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 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.

6. **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.

7. **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:
   
   i. 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.
   
   ii. A failure to implement the written nurse staffing plan;
   
   iii. A failure to comply with the patient care plan;
   
   iv. An error that has a negative impact on the patient;
   
   v. A patient reports that his/her nursing care needs have not been met;
   
   vi. A medication not given as scheduled;
   
   vii. The nursing preparation for a procedure not accomplished on time;
   
   viii. Registered nurses, licensed practical nurses and/or certified nursing assistants practicing outside their scope of practice;
   
   ix. The daily unit-level staffing does not include coverage for all known patients, taking into account the turnover of patients;
   
   x. 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
   
   xi. An unreasonable delay in responding to a patient’s (or a family member’s request on behalf of a patient) request for nursing care.

8. **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.

9. **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.

10. **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.

11. **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.
12. 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.

13. 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.

14. 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.

15. 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.

16. 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.

17. 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).

18. 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.

19. 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))

20. 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))