HB 2800: Hospital Nurse Staffing Law  (document prepared by Oregon Nurses Association, 10/06)

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<th>Definitions</th>
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<tr>
<td>333-510-0002 Definitions. As used in OAR Chapter 333, Division 510, the following definitions apply:</td>
<td>leaves the assignment or transfers care to another.</td>
<td>(9) “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.</td>
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<td>(1) “Direct Care Nurse” means a nurse who is routinely assigned to a patient care unit, who is replaced for scheduled and unscheduled absences and includes charge nurses if the charge nurse is not management services.</td>
<td>(a) A failure to implement the written nurse staffing plan;</td>
<td>(a) A failure to implement the written nurse staffing plan;</td>
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<td>(2) “Evidence Based Standards” means standards that have been scientifically developed, are based on current literature and are driven by consensus.</td>
<td>(b) A failure to comply with the patient care plan;</td>
<td>(b) A failure to comply with the patient care plan;</td>
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<td>(3) “Hospital” has the same meaning as given in ORS 442.015.</td>
<td>(c) An error that has a negative impact on the patient;</td>
<td>(c) An error that has a negative impact on the patient;</td>
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<td>(4) “Mandatory Overtime” is any time that exceeds those limits specified in ORS 441.166 unless the registered nurse, licensed practical nurse or certified nursing assistant voluntarily chooses to work overtime.</td>
<td>(d) A patient reports that his/her nursing care needs have not been met;</td>
<td>(d) A patient reports that his/her nursing care needs have not been met;</td>
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<td>(5) “Nurse Manager” means a registered nurse who has administrative responsibility 24 hours a day, 7 days a week for a patient care unit, units, or hospital and who is not replaced for short-term scheduled or unscheduled absences.</td>
<td>(e) A medication not given as scheduled;</td>
<td>(e) A medication not given as scheduled;</td>
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<td>(6) “On Call” means a scheduled state of availability to return to duty, work-ready, within a specified period of time.</td>
<td>(f) The nursing preparation for a procedure not accomplished on time;</td>
<td>(f) The nursing preparation for a procedure not accomplished on time;</td>
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<td>(7) “On-call nursing staff” means individual nurses and/or nursing service agencies maintained by a hospital that are available and willing to cover nursing staff shortages due to unexpected nursing staff absences or unanticipated increased nursing service needs.</td>
<td>(g) Registered nurses, licensed practical nurses and/or certified nursing assistants practicing outside their scope of practice;</td>
<td>(g) Registered nurses, licensed practical nurses and/or certified nursing assistants practicing outside their scope of practice;</td>
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<td>(8) “Potential Harm” or “At Risk of Harm” means that an unstable patient will be left without adequate care for an unacceptable period of time if the registered nurse, licensed practical nurse or certified nursing assistant</td>
<td>(h) The daily unit-level staffing does not include coverage for all known patients, taking into account the turnover of patients;</td>
<td>(h) The daily unit-level staffing does not include coverage for all known patients, taking into account the turnover of patients;</td>
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<td>(i) The skill mix of employees and the relationship of the skill mix to patient acuity and intensity of the workload is insufficient to meet patient needs, or</td>
<td>(i) The skill mix of employees and the relationship of the skill mix to patient acuity and intensity of the workload is insufficient to meet patient needs, or</td>
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<td>(j) An unreasonable delay in responding to a patient’s (or a family member’s request on behalf of a patient) request for nursing care.</td>
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<td>(10) “Standby” means a scheduled state of being ready to be called to work within a hospital-designated time frame.</td>
<td>(10) “Standby” means a scheduled state of being ready to be called to work within a hospital-designated time frame.</td>
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### SECTION 1. ORS 441.162 is amended to read:

(1) A hospital shall be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The staffing plan shall be developed, monitored, evaluated and modified by a hospital staffing plan committee. To the extent possible, the committee shall:
   
   (a) Include equal numbers of hospital nurse managers and direct care registered nurses;
   
   (b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to be selected by direct care registered nurses from the particular specialty or unit. The hospital shall define its own specialties or unit; and
   
   (c) Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to this chapter.

(2) The hospital shall evaluate and monitor the staffing plan for effectiveness and revise the staffing plan as necessary as part of the hospital’s quality assurance process. The hospital shall maintain written documentation of these quality assurance activities.

(3) The written staffing plan shall:
   
   (a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care and include a periodic quality evaluation process to determine whether the staffing plan is appropriate and accurately reflecting patient needs over time.

### 333-510-0002 Definitions

As used in OAR Chapter 333, Division 510, the following definitions apply: see page 1 of this document).

**333-510-0030**

(1) The hospital shall provide a nursing service department which provides 24-hour onsite registered nursing care, 7 days a week.

(2) The nursing services department shall be under the direction of a nurse executive who is a registered nurse, licensed to practice in Oregon.

(3) All nursing personnel shall maintain current certification in cardiopulmonary resuscitation.

**333-510-0045 Nursing Services Staffing**

(1) Each hospital must be responsible for the implementation of a written hospital-wide staffing plan for nursing services. The nurse staffing plan must be developed, monitored, evaluated and modified by the hospital nurse staffing plan committee except as providing in subsection 6 of this section. To the extent possible, the committee must:
   
   (a) Be comprised solely of equal numbers of hospital nurse managers and direct care registered nurses as its exclusive membership for decision making;
   
   (b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to be selected by direct care registered nurses from the particular specialty or unit as the specialty or unit is defined by the hospital; and
   
   (c) Have as its primary consideration the provision of safe patient care and adequate nursing staff pursuant to ORS 441.

(2) The hospital nurse staffing committee must document:
   
   (a) How its members were chosen to reflect fair and knowledgeable representation;
   
   (b) How the input of each member in decision making is assured;
   
   (c) The committee process and procedures, including how
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<td>(b) Be based on the specialized qualifications and competencies of the nursing staff. The skill mix and competency of the staff shall ensure that the nursing care needs of the patients are met and shall ensure patient safety.</td>
<td>and when meetings are scheduled, how committee members are notified of meetings, how the meetings are conducted, how unit staff input is acquired, who may participate in the decision making and how decisions are made; (d) Plans for how it will monitor, evaluate and modify the nurse staffing plan over time; and (e) Meeting proceedings (meeting minutes). (3) The written staffing plan must: (a) Be based on an accurate description of individual and aggregate patient needs and requirements for nursing care; (b) Include at least an annual quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time; (c) Be based on the specialized qualifications and competencies of the nursing staff; (d) Ensure that the skill mix and competency meet the nursing care needs of the patient; (e) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations and recognize differences in patient acuteness.</td>
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<tr>
<td>(c) Be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations and recognize differences in patient acuteness.</td>
<td>(f) Recognized differences in patient acuteness; (g) Include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients; and (h) Establish minimum numbers of nursing staff personnel including licensed nurses and certified nursing assistants required on specified shifts, with no fewer than one registered nurse and one other nursing care staff member on duty in a unit when a patient is present.</td>
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(e) Include a formal process for evaluating and initiating limitations on admissions or diversion of patients to another acute care facility when, in the judgement of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients.

(4) The hospital shall maintain and post a list of on-call nursing staff or staffing agencies to provide replacement for nursing staff in the event of vacancies. The list of on-call nurses or agencies must be sufficient to provide replacement staff.

(5) (a) An employer may not impose upon unionized nursing staff any changes in wages, hours or other terms and conditions of employment pursuant to a staffing plan developed or modified under subsection (1) of this section unless the employer first provides notice to and, on request, bargains with the union as the exclusive collective bargaining representative of the nursing staff in the bargaining unit.

   (b) A staffing plan developed or modified under subsection (1) of this section does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect.
### VARIANCES

|-------------------------------|---------------------------------|-------|
| **ORS 441.164** Variances in staffing plan requirements. Upon request of a hospital, the Department of Human Services may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital | **333-510-0045**: (17) Upon request, the Department may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. Such request for a variance must be in writing and must state the reason for seeking a variance, verification that the nurse staffing plan committee has reviewed the request for a variance, and how granting the variance will meet patient needs or the nursing practices of the hospital. A variance must be posted along with the notice required in ORS 441.180.  
(18) Nothing in subsections (4) and (7) of this rule relieves a hospital of complying with ORS 441.162 or 441.166. | |
| **333-510-0045** | (4) On January 2, 2007, any hospital that has not implemented a nurse staffing plan developed by its hospital nurse staffing committee must request from the Department a sixty (60) day Planning Process Extension or be found in violation of this law and subject to civil penalty per OAR 333-500-0057. To be granted the Extension, a hospital must:  
(a) Provide written documentation describing those portions of the nurse staffing plan that have been developed and approved by the nurse staffing committee;  
(b) Present a written plan for assisting the hospital nurse staffing committee in resolving outstanding differences or in establishment of a functional committee, including efforts to encourage participation in the committee, scheduling timely meetings, arranging for meeting facilitation and settling time-lines; and  
(c) Implement a temporary nurse staffing plan that incorporates the portions of the nurse staffing plan that have been accepted by the nurse staffing committee, and is consistent with subsection (3)(a) through (h).  
(5) A hospital may request from the Department a second sixty (60) day Planning Process Extension. To be granted this second Extension, in addition to (4) (a) through (c), the hospital must:  
(a) Employ a mediator within thirty (30) days to establish a functional nurse staffing committee and/or assist in working out a compromise on issues of disagreement; and | |

**EXTENSIONS, CONTD......**
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<td>(b) Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.</td>
<td>(6) The hospital must evaluate and monitor the staffing plan for effectiveness and revise the staffing plan as necessary to improve patient care as part of the hospital’s quality assurance activities. The hospital shall document these quality assurance activities. When the hospital revises the staffing plan pursuant to this subsection, the hospital shall advise the hospital nurse staffing committee of the revision and the reasons the revision is necessary.</td>
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<td>(7) (a) The hospital nurse staffing committee must monitor, evaluate, modify and re-approve the nurse staffing plan according to the schedule described in the nurse staffing plan.</td>
<td>(b) If the hospital nurse staffing plan committee is unable to reach agreement on a re-approval of the nurse staffing plan, any nurse on the committee may request the Department to assist in resolving the impasse.</td>
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<td>(c) The Department may require the hospital to:</td>
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<td>(A) Provide written documentation describing those portions of the modified nurse staffing plan that have been developed and approved by the nurse staffing committee;</td>
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<td>(B) Present a written plan for assisting the hospital nurse staffing committee in resolving outstanding differences including the scheduling of timely meetings, arranging for meeting facilitation and setting timelines; and</td>
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<td>(C) Implement those modifications to the nurse staffing plan that have been approved by the nurse staffing committee.</td>
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<td>(d) If a hospital is unable to resolve differences and adopt a modified plan within sixty (60) days from the time the Department is notified of the impasse, it may request a sixty (60) day Planning Process Extension.</td>
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<td>(e) To be granted the extension, a hospital must:</td>
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<td>(A) Employ a mediator within thirty (30) days to assist in working out a compromise; and</td>
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<td>(B) Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.</td>
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### SECTION 1. ORS 441.166 is amended to read:

441.166 (1) When a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse or certified nursing assistant to work overtime.

(2) A hospital may not require a registered nurse, licensed practical nurse or certified nursing assistant to work:
   (a) Beyond an agreed-upon shift;
   (b) More than 48 hours in any hospital-defined work week; or
   (c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require an additional hour of work beyond the 12 hours if:
      (A) A staff vacancy for the next shift becomes known at the end of the current shift; or
      (B) There is a potential harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(3)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (2) of this section.

#### 333-510-0045

(8) The hospital must maintain and post a list of on-call nursing staff or staffing agencies that may be called to provide qualified replacement or additional staff in the event of emergencies, sickness, vacations, vacancies and other absences of the nursing staff and that provides a sufficient number of replacement staff for the hospital on a regular basis. The list must be available to the individual responsible for obtaining replacement staff.

(9) When developing the on-call list, the hospital must explore all reasonable options for identifying local replacement staff. These efforts must be documented.

(10) When a hospital learns about the need for replacement staff, the hospital must make every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse or certified nursing assistant to work overtime. Reasonable effort includes the hospital seeking replacement at the time the vacancy is known and contacting all available resources as described in subsection (8) of this rule. Such efforts must be documented.

(11) A hospital may not require a registered nurse, licensed practical nurse or certified nursing assistant to work:
   (a) Beyond an agreed-upon shift;
   (b) More than 48 hours in any hospital-defined work week;
   (c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require an additional hour of work beyond the 12 hours if:
      (A) A staff vacancy for the next shift becomes known at the end of the current shift; or
      (B) There is a risk of harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment of transfers care to another.
### MANDATORY OVERTIME, CONT'D....

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<th><strong>Oregon Revised Statute (2005)</strong></th>
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<th><strong>Notes</strong></th>
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<tr>
<td>(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (2) of this section.</td>
<td>(12) Each hospital must have a system to document mandatory overtime. The procedure must be clearly written, provided to all new staff and posted in a conspicuous place. The procedure must ensure that both the employee and management are involved.</td>
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<td>(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (2) of this section.</td>
<td>(13)(a) Time spent attending hospital-mandated meetings, and hospital-mandated education and/or training must be included as hours worked for purposes of subsection (11) of this rule.</td>
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<td>(4) The provision of this section do not apply to nursing staff needs:</td>
<td>(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (11) of this rule.</td>
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<td>(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;</td>
<td>(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer must be included as hours worked for purposes of subsection (11) of this rule.</td>
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<td>(b) In emergency circumstances identified by the Department of Human Services by rule; or</td>
<td>(14). The provision of subsections (10) to (13) of this rule do not apply to nursing staff needs:</td>
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<td>(c) If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in ORS 441.162 and unable to obtain replacement staff in a timely manner.</td>
<td>(a) In the event of a national or state emergency or circumstances requiring the implementation of a facility disaster plan;</td>
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<td>(b) In emergency circumstances, such as but not limited to:</td>
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<td>(A) Sudden unforeseen adverse weather conditions;</td>
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<td>(B) An infectious disease epidemic of staff; or</td>
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<td>(C) Any unforeseen event presenting replacement staff from approaching or entering the premises; or</td>
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<td>(c) If the hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in subsection (8) of this rule and is unable to obtain replacement staff in a timely manner.</td>
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<td>(15) The registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing Oregon Administrative Rules 851-045-00 (1)(j) and (5).</td>
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**ORS 441.168** Leaving a patient care assignment. A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed upon extended shift without authorization from the appropriate supervisory personnel.
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<td><strong>ORS 441.170</strong> Civil penalties; suspension or revocation of license; rules; compliance audits (1) The Department of Human Services may impose civil penalties in the manner provided in ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS 441.162 or 441.166. The department shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for any violation of ORS 441.162 or 441.166 when there is a reasonable belief that safe patient care has been or may be negatively impacted. A civil penalty imposed under this subsection may not exceed $5,000. Each violation of a nursing staff plan shall be considered a separate violation. Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030. (2) The department shall maintain for public inspection records of any civil penalties or license suspensions or revocations imposed on hospital penalized under subsection (1) of this section.</td>
<td><strong>333-500-0057</strong> Civil Penalties (1) For the purposes of this rule, “safe patient care” has the meaning given the term in OAR 333-510-0002. (2) Following completion of a nurse staffing audit or a nurse staffing complaint investigation the Department may impose civil penalties in the manner provided in ORS 441.170 if there is reasonable belief that safe patient care has been or may be negatively impacted. (3) Each violation of a nurse staffing plan shall be considered a separate violation. (4) Civil penalties may be imposed for violations of ORS 441.162 and 441.166 in accordance with Table 1 of this rule (attached). (5) The Department shall consider all evidence in determining a violation of the hospital nurse staffing rule including but not limited to witness testimony, written documents and observations. (6) A notice of civil penalty shall include a statement of appeal rights as provided in ORS 441.170 and ORS 183.745. (7) The department shall maintain for public inspection records of any civil penalties imposed on hospitals penalized under this rule. <strong>333-510-0046</strong> Audit Procedure (1) The Department shall annually conduct random audits of not less than seven percent of all hospitals in this state solely to verify compliance with the requirements of ORS 441.162, 441.166 and 441.192. Surveys made by private accrediting organizations shall not be used in lieu of the audit required under this subsection. The department shall compile and maintain for public inspection an annual report of the audit conducted under this subsection. (2) During an audit, the Department shall review: (a) The hospital’s written hospital-wide staffing plan for nursing services to ensure that the staffing plan addresses all the requirements in OAR 333-0510-0045(3); (b) The job descriptions and personnel files of the nursing staff, which includes the documentation of required licensure and indicates the specialized qualifications and competencies of the nursing staff; (c) The list of qualified, on-call nursing staff and staffing agencies the hospital contacts for replacement staff;</td>
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(d) The hospital’s process for obtaining replacement nursing staff, including efforts made to obtain replacement staff using all available resources;  
(e) Documentation described in OARH 333-510-0045 (2) and (4) to (7);  
(f) The hospital’s process for evaluating and initiating limitation on admission or diversion of patients to another acute care facility;  
(g) The hospital’s policy regarding mandatory overtime and the documentation of mandatory overtime pursuant to OAR 333-510-0034 (12);  
(h) The hospital’s policy regarding education and training to ensure that hospital-mandated hours are included in time worked;  
(i) The hospital’s policy on maintenance, use and access to the on-call list for seeking replacement staff; and  
(j) Documentation of the hospital’s efforts to seek replacement staff when needed.  
(3) In conducting an audit, the Department may interview:  
(a) Appropriate hospital staff regarding:  
(A) Implementation and effectiveness of the nurse staffing plan for nursing services;  
(B) Input, in any, that was provided to the nurse staffing plan committee;  
(C) Whether the hospital has a formal procedure for admission and diversion of patients to another acute care facility when, in the judgment of the direct care registered nurses, there is an inability to meet patient care needs or a risk of harm to existing and new patients; or  
(D) Any other subject or fact relating to hospital nursing services that is subject to the review of the Department under this rule.
(b) Hospital staff that does not voluntarily come forward for an interview during an audit; and
(c) Patients or family members regarding concerns or complaints with regard to nurse staffing in the hospital.
(4) Following an audit, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:
(a) A notice of violation requiring corrective action; 
(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-500-0047.
(5) A statement of deficiencies will be issued for all violations in addition to any penalty levied.
(6) The names of witnesses providing evidence during an audit will be kept confidential to the extent permitted by the law.

333-510-0047 Investigation Procedures for Investigation of Nurse Staffing Complaints.
(1) As soon as possible after receiving a nurse staffing complaint, the Department shall interview the complainant and gather as much information as possible about allegations.
(2) Following the review of the complaint and interview of the complainant, the Department will determine whether the allegations, if true, would constitute a violation of ORS 441.162 to 441.168. If the allegations constitute a violation of ORS 441.162 to 441.168, the Department will proceed with an on site complaint investigation.
(3) During an onsite complaint investigation, the Department may, as appropriate:
(a) Review any documentation described in OAR 333-510-00046 (2) or any other documentation that may be relevant to the complaint, including a review of patient files;
(b) Interview any person described in OAR 333-510-0046(3) or any other person who may have information relevant to the type of complaint received; and
(c) Review any current waivers of the nurse staffing rules that the hospital has been granted.
(4) In conducting interviews during a complaint investigation under subsection (3) of this rule, the Department shall interview both direct care nurses and nurse managers and hospital staff that did not come forward voluntarily for an interview during an investigation, but who may have information relevant to the complaint.
(5) The Department shall determine whether the notice required under ORS 441.180 is posted in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.
(6) In deciding whether there is a violation of ORS 441.162 to 441.168, the Department shall consider:
(a) Whether there is objective evidence discovered during the investigation to substantiate the complaint;
(b) The number of witnesses, and the credibility of the witnesses who will attest to an alleged violation of ORS 441.162 to 441.168; and
(c) Whether witness statements are corroborated or refuted by other evidence.
(7) Nothing in subsection (6) of this rule requires that witness statements be corroborated in order for the Department to find a violation of ORS 441.162 or 441.166.
(8) Following an investigation, if the Department finds a provision of ORS 441.162 or 441.168 has been violated, the Department may issue either or both:
(a) A notice of violation requiring corrective action;
(b) A notice of civil penalty pursuant to ORS 441.170 and OAR 333-500-0057.
(9) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.
(10) The identity of witnesses providing statement to the Department during an investigation will be kept confidential to the extent permitted by the law. However,
### POSTING OF NOTICE

|-------------------------------|--------------------------------|-------|
| **ORS 411.180**  
Hospital posting of notice.  
(1) A hospital shall post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants are customarily displayed.  
(2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed $500. Civil penalties under this section shall be imposed by the Department of Human Services in the manner provided in ORS 183.745. | **(333-510-0045)(16)**  
A hospital must post a notice summarizing the provisions of ORS 441.162, 441.166, 441.168, 441.174, 441.176, 441.178, and 441.192, in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed. | |
ORS 441.174 Retaliation prohibited.
(1) A hospital may not take retaliatory action against
a nursing staff because the nursing staff:
   (a) Discloses or intends to disclose to a manager, a
       private accreditation organization or a public body an
       activity, policy, or practice of the hospital or of a
       hospital that the nursing staff reasonably believes is
       in violation of law or a rule or is a violation of
       professional standards of practice that the nursing
       staff reasonably believes poses a risk to the health,
       safety or welfare of a patient or the public;
   (b) Provides information to or testifies before a
       private accreditation organization or a public body
       conducting an investigation, hearing or inquiry into
       an alleged violation of law or rule or into an activity,
       policy or practice by a hospital that the nursing staff
       reasonably believes poses a risk to the health, safety
       or welfare of a patient or the public;
   (c) Objects to or refuses to participate in any
       activity, policy or practice of a hospital that the
       nursing reasonably believes is in violation of law or
       rule or is a violation of professional standards of
       practice that the nursing staff reasonably believes
       poses a risk to the health, safety and welfare of a
       patient or the public, or
       nursing staff, unless the nursing staff, before making
       a disclosure to a private accreditation organization or
       a public body as described in subsection (1)(a) of this
       section:
   (d) Participates in a committee or peer review
       process or files a report or a complaint that discusses
       allegations of unsafe, dangerous or potentially
dangerous care.
(2) Except as provided in subsection (3) of this section, the protection against retaliatory action in subsection (1) of this section does not apply to a nursing staff, unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in subsection (1)(a) of this section:
   (a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and
   (b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.
(3) A nursing staff is not required to comply with the provisions of subsection (2) of this section if the nursing staff:
   (a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;
   (b) Reasonably fears physical harm as a result of
the disclosure; or
(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, or practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime.

**ORS 441.176** Remedies for retaliation.
(1) A nursing staff aggrieved by an act prohibited by ORS 441.174 may bring an action in circuit court of the county in which the hospital is licensed. All remedies available in a common law tort action are available to a nursing staff if the nursing staff prevails in an action brought under this subsection and are in addition to any remedies provided in subsection (2) of this section.
(2) In an action brought under subsection (2) of this section, a circuit court may do any of the following:
(a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a continued violation of ORS 441.174.
(b) Reinstat[e] the nursing staff to the same or equivalent position that the nursing staff held before the retaliatory action.
(c) Reinstat[e] full benefits and seniority rights to the nursing staff as if the nursing staff had continued in employment.
(d) Compensate the nursing staff for lost wages, benefits and other remuneration, including interest, as if the nursing staff had continued in employment.
(e) Order the hospital to pay reasonable litigation costs of nursing staff, including reasonable expert witness fees and reasonable attorney fees.
(f) Award punitive damages as provided in ORS 31.730.

(3) Except as provided in subsection (4) of this section, in any action brought by a nursing staff under subsection (1) of this section, if the court finds that the nursing staff had no objectively reasonable basis for asserting the claim, the court may award costs, expert witness fees and reasonable attorney fees to the hospital.

(4) A nursing staff may not be assessed costs or fees under subsection (3) of this section if, upon exercising reasonable and diligent efforts after filing the action, the nursing staff moves to dismiss the action against the hospital after determining that no issue of law or fact exists that supports the action against the hospital.

### 441.178 Unlawful employment practices, civil action for retaliation.

(1) A hospital that takes any retaliatory action described in ORS 441.174 against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of ORS 441.174 may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659A.820. Except for the provisions of ORS 659A.870, 659A.875, 659A.880 and 659A.885, violation of ORS 441.174 is subject to enforcement under ORS chapter 659A.

(3) Except as provided in subsection (4) of this section, a civil action under ORS 441.176 must be commenced within one year after the occurrence of the unlawful employment practice unless a
complaint has been timely filed under ORS 659A.820.
(4) The nursing staff who has filed a complaint under ORS 659A.820 must commence a civil action under ORS 441.176 within 90 days after a 90-day notice is mailed to the nursing staff under this section.
(5) The commissioner shall issue a 90-day notice to the nursing staff.
   (a) If the commissioner dismisses the complaint within one year after the filing of the complaint and the dismissal is for any reason other than the fact that a civil action has been filed.
   (b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under paragraph (a) of this subsection or the matter has been resolved by the execution of a settlement agreement.
(6) A 90-day notice under this section must be in writing and must notify the nursing staff that a civil action against the hospital under ORS 441.176 may be filed within 90 days after the date of mailing of the 90-day notice and that any right to bring a civil action against the hospital under ORS 441.176 will be lost if the action is not commenced within 90 days after the date of mailing the 90-day notice.
(7) The remedies under this section and ORS 441.176 are supplemental and not mutually exclusive.
ORS 441.182 Rights, privileges or remedies of nursing staff.
(1) Except as provided in subsection (2) of this section, nothing in ORS 441.176 and 441.178 shall be deemed to diminish any rights, privileges or remedies of a nursing staff under federal or state law.
or regulation or under any collective bargaining agreement or employment contract. (2) ORS 441.176 and 441.178 provide the only remedies under state law for a nursing staff for an alleged violation of ORS 441.176 committed by a hospital.

### NOTICE OF OUTSIDE EMPLOYMENT

|-------------------------------|-------------------------------|-------|
| ORS 441.192 Notice of employment outside of hospital.  
(1) A hospital, defined in ORS 441.172 may require a registered nurse who is receiving full employment benefits from the hospital to provide notice of any outside employment that may reasonably impede the ability of the nurse to fulfill the nurse’s obligation to the hospital in providing nursing services to patients under the hospital’s care.  
(2) If the hospital determines that the outside employment causes a risk to patients receiving services in the hospital, the hospital may require the nurse to discontinue the outside employment.  
(3) A hospital may not unreasonably restrict the outside employment of nurses and may restrict outside employment only if the hospital provides in writing to the nurse an explanation of the hospital’s documentation that the outside employment creates a risk to patients in the hospital.  
(4) A nurse who does not provide notice as required by a hospital pursuant to this section may be disciplined or terminated from employment by the hospital if the failure to provide notice creates a risk | | |
to a patient in the hospital.

### AMBULATORY SURGICAL CENTERS

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<td>(b) “Type I ambulatory surgical center” means a licensed health care facility for the performance of outpatient surgical procedures including, but not limited to, cholecystectomies, tonsillectomies or urological procedures, involving general anesthesia or a relative high infection control consideration. (2)(a) The duties of the circulating nurse performed in an operating room of a Type I ambulatory surgical center or a hospital shall be performed by a registered nurse licensed under ORS 678.010 to 678.410. (b) In any requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as a part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure. (c) Nothing in this section precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the procedure.</td>
<td><strong>333-510-0030</strong> (4) For the purpose of these rules, “circulating nurse” means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of the operating room team members during the surgery. (5) The duties of the circulating nurse performed in an operating room of a hospital shall be performed by a registered nurse licensed under ORS 678.010 to 678.410. In all cases requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure. (6) Nothing in this section precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the procedure.</td>
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<td>(3) At the request of a Type I ambulatory surgical center or a hospital, the Department of Human Services may grant a variance form the requirements of this section based on patient care needs or the nursing practices of the surgical center or the hospital. SECTION 4. Section 3 of this 2005 Act is added to an made part of ORS 678.010 to 678.445.</td>
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