



To: Chair Gelser
Members of the Senate Human Services Committee

From: Fawn Barrie
Executive Director, Oregon Association for Home Care

RE: SB 669

The Oregon Association for Home Care (OAHC) is an organization representing providers of skilled home health, hospice and in-home care throughout the state of Oregon. Home health care promotes better patient outcomes, is the patient preferred setting for medical care, provides access to the latest therapies and medical technology and brings proven cost savings. Our organization is opposed to SB 669 as drafted and to the -1 amendments to SB 669.

OAHC represents both in-home care agencies and home health agencies. Home health, home health care and home care are phrases that are often used interchangeably. For purposes of this discussion, we want to clarify what an In-Home Care Agency is compared to a Home Health Agency:

In-Home Care Agency: Provide non-medical services using personal care givers who are trained to understand the nuances of long term-care. Personal care givers can help individuals with activities of daily living, such as meal preparation, medication reminders, laundry, light housekeeping, errands, shopping, transportation and companionship.

Home Health Agency: Provide intermittent skilled care in a patient's home that may include nursing, physical therapy, occupational therapy, speech language pathology and social work. The goal of Home Health is to treat an illness or injury such that the patient is able to regain their independence as best as possible.

SB 669 frankly is a confusing piece of legislation. It seeks to specify in statute a number of issues that our association has concerns with. Aside from our concerns about the impact for In-Home Care Agencies, we are unsure what the impact of this legislation would be for Home Health Agencies because of the inconsistency of the application of this bill to Home Health Agencies. This is in part because of the statutory framework of home health agencies and in-home care agencies.

Home health agencies were licensed in Oregon statute long before In-Home Care Agencies. Many home health agencies also provide services considered personal care services. When in-home care agencies became licensed, a provision was put in statute specifying that a home

health agency does not have to be licensed as an in-home care agency to provide personal care services “that are necessary to assist an individual in meeting the individual’s daily needs, but do not include curative or rehabilitative services..” The statute (443.090), however, also says “A licensed home health agency that provides personal care services shall comply with all laws and rules concerning in-home care services except for the licensing requirements.”

Does that mean a home health agency would be subject to all of the provisions of the bill outside of Section 2 if they provide personal care services? I don’t think that was the intent, but we are concerned about the potential for application of these provisions to home health agencies who are already highly regulated at the state and Federal level. We are also concerned about how inserting and modifying definitions in this legislation could potentially impact the services home health agencies provide.

This legislation seeks to enforce existing law that should be enforced by the Bureau of Labor and Industries through the Oregon Health Authority. The bill says the Oregon Health Authority shall draft rules including requirements that “...ensure that an in-home care agency:

- Has been in compliance with ORS chapter 659A;
- Has not committed an unlawful practice under ORS 646.608”

ORS 659A deals with unlawful employment discrimination. How will the OHA draft rules to ensure an in-home care agency (and possibly home health agency) is in compliance with workplace discrimination law? Isn’t that the responsibility of BOLI? ORS 646.608 is the unlawful trade practices act. There are almost 80 individual UTPA violations under this section of law. UTPA violations are generally investigated by the Attorney General and often violations are litigated. How will the OHA adopt rules including requirements to ensure an in-home care agency (and possibly home health agency) hasn’t committed a UTPA violation? These are just two of the many provisions OHA will be required to adopt rules that include requirements around in-home care agencies. It does not seem like these are areas the OHA should be responsible for.

Finally, Section 3 of the bill is very concerning to OAHC as well. This section is very broad and could impact our ability to discharge an employee for any reason for fear they would claim it was retaliatory. In some circumstances, you could have requests from the individuals we are serving to remove a caregiver. If an employee files a complaint under this section for any complaint “as to the care or services” provided by the in-home care or home health agency, and the agency then moves or terminates the employee, the employee can sue for retaliation. It’s important to note that this section also specifies the complainant will be confidential. The agency presumably will not know a complaint has been filed. But if they terminate the employee or transfer the employee from a client, they can be sued.

OAHC members deliver high quality, accessible homebased health care. Home care provides improved patient outcomes, increased patient satisfaction and cost effectiveness for those we serve. We care for people in their homes when they need care the most. This legislation will make it more challenging for our members to provide that care for Oregonians.

OAHC urges your opposition to SB 669.