

Rules Hearing and Public Comment Report

Date: November 14, 2024
From: Joseph Sullivan, Temporary Health Care Staff Rate Setting Program Manager
Subject: Report on Rulemaking Hearing and Public Comments

Hearing Date: October 15, 2024
Hearing Location: Remote, Zoom
Hearing Officer: Pete Edlund, HPA Rules Coordinator
Public Comment Period: October 1, 2024 - October 21, 2024
Title of Proposed Rules: Establishing the Temporary Health Care Staff Rate Setting Program arising from HB2665 (2023). Adopt OAR 409-039.
Hearing Recording: <https://www.youtube.com/watch?v=PYkqINK6TPY>

Summary of written comments received during the public comment period, October 1, 2024 - October 21, 2024.

See associated exhibits for full text and included attachments.

Comments from Jeff Kruse, Integrated Healthcare Solutions (Exhibit 1) Received via email 10/21/2024

Integrated Healthcare Solutions, LLC submits these comments regarding proposed rules in HB2665 (2023).

Exception for temporary staffing agencies providing 25 or fewer personnel.

Proposed rule 409-039-0020 (2) provides that a temporary staffing agency engaged by a hospital to provide 25 or fewer personnel (collectively) in a single licensed care setting may charge and receive rates that exceed the maximum rates set under OAR 409-039-0040. We would request that this rule maintains the initial rule summary in providing that a temporary staffing agency engaged by hospital and facility to provide 25 or fewer personnel in a single licensed care setting may charge and receive rates that exceed the maximum rates set under OAR 409-039-0040.

Maximum Rates for a Hospital or Facility.

Proposed rule 409-0039-0040 (4) provides Table 1 with the proposed Personnel Type, Maximum Rates, and Maximum Rates (Holiday and Overtime).

We would like to propose a marketplace rate for Personnel Type CNA with a Maximum Rate of \$46.95 and Maximum Rate(Holiday and Overtime) of \$70.43.

OHA Response: OHA thanks you for this comment.

Comments from Jen Lewis-Goff, Kaiser Permanente (Exhibit 2)

Received via email 10/21/2024 (sent via email by Ivy Jones)

Kaiser Foundation Health Plan of the Northwest appreciates the opportunity to provide feedback to the Oregon Health Authority (OHA) on the proposed rules establishing the Temporary Health Care Staff Rate Setting Program dated September 24, 2024. Kaiser Permanente Northwest is an integrated health care system that covers and cares for Oregonians. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve. Temporary staff are essential members of our hospital team. We routinely rely upon temporary contracts to supplement and backfill positions, ensuring our patients receive seamless care. In a time of extreme workforce shortages, it is paramount that we be able to access temporary staffing quickly and efficiently. Our comments today reflect our goal to remain competitive in attracting nurses, while ensuring our operations can proceed smoothly.

409-039-0040 Table 1

We encourage OHA to establish an additional rate tier for RNs who provide specialty care in hospital settings. The current rates provided in the table do not account for market rates needed to recruit specialty nurses to fill temporary positions in critically important hospital departments. It is essential that hospitals maintain competitiveness across the national market to ensure we can recruit and retain staff. We recommend that OHA include a differential rate for RNs that provide specialized care including, but not limited to, the following hospital departments: Critical Care, Maternal Child and Women's Health, Surgical, Surgical Preparation and Recovery and Emergency Room.

409-039-0070 (3)

Kaiser Permanente appreciates that the draft rule includes a non-emergency waiver process for waiving the maximum rates. However, we have concerns with the current language and process outlined in the proposed rule.

Annual Renewal Process

Temporary staff contracts are typically offered for 90 days and are often renewed several times. It is important that hospitals and facilities are able to provide sufficient notice to temporary workers regarding anticipated contract renewals to promote stability and reduce administrative burden. We recommend that OHA implement an annual renewal process for non-emergency waivers instead of the current 30, 60, or 90-day process. This change more closely reflects industry standards and promotes stability while reducing administrative burden allowing hospitals and facilities to focus on improving patient care along with hiring, training, and retaining permanent workers. If OHA declines to implement an annual renewal process, we recommend several changes to the proposed process to improve efficiency, reduce administrative burden, and improve temporary staff recruitment and retention.

Waiver Renewal

The proposed rules do not permit entities to apply for a waiver renewal until the waiver is 25 days away from expiring. This timeframe does not allow hospitals and facilities to provide sufficient notice to temporary workers regarding contract renewals. We recommend that OHA amend this provision to allow hospitals to apply for a waiver renewal at least 60 days before the waiver expires. Temporary staff often begin looking for another position before their contracts expire and this change will provide temporary staff with stability and predictability while also ensuring that hospitals have sufficient time to recruit new staff if necessary.

Waiver Approval

The proposed rules do not provide a timeframe by which OHA must communicate whether a waiver was approved or denied to an entity. Timely review and communication of waiver status is crucial to ensure that hospitals and facilities are equipped with the tools necessary to safely staff their operations. We recommend that the proposed rules be amended to clarify that OHA will provide a response to entities within five business days of submission of a waiver request or extension.

Waiver Timeframe

The proposed rules allow entities to apply for waivers for 30, 60 or 90 days. We recommend that OHA include the ability for entities apply for waivers for 120 days as well to align with industry practices, promote stability, and reduce administrative burdens for hospitals and facilities.

OHA Response: OHA thanks you for this comment.

**Comments from Troy Duker, Oregon Hospital Association (Exhibit 3)
Received via email 10/21/2024 (sent via email by Sierra Canfield)**

The Hospital Association of Oregon (HAO) appreciates the opportunity to provide written comments on the proposed rules for the Temporary Health Care Staff Rate Setting Program. We appreciate OHA's public engagement and consideration of feedback from stakeholders. The high cost of temporary agency staff was a key contributor to hospital financial strain during the pandemic and continues today as hospitals face ongoing workforce shortages and inadequate payment for providing services. Given that Oregon's regulation of temporary staff rates may reduce Oregon health care providers' competitiveness for finite resources and potentially impact access to care, we are writing to reemphasize several critical concerns with the proposed rules. We request that OHA's rules account for the need to protect access to care in our communities. While regulating the rates that temporary staffing agencies can charge may help alleviate some of this strain, such regulation should be balanced against the concern that the rate caps may prevent hospitals and other health care providers from securing the staff needed to maintain patient access to care.

HB2665 (2023) included provisions for hospitals that allow temporary staffing agency rate caps to be waived under certain circumstances. The rules must ensure that the waivers are available so that our communities are able to access hospital care when they need it.

OAR 409-039-0050 (2): Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070 if the applicant clearly demonstrates to the Authority that:

- (a) it has made reasonable, good faith efforts to stay within the maximum rates;
- (b) it has exhausted all other possibilities to stay within the maximum rates; and
- (c) an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.

This proposed rule appears to narrow the statutory text and should be deleted and replaced with a rule that aligns with the statute. Patient access to hospital care is what is at stake if a waiver is not provided. Patients who need care in a hospital may not be able to receive it, or may face delays in care, if OHA does not grant a waiver that a hospital has requested.

Request: We request the rule be revised as follows:

(2) Non-Emergency Waiver:

A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070. ~~if the applicant clearly demonstrates to the Authority that:~~

- ~~(a) it has made reasonable, good faith efforts to stay within the maximum rates;~~
- ~~(b) it has exhausted all other possibilities to stay within the maximum rates; and~~
- ~~(c) an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.~~

In the event OHA chooses not to delete the selected text as requested above, we request that the rule is amended to retain subsection (c) only: “an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.” The requirements of (a) and (b) are particularly concerning. Regarding (a), how would OHA determine what “reasonable, good faith” efforts are required? And how would a hospital establish that? That concern is magnified by (b) which raises the bar set by (a) to “exhaust[ing] all other possibilities.” Requiring hospital to exhaust “all other possibilities to stay within the maximum rates” is an unrealistic and inappropriate standard. How would OHA determine when this has occurred?

Request: In the event OHA chooses not to make a revision consistent with the request above we request the rule be revised as follows:

(2) Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070 if ~~the applicant clearly demonstrates to the Authority that:~~
~~(a) it has made reasonable, good faith efforts to stay within the maximum rates;~~
~~(b) it has exhausted all other possibilities to stay within the maximum rates; and~~
~~(c) an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.~~

OAR 409-039-0070: Application Process and Review of Non-Emergency Waiver Requests

(3) A Non-Emergency Waiver requested may be for a period of 30, 60 or 90 calendar days. A temporary staffing agency, facility, or hospital may request to renew an approved Non- Emergency Waiver.

(a) A request to renew a Non-Emergency Waiver must be filed with the Authority no sooner than 25 business days before, and no later than twelve (12) business days before, the approved Non-Emergency Waiver is set to expire.

(b) Upon expiration of the Non-Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority.

(4) The Authority shall approve or deny a request for a Non-Emergency Waiver made pursuant to Section (1) of this rule or a request to renew an approved Non-Emergency Waiver pursuant to Section (3) of this rule within ten (10) business days after request is received by the Authority.

(5) For the purposes of this rule, the time for the Authority to approve or deny a request for a Non- Emergency Waiver, or a request to renew an approved Non-Emergency Waiver, that is filed with the Authority after 4:00 p.m. on a Friday, or on a Saturday, Sunday, or legal holiday, shall be considered received on the next following business day.

We are concerned that under these proposed rules, it is possible that hospitals will receive only two days' notice of OHA's decision to approve or deny the hospital's request to renew a waiver.

In addition, pursuant to (5), it appears possible that OHA may not approve or deny a request for a Non-Emergency Waiver or approve or deny a request to renew a waiver, before it expires. For example, if a hospital filed a request to renew a Non-Emergency Waiver on a Friday at 4:05p.m., it is possible that OHA could decide whether to approve or deny the waiver request after the expiration of the waiver. Although these waivers are referred to as Non-Emergency Waivers, that should not be understood to mean the need is unimportant or not urgent. Additional notice is critical for hospitals to have sufficient time to make plans to support access to care. We also acknowledge that the timelines set for requesting and renewing a Non-Emergency Waiver might not align with how temporary staffing agencies work in practice and the timelines might need to be adjusted in the future to meet community needs. Below we request a revision that will provide OHA with the same amount of time to conduct its review but allow hospitals to have more notice of OHA's decision regarding a waiver request. In our request below, we include a proposed revision.

Request: We request the rule be revised as follows:

(3) A Non-Emergency Waiver requested may be for a period of 30, 60 or 90 calendar days. A temporary staffing agency, facility, or hospital may request to renew an approved Non-Emergency Waiver.

(a) A request to renew a Non-Emergency Waiver must be filed with the Authority no sooner than 30 ~~25~~ business days before, and no later than fifteen (15) ~~twelve (12)~~ business days before, the approved Non-Emergency Waiver is set to expire.

(b) Upon expiration of the Non-Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority.

OAR 409-039-0080: Reconsideration Process for Denied Waivers

(6) If the Authority denies the request for reconsideration, the requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed with the Authority within 15 calendar days from the date of service of the denial.

(a) Contested case hearings shall be conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings.

(b) The requestor shall have the burden to prove a compelling need for the Emergency Waiver or Non- Emergency Waiver.

(c) The issues to be considered in a contested case hearing conducted pursuant to this rule shall be limited in scope to the facts and conclusions contained in the Authority's denial.

ORS 676.722 does not provide statutory authority to OHA to create an additional burden or standard for requestors (e.g., hospitals) related to contested cases. The typical burdens that apply to contested care hearings should apply to the reconsideration process for denied waivers.

This standard in (b) appears to place a new burden on the requestor, such as hospital. We are unaware of statutory authority to support that OHA may require the requestor to “prove a compelling need.” We request that OHA remove that standard. There is no need for a rule when the typical contested case process will be followed. If OHA believes a statute provides authority for that standard, we request that OHA provide a citation and explanation.

The standard in (c) appears to allow the OHA to limit the facts that are within the scope of review simply by OHA leaving the facts out when preparing its denial. That process would be concerning. We request that the typical process for contested case hearings be followed. There is no need for a rule when the typical contested case process will be followed.

Request: We request that (b) and (c) be deleted.

OAR 409-039-0120: Information Sharing and Use of Data

(2) The Authority may use a confidential document, material, information, or data in administering these rules. In order to assist in the performance of the Authority’s duties, the Authority may authorize sharing a confidential document, material, information, or data or other information, as appropriate, among the administrative divisions and staff offices of the Authority and OHA’s Health Licensing Office.

Section (2) is too broad and appears to allow OHA to share a confidential document, material, information, or data or other information among the administrative divisions and staff offices of the Authority and OHA’s Health Licensing Office when the sharing would “assist in the performance of the Authority’s duties.” The first sentence provides OHA will the ability to use the confidential document, material, information, or data in administering the rules applicable to HB 2665. No more is needed or appropriate.

Request: We request the rule be revised as follows:

(2) The Authority may use a confidential document, material, information, or data in administering these rules. ~~In order to assist in the performance of the Authority’s duties, the Authority may authorize sharing a confidential document, material, information, or data or other information, as appropriate, among the administrative divisions and staff offices of the Authority and OHA’s Health Licensing Office.~~

OAR 408-039-0040: Maximum Rates for a Hospital or Facility, Table 1 (see exhibit)

The rates set in Table 1 are inconsistent with the intent of HB 2655 and the ORS 676.695 definition of “personnel.” The Maximum Rates for a Hospital or Facility should be broken out by RNs and CNAs for hospitals.

ORS 676.716(1) states “The authority shall establish more than one maximum rate under this section.” Pursuant to ORS 676.716(2), “The differences in maximum rates established under this section must be based on factors including but not limited to . . . type of licensed care setting for hospitals as RNs and CNAs.

There are two primary conclusions from these sections. First, OAR 408-039-0040 Table 1 should have rates for RNs and CNAs specific to the hospital setting. Second, the maximum rates for other categories of workers do not apply in the hospital setting.

Request: We request the table for the rule be revised as follows and that OHA set corresponding rates:

Column: "Personnel Type"

RN (Hospital)

RN (Other Facilities) LPN/LVN (Other Facilities) CMA (Other Facilities) CNA (Hospital)

CNA (Other Facilities)

Direct Caregiver (Other Facilities)

OHA Response: OHA thanks you for this comment.

**Comments from Eugenia Liu, Oregon Health Care Association (Exhibit 4)
Received via email 10/21/2024**

Oregon Health Care Association (OHCA) is Oregon's largest non-profit trade association representing long term care providers in every corner of our state. Our members include nursing facilities, assisted living and residential care communities, memory care communities, and in-home care agencies. We appreciate the opportunity to provide additional comment on the proposed administrative rules for the Temporary Staffing Agency Rate Setting Program. We appreciate the changes that the Oregon Health Authority (OHA) made to the proposed rules that provide more clarity and detail on key definitions and the maximum rate waiver process. We also understand that this is a new program for and appreciate the communication by the agency as we collectively implement the requirements of HB 2665 (2023) that directs the agency to establish reasonable maximum rates.

There are several components of OHA's maximum rate-setting methodology that are in line with the statute. OHA uses a base wage from the available wage data with inflators that account for the compensation variability between temporary and permanently employed workers as well as tenure and shifts (which we understand to be included in the "Compensation Alignment Factor" or CAF).

There is also an inflator for the higher wages earned in the Portland Metro area, which is applied statewide for administrative ease of the OHA. OHA has also established a “margin” for the temporary staffing agency to account for administrative costs and profits. However, OHCA remains concerned that how OHA reached the CAF inaccurately inflates the maximum rate. OHA indicates the CAF accounts for, among other things, compensation variability between temporary and permanently employed workers. OHCA is concerned that in calculating this factor, OHA utilized data collected during the height of the COVID-19 pandemic when temporary staffing agencies engaged in predatory pricing practices that allowed them to artificially inflate the wage differences between temporary staff and permanently employed workers. To ensure the maximum rates “bear a reasonable relationship” to the base wage data, as required by HB 2665, each component used to build the maximum rates must be viewed through that same lens and the differential between temporary and permanently employed workers must also be reasonable, which it was not during the pandemic. More importantly, OHCA continues to have significant concerns with the “agency margin” and how the 34.2% “margin” is calculated in the proposed rules, which results in maximum rates that are designed to unduly benefit the temporary staffing agencies while violating the legal standard in the statute - that the proposed maximum rates “bear a reasonable relationship” to the base wage data. What OHA has termed “agency margin” should really be an “agency markup.” A markup is based on the cost of the goods/services being sold and reflects the difference between the cost of the goods/services sold and the sales price charged. On the other hand, a margin is based on the sales price and is a percentage of the sales price. These terms are not interchangeable, and by characterizing the final adjustment as an “agency margin” instead of an “agency markup,” OHA has divorced this final step from the base wage data and grossly inflated the maximum rate. Assuming that 34.2% is a reasonable amount, OHA has unreasonably applied a margin concept in calculating the maximum rate. In applying the other inflators -- the Portland Metro Wage and CAF adjustments -- OHA’s methodology built upon the previous numbers that were directly tied to the base wage data. For example, OHA identified a LPN/LVN base wage of \$36.30. OHA then identified a “Regional Factor to Portland Metro Level” of 3.1% and calculated 3.1% of \$36.30, which is \$1.13, and added that to \$36.30 for \$37.43. OHA then identified a CAF of 23.6% and calculated 23.6% of \$37.43, which is \$8.83, and added that to \$37.43 for an estimated Pay Rate of \$46.26.

If OHA applied the same methodology and applied a 34.2% markup to the Pay Rate (again, a markup is based on the cost of the service), the calculation would be 34.2% of \$46.26, which is \$15.82. Adding \$15.82 to the Pay Rate of \$46.26 would result in a maximum Bill Rate of \$62.08. Instead, OHA's calculation results in a maximum Bill Rate of \$70.32. OHA changed the methodology for this final step and instead of a markup based on the cost of the service, OHA used a margin concept, which is based on the price charged, by applying 34.2% to the "Bill Rate" to substantially inflate the maximum rate. What OHA has chosen to do is essentially prioritize the profit percentage for temporary staffing agencies. OHA set a maximum Bill Rate of \$70.32 for LPNs/LVNs, and the difference between Bill Rate of \$70.32 and the Pay Rate/cost of \$46.26 is \$24.06, which is 34.2% of \$70.32. By taking this approach and divorcing the methodology from the Pay Rate/costs, the "agency margin" of 34.2% translates into a 52% markup as \$24.06 is 52% of the \$46.26 Pay Rate/cost for LPN/LVNs.¹ The maximum rate is almost 100% higher than the base wage. To support a consistent methodology, OHA should apply an agency "markup" calculated as a percentage of the direct costs incurred by the temporary staffing agency, which is the Pay Rate. As previously stated, HB 2665 expressly requires the maximum rates to "bear a reasonable relationship to the wage data," which in this case is the Pay Rate based on the wage data. OHA's decision to change the methodology in the final step and apply an "agency margin" to the "Bill Rate" divorces this inflator (and this inflator only) from the wage data and instead, prioritizes the temporary staffing agency's profits over the wage data. OHCA therefore recommends that OHA be consistent with the methodology adopted for calculating the Pay Rate, which is built upon the base wage data, and apply a reasonable markup as a percentage of the Pay Rate/cost. By doing so, the Maximum Bill Rates would be much more reasonable and align with the statutory directive that maximum agency rates "bear a reasonable relationship to average wages."

We look forward to continuing to work with the Authority and other stakeholders to ensure we address the key concerns outlined in this letter. Thank you again for the opportunity to provide additional feedback and comments on behalf of our members.

OHA Response: OHA thanks you for this comment.

Comments from Chris Ahl, Medical Solutions (Exhibit 5)
Received via email 10/21/2024

Medical Solutions L.L.C. is a Temporary Staffing Agency that places clinicians in all 50 states, including the great State of Oregon. I very much appreciate the privilege and responsibility of acting as a participant of the RAC set to support the process of drafting and implementing these proposed rules related to HB 2665. I have reviewed the proposed rules and submit the following comments for your consideration:

OHA Should Provide Clear Guidance on how the Max Rate Caps impact existing Rates/assignments/executed Client Work Orders.

While we understand that OHA has communicated that the new maximum rates would not affect temporary staffing agency hospital or facility client bill rates that were in effect before the regulations become effective on January 1, 2025. This guidance will allow clients and agencies to avoid significant disruption of previously agreed-upon bill rates and the personnel wage agreements tied directly to those bill rates. We would ask that the final regulations make this clear by expressly providing that the maximum rates do not apply to client bill rates in effect prior to January 1, 2025, and apply only to rates set forth in client work orders or other agreements entered on or after such date.

Bill Rate Cap Exception for temporary staffing agencies providing 25 or fewer personnel.

Proposed rule 409-039-0020(2) provides that a temporary staffing agency engaged by a hospital to provide 25 or fewer personnel (as defined) in a single licensed care setting may charge and receive rates that exceed the maximum rates set under OAR 409-039-0040 and that the 25 or fewer exception applies per licensed facility, and “per work order or contract” and that the max rates would only be for those placements number 26 and forward. We appreciate the clarification that has come concerning “per work order or contract,” and would ask that further clarification be provided on the timeframe for this measurement. Is this a snapshot? Is this over the life of the contract? Is this based on an average over a year?

Make Clear that the Max Bill Rates do not include Expense Reimbursements

In OHA's prior correspondence it made clear that expense reimbursements paid to clinicians by its employer-agency (e.g., travel expenses, lodging and meal per diems, licensure costs, etc.) are not subject to/or a part of the Max Rates, which makes logical sense as OHA based its max rates on wage information only and because these are dollars ultimately delivered to the clinician and not retained by the agency. However, the proposed rules do not provide agencies or its healthcare clients any guidance on this issue or how OHA would expect agencies to bill its Oregon-based client facilities for these expenses. The industry standard is to include this cost within the bill rate. How should agencies and their clients proceed on this issue?

OHA Response: OHA thanks you for this comment.

**Comments from Ed Lenz, American Staffing Association (Exhibit 6)
Received via email 10/21/2024**

The American Staffing Association (ASA) represents temporary and contract staffing agencies that provide employees to perform a wide range of services to diverse businesses throughout the United States. ASA submits these comments on behalf of temporary staffing agencies that employ personnel to provide health care services or assistance with activities of daily living to hospitals and facilities in Oregon.

Effective date of maximum rates; no effect on existing rates.

As noted in our comment at the October 15 hearing, stakeholders were informally advised that the new maximum rates would not apply to temporary staffing agency bill rates set forth in work orders or other agreements with hospital or facility clients that were entered before the regulations become effective on January 1, 2025. ASA applauds that determination, which avoids disrupting previously agreed-upon agency bill rates and their related personnel wage agreements. To confirm this determination, we request that the final regulations expressly provide that the maximum rates do not apply to bill rates set forth in client work orders or other agreements entered prior to January 1, 2025, and apply only to rates set forth in work orders or agreements entered on or after such date.

Definition of “temporary work.”

Proposed rule 409-039-0010 (26) defines “temporary staffing agency” as “An entity that operates in this state for the purpose of providing temporary work to personnel providing health care services or assistance with activities of daily living for or on behalf of hospitals or facilities that engage the temporary staffing agency” (emphasis added).

We propose that a new subsection (27) be added to section 409-039-0010 that defines “temporary work” as follows: (27) “Temporary work” means personnel provided by a temporary staffing agency to a hospital or facility for an initial term of less than twenty-four (24) months.”

The proposed definition of temporary work is consistent with the definition adopted by other states to accommodate the needs of staffing agencies that recruit nurses (e.g., foreign nurses) for long-term assignments of two years or more. Such long-term services should not be viewed as “temporary work.” See, e.g., Missouri Code of State Regulations, 19 CSR 30-105.010(21).

Exception for temporary staffing agencies providing 25 or fewer personnel.

Proposed rule 409-039-0020 (2) provides that a temporary staffing agency engaged by a hospital to provide 25 or fewer personnel (collectively) in a single licensed care setting may charge and receive rates that exceed the maximum rates set under OAR 409-039-0040 and that the 25 or fewer exception applies per licensed facility, and “per work order or contract.” It is unclear how the 25 or fewer exception applies. For example, is the personnel headcount determined based on a snapshot in time, or on the average headcount over some prior measurement period? And if an agency determines that the headcount is 25 or fewer, over what period does the exception apply, e.g., the duration of the work order or contract, or some other period? The final rules should provide specific examples of how to apply the exception.

OHA Response: OHA thanks you for this comment.

Exhibits 1 through 6 are attached

INTEGRATED

Healthcare Solutions, LLC

10200 SW Greenburg Rd, Suite 700, Portland, OR 97223

October 21, 2024

Joseph Sullivan
Health Care Rate Setting Program Manager
Oregon Health Authority- Health Policy and Analytics
500 Summer St NE
Salem, OR 97301

RE: Notice of Proposed Rulemaking: Establishing the Temporary Health Care Staff Rate Setting Program arising from HB2665

Dear Mr. Sullivan,

Integrated Healthcare Solutions, LLC submits these comments regarding proposed rules in HB2665 (2023).

Exception for temporary staffing agencies providing 25 or fewer personnel.

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Respectfully,

Jeff Kruse, Member
Integrated Healthcare Solutions, LLC

October 21,2024

Oregon Health Authority
500 Summer St NE
Salem, OR 97301
Attn: Joseph Sullivan, Rules Coordinator
Submitted via email to: HB2665.Implementation@odhsoha.oregon.gov

Re: Temporary Health Care Staff Rate Setting Program arising from HB 2665 (2023) Proposed Rules

Joseph Sullivan,

Kaiser Foundation Health Plan of the Northwest appreciates the opportunity to provide feedback to the Oregon Health Authority (OHA) on the proposed rules establishing the Temporary Health Care Staff Rate Setting Program dated September 24,2024. Kaiser Permanente Northwest is an integrated health care system that covers and cares for Oregonians. We are committed to delivering affordable, coordinated, and high-quality care and coverage that supports not only our members but also the communities we serve.

Temporary staff are essential members of our hospital team. We routinely rely upon temporary contracts to supplement and backfill positions, ensuring our patients receive seamless care. In a time of extreme workforce shortages, it is paramount that we be able to access temporary staffing quickly and efficiently. Our comments today reflect our goal to remain competitive in attracting nurses, while ensuring our operations can proceed smoothly.

409-039-0040 Table 1

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409-039-0070 (3)

Kaiser Permanente appreciates that the draft rule includes a non-emergency waiver process for waiving the maximum rates. However, we have concerns with the current language and process outlined in the proposed rule.

Annual Renewal Process

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recommend that OHA implement an annual renewal process for non-emergency waivers instead of the current 30, 60, or 90-day process. This change more closely reflects industry standards and promotes stability while reducing administrative burden allowing hospitals and facilities to focus on improving patient care along with hiring, training, and retaining permanent workers. If OHA declines to implement an annual renewal process, we recommend several changes to the proposed process to improve efficiency, reduce administrative burden, and improve temporary staff recruitment and retention.

Waiver Renewal

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Waiver Timeframe

The proposed rules allow entities to apply for waivers for 30, 60 or 90 days. We recommend that OHA include the ability for entities apply for waivers for 120 days as well to align with industry practices, promote stability, and reduce administrative burdens for hospitals and facilities.

Thank you for the opportunity to provide comments on this proposed rulemaking. Please do not hesitate to contact us with questions.

Sincerely,

Jen Lewis-Goff
Government Relations Director, Northwest

Kaiser Foundation Health Plan of the Northwest
Government Relations
500 NE Multnomah Street, Suite 100
Portland, OR 97232



October 21, 2024

Joseph Sullivan
Health Systems Division
Oregon Health Authority
500 Summer St NE, E35
Salem, Oregon 97301

Submitted electronically to: joseph.a.sullivan@oha.oregon.gov; HB2665.Implementation@odhsoha.oregon.gov

Re: Notice of Proposed Rulemaking - 409-039 Temporary Health Care Staff Rate Setting Program

Joseph Sullivan:

The Hospital Association of Oregon (HAO) appreciates the opportunity to provide written comments on the proposed rules for the Temporary Health Care Staff Rate Setting Program. We appreciate OHA's public engagement and consideration of feedback from stakeholders.

The high cost of temporary agency staff was a key contributor to hospital financial strain during the pandemic and continues today as hospitals face ongoing workforce shortages and inadequate payment for providing services. Given that Oregon's regulation of temporary staff rates may reduce Oregon health care providers' competitiveness for finite resources and potentially impact access to care, we are writing to reemphasize several critical concerns with the proposed rules. We request that OHA's rules account for the need to protect access to care in our communities.

While regulating the rates that temporary staffing agencies can charge may help alleviate some of this strain, such regulation should be balanced against the concern that the rate caps may prevent hospitals and other health care providers from securing the staff needed to maintain patient access to care. HB 2665 (2023) included provisions for hospitals that allow temporary staffing agency rate caps to be waived under certain circumstances. The rules must ensure that the waivers are available so that our communities are able to access hospital care when they need it.



OAR 409-039-0050 (2): Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070 if the applicant clearly demonstrates to the Authority that:

- (a) it has made reasonable, good faith efforts to stay within the maximum rates;
- (b) it has exhausted all other possibilities to stay within the maximum rates; and
- (c) an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.

This proposed rule appears to narrow the statutory text and should be deleted and replaced with a rule that aligns with the statute. Patient access to hospital care is what is at stake if a waiver is not provided. Patients who need care in a hospital may not be able to receive it, or may face delays in care, if OHA does not grant a waiver that a hospital has requested.

➤ Request: We request the rule be revised as follows:

(2) Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070. ~~if the applicant clearly demonstrates to the Authority that:~~

- ~~(a) it has made reasonable, good faith efforts to stay within the maximum rates;~~
- ~~(b) it has exhausted all other possibilities to stay within the maximum rates; and~~
- ~~(c) an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.~~

In the event OHA chooses not to delete the selected text as requested above, we request that the rule is amended to retain subsection (c) only: “an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.” The requirements of (a) and (b) are particularly concerning. Regarding (a), how would OHA determine what “reasonable, good faith” efforts are required? And how would a hospital establish that? That concern is magnified by (b) which raises the bar set by (a) to “exhaust[ing] all other possibilities.” Requiring a hospital to exhaust “all other possibilities to stay within the maximum rates” is an unrealistic and inappropriate standard. How would OHA determine when this has occurred?

➤ Request: In the event OHA chooses not to make a revision consistent with the request above, we request the rule be revised as follows:



(2) Non-Emergency Waiver: A temporary staffing agency, hospital, or facility may apply to the Authority for a Non-Emergency Waiver of the maximum rates pursuant to the process outlined in OAR 409-039-0070 if ~~the applicant clearly demonstrates to the Authority that:~~

~~(a) it has made reasonable, good faith efforts to stay within the maximum rates;~~

~~(b) it has exhausted all other possibilities to stay within the maximum rates; and~~

(c) -an acute incident has occurred, or an imminent event is anticipated, that the applicant expects will substantially and negatively impact access to care.

OAR 409-039-0070: Application Process and Review of Non-Emergency Waiver Requests

(3) A Non-Emergency Waiver requested may be for a period of 30, 60 or 90 calendar days. A temporary staffing agency, facility, or hospital may request to renew an approved Non-Emergency Waiver.

(a) A request to renew a Non-Emergency Waiver must be filed with the Authority no sooner than 25 business days before, and no later than twelve (12) business days before, the approved Non-Emergency Waiver is set to expire.

(b) Upon expiration of the Non-Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority.

(4) The Authority shall approve or deny a request for a Non-Emergency Waiver made pursuant to Section (1) of this rule or a request to renew an approved Non-Emergency Waiver pursuant to Section (3) of this rule within ten (10) business days after request is received by the Authority.

(5) For the purposes of this rule, the time for the Authority to approve or deny a request for a Non-Emergency Waiver, or a request to renew an approved Non-Emergency Waiver, that is filed with the Authority after 4:00 p.m. on a Friday, or on a Saturday, Sunday, or legal holiday, shall be considered received on the next following business day.

We are concerned that under these proposed rules, it is possible that hospitals will receive only two days' notice of OHA's decision to approve or deny the hospital's request to renew a waiver.

In addition, pursuant to (5), it appears possible that OHA may not approve or deny a request for a Non-Emergency Waiver or approve or deny a request to renew a waiver, before it expires. For example, if a hospital filed a request to renew a Non-Emergency Waiver on a Friday at 4:05p.m., it is possible that OHA could decide whether to approve or deny the waiver request after the expiration of the waiver. Although these waivers are referred to as Non-Emergency Waivers, that should not be understood to mean the need is unimportant or not urgent. Additional notice is critical for hospitals to have sufficient



time to make plans to support access to care. We also acknowledge that the timelines set for requesting and renewing a Non-Emergency Waiver might not align with how temporary staffing agencies work in practice and the timelines might need to be adjusted in the future to meet community needs.

Below we request a revision that will provide OHA with the same amount of time to conduct its review but allow hospitals to have more notice of OHA's decision regarding a waiver request. In our request below, we include a proposed revision.

➤ **Request: We request the rule be revised as follows:**

(3) A Non-Emergency Waiver requested may be for a period of 30, 60 or 90 calendar days. A temporary staffing agency, facility, or hospital may request to renew an approved Non-Emergency Waiver.

(a) A request to renew a Non-Emergency Waiver must be filed with the Authority no sooner than ~~30-25~~ business days before, and no later than ~~fifteen (15) twelve (12)~~ business days before, the approved Non-Emergency Waiver is set to expire.

(b) Upon expiration of the Non-Emergency Waiver, the temporary staffing agency, hospital, or facility must comply with the maximum rates established in OAR 409-039-0040 unless a renewal is timely requested and approved by the Authority.

OAR 409-039-0080: Reconsideration Process for Denied Waivers

(6) If the Authority denies the request for reconsideration, the requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed with the Authority within 15 calendar days from the date of service of the denial.

(a) Contested case hearings shall be conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings.

(b) The requestor shall have the burden to prove a compelling need for the Emergency Waiver or Non-Emergency Waiver.

(c) The issues to be considered in a contested case hearing conducted pursuant to this rule shall be limited in scope to the facts and conclusions contained in the Authority's denial.

ORS 676.722 does not provide statutory authority to OHA to create an additional burden or standard for requestors (e.g., hospitals) related to contested cases. The typical burdens that apply to contested care hearings should apply to the reconsideration process for denied waivers.



This standard in (b) appears to place a new burden on the requestor, such as hospital. We are unaware of statutory authority to support that OHA may require the requestor to “prove a compelling need.” We request that OHA remove that standard. There is no need for a rule when the typical contested case process will be followed. If OHA believes a statute provides authority for that standard, we request that OHA provide a citation and explanation.

The standard in (c) appears to allow the OHA to limit the facts that are within the scope of review simply by OHA leaving the facts out when preparing its denial. That process would be concerning. We request that the typical process for contested case hearings be followed. There is no need for a rule when the typical contested case process will be followed.

- **Request:** We request that (b) and (c) be deleted.

OAR 409-039-0120: Information Sharing and Use of Data

(2) The Authority may use a confidential document, material, information, or data in administering these rules. In order to assist in the performance of the Authority’s duties, the Authority may authorize sharing a confidential document, material, information, or data or other information, as appropriate, among the administrative divisions and staff offices of the Authority and OHA’s Health Licensing Office.

Section (2) is too broad and appears to allow OHA to share a confidential document, material, information, or data or other information among the administrative divisions and staff offices of the Authority and OHA’s Health Licensing Office when the sharing would “assist in the performance of the Authority’s duties.” The first sentence provides OHA will the ability to use the confidential document, material, information, or data in administering the rules applicable to HB 2665. No more is needed or appropriate.

- **Request:** We request the rule be revised as follows:

(2) The Authority may use a confidential document, material, information, or data in administering these rules. ~~In order to assist in the performance of the Authority’s duties, the Authority may authorize sharing a confidential document, material, information, or data or other information, as appropriate, among the administrative divisions and staff offices of the Authority and OHA’s Health Licensing Office.~~



OAR 408-039-0040: Maximum Rates for a Hospital or Facility, Table 1

Personnel Type	Maximum Rates	Maximum Rates (Holiday and Overtime)
RN (Hospital)	\$131.95	\$197.93
RN (Other Facilities)	\$117.49	\$176.24
LPN/LVN	\$70.32	\$105.74
CMA	\$47.06	\$70.59
CNA	\$42.23	\$63.35
Direct Caregiver	\$36.28	\$54.42

The rates set in Table 1 are inconsistent with the intent of HB 2655 and the ORS 676.695 definition of “personnel.” The Maximum Rates for a Hospital or Facility should be broken out by RNs and CNAs for hospitals.

ORS 676.716(1) states “The authority shall establish more than one maximum rate under this section.” Pursuant to ORS 676.716(2), “The differences in maximum rates established under this section must be based on factors including but not limited to . . . type of licensed care setting. . .” ORS 676.695 Section (2)(b) defines personnel for hospitals as RNs and CNAs.

There are two primary conclusions from these sections. First, OAR 408-039-0040 Table 1 should have rates for RNs and CNAs specific to the hospital setting. Second, the maximum rates for other categories of workers do not apply in the hospital setting.

- Request: We request the table for the rule be revised as follows and that OHA set corresponding rates:

Column: “Personnel Type”

RN (Hospital)

RN (Other Facilities)

LPN/LVN (**Other Facilities**)

CMA (**Other Facilities**)

CNA (Hospital)

CNA (**Other Facilities**)

Direct Caregiver (**Other Facilities**)

Thank you for your consideration of our comments.

Sincerely,





Troy Duker
Director of Government Affairs
Hospital Association of Oregon

About the Hospital Association of Oregon

Founded in 1934, the Hospital Association of Oregon (HAO) is a mission-driven, nonprofit trade association representing Oregon's 61 hospitals. Together, hospitals are the sixth largest private employer statewide, employing more than 70,000 employees. Committed to fostering a stronger, safer, more equitable Oregon where all people have access to the high-quality care they need, the hospital association supports Oregon's hospitals so they can support their communities; educates government officials and the public on the state's health landscape and works collaboratively with policymakers, community based organizations and the health care community to build consensus on and advance health care policy benefiting the state's 4 million residents.



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October 21, 2024

Joseph Sullivan
Oregon Health Authority
500 Summer St. NE
Salem, OR 97301

Re: OHCA Comments on Establishing the Temporary Health Care Staff Rate Setting Program. OAR 409-039-0000 to 409-039-0120

Dear Mr. Sullivan,

Oregon Health Care Association (OHCA) is Oregon’s largest non-profit trade association representing long term care providers in every corner of our state. Our members include nursing facilities, assisted living and residential care communities, memory care communities, and in-home care agencies. We appreciate the opportunity to provide additional comment on the proposed administrative rules for the Temporary Staffing Agency Rate Setting Program.

We appreciate the changes that the Oregon Health Authority (OHA) made to the proposed rules that provide more clarity and detail on key definitions and the maximum rate waiver process. We also understand that this is a new program for OHA and appreciate the communication by the agency as we collectively implement the requirements of HB 2665 (2023) that directs the agency to establish reasonable maximum rates.

There are several components of OHA’s maximum rate-setting methodology that are in line with the statute. OHA uses a base wage from the available wage data with inflators that account for the compensation variability between temporary and permanently employed workers as well as tenure and shifts (which we understand to be included in the “Compensation Alignment Factor” or CAF). There is also an inflator for the higher wages earned in the Portland Metro area, which is applied statewide for administrative ease of the OHA. OHA has also established a “margin” for the temporary staffing agency to account for administrative costs and profits.

However, OHCA remains concerned that how OHA reached the CAF inaccurately inflates the maximum rate. OHA indicates the CAF accounts for, among other things, compensation variability between temporary and permanently employed workers. OHCA is concerned that in calculating this factor, OHA utilized data collected during the height of the COVID-19 pandemic when temporary staffing agencies engaged in predatory pricing practices that allowed them to artificially inflate the wage differences between temporary staff and permanently employed workers. To ensure the maximum rates “bear a reasonable relationship” to the base wage data, as required by HB 2665, each component used to build the maximum rates must be viewed through

that same lens and the differential between temporary and permanently employed workers must also be reasonable, which it was not during the pandemic.

More importantly, OHCA continues to have significant concerns with the “agency margin” and how the 34.2% “margin” is calculated in the proposed rules, which results in maximum rates that are designed to unduly benefit the temporary staffing agencies while violating the legal standard in the statute - that the proposed maximum rates “bear a reasonable relationship” to the base wage data.

What OHA has termed “agency margin” should really be an “agency markup.” A markup is based on the cost of the goods/services being sold and reflects the difference between the cost of the goods/services sold and the sales price charged. On the other hand, a margin is based on the sales price and is a percentage of the sales price. These terms are not interchangeable, and by characterizing the final adjustment as an “agency margin” instead of an “agency markup,” OHA has divorced this final step from the base wage data and grossly inflated the maximum rate. Assuming that 34.2% is a reasonable amount, OHA has unreasonably applied a margin concept in calculating the maximum rate. In applying the other inflators -- the Portland Metro Wage and CAF adjustments -- OHA’s methodology built upon the previous numbers that were directly tied to the base wage data. For example, OHA identified a LPN/LVN base wage of \$36.30. OHA then identified a “Regional Factor to Portland Metro Level” of 3.1% and calculated 3.1% of \$36.30, which is \$1.13, and added that to \$36.30 for \$37.43. OHA then identified a CAF of 23.6% and calculated 23.6% of \$37.43, which is \$8.83, and added that to \$37.43 for an estimated Pay Rate of \$46.26.

If OHA applied the same methodology and applied a 34.2% markup to the Pay Rate (again, a markup is based on the cost of the service), the calculation would be 34.2% of \$46.26, which is \$15.82. Adding \$15.82 to the Pay Rate of \$46.26 would result in a maximum Bill Rate of \$62.08. Instead, OHA’s calculation results in a maximum Bill Rate of \$70.32.

OHA changed the methodology for this final step and instead of a markup based on the cost of the service, OHA used a margin concept, which is based on the price charged, by applying 34.2% to the “*Bill Rate*” to substantially inflate the maximum rate. What OHA has chosen to do is essentially prioritize the profit percentage for temporary staffing agencies. OHA set a maximum Bill Rate of \$70.32 for LPNs/LVNs, and the difference between Bill Rate of \$70.32 and the Pay Rate/cost of \$46.26 is \$24.06, which is 34.2% of \$70.32. By taking this approach and divorcing the methodology from the Pay Rate/costs, the “agency margin” of 34.2% translates into a 52% markup as \$24.06 is 52% of the \$46.26 Pay Rate/cost for LPN/LVNs.¹ The maximum rate is almost 100% higher than the base wage.

To support a consistent methodology, OHA should apply an agency “markup” calculated as a percentage of the direct costs incurred by the temporary staffing agency, which is the Pay Rate. As previously stated, HB 2665 expressly requires the maximum rates to “bear a reasonable relationship to the wage data,” which in this case is the Pay Rate based on the wage data. OHA’s decision to change the methodology in the final step and apply an “agency margin” to the “Bill

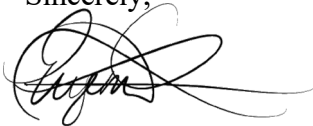
¹ OHCA is attaching a chart that outlines how this core problem impacts each category of personnel and what the Maximum Bill Rate would be if OHA applied a “markup” versus a “margin” of the Pay Rate.

Rate” divorces this inflator (and this inflator only) from the wage data and instead, prioritizes the temporary staffing agency’s profits over the wage data.

OHCA therefore recommends that OHA be consistent with the methodology adopted for calculating the Pay Rate, which is built upon the base wage data, and apply a reasonable markup as a percentage of the Pay Rate/cost. By doing so, the Maximum Bill Rates would be much more reasonable and align with the statutory directive that maximum agency rates “bear a reasonable relationship to average wages.”

We look forward to continuing to work with the Authority and other stakeholders to ensure we address the key concerns outlined in this letter. Thank you again for the opportunity to provide additional feedback and comments on behalf of our members.

Sincerely,

A handwritten signature in black ink, appearing to read 'Eugenia Liu', with a large, stylized flourish extending to the right.

Eugenia Liu
Senior Vice President and General Counsel
Oregon Health Care Association

OHCA Written Comments 10-21-24 - Attachment Based on Page 8 Chart - OHA Slide Deck

	A	B	C	D	E	F	G	H	I	J	K		
	Base Wage	Licensed Care Setting	Regional Factor to Portland Metro Level	Compensation Alignment Factor	Shift Diff/Specialty Pay	Estimated Pay Rate	Agency Guaranteed Margin	OHA Proposed Max Rates	Actual markup% from Estimated Pay Rate	Max Rate if 34.2% markup tied to Estimated Pay Rate	Holiday Pay	Holiday Max Rates (posted)	Holiday Max Rates - using 34.2% markup tied to Estimated Pay Rate
RN Hospital	56.82	12.30%	4.10%	30.70%	0	86.82	34.20%	131.95	52%	116.51	1.5	197.93	174.76
RN Facility	56.82	0.00%	4.10%	30.70%	0	77.31	34.20%	117.49	52%	103.75	1.5	176.24	155.62
LPN	36.30	0.00%	3.10%	23.60%	0	46.26	34.20%	70.32	52%	62.08	1.5	105.48	93.12
C N A	24.27	0.00%	1.10%	13.20%	0	27.78	34.20%	42.23	52%	37.28	1.5	63.35	55.91
CMA	25.67	0.00%	4.30%	15.60%	0	30.95	34.20%	47.06	52%	41.54	1.5	70.59	62.30
Direct Caregiver	20.91	0.00%	3.40%	10.40%	0	23.87	34.20%	36.28	52%	32.03	1.5	54.42	48.05

During a September 10, 2024 RAC meeting, OHA shared that the agency margin is "tied to the agreed upon wage rate." OHA also provided an example of how the "agency margin" works and noted that if the LPN pay rate is \$50 and the agency margin rate is 34.2%, the bill rate would be approximately \$67.10. This is calculated as follows:

(1) $\$50 \times .342 = \17.10 (agency margin of 34.2% that is tied to estimated pay rate)

(2) $\$50 + \$17.10 = \$67.10$

October 21, 2024

Joseph Sullivan
Health Care Rate Setting Program Manager
Oregon Health Authority—Health Policy and Analytics
500 Summer St NE
Salem, OR 97301
HB2665.Implementation@odhsoha.oregon.gov
503-559-4945

RE: Notice of Proposed Rulemaking: Establishing the Temporary Health Care Staff Rate Setting Program arising from HB 2665 (2023)

Mr. Sullivan,

Medical Solutions L.L.C. is a Temporary Staffing Agency that places clinicians in all 50 states, including the great State of Oregon. I very much appreciate the privilege and responsibility of acting as a participant of the RAC set to support the process of drafting and implementing these proposed rules related to HB 2665. I have reviewed the proposed rules and submit the following comments for your consideration:

OHA Should Provide Clear Guidance on how the Max Rate Caps impact existing Rates/assignments/executed Client Work Orders.

While we understand that OHA has communicated that the new maximum rates would not affect temporary staffing agency hospital or facility client bill rates that were in effect before the regulations become effective on January 1, 2025. This guidance will allow clients and agencies to avoid significant disruption of previously agreed-upon bill rates and the personnel wage agreements tied directly to those bill rates.

We would ask that the final regulations make this clear by expressly providing that the maximum rates do not apply to client bill rates in effect prior to January 1, 2025, and apply only to rates set forth in client work orders or other agreements entered on or after such date.

Bill Rate Cap Exception for temporary staffing agencies providing 25 or fewer personnel.

Proposed rule 409-039-0020(2) provides that a temporary staffing agency engaged by a hospital to provide 25 or fewer personnel (as defined) in a single licensed care setting may charge and receive rates that exceed the maximum rates set under OAR 409-039-0040 and that the 25 or fewer exception applies per licensed facility, and “per work order or contract” and that the max

rates would only be for those placements number 26 and forward. We appreciate the clarification that has come concerning “per work order or contract,” and would ask that further clarification be provided on the timeframe for this measurement. Is this a snapshot? Is this over the life of the contract? Is this based on an average over a year?

Make Clear that the Max Bill Rates do not include Expense Reimbursements

In OHA’s prior correspondence it made clear that expense reimbursements paid to clinicians by its employer-agency (e.g., travel expenses, lodging and meal per diems, licensure costs, etc.) are not subject to/or a part of the Max Rates, which makes logical sense as OHA based its max rates on wage information only and because these are dollars ultimately delivered to the clinician and not retained by the agency. However, the proposed rules do not provide agencies or its healthcare clients any guidance on this issue or how OHA would expect agencies to bill its Oregon-based client facilities for these expenses. The industry standard is to include this cost within the bill rate. How should agencies and their clients proceed on this issue?

Thank you for your consideration

A handwritten signature in cursive script, appearing to read "Chris Ahl".

Chris Ahl

Director of Contracts and Business Risk
Medical Solutions L.L.C.

American Staffing Association

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October 21, 2024

Joseph Sullivan
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503-559-4945

RE: Notice of Proposed Rulemaking: Establishing the Temporary Health Care Staff Rate Setting Program arising from HB 2665 (2023)

Dear Mr. Sullivan,

The American Staffing Association (ASA) represents temporary and contract staffing agencies that provide employees to perform a wide range of services to diverse businesses throughout the United States.

ASA submits these comments on behalf of temporary staffing agencies that employ personnel to provide health care services or assistance with activities of daily living to hospitals and facilities in Oregon.

Effective date of maximum rates; no effect on existing rates.

As noted in our comment at the October 15 hearing, stakeholders were informally advised that the new maximum rates would not apply to temporary staffing agency bill rates set forth in work orders or other agreements with hospital or facility clients that were entered before the regulations become effective on January 1, 2025. ASA applauds that determination, which avoids disrupting previously agreed-upon agency bill rates and their related personnel wage agreements.

To confirm this determination, we request that the final regulations expressly provide that the maximum rates do not apply to bill rates set forth in client work orders or other agreements entered prior to January 1, 2025, and apply only to rates set forth in work orders or agreements entered on or after such date.

Definition of “temporary work.”

Proposed rule 409-039-0010 (26) defines “temporary staffing agency” as “An entity that operates in this state for the purpose of providing *temporary work* to personnel providing

October 21, 2024

Oregon Rate Cap Proposed Regulations

Page 2

health care services or assistance with activities of daily living for or on behalf of hospitals or facilities that engage the temporary staffing agency” (emphasis added).

We propose that a new subsection (27) be added to section 409-039-0010 that defines “temporary work” as follows:

(27) “Temporary work” means personnel provided by a temporary staffing agency to a hospital or facility for an initial term of less than twenty-four (24) months.”

The proposed definition of temporary work is consistent with the definition adopted by other states to accommodate the needs of staffing agencies that recruit nurses (e.g., foreign nurses) for long-term assignments of two years or more. Such long-term services should not be viewed as “temporary work.” See, e.g., Missouri Code of State Regulations, 19 CSR 30-105.010(21).

Exception for temporary staffing agencies providing 25 or fewer personnel.

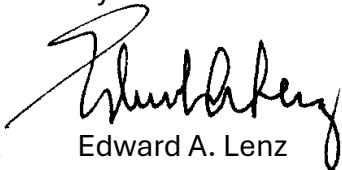
Proposed rule 409-039-0020 (2) provides that a temporary staffing agency engaged by a hospital to provide 25 or fewer personnel (collectively) in a single licensed care setting may charge and receive rates that exceed the maximum rates set under OAR 409-039-0040 and that the 25 or fewer exception applies per licensed facility, and “per work order or contract.”

It is unclear how the 25 or fewer exception applies. For example, is the personnel headcount determined based on a snapshot in time, or on the average headcount over some prior measurement period? And if an agency determines that the headcount is 25 or fewer, over what period does the exception apply, e.g., the duration of the work order or contract, or some other period? The final rules should provide specific examples of how to apply the exception.

Respectfully submitted,

AMERICAN STAFFING ASSOCIATION

By



Edward A. Lenz
Senior Counsel