

House Bill 2747

Sponsored by Representative GOODWIN (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals certain requirements with respect to hospital nurse staffing committees and plans. Requires Oregon Health Authority to provide processes for hospital to request variance, appeal denial of variance and request additional staff to meet nurse-to-patient ratio if authority adopts nurse staffing standard based on nurse-to-patient ratio.

A BILL FOR AN ACT

1
2 Relating to hospital nurse staffing; creating new provisions; amending ORS 441.030, 441.152, 441.154,
3 441.164 and 441.166; and repealing ORS 441.155, 441.156, 441.157, 441.165, 441.169, 441.171,
4 441.173, 441.175 and 441.177.

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

6 **SECTION 1.** ORS 441.152 is amended to read:

7 441.152. (1)(a) The Nurse Staffing Advisory Board is established within the Oregon Health Au-
8 thority, consisting of 12 members appointed by the Governor.

9 (b) Of the 12 members of the board:

10 (A) Six must be hospital nurse managers;

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

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

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

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

24 (2) The board shall:

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

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

27 (c) Make recommendations to the authority on the basis of those trends, opportunities and
28 concerns[; *and*]

29 [(d) *Review the authority's enforcement powers and processes under ORS 441.157, 441.171 and*
30 *441.177*].

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

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

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

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

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

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

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

13 (7) The board shall meet:

14 (a) At least once every three months; and

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

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

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

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

25 **SECTION 2.** ORS 441.154 is amended to read:

26 441.154. (1)(a) For each hospital there shall be established a hospital nurse staffing committee.
 27 Each committee shall:

28 (A) Consist of an equal number of hospital nurse managers and direct care staff;

29 (B) For that portion of the committee composed of direct care staff, consist entirely of direct
 30 care registered nurses, except for one position to be filled by a direct care staff member who is not
 31 a registered nurse and whose services are covered by a written hospital-wide staffing plan [*that*
 32 *meets the requirements of ORS 441.155*]; and

33 (C) Include at least one direct care registered nurse from each hospital nurse specialty or unit.

34 (b) If the direct care registered nurses who work at a hospital are represented under a collective
 35 bargaining agreement, the bargaining unit shall conduct a selection process by which the direct care
 36 registered nurses who work at the hospital select the members of the committee who are direct care
 37 registered nurses.

38 (c) If the direct care staff member who is not a registered nurse who works at a hospital is re-
 39 presented under a collective bargaining agreement, the bargaining unit shall use the selection pro-
 40 cess conducted pursuant to paragraph (b) of this subsection to select that member of the committee.

41 (d) If the direct care registered nurses who work at a hospital are not represented under a
 42 collective bargaining agreement, the direct care registered nurses belonging to a hospital nurse
 43 specialty or unit shall select each member of the committee who is a direct care registered nurse
 44 from that specialty or unit.

45 (2) A hospital nurse staffing committee shall develop a written hospital-wide staffing plan [*in*

1 *accordance with ORS 441.155*]. The committee's primary goals in developing the staffing plan shall
 2 be to ensure that the hospital is staffed to meet the health care needs of patients. The committee
 3 *[shall]* **may** review and modify the staffing plan *[in accordance with ORS 441.156]* **as needed**.

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

6 (4) A hospital nurse staffing committee shall have two cochair. One cochair shall be a hospital
 7 nurse manager elected by the members of the committee who are hospital nurse managers and one
 8 cochair shall be a direct care registered nurse elected by the members of the committee who are
 9 direct care staff.

10 (5)*[(a)]* A decision made by a hospital nurse staffing committee must be made by a vote of a
 11 majority of the members of the committee. If a quorum of members comprises an unequal number
 12 of hospital nurse managers and direct care staff, only an equal number of hospital nurse managers
 13 and direct care staff may vote.

14 *[(b) If the committee is unable to reach an agreement on the staffing plan, either cochair of the*
 15 *committee may invoke a 30-day period during which the committee shall continue to develop the staffing*
 16 *plan. During the 30-day period, the hospital shall respond in a timely manner to reasonable requests*
 17 *from members of the committee for data that will enable the committee to reach a resolution. If at the*
 18 *end of the 30-day period, the committee remains unable to reach an agreement on the staffing plan, one*
 19 *of the cochairs shall notify the Oregon Health Authority of the impasse.]*

20 *[(c) Upon receiving notification under paragraph (b) of this subsection, the authority shall provide*
 21 *the committee with a mediator to assist the committee in reaching an agreement on the staffing plan.*
 22 *Mediation conducted under this paragraph must be consistent with the requirements for implementing*
 23 *and reviewing staffing plans under ORS 441.155 and 441.156.]*

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

26 (6) A hospital nurse staffing committee shall meet:

27 (a) *[At least]* Once every *[three]* **12** months; and

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

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

31 (A) The hospital nursing staff as observers; and

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

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

35 *[(8) Minutes of hospital nurse staffing committee meetings must:]*

36 *[(a) Include motions made and outcomes of votes taken,]*

37 *[(b) Summarize discussions; and]*

38 *[(c) Be made available in a timely manner to hospital nursing staff and other hospital staff upon*
 39 *request.]*

40 *[(9)]* **(8)** A hospital shall release a member of a hospital nurse staffing committee described in
 41 subsection (1)(a) of this section from the member's assignment, and provide the member with paid
 42 time, to attend committee meetings.

43 **SECTION 3.** ORS 441.164 is amended to read:

44 441.164. *[Upon request of a hospital, the Oregon Health Authority may grant a variance to the*
 45 *written hospital-wide staffing plan requirements described in ORS 441.155 if the variance is necessary*

1 *to ensure that the hospital is staffed to meet the health care needs of patients.]*

2 **If the Oregon Health Authority adopts by rule a nurse staffing standard for a hospital**
 3 **that is based on a nurse-to-patient ratio, the rule shall provide for:**

4 **(1) A process for a hospital to request a variance from the nurse-to-patient ratio to allow**
 5 **the hospital to meet the health care needs of the patients in the hospital;**

6 **(2) An appeal by a hospital of a denial of a variance under subsection (1) of this section**
 7 **to an experienced nurse mediator to engage in mediation with the authority; and**

8 **(3) A process for a hospital to request that the authority provide any additional staff**
 9 **needed to meet the nurse-to-patient ratio.**

10 **SECTION 4.** ORS 441.166 is amended to read:

11 441.166. (1) For purposes of this section, “nursing staff” includes registered nurses, licensed
 12 practical nurses, certified nursing assistants and other hospital nursing staff members as defined by
 13 the Oregon Health Authority by rule.

14 (2) When a hospital learns about the need for replacement staff, the hospital shall make every
 15 reasonable effort to obtain nursing staff for unfilled hours or shifts before requiring a nursing staff
 16 member to work overtime.

17 (3)(a) Except as provided in subsection (4) of this section, a hospital may not require a nursing
 18 staff member to work:

19 (A) Beyond the agreed-upon and prearranged shift, regardless of the length of the shift;

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

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

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

24 (b) For purposes of paragraph (a)(D) of this subsection, a nursing staff member begins to work
 25 when the nursing staff member begins a shift.

26 (4) A hospital may require an additional hour of work beyond the work authorized under sub-
 27 section (3) of this section if:

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

29 (b) There is a potential harm to an assigned patient if the nursing staff member leaves the as-
 30 signment or transfers care to another nursing staff member.

31 (5) If a nursing staff member agrees to work overtime, the nursing staff member is accountable
 32 for the nursing staff member’s competency in practice and is responsible for notifying the nursing
 33 staff member’s supervisor when the nursing staff member’s ability to safely provide care is compro-
 34 mised.

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

37 (b) Time spent on call or on standby when the nursing staff member is required to be at the
 38 premises of the employer shall be included as hours worked for purposes of subsection (3) of this
 39 section.

40 (c) Time spent on call but away from the premises of the employer may not be included as hours
 41 worked for purposes of subsection (3) of this section.

42 (7) If a nursing staff member believes that a hospital unit is engaging in a pattern of requiring
 43 direct care nursing staff to work overtime for nonemergency care, the nursing staff member may
 44 report that information to the hospital nurse staffing committee established for the hospital pursuant
 45 to ORS 441.154. *[The hospital nurse staffing committee shall consider the information when reviewing*

1 *the written hospital-wide staffing plan as required by ORS 441.156.]*

2 (8) The provisions of this section do not apply to nursing staff needs:

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

5 (b) In emergency circumstances identified by the authority by rule.

6 **SECTION 5.** ORS 441.030 is amended to read:

7 441.030. (1) The Oregon Health Authority or the Department of Human Services may assess a
8 civil penalty and, pursuant to ORS 479.215, shall deny, suspend or revoke a license, in any case
9 where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there
10 is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from
11 fire.

12 (2) The authority may:

13 (a) Assess a civil penalty or deny, suspend or revoke a license of a health care facility other
14 than a long term care facility in any case where it finds that there has been a substantial failure
15 to comply with ORS 441.015 to 441.087 or the rules or minimum standards adopted under ORS
16 441.015 to 441.087.

17 (b) Assess a civil penalty or suspend or revoke a license issued under ORS 441.025 for failure
18 to comply with an authority order arising from a health care facility's substantial lack of compliance
19 with the provisions of ORS 441.015 to 441.087 or 441.152 to 441.177 or the rules adopted under ORS
20 441.015 to 441.087 or 441.152 to 441.177.

21 *[(c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty im-*
22 *posed under ORS 441.175.]*

23 (3) The department may:

24 (a) Assess a civil penalty or deny, suspend or revoke a long term care facility's license in any
25 case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.087
26 or the rules or minimum standards adopted under ORS 441.015 to 441.087.

27 (b) Assess a civil penalty or suspend or revoke a long term care facility's license issued under
28 ORS 441.025 for failure to comply with a department order arising from a long term care facility's
29 substantial lack of compliance with the provisions of ORS 441.015 to 441.087 or the rules adopted
30 under ORS 441.015 to 441.087.

31 (c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty im-
32 posed under ORS 441.710.

33 (d) Order a long term care facility licensed under ORS 441.025 to restrict the admission of pa-
34 tients when the department finds an immediate threat to patient health and safety arising from
35 failure of the long term care facility to be in compliance with ORS 441.015 to 441.087 and the rules
36 adopted under ORS 441.015 to 441.087.

37 (4) Any long term care facility that has been ordered to restrict the admission of patients pur-
38 suant to subsection (3)(d) of this section shall post a notice of the restriction, provided by the de-
39 partment, on all doors providing ingress to and egress from the facility, for the duration of the
40 restriction.

41 **SECTION 6.** ORS 441.155, 441.156, 441.157, 441.165, 441.169, 441.171, 441.173, 441.175 and
42 **441.177 are repealed.**

43 **SECTION 7.** (1) **On the effective date of this 2023 Act, the Oregon Health Authority shall**
44 **cease all audits being conducted under ORS 441.157 and cease all complaint investigations**
45 **being conducted under ORS 441.171.**

1 **(2) A civil penalty imposed under ORS 441.175 prior to the effective date of this 2023 Act**
2 **but not yet collected by the authority on the effective date of this 2023 Act is**
3 **extinguished. This subsection does not impose an obligation upon the authority to return a**
4 **civil penalty paid under ORS 441.175 prior to the effective date of this 2023 Act.**

5 **(3) The authority shall restore a license that was suspended or revoked under ORS**
6 **441.030 (2)(c) if the license was suspended or revoked only for failure to pay a civil penalty**
7 **imposed under ORS 441.175.**

8 **(3) The authority shall remove from the authority’s website reports of audits and other**
9 **reports posted in accordance with ORS 441.177.**

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