

---

# Oregon Nurse Staffing Collaborative

## 2016 Administrative Rule Update

August 3, 2016

Dana Selover, MD, MPH – HCRQI Section Manager  
Annabelle Henry, JD, MBA – HFLC Program Manager  
Public Health Division



# Administrative Rule Overview

- **Administrative Rules – Purpose**

- Implement statutes
- Interpret statutes
- Describe procedure/practice for complying with statute

- **Administrative Rules – Process**

- Asked stakeholders from Nurse Staffing Advisory Board (NSAB) for input
- Provided draft rules to Rules Advisory Committee (RAC) made up of NSAB members and received RAC input
- Sent draft incorporating RAC input to Secretary of State (SOS)
- Received public comments
- Issued Hearing Officer Report and sent final rules reflecting public comments to SOS
- New rules were effective July 1, 2016

# Administrative Rule Overview

- **Administrative Rules – Location**

- New rules will be posted on the Secretary of State website in mid-August
- Current rules are always linked on [www.healthoregon.org/nursestaffing](http://www.healthoregon.org/nursestaffing)

- **Administrative Rules – Structure**

- 333-501s contain surveys/audits, complaint investigations, and civil penalties
- 333-510s contain definitions and operative rules.
- Operative rules used to all be in 333-510-0045, but now they're in 333-510-0045 and 333-510-0105 through 333-510-0140

# Nurse Staffing Administrative Rules

---

|                  |   |
|------------------|---|
| OAR 333-501-0035 | Nurse Staffing Audit Procedures                       |
| OAR 333-501-0040 | Nurse Staffing Complaint Investigation Procedures     |
| OAR 333-501-0045 | Civil Penalties for Violations of Nurse Staffing Laws |
| OAR 333-510-0002 | Definitions   |
| OAR 333-510-0045 | Nurse Staffing Posting and Record Requirements        |
| OAR 333-510-0105 | Nurse Staffing Committee Requirement                  |
| OAR 333-510-0110 | Nurse Staffing Plan Requirements                      |
| OAR 333-510-0115 | Nurse Staffing Plan Review Requirement                |
| OAR 333-510-0120 | Nurse Staffing Plan Mediation                         |
| OAR 333-510-0125 | Replacement Nurse Staffing Requirements               |
| OAR 333-510-0130 | Nursing Staff Member Overtime                         |
| OAR 333-510-0135 | Nurse Staffing Plan Waiver                            |
| OAR 333-510-0140 | Nurse Staffing Plan During an Emergency               |

**OAR 333-501-0035**

**Nurse Staffing Audit Procedures**

**OAR 333-501-0040**

**Nurse Staffing Complaint Investigation  
Procedures**

---

- 3-days advance notice for hospital and Hospital Nurse Staffing Committee (HNSC) cochairs (Audits only)
- Required interview of both cochairs
- Additional interviews at surveyors' discretion: staff, including those who do not come forward voluntarily, and patients/family members
- OHA report issued to hospital and cochairs within 30 days after audit/investigation closes
- Hospital must submit plan of corrections (POC) within 30 days after receiving OHA's report
- OHA issues written POC sufficiency determination within 30 days after receiving POC. Determination requires hospital to
  - Revise and resubmit POC within 30 days, or
  - Implement approved POC within 45 days
- OHA conducts a follow-up audit/investigation within 60 days of POC approval date

## OAR 333-510-0045

## Nurse Staffing Posting and Record Requirements

---

- Hospitals must post a complaint notice
  - Summarizes ORS 441.152 – 441.177
  - Clearly visible to public
  - Includes OHA's phone, email, and [www.healthoregon.org/nursestaffing](http://www.healthoregon.org/nursestaffing)
- Hospitals must post an anti-retaliation notice
  - Summarizes ORS 441.181, 441.183, 441.192
  - Posted where notices to employees and employment applicants are customarily displayed
- Rule lists documents that hospitals must maintain in order to demonstrate compliance. Nurse staffing surveyors may request some or all of these documents when conducting an audit or investigation.

## OAR 333-510-0105

## Nurse Staffing Committee Requirement

---

- HNSC develops hospital-wide staffing plan implemented by hospital
- HNSC meets at least every 3 months and additional times specified by either cochair
- Hospital releases from assignment and pays members of HNSC to attend HNSC meetings
- HNSC has equal numbers direct care & nurse managers with 2 cochairs
- HNSC direct care members = 1 RN per specialty/unit + 1 LPN/CNA per committee. Selection process specified in rule
- HNSC charter must document processes for scheduling, meeting notices, agendas, input from staff & decision-making
- Quorum & equal voting requirements
- Observers & limited exclusions
- Detailed minutes requirements

## OAR 333-510-0110

## Nurse Staffing Plan Requirements

---

Plan must :

- Be based on specialized qualifications & competencies to provide necessary skill mix
- Be based on measurement of unit activity including admissions, discharges & transfers
- Be based on total diagnoses for unit & nursing staff required to manage that set of diagnoses
- Be consistent with nationally recognized standards & guidelines
- Recognize differences in individual patient acuity & nursing care intensity
- Establish minimum nurse staffing numbers, no less than 1:1
- Include formal process for initiating limits on admissions & diversions
- Consider tasks not related to direct care including breaks
- Cannot be based solely on external benchmarking data
- Doesn't change CBA



## OAR 333-510-0115

## Nurse Staffing Plan Review Requirement

---

- HNSC must review plan at least annually
- Review considers:
  - Patient outcomes
  - Complaints about staffing including delays or absence of nursing care
  - Number of hours of care provided compared with number of patients served during a 24-hour period
  - Aggregate mandatory overtime & aggregate voluntary overtime worked by nursing staff
  - Percentage of shifts for which nurse staffing differed from written plan requirements
  - Any other factors necessary to ensure hospital meets patient health care needs
  - Any report filed by nursing staff indicating pattern of required overtime for nonemergency care
- After review HNSC issues written report to hospital and modifies plan as needed

## OAR 333-510-0120

## Nurse Staffing Plan Mediation

---

- If HNSC cannot agree on a plan, then either cochair can start 30-day waiting period. During the 30 days
  - HNSC continues to develop plan
  - Hospital continues to respond to reasonable data requests submitted to a cochair
- After 30 days if there is still no agreement, cochairs notify OHA of impasse. Notification includes:
  - Documentation of first vote
  - Documentation that 30-day period was invoked
  - Documentation that negotiations and data exchange continued during 30-day period
  - Documentation of vote at the end of 30-days
- OHA assigns a mediator within 15 days
- Mediation continues for up to 90 days
- Possible CMPs

## OAR 333-510-0125

## Replacement Nurse Staffing Requirements

---

- Hospital maintains and posts/publishes a list of on-call replacements for vacancies & unexpected shortages. List must:
  - Provide sufficient replacements on a regular basis
  - Be available to the person responsible for obtaining replacements
  - On-call lists are defined in OAR 333-510-0002 and can include off-duty staff, nurse staffing agencies, and others
- When developing the list hospital needs to explore all reasonable options and document these efforts
- When a hospital learns of the need for replacements the hospital must make every reasonable effort to secure voluntary replacements before requiring overtime. Hospitals must document efforts to secure voluntary replacements. Reasonable efforts include, but are not limited to:
  - Seeking replacements when the vacancy became known; and
  - Contacting all available resources on the on-call list

## OAR 333-510-0130

## Nursing Staff Member Overtime

- “Require” means hours worked as a condition of employment including previously scheduled hours or hours actually worked on call or on standby
- Hospitals may not require nursing staff members to work
  - Beyond the agreed-upon and prearranged shift, regardless of shift length;
  - More than 48 hours in any hospital-defined work week;
  - More than 12 hours in a 24-hour period; or
  - During the 10-hour period immediately following the 12<sup>th</sup> hour worked during a 24-hour period. This work period begins when the nursing staff member begins a shift
- Voluntary overtime is allowed
- Hospitals can require an additional hour if:
  - A vacancy in the next shift becomes known at the end of the current shift; or
  - To avoid potential harm to a patient if the nurse leaves or transfers care

Maximum  
Required  
Hours

## OAR 333-510-0130

## Nursing Staff Member Overtime

---

- Hospitals must have mandatory overtime policies
  - That require mandatory overtime occurrences be documented
  - Policies must be provided to new nursing staff and readily available to all nursing staff
- Calculation of Hours Worked:
  - Time in required meetings or training counts as hours worked in the Maximum Required Hours
  - Time spent on call or on standby when a nursing staff member is required to be at the hospital counts as hours worked in the Maximum Required Hours
  - Time spent on call or on standby when a nursing staff member is not required to be at the hospital does not count as hours worked in the Maximum Required Hours
- Nursing staff members can report a pattern of required overtime in nonemergency circumstances to the HNSC.

## OAR 333-510-0130

## Nursing Staff Member Overtime

---

- Maximum Required Hours and Calculation of Hours Worked do not apply in
  - National or state emergencies or when the hospital's facility disaster plan is implemented
  - In the following emergency circumstances:
    - Sudden and unforeseen adverse weather conditions
    - An infectious disease epidemic suffered by hospital staff
    - An unforeseen event preventing replacement staff from approaching or entering the hospital; or
    - Unplanned direct care staff vacancies of 20% or more of the nursing staff for the next shift at the Oregon State Hospital (OSH) if, based on the patient census, the OSH determines the number of direct care staff available hospital-wide cannot ensure patient safety
- OSH has to seek replacements in the emergency described above
- RNs cannot place patients at risk of harm in violation of Board of Nursing rules
- Nursing staff members are RNs, LPNs & CNAs

## OAR 333-510-0135

## Nurse Staffing Plan Waiver

---

- OHA may waive any staffing plan requirement if the waiver is necessary to ensure the hospital is staffed to meet health care needs of its patients
- This waiver standard differs significantly from the prior standard
- Waiver requests must be
  - Submitted to OHA in writing;
  - State why the hospital is seeking the waiver;
  - Explain how the waiver is necessary for the hospital to meet patient health care needs; and
  - Verify that the HNSC was notified of the waiver request before it was submitted to OHA

- Hospital does not have to follow the staffing plan in the event of:
  - National or state emergencies or when the hospital's facility disaster plan is implemented
  - In the following emergency circumstances:
    - Sudden and unforeseen adverse weather conditions
    - An infectious disease epidemic suffered by hospital staff
- In any other kind of emergency either HNSC cochair can call and emergency meeting and the HNSC can review and modify the plan



## Next Steps

---

- **Open Houses provide education about new laws, new rules, survey process & survey tools. Events are live, webcast, and archived for later viewing.**

**Go to [www.healthoregon.org/nursestaffing](http://www.healthoregon.org/nursestaffing) for links**

- May 17, 2016 – SB 469
  - August 25, 2016 – Administrative Rules
  - December 15, 2016 – Survey Tools
- **FAQ coming soon – Submit your question today:**
    1. Write it on a notecard and submit it
    2. Email it to [mailbox.hclc@state.or.us](mailto:mailbox.hclc@state.or.us)

# Next Steps

---

## Oregon Nurse Staffing Collaborative

- Compile and share creative solutions from hospital nurse staffing committees
- Foster dialogue between committees to share positive experiences and avoid common pitfalls
- Encourage outreach among members to increase awareness of nurse staffing resources statewide

## **Nurse Staffing Information:** [www.healthoregon.org/nursestaffing](http://www.healthoregon.org/nursestaffing)

Anna Davis, JD  
Nurse Staffing Policy Analyst  
[anna.l.davis@state.or.us](mailto:anna.l.davis@state.or.us)  
(971) 673-2950

Lisa Finkle  
Nurse Staffing Advisory Board Specialist  
[lisa.k.finkle@state.or.us](mailto:lisa.k.finkle@state.or.us)  
971-673-2755

---

## **Additional Resources:**

Dana Selover, MD, MPH  
Section Manager  
[dana.s.selover@state.or.us](mailto:dana.s.selover@state.or.us)  
(971) 673-0540

Annabelle Henry, JD, MBA  
Program Manager  
[annabelle.d.henry@state.or.us](mailto:annabelle.d.henry@state.or.us)  
(971) 673-0540

---

## **HFLC Information:**

General Inquiries  
[mailbox.hclc@state.or.us](mailto:mailbox.hclc@state.or.us)  
(971) 673-0540

---

Oregon  
Health  
Authority