



## Civil Monetary Penalties Committee Meeting Agenda

Date: October 1<sup>st</sup>, 2021  
 Time: 1:30 PM – 3:30 PM  
 Location: <https://www.zoomgov.com/j/1619734416?pwd=clZoVy9oVG5XM3h5enVUU09NZHB0dz09>  
 Meeting ID: 161 973 4416  
 Participant Code: 151930

Time	Agenda Item	Materials Provided	Presenter
1:30 PM – 1:35 PM	<p><b>Item 1 – Review the meeting agenda and summary from September 10<sup>th</sup> meeting</b></p> <ul style="list-style-type: none"> <li>Review status of action items from last meeting</li> </ul>	<ul style="list-style-type: none"> <li>October 1<sup>st</sup> Committee agenda</li> <li>September 10<sup>th</sup> Committee meeting summary</li> </ul>	Kimberly Voelker
1:35 PM – 2:00 PM	<p><b>Item 2 – Discuss Table 1 – Civil Penalty Assessments and advise on objective measurements for Table elements</b></p> <ul style="list-style-type: none"> <li>Provide information regarding safe patient care</li> </ul>	<ul style="list-style-type: none"> <li>Nurse staffing survey deficiencies handout</li> <li>Table 1 – Civil Penalty Assessments under OAR 333-510-0045</li> </ul>	Kimberly Voelker & Anna Davis

2:00 PM – 3:25 PM	<b>Item 3 – Advise on factors that may impact size of CMP imposed</b> <ul style="list-style-type: none"> <li>• Survey type: Triennial nurse staffing survey, complaint investigation, and revisit surveys; and combined surveys</li> <li>• Repeated noncompliance</li> <li>• Priority tags identified by PIC</li> <li>• Number of licensed hospital beds</li> </ul>	<ul style="list-style-type: none"> <li>• CMP factors handout and slide</li> <li>• Old CMP matrix</li> </ul>	Kimberly Voelker & Anna Davis
3:25 PM – 3:30 PM	<b>Item 4 – Summarize action items, next steps</b>		Kimberly Voelker
3:30 PM	<b>Meeting adjourned</b>		

**Upcoming Meetings**

- *Nurse Staffing Advisory Board – October 27, 2021: 1:00 PM – 5:00 PM*
- *NSAB Civil Monetary Penalties Committee – November 1, 2021: 1:30 PM – 3:30 PM*
- *NSAB Civil Monetary Penalties Committee – November 19, 2021: 10:00 AM – 12:00 PM*

Everyone has a right to know about and use Oregon Health Authority (OHA) programs and services. OHA provides free help. Some examples of the free help OHA can provide are:

- Sign language and spoken language interpreters
- Written materials in other languages
- Braille
- Large print
- Audio and other formats

If you need help or have questions, please contact Kimberly Voelker at 971-803-0914, 711 TTY or [kimberly.n.voelker@state.or.us](mailto:kimberly.n.voelker@state.or.us) at least 48 hours before the meeting.

**Survey & Certification Unit**  
 800 NE Oregon Street, Suite 465  
 Portland, OR 97232  
 Voice: (971) 673-0540  
 Fax: (971) 673-0556  
 TTY: 711

<http://www.healthoregon.org/nursestaffing>  
[mailbox.nursestaffing@state.or.us](mailto:mailbox.nursestaffing@state.or.us)

**Oregon NSAB Civil Monetary Penalties Committee**  
 September 10<sup>th</sup>, 2021  
 1:30 PM – 3:30 PM

Meeting Summary

Members present	Jenni Word, RN; Barbara Merrifield, MSN, RN; Debbie Robinson, RN, MSN; Kelsey Betts, RN
Members absent	Uzo Izunagbara, RN; Rob Campbell, CP, ADN, RN
PHD staff present	Dana Selover, MD, MPH; Anna Davis, JD; Kimberly Voelker, MPH

Guests present	Donell Owens (Kaiser Sunnyside Medical Center); Nancy Mitchell (Santiam Hospital);
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<b>Agenda Item 1</b>	<i>Review the meeting agenda and summary from July 26<sup>th</sup> meeting</i>
The meeting was conducted as an online Zoom meeting with computer or phone audio options. The meeting was called to order and members confirmed their presence on the meeting via roll call. All other individuals present identified themselves. K. Voelker reviewed the agenda with the committee members and summary from the previous meeting	

<b>Agenda Item 2</b>	<i>Review nurse staffing survey deficiencies</i>
K. Voelker shared the Nurse staffing survey deficiencies handout and presented which tags could be cited during a nurse staffing survey. A. Davis explained that some tags were cited more frequently than others, such as tags related to implementation and approval of the nurse staffing plan and tags related to mandatory overtime. In addition, the frequency of some citations changes over time due to implementation timelines for annual reviews in 2018 and changes to the survey tools and processes in 2021.	

<b>Agenda Item 3</b>	<i>Discuss definition of safe patient care and advise on measurements of unsafe patient care</i>
K. Voelker presented the definition of safe patient care found in OAR 333-510-0002(17) and asked the committee for measurable indicators of the factors of unsafe patient care. D.	

Oregon Nurse Staffing Advisory Board  
 Civil Monetary Penalties Committee  
 Meeting Summary – September 10<sup>th</sup>, 2021

Selover explained that the definition of safe patient care existed prior to the 2015 amendment to the nurse staffing law and related 2016 amendment to the rules. Committee members discussed how factors (c) through (f) in the definition of safe patient care were addressed during the nurse staffing plan annual review, and that a hospital nurse staffing committee's failure to address whether the nurse staffing plan adequately met the needs of patients could be a measurable indicator for those factors. Committee members asked for regulatory language about when OHA could impose a civil monetary penalty, and K. Voelker read the requirements in ORS 441.175(1). Committee members proposed nurse staffing survey deficiencies that would show a hospital had failed to implement the written nurse staffing plan (OAR 333-510-0002(17)(a)) and were related to a reasonable belief that safe patient care had been or may be negatively impacted (ORS 441.175(1)) would be Tags E630, E640, E642, and E646.

<b>Agenda Item 4</b>	<i>Discuss Table 1 – Civil Penalty Assessments and advise on objective measurements for Table elements</i>
<p>K. Voelker presented the Table 1- Civil Penalty Assessments from OAR 333-510-0045. Committee members asked for clarification regarding the interpretation of ORS 441.175(1) and stated that guidance from the Department of Justice (DOJ) would help the committee determine which deficiencies to recommend as indicators for the factors in the table. D. Selover confirmed that OHA would seek guidance from the DOJ and provide feedback to the committee at its next meeting.</p>	
<b>Action Item(s)</b>	<ul style="list-style-type: none"> <li>• OHA to seek guidance from the DOJ regarding the interpretation of ORS 441.175(1) and provide feedback to the committee</li> </ul>

<b>Agenda Item 5</b>	<i>Summarize action items, next steps</i>
<p>K. Voelker summarized the action item from this meeting, which was to clarify the requirements related to safe patient care and civil monetary penalties with the Department of Justice (DOJ). K. Voelker reminded the committee that the next meeting was October 1<sup>st</sup>, 2021.</p>	

<b>Agenda Item 6</b>	<i>Meeting Adjourned</i>
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## Nurse Staffing Survey Tags

- E600**      **Nurse Staffing Complaint Notice**  
The hospital is required to post a complaint notice that summarizes ORS 441.152 to 441.177, is clearly visible, and provides contact information for OHA.
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- E602**      **Anti-Retaliation Notice**  
The hospital is required to post an anti-retaliation notice that summarizes ORS 441.181, 441.183, 441.184 and 441.192, is clearly visible, and is posted where notices to employees and applicants are customarily displayed.
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- E604**      **Nurse Staffing Documentation**  
The hospital is required to maintain all records necessary to demonstrate compliance with ORS 441.152 to 441.177.
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- E606**      **Nurse Staffing Committee Requirements**  
The hospital must have a nurse staffing committee which is focused on ensuring that the hospital is adequately staffed to meet the health care needs of its patients.
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- E608**      **Nurse Staffing Committee: Meeting frequency**  
The staffing committee must meet at least once every three months and at any other time and place specified by NSC co-chairs.
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- E610**      **Nurse Staffing Committee: Meeting Release**  
The hospital must release NSC members from their assignment and provide paid time for attending the meeting.
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- E612**      **Nurse Staffing Committee: Composition**  
NSC shall be comprised of an equal number of direct care and nurse manager members. Each unit or specialty where nursing services are provided shall have a direct care representative.
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- E614**      **Nurse Staffing Committee: Non-RN Member**  
There must be a direct care CNA or LPN representative on the committee.
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- E616**      **Nurse Staffing Committee: Direct care membership**  
If the direct care RNs are represented under a collective bargaining agreement, the bargainin unit must coorinate a vote to select direct care RN members; otherwise the hospital must coordinate a vote. If the direct care non-RNs are represented under a collective bargaining agreement, the bargaining unit must coordinate a vote to select the direct care non-RN member; otherwise, the hospital must coordinate a vote.
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- E618**      **Nurse Staffing Committee: Co-Chairs**  
The NSC will have a direct care co-chair elected by a majority of direct care members and a nurse manager co-chair elected by a majority of nurse manager members.

- E620 Nurse Staffing Committee: Charter**  
The NSC must have a written charter that documents committee's polices and procedures, and must contain factors specified in rule.
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- E622 Nurse Staffing Committee: Quorum and voting**  
Meetings cannot be conducted without a quorum, NSC voting requirements, and meetings must be open to all nursing staff as observers except in certain circumstances.
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- E624 Nurse Staffing Committee: Meeting minutes**  
States the information that must be included in NSC meeting minutes.
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- E626 Nurse Staffing Committee: Approve meeting minutes and minutes availability**  
Requires the NSC to approve the meeting minutes prior to or during next NSC meeting and requires NSC to provide meeting minutes within 30 days to any hospital staff requesting minutes.
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- E628 Nurse Staffing Plan Requirements**  
The hospital must implement NSP that is approved by the NSC.
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- E630 Nurse Staffing Plan: Qualifications and competencies**  
NSP must be based on specialized qualifications and competencies necessary to treat patient population.
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- E632 Nurse Staffing Plan: Admissions, discharges and transfers**  
NSP must quantify the rate of ADT and the time required to complete ADT tasks.
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- E634 Nurse Staffing Plan: Total diagnoses**  
NSP must be based on total diagnoses for each unit and the nurse staffing to manage those diagnoses.
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- E636 Nurse Staffing Plan: Nationally recognized evidence-based standards**  
NSP must be consistent with nationally recognized evidence-based standards.
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- E638 Nurse Staffing Plan: Patient acuity and nursing care intensity**  
NSP must recognize differences in patient acuity and nursing care intensity.
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- E640 Nurse Staffing Plan: Minimum numbers on specified shifts**  
NSP must establish minimum numbers of NSMs required for specified shifts.
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- E642 Nurse Staffing Plan: Minimum numbers at least 1 RN + 1 NSM**  
NSP must establish minimum numbers that are at least 1 RN + 1 RN/CNA/LPN when a patient is present.
- 
- E644 Nurse Staffing Plan: Limitation of admission and diversions**  
NSP must include process for evaluating and initiating limitations on admission or diversion.

- E646 Nurse Staffing Plan: Tasks not related to providing direct patient care**  
NSP must consider tasks not related to providing direct care, including meal and rest breaks.
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- E648 Nurse Staffing Plan: External benchmarking data**  
NSP must not be based solely on external benchmarking data.
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- E650 Nurse Staffing Plan: Collective bargaining agreement**  
NSP may not be used to impose upon unionized nursing staff any changes in conditions of employment, and cannot be used to create, preempt or modify collective bargaining agreement or require parties to bargain over staffing plan.
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- E652 Nurse Staffing Plan Annual Review**  
The NSC must review staffing plans at least once per year and at any other time specified by either co-chair.
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- E654 Nurse Staffing Plan Annual Review: Factors**  
Lists factors that the NSC must consider when completing the annual review.
- 
- E656 Nurse Staffing Plan Annual Review: Report**  
Following the annual review, the NSC must issue a written report to the hospital that indicates whether the staffing plan ensures the hospital is adequately staffed and meets healthcare needs. If NSP does not meet healthcare needs, NSC must modify plan.
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- E658 Replacement Nursing Staff List**  
Hospital must maintain and post list of on-call replacement nursing staff.
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- E660 Utilizing Replacement Nursing Staff List**  
Requires the hospital to seek voluntary replacement staff prior to requiring a member to work overtime and reasonable efforts must be documented.
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- E665 Nurse Staffing Member Overtime**  
Prohibits the hospital from requiring mandatory overtime except in limited situations.
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- E670 Nurse Staffing Member Overtime Policy**  
Requires the hospital to have a policy that ensures MOT is documented in writing, and that the policy be provided to new NSMs and all NSMs upon request.

**TABLE 1 - CIVIL PENALTY ASSESSMENTS - OAR 333-501-0045**

<b>Type of Violation</b>	<b>First Violation</b>	<b>Repeat Violations</b>
No written nurse staffing plan developed or implemented by facility and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$5,000	Not to exceed \$5000
Statement of deficiencies or letter of warning will be issued for all violations in addition to any civil penalty levied.	\$0	\$0
The hospital required a registered nurse, licensed practical nurse or certified nursing assistant to work: - beyond the agreed-upon and prearranged shift, regardless of the length of the shift; - more than 48 hours in any hospital-defined workweek; - more than 12 consecutive hours in a 24-hour period and, as a result, safe patient care has been or may be negatively impacted; or - during the 10-hour period immediately following the 12th hour worked during a 24-hour period. This work period begins when the nursing staff member begins a shift.	Not to exceed \$2500	Not to exceed \$5000
The hospital willfully does not comply with the requirement to post notice to personnel and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$500	Not to exceed \$500

**WRITTEN NURSE STAFFING PLAN**

<b>Type of Violation</b>	<b>First Violation</b>	<b>Repeat Violations</b>
The written nurse staffing plan was not developed, monitored, evaluated or modified by the hospital staffing plan committee and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000
The committee does not have as its primary consideration the provision of safe patient care and adequate nursing staff and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000



## REPLACEMENT STAFF

Type of Violation	First Violation	Repeat Violations
The hospital does not maintain and post a list of replacement staff and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000
The hospital does not make reasonable efforts to get replacement staff and, as a result, safe patient care has been or may be negatively impacted.	Not to exceed \$2500	Not to exceed \$5000

Factors which may influence the amount of penalty include, but are not limited to:

- Duration and extent of violation;
- Actual harm to one or more patients;
- Willfullness of violation;
- Number of patients harmed.

## Nurse Staffing Civil Monetary Penalties Potential Factors

### Survey Type

**Triennial:** ORS 441.156 requires the OHA to survey each Oregon hospital at least once every three years. During these surveys, OHA assesses the hospital's compliance with each of the nurse staffing requirements. This process involves reviewing documents completed by the unit's direct care representative and nurse manager, as well as direct care nursing staff member interviews. Surveyed areas include:

- Complaint and anti-retaliation notices (Tags E600 and E602)
- Documentation requirements (Tag E604)
- Nurse staffing committee composition, charter and operations (Tags E606, E608, E610, E612, E614, E616, E618, E620, E622, E624, E626)
- Nurse staffing plan requirements (Tags E628, E630, E632, E634, E636, E640, E642, E644, E646, E648 and E650)
- Nurse staffing plan annual review requirements (Tags E652, E654, and E656)
- Replacement staff requirements (Tags E658 and E660)\*
- Mandatory overtime (Tags E665 and E670)

\*During Cycle 1, OHA was frequently unable to assess whether hospitals met replacement staff requirements due to incomplete nurse staffing plans and lack of documentation.

*In the first survey cycle, OHA cited 18 deficiency tags on average for a triennial survey .*

**Complaint:** Complaint investigations have a narrow focus, and surveyors only investigate areas related to the complainant's concern. Due to the limited scope of complaint investigations, it is rare for the survey to substantiate deficiencies other than those alleged in the original complaint; on the rare instance this occurs, the additional deficiency is cited on the report.

*On average, OHA cites 3 deficiency tags for a complaint investigation .*

**Revisit:** Revisit surveys focus on the areas that were found to be noncompliant on the nurse staffing report and assess whether the hospital has implemented its POC and returned to compliance. During the first survey cycle, OHA was not able to complete revisit surveys due to workload. In 2021, OHA implemented a revisit process proposed by the NSAB Process Improvement Committee (PIC), which involves NSC Co-Chair attestations and limited document submission. If either NSC Co-Chair indicates that the hospital has not returned to compliance for a certain tag, OHA will expand its review of that issue.

### Repeated Noncompliance

As part of the second survey cycle, OHA has been indicating whether a deficiency tag had been cited in previous triennial surveys or complaint investigations. Below is an example of the language used in nurse staffing reports when repeated noncompliance has been identified.

This citation reflects repeated noncompliance with the requirement under OAR 333-510-0110(2)(f). OHA previously cited the hospital for noncompliance with this rule in the nurse staffing survey initiated on 09/17/2017. The previous citation reflected noncompliance in Med/Surg and Surgical units.

## Priority Tags Identified by Process Improvement Committee (PIC)

In 2020, the PIC proposed a streamlined process for revisit surveys. This process involves attestations from the Nurse Staffing Committee Direct Care and Nurse Manager Co-Chairs for most survey tags. There were six priority tags identified that requires the hospital to submit documentation reflecting its return to compliance during the revisit survey.

- E630 - Nurse Staffing Plan: Qualifications and Competencies
- E638 - Nurse Staffing Plan: Patient Acuity and Nursing Care Intensity
- E640 - Nurse Staffing Plan: Minimum Numbers on Specified Shifts
- E646 - Nurse Staffing Plan: Tasks Not Related to Providing Direct Care
- E656 - Nurse Staffing Plan Review Requirements
- E665 - Nursing Staff Member Overtime

## Number of Licensed Hospital Beds

The OHA Nurse Staffing Team uses the number of licensed beds to determine how many hospital units to survey during a triennial survey.

- 1 - 49 licensed beds: Survey 2 units
- 50 - 99 licensed beds: Survey 3 units
- 100 - 199 licensed beds: Survey 4 units
- 200+ licensed beds: Survey 5 units

Additionally, during NSAB meetings, OHA often presents nurse staffing data based on hospital size. Hospital size is determined as follows:

- Critical access hospital: 25 licensed beds or fewer
- Medium hospital: 26 - 150 licensed beds
- Large hospital: 150+ licensed beds

Date of Review:	
Facility Name:	
<b>Decision Making Matrix for Nurse Staffing Violations</b>	<b>Points</b>
<u>Does the survey team recommend a penalty?-if yes 1 point-if no 0 points</u>	0
<u>Does Objective Data support a rule violation? If yes 1 point-if no 0 points</u>	0
<u>Do we have supporting witness testimony?-if yes 1 points-if no 0 points</u>	0
<u>Do witnesses have supporting documentation?-if yes 1 points-if no 0 points</u>	0
<u>Is there evidence of potential patient harm?-if yes 5 points-if no 0 points</u>	0
<u>Is there evidence of actual patient harm?-if yes 10 points-if no 0 points</u>	0
<u>Did the Nurse Staffing Committee support the violation or complaint?-if no 1 point</u>	0
<u>Is there evidence of willfull or flagrant violation of the nurse staffing rule? If yes 5 points</u>	0
Two or less Violations _____ ▶ If yes 2 points	0
More than two but less than 5 violations _____ ▶ If yes 3 points	
Five or more violations _____ ▶ If yes 5 points	
Failure to correct previously cited deficiencies _____ ▶ If yes 5 points	0
<b>Total of points</b> _____ ▶	<b>0</b>
<u>If 10 or less points then a plan of correction is required</u>	
<u>If 11 to 17 points then a civil penalty issued at 50% of the maximum penalty</u>	
<u>If 18 or more points then a civil penalty issued at 100% of the maximum penalty</u>	
Please note that any penalty must have evidence of actual or potential harm to patients	
Amount of Penalty:	
Notes: No Staffing Violation	