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LTCO Perspectives Re: SB 714 and 266 Implementation

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presentation to interim Senate Committee on Human Services, Mental Health and Recovery

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LTCO Overview

- Mission: to protect individual rights, enhance quality of life, improve care, and promote dignity of residents living in Oregon's licensed long-term care facilities.

- >125 Certified Ombudsmen volunteers provide bulk of advocacy through complaint investigation and resolution

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Recent complaint calls

- Resident supposed to be turned every 2 hours in bed, but staff not doing it
- Bandage changes are not occurring every day as prescribed
- Showers not being provided / linens not being changed
- Toilet clogged for 10 days until visiting family member had to demand multiple times that it be fixed
- A visitor had found a resident with a soiled bandage that had not been changed in days
- A facility was supposed to order replacement dentures but hasn't – resident can't eat without them

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SB 714 - ABST

- Where successful:
  - Considerable focus at ODHS for implementation
  - Anecdote: resident conveyed to LTCO that one additional caregiver as indicated by the ABST has significantly improved the care at their facility

- Potential concerns (preliminary):
  - Facilities may be looking at the minimum staffing output of an ABST as the maximum staff required
  - ODHS tool for ABST does not confirm the number of caregivers needed

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ABST concerns?

- August 2022 LTCO staff question to ODHS ABST staff: “The facility states the ABST indicates they need 5 caregivers during the day and evening shift. Their staffing plan is 3 caregivers and 2 med techs or 4 caregivers and 1 med tech. Is the facility fulfilling the ABST requirement with this staffing plan?”
- ODHS staff response: “the ODHS ABST does not provide database users with specific staffing numbers.” “Unfortunately, we are unable to provide you with an answer whether the facility is fulfilling the ABST requirements.”

- A manager later clarified that the staffing plan was insufficient
  - LTCO is concerned about lack of clarity for residents

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SB 266

- Key components of SB 266 with questionable implementation:
  - Section 1 (3): “For a complaint of a licensing violation, other than abuse, that alleges harm or potential harm to a resident …: (a) The Department shall begin an investigation without undue delay”
  - Section 3: “in regulating residential care facilities and long term care facilities, the Department of Human Services **shall prioritize the health, welfare, safety and rights of residents**.”
  - Section 5: enhanced oversight and supervision program

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SB 266 implementation confusion

- SB 266 effective approximately October 1, 2021

- November 2021: LTCO staff reporting licensing complaints submitted for investigation were potentially not being investigated
- April 2022 report submitted by ODHS to legislature describes the regulatory process using old language pre-dating SB 266 changes (i.e., nowhere does it mention the re-focus onto “health, welfare, safety and rights” of residents.
- June 14, 2022 presentation by SOQ Administrator stated at a provider conference that SOQ is still regulating under the statutory direction that was deleted under SB 266.
- OAR 411-054-0106 (the ODHS “regulatory framework” rule) still provides the deleted/changed text regarding regulatory direction from before SB 266 was passed, while deprioritizing the now statutorily priority of resident “health, welfare, safety and rights”

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SB 266 implementation confusion

- ODHS has arbitrarily chosen to only include 4 facilities at a time for the enhanced oversight and supervision program
  - If more than 4 are eligible but not enrolled, is there a lack of statutory compliance?

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Historical: Rights violations ignored

- OAR 411-054-0027 establishes resident rights
- When violated, historically approached with “technical assistance”:
  - 0027(1)(a): ”to be treated with dignity and respect”
  - 0027(1)(c): “to participate in the development of their initial service plan and any revisions or updates at the time those changes are made”
  - 0027(1)(g): ”to receive services in a manner that protects privacy and dignity”
  - 0027(1)(m): “to have access to, and participate in, social activities”
  - 0027(1)(t): “to receive proper notification if requested to move-out of the facility, and …”

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Example: Eviction w/o due process

- Resident evicted to family under false pretenses
  - Facility called family and demanded they take the resident for 24 hours
  - Facility then refused to allow resident to return
- LTCO referred OAR violation to licensing compliance unit for investigation
- Response from DHS intake specialist: “We will not be opening a case at this time since this has been referred to the policy analyst to address with the facility.”
- After elevating to management and citing SB 266 requirement, manager response: ”LCU will continue to forward complaints regarding move-out notices to the policy analyst.”

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Recommendations

- Continue monitoring ODHS implementation of this legislation
- Examine regulatory tools for sufficiency in achieving consumer protections
  - E.g., should “Letters of Agreement” between ODHS and provider be kept secret from the public as they currently are
- Mandate firewall between training/education functions vs. regulatory/licensing consumer protection functions
  - Opportunity for establishing more direct supports for caregiving workforce (not just provider leadership)

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Questions?