



Oregon

Tina Kotek, Governor

Department of Human Services

Office of Aging and People with Disabilities

Office of the Director

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Salem, OR 97301



February 7, 2024

Chair Sara Gelsner Blouin
Senate Committee on Human Services
Oregon State Capitol
900 Court Street NE
Salem, OR 97301-4048

Dear Chair Gelsner Blouin,

Thank you for the opportunity to testify on SB 1521. I would like to provide testimony on two separate aspects of that omnibus bill.

Acuity-Based Staffing

First, SB 1521 provides some technical clarifications to statutory language that passed as part of Senate Bill 714 (2021). SB 714 required residential care facilities (RCFs), including assisted living facilities and endorsed memory care, to adopt an acuity-based staffing tool (ABST) to assist in calculating staffing levels needed to meet the scheduled and unscheduled needs of its residents 24 hours a day, seven days a week. Additionally, it required the Oregon Department of Human Services (ODHS) to promulgate rules to establish minimum requirements and design for an ABST for residential care facilities to adopt.

The acuity-based staffing tool was originally implemented as a result of HB 3359 (2017). At that time, the ABST was not required for every RCF to use, but it was a tool that the ODHS could use in its licensing review of facilities to assist those facilities around concerns about staffing levels, to evaluate whether or not there was sufficient staffing to meet scheduled and unscheduled needs of individuals residing there. Individual providers were also able, but not required, to use the ABST alongside their own staffing metrics to ensure that they were meeting the needs of their residents 24/7. Under HB 3359, the ODHS wasn't required to use the ABST in

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every situation; only when there were disagreements between the ODHS and a particular provider regarding staffing levels.

Senate Bill 714 (2021) increased requirements for residential care facilities, requiring each to adopt a technology-based ABST by February 2022, and implement an ABST that meets the requirements of rules and ensures the facility is consistently staffing to the levels, intensity and qualifications indicated by the ABST to meet the scheduled and unscheduled needs of all the facility's residents 24 hours a day, seven days a week. SB 714 also required the ODHS to assess staffing levels of a facility under certain circumstances: each time a licensing survey is conducted; each time there is an investigation into a complaint regarding: abuse of a resident; injury to a resident, resident safety, or staffing levels.

Finally, as previously mentioned, SB 714 required the ODHS to promulgate rules to establish minimum requirements and design for an acuity-based staffing tool (ABST) for facilities to adopt. To establish those minimum requirements, the ODHS identified 22 activities of daily living (ADLs) that need to be assessed for each resident, and designed an ABST that includes a formula to calculate staffing levels that meet the assessed residents' care needs. The minimum requirement standard and ability to calculate staffing levels is necessary so the ODHS, when working with a facility, can quickly confirm the staffing levels for a facility is based on a thorough assessment of each resident's needs.

Subject to the rules promulgated pursuant to SB 714, the ODHS began regulating staffing levels with an ABST in July 2022. This included, in part, the imposition of conditions on licenses for facilities that were not meeting all regulatory requirements. Because of the large number of reports of abuse, injury, safety, and staffing concerns that required staffing assessments, the volume of incidents requiring ABST reviews has been significant. Since July 2022, we have reviewed over 925 ABST complaints, representing over 400 facilities, and substantiated over 340 violations.

Today, over 200 facilities have received letters of determination and we have 90 active ABST-related license conditions presently in place and pending. This is more than ten times as many conditions as we typically had prior to the implementation of SB 714. Many of these conditions are not the result of insufficient staffing, but instead the result of technicalities associated with the requirements established by SB 714. Consequently, a facility's technical failure to comply with the rules undermines the actual intention to ensure sufficient staffing levels and ultimately safety of residents in that facility. We feel that SB 714 unintentionally posed

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avoidable burdens on providers and ODHS staff alike, insofar as it has generated so many license conditions.

Additionally, the ODHS received feedback from providers which included technical issues and questions such as: whether a facility could adopt an ABST developed or selected by the facility and what the process is; confusion about what standard the ODHS is using to determine ABST compliance; frustration about having conditions imposed for technical violations vs. substantive violations that may place residents at risk; and concerns the ODHS would change the minimum requirements for ABST.

The ODHS is dedicated to ensuring the ABST is a helpful tool for both a facility and the ODHS staff tasked with ensuring the safety of residents and regulatory compliance of facilities. We believe the technical clarifications in SB 1521 will correct some of these unintended issues mentioned above. Adjusting the language introduced by SB 714 (2021) will provide confidence to providers that the ODHS will not arbitrarily change the minimum requirements for the ABST, and that conditions result from substantive issues related to a facility's use of an ABST, such as consistent staffing levels to ensure resident safety.

The ODHS will also work with providers to address the other issues through further rulemaking which includes revising administrative rules to describe process for the ODHS to approve a facility's selected ABST if it meets the ODHS established minimum requirements (i.e., assessing 22 ADLs and ability to calculate the staffing levels based on acuity of residents). For technically based ABST related violations, the ODHS will work within the current regulatory framework to assess condition(s) relative to the violation to ensure the ABST can be used to optimize safety and ensure an efficient use of resources for both the ODHS and facilities.

In closing, the ODHS is supportive of this section of SB 1521 on the acuity-based staffing tool.

Fire Safety in APD-Licensed Adult Foster Homes

In 2022, SB 1548 prohibited the Oregon Department of Human Services (the ODHS) from requiring adult foster homes to have sprinkler systems, notwithstanding provisions in the state building code that required such systems in those settings; the bill delayed the enforcement of those building code provisions until July 2024. The ODHS has since been working with the Building Codes Division of the Department of Consumer and Business Services (DCBS) to find a way to implement this requirement that will not lead to an unintentional reduction of capacity in APD's service delivery network.

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Sprinkler systems would impose a significant cost and a logistical challenge to adult foster homes if the state did not provide those service settings with funding to offset the cost, and technical support to ease the retrofitting of existing buildings.

ODHS and DCBS will continue their work to find an administrative solution that protects the service delivery system (i.e., does not deter prospective providers from opening new adult foster homes) while addressing DCBS's interest in strong fire safety through licensing rules for adult foster homes. However, there is a chance that this work will need to continue beyond July 2024, and the legislature is addressing that risk by proposing another extension of the enforcement timeline. ODHS is neutral on this section of the bill, and still hopes to complete its work with DCBS by July 2024, but will make good use of the additional time if it is needed.

Sincerely,



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