



June 4, 2024

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Health Care Regulation and Quality Improvement Program  
800 NE Oregon Street, Suite 465  
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Re: Staffing Complaints – Providence Health and Services - Oregon

I. Introduction

Please accept this letter in support of numerous complaints that have been filed on this day pursuant to ORS 441.791 by the Oregon Nurses Association, as exclusive representative of nurses at acute care facilities at Providence Health and Services- Oregon. Please direct any correspondence on this matter to my attention. Time is of the essence on this matter and we ask that an investigation be opened pursuant to ORS 441.791(2)(c) immediately.

As described below, Providence Health and Services – Oregon, has begun a systematic and concerted mass violation of the Oregon Nurse staffing law through unilateral adoption of staffing plans and adoption of “plans” that are not nurse staffing plans. Providence’s efforts appear to be designed to increase nurse patient loads in violation of existing staffing plans which themselves were already compliant with the safety standards reflected in HB 2697 (2023). We urge and demand that the Oregon Health Authority exercise its compulsory obligation to enforce these statutes immediately. We request that the Agency order compliance with ORS 441.761 to ORS 441.795 immediately.

As described in detail below, we allege that on June 1, 2024, Providence Health and Services – Oregon committed some or all of the following violations at several of its acute care facilities in Oregon:

Violation 1: ORS 441.792(2)(c) – Failure to adopt a plan by agreement

Providence has submitted a plan to OHA that was not agreed to by the staffing committee and therefore Providence is in violation of ORS 441.792(2)(c) which makes it a violation to fail “to adopt a **nurse staffing plan by agreement** or after binding arbitration.”

Violation 2: Providence has submitted plans to OHA that were not agreed to by the staffing committee and therefore Providence is in violation of ORS 441.762 and 441.763 and the Agency has the authority to find violations under ORS 441.792(2)(c).

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### Violation 3: Section 29, chapter 507, Oregon Laws 2023

Providence has disavowed its existing nurse staffing plan which were adopted by agreement and therefore is in violation of Section 29 of HB 2697 which provides that “(c) A nurse staffing plan that is in effect on the effective date of this 2023 Act and that complies with ORS 441.152 to 441.177 remains in effect until revised in accordance with ORS [441.762].” ORS 441.762(5) requires that any changes to existing plans be done by a “decision made by a hospital nurse staffing committee” which “must be made by a vote of a majority of the members of the committee.” Because there has been no modification by a majority vote, the prior plans are still in full force and effect and Providence’s repudiation of that agreement is in violation of this statute.

Violation 4: ORS 441.792(2)(c): Failure to adopt **a nurse staffing plan** by agreement or after binding arbitration;

Providence has unilaterally adopted a document that is not a “nurse staffing plan” as defined by ORS 441.764 by not utilizing a majority vote to modify an existing staffing plan and by not considering the requirements that it must consider which are set out in ORS 441.764 (e.g., patient outcomes, complaints).

Violation 5: ORS 441.792(2)(c): Failure to adopt **a nurse staffing plan** by agreement or after binding arbitration.

Providence has unilaterally adopted a staffing plan that is not in compliance with ORS 441.763(1)(b) which requires that a staffing plan include “any staffing-related terms and conditions that were previously adopted through any applicable collective bargaining agreement, including meal breaks and rest breaks, unless a term or condition is in direct conflict with an applicable statute or administrative rule.” Several unilaterally adopted plans do not include these staffing related terms and is therefore in violation of ORS 441.763.

Following is a more detailed explanation of these alleged violations.

## II. Unilateral Adoption of a Staffing Plan Is Unlawful

The agency has authority to find violations under ORS 441.792(2)(c) which provides that: “The authority **shall** take the actions described in subsection (1) of this section for the following violations by a hospital of ORS 441.761 to 441.795: . . . (c) Failure to adopt **a nurse staffing plan by agreement** or after binding arbitration.” (emphasis added).

441.792(2)(c) calls out specifically that “agreement or binding arbitration” is necessary and adopting a plan without that agreement (as defined above) or arbitration is a violation. The statute is clear that the agency is compelled to enforce the staffing law’s plan requirements under 441.792(2)(c) if a hospital fails to adopt a statutorily compliant nurse staffing plan. A nurse

staffing plan is defined in the referenced statutes. One of those statutes, ORS 441.763 requires that each hospital shall implement a written hospital-wide staffing plan for nursing services that:

(a) Meets the requirements of this section and ORS 441.762, 441.764, 441.765, 441.766, 441.767 and 441.768;

(b) Includes any staffing-related terms and conditions that were previously adopted through any applicable collective bargaining agreement, including meal breaks and rest breaks, unless a term or condition is in direct conflict with an applicable statute or administrative rule; and

**(c) Has been developed and approved by the hospital nurse staffing committee under ORS 441.762.** (emphasis added).

The referenced and incorporated ORS 441.762 requires that a staffing plan be adopted by a staffing committee “by a vote of a majority of the members of the committee. If a quorum of members present at a meeting comprises an unequal number of hospital nurse managers and direct care staff, only an equal number of hospital nurse managers and direct care staff may vote.”

Therefore, the statute is clear that nurse staffing plans can only be adopted by a majority vote of the staffing committee (or for certain units, through binding arbitration). Unilateral adoption of a plan is anathema to the basic principle of majority adoption and equal voting power between management and staff nurses. Here, the adopted plans were not adopted by “agreement or binding arbitration” and thus Providence is in violation of both ORS 441.792(2)(c) directly and ORS 441.762, ORS 441.763 through ORS 441.792(2)(c). Therefore, the Agency should find a violation for each day that is has purported to implement this plan without agreement.

### III. Providence Has Unilaterally Adopted Unit Staffing Plans Without Agreement

Providence Health and Services – Oregon operates multiple acute care hospitals here in Oregon. Providence has approached the implementation of HB 2697 at these facilities with a deep disregard for many of these statutory requirements. Following is a summary of their unilateral actions at Oregon facilities that are subject to Complaints filed on this day:

Providence Portland Medical Center: Providence has submitted a Hospital Nurse Staffing Plan that was not agreed to by the staffing committee.

Providence Newberg Medical Center: Providence has submitted a Nurse Staffing Plan for certain units that were not agreed to by the staffing committee.

Providence Willamette Falls Medical Center: Providence has submitted a Nurse Staffing Plan for certain units that was not agreed to by the staffing committee. In addition, Providence has failed to submit a Nurse Staffing Plan that was agreed to by the staffing Committee and there is in violation of 441.763(5) which requires that the Hospital submit a plan that was adopted in accordance with 441.763 and/or 441.766.

Providence Hood River Medical Center has submitted a Nurse Staffing Plan for certain units that was not agreed to by the staffing committee.

Providence Seaside Medical Center has submitted for certain units a Nurse Staffing Plan that was not agreed to by the staffing committee.

By submitting a plan that was not adopted in accordance with ORS 441.763 and/or ORS 441.766, Providence has violated ORS 411.792(2)(c) as well as ORS 441.762 (plans must be agreed to by staffing committee by majority) and 441.763 (submission of only agreed on plans).

#### IV. The Agency Should Order that the Existing Staffing Plans Are In Effect

In each of these instances, Providence has engaged in unilateral unlawful imposition of staffing plans, and has disavowed existing staffing plans which were in compliance with the ORS 441.765 maximum patient load requirements.

Section 29, chapter 507, Oregon Laws 2023 provides as follows in regard to existing staffing plans:

(1)(a) A nurse staffing plan that is in effect on the effective date of this 2023 Act [September 1, 2023] that does not comply with ORS 441.152 to 441.177 [series became 441.761 to 441.795] continues in force until a hospital nurse staffing committee revises the plan or develops a new plan. The committee shall revise the plan, or develop a new plan, to comply with ORS 441.152 to 441.177 no later than June 1, 2024.

(b) A hospital must be in compliance with section 6 of this 2023 Act [441.765] no later than June 1, 2024.

**(c) A nurse staffing plan that is in effect on the effective date of this 2023 Act and that complies with ORS 441.152 to 441.177 remains in effect until revised in accordance with ORS 441.154 [renumbered 441.762]. (emphasis added).**

ORS 441.762(5) requires that a decision made by a hospital nurse staffing committee must be done by a majority vote of the committee members. Because there has been no modification by a majority vote, the prior plan is still in full force and effect and Providence's repudiation of that agreement is in violation of this statute. The agency should order that the existing plans continue in full force and effect until modified by agreement of the staffing committee.

#### V. The Unilaterally Adopted Purported "Plans" are Themselves Non-Compliant with Statutory Requirements.

As described above, the Authority is compelled by statute to enforce the requirements of ORS 441.761 to ORS 441.795 through the complaints that are filed under ORS 441.792(2)(c) – e.g., failure to adopt a statutory nurse staffing plan. The unlawfully adopted plans that Providence has submitted are in violation of numerous provisions of the nurse staffing law. These include the following:

**a. Modifications of nurse staffing plans must meet ORS 441.764 criteria.**

441.764 specifies that when reviewing a staffing plan, the nurse staffing committee shall consider:

- (a) Patient outcomes
- (b) Complaints regarding staffing, including complaints about a delay in direct care nursing or an absence of direct care nursing;
- (c) The number of hours of nursing care provided through a hospital unit compared with the number of patients served by the hospital unit during a 24-hour period;
- (d) The aggregate hours of mandatory overtime worked by the nursing staff;
- (e) The aggregate hours of voluntary overtime worked by the nursing staff;
- (f) The percentage of shifts for each hospital unit for which staffing differed from what is required by the staffing plan;
- (g) The number of meal breaks and rest breaks missed by direct care staff; and
- (h) Any other matter determined by the committee to be necessary to ensure that the hospital is staffed to meet the health care needs of patients.

The unlawful staffing plans that were adopted by Providence failed to consider any of these aspects of nurse staffing and therefore are in violation of ORS 441.765 which results in a violation of ORS 441.792(2)(c).

**b. Failure to Include Inclusion in Plan of Staffing Related Terms Adopted in a Collective Bargaining Agreement:**

ORS 441.763(1)(b) which requires that an adopted staffing plan include “any staffing-related terms and conditions that were previously adopted through any applicable collective bargaining agreement, including meal breaks and rest breaks, unless a term or condition is in direct conflict with an applicable statute or administrative rule.”

Many of the Providence hospitals have staffing related terms and conditions that were in collective bargaining agreements.

1. Providence Portland Medical Center collective bargaining agreement provides that the employer, “will consider factors such as patient acuity, skill mix, admissions, discharges, transfers and staffing plan guidelines.”
2. St. Vincent’s Medical Center collective bargaining agreements Article XVI requires that its staffing plan recognize difference in acuity and intensity.
3. Providence Milwaukie collective bargaining agreements Article 41 requires that its staffing plan recognize differences in acuity and intensity.
4. The Providence Hood River collective bargaining agreements Article 27.2 requires that its staffing plan recognize differences in acuity and intensity.

The unilaterally adopted plans that have been submitted do not include these staffing related terms and are therefore in violation of ORS 441.763 and thus the agency must find a violation under ORS 441.792(2)(c).

VI. Conclusion

As described throughout this letter, Providence Health and Services – Oregon, has begun a systematic violation of the Oregon Nurse Staffing law through unilateral adoption of staffing plans. Providence’s efforts appear to be designed to increase nurse patient loads in violation of existing staffing plans which were already compliant with the safety standards reflected in HB 2697. These plans not only result in increasing patient loads for nurses, in direct conflict with the language and intent of the HB 2697, but these plans also fail to comply with the requirements of the statute as to what must be considered and included in those plans. We urge and demand that the Oregon Health Authority exercise its compulsory obligation to enforce these statutes. We will provide whatever additional information you need to complete this investigation and issue findings promptly.

We appreciate your attention to this matter. Please contact me directly for further information.

Sincerely,

*Thomas Doyle*

Thomas Doyle  
ONA General Counsel