

Report to the Legislature

# Nurse Staffing Report

December 2020

RCW 70.41.425



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# Contents

|                                                                                   |    |
|-----------------------------------------------------------------------------------|----|
| Executive Summary.....                                                            | 1  |
| Introduction .....                                                                | 2  |
| Department of Health Implementation of HB 1714.....                               | 3  |
| Figure 1: DOH Nurse Staffing Complaint Assessment and Investigation Process ..... | 4  |
| Complaint and Investigation Data .....                                            | 5  |
| Table 1: Number and Status of Complaints and Investigations.....                  | 5  |
| Table 2: Number of Complaints by Type of Allegation.....                          | 6  |
| Cost of Nurse Staffing Investigations .....                                       | 6  |
| Recommendations .....                                                             | 6  |
| Conclusion.....                                                                   | 7  |
| Appendices.....                                                                   | 9  |
| Appendix A – WSNA, SEIU Healthcare 1199NW, UFCW21 Recommendations .....           | 9  |
| Appendix B – WSHA Recommendations.....                                            | 12 |







## Executive Summary

The 2017 Washington State Legislature passed House Bill 1714 with the intent to ensure sufficient staffing of hospital personnel, including nurses, to protect patients and to support safe working conditions. The bill expanded the role of hospital committees on nurse staffing to address complaints regarding variations from hospital nurse staffing plans. House Bill 1714 also created a limited role for the Washington State Department of Health (department) to investigate complaints on violations of the nurse staffing law. The nurse staffing committee law and subsequent expansion applies to 93 licensed hospitals in Washington state, employing tens of thousands of nurses in hundreds of patient care units.

Between January 1, 2019, and August 24, 2020, the department opened 31 complaint investigations against 21 hospitals based on 104 allegations of nurse staffing violations. Six were closed without investigation, one was closed following a completed investigation, and the remaining 24 are open investigations. The completed investigation resulted in a statement of deficiencies to the hospital and a plan of correction. Allegations included 16 hospitals failing to submit nurse staffing plans annually and any updates, two failing to conduct semiannual reviews of the nurse staffing plans, and 12 failing to resolve complaints regarding staffing variations from the nurse staffing plans.

Through the end of August 2020, the department had expended \$15,909 to investigate nurse staffing complaints. However, this represents only a few months of investigatory work as the department suspended most hospital investigations during the spring and summer of 2020 due to the COVID-19 pandemic. The full cost of conducting nurse staffing investigations and the future effect on acute care hospital licensing fees are not yet known.

As directed by House Bill 1714, the department convened representatives from the Washington State Hospital Association (WSHA), Washington State Nurses Association (WSNA), Service Employees International Union (SEIU) Healthcare 1199NW, and United Food and Commercial Workers (UFCW) 21 to review a draft of this report and to discuss joint recommendations to the legislature. The department and stakeholders agree that each hospital nurse staffing committee should be required to develop and adopt a charter that addresses certain elements (such as meeting schedules and documentation).

Through the conversations about potential joint recommendations, many areas of difference among stakeholders emerged. The department invited each stakeholder organization to summarize its perspectives. Those received are included as appendices to this report.

## Introduction

In 2008, the legislature passed House Bill 3123 (codified as RCW 70.41.420), amending chapter 70.41 RCW to require hospitals to establish nurse staffing committees (NSC). At least one-half of the members of the nurse staffing committee shall be registered nurses currently providing direct patient care and up to one-half of the members shall be determined by the hospital administration. The bill directed NSCs to develop and oversee patient care unit and shift-based nurse staffing plans, to conduct semi-annual reviews of the plans, and to review, assess, and respond to nurse staffing concerns.

In 2017, the legislature passed House Bill 1714 (codified as RCW 70.41.420 and RCW 70.41.425), amending the nurse staffing law. The bill expanded the role of NSCs to address complaints from nurses about staffing variations from the plan. Registered nurses may submit complaints to the NSC about personnel assignments that do not follow the nurse staffing plan, as well as shift-to-shift adjustments. NSCs must create a process to review complaints that includes a determination of whether a complaint is resolved or dismissed.

House Bill 1714 also created a role for the department to investigate complaints about violations of the nurse staffing law. Starting January 1, 2019, hospitals must submit to the department nurse staffing plans annually and whenever the plan is updated. The department must investigate complaints for a failure to:

1. Form or establish a nurse staffing committee;
2. Submit a nurse staffing plan annually, plus any updates;
3. Conduct a semiannual review of the nurse staffing plan; and
4. Follow nursing personnel assignments in a patient care unit or shift-to-shift adjustments in staffing levels.

The department may investigate complaints of nursing personnel assignments and shift-to-shift adjustments only if the evidence submitted by the complainant includes aggregate data showing a continuing pattern of unresolved violations for a minimum 60-day continuous period.

If an investigation substantiates the complaint allegations, the department will issue the hospital a statement of deficiencies. The hospital has 45 days to submit a corrective action plan. If the hospital fails to submit or follow the corrective action plan, the department has authority to impose a civil penalty of \$100 per day.

The law instructs that the department may not investigate complaints in the event of unforeseeable emergency circumstances or if the hospital, after consulting with the NSC, documents that it made reasonable efforts to obtain staffing but was unable to do so.

“Unforeseeable emergency circumstance” is defined in the law as:

- Any unforeseen national, state, or municipal emergency;
- When a hospital disaster plan is activated;



- Any unforeseen disaster or catastrophic event that substantially affects or increases the need for health care services; or
- When a hospital is diverting patients to another hospital or the hospital is receiving patients from another hospital.

Finally, House Bill 1714 directed the department to submit a report to the legislature by December 31, 2020 that addresses the number of nurse staffing complaints received, the status of those complaints, the number of investigations conducted, the costs associated with the complaint investigations, projections for the effect on hospital fees over the next four years, and recommendations for any needed statutory changes. The legislation also required the department to convene a stakeholder group to review the draft report and to jointly develop any legislative recommendations to be included in the report. The stakeholder group must include WSHA, WSNA, SEIU Healthcare 1199NW, and UFCW 21.

This report addresses the department’s implementation of House Bill 1714; data on nurse staffing complaints, investigations and costs; and recommendations for statutory changes made jointly by the department, the hospital and nursing associations, and the two labor unions.

## Department of Health Implementation of HB 1714

In 2019, the department began accepting nurse staffing plans from hospitals and, at the request of stakeholders, posting them to the [hospital policies webpage](#). In addition, the department developed a [nurse staffing webpage](#) containing information for hospitals and other stakeholders about how to submit nurse staffing plans and nurse staffing complaints to the department. This page also includes links to WSHA, WSNA, SEIU Healthcare 1199NW, and UFCW 21 webpages containing guidance documents for hospitals on nurse staffing that were developed jointly by these organizations in 2018.

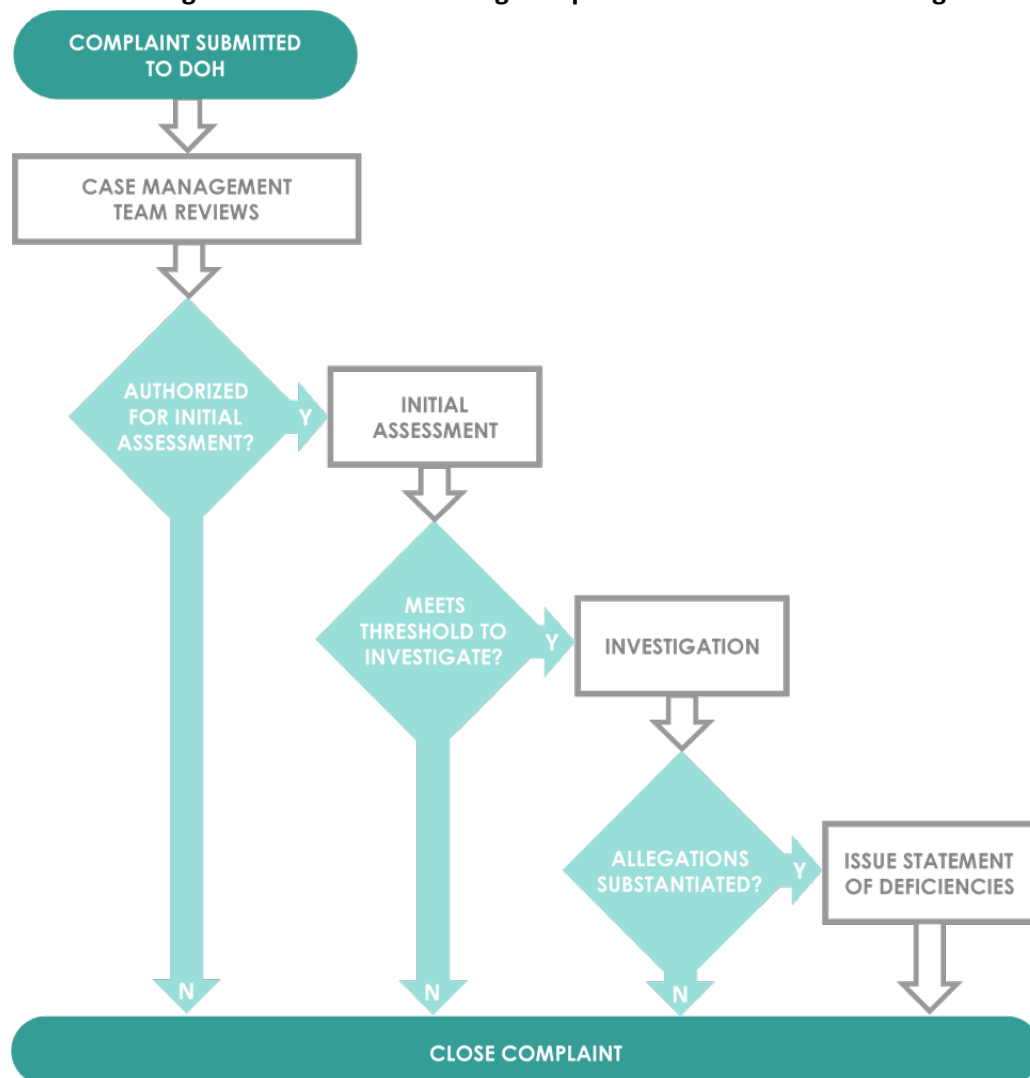
Parties wishing to file complaints about alleged violations of nurse staffing law may do so using the department’s standard [health care facility complaint process](#), including an online complaint intake form, email, and mail. Complaints are then reviewed by a case management team to determine whether they contain sufficient information to open an investigation and meet the requirements in RCW 70.41.425 for the department to investigate. The nurse staffing law allows the department to investigate complaints for a failure to follow nurse staffing plans only:

*“...after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations of RCW 70.41.420(7)(a) or (b), that were submitted to the nurse staffing committee excluding complaints determined by the nurse staffing committee to be resolved or dismissed. The submitted evidence must include the aggregate data contained in the complaints submitted to the nurse staffing committee that indicate a continuing pattern of unresolved violations for a minimum sixty-day continuous period leading up to receipt of the complaint by the department.” RCW 70.41.425 (1)(iv)(B)*

The statute does not define the terms “continuing pattern” and “aggregate data.” The department interprets “continuing pattern” to mean more than one complaint to a nurse staffing committee is unresolved for 60 or more days from the initial complaint to the NSC. The department interprets “aggregate data” as data that adequately demonstrate that variations in personnel assignments or shift-to-shift adjustments are not in accordance with the current nurse staffing plan.

If the complaint meets the conditions of RCW 70.41.425, the case management team authorizes an investigation and assigns a priority level. The prioritization of investigations ensures the department responds quickly to allegations of imminent and serious harm to patients. Once an investigator is assigned, they must further assess the department’s authority to investigate by contacting the hospital to determine whether there was an unforeseeable emergency or the hospital made reasonable efforts to obtain staffing but was unable to do so. A flow chart illustrating this complaint assessment and investigation process is shown below:

**Figure 1: DOH Nurse Staffing Complaint Assessment and Investigation Process**



# Complaint and Investigation Data

The department began receiving nurse staffing complaints in July 2019. As of August 24, 2020, the department had received 31 nurse staffing complaints based on 104 reports of alleged violations at 21 hospitals. When the department receives multiple complaints from a single complainant about a single facility at the same time, they are counted and investigated as a single complaint. WSNA submitted 22 of the 31 complaints and SEIU Healthcare 1199NW submitted seven. The remaining two were submitted by the public or anonymously.

Among the 31 complaints, 25 were opened for investigation and six were closed without investigation because either the complaint did not contain sufficient information to show a continued pattern of unresolved violations or because what was being alleged would not have been a violation of law (e.g., complaints about nursing plans not containing specific elements are outside of the department’s jurisdiction). Twenty-four of these investigations are currently open and one is completed.

**Table 1: Number and Status of Complaints and Investigations**

|                                         |    |
|-----------------------------------------|----|
| Complaints received                     | 31 |
| Complaints closed without investigation | 6  |
| Complaints authorized for investigation | 25 |
| Open investigations                     | 24 |
| Closed investigations                   | 1  |

The low number of completed investigations is a direct result of the COVID-19 pandemic. In March, as cases of COVID-19 and demand on the health care system rose rapidly, the department suspended routine health care facility inspections and most complaint investigations.<sup>1</sup> This action allowed hospitals to focus their efforts on caring for patients and on preparing for a surge in need for hospital beds. After reviewing the situation and consulting with stakeholders, the department restarted work on nurse staffing investigations in late July.

The department received no complaints about a hospital failing to form a NSC. Sixteen complaints alleged that the hospital failed to submit a nurse staffing plan to the department in the required timeframe or failed to submit updates. Two complaints alleged a failure to review

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<sup>1</sup> The department continued to investigate complaints alleging imminent risk of death or serious injury to patients, as well as those related to infection control.

the nurse staffing plan. The department received 12 complaints alleging an NSC failed to resolve complaints about violations of the nurse staffing plan over a continuous 60-day period.

**Table 2: Number of Complaints by Type of Allegation**

| Type of Nurse Staffing Complaint                    | Complaints Received |
|-----------------------------------------------------|---------------------|
| Failure to establish a NSC                          | 0                   |
| Failure to submit an annual plan or updates         | 16                  |
| Failure to conduct a semi-annual review of plan     | 2                   |
| Failure to follow the plan in personnel assignments | 12                  |

## Cost of Nurse Staffing Investigations

As of August 31, 2020, the department had expended \$15,909 on personnel to investigate nurse staffing complaints. This figure represents a very limited amount of time conducting investigations, as this work was suspended during the spring and early summer of 2020 due to the COVID-19 pandemic. While nurse staffing investigations have resumed, many of these are still in the early stages so the full cost of this work is not yet known or reflected here.

Because investigations were suspended due to the COVID-19 pandemic, the department does not yet have sufficient experience conducting nurse staffing investigations, nor enough financial data on their cost, to project the four-year effect on acute care hospital fees.

## Recommendations

During September 2020, the department convened WSHA, WSNA, SEIU Healthcare 1199NW, and UFCW 21 to review the information presented in this report and to discuss joint legislative recommendations. The group met for eight hours over four meetings to discuss potential recommendations and to identify areas of agreement. One joint recommendation, described below, emerged from these discussions.

Through the stakeholder meetings, several areas of disagreement about nurse staffing law also emerged. In light of robust disagreement over how the law should be modified, the department invited each stakeholder organization to summarize its perspectives and included those we received as appendices to this report.

The department shared a draft copy of this report with WSHA, WSNA, SEIU Healthcare 1199NW, and UFCW 21 for comment at two stages: first when the complaint and investigation data sections were drafted and a second time after this recommendations section was drafted.

***Recommendation: Nurse Staff Committee Charters***

Stakeholders raised a number of concerns about how NSCs are receiving, reviewing, and addressing nurse staffing complaints. In particular, there were concerns that some NSCs are not meeting often enough to handle complaints in a timely manner and they are not creating, retaining, and making available documentation of their decisions. Stakeholders agreed that the best path forward would be to require each hospital NSC to develop and adopt charters that define the processes they will use locally. While stakeholders reported that a few hospital NSCs have established charters, the majority have not. There was agreement in the group that hospital NSC charters should include but not be limited to:

- The roles, responsibilities, and processes by which the NSC functions to address complaints related to the hospital’s nurse staffing plan;
- A schedule for regular meetings that ensures complaints are handled in a timely fashion;
- Standards for committee approval of meeting documentation including attendees and actions taken;
- Policies for retention of meeting documentation for a minimum of three years and consistent with each hospital’s retention policies<sup>2</sup>; and
- Processes for review of all nurse staffing complaints noting date received as well as initial, contingent, and final disposition of complaints where applicable.

## Conclusion

The department has established processes for receiving, assessing, and investigating complaints related to the nurse staffing law. Although the investigatory work was delayed this year due to the COVID-19 pandemic, several investigations are under way. As the department completes more of these investigations, it will have additional information about the cost of this work and the potential effect on acute care hospital licensing fees over time.

WSHA, WSNA, SEIU Healthcare 1199NW and UFCW 21 see opportunities to clarify and strengthen nurse staffing law. Although there are many differences between hospitals and labor organizations about changes they would like to see, there is agreement that NSCs should be required to have charters with certain elements.

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<sup>2</sup> WSHA believes that NSC charters should also address requests for inspection and review of meeting documentation by the nurse staffing committee, but there was not agreement about this in the stakeholder group.



# Appendices

## Appendix A – WSNA, SEIU Healthcare 1199NW, UFCW21 Recommendations

### WSNA, SEIU Healthcare 1199NW, UFCW21 Recommendations

#### **HOSPITAL STAFFING PLANS - ANNUAL SUBMISSION<sup>3</sup>**

As the DOH report indicates, 16 of the filed complaints were for hospitals' failure to submit an annual staffing plan to DOH as required by law. During the stakeholder meetings, there was largely agreement that the submission of a hospital staffing plan should be a binary – it either was or was not submitted. This was an area where all stakeholders seemed to agree that the investigatory cost to DOH could be reduced if the department simply flagged those hospitals that did not submit and automatically generated a letter triggering the 45-day period to correct this non-compliance.

DOH indicated that they believed that a complaint must be filed with the department to trigger an investigation into whether a hospital submitted its annual nurse staffing plan. The nursing unions recommend that DOH be responsible for determining whether hospital staffing plans are submitted by the deadline.

We further recommend that there be a standard template for hospitals to use when submitting their staffing plans to DOH. Currently, some hospitals submit very detailed staffing plans that range from 50-100 pages, while other hospitals submit a single page of indecipherable matrices. These plans would greatly benefit from some level of standardization with an agreement on common language.

After this law passed, we were committed to successfully working with WSHA to develop a suite of templates and materials for nurse staffing committees. However, there was a lack of follow through by the hospitals to use the collaboratively designed materials. With the range in quality of submitted plans, we recommend that DOH be responsible for assessing the basic quality of the submitted plans. This includes evaluating if the plan includes the elements as outlined in the nurse staffing law. It would also include evaluating whether the plans are legible or decipherable. In these obvious and extreme cases, DOH should provide some level of quality assurance.

#### **“CONTINUING PATTERN”**

The nurse staffing law states that DOH “may only investigate a complaint under this subsection after making an assessment that the submitted evidence indicates a continuing pattern of unresolved violations of RCW 70.41.420, that were submitted to the nurse staffing committee excluding complaints determined by the nurse staffing committee to be resolved or dismissed. The submitted evidence must

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<sup>3</sup> The department disagrees that cost savings would result if it “flagged those hospitals that did not submit [annual plans] and automatically generated a letter triggering the 45-day period to correct this non-compliance.” If the department discovers possible non-compliance, it must still follow our complaint investigation process, as described on pages 3-4 of this report. Additionally, the department does not support the recommendation to expand its role to include assessing the quality of the nurse staffing plans.

include the aggregate data contained in the complaints submitted to the hospital's nurse staffing committee that indicate a continuing pattern of unresolved violations for a minimum sixty-day continuous period leading up to receipt of the complaint by the department.”

WSHA recommended defining a “continuing pattern” of unresolved complaints to mean only complaints “of a similar nature.” However, that phrase is too limiting and we recommend that this language should stand as currently written. We have seen situations arise in which a “continuing pattern of unresolved” complaints may have multiple meanings:

- Complaints unilaterally prevented from reaching the staffing committee: We have seen situations where the manager of a certain unit within the hospital does not allow complaints in that unit to reach the nurse staffing committee – instead, unilaterally deciding to “resolve” those complaints at the unit level. These actions are inconsistent with the intent and purpose of the nurse staffing law and the complaints that never reach the staffing committee would constitute a “continuing pattern of unresolved” complaints by virtue of those complaints never having the opportunity to be resolved by the nurse staffing committee. Those individual complaints may or may not be about the same particular staffing issue.
- The nurse staffing committee may not be meeting regularly and therefore may not be reviewing and resolving complaints in a timely manner. In this case, the complaints may or may not be “of a similar nature”, but there may be a “continuing pattern of unresolved” complaints in units across the hospital because the staffing committee is not meeting to resolve these complaints. In this case, it would be appropriate to file a complaint with DOH because the nurse staffing committee is not meeting its function to review and resolve or dismiss complaints.

## OPEN MEETINGS

The nursing unions jointly recommend that a critical clarification in the nurse staffing law is that nurse staffing committee meetings are open unless in executive session. The statute says the committee shall **“Review, assessment, and response to staffing variations or concerns presented to the committee.”** It further says a hospital may not retaliate against **“An employee, patient, or other individual who notifies the nurse staffing committee or the hospital administration of his or her concerns on nurse staffing.”**

Under this reading and without any statutory revocation of the ability of employees, patients, or other individuals to submit complaints, the plain reading of the text is that concerns based on staffing can be submitted and shall be reviewed, assessed and responded to by the committee.

It follows that these committees should be open so that concerned parties – be they employees, patients, or other individuals – can attend. Attendance is distinct from participation—the minimal standard for participation is set in statute, and we agree that any additional participation beyond those named would be at the discretion of the individual nurse staffing committee. We recommend that the nurse staffing committee charter include these guidelines, as well as guidelines for potential executive sessions should they be needed (in our experience, this has not been the case).



While WSHA seeks to limit the nurse staffing committee review of complaints to only those filed by nurses, our read is that the nurse staffing committee has a duty to look at all complaints. The law states: **“Each hospital shall post, in a public area on each patient care unit, the nurse staffing plan and the nurse staffing schedule for that shift on that unit, as well as the relevant clinical staffing for that shift. The staffing plan and current staffing levels must also be made available to patients and visitors upon request.”** Because the posting of the staffing levels is public information, it logically follows that any member of the public should be able to file a complaint with the nurse staffing committee. In a meeting between DOH and the nursing unions in September 2019, DOH reiterated that it would accept nurse staffing complaints from anyone and in any form.

Given the fact that the broader categories of employees, patients, and other individuals can submit nurse staffing concerns, open attendance would be desirable and healthy. In many successful staffing committees today, our staff attend to support our members who serve on nurse staffing committees. Open meetings are a basic measure of collaboration and transparency—two goals all stakeholders agreed are essential for success under this model.

#### **“UNFORESEEABLE EMERGENT CIRCUMSTANCES”**

The nurse staffing law states: “The department may not investigate a complaint under this subsection in the event of unforeseeable emergency circumstances.” It goes on to define “unforeseeable emergency circumstances” as:

- (a) Any unforeseen national, state, or municipal emergency;
- (b) When a hospital disaster plan is activated;
- (c) Any unforeseen disaster or other catastrophic event that substantially affects or increases the need for health care services; or
- (d) When a hospital is diverting patients to another hospital or hospitals for treatment or the hospital is receiving patients who are from another hospital or hospitals.

Due to the ongoing state of emergency related to the COVID-19 pandemic, some hospitals are not following the nurse staffing law. However, we moved from “unforeseeable” conditions early in the pandemic, to a “foreseeable” state of emergency. The current situation has created a loophole for hospitals to abdicate their responsibility for following these laws. Because of this, we recommend that “unforeseeable” as relevant to “emergent circumstances” should be defined in WAC as it is elsewhere in code. We recommend using the following definition that already exists in WAC:

**Definition—Unforeseen.** As used in this chapter, "unforeseen" means the extent that a reasonably prudent person could not have anticipated. Citation:

<https://apps.leg.wa.gov/WAC/default.aspx?cite=392-129-065&pdf=true>

## Appendix B – WSHA Recommendations



The Washington State Hospital Association (WSHA) appreciates the opportunity to provide comments in this addendum, to Department of Health’s (DOH) report on the nurse staffing committee complaint investigation process. WSHA believes some positive joint recommendations emerged from the conversations, and greatly appreciates the work of DOH and all participating stakeholders.

WSHA has engaged as a partner negotiating in good faith, ensuring a transparent approach, following timelines established by DOH, and staying within the scope of the report as established by the legislature under RCW 70.41.425. During the workgroup, WSHA was very clear we were not in agreement on a number of the issues addressed below:

- **Emergency Provisions.** The recommendations contained in this report came from focused discussions spanning a four-meeting timeline. Questions regarding the language of the definition of “unforeseeable emergency circumstance” in RCW 70.41.425 were presented at the start of the final meeting, which was after the agreed-upon timeframe for new topics. Given the complexity and potential for unintended consequences of a definition change, WSHA was not willing to engage in a conversation with the stakeholders under the proposed constrained timeframes but is willing to engage in future conversations on this topic if desired.
- **Referrals of Allegations of Intimidation or Retaliation.** Hospitals and health systems take allegations of intimidation or retaliation very seriously. WSHA supports clearly identifying where alleged complaints should be referred. There are many forms retaliation from an employer can take, and the specific federal or state agency to which an allegation may be referred to depends on the form of the complaint as well as who made the complaint. Until DOH has guidance from the Attorney General’s Office to confirm appropriate pathways for referrals, WSHA supports broader statutory language. Specifically, WSHA recommends: “the department may refer any allegation of retaliation or intimidation to the appropriate state or federal agency”.
- **Nurse Staffing Committee Access.** Stakeholders were in agreement the statute specifically designates the composition for the nurse staffing committee participants (RCW 70.41.420). However, agreement was not reached regarding outside attendance of nurse staffing committee meetings. WSHA does not agree that all nurse staffing committee meetings should be open to the public. The goal of these committees is to create a collaborative atmosphere among all committee members and ensure they are able to meet the obligations of the statute. Whether meetings should be open to others to attend is best left at the local level to determine through the newly adopted charters.
- **Submission of Complaints to the Nurse Staffing Committee.** Nurse staffing committees were

established in law to ensure nurse staffing decisions at each hospital are made at the local level. A question was raised whether nurse staffing committees should handle complaints from patients, employees, or other individuals. The statute was constructed, and the committees were specifically designed to provide a process for complaints from Registered Nurses. Hospitals have processes in place and other forums and avenues to more appropriately address staffing complaints from patients, employees, and other individuals.

Thank you again for the opportunity to provide comments. WSHA is very appreciative for the opportunity to participate in this process and looks forward to working together with DOH and all other stakeholders to continue to improve nurse staffing committees.

