the previous meeting	

<b>Agenda Item 2</b>	<i>Review nurse staffing survey deficiencies</i>
K. Voelker shared the Nurse staffing survey deficiencies handout and presented which tags could be cited during a nurse staffing survey. A. Davis explained that some tags were cited more frequently than others, such as tags related to implementation and approval of the nurse staffing plan and tags related to mandatory overtime. In addition, the frequency of some citations changes over time due to implementation timelines for annual reviews in 2018 and changes to the survey tools and processes in 2021.	

<b>Agenda Item 3</b>	<i>Discuss definition of safe patient care and advise on measurements of unsafe patient care</i>
K. Voelker presented the definition of safe patient care found in OAR 333-510-0002(17) and asked the committee for measurable indicators of the factors of unsafe patient care. D.	

Oregon Nurse Staffing Advisory Board  
 Civil Monetary Penalties Committee  
 Meeting Summary – September 10<sup>th</sup>, 2021

Selover explained that the definition of safe patient care existed prior to the 2015 amendment to the nurse staffing law and related 2016 amendment to the rules. Committee members discussed how factors (c) through (f) in the definition of safe patient care were addressed during the nurse staffing plan annual review, and that a hospital nurse staffing committee's failure to address whether the nurse staffing plan adequately met the needs of patients could be a measurable indicator for those factors. Committee members asked for regulatory language about when OHA could impose a civil monetary penalty, and K. Voelker read the requirements in ORS 441.175(1). Committee members proposed nurse staffing survey deficiencies that would show a hospital had failed to implement the written nurse staffing plan (OAR 333-510-0002(17)(a)) and were related to a reasonable belief that safe patient care had been or may be negatively impacted (ORS 441.175(1)) would be Tags E630, E640, E642, and E646.

<b>Agenda Item 4</b>	<i>Discuss Table 1 – Civil Penalty Assessments and advise on objective measurements for Table elements</i>
<p>K. Voelker presented the Table 1- Civil Penalty Assessments from OAR 333-510-0045. Committee members asked for clarification regarding the interpretation of ORS 441.175(1) and stated that guidance from the Department of Justice (DOJ) would help the committee determine which deficiencies to recommend as indicators for the factors in the table. D. Selover confirmed that OHA would seek guidance from the DOJ and provide feedback to the committee at its next meeting.</p>	
<b>Action Item(s)</b>	<ul style="list-style-type: none"> <li>• OHA to seek guidance from the DOJ regarding the interpretation of ORS 441.175(1) and provide feedback to the committee</li> </ul>

<b>Agenda Item 5</b>	<i>Summarize action items, next steps</i>
<p>K. Voelker summarized the action item from this meeting, which was to clarify the requirements related to safe patient care and civil monetary penalties with the Department of Justice (DOJ). K. Voelker reminded the committee that the next meeting was October 1<sup>st</sup>, 2021.</p>	

<b>Agenda Item 6</b>	<i>Meeting Adjourned</i>
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**Oregon NSAB Civil Monetary Penalties Committee**  
*October 1<sup>st</sup>, 2021*  
 1:30 PM – 3:30 PM

Meeting Summary

Members present	Jenni Word, RN; Barbara Merrifield, MSN, RN; MSN; Kelsey Betts, RN; Uzo Izunagbara, RN
Members absent	Debbie Robinson, RN; Rob Campbell, CP, ADN, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH; Belle Shepherd

Guests present	Ruth Miles (Salem Health); Nancy Mitchell (Santiam Hospital); Danielle Meyer (OAHHS)
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<b>Agenda Item 1</b>	<i>Review the meeting agenda and summary from September 10<sup>th</sup> meeting</i>
<p>The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves via Zoom registration. K. Voelker reviewed the agenda with the committee members and summary from the previous meeting.</p>	

<b>Agenda Item 2</b>	<i>Discuss Table 1 – Civil Penalty Assessments and advise on objective measurements for Table elements</i>
<p>A. Davis provided guidance on what was meant by “reasonable belief” in statute and stated that in terms of the nurse staffing statute, it means that a reasonable person would believe that safe patient care has been or may be negatively impacted. She emphasized that OHA would need evidence to support the reasonable belief.</p> <p>K. Voelker presented the Table 1 – Civil Penalty Assessments found in rule language. Committee members stated that their belief that mandatory overtime would negatively impact safe patient care, but drew a distinction between a single nursing staff member experiencing</p>	

mandatory overtime versus multiple nursing staff members. Committee members agreed that failing to post the complaint notice was not related to safe patient care. The committee also discussed violations related to the nurse staffing committee. K. Voelker and A. Davis explained that OHA would have difficulty measuring whether the committee had as its primary consideration the provision of safe patient care as that requires an understanding of the committee's mental status, and committee members agreed that it would be challenging to assess for the purposes of civil monetary penalties.

<b>Agenda Item 3</b>	<i>Advise on factors that may impact size of CMP imposed</i>
<p>K. Voelker shared the old CMP matrix and presented the CMP factors handout. Committee members discussed the factors that may impact the size of CMP imposed, including survey type, repeated noncompliance, priority tags identified by the NSAB Process Improvement Committee, and number of licensed hospital beds. Committee members stated that deficiencies cited during a triennial survey and complaint investigation should have the same weight, whereas deficiencies cited during a revisit survey should be more heavily weighted because hospitals would have had an opportunity to address the underlying problem. Similarly, committee members believed repeated noncompliance was more significant than a first finding of noncompliance. Committee members did not think priority tags identified by the PIC should be given additional weight beyond what was already identified by the NSAB CMP Committee. Committee members also believed that hospital size should play a role in the size of CMP imposed and proposed a system where the number of findings was compared to the number of units surveyed.</p>	

<b>Agenda Item 4</b>	<i>Summarize action items, next steps</i>
<p>K. Voelker summarized the agenda items reviewed during the meeting and noted that there were no action items. She reminded the committee that the next meeting was November 1, 2021.</p>	

<b>Agenda Item 5</b>	<i>Meeting Adjourned</i>
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**Oregon NSAB Civil Monetary Penalties Committee**  
*November 1<sup>st</sup>, 2021*  
 1:30 PM – 3:30 PM

Meeting Summary

Members present	Jenni Word, RN; Barbara Merrifield, MSN, RN; MSN; Kelsey Betts, RN; Uzo Izunagbara, RN; Debbie Robinson, RN;
Members absent	Rob Campbell, CP, ADN, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH; Belle Shepherd

Guests present	Ruth Miles (Salem Health), Katie Shriver (SEIU), Nancy Deyhle (Sacred Heart Medical Center Riverbend), Nate Wadsworth (Grande Ronde Hospital), Rachele Lyons-Schatz (Legacy Health System), Lori Gaston (St. Charles Bend)
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<b>Agenda Item 1</b>	<i>Review the meeting agenda and summary from October 1<sup>st</sup> meeting</i>
The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves via Zoom registration. K. Voelker reviewed the agenda with the committee members and summary from the previous meeting.	

<b>Agenda Item 2</b>	<i>Review financial and workload impacts of nurse staffing regulatory activities</i>
A. Davis presented the Survey Process Map, which showed the workload activities and timelines required for nurse staffing surveys and complaint investigations. These workload activities included conducting surveys and investigations, writing nurse staffing reports, reviewing Plans of Correction (POC) and hosting conference calls to clarify questions about the POC, conducting revisit surveys, and writing reports for revisit surveys.	

A. Davis also presented the Civil Monetary Penalties (CMP) Process Map and explained that CMPs are imposed after a survey or complaint investigation and after OHA provides notice of intent to impose CMPs. She stated that facilities are given the opportunity to request a hearing, but may choose to pay the fine. If the facility chooses to contest the CMP, OHA needs to coordinate setting up a hearing with the Office of Administrative Hearings, and Department of Justice (DOJ) and hospital attorneys will exchange documents and hold pre-hearing meetings. She stated that hearings are often set six to nine months after the request and that hearings are before an Administrative Law Judge. She stated that the Administrative Law Judge writes a proposed order, to which OHA and the hospital may respond. OHA would then issue a final order, which the hospital can appeal. If the hospital appeals the final order, the case then goes to the Oregon Court of Appeals. A. Davis noted that the hospital could appeal the case to the Oregon Supreme Court, which has the option of hearing the case but is not required to do so. She stated that OHA estimated CMPs to cost OHA \$20,000 for DOJ services and \$20,000 for Office of Administrative Hearing services for each contested case hearing. She stated that these financial estimates do not include the costs associated with OHA staff time.

There were no questions about OHA nurse staffing workload or the financial impacts of these activities.

<b>Agenda Item 3</b>	<i>Prioritize nurse staffing regulatory activities</i>
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K. Voelker presented slides showing OHA nurse staffing regulatory activities, which included:

- Conducting triennial surveys
- Processing complaints and conducting complaint investigations within 60 business days
- Conducting revisit surveys within 45 to 60 business days after the POC has been approved
- Writing the survey or investigation report within 30 business days
- Reviewing POCs within 30 business days
- Holding conference calls with hospitals to address POC questions
- Imposing CMPs

A. Davis clarified that some activities must happen before others, for example, a survey or complaint investigation must occur prior to OHA being able to impose CMPs. D. Selover further clarified that OHA was working towards being able to complete all those activities within the required timeframes, but that due to the amount of noncompliance seen in Cycle 1, OHA needed the committee's assistance in knowing how to prioritize these activities.

K. Voelker initiated the polling process. Committee members were instructed to vote three times for the workload activities they prioritized, and they were informed that they could vote for one activity multiple times or for three separate activities.



D. Selover stated that this activity would help OHA know which regulatory activities to prioritize while working towards an ideal state where OHA would complete all regulatory activities within statutory timelines.

The first round of polling showed that committee members equally prioritized conducting triennial surveys, completing complaint investigations within 60 business days, and reviewing POCs and issuing determinations within 30 business days. Committee members stated that they prioritized the triennial surveys because it allowed for a comprehensive review of the hospital's staffing practices. They stated that completing complaint investigations in a timely manner was also important because the farther removed the investigation was from the incident, the harder it was to address the noncompliant practice.

Committee members also clarified that they prioritized receiving the POCs back in a timely manner above receiving the nurse staffing report because receiving the POC determination helped the hospital know whether it could start making changes to the deficient practice.

K. Voelker initiated the second round of voting. The second round of voting reflected that the votes were almost equally split between the remaining regulatory activities: Revisit surveys (4 votes); Writing nurse staffing reports (4 votes); POC guidance (4 votes); and Imposing CMPs (3 votes).

Committee members discussed why they had or had not voted for revisit surveys. Some committee members believed the 45 to 60 business day timeline was not enough time for the hospital to institutionalize changes from the POC, whereas others prioritized completing the revisit survey, even if the timelines would be hard to meet. Committee members also emphasized the importance of imposing CMPs as a way to enforce the nurse staffing rules.

K. Voelker initiated the third round of voting, in which participants only had two votes. The third round of voting reflected five votes for writing nurse staffing reports, three votes for POC guidance, two votes for imposing CMPs and zero votes for conducting revisit surveys.

Committee members explained that when they only had two votes, they prioritized other regulatory activities over conducting revisit surveys because it was challenging to make institutional changes within the statutory timelines.

Committee members discussed POC guidance and how OHA invites both nurse staffing committee co-chairs and the CNO to be present for the meeting. K. Voelker noted that sometimes other hospital staff, such as Quality Improvement Specialists, will be present for the conference call. Committee members discussed the importance of including the direct care co-chair on the POC conference call and ensuring that direct care members were involved in the POC process. Committee members explained that by being included on the calls, direct care co-chairs could report back to the nurse staffing committee what processes and aspects of the nurse staffing plans needed changes. Committee members also discussed the importance of transparency throughout the POC process.

- K. Voelker presented the overall prioritization ranking voted on by the committee:
1. Conducting triennial surveys / Processing complaints and conducting complaint investigations within 60 days / Reviewing POCs within 30 business days
  2. Writing the survey or investigation report within 30 business days
  3. Holding conference calls with hospitals to address POC questions
  4. Imposing CMPs
  5. Conducting revisit surveys within 45 to 60 business days after the POC has been approved by OHA

Committee members asked how OHA would use the information shared by the committee.

K. Voelker clarified that OHA was still required to complete all of the regulatory activities and she stated that this information provided context for how OHA should focus its resources.

D. Selover stated that this information helped OHA prioritize its short-term priorities while the nurse staffing team grows and that this information was useful to know which activities should be prioritized over others.

K. Voelker thanked the committee for their feedback and noted that this information was helpful to understand CMPs within the larger context of nurse staffing regulatory work. She asked whether there were any additional questions or comments. The committee did not have any other questions or comments.

<b>Agenda Item 4</b>	<i>Summarize action items, next steps</i>
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K. Voelker summarized the discussion from the meeting and stated that OHA would discuss processes and the feedback the committee provided. She stated that the next meeting was on November 19<sup>th</sup>, 2021.

<b>Agenda Item 5</b>	<i>Meeting Adjourned</i>
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**Oregon NSAB Civil Monetary Penalties Committee**

November 19th, 2021  
 10:00 AM – 12:00 PM

Meeting Summary

Members present	Barbara Merrifield, MSN, RN; MSN; Uzo Izunagbara, RN; Debbie Robinson, RN; Rob Campbell, CP, ADN, RN
Members absent	Jenni Word, RN; Kelsey Betts, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH; Belle Shepherd

Guests present	Barbara Hutchinson; Ruth Miles (Salem Health); Danielle Meyer (OAHHS); Rachelle Lyons-Schatz (Legacy Meridian Park); Stacy January; Jennifer Gentry (Providence Portland)
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<b>Agenda Item 1</b>	<i>Review the meeting agenda and summary from November 1<sup>st</sup> meeting</i>
<p>The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves via Zoom registration. K. Voelker reviewed the agenda with the committee members and summary from the previous meeting.</p>	

<b>Agenda Item 2</b>	<i>Propose elements that alert OHA to need for CMPs</i>
<p>K. Voelker reviewed the CMP Factors handout and Nurse Staffing Survey Deficiencies handout discussed at previous meetings. She reminded committee members that OHA needs to have a reasonable belief that safe patient care could be jeopardized when imposing CMPs, and she asked the committee for elements that could alert OHA to the potential need for CMPs.</p> <p>Committee members suggested that OHA develop a point system that would be used to alert OHA about the potential need for CMPs if a hospital passed a certain point threshold.</p>	

Committee members discussed the importance of the point system capturing repeated noncompliance and wondered whether it would capture situations that did not warrant CMPs.

A. Davis clarified that OHA discretion when imposing CMPs and for every situation that met the point threshold, OHA could consider whether the situation actually represented potential patient harm.

K. Voelker added that the committee would help OHA create a system to identify potential egregious situations, and then OHA would review the context surrounding the deficiencies to determine if the violation was egregious.

Committee members suggested that the matrix capture priority tags identified by the PIC, the overall number of tags cited during the survey, multiple unaccepted POCs, and continued noncompliance during a revisit survey. Committee members also discussed why substantiated complaints may not be an appropriate factor to include on the matrix, noting that complaints do not necessarily correlate with the degree of noncompliance.

Committee members asked whether large hospitals receive more citations than medium hospitals and critical access hospitals (CAHs).

A. Davis stated that hospital size was not correlated with number of citations for Cycle 1 or, so far, for Cycle 2.

K. Voelker added that the number of citations for a hospital did not vary by size but the number of findings, which provide specific examples of the deficiency, increased with hospital size because more units are surveyed for larger hospitals. She clarified that hospitals address deficiencies and not specific findings for a POC.

Committee members discussed POC engagement factors that could indicate potential harm to safe patient care. Factors that could indicate potential harm included multiple POC submissions, not requesting to have a conference call with OHA to discuss concerns, the POC reflecting the same problems as OHA previously addressed with the hospital, and the number of insufficient tags not decreasing significantly between POC versions.

K. Voelker thanked the committee for their feedback and asked if there were any questions. The committee had no questions and no other feedback to provide OHA.

**Agenda Item 3**

*Discuss factors for OHA to consider when deciding to impose CMP and amount of CMP*

K. Voelker asked the committee for feedback on how OHA determines the amount of CMP imposed after it has determined that there is an egregious situation representing a risk to safe patient care.

Committee members proposed that this method be built into the CMP matrix that would be used to determine whether an egregious situation exists. They stated that when the hospital reaches a certain point threshold, it would switch to different levels of CMP.

K. Voelker noted that the next step was for OHA to create the matrix to share with the committee. There was no further discussion for this agenda item.

<b>Agenda Item 4</b>	<i>Discuss CMP report for NSAB</i>
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K. Voelker explained that she would draft a report summarizing the CMP Committee's feedback and present it to the committee for their review. She stated that the CMP matrix would be included as part of the report.

Committee members supported these next steps.

<b>Agenda Item 5</b>	<i>Summarize actions items, next steps</i>
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K. Voelker summarized the action items from this meeting, which included drafting a report to summarize the committee's work and creating a matrix that would alert OHA to the potential need for CMPs. She reminded the committee that she would schedule an additional meeting after this work was completed.

<b>Agenda Item 6</b>	<i>Meeting Adjourned</i>
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**Oregon NSAB Civil Monetary Penalties Committee**

June 8<sup>th</sup>, 2022  
 3:00 PM – 4:30 PM

Meeting Summary

Members present	Barbara Merrifield, MSN, RN; MSN; Uzo Izunagbara, RN; Debbie Robinson, RN; Joel Hernandez, RN; Jenni Word, RN; Kelsey Betts, RN
Members absent	
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH; Tip McIntosh; Phyllis Lebo, RN
Additional Oregon State Employees	AmyBeth Stevens (Office of Rep. Travis Nelson)

Guests present	Todd Luther (Mercy Medical Center); Peter Morgan (Adventist Health); Lisa Barton; Kelsey Smith; Kelly McNitt (Blue Mountain Hospital)
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<b>Agenda Item 1</b>	<i>Review the meeting agenda</i>
The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves via Zoom registration. K. Voelker reviewed the agenda with the committee members.	

<b>Agenda Item 2</b>	<i>Summarize Past CMP Committee Discussion</i>
K. Voelker summarized past CMP Committee discussions, discussing the advisory role of the CMP Committee and the NSAB in identifying factors that indicate civil monetary penalties (CMPs) should be assessed; the financial and workload impacts of CMPs and other nurse staffing regulatory work on OHA; objective measurements of unsafe patient care, as represented by seven citation tags; and specific factors that indicate safe patient care had been or may be negatively impacted.	

<b>Agenda Item 3</b>	<i>Discuss draft CMP Decision-making Tool</i>
<p>K. Voelker introduced the CMP Decision-making tool drafted based on the committee’s work thus far and stated that the tool would be completed by OHA staff. She explained that Part A of the tool was used for identifying noncompliance, and Part B was to capture OHA’s decision to issue CMPs. She explained that Part A was filled out immediately after OHA completed a survey or investigation, and that it would be updated if the hospital submitted more than three Plans of Correction (POCs) or if a POC was submitted late.</p> <p>K. Voelker introduced Part A, Section 1, which assigns points based on the total number of tags cited during the survey or investigation. She also described how it would be used for a standalone revisit survey. A. Davis explained that hospitals received an average of 11 citations in Cycle 2, and that this average was significantly higher in Cycle 1.</p> <p>Committee member asked whether the number of findings impacted the monetary amount or the points received in this section. A. Davis explained that number of citations tags, and not the number of findings within a tag, were addressed in the tool. She stated that the number of findings would differ based on hospital size, and OHA would request guidance from the CMP Committee to if the goal was to scale the number of findings based on hospital size.</p> <p>Committee member asked where the numbers came from in Section 1. A. Davis explained that the numbers were based on averages from Cycle 1 and Cycle 2. K. Voelker added that the CMP Committee also previously discussed how revisit surveys should be more heavily weighted than survey and complaints, so they were given more points in Section 1.</p> <p>K. Voelker introduced Part A, Section 2, which assigns points based on whether a citation represents repeated noncompliance. She stated that the hospital would receive points if the citation was cited within the past two cycles.</p> <p>Committee member asked why the points increase each cycle, even if it was the hospital’s second time being cited. A. Davis explained that with each cycle, we get farther away from the law changes and that noncompliance in Cycle 3 would be more significant than noncompliance in Cycle 2.</p> <p>K. Voelker asked for feedback about the proposal that the hospital receive points if it received the same citation within the past two cycles. Committee members indicated their support for this proposal.</p> <p>K. Voelker introduced Part A, Section 3, which assigns points for citations closely related to unsafe patient care.</p> <p>K. Voelker explained the point threshold for Sections 1 – 3 and how OHA modeled different scenarios to come to the proposed threshold of 27 points. K. Voelker and A. Davis explained how the number of tags cited would not differ based on hospital size.</p>	

K. Voelker introduced Part A, Section 4, which assigns points for the number of unacceptable POCs the hospital submits, as well as the number of POCs that are submitted late. Committee member expressed support for the tool. Another committee member expressed concern that some survey tags were repetitive and that hospitals were being cited for the same thing in multiple parts. A. Davis explained that all tags deal with different requirements of the law, although there are some similarities between some of the tags. She explained how OHA carefully reviews survey documents to determine which tags should be cited.

Committee member suggested splitting up the timelines into smaller groups and adding more points to be higher for the later submissions.

K. Voelker introduced Part B, which reflected that OHA can send a warning letter or go straight to CMPs. Committee members asked whether a warning letter would always precede a CMP, and A. Davis indicated that there may be situations where the point total was large enough to go straight to issuing CMPs. Committee members discussed how CMPs would be public record and posted on the OHA Hospital Nurse Staffing website.

Committee members asked why there were signature sections for the HCRQI Section Manager, HFLC Program Manager, and the Nurse Staffing Policy Analyst. A. Davis explained how this process matches the waiver process and is a system of checks to make sure that there is consistency maintained across the state and across hospital systems.

<b>Agenda Item 4</b>	<i>Discuss CMP report for NSAB</i>
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The CMP Report was not presented to the NSAB CMP Committee during this meeting. K. Voelker stated that the draft report would be shared at a future meeting.

<b>Agenda Item 5</b>	<i>Summarize actions items, next steps</i>
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K. Voelker explained that the CMP Committee would hold another meeting to discuss the CMP Committee Summary Report. She thanked the CMP Committee for the robust discussion.

<b>Agenda Item 6</b>	<i>Meeting Adjourned</i>
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**Oregon NSAB Civil Monetary Penalties Committee**

*August 10, 2022*  
*2:00 PM – 3:00 PM*

Meeting Summary

Members present	Barbara Merrifield, MSN, RN; MSN; Uzo Izunagbara, RN; Joel Hernandez, RN; Jenni Word, RN;
Members absent	Debbie Robinson, RN; Kelsey Betts, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH; Tip McIntosh; Austin Schmidt, RN

Guests present	Danielle Meyer (Oregon Association of Hospitals and Health Systems); Melinda Stibal (Legacy Meridian Park Medical Center); Christy Simila (Oregon Nurses Association); Jackie Fabrick (Providence); Kate York (Cedar Hills Hospital); Jennifer Rourke (Portland VA Health Care System); Denise Moland (Samaritan North Lincoln Hospital); Eugenia Liu (Oregon Health Care Association); Jennifer Brown (Cedar Hills Hospital); Kerry Kilgore (Samaritan Lebanon Community Hospital)
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<b>Agenda Item 1</b>	<i>Review the meeting agenda</i>
The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves via Zoom registration. K. Voelker reviewed the agenda with the committee members.	

<b>Agenda Item 2</b>	<i>Review changes to the draft CMP Decision-Making tool</i>
D. Selover discussed the work of OHA and the NSAB in implementing the nurse staffing law, including interpretive guidance and nurse staffing webinars. She emphasized the importance of civil monetary penalties (CMPs) as another tool to help ensure compliance with the nurse	

staffing law. A. Davis explained how during the first survey cycle, OHA’s work centered on education about the new nurse staffing law.

K. Voelker discussed the changes OHA had made to the CMP Decision-Making tool, which included adding clarification to the instructions, adding the threshold points that had been discussed in the previous meeting, and breaking up the timelines for late POCs to assign more points for POCs that were submitted significantly late. She added that OHA had also moved Part B to a Word document to make it more efficient for OHA to complete the document, but that there were no content changes in Part B.

Committee member noticed that an addition symbol was missing.

Committee members discussed the use of the word “noncompliance.” Some committee members worried that the term was too strong and that it implied willful noncompliance with the law. D. Selover explained that noncompliance is standard regulatory language and that intent is not implicit in OHA’s use of the word “noncompliance.” Some committee members felt that noncompliance was a neutral term and were not concerned with it being included in the tool, whereas other committee members believed the word was punitive. Committee members considered adding a footnote to explain OHA’s interpretation of the word “noncompliance.”

The CMP Committee held a vote to move the tool to the NSAB for full board discussion. The Committee unanimously voted on sending the tool to the NSAB.

<b>Agenda Item 3</b>	<i>Discuss CMP report for NSAB</i>
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K. Voelker introduced the CMP Committee Report, discussing the background leading to the CMP Committee; the role of the NSAB in providing guidance to OHA on CMPs; how CMPs fit into the OHA regulatory landscape, including financial and workload impacts of CMPs and prioritization of CMPs relative to other nurse staffing regulatory work; the definition of safe patient care and objective measurements of unsafe patient care; and identifying degree of noncompliance.

Committee members asked whether CMPs would be posted on the OHA website. A. Davis confirmed they would be posted on the OHA website.

Committee member indicated that she would not be able to support implementing the CMP process at this time given the healthcare landscape. She asked that OHA and the NSAB continue to study the issue moving forward and implement CMPs in a future cycle. Other committee members indicated their support for implementing CMPs in the current cycle and noted that having a mechanism to issue CMPs would help bring some hospitals into compliance with the nurse staffing law.

Oregon Nurse Staffing Advisory Board  
Civil Monetary Penalties Committee  
Meeting Summary – August 10, 2022

Committee members voted on a recommendation to implement the proposed CMP process at a later time, allowing OHA and NSAB to continue studying the issue. The Committee tied on this vote; therefore, the recommendation did not pass.

Committee members voted on a recommendation to move the CMP Committee Report to the NSAB, with language that the CMP Committee did not reach a consensus. The Committee unanimously supported this recommendation; therefore, the recommendation passed.

<b>Agenda Item 4</b>	<i>Summarize actions items, next steps</i>
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K. Voelker summarized the action items, which include updating the report to reflect the recommendations discussed during the meeting and bringing the report and decision-making tool to the quarterly NSAB meeting in October.	
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<b>Agenda Item 5</b>	<i>Meeting Adjourned</i>
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# Civil Monetary Penalties Committee Overview

Public Health Division

Anna Davis, JD

Kimberly Voelker, MPH

The logo for the Oregon Health Authority. It features the word "Oregon" in a smaller, orange, serif font above the word "Health" in a larger, blue, serif font. Below "Health" is the word "Authority" in a smaller, orange, serif font. The entire logo is set against a light blue, curved background.

Oregon  
Health  
Authority

# Committee Background

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- **2015** – Statutory changes to the nurse staffing law
- **2016** – Administrative rule changes implementing statutory changes
- **2017 – 2019** – Nurse Staffing Survey Cycle 1
- **2021 – 2023** – Nurse Staffing Survey Cycle 2
- **April 2021** – NSAB formed the Civil Monetary Penalties (CMP) Committee to explore use of CMPs as a tool to improve compliance
- **July 2021 – August 2022** – The CMP Committee met seven times to discuss how to identify situations warranting CMPs and provide guidance to OHA on issuing CMPs

# Role of the NSAB & OHA

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NSAB makes recommendations on the administration of the nurse staffing law, including CMPs. ORS 441.152(2) states:

The board shall:

- a) Provide advice to the authority on the administration of ORS 441.152 to 441.177;
- b) Identify trends, opportunities and concerns related to nurse staffing;
- c) Make recommendations to the authority on the basis of those trends, opportunities and concerns; and
- d) Review the authority's enforcement powers and processes under ORS 441.157, 441.171 and 441.177

OHA is responsible for implementing and operationalizing the nurse staffing law.

# Reasonable Person Standard

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- Under ORS 441.175, OHA may impose a CMP “when there is a reasonable belief that safe patient care has been or may be negatively impacted”.
- “Reasonable person standard” refers to legal standard where a reasonable person would believe that two things are related
  - For nurse staffing: CMP Committee looked at factors that a reasonable person would believe that safe patient care had been or may be negatively impacted
- “Reasonable person standard” is **not** causation. There is no requirement to demonstrate how X **caused** Y

# Definition of Safe Patient Care

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Safe patient care definition comes from OAR 333-510-0002(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 was not accomplished on time;



# Definition of Safe Patient Care, Continued

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- 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.”

# Table 1 – Civil Penalty Assessments – OAR 333-501-0045

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Table 1 describes civil penalties for:

- No written nurse staffing plan developed or implemented
- Nurse staffing committee failing to develop, monitor, evaluate, or modify the nurse staffing plan
- Nurse staffing committee not having as its primary consideration the provision of safe patient care and adequate nursing staff

# Table 1 – Civil Penalty Assessments – OAR 333-501-0045; Continued

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Table 1 describes civil penalties for:

- Violations of mandatory overtime provisions
- Willful violations of posting requirements
- Failing to maintain and posting a list of replacement staff
- Failing to make reasonable efforts to get replacement staff

# Objective Measurements of Unsafe Patient Care

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The NSAB CMP Committee advised that the following seven nurse staffing survey deficiencies reflected unsafe patient care:

**Tag E630:** NSP – Qualifications and Competencies

**Tag E638:** NSP – Patient Acuity and Nursing Care Intensity

**Tag E640:** NSP – Minimum Numbers on Specified Shifts

**Tag E642:** NSP – Minimum Number on the Unit

**Tag E646:** NSP – Tasks Unrelated to Providing Direct Patient Care

**Tag E654:** NSP Annual Review Factors

**Tag E665:** Nursing Staff Member Overtime

# Identifying Noncompliance

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The CMP Committee advised on additional factors that can be considered to indicate a potential or actual a threat to patient safety:

- Total number of tags cited on a survey or complaint investigation, with citations for a standalone revisit survey being more heavily weighted
- Repeated noncompliance tags
- Citations that represent objective measurements of unsafe patient care
- Lack of engagement in the Plan of Correction (POC) process, as reflected by multiple unacceptable POC submissions and late POC submissions

# CMP Decision-Making Tool

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- Developed by the CMP Committee to identify situations of unsafe patient care
- **Part A – Identifying Noncompliance**
  - Section 1 – Adds points for total number of tags cited
  - Section 2 – Adds points for repeated noncompliance
  - Section 3 – Adds points for unsafe patient care citations

*If the point total for Section 1 – 3 is  $\leq 27$ , move to Part B*

# CMP Decision-Making Tool

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- Developed by the CMP Committee to identify situations of unsafe patient care
- **Part A – Identifying Noncompliance**
  - Section 4 – Adds points for three or more unacceptable POCs and points for POCs submitted late
- **Part B – Decision-making**
  - OHA decides whether to send out a warning letter or move immediately to CMPs

# Nurse Staffing Resources:

**Website:** [www.healthoregon.org/nursestaffing](http://www.healthoregon.org/nursestaffing)

**Email:** [mailbox.nursestaffing@odhsoha.oregon.gov](mailto:mailbox.nursestaffing@odhsoha.oregon.gov)

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Nurse Staffing Policy Analyst

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## **Additional Resources:**

### **Dana Selover, MD, MPH**

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## **Nurse Staffing Advisory Board Civil Monetary Penalties Committee Summary Report**

This report summarizes the work of the Nurse Staffing Advisory Board (NSAB): Civil Monetary Penalties (CMP) Committee and provides recommendations to the Oregon Health Authority (OHA) on issuing CMPs to hospitals that are noncompliant with the nurse staffing law.

The Committee worked to formulate guidance on the use of CMPs. After seven meetings, when the Committee was reviewing the draft final report, there was a proposal put forward that the NSAB recommend that OHA not issue CMPs until after the third survey cycle is completed because the nurse staffing law was still new; hospitals have been impacted by the pandemic; and additional time would allow the board to further study underlying causes of nurse staffing citations. There was not consensus among Committee members on this proposal, and the motion did not pass. The Committee also unanimously voted to move the Summary Report and decision-making tool to the NSAB for discussion and consideration.

### **Background**

In 2017, OHA began the first 3-year cycle of nurse staffing surveys under the 2015 statutory changes<sup>1</sup> and the 2016 amendments to the nurse staffing administrative rules implementing the statutory changes. Since that time, OHA has regularly updated the NSAB on the status of nurse staffing surveys and complaint investigations, including the breadth of noncompliance with nurse staffing requirements found during the first nurse staffing survey cycle and the time necessary for hospitals to plan and implement corrections. Both OHA and the NSAB have received input from interested parties across the state about areas of continued noncompliance.

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<sup>1</sup> [Senate Bill 469](#)

Nurse Staffing Advisory Board  
Civil Monetary Penalties Committee  
Summary Report

Under Oregon Revised Statutes (ORS) 441.175(1) – (2); 441.177(4); and 441.185(1) – (2), OHA may issue CMPs for violations of the nurse staffing law. OHA last assessed CMPs for violations of the nurse staffing law prior to the 2015/2016 changes to the regulations.

Members of the NSAB have requested that OHA explore the use of CMPs as a tool to improve compliance with the nurse staffing law. OHA has sought recommendations from the NSAB about when CMPs should be imposed and how to identify situations warranting CMPs given the breadth and degree of noncompliance in the first survey cycle. In April 2021, the NSAB formed the CMP Committee to provide guidance to OHA on issuing CMPs to hospitals that are noncompliant with the nurse staffing law.

### **Role of the NSAB in providing guidance to OHA on Civil Monetary Penalties**

NSAB members are tasked with advising OHA on the administration of Oregon’s nurse staffing laws. As an advisory board, the NSAB is responsible for making recommendations that OHA can use to influence policies for the agency to use when determining whether to issue a CMP. OHA is then responsible for implementing and operationalizing the nurse staffing law.

### **How CMPs Fit Into the OHA Regulatory Landscape**

#### *Financial and Workload Impacts of CMPs*

The NSAB CMP Committee discussed the financial and workload impacts associated with issuing a CMP. If the hospital contests the CMP, OHA must request a hearing with the Office of Administrative Hearings and be represented by the Department of Justice (DOJ). The hospital must be represented by an attorney. Both sides would participate in a discovery process in preparation for a hearing. At the hearing the Administrative Law Judge assigned to the case would listen to evidence from both the agency and the hospital. The Administrative Law Judge then issues a proposed order, to which OHA and the hospital may respond. OHA would then issue a final order, which the hospital could appeal. If the hospital appeals, the appeal is heard by the Oregon Court of Appeals.

For each contested case hearing, OHA expects to pay approximately \$20,000 for DOJ services and \$20,000 for Office of Administrative Hearing Services. These financial projections do not include the costs associated with OHA staff time for hearing preparations or the cost of work on an appeal.

#### *Prioritization of CMPs Relative to Other Nurse Staffing Regulatory Work*

In the ideal state, OHA will be able to complete all nurse staffing regulatory activities within required timeframes. While OHA is working towards its ideal state, it requested feedback from the NSAB CMP Committee on how to prioritize required regulatory activities given the competing priorities of surveys, investigations, outreach and sanctions.

Nurse Staffing Advisory Board  
Civil Monetary Penalties Committee  
Summary Report

The Committee was polled on its prioritization of completing regulatory activities within required timelines. After discussion and multiple rounds of voting, the Committee provided the following ranking:

1. Conducting triennial surveys / Processing complaints and conducting complaint investigations within 60 days / Reviewing POCs within 30 business days
2. Writing the survey or investigation report within 30 business days
3. Holding conference calls with hospitals to address POC questions
4. Issuing CMPs
5. Conducting revisit surveys within 45 to 60 business days after the POC has been approved by OHA

### **Safe Patient Care and Civil Monetary Penalties**

Under ORS 441.175, the Oregon Health Authority may impose a CMP for a violation of the nurse staffing law “when there is a reasonable belief that safe patient care has been or may be negatively impacted.” The CMP committee discussed the meaning of this language as indicating that if a reasonable person were to believe that safe patient care had been or may be negatively impacted by the nurse staffing practice or policy, OHA may issue a CMP.

The NSAB CMP Committee reviewed the definition of “safe patient care” in OAR 333-510-0002(17) to make recommendations on measurements of safe patient care. As stated in the nurse staffing rules, “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 on behalf of a patient by his or her family member.

The NSAB CMP Committee determined that OAR 333-510-0002(17)(a), (g), (h), and (i) were directly measured during nurse staffing surveys and could easily be assessed with existing tools. Additionally, they advised that factors (c), (d), (e), (f) and (j) are addressed by the hospital nurse staffing committee at the time of their annual review of

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Last Revised 10/18/2022

the nurse staffing plan, since that review requires the hospital nurse staffing committee to determine whether the staffing plan adequately meets the health care needs of patients.

### **Objective Measurements of Unsafe Patient Care**

The NSAB CMP Committee advised on nurse staffing survey deficiencies for which there could be a reasonable belief that safe patient care had been or may be negatively impacted (ORS 441.175(1)). The Committee determined the following tags represented unsafe patient care:

- Tag E630: Nurse Staffing Plan – Qualifications and Competencies
- Tag E638: Nurse Staffing Plan – Patient Acuity and Nursing Care Intensity
- Tag E640: Nurse Staffing Plan – Minimum Numbers on Specified Shifts
- Tag E642: Nurse Staffing Plan – Minimum Number in the Unit
- Tag E646: Nurse Staffing Plan – Tasks Unrelated to Providing Direct Patient Care
- Tag E654: Nurse Staffing Plan Annual Review Factors
- Tag E665: Nurse Staffing Member Overtime

### **Degree of Noncompliance**

#### *Identifying Degree of Noncompliance*

During the first survey cycle, hospitals frequently had one or more of the tags listed above cited during a nurse staffing survey or complaint investigation. Under the nurse staffing law, CMPs must be based on a reasonable belief that safe patient care has been or may be negatively impacted. The NSAB CMP Committee proposed additional factors that can be considered to identify those situations that reflect a threat to patient safety. These additional factors differentiate between different noncompliant situations to ensure that patient safety remains the basis of CMPs in accordance with the law. The Committee proposed that OHA use a decision-making tool to identify these situations.

The Committee recommended that deficiencies cited during a revisit survey be weighted more heavily than those cited during a triennial survey or complaint investigation because the hospital would have recently been cited for that deficiency and had an opportunity to correct it through its Plan of Correction. The Committee also advised that failure to correct a deficiency during a revisit survey could represent willful noncompliance because the hospital would have had an opportunity to correct the deficiency and failed to do so.

The NSAB CMP Committee indicated that repeated noncompliance was more significant than the first finding of noncompliance and recommended that it be weighted more heavily on the decision-making tool. It indicated that a hospital repeatedly being cited for the same deficiency could represent willful noncompliance since the hospital would have had previous opportunities to correct the deficiency.

The NSAB CMP Committee stated that surveys resulting in more citations were more egregious than those resulting in fewer citations. The Committee recommended that the decision-making matrix reflect the total number of citations.

Finally, the Committee also discussed the Plan of Correction (POC) process and advised that lack of engagement in the POC process could indicate that safe patient care has been or may be negatively impacted. The Committee advised that a hospital could be seen as not engaged in the POC process if it had submitted multiple POCs without a significant decrease in the number of unacceptable tags or had submitted a POC after its submission deadline.

### **How the CMP Decision-Making Tool Works**

The Civil Monetary Penalty Decision-Making Tool is divided into two parts. Part A focuses on identifying nurse staffing noncompliance. The hospital receives points for indicators of noncompliance, such as the total number of deficiencies cited, repeated noncompliance, citations closely related to unsafe patient care, and lack of engagement in the POC process. OHA completes Sections 1 – 3 when the nurse staffing report is sent to the hospital. Section 4 is completed if the hospital has three or more unacceptable POCs or if the hospital submits a POC late. Late POC submissions include only those submissions where the hospital has submitted the POC after the original due date, or if an extension has been granted by OHA, after the extension due date.

If the point total for Sections 1 – 3 exceeds 27 POINTS, or if it exceeds 55 POINTS for Section 1 - 4, OHA completes Part B of the decision-making tool. In Part B, OHA indicates whether it will issue a warning letter or issue a civil monetary penalty.

- **Warning Letter:** OHA will send the hospital a letter indicating that there is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.
- **Civil Monetary Penalty:** OHA will send a letter to the hospital and its counsel indicating that there is noncompliance that reflects safe patient care has been or may be negatively impacted and that OHA is imposing a civil monetary penalty.

### **Conclusion**

The NSAB CMP Committee recognizes that civil monetary penalties may be one of several ways to improve compliance with the nurse staffing law. The Committee and OHA have worked together to develop guidance that can be applied objectively and consistently to hospitals. The Committee recommended factors that indicate that safe patient care has been or may be negatively impacted. OHA will continue to inform the NSAB on the frequency of noncompliance and on any CMPs issued.

## Civil Monetary Penalty Decision-Making Tool

Hospital \_\_\_\_\_

Survey Type \_\_\_\_\_ Survey Exit Date \_\_\_\_\_

NS Policy Analyst \_\_\_\_\_ Date \_\_\_\_\_

This form is for use by OHA to identify situations that reflect safe patient care has been or may be negatively affected. After a hospital has been issued its nurse staffing report, the Nurse Staffing Policy Analyst will complete Sections 1 - 3 in Part A. The Nurse Staffing Policy Analyst will complete Section 4 after the hospital has submitted three POCs or submitted a late POC. If the point total in Part A exceeds the threshold, complete Part B. (See Section 4 for definition of late POC.)

This form should be saved with the hospital's survey or investigation folder.

### Part A: Identifying Noncompliance

For each section, record the number of points as instructed on the form.

#### Section 1 - Total Number of Deficiencies

*Check the box next to the number of deficiencies cited on this SOD. Check the boxes if the SOD was issued for a standalone revisit survey. (For example, if 12 tags were cited, the 2 Points Box and "Add 4 points if revisit survey", resulting in a total of 6 points.)*

- |                                        |               |                          |
|----------------------------------------|---------------|--------------------------|
| Check if less than 10 tags cited:      | (0 Points)    | <input type="checkbox"/> |
| Check if 10 - 15 tags cited:           | (2 Points)    | <input type="checkbox"/> |
| <i>Add 4 points if revisit survey</i>  | + (4 Points)  | <input type="checkbox"/> |
| Check if 16 - 20 tags cited:           | (4 Points)    | <input type="checkbox"/> |
| <i>Add 8 points if revisit survey</i>  | + (8 Points)  | <input type="checkbox"/> |
| Check if 20+ tags cited:               | (8 Points)    | <input type="checkbox"/> |
| <i>Add 16 points if revisit survey</i> | + (16 Points) | <input type="checkbox"/> |

Point Total for Section 1: \_\_\_\_\_

Section 2 - Repeated Noncompliance

Check the box for each survey Cycle the tag was cited. The points are added only if the hospital has received the citation within the past two survey cycles. For example, if a hospital is cited for E600 in Cycle 2 but not cited in Cycle 1, do not add the points because there is no repeat compliance.

	<b>Cycle 1</b> (2017 - 2019) (0 points)	<b>Cycle 2</b> (2021 - 2023) (2 points if recently cited)	<b>Cycle 3</b> (2024 - 2026) (4 points if recently cited)	<b>Cycle 4</b> (2027 - 2029) (8 points if recently cited)	<b>Standalone Complaint Investigation</b> (1 point)	<b>Points</b>
<i>Example 1 - Tag cited in Cycle 1 and Cycle 2</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Example 1: 2 Points</b>
<i>Example 2 - Tag cited in Cycle 1, Cycle 2, and Cycle 3</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Example 2: 6 points</b>
<i>Example 3 - Tag cited in Cycle 2 and Cycle 3</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Example 3: 4 points</b>
<i>Example 4 - Tag cited in Cycle 1 and Cycle 3</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<b>Example 4: 4 points</b>
<i>Example 5 - Tag cited in Cycle 1 and Cycle 4</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<b>Example 5: 0 points</b>

	<b>Cycle 1</b> (2017 - 2019) (0 points)	<b>Cycle 2</b> (2021 - 2023) (2 points if recently cited)	<b>Cycle 3</b> (2024 - 2026) (4 points if recently cited)	<b>Cycle 4</b> (2027 - 2029) (8 points if recently cited)	<b>Standalone Complaint Investigation</b> (1 point)	<b>Points</b>
<b>Tag E630- NSP Qualifications, trainings &amp;</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Tag E638 - NSP Acuity &amp; Intensity</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Tag E640 - NSP Minimum Numbers: Specified Shifts</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Tag E642 - NSP Minimum Numbers: 1 RN + 1 NSM</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Tag E646 - NSP Tasks not Related to Direct Care</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Tag E654 - Annual Review Factors</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
<b>Tag E665 - NSM Mandatory Overtime</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Point Total for Section 2: \_\_\_\_\_

Section 3 - Tags Closely Related to Unsafe Patient Care

*The NSAB CMP Committee advised that a reasonable belief that safe patient care had been or may be negatively impacted if the following tags were cited. Mark each tag that was cited on the SOD.*

Tag E630: NSP Qualifications, trainings & competencies

Tag E646: NSP Tasks not Related to Direct Patient Care

Tag E638: NSP Acuity & Intensity

Tag E654: Annual Review Factors

Tag E640: NSP Minimum Numbers: Specified Shifts

Tag E665: NSM Mandatory Overtime

Tag E642: Minimum Numbers: 1 RN + 1 NSM

Number of Section 3 Tags cited: \_\_\_\_\_ x 1 point = \_\_\_\_\_ points

Point Total for Section 3: \_\_\_\_\_

Calculate Point Totals from Part A, Sections 1 - 3

*This section calculates the points from Sections 1 - 3. This section should be filled out after the nurse staffing report has been sent to the hospital. If Sections 1 - 3 exceeds 27 points, complete Part B.*

Total from Section 1: \_\_\_\_\_ +

Total from Section 2: \_\_\_\_\_ +

Total from Section 3: \_\_\_\_\_

= \_\_\_\_\_ points

If total exceeds 27 points, complete Part B.



**Section 4 - Plan of Correction Engagement**

*Note: Do not complete this section until the hospital has submitted three Plans of Correction or the hospital submits a late POC. A late POC is a POC submitted after its 30 work-day deadline, or if the hospital has received an extension on its POC from OHA, after the POC extension deadline.*

*If there is new information to record in this section, print a new Section 4 page. Draw a single line through the previous version and date and initial. Retain both versions in the hospital's POC folder.*

Section 4A: Number of POC Submissions

- POC 1 Accepted: 0 points
- POC 1 Unacceptable: 0 points
- POC 2 Unacceptable: 0 points
- POC 3 Unacceptable: \_\_\_\_\_ tags to correct × 1 point = \_\_\_\_\_ points
- POC 4 Unacceptable: \_\_\_\_\_ tags to correct × 2 points = \_\_\_\_\_ points
- POC 5 Unacceptable: \_\_\_\_\_ tags to correct × 3 points = \_\_\_\_\_ points

Add 20 points for each additional POC that is unaccepted (POC 6, POC 7, etc.)

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Point Total for Section 4A: \_\_\_\_\_

Section 4B: Late POC Submissions

*Use the space below to record incidents where the POC was received more than 5 work days after its original due date. If the hospital received an extension, only list incidents where the POC was received more than one work day after the extended due date.*

	POC Version #	POC Due Date	Check if extension	Extension Due Date	Date POC Received	# Work Days Late
Incident 1			<input type="checkbox"/>			
Incident 2			<input type="checkbox"/>			
Incident 3			<input type="checkbox"/>			
Incident 4			<input type="checkbox"/>			
Incident 5			<input type="checkbox"/>			

- POC received 2 - 5 work days late: # Incidents \_\_\_\_\_ × 2 points = \_\_\_\_\_ points
- POC received 6 - 10 work days late: # Incidents \_\_\_\_\_ × 4 points = \_\_\_\_\_ points
- POC received 11 - 20 work days late: # Incidents \_\_\_\_\_ × 8 points = \_\_\_\_\_ points
- POC received 21 or more work days late: # Incidents \_\_\_\_\_ × 10 points = \_\_\_\_\_ points
- Extended POC received 1 or more work days late: # Incidents \_\_\_\_\_ × 2 points = \_\_\_\_\_ points

Point Total for Section 4B: \_\_\_\_\_

Calculate Point Totals from Part A

*If there is a new point total for Section 4 (as a result of multiple POC submissions or late POC submissions), print a new calculation page. Draw a line through the previous version and date and initial. Retain each version in the hospital's POC folder.*

Total from Section 1: \_\_\_\_\_ +  
Total from Section 2: \_\_\_\_\_ +  
Total from Section 3: \_\_\_\_\_  
Total from Section 4A: \_\_\_\_\_ +  
Total from Section 4B: \_\_\_\_\_ = \_\_\_\_\_ points

If total exceeds 55 points, complete Part B.

## Part B: Decision-making

### Decision by HFLC Survey & Certification Manager

**Issue Warning Letter** - There is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be sent a warning letter and required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.

**Issue Civil Monetary Penalty** - There is noncompliance that reflects safe patient care has been or may be negatively impacted. Check the box next to each applicable statement.

The hospital is noncompliant with many aspects of the nurse staffing law. It received 10 or more citations during the survey. (See Part A, Section 1 - Total Number of Deficiencies)

The hospital has failed to correct or maintain compliance for deficiencies previously cited against the hospital. (See Part A, Section 2 - Repeated Noncompliance.)

The hospital received at least one citation closely related to unsafe patient care. (See Part A, Section 3 - Tags Closely Related to Unsafe Patient Care.)

The hospital is not engaged in the Plan of Correction process. (See Part A, Section 4 - POC Engagement.)

Comments:

Click or tap here to enter text.

Printed Name

Date

Signature \_\_\_\_\_

**Decision by HCRQI Program Manager**

**Issue Warning Letter** - There is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be sent a warning letter and required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.

**Issue Civil Monetary Penalty** - There is noncompliance that reflects safe patient care has been or may be negatively impacted. Check the box next to each applicable statement.

The hospital is noncompliant with many aspects of the nurse staffing law. It received 10 or more citations during the survey. (See Part A, Section 1 - Total Number of Deficiencies)

The hospital has failed to correct or maintain compliance for deficiencies previously cited against the hospital. (See Part A, Section 2 - Repeated Noncompliance.)

The hospital received at least one citation closely related to unsafe patient care. (See Part A, Section 3 - Tags Closely Related to Unsafe Patient Care.)

The hospital is not engaged in the Plan of Correction process. (See Part A, Section 4 - POC Engagement.)

Comments:  
Click or tap here to enter text.

Printed Name

Date

Signature \_\_\_\_\_

**Recommendation by NS Policy Analyst**

**Issue Warning Letter** - There is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be sent a warning letter and required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.

**Issue Civil Monetary Penalty** - There is noncompliance that reflects safe patient care has been or may be negatively impacted. Check the box next to each applicable statement.

The hospital is noncompliant with many aspects of the nurse staffing law. It received 10 or more citations during the survey. (See Part A, Section 1 - Total Number of Deficiencies)

The hospital has failed to correct or maintain compliance for deficiencies previously cited against the hospital. (See Part A, Section 2 - Repeated Noncompliance.)

The hospital received at least one citation closely related to unsafe patient care. (See Part A, Section 3 - Tags Closely Related to Unsafe Patient Care.)

The hospital is not engaged in the Plan of Correction process. (See Part A, Section 4 - POC Engagement.)

Comments:  
Click or tap here to enter text.

Printed Name

Date

Signature \_\_\_\_\_

**Survey and Certification Unit**

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## **Public Comment on Civil Monetary Penalties**

The following pages reflect the written comments on civil monetary penalties that OHA received by 5:00 PM on November 21, 2022. These comments are included for the Nurse Staffing Advisory Board's review prior to the ad hoc meeting on December 2, 2022.



November 12, 2022

Dana Selover, MD MPH  
Oregon Health Authority  
Public Health Division  
Section Manager, Health Care Regulation & Quality Improvement; EMS & Trauma Systems  
Director  
800 NE Oregon St, Portland, OR 97232

RE: Implementation of Civil Monetary Penalties

Dr. Selover:

On behalf of more than 13,000 nurse members of the Oregon Nurses Association (ONA), I am submitting comments on the long overdue implementation of civil monetary penalties (CMPs). We would like to express our appreciation to the Nurse Staffing Advisory Board (NSAB) members who participated in the CMP subcommittee.

We appreciate the factors identified that may be used as evidence of unsafe patient care. We assert the current survey process clearly identifies widespread failures to implement key components of staffing plans, as demonstrated by multiple facilities receiving citations for "repeated non-compliance" with the law. ONA asserts hospitals are cited for the same violations, time and time again, because they willfully ignore the law and are not held accountable to it. This lack of progress and good faith engagement by management is evidenced by outcomes of OHA nurse staffing surveys and the current nurse staff turnover crisis plaguing Oregon's hospitals.

We appreciate the many hours NSAB members have spent providing guidance to OHA staff. It is time OHA honor that work, the letter, and spirit of the law, and hold hospitals accountable by issuing CMPs that are high enough to be an effective deterrent. Many hospitals in Oregon have a demonstrated pattern of non-compliance with the staffing law. CMPs have been available to OHA since the implementation of SB469 and there is no justification for waiting any longer to level CMPs on these chronic offenders.

The literature is clear: nurse fatigue is a risk to patient safety, and nurses receiving their meal and rest breaks are a means to mitigate fatigue. This is especially true for nurses working extended length shifts. OHA nurse staffing survey reports demonstrate Oregon's premier academic hospital received citations in 2017 and 2021 for failing to consider meals and breaks in their staffing plans and dropping below the minimum number of staff needed when a nurse takes a break. Despite OHA stating the hospital is being cited for "repeated non-compliance" there still has been no change in practice at the hospital. Furthermore, OHA has yet to approve a plan of correction even after more than 20 months have passed since the survey; it's been more than a year and the Authority has failed to investigate valid complaints submitted by frontline nurses. There has been no consequence for ignoring the law, the citations, and the voices of frontline nurses. The result is a medical center unprepared to meet the needs of Oregonians because they nurses leave the bedside faster than they can be replaced.

Obstructive behaviors like this perpetuate nurse fatigue and threaten patient safety and therefore warrant immediate implementation of CMPs.

ONA members have engaged in good faith since the first staffing law was passed, in 2001, while most hospitals have focused on obstructing the process to maintain the status quo, their external benchmark targets, and budgetary goals. A review of the legislative record shows Senate Bill 469 was passed to improve the working conditions of direct care nurses by giving them a voice in that process. OHA has enabled hospitals to obstruct and ignore that voice by neglecting to enforce the law with CMPs.

The current staffing crisis is because hospitals refuse to listen to direct care nurses. OHA exists to ensure Oregonians can receive safe, quality health care and must immediately begin leveling CMPs. The Authority must compel hospitals to follow the staffing law and to ensure nursing work environments enable nurses to provide safe, quality care.

Respectfully,

Matt Calzia, BSN, RN

Director of Nursing Practice and Professional Development

Oregon Nurses Association



**From:** [Terri Kaiser](#)  
**To:** [Mailbox Nurse Staffing](#)  
**Subject:** Fwd: Comment to the NSAB meeting on December 2  
**Date:** Wednesday, November 16, 2022 1:44:34 PM

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----- Forwarded message -----

From: **Terri Kaiser** <[tmallerrn@gmail.com](mailto:tmallerrn@gmail.com)>  
Date: Wed, Nov 16, 2022 at 1:39 PM  
Subject: Comment to the NSAB meeting on December 2  
To: <[mailbox.nursestaffing@odhoha.oregon.gov](mailto:mailbox.nursestaffing@odhoha.oregon.gov)>

Dear Nurse Staffing Advisory Board Members,

I would like to comment on the assessment of Civil Monetary Penalties for hospitals who violate the nurse staffing plans. I think the language in the staffing law is too vague and allows the OHA way too much leeway in making the decisions to penalize hospitals who are found to be in violation of their staffing plans. In my experience as the nurse co-chair of my staffing committee, I find that management has often taken the attitude that if documentation is submitted by nurses that show the staffing plan is not being followed they aren't concerned and have stated that "nothing will be done to us anyway." This shows a total lack of respect for the staffing law and the ability of OHA to enforce these penalties. I would be interested to see the data of how many times a hospital has been fined by the OHA. Please make the guidelines for assessing Monetary Penalties stricter. Thank you.

Terri Kaiser RN  
Nurse Co-Chair of the staffing committee at OHSU-HMC

**From:** [Pisciotta,Diana](#)  
**To:** [Mailbox Nurse Staffing](#)  
**Subject:** NSAB - comment on Civil Monetary Penalties  
**Date:** Wednesday, November 16, 2022 2:58:58 PM

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Hello,

I am submitting a written comment for the ad-hoc NSAB meeting coming up on Dec 2<sup>nd</sup> as I will be working the floor and wont be able to listen in real time.

I am a staff nurse at Adventist Health Tillamook and co-chair of our NSC. We had our survey in August of 2021 and are on our 6<sup>th</sup> Plan of Correction. We have worked very hard on passing but we still seem to not get the correct wording/process on our POCs. I don't think it would be fair for our hospital to be penalized monetarily when I myself have not experienced unsafe staffing here or any other negative situations related to Nurse Staffing. I listened to the last NSAB meeting and others had also verbalized the concern that maybe there are opportunities to make changes to the survey itself or the process of POCs. I am not totally opposed to civil monetary penalties, but I dont think this is the right time to initiate them, especially when so many hospitals are struggling to pass these POCs.

**Diana Geacu Pisciotta** | RN, BSN | ICU & Med/Surg  
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November 21, 2022

Submitted Electronically: [dana.s.selover@dhsosha.state.or.us](mailto:dana.s.selover@dhsosha.state.or.us) &  
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Dana Selover, MD  
Survey & Certification Unit  
Oregon Health Authority  
800 NE Oregon Street, Suite 465  
Portland, OR 97232

**Re: NSAB Civil Monetary Penalties Committee – Decision Making Tool**

Dr. Selover:

Legacy Health appreciates the opportunity to provide comments on the Nurse Staffing Advisory Board (NSAB) Civil Monetary Penalty (CMP), Decision-Making Tool and draft CMP Committee Summary Report (last revised 10/18/2022).

Legacy is a nonprofit health care provider serving the Portland-Vancouver area and mid-Willamette Valley. We are an integrated care network that includes six community-based and nationally recognized hospitals, over 100 primary care, urgent care, and specialty care clinics, and nearly 14,000 employees.

Measurements of Unsafe Patient Care

According to the Summary Report, the NSAB CMP Committee determined there are seven tags that “*could*” represent unsafe patient care. The seven tags are very broad in nature and include deficiencies that do not represent unsafe patient care. It is our belief that clear and objective standards that identify how the deficiency indicates unsafe patient care should be developed.

Identifying Degree of Noncompliance

Legacy agrees that repeated noncompliance should be considered as a factor when determining whether to impose CMPs in certain circumstances, however, Legacy has two noteworthy concerns. First, our experience has been that the survey process can be inconsistent. Having several of our hospitals go through more than one survey cycle, this continues to be our experience. This is another area we believe should be narrowed as repeated noncompliance should be limited to same unit/same finding as prior survey.

Second, Legacy opposes OHA imposing civil penalties based on tags cited prior to the effective date of the Decision-Making Tool. We should have a fair opportunity to correct a deficiency before a perceived failure to do so is considered willful noncompliance. Cycle 1 occurred while hospitals and OHA were in a period of learning how to engage in nurse staffing surveys and parts of Cycle 2 occurred during the COVID-19 emergency period. This was a time of great

change and uncertainty for our hospitals and teams with the pandemic exacerbating pre-existing challenges.

Legacy requests that NSAB consider the proposal put forward that OHA not issue CMPs until after the third survey cycle is completed.

#### Prioritization of CMPs Relative to Other Nurse Staffing Regulatory Work

The draft CMP Committee Summary Report indicates that “Issuing CMPs” was not given high priority by the Committee ranking it near the bottom of the priority ranking after multiple rounds of voting. Legacy agrees with the committee, that “Issuing CMPs” should not be a high priority. Our hospitals and staff are dedicated to serving our patients and community. Our continued focus is on providing access to care in the face of substantial challenges including workforce shortages and financial instability. Safer patient care can be supported by OHA through education and efficient communication when concerns arise. In addition, imposing CMPs adds costs beyond the amount of the CMPs to hospitals—the process to resolve CMPs means that OHA and hospitals should expect to incur considerable costs to participate in the process.

Legacy requests that OHA prioritize the completion of its other nurse staffing regulatory activities within the required timeframes before issuing CMPs to hospitals.

#### Current Law

Legacy continues to be concerned that Oregon’s Nurse Staffing Law has substantial weaknesses. Our concerns increase when this flawed law is used as a basis to impose financial penalties. Oregon’s Nurse Staffing Law imposes a significant regulatory burden with too much focus on record keeping and administrative burdens and not enough focus on the needs of patients and our communities.

Legacy Health is driven by our mission to improve the health of our communities, and we are committed to providing safe, quality care. We welcome the opportunity to partner with the NSAB and OHA to achieve these objectives.

Sincerely,



Kecia M. Kelly, DNP, RN  
Senior Vice President and Chief Nursing Officer

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## **Previously Received Written Comments on Civil Monetary Penalties**

OHA received the following written comments on October 25<sup>th</sup> and October 26<sup>th</sup>, 2022, prior to the Nurse Staffing Advisory Board: October Quarterly Meeting. These comments are being included for the NSAB's ad hoc meeting on civil monetary penalties and are included in this packet for the board's review.



October 25, 2022

To Whom It May Concern:

I am the Chief Nursing Officer for Asante, a non-profit health system which serves Jackson and Josephine counties. As CNO at Asante, I oversee Nursing Services for acute care patients. I would like to voice my opposition to implementing Civil Monetary Penalties (CMP) at the current time. I would also like to voice my opposition to how the OHA proposes to use deficiencies in the CMP process, as well as the broad discretion afforded by the OHA to impose a CMP.

Across the state of Oregon, hospitals are managing huge labor shortages, struggling financially, and experiencing patient volumes that overwhelm their resources. The confluence of these three factors has imposed significant strain on hospitals, especially non-profit systems that serve underserved populations. Even before the pandemic, hospitals were experiencing nursing shortages. The pandemic exacerbated the nursing shortages and staffing crises that hospitals were already experiencing before the impact of COVID-19.

Hospitals undertook heroic efforts to respond to the increased demand imposed on the healthcare system by the pandemic and combat the labor shortage. Hospitals across the state paid premium dollars for labor to ensure our communities were cared for during unprecedented times. Even in the face of unprecedented labor costs, hospitals continued to face nursing shortages.

The financial repercussions of the pandemic continue to resonate as hospitals are looking to recover from negative operating margins. While operating at a loss, hospitals are also experiencing near constant capacity constraints; the number of acute care beds in the state does not meet the needs of the communities we all serve. The high patient volumes are in part due to a lack of community beds, delayed care related to the pandemic, and longer inpatient lengths of stay. With capacity already being a constraint, decreasing the number of available acute care beds is an unrealistic tactic to improve nurse staffing; a hospital's capacity constraints do not inhibit the patient's need to seek care. To impose CMP, due to staffing shortages beyond the control of any organization, at a time when all hospitals are in dire straits, would be devastating to the sustainability of healthcare organizations and the communities we serve would suffer.

The OHA's proposed tool that uses deficiencies in the CMP process does not account for an organization's active efforts to improve nurse staffing. In the context of imposing penalties, it is inequitable to evaluate an organization's compliance or alleged non-compliance without taking account of the "why" or considering the barriers and efforts undertaken by the organization in determining whether penalties are appropriate. In light of the significant nurse staffing shortages, both locally and nationwide, hospitals that are making progress to adequately staff to the approved nurse staffing plans should be recognized for the commitment and intent to be fully compliant with the nurse staffing laws. Under reasonable circumstances, all hospitals would be required to follow the nurse staffing law as written; however, the mass "noncompliance" of hospitals across the state with nurse staffing laws is evidence of the systemic lack of capability and resources across the system, not an intentional or



flippant disregard for the rules. The OHA must recognize and take into account barriers that should be resolved before imposing CMP on hospitals. It must also acknowledge that sometimes external circumstances make compliance unattainable.

Furthermore, the proposal grants OHA vast discretion in imposing a CMP. The factors listed as evidence of unsafe patient care are broad and subjective, leaving extensive room for interpretation. To promote integrity and just implementation/enforcement of the law, safe patient care needs to have measurable, objective data to utilize in this determination. There cannot be such wide discretion left to the OHA, as this leaves room for subjective criticism and inconsistencies.

I recommend prior to implementation of CMP that OHA commit to:

- Demonstrating timeliness and consistency in survey completion, including POC approvals and revisits
- Defining measurable outcomes to determine safe/unsafe patient care
- Considering organizational efforts to improve nurse staffing when determining if CMP is warranted
- Accounting for the workforce and economic climate, along with other external factors, in staffing law compliance and identify ways to partner with hospitals for success

Sincerely,

A handwritten signature in blue ink that reads "Amanda Kotler".

Amanda Kotler, MBA, BSN, RN  
Chief Nursing Officer  
Asante



October 25, 2022

To Whom It May Concern,

We are writing to express our concern over the proposed plan for OHA to begin handing out civil monetary penalties to hospitals from the Nurse Staffing Survey process. Healthcare is in a tumultuous time with unprecedented vacancy rates in nursing positions. At the same time greater than 50% of hospitals nationwide, with Oregon being no exception, are experiencing negative operating margins. In fact, through the first two quarters of 2022, 65% of the hospitals in Oregon had a negative operating margin. It is unreasonable to add a further financial burden to already struggling hospitals that are doing all they can to fill vacant nursing positions. We, at Columbia Memorial Hospital (CMH) gave a substantial annual raise to our frontline nurses to remain competitive with other hospitals in Oregon and the surrounding states. We also have approximately 20 agency nurse positions within our 25-bed critical access hospital to assure we can maintain our patient care operations. There are limited opportunities to hire nurses in our rural area. The local community college only graduated 18 nurses this year and we along with the other critical access hospital in our area hired the majority of those graduates. This hiring helped our vacancy rate but did not eliminate it. We are not significantly different than other small hospitals in rural areas of Oregon.

We also have concerns with the current Nurse Staffing Survey process. This year CMH participated in our Nurse Staffing Survey in early March. The following are concerns from that experience:

- OHA took greater than the allowed 45 business days to return our report from the survey. It is unreasonable to hold hospitals to their part of the process with civil monetary penalties when OHA does not comply with their part.
- OHA cited an issue that was completed with the acceptance of our 2018 Nurse Staffing Survey Plan of Correction. We did not feel there was adequate support or explanation about why they were revisiting this issue even after a phone conversation with OHA representatives.
- We submitted our Plan of Correction within the appropriate timeframe after receiving the report. We were notified that basically none of our POC was accepted. We were very disappointed in the expectations set out by OHA for a POC. Prior to submitting our POC, we reviewed our 2018 accepted POC and other hospitals accepted POCs as instructed and were confident in our plan.
- One of our largest concerns is the challenge in engaging the unionized nurses within our organization. ONA represented members are not responsive or supportive in assuring the processes required by the

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Oregon Nurse Staffing Law. We were told by representatives from OHA that they “have no authority over the ONA and can only hold hospitals accountable.” This is very problematic when the point of the Nurse Staffing Law is collaboration between the hospital and the front-line nursing staff. Until such a time that there are civil monetary penalties for the representative nurses’ union in our state when nurses will not come to the table to work collaboratively in a timely fashion to meet the requirements of the Nurse Staffing Law, it remains unreasonable to impart civil monetary penalties onto the hospitals.

Thank you for considering our concerns. We know we are not the only hospital with similar issues with the process of the Nurse Staffing Survey nor are we alone in being concerned that the proposal of civil monetary penalties will exacerbate the already uncertain financial future of our state’s hospitals and hospital systems. Now is not the time for financial penalties. It is the time to improve the processes surrounding the Oregon Nurse Staffing Law to truly assure safe staffing of hospitals for our patients.

Sincerely,

Erik Thorsen  
CEO Columbia Memorial Hospital  
Columbia Memorial Hospital

Judy Geiger RN  
VP Patient Care Services

October 25, 2022

Submitted Electronically: [dana.s.selover@dhsoha.state.or.us](mailto:dana.s.selover@dhsoha.state.or.us) &  
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Dana Selover  
Survey & Certification Unit  
Oregon Health Authority  
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Portland, OR 97232

**Re: NSAB Civil Monetary Penalties Committee – Decision Making Tool**

Dana Selover:

On behalf of Oregon's 62 community hospitals and the patients they serve, the Oregon Association of Hospitals and Health Systems ("OAHHS") is providing comments on the Nurse Staffing Advisory Board (NSAB) Civil Monetary Penalty (CMP), Decision-Making Tool and draft CMP Committee Summary Report (last revised 10/18/2022).

#### Measurements of Unsafe Patient Care

According to the Summary Report, the NSAB CMP Committee determined there are seven tags that represent unsafe patient care. The seven tags capture a broad range of situations. It is our view that not every possible deficiency that falls within these tags represents unsafe patient care. Even if there is some content within each of these tags that may represent unsafe patient care, if there is some content within any of the tags that does *not* represent unsafe patient care then the standard should be narrowed. It is critically important that OHA develop a clear and objective standard. OAHHS is also opposed to the use of the tags due to the risk the tags could be applied in a subjective or inconsistent manner.

OAHHS requests that measurements of unsafe patient care be appropriately tailored to identify unsafe patient care and be objective.

#### Identifying Degree of Noncompliance

OAHHS does not oppose repeated noncompliance being considered as a factor when determining whether to impose CMPs in certain circumstances, however, OAHHS has two substantial concerns. First, our understanding is that the survey process can sometimes be inconsistent. Second, OAHHS opposes OHA imposing civil penalties based on tags cited prior to the effective date of the Decision-Making Tool. Hospitals should have a fair opportunity to correct a deficiency before a perceived failure to do so is considered willful noncompliance. Moreover, Cycle 1 occurred when hospitals and OHA were in a period of learning how to engage in nurse staffing surveys and parts of Cycle 2 occurred during the COVID-19 emergency period, which was a time of great uncertainty and change in our hospitals. Although there was not consensus and the motion did not pass, a proposal was put forward that the NSAB recommend that OHA not issue CMPs until the third survey cycle is completed.

OAHHS requests that NSAB consider the proposal put forward that the NSAB recommend that OHA not issue CMPs until after the third survey cycle is completed.

Prioritization of CMPs Relative to Other Nurse Staffing Regulatory Work

The draft CMP Committee Summary Report indicates that “Issuing CMPs” was not given high priority by the Committee when the Committee was asked how to prioritize required regulatory activities. OAHHS agrees that “Issuing CMPs” should not be a high priority. Hospitals and their staff are dedicated to serving patients and preserving access to care in the face of substantial challenges including workforce shortages and financial instability. Safer patient care can be supported by OHA through education and efficient communication with hospitals when concerns arise. In addition, imposing CMPs adds costs beyond the amount of the CMPs to hospitals—the process to resolve CMPs means that OHA and hospitals should expect to incur considerable costs to participate in the process.

OAHHS requests that OHA prioritize the completion of its other nurse staffing regulatory activities within the required timeframes before issuing CMPs to hospitals.

Current Law

OAHHS continues to be concerned that Oregon’s Nurse Staffing Law has substantial weaknesses. Our concerns increase when this flawed law is used as a basis to impose financial penalties. Oregon’s Nurse Staffing Law imposes a significant regulatory burden with too much focus on record keeping and administrative burdens and not enough focus on the needs of patients and our communities.

Thank you,



Danielle Meyer  
Director of Public Policy  
Oregon Association of Hospitals and Health Systems

October 26, 2022

Nurse Staffing  
Health Care Regulation & Quality Improvement  
Oregon Health Authority

Via email to: [mailbox.nursestaffing@odhsoha.oregon.gov](mailto:mailbox.nursestaffing@odhsoha.oregon.gov)

RE: Civil Monetary Penalties Committee Summary Report

Salem Health Hospitals & Clinics serves the mid-Willamette Valley with Salem Hospital (Level II Trauma Center, Region 2 Resource Hospital) and West Valley Hospital in Dallas (Critical Access Hospital). In addition, we provide primary and specialty care, urgent and same-day care to people who live in these same communities.

These are incredibly challenging times for Oregon's health care system. As of today, Salem Health has over 700 unfilled jobs. Many of those openings are for nurses. Providers throughout the continuum of care are struggling to hire staff. The fact that many patients are, even today, boarding in our hospital for lack of step-down care is evidence of the devastating shortage of nurses and health care staff in Oregon.

It is with this in mind that I write with concerns about the Nurse Staffing Advisory Board Civil Monetary Penalties Committee Summary Report. The report proposes an unnecessarily complex point system to measure and punish the degree of noncompliance by subject hospitals. Oregon's Nurse Staffing laws and associated regulations have resulted in confusing and frustrating processes that do not yield desired results. Unfortunately, this report adds to the problem.

While I applaud their effort, the Civil Monetary Penalties Committee did not come to consensus on a process by which civil monetary penalties would be applied. They did not agree on methodology that would allow clarity for subject hospitals as well as consistent enforcement of both statute and regulations.

Reading through the report, I am concerned that it does not faithfully represent the work of the Civil Monetary Penalties Committee. It reads as if the Committee members were of one mind, which was not the case. Further, the report relies on terminology that deepens the divide between regulators and regulated. It is the responsibility of the Oregon Health Authority to work *with* regulated hospitals. The language used and the point system forms reflect a punitive, rather than collaborative, regulatory approach.

Implementing a structure that lacks broad support among affected stakeholders is not likely to achieve positive outcomes and has the potential to increase frustration among staff and nurse leadership who are responsible for operationalizing these regulations. I recommend that the Nurse Staffing Advisory Board respect the lack of consensus among the hard-working members of the Civil Monetary Penalties Committee by *not* moving forward with the draft report staff recommendations.

Rather, the Nurse Staffing Advisory Board should refocus the work of the Civil Monetary Penalties Committee on the outcomes to be achieved and provide them with the space and time needed to come to true consensus. This may allow them to develop a framework that would allow for objective and consistent application of statute, and provide clarity for both regulators and regulated parties.

Sincerely,



Sarah Horn, MBA, BSN, RN, NE-BC, RNC-LRN  
Senior Vice President, Chief Nursing & Clinical Operations Officer