



Oregon

Tina Kotek, Governor

Department of Human Services

Office of Aging and People with Disabilities

Office of the Director

500 Summer St. NE

Salem, OR 97301



March 6, 2024

Co-Chair Fred Girod
Co-Chair Paul Holvey
Joint Ways and Means Subcommittee on Capital Construction
Oregon State Capitol
900 Court Street NE
Salem, OR 97301-4048

Dear Co-Chairs Girod and Holvey,

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, the bill provides some technical clarifications to statutory language that passed as part of Senate Bill 714 (2021), and established requirements for the Department of Human Services to make rules for acuity-based staffing tools to be used by community-based residential care facilities.

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 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 Department wasn't required to use the ABST in every situation; only when there were disagreements between the Department and a particular provider.

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Senate Bill 714 (2021) increased requirements for these facilities, requiring each to adopt an ABST and implement its usage in determining staffing. SB 714 required the Department to establish minimum requirements for ABSTs and their design for facilities to adopt. In an effort to establish those minimum requirements, the Department identified 22 activities of daily living (ADLs) that needed to be assessed for each resident, and a formula to determine required staffing according to those 22 ADLs. That standard was necessary so that the Department, when working with providers in the course of assessing a facility's safety and regulatory compliance, could quickly confirm that the staffing for a facility was based on a thorough review of each resident's needs. Some facilities, however, have existing ABSTs that do not necessarily reflect all 22 of these ADLs.

SB 714 also required that we assess staffing levels under certain circumstances. Each time a licensing survey is conducted, and each time there is an investigation into reports of abuse, neglect, injury, safety concerns, or staffing concerns, staffing levels are assessed according to the ABST.

Subject to the rules promulgated pursuant to SB 714, the Department 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 number of conditions being imposed was significant. Since July 2022, we have reviewed over 800 ABST complaints, representing over 400 facilities, and substantiated over 300 violations.

Today, over 200 facilities have received letters of determination and ultimately we have over 100 active ABST-related license conditions presently in place. 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 individual providers' ABSTs not meeting the requirements of the rules promulgated pursuant to SB 714. However, while a facility's failure to comply with those rules presents a regulatory hurdle for the department, it does not necessarily directly impact the safety of residents in that facility so long as adequate staffing is still maintained. While ODHS is dedicated to ensuring that the ABST is a helpful tool for both a facility and the ODHS staff tasked with regulating the care it provides, we feel that SB 714 unintentionally posed avoidable burdens on providers and ODHS staff alike, insofar as it has generated so many license conditions.

The technical changes in SB 1521 will correct some of these issues, as ODHS works with providers to address other issues through further rulemaking. Adjusting

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the language introduced by SB 714 (2021) will ensure that conditions result from substantive issues related to a facility's use of an ABST, or to insufficient staffing according to that ABST. For insufficiencies in the technical design of each facility's ABST, ODHS will work with providers on less drastic regulatory penalties than licensing conditions in order to ensure that the ABST can be used to optimize safety and ensure an efficient use of resources for both the Department and providers.

Fire Safety in APD-Licensed Adult Foster Homes

In 2022, SB 1548 prohibited 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. ODHS has since been working with the Building Codes Division of the Department of Consumer and Business Services to find a way to implement this requirement that will not lead to an unintentional reduction of capacity in APD's service delivery network.

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 until later than 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,

Corissa Neufeldt
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Oregon Department of Human Services