

House Bill 3014

Sponsored by Representative NOSSE

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 hospital to establish hospital staffing committee, in addition to hospital nurse staffing committee, to develop hospital-wide staffing plan for staff other than nursing staff. Specifies membership and duties of hospital staffing committee.

Requires Oregon Health Authority to conduct audits, respond to complaints and enforce provisions regarding hospital staffing committee. Increases maximum civil penalty to \$20,000.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to hospital staffing; creating new provisions; amending ORS 441.154, 441.155, 441.156,
3 441.157, 441.165, 441.166, 441.171 and 441.175; and prescribing an effective date.

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

5 **SECTION 1.** ORS 441.154 is amended to read:

6 441.154. *[(1)(a)]* **(1)** For each hospital there shall be established a hospital nurse staffing com-
7 mittee **and a hospital staffing committee**. Each committee shall[:]

8 *[(A)]* consist of an equal number of *[hospital nurse]* managers and *[direct care]* **nonmanagement**
9 staff.[:]

10 *[(B)]* **(2)(a)** *[For that]* **The** portion of the **hospital nurse staffing** committee composed of *[direct*
11 *care]* **nonmanagement** staff[,] **must:**

12 **(A)** Consist entirely of direct care registered nurses, except for one position to be filled by a
13 *[direct care staff 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 441.155]* **certified nursing assistant;**
15 and

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

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

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

26 (d) If the direct care registered nurses who work at a hospital are not represented under a
27 collective bargaining agreement, the direct care registered nurses belonging to a hospital nurse
28 specialty or unit shall select each member of the committee who is a direct care registered nurse
29 from that specialty or unit.

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 **(3) The portion of the hospital staffing committee composed of nonmanagement staff**
 2 **must consist entirely of staff other than nurses who provide direct care or whose work**
 3 **provides critical support to direct care providers, including but not limited to staff from each**
 4 **of the following:**

- 5 **(a) Admitting staff;**
- 6 **(b) Housekeeping staff;**
- 7 **(c) Certified nursing assistants; and**
- 8 **(d) Specialty technicians.**

9 [(2)] **(4)** [A *hospital nurse*] **Each** staffing committee shall develop a written hospital-wide staffing
 10 plan in accordance with ORS 441.155. The [committee's] **committees'** primary goals in developing
 11 the staffing [plan] **plans** shall be to ensure that the hospital is staffed to meet the health care needs
 12 of patients. The [committee] **committees** shall review and modify the staffing [plan] **plans** in ac-
 13 cordance with ORS 441.156.

14 [(3)] **(5)** A majority of the members of [a *hospital nurse*] **each** staffing committee constitutes a
 15 quorum for the transaction of business.

16 [(4)] **(6)** [A *hospital nurse*] **Each** staffing committee shall have two cochair. One cochair shall
 17 be a [*hospital nurse*] manager elected by the members of the committee who are hospital [*nurse*]
 18 managers and one cochair shall be a [*direct care registered nurse*] **nonmanagement staff person**
 19 elected by the members of the committee who are [*direct care*] **nonmanagement** staff.

20 [(5)(a)] **(7)(a)** A decision made by a [*hospital nurse*] staffing committee must be made by a vote
 21 of a majority of the members of the committee. If a quorum of members comprises an unequal num-
 22 ber of [*hospital nurse*] managers and [*direct care*] **nonmanagement** staff, only an equal number of
 23 [*hospital nurse*] managers and [*direct care*] **nonmanagement** staff may vote.

24 (b) If [*the*] **a** committee is unable to reach an agreement on the staffing plan, either cochair of
 25 the committee may invoke a 30-day period during which the committee shall continue to develop the
 26 staffing plan. During the 30-day period, the hospital shall respond in a timely manner to reasonable
 27 requests from members of the committee for data that will enable the committee to reach a resol-
 28 ution. If at the end of the 30-day period, the committee remains unable to reach an agreement on
 29 the staffing plan, one of the cochairs shall notify the Oregon Health Authority of the impasse.

30 (c) Upon receiving notification under paragraph (b) of this subsection, the authority shall pro-
 31 vide the committee with a mediator to assist the committee in reaching an agreement on the staffing
 32 plan. Mediation conducted under this paragraph must be consistent with the requirements for im-
 33 plementing and reviewing staffing plans under ORS 441.155 and 441.156.

34 (d) If the committee is unable to reach an agreement on the staffing plan after 90 days of me-
 35 diation, the authority may impose a penalty against the hospital as described in ORS 441.175.

36 [(6)] **(8)** [A *hospital nurse*] **Each** staffing committee shall meet:

- 37 (a) At least once every three months; and
- 38 (b) At any time and place specified by either cochair.

39 [(7)(a)] **(9)(a)** Subject to paragraph (b) of this subsection, a [*hospital nurse*] staffing committee
 40 meeting must be open to:

41 (A) The hospital nursing staff **for the hospital nurse staffing committee and the non-**
 42 **nursing staff for the hospital staffing committee**, as observers; and

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

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

1 [(8)] (10) Minutes of [*hospital nurse*] **each** staffing committee [*meetings*] **meeting** must:

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

3 (b) Summarize discussions; and

4 (c) Be made available in a timely manner to [*hospital nursing staff and other*] **all** hospital staff
5 upon request.

6 [(9)] (11) A hospital shall release a member of a [*hospital nurse*] staffing committee [*described in*
7 *subsection (1)(a) of this section*] from the member's assignment, and provide the member with paid
8 time, to attend committee meetings.

9 **SECTION 2.** ORS 441.155 is amended to read:

10 441.155. (1) Each hospital shall implement the written hospital-wide staffing [*plan for nursing*
11 *services that has*] **plans that have** been developed and approved by the hospital nurse staffing
12 committee **and the hospital staffing committee** under ORS 441.154.

13 (2) The staffing [*plan*] **plans**:

14 (a) Must be based on the specialized qualifications and competencies of the nursing staff **and**
15 **non-nursing staff** and provide for the skill mix and level of competency necessary to ensure that
16 the hospital is staffed to meet the health care needs of patients;

17 (b) Must be based on a measurement of hospital unit activity that quantifies the rate of admis-
18 sions, discharges and transfers for each hospital unit and the time required for [*a direct care regis-*
19 *tered nurse*] **staff** belonging to a hospital unit to complete admissions, discharges and transfers for
20 that hospital unit;

21 (c) Must be based on total diagnoses for each hospital unit and the nursing staff **and non-**
22 **nursing staff** required to manage that set of diagnoses;

23 (d) **For nursing staff**, must be consistent with nationally recognized evidence-based standards
24 and guidelines established by professional nursing specialty organizations;

25 (e) Must recognize differences in patient acuity;

26 (f) **For nursing staff**, must establish minimum numbers of nursing staff, including licensed
27 practical nurses and certified nursing assistants, required on specified shifts, provided that at least
28 one registered nurse and one other nursing staff member is on duty in a unit when a patient is
29 present;

30 (g) Must include a formal process for evaluating and initiating limitations on admission or di-
31 version of patients to another hospital when, in the judgment of a direct care registered nurse or
32 a nurse manager, there is an inability to meet patient care needs or a risk of harm to patients;

33 (h) Must consider tasks not related to providing direct care, including meal breaks and rest
34 breaks; and

35 (i) May not base [*nursing staff*] **staffing** requirements solely on external benchmarking data.

36 (3) A hospital must maintain and post a list of on-call nursing staff or staffing agencies to pro-
37 vide replacement nursing staff in the event of a vacancy. The list of on-call nursing staff or staffing
38 agencies must be sufficient to provide for replacement nursing staff.

39 (4)(a) An employer may not impose upon unionized [*nursing*] staff any changes in wages, hours
40 or other terms and conditions of employment pursuant to a staffing plan unless the employer first
41 provides notice to and, upon request, bargains with the union as the exclusive collective bargaining
42 representative of the [*nursing*] staff in the bargaining unit.

43 (b) A staffing plan does not create, preempt or modify a collective bargaining agreement or re-
44 quire a union or employer to bargain over the staffing plan while a collective bargaining agreement
45 is in effect.

1 **SECTION 3.** ORS 441.156 is amended to read:

2 441.156. (1) A hospital nurse staffing committee **and a hospital staffing committee** established
 3 pursuant to ORS 441.154 shall review the written hospital-wide staffing [*plan*] **plans** developed by
 4 the [*committee*] **committees** under ORS 441.155:

5 (a) At least once every year; and

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

7 (2) In reviewing a **hospital nurse** staffing plan, a hospital nurse staffing committee shall con-
 8 sider:

9 (a) Patient outcomes;

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

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

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

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

16 (f) The percentage of shifts for each hospital unit for which staffing differed from what is re-
 17 quired by the staffing plan; and

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

20 **(3) In reviewing a hospital staffing plan, a hospital staffing committee shall consider:**

21 **(a) Patient outcomes;**

22 **(b) Complaints regarding staffing;**

23 **(c) The aggregate hours of mandatory overtime worked by staff;**

24 **(d) The aggregate hours of voluntary overtime worked by staff;**

25 **(e) The percentage of shifts for each hospital unit for which staffing differed from what**
 26 **is required by the staffing plan; and**

27 **(f) Any other matter determined by the committee to be necessary to ensure that the**
 28 **hospital is staffed to meet the health care needs of patients.**

29 [(3)] **(4)** Upon reviewing a staffing plan, a [*hospital nurse*] staffing committee shall:

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

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

34 **SECTION 4.** ORS 441.157 is amended to read:

35 441.157. (1) For the sole purpose of verifying compliance with the requirements of ORS 441.152
 36 to 441.177 and 441.192, the Oregon Health Authority shall audit each hospital in this state once
 37 every three years, at the time of conducting an on-site inspection of the hospital under ORS 441.025.

38 (2) When conducting an audit pursuant to this section, the authority shall:

39 (a) If the authority provides notice of the audit to the hospital, provide notice of the audit to
 40 the cochairs of the hospital nurse staffing committee **and the hospital staffing committee** estab-
 41 lished pursuant to ORS 441.154;

42 (b) Interview both cochairs of [*the hospital nurse*] **each** staffing committee;

43 (c) Review any other hospital record and conduct any other interview or site visit that is nec-
 44 essary to verify that the hospital is in compliance with the requirements of ORS 441.152 to 441.177
 45 and 441.192; and

1 (d) Within 60 days after issuing an order requiring a hospital to implement a plan to correct a
2 violation of ORS 441.152 to 441.177 or 441.192, conduct an investigation of the hospital to ensure
3 compliance with the order.

4 (3) Following an investigation conducted pursuant to subsection (2) of this section, the authority
5 shall provide in writing a report of the authority's findings to the hospital and the cochairs of the
6 *[hospital nurse staffing committee]* **staffing committees**.

7 (4) The authority shall compile and maintain for public inspection an annual report of audits and
8 investigations conducted pursuant to this section.

9 (5) The costs of audits required by this section may be paid out of funds from licensing fees paid
10 by hospitals under ORS 441.020.

11 **SECTION 5.** ORS 441.165 is amended to read:

12 441.165. (1) *[For purposes of]* **As used in** this section, "epidemic" means the occurrence of a
13 group of similar conditions of public health importance in a community or region that are in excess
14 of normal expectancy and that are from a common or propagated source.

15 (2) Notwithstanding ORS 441.155 and 441.156, a hospital is not required to follow *[a]* written
16 hospital-wide staffing *[plan]* **plans** developed and approved by the hospital nurse staffing committee
17 **and the hospital staffing committee** under ORS 441.154 upon the occurrence of a national or state
18 emergency requiring the implementation of a facility disaster plan, or upon the occurrence of sudden
19 unforeseen adverse weather conditions or an infectious disease epidemic suffered by hospital staff.

20 (3) Upon the occurrence of an emergency circumstance not described in subsection (2) of this
21 section, either cochair of the hospital nurse staffing committee **or the hospital staffing committee**
22 may require the *[hospital nurse]* **respective** staffing committee to meet to review and potentially
23 modify the staffing plan in response to the emergency circumstance.

24 **SECTION 6.** ORS 441.166 is amended to read:

25 441.166. (1) *[For purposes of]* **As used in** this section, *["nursing staff"]* "**staff**" includes:

26 (a) Registered nurses, licensed practical nurses, certified nursing assistants and other hospital
27 nursing staff members as defined by the Oregon Health Authority by rule; **and**

28 (b) **Hospital staff represented by the hospital staffing committee established pursuant to**
29 **ORS 441.154.**

30 (2) When a hospital learns about the need for replacement staff, the hospital shall make every
31 reasonable effort to obtain *[nursing]* staff for unfilled hours or shifts before requiring a *[nursing]*
32 staff member to work overtime.

33 (3)(a) Except as provided in subsection (4) of this section, a hospital may not require a
34 *[nursing]* staff member to work:

35 (A) Beyond the agreed-upon and prearranged shift, regardless of the length of the shift;

36 (B) More than 48 hours in any hospital-defined work week;

37 (C) More than 12 hours in a 24-hour period; or

38 (D) During the 10-hour period immediately following the 12th hour worked during a 24-hour pe-
39 riod.

40 (b) For purposes of paragraph (a)(D) of this subsection, a *[nursing]* staff member begins to work
41 when the *[nursing]* staff member begins a shift.

42 (4) A hospital may require an additional hour of work beyond the work authorized under sub-
43 section (3) of this section if:

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

45 (b) There is a potential harm to an assigned patient if the *[nursing]* staff member leaves the

1 assignment or transfers care to another [*nursing*] staff member.

2 (5) If a [*nursing*] staff member agrees to work overtime, the [*nursing*] staff member is account-
 3 able for the [*nursing*] staff member's competency in practice and is responsible for notifying the
 4 [*nursing*] staff member's supervisor when the [*nursing*] staff member's ability to safely provide care
 5 is compromised.

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

8 (b) Time spent on call or on standby when the [*nursing*] staff member is required to be at the
 9 premises of the employer shall be included as hours worked for purposes of subsection (3) of this
 10 section.

11 (c) Time spent on call but away from the premises of the employer may not be included as hours
 12 worked for purposes of subsection (3) of this section.

13 (7) If a [*nursing*] staff member believes that a hospital unit is engaging in a pattern of requiring
 14 [*direct care nursing*] **any type of** staff to work overtime for nonemergency care, the [*nursing*] staff
 15 member may report that information to the [*hospital nurse*] **appropriate** staffing committee estab-
 16 lished for the hospital pursuant to ORS 441.154. The [*hospital nurse*] staffing committee shall con-
 17 sider the information when reviewing the written hospital-wide staffing plan as required by ORS
 18 441.156.

19 (8) The provisions of this section do not apply to [*nursing*] staff needs:

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

22 (b) In emergency circumstances identified by the authority by rule.

23 **SECTION 7.** ORS 441.171 is amended to read:

24 441.171. (1) For purposes of ensuring compliance with ORS 441.152 to 441.177, the Oregon Health
 25 Authority shall:

26 (a) Within 60 days after receiving a complaint against a hospital for violating a provision of ORS
 27 441.152 to 441.177, conduct an on-site investigation of the hospital; and

28 (b) Within 60 days after issuing an order requiring a hospital to implement a plan to correct a
 29 violation of ORS 441.152 to 441.177, conduct an investigation of the hospital to ensure compliance
 30 with the plan.

31 (2) When conducting an investigation of a hospital to ensure compliance with ORS 441.152 to
 32 441.177, the authority shall, if the authority provides notice of the investigation to the hospital,
 33 provide notice of the investigation to the cochairs of the hospital nurse staffing committee **and the**
 34 **hospital staffing committee** established pursuant to ORS 441.154.

35 (3) Following an investigation conducted pursuant to this section, the authority shall provide in
 36 writing a report of the authority's findings to the hospital and the cochairs of the [*hospital nurse*]
 37 staffing [*committee*] **committees**.

38 (4) When conducting an investigation of a hospital to ensure compliance with ORS 441.152 to
 39 441.177, the authority may:

40 (a) Take evidence;

41 (b) Take the depositions of witnesses in the manner provided by law in civil cases;

42 (c) Compel the appearance of witnesses in the manner provided by law in civil cases;

43 (d) Require answers to interrogatories; and

44 (e) Compel the production of books, papers, accounts, documents and testimony pertaining to the
 45 matter under investigation.

1 **SECTION 8.** ORS 441.175 is amended to read:

2 441.175. (1) The Oregon Health Authority may impose civil penalties in the manner provided in
 3 ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS
 4 441.152 to 441.177. The authority shall adopt by rule a schedule establishing the amount of civil
 5 penalty that may be imposed for a violation of ORS 441.152 to 441.177 when there is a reasonable
 6 belief that safe patient care has been or may be negatively impacted, except that a civil penalty
 7 may not exceed [~~\$5,000~~] **\$20,000**. Each violation of a written hospital-wide staffing plan shall be
 8 considered a separate violation. Any license that is suspended or revoked under this subsection shall
 9 be suspended or revoked as provided in ORS 441.030.

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

12 **SECTION 9.** (1) **As used in this section, “hospital” has the meaning given that term in**
 13 **ORS 441.151.**

14 (2) **A hospital staffing committee shall be established for each hospital in accordance with**
 15 **the amendments to ORS 441.154 by section 1 of this 2021 Act on or before January 1, 2022.**

16 (3) **The Oregon Health Authority shall adopt rules specifying the contents of records**
 17 **necessary to demonstrate compliance with the amendments to ORS 441.154, 441.155, 441.156,**
 18 **441.157, 441.165, 441.166, 441.171 and 441.175 by sections 1 to 8 of this 2021 Act on or before**
 19 **July 1, 2022.**

20 (4) **The hospital staffing committee established for each hospital pursuant to the**
 21 **amendments to ORS 441.154 by section 1 of this 2021 Act shall develop a written hospital-wide**
 22 **staffing plan in accordance with ORS 441.155 as amended by section 2 of this 2021 Act on or**
 23 **before January 1, 2023.**

24 **SECTION 10.** **In addition to and not in lieu of any other appropriation, there is appro-**
 25 **priated to the Oregon Health Authority, for the biennium beginning July 1, 2021, out of the**
 26 **General Fund, the amount of \$_____, which may be expended for implementing section 9**
 27 **of this 2021 Act and the amendments to ORS 441.154, 441.155, 441.156, 441.157, 441.165, 441.166,**
 28 **441.171 and 441.175 by sections 1 to 8 of this 2021 Act.**

29 **SECTION 11.** **This 2021 Act takes effect on the 91st day after the date on which the 2021**
 30 **regular session of the Eighty-first Legislative Assembly adjourns sine die.**

31