



HB 2800 Guideline for Compliance

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Introduction and Disclaimer:

HB 2800, passed by the 2005 Oregon Legislative Assembly and codified as ORS 441.162.170, establishes a new procedure for development of hospital nurse staffing plans. Now, the hospital's nurse staffing plan must be developed, monitored, evaluated and modified by a hospital staffing plan committee. The law also imposes new limitations on mandatory overtime. While the legislation imposes new obligations, it also offers new opportunities for greater collaboration and communication between nurses and hospital administration. These Guidelines are intended to assist hospitals and nurses in complying with these new obligations and encourage the collaboration and communication that can accompany the new obligations.

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Nurse Staffing Plan

No later than January 2, 2007, hospitals must implement a hospital-wide nurse staffing plan developed by the hospital nurse staffing committee. The staffing plan must cover nursing services. The first step in complying with this obligation is to form a nurse staffing committee.

Formation of the staffing committee:

To the extent possible, the staffing committee must:

- Be comprised solely of equal numbers of hospital nurse managers and direct care registered nurses as its exclusive membership for decision making;
- 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.
- Have as its primary consideration the provision of safe patient care and an adequate nursing staff.

Documentation requirements:

The hospital nurse staffing committee must document:

- How its members were chosen to reflect fair and knowledgeable representation;

- How the input of each member in decision making is assured;
- The committee process and procedures, including how 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;
- Plans for how it will monitor, evaluate and modify the nurse staffing plan over time; and
- Meeting proceedings (meeting minutes).

Organizing the committee:

Hospitals and nurses are urged to consult the Joint OAHHS/ONA Hospital Nurse Staffing Committee Guidelines for advice on issues to consider when organizing their staffing committee. Hospitals may find these guidelines posted on the OAHHS website at www.oahhs.org. General issues to consider include:

- How co-chairs are chosen
- How decisions are to be made; consensus, formal vote, other means
- Meeting schedule
- How meetings are announced
- Whether proxies are allowed if a member cannot attend
- How input from staff or others outside the committee is obtained

Frequently Asked Questions

1. ***May the hospital include other hospital representatives on the staffing committee in addition to nurse managers and direct care registered nurses if the number of nurse managers and direct care nurses remains equal?*** No. The administrative rules implementing HB 2800 specify that hospital nurse managers and direct care registered nurses form the exclusive membership of the staffing committee for decision making.
2. ***May the hospital invite other members of the hospital staff or outside experts to participate in staffing committee discussion?*** Yes, so long as they are not part of the actual decision making process. As a good practice, the committee should invite this participation rather than the hospital imposes it.
3. ***May the hospital participate in the selection of direct care nurse representation on the committee?*** No. The law requires the direct care nurses to select their own members. But, the hospital could suggest a means for direct care nurses to make this selection if the direct care nurses do not take on this task themselves or the method chosen by the direct care nurses is deemed by the hospital to impose legal risk on the hospital. The hospital must make sure, however, that the actual selection is performed by the direct care nurses and there is no actual or appearance that the hospital has influenced who represents direct care nurses on the committee.

4. **Does the law impose a particular method for direct care nurses to choose their representative?** No. The hospital nurse staffing committee must, however, document how members were chosen to reflect fair and knowledgeable representation.
5. **What are some suggested methods for direct care nurses to select their own members?** The Joint OAHHS/ONA Hospital Nurse Staffing Committee Guidelines present suggestions for selection method. These Guidelines are available on the OAHHS website at www.oahhs.org.
6. **What if hospital direct care nurses do not engage in forming a staffing committee?** The law provides for a Process Planning Extension if the hospital is unable to form a functioning staffing committee in time to implement a committee-developed staffing plan by January 2, 2007. See below in these guidelines for an explanation of how to obtain a Process Planning Extension
7. **When must the hospital have a staffing committee in place?** The law went into effect on January 1, 2006, so technically hospitals were required to have a plan in place on that date. The Department of Human Services, however, elected not to enforce the law until administrative rules were adopted providing necessary implementation details. The administrative rules are now final and provide that hospitals must have a staffing plan developed by the staffing committee in place by January 2, 2007.
8. **What is the effect of the Kentucky River legal decision on the composition of the staffing committee?** Direct care nurses and nurse managers should consult their association for advice on this issue. OAHHS will be issuing a Legal Services Bulletin on this topic that will be available on the association website at www.oahhs.org.

Development of the Nurse Staffing Plan

The staffing plan developed by the nurse staffing committee must be hospital-wide. This means it must cover all units or departments of the hospital, including outpatient units and the emergency room.

The staffing plan must cover all nursing services.

Checklist for a hospital nurse staffing plan: When evaluating whether a hospital nurse staffing plan complies with the law, ask:

- Does the plan have as its primary consideration the provision of safe patient care and an adequate nursing staff, to the extent possible
- Is the plan based on an accurate description of individual and aggregate patient needs and requirements for nursing care
- Does the plan include at least an annual quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time

- Is the plan based on the specialized qualifications and competencies of the nursing staff
- Does the plan ensure that the skill mix and the competency of the staff meet the nursing care needs of the patient
- Is the plan consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations, such as, but not limited to, The American Association of Critical Care Nurses, American Operating Room Nurses (AORN), or American Society of Peri-Anesthesia Nurses (ASPAN)
- Does the plan recognize differences in patient acuteness
- Does the plan 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
- Does the plan establish minimum numbers of nursing staff personnel including licensed nurses and certified nursing assistants 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.

Frequently Asked Questions

1. ***What is a good way to start in developing the staffing plan?*** As a first step to development of a nurse staffing plan, the nurse staffing committee should review the existing plan. The committee should seek agreement as to where there are problem areas and where there are portions of the plan that are acceptable going forward. If there is agreement that the staffing plan provides safe patient care, the committee could adopt the hospital's existing plan with a commitment to undertaking a thorough evaluation of the plan and making modifications as necessary. Disagreements must be resolved before the exiting plan may be adopted.
2. ***How should the committee proceed in resolving problem areas?*** The answer to how to proceed will depend on the nature of the difficulty each committee is having. Options include bringing in a nurse expert in the particular area of concern or using a facilitator. Whatever process is chosen to resolve differences should have the buy in of both direct care nurses and nurse managers. Remember that the rules provide that if the hospital has already received one Process Planning Extension (see that issue later in this document) and still cannot meet the January 2, 2007 deadline, the hospital is required to retain a mediator with nursing expertise to help resolve disagreements.
3. ***The plan is supposed to have as its primary consideration the provision of safe patient care and an adequate nursing staff, to the extent possible. What does "safe patient care" mean?*** The law specifically defines "safe patient care" to mean:
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 reports that his/her nursing care needs have not been met;
- e. A medication not given as scheduled;
- f. The nursing preparation for a procedure not accomplished on time;
- g. Registered nurses, licensed practical nurses and/or certified nursing assistants practicing outside their scope of practice;
- h. The daily unit-level staffing 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 intensity of the workload is insufficient to meet patient needs; or
- 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.

4. ***Does the staffing plan requirement that the plan recognize differences in patient acuteness require the hospital to adopt a particularly acuity system?*** No. The hospital does not have to adopt a particular acuity system but must have a means to measure differences in patient acuteness.
5. ***Does the requirement that the plan ensure that the skill mix and the competency of the staff meet the nurse care needs of the patient mean the staffing committee can dictate the skill mix and competency measurements used by the hospital when making hiring decisions?*** No. Hiring criteria are determined by the hospital. The staffing committee should, however, review the skill mix and competency of nurse staff to determine if the skill mix and competency is appropriate for the patient population being served. If the skill mix and competency are deemed inappropriate, the staffing committee could develop a staffing plan based on a different mix.
6. ***Must the plan cover nurse management services as well as direct care nursing services?*** The law requires the plan to cover "nursing services". Nursing services is not defined in the law. A reasonable approach to this question is to ask whether nurse managers in the hospital are providing actual nursing services to patients or whether they are playing more of a management role. The purpose of the law and the staffing plan is to provide the best possible patient care. If a nurse manager is not directly involved in providing that care, then staffing in that area need not be included in the staffing plan.
7. ***Must the plan cover such services as respiratory therapy and other non-nursing services?*** No. The law requires the plan to cover only nursing services.
8. ***Does the law now allow a nurse to deny new admissions on his or her own initiative?*** No. The law requires the hospital to have in place a 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. The nurse may initiate the process but does not make the ultimate decision. OAHHS hopes to post examples of divert policies on the OAHHS website in the near future.

Process Planning Extension

Many hospitals have expressed concern that the hospital will not have a staffing plan developed by the staffing committee in place by January 2, 2007. The reason for this will vary, from difficulty getting the committee functioning to disagreement on staffing issues. The law provides a process to follow if this happens, called a Process Planning Extension. Here is how it works:

To be granted an extension, a hospital must

- Provide written documentation describing those portions of the nurse staffing plan that have been developed and approved by the nurse staffing committee;
- 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 of timely meetings, arranging for meeting facilitation and setting timelines; and
- 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 subsections (3)(a) through (h) of this rule

A hospital may request from the Department a second sixty (60) day Planning Process Extension. To be granted this second Extension, in addition to the earlier requirements, the hospital must:

- 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
- Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.

Frequently Asked Questions:

1. ***Will the hospital be in violation of the law on January 2, 2007 if it has not implemented a staffing plan developed by the staffing committee but has obtained a Process Planning Extension?*** No. The law provides that the hospital will not be in violation of the law while acting under an extension.
2. ***How does a hospital apply for a Process Planning Extension?*** The Department of Human Services is working on a form. They have issued a draft

form as guidance in the interim. That form is available on the OAHHS website at www.oahhs.org.

3. ***How long will it take to obtain a response from the Department to an application?*** That is uncertain at this time, but the Department indicates a hospital will be “immunized” from violation as of the date the application is submitted to the Department.
4. ***What if the Process Planning Extension expires and the hospital still has not implemented a staffing plan developed by the staffing committee?*** At this point the hospital will be in violation of the law and subject to a citation and plan of correction, and possible civil penalty. Whether a penalty is assessed depends upon whether “there is a reasonable belief that safe patient care has been or will be negatively impacted”.
5. ***What if there is a deliberate attempt to prevent a staffing committee from developing a staffing plan, possibly as a “bargaining chip” in another unrelated dispute. Is there an appeal process if the hospital does not have a staffing plan in place developed by the staffing committee in these circumstances?*** There is not an appeal process to a citation and the law places the burden on hospitals to manage staffing through this committee structure. However, the Department will consider the circumstances in each situation when considering the remedy. Remember also that the hospital may utilize the Process Planning Extension process in this circumstance. It will be important to document the efforts made by the hospital to overcome barriers to development of the staffing plan. It is reasonable to assume that a hospital that can document its good faith efforts to work within the staffing committee framework and provide safe patient care will not be subjected to sanctions by the Department.

Re-approval and modifications to the staffing plan

The hospital nurse staffing committee is responsible for reapproving and modifying the staffing plan at least once a year. The exception to the modification responsibility is when the hospital sees a need to modify the plan to improve patient care pursuant to the hospital’s quality assurance process. The law charges the hospital with monitoring the plan for effectiveness and revising the staffing plan as necessary to improve patient care as part of the hospital’s quality assurance process. The hospital must document these quality assurance activities and advise the nurse staffing committee of revisions and the reasons they are necessary.

If the nurse staffing committee faces an impasse in reapproving the plan, the law provides a process to resolve that impasse. The law says that any nurse on the committee may request the Department of Human Services to assist in resolving the impasse. As part of that resolution, the Department may require a hospital to:

- Provide written documentation describing those portions of the modified nurse staffing plan that have been developed and approved by the staffing committee.

- 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
- Implement those modifications to the nurse staffing plan that have been approved by the nurse staffing committee.
- 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. To be granted the extension, the hospital must:
- Employ a mediator within thirty (30) days to assist in working out a compromise; and
- Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.

Frequently asked questions

1. ***The hospital has an existing process for approval of the staffing plan, involving review by the CFO and others. May the hospital continue to implement that process?*** Yes. The difference now is if the approval process demonstrates a need to change the plan, hospital administration cannot change it unilaterally. The nurse staffing committee is the entity that must modify the plan, not hospital administration, unless the changes are necessary to improve patient care as part of the hospital's quality assurance process. For more information on hospital authority, hospitals may review a Legal Services Bulletin on this topic posted on the OAHHS website at www.oahhs.org.
2. ***What if the nurse staffing committee will not modify the plan as the hospital thinks is necessary for the proper operation of the hospital?*** The first step is to try to resolve the impasse internally through such mechanisms as inviting an outside expert on whatever issue is causing the impasse and use of a facilitator. If this process fails, the law provides a process to follow (see the explanation of the process above).

Mandatory Overtime

HB 2800 further limits the use of mandatory overtime. Mandatory overtime is defined as "any time that exceeds those time limits specified in ORS 441.166 unless the registered nurse, licensed practical nurse or certified nursing assistant voluntarily chooses to work overtime." (OAR 333-510-0002 (4))

As of January 1, 2006, a hospital may not require a registered nurse, licensed practical nurse or certified nursing assistant to work:

- Beyond the agreed-upon shift;
- More than 48 hours in any hospital-defined work week; or

- More than 12 consecutive hours in a 24-hour period, except that a hospital may require an additional hour of work beyond the 12 hours if:
 - A staff vacancy for the next shift becomes known at the end of the current shift; or
 - There is a risk of harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

Each hospital must have a system to document mandatory overtime. The procedure must be clearly written, provided to all new nursing staff, and be posted in a conspicuous place. The procedure must ensure that both the employee management are involved. OAHHS hopes to post examples of mandatory documentation systems on its website in the near future.

Time spent attending hospital-mandated meetings and hospital-mandated education and/or training must be included as hours worked for purposes of mandatory overtime restrictions.

Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of mandatory overtime restrictions.

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 mandatory overtime restrictions.

Mandatory overtime restrictions do not apply to nurse staffing needs:

- In the event of a national or state emergency or circumstances requiring the implementation of a hospital disaster plan;
- In emergency circumstances, such as but not limited to:
 - Sudden unforeseen adverse weather conditions;
 - An infectious disease epidemic of staff; or
 - Any unforeseen event preventing replacement staff from approaching or entering the premises; or
- If a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list and is unable to obtain replacement staff in a timely manner.

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

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 on the list. These efforts must be documented.

Frequently Asked Questions:

1. ***My hospital nurses want to work shifts that are not allowed under the mandatory overtime restrictions, due to family needs or other lifestyle preferences. Can the hospital allow this?*** Yes. The mandatory overtime restrictions do not apply to shifts for which a nurse volunteers. Remember, however, that while a nurse may want to work a long shift granting that request may not be the best thing for your patients.
2. ***Time spent on standby must be included as hours worked for purposes of mandatory overtime. Does the law define “standby”?*** Yes. “Standby” is defined as “a scheduled state of being ready to be called to work within a hospital-designated timeframe.” (OAR 333-510-0002(10))
3. ***An exception to the mandatory overtime restriction is when a hospital has made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list and is unable to obtain replacement staff in a timely manner. Does this mean my hospital must have a contract with a staffing agency in order to take advantage of this exception?*** No. It just means if you have a contract with a staffing agency you must include them in on the list of replacement staff.
4. ***Hospitals must maintain a list of “on call nursing staff”. What does “on call nursing staff” mean?*** The law defines “On Call Nursing Staff” to mean “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 services needs.” (OAR 333-510-00002(7))
5. ***Does the law require the hospital to have a particular system to document mandatory overtime?*** No, the hospital may establish its own system for documentation of overtime. The law does require, however, that the procedure be clearly written, provided to all nursing staff and be posted in a conspicuous place. The procedure must ensure that both the employee management is involved.
6. ***Is time a nurse spends charting after the nurse’s shift is over considered mandatory overtime?*** This is a controversial issue. Most hospitals do not consider charting after the end of a shift to be mandatory overtime since this is part of a nurse’s regular duties and should be performed during, not after, the shift. Many nurses believe that they should have adequate time for charting during their shift and if they do not then the staffing plan was inadequate and the consequence is they are forced to work overtime. The safest and most collaborative approach is for hospitals to clearly set the expectation that charting be done before the end of a shift but ask nurses to let the hospital know if this is an expectation that cannot be routinely met by a group of nurses.

Waiver Opportunity

Upon request of a hospital, the Department may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital. The 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 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. (ORS 441.164)

Required Postings

Oregon law already requires a hospital to 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. (ORS 441.180) This notice must also reference any variances granted in the written staffing plan.

Now, the hospital must also 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.
- The hospital system to document mandatory overtime.

Frequently Asked Questions

1. **Must the notice of on-call nursing staff that may be called on to provide replacement be posted in a public, conspicuous place?** No. It must only be posted in a location where direct care nurses have access to it and where it is available to the individual responsible for obtaining replacement staff.
2. **What information must the hospital include on the notice? For example, should the notice contain name only or also contact information for the individuals named?** Because the purpose of the list is to provide information necessary to find replacement staff, including a contact telephone number along with the available person's name would be advisable. This is another reason why the notice should not necessarily be posted where anyone and everyone can see it.

Enforcement

The Department of Human Services is responsible for enforcing HB 2800. They will monitor hospital performance pursuant to random audit or nurse staffing complaint. If

the Department finds that a hospital is in violation of the law, they may issue either or both:

- A notice of violation requiring corrective action;
- A notice of civil penalty.

The Department may assess a civil penalty when there is a reasonable belief that safe patient care has been or may be negatively impacted. A civil penalty may not exceed \$5,000. Each violation of a nursing staff plan is considered a separate violation.

The ultimate sanction available to the Department is suspension or revocation of the hospital's license.

Audit (333-510-0046)

The Department will annually audit not less than 7% of all hospitals. During an audit, the Department shall review:

- The hospital's written hospital-wide staffing plan for nursing services to ensure that the staffing plan addresses all the requirements in OAR 333-510-0045(3);
- 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;
- The list of qualified, on-call nursing staff and staffing agencies the hospital contacts for replacement staff;
- The hospital's process for obtaining replacement nursing staff, including efforts made to obtain replacement staff using all available resources;
- Documentation described in OAR 333-510-0045(2) and (4) to (7);
- The hospital's process for evaluating and initiating limitation on admission or diversion of patients to another acute care facility;
- The hospital's policy regarding mandatory overtime and the documentation of mandatory overtime pursuant to OAR 333-510-0045(12);
- The hospital's policy regarding education and training to ensure that hospital-mandated hours are included in time worked;
- The hospital's policy on maintenance, use and access to the on-call list for seeking replacement staff; and
- Documentation of the hospital's efforts to seek replacement staff when needed.

In conducting an audit, the Department may interview:

- Appropriate hospital staff regarding:
 - Implementation and effectiveness of the nurse staffing plan for nursing services;
 - Input, if any that was provided to the nurse staffing plan committee
 - 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

- Any other subject or fact relating to hospital nursing services that is subject to the review of the Department under this rule.
 - Hospital staff that does not voluntarily come forward for an interview during an audit; and
 - Patients or family members regarding concerns or complaints with regard to nurse staffing in the hospital.

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 notice of violation requiring corrective action;
- A notice of civil penalty pursuant to ORS 441.170 and OAR 333-500-0057.

A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.

The names of witnesses providing evidence during an audit will be kept confidential to the extent permitted by state law.

Complaint (OAR 333-510-0047)

If the Department receives a nurse staffing complaint, the Department will interview the complainant and gather as much information as possible about the allegations.

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.

During an onsite complaint investigation, the Department may, as appropriate:

- Review any documentation described in OAR 333-510-0046(2) or any other documentation that may be relevant to the complaint, including a review of patient files;
- 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
- Review any current waivers of the nurse staffing rules that the hospital has been granted.

In conducting interviews during a complaint investigation 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.

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.

In deciding whether there is a violation of ORS 441.162 to 441.168, the Department shall consider:

- Whether there is objective evidence discovered during the investigation to substantiate a complaint;
- 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
- Whether witness statements are corroborated or refuted by other evidence.

Nothing in the rule requires that witness statements be corroborated in order for the Department to find a violation of ORS 441.162 or 441.

The identity of witnesses providing statements to the Department during an investigation will be kept confidential to the extent permitted by law. However, in the event witness testimony is needed in a hearing concerning a violation of ORS 441.162 to 441.168, the identity of a witness may be required to be disclosed.

If during a complaint investigation, the Department has evidence that a hospital has engaged in a retaliatory act prohibited by ORS 441.174, the Department will advise the registered nurse, licensed practical nurse or certified nursing assistant to contact the Bureau of Labor and Industries regarding the concern.

Frequently Asked Questions:

1. ***When will the Department assess a civil penalty?*** When they make a finding that safe patient care has been or may be negatively impacted.
2. ***What is “safe patient care”?***_The rules (OAR 333-510-0002(9)) define “safe patient care” to be:

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 reports that his/her nursing care needs have not been met;
- e. A medication not given as scheduled;
- f. The nursing preparation for a procedure not accomplished on time;
- g. Registered nurses, licensed practical nurses and/or certified nursing assistants practicing outside their scope of practice;
- h. The daily unit-level staffing 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 intensity of the workload is insufficient to meet patient needs; or
- 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.

3. ***Does that mean that if the Department finds one of those factors exist they will make a finding of unsafe patient care?*** Not necessarily. The factors provided do not automatically indicate unsafe patient care. However, if any one of these conditions exists the Department will seek a satisfactory explanation of why that condition is not indicative of unsafe patient care.

4. ***The rules now say that nurse testimony does not need to be corroborated. Does that mean the Department will always accept the nurse's version of an event without other evidence?*** No. This provision means that the Department will not always need to find corroborating evidence to support a nurse's statement if the Department finds the nurse's statement to be credible on its own.