



Oregon

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February 10, 2016

The Honorable Alissa Keny-Guyer, Chair
House Human Services and Housing Committee
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048



Re: HB4083 Testimony Follow-up

Dear Chair Keny-Guyer:

Thank you for the opportunity to testify on HB4083 on February 8, 2016. The purpose of this letter is to provide answers to the questions we were unable to answer during the hearing. Following is a list of each question asked and our answer.

How many complaints has DHS received about Baycrest (allegations, details, etc.) over the past three years?

The local Aging and People with Disabilities office received 157 calls regarding a variety of complaints (both abuse allegations and licensing violation allegations). Our data shows that of those calls:

- 62 instances were substantiated for wrongdoing and of those
 - 40 are substantiated for a finding of abuse; and
 - 22 were substantiated for a finding of a licensing violation.

Additionally, our data shows that the new licensing compliance specialist unit has received 3 complaints since its inception (August 2015) about Baycrest Memory Care.

How long has Baycrest been open under current management?

Farmington Centers Inc. operated Baycrest from December 2000 through June 2011. Radiant Senior Living has operated Baycrest since July 2011. As discussed, Seasons has been the agreed-upon management company since January 20, 2016.

What has been past DHS policy for investigating such complaints as received about Baycrest? More concerned with abuse allegations and performance metrics in terms of investigating abuse allegations. What has that policy been in the past and what is it currently?

DHS past and current policy is that local Adult Protective Service (APS) workers must close their reports within 60 days, deviations from time frames are allowed when concurrent law enforcement investigation is occurring; extensive witnesses must be interviewed, or key witnesses are unavailable. The report is then sent to the Office of Licensing and Regulatory Oversight (OLRO) and they have 60 days for a determination of abuse and appropriate corrective actions for the facility. The total time frame allowed is 120 days for both activities, per Oregon Administrative Rule. If a resident is found to have been harmed or is at risk of harm, protective services are offered immediately, per Oregon Administrative Rule. Below are timeframes and applicable sections from the Administrative Rule.

- **60 days to send to the Office of Licensing and Regulatory Oversight (OAR 411-020-0120(4))**
- **120 days to document and close the investigation (OAR 411-020-0100(5))**

411-020-0080 Triage

(Amended 01/01/2015)

(1) Triage is the APS process of determining the nature and severity of risk to individuals and the immediacy of response required.

(2) The local office shall provide for a prompt and timely initial response to all APS referrals meeting the eligibility criteria established in these rules. The specific times for response are governed by the nature and severity of the complaint and the rules and laws related to the category of complaint.

(3) General time frames for response as determined by the Department are as follows:

(a) COMMUNITY CASES (Non-facility, elder abuse, and APS).

(A) IMMEDIATELY: Contact 911 when an emergency situation exists. An emergency is a situation in which evidence suggests that a human life is in jeopardy. The individual is in the process of being harmed due to criminal activity, medical emergency, fire, or is a clear and present danger to self or others;

(B) WITHIN TWO HOURS OF RECEIPT OF COMPLAINT: Initiate investigation within two hours when the reported victim is identified as being in imminent danger;
(C) BY THE END OF THE NEXT WORKING DAY: Initiate investigation by the end of the next working day when the individual is identified as being in a hazardous situation that is one that may lead to increased harm or risk; or
(D) WITHIN FIVE WORKING DAYS: When screening determines the situation is problematic, one that is chronic or ongoing, or is a general complaint that an immediate response is unlikely to change the reported victim's risk level, an investigation must be initiated within five working days.

(b) ASSISTED LIVING, RESIDENTIAL CARE, ADULT FOSTER HOME AND NURSING FACILITY CASES.

(A) WITHIN TWO HOURS:

- (i) If the resident's health or safety is in imminent danger; or
- (ii) The resident has recently died, been hospitalized, or been treated in an emergency department as a result of suspected abuse or neglect.

(B) BEFORE THE END OF THE NEXT WORKING DAY: If circumstances exist that may result in abuse.

The Department tracks performance metrics around timeliness of response and completion of reports. This process is disjointed and not as accurate as we would like. Additionally, the information is often delayed until reports are completed, but provides a snapshot on how timely investigations are occurring. The Department has been engaging the Legislature to create a Centralized Abuse Management (CAM) system, which we hope would allow for better tracking and additional statistical reporting.

Current tracking mechanisms indicate that 94% of allegations in the community and our licensed Community Based Care settings are being responded to in a timely manner per Oregon Administrative Rule requirements. For report completion, the Department has been doing specific analysis as timeliness has been around 40-50% over the last year. Specifically, there are 4 local offices contributing to this low percentage. The Department has been working with these areas to correct and complete reports. In many cases the reports have been completed, but the information has not been logged into the system.

What is the performance criteria in terms of timely investigation of abuse allegations in memory care facilities in the past and under current jurisdiction? How often do you attain those metrics?

The answer to this question is addressed above.

Is what is in the bill (certification of care providers) already happening and just needs to be enforced?

Memory care communities are currently inspected every two years. There is currently no requirement for all staff in a memory care community to be registered, certified or licensed by the Oregon State Board of Nursing, regardless of whether they are administering medications. Memory Care Communities have additional OAR's that require specific training and standards.

Are there enough regulations to protect those in memory care communities, or is it that we're failing to enforce current regulations? Or do we need to be changing statutes to make it so people are cared for at the right level?

There are significant protections in the rules currently to promote the health, safety and well-being of residents in memory care communities. We are currently reviewing our full authority and will report back on whether the Department believes statutory or rule changes are necessary.

If timing of response had occurred in a more timely fashion, would [Baycrest] have gotten the message that these things needed to happen?

In the situation with Baycrest, several components of licensing rules were utilized to attempt to bring the facility back into compliance. We do not know whether or not the outcome would have been different if we had acted in a more timely fashion. We have detailed the actions that the agency took below:

Surveys:

Each Memory Care Facility is surveyed once every two years. If a facility is not in compliance, they must submit a plan of correction, and provide a date when they will be in compliance with our rules. This date must be within 60 days from the exit date of the survey team. The survey is then scheduled for a time after the facility has alleged compliance to review whether their systems are correcting the concerns. This can be anywhere from 2 weeks, to 2 months. In addition, when the survey team revisits a facility after an initial survey, they typically only review records for issues cited in the past survey. However, in this situation, an additional relicensing survey was conducted in August to get a thorough picture of where the facility was with regards to their actual overall compliance with the rules and regulations. In this situation the dates for Baycrest are:

- 03/27/15 Initial survey –
 - Not in compliance – several concerns were noted.
 - Alleged compliance date was 5/26/15.

- 06/11/15 Re-visit survey
 - Not in compliance – significant decrease in cited areas.
 - Alleged compliance date was 7/31/15

- 08/24/15 Full licensing survey –
 - Not in compliance – overall improvement for review of all systems, however, facility still out of compliance.
 - Alleged compliance date was 10/25/15

- 11/09/15 Re-visit survey
 - Not in compliance – very little improvement from prior survey.

Additional department actions taken to try and get the facility back into compliance:

- 04/16/15 Order imposing license conditions directed facility to:
 - Restrict admissions
 - Required additional staffing
 - Additional training for facility RN
 - Facility required to report to OLRO on staffing and steps taken to correct deficiencies from survey.

- 05/21/15 - Notice of Intent to Non-Renew the facility's license.

- 06/01/15 - Civil penalty issued for failing to comply with increased staffing requirement in condition. Civil penalty amount \$500.

- 06/18/15 - Amended Condition Order adding requirement that the facility obtain a Department approved consultant. (Consultant in building beginning of July.)

- 07/20/15 - Additional civil penalty issued for again failing to comply with increased staffing requirement. Civil penalty was in the amount of \$6000.
- 08/27/15 - Letter from Medicaid contracting unit indicating facility is not in compliance w/contract's statement of work.
- 09/14/15 - 2nd Amended Order allowing 1 new admission for consultant to review admission process.
- 10/22/15 - Medicaid unit received necessary documentation for compliance with requirements.
- 11/06/15 - Entered into Stipulated Agreement with facility w/drawing Notice of intent to not renew due to improvements at facility.
- 12/07/15 - Discussion with facility regarding a change in management company to a department approved management company.
- 01/20/16 - Contract reviewed and approved by Department for change of management company.

How many memory care providers are there in the State of Oregon?

As of February 10, 2016, there are 182 Memory Care providers in Oregon. Fourteen are located in nursing facilities and 168 are located in assisted living/ residential care facilities.

How many of memory care facilities are under a corrective action plan?

There are currently four memory care facilities under a corrective action plan.

How many of the 182 have a current license?

All 182 memory care communities have a current license. If a renewal application and required fee are submitted prior to the expiration of the current license, the date of expiration extends until the department takes action on the application. These are considered to be "pending."

How many memory care licenses are pending?

Seven memory care communities have a renewal pending. Some are waiting for verification of compliance relevant to fire and life safety codes; others are waiting for the survey team to inspect the facility.

For how long are facilities put in a pending category?

Facilities are put into a pending category until all issues have been resolved. This includes things such as verification of compliance with fire and life safety or verification of survey compliance.

Thank you again for the opportunity to provide information to the House Human Services and Housing Committee. I hope this letter has addressed the Committee's questions satisfactorily. Please let me know if you have additional questions or if I can be of further assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Ashley Carson Cottingham". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Ashley Carson Cottingham, Director
Aging and People with Disabilities Program

