

**DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH  
CHAPTER 333**

**DIVISION 500  
LICENSING PROCEDURES**

**333-500-0057**

**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 for a violation of any provision of ORS 441.162 or 441.166 if there is reasonable belief that safe patient care has been or may be negatively impacted.

(3) Each violation of a nursing staff 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 in this rule.**

(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.

Stat. Auth.: ORS 409.050 and ORS 441.170

Stats. Implemented: ORS 441.162, 441.166 and 441.170

**TABLE 1 - CIVIL PENALTY ASSESSMENTS - OAR 333-500-0057**

<b>Type of Violation</b>	<b>First Violation</b>	<b>Repeat Violations</b>
No written nurse staffing plan developed or implemented by hospital.	Not to exceed \$5000	Not to exceed \$5000
<p>The hospital required a registered nurse, licensed practical nurse or certified nursing assistant to work:</p> <ul style="list-style-type: none"> <li>- Beyond the scheduled shift;</li> <li>- More than 48 hours in any hospital-defined workweek; or</li> <li>- 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 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:</li> </ul> <p>Exceptions to this requirement include:</p> <ul style="list-style-type: none"> <li>- A national or state emergency or circumstances requiring the implementation of a hospital disaster plan; or</li> <li>- A hospital having made reasonable efforts to contact all of the on-call nursing staff or staffing agencies on the list described in OAR 333-510-0045 and being unable to obtain replacement staff in a timely manner.</li> </ul>	Not to exceed \$2500	Not to exceed \$5000
The hospital willfully does not comply with the requirement to post notice to personnel.	Not to exceed \$500.	Not to exceed \$500.

**WRITTEN NURSE STAFFING PLAN**

<b>Type of Violation</b>	<b>First Violation</b>	<b>Repeat Violations</b>
The written nurse staffing plan does not take into consideration the aggregate and individual needs of patients or was not developed, monitored, evaluated nor modified by the hospital staffing plan committee.	Not to exceed \$2500	Not to exceed \$5000
The hospital staffing plan committee did not include at least one direct care registered nurse from each hospital nurse specialty or unit.	Not to exceed \$2500	Not to exceed \$5000
The hospital staffing plan committee did not have as its primary consideration the provision of safe patient care and adequate nursing staff.	Not to exceed \$2500	Not to exceed \$5000

## REPLACEMENT STAFF

<b>Type of Violation</b>	<b>First Violation</b>	<b>Repeat Violations</b>
The hospital does not maintain and post a list of replacement staff.	Not to exceed \$2500	Not to exceed \$5000
The hospital does not make reasonable efforts to get replacement staff.	Not to exceed \$2500	Not to exceed \$5000

Factors, which may influence the amount of penalty, include but are not limited to:

- Duration and extent of violation;
- Actual harm to one or more patients;
- Willfulness of violation; and
- Number of patients harmed.

**DIVISION 510  
PATIENT CARE SERVICES**

**333-510-0002**

**Definitions**

As used in OAR Chapter 333, Division 510, the following definitions apply:

- (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.
- (2) “Evidence Based Standards” means standards that have been scientifically developed, are based on current literature, and are driven by consensus.
- (3) “Hospital” has the same meaning given in ORS 442.015.
- (4) “Mandatory Overtime” is 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.
- (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.
- (6) “On Call” means a scheduled state of availability to return to duty, work-ready, within a specified period of time.
- (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 services needs.
- (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 leaves the assignment or transfers care to another.
- (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.
  - (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.
- (10) “Standby” means a scheduled state of being ready to be called to work within a hospital-designated timeframe.

Stat. Auth.: ORS 409.050 and ORS 441.170

Stats. Implemented: ORS 441.160 to 441.192

### **333-510-0030**

#### **Nursing Services**

- (1) The hospital shall provide a nursing service department, which provides 24-hour onsite registered nursing care, 7 days per 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.
- (4) For the purposes 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 surgery.
- (5) The duties of a 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 surgical procedure.

Stat. Auth.: ORS 409.050 and ORS 441.170

Stats. Implemented: ORS 441.160 to 441.192

### **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 a hospital nurse staffing plan committee except as provided in section 6 of this rule. 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 as defined by the hospital; and
  - (c) Have as its primary consideration the provision of safe patient care and an 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 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 the competency of the staff 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, 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 (ASPN);
  - (f) Recognize 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 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.
- (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 of timely meetings, arranging for meeting facilitation and setting timelines; 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 subsections (3)(a) through (h) of this rule.
- (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 subsections (4)(a) through (c) of this rule, 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
  - (b) Provide evidence that such a mediator will include nurse staffing expertise in the deliberative process.
- (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 process. The hospital shall document these quality assurance activities. When the hospital revises the staffing plan pursuant to this section, the hospital shall advise the hospital nurse staffing plan committee of the revision and the reasons the revision is necessary.
- (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.

(b) If the hospital nurse staffing 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.

(c) The Department may require a hospital to:

(A) Provide written documentation describing those portions of the modified 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 including the scheduling of timely meetings, arranging for meeting facilitation and setting timelines; and

(C) Implement those modifications to the nurse staffing plan that have been approved by the nurse staffing committee.

(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.

(e) To be granted the extension, a hospital must:

(A) Employ a mediator within thirty (30) days to assist in working out a compromise; and

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

(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 section (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 the 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 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 or transfers care to another.

(12) 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 and management are involved.

(13)(a) Time spent attending hospital-mandated meetings, and hospital-mandated education and/or training must be included as hours worked for purposes of section (11) of this rule.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of section (11) of this rule.

(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 section (11) of this rule.

(14) The provisions of sections (10) to (13) of this rule do not apply to nursing staff needs:

(a) In the event of a national or state emergency or circumstances requiring the implementation of a hospital disaster plan;

(b) In emergency circumstances, such as but not limited to:

(A) Sudden unforeseen adverse weather conditions;

(B) An infectious disease epidemic of staff; or

(C) Any unforeseen event preventing replacement staff from approaching or entering the premises; or

(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 section (8) of this rule and is unable to obtain replacement staff in a timely manner.

(15) 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 scheduled shift or an agreed-upon extended shift without authorization from the appropriate supervisory personnel as required by the Oregon State Board of Nursing Oregon Administrative Rules 851-045-0015S(1)(j) and (5).

(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.

(17) 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. 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 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 sections (4) to (7) of this rule relieves a hospital from complying with ORS 441.162 or 441.166.

Stat. Auth.: ORS 409.050 and ORS 441.170

Stats. Implemented: ORS 441.160 to 441.192

### **333-510-0046**

#### **Audit Procedure**

(1) The Department shall annually conduct random audits of not less than seven percent of all hospitals, to determine compliance with the requirements of ORS 441.162, 441.166 and 441.192.

(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 333-510-0045(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;
  - (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 OAR 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 333-510-0045(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, if 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 333-500-0057.
- (5) A statement of deficiencies will be issued for all violations in addition to any civil penalty levied.
- (6) The names of witnesses providing evidence during an audit will be kept confidential to the extent permitted by state law.

Stat. Auth.: ORS 409.050 and ORS 441.170

Stats. Implemented: ORS 441.160 to 441.192

### **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 the 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 333-510-0046(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 section (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 a 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 section (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 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.
- (11) 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.

Stat. Auth.: ORS 409.050 and ORS 441.170

Stats. Implemented: ORS 441.160 to 441.192