

Enrolled House Bill 2800

Sponsored by Representatives SIMMONS, KNOPP, Senator METSGER; Representatives BACKLUND, BARNHART, BATES, DEVLIN, DOYLE, GARDNER, GARRARD, HILL, JENSON, KROPF, KRUMMEL, LEE, MARCH, MINNIS, MONNES ANDERSON, MORGAN, ROSENBAUM, G SMITH, STARR, V WALKER, WILLIAMS, WINTERS, ZAUNER, Senators BROWN, COURTNEY, DUNCAN, GEORGE, HANNON, MINNIS, NELSON, STARR

CHAPTER

AN ACT

Relating to nursing staff at acute inpatient care facilities; creating new provisions; amending ORS 441.030, 441.057 and 659.095; and prescribing an effective date.

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

SECTION 1. As used in sections 2 to 7 of this 2001 Act, "hospital" includes a hospital as described in ORS 442.015 and an acute inpatient care facility as defined in ORS 442.470.

SECTION 2. (1) A hospital shall be responsible for the development and implementation of a written hospital-wide staffing plan for nursing services. The hospital shall have a process that ensures the consideration of input from direct care clinical staff in the development, implementation, monitoring, evaluation and modification of the staffing plan. The staffing plan shall include the number, qualifications and categories of nursing staff needed for all units.

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

(3) The written staffing plan shall:

(a) Be based on the nursing care required by the aggregate and individual needs of patients. This nursing care shall be the major consideration in determining the number and categories of nursing staff needed.

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

(c) Be consistent with the scopes of practice for registered nurses, licensed practical nurses and the authorized duties of certified nursing assistants.

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

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

SECTION 3. Upon request of a hospital, the Health Division may grant variances in the written staffing plan requirements based on patient care needs or the nursing practices of the hospital.

SECTION 4. (1) After a hospital learns about the need for replacement staff, the hospital shall make every reasonable effort to obtain registered nurses for unfilled hours or shifts before requiring a registered nurse to work overtime.

(2) A hospital may not require a registered nurse to work:

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

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

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

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

(b) In emergency circumstances identified by the Health Division by rule; or

(c) If a hospital has made reasonable efforts to contact all of the qualified, on-call nursing staff and nursing services on the list described in section 2 of this 2001 Act and is unable to obtain replacement staff in a timely manner.

SECTION 5. A registered nurse at a hospital may not place a patient at risk of harm by leaving a patient care assignment during an agreed upon shift or an agreed upon extended shift without authorization from the appropriate supervisory personnel.

SECTION 6. (1) The Health Division may impose civil penalties in the manner provided in ORS 183.090 or suspend or revoke a license of a hospital for a violation of any provision of section 2 or 4 of this 2001 Act. The division shall adopt by rule a schedule establishing the amount of civil penalty that may be imposed for any violation of section 2 or 4 of this 2001 Act when there is a reasonable belief that safe patient care has been or may be negatively impacted. A civil penalty imposed under this subsection may not exceed \$5,000. Each violation of a nursing staff plan shall be considered a separate violation. Any license that is suspended or revoked under this subsection shall be suspended or revoked as provided in ORS 441.030.

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

(3) The division shall conduct an annual random audit of not less than seven percent of all hospitals in this state solely to verify compliance with the requirements of sections 2, 4 and 18 of this 2001 Act. Surveys made by private accrediting organizations may not be used in lieu of the audit required under this subsection. The division shall compile and maintain for public inspection an annual report of the audit conducted under this subsection.

(4) The costs of the audit required under subsection (3) of this section may be paid out of funds from licensing fees paid by hospitals under ORS 441.020.

SECTION 7. The Health Division shall report to the Seventy-second Legislative Assembly on whether funds from licensing fees paid by hospitals under ORS 441.020 are being used to pay the costs of audits required by section 6 of this 2001 Act.

SECTION 8. ORS 441.030 is amended to read:

441.030. (1) The Health Division or the Senior and Disabled Services Division of the Department of Human Services, pursuant to ORS 479.215, shall deny, suspend or revoke a license in any case where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from fire.

(2) The appropriate division may deny, suspend or revoke a license in any case where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063, 441.085, 441.087, 441.990 (3) or the rules or minimum standards adopted under those statutes.

(3) The appropriate division may suspend or revoke a license issued under ORS 441.025 for failure to comply with a division order arising from a health care facility's substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087 and 441.990 (3) **or section 2 or 4 of this 2001 Act**, or the rules adopted thereunder, or for failure to pay a civil penalty imposed under ORS 441.710 **or section 6 of this 2001 Act**.

(4) The Senior and Disabled Services Division may order a long term care facility licensed under ORS 441.025 to restrict the admission of patients when the division finds an immediate threat to patient health and safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to 441.063, 441.084 to 441.087 and the rules adopted pursuant thereto.

(5) Any long term care facility which has been ordered to restrict the admission of patients pursuant to subsection (4) of this section shall post a notice of such restriction, provided by the division, on all doors providing ingress to and egress from the facility, for the duration of the restriction.

SECTION 9. As used in sections 9 to 14 of this 2001 Act:

(1) **"Affiliated hospital" means a hospital that has a business relationship with another hospital.**

(2) **"Hospital" means:**

(a) **An acute inpatient care facility, as defined in ORS 442.470; or**

(b) **A hospital as described in ORS 442.015.**

(3) **"Manager" means a person who:**

(a) **Has authority to direct and control the work performance of nursing staff;**

(b) **Has authority to take corrective action regarding a violation of law or a rule or a violation of professional standards of practice, about which a nursing staff has complained; or**

(c) **Has been designated by a hospital to receive the notice described in section 10 (2) of this 2001 Act.**

(4) **"Nursing staff" means a registered nurse, a licensed practical nurse, a nursing assistant or any other assistive nursing personnel.**

(5) **"Public body" has the meaning given that term in ORS 30.260.**

(6) **"Retaliatory action" means the discharge, suspension, demotion, harassment, denial of employment or promotion, or layoff of a nursing staff, or other adverse action taken against a nursing staff in the terms or conditions of employment of the nursing staff, as a result of filing a complaint.**

SECTION 10. (1) A hospital may not take retaliatory action against a nursing staff because the nursing staff:

(a) **Discloses or intends to disclose to a manager, a private accreditation organization or a public body an activity, policy or practice of the hospital or of a hospital that the nursing staff reasonably believes is in violation of law or a rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;**

(b) **Provides information to or testifies before a private accreditation organization or a public body conducting an investigation, hearing or inquiry into an alleged violation of law or rule or into an activity, policy or practice that may be in violation of professional standards of practice by a hospital that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public;**

(c) **Objects to or refuses to participate in any activity, policy or practice of a hospital that the nursing staff reasonably believes is in violation of law or rule or is a violation of professional standards of practice that the nursing staff reasonably believes poses a risk to the health, safety or welfare of a patient or the public; or**

(d) Participates in a committee or peer review process or files a report or a complaint that discusses allegations of unsafe, dangerous or potentially dangerous care.

(2) Except as provided in subsection (3) of this section, the protection against retaliatory action in subsection (1) of this section does not apply to a nursing staff, unless the nursing staff, before making a disclosure to a private accreditation organization or a public body as described in subsection (1)(a) of this section:

(a) Gives written notice to a manager of the hospital of the activity, policy, practice or violation of professional standards of practice that the nursing staff reasonably believes poses a risk to public health; and

(b) Provides the manager a reasonable opportunity to correct the activity, policy, practice or violation.

(3) A nursing staff is not required to comply with the provisions of subsection (2) of this section if the nursing staff:

(a) Is reasonably certain that the activity, policy, practice or violation is known to one or more managers of the hospital or an affiliated hospital and an emergency situation exists;

(b) Reasonably fears physical harm as a result of the disclosure; or

(c) Makes the disclosure to a private accreditation organization or a public body for the purpose of providing evidence of an activity, policy, practice or violation of a hospital or an affiliated hospital that the nursing staff reasonably believes is a crime.

SECTION 11. (1) A nursing staff aggrieved by an act prohibited by section 10 of this 2001 Act may bring an action in circuit court of the county in which the hospital is located. All remedies available in a common law tort action are available to a nursing staff if the nursing staff prevails in an action brought under this subsection and are in addition to any remedies provided in subsection (2) of this section.

(2) In an action brought under subsection (1) of this section, a circuit court may do any of the following:

(a) Issue a temporary restraining order or a preliminary or permanent injunction to restrain a continued violation of section 10 of this 2001 Act.

(b) Reinstate the nursing staff to the same or equivalent position that the nursing staff held before the retaliatory action.

(c) Reinstate full benefits and seniority rights to the nursing staff as if the nursing staff had continued in employment.

(d) Compensate the nursing staff for lost wages, benefits and other remuneration, including interest, as if the nursing staff had continued in employment.

(e) Order the hospital to pay reasonable litigation costs of the nursing staff, including reasonable expert witness fees and reasonable attorney fees.

(f) Award punitive damages as provided in ORS 18.537.

(3) Except as provided in subsection (4) of this section, in any action brought by a nursing staff under subsection (1) of this section, if the court finds that the nursing staff had no objectively reasonable basis for asserting the claim, the court may award costs, expert witness fees and reasonable attorney fees to the hospital.

(4) A nursing staff may not be assessed costs or fees under subsection (3) of this section if, upon exercising reasonable and diligent efforts after filing the action, the nursing staff moves to dismiss the action against the hospital after determining that no issue of law or fact exists that supports the action against the hospital.

SECTION 12. (1) A hospital that takes any retaliatory action described in section 10 of this 2001 Act against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of section 10 of this 2001 Act may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by ORS 659.040. The commissioner shall enforce the provisions of section 10 of this 2001 Act in the manner provided in ORS 659.010 to 659.110 regarding unlawful employment practices.

(3) The remedies under this section and section 11 of this 2001 Act are supplemental and not mutually exclusive.

SECTION 12a. If House Bill 2352 becomes law, section 12 of this 2001 Act is amended to read:

Sec. 12. (1) A hospital that takes any retaliatory action described in section 10 of this 2001 Act against a nursing staff commits an unlawful employment practice.

(2) A nursing staff claiming to be aggrieved by an alleged violation of section 10 of this 2001 Act may file a complaint with the Commissioner of the Bureau of Labor and Industries in the manner provided by [ORS 659.040. *The commissioner shall enforce the provisions of section 10 of this 2001 Act in the manner provided in ORS 659.010 to 659.110 regarding unlawful employment practices.*] **section 2, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2352). Except for the provisions of sections 12, 13, 14 and 15, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2352), violation of section 10 of this 2001 Act is subject to enforcement under sections 1 to 15, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2352).**

(3) Except as provided in subsection (4) of this section, a civil action under section 11 of this 2001 Act must be commenced within one year after the occurrence of the unlawful employment practice unless a complaint has been timely filed under section 2, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2352).

(4) The nursing staff who has filed a complaint under section 2, chapter _____, Oregon Laws 2001 (Enrolled House Bill 2352), must commence a civil action under section 11 of this 2001 Act within 90 days after a 90-day notice is mailed to the nursing staff under this section.

(5) The commissioner shall issue a 90-day notice to the nursing staff:

(a) If the commissioner dismisses the complaint within one year after the filing of the complaint and the dismissal is for any reason other than the fact that a civil action has been filed.

(b) On or before the one-year anniversary of the filing of the complaint unless a 90-day notice has previously been issued under paragraph (a) of this subsection or the matter has been resolved by the execution of a settlement agreement.

(6) A 90-day notice under this section must be in writing and must notify the nursing staff that a civil action against the hospital under section 11 of this 2001 Act may be filed within 90 days after the date of mailing of the 90-day notice and that any right to bring a civil action against the hospital under section 11 of this 2001 Act will be lost if the action is not commenced within 90 days after the date of mailing of the 90-day notice.

[~~(3)~~] **(7) The remedies under this section and section 11 of this 2001 Act are supplemental and not mutually exclusive.**

SECTION 13. (1) A hospital shall post a notice summarizing the provisions of sections 2, 4, 5, 10, 11, 12 and 18 of this 2001 Act in a conspicuous place on the premises of the hospital. The notice must be posted where notices to employees and applicants for employment are customarily displayed.

(2) Any hospital that willfully violates this section is subject to a civil penalty not to exceed \$500. Civil penalties under this section shall be imposed by the Health Division in the manner provided by ORS 183.090.

SECTION 14. (1) Except as provided in subsection (2) of this section, nothing in sections 11 and 12 of this 2001 Act shall be deemed to diminish any rights, privileges or remedies of a nursing staff under federal or state law or regulation or under any collective bargaining agreement or employment contract.

(2) Sections 11 and 12 of this 2001 Act provide the only remedies under state law for a nursing staff for an alleged violation of section 10 of this 2001 Act committed by a hospital.

SECTION 15. ORS 659.095 is amended to read:

659.095. (1) If, within one year following the filing of a complaint [*pursuant to*] **under ORS 659.040 (1) or 659.045 (1) or section 12 of this 2001 Act** except a complaint alleging violations of ORS 30.670 or 30.685, the Commissioner of the Bureau of Labor and Industries has been unable to obtain a conciliation agreement with a respondent, or has not caused to be prepared and attempted

to serve the specific charges referred to in ORS 659.060 (1), the commissioner shall so notify the complainant in writing and within 90 days after the date of mailing of such notice, the complainant may file a civil suit as provided for in ORS 659.121 **or section 11 of this 2001 Act**. Within one year following the filing of the complaint, the commissioner may issue, or cause to be issued, an administrative determination. If no administrative determination has been issued at the end of the one-year period, the commissioner has no further authority to continue proceedings to resolve the complaint, except as provided in ORS 659.070 and 659.085. If prior to the expiration of one year from the filing of a complaint pursuant to this section the commissioner dismisses the complaint for any reason other than a dismissal pursuant to ORS 659.060 (3), or the complainant requests the commissioner to terminate proceedings with respect to the complaint, the commissioner shall notify the complainant of said dismissal or termination in writing, and within 90 days after the date of mailing of such notice of dismissal or termination, a civil suit may be filed as provided for in ORS 659.121 **or section 11 of this 2001 Act**.

(2) As used in this section, "administrative determination" means a written notice to the respondent and the complainant signed by the commissioner, or the commissioner's designee, which includes, but is not limited to, the following information:

- (a) The name of the complainant;
- (b) The name of the respondent;
- (c) Allegations contained in the complaint;
- (d) Facts found by the commissioner to have a bearing on the allegations contained in the complaint in the course of any investigation, conference or other information gathering function of the Bureau of Labor and Industries as such facts relate to laws within the bureau's jurisdiction; and
- (e) A statement as to whether investigation of the complaint has disclosed any substantial evidence supporting the allegations of the complaint.

SECTION 15a. If House Bill 2352 becomes law, section 15 of this 2001 Act (amending ORS 659.095) is repealed.

SECTION 16. ORS 441.057 is amended to read:

441.057. (1) Rules adopted by the Health Division or the Senior and Disabled Services Division pursuant to ORS 441.055 shall include procedures for the filing of complaints as to the standard of care in any health care facility and provide for the confidentiality of the identity of any complainant.

(2) No health care facility, or person acting in the interest of the facility, shall take any disciplinary or other adverse action against any employee who in good faith brings evidence of inappropriate care or any other violation of law or rules to the attention of the proper authority solely because of the employee's action as described in this subsection.

(3) Any employee who has knowledge of inappropriate care or any other violation of law or rules shall utilize established reporting procedures of the health care facility administration before notifying the Health Division, the Senior and Disabled Services Division or other state agency of the alleged violation, unless the employee believes that patient health or safety is in immediate jeopardy or the employee makes the report to the Health Division or the Senior and Disabled Services Division under the confidentiality provisions of subsection (1) of this section.

(4) The protection of health care facility employees under subsection (2) of this section shall commence with the reporting of the alleged violation by the employee to the administration of the health care facility or to the Health Division, the Senior and Disabled Services Division or other state agency pursuant to subsection (3) of this section.

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy.

(6) The provisions of this section do not apply to a nursing staff, as defined in section 9 of this 2001 Act, who claims to be aggrieved by a violation of section 10 of this 2001 Act committed by a hospital.

SECTION 17. Sections 10, 11 and 12 of this 2001 Act and the amendments to ORS 441.057 and 659.095 by sections 15 and 16 of this 2001 Act apply only to actions taken by a nursing staff on or after the effective date of this 2001 Act.

SECTION 17a. If House Bill 2352 becomes law, section 17 of this 2001 Act is amended to read:

Sec. 17. Sections 10, 11 and 12 of this 2001 Act and the amendments to ORS 441.057 [and 659.095] by [sections 15 and 16] **section 16** of this 2001 Act apply only to actions taken by a nursing staff on or after the effective date of this 2001 Act.

SECTION 18. (1) A hospital, as defined in section 9 of this 2001 Act, may require a registered nurse who is receiving full employment benefits from the hospital to provide notice of any outside employment that may reasonably impede the ability of the nurse to fulfill the nurse's obligation to the hospital in providing nursing services to patients under the hospital's care.

(2) If a hospital determines that the outside employment causes a risk to patients receiving services in the hospital, the hospital may require the nurse to discontinue the outside employment.

(3) A hospital may not unreasonably restrict the outside employment of nurses and may restrict outside employment only if the hospital provides in writing to the nurse an explanation of the hospital's documentation that the outside employment creates a risk to patients in the hospital. A nurse who does not discontinue outside employment if required by the hospital may be disciplined or terminated from employment by the hospital.

(4) A nurse who does not provide notice as required by a hospital pursuant to this section may be disciplined or terminated from employment by the hospital if the failure to provide notice creates a risk to a patient in the hospital.

SECTION 19. This 2001 Act takes effect on October 1, 2002.

Passed by House May 2, 2001

Received by Governor:

Repassed by House June 8, 2001

.....M.,....., 2001

Approved:

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Chief Clerk of House

.....M.,....., 2001

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Speaker of House

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Governor

Passed by Senate June 6, 2001

Filed in Office of Secretary of State:

.....M.,....., 2001

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President of Senate

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Secretary of State