Oregon Association of Hospitals and Health Systems

February 28, 2023

Oregon State Legislature
900 Court St. NE
Salem, OR 97301

Re: House Bill 2697

Delivered electronically via OLIS

Chair Nosse and Members of the House Committee on Behavioral Health and Health Care,

The Oregon Association of Hospitals and Health Systems (OAHHS) is a mission-driven, nonprofit association representing Oregon's 62 community hospitals. Together, hospitals are the sixth largest private employer statewide, employing more than 70,000 employees. Committed to fostering a stronger, safer Oregon with equitable access to quality health care, OAHHS provides services to Oregon's community hospitals ensuring all are able to deliver dependable, comprehensive health care to their communities; educates government officials and the public on the state's health landscape; and works collaboratively with policymakers, community organizations, and the health care community to build consensus on and advance health care policy benefiting the state's 4 million residents.

Hospitals are more than just buildings; they are cornerstones within the communities they serve. Our hospitals are employers, partners in community projects, and community spaces—all while providing vital health services to generation after generation of families in communities across Oregon. We know that when our hospitals are strong, our communities win.

We appreciate the opportunity to express concerns about House Bill 2697 and we oppose it as written.

This Bill is a Threat to Access to Care

We agree the time is right to fix the nursing staffing law. We agree the time is right to find new ways to recruit and retain the hospital workforce. We do not agree with the approach proposed in House Bill 2697.

House Bill 2697, as written, is a threat to access to care throughout Oregon. It takes what is dysfunctional and broken in the current nurse staffing law and replicates it so that it reaches what appears to be nearly our entire workforce. It adds a one-size-fits-all approach to nurse staffing by adding ratios, fundamentally changing how nurse staffing is set and, when combined with other aspects of the proposal, diminishing nurses' voices and the autonomy they now have in caring for patients. It adds more burdensome administrative processes and will greatly increase the demands and costs the law places on the Oregon Health Authority (OHA). It means community hospitals will face new expansive, excessive penalties for new processes and requirements that do not affect patients and are not clear. It does not address or even appear to consider that Oregon, like the rest of the country, is facing a workforce shortage. To be clear, this is a hospital staffing bill, not a nurse

4000 Kruse Way Place, Bldg. 2, Suite 100
Lake Oswego, Oregon 97035
503-636-2204 Fax 503-636-8310

staffing bill. And it is an attempt to create something that does not currently exist in Oregon or anywhere else.

Ratios Will Not Solve the Problem

The Oregon Nurses Association (ONA) has claimed publicly that Oregon has enough nurses to meet hospital staffing needs, that the staffing shortage is due to nurses' unwillingness to work under unsafe staffing conditions, and that minimum staffing standards (ratios) are a crucial step toward improving working conditions. We have been told that there are nurses who will return to the bedside if this bill is passed.

But what if they do not?

If hospitals do not have more nurses, these statutorily imposed ratios in our hospitals would likely lead to some combination of two things: (1) service reductions, and (2) an increased reliance on traveling nurses. Both outcomes would only exacerbate existing problems for communities and patients. Fewer staffed hospital beds and service closures mean that people in our communities will have a harder time getting care when and where they need it. When hospitals relied heavily on traveling nurses through the pandemic to meet the community needs, it adversely impacted staff morale and hospital financial stability.

Hospitals across the state have been struggling to fill existing nursing vacancies for some time.[1] This is despite the fact that Oregon already ranks third in the country, behind California and Hawaii, for mean annual RN wages at $98,630 per year[2] and ranks second when adjusted for cost of living.[3] Even California, which is also the only state that currently has comprehensive minimum nurse staffing ratios, is experiencing a shortage.[4]

The health care workforce shortage is national in scope.[5] Oregon is further disadvantaged because Oregon does not educate and train enough nurses to meet its needs; employers here traditionally rely on nurses moving from other states to care for patients.[6] Oregon was trending toward a nursing

[1] According to the Oregon Employment Department 2021 Job Vacancy Survey, 76% of open RN positions were considered "difficult to fill" by employers, and approximately 40% of those open RN positions had been vacant for 60 days or more at the time of the survey. Bates, et al., The Future of Oregon's Nursing Workforce: Analysis and Recommendations, November 1, 2022, p. 39.
[2] US Bureau of Labor Statistics, May 2021.
[3] NurseJournal.org, July 27, 2022.
[4] *See, for example:* California has 8.2 nurses per 1,000 population members compared to Oregon's 8.92 (The U.S. Nursing Shortage: A State-by-State Breakdown | NurseJournal); Articles Nurse shortages in California reaching crisis point - CalMatters and California Faces Short-Term Nursing Shortage from COVID-19 Retirements | UC San Francisco (ucsf.edu).
[5] *See* Statement of the American Hospital Association for the Committee on Health, Education, Labor and Pensions of the U.S. Senate, February 16, 2023.
[6] Allgeyer, R. (2022). Filling the Gap: An Examination of Oregon Registered Nurses Licensed Through Endorsement. Portland, OR: Oregon Center for Nursing

shortage even before the pandemic—a 2018 analysis predicted that Oregon would have a shortage of 6,801 RNs by 2030.[7]

The nurse staffing law should support nurses' voices, collaborative problem solving, and innovative care models. It should be realistic in how it accommodates patient care needs in a variety of hospital types, settings, and circumstances. The same standards may not work for an urban hospital with hundreds of nurses and a small rural hospital with three nurses in the entire building.

The ratios in HB 2697 are not adaptable to reality. What is this bill's answer to what should happen when trauma patients from a mass casualty event are rushed through the doors of an ED with a ratio in place? What is this bill's answer to how hospitals should meet their obligations under federal law (EMTALA) that are intended to ensure the public has access to emergency services regardless of ability to pay? What is this bill's answer to what should happen when patients seek care at their local, rural hospital and cannot be transferred because transportation options are limited or non-existent due to the winter weather, or because ratios prevent beds from opening at hospitals with higher levels of care? We do not see acceptable answers to these situations and many others. The rigid ratios proposed in HB 2697 would be a step backwards for both nurses and patients.

California's Nurse Ratios are Different

No other state has taken the approach that is proposed in this bill. California is the only state that requires certain nurse-to-patient ratios in many units of the hospital, but California's requirements look different than HB 2697. First, who is a "nurse" is different. In California, subject to exceptions, half of the nurses in the ratio can be licensed vocational nurses, which are similar to licensed practical nurses in Oregon. HB 2697 does not allow for that, requiring instead that each nurse in the ratio be a registered nurse. Second, there are important differences in the ratios. Many of the ratios in HB 2697 are even more stringent than those in California. For example, the ratios in medical-surgical units in California are 1:5, and in HB 2697 they are 1:4. What that appears to mean is that in California, 2 registered nurses and 2 licensed vocational nurses could take care of 20 medical-surgical patients, but in Oregon, 5 registered nurses would be required to take care of the same patients. Finally, and as another example of how untested this proposal is, California's law does not involve hospital-wide staffing requirements, as this bill does.

Nurse Staffing Committees Are the Alternative to Ratios

A core feature of the nurse staffing law, passed as Senate Bill 469 (2015), is hospital nurse staffing committees. The intent was for the committees to enable direct care staff and nurse leaders to come together in equal numbers and under shared leadership to generate nurse staffing plans that appropriately address the unique needs of their patients and facilities, provide a safe venue to constructively address staffing challenges, and collaboratively explore new ideas for optimizing patient care.

We supported hospital nurse staffing committees, a model that would be unique to Oregon, and, critically, a model that did not include ratios. As I said on June 9, 2015, "Importantly, this legislation

[7] United States Registered Nurse Workforce Report Card and Shortage Forecast: A Revisit. American Journal of Medical Quality, 2018

does not attempt to impose nurse-to-patient ratios . . ." [8] Now, we face a bill where ratios are added to the committee model, when the committee model was supposed to be the chosen alternative to ratios to empower staff's voices in hospitals throughout Oregon. Ratios plus hospital nurse staffing committees does not make sense.

The Nurse Staffing Law Needs to be Fixed Rather than Expanded

The nurse staffing law is not working as intended and improvements to the law are needed. As set forth in a recent nursing workforce report required by HB 4003 (2022):

> "Key informants noted there is a general lack of understanding of what the [nurse staffing] law requires, who is covered by the law, how the audit process works, and what information is needed to ensure compliance, despite substantial efforts of HFLC staff to communicate on these topics and make themselves available to answer questions." [9]

The survey process set forth in the nurse staffing law and preserved in this bill is not working. It is an extremely time-intensive process for hospitals, nurses, and OHA. Hospitals have struggled with the OHA interpretation and implementation of the law and related rules. The lack of clarity, and the back-and-forth with regulators community hospitals endure, shifts attention and resources toward paperwork and away from patient care. Hospitals have spent an enormous amount of time and resources engaging with OHA during surveys and in developing plans of correction. Yet the process does not result in swift identification of issues, and it has lost sight of the goals of nurse satisfaction and patient safety.

Hospitals are not alone in thinking that there is room for improvement. Our understanding is that nurses and their representatives also have frustrations with the process. One of our shared frustrations is that OHA may wait months or even more than a year to investigate a complaint related to nurse staffing. This does not make nurses feel heard and it does not allow hospitals to have timely notice of concerns and, when necessary, make swift adjustments.

The same HB 4003 report includes information on this topic:

> "Nurse workload is a concern among both nurses and their employers. Oregon's nurse staffing law was intended to create collaborative processes to ensure adequate staffing for high quality patient care. There was agreement that the regulations are not fully achieving their goal, but there were differences in opinion about why this is the case.
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> - Some concerns were raised about the complexity of the survey process and perceptions that enforcement was not as rigorous as desired.

[8] *OAHHS Testimony on SB 469-8, June 9, 2015*
[9] *Bates, et al., The Future of Oregon's Nursing Workforce: Analysis and Recommendations, November 1, 2022, p. 47.*

- There has not been any objective evaluation of the effectiveness of the law's impact on nurse staffing, nurse workloads, or patient outcomes.
- Recent data indicate that nurse staffing in Oregon hospitals is higher than the national average, but nurses nonetheless attribute a great deal of their stress and burnout to heavy workloads."[10]

We agree with the report's recommendations that "Revisions to the Nurse Staffing Law should aim to increase clarity, support effective partnerships between nurse staff and management, and reduce unnecessary regulatory burden. Enforcement of the Law should be consistent."[11] We are ready to work with stakeholders on making those important revisions.

It Does Not Make Sense to Replicate a Failed Structure

The health care workforce shortage extends far beyond nurses, and we recognize that other critical frontline hospital staff are also feeling burned out, tired, and overworked. The Service Employees International Union, Local 49, claims that HB 2697 "would give workers across all departments a voice in staffing plans for hospitals and ensure that management is held accountable when they do not follow the law."[12] We recognize and appreciate that it takes a team of hospital staff to care for patients, and one of the goals of the bill is to ensure more workers' voices are heard on the topic of staffing. We support that goal, but we do not agree with the approach in HB 2697, which includes much more than that.

HB 2697 would take the components of the nurse staffing law that are not working, including the committees and surveys, and expand the reach to nearly the entire hospital workforce. If the nurse staffing law is not working well for nurses, we do not see why it should be expected to work for nearly the entire hospital workforce. The bill creates hospital professional staffing committees, hospital technical staffing committees, hospital service staffing committees, and home health staffing committees. Each of these committees would be required to develop a written hospital-wide staffing plan and review and modify it as directed in the law. There would be a costly and lengthy dispute resolution process when the committees cannot agree, and enforcement would be taken against hospitals for violations of law. But the difficult operational questions remained unanswered. Will the committees work together? If so, how? Will the costs of staffing be considered? Will shortages be considered? Will access to care be considered? Staffing a hospital is a complex task that is dynamic. HB 2697 does not treat it that way.

OHA would have much more work to do if this bill passed. The complaint and survey process would grow substantially in scope, and we expect that OHA would need staff with new areas of expertise. OHA has proven it struggles with a much smaller scope of work than this bill would demand. We do not understand how such an ill-defined addition of FOUR brand new committees AND changes to the existing committee AND new enforcement can be handled by OHA all at once.

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[10] Bates, et al., The Future of Oregon's Nursing Workforce: Analysis and Recommendations, November 1, 2022, p. 68.
[11] Bates, et al., The Future of Oregon's Nursing Workforce: Analysis and Recommendations, November 1, 2022, p. 73.
[12] Contact Lawmakers - Safe Staffing — SEIU Local 49 (seiu49.org).

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503-636-2204 Fax 503-636-8310

Enforcement Should Make Sense

The enforcement proposed in HB 2697 goes far beyond what is necessary to ensure compliance with the law and allows OHA to set civil penalties with limited to no controls or legislative sideboards.

HB 2697 takes a $5,000 civil penalty cap in current law and makes it a $10,000 per day minimum with no limit set in law. In addition, HB 2697 removes the requirement in current law that civil penalties be imposed only when there is a reasonable belief that safe patient care has been or may be negatively impacted. Imposing limitless civil penalties upon hospitals for minor violations of the law that have nothing to do with patient care is unacceptable.

HB 2697 also introduces a new enforcement option: a lawsuit. A lawsuit could be filed by a union or hospital staff person for even a very minor violation of the law that is unrelated to safe patient care. Lawsuits are expensive and stressful. The court may order the assessment of civil penalties or a variety of other relief.

Hospitals from all parts of the state must defend any lawsuit brought against them in one place only: Salem (the Circuit Court for Marion County). This places a burden on hospitals and their staff throughout the state, and a particularly great burden on any staff member from Oregon's rural or frontier hospitals who would like to bring a claim, the rural or frontier hospitals, and the staff that will need to travel to Marion County to defend the claim. What this means is that rural community members will need to travel hundreds of miles across the state to have their day in court. And it likely won't be just a day. There could be multiple hearings over time, followed by a trial. These types of provisions further drive up the costs that hospitals must expend on activities that are not in service to their communities. Moreover, these types of Salem-centric provisions reinforce concerns in our rural communities that they are not considered in—or, worse, are disadvantaged by—state policies.

Conclusion

Oregon is known to lead in health care, and a hallmark of that work is collaboration. Oregon could be leading the way with HB 2697, but instead the bill reflects powerful voices that are leading us in the wrong direction. This is not the Oregon way. We are actively discussing with our labor partners the potential for an amendment to HB 2697. We are working to ensure the voices of direct care workers are heard, that standards are clear and feasible, and that they facilitate quality patient care. And we are identifying enforcement tools that are fair and meaningful. But hospital staffing is only a piece of the larger puzzle that we must solve.

If we do not take additional steps at the same time, in parallel to support our workforce and our hospitals, we are setting our health care system up to fail our communities. Building the workforce Oregon needs will require a multifaceted approach. OAHHS supports legislation that will help recruit and retain health care providers in Oregon, remove barriers to entering the health care workforce, expand the diversity of our health care providers, and increase access to care across the state.

4000 Kruse Way Place, Bldg. 2, Suite 100
Lake Oswego, Oregon 97035
503-636-2204 Fax 503-636-8310

Thank you for the opportunity to engage on behalf of our members and the communities they serve.

Thank you,

Andi Easton
Vice President of Government Affairs
Oregon Association of Hospitals and Health Systems

4000 Kruse Way Place, Bldg. 2, Suite 100
Lake Oswego, Oregon 97035
503-636-2204 Fax 503-636-8310