June 3, 2022

Direct Care Position Statement on Establishing Minimum Nurse Staffing in Unit Staffing Plans

Situation:

The direct care and management members of the hospital nurse staffing committee (HNSC) are unable to reach consensus on defining which nurse staff members are required to be included in a unit’s minimum staffing grid. This is a cornerstone to the development of most staffing plans and UBNPC members and frontline managers express confusion about which staff belong in the grid. This has caused extensive delays in the formation and approval of staffing plans.

Background:

The Oregon Health Authority (OHA) has completed two surveys of OHSU nurse staffing, in 2017 and 2021. The hospital received citations due to staffing plans not identifying minimum staffing levels in both surveys. OHA determined OHSU failed to create staffing plans that “establish the minimum numbers of nursing staff … required on specified shifts” and “provide that no fewer than one registered nurse and one other nursing staff member is on duty in a unit when a patient is present.” These citations are identified in the OHA survey reports with tags E640 and E642, respectively.

Operationally, many units utilize a nursing hours per patient day (HPPD) grid to determine staffing levels for specified shifts. HPPD grids have not been approved by the HNSC as required by the Oregon nurse staffing law. Hospitals submit HPPD data to the National Database of Nursing Quality Indicators (NDNQI) in large part to establish benchmarks. OAR 333-310-0110 (2)(j) clearly states staffing plans may not be based solely on external benchmarks. Units have presented grids to the staffing committee that have fewer staff identified than in current HPPD grids and exclude charge nurses (CN) and made statements indicating this was to keep the staffing plan within approved HPPD.

After extensive conversations during HNSC meetings, the committee has been unable to reach consensus. Management members of the HNSC assert charge nurses should not be included in the minimum grids, with some exceptions. Direct care members of the HNSC assert charge nurses should be included in the grids unless there is a clear rationale to exclude them, which needs to be presented by the UBNPC.

Assessment:

Relevant Oregon Administrative Rules (OAR) Chapter 333 Division 510

OAR 333-510-0002 Definitions:

(1) "Direct Care Registered Nurse" means a nurse who is routinely assigned to a patient care unit, who is replaced for scheduled and unscheduled absences and includes charge nurses if the charge nurse is not management services.

(9) "Nursing care intensity" means the level of patient need for nursing care as determined by the nursing assessment.

(10)"Nursing staff" means registered nurses, licensed practical nurses and certified nursing assistants.
(17) "Safe Patient Care" means nursing care that is provided appropriately, in a timely manner, and meets the patient's health care needs.

OAR 333-310-0110 Nurse Staffing Plan Requirements:

(1) Each hospital shall implement a written hospital-wide staffing plan for nursing services that is developed and approved by the hospital nurse staffing committee established in accordance with ORS 441.154 and OAR chapter 333 division 510 rules.

(2)(f) Must establish minimum numbers of nursing staff, including licensed practical nurses and certified nursing assistants, required on specified shifts, provided that no fewer than one registered nurse and one other nursing staff member is on duty in a unit when a patient is present;

(2)(h) Must consider tasks not related to providing direct care, including meal breaks and rest breaks;

(2)(j) May not base nursing staff requirements solely on external benchmarking data;

Direct Care Assessment

The definitions and requirements provided in the OARs are clear that CNs are direct care nurses and should be included in the minimum staffing grid because the grid identifies the nurses required on specified shifts. A CN is required on all specified shifts and therefore needs to be included.

The argument that minimum numbers must be established to account for nurses who leave a unit, briefly, is not substantiated by any language in the OARs. The only time the OARs define that a nurse must be “in a unit” is when referring to one RN and one other nursing staff member being present when a patient is present.

The OARs are specific that plans must account for when nurses are not providing care. The OARs never reference geographic terms or declare staffing plans must account for “when a nurse is off the unit.” If this was the intent, it would be described in the statute or rules, and it is not.

The law does account for when nurses provide care to patients off the unit, such as taking a patient to an imaging study. This is more appropriately addressed in the patient acuity and nursing work intensity sections of the staffing plan.

When a nurse takes a patient off the unit, they are indeed providing direct patient care. The number of nurses on the specified shift remain the same, but the nursing work intensity has changed because a nurse had to assume a 1:1 role with their patient to deliver the nursing services needed.

Furthermore, if a nurse took a rest break in the unit, at the nurses’ station, they would not be providing direct patient care, and therefore not included in the minimum for that specified shift.

The language in the OARs does not identify the geographic location of the nurse on duty but rather it identifies the activity the nurse is engaged in. The evidence and definitions substantiate the rationale for including the CN in the minimum staffing grid and dismisses the concern a unit would drop below the minimum if a nurse leaves briefly while on duty.
(12) Can a hospital have a matrix or grid separate from the nurse staffing plan that determines the number of nursing staff members on a shift?
Answer: No. The nurse staffing plan must include minimum numbers of nursing staff members required on specified shifts. These minimum staffing numbers must be part of the plan that is approved by the HNSC. Changes to approved minimum numbers must be considered and approved by the HNSC.

(20) Can a nurse staffing plan use a break coverage system in which an on-duty nursing staff member takes on the patients or any patient care duties of another on-duty nursing staff member during a break?
Answer: Maybe. The nurse staffing plan must consider tasks not related to providing direct care, including meal breaks and rest breaks. The plan can include using on-duty nursing staff members to cover for breaks if the number of nursing staff members on duty in a unit remains at or above the minimum number established by the nurse staffing plan throughout the break. The hospital violates the nurse staffing plan if the number of on-duty nursing staff members falls below the minimum number established in the plan during the break. The viability of a break coverage system is determined by whether the coverage complies with the unit’s nurse staffing plan, and not whether a covering nursing staff member takes on some or all of the other nursing staff member’s patient care duties.

For example: The unit B-6 nurse staffing plan states that the minimum number of nursing staff members for a specific 12-hour shift is 4 RNs and 2 CNAs. Nurse Camden and Nurse Dakota are working that 12-hour shift with 2 other RNs and 2 CNAs. Nurse Dakota takes on Nurse Camden’s patients during Camden’s break. During the break the unit has only 3 RNs and 2 CNAs. The unit does not have the minimum staffing required under its nurse staffing plan during Camden’s break. The unit could be cited for failure to staff according to the plan during a survey or complaint investigation.

Direct Care Assessment

Historically, the HPPD grid has been used to determine the minimum staffing for a specified shift. To bring OHSU into compliance with the law it was determined by the HNSC that units would create minimum grids and submit them to the HNSC for approval. Some units have presented grids that are significantly different than their HPPD grid and implied this was the minimum, but the unit would also use HPPD as a target. It has also been suggested there would be the minimum identified in the grid, as a sort of bare minimum, and then an ideal staffing...
level. There is nothing in the OAR language or interpretive guidance to suggest a unit have two
types of minimum staffing levels, be it a minimum grid and HPPD grid or a minimum grid and an
ideal or target level.

The language around a break coverage system again makes clear the minimum number of
nurses are those on-duty. The interpretive guidance language clearly states it is “the number of
on-duty nursing staff members” used to determine if a unit is within the plan. This further
negates the concern that a unit violates the staffing plan when an on-duty nurse transports a
patient.

**OHA 2017 and 2021 Survey’s, Complaint Investigations, and Revisit**

(2) The staffing plan:
(f) Must establish minimum numbers of nursing staff, including licensed practical nurses
and certified nursing assistants, required on
specified shifts ...
Stat. Auth.: ORS 413.042 & 441.155
Stats. Implemented: ORS 441.155

“This Rule is not met as evidenced by:
Based on interview and review ... 5 of 5 units (10K, 8C, PED ED, 9K and 12C), ... the
hospital failed to implement a hospital-wide NSP that established minimum numbers of
nursing staff required on specified shifts.
Findings include:
1. This citation reflects repeated noncompliance ... OHA previously cited the hospital for
noncompliance with this rule in the nurse staffing survey and complaint investigation
initiated on 09/25/2017. The previous citation reflected noncompliance in units 4A, 12C,
CHO, DCHOR and 6A.

Findings include:

6. In addition, the grid did not specify whether the numbers of RNs meant the staff RNs who had
patient assignments, or whether the number of RNs included the Charge RN, with or without
patient assignment

9. During interview with 8C CN on 03/30/2021 at 1300, an undated "Trauma Surgical Intensive
Care Unit" staffing grid, described as the minimum numbers, ... it was not clear if those numbers
of RNs included the CN and the other specialty RN positions identified on the NSP ...

10. During interview with 8C NM and DCC on 03/31/2021 beginning at 1410, it was confirmed
that the "Trauma Surgical Intensive Care Unit" staffing grid was a "guideline" and was "not
minimum numbers." They indicated that there could be fewer numbers of RNs than was
reflected on the staffing grid if patients were stable. It was also confirmed that the staffing grid was not referenced or incorporated into the 8C NSP and not approved by the NSC.

**Direct Care Assessment**

The hospital has been out of compliance in every unit surveyed at OHSU, including units that have been resurveyed. It is clear in the sample of findings included above the OHSU standard practice has been to use unapproved HPPD grids to determine the minimum staffing required for specified shifts.

OHA clearly states compliance requires the minimums to identify specific roles within the plans. OHA states it is unclear if the charge nurse was included or if the charge nurse had a patient assignment. OHA also notes the 8C plan failed to identify if other specialty RNs were included in the minimum (such as flex or helper RNs). This demonstrates the expectation of OHA is that all direct care staff roles be clearly identified in the minimum grids.

**Recommendations:**

The direct care members, based on an abundance of supporting evidence, recommend minimum staffing grids:

1) Be designed to provide the nursing services required for the patients on the unit.
2) Include charge nurses.
3) Align with the letter of the law and not be constructed to fit within HPPD, an external benchmark.

We recommend any proposals that exclude charge nurse from the minimum are the exception and require rationale to be presented to the HNSC by the UBNPC.

We recommend notifying UBNPCs and nurse managers that we are at impasse on this issue and collaboratively draft a summary of where we are unable to reach agreement.

We recommend making our position statement and any management position statement available to OHSU nurses.

We support continuing the established practice of allowing UBNPCs and managers that cannot achieve consensus to bring their opposing plans for review and vote by the committee.