

# Enrolled House Bill 2697

Sponsored by Representative NOSSE, Senator MANNING JR, Representative NELSON, Senator PATTERSON; Representatives ANDERSEN, BOWMAN, CHAICHI, DEXTER, FAHEY, GAMBA, GRAYBER, HOLVEY, HUDSON, KROPF, MCLAIN, REYNOLDS, RUIZ, SOSA, Senators CAMPOS, SOLLMAN (Presession filed.)

CHAPTER .....

AN ACT

Relating to staffing plans for health care provider entities; creating new provisions; amending ORS 441.020, 441.151, 441.152, 441.154, 441.155, 441.156, 441.164, 441.165, 441.171, 441.173, 441.175, 441.177 and 653.261; repealing ORS 441.157; and declaring an emergency.

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

## HOSPITAL STAFFING PLANS (Staffing Committees)

**SECTION 1.** ORS 441.151 is amended to read:

441.151. As used in ORS 441.152 to 441.177[.]:

(1) **“Charge nurse” means a direct care registered nurse who coordinates patient care responsibilities among nurses in a hospital unit.**

(2) **“Clinical care staff” means individuals who are licensed or certified by the state and who provide direct care.**

(3) **“Direct care” means any care provided by a licensed or certified member of the hospital staff that is within the scope of the license or certification of the member.**

(4) **“Direct care staff” means any of the following who are routinely assigned to patient care and are replaced when they are absent:**

(a) **Registered nurses, including registered nurses that do not assume primary responsibility for a patient’s care but have responsibility for consulting on patient care;**

(b) **Licensed practical nurses; or**

(c) **Certified nursing assistants.**

(5) **“Exclusive representative” means a labor organization that is:**

(a) **Certified as an exclusive representative by the National Labor Relations Board; or**

(b) **Certified as an exclusive representative by the Employment Relations Board under ORS 243.650 to 243.809.**

(6) **“Hospital” includes a hospital as described in ORS 442.015 and an acute inpatient care facility as defined in ORS 442.470.**

(7) **“Intensive care unit” means a unit of a hospital that provides care to critically ill patients who require advanced treatments such as mechanical ventilation, vasoactive in-**

fusions or continuous renal replacement treatment or who require frequent assessment and monitoring.

(8) "Intermediate care unit" means a unit of a hospital that provides progressive care, intensive specialty care or step-down care.

(9) "Licensed independent practitioner" has the meaning given that term in ORS 426.005.

(10) "Medical-surgical unit" means an inpatient unit in which general medical or post-surgical level of care is provided, excluding critical care units and any units referred to in sections 6, 7 and 9 of this 2023 Act.

(11) "Professional staff" means professional workers as defined in a collective bargaining agreement or, if no collective bargaining agreement exists, by the chief executive officer of the hospital or the chief executive officer's designee, consistent with National Labor Relations Board regulations.

(12) "Progressive care" means care provided to hospital patients who need more monitoring and assessment than patients on the medical-surgical units but whose conditions are not so unstable that they require care in an intensive care unit.

(13) "Service staff" means service workers as defined by a collective bargaining agreement or, if no collective bargaining agreement exists, by the chief executive officer of the hospital or the chief executive officer's designee, consistent with National Labor Relations Board regulations.

(14) "Step-down care" means care for patients transitioning out of the intensive care unit who require more care and attention than patients in a hospital's medical-surgical units.

(15) "Technical staff" means technical workers as defined in a collective bargaining agreement or, if no collective bargaining agreement exists, by the chief executive officer of the hospital or the chief executive officer's designee, consistent with National Labor Relations Board regulations.

**SECTION 2.** Sections 3 to 9, 12 and 28 of this 2023 Act are added to and made a part of ORS 441.152 to 441.177.

**SECTION 3.** (1)(a) For each hospital there shall be established a hospital professional and technical staffing committee. A hospital professional and technical staffing committee shall consist of an equal number of hospital professional and technical managers and professional and technical staff who work at the hospital.

(b) If the professional and technical staff who work at the hospital have an exclusive representative, the exclusive representative shall select the staff members of the hospital professional and technical staffing committee.

(c) If none of the professional and technical staff who work at the hospital have an exclusive representative, the professional and technical managers shall select the professional and technical staff members of the hospital professional and technical staffing committee.

(2) A hospital professional and technical staffing committee shall develop a written hospital-wide professional and technical staffing plan in accordance with subsection (5) of this section. In developing the staffing plan, the primary goal of the committee shall be to ensure that the hospital is staffed sufficiently to meet the health care needs of the patients in the hospital. The committee shall review and modify the staffing plan, as needed, in accordance with this section.

(3) A majority of the members of the hospital professional and technical staffing committee constitutes a quorum for the transaction of business.

(4) A hospital professional and technical staffing committee must have two cochairs. One cochair shall be a professional or technical manager elected by the members of the committee who are professional or technical managers. The other cochair shall be a professional or technical staff person elected by the members of the committee who are professional and technical staff.

(5)(a) A hospital professional and technical staffing committee shall develop a professional and technical staffing plan that is consistent with the approved nurse staffing plan for

the hospital and that takes into account the hospital service staffing plan for the hospital developed under section 4 of this 2023 Act.

(b) The hospital professional and technical staffing committee shall consider the following criteria when developing the professional and technical staffing plan:

- (A) The hospital's census;
- (B) Location of the patients;
- (C) Patient types and patient acuity;
- (D) National standards, if any;
- (E) The size of the hospital and square footage of the hospital;
- (F) Ensuring patient access to care; and
- (G) Feedback received during committee meetings from staff.

(6)(a) A hospital professional and technical staffing committee must adopt a professional and technical staffing plan by a majority vote of the members of the committee. If a quorum of members present at a meeting comprises an unequal number of professional and technical staff and professional and technical managers, only an equal number of staff and managers may vote. A staffing plan adopted by the committee must include a summary of the committee's consideration of the criteria in subsection (5) of this section and how the plan:

(A) Is consistent with the approved nurse staffing plan for the hospital; and

(B) Takes into account the hospital service staffing plan for the hospital that was developed in accordance with section 4 of this 2023 Act.

(b) If the hospital professional and technical staffing committee does not adopt a professional and technical staffing plan or adopts only a part of the staffing plan, either cochair may invoke the commencement of a 60-day period during which the committee shall continue to develop the staffing plan. If, by the end of the 60-day period, the committee does not adopt a staffing plan or adopts only part of a staffing plan, the committee shall submit the disputed plan or parts of the plan, as applicable, including a summary of the committee's consideration of the criteria in subsection (5) of this section, to the chief executive officer of the hospital. No later than 60 days after receiving the submission from the committee, the chief executive officer or the chief executive officer's designee shall decide the disputed plan or parts of the plan, as applicable, considering the summary of the committee's consideration of the criteria in subsection (5) of this section, and adopt the staffing plan or parts of the staffing plan that were not adopted by the committee. The chief executive officer or the chief executive officer's designee shall provide to the committee:

(A) A written explanation of the staffing plan or the parts of the staffing plan that were in dispute;

(B) The final written proposals of the members of the committee and the members' rationales for their proposals and the committee's summary of the committee's consideration of the criteria in subsection (5) of this section; and

(C) A summary of the consideration by the chief executive officer or the chief executive officer's designee of the criteria in subsection (5) of this section.

(c) If the hospital professional and technical staffing committee is unable to reach an agreement on the professional and technical staffing plan during the 60-day period invoked under paragraph (b) of this subsection, the members of the committee may extend deliberations for one additional 60-day period before the disputed plan or parts of the plan must be submitted to the chief executive officer or the chief executive officer's designee in accordance with paragraph (b) of this subsection. The deliberations may be extended under this paragraph only by a majority vote of the members of the committee. If a quorum of members present at a meeting comprises an unequal number of professional and technical staff and professional and technical managers, only an equal number of staff and managers may vote.

(d) A professional and technical staffing plan adopted by a hospital professional and technical staffing committee, a chief executive officer or the chief executive officer's

designee must include any staffing-related terms and conditions that were previously adopted through any applicable collective bargaining agreement, including any meal break and rest break requirements, unless a term or condition is in direct conflict with an applicable statute or administrative rule.

(7) A hospital professional and technical staffing committee must meet three times each year and at the call of either cochair, at a time and place specified by the cochairs.

(8)(a) Except as provided in paragraph (b) of this subsection, a hospital professional and technical staffing committee meeting must be open to:

(A) The hospital's professional and technical staff, who shall be offered the opportunity to provide feedback to the committee during the committee's meetings; and

(B) Other observers or presenters invited by either cochair.

(b) While the committee is deliberating or voting during a meeting, either cochair may exclude individuals described in paragraph (a) of this subsection.

(9) Minutes must be taken at every hospital professional and technical staffing committee meeting and the minutes must:

(a) Include all motions made and the outcome of all votes taken;

(b) Include a summary of all discussions; and

(c) Be made available in a timely manner to any of the hospital staff upon request.

(10) A manager shall release from their duties staff and managers who serve on the hospital professional and technical staffing committee and compensate the staff and managers who serve on the committee for time spent attending committee meetings.

(11) The hospital shall submit the professional and technical staffing plan adopted under subsection (6) of this section to the Oregon Health Authority no later than 30 days after adoption of the staffing plan and shall submit any subsequent changes to the authority no later than 30 days after the changes are adopted.

(12) Each hospital unit, as defined by the chief executive officer or the chief executive officer's designee, may deviate from the professional and technical staffing plan within a period of 12 consecutive hours, no more than six times during a rolling 30-day period, without being in violation of the staffing plan. The unit manager must notify the hospital professional and technical staffing committee cochairs no later than 10 days after each deviation. Each subsequent deviation during the 30-day period constitutes a separate violation under section 20 of this 2023 Act.

**SECTION 4.** (1)(a) For each hospital there shall be established a hospital service staffing committee. A hospital service staffing committee shall consist of an equal number of service staff managers and service staff who work at the hospital.

(b) If the service staff who work at the hospital have an exclusive representative, the exclusive representative shall select the service staff members of the hospital service staffing committee.

(c) If none of the service staff who work at the hospital have an exclusive representative, the service staff managers shall select the service staff members of the hospital service staffing committee.

(2) A hospital service staffing committee shall develop a written hospital-wide hospital service staffing plan in accordance with subsection (5) of this section. The committee shall review and modify the staffing plan as needed in accordance with this section.

(3) A majority of the members of the hospital service staffing committee constitutes a quorum for the transaction of business.

(4) A hospital service staffing committee must have two cochairs. One cochair shall be a service staff manager elected by the members of the committee who are service staff managers. The other cochair shall be a service staff person elected by the members of the committee who are service staff.

(5) A hospital service staffing committee shall develop a hospital service staffing plan that is consistent with the approved nurse staffing plan for the hospital and that takes into

account the professional and technical staffing plan for the hospital developed under section 3 of this 2023 Act. The committee shall consider the following criteria in developing the staffing plan:

- (a) The hospital's census;
- (b) Location of the patients;
- (c) Patient types and patient acuity;
- (d) National standards, if any;
- (e) The size of the hospital and square footage of the hospital;
- (f) Ensuring patient access to care; and
- (g) Feedback received during committee meetings from staff.

(6)(a) A hospital service staffing committee must adopt a hospital service staffing plan by a majority vote of the members of the committee. If a quorum of members present at a meeting comprises an unequal number of service staff and service staff managers, only an equal number of staff and managers may vote. A staffing plan adopted by the committee must include a summary of the committee's consideration of the criteria in subsection (5) of this section and how the plan:

(A) Is consistent with the approved nurse staffing plan for the hospital; and

(B) Takes into account the professional and technical staffing plan for the hospital that was developed in accordance with section 3 of this 2023 Act.

(b) If the hospital service staffing committee does not adopt a hospital service staffing plan or adopts only a part of the staffing plan, either cochair may invoke the commencement of a 60-day period during which the committee shall continue to develop the staffing plan. If, by the end of the 60-day period, the committee does not adopt a staffing plan or adopts only part of a staffing plan, the committee shall submit the disputed plan or parts of the plan, as applicable, including a summary of the committee's consideration of the criteria in subsection (5) of this section, to the chief executive officer of the hospital. No later than 60 days after receiving the submission from the committee, the chief executive officer or the chief executive officer's designee shall decide the disputed plan or parts of the plan, as applicable, considering the summary of the committee's consideration of the criteria in subsection (5) of this section, and adopt the staffing plan or parts of the staffing plan that were not adopted by the committee. The chief executive officer or the chief executive officer's designee shall provide to the committee:

(A) A written explanation of the staffing plan or the parts of the staffing plan that were in dispute;

(B) The final written proposals of the members of the committee and the members' rationales for their proposals and the committee's summary of the committee's consideration of the criteria in subsection (5) of this section; and

(C) A summary of the consideration by the chief executive officer or the chief executive officer's designee of the criteria in subsection (5) of this section.

(c) If the hospital service staffing committee is unable to reach an agreement on the hospital service staffing plan during the 60-day period invoked under paragraph (b) of this subsection, the members of the committee may extend deliberations for one additional 60-day period before the disputed plan or parts of the plan must be submitted to the chief executive officer or the chief executive officer's designee in accordance with paragraph (b) of this subsection. The deliberations may be extended under this paragraph only by a majority vote of the members of the committee. If a quorum of members present at a meeting comprises an unequal number of hospital service staff and hospital service managers, only an equal number of staff and managers may vote.

(d) A hospital service staffing plan adopted by a hospital service staffing committee, a chief executive officer or the chief executive officer's designee must include any staffing-related terms and conditions that were previously adopted through any applicable collective

bargaining agreement, including any meal break and rest break requirements, unless a term or condition is in direct conflict with an applicable statute or administrative rule.

(7) A hospital service staffing committee must meet three times each year and at the call of either cochair, at a time and place specified by the cochairs.

(8)(a) Except as provided in paragraph (b) of this subsection, a hospital service staffing committee meeting must be open to:

(A) The hospital's service staff, who shall be offered the opportunity to provide feedback to the committee during the committee's meetings; and

(B) Other observers or presenters invited by either cochair.

(b) While the committee is deliberating or voting during a meeting, either cochair may exclude individuals described in paragraph (a) of this subsection.

(9) Minutes must be taken at every hospital service staffing committee meeting and the minutes must:

(a) Include all motions made and the outcome of all votes taken;

(b) Include a summary of all discussions; and

(c) Be made available in a timely manner to any of the hospital staff upon request.

(10) A manager shall release from their duties staff and managers who serve on the hospital service staffing committee and compensate the staff and managers who serve on the committee for time spent attending committee meetings.

(11) The hospital shall submit the hospital service staffing plan adopted under subsection (6) of this section to the Oregon Health Authority no later than 30 days after adoption of the staffing plan and shall submit any subsequent changes to the authority no later than 30 days after the changes are adopted.

(12) Each hospital unit, as defined by the chief executive officer or the chief executive officer's designee, may deviate from the hospital service staffing plan within a period of 12 consecutive hours, no more than six times during a rolling 30-day period, without being in violation of the staffing plan. The unit manager must notify the hospital service staffing committee cochairs no later than 10 days after each deviation. Each subsequent deviation during the 30-day period constitutes a separate violation under section 20 of this 2023 Act.

**SECTION 5.** (1) A hospital nurse staffing committee, a professional and technical staffing committee and a hospital service staffing committee may, by mutual agreement, combine two or more of the staffing committees into one committee if:

(a) The structures of the committees to be combined meet the requirements of ORS 441.154 and section 3 or 4 of this 2023 Act, as applicable; and

(b) The members of the combined committee are selected from each committee by an exclusive representative or otherwise as provided in ORS 441.154 (1)(b) and (c), section 3 (1)(b) and (c) of this 2023 Act and section 4 (1)(b) and (c) of this 2023 Act.

(2) A majority of members of each staffing committee constitutes a quorum for the transaction of the business of the combined committee. If there is an unequal number of staff and management from each committee present at a meeting of the combined committee, only an equal number of staff and managers from each committee may vote.

(3) Disputes arising in combined committees shall be resolved using the applicable dispute resolution processes under section 3, 4 or 9 of this 2023 Act.

**SECTION 6.** (1) As used in this section, "unit" means a hospital unit as defined by the chief executive officer of the hospital or the chief executive officer's designee.

(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.

(b) In an intensive care unit, a direct care registered nurse is assigned to no more than two patients.

(c) In a labor and delivery unit, a direct care registered nurse is assigned to no more than:

(A) Two patients if the patients are not in active labor or experiencing complications; or

(B) One patient if the patient is in active labor or if the patient is at any stage of labor and is experiencing complications.

(d) In a postpartum, antepartum and well-baby nursery, a direct care registered nurse is assigned to no more than six patients, counting mother and baby each as separate patients.

(e) In a mother-baby unit, a direct care registered nurse is assigned to no more than eight patients, counting mother and baby each as separate patients.

(f) In an operating room, a direct care registered nurse is assigned to no more than one patient.

(g) In an oncology unit, a direct care registered nurse is assigned to no more than four patients.

(h) In a post-anesthesia care unit, a direct care registered nurse is assigned to no more than two patients.

(i) In an intermediate care unit, a direct care registered nurse is assigned to no more than three patients.

(j) In a medical-surgical unit, a direct care registered nurse is assigned to no more than five patients.

(k) In a cardiac telemetry unit, a direct care registered nurse is assigned to no more than four patients.

(L) In a pediatric unit, a direct care registered nurse is assigned to no more than four patients.

(3) Notwithstanding subsection (2) of this section, the direct care registered nurse-to-patient ratio for an individual patient shall be based on a licensed independent practitioner's classification of the patient, as indicated in the patient's medical record, regardless of the unit where the patient is being cared for.

(4) With the approval of a majority of the members of the hospital nurse staffing committee, a unit can deviate from the direct care registered nurse-to-patient ratios in subsection (2) of this section, in pursuit of innovative care models that were considered by the committee, by allowing other clinical care staff to constitute up to 50 percent of the registered nurses needed to comply with the applicable nurse-to-patient ratio. The staffing in an innovative care model must be reapproved by the committee every two years.

(5) A hospital shall provide for meal breaks and rest breaks in accordance with ORS 653.261, and rules implementing ORS 653.261, and any applicable collective bargaining agreement.

(6) Each hospital unit may deviate from a nurse staffing plan, except with respect to meal breaks and rest breaks, including the applicable registered nurse-to-patient ratios under this section, within a period of 12 consecutive hours, no more than six times during a rolling 30-day period, without being in violation of the nurse staffing plan. The unit manager must notify the hospital nurse staffing committee no later than 10 days after each deviation. Each subsequent deviation during the 30-day period constitutes a separate violation under section 20 of this 2023 Act.

(7) A hospital may not require a direct care registered nurse to be assigned to more patients than as specified in this section or in the nurse staffing plan approved by the hospital nurse staffing committee, as applicable.

(8) A charge nurse may:

(a) Take patient assignments, including patient assignments taken for the purpose of covering staff who are on meal breaks or rest breaks, in units with 10 or fewer beds;

(b) Take patient assignments, including patient assignments taken for the purpose of covering staff who are on meal breaks or rest breaks, in units with 11 or more beds with the approval of the hospital nurse staffing committee; and

(c) Be taken into account in determining the direct care registered nurse-to-patient ratio during periods when the charge nurse is taking patient assignments under this subsection.

**SECTION 7.** (1) As used in this section, “psychiatric unit” includes:

(a) Inpatient psychiatric units;

(b) Psychiatric geriatric units;

(c) Psychiatric pediatric units;

(d) Emergency departments that provide psychiatric emergency service, as defined by the Oregon Health Authority by rule; and

(e) The Oregon State Hospital.

(2) A psychiatric unit shall create a multidisciplinary subcommittee of the hospital nurse staffing committee consisting of staff from the unit. The subcommittee shall adopt the staffing plan for the psychiatric unit and shall be considered a hospital nurse staffing committee for purposes of:

(a) The adoption of a nurse staffing plan under ORS 441.154 and 441.155; and

(b) Provisions of section 9 of this 2023 Act related to:

(A) Dispute resolution through mandatory arbitration; and

(B) Determining the circumstances when the nurse-to-patient ratios in section 6 of this 2023 Act will not apply.

**SECTION 8.** 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.

**SECTION 9.** (1) Direct care registered nurse-to-patient staffing ratios under section 6 of this 2023 Act do not apply to the care of:

(a) Patients in intensive care or critical units in circumstances prescribed by the hospital nurse staffing committee;

(b) Emergency department patients who are in critical condition, until they are stable;

(c) Patients in swing beds, as defined by the Centers for Medicare and Medicaid Services;

(d) Patients, in inpatient units, who are ready for discharge but are facing a barrier to discharge, as indicated by a licensed independent practitioner in each patient’s medical record;

(e) Patients, including patients in an emergency department, who are located in adjacent rooms or the same room in the hospital and who are ready for discharge but are facing a barrier to discharge, as indicated by a licensed independent practitioner in each patient’s medical record;

(f) Patients in outpatient units that operate under a hospital’s license; or

(g) Patients in psychiatric units.

(2) For patients described in subsection (1) of this section, the hospital nurse staffing committee established under ORS 441.154 shall adopt a nurse staffing plan that is:

(a) Consistent with nationally recognized nurse staffing standards or benchmarks;

(b) Consistent with a tool that measures patient acuity and intensity and that has been calibrated to the applicable unit; or

(c) Approved after the committee has considered:

(A) The specialized qualifications and competencies of the staff in the unit;

(B) Historic acuity and intensity of the patients in the unit;

(C) Nationally recognized nurse staffing standards, if any; and

(D) Ensuring patient access to care.



(3)(a)(A) If the hospital nurse staffing committee does not adopt a nurse staffing plan under subsection (2) of this section, either cochair of the committee may invoke the commencement of a 60-day period during which the committee shall continue to develop the staffing plan.

(B) If by the end of the 60-day period, the hospital nurse staffing committee does not adopt a nurse staffing plan, the members of the committee may extend deliberations for one additional 60-day period only by a majority vote of the members of the committee.

(C) If a quorum of members present at a meeting comprises an unequal number of nursing staff and managers, only an equal number of staff and managers may vote.

(b) If by the end of the initial 60-day period of deliberations or by the end of the second 60-day period of deliberations, if deliberations are extended under subsection (3)(a)(B) of this section, the hospital nurse staffing committee does not adopt a nurse staffing plan, the cochairs of the committee shall submit the disputed plan or parts of the plan, as applicable, to the Oregon Health Authority, and the authority shall initiate expedited binding arbitration.

(c) The arbitrator shall be selected using alternating strikes by the cochairs or their designees from a list of seven drawn from the interest arbitrator panel maintained by the State Conciliation Service.

(d) Arbitration must be scheduled by mutual agreement no later than 30 calendar days after the cochairs submit the disputed nurse staffing plan or the disputed parts of the plan to the authority except as, by mutual agreement, the time may be extended.

(e) The arbitrator shall issue a decision on the nurse staffing plan or the disputed parts of the plan, as applicable, based on the written submissions of evidence and arguments and may not conduct an evidentiary hearing or allow discovery. The arbitrator's decision must be based on and within the parameters of the versions of the plan or the disputed parts of the plan submitted by the cochairs and must be within the staffing parameters.

(f) The arbitrator shall issue a decision no later than 60 days after the submission of evidence and written arguments.

(g) The hospital shall pay for the cost of the arbitrator.

**SECTION 10.** Section 11 of this 2023 Act is added to and made a part of ORS 653.010 to 653.261.

**SECTION 11.** (1) As used in this section:

(a)(A) "Employee" includes the following:

(i) Registered nurses who provide direct care as defined in ORS 441.151;

(ii) Professional staff as defined in ORS 441.151;

(iii) Technical staff, as defined in ORS 441.151; and

(iv) Service staff, as defined in ORS 441.151.

(B) "Employee" does not include an individual described in subparagraph (A) of this paragraph if the individual is covered by a collective bargaining agreement that includes a monetary remedy for missed meal periods and missed rest periods.

(b) "Exclusive representative" has the meaning given that term in ORS 441.151.

(2) An employee or an exclusive representative of an employee may enforce requirements for meal periods and rest periods adopted by rule by the Commissioner of the Bureau of Labor and Industries under ORS 653.261 by electing to file a complaint in one of the following ways:

(a) With the Oregon Health Authority in accordance with section 12 of this 2023 Act; or

(b) With the Commissioner of the Bureau of Labor and Industries in accordance with rules adopted pursuant to ORS 653.261.

(3) Upon the receipt of a complaint forwarded by the authority to the commissioner under section 12 of this 2023 Act, the commissioner shall proceed on the complaint in accordance with this section.

(4) The commissioner shall deem a complaint filed under subsection (2) of this section to be withdrawn if notified by an employer that:

(a) The employer received a grievance filed by the employee or an exclusive representative of the employee alleging the same violation as the violation alleged in a complaint filed under subsection (2) of this section; or

(b) The employee or the exclusive representative of the employee has filed a civil complaint against the employer alleging the same violation as the violation alleged in a complaint filed under subsection (2) of this section.

(5) If the commissioner receives a complaint under subsection (2)(a) of this section that was filed with the authority more than 60 days after the date of the missed meal period or missed rest period alleged in the complaint, the commissioner:

(a) Shall dismiss the complaint; and

(b) May not investigate the complaint or take any enforcement action with respect to the complaint.

(6)(a) Following an investigation of a complaint filed under subsection (2)(a) of this section, if the commissioner determines that a civil penalty is appropriate, the commissioner shall provide to the hospital, to the cochairs of the relevant staffing committee and to the exclusive representative, if any, of the complainant a notice, in accordance with ORS 183.415, 183.417 and 183.745, of the commissioner's intent to assess a civil penalty of \$200.

(b) A civil penalty imposed under this section:

(A) Constitutes the liquidated damages of the complainant for the missed meal period or rest period;

(B) May not be combined with a penalty assessed under ORS 653.256;

(C) Precludes any other penalty or remedy provided by law for the violation found by the commissioner; and

(D) Becomes final if an application for hearing is not requested in a timely manner.

(7)(a) The liquidated damages imposed under this section shall be paid to the complainant no later than 15 business days after the date on which the order becomes final by operation of law or 15 days after the issuance of a decision on appeal.

(b) A hospital shall provide to the commissioner proof of the payment of liquidated damages under paragraph (a) of this subsection no later than 30 days after making the payment.

(8) An employee's failure to file a complaint under subsection (2) of this section does not preclude the employee from pursuing any other remedy otherwise available to the employee under any provision of law.

(9) Nothing in this section creates a private cause of action.

**SECTION 12.** (1) As used in this section, "employee" and "exclusive representative" have the meanings given those terms in section 11 of this 2023 Act.

(2) The Oregon Health Authority shall implement a process for an employee or an employee's exclusive representative to file a complaint against a hospital under section 11 (2)(a) of this 2023 Act for missed meal periods and rest periods.

(3) The authority shall forward to the Commissioner of the Bureau of Labor and Industries any complaint filed under this section no later than 14 days after the complaint is filed.

(4) No later than 30 days after receiving a complaint under this section, the authority shall provide notice of the filing of the complaint to the following:

(a) The hospital;

(b) The cochairs of the relevant staffing committee established pursuant to ORS 441.154 or section 3 or 4 of this 2023 Act; and

(c) The exclusive representative, if any, of the employee filing the complaint.

**SECTION 13.** ORS 441.154 is amended to read:

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

- (A) Consist of an equal number of hospital nurse managers and direct care staff;
- (B) For *[that]* **the** portion of the committee composed of direct care staff, consist entirely of direct care registered nurses, except for one position to be filled by a direct care staff member who is not a registered nurse and whose services are covered by a written hospital-wide **nurse** staffing plan *[that meets the requirements of ORS 441.155]*; and
- (C) Include at least one direct care registered nurse from each hospital nurse specialty or unit.
- (b) If **any of** the direct care registered nurses who work at a hospital *[are represented under a collective bargaining agreement, the bargaining unit shall conduct a selection process by which the direct care registered nurses who work at the hospital select the members of the committee who are direct care registered nurses]* **have an exclusive representative, the exclusive representative shall select the direct care registered nurse members of the committee.**
- (c) If the direct care staff member who is not a registered nurse who works at a hospital *[is represented under a collective bargaining agreement, the bargaining unit shall use the selection process conducted pursuant to paragraph (b) of this subsection to select that member of the committee]* **has an exclusive representative, the exclusive representative shall select the direct care staff member of the committee who is not a registered nurse.**
- (d) **If none of the direct care registered nurses who work at a hospital are represented by an exclusive representative, the direct care registered nurses belonging to a hospital nurse specialty or unit shall select the members of the committee who are direct care registered nurses from the specialty or unit to serve on the committee.**
- (e) **If none of the direct care staff working at the hospital who are not registered nurses are represented by an exclusive representative, the direct care registered nurses who are members of the staffing committee shall select the direct care staff who are not registered nurses to serve on the committee.**
- [(d) If the direct care registered nurses who work at a hospital are not represented under a collective bargaining agreement, the direct care registered nurses belonging to a hospital nurse specialty or unit shall select each member of the committee who is a direct care registered nurse from that specialty or unit.]*
- (2) A hospital nurse staffing committee shall develop a written hospital-wide **nurse** staffing plan in accordance with **this section and ORS 441.155 and 441.156 and sections 6, 7, 8 and 9 of this 2023 Act.** The committee's primary goals in developing the staffing plan shall be to ensure that the hospital is staffed to meet the health care needs of patients. The committee shall review and modify the staffing plan in accordance with ORS 441.156.
- (3) A majority of the members of a hospital nurse staffing committee constitutes a quorum for the transaction of business.
- (4) A hospital nurse staffing committee shall have two cochair. One cochair shall be a hospital nurse manager elected by the members of the committee who are hospital nurse managers and one cochair shall be a direct care registered nurse elected by the members of the committee who are direct care staff.
- (5)*[(a)]* A decision made by a hospital nurse staffing committee must be made by a vote of a majority of the members of the committee. If a quorum of members **present at a meeting** comprises an unequal number of hospital nurse managers and direct care staff, only an equal number of hospital nurse managers and direct care staff may vote.
- [(b) If the committee is unable to reach an agreement on the staffing plan, either cochair of the committee may invoke a 30-day period during which the committee shall continue to develop the staffing plan. During the 30-day period, the hospital shall respond in a timely manner to reasonable requests from members of the committee for data that will enable the committee to reach a resolution. If at the end of the 30-day period, the committee remains unable to reach an agreement on the staffing plan, one of the cochairs shall notify the Oregon Health Authority of the impasse.]*
- [(c) Upon receiving notification under paragraph (b) of this subsection, the authority shall provide the committee with a mediator to assist the committee in reaching an agreement on the staffing plan.]*

*Mediation conducted under this paragraph must be consistent with the requirements for implementing and reviewing staffing plans under ORS 441.155 and 441.156.]*

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

(6) A hospital nurse staffing committee shall meet:

(a) At least once every [*three*] **four** months; and

(b) At any time and place specified by either cochair.

(7)(a) Subject to paragraph (b) of this subsection, a hospital nurse staffing committee meeting must be open to:

(A) The hospital nursing staff as observers; and

(B) Upon invitation by either cochair, other observers or presenters.

(b) At any time, either cochair may exclude persons described in paragraph (a) of this subsection from a committee meeting for purposes related to deliberation and voting.

(8) Minutes of hospital nurse staffing committee meetings must:

(a) Include motions made and outcomes of votes taken;

(b) Summarize discussions; and

(c) Be made available in a timely manner to hospital nursing staff and other hospital staff upon request.

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

**SECTION 14.** ORS 441.155 is amended to read:

441.155. (1) Each hospital shall implement [*the*] **a** written hospital-wide staffing plan for nursing services that:

**(a) Meets the requirements of this section and ORS 441.154 and 441.156 and sections 6, 7, 8 and 9 of this 2023 Act;**

**(b) Includes any staffing-related terms and conditions that were previously adopted through any applicable collective bargaining agreement, including meal breaks and rest breaks, unless a term or condition is in direct conflict with an applicable statute or administrative rule; and**

(c) Has been developed and approved by the hospital nurse staffing committee under ORS 441.154.

(2) [*The staffing plan*] **If the nurse-to-patient ratios in section 6 of this 2023 Act apply, the hospital nurse staffing committee:**

**(a) May consider:**

[(a)] (A) [*Must be based on*] The specialized qualifications and competencies of the nursing staff and [*provide for*] the skill mix and level of competency [*necessary*] **needed** to ensure that the hospital is staffed to meet the health care needs of patients;

[(b)] (B) [*Must be based on*] **The size of the hospital and** a measurement of hospital unit activity that quantifies the rate of admissions, discharges and transfers for each hospital unit and the time required for a direct care registered nurse belonging to a hospital unit to complete admissions, discharges and transfers for that hospital unit;

[(c) *Must be based on total diagnoses for each hospital unit and the nursing staff required to manage that set of diagnoses;*]

**(C) The unit's general and predominant patient population as defined by the Medicare Severity Diagnosis-Related Groups adopted by the Centers for Medicare and Medicaid Services, or by other measures for patients who are not classified in the Medicare Severity Diagnosis-Related Groups;**

[(d)] (D) [*Must be consistent with*] Nationally recognized evidence-based standards and guidelines established by professional nursing specialty organizations, **if any;**

[(e)] (E) [*Must recognize*] Differences in patient acuity; **and**

*[(f) Must establish minimum numbers of nursing staff, including licensed practical nurses and certified nursing assistants, required on specified shifts, provided that at least one registered nurse and one other nursing staff member is on duty in a unit when a patient is present;]*

*[(g) Must include a formal process for evaluating and initiating limitations on admission or diversion of patients to another hospital when, in the judgment of a direct care registered nurse or a nurse manager, there is an inability to meet patient care needs or a risk of harm to patients;]*

*[(h)] (F) [Must consider] Tasks not related to providing direct care[, including meal breaks and rest breaks]; and*

*[(i) May not base nursing staff requirements solely on external benchmarking data.]*

**(b) Must comply with section 6 of this 2023 Act.**

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

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

(b) A staffing plan does not create, preempt or modify a collective bargaining agreement or require a union or employer to bargain over the staffing plan while a collective bargaining agreement is in effect.

**(5) A hospital shall submit to the Oregon Health Authority a nurse staffing plan adopted in accordance with this section and section 9 of this 2023 Act and submit any changes to the plan no later than 30 days after approval of the changes by the hospital nurse staffing committee.**

**(6) A type A or a type B hospital may vary from the requirements of section 6 of this 2023 Act if the hospital nurse staffing committee of the hospital has voted to approve the variance. A type A hospital or type B hospital shall notify the authority of the variance through the authority's website. The notification to the authority shall include a statement signed by the cochairs of the committee, confirming that the committee voted to approve the variance. The variance becomes effective upon the submission of the notification to the authority and remains in effect for two years. A type A or type B hospital may renew a variance or notify the authority of a new variance as provided in this subsection.**

**SECTION 15. Notwithstanding ORS 441.155, prior to June 1, 2024, a hospital nurse staffing committee established under ORS 441.154 may approve a staffing plan that is:**

**(1) Consistent with nationally recognized nurse staffing standards or benchmarks;**

**(2) Consistent with a tool that measures patient acuity and intensity and that has been calibrated to the hospital unit, as defined by the hospital nurse staffing committee; or**

**(3) Approved after the hospital nurse staffing committee has considered:**

**(a) The specialized qualifications and competencies of the staff in the unit;**

**(b) The historic acuity and intensity of the patients in the unit;**

**(c) Nationally recognized nurse staffing standards, if any; and**

**(d) Patients' access to care.**

**SECTION 16. ORS 441.156 is amended to read:**

**441.156. (1) A hospital nurse staffing committee established pursuant to ORS 441.154 [shall review the written hospital-wide staffing plan developed by the committee under ORS 441.155] shall review the nurse staffing plan:**

**(a) At least once every year; and**

**(b) At any other date and time specified by either cochair of the committee.**

**(2) In reviewing a staffing plan, a hospital nurse staffing committee shall consider:**

**(a) Patient outcomes;**

(b) Complaints regarding staffing, including complaints about a delay in direct care nursing or an absence of direct care nursing;

(c) The number of hours of nursing care provided through a hospital unit compared with the number of patients served by the hospital unit during a 24-hour period;

(d) The aggregate hours of mandatory overtime worked by the nursing staff;

(e) The aggregate hours of voluntary overtime worked by the nursing staff;

(f) The percentage of shifts for each hospital unit for which staffing differed from what is required by the staffing plan; *[and]*

**(g) The number of meal breaks and rest breaks missed by direct care staff; and**

*[(g)]* **(h)** Any other matter determined by the committee to be necessary to ensure that the hospital is staffed to meet the health care needs of patients.

(3) Upon reviewing a staffing plan, a hospital nurse staffing committee *[shall:]*

*[(a) Report whether the staffing plan ensures that the hospital is staffed to meet the health care needs of patients; and]*

*[(b) may modify the staffing plan [as necessary to ensure that the hospital is staffed to meet the health care needs of patients].*

**SECTION 17.** Section 6 of this 2023 Act is amended to read:

**Sec. 6.** (1) As used in this section, “unit” means a hospital unit as defined by the chief executive officer of the hospital or the chief executive officer’s designee.

(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.

(b) In an intensive care unit, a direct care registered nurse is assigned to no more than two patients.

(c) In a labor and delivery unit, a direct care registered nurse is assigned to no more than:

(A) Two patients if the patients are not in active labor or experiencing complications; or

(B) One patient if the patient is in active labor or if the patient is at any stage of labor and is experiencing complications.

(d) In a postpartum, antepartum and well-baby nursery, a direct care registered nurse is assigned to no more than six patients, counting mother and baby each as separate patients.

(e) In a mother-baby unit, a direct care registered nurse is assigned to no more than eight patients, counting mother and baby each as separate patients.

(f) In an operating room, a direct care registered nurse is assigned to no more than one patient.

(g) In an oncology unit, a direct care registered nurse is assigned to no more than four patients.

(h) In a post-anesthesia care unit, a direct care registered nurse is assigned to no more than two patients.

(i) In an intermediate care unit, a direct care registered nurse is assigned to no more than three patients.

(j) In a medical-surgical unit, a direct care registered nurse is assigned to no more than *[five]* **four** patients.

(k) In a cardiac telemetry unit, a direct care registered nurse is assigned to no more than four patients.

(L) In a pediatric unit, a direct care registered nurse is assigned to no more than four patients.

(3) Notwithstanding subsection (2) of this section, the direct care registered nurse-to-patient ratio for an individual patient shall be based on a licensed independent practitioner’s classification of the patient, as indicated in the patient’s medical record, regardless of the unit where the patient is being cared for.

(4) With the approval of a majority of the members of the hospital nurse staffing committee, a unit can deviate from the direct care registered nurse-to-patient ratios in subsection (2) of this section, in pursuit of innovative care models that were considered by the committee, by allowing other clinical care staff to constitute up to 50 percent of the registered nurses needed to comply with the applicable nurse-to-patient ratio. The staffing in an innovative care model must be reapproved by the committee every two years.

(5) A hospital shall provide for meal breaks and rest breaks in accordance with ORS 653.261, and rules implementing ORS 653.261, and any applicable collective bargaining agreement.

(6) Each hospital unit may deviate from a nurse staffing plan, except with respect to meal breaks and rest breaks, including the applicable registered nurse-to-patient ratios under this section, within a period of 12 consecutive hours, no more than six times during a rolling 30-day period, without being in violation of the nurse staffing plan. The unit manager must notify the hospital nurse staffing committee no later than 10 days after each deviation. Each subsequent deviation during the 30-day period constitutes a separate violation under section 20 of this 2023 Act.

(7) A hospital may not require a direct care registered nurse to be assigned to more patients than as specified in this section or in the nurse staffing plan approved by the hospital nurse staffing committee, as applicable.

(8) A charge nurse may:

(a) Take patient assignments, including patient assignments taken for the purpose of covering staff who are on meal breaks or rest breaks, in units with 10 or fewer beds;

(b) Take patient assignments, including patient assignments taken for the purpose of covering staff who are on meal breaks or rest breaks, in units with 11 or more beds with the approval of the hospital nurse staffing committee; and

(c) Be taken into account in determining the direct care registered nurse-to-patient ratio during periods when the charge nurse is taking patient assignments under this subsection.

#### **(Enforcement)**

**SECTION 18.** ORS 441.171 is amended to read:

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

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

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

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

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

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

*[(a) Take evidence;]*

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

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

*[(d) Require answers to interrogatories; and]*

*[(e) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation.]*

(1) As used in this section, “valid complaint” means a complaint containing an allegation that, if assumed to be true, is a violation listed in section 20 of this 2023 Act.

(2) To ensure compliance with ORS 441.152 to 441.177, the Oregon Health Authority shall:

(a) Establish a method by which a hospital staff person or an exclusive representative of a hospital staff person may submit a complaint through the authority’s website regarding any violation listed in section 20 of this 2023 Act;

(b) No later than 14 days after receiving a complaint, send a copy of the complaint to the exclusive representative, if any, of the staff person or staff persons who filed the complaint;

(c) No later than 30 days after receiving a valid complaint of a violation listed in section 20 of this 2023 Act, open an investigation of the hospital and provide a notice of the investigation to the hospital and the cochairs of the relevant staffing committee established pursuant to ORS 441.154 or section 3 or 4 of this 2023 Act, and to the exclusive representative, if any, of the staff person or staff persons filing the complaint. The notice must include a summary of the complaint that does not include the complainant’s name or the specific date, shift or unit but does include the calendar week in which the complaint arose;

(d) Not later than 80 days after opening the investigation, conclude the investigation and provide a written report on the complaint to the hospital, the cochairs of the hospital staffing committee and the exclusive representative, if any, of the staff person or staff persons filing the complaint. The report:

(A) Shall include a summary of the complaint;

(B) Shall include the nature of the alleged violation or violations;

(C) Shall include the authority’s findings and factual bases for the findings;

(D) Shall include other information the authority determines is appropriate to include in the report; and

(E) May not include the name of any complainant, the name of any patient or the names of any individuals that the authority interviewed in investigating the complaint;

(e) If the authority issues a warning or imposes one or more civil penalties based on the report described in paragraph (d) of this subsection, provide a notice of the civil penalty that complies with ORS 183.415, 183.745 and 441.175 to the hospital, the cochairs of the applicable hospital staffing committee and the exclusive representative, if any, of the staff person or staff persons who filed the complaint; and

(f) In determining whether to impose a civil penalty, consider all relevant evidence, including but not limited to witness testimony, written documents and the observations of the investigator.

(3) A hospital subject to a valid complaint shall provide to the authority, no later than 20 days after receiving the notice under subsection (1)(c) of this section:

(a) The staffing plan that is the subject of the complaint;

(b) If relevant to the complaint, documents that show the scheduled staffing and the actual staffing on the unit that is the subject of the complaint during the period of time specified in the complaint; and

(c) Documents that show the actions described in ORS 441.175 (4), if any, that the hospital took to comply with the staffing plan or to address the issue raised by the complaint.

(4) In conducting an investigation, the authority shall review any document:

(a) Related to the complaint that is provided by the exclusive representative that filed the complaint or by the hospital staff person who filed the complaint and the person’s exclusive representative, if any; and

(b) Provided by the hospital in response to the complaint.

(5) In conducting an investigation, the authority may:

(a) Make an on-site inspection of the unit that is the subject of the complaint;

(b) Interview a manager for the unit and any other staff persons with information relevant to the complaint;

(c) Interview the cochairs of the relevant staffing committee;



(d) Interview the staff person or staff persons who filed the complaint unless the individual declines to be interviewed; and

(e) Compel the production of books, papers, accounts, documents and testimony pertaining to the complaint, other than documents that are privileged or not otherwise subject to disclosure.

(6) A complaint by a hospital staff person or the staff person's exclusive representative must be filed no later than 60 days after the date of the violation alleged in the complaint. The authority may not investigate a complaint or take any enforcement action with respect to a complaint that has not been filed timely.

**SECTION 19.** ORS 441.175 is amended to read:

441.175. (1) The Oregon Health Authority [*may*] **shall** impose civil penalties in the manner provided in ORS 183.745 [*or suspend or revoke a license of a hospital*] for a violation [*of any provision of ORS 441.152 to 441.177*] **listed in section 20 of this 2023 Act.** [*The authority shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for a violation of ORS 441.152 to 441.177 when there is a reasonable belief that safe patient care has been or may be negatively impacted, except that a civil penalty may not exceed \$5,000.*]

**(2) The authority may suspend or revoke the license of a hospital, in the manner provided in ORS 441.030, for a violation described in section 20 of this 2023 Act.**

(3) Each violation of a written hospital-wide staffing plan shall be considered a separate violation **and there is no cap on the times that a penalty may be imposed for a repeat of a violation.** [*Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030.*]

**(4) The authority may not impose a civil penalty for a violation of a nurse staffing plan, a hospital professional and technical staffing plan or a hospital service staffing plan if the hospital took the following actions:**

(a) Scheduled staff in accordance with the staffing plan;

(b) Sought volunteers from all available qualified employees to work extra time;

(c) Contacted qualified employees who made themselves available to work extra time;

(d) Solicited per diem staff to work; and

(e) Contacted contracted temporary agencies, that the hospital regularly uses, if temporary staff from such agencies are permitted to work in the hospital by law or any applicable collective bargaining agreement.

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

**SECTION 20. (1) Following the receipt of a complaint and completion of an investigation described in ORS 441.171, for a violation described in subsection (2) of this section, the Oregon Health Authority shall:**

(a) Issue a warning for the first violation in a four-year period;

(b) Impose a civil penalty of \$1,750 for the second violation of the same provision in a four-year period;

(c) Impose a civil penalty of \$2,500 for the third violation of the same provision in a four-year period; and

(d) Impose a civil penalty of \$5,000 for the fourth and subsequent violations of the same provision in a four-year period.

**(2) The authority shall take the actions described in subsection (1) of this section for the following violations by a hospital of ORS 441.152 to 441.177:**

(a) Failure to establish a hospital professional and technical staffing committee or a hospital service staffing committee;

(b) Failure to create a professional and technical staffing plan or a hospital service staffing plan;

(c) Failure to adopt a nurse staffing plan by agreement or after binding arbitration;

(d) Failure to comply with the staffing level in the nurse staffing plan, including the nurse-to-patient staffing ratios prescribed in section 6 of this 2023 Act, if applicable, and the failure to comply is not an allowed deviation described in section 6 (6) of this 2023 Act;

(e) Failure to comply with the staffing level in the professional and technical staffing plan or the hospital service staffing plan and the failure to comply is not an allowed deviation as described in section 3 (12) or 4 (12) of this 2023 Act;

(f) Failure to comply with the staffing requirements for certified nursing assistants in section 8 of this 2023 Act and the failure is not an allowed deviation under section 4 (12) of this 2023 Act; or

(g) Requiring a nursing staff, except as allowed by ORS 441.166, to work:

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

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

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

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

(3) If a staff person at a hospital is unable to attend a staffing committee meeting because the staff person was not released from other hospital duties to attend the meeting, in violation of ORS 441.154 (9) or section 3 (10) or 4 (10) of this 2023 Act, the authority shall:

(a) Issue a warning for the first violation; and

(b) Impose a civil penalty of \$500 for a second and each subsequent violation.

(4) A direct care staff person, a hospital professional or technical staff person or a hospital service staff person, or an exclusive representative of a direct care staff person, a hospital professional or technical staff person or a hospital service staff person, may elect to enforce meal break and rest break violations under ORS 653.261 by filing a complaint with the authority in accordance with ORS 441.171.

**SECTION 21.** ORS 441.177 is amended to read:

441.177. The Oregon Health Authority shall post on a website maintained by the authority:

(1) *[Reports of audits described in ORS 441.157]* **The hospital staffing plans received by the authority under ORS 441.152 to 441.177;**

(2) Any report, **described in ORS 441.171 (2)(d)**, made pursuant to an investigation of *[whether a hospital is in compliance with ORS 441.152 to 441.177]* **a complaint for which the authority issued a warning or imposed a civil penalty under section 20 of this 2023 Act;**

*[(3) Any order requiring a hospital to implement a plan to correct a violation of ORS 441.152 to 441.177;]*

*[(4)]* (3) Any order *[imposing a civil penalty against a hospital or]* suspending or revoking the license of a hospital pursuant to ORS 441.175; and

*[(5)]* (4) Any other matter recommended by the Nurse Staffing Advisory Board established under ORS 441.152.

**SECTION 22.** ORS 441.020 is amended to read:

441.020. (1) Licenses for health care facilities, except long term care facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.

(4)(a) Each application submitted to the Oregon Health Authority must be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of the Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under and enforcing ORS 441.015 to 441.087 **and 441.152 to 441.177;** or

(b) Each application submitted to the Department of Human Services must be accompanied by the application fee or the annual renewal fee, as applicable. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of the Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under and enforcing ORS 431A.050 to 431A.080 and 441.015 to 441.087.

(5) Except as otherwise provided in subsection (8) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be \$1,250.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,850.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$3,800.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$6,525.

(e) Two hundred or more beds, but fewer than 500 beds, the annual license fee shall be \$8,500.

(f) Five hundred or more beds, the annual license fee shall be \$12,070.

(6) A hospital shall pay an annual fee of \$750 for each hospital satellite indorsed under the hospital's license.

(7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority determines that charging the standard fee constitutes a significant financial burden to the facility.

(8) For long term care facilities with:

(a) One to 15 beds, the application fee shall be \$2,000 and the annual renewal fee shall be \$1,000.

(b) Sixteen to 49 beds, the application fee shall be \$3,000 and the annual renewal fee shall be \$1,500.

(c) Fifty to 99 beds, the application fee shall be \$4,000 and the annual renewal fee shall be \$2,000.

(d) One hundred to 150 beds, the application fee shall be \$5,000 and the annual renewal fee shall be \$2,500.

(e) More than 150 beds, the application fee shall be \$6,000 and the annual renewal fee shall be \$3,000.

(9) For ambulatory surgical centers, the annual license fee shall be:

(a) \$1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) \$1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) \$1,000 for moderate complexity noncertified ambulatory surgical centers.

(10) For birthing centers, the annual license fee shall be \$750.

(11) For outpatient renal dialysis facilities, the annual license fee shall be \$2,000.

(12) The authority shall prescribe by rule the fee for licensing an extended stay center, not to exceed:

(a) An application fee of \$25,000; and

(b) An annual renewal fee of \$5,000.

(13) During the time the licenses remain in force, holders are not required to pay inspection fees to any county, city or other municipality.

(14) Any health care facility license may be indorsed to permit operation at more than one location. If so, the applicable license fee shall be the sum of the license fees that would be applicable if each location were separately licensed. The authority may include hospital satellites on a hospital's license in accordance with rules adopted by the authority.

(15) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(16) Notwithstanding subsection (4) of this section, all moneys received for approved applications pursuant to subsection (8) of this section shall be deposited in the Quality Care Fund established in ORS 443.001.

(17) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the authority by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

**SECTION 23.** ORS 441.164 is amended to read:

441.164. Upon request of a hospital, the Oregon Health Authority may grant a variance to the written hospital-wide staffing plan requirements described in ORS [441.155] **441.152 to 441.177** if the variance is necessary to ensure that the hospital is staffed to meet the health care needs of patients.

**SECTION 24.** ORS 441.165 is amended to read:

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

(2) Notwithstanding ORS [441.155 and 441.156] **441.152 to 441.177**, a hospital is not required to follow a written hospital-wide staffing plan developed and approved by the hospital nurse staffing committee under ORS 441.154 upon the occurrence of:

(a) A national emergency or state emergency declared under ORS 401.165 to 401.236 or 433.441 to 433.452 requiring the implementation of a facility disaster plan and crisis standards of care;

(b) Sudden unforeseen adverse weather conditions; or

(c) An infectious disease epidemic suffered by hospital staff.

(3)(a) No later than 30 days after a hospital deviates from a written hospital-wide staffing plan under subsection (2)(a) of this section, the hospital incident command shall report to the cochairs of the hospital nurse staffing committee established under ORS 441.154 an assessment of the nurse staffing needs arising from the national or state emergency declaration.

(b) Upon receipt of the report described in paragraph (a) of this subsection, the hospital nurse staffing committee shall convene to develop a contingency nurse staffing plan to address the needs arising from the national or state emergency declaration. The contingency nurse staffing plan must include crisis standards of care.

(c) The hospital's deviation from the written hospital-wide staffing plan may not be in effect for more than 90 days without the approval of the hospital nurse staffing committee.

(4) Upon the occurrence of a national or state emergency declaration or circumstances not described in subsection (2) of this section, either cochair of the hospital nurse staffing committee may require the hospital nurse staffing committee to meet to review and potentially modify the staffing plan in response to the emergency declaration or circumstances.

**SECTION 25.** ORS 441.152 is amended to read:

441.152. (1)(a) The Nurse Staffing Advisory Board is established within the Oregon Health Authority, consisting of 12 members appointed by the Governor.

(b) Of the 12 members of the board:

(A) Six must be hospital nurse managers;

(B) Five must be direct care registered nurses who work in hospitals; and

(C) One must be either a direct care registered nurse who works in a hospital or a direct care staff member who is not a registered nurse and whose services are covered by a written hospital-wide staffing plan that meets the requirements of ORS 441.155.

(c) To the extent practicable, board members shall be appointed to ensure that the board is represented by members from hospitals where direct care staff are represented under a collective bargaining agreement and hospitals where direct care staff are not represented by a collective bargaining agreement and by hospitals of different sizes, types and geographic location.

(d) The term of office of each board member is three years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins January 1 next following. A member is eligible for reappointment, but may not serve more than two consecutive terms. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(2) The board shall:

(a) Provide advice to the authority on the administration of ORS 441.152 to 441.177;

(b) Identify trends, opportunities and concerns related to nurse staffing;

(c) Make recommendations to the authority on the basis of those trends, opportunities and concerns; and

(d) Review the authority's enforcement powers and processes under ORS [441.157,] 441.171 and 441.177.

(3)(a) Upon request, the authority shall provide the board with written hospital-wide staffing plans implemented under ORS 441.155, reviews conducted under ORS 441.156[ *information obtained during an audit under ORS 441.157*] and complaints filed and investigations conducted as described in ORS 441.171.

(b) The authority may not provide the board with any information under paragraph (a) of this subsection that is identifiable with a specific hospital unless the information is publicly available.

(c) Hospital-wide staffing plans provided to the board under this section are confidential and not subject to public disclosure.

(4) A majority of the members of the board constitutes a quorum for the transaction of business.

(5) The board shall have two cochairs selected by the Governor. One cochair shall be a hospital nurse manager and one cochair shall be a direct care registered nurse.

(6) Official action by the board requires the approval of a majority of the members of the board.

(7) The board shall meet:

(a) At least once every three months; and

(b) At any time and place specified by the call of both cochairs.

(8) The board may adopt rules necessary for the operation of the board.

(9) The board shall submit a report on the administration of ORS 441.152 to 441.177 in the manner provided in ORS 192.245 to an interim committee of the Legislative Assembly related to health no later than September 15 of each year. The board may include in its report recommendations for legislation.

(10) Members of the board are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses shall be paid out of funds appropriated to the authority for purposes of the board.

**SECTION 26.** ORS 441.173 is amended to read:

441.173. A hospital shall keep and maintain records necessary to demonstrate compliance with ORS 441.152 to 441.177. [*For purposes of this section, the Oregon Health Authority shall adopt rules specifying the content of the records and the form and manner of keeping, maintaining and disposing of the records.*] A hospital must provide records kept and maintained under this section to the **Oregon Health** Authority upon request.

**SECTION 27.** ORS 653.261 is amended to read:

653.261. (1)(a) The Commissioner of the Bureau of Labor and Industries may adopt rules prescribing such minimum conditions of employment, excluding minimum wages, in any occupation as may be necessary for the preservation of the health of employees. The rules may include, but are not limited to, minimum meal periods and rest periods, and maximum hours of work, but not less than eight hours per day or 40 hours per workweek; however, after 40 hours of work in one workweek overtime may be paid, but in no case at a rate higher than one and one-half times the regular rate of pay of the employees when computed without benefit of commissions, overrides, spiffs and similar benefits.

(b) As used in this subsection, "workweek" means a fixed period of time established by an employer that reflects a regularly recurring period of 168 hours or seven consecutive 24-hour periods. A workweek may begin on any day of the week and any hour of the day and need not coincide with a calendar week. The beginning of the workweek may be changed if the change is intended to be permanent and is not designed to evade overtime requirements.

(2) Rules adopted by the commissioner pursuant to subsection (1) of this section do not apply to individuals employed by this state or a political subdivision or quasi-municipal corporation thereof if other provisions of law or collective bargaining agreements prescribe rules pertaining to

conditions of employment referred to in subsection (1) of this section, including meal periods, rest periods, maximum hours of work and overtime.

(3) **Except as provided in section 11 (2)(a) of this 2023 Act**, rules adopted by the commissioner pursuant to subsection (1) of this section regarding meal periods and rest periods do not apply to nurses who provide acute care in hospital settings if provisions of collective bargaining agreements entered into by the nurses prescribe rules concerning meal periods and rest periods.

(4)(a) The commissioner shall adopt rules regarding meal periods for employees who serve food or beverages, receive tips and report the tips to the employer.

(b) In rules adopted by the commissioner under paragraph (a) of this subsection, the commissioner shall permit an employee to waive a meal period. However, an employer may not coerce an employee into waiving a meal period.

(c) Notwithstanding ORS 653.256 (1), in addition to any other penalty provided by law, the commissioner may assess a civil penalty not to exceed \$2,000 against an employer that the commissioner finds has coerced an employee into waiving a meal period in violation of this subsection. Each violation is a separate and distinct offense. In the case of a continuing violation, each day's continuance is a separate and distinct violation.

(d) Civil penalties authorized by this subsection shall be imposed in the manner provided in ORS 183.745. All sums collected as penalties under this subsection shall be applied and paid over as provided in ORS 653.256 (4).

## **IMPLEMENTATION**

**SECTION 28. (1) The Oregon Health Authority may adopt rules necessary to carry out ORS 441.152 to 441.177 only with respect to:**

**(a) The processing of complaints under ORS 441.171;**

**(b) The processing of complaints regarding meal breaks and rest breaks under section 12 of this 2023 Act;**

**(c) The requirements for nurse-to-patient ratios in emergency departments under section 6 (2)(a) of this 2023 Act; and**

**(d) The provisions of ORS 441.166 (1) and (8)(b).**

**(2) The authority shall convene a subcommittee of the Nurse Staffing Advisory Board established in ORS 441.152 to advise the authority in the adoption of rules under this section. The subcommittee must have equal representation of hospital employees and hospital managers and shall include individuals representing labor organizations and organizations representing hospitals.**

**SECTION 29. (1)(a) A nurse staffing plan that is in effect on the effective date of this 2023 Act that does not comply with ORS 441.152 to 441.177 continues in force until a hospital nurse staffing committee revises the plan or develops a new plan. The committee shall revise the plan, or develop a new plan, to comply with ORS 441.152 to 441.177 no later than June 1, 2024.**

**(b) A hospital must be in compliance with section 6 of this 2023 Act no later than June 1, 2024.**

**(c) A nurse staffing plan that is in effect on the effective date of this 2023 Act and that complies with ORS 441.152 to 441.177 remains in effect until revised in accordance with ORS 441.154.**

**(2) A hospital must establish a hospital professional and technical staffing committee and a hospital service staffing committee in accordance with sections 3 and 4 of this 2023 Act no later than December 31, 2024.**

**(3)(a) Except as provided in subsection (4) of this section, the Oregon Health Authority may begin the enforcement of:**

**(A) Sections 3 and 4 of this 2023 Act on the date specified in subsection (2) of this section;**

**(B) Section 6 of this 2023 Act on the date specified in subsection (1) of this section; and**

(C) The amendments to ORS 441.020, 441.151, 441.152, 441.154, 441.155, 441.156, 441.164, 441.165, 441.171, 441.173, 441.175 and 441.177 by sections 1, 13, 14, 16, 18, 19 and 21 to 26 of this 2023 Act on the effective date of this 2023 Act.

(b) The authority shall adopt rules to implement the process for receiving complaints under ORS 441.171 and section 12 of this 2023 Act no later than January 1, 2024. Complaints may be filed for any violation occurring on or after the effective date of this 2023 Act.

(4) The authority may not impose civil penalties under section 20 of this 2023 Act for violations that occur before June 1, 2025.

#### FINANCING

**SECTION 30.** Notwithstanding any other provision of law, the General Fund appropriation made to the Bureau of Labor and Industries by section 1, chapter \_\_\_\_\_, Oregon Laws 2023 (Enrolled Senate Bill 5515), for the biennium beginning July 1, 2023, is increased by \$188,577 for the implementation and staffing costs to enforce meal break and rest break violations under section 18 of this 2023 Act.

**SECTION 31.** In addition to and not in lieu of any other appropriation, there is appropriated to the Oregon Health Authority, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$1,980,571, which may be expended to investigate complaints and support the Oregon State Hospital staffing committees.

#### REPEALS

**SECTION 32.** (1) ORS 441.157 is repealed.

(2) Section 15 of this 2023 Act is repealed on June 2, 2024.

#### OPERATIVE DATE

**SECTION 33.** (1) The amendments to section 6 of this 2023 Act by section 17 of this 2023 Act become operative on July 1, 2026.

(2)(a) Section 11 of this 2023 Act and the amendments to ORS 653.261 by section 27 of this 2023 Act become operative on June 1, 2025.

(b) The Commissioner of the Bureau of Labor and Industries may take any action before the operative date specified in this subsection that is necessary for the commissioner to exercise, on and after the operative date specified in this subsection, the duties, functions and powers conferred on the commissioner by section 11 of this 2023 Act and the amendments to ORS 653.261 by section 27 of this 2023 Act.

#### CAPTIONS

**SECTION 34.** The unit captions used in this 2023 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2023 Act.

#### EFFECTIVE DATE

**SECTION 35.** This 2023 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect September 1, 2023.

**Passed by House June 14, 2023**

.....  
Timothy G. Sekerak, Chief Clerk of House

.....  
Dan Rayfield, Speaker of House

**Passed by Senate June 22, 2023**

.....  
Rob Wagner, President of Senate

**Received by Governor:**

.....M,....., 2023

**Approved:**

.....M,....., 2023

.....  
Tina Kotek, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2023

.....  
Secretary of State