



Civil Monetary Penalty Committee Meeting Agenda

Date: August 10, 2022
Time: 2:00 PM – 3:00 PM

To receive meeting login information, register for the meeting here:

https://www.zoomgov.com/meeting/register/vJlscu6rrzsrHME07DtRh0u_3a0hiWOybH8

Time	Agenda Item	Materials Provided	Presenter
2:00 PM – 2:05 PM	Item 1 – Review the meeting agenda		Kimberly Voelker
2:05 PM – 2:20 PM	Item 2 – Review changes to the draft CMP Decision-Making tool <ul style="list-style-type: none">• Provide feedback on incorporated changes• Vote to recommend tool to the NSAB	<ul style="list-style-type: none">• Draft CMP Decision-making Tool	Kimberly Voelker
2:20 PM – 2:55 PM	Item 3 - Discuss CMP report for NSAB <ul style="list-style-type: none">• Recommend changes• Vote to move CMP Report to the NSAB	<ul style="list-style-type: none">• Draft CMP Report	Kimberly Voelker & Anna Davis
2:55 PM – 3:00 PM	Item 4 – Summarize action items and next steps		Kimberly Voelker

3:00 PM	Meeting adjourned		
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Upcoming Meetings

- *NSAB Rules Review Committee – September 14, 2022 – 9:00 AM – 10:30 AM*
- *NSAB Quarterly Meeting – October 26, 2022 – 1:00 PM – 5:00 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 at least 48 hours before the meeting.

Civil Monetary Penalty Decision-Making Tool

Hospital _____

Survey Type _____ Survey Exit Date _____

NS Policy Analyst _____ Date _____

This form is for use by OHA to identify situations that reflect safe patient care has been or may be negatively affected. After a hospital has been issued its nurse staffing report, the Nurse Staffing Policy Analyst will complete Sections 1 - 3 in Part A. The Nurse Staffing Policy Analyst will complete Section 4 after the hospital has submitted three POCs or submitted a late POC. If the point total in Part A exceeds the threshold, complete Part B. (See Section 4 for definition of late POC.)

This form should be saved with the hospital's survey or investigation folder.

Part A: Identifying Noncompliance

For each section, record the number of points as instructed on the form.

Section 1 - Total Number of Deficiencies

Check the box next to the number of deficiencies cited on this SOD. Check the boxes if the SOD was issued for a standalone revisit survey. (For example, if 12 tags were cited, the 2 Points Box and "Add 4 points if revisit survey", resulting in a total of 6 points.)

- | | | |
|--|---------------|--------------------------|
| Check if less than 10 tags cited: | (0 Points) | <input type="checkbox"/> |
| Check if 10 - 15 tags cited: | (2 Points) | <input type="checkbox"/> |
| <i>Add 4 points if revisit survey</i> | + (4 Points) | <input type="checkbox"/> |
| Check if 16 - 20 tags cited: | (4 Points) | <input type="checkbox"/> |
| <i>Add 8 points if revisit survey</i> | + (8 Points) | <input type="checkbox"/> |
| Check if 20+ tags cited: | (8 Points) | <input type="checkbox"/> |
| <i>Add 16 points if revisit survey</i> | + (16 Points) | <input type="checkbox"/> |

Point Total for Section 1: _____

Section 2 - Repeated Noncompliance

Check the box for each survey Cycle the tag was cited. The points are added only if the hospital has received the citation within the past two survey cycles. For example, if a hospital is cited for E600 in Cycle 2 but not cited in Cycle 1, do not add the points because there is no repeat compliance.

	Cycle 1 (2017 - 2019) (0 points)	Cycle 2 (2021 - 2023) (2 points if recently cited)	Cycle 3 (2024 - 2026) (4 points if recently cited)	Cycle 4 (2027 - 2029) (8 points if recently cited)	Standalone Complaint Investigation (1 point)	Points
<i>Example 1 - Tag cited in Cycle 1 and Cycle 2</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Example 1: 2 Points
<i>Example 2 - Tag cited in Cycle 1, Cycle 2, and Cycle 3</i>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Example 2: 6 points
<i>Example 3 - Tag cited in Cycle 2 and Cycle 3</i>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Example 3: 4 points
<i>Example 4 - Tag cited in Cycle 1 and Cycle 3</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	Example 4: 4 points
<i>Example 5 - Tag cited in Cycle 1 and Cycle 4</i>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	Example 5: 0 points

	Cycle 1 (2017 - 2019) (0 points)	Cycle 2 (2021 - 2023) (2 points if recently cited)	Cycle 3 (2024 - 2026) (4 points if recently cited)	Cycle 4 (2027 - 2029) (8 points if recently cited)	Standalone Complaint Investigation (1 point)	Points
Tag E630- NSP Qualifications, trainings &	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tag E638 - NSP Acuity & Intensity	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tag E640 - NSP Minimum Numbers: Specified Shifts	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tag E642 - NSP Minimum Numbers: 1 RN + 1 NSM	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tag E646 - NSP Tasks not Related to Direct Care	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tag E654 - Annual Review Factors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Tag E665 - NSM Mandatory Overtime	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Point Total for Section 2: _____

Section 3 - Tags Closely Related to Unsafe Patient Care

The NSAB CMP Committee advised that a reasonable belief that safe patient care had been or may be negatively impacted if the following tags were cited. Mark each tag that was cited on the SOD.

Tag E630: NSP Qualifications, trainings & competencies

Tag E646: NSP Tasks not Related to Direct Patient Care

Tag E638: NSP Acuity & Intensity

Tag E654: Annual Review Factors

Tag E640: NSP Minimum Numbers: Specified Shifts

Tag E665: NSM Mandatory Overtime

Tag E642: Minimum Numbers: 1 RN + 1 NSM

Number of Section 3 Tags cited: _____ x 1 point = _____ points

Point Total for Section 3: _____

Calculate Point Totals from Part A, Sections 1 - 3

This section calculates the points from Sections 1 - 3. This section should be filled out after the nurse staffing report has been sent to the hospital. If Sections 1 - 3 exceeds 27 points, complete Part B.

Total from Section 1: _____ +

Total from Section 2: _____ +

Total from Section 3: _____

= _____ points

If total exceeds 27 points, complete Part B.

Section 4 - Plan of Correction Engagement

Note: Do not complete this section until the hospital has submitted three Plans of Correction or the hospital submits a late POC. A late POC is a POC submitted after its 30 work-day deadline, or if the hospital has received an extension on its POC from OHA, after the POC extension deadline.

If there is new information to record in this section, print a new Section 4 page. Draw a single line through the previous version and date and initial. Retain both versions in the hospital's POC folder.

Section 4A: Number of POC Submissions

- POC 1 Accepted: 0 points
- POC 1 Unacceptable: 0 points
- POC 2 Unacceptable: 0 points
- POC 3 Unacceptable: _____ tags to correct × 1 point = _____ points
- POC 4 Unacceptable: _____ tags to correct × 2 points = _____ points
- POC 5 Unacceptable: _____ tags to correct × 3 points = _____ points

Add 20 points for each additional POC that is unaccepted (POC 6, POC 7, etc.)

Point Total for Section 4A: _____

Section 4B: Late POC Submissions

Use the space below to record incidents where the POC was received more than 5 work days after its original due date. If the hospital received an extension, only list incidents where the POC was received more than one work day after the extended due date.

	POC Version #	POC Due Date	Check if extension	Extension Due Date	Date POC Received	# Work Days Late
Incident 1			<input type="checkbox"/>			
Incident 2			<input type="checkbox"/>			
Incident 3			<input type="checkbox"/>			
Incident 4			<input type="checkbox"/>			
Incident 5			<input type="checkbox"/>			

- POC received 2 - 5 work days late: # Incidents _____ × 2 points = _____ points
- POC received 6 - 10 work days late: # Incidents _____ × 4 points = _____ points
- POC received 11 - 20 work days late: # Incidents _____ × 8 points = _____ points
- POC received 21 or more work days late: # Incidents _____ × 10 points = _____ points
- Extended POC received 1 or more work days late: # Incidents _____ × 2 points = _____ points

Point Total for Section 4B: _____

Calculate Point Totals from Part A

If there is a new point total for Section 4 (as a result of multiple POC submissions or late POC submissions), print a new calculation page. Draw a line through the previous version and date and initial. Retain each version in the hospital's POC folder.

Total from Section 1: _____ +
Total from Section 2: _____ +
Total from Section 3: _____
Total from Section 4A: _____ +
Total from Section 4B: _____ = _____ points

If total exceeds 55 points, complete Part B.

Part B: Decision-making

Decision by HFLC Survey & Certification Manager

Issue Warning Letter - There is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be sent a warning letter and required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.

Issue Civil Monetary Penalty - There is noncompliance that reflects safe patient care has been or may be negatively impacted. Check the box next to each applicable statement.

The hospital is noncompliant with many aspects of the nurse staffing law. It received 10 or more citations during the survey. (See Part A, Section 1 - Total Number of Deficiencies)

The hospital has failed to correct or maintain compliance for deficiencies previously cited against the hospital. (See Part A, Section 2 - Repeated Noncompliance.)

The hospital received at least one citation closely related to unsafe patient care. (See Part A, Section 3 - Tags Closely Related to Unsafe Patient Care.)

The hospital is not engaged in the Plan of Correction process. (See Part A, Section 4 - POC Engagement.)

Comments:

Click or tap here to enter text.

Printed Name

Date

Signature _____

Decision by HCRQI Program Manager

Issue Warning Letter - There is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be sent a warning letter and required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.

Issue Civil Monetary Penalty - There is noncompliance that reflects safe patient care has been or may be negatively impacted. Check the box next to each applicable statement.

The hospital is noncompliant with many aspects of the nurse staffing law. It received 10 or more citations during the survey. (See Part A, Section 1 - Total Number of Deficiencies)

The hospital has failed to correct or maintain compliance for deficiencies previously cited against the hospital. (See Part A, Section 2 - Repeated Noncompliance.)

The hospital received at least one citation closely related to unsafe patient care. (See Part A, Section 3 - Tags Closely Related to Unsafe Patient Care.)

The hospital is not engaged in the Plan of Correction process. (See Part A, Section 4 - POC Engagement.)

Comments:

Click or tap here to enter text.

Printed Name

Date

Signature _____

Recommendation by NS Policy Analyst

Issue Warning Letter - There is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be sent a warning letter and required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.

Issue Civil Monetary Penalty - There is noncompliance that reflects safe patient care has been or may be negatively impacted. Check the box next to each applicable statement.

The hospital is noncompliant with many aspects of the nurse staffing law. It received 10 or more citations during the survey. (See Part A, Section 1 - Total Number of Deficiencies)

The hospital has failed to correct or maintain compliance for deficiencies previously cited against the hospital. (See Part A, Section 2 - Repeated Noncompliance.)

The hospital received at least one citation closely related to unsafe patient care. (See Part A, Section 3 - Tags Closely Related to Unsafe Patient Care.)

The hospital is not engaged in the Plan of Correction process. (See Part A, Section 4 - POC Engagement.)

Comments:
Click or tap here to enter text.

Printed Name

Date

Signature _____

Survey and Certification Unit
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Portland, OR 97232
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Fax: (971) 673-0556
TTY: 711

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mailbox.nursestaffing@state.or.us

Nurse Staffing Advisory Board Civil Monetary Penalties Committee Summary Report

This report summarizes the work of the Nurse Staffing Advisory Board (NSAB): Civil Monetary Penalties (CMP) Committee and provides recommendations to the Oregon Health Authority (OHA) on issuing CMPs to hospitals that are noncompliant with the nurse staffing law.

Background

In 2017, OHA began the first 3-year cycle of nurse staffing surveys under the 2015 statutory changes¹ and the 2016 amendments to the nurse staffing administrative rules implementing the statutory changes. Since that time, OHA has regularly updated the NSAB on the status of nurse staffing surveys and complaint investigations, including the breadth of noncompliance with nurse staffing requirements found during the first nurse staffing survey cycle and the time necessary for hospitals to plan and implement corrections. Both OHA and the NSAB have received input from interested parties across the state about areas of continued noncompliance.

Under Oregon Revised Statutes (ORS) 441.175(1) – (2); 441.177(4); and 441.185(1) – (2), OHA may issue CMPs for violations of the nurse staffing law. OHA last assessed CMPs for violations of the nurse staffing law prior to the 2015/2016 changes to the regulations.

Members of the NSAB have requested that OHA explore the use of CMPs as a tool to improve compliance with the nurse staffing law. OHA has sought recommendations from the NSAB about when CMPs should be imposed and how to identify situations warranting CMPs given the breadth and degree of noncompliance in the first survey cycle. In April 2021, the NSAB formed the CMP Committee to provide guidance to OHA on issuing CMPs to hospitals that are noncompliant with the nurse staffing law.

¹ [Senate Bill 469](#)

Role of the NSAB in providing guidance to OHA on Civil Monetary Penalties

NSAB members are tasked with advising OHA on the administration of Oregon's nurse staffing laws. As an advisory board, the NSAB is responsible for making recommendations that OHA can use to influence policies for the agency to use when determining whether to issue a CMP. OHA is then responsible for implementing and operationalizing the nurse staffing law.

How CMPs Fit Into the OHA Regulatory Landscape

Financial and Workload Impacts of CMPs

The NSAB CMP Committee discussed the financial and workload impacts associated with issuing a CMP. If the hospital contests the CMP, OHA must request a hearing with the Office of Administrative Hearings and be represented by the Department of Justice (DOJ). The hospital must be represented by an attorney. Both sides would participate in a discovery process in preparation for a hearing. At the hearing the Administrative Law Judge assigned to the case would listen to evidence from both the agency and the hospital. The Administrative Law Judge then issues a proposed order, to which OHA and the hospital may respond. OHA would then issue a final order, which the hospital could appeal. If the hospital appeals, the appeal is heard by the Oregon Court of Appeals.

For each contested case hearing, OHA expects to pay approximately \$20,000 for DOJ services and \$20,000 for Office of Administrative Hearing Services. These financial projections do not include the costs associated with OHA staff time for hearing preparations or the cost of work on an appeal.

Prioritization of CMPs Relative to Other Nurse Staffing Regulatory Work

In the ideal state, OHA will be able to complete all nurse staffing regulatory activities within required timeframes. While OHA is working towards its ideal state, it requested feedback from the NSAB CMP Committee on how to prioritize required regulatory activities given the competing priorities of surveys, investigations, outreach and sanctions.

The Committee was polled on its prioritization of completing regulatory activities within required timelines. After discussion and multiple rounds of voting, the Committee provided the following ranking:

1. Conducting triennial surveys / Processing complaints and conducting complaint investigations within 60 days / Reviewing POCs within 30 business days
2. Writing the survey or investigation report within 30 business days
3. Holding conference calls with hospitals to address POC questions
4. Issuing CMPs
5. Conducting revisit surveys within 45 to 60 business days after the POC has been approved by OHA

Safe Patient Care and Civil Monetary Penalties

Under ORS 441.175, the Oregon Health Authority may impose a CMP for a violation of the nurse staffing law “when there is a reasonable belief that safe patient care has been or may be negatively impacted.” The CMP committee discussed the meaning of this language as indicating that if a reasonable person were to believe that safe patient care had been or may be negatively impacted by the nurse staffing practice or policy, OHA may issue a CMP.

The NSAB CMP Committee reviewed the definition of “safe patient care” in OAR 333-510-0002(17) to make recommendations on measurements of safe patient care. As stated in the nurse staffing rules, “safe patient care means nursing care that is provided appropriately, in a timely manner, and meets the patient’s health care needs. The following factors may be, but are not in all circumstances, evidence of unsafe patient care:

- (a) A failure to implement the written nurse staffing plan;
- (b) A failure to comply with the patient care plan;
- (c) An error that has a negative impact on the patient;
- (d) A patient report that his or her nursing care needs have not been met;
- (e) A medication not given as scheduled;
- (f) The nursing preparation for a procedure that was not accomplished on time;
- (g) A nursing staff member who was practicing outside his or her authorized scope of practice;
- (h) Daily unit-level staffing that does not include coverage for all known patients, taking into account the turnover of patients;
- (i) The skill mix of employees and the relationship of the skill mix to patient acuity and nursing care intensity of the workload is insufficient to meet patient needs; or
- (j) An unreasonable delay in responding to a request for nursing care made by a patient or on behalf of a patient by his or her family member.

The NSAB CMP Committee determined that OAR 333-510-0002(17)(a), (g), (h), and (i) were directly measured during nurse staffing surveys and could easily be assessed with existing tools. Additionally, they advised that factors (c), (d), (e), (f) and (j) are addressed by the hospital nurse staffing committee at the time of their annual review of the nurse staffing plan, since that review requires the hospital nurse staffing committee to determine whether the staffing plan adequately meets the health care needs of patients.

Objective Measurements of Unsafe Patient Care

The NSAB CMP Committee advised on nurse staffing survey deficiencies for which there could be a reasonable belief that safe patient care had been or may be negatively impacted (ORS 441.175(1)). The Committee determined the following tags represented unsafe patient care:

Nurse Staffing Advisory Board
Civil Monetary Penalties Committee
Summary Report

- Tag E630: Nurse Staffing Plan – Qualifications and Competencies
- Tag E638: Nurse Staffing Plan – Patient Acuity and Nursing Care Intensity
- Tag E640: Nurse Staffing Plan – Minimum Numbers on Specified Shifts
- Tag E642: Nurse Staffing Plan – Minimum Number in the Unit
- Tag E646: Nurse Staffing Plan – Tasks Unrelated to Providing Direct Patient Care
- Tag E654: Nurse Staffing Plan Annual Review Factors
- Tag E665: Nurse Staffing Member Overtime

Degree of Noncompliance

Identifying Degree of Noncompliance

During the first survey cycle, hospitals frequently had one or more of the tags listed above cited during a nurse staffing survey or complaint investigation. Under the nurse staffing law, CMPs must be based on a reasonable belief that safe patient care has been or may be negatively impacted. The NSAB CMP Committee proposed additional factors that can be considered to identify those situations that reflect a threat to patient safety. These additional factors differentiate between different noncompliant situations to ensure that patient safety remains the basis of CMPs in accordance with the law. The Committee proposed that OHA use a decision-making tool to identify these situations.

The Committee recommended that deficiencies cited during a revisit survey be weighted more heavily than those cited during a triennial survey or complaint investigation because the hospital would have recently been cited for that deficiency and had an opportunity to correct it through its Plan of Correction. The Committee also advised that failure to correct a deficiency during a revisit survey could represent willful noncompliance because the hospital would have had an opportunity to correct the deficiency and failed to do so.

The NSAB CMP Committee indicated that repeated noncompliance was more significant than the first finding of noncompliance and recommended that it be weighted more heavily on the decision-making tool. It indicated that a hospital repeatedly being cited for the same deficiency could represent willful noncompliance since the hospital would have had previous opportunities to correct the deficiency.

The NSAB CMP Committee stated that surveys resulting in more citations were more egregious than those resulting in fewer citations. The Committee recommended that the decision-making matrix reflect the total number of citations.

Finally, the Committee also discussed the Plan of Correction (POC) process and advised that lack of engagement in the POC process could indicate that safe patient care has been or may be negatively impacted. The Committee advised that a hospital could be seen as not engaged in the POC process if it had submitted multiple POCs

without a significant decrease in the number of unacceptable tags or had submitted a POC after its submission deadline.

How the CMP Decision-Making Tool Works

The Civil Monetary Penalty Decision-Making Tool is divided into two parts. Part A focuses on identifying nurse staffing noncompliance. The hospital receives points for indicators of noncompliance, such as the total number of deficiencies cited, repeated noncompliance, citations closely related to unsafe patient care, and lack of engagement in the POC process. OHA completes Sections 1 – 3 when the nurse staffing report is sent to the hospital. Section 4 is completed if the hospital has three or more unacceptable POCs or if the hospital submits a POC late. Late POC submissions include only those submissions where the hospital has submitted the POC after the original due date, or if an extension has been granted by OHA, after the extension due date.

If the point total for Sections 1 – 3 exceeds 27 POINTS, or if it exceeds 55 POINTS for Section 1 - 4, OHA completes Part B of the decision-making tool. In Part B, OHA indicates whether it will issue a warning letter or issue a civil monetary penalty.

- **Warning Letter:** OHA will send the hospital a letter indicating that there is noncompliance that reflects safe patient care has been or may be negatively impacted. The hospital will be required to submit a POC within the required deadline. If the submitted POC is not acceptable, OHA may issue a CMP.
- **Civil Monetary Penalty:** OHA will send a letter to the hospital and its counsel indicating that there is noncompliance that reflects safe patient care has been or may be negatively impacted and that OHA is imposing a civil monetary penalty.

Conclusion

The NSAB CMP Committee recognizes that civil monetary penalties may be one of several ways to improve compliance with the nurse staffing law. The Committee and OHA have worked together to develop guidance that can be applied objectively and consistently to hospitals. The Committee recommended factors that indicate that safe patient care has been or may be negatively impacted. OHA will continue to inform the NSAB on the frequency of noncompliance and on any CMPs issued.