House Bill 3014

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

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

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

SECTION 1. ORS 441.154 is amended to read:

441.154. [(1)(a)] (1) For each hospital there shall be established a hospital nurse staffing committee and a hospital staffing committee. Each committee shall:

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

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

[(A)] Consist entirely of direct care registered nurses, except for one position to be filled by a [direct care staff member who is not a registered nurse and whose services are covered by a written hospital-wide staffing plan that meets the requirements of ORS 441.155] certified nursing assistant;

and

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

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

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

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

LC 1747
The portion of the hospital staffing committee composed of nonmanagement staff must consist entirely of staff other than nurses who provide direct care or whose work provides critical support to direct care providers, including but not limited to staff from each of the following:

(a) Admitting staff;
(b) Housekeeping staff;
(c) Certified nursing assistants; and
(d) Specialty technicians.

Each staffing committee shall develop a written hospital-wide staffing plan in accordance with ORS 441.155. The committees' primary goals in developing the staffing plans shall be to ensure that the hospital is staffed to meet the health care needs of patients. The committees shall review and modify the staffing plans in accordance with ORS 441.156.

A majority of the members of each staffing committee constitutes a quorum for the transaction of business. Each staffing committee shall have two cochairs. One cochair shall be a [hospital nurse] manager elected by the members of the committee who are hospital [nurse] managers and one cochair shall be a [direct care registered nurse] nonmanagement staff person elected by the members of the committee who are [direct care] nonmanagement staff.

A decision made by a staffing committee must be made by a vote of a majority of the members of the committee. If a quorum of members comprises an unequal number of [hospital nurse] managers and [direct care] nonmanagement staff, only an equal number of [hospital nurse] managers and [direct care] nonmanagement staff may vote.

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

Upon receiving notification under paragraph (b) of this subsection, the authority shall provide the committee with a mediator to assist the committee in reaching an agreement on the staffing plan. Mediation conducted under this paragraph must be consistent with the requirements for implementing and reviewing staffing plans under ORS 441.155 and 441.156.

If the committee is unable to reach an agreement on the staffing plan after 90 days of mediation, the authority may impose a penalty against the hospital as described in ORS 441.175.

Each staffing committee shall meet:
(a) At least once every three months; and
(b) At any time and place specified by either cochair.

Subject to paragraph (b) of this subsection, a staffing committee meeting must be open to:
(A) The hospital nursing staff for the hospital staffing committee and the non-nursing staff for the hospital staffing committee, as observers; and
(B) Upon invitation by either cochair, other observers or presenters.
(b) At any time, either cochair may exclude persons described in paragraph (a) of this subsection from a committee meeting for purposes related to deliberation and voting.
Minutes of each staffing committee meeting must:

(a) Include motions made and outcomes of votes taken;
(b) Summarize discussions; and
(c) Be made available in a timely manner to all hospital staff upon request.

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

SECTION 2. ORS 441.155 is amended to read:

441.155. (1) Each hospital shall implement the written hospital-wide staffing plan for nursing services that has been developed and approved by the hospital nurse staffing committee and the hospital staffing committee under ORS 441.154.

(2) The staffing plans:
(a) Must be based on the specialized qualifications and competencies of the nursing staff and non-nursing staff and provide for the skill mix and level of competency necessary to ensure that the hospital is staffed to meet the health care needs of patients;
(b) Must be based on a measurement of hospital unit activity that quantifies the rate of admissions, discharges and transfers for each hospital unit and the time required for a direct care registered nurse staff belonging to a hospital unit to complete admissions, discharges and transfers for that hospital unit;
(c) Must be based on total diagnoses for each hospital unit and the nursing staff and non-nursing staff required to manage that set of diagnoses;
(d) For nursing staff, must be consistent with nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations;
(e) Must recognize differences in patient acuity;
(f) For nursing staff, must establish minimum numbers of nursing staff, including licensed practical nurses and certified nursing assistants, required on specified shifts, provided that at least one registered nurse and one other nursing staff member is on duty in a unit when a patient is present;
(g) Must include a formal process for evaluating and initiating limitations on admission or diversion of patients to another hospital when, in the judgment of a direct care registered nurse or a nurse manager, there is an inability to meet patient care needs or a risk of harm to patients;
(h) Must consider tasks not related to providing direct care, including meal breaks and rest breaks; and
(i) May not base staffing requirements solely on external benchmarking data.

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

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

(b) A staffing plan does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect.
SECTION 3. ORS 441.156 is amended to read:
441.156. (1) A hospital nurse staffing committee and a hospital staffing committee established pursuant to ORS 441.154 shall review the written hospital-wide staffing plans developed by the committees under ORS 441.155:
(a) At least once every year; and
(b) At any other date and time specified by either cochair of the committee.
(2) In reviewing a hospital nurse staffing plan, a hospital nurse staffing committee shall consider:
(a) Patient outcomes;
(b) Complaints regarding staffing, including complaints about a delay in direct care nursing or an absence of direct care nursing;
(c) The number of hours of nursing care provided through a hospital unit compared with the number of patients served by the hospital unit during a 24-hour period;
(d) The aggregate hours of mandatory overtime worked by the nursing staff;
(e) The aggregate hours of voluntary overtime worked by the nursing staff;
(f) The percentage of shifts for each hospital unit for which staffing differed from what is required by the staffing plan; and
(g) Any other matter determined by the committee to be necessary to ensure that the hospital is staffed to meet the health care needs of patients.
(3) In reviewing a hospital staffing plan, a hospital staffing committee shall consider:
(a) Patient outcomes;
(b) Complaints regarding staffing;
(c) The aggregate hours of mandatory overtime worked by staff;
(d) The aggregate hours of voluntary overtime worked by staff;
(e) The percentage of shifts for each hospital unit for which staffing differed from what is required by the staffing plan; and
(f) Any other matter determined by the committee to be necessary to ensure that the hospital is staffed to meet the health care needs of patients.
(3) (4) Upon reviewing a staffing plan, a hospital nurse staffing committee shall:
(a) Report whether the staffing plan ensures that the hospital is staffed to meet the health care needs of patients; and
(b) Modify the staffing plan as necessary to ensure that the hospital is staffed to meet the health care needs of patients.

SECTION 4. ORS 441.157 is amended to read:
441.157. (1) For the sole purpose of verifying compliance with the requirements of ORS 441.152 to 441.177 and 441.192, the Oregon Health Authority shall audit each hospital in this state once every three years, at the time of conducting an on-site inspection of the hospital under ORS 441.025.
(2) When conducting an audit pursuant to this section, the authority shall:
(a) If the authority provides notice of the audit to the hospital, provide notice of the audit to the cochairs of the hospital nurse staffing committee and the hospital staffing committee established pursuant to ORS 441.154;
(b) Interview both cochairs of the hospital nurse each staffing committee;
(c) Review any other hospital record and conduct any other interview or site visit that is necessary to verify that the hospital is in compliance with the requirements of ORS 441.152 to 441.177 and 441.192; and
(d) Within 60 days after issuing an order requiring a hospital to implement a plan to correct a violation of ORS 441.152 to 441.177 or 441.192, conduct an investigation of the hospital to ensure compliance with the order.

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

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

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

SECTION 5. ORS 441.165 is amended to read:

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

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

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

SECTION 6. ORS 441.166 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

(b) There is a potential harm to an assigned patient if the [nursing] staff member leaves the
assignment or transfers care to another [nursing] staff member.

(5) If a [nursing] staff member agrees to work overtime, the [nursing] staff member is accountable for the [nursing] staff member’s competency in practice and is responsible for notifying the [nursing] staff member’s supervisor when the [nursing] staff member's ability to safely provide care is compromised.

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

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

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

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

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

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

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

SECTION 7. ORS 441.171 is amended to read:

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

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

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

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

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

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

(a) Take evidence;

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

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

(d) Require answers to interrogatories; and

(e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.
SECTION 8. ORS 441.175 is amended to read:
441.175. (1) The Oregon Health Authority may impose civil penalties in the manner provided in ORS 183.745 or suspend or revoke a license of a hospital for a violation of any provision of ORS 441.152 to 441.177. The authority shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a violation of ORS 441.152 to 441.177 when there is a reasonable belief that safe patient care has been or may be negatively impacted, except that a civil penalty may not exceed \[$5,000\] \[$20,000\]. Each violation of a written hospital-wide staffing plan shall be considered a separate violation. Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030.

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

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

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

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

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

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

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