

Enrolled House Bill 2800

Sponsored by Representative MINNIS; Representatives BOONE, BRUUN, DALTO, FARR, GALIZIO, MARCH, MORGAN, NELSON, P SMITH, TOMEI, WHISNANT, Senators ATKINSON, BATES, BROWN, COURTNEY, DEVLIN, FERRIOLI, GEORGE, METSGER, MONNES ANDERSON, WALKER, WESTLUND

CHAPTER

AN ACT

Relating to nurses; creating new provisions; and amending ORS 441.162 and 441.166.

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

SECTION 1. ORS 441.166 is amended to read:

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

(2) A hospital may not require a registered nurse, **licensed practical nurse or certified nursing assistant** to work:

[(a) More than two hours beyond a regularly scheduled shift; and]

[(b) More than 16 hours in a 24-hour time period.]

(a) Beyond the agreed-upon shift;

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

(c) More than 12 consecutive hours in a 24-hour time period, except that a hospital may require an additional hour of work beyond the 12 hours if:

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

(B) There is a potential harm to an assigned patient if the registered nurse, licensed practical nurse or certified nursing assistant leaves the assignment or transfers care to another.

(3)(a) Time spent in required meetings or receiving education or training shall be included as hours worked for purposes of subsection (2) of this section.

(b) Time spent on call but away from the premises of the employer may not be included as hours worked for purposes of subsection (2) of this section.

(c) Time spent on call or on standby when the registered nurse, licensed practical nurse or certified nursing assistant is required to be at the premises of the employer shall be included as hours worked for purposes of subsection (2) of this section.

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

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

(b) In emergency circumstances identified by the Department of Human Services by rule; or

(c) If a hospital has made reasonable efforts to contact all of the [*qualified,*] on-call nursing staff [*and nursing services*] **or staffing agencies** on the list described in ORS 441.162 and is unable to obtain replacement staff in a timely manner.

SECTION 2. ORS 441.162 is amended to read:

441.162. (1) A hospital shall be responsible for the [*development and*] implementation of a written hospital-wide staffing plan for nursing services. [*The hospital shall have a process that ensures the consideration of input from direct care clinical staff in the development, implementation, monitoring, evaluation and modification of the staffing plan. The staffing plan shall include the number, qualifications and categories of nursing staff needed for all units.*] **The staffing plan shall be developed, monitored, evaluated and modified by a hospital staffing plan committee. To the extent possible, the committee shall:**

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

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

(c) **Have as its primary consideration the provision of safe patient care and an adequate nursing staff pursuant to this chapter.**

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

(3) The written staffing plan shall:

(a) Be based on [*the nursing care required by the aggregate and individual needs of patients. This nursing care shall be the major consideration in determining the number and categories of nursing staff needed.*] **an accurate description of individual and aggregate patient needs and requirements for nursing care and include a periodic quality evaluation process to determine whether the staffing plan is appropriately and accurately reflecting patient needs over time.**

(b) Be based on the specialized qualifications and competencies of the nursing staff. The skill mix and the competency of the staff shall ensure that the nursing care needs of the patients are met and shall ensure patient safety.

(c) Be consistent with [*the scopes of practice for registered nurses, licensed practical nurses and the authorized duties of certified nursing assistants.*] **nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations and recognize differences in patient acuteness.**

(d) **Establish minimum numbers of nursing staff including licensed practical nurses and certified nursing assistants required on specified shifts. At least one registered nurse and one other nursing staff member must be on duty in a unit when a patient is present.**

(e) **Include a formal process for evaluating and initiating limitations on admission or diversion of patients to another acute care facility when, in the judgment of the direct care registered nurse, there is an inability to meet patient care needs or a risk of harm to existing and new patients.**

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

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

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

[(4) The written staffing plan for nursing services shall establish minimum numbers of nursing staff, including licensed nurses and certified nursing assistants, on specified shifts. The number of nursing staff on duty shall be sufficient to ensure that the nursing care needs of each patient are met. At least one registered nurse and one other nursing care staff member must be on duty when a patient is present.]

[(5) A hospital shall maintain and post a list of qualified, on-call nursing staff and nursing services that may be called to provide replacement staff in the event of sickness, vacations, vacancies and other absences of nursing staff and that provides a sufficient number of replacement staff for the hospital on a regular basis.]

SECTION 3. (1) As used in this section:

(a) "Circulating nurse" means a registered nurse who is responsible for coordinating the nursing care and safety needs of the patient in the operating room and who also meets the needs of operating room team members during surgery.

(b) "Type I ambulatory surgical center" means a licensed health care facility for the performance of outpatient surgical procedures including, but not limited to, cholecystectomies, tonsillectomies or urological procedures, involving general anesthesia or a relatively high infection control consideration.

(2)(a) The duties of a circulating nurse performed in an operating room of a Type I ambulatory surgical center or a hospital shall be performed by a registered nurse licensed under ORS 678.010 to 678.410.

(b) In any case requiring anesthesia or conscious sedation, a circulating nurse shall be assigned to, and present in, an operating room for the duration of the surgical procedure unless it becomes necessary for the circulating nurse to leave the operating room as part of the surgical procedure. While assigned to a surgical procedure, a circulating nurse may not be assigned to any other patient or procedure.

(c) Nothing in this section precludes a circulating nurse from being relieved during a surgical procedure by another circulating nurse assigned to continue the surgical procedure.

(3) At the request of a Type I ambulatory surgical center or a hospital, the Department of Human Services may grant a variance from the requirements of this section based on patient care needs or the nursing practices of the surgical center or hospital.

SECTION 4. Section 3 of this 2005 Act is added to and made a part of ORS 678.010 to 678.445.

Passed by House May 25, 2005

Repassed by House July 15, 2005

.....
Chief Clerk of House

.....
Speaker of House

Passed by Senate July 14, 2005

.....
President of Senate

Received by Governor:

.....M,....., 2005

Approved:

.....M,....., 2005

.....
Governor

Filed in Office of Secretary of State:

.....M,....., 2005

.....
Secretary of State