



# Oregon

Kate Brown, Governor



**Oregon Department of Human Services**

*Office of the Director*

500 Summer St. NE, E-15

Salem, OR 97301

Voice: 503-945-5600

Fax: 503-581-6198

## **Oregon Department of Human Services Provider Accountability Report**

**December 30, 2021**

### **Introduction:**

#### **Background and Current Authority**

ORS 409.050 provides the Oregon Department of Human Services broad authority to adopt Oregon administrative rules considered “necessary to carry out the functions of the Department of Human Services”. This and other more specific ORS’s give ODDS authority to establish rules for services, programs, and providers.

#### **Senate Bill 725**

Senate Bill 725 (“SB725”) was proposed as a measure to limit the ability of for-profit organizations to operate programs for individuals with intellectual and developmental disabilities (I/DD) in Oregon. SB 725 did not become a law, in part due to the complex nature of the legal framework for the various corporate structures and the need to ensure increased provider transparency and accountability regardless of the corporate structure of provider agencies. People with I/DD need consistent and appropriate protections regardless of the corporate status of the agency providing their supports. ODDS committed to evaluate current statutes and make recommendations for improvements to address provider transparency and accountability in its services.

This report reflects the results of the ODDS analysis of current statutory authority, Oregon Administrative Rules (OARs), and accountability measures. ODDS has compiled a list of strategies to amend statute to allow ODDS greater ability to assess provider performance and ensure transparency. ODDS shared these recommendations with partners, providers, the Residential Facilities Ombudsman (RFO) and other stakeholders and has included feedback from the respective groups as part of this report.

### **Key Issues: Problems and Proposed Legislative Concepts:**

The following key issues were identified in the ODDS analysis of areas where improvements are needed:

“Assisting People to Become Independent, Healthy and Safe”

### Direct Support Professional Workforce Wage Reporting

**Problem:** Although there are currently provisions in ORS 443.434 for residential training homes and facilities to submit annual staffing data, this requirement needs to be expanded to address reporting for staffing across additional service types, including reporting of staff compensation. Understanding the nature of the I/DD workforce is also an important component of the data gathering effort. While the national staff survey tool ODDS uses is adding demographic information to the survey, that data is not specifically required in statute. This information would provide critical information on the overall Direct Support Professional (DSP) workforce in Oregon and on the composition of the workforce in specific agencies, regardless of services provided.

**Legislative Concept Proposal:** Provide statutory authority for the Department to require staffing data reporting, including DSP compensation and other employment-related benefits to apply to all agency services and settings. The requirement should also include aggregate reporting on the demographics of the workforce for each agency.

#### **Stakeholder/Provider Feedback:**

- Questions were raised about how this will help people living in in-home settings.
- Requests were made to extend this data collection effort to PSWs, as well.

#### **Residential Facilities Ombudsman Feedback:**

- RFO agrees with the both the initial problem statement as well as the initial legislative concept proposal related to Direct Support Professional Workforce Wage Reporting (including Agency Executive Compensation). Staffing wages, benefits and hours across all residential types is crucial to understanding how to support staffing in providing quality of care for residents. Along with the demographics there will need to be an accessible system for tracking. This information, combined with licensing report outcomes, abuse investigations and other complaint systems can help provide a roadmap to better care.

### Provider Agency Executive Compensation

**Problem:** In addition to the need to gather information about the direct care workforce, information on executive compensation and benefits is also important. Specifically, identifying how an agency compensates their top five paid executives

regardless of the agency's corporate structure provides transparency into how an agency expends state and federal funding.

**Legislative Concept Proposal:** Require all ODDS licensed, certified, and endorsed providers to report executive compensation and benefits, or at a minimum, compensation of the top five executives with relational information about agency fiscal operations and direct care staffing compensation. The requirement should also include aggregate reporting on the demographics of the executive team for each agency. This will help inform ODDS's efforts to support the growth and expansion of agencies that serve underserved communities of color and tribal families. Both concepts related to workforce and executive compensation need funding associated to address the administrative workload impact for ODDS operations to receive, track and analyze this information.

**Stakeholder/Provider Feedback:**

- Providers suggested requiring this only for agencies that do not already complete an IRS Form 990.
- If this information will be used to formally assess agencies, providers requested ODDS set guidelines for that criteria and process in rule or statute.

**Residential Facilities Ombudsman Feedback:**

- Same as above.

Annual Provider Fiscal Reporting

**Problem:** ODDS needs routine and consistent financial reporting from all provider types. Having this information available would allow ODDS to understand how funds are utilized to operate programs that provide direct services to individuals.

**Legislative Concept Proposal:** Require annual fiscal reporting by agency providers to ODDS regarding agency overhead, expenditures, compensation, and other relevant fiscal measures. To ensure this requirement is meaningful, ODDS will include a request for two Fiscal Analysts.

**Stakeholder/Provider Feedback:**

- Comments were made about how this information may already be provided through Form 990s and annual audits.
- Additional comments were made about identifying the criteria ODDS will use to review this fiscal information from providers.

- Questions were raised about how ODDS will determine if a provider is spending too much on overhead and other expenses and then, what ODDS will do as a result.
- The suggestion was made to only require this reporting from agencies that do not already complete a Form 990.
- The additional suggestion was made to only require this level of financial reporting from agencies that are having trouble passing licensing reviews or are otherwise not meeting ODDS standards.
- The recommendation was made to collect this information from Form 990s and not add additional reporting requirements on top of that, for agencies that already complete this form.
- The suggestion was made to put these reporting requirements more firmly in contracts (PEAAs) with providers rather than in statute.

#### **Residential Facilities Ombudsman Feedback:**

- RFO agrees with both the initial problem statement as well as the initial legislative concept for Annual Provider Fiscal Reporting. Agency overhead, expenditures, compensation – how funds are used to operate programs that provide direct services to individuals are necessary pieces of information for quality of care. Financial strategies of providers form the basis of many care decisions for individuals (involuntary move-out notices, under-staffing, lack of basic training to support individuals).

#### Passing on Rate Increases to Increase Direct Care Workforce Compensation

**Problem:** ODDS is requesting a requirement for providers to pass standard rate increases onto direct care workers in the form of wages and compensation, regardless of provider agency type or setting. Currently, ORS 443.439 states the intent of the Legislative Assembly that when there are approved increases “in funding of services provided by residential training facilities or residential training homes, wages and health benefits paid to direct support professionals in the residential training facilities or residential training homes be increased at a comparable rate”.

**Legislative Concept Proposal:** Require that rate increases result in increased compensation and wages for direct care staffing for all provider agency services and settings.

#### **Stakeholder/Provider Feedback:**

- The suggestion was made to use the new, very transparent rate models to assess the extent to which increased funding will be passed onto the direct care workforce.
- The request was made that any statutory language be very clear about what is expected in terms of passing on increases to wages and/or benefits.

### **Residential Facilities Ombudsman Feedback:**

- RFO strongly supports any requirement for providers to pass standard rate increases onto direct care workers in the form of wages and compensation, regardless of provider agency type or setting. In order to recruit and retain quality staffing that support individuals at the level expected, wages and compensation must support that staffing and not stop at agency level administration in top heavy organizations.

### Licensing, Certification and Endorsement Fee Schedules

**Problem:** Currently, application fees are nominal for residential training homes and facilities (\$50 for a residential training home and \$60 for a residential training facility) and there are no fees for agency certification and endorsement.

Licensing and certification structure is such that an agency applies to be a certified Medicaid agency. An agency then may apply for endorsement to deliver specific types of services with a separate endorsement required for each service type. Then, ODDS licenses specific sites where services are delivered such as 24-hour residential homes and site-based day and employment programs. Although all three types of licensing applications require dedication of resources, fees are only collected for the site licenses,

The small or non-existent fees fail to require investment by an applicant, leaving them with little stake in the process.

**Legislative Concept Proposal:** ODDS would like to see application fees be increased in a way that allows for adjustment with inflation, licensing fees that reflect the importance of serving people with IDD as well as provide flexibility to waive or lower fees for applications to encourage capacity or growth in underserved areas. Additionally, ODDS would like to impose certification and endorsement fees for initial and renewal applications for agency certification and provider endorsements. A statutory change which gives the authority to the Department to establish agency application fees would affirm that revenue

generated from such fees be direct back to invest in ODDS trainings and quality improvement initiatives.

**Stakeholder/Provider Feedback:**

- The request was made to ensure the increased fees stay with-in ODDS to support the quality improvement initiatives like training for the direct support workforce.

**Residential Facilities Ombudsman Feedback:**

- RFO strongly agrees that current minimal or non-existent fees for licenses, renewals or agency certification and endorsements leave providers with no real stake in the process. It also leads to a higher number of applications of providers not prepared to offer the level of quality of service required by individuals. High quality and prepared providers begin at the front door of licensure. Later, it becomes much more difficult to remedy care issues or raise quality. It costs more in the State of Oregon to become a licensed hair dresser than obtain a license/certification to care for individuals with developmental disabilities. The amount charged for an agency certification, opening of a home, renewal of a home license must reflect the investment and philosophy required. The fee should also cover the actual cost of processing.
- RFO does not agree with waiving or lowering fees for applications to encourage capacity or growth in underserved areas. Fees and applications should remain the same identified rate for all providers that reflects the importance of the licensure/contract and how important the work is considered. That standard should be high and not change for anyone wanting to provide care. ODDS, however, could encourage capacity and growth in underserved areas by identifying those areas in contract and;
  - 1) Offer a higher identified rate to homes opening in those areas
  - 2) Increased technical assistance (TA) and support services in those areas
  - 3) Increased levels of training or supports offered related to issues providers have in those areas (difficulty resolving incontinent supply issues, specialized equipment/repair, transportation). The issues providers deal with every day in serving residents.
- Finally, a specific percentage of the revenue generated from the increased fees should be directed to a specific set of training/orientations required for applicants who seek to become endorsed and then licensed in any area. The

development of this training could be undertaken with a small investment and take place as a hybrid/online course (licensing requirements, care issues, philosophy of care/expectations etc.). This would be one of the single most beneficial actions to improve quality of care long-term. It is important to protect this investment with an exact percentage.

#### Civil Penalties- Increase and Consolidate

**Problem:** Civil penalty fees are set in statute separately for residential training homes and facilities (ORS 443.455; 441.731) from other agency provider and service types (ORS 427.900). Additionally, the imposition of civil penalties under ORS 443.455 are limited in amount and per violation which has a disparate impact depending on size of agency operations and once a fee is imposed, there is no incentive for timely correction.

**Legislative Concept Proposal:** Consolidation of civil penalties with residential training homes and residential training facilities to be included under ORS 427.900 and being removed from the other statutory inclusion under 443.455 and 441.731. Additionally, direct the Department to establish rules which address fees schedules or leveling for civil penalties. This would allow ODDS to address impact when leveling penalties, considering factors such as revenue or size of a provider agency. Maintain current designation of fees for group homes and Adult Foster Homes to RFO and continue the designation of other fees to ODDS to offer trainings and other quality improvement initiatives to providers. This legislative concept should also include funding for one additional ODDS policy analyst to address the rule making, policy implementation and dedicated subject matter expertise as well as one licensing corrective action staff for issuing and processing the civil penalties.

#### **Stakeholder/Provider Feedback:**

- Similar comments were made here, requesting we ensure additional funding from penalties not already designated for other uses stay within ODDS for quality improvement initiatives.

#### **Residential Facilities Ombudsman Feedback:**

- RFO has some concern regarding the “leveling” of civil penalties if it means lowering penalties below the current threshold for a “small” agency as opposed to a “larger” agency. To reach the level of a civil penalty is a high threshold in itself. To reach it, something has gone terribly wrong in an individual’s care. A minimal threshold must be maintained for providers for

the benefit of individuals. However, the ability to increase the penalty for a much larger provider would be necessary to have an equivalent effect.

- Civil penalties, condition of opening more homes could be paired if incentive for timely correction has been an issue (as well as increased civil penalties after a certain date).

#### Revocation and Surrender of License, Certification, or Endorsement

**Problem:** There is a need for authority to limit the ability of a provider to re-apply for a new license, certificate, or endorsement following a licensing revocation or surrender as an alternative to a revocation. Currently, when a licensed is surrendered, regardless of the circumstances of the surrendered license, there is nothing that prohibits that same or associated providers to apply for a new license, certification, or endorsement.

**Legislative Concept Proposal:** Direct the Department to establish conditions under which a provider may be prohibited from applying for a license, certification, or endorsement. Included in this concept would be authority for rule making by ODDS to address scope and nature of the situation the resulted in a termination of license, certificate or endorsement. The prohibition could include conditions, time limits, or other measures.

#### **Stakeholder/Provider Feedback:**

- Providers shared reasons why they may surrender a licenses including challenges serving individuals with significant needs when those needs exceed their capacity.
- Providers expressed concern about the criteria that will be used to determine when a provider will not be allowed to open another home when a license is surrendered.
- The request was made to clarify the criteria in statute, not in OAR.

#### **Residential Facilities Ombudsman Feedback:**

- RFO agrees with the stated problem and Legislative Concept Proposal. We would encourage the incorporation into the ODDS licensing scope and severity tool or similar tool. Also, including the requirement related to when and how a license is “closed” in state tracking, i.e. when a provider is allowed to “withdraw” or “not renew” a license in the face of termination affects later vetting. It would be very important to track those as “closed by state”. There is also concern regarding providers reopening under different names and relations. This should be addressed as well.



### Provider Performance in Other Locations

**Problem:** Although SB 86 passed in the 2021 Legislative Session clarifying the authority for the Department to have discretion to evaluate the compliance and operational history of a provider of a residential training home or facility per ORS 443.420, this authority is not clearly stated for other provider and service setting types.

**Legislative Concept Proposal:** Expand of the authority stated in SB86 to apply to other provider types and settings to allow for licensing to investigate provider performance in other states and territories.

### **Stakeholder/Provider Feedback:**

- Questions were raised about how Oregon will collect information from other states.
- Requests were made to ensure that the criteria for using the information from other states as the basis for not approving a provider be clearly stated and publicly known.

### **Residential Facilities Ombudsman Feedback:**

- RFO agrees with the problem. We believe the legislative Concept Proposal shouldn't only "allow" for licensing to investigate provider history in other states and territories, it should **require** it for all applicants as part of the application process. This should also include in-state providers (and actual report of licensing issues under current homes, history of abuse investigations/reports etc.) that are not part of the current application vetting process.

### Organizational History

**Problem:** ODDS does not have current explicit statutory authority requiring provider agencies and applicants to report their performance and compliance history in other service arenas, territories, as well as affiliations with other organizations.

**Legislative Concept Proposal:** Require reporting of up to 10 years of organizational history, including performance history in other related service fields, geographical areas outside of Oregon, affiliation with other human services provider agencies, to be included as part of a provider application for initial and on-going licensing, certification, or endorsement. ODDS's intent is to review prior

performance of providers in other states only for providers that have been in existence prior to requesting approval to operate in Oregon. ODDS would also reserve the right to review provider performance in other states at renewals. This reporting requirement would apply to all agency executives or persons with a five percent or greater stake in the agency. This concept in addition to the previous section addressing provider performance in other locations would need funding associated to support the increase in licensing workforce capacity necessary to research provider performance and organizational history. This would require two new licensing positions.

**Stakeholder/Provider Feedback:**

- Questions were raised about the criteria that will be used to determine whether or not a provider should be approved, based on this historical information.

**Residential Facilities Ombudsman Feedback:**

- Same as above.

**Conclusion:**

ODDS proposes the above recommended legislative concepts in combination with efforts by the program to expand rulemaking and policy related to increase provider accountability and service expectations. We appreciate OHA’s partnership in developing the initial recommendations and the feedback received from stakeholders, provider agencies and the Residential Facilities Ombudsman. ODDS looks forward to moving these recommendations forward through the legislative process.