



SB 714 Testimony
Relating to Staffing Ratios in Residential Care
Senate Human Services, Mental Health & Recovery Committee
March 18, 2021

Chair Gelser, Vice Chair Anderson and members of the committee, thank you for the opportunity to testify on SB 714 concerning staffing ratios in residential care, assisted living and memory care facilities. I am Ruth Gulyas, CEO of LeadingAge Oregon – the statewide association of not-for-profit and other mission-directed organizations consisting of residential care and assisted living facilities, nursing homes, in-home care agencies, continuing care retirement facilities known as CCRCs and federally subsidized housing for low-income seniors.

SB 714 would require minimum staffing ratios for assisted living, residential care and memory care facilities, unless the facility can demonstrate to the Oregon Department of Human Services (ODHS) that the facility has completed the acuity-based staffing tool for each week based on the scheduled and unscheduled needs of the current residents and has the staffing plan indicated by the tool on file for each day of operation. If these conditions are not met, the staffing ratios would be 7:9.5:17 for non-memory care assisted living (ALF) and residential care facilities (RCFs) and 5:9.5:10 for memory care facilities.

LeadingAge Oregon does not support SB 714. We believe there already exists the needed regulatory oversight, enforcement mechanisms, and quality improvement tools to assure the staffing in RCFs/ALFs is sufficient to meet the scheduled and unscheduled needs of the residents.

The pandemic has challenged all Oregonians. Long term care caregivers and providers have been at the forefront of the pandemic doing their best every day to keep seniors safe amongst the everchanging landscape. Covid-19 has exacerbated an existing staffing challenge in long term care. We had members exhausting all measures to find staff when faced with shortages due to illness and their own family caregiving needs.

Existing Regulatory Oversight

Oregon rules governing assisted living and residential care facilities, [OAR 411-054-0070](#), require facilities to have qualified awake direct care staff, sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident. Under those rules, ODHS has the authority to require minimum staffing standards based on acuity, complaint investigation or survey inspection. Facilities are responsible for assuring that staffing is increased to compensate for the evaluated care and service needs of residents at move-in and for the changing physical or mental needs of the residents. Facilities are required to have adequate direct care staff present at all times, to meet the fire safety evacuation standards as required by the fire authority or the Department.

Acuity-Based Staffing Tool

[HB 3359](#), passed by the 2017 Legislature, contained many provisions to improve care, training and services to Oregonians residing in long term care facilities, including residential care. A summary of the provisions contained in HB 3359, many emanating from the Purple Ribbon Commission convened in November 2016 address quality improvement for services to persons impacted by Alzheimer's and Dementia, is attached.

Development and maintenance of an acuity base staffing tool by ODHS was included as one of the provisions in HB 3359. The acuity-based staffing tool is to be made available to facilities to:

- Enable facilities to assess their staffing needs and determine whether they have a sufficient number of qualified awake caregivers to meet the 24-hour scheduled and unscheduled needs of each resident;
- Communicate the required staffing needs and each residential care facility's staffing plan to residents, their family members, and other persons; and
- Demonstrate to ODHS that the residential care facility's staffing plan meets the 24-hour scheduled and unscheduled needs of each resident.

The tool is to be made available to all facilities, but providers are allowed to use their own method to determine staffing based on their resident profile. ODHS can require the facility to use the tool when ODHS is considering imposing a staffing requirement on a facility as part of a licensing condition and ODHS and the facility are not in agreement about whether staffing meets the residents' scheduled and unscheduled needs, or the staffing standards proposed by DHS.

The tool was developed, piloted in an excel file format, and work began on the development of a web-based tool to make it less cumbersome for providers to use. The first iteration of the web-based tool was completed in January of 2020. The tool was tested by Safety Oversight and Quality who provided further feedback to the developers who turned it back over to SOQ at the beginning of March 2020 so they could begin testing with facilities. That effort was put on hold for 3-6 months due to COVID and has been continued to be extended.

HB 3359 also required that a uniform quality metrics reporting system, to be overseen by the Quality Measurement Council, be developed to measure and compare the performance of residential care and assisted living facilities across the state. The quality metrics to be tracked include: the incidence of falls with injury, staff retention, compliance with staff training requirements, use of antipsychotic medications for nonstandard purposes, and resident satisfaction.

During the Covid-19 pandemic and the stress it created on the long term care system, the Council made the decision to simplify the required reporting for facilities to a yes and no format in 2021. Facilities that do not report the required data will be noted in the required annual report to be completed by ODHS.

Proposed Ratios Equivalent to Nursing Facility Ratios

The ratios for Non-Memory Care ALFs/RCFs are the same as the ratios required for certified nursing assistants (CNAs) working in Oregon nursing facilities that serve more frail seniors, often with more complex medical needs. In 2006, work of the Governor's Nursing Facility Staffing Commission resulted in the recommendation to increase CNA staffing ratios in nursing homes from 10:15:25 (or 1.65 hours per resident day) to 2.46 hours per resident day (HPRD) for a ratio of 7:9.5:17. At the time of establishment of the staffing commission, the Governor indicated additional funds would be sought to cover the costs to implement increased ratios. Oregon increased CNA staffing ratios in stages beginning in 2007 and ending in 2014. The legislature appropriated \$3.43 million to implement the ratios over that period of time.

The Medicaid rate for nursing facilities is much higher than that for assisted living and resident care facilities to reflect the higher needs of residents in that setting. The basic nursing rate is \$351.61 per day compared to a monthly rate of \$3382 for level 5 assisted living or roughly the equivalent of \$111 per day.

In closing, LeadingAge Oregon believes the state has and should use its existing authority to monitor, evaluate, and work with providers to assure staffing is adequate to meet the scheduled and unscheduled needs of residents within Oregon ALFs, RCFs and memory care communities. We also believe quality tools authorized under HB 3359, including the acuity based staffing tool should be fully developed and implemented prior to consideration of any additional regulatory requirements.

Thank you for your time and the opportunity to testify with you today.



Summary of [HB3359](#) Long Term Care Quality Improvements

SUMMARY

HB3359, passed in 2017, contains many recommendations emanating from the Purple Ribbon Commission convened in November 2016 to develop a set of policy and practice recommendations to improve care, training, and services to Oregonians impacted by Alzheimer's and Dementia. Ruth Gulyas LeadingAge Oregon CEO was a member of the Commission that was convened by the Alzheimer's Association and OHCA.

- **Residential Care Quality Measurement Council and Program.** Requires residential care facilities to track key quality measures and report results to DHS. Establishes within DHS an 8 member quality measurement council to prescribe how the DHS will implement the Quality Measurement Program. Requires DHS to publish an annual report that analyzes the results and to provide each facility a report allowing them to measure and compare their quality metrics over time. The report is to be available online to be used by facilities and the general public to evaluate and compare facilities. The quality metrics to be tracked include:
 - the incidence of falls with injury,
 - staff retention,
 - compliance with staff training requirements,
 - use of antipsychotic medications for nonstandard purposes, and
 - satisfaction of the resident's experience.

NOTE: [SB 815](#) passed by the 2019 Legislature extended the date ALF/RCF providers must begin reporting quality metrics from January 1, 2020 to January 31, 2021.

SB 815 also requires a RCF/ALF to provide a prospective resident a summary explanation of the services provided by the facility; the types of care that the facility does not provide; a statement that if the facility is not capable of meeting the resident's needs for care and services, the facility may require the resident to pursue other options, including by moving to another facility or care setting; and other information that may be found and provided using the following form [9098CS](#). This is in addition to the requirement that facilities must also provide prospective residents a Uniform Disclosure Statement ([Form APD 9098A](#)) designated by ODHS and the facility's Residency Agreement.

- **Acuity Based Staffing Tool.** Requires DHS to update its acuity-based staffing tool to become a web-based portal for use by providers and the department to evaluate whether there is sufficient staff to address the needs of residents.
- **Dementia Care Training.** Requires direct care staff to complete training on the following topics prior to providing care to residents:
 - Education on the dementia disease process, including the progression of the disease, memory loss, psychiatric and behavioral symptoms;

- Techniques for understanding and managing symptoms, including but not limited to reducing the use of anti-psychotic medications for non-standard use;
 - Strategies for addressing the social needs of persons with dementia and providing meaningful activities, and
 - Information on addressing specific aspects of dementia care and ensuring the safety of residents with dementia, including, but not limited to how to: address pain, provide food and fluids; and prevent wandering and elopement
- **Continuing education.** In addition to the pre-service dementia training requirements, requires direct care workers to complete an additional **six hours annually** in dementia care. This training may be part of any existing continuing education requirement.
 - **Certificate of Completion/Competency of Training.** Requires residential care facilities to provide staff with a certificate of completion of the training requirements that includes a demonstration of competency in the subject areas.
 - **Enhanced Oversight and Supervision.** Subjects underperforming residential care facilities to enhanced oversight and supervision program by the agency including regular and more frequent surveys.
 - **Compliance Guidelines Manual.** Required DHS to develop, maintain and periodically update a compliance guidelines manual for residential care facilities that is made available electronically.
 - **Civil Monetary Penalties and Licensing Fees.** Updates amounts and caps for civil monetary penalties for abuse and harm within nursing, assisted living and residential care facilities. Adopts a new penalty for failure to report suspected abuse and failure to perform corrective action noted during survey. Updates licensing fee amounts for nursing, assisted living and residential care facilities.
 - **Independent Licensure for Administrators.** HB 3359 set forth the intent that administrators of residential care facilities, including assisted living and memory care, should be licensed by an independent board. [HB 4129](#) passed in 2018 requires ALF/RCF administrators to be licensed by January 2022.
 - **Prescription Drug Packaging.** Requires residential care facilities to dispense prescription drugs in a manner that reduces errors in the tracking and administration of the drugs, including but not limited to the use on unit dose systems or blister packs.
 - **Immediate Suspension.** Revises process for immediately suspending the license of a residential care facility when there is critical health, safety or welfare issue without waiting 10 days for a hearing.