

2022

>> OHA Nurse Staffing Advisory Board

2022 Legislative Report



Oregon
Health
Authority
PUBLIC HEALTH DIVISION

Acknowledgments

The Oregon Health Authority prepared this publication in collaboration with members of the Public Health Division Health Care Regulation and Quality Improvement Section, and the Oregon Nurse Staffing Advisory Board.

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Contents

» Executive summary.....	4
» Key achievements	6
» Survey reports and plans of correction.....	7
» Waivers	9
» Additional funding allocated for nurse staffing	10
» Other board work in progress	11
» Civil Monetary Penalties (CMP) Committee	11
» Rules Review Committee.....	12
» Rules Advisory Committee (RAC) for HB 3016	12
» Areas of continued focus	14
» Continuing challenges in nurse staffing	14
» Nurse staffing surveys and complaint investigations	18
» Board and committee meetings.....	18
» Continuing impact of COVID-19 pandemic.....	18
» Plan for the coming year	19
» Conclusion	20

Executive summary



Oregon nurse staffing laws require hospitals and direct care nursing staff to work together to promote safe patient care. These laws have been part of Oregon's commitment to improving health care since 2001. In 2015, changes in the law expanded these requirements and created a Nurse Staffing Advisory Board (NSAB) supported by the Oregon Health Authority (OHA).

This report discusses:

- The NSAB's key achievements in the last year
- Progress in conducting nurse staffing surveys and complaint investigations as well as implementing Plans of Correction at hospitals and special inpatient care facilities across Oregon
- Nurse staffing waiver requests
- How funding appropriated in the 2021 legislative session is being used to help OHA support compliance with the nurse staffing law
- The NSAB's committee work, including the Civil Monetary Penalties Committee, Rules Review Committee, and OHA's Rules Advisory Committee for HB 3016
- Areas of continued focus, including continued areas of noncompliance:
 - » Meal and rest breaks,
 - » Minimum numbers of nursing staff members as specified in the nurse staffing plan, and
 - » Patient acuity and nursing care intensity.

In early 2020 OHA completed all on-site nurse staffing surveys for the first three-year cycle set by the Legislature. Between 2017 and 2021, OHA's limited resources delayed initiating complaint investigations and revisit surveys. In the 2021 legislative session, the legislature appropriated an additional \$1,383,589 from the General Fund for 2021-2023 biennium. With this additional funding, OHA has hired two dedicated nurse staffing surveyors and will be hiring additional positions to support both compliance and outreach work.

Like other state work, OHA's nurse staffing regulatory activities have been affected by the COVID-19 pandemic. OHA prepared to begin the second three-year survey cycle in March 2020. However, OHA delayed nurse staffing surveys and complaint investigations to align with federal survey suspensions and the Governor's Executive Orders as a result of the COVID-19 pandemic. OHA resumed complaint investigations in August 2020 and initiated the second three-year survey cycle in March 2021 with the board's support. The second survey cycle uses new processes and tools created by the NSAB's Process Improvement Committee. The new processes streamline the survey while prioritizing key regulatory elements. The NSAB has continued to receive positive feedback from OHA and members of the public on changes to the new nurse staffing survey process.

NSAB continues to provide valuable input to OHA. In April 2021, the NSAB formed the Civil Monetary Penalty (CMP) Committee to provide input about criteria and process for implementation of CMPs. The CMP Committee has advised on fair, consistent factors for OHA to consider when deciding whether to assess a civil monetary penalty. The CMP Committee has advised on a decision-making tool to be reviewed by the NSAB and adopted by the OHA. The committee plans to present its work at the quarterly NSAB meeting in October 2022.

At its April 2022 meeting, the NSAB formed a Rules Review Committee. The Rules Review Committee will review existing nurse staffing rules and recommend changes OHA can make during rulemaking. The Rules Review Committee will have a special focus on rules related to patient acuity, and nursing care intensity, meal and rest break practices, and minimum numbers of nursing staff members. OHA would review the committee's recommendations to determine what changes could be made and form a Rules Advisory Committee composed of the NSAB members, interested parties, and impacted communities to advise on specific language to be adopted in permanent rule.

Finally, to ensure the success of Oregon's nurse staffing laws, NSAB strongly encourages the Governor:

- To continue to fill NSAB vacancies as they arise, and
- Continue to re-appoint NSAB members eligible for a second term on the board.

The full legislative report is available at www.healthoregon.org/nursestaffing.

Key achievements

In February 2020, the NSAB formed the Process Improvement Committee (PIC) to improve the nurse staffing survey and investigation process. The PIC presented its work to the board in October 2020, and the board recommended that OHA incorporate the PIC's proposals in the second triennial survey cycle. These new processes and tools promote a more efficient survey process and allow more direct care nursing staff members to participate in nurse staffing surveys through increased interviews, onsite nursing unit reviews, and opportunities for direct care nursing unit representatives to provide feedback on unit nurse staffing practices. The board continues to track implementation of the PIC's changes and asks for surveyor feedback on the efficacy of survey changes and inclusion of direct care nursing staff members in the full nurse staffing survey.

The NSAB also formed the Civil Monetary Penalty (CMP) Committee in April 2021 to explore OHA's options to enforce the nurse staffing law and advise on the fair and consistent application of CMPs for continued noncompliance. The committee first met in July 2021 and has continued to meet throughout 2022. The CMP Committee has advised on a decision-making tool to alert OHA to when non-compliance reflects a reasonable belief that safe patient care has been or may be negatively impacted and CMPs should be issued. The CMP Committee will present the decision-making tool, as well as a report summarizing its work, to the full board at the October 2022 meeting.

Survey reports and plans of correction

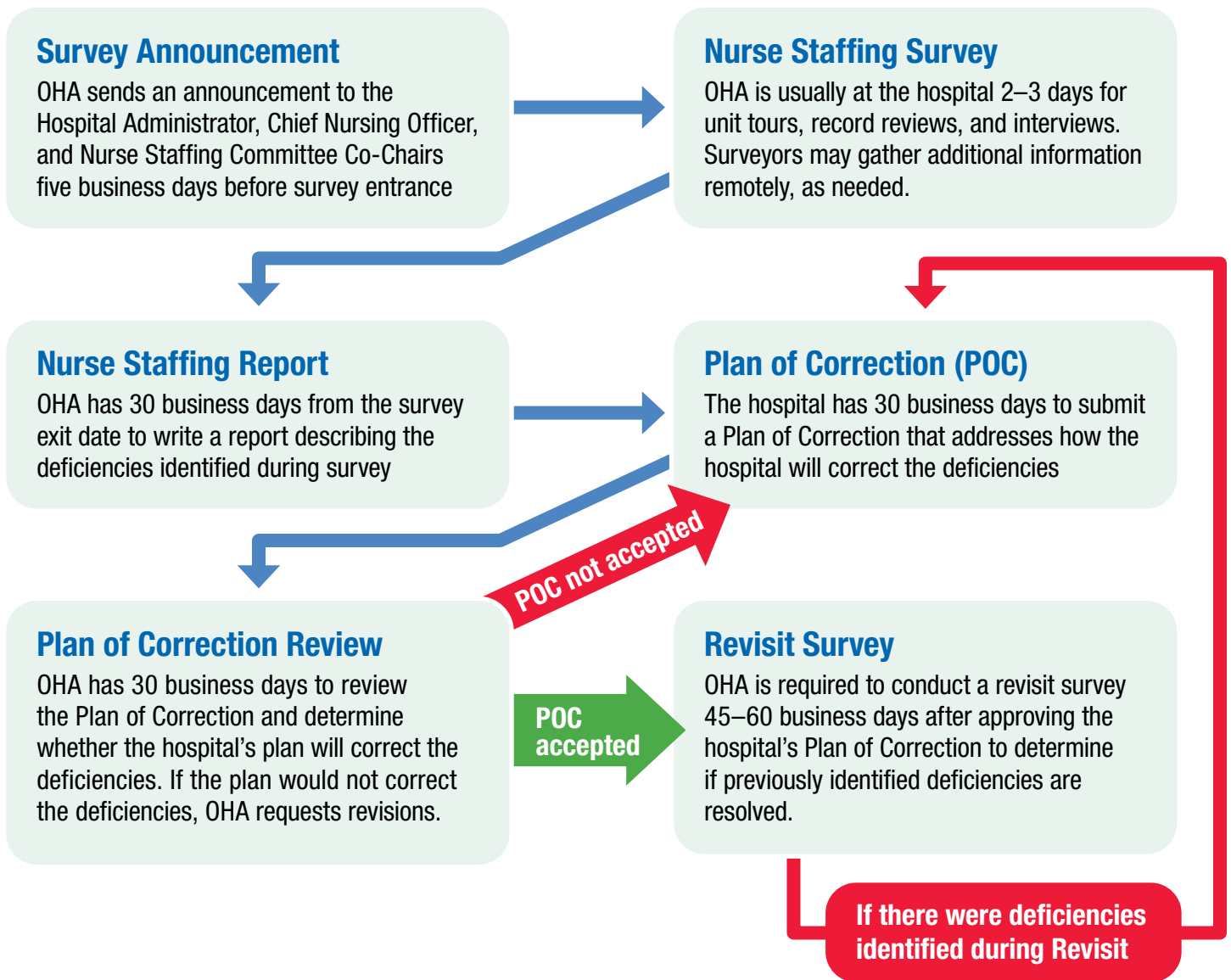
Between 2017 and 2019 (“Cycle 1”), OHA completed nurse staffing surveys of all 70 hospitals of all 70 hospitals and special inpatient care facilities (SICFs) across Oregon, and the NSAB received regular updates on the progress of these surveys. Survey Cycle 2 was set to begin in 2020 and end in 2022, but these plans were disrupted by the pandemic. In March 2020, OHA paused nurse staffing survey and complaint investigations to align with federal survey suspensions and the Governor’s Executive Orders. This delayed the start of the Cycle 2 nurse staffing surveys to the start of 2021. The board used the 2020 pause to redesign the survey process to improve survey efficiency and allow more input from direct care nurses. More information about this survey redesign can be found in the “Key Achievements” section of the [2021 annual legislative report](#).

Additionally, the board has discussed areas that remain a regulatory focus in the second survey cycle, such as nursing intensity and patient acuity requirements, meal and rest breaks, and mandatory overtime. The board has formed committees and recommended on OHA guidance for continued areas of focus. Please read more about this work in “Other Board work in progress.”

Hospitals have struggled with submitting acceptable POCs in the first and second survey cycle. In response, the NSAB reviewed information from OHA about deficiencies hospitals struggle most to correct, as well as other challenges in the POC submission process, such as changes in hospital leadership, and confusion about rule requirements. The board has made recommendations to OHA on the implicit nature of these challenges and discussed the outreach and guidance OHA provides to hospitals about POCs, including POC conference calls.

After the POC is approved, the hospital has 45 business days to implement its POC. OHA is then required to complete a revisit within 15 business days to determine if the hospital has returned to compliance. OHA was unable to conduct revisits of Cycle 1 nurse staffing surveys due to workload and not being staffed for this work. The NSAB supported OHA’s plan to combine the revisits for surveys and complaints from the first survey cycle (2017 – 2019) with the nurse staffing surveys from the second survey cycle (2021 – 2023).

Thanks to the work of the NSAB Process Improvement Committee and increased legislative funding, OHA is making revisits a priority. In addition to the revisits for hospitals surveyed between 2017 and 2019, OHA is conducting revisits for hospitals that were surveyed in 2021. The board is aware of OHA’s work on revisit surveys and will provide recommendations as trends become evident.



Waivers

As of August 1, 2022, OHA has received nurse staffing waiver requests from 51 hospitals. Nurse staffing waiver requests are active for 44 Oregon hospitals and five Oregon hospitals have a nurse staffing waiver that was approved and has since expired without requesting a renewal of the waiver. More than 90 percent of the waiver requests relate to the statutory requirement for minimum number of nursing staff members on duty in a unit when a patient is present. These requests also deal with which staff members can be used in lieu of a second nursing staff member; the second staff member is often a trained technician or technologist who provides specialized patient care. The board continues to provide guidance on waiver criteria and receives regular updates from OHA on the nature and status of requests.

Oregon hospitals that have requested a waiver between 2016 and 2022:

- 17 of Oregon's 18 large hospitals (> 150 licensed beds). 16 large hospitals have waivers that are currently active and one large hospital has a waiver that expired without submitting a renewal request
- 20 of Oregon's 22 medium hospitals (26 – 150 licensed beds). 17 medium hospitals have waivers that are currently active and three medium hospitals have waivers that expired without submitting a renewal request.
- 14 of Oregon's 25 Critical Access Hospitals (\leq 25 licensed beds). 8 Critical Access Hospitals and one SICF have waivers that are currently active, and five Critical Access Hospitals have waivers that expired without submitting a renewal request.

Additional funding allocated for nurse staffing

The 2015 amendment to the nurse staffing law significantly expanded nurse staffing requirements for hospitals and increased OHA regulatory activities and provided some limited funding for OHA's regulatory work. During the first survey cycle, the NSAB recognized the need for increased funding for the nurse staffing program and recommended in previous legislative reports that the legislature appropriate funding to OHA for its nurse staffing work.

During the 2021 legislative session, the Oregon State Legislature appropriated an additional \$1,383,589 from the General Fund for nurse staffing to provide additional staffing for Public Health to support the ongoing implementation of Oregon's nurse staffing law. The NSAB is grateful to the Legislature for their recognition of the work being done to promote safe nurse staffing and their support in implementing this important law.

With this funding, OHA has hired two client care surveyors whose work will involve conducting nurse staffing audits and complaint investigations and reviewing nurse staffing Plans of Correction. OHA and the NSAB are working together to prioritize hiring among the other positions that were reflected in the legislation as steps to improve nurse staffing enforcement, including: a Compliance Specialist 3; a Public Health Nurse 2; a Research Analyst; and a Principal Executive/Manager D.

This additional funding will help OHA achieve its program improvement goals, including:

- Meeting timelines for survey revisits as required by statute and rule;
- Providing more timely feedback on nurse staffing survey results;
- Providing consultation about the survey process and nurse staffing requirements;
- Prioritizing nurse staffing complaint investigations and reducing the time between receiving a complaint and initiating an investigation;
- Providing education to partners on the impact of nurse staffing;
- Analyzing data from nurse staffing surveys and complaint investigations to understand outcomes and improve implementation of the nurse staffing law; and
- Increasing enforcement for hospital noncompliance.

The NSAB and OHA will work together to reach these program improvement goals and the NSAB will continue to advise on opportunities for further improvement.

Other board work in progress

Civil Monetary Penalties (CMP) Committee

The board formed the Civil Monetary Penalty (CMP) Committee in April 2021 to provide recommendations to OHA on when to issue CMPs. The committee first met in July 2021.

The committee has met seven times between July 2021 and August 2022 and has discussed:

- The role of the NSAB in providing guidance to OHA on issuing CMPs;
- How CMPs fit into the OHA regulatory landscape, including the financial and workload impacts of CMPs and prioritization of CMPs relative to other nurse staffing regulatory work;
- The regulatory language associated with CMPs for nurse staffing, including language that reflects OHA may impose a CMP for a violation of the nurse staffing law “when there is a reasonable belief that safe patient care has been or may be negatively impacted”;
- Objective measurements of unsafe patient care found in nurse staffing survey reports; and
- Indicators in nurse staffing survey tools, survey reports, and past survey performance that may be used to alert OHA that safe patient care has been or may be negatively impacted.

Based on these discussions, the CMP Committee and OHA has developed a decision-making tool that can be used to identify when there is a reasonable belief that safe patient care has been or may be negatively impacted. At the August 2022 meeting, the CMP Committee voted to move the decision-making tool and summary report to the full board for review and discussion.

The CMP Committee will present this decision-making tool and a report summarizing their discussions at the October 2022 NSAB meeting.

Rules Review Committee

The board formed the Rules Review Committee at the April 2022 board meeting to advise on improvements to Oregon's nurse staffing rules. The Rules Review Committee will thoroughly review Oregon's nurse staffing rules and recommend changes to improve administration of Oregon's nurse staffing law, including necessary clarification to the current rules.

The Rules Review Committee will pay special attention on issues related to Plan of Correction (POC timelines); additional definitions that could improve compliance, including a definition for a nurse staffing unit; and clarifications to areas of the rule related to minimum numbers of nursing staff members, meal and rest break processes and requirements, requirements for nursing care intensity, and requirements for patient acuity.

Following the work of the Rules Review Committee, OHA will form a Rules Advisory Committee composed of the board and members of the community to review the recommended changes. The committee anticipates completing their work by early 2023 and recommending OHA form a Rules Advisory Committee in July 2023.

Rules Advisory Committee (RAC) for HB 3016

In July 2021, the NSAB formed a Rules Advisory Committee (RAC) to advise on the creation of rules to implement HB 3016. HB 3016 was passed by the Legislature in 2021 and created new nurse staffing requirements related to implementation of facility disaster plans, including that:

- A hospital may suspend its nurse staffing plan in response to a national emergency or state declaration requiring implementation of a facility disaster plan only if the facility also implements crisis standards of care;
- Within 30 days after deviating from a hospital-wide nurse staffing plan in this type of emergency, hospital Incident Command must report to the hospital nurse staffing committee co-chairs an assessment of the nurse staffing needs arising from the emergency;
- The hospital nurse staffing committee must meet to develop a contingency nurse staffing plan to address the needs reflected in the report from Incident Command, and the contingency nurse staffing report must align with crisis standards of care as implemented; and
- An emergency deviation from the hospital-wide nurse staffing plan may not be in effect for more than 90 days without approval from the nurse staffing committee.

Prior to forming a RAC, the NSAB created a HB 3016 Rules Review Committee to provide recommendations to OHA on rule language that addresses these requirements and provides guidance on working with the nurse staffing committee when the hospital has an emergency that does not meet the requirements for suspending a nurse staffing plan. The HB 3016 Rules Review Committee included three direct care NSAB members, three nurse manager NSAB members, and one representative each from the Oregon Nurses Association (ONA) and Oregon Association of Hospitals and Health Systems (OAHHS). The rules committee met twice between September 2021 and October 2021, and it presented its work to the full board at the October 2021 quarterly meeting. The NSAB met again in November 2021 to make final recommendations before OHA opened the draft rule for public comment.

The permanent rule amended OAR 333-510-0140 and went into effect January 1, 2022. The NSAB has continued to receive feedback from the OHA on the effectiveness of this rule, well as questions OHA has received about the new rule. The NSAB also advised on Interpretive Guidance for these new requirements.

Areas of continued focus

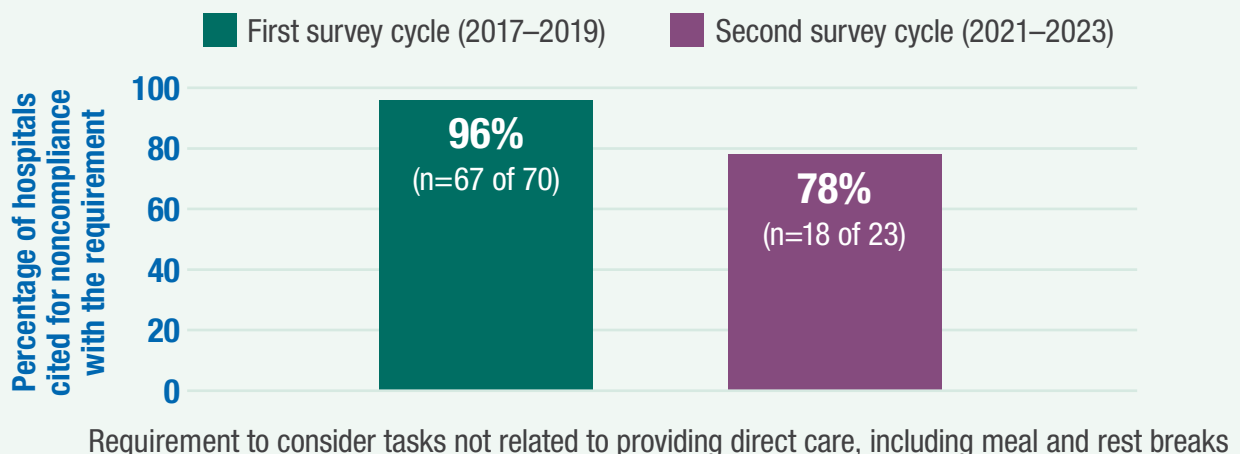
Continuing challenges in nurse staffing

Meal and rest breaks

For the first survey cycle, 67 of 70 hospitals (96%) were found to be out of compliance with the requirement under Oregon Administrative Rule (OAR) 333-510-0110(2)(h), which requires hospital nurse staffing plans to “consider tasks not related to providing direct care, including meal and rest breaks.” Under this rule, hospitals must have a process to ensure that safe minimum staffing is maintained on patient care units when nursing staff members (NSMs) take meal and rest breaks, that NSMs receive meal and rest breaks, that missed breaks are documented, and that the process the unit uses to ensure breaks are taken and documented is part of the nurse staffing plan approved by the hospital’s nurse staffing committee.

As of August 1, 2022, OHA has surveyed 25 hospitals for the second survey cycle and completed written reports for 23 of those facilities; of the 23 facilities with completed survey reports, 18 (78%) were cited as being noncompliant with the requirement related to meal and rest breaks; this reflects a reduction in citations. The board supports the guidance OHA gives to interested parties on the issue of meal and rest breaks and will continue to discuss opportunities to improve compliance with this issue.

Noncompliance with Meal and Rest Break Requirement in Cycle 1 and Cycle 2

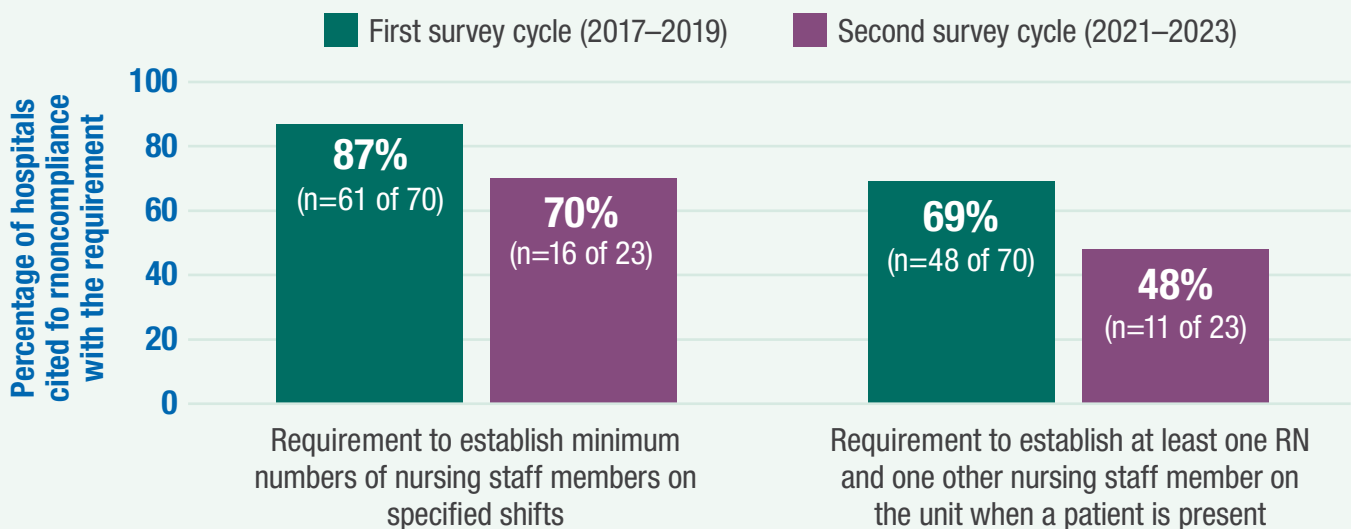


Minimum numbers of nursing staff members (NSMs)

Under OAR 333-510-0110(2)(f), the nurse staffing plan approved by the hospital nurse staffing committee “must establish minimum numbers of nursing staff, including licensed practical nurses, and certified nursing assistants, required on specified shifts, provided that no fewer than one registered nurse and one other nursing staff member is on duty in a unit when a patient is present.” Although progress is being made in the second survey cycle, there remains significant misunderstanding in hospitals of the requirement for minimum numbers. Some hospitals mistakenly establish a ratio of registered nurses to patients instead of the minimum number of registered nurses (RNs), licensed practical nurses (LPNs) and certified nursing assistants (CNAs) required for the unit when the unit is at different censuses.

Hospitals must meet the minimum numbers requirement in two ways. First, the hospital must have a nurse staffing plan that establishes the minimum numbers of nursing staff members for specified shifts. Second, the hospital must have a nurse staffing plan that establishes that there will be at least one RN and one other nursing staff member on the unit when there is at least one patient present. So far in the second survey cycle, 16 of 23 hospitals (70%) have been found to be out of compliance with this first requirement, compared to 61 of 70 hospitals (87%) in the first survey cycle. For the second requirement, 11 of 23 hospitals (48%) have been found to be out of compliance in the second survey cycle, compared to 48 of 70 hospitals (69%) in the first survey cycle.

Noncompliance with Minimum Numbers Requirements in Cycle 1 and Cycle 2

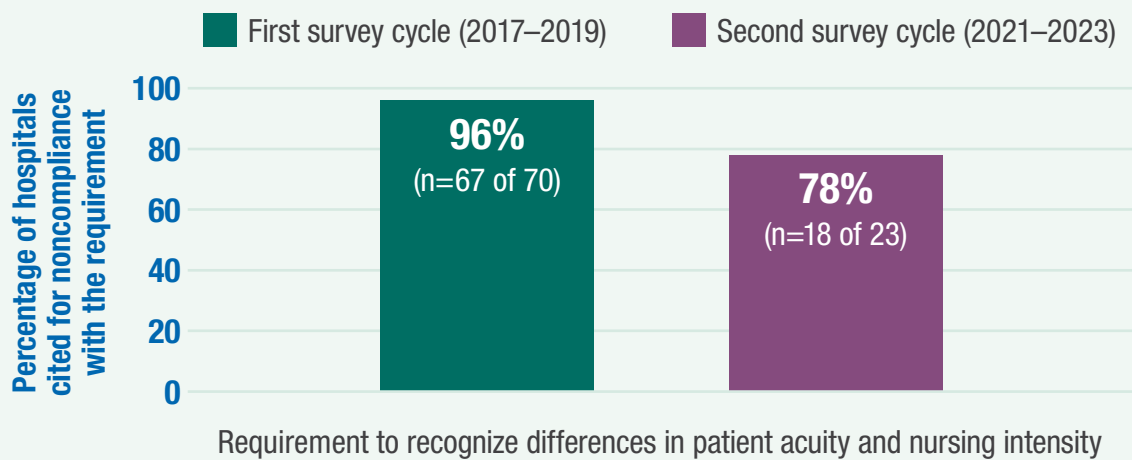


Patient acuity and nursing care intensity

In the first survey cycle hospitals struggled with the requirement under OAR 333-510-0110(2) (e), which requires the hospital nurse staffing plan to “recognize differences in patient acuity and nursing care intensity.” During a nurse staffing survey or complaint investigation, OHA determines whether the nurse staffing plan includes a process for measuring patient acuity and nursing care intensity on the unit and adjusting staffing based on that measurement.

So far in the second survey cycle, 18 of 23 hospitals (78%) have been found to be out of compliance with the acuity and intensity requirement, compared to 67 of 70 hospitals (96%) in the first survey cycle.

Noncompliance with Patient Acuity and Nursing Intensity Requirement in Cycle 1 and Cycle 2



In 2018, the NSAB formed the Acuity Committee to draft guidance to hospitals that would clarify the requirements for nurse staffing plans to measure patient acuity and nursing care intensity. In January 2021, the NSAB voted to approve the guidance created by the Acuity Committee. OHA published the Hospital Nurse Staffing Interpretive Guidance on Staffing for Acuity & Intensity on its hospital nurse staffing website and distributed the interpretive guidance to Oregon hospitals and other interested parties. The NSAB and OHA have received positive feedback from Oregon hospitals on the helpfulness of the interpretive guidance.

Board plan to address continuing challenge areas

The NSAB and OHA received feedback from interested parties across the state regarding the continue compliance challenges with implementing nurse staffing rule requirements for meals and breaks, minimum numbers of nursing staff members on a unit, nursing care intensity and patient acuity. The board will continue to advise OHA on the guidance needed to help improve understanding of the nurse staffing law. The board and OHA encourage interested parties across the state, particularly direct care nursing staff members, nurse managers and hospital administrators, to contact OHA with questions about nurse staffing requirements at the nurse staffing mailbox, mailbox.nursestaffing@odhsoha.oregon.gov.

The NSAB encouraged OHA to create Explanation Guides for survey tools used during nurse staffing surveys and complaint investigations because they will clarify what OHA measures during surveys and investigations. The Explanation Guides will also help facilitate understanding of requirements under Oregon's nurse staffing rules, including requirements for meal and rest breaks, minimum numbers of nursing staff members, and nursing care intensity and patient acuity. An Explanation Guide detailing the unit onsite interview is already available on the OHA nurse staffing website; OHA anticipates completing additional Explanation Guides throughout 2022 and 2023. The NSAB will provide guidance on the additional Explanation Guides as they are completed.

Continuing impact of COVID-19 pandemic

Nurse staffing surveys and complaint investigations

The second cycle of the triennial nurse staffing surveys was set to begin in March 2020. In early March 2020, the Centers for Medicare & Medicaid Services (CMS) suspended most federal surveys due to the novel coronavirus pandemic. OHA postponed the beginning of the second survey cycle to align with the federal suspension and the Governor's request that the Health Care Regulation and Quality Improvement Section prioritize activities to facilitate hospitals' immediate COVID-19 response.

Throughout the pandemic, the NSAB has advised OHA on options to safely conduct nurse staffing surveys and complaint investigations. The NSAB endorsed OHA's proposal to initiate Cycle 2 of the triennial nurse staffing surveys in early 2021. OHA restarted complaint investigations in August 2020 and has conducted those investigations remotely due to the continued impact of the pandemic.

To ensure safety of hospital staff, patients and their families, and OHA surveyors, OHA has monitored the number of COVID-19 patients at hospitals while scheduling nurse staffing surveys and complaint investigations. OHA surveyors also were fully vaccinated against COVID-19 and wore personal protective equipment (PPE) in alignment state and federal requirements. The board continues to receive updates from OHA on the impacts of the pandemic and how OHA is balancing community safety and nurse staffing regulatory activities.

Board and committee meetings

Boards and committees previously held meetings in-person, with a call-in option available to members who cannot be physically present. Due to the COVID-19 pandemic, OHA moved all NSAB board and committee meetings to a virtual platform, such as Microsoft Teams and Zoom. All virtual meetings remain available to the public and comply with Oregon's Public Meetings Law Oregon Revised Statute (ORS) 192.610 through 102.710) and Public Records Laws (ORS 192.001 through 192.505). OHA and the board have found that remote meeting options have made it easier for board members and members of the public located outside of the Portland metro area to attend meetings. OHA and the board will continue to offer remote meeting options adopted during the pandemic for future meetings.

Plan for the coming year

- NSAB will continue to provide feedback on administering the nurse staffing law and rules from:
 - » Hospital-based direct care nursing staff members,
 - » Hospital administrators and nurse managers, and
 - » Other interested parties.
- The board will continue to accept public comments at each quarterly NSAB meeting.
- Throughout the pandemic, the board has discovered new ways to be productive. The board encourages use of best remote meeting practices to foster productive discussions. OHA and the board will continue to clearly communicate the meeting's venue – whether it be online, via phone, or some other method.
- OHA and the board will continue to discuss the pandemic's impact on nurse staffing and discuss lessons learned about survey and board work. OHA and the board will continue to consider how best to support Oregon's nurses and hospitals on emerging nurse staffing issues.
- The board will continue to make recommendations to OHA throughout the second survey cycle and will advise OHA on changes to improve compliance among hospitals.
- The board will continue to encourage interested parties across the state to apply for these positions and ask the Governor to appoint members to the board in a timely manner. To see upcoming vacancies on the board, please visit the OHA Hospital Nurse Staffing website at www.healthoregon.org/nursestaffing.
- Through its committee work, NSAB will continue to address issues such as:
 - » Providing guidance to OHA on when to seek civil monetary penalties against hospitals that are noncompliant with the nurse staffing rules; and
 - » Updating the nurse staffing rules to improve compliance with the nurse staffing law.
- NSAB will form additional committees as new issues arise.
- NSAB and OHA will continue working closely together to build shared understanding of patient care issues, including staffing, and scheduling of nursing staff members.

Conclusion

NSAB members continue to collaborate together and with OHA staff to promote safe patient care. Engagement from interested parties shows Oregon hospitals and direct care nursing staff members are working to understand and work within this regulatory framework.

NSAB members' commitment to safe patient care is their guide. Members recognize nurse staffing directly affects patient care. Safe patient care is the primary priority of nurse staffing regulations.

While areas of ambiguity remain, NSAB members agree that the data obtained in future survey and complaint investigations will produce valuable information. NSAB members and OHA can use these data to evaluate new trends in nurse staffing. NSAB members will continue to advise OHA on enforcement opportunities to improve nurse staffing compliance with the law. Meanwhile, NSAB members will take the actions identified above and continue to advise OHA on administration of these rules.



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