PUBLIC HEALTH DIVISION
Office of the State Public Health Director
Tina Kotek, Governor

800 NE Oregon Street
Portland, OR 97232
Voice: (971) 673-1222
FAX: (971) 673-1299
TTY: 711

DATE: May 15, 2024

TO: Hearing Attendees and Commenters –
Oregon Administrative Rules chapter 333, divisions 501, 503, 510 - "Hospital Staffing Procedures and Requirements to Comply with HB 2697 (2023)"

FROM: Brittany Hall, Hearing Officer

Cc: Dana Selover, Section Manager
Health Care Regulation and Quality Improvement

SUBJECT: Presiding Hearing Officer's Report on Rulemaking Hearing and Public Comment Period

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Hearing Officer Report

Date of hearing: April 16, 2024, via Microsoft Teams

Purpose of hearing and public comment period: The purpose of this hearing was to receive testimony and comments regarding the Oregon Health Authority (OHA), Public Health Division's proposed amendment, adoption, and repeal of rules in response to legislation considered and passed during the 2023 legislative session. This includes:

- Adoption of Oregon Administrative Rule (OAR) 333-503-0002, 333-503-0005, 333-503-0010, 333-503-0020, 333-503-0040, 333-503-0050 and 333-503-0060
- Repeal of OAR 333-501-0035, 333-501-0040, 333-501-0045, 333-510-0105, 333-510-0110, 333-510-0115, 333-510-0120, 333-510-0125, 333-510-0130, 333-510-0135 and 333-510-0140.
- Amendments to OAR 333-510-0002 and 333-510-0045.

Background:

HB 2697 (ORS 441.760-441.795), passed by the Oregon Legislature in June 2023, significantly changed Oregon's hospital staffing laws. The law went into effect on September 1, 2023, however certain sections of the law will not be in effect until later dates. Under HB 2697

OHA was required to issue administrative rules no later than January 1, 2024, that describe the procedure for receiving and processing hospital staffing complaints. On January 1, 2024, OHA issued temporary rules that addressed:

- Definitions,
- Filing Hospital Staffing Complaints,
- Processing Complaints,
- Hospital Staffing Enforcement,
- Hospital Staffing Plan Waiver and
- Nurse Staff Member Overtime

(Temporary Administrative Order PH 59-2023).

Earlier this year OHA began engagement with partners for a permanent rulemaking process to propose permanent rules to comply with statutory requirements and provide additional clarification where it is permitted under the law. Information about OHA's proposed permanent rules were posted in the Oregon Bulletin on April 1, 2024, seeking public comment.

Comments and Testimony received: In OHA's Notice of Proposed Rulemaking, OHA announced that individuals could submit written comments by sending them to OHA's designated email address for receiving such comments, or by fax or mail. In addition, OHA took public testimony at a public hearing that was held on April 16, 2024. OHA received oral testimony from two individuals at the public hearing and received five written comments. OHA staff have considered the written comments and public testimony received prior to the deadline on April 22, 2024 at 5:00 p.m PDT. The OHA, Public Health Division, Health Care Regulation and Quality Improvement (HCRQI) section thanks the respondents for their consideration of the proposed rule changes and for the comments received.

Themes of the testimony and written comments, in no particular order, are summarized below. Written comments are attached to this report as EXHIBIT 1.

- Several commenters expressed concern that OHA had not put in rule a definition of "assignment" or "task" as they relate to Certified Nursing Assistants (CNAs) noting that there may be additional patients, above the statutory maximum assignments, assigned to CNAs if OHA does not clarify these issues in the rule.

  Agency response: OHA understands that this topic is complex and may require additional discussion with organizational and state partners. Knowing that there is more work to be done on the issue, OHA will consider additional rulemaking as it relates to CNA patient maximum assignments. Hospital Nurse Staffing Committees may include definitions and clarifications of "CNA assignment" and " CNA task" in nurse staffing plans to resolve confusion.

- Several commenters noted that OHA had not proposed rules related to nurse-patient ratios in emergency departments (ED). Commenters expressed that without a specific definition of what a nurse assignment means in an ED, particularly as related to individuals who await diagnosis and treatment in EDs, there could be confusion and

therefore potential impacts to patient safety. In addition, some commenters suggested OHA include definitions of nurse assignment that aligns with administrative rules related to the Nurse Scope of Practice. Many commenters requested that OHA engage in additional rulemaking to clarify ratio calculation requirements in EDs.

Agency response: OHA understands that the Rules Advisory Committee and commenters are concerned about potential confusion and patient safety when it comes to Emergency Department ratios. The agency agrees that the topic would require additional conversation with organizational and state partners. To that end, OHA will consider engaging in additional rulemaking to work with partners to resolve the issue in rule. Hospital Nurse Staffing Committees may include definitions and clarifications of RN assignment in ED settings in nurse staffing plans to resolve confusion.

- One commenter recommended OHA allow, in the rule, patients to submit complaints about hospital staffing rather than restricting complaint submission to hospital staff and exclusive representatives.

  Agency response: OHA does not have the statutory authority to create a system for receiving complaints from individuals other than hospital staff members or exclusive representatives. Under ORS 441.791(2)(a), OHA is required to establish a method by which a hospital staff person or an exclusive representative of a hospital staff person may submit a complaint through OHA’s website regarding any violation listed in ORS 441.792.

- One commenter expressed concern about OHA's rule related to Nurse Staff Member Overtime, asserting that OHA's definition of "Emergency circumstances" is too narrow and should include circumstances such as family emergencies or traffic.

  Agency response: OHA's intention with the definition of "emergency circumstances" is to describe scenarios that affect the facility’s overall capacity to provide services. This includes an epidemic suffered by staff, unforeseen adverse weather conditions, or similar events that impact the facility or entire populations of an area or region. The intent of the definition is not to describe individual circumstances that affect an individual staff member's ability to come to work on a particular day. OHA's goal with the definition, as written, is to describe situations which, due to a widespread event, could affect hospital staffing to an extent where mandatory overtime could be required in accordance with the law.

EXHIBIT 1

From: KRISTINA Telanoff
To: Public Health Rules
Subject: HB 2697 - CNA Language
Date: Tuesday, April 16, 2024 5:15:05 AM

To Whom It May Concern,

My name is Kristina Telanoff, and I am a registered nurse at Kaiser Westside with twelve years of experience in acute care nursing.

I am writing to address concerns regarding HB 2697. The bill lacks clarity and sufficient guidance in determining the required number of Certified Nursing Assistants (CNAs) for each unit at any given time. This ambiguity could significantly hinder the identification and confirmation of violations, a critical responsibility entrusted to the Oregon Health Authority (OHA).

A more comprehensive rule, featuring precise language, is essential to establish clear expectations for both employers and employees. For instance, the language could be clarified to state: "Where applicable, each unit shall be staffed with 1 CNA for every 1-7 patients during the day shift and 1 CNA for every 1-9 patients during the night shift."

Thank you for considering these important matters.

Sincerely,
Kristina Telanoff RN BSN

"Our lives begin to end the day we become silent about things that matter." - Martin Luther King Jr.

From: Jen Packer
To: Public Health Rules
Subject: Notice of Rulemaking: Hospital staffing procedures and requirements to comply with HB 2697 (2023)
Date: Friday, April 19, 2024 10:46:49 AM

I am writing to express concerns regarding the Notice of Rulemaking: Hospital staffing procedures and requirements to comply with HB 2697, currently under development by the Oregon Health Authority.

1. Concerns regarding the draft language pertaining to Nursing Staff Member Overtime: The language in section (1)(c) appears overly specific, stating, "Any unforeseen event preventing replacement staff from approaching or entering the premises." While acknowledging the necessity of addressing unforeseen circumstances, it is imperative to recognize the diverse range of such events that could impede replacement staff, such as vehicular issues, sudden familial emergencies, or atypical traffic conditions. Failing to encompass a broader spectrum of unforeseen circumstances beyond those directly impeding replacement staff from hospital entry poses risks to patient welfare and may also jeopardize the professional licensure of Registered Nurses (RNs).

2. Concerns regarding Oregon State Board of Nursing, Chapter 851, Division 45: Section 851-045-0070 outlines conduct derogatory to the standards of nursing, notably mentioning scenarios where a nurse may leave or fail to complete an assignment without proper notification or fail to communicate crucial client information to authorized personnel. The proposed language, without accounting for situations where adequate replacement staff cannot report for duty due to unforeseen circumstances, could inadvertently condone scenarios where a nurse leaves an assignment without proper replacement or fails to convey essential information to substitute personnel. Such statutory language poses a risk to the licensure integrity of nurses.

It is crucial to emphasize that this correspondence does not condone scenarios where nurses are unduly required to work overtime. Rather, it underscores the importance of considering unforeseen circumstances beyond the scope of the current draft language.

Thank you for your attention to these concerns.

Jen Packer, MSN, RN, CENP, CPHRM (She/Her)
Chief Nursing Officer/Chief Operating Officer
OHSU Health Hillsboro Medical Center
e-mail: jen.packer@tuality.org
Phone: 503.681.1977

OFNHP
AFT LOCAL 5017

April 22, 2024

Regarding: Implementation of House Bill 2697 and Permanent Rulemaking

From: The Oregon Federation of Nurses and Health Professionals, AFT Local 5017

My name is Hannah Winchester and I am submitting comments today on behalf of the Oregon Federation of Nurses and Health Professionals (OFNHP). OFNHP represents over 6,000 nurses and health professionals.

In addition to being the Political Liaison for our union since 2023, I work in home health care as a physical therapist. We have been actively engaged in the Rulemaking Process to implement the staffing law from House Bill 2697 and look forward to the positive impacts this policy can have for our members.

As we implement the standards and ratios outlined in HB 2697, we must ensure that the definitions outlined by the Authority align with the intent of the Law. Looking to Certified Nursing Assistants, we need to address confusion between "task" and "assignment". The ambiguity around these terms is difficult to comprehend and may create confusion or an inability to comply with the law in high-stress environments. Lacking clear guidance and direction for patient care assignments, the process of violation determination/confirmation that OHA is tasked with enforcing becomes more complicated. A more detailed Rule would allow for clear expectations of the employer and the employee.

If we do not have clear definitions around these assignments, the ability of OHA to enforce violations of the staffing law and its intent could be significantly limited. It is critical that as this rule is finalized, we do our utmost to protect the workers and patients in the health care system. It is necessary that health care providers have decipherable and direct guidance when assigned a "patient care task" so they can confidently make decisions.

Medical care providers want to protect their patients and their colleagues. Anything that reads like a gray area does not cultivate that shared end goal and will have consequences in the field.

Thank you for your time and consideration, we look forward to continuing to engage in this process.

Hannah Winchester

Comments provided by Hannah Winchester

hwinchester@ofnhp.org ● 618.830.0762

ONA Oregon Nurses Association
Caring for Oregon

April 22, 2022

OHA, Public Health Division
Administrative Rules Coordinator
800 NE Oregon Street, Suite 930
Portland, Oregon 97232
publichealth.rules@odhsoha.oregon.gov

Re: Public Comments Re Notice of Proposed Rulemaking filed March 27, 2024, regarding HB 2697 (2023)

To Whom it May Concern:

I. INTRODUCTION

Staff and members of the Oregon Nurses Association (ONA) participated in the HB 2697 Rulemaking Advisory Committee (RAC) in March 2024 representing direct care nurses and clinicians. Our members are directly impacted by the new hospital staffing law passed via HB 2697.[1] We hereby submit the following comments pertaining to the proposed permanent rules[2] that the agency shared with the public following the RAC meetings. Our comments submitted now during this public comment period are in addition to the joint comments that we and the Oregon Association of Hospitals submitted as part of the RAC process. We are committed to continued partnership with the Oregon Health Authority and stakeholders to ensure successful implementation of this law including through any additional rulemaking.

II. DEFINITION OF "NURSE IS ASSIGNED"

An essential aspect of HB 2697 and ORS 441.765 is that the number of patients a nurse can be assigned has been capped in a wide variety of acute care hospital units. However, nowhere in the statute or rule is the phrase "nurse is assigned" defined. We believe that while this phrase has a definite meaning reflected in nursing practice and statute, a rule-based definition will help hospitals and nurses correctly apply these statutory maximums in applicable units. We propose that the phrase "nurse is assigned" for purposes of determining all nurse-to-patient staffing ratios under ORS 441.765 should reflect OSBN rules on nurse assignment and ongoing responsibility once that assignment commences. Relevant OSBN rules provide as follows:

[1] Codified at https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2023orlaw0507.pdf

[2] https://www.oregon.gov/oha/PH/PROVIDERPARTNERRESOURCES/HEALTHCAREPROVIDERSFACILITIES/HEALTHCAREHEALTHCAREREGULATIONQUALITYIMPROVEMENT/Documents/ProposedRules/OARProposedRulesHospitalStaffingHB2697NPRH.pdf

OAR 851-045-0060(3) provides:

(3) Standards related to the RN's responsibility for nursing practice. Through the application of scientific evidence, practice experience, and nursing judgment, the RN shall:

(a)Conduct comprehensive assessments by:

(A)Collecting data from observations, examinations, interviews, and records in an accurate and timely manner as appropriate to the client's needs and context of care;

(B)Validating data by utilizing available resources, including interactions with the client, with health care team members, and by accessing scientific literature;

(C)Distinguishing abnormal from normal data, sorting, selecting, recording, evaluating, synthesizing and communicating the data;

(D)Identifying potentially inaccurate, incomplete or missing data and reporting data discrepancies as appropriate for the context of care;

(E)Identifying signs and symptoms of deviation from current health status;

(F)Anticipating changes in client status; and

(G)Evaluating the data to identify problems or risks presented by the client.

(b)Develop reasoned conclusions that identify client problems or risks;

(c)Develop a client-centered plan of care based on analysis of the client's problems or risks that:

(A)Establishes priorities in the plan of care;

(B)Identifies measurable outcomes; and

(C)Includes nursing interventions to address prioritized diagnostic statements or reasoned conclusions.

(d)Implement the plan of care;

(e)Evaluate client responses to nursing interventions and progress toward identified outcomes; and

(f)Update and modify the plan of care based on ongoing client assessment and evaluation of data.

Clearly, there are a wide variety of functions within nursing practice that occur once a nurse has assumed an assignment. Just as clearly, once that nurse has agreed to that assignment, the nurse has an ongoing responsibility relative to that patient. OAR 851-045-0070(3)(b) provides for disciplinary action against a registered nurse if they fail "to take action to preserve or promote the client's safety based on nursing assessment and judgment." Moreover, OAR 851-045-0070(3)(i) prevents a nurse from "[l]eaving or failing to complete any nursing assignment, including a supervisory assignment, without notifying the appropriate personnel and confirming that nursing assignment responsibilities will be met."

We believe that the OHA definition should also reflect the wide variety of assigned care that constitutes a nursing assignment as well as the continuing nature of a nursing assignment which persists until there is a subsequent handoff of that patient. Under OSBN regulatory guidance, a nurse is assigned a patient and has responsibility for that patient when the nursing

personnel accepts "a patient assignment thereby agreeing to provide care and thereby agreeing to establishing a relationship with the patient."[3]

Therefore, we propose the following definition:
As used in ORS 441.765, the phrase "nurse is assigned" shall mean that a nurse has been given and has accepted responsibility for a patient within the Nursing Scope of Practice as defined in OAR 851-045-0060 and thereby is subject to the responsibilities of that nurse-patient relationship under OAR 851-04-00070 and in accordance with 678.010-678.445 and Oregon Administrative Rules, Chapter 851.

III. RULEMAKING IS NECESSARY TO ASSIST IN THE APPLICATION OF ORS 441.765 TO EMERGENCY DEPARTMENTS.

As discussed in both RAC meetings, OHA has the authority to write rules pertaining to the emergency department nurse-to-patient ratio, which is an average across the unit during a shift, but the agency has not proposed any rules on this component of the law. We request that the agency draft rules pertaining to two issues within this component: One, which patients are included in the ratio, and two, how the averaging is to be calculated. As stated in our previous joint comments, **we believe that OHA should open an additional rulemaking process** to write rules on this topic.

We plan to actively participate in and contribute to that process. To help the agency prepare for an additional round of rulemaking on this important and complex topic, we provide the following context:

A. Calculating the average

ORS 441.765 provides as follows, in relevant parts:

(2) With respect to direct care registered nurses, a nurse staffing plan must ensure that at all times:

(a) In an emergency department:

(A) A direct care registered nurse is assigned to not more than one trauma patient; and

(B) The ratio of direct care registered nurses to patients averages no more than one to four over a 12-hour shift and a single direct care registered nurse may not be assigned more than five patients at one time. Direct care registered nurses assigned to trauma patients may not be taken into account in determining the average ratio.

We believe that to determine whether a patient maximum under (B) has been reached, there are two essential components to that calculations:

1. Who counts as a patient of the nurse
2. How many of those patients a nurse has been assigned at one time during a shift.

[3] https://www.oregon.gov/osbn/documents/IS_PatientAbandonment.pdf

As described, both above and below, for the first question, we believe that who counts as a patient that a nurse is assigned is determined by application of a definition that reflects the ongoing responsibility that a nurse has for patients once they have begun nursing care. For the second issue, we believe the agency should design a method of calculating the weighted average nurse to patient ratio for nurses in a unit throughout a shift, as well after a shift has occurred, so that nurses and nurse managers can appropriately assign patients. Following is further explanation on both of these issues.

1. <u>Which patients are included in the ratio</u>

A. Defining when a nurse is assigned to care for a patient in an Emergency Department.

As described above, we propose the following definition of the phrase "nurse is assigned":

> As used in ORS 441.765, the phrase "nurse is assigned" shall mean that a nurse has been given and has accepted responsibility for a patient within the Nursing Scope of Practice as defined in OAR 851-045-0060 and thereby is subject to the responsibilities of that nurse-patient relationship under OAR 851-04500070 and in accordance with 678.010-678.445 and Oregon Administrative Rules, Chapter 851.

In addition to general application for all of ORS 441.175, adopting this definition is particularly critical in this context because a clear definition of "nurse is assigned" will assist the agency to adopt rules to assist in application of the emergency department maximum nurse to patient assignment ratio (as specifically called out in statute). As discussed above, a definition of the phrase "nurse is assigned" will also assist hospital staff to apply these nurse-to-patient assignment maximums. This definition aligns with OSBN rules and guidance and Federal Law on nurse assignments in Emergency Departments.

a. The Proposed Definition of "Nurse is Assigned" is Based on OSBN Rule and Guidance

As explained above, the definition of this phrase is explicitly based on and incorporates OSBN rule. In addition, it is in alignment with Oregon State Board of Nursing (OSBN)'s use of this phrase and this proposed definition also is consistent with Dr. Selover's statements in the RAC meeting that OHA rules must be consistent with the Oregon Nurse Practice Act and OSBN's rules.

For instance, this definition reflects the tone and tenor of the comments that OSBN's policy analyst provided in both RAC meetings. OSBN's position at the March 18 meeting expounds on why the proposed definition of "nurse is assigned" will facilitate a statutorily consistent application of patient maximums in Emergency Departments. During the RAC meeting, OSBN staff was asked by ONA representatives on the RAC whether when a nurse engages with a client, whether they have accepted an assignment under their nursing license

with that engagement. The example provided by ONA representative Matt Calzia was of a triage nurse in the emergency department who obtains vital signs, assesses the client, draws labs, implements institutional protocols, but then returns the patient to the waiting room. The consensus at the RAC between these nursing experts was that the nurse has accepted the assignment of that client and assigned responsibility continues until the hand off to another professional.

To summarize that conversation, any time a licensed nurse actively applies their professional knowledge, skills, abilities, experiences towards addressing a person's response to their health, a nurse and client professional relationship constituting an "assignment" is established regardless of the context of the alliance or the length of interaction. If the nurse accepts the assignment (sees/speaks to a client, asks pertinent questions, decides based on that information to draws labs, and assigns a triage level to the client) they have now started a relationship with the client and are responsible for those decisions. When a nurse speaks to a patient and provides advice of any kind, they have established a relationship with them and therefore would be subject to the Nurse Practice Act and all its requirements.

b. The Proposed Definition is Consistent with Other OSBN Guidance Relating to Nursing in an Emergency Department.

ORS 678.010-678.445 (Nurse Practice Act) and OAR Chapter 851 definitions also indicate that patients in the waiting room must be included in the nurse-to-patient emergency department ratios.

- "Assign" means directing and distributing, within a given work period, the work that each health care team member is already authorized by license or certification and organizational position description to perform. OAR 851-006-0010 (20)
- "Context of Care" means the environment where the practice of nursing occurs. Defining a specific context of care includes, but is not limited to, the following variables: the location where the client receives nursing services (e.g., practice setting), the licensee's practice role within the setting, the regulations of the setting that impact nursing services delivery, policies and procedures of the setting, professional and specialty nursing practice standards applicable to the nurse's practice role. OAR 851-006-0030 (18)
- "Hand off", means a transfer and acceptance of nursing services responsibility for a client achieved through effective communication. It is a synchronous process of passing client-specific information from one nurse to another for the purpose of ensuring continuity of services and the safety of the client. OAR 851-006-0080 (1)
- "Nursing Process" means the critical thinking model used by nurses that directs the development of or revision of the plan of care. The components of the nursing process are assessment, identification of client needs or risks, identification of expected outcomes, planning how care will be implemented, implementation of the plan, and evaluation of the plan for continuation or revision. OAR 851-006-0140 (17)

Under these definitions, for a registered nurse working in triage, the institution has assigned work that the nurse is authorized by their license. That assignment includes the provision of nursing services, specifically triaging patients, and the RN licensee is required to use the nursing process to assess the patient, create a plan for the patient, implement the plan, and evaluate the plan for revision. In this scenario the Context of Care is the emergency department waiting room, with a triage nurse (practice role) being the only clinician to have contact with the patient, EMTALA regulations (as described below) determine that the patient must receive care, and many hospitals have policies defining the frequency of reassessing vital signs. Therefore, the nurse is responsible for that patient and the plan the nurse created based on their assessment until they hand off the responsibility of nursing services to another individual who may accept the assignment because they are authorized by license to do so.

c. Federal law indicates that patients in the waiting room must be included in the nurse-to-patient emergency department ratios

As discussed above, for purposes of calculating ratios under ORS 441.765, a definition of patient for whom a "nurse is assigned" must include patients that a nurse has a legal obligation to provide care for under OSBN rules. This means that any patients to whom a nurse has applied the knowledge, skills, abilities, or experiences that mean the nurse has been "assigned" or has accepted an "assignment" are counted within the nurse-to-patient ratio for the emergency department and other units. OSBNs rules on this are in alignment with the Emergency Treatment and Active Labor Act (EMTALA), which requires all hospitals with emergency departments to evaluate every patient that enters; and if a patient is evaluated by a nurse, the "nurse is assigned" to the patient.

Assuming the patient has registered to be seen at the triage desk, the hospital is legally responsible for the patient pursuant to EMTALA. "Contrary to myth, the emergency physician (EP) on duty in the emergency department is not legally responsible for patients in the ED waiting room, for the simple reason that the physician has not yet interacted with the patient." Indeed, under EMTALA, under state tort law, some assert that the plaintiff could potentially sue the triage nurse.[4] The rule and statute should reflect the real responsibility that nurses have in this context when applying the maximum patient assignment limits of ORS 441.765.

d. **The Appropriate Calculation is a Weighted Average of a Nurse's Patient Assignment Over Their Entire Shift**

To determine whether the 4:1 to maximum average has been exceeded, one must simply determine if the average over a twelve-hour shift has been exceeded. We request that the agency adopt a calculation that reflects the number of patients a nurse has been assigned at any point during their shift and the amount of time that those differing patients loads have been placed on the nurse.

We believe that for purposes of determining compliance with ORS 441.765(2)(a)(B), the "average ratio of direct care registered nurses shall be determined by calculating a weighted

[4] Stacey Kusterbeck and Robert A. Bitterman, MD, JD, FACEP, "Who is legally responsible for patients in the waiting room?" https://www.reliasmedia.com/articles/149391-who-is-legally-responsible-for-patients-in-ed-waiting-room

average of patients a nurse is assigned using based on the duration of the differing patient loads over that shift. For instance, a nurse who has had three patients for six of the hours and five patients for the other six would have an average of four.

This calculation would then identify what additional patient assignments a nurse could incur without exceeding the safe patient assignment maximums over the remainder of their shift. This calculation would also be used retrospectively to determine if a hospital has in fact violated those maximums.

In addition, we believe that this maximum of an average of four patients should apply to any shift length that is shorter than twelve hours by extrapolation of that average patient load to an entire twelve-hour shift.

IV. CONCLUSION

We appreciate the opportunity to provide these comments on this critical issue to our members and to the State as whole. We believe our proposed rule language will enable healthcare workers and their employers to implement the maximum patient assignment limits found in ORS 441.765 effectively. These limits are intended to protect patients and nurses and therefore, must take into consideration the actual statutory responsibility that nurses have for patients in these Emergency Departments. It is crucial that these limits reflect the real-world ongoing responsibility and safe workload for nurses in all units. Our proposed modifications to the Agency's proposed rules will help accomplish these goals.

Respectfully,

Tom Doyle, General Counsel
Paige Spence, Director of Government Relations

From: Matt Swanson
To: Public Health Rules
Cc: Odalis Aguilar
Subject: Hospital Staffing Rules
Date: Monday, April 22, 2024 4:53:43 PM

On behalf of the more then 80,000 members of the Service Employees International Union in Oregon and the 38,000 members of Oregon AFSCME, including several thousand working in acute care hospitals, please accept this comment on the proposed rulemaking regarding House Bill 2697.

House Bill 2697 requires CNA-to-patient ratios of 7:1 during daytime and evening shifts and 11:1 at night. These limits, like those in long term care, are meant to ensure safe staffing for patients and workers alike. In discussions about the new patient limit, there has been confusion about what a CNA performing duties as part of a care plan means. In some cases, there is a belief that tasks do not equal patient assignments. This approach raises serious concerns about patient safety, conflicts with licensure standards and could impact the quality of care.

If OHA interprets that assigning CNAs tasks does not equal an assignment of a patient for the purposes of the law, it will undermine the effectiveness of the mandated limits and also place undue strain on healthcare workers. It is imperative that the language of House Bill 2697 be interpreted correctly to ensure patient safety is not compromised.

We urge you to consider the following principles in rulemaking or how you will enforce the standards in House Bill 2697.

1. The law is clear:
"A hospital may not assign a certified nursing assistant to more than seven patients at a time during a day or evening shift or to more than 11 patients during a night shift."

As a health care professional, a CNA will take on duties for patients as assigned. The language of the law is clear that during a day or evening shift, a CNA is limited to no more than 7 at a on days and evenings and during a night shift no more than 11. A CNA cannot abandon a patient because they are a "task".

2. When a CNA is assigned tasks, that is part of a patient's care plan and falls under licensure standards.
Oregon licenses health care workers to ensure safe and effective care. When a CNA takes on duties there are standards of professional care and responsibilities related to that patient's care during that shift that fall under assigned duties in OAR 831-063-0010 through 0035. This would also impact the registered nurses who are responsible for implementing a care plan. The language that OHA may consider for purposes of CNA ratios could look like:

CNA Ratios

A hospital may not assign a certified nursing assistant to more than seven patients at a time during a day or evening shift or to more than 11 patients at a time during a night shift. [2023 c.507 Â§8]

A certified nursing assistant is deemed to have been assigned a patient when they are performing the tasks and duties related to that patient's care during that shift that fall under assigned duties in OAR 831-063-0010 through 0035.

Minimum Staffing Generally

Patient needs must be the primary consideration in determining the number and categories of nursing personnel needed.

Shift Scheduling

(a) Unless defined in a collective bargaining agreement, the hospital staffing committee must determine the specific time frame for beginning and ending each consecutive eight-hour shifts for day, evening and night.

(b) Plans must specify departments where patients are assigned and be informed of the nursing assistant responsible for their care and services on each shift. The numbers listed in this rule represent the minimum staffing requirement. The numbers do not represent sufficient nursing staff. The number of staff necessary to meet the needs of each patient determines sufficient nursing staff.

We encourage the Health Authority to either write clear rules or ensure consistent interpretations of the CNA patient limits to keep Oregonians safe and healthy in our hospitals.
Sincerely,

Matt Swanson
SEIU Oregon State Council

Odalis Aguilar Aguilar
Oregon AFSCME

Matt Swanson
Political Strategist
SEIU Oregon State Council
(503)881-4529