# Community-Based Care Acuity-Based Staffing Tools

## Senate Interim Committee on Human Services

## November 7, 2023

OHCA
OREGON HEALTH CARE ASSOCIATION

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# Policy Goals & Expectations

## SB 714 (2021)

- Require licensed community-based care facilities (memory care, assisted living, residential care) to use and update an Acuity-Based Staffing Tool (ABST) of their choice that allows them to consider resident acuity in determining staffing levels.

- Hold facilities accountable to utilizing an ABST and ensure staffing levels are reflective of overall resident acuity.

- Require ODHS to design and pilot the State's ABST in a timely manner (as required by HB 3359 (2017)).

- Protect a facility's right to use *their own* ABST so long as the tool meets minimum qualitative requirements. Most proprietary ABSTs are integrated with Electronic Health Records software systems.

# Staffing in Community-Based Care (CBC) Facilities

## Assisted Living, Residential Care, & Memory Care

# How ABSTs Function

## What to Know:

- ABSTs do not produce a staffing plan or staffing ratios for a facility. Instead, an ABST generates a range of estimated task times related to a resident's assessed Activities of Daily Living (ADL) and informs the facility's development of a staffing plan or staffing levels.

- ABSTs do not produce exact minutes because a task can take more or less time on any given day based on various factors and resident's daily needs.

- ABSTs may consider both scheduled and unscheduled needs of a resident.

- Many proprietary ABSTs typically pull data straight from the service plans that are updated at admission, with significant change in condition, and quarterly at minimum.

# Other Considerations

**Resident acuity is *one* component of developing a staffing plan. There are existing rules around staffing prior to the passage of SB 714 under OAR 411-054-00070.**

- Facility structural design (e.g., two or more detached buildings, multiple floors, etc.)
- Fire safety evacuation standards
- Resident census (e.g., # of residents moving in or out, or how many be out of the community for a period of time).
- Staff experience/capabilities of staff
- Presence of residents who require two-person assistance
- Use of technology if applicable
- Disruptions to normal facility operations (e.g., illness outbreaks, weather-related events, etc.)

# Implementation Concerns

# Issue #1: Erosion of Provider's Ability to Choose Their Own ASBT

- SB 714 required facilities to designate their ABST by February 1, 2022, and the OARs governing ABST requirements went into effect July 1, 2022.
  - Providers worked to come into compliance with current rules and ODHS conducted trainings and offered technical assistance.

- In 2023, ODHS proposed ***new*** ABST rules, moving the target compliance on the **design and format of the ABST**. The newly proposed rules are overly prescriptive and have resulted in many providers abandoning their proprietary tools.

- Newly proposed design requirements that are problematic because they create duplicative data entry and do not align with generally accepted ABSTs in the market today include:
  - Requirement of *separately* listing each of the 22 ADLs and disallowing bundling.
  - Requirement of a zero (0) value if a resident does not require minutes for an ADL.
  - Requirement of a timestamp in the ABST for each resident upon quarterly service plan review even if there are no changes to the time needed to provide services.

# Issue #2: Conditions on Licenses Related to ABST

## Conditions related to the ASBT should be reserved for circumstances resulting in consistent understaffing.

- The Department has other enforcement mechanisms to ensure compliance including sanctions, citations, corrective actions including civil penalties and fines, that would be more appropriate for technical issues related to a facility's ABST.

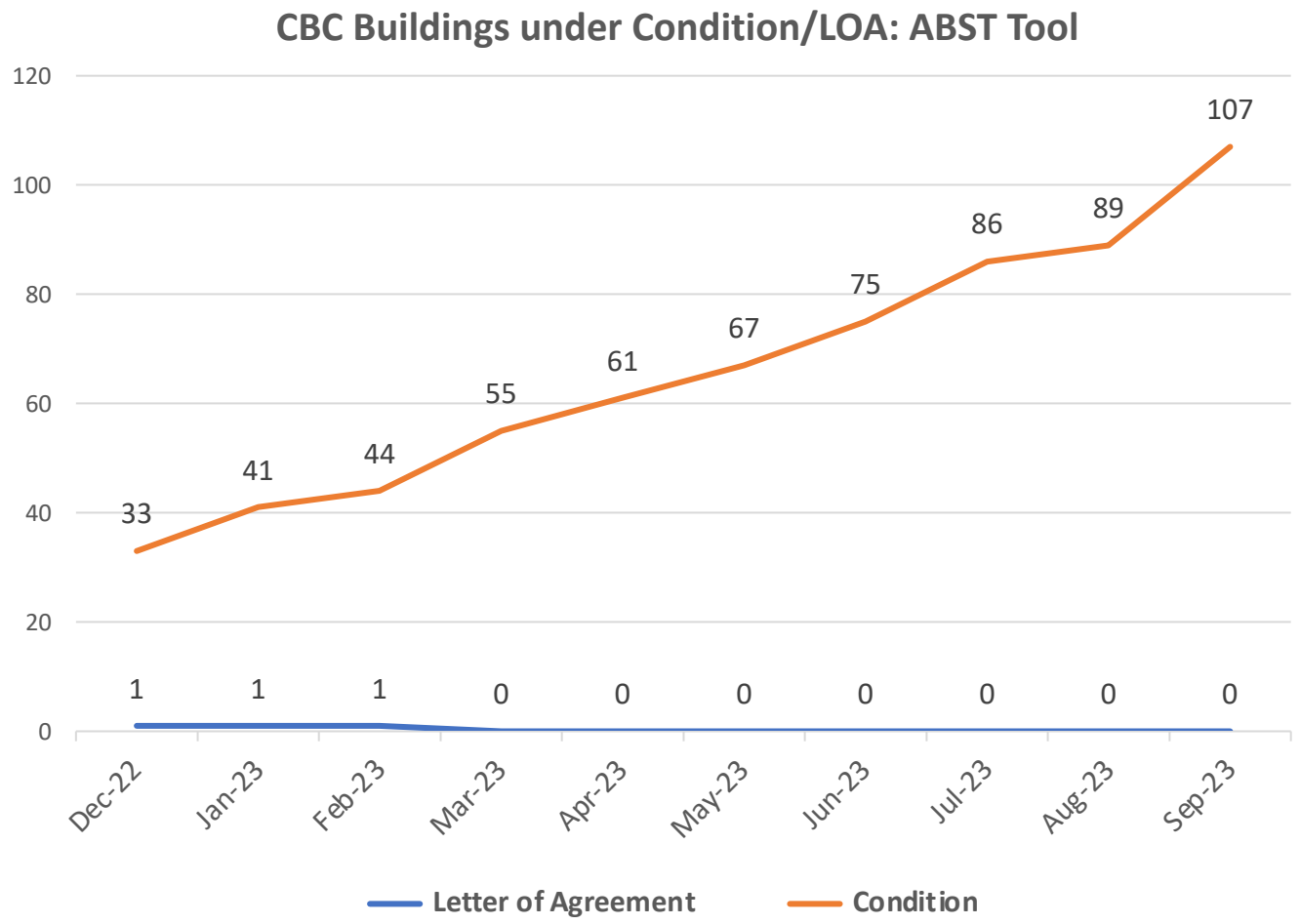
- Without publicly available detail as to why the facility received the ABST condition is potentially misleading for consumers and damaging for providers.

- The statutory requirement for "six-month continuous monitoring" is not needed once a condition has been lifted.

- Conditions related to the ABST have been imposed even if a facility has met or exceeded staffing requirements.

# Conditions for ABST Have More Than Tripled in 10 Months

| Month | Letter of Agreement | Condition |
|---|---|---|
| Dec-22 | 1 | 33 |
| Jan-23 | 1 | 41 |
| Feb-23 | 1 | 44 |
| Mar-23 | 0 | 55 |
| Apr-23 | 0 | 61 |
| May-23 | 0 | 67 |
| Jun-23 | 0 | 75 |
| Jul-23 | 0 | 86 |
| Aug-23 | 0 | 89 |
| Sep-23 | 0 | 107 |



# Proposed Solutions

## Statutory and administrative rule adjustments are needed in 2024.

- **Overview of Proposed Statutory Revisions**
  - Consolidates duplicative language and clarifies the intent of SB 714 to place a condition on a facility for substantive issues related to a facility's use of an ABST and the insufficiency of staffing levels to meet the residents' scheduled and unscheduled needs.
  - Requires the Department consider impact on facilities and residents before changing rules around minimum requirements and design of an acuity-based staffing tool.

- **Overview of Administrative Rule and Other Policy Adjustments**
  - Establish a process by rule for ODHS to review and validate a facility's ABST in a timely manner.
  - Provide additional interpretive guidance/FAQ resource for facilities to ensure clear expectations and a pathway to compliance.