

>> OHA Nurse Staffing Advisory Board

2023 Legislative Report



Acknowledgments

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

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Executive summary

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

This report discusses:

- The NSAB's key achievements in the last year
- Progress in conducting nurse staffing surveys and complaint investigations as well as implementing Plans of Correction at hospitals and special inpatient care facilities across Oregon
- Nurse staffing waiver requests
- The NSAB's committee work, including the Rules Review Committee and Civil Monetary Penalty Committee
- Lessons Learned from the COVID-19 Pandemic
- Impact of 2023 legislation, including HB 2697, on the board's work
- Plan for the coming year

In 2023, the Legislature passed HB 2697, which expands hospital staffing requirements and creates mandated ratios for registered nurses (RNs) in certain units, maximum assignment limits for certified nursing assistants (CNAs), modifies nurse staffing plan requirements, and sets mandatory civil monetary penalties for noncompliance beginning in 2025. The bill also creates a complaint-driven enforcement process by eliminating routine nurse staffing surveys.



The board continues to provide valuable input to OHA regarding hospital nurse staffing. In December 2022, NSAB completed its work on the Civil Monetary Penalty (CMP) Committee that was formed in April 2021. The CMP Committee advised on fair, consistent factors for OHA to consider when deciding whether to assess a civil penalty and worked with OHA to create a decision-making tool. At its October 2022 meeting and a December 2022 ad hoc meeting, the NSAB reviewed the CMP Committee's work. The NSAB recommended that OHA adopt the decision-making tool to ensure fair, consistent application of CMPs. Additional discussions with Oregon Department of Justice revealed complications that would limit OHA's ability to issue CMPs under the existing law.

In April 2022, the NSAB formed a Rules Review Committee. The Rules Review Committee reviewed the current nurse staffing rules and recommended changes OHA could make to improve rule clarity. The Rules Review Committee had a special focus on continuing areas of focus, including rules related to patient acuity, nursing care intensity, meal and rest break practices, and minimum numbers of nursing staff members. The Committee identified three themes to improve understanding of Oregon's complex nurse staffing rules. The committee's work will guide OHA in rulemaking required by HB 2697.

Finally, to ensure the success of Oregon's nurse staffing laws, NSAB encourages the Governor to continue to make timely appointments and reappointments to the board:

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



Key achievements

NSAB members continue to advise OHA on opportunities to enhance patient safety, assure quality care, support nurses, and ensure that OHA's activities are both efficient and effective. NSAB's work through the CMP Committee and the Rules Review Committee demonstrate the board's commitment to balancing the need for fair, consistent enforcement mechanisms with education and outreach about the hospital nurse staffing law.

With the 2023 passage of HB 2697, NSAB recognizes the important work ahead for the board and OHA in implementing this innovative bill. The board is prepared to advise on opportunities for education and outreach to hospitals, hospital staff, and other interested partners across the state on issues related to nurse staffing as the OHA works within the larger context of hospital staffing regulation.



Impact of HB 2697

In June 2023, the Legislature passed HB 2697, which makes several changes in Oregon's hospital staffing law. The new law includes nurse staffing and other hospital staffing changes.

The board will advise OHA on implementation of Oregon's new nurse staffing requirements. HB 2697 makes the following changes to the nurse staffing law:

- Requires hospitals to maintain specified RN-to-patient nurse staffing ratios in specific units and limits the number of patients that can be assigned to CNAs.
- Modifies existing hospital nurse staffing committee and plan requirements.
- Makes all hospital staffing enforcement activities complaint-driven; limits the bases for staffing complaints; and sets civil monetary penalties for OHA to impose when complaints are substantiated.
- Eliminates routine triennial hospital nurse staffing surveys.
- Allows Nurse Staffing Committees at small, rural hospitals to approve two-year variances from hospital nurse staffing plan requirements.
- Requires OHA to adopt by rule a method for submitting complaints about hospital staffing requirements.
- Creates a referral process for OHA to receive missed meal and break complaints and send those complaints to BOLI for investigation.



HB 2697 also makes several changes to hospital staffing requirements that are not related to nurse staffing. While NSAB's role remains focused on hospital nurse staffing, it is also aware that Oregon's hospital staffing law also:

- Creates definitions for professional, technical, and service staff.
- Requires hospitals to develop a professional and technical staffing committee that is required to create a professional/technical staffing plan.
- Requires hospitals to develop a service staffing committee that is required to create a service staffing plan.
- Establishes a complaint-driven process to investigate potential violations of professional, technical, and service staffing requirements.

The board and OHA recognize the exciting work ahead in implementing this new law. The board will serve on the Rules Advisory Committee (RAC) with representatives from labor organizations and organizations representing hospitals, as well as people from communities most likely to be affected by the rules. The RAC will develop rules necessary to process staffing complaints, complaints related to meal and rest breaks, and staffing ratios in Emergency Departments. The board looks forward to providing guidance to OHA to ensure the success of Oregon's nurse staffing law.

To support implementation of Oregon's expanded staffing law, the Legislature has appropriated to OHA \$1,518,596 from the General Fund for the 2023–2025 biennium and \$2,693,928 from the General Fund for the 2025–2027 biennium. The NSAB appreciates the Legislature's responsiveness and support for safe hospital staffing.



Survey reports and Plans of Correction

Between 2017 and 2019 (“Cycle 1”), OHA completed nurse staffing surveys of all 70 hospitals and special inpatient care facilities (SICFs) across Oregon, and the NSAB received regular updates on the progress of these surveys. Survey Cycle 2 was set to begin in 2020 and end in 2022; these plans were disrupted by the pandemic. In March 2020, OHA paused nurse staffing survey and complaint investigations to align with federal survey suspensions and the Governor’s Executive Orders related to COVID-19. Cycle 2 nurse staffing surveys started in 2021. The board used the 2020 survey pause to redesign the survey process to improve survey efficiency and allow more input from direct care nursing staff members. More information about this survey redesign can be found in the “Key Achievements” section of the [2021 annual legislative report](#).

The board has discussed areas that remain a regulatory focus in the second survey cycle, such as nursing intensity and patient acuity requirements, meal and rest break requirements, and mandatory overtime. The board formed the Rules Review Committee and the Civil Monetary Penalty Committee to address these continuing areas of focus. Please read more about these committees’ work in “Other Board work in progress”.

HB 2697 eliminates routine nurse staffing surveys, Plans of Correction, and revisits, as of September 1, 2023. OHA completed 44 of 68 routine surveys during Cycle 2 before HB 2697 went into effect.



Waivers

The current nurse staffing law allowed OHA to grant waivers to nurse staffing plan requirements, provided the waiver is necessary to ensure the hospital is staffed to meet the health care needs of its patients. Waivers did not exempt hospitals from all nurse staffing requirements; instead, they allowed hospitals to meet alternate staffing models. During the application process, hospitals must demonstrate how the requested staffing model ensured patient safety.

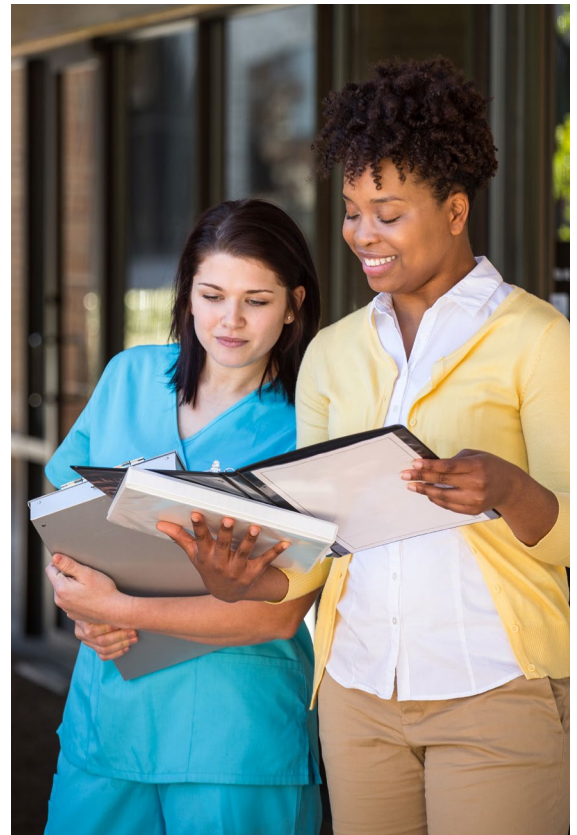
Approved nurse staffing waivers related to the statutory requirement for minimum numbers of nursing staff members on duty in a unit when one patient is present. These requests deal with hospital staff that could be used in lieu of a second nursing staff member; the second staff member was often a trained technician or technologist who provides specialized patient care in a unit.

As of August 1, 2023, OHA had received nurse staffing waiver requests from 52 hospitals. Nurse staffing waiver requests are active for 47 Oregon hospitals and five Oregon hospitals have a nurse staffing waiver that was approved and has since expired without requesting a renewal of the waiver.



Oregon hospitals that have received a waiver between 2016 and 2023:

- 17 of Oregon’s 18 large hospitals (more than 150 licensed beds). Sixteen large hospitals have waivers that are currently active and one large hospital has a waiver that expired without submitting a renewal request.
- 20 of Oregon’s 22 medium hospitals (26–160 licensed beds). Seventeen medium hospitals have waivers that are currently active and three medium hospitals have waivers that expired without submitting a renewal request.
- 15 of Oregon’s 25 Critical Access Hospitals (≤ 25 licensed beds). Thirteen Critical Access Hospitals and one SICF have waivers that are currently active, and one Critical Access Hospital has a waiver that expired without submitting a renewal request.



Under HB 2697, OHA may continue to grant waivers to the written hospital-wide staffing plan requirements described in ORS 441.152 to 441.177. The bill also adds two other pathways for hospitals seeking alternate nurse staffing models. Both pathways require approval from the Hospital Nurse Staffing Committee:

1. **Innovative Care Model:** Hospital Nurse Staffing Committees may approve an innovative care model that allows other clinical care staff to constitute up to 50% of the RNs needed to comply with the applicable statutory RN-to-patient ratio. Innovative care models must be reapproved by the Hospital Nurse Staffing Committee every two years. Hospitals are not required to notify OHA when using this option.
2. **Type A Hospital* and Type B Hospital† Variance:** Hospital Nurse Staffing Committees at Type A and Type B hospitals may approve a variance to the statutory RN-to-patient ratios. The committee is required to notify OHA that it has approved a variance. The variance becomes effective upon submission to the OHA and can be renewed by the Hospital Nurse Staffing Committee every two years.

* Type A hospitals are small hospitals (with 50 or fewer beds) that are located more than 30 miles from another hospital.

† Type B hospitals are small hospitals (with 50 or fewer beds) that are located within 30 miles of another hospital.

Other board work in progress

Rules Review Committee

The board formed the Rules Review Committee at the April 2022 board meeting to address continuing confusion with Oregon’s hospital nurse staffing rules. The Committee was tasked with advising OHA on opportunities to improve the rules, with a special focus on issues related to Plan of Correction (POC) timelines; additional definitions that could improve compliance; and clarifications to minimum numbers of nursing staff members, meal and rest break processes, requirements for nursing care intensity, and requirements for patient acuity.

The Rules Review Committee met nine times between September 2022 and June 2023. The Committee thoroughly reviewed rule and statutory language, and it identified three common themes:

- 1. If OHA measures for a specific outcome, that same specificity should exist in rule.** For example, the nurse staffing rules reflect the Nurse Staffing Plan must be reviewed “at least once per year”. The Committee identified how this term could be misinterpreted to mean once per calendar year instead of once every 12 months and recommended updating the language to be more specific.
- 2. If two rules are related to each other, those rules should include cross-references to each other.** For example, under the nurse staffing rules prior to HB 2697, the Nurse Staffing Plan was required to include specialized qualifications and competencies for nursing staff members (RNs, LPNs, and CNAs). Additionally, the hospital was required to maintain documentation showing the specialized qualifications and competencies of nursing staff members assigned to the unit. The Committee recommended that those rules be updated to include cross-references to ensure that hospitals recognized the requirement to maintain documentation for qualifications and competencies referenced in the Nurse Staffing Plan.
- 3. OHA and the board should work together to identify areas where additional guidance on the rules is beneficial.** The Committee also recommended that OHA provide guidance for rules with complex requirements. The Committee stated that webinars and interpretive guidance helped reduce confusion for complicated regulatory requirements.

In June 2023, the Legislature passed HB 2697, which makes significant changes to nurse staffing requirements. NSAB recommended that OHA take lessons learned from the Rules Review Committee as recommendations for nurse staffing rulemaking to implement HB 2697.

Civil Monetary Penalty (CMP) Committee

The board formed the Civil Monetary Penalty (CMP) Committee in April 2021 to provide recommendations to OHA on when to issue CMPs. The committee met seven times between July 2021 and August 2022 and discussed:

- The role of the NSAB in providing guidance to OHA on issuing CMPs;
- How CMPs fit into the OHA regulatory landscape, including the financial and workload impacts of CMPs and prioritization of CMPs relative to other nurse staffing regulatory work;
- The regulatory language associated with CMPs for nurse staffing”;
- Objective measurements of unsafe patient care found in nurse staffing survey reports, including survey tags that were more likely to be closely linked to actual or potential patient harm; and
- Indicators in nurse staffing survey tools, survey reports, and past survey performance that may be used to alert OHA that safe patient care has been or may be negatively impacted.

Based on these discussions, the CMP Committee and OHA developed a decision-making tool that could be used to identify when there was a reasonable belief that safe patient care had been or may be negatively impacted.

The CMP Committee presented its work to the full board at the October 2022 meeting and at an ad hoc meeting in December 2022. The board solicited comments from the public on the decision-making tool and summary report. At the December 2022 ad hoc meeting, the board recommended that OHA adopt the CMP decision-making tool as written, although there was not consensus from the board on the decision-making tool or how OHA should proceed with issuing CMPs.

OHA sought guidance from the Department of Justice (DOJ) on implementation of the Committee’s proposals. OHA was working through DOJ’s feedback to implement the board’s recommendations when HB 2697 passed changing the enforcement and CMP systems.



Lessons learned from the COVID-19 pandemic

Nurse staffing surveys and complaint investigations

Throughout the COVID-19 pandemic, the NSAB has advised OHA on options to safely conduct nurse staffing surveys and complaint investigations. The NSAB endorsed OHA's proposal to initiate the second cycle of triennial nurse staffing surveys in early 2021. OHA restarted complaint investigations in August 2020 and conducted those investigations remotely. OHA and the board found that investigations can be effectively conducted offsite, and the board recommended that remote investigations remain an option after the pandemic. HB 2697 will allow OHA to continue conducting investigations onsite and remotely. SB 965 also allows OHA to conduct complaint investigation remotely, at OHA's discretion.

Board and committee meetings

Prior to 2020, board and committee meetings were held in-person, with a call-in option available to members who could not be physically present. Due to the COVID-19 pandemic, OHA moved all NSAB board and committee meetings to a virtual platform, such as Microsoft Teams and Zoom. All virtual meetings remained open to the public and complied with Oregon's Public Meetings Law (Oregon Revised Statute (ORS) 192.610 through 102.710) and Public Records Law (ORS 192.001 through 192.505).

Remote meeting options have made it easier for board members and members of the public located outside of the Portland metro area to attend NSAB meetings. The board also recognizes the importance in creating spaces for board members to collaborate together in-person.

The NSAB will hold its October 2023 meeting in-person, with remote access options for board members and members of the public who are unable to attend the meeting in-person. Starting in 2024, the board plans to hold two in-person quarterly meetings; the other two will continue to on Zoom. All NSAB meeting locations will be announced in advance on the OHA Hospital Staffing website and will comply with Oregon's Public Meetings Law and Public Records Law.

Plan for the coming year

- NSAB will make recommendations to OHA on the implementation of HB 2697, particularly as it relates to education and outreach for the nurse staffing changes that go into effect 2023–2026. The NSAB will also review and make recommendations on trends for complaints submitted under the new law, as well as documented efforts by hospitals to avoid noncompliance.
- The board will serve as members on the Rules Advisory Committee to implement HB 2697.
- NSAB will continue to provide feedback on administering the nurse staffing law from:
 - » Hospital-based direct care nursing staff members,
 - » Hospital administrators and nurse managers, and
 - » Other interested parties.
- The board will continue to accept public comments at each quarterly NSAB meeting.
- OHA and the board will continue to consider how best to support Oregon’s nurses and hospitals on emerging nurse staffing issues.
- The board will continue to advise OHA on how to improve compliance among hospitals.
- The board will continue to encourage interested parties across the state to apply for NSAB positions and ask the Governor to appoint members to the board in a timely manner. To see current and upcoming vacancies on the board, please visit the OHA Hospital Staffing website at www.healthoregon.org/nursestaffing.
- NSAB will form additional committees as new issues arise.
- NSAB and OHA will continue working closely together to build shared understanding of patient care issues, including staffing of nursing staff members.

Conclusion

NSAB members continue to collaborate with nurses and hospitals and advise OHA on promoting safe patient care. NSAB members use their commitment to safe patient care as their guide. Members recognize nurse staffing affects the safe nursing care and the quality of patient outcomes. Nurse staffing regulation always has safe patient care as its primary priority.

The board recognizes that it is in a period of transition for Oregon hospital staffing regulations. NSAB members look forward to advising OHA on implementation of HB 2697 and will identify opportunities to promote understanding of this new law as it relates to nurse staffing in Oregon hospitals.





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