Oregon
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Senate Interim Committee on Human Services, Mental Health and Recovery
Senator, Sara Gelser-Blouin, Chair
Informational Hearing, Senate Bill 266 (2021) Senate Bill 714 (2021)
Re: Responses to issues raised during Legislative Hearing held 9/23/22

Dear Chair Gelser-Blouin, Vice-Chair Robinson, members of the committee,

I appreciated the opportunity to speak before the committee, as the new Director of the Office of Aging and People with Disabilities in the Oregon Department of Human Services.

Let me begin by saying my top priority as the Director of APD is the safety of individuals receiving care and services from our program. More specifically, I am committed to the health and safety of residents of long-term care facilities in our state and recognize that appropriate and adequate staffing levels are directly linked to quality care.

I also value establishing and maintaining positive and productive relationships with the Long-Term Care Ombudsman and the Oregon Health Care Association and look forward to building upon the foundation laid by my predecessor, Mike McCormick, during my tenure as APD Director.

I also look forward to working with each of the committee members.

I am honored to share additional details on our progress in implementing SB266 and SB714. These bills provide our agency with the regulatory authority and tools necessary to ensure that appropriate and adequate staffing levels are not a barrier to quality care.

Implementation of these Bills requires work in both our Safety Oversight and Quality and Adult Protective Services units.

The Safety, Oversight and Quality (or SOQ) Unit of Aging and People with Disabilities is responsible for overseeing and regulating licensed care facilities that serve older adults and people with disabilities in our state.

Senate Bill 266: This Bill shifted the responsibilities and broadened the focus on the Licensing Complaint Unit (LCU) from technical assistance only to a regulatory function. The Bill requires the Department to review allegations of licensing violations (other than abuse), and to ensure that the facility has qualified awake direct-care staff in sufficient numbers to meet the scheduled and unscheduled needs of each resident 24 hours a day.

The Licensing Complaint Unit, which is part of SOQ, initially provided technical assistance to facilities as they implemented HB 3359, which required the department to use "progressive enforcement" to "encourage and compel compliance with licensing regulations…." With the passage of SB 266, the role of the Licensing Complaint Unit has significantly changed; a regulatory role is now the key function of this unit.

LCU currently investigates licensing complaints alleged in residential care facilities (RCFs) and assisted living facilities (ALFs), collectively referred to as Community-Based Care settings, with the authority to cite substantiated licensing violations.

All complaints received by the LCU screening staff are reviewed to determine if the allegation involves a potential violation of an administrative rule; every such allegation is then investigated. Screeners consider the following questions to determine appropriateness for LCU investigation:

- Is the facility an RCF or ALF? (If "no," triage complaint to appropriate entity)
- Does the complaint allege abuse? (If "yes," triage complaint to APS)
- Does the allegation deal with a potential licensing violation, relating to OAR 411, division 54, 57 or any other CBC rule requirements?
    - ALL potential licensing violations are "screened in," meaning they are assigned for investigation. _____
    - All allegations that are "screened out," or not investigated further due to a lack of alleged licensing violations, are recorded in ASPEN.

To determine the extent of possible licensing violations, the LCU Screeners ask a series of questions before forwarding the complaint to LCU Investigators for resolution. Complaints involving a potential licensing violation in a CBC facility will be screened in, triaged and assigned to a Licensing Complaint Investigator in the relevant region. **All** complaints meeting the criteria above must be triaged and forwarded to an investigator for review.

- The person who issued the complaint will be contacted by the Screener and provided:
  - Unique identifying intake number(s) for the case(s).
  - A brief written explanation of the complaint referral and investigatory process.
  - Explanation of what happens to confidential versus public information.
  - A description of how the complainant will be informed of the final outcome.
  - Contact information for the assigned Licensing Complaint Investigator.
  - A description of remedies that are available, if concerns are not resolved.

All allegations of abuse in Community-Based Care settings are investigated by the Adult Protective Services program. Licensing violations encompass any violations of state regulation that **do not result** in abuse to a resident. LCU is charged with investigating every complaint related to licensing violations that meets screening criteria (i.e., complaints that do not indicate a Rule violation will be screened out).

All substantiated investigations performed by both APS and LCU are reviewed by Corrective Action Coordinators who assess appropriate Civil Penalties and other sanctions. The Corrective Action Coordinators focus on developing sanctions and improvement plans specifically designed to best ensure the overall safety and quality of care within the long-term care setting, and the health, welfare and rights of residents.

Among the various sanctions that may be imposed, SOQ may issue a *Letter of Agreement*, or LOA, to a facility. LOAs are voluntary agreements between the facility and the department, issued at the discretion of the Department, and are generally offered when the facility has provided

assurance of safety, a willingness to work expeditiously to resolve any and all identified issues, and is satisfactorily meeting requirements placed upon them. LOAs are available to the public upon request. However, LOAs are not posted on our LTC Licensing website due to the fact that they do not provide the licensee with a right to Hearing, and do not have the same effect as other legal tools available to our regulatory staff. If a facility fails to comply with requirements of the LOA within established timelines, additional sanctions, including but not limited to license conditions, will be applied. A license condition is a restriction or requirement placed on a facility's license to operate, and is tailored to remediate the issue that led to its imposition. It should be noted that although an LOA may be offered in lieu of a license condition, it does not prevent the facility from receiving lower sanctions, such as Civil Penalties, concurrently to the LOA.

With the Licensing Complaint Unit shifting to a regulatory role, SOQ is re-organizing the Community-Based Care program to distinguish staff focused on policy and support from staff with a regulatory focus. Community-Based Care is currently recruiting for a manager to oversee Corrective Action Coordinators, which are the staff who impose license conditions, civil penalties and other sanctions based on survey outcomes and Licensing Complaint Unit and Adult Protective Services complaint investigations. With these changes, the Operations and Policy Analysts will focus on program policy development, interpretation, and implementation. SOQ is excited to strengthen our processes as we operationalize these changes.

Senate Bill 714: Introduced the Acuity-Based Staffing Program. This program focuses on the legal requirement that facilities ensure the availability of qualified awake direct care staff in sufficient numbers to meet the scheduled and unscheduled needs of each resident 24 hours a day.

Although this requirement has been in law for years, SB 714 (2021) requires all Community-Based Care facilities to utilize an *Acuity-Based Staffing Tool* (ABST). This tool provides data to assist facilities in determining the number of staff required to meet the care needs of each resident based on acuity. Although an acuity-based staffing scheme has existed in Oregon for several years, determining staffing needs based on individual resident acuity is proving to be a distinct cultural change for many providers, as this committee is likely well aware. We continue to further refine and develop the Acuity-Based Staffing Program which represents a significant paradigm shift for providers, external partners, and ODHS staff.

We agree with Libby Batlan's comment that completing the ABST is "more art than science." It is true that facilities must review several items unique to their own internal operations before building an appropriate staffing plan with the ABST data. The ODHS ABST is used to estimate the number of hours needed to provide care, but does not dictate how many staff are needed. We continue learning from the examples and experiences of facilities now that the ABS program has formally launched. We are addressing necessary changes, including drafting proposed amended administrative rules for this program. This rule set will be shared for public comment in an upcoming Rule Advisory Committee hearing.

SOQ has worked with web developers in ODHS to develop a web-based Acuity-Based Staffing Tool for facilities to use. This tool addresses activities of daily living, or ADLs, and other tasks related to care, as outlined in administrative rule. Each facility must use either the department's Acuity-Based Staffing Tool or another tool designed to address ADLs.

SOQ has implemented all requirements of SB 714 and finished the following required projects:

- Completion of a pilot test of the ABST, with the assistance of several providers.
- Published two legislative reports on the status of the project implementation.
- Developed administrative rules.
- Developed and disseminated an ABST provider guide for facilities.
- Developed a list of Frequently Asked Questions (FAQs).
- Developed a comprehensive webpage to assist facilities in implementing SB714.

(See Website at https://www.oregon.gov/dhs/PROVIDERS-PARTNERS/LICENSING/CBC/Pages/Acuity-Based-Staffing.aspx)

The Acuity-Based Staffing Program was fully launched July 1, 2022.
SOQ is required to assess the staffing levels of a facility each time the department conducts a survey, license approval or renewal, or investigates a complaint regarding: abuse of a resident; injury to a resident; resident safety; or staffing levels.

To date, the Community-Based Care team has issued 14 acuity-based staffing tool-related citations; the Licensing Complaint Unit has received 83 acuity-based staffing tool intakes and issued 29 acuity-based staffing tool

citations; a total of 10 license conditions have been issued to facilities for acuity-based staffing tool-related sanctions.

SOQ will require additional permanent positions in LCU. Although we were provided with eight FTE, only two of the eight were designated for LCU.

Performing the ABST review for every abuse/neglect investigation conducted by APS will add over 5,000 cases a year for the Licensing Complaint Unit. (Over the past year, APS conducted 5,233 investigations in CBC facilities.) By considering the average time required to conduct each ABST review, we estimate we will need as many as 42 additional FTE to adequately assure the safety and well-being of the Oregonians we serve. At this time, the program is still funded primarily by temporarily freezing other positions; only four of our current 13 investigator positions are permanent. We estimate that we need an additional 42 LCU investigators. That would bring us to a total of 46 permanent LCU investigators.

With this, I recognize the collaborative role of the APS program in assisting the office of Safety, Oversight and Quality (SOQ) in implementing the requirements of these Senate Bills.

APS remains committed to providing SOQ with all of the information they need to appropriately regulate licensed facilities in our state, which is not limited to this legislation.

This occurs daily, weekly, and monthly in the form of referrals to LCU; data reports on facility investigations; documentation of facility self-reports; written investigative reports; and now includes information regarding the facility's use of an Acuity Based Staffing Tool.

Effective September 19th, specific to the goal of providing SOQ with the ability to regulate a facility's use of an Acuity Based Staffing Tool, APS has directed local office investigators to complete a series of steps when conducting an investigation of abuse in a licensed setting.

Finally, HB 3359, introduced in the 2017 legislative session, required the development of an Enhanced Oversight program for Community Based Care facilities that consistently demonstrate a lack of substantial compliance with Oregon Administrative Rules and the requirements of ORS 443.400 to 443.455. Facilities in the program will be indicated on the public website, and will be subject to one or more sanctions including but not

limited to increased survey frequency, focused care-area surveys and Conditions placed on the license (Conditions may carry a range of sanctions including but not limited to restricted admissions, hiring an external consultant, and frequent reporting to the Department). Concerns about resource constraints limited the nascent program to four facilities at a given time. The program will now be expanded to accommodate additional facilities as they meet criteria for the program. I would also like to note that facilities that fail to achieve substantial compliance with Rules receive sanctions such as civil penalties, reporting requirements and license Conditions, even if not enrolled in the Enhanced Oversight Program.

I know this is a lot of information. Thank you for the opportunity to provide information regarding this valuable and important work and the tools and processes devised to help us accomplish our goals. I will continue to monitor progress on this important work, problem solve any barriers or roadblocks that may come up, and ensure we report our progress on a regular basis, as needed.

Again, safety is my highest priority, as it is foundational. Without safety, the people we serve cannot achieve well-being.

I welcome any questions you may have.

Respectfully,

Nakeshia Knight-Coyle

Nakeshia Knight-Coyle
Director, Aging and People with Disabilities
Oregon Department of Human Services