

A-Engrossed
Senate Bill 469

Ordered by the Senate April 27
Including Senate Amendments dated April 27

Sponsored by Senator MONNES ANDERSON, Representative GREENLICK, Senator KNOPP; Senators DEVLIN, ROSENBAUM, STEINER HAYWARD, Representatives KENNEMER, NOSSE (Presession filed.)

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.

Makes changes to laws governing hospital nursing staff, including laws setting forth composition of hospital nurse staffing committees and laws governing content of written hospital-wide staffing plans.

Establishes Nurse Staffing Advisory Board within Oregon Health Authority for purposes related to administration of laws governing hospital nursing staff.

Declares emergency, effective on passage.

A BILL FOR AN ACT

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

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

5
6 **HOSPITAL NURSE STAFFING COMMITTEES**

7
8 **SECTION 1. (1)(a) For each hospital there shall be established a hospital nurse staffing**
9 **committee. Each committee shall:**

10 **(A) Consist of an equal number of hospital nurse managers and direct care staff;**

11 **(B) For that portion of the committee composed of direct care staff, consist entirely of**
12 **direct care registered nurses, except for one position to be filled by a direct care staff**
13 **member who is not a registered nurse and whose services are covered by a written**
14 **hospital-wide staffing plan that meets the requirements of ORS 441.162; and**

15 **(C) Include at least one direct care registered nurse from each hospital nurse specialty**
16 **or unit.**

17 **(b) If the direct care registered nurses who work at a hospital are represented under a**
18 **collective bargaining agreement, the bargaining unit shall conduct a selection process by**
19 **which the direct care registered nurses who work at the hospital select the members of the**
20 **committee who are direct care registered nurses.**

21 **(c) If the direct care staff member who is not a registered nurse who works at a hospital**
22 **is represented under a collective bargaining agreement, the bargaining unit shall use the**
23 **selection process conducted pursuant to paragraph (b) of this subsection to select that**
24 **member of the committee.**

25 **(d) If the direct care registered nurses who work at a hospital are not represented under**

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 a collective bargaining agreement, the direct care registered nurses belonging to a hospital
2 nurse specialty or unit shall select each member of the committee who is a direct care reg-
3 istered nurse from that specialty or unit.

4 (2) A hospital nurse staffing committee shall develop a written hospital-wide staffing plan
5 in accordance with ORS 441.162. The committee's primary goals in developing the staffing
6 plan shall be to ensure that the hospital is staffed to meet the health care needs of patients.
7 The committee shall review and modify the staffing plan in accordance with section 5 of this
8 2015 Act.

9 (3) A majority of the members of a hospital nurse staffing committee constitutes a quo-
10 rum for the transaction of business.

11 (4) A hospital nurse staffing committee shall have two cochair. One cochair shall be a
12 hospital nurse manager elected by the members of the committee who are hospital nurse
13 managers and one cochair shall be a direct care registered nurse elected by the members
14 of the committee who are direct care staff.

15 (5)(a) A decision made by a hospital nurse staffing committee must be made by a vote
16 of a majority of the members of the committee. If a quorum of members comprises an une-
17 qual number of hospital nurse managers and direct care staff, only an equal number of hos-
18 pital nurse managers and direct care staff may vote.

19 (b) If the committee is unable to reach an agreement on the staffing plan, either cochair
20 of the committee may invoke a 30-day period during which the committee shall continue to
21 develop the staffing plan. During the 30-day period, the hospital shall respond in a timely
22 manner to reasonable requests from members of the committee for data that will enable the
23 committee to reach a resolution. If at the end of the 30-day period, the committee remains
24 unable to reach an agreement on the staffing plan, one of the cochairs shall notify the
25 Oregon Health Authority of the impasse.

26 (c) Upon receiving notification under paragraph (b) of this subsection, the authority shall
27 provide the committee with a mediator to assist the committee in reaching an agreement
28 on the staffing plan. Mediation conducted under this paragraph must be consistent with the
29 requirements for implementing and reviewing staffing plans under section 5 of this 2015 Act
30 and ORS 441.162.

31 (d) If the committee is unable to reach an agreement on the staffing plan after 90 days
32 of mediation, the authority may impose a penalty against the hospital as described in ORS
33 441.170.

34 (6) A hospital nurse staffing committee shall meet:

35 (a) At least once every three months; and

36 (b) At any time and place specified by either cochair.

37 (7)(a) Subject to paragraph (b) of this subsection, a hospital nurse staffing committee
38 meeting must be open to:

39 (A) The hospital nursing staff as observers; and

40 (B) Upon invitation by either cochair, other observers or presenters.

41 (b) At any time, either cochair may exclude persons described in paragraph (a) of this
42 subsection from a committee meeting for purposes related to deliberation and voting.

43 (8) Minutes of hospital nurse staffing committee meetings must:

44 (a) Include motions made and outcomes of votes taken;

45 (b) Summarize discussions; and

1 (c) Be made available in a timely manner to hospital nursing staff and other hospital staff
2 upon request.

3 (9) A hospital shall release a member of a hospital nurse staffing committee described in
4 subsection (1)(a) of this section from the member's assignment, and provide the member
5 with paid time, to attend committee meetings.

6
7 **NURSE STAFFING ADVISORY BOARD**

8
9 **SECTION 2.** (1)(a) The Nurse Staffing Advisory Board is established within the Oregon
10 Health Authority, consisting of 12 members appointed by the Governor.

11 (b) Of the 12 members of the board:

12 (A) Six must be hospital nurse managers;

13 (B) Five must be direct care registered nurses who work in hospitals; and

14 (C) One must be either a direct care registered nurse who works in a hospital or a direct
15 care staff member who is not a registered nurse and whose services are covered by a written
16 hospital-wide staffing plan that meets the requirements of ORS 441.162.

17 (c) To the extent practicable, board members shall be appointed to ensure that the board
18 is represented by members from hospitals where direct care staff are represented under a
19 collective bargaining agreement and hospitals where direct care staff are not represented by
20 a collective bargaining agreement and by hospitals of different sizes, types and geographic
21 location.

22 (d) The term of office of each board member is three years, but a member serves at the
23 pleasure of the Governor. Before the expiration of the term of a member, the Governor shall
24 appoint a successor whose term begins January 1 next following. A member is eligible for
25 reappointment, but may not serve more than two consecutive terms. If there is a vacancy
26 for any cause, the Governor shall make an appointment to become immediately effective for
27 the unexpired term.

28 (2) The board shall:

29 (a) Provide advice to the authority on the administration of ORS 441.162 to 441.170;

30 (b) Identify trends, opportunities and concerns related to nurse staffing;

31 (c) Make recommendations to the authority on the basis of those trends, opportunities
32 and concerns; and

33 (d) Review the authority's enforcement powers and processes under sections 9, 10 and
34 11 of this 2015 Act.

35 (3)(a) Upon request, the authority shall provide the board with written hospital-wide
36 staffing plans implemented under ORS 441.162, reviews conducted under section 5 of this 2015
37 Act, information obtained during an audit under section 9 of this 2015 Act and complaints
38 filed and investigations conducted as described in section 10 of this 2015 Act.

39 (b) The authority may not provide the board with any information under paragraph (a)
40 of this subsection that is identifiable with a specific hospital unless the information is pub-
41 licly available.

42 (c) Hospital-wide staffing plans provided to the board under this section are confidential
43 and not subject to public disclosure.

44 (4) A majority of the members of the board constitutes a quorum for the transaction of
45 business.

1 (5) The board shall have two cochair selected by the Governor. One cochair shall be a
2 hospital nurse manager and one cochair shall be a direct care registered nurse.

3 (6) Official action by the board requires the approval of a majority of the members of the
4 board.

5 (7) The board shall meet:

6 (a) At least once every three months; and

7 (b) At any time and place specified by the call of both cochair.

8 (8) The board may adopt rules necessary to for the operation of the board.

9 (9) The board shall submit a report on the administration of ORS 441.162 to 441.170 in the
10 manner provided in ORS 192.245 to an interim committee of the Legislative Assembly related
11 to health no later than September 15 of each year. The board may include in its report rec-
12 ommendations for legislation.

13 (10) Members of the board are not entitled to compensation, but may be reimbursed for
14 actual and necessary travel and other expenses incurred by them in the performance of their
15 official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses
16 shall be paid out of funds appropriated to the authority for purposes of the board.

17 **SECTION 3.** Notwithstanding the term of office specified by section 2 of this 2015 Act,
18 of the members first appointed to the Nurse Staffing Advisory Board:

19 (1) Four shall serve for a term ending January 1, 2017;

20 (2) Four shall serve for a term ending January 1, 2018; and

21 (3) Four shall serve for a term ending January 1, 2019.

22
23 **STAFFING PLANS**

24
25 **SECTION 4.** ORS 441.162 is amended to read:

26 441.162. (1) [A] **Each** hospital shall *[be responsible for the implementation of a]* **implement the**
27 written hospital-wide staffing plan for nursing services **that has been developed and approved by**
28 **the hospital nurse staffing committee under section 1 of this 2015 Act.** *[The staffing plan shall*
29 *be developed, monitored, evaluated and modified by a hospital staffing plan committee. To the extent*
30 *possible, the committee shall:]*

31 *[(a) Include equal numbers of hospital nurse managers and direct care registered nurses;]*

32 *[(b) Include at least one direct care registered nurse from each hospital nurse specialty or unit, to*
33 *be selected by direct care registered nurses from the particular specialty or unit. The hospital shall*
34 *define its own specialties or units; and]*

35 *[(c) Have as its primary consideration the provision of safe patient care and an adequate nursing*
36 *staff pursuant to ORS chapter 441.]*

37 *[(2) The hospital shall evaluate and monitor the staffing plan for effectiveness and revise the*
38 *staffing plan as necessary as part of the hospital's quality assurance process. The hospital shall*
39 *maintain written documentation of these quality assurance activities.]*

40 *[(3)]* (2) The *[written]* staffing plan *[shall]*:

41 (a) **Must** be based on an accurate description of individual and aggregate patient needs and
42 requirements for nursing care *[and include a periodic quality evaluation process to determine whether*
43 *the staffing plan is appropriately and accurately reflecting patient needs over time.];*

44 (b) **Must** be based on the specialized qualifications and competencies of the nursing staff. *The*
45 *skill mix and the competency of the staff shall ensure that the nursing care needs of the patients are*

1 *met and shall ensure patient safety.] and provide for the skill mix and level of competency nec-*
2 *essary to ensure that the hospital is staffed to meet the health care needs of patients;*

3 **(c) Must be based on a measurement of hospital unit activity that quantifies the rate of**
4 **admissions, discharges and transfers for each hospital unit and the time required for a direct**
5 **care registered nurse belonging to a hospital unit to complete admissions, discharges and**
6 **transfers for that hospital unit;**

7 **(d) Must be based on total diagnoses for each hospital unit and the nursing staff required**
8 **to manage that set of diagnoses;**

9 *[(c)] (e) Must be consistent with nationally recognized evidence-based standards and guidelines*
10 *established by professional nursing specialty organizations [and];*

11 **(f) Must recognize differences in patient [acuteness.] acuity;**

12 *[(d)] (g) Must establish minimum numbers of nursing staff, including licensed practical nurses*
13 *and certified nursing assistants, required on specified shifts[.], provided that at least one registered*
14 *nurse and one other nursing staff member [must be] is on duty in a unit when a patient is*
15 *present[.];*

16 *[(e)] (h) Must include a formal process for evaluating and initiating limitations on admission or*
17 *diversion of patients to another [acute care facility] hospital when, in the judgment of [the] a direct*
18 *care registered nurse or a nurse manager, there is an inability to meet patient care needs or a risk*
19 *of harm to [existing and new] patients[.];*

20 **(i) Must consider tasks not related to providing direct care, including meal breaks and**
21 **rest breaks; and**

22 **(j) May not base nursing staff requirements solely on external benchmarking data.**

23 **(3) A hospital must maintain and post a list of on-call nursing staff or staffing agencies**
24 **to provide replacement nursing staff in the event of a vacancy. The list of on-call nursing**
25 **staff or staffing agencies must be sufficient to provide for replacement nursing staff.**

26 *[(4) The hospital shall maintain and post a list of on-call nursing staff or staffing agencies to*
27 *provide replacement for nursing staff in the event of vacancies. The list of on-call nurses or agencies*
28 *must be sufficient to provide replacement staff.]*

29 *[(5)(a)] (4)(a) An employer may not impose upon unionized nursing staff any changes in wages,*
30 *hours or other terms and conditions of employment pursuant to a staffing plan [developed or modified*
31 *under subsection (1) of this section] unless the employer first provides notice to and, [on] upon re-*
32 *quest, bargains with the union as the exclusive collective bargaining representative of the nursing*
33 *staff in the bargaining unit.*

34 *(b) A staffing plan [developed or modified under subsection (1) of this section] does not create,*
35 *preempt or modify a collective bargaining agreement or require a union or employer to bargain over*
36 *the staffing plan while a collective bargaining agreement is in effect.*

37 **SECTION 5. (1) A hospital nurse staffing committee established pursuant to section 1 of**
38 **this 2015 Act shall review the written hospital-wide staffing plan developed by the committee**
39 **under ORS 441.162:**

40 **(a) At least once every year; and**

41 **(b) At any other date and time specified by either cochair of the committee.**

42 **(2) In reviewing a staffing plan, a hospital nurse staffing committee shall consider:**

43 **(a) Patient outcomes;**

44 **(b) Complaints regarding staffing, including complaints about a delay in direct care**
45 **nursing or an absence of direct care nursing;**

1 (c) The number of hours of nursing care provided through a hospital unit compared with
2 the number of patients served by the hospital unit during a 24-hour period;

3 (d) The aggregate hours of mandatory overtime worked by the nursing staff;

4 (e) The aggregate hours of voluntary overtime worked by the nursing staff;

5 (f) The percentage of shifts for each hospital unit for which staffing differed from what
6 is required by the staffing plan; and

7 (g) Any other matter determined by the committee to be necessary to ensure that the
8 hospital is staffed to meet the health care needs of patients.

9 (3) Upon reviewing a staffing plan, a hospital nurse staffing committee shall:

10 (a) Report whether the staffing plan ensures that the hospital is staffed to meet the
11 health care needs of patients; and

12 (b) Modify the staffing plan as necessary to ensure that the hospital is staffed to meet
13 the health care needs of patients.

14 **SECTION 5a.** (1) For purposes of this subsection, “epidemic” means the occurrence of a
15 group of similar conditions of public health importance in a community or region that are
16 in excess of normal expectancy and that are from a common or propagated source.

17 (2) Notwithstanding ORS 441.162 and section 5 of this 2015 Act, a hospital is not required
18 to follow a written hospital-wide staffing plan developed and approved by the hospital nurse
19 staffing committee under section 1 of this 2015 Act upon the occurrence of a national or
20 state emergency requiring the implementation of a facility disaster plan, or upon the occur-
21 rence of sudden unforeseen adverse weather conditions or an infectious disease epidemic
22 suffered by hospital staff.

23 (3) Upon the occurrence of an emergency circumstance not described in subsection (2)
24 of this section, either cochair of the hospital nurse staffing committee may require the
25 hospital nurse staffing committee to meet to review and potentially modify the staffing plan
26 in response to the emergency circumstance.

27
28 **REPLACEMENT STAFF**

29
30 **SECTION 6.** ORS 441.166 is amended to read:

31 441.166. (1) For purposes of this section, “nursing staff” includes registered nurses, li-
32 censed practical nurses and certified nursing assistants.

33 [(1)] (2) When a hospital learns about the need for replacement staff, the hospital shall make
34 every reasonable effort to obtain [*registered nurses, licensed practical nurses or certified nursing as-*
35 *assistants*] **nursing staff** for unfilled hours or shifts before requiring a [*registered nurse, licensed*
36 *practical nurse or certified nursing assistant*] **nursing staff member** to work overtime.

37 [(2)] (3)(a) **Except as provided in subsection (4) of this section,** a hospital may not require
38 a [*registered nurse, licensed practical nurse or certified nursing assistant*] **nursing staff member** to
39 work:

40 [(a)] (A) Beyond the agreed-upon **and prearranged** shift, **regardless of the length of the**
41 **shift;**

42 [(b)] (B) More than 48 hours in any hospital-defined work week; [*or*]

43 [(c)] (C) More than 12 [*consecutive*] hours in a 24-hour [*time*] period[, *except that a hospital may*
44 *require an additional hour of work beyond the 12 hours if*]; **or**

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

1 (1) **Reports of audits described in section 9 of this 2015 Act;**

2 (2) **Any report made pursuant to an investigation of whether a hospital is in compliance**
3 **with ORS 441.162 to 441.170;**

4 (3) **Any order requiring a hospital to implement a plan to correct a violation of ORS**
5 **441.162 to 441.170;**

6 (4) **Any order imposing a civil penalty against a hospital or suspending or revoking the**
7 **license of a hospital pursuant to ORS 441.170; and**

8 (5) **Any other matter recommended by the Nurse Staffing Advisory Board established**
9 **under section 2 of this 2015 Act.**

10
11 **CONFORMING AMENDMENTS**
12

13 **SECTION 12.** ORS 441.164 is amended to read:

14 441.164. Upon request of a hospital, the Oregon Health Authority may grant [*variances in*] a
15 **variance to** the written **hospital-wide** staffing plan requirements [*based on patient care needs or the*
16 *nursing practices of the hospital*] **described in ORS 441.162 if the variance is necessary to ensure**
17 **that the hospital is staffed to meet the health care needs of patients.**

18 **SECTION 13.** ORS 441.170 is amended to read:

19 441.170. (1) The Oregon Health Authority may impose civil penalties in the manner provided in
20 ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS
21 441.162 [*or 441.166*] **to 441.170.** The authority shall adopt by rule a schedule establishing the amount
22 of civil penalty that may be imposed for [*any*] a violation of ORS 441.162 [*or 441.166*] **to 441.170**
23 when there is a reasonable belief that safe patient care has been or may be negatively impacted[.
24 A], **except that** a civil penalty [*imposed under this subsection*] may not exceed \$5,000. Each vio-
25 lation of a [*nursing staff*] **written hospital-wide staffing** plan shall be considered a separate vio-
26 lation. Any license that is suspended or revoked under this subsection shall be suspended or revoked
27 as provided in ORS 441.030.

28 (2) The authority shall maintain for public inspection records of any civil penalties or license
29 suspensions or revocations imposed on hospitals penalized under subsection (1) of this section.

30 [(3) *The authority shall conduct an annual random audit of not less than seven percent of all*
31 *hospitals in this state solely to verify compliance with the requirements of ORS 441.162, 441.166 and*
32 *441.192. Surveys made by private accrediting organizations may not be used in lieu of the audit re-*
33 *quired under this subsection. The authority shall compile and maintain for public inspection an annual*
34 *report of the audit conducted under this subsection.*]

35 [(4) *The costs of the audit required under subsection (3) of this section may be paid out of funds*
36 *from licensing fees paid by hospitals under ORS 441.020.*]

37 **SECTION 14.** ORS 441.030 is amended to read:

38 441.030. (1) The Oregon Health Authority or the Department of Human Services may assess a
39 civil penalty and, pursuant to ORS 479.215, shall deny, suspend or revoke a license, in any case
40 where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there
41 is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from
42 fire.

43 (2) The authority may:

44 (a) Assess a civil penalty or deny, suspend or revoke a license of a health care facility other
45 than a long term care facility in any case where it finds that there has been a substantial failure

1 to comply with ORS 441.015 to 441.063 or the rules or minimum standards adopted under ORS
2 441.015 to 441.063.

3 (b) Assess a civil penalty or suspend or revoke a license issued under ORS 441.025 for failure
4 to comply with an authority order arising from a health care facility's substantial lack of compliance
5 with the provisions of ORS 441.015 to 441.063[,] **or** 441.162 [*or 441.166*] **to 441.170** or the rules
6 adopted under ORS 441.015 to 441.063[,] **or** 441.162 [*or 441.166*] **to 441.170**.

7 (c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty im-
8 posed under ORS 441.170.

9 (3) The department may:

10 (a) Assess a civil penalty or deny, suspend or revoke a long term care facility's license in any
11 case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063
12 or 441.087 or the rules or minimum standards adopted under ORS 441.015 to 441.063 or 441.087.

13 (b) Assess a civil penalty or suspend or revoke a long term care facility's license issued under
14 ORS 441.025 for failure to comply with a department order arising from a long term care facility's
15 substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 or 441.087 or
16 the rules adopted under ORS 441.015 to 441.063, 441.084 or 441.087.

17 (c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty im-
18 posed under ORS 441.710.

19 (d) Order a long term care facility licensed under ORS 441.025 to restrict the admission of pa-
20 tients when the department finds an immediate threat to patient health and safety arising from
21 failure of the long term care facility to be in compliance with ORS 441.015 to 441.063, 441.084 or
22 441.087 and the rules adopted under ORS 441.015 to 441.063, 441.084 or 441.087.

23 (4) Any long term care facility that has been ordered to restrict the admission of patients pur-
24 suant to subsection (3)(d) of this section shall post a notice of the restriction, provided by the de-
25 partment, on all doors providing ingress to and egress from the facility, for the duration of the
26 restriction.

27 **SECTION 15.** ORS 441.180 is amended to read:

28 441.180. (1) A hospital shall post a notice summarizing the provisions of ORS [*441.162, 441.166,*
29 *441.168,*] 441.174, 441.176, 441.178 and 441.192 in a conspicuous place on the premises of the hospital.
30 The notice must be posted where notices to employees and applicants for employment are custom-
31 arily displayed.

32 (2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed
33 \$500. Civil penalties under this section shall be imposed by the Oregon Health Authority in the
34 manner provided by ORS 183.745.

35
36 **SERIES PLACEMENT**

37
38 **SECTION 16.** Sections 1, 2, 5, 5a and 7 to 11 of this 2015 Act are added to and made a part
39 of ORS 441.162 to 441.170.

40
41 **IMPLEMENTATION**

42
43 **SECTION 17.** (1) For purposes of this section, "hospital" has the meaning given that term
44 in ORS 441.160.

45 (2) A hospital nurse staffing committee shall be established for each hospital in accord-

