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Oregon Nurse Staffing Advisory Board (NSAB)
Wednesday, November 30, 2016
1:00 PM – 5:00 PM

Meeting Minutes

Cochairs	Carol Bradley, MSN, RN, CENP (Presiding); Susan King, MS, RN, CEN, FAAN (not present)
Members present	Carolyn Starnes, ASN, RN; Debbie Robinson, RN, MSN (by phone); Jennifer Burrows, RN, BN, BSc, MBA; Rob Campbell, CP, ADN, RN; Trece Gurrad, RN, MSN; Virginia Smith, BSN, RN-BC
Members not present	Zennia Ceniza, RN, MA, CCRN, ACNP-BC, NE-BC
PHD staff present	Dana Selover, MD, MPH; Wendy Edwards, RN, BSN; Anna Davis, JD; Lisa Finkle
Guests present	Diane Waldo, Oregon Association of Hospitals and Health Systems; Margie Gutierrez

Agenda Item 1	*Call to Order – Carol Bradley*
The meeting was called to order.	

Agenda Item 2 Time Stamp: 00:00:30	*Acknowledgments – Carol Bradley*
Carol Bradley noted that Connie Pullen and Ruwani Dissanayake have resigned from the Board because they have both changed jobs. She commended both for their service and commitment to the Board. They will each receive a certificate acknowledging their service. Members of the Board are grateful for the time and energy they devoted to the Nurse Staffing Advisory Board	

Agenda Item 3 Time stamp 00:01:45	*August 31, 2016 Board Minutes – Carol Bradley*
The Board voted to approve the minutes.	

Agenda Item 4 Time stamp 00:09:07	*Draft Survey Tools – Anna Davis*

Anna Davis provided updated draft survey tools. The surveys will begin in the second quarter of 2017, which will give hospitals an opportunity to implement their new nurse staffing plans that comply with the new administrative rules. Surveyors are currently doing complaint investigations which have brought to light some misunderstanding about the similarities and differences between survey and complaint investigation processes. For both surveys and complaint investigations the report timelines, Plan of Correction timelines, entrance and exit activities are similar and for both the results will be online.

Carol Bradley asked whether the complaints will be online.

Anna Davis stated that the complaints are confidential, so they will not be available online. Complaint investigation reports contain a summary of the allegations with identifying information removed. She described that surveys occur once every three years, whereas complaint investigations do not have a regular interval. In addition, hospitals and hospital nurse staffing committee (HNSC) cochairs receive notice of a survey three business days prior to the survey. Surveyors use the survey tools, review records, and interview the HNSC cochairs on standard surveys. Other interviews are conducted as needed. Complaint investigations are conducted within 60 days after OHA receives a completed complaint. When OHA receives a complaint with insufficient information, surveyors contact the complainant and ask additional questions to determine whether there is a nurse staffing regulation at issue. Complaint investigations are unannounced. Complaint investigations include reviews of records and interviews as needed regarding the topic of the investigation. Cochairs interviews are not required and only occur if the surveyors determine that a cochair might have direct knowledge of the facts surrounding the alleged violation. Complaint investigations may use some of the survey tools to facilitate the records review, but surveyors are unlikely to use the full set of tools. She described the survey process including pre-survey preparations by surveyors, entrance activities, the Needs List that surveyors use to request documentation from the hospital.

Carol Bradley pointed out that the phrase “patient treatment areas” on the Needs List may be overly broad and include units/areas where nursing care is not the primary activity.

Dana Selover noted that the definition is limited by the introductory language that refers to areas where nursing services are provided.

Anna Davis described the information gathering process for surveyors.

Wendy Edwards confirmed that surveyors rarely look at contracts, but may do so in the context of staffing agencies.

Dana Selover pointed out that because the survey may not close on the day that surveyors exit the facility, the surveyors may notify the administration of the closure date by email.

Carol Bradley asked whether a hospital can produce additional information during the exit conference that has accidentally been omitted.

Wendy Edwards stated that those types of corrections are allowed.

Anna Davis described the survey report and Plan of Correction timelines. Staff is preparing documentation to guide hospitals in writing Plans of Correction. It is possible that a Plan of Correction is not deemed sufficient and must be resubmitted. The timelines for these exchanges are in the rules. The corrections must be implemented within 45 days of the date of approval of the Plan of Correction. The surveyors revisit the deficiency within 60 days.

Dana Selover pointed out that the revisit may or may not be a site visit. The revisit scale and scope will depend on the type of correction made.

Wendy Edwards described possible desk audits of policy changes.

Trece Gurrad asked whether the hospital can provide copies of updated policies if a policy was the deficiency.

Wendy Edwards explained that when there is a desk revisit there will be some additional communication between the surveyor and the hospital.

Jennifer Burrows noted that 60 days may not be enough time to correct some types of deficiencies.

Dana Selover acknowledged that some staffing issues may not be resolved during that time, but the 60-day revisit is a statutory timeframe. The efficacy of using this timeframe should be monitored as the NSAB could recommend changes to the timeframe if evidence shows that the time is frequently problematic. Once the OHA has done a fair number of surveys there may be more evidence of problems.

Anna Davis described the topics covered by the survey tools and the scope of the tools beginning with the Time Block Selection tool.

Carol Bradley asked why time blocks are being used because hospitals staff in shifts.

Anna Davis responded that surveys generally use representative sample sets to get a measure of compliance without reviewing every single piece of data. The Time Block Selection tool is a way of drawing a representative sample set from the available records.

Carol Bradley noted that hospitals do not keep records in 3-hour blocks. She stated that some hospitals have a manual counting system and other hospitals have a computerized system.

Virginia Smith stated that within her hospital system the charge nurse keeps track of admissions, discharges, and transfers (ADT) within 4-hour time blocks. The records are kept manually and the charge nurse makes decisions about staffing during each 4-hour block. When reviewing productivity every two weeks they look at those reports and compare them to end of shift summaries and ADT reports.

Carol Bradley is concerned that the hospital cannot recreate the data. The data is used when decisions are being made, but is not available after that time.

Anna Davis stated that surveyors will request hospital records for an entire shift and then focus on information within the 3-hour block.

Carol Bradley stated that the hospital does not keep records about which specific patients have left a unit at any given time. She expressed concern that decisions that are made in the moment that cannot be recreated retrospectively.

Virginia Smith asked whether the hospital can run reports that show a patient census at a specific time.

Carol Bradley responded that the census does not reflect who is actually on the unit during that time.

Rob Campbell pointed out that surveyors are using this as a tool to measure how the hospital was doing during that time period.

Carol Bradley noted that many records reflect the patients' activities, but not the nurse staffing. There are notes in the system about ADT, but the hospital cannot create a 3-hour block showing the staffing.

Wendy Edwards stated that she appreciates the dialogue and challenges that are being discussed. The OHA will continually reevaluate tools and can change the tools if they do not work in the field. Surveyors are looking for a census that correlates to the number of nursing staff members in the unit.

Debbie Robinson asked about the use of a 3-hour block when the hospitals use 4-hour blocks.

Trece Gurrad agreed the 4-hour block is more commonly used.

Anna Davis described how the blocks of time are used in the Staffing Data Review tool.

Jennifer Burrows noted that the hospital may end up staffing with more RNs and fewer CNAs than the plan required.

Virginia Smith noted that the staffing plan itself may state that RNs can be used in place of CNAs.

Carol Bradley stated that the danger in using this analysis is that the hospital may have additional nurses if the acuity is high and may have fewer nurses is the acuity is low. Some of the staffing plans have a range rather than a fixed number. The nurses on the unit decide whether they need more or fewer nurses.

Anna Davis explained that if the staffing is within the range then it will likely be acceptable, as long as the plan shows when and why staffing levels change.

Carol Bradley asked about how patient flow nurses are reflected. During the course of a shift patient flow nurses move around to a variety of units.

Trece Gurrad said that when there was a survey at her hospital the surveyors wanted to see all of the nurse staffing members who were working on the unit including nurse managers and supervisors.

Anna Davis explained that there's a difference if nurses are only on the unit to take a patient elsewhere for treatment compared with nurses who are working on the unit.

Carol Bradley clarified that the survey tools will be completed by the OHA surveyors.

Dana Selover pointed out that these are draft tools and can be changed based on how they work in the field.

Anna Davis stated that the draft survey tools will be available on the website before the webinar scheduled for December 15, 2016.

Virginia Smith said that this is an extremely comprehensive set of tools compared to what was available before. She asked about the long term plan for getting feedback from to the Board regarding changes to the tools.

Anna Davis said that the tools will likely be reviewed by the Board after they have been in use for several quarters. It will be useful to bring them back and discuss what surveyors have been seeing in the field. Surveyors may make some changes before that. In addition, hospitals can notify Anna Davis directly if they have a significant experience with a survey tool that indicates there's a problem with the tool.

Dana Selover pointed out that surveyors will see problems with the tools early on.

Rob Campbell asked what feedback surveyors have received with the tools thus far.

Wendy Edwards stated that the surveyors have just begun to use the tools. Thus far they have not gotten a lot of feedback on the tools, but surveyors were instrumental in creating the tools.

Jennifer Burrows expressed concern that charge nurses will spend the entire shift documenting in order to satisfy the tool rather than providing patient care.

Trece Gurrad pointed out that when the unit is very busy it's hard to remember to stop and document.

Virginia Smith noted that much of this information is already being documented.

Dana Selover noted that the tools will also function differently depending on the size of the hospital. It will take use of the tools in all different environments to see how they work.

Wendy Edwards pointed out that regardless of how the tools are laid out, the surveyors will still be looking for documentation. She suggested that hospitals try to run their own mock surveys.

Carol Bradley stated that the difficulty is trying to recreate what occurred during a given period. Hospital administration knows in the moment what is happening, but it is hard determine what occurred once it is over. Also, there is a constant churn on every nursing unit as the census rises and falls, but the numbers of nurses on the unit do not necessarily change during that time. The averaging of ups and downs is what leads to appropriate staffing.

Anna Davis noted that the reason for reviewing multiple blocks of time is to have a sample that shows what is typical. If the staffing in a specific block of time is greatly different than the plan, then the surveyor may look at additional blocks of time to determine whether this block was an anomaly or whether there are serious staffing problems on the unit. The Personnel Survey tool looks at whether the unit staff has the correct qualifications and competencies for the patients generally served on that unit. This tool uses the same time blocks.

Jennifer Burrows noted that this still may be a large number of staff members to review.

Anna Davis described the Plan Component Review tool. The tool can be used on unit-specific plan or the entire hospital plan, depending on the size of the hospital and the number of unit plans. The plan requirements are from statute and rule. Surveyors will look at the plan itself and may also look at hospital nurse staffing committee meeting minutes for evidence of consideration of the factors. The Annual Staffing Plan Review tool will likely be a review of staffing committee minutes and the committee's annual report to the hospital administration. This tool can also be used on unit-based tools or hospital-wide.

Wendy Edwards stated that the format of the plan is not as important as the fact that all of the information is contained in it. Surveyors have seen that plans vary greatly.

Anna Davis described the set of tools related to replacement staff. The Replacement List Evaluation tool looks at the types of lists available, how are they maintained, and how are the lists actually used. Hospitals will likely know whether the list is working. The efforts to add additional names to the list will be more important if the current list is not providing sufficient substitutes.

Carol Bradley noted that the list may be all of the current employees.

Anna Davis agreed that the list may not be a single, printed list. It may be an electronic system.

Wendy Edwards stated that the surveyors do see the lists taped on the walls and sometimes more than one list. In some hospitals nurse managers have not known of all of the locations or all of the different lists.

Anna Davis described the Staffing Replacement Usage tool, which looks narrowly at specific vacancies and determines how replacements were secured and/or what attempts were made to secure replacements.

Carol Bradley confirmed that this tool would not be used to review changes in the schedule made to cover vacancies such that the vacancy is averted well before the shift even begins.

Anna Davis noted that the tool also includes a location for a notation that there was an emergency that would allow for suspension of the nursing staff member overtime rule. Surveyors would then explore that topic in greater detail. The Nurse Staffing Posting tool looks at a variety of types of notices that have to be posted. Some of the notices must be physically posted, whereas others can be posted electronically.

Carolyn Starnes asked about the use of the term “on call” in reference to on call staff who may be replacement staff.

Anna Davis described the two different definitions of “on call”. One definition refers to employees paid to wait to be called in and then reporting when called in. The other definition refers to employees and non-employees not currently working who may or may not take a shift when called. On this tool the term “on call” refers to the latter definition. The posting tool also describes the retaliation posting, the complaint posting and the required notification of staff regarding the hospital’s mandatory overtime policy.

Carol Bradley stated that at Legacy Hospital’s replacement staffing is arranged by the staffing office and not the units. The names and numbers of the replacements are never posted on the units.

Anna Davis agreed that the names and contact information only needs to be available to the staff who secure replacements.

Virginia Smith asked why there’s a breakdown among the types of replacement staff on-duty, off-duty, staffing agency, etc.

Anna Davis stated that there’s not a weight or value among the different types of replacements.

Carolyn Starnes further clarified the difference between paid on-call staff and on-call staff.

Anna Davis confirmed that paid on-call refers to individuals paid to wait, whereas the other “on-call staff” are replacement staff, who come from a broad variety of sources.

Debbie Robinson noted that the on-call staff refers to all possible replacement staff members from any source.

Anna Davis described the next set of tools as relating to the composition and operations of the hospital nurse staffing committee. The first of these tools reviews the minutes of the hospital nurse staffing committee. The requirements in this tool come from the statute and rule. Some hospitals have created templates for minutes.

Carol Bradley asked whether a manager can send a replacement manager to a HNSC meeting.

Trece Gurrad stated that their committee charter included this policy.

Carol Bradley confirmed that if the charter allows for this then then the OHA does not object.

Wendy Edwards stated that this type of practice should be included in the charter if the hospital wishes to allow for replacements on the HNSC.

Trece Gurrad stated that at the beginning of their HNSC meetings they note whether they have a voting quorum present.

Anna Davis described the Charter Review tool. There are some HNSC requirements that may or may not appear in the charter. Surveyors will look first in the charter for this information and then ask the cochairs in the interview if the information is not in the charter. The Staffing Committee Composition tool shows the breakdown and representation on the committee.

Trece Gurrad noted that at her hospital the direct care committee members recently selected a new cochair.

Anna Davis pointed out that there is a form online that committees should complete and send in when there is a new cochair so that OHA can send the required notices and reports to cochairs. The Cochair Interview tool is a list of suggested questions. Surveyors can add to or subtract from the questions based on what they observe during the survey. The next set of tools relate to overtime. Several of the tools have already been discussed because they also relate to other areas of regulation. The Maximum Hour Review tool looks at a variety of factors to determine whether the nursing staff member overtime rule has been violated. This rule tracks the provisions of the overtime rule including the temporary provisions.

Carolyn Starnes asked whether nurses or the hospital are responsible for tracking whether overtime is voluntary.

Trece Gurrad noted that at her hospital nurses must sign a document to indicate whether the time is voluntary.

Carol Bradley stated that at Legacy hospitals nurses email or text to affirm voluntary overtime.

Anna Davis stated that OHA cannot require nurses to produce records, because the agency licenses hospitals and can only require the hospitals to produce records. Nevertheless, when nurses file a complaint any documentation the nurses can produce will also be considered. When the hospital lacks documentation, surveyors may have difficulty determining whether a violation occurred. The information from the specific survey tools are put into the Nurse Staffing Workbook which contains the administrative rules. The Workbook breaks down the regulations by which tool is used to measure compliance. The tag numbers are not final but will be useful when the survey report is generated. There are some topics that do not have survey tools. The biggest of these topics is when the nurse staffing plan is not implemented because of an emergency. In that situation surveyors will ask for additional information, but there is no specific tool. The survey tools will be presented at a webinar scheduled for December 15. This webinar will not have an in-person

component, but viewers can submit questions live during the webinar. The tools will also be available online in advance of the webinar. The webinar is set for two hours.

Carol Bradley asked how quickly tools will be modified if surveyors find they're not working.

Anna Davis responded that surveyors have historically changed tools whenever they needed to. They may also determine that tools function differently in different sized hospitals and can adjust usage to reflect that.

Carol Bradley stated that she believes the time blocks will turn out to be problematic. The Joint Commission used to require the hospital to pull staffing for an entire week throughout the hospital and she is concerned that the time blocks will not give a realistic picture of staffing throughout the hospital.

Dana Selover suggested that hospitals could let us know how a mock survey worked using these tools.

Wendy Edwards described how the time block could be used in a complaint investigation. Surveyors will absolutely change the tools if they're not working in the field.

Margie Gutierrez, a guest on the phone, noted that the tools should take into account when a vacancy was discovered. In some rural areas vacancies are known in advance and yet not filled. In addition, the replacement staff list may contain staff who are unwilling to serve as replacements.

Agenda Item 5 Time stamp 01:46:10	*Rulemaking Update – Dana Selover*

Dana Selover stated that the temporary rule was effective October 25, 2016 and then the permanent rulemaking began. There was some input during the legislative days. There were two parallel Rule Advisory Committee meetings in order to get feedback from as many Rule Advisory Committee members as possible. Anna Davis sent the minutes out that combined the minutes received from both meetings. Comments on the draft rule can be sent in until 5:00 PM on December 22, 2016. The instructions for submitting comments are on the web. The Statement of Need and Fiscal Impact was also discussed at the Rule Advisory Committee meetings and there was one change to that document as a result of discussions at those meetings. The rule will likely be finalized in January depending on the comments submitted and the public hearing. The rule needs to be completed before the legislative session begins, as the agency does not generally make new rules during session.

Agenda Item 6 Time stamp 01:52:30	*Nurse Staffing Waivers – Anna Davis*

Anna Davis stated that the statute includes both the standard for waivers and the requirements that can be waived. The standard is that the waiver must be necessary

to ensure that the hospital is staffed to meet the health care needs of patients. The agency cannot grant waivers except in this situation. Under the old standard the waiver could be granted based on patient care needs or the nursing practices of the hospital. That standard allowed for a different basis for the waiver. Any required element of the nurse staffing plan can be waived. The most common request is in the need to establish minimum staffing ratios when there is at least one patient in the unit. Things that cannot be waived are other nurse staffing regulations such as the need to have a nurse staffing committee and the overtime rules. In order to publicize the new standard OHA did a targeted mailing to all hospitals that recently had waivers, all hospitals that applied for a waiver after the 2015 legislation, and all hospitals that had waivers with an expiration date of January 1, 2017. There are no hospitals with waivers that have an expiration date later than January 1, 2017. In November a letter was sent to all hospital administrators and all hospital nurse staffing committee cochairs by email and regular mail to make sure the new standard was known and advising any hospital seeking a waiver to apply by November 17, 2017. There have been some specific questions about waivers in response to that letter. One of the questions for the Board is what instructions the Board would like to give the hospitals about waivers.

Dana Selover pointed out that in a particular specialty unit there might be a specialized tech who could provide better care than a CNA. To use that specialized tech to establish minimum staffing numbers would require a waiver. The agency cannot waive anything about hospital nurse staffing committee composition and voting. The plan requirements are waivable, although there are some things that seem less likely to be waived.

Trece Gurrad asked whether a hospital needs to request a waiver if there are no nationally recognized standards for a specific service.

Anna Davis confirmed that the survey team will not expect waivers if there are no standards.

Carol Bradley noted that if hospitals want to do things that exceed the rules, like including techs, in the staffing plan then they don't need to request a waiver.

Anna Davis confirmed that there is no need to request a waiver if the hospital is being more stringent.

Dana Selover noted that this is a nurse staffing law and it does not cover techs, but the only time the techs become an issue is when the techs are being used in lieu of a required nursing staff member. Hospitals will need to request a waiver if they use a tech to meet the 1:1 ratio.

Rob Campbell noted that his Cath lab has a waiver and only uses one RN and a tech at night.

Anna Davis indicated that Rob Campbell's hospital does not have a record of having a waiver.

Virginia Smith asked whether the waiver application should be more specific in indicating what can be waived.

Anna Davis explained that the waiver form is used for all hospital waivers from nurse staffing to design and construction.

Carol Bradley stated that where a physician provider is performing a procedure in the Cath lab there is not a second nurse in the procedure room. There is a tech in that procedure room. These units did not previously have a nurse staffing plan, but they do now.

Virginia Smith asked whether there should be a specific nurse staffing waiver request form. She stressed the importance of the hospital nurse staffing committee being notified of the waiver request.

Anna Davis explained that the form will be returned to the hospital with instructions if the waiver request has does not include evidence that the nurse staffing committee was notified of the request.

Dana Selover confirmed that Board members requested a waiver request form that is specific to nurse staffing.

Carolyn Starnes asked whether certified OR techs need a waiver.

Dana Selover confirmed that if the techs are used to meet the 1:1 ratio then there must be a waiver.

Carol Bradley noted that Cath labs do not actually need registered nurses.

Rob Campbell stated that this is no longer the standard.

Dana Selover stated that the surveyors are going to look at the nurse staffing plan and then look at whether all of the standards, including the mandatory minimums, are met in the plan.

Jennifer Burrows stated that the challenge is that there is not a second nurse in the OR, and it is likely that the call schedule does not include two nurses for those call hours.

Anna Davis noted that waivers are for units and not for specific procedure rooms.

Several Board members believe that every hospital will be requesting a waiver for night shifts that only have one nurse on call.

Dana Selover noted that this language was in the statute prior to 2015. When every hospital needs a waiver, there may be a need for a change to the statute.

Rob Campbell added that it is important to know how many waivers are needed and why. There may then be a trend of requesting waivers.

Anna Davis confirmed that there have been no waivers submitted for an OR thus far.

Carol Bradley was concerned that this problem arose because of the narrow definition of nursing staff members.

Anna Davis clarified that the definition of nursing staff members for purposes of minimum staffing is also statutory and original to the 2001 legislation.

Debbie Robinson asked whether surveyors have cited this practice.

Wendy Edwards does not recall citing this as a violation. Dana Selover noted that most waiver requests come from EDs and CCUs in critical access hospitals. Anna Davis explained that there will be a waiver update at the February Board meeting.	
Action Item	• OHA will work on a waiver request form specifically for nurse staffing

Time stamp 02:23:40	*Board reappointment – Virginia Smith*
Virginia Smith noted that she applied for reappointment as her Board term is ending and has not heard from the governor's office. Anna Davis will reach out to the governor's office for information on the status of the reappointments. Carol Bradley noted that we have requested that the vacancies be filled. Dana Selover noted that OHA sends a monthly reminder about this issue.	
Action Item	• OHA will check on the status of Board reappointments and Board vacancies with the governor's office.

Time stamp 02:25:50	*Other Issues – Carol Bradley*
Carol Bradley stated that during the legislative days in September she and Susan King raised the issue of the Oregon State Hospital. She asked whether there was any further resolution of that issue. Dana Selover stated that she was unaware of any further resolution and would look into it. Carol Bradley stated that she had a conversation with Lynne Saxton and Greg Roberts. They discussed the pros and cons and she thought they were going to get back to us. When it is resolved it would be good for the entire Board to hear it.	
Action Item	• OHA will inform the Board of any resolution of the issue related to the Oregon State Hospital.

Agenda Item 7 Time stamp 02:26:27	*Public Comments*
Diane Waldo stated that the waiver conversation might also be important at the nurse staffing workshop in February. The planning group may make that part of the OHA's presentation. The waiver request forms might also give examples of what things cannot be waived. Also, the instructions should indicate that the duration of the waiver requested.	

Margie Guiterrez is awaiting appointment to replace Ruwani Dissanayake. She didn't hear everything that was said about waivers, but she would like to see signatures of the nurse staffing committee on the waiver request.

Dana Selover noted that the housekeeping bill preparation begins about 18 months before the session in which the bill will be presented. Dana Selover described the types of changes that can be made in a housekeeping bill and the process for getting statutory changes into the housekeeping bill.

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