

# Senate Bill 564

Sponsored by COMMITTEE ON HEALTH CARE AND VETERANS' AFFAIRS (at the request of Oregon Federation of Nurses and Health Professionals (AFT, Local 5017) and AFT-Oregon)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires certain health care facilities to implement acuity-based classification systems, maintain certain nurse-to-patient staffing ratios, submit staffing plans to Department of Human Services and implement work assignment policies. Imposes penalties for violations. Punishes falsification of required documents by maximum of one year's imprisonment, \$6,250 fine, or both.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to nurses; creating new provisions; amending ORS 441.030, 441.166 and 441.180; repealing  
3 ORS 441.162, 441.164 and 441.170; and declaring an emergency.

4 Whereas the purpose of this 2009 Act is to ensure that the delivery of health care services to  
5 patients in health care facilities is adequate and safe, and that health care facilities retain sufficient  
6 registered nursing staff to promote optimal health care outcomes; and

7 Whereas inadequate hospital staffing results in dangerous medical errors and patient infections;  
8 and

9 Whereas registered nurses constitute the highest percentage of direct health care staff in acute  
10 care facilities and have a central role in health care delivery; and

11 Whereas in order to ensure the adequate protection and care for patients in health care facili-  
12 ties it is essential that qualified registered nurses be accessible and available to meet the nursing  
13 needs of patients; and

14 Whereas the basic principles of staffing in health care facilities should be focused on patient  
15 health care needs and be based on consideration of patient acuity levels and services that ensure  
16 optimal outcomes; and

17 Whereas the high-stress workplace environment caused by an increase in the number and acuity  
18 of patients assigned to nurses results in a decrease in the amount of time nurses have to participate  
19 in direct patient care and severely and negatively impacts the quality of nursing care patients re-  
20 ceive; and

21 Whereas establishing staffing standards for registered nurses in health care facilities ensures  
22 that the facilities provide safe workplace environments and improves public safety and the quality  
23 of health care services; now, therefore,

24 **Be It Enacted by the People of the State of Oregon:**

25 **SECTION 1. As used in sections 1 to 5 of this 2009 Act:**

26 **(1) "Acuity-based patient classification system" means a standard set of criteria, based**  
27 **on scientific data, that:**

28 **(a) Predicts registered nursing care requirements for individual patients based on sever-**  
29 **ity of patient illness, need for specialized equipment and technology, intensity of nursing**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 interventions required and the complexity of clinical judgment needed to design, implement  
 2 and evaluate a patient’s nursing care plan consistent with professional standards of care;

3 (b) Details the amount of registered nursing care needed, both in number of direct care  
 4 registered nurses and skill mix of nursing personnel required on a daily basis for each patient  
 5 in a nursing department or unit;

6 (c) Is stated in terms that can be readily used and understood by direct care registered  
 7 nurses; and

8 (d) Takes into consideration the patient care services provided by registered nurses, li-  
 9 censed practical nurses and other health care personnel.

10 (2) “Assessment tool” means a system that compares the registered nurse staffing level  
 11 in a nursing department or unit against actual patient nursing care requirements to measure  
 12 the accuracy of an acuity-based patient classification system.

13 (3) “Direct care registered nurse” means a registered nurse who is directly responsible  
 14 for carrying out medical regimens, nursing care or other bedside care for patients.

15 (4) “Facility” means a hospital licensed in Oregon, any licensed private or state owned  
 16 and operated general acute care program hospital, psychiatric facility or specialty hospital  
 17 or an acute care program within a state operated facility.

18 (5) “Nursing care” means care that falls within the scope of the practice of nursing de-  
 19 fined in ORS 678.010 to 678.410 or within recognized professional standards of nursing.

20 **SECTION 2.** (1) Each facility shall implement and maintain the following minimum direct  
 21 care registered nurse-to-patient staffing ratios:

- 22 (a) Acute rehabilitation unit, 1:3;
- 23 (b) Burn unit, 1:2;
- 24 (c) Cardiac care unit, 1:2;
- 25 (d) Critical care unit, 1:2;
- 26 (e) Emergency critical care, 1:2;
- 27 (f) Emergency department, 1:3;
- 28 (g) Emergency trauma, 1:1;
- 29 (h) Intensive care unit, 1:2;
- 30 (i) Medical and surgical, 1:4;
- 31 (j) Neonatal intensive care, 1:2;
- 32 (k) Observational and outpatient treatment, 1:4;
- 33 (L) Operating room:
- 34 (A) Under anesthesia, 1:1; and
- 35 (B) Post-anesthesia, 1:2;
- 36 (m) Pediatrics, 1:3;
- 37 (n) Perinatal care:
- 38 (A) Antepartum, 1:3;
- 39 (B) Active labor, 1:1;
- 40 (C) Immediate postpartum, 1:2;
- 41 (D) Postpartum, 1:6;
- 42 (E) Intermediate care nursery, 1:4; and
- 43 (F) Well baby nursery, 1:6;
- 44 (o) Post-anesthesia care unit:
- 45 (A) Under anesthesia, 1:1; and

- 1 (B) Post-anesthesia, 1:2;
- 2 (p) Psychiatric, 1:4;
- 3 (q) Rehabilitation unit, 1:5;
- 4 (r) Specialty care unit, 1:4;
- 5 (s) Step-down/intermediate care, 1:3;
- 6 (t) Telemetry, 1:3; and
- 7 (u) Transitional care, 1:5.

8 (2)(a) Any unit not otherwise listed in subsection (1) of this section shall be considered  
9 a specialty care unit.

10 (b) A triage or other specialty registered nurse is not counted as a nurse for the mini-  
11 mum direct care registered nurse-to-patient staffing ratio established by subsection (1) of  
12 this section.

13 (3) Nothing in this section:

14 (a) Precludes a facility from increasing the number of direct care registered nurses in  
15 any unit above the minimum staffing ratios established by this section; or

16 (b) Supersedes any requirements otherwise mandated by law, rule or a collective bar-  
17 gaining agreement if compliance with those requirements allows the facility to meet the  
18 minimum staffing ratios established by this section.

19 (4) The minimum direct care registered nurse-to-patient staffing ratios established by  
20 this section do not authorize the understaffing of other critical health care workers, includ-  
21 ing but not limited to licensed practical nurses and certified nursing assistants, required to  
22 enable direct care registered nurses to focus on the nursing care functions that only direct  
23 care registered nurses are authorized by law to perform.

24 **SECTION 3.** (1) In order to obtain a license from the Department of Human Services, a  
25 facility shall submit annually to the department a prospective staffing plan, together with a  
26 statement that the staffing plan is sufficient to provide adequate and appropriate delivery  
27 of health care services to patients for the ensuing year. The prospective staffing plan must:

28 (a) Meet the minimum direct care registered nurse-to-patient staffing ratios established  
29 by section 2 of this 2009 Act;

30 (b) Meet any other requirements for a facility established by any other applicable law or  
31 regulation;

32 (c) Employ an acuity-based patient classification system for addressing fluctuations in  
33 patient acuity levels by increasing direct care registered nurse staffing levels above the  
34 minimum staffing ratios established by section 2 of this 2009 Act;

35 (d) Provide for training of direct care registered nursing staff in assigned clinical practice  
36 areas, including temporary assignments, sufficient to provide competent nursing care;

37 (e) Include staffing requirements for other nursing department or unit activity such as  
38 discharges, transfers, admissions and administrative and support tasks that are done by di-  
39 rect care registered nurses in addition to direct nursing care;

40 (f) Describe the assessment tool used to measure and document, on a daily basis, direct  
41 care registered nurse staffing in each nursing department or unit of the facility for each  
42 shift;

43 (g) Be produced in consultation with a majority of the direct care registered nurses in  
44 each nursing department or unit or, if applicable, with the recognized or certified collective  
45 bargaining representative of direct care registered nurses at the facility; and

1       (h) Include an audit of the preceding year's staffing plan submitted in compliance with  
2 this section. The audit must compare the requirements of the staffing plan with the actual  
3 staffing for the period covered by the audit and include measurements of actual acuity for  
4 all units within the facility.

5       (2) A facility required to have a staffing plan under this section shall:

6       (a) Prominently post within each unit of the facility the daily written nursing staffing  
7 plan reflecting the minimum direct care registered nurse-to-patient staffing ratios estab-  
8 lished by section 2 of this 2009 Act;

9       (b) Make copies of the staffing plan filed with the department available to the public upon  
10 request; and

11       (c) Provide patients with a toll-free hotline number for the department that may be used  
12 to report inadequate direct care registered nurse staffing.

13       (3) A facility may not assign any person who is not a direct care registered nurse to  
14 perform functions that must be provided by a licensed direct care registered nurse, including  
15 functions that require the clinical assessment, judgment and skill of a direct care registered  
16 nurse. These functions include, but are not limited to:

17       (a) Physical, psychological and social assessments that require nursing judgment, inter-  
18 vention, referral or follow-up;

19       (b) Formulation of the plan of nursing care and evaluation of the patient's response to  
20 the care provided;

21       (c) Administration of medications; and

22       (d) Health teaching and health counseling.

23       (4) A facility shall employ a full-time direct care registered nurse executive leader to be  
24 responsible for:

25       (a) Management of resources to ensure sufficient direct care registered nurse staffing is  
26 provided by the facility;

27       (b) Quality assurance of nursing care provided by the facility; and

28       (c) Occupational health and safety of nursing staff employed by the facility.

29       (5) For the purpose of compliance with the minimum direct care registered nurse-to-  
30 patient staffing ratios established by section 2 of this 2009 Act, a direct care registered nurse  
31 may not be assigned to or be included in the count of assigned direct care registered nurse  
32 staff in a nursing department or unit or a clinical practice area within the facility unless the  
33 direct care registered nurse has had training in that clinical practice area sufficient to pro-  
34 vide competent nursing care to the patients in that area, and has demonstrated current  
35 competence in providing care in that area.

36       (6) A facility shall adopt, distribute to direct care registered nurses and comply with a  
37 written policy that establishes the circumstances under which a direct care registered nurse  
38 may refuse a work assignment. The work assignment policy must include:

39       (a) A provision that permits a direct care registered nurse to refuse any assignment that:

40       (A) The nurse is not prepared by education, training or experience to fulfill without  
41 compromising or jeopardizing patient safety, the nurse's ability to meet foreseeable patient  
42 needs or the nurse's license; or

43       (B) Would violate requirements established by sections 2 and 3 of this 2009 Act;

44       (b) Reasonable requirements and methods for providing prior notice and supporting rea-  
45 sons to the direct care registered nurse's supervisor regarding the nurse's refusal of a work

1 assignment;

2 (c) A provision that allows, when feasible, an opportunity for the supervisor to review the  
3 specific conditions supporting the direct care registered nurse's refusal of a work assign-  
4 ment, and to decide whether to remedy the conditions, to relieve the nurse of the assignment  
5 or to deny the nurse's request to be relieved of the assignment; and

6 (d) A process that permits the direct care registered nurse to exercise the right to refuse  
7 the assignment when the supervisor denies the request to be relieved if:

8 (A) The supervisor rejects the request without proposing a remedy or the proposed  
9 remedy would be inadequate or untimely;

10 (B) The complaint and investigation process with a regulatory agency would be untimely  
11 to address the concern; and

12 (C) The nurse refusing the work assignment believes in good faith that the assignment  
13 meets conditions justifying refusal.

14 (7) A nurse who refuses an assignment pursuant to a work assignment policy established  
15 pursuant to this section is not, because of the refusal, considered to have engaged in  
16 negligent or incompetent action or patient abandonment, or otherwise to have violated ap-  
17 plicable legal standards of nursing.

18 **SECTION 4.** The Department of Human Services shall:

19 (1) Adopt rules necessary to implement the provisions of sections 1 to 5 of this 2009 Act,  
20 including, but not limited to developing:

21 (a) An acuity-based patient classification system to be used by all facilities to predict the  
22 number of direct care registered nurses necessary to meet patient needs; and

23 (b) An easily accessible, confidential method by which a person can:

24 (A) Report any failure to comply with the requirements of sections 2 and 3 of this 2009  
25 Act; and

26 (B) Access information about reports of inspections of facilities, failure by a facility to  
27 comply with the requirements of sections 1 to 5 of this 2009 Act and corrective action taken  
28 by facilities to correct any deficiencies identified; and

29 (2) Investigate a report that a facility has failed to comply with the requirements of  
30 sections 2 and 3 of this 2009 Act within 24 hours after receiving the report.

31 **SECTION 5.** (1) If a facility violates any provision of section 2 or 3 of this 2009 Act or  
32 rules adopted under section 4 of this 2009 Act, the Department of Human Services may:

33 (a) Revoke or suspend the facility's license or registration; and

34 (b) Impose a civil penalty of not more than \$25,000 for each violation.

35 (2) Each day a facility is in violation of a provision of section 2 or 3 of this 2009 Act or  
36 rules adopted under section 4 of this 2009 Act is a separate violation.

37 (3) Civil penalties imposed under this section are in addition to any other penalties that  
38 may be prescribed by law.

39 (4) Civil penalties may be assessed in any court of competent jurisdiction in any action  
40 brought on behalf of a patient or resident aggrieved by a violation of a provision of section  
41 2 or 3 of this 2009 Act or rules adopted under section 4 of this 2009 Act.

42 (5) Civil penalties assessed under this section shall be deposited in the State Treasury  
43 and credited to the Nursing Education Grant Fund established under ORS 353.612.

44 (6) Falsification of any documents required to be filed with the department by section 2  
45 or 3 of this 2009 Act or rules adopted under section 4 of this 2009 Act is a Class A

1 **misdemeanor.**

2 **SECTION 6. ORS 441.162, 441.164 and 441.170 are repealed.**

3 **SECTION 7.** ORS 441.030 is amended to read:

4 441.030. (1) The Department of Human Services, pursuant to ORS 479.215, shall deny, suspend  
5 or revoke a license in any case where the State Fire Marshal, or the representative of the State  
6 Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances  
7 and rules relating to safety from fire.

8 (2) The department may deny, suspend or revoke a license in any case where it finds that there  
9 has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085 or 441.087 or the rules  
10 or minimum standards adopted under ORS 441.015 to 441.063, 441.085 or 441.087.

11 (3) The department may suspend or revoke a license issued under ORS 441.025 for failure to  
12 comply with a department order arising from a health care facility's substantial lack of compliance  
13 with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087[, 441.162] or 441.166 or the rules  
14 adopted under ORS 441.015 to 441.063, 441.084 to 441.087[, 441.162] or 441.166, or for failure to pay  
15 a civil penalty imposed under ORS [441.170 or] 441.710.

16 (4) The department may order a long term care facility licensed under ORS 441.025 to restrict  
17 the admission of patients when the department finds an immediate threat to patient health and  
18 safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to  
19 441.063 or 441.084 to 441.087 and the rules adopted under ORS 441.015 to 441.063 or 441.084 to  
20 441.087.

21 (5) Any long term care facility that has been ordered to restrict the admission of patients pur-  
22 suant to subsection (4) of this section shall post a notice of the restriction, provided by the depart-  
23 ment, on all doors providing ingress to and egress from the facility, for the duration of the  
24 restriction.

25 **SECTION 8.** ORS 441.166 is amended to read:

26 441.166. (1) When a hospital learns about the need for replacement staff, the hospital shall make  
27 every reasonable effort to obtain registered nurses, licensed practical nurses or certified nursing  
28 assistants for unfilled hours or shifts before requiring a registered nurse, licensed practical nurse  
29 or certified nursing assistant to work overtime.

30 (2) A hospital may not require a registered nurse, licensed practical nurse or certified nursing  
31 assistant to work:

32 (a) Beyond the agreed-upon shift;

33 (b) More than 48 hours in any hospital-defined work week; or

34 (c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require  
35 an additional hour of work beyond the 12 hours if:

36 (A) A staff vacancy for the next shift becomes known at the end of the current shift; or

37 (B) There is a potential harm to an assigned patient if the registered nurse, licensed practical  
38 nurse or certified nursing assistant leaves the assignment or transfers care to another.

39 (3)(a) Time spent in required meetings or receiving education or training shall be included as  
40 hours worked for purposes of subsection (2) of this section.

41 (b) Time spent on call but away from the premises of the employer may not be included as hours  
42 worked for purposes of subsection (2) of this section.

43 (c) Time spent on call or on standby when the registered nurse, licensed practical nurse or  
44 certified nursing assistant is required to be at the premises of the employer shall be included as  
45 hours worked for purposes of subsection (2) of this section.

1 (4) The provisions of this section do not apply to nursing staff needs:

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

4 (b) In emergency circumstances identified by the Department of Human Services by rule; or

5 (c) If a hospital has made reasonable efforts to contact *[all of the]* on-call nursing staff or staffing  
6 agencies *[on the list described in ORS 441.162]* and is unable to obtain replacement staff in a timely  
7 manner.

8 **SECTION 9.** ORS 441.180 is amended to read:

9 441.180. (1) A hospital shall post a notice summarizing the provisions of ORS *[441.162,]* 441.166,  
10 441.168, 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital.  
11 The notice must be posted where notices to employees and applicants for employment are custom-  
12 arily displayed.

13 (2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed  
14 \$500. Civil penalties under this section shall be imposed by the Department of Human Services in  
15 the manner provided by ORS 183.745.

16 **SECTION 10.** (1) **Sections 1, 2, 3 and 5 of this 2009 Act, the repeal of ORS 441.162, 441.164**  
17 **and 441.170 by section 6 of this 2009 Act and the amendments to ORS 441.030, 441.166 and**  
18 **441.180 by sections 7 to 9 of this 2009 Act become operative on January 1, 2011.**

19 **(2) The Department of Human Services may take any action before the operative date**  
20 **specified in subsection (1) of this section that is necessary to enable the department to ex-**  
21 **ercise, on and after the operative date specified in subsection (1) of this section, all the du-**  
22 **ties, functions and powers conferred on the department by section 3 to 5 of this 2009 Act.**

23 **(3) The department shall adopt the rules required by section 4 of this 2009 Act by July**  
24 **1, 2010.**

25 **SECTION 11.** **This 2009 Act being necessary for the immediate preservation of the public**  
26 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
27 **on its passage.**

28