OHCA
OREGON HEALTH CARE ASSOCIATION

Oregon's Voice for Long Term Care & Senior Housing

March 11, 2025

Senate Committee on Human Services
Oregon State Capitol
900 Court St. NE
Salem, OR 97302

Re: SB 34 (-1); Concerns and Suggested Amendments

Chair Gelser Blouin, Vice Linthicum, and Members of the Committee,

Oregon Health Care Association (OHCA) represents long term care providers including skilled nursing facilities, assisted living, residential care, and memory care-endorsed facilities, and licensed in-home care agencies. Our mission is to promote high-quality care for older adults and people with disabilities in Oregon.

Nursing facilities are largely regulated by the U.S. Centers for Medicare and Medicaid Services (CMS). With only 129 licensed skilled nursing facilities, Oregon has one of the lowest numbers of beds per capita in the country[1] but for decades has been a national leader for quality care standards. The impact of COVID-19 pandemic was particularly devastating for nursing facilities, and many are still in the process of recovery. This and other factors led to some Oregon facilities selling and exiting the sector over the last two years.

In 2024, the Center for Health Care Strategies (CHCS) partnered with the Oregon Department of Human Services (ODHS) on the "Nursing Home Innovation and Transparency Learning Collaborative." OHCA was not invited by ODHS or CHCS to participate in that learning collaborative, but it is our understanding that the -1 to SB 34 is the result of that effort. OHCA cannot support all the provisions in the -1 amendment. However, we would support the adoption of an amendment that removes duplication of existing requirements, aligns notice requirements with current practices, and focuses the studies on creating value for consumers and families.

Consumers must have the resources to make informed decisions about their care, but it is imperative that the information is meaningful and easy to understand. We already hear from consumers that the information on the ODHS Web site is difficult to navigate, confusing, and

[1]Luck, J., Scarborough, N., Kumbeni, M.T., Bahl A, & Yarbrough, M. (2024). The State of Nursing Facilities in Oregon, 2023. Corvallis, OR: OSU College of Health.

hard to digest. Further inundating consumers with complex information would undermine the value of its disclosure and the resources expended to disclose it.

Existing Disclosure Requirements for Ownership and Quality Measures

It is vitally important to ground this conversation in the reality that Oregon already requires extensive and detailed transparency by nursing facilities.

Today, CMS and ODHS collect and make publicly available data related to ownership, licensure and survey history, and facility performance measures. Last year, CMS issued *additional* ownership transparency rules that go deep into the relationships of nursing facility ownership and affiliates. The new requirements are broad and complex as evidenced by the fact that CMS continues to issue evolving sub-regulatory guidance. Since January of last year there have been 11 updates to these new rules to guidance.

CMS' Nursing Home Compare Website provides ownership, financial, and performance measures for any nursing facility.
Find Healthcare Providers: Compare Care Near You | Medicare

Current State and Federal Reporting Requirements:

- The name of the facility and contact information.
- The legal business name.
- Ownership type.
- Name of the owner and anyone with 5% or greater indirect ownership interest, including stockholders and leaseholders.
- Financial history of anyone with 10% or more incident of ownership in the facility (e.g. free of incident of ownership history in any facility of business that failed to pay employees or meet financial obligations, a record of good credit, and proof of fiscal responsibility are among the disclosures).
- The entity with operational/managerial control.
- The managing employee, which is defined to mean a general manager, administrator, director or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the provider or supplier, either under contract or through some other arrangement, regardless of if the individual is a W-2 employee.
- Any person who has a 10% incident of ownership, direct or indirect, in a pharmacy or any business that provides services or supplies to nursing facilities. And if any such person exists, the name and address of the pharmacy or business must also be disclosed.
- Whether any organization with ownership interest and/or managing control is, among other things, a private equity company.
- Whether any organization with ownership interest and/or managing control is, among other things, a Real Estate Investment Trust.
- All governing body members, including name, title and period of service.

- All owners of an LLC regardless of their percentages of ownership.
- Whether the nursing facility is established as a trust and the names of all the trustees.
- Additional disclosable parties, including persons or entities who lease or sublease real property to a facility, owns a whole or part interest of 5% or more of the total value of such real property, exercise financial, operational or managerial control over the facility, provides accounting, administrative, cash management, clinical consulting, financial, or management services, or provides policies and procedures to the facility.
- All states where the license or persons having a 10% or more incident of ownership in the facility currently are or previously have been licensed to provide long-term care.
- Whether the licensee or any persons with incident of ownership in the facility have ever been convicted of a crime associated with operation of a health care facility or agency under federal law or the laws of any state.
- Credit and background check for the licensee and each person with 10% incident ownership in a facility, and when required by ODHS.

Beyond ownership disclosures, CMS also collects, analyzes, and discloses metrics to assist consumers' choices about their care and identify, in plain language, safety and quality trends across owners and operators. CMS helps consumers compare the metrics for a particular facility against other facilities as well as the averages for Oregon and the U.S.

These metrics include:

- **A facility's health inspection data:** Including complaint and infection control inspections. Consumers can also review the number of federal fines and whether there have been any Medicare payment denials.
- **A facility's staffing data:** Including average number of residents per day, total number of nurse staff hours per resident per day, RN hours per resident per day, LPN/LVN hours per resident per day, and CNA hours per resident per day. The reports on level of staff extends to physical therapist staff hours, additional details on RN staffing levels, and staff turnover percentages for overall nursing staff, RNs, and administrators.
- **A facility's quality measures:** The measures distinguish between short-stays (100 days or less) and long-stays (101 days or more) and cover a wide range of clinical data, such as percent of residents who had new or worsening pressure ulcers, experienced one or more falls with major injury, received antipsychotic medications, received flu and/or pneumonia vaccinations, were at or above the expected ability to care for themselves at discharge, or whose need for help with daily activities increased.

Analysis of SB 34, with the -1 Amendment, and OHCA's Requested Changes

SB 34(-1) requires ODHS to conduct multiple studies, some of which are duplicative with existing reporting requirements and would likely not be a best and highest use of state resources to repeat. We believe an amendment that narrows the focus of a study to enhance education for consumers and how they can better access these readily available ownership disclosures would improve the bill.

Section 1:

OHCA is supportive of Section 1. Consumers and providers alike deserve for the state's website to be user-friendly and for the information on it to be easily understood. OHCA has no requested changes to this section but do want to ensure that nursing facilities would not need to double report information to CMS and ODHS.

Section 2:

Section 2 directs ODHS to study whether additional ownership or facility disclosures are needed. Much of the information required in this study duplicates or overlaps with existing reporting requirements or would be very challenging, if not impossible, for facilities to provide.

- The definition of the term "related party" is too broad and is largely duplicative of the existing reporting of "additional disclosable party" under federal law. Under CMS rules, "additional disclosable parties" are:
    - *"Any person or entity who:*
        - *Exercises operational, financial, or managerial control over the nursing facility or a part thereof or provides policies or procedures for any of the nursing facility operations or provides financial or cash management services to the nursing facility.*
        - *Leases or subleases real property to the nursing facility, or owns a whole or part interest equal to or exceeding 5 percent of the total value of such real property; or*
        - *Provides management or administrative services, management or clinical consulting services, or accounting or financial services to the facility."*

- The requirement that the study include recommendations regarding *"Data about staffing, including the percentage of a long term care facility's Medicaid funding that the facility spends on direct care or staffing;"* is not reasonable. First, staffing information is already reported under existing rules and made publicly available to consumers (6106 of the Affordable Care Act also requires facilities to electronically submit direct care staffing information based on payroll and other auditable data). Second, data about the percentage of a facility's Medicaid funding spent on direct care would be very challenging for a facility to provide as it does not align with how budgets function. Medicaid revenue is not parsed out from other revenue streams like Medicare, commercial insurance, or private pay. Facilities would need to overhaul their budgeting practices to meet such a requirement.

OHCA's Requested Changes to Section 2:

- There is almost nothing in Section 2's required study that is not already reported on or collected today. As a result, we would request this section be removed from the bill.
- If Section 2 must remain:

- It is critical that the language related to requiring ODHS to make recommendations on Medicaid dollars spent on staffing or direct care be removed because it is not a reasonable standard for facilities to meet.
- Align the definition of "related party" to "additional disclosable party" under CMS rule.
- Insert language that focuses the scope and frame of the study to *"whether the information to be collected:*
  - *Is a primary factor for consumers who are considering where to receive care.*
  - *Creates additional costs on long term care facilities.*
  - *Is unnecessarily burdensome on long term care facilities.*
  - *Creates an adverse impact on small businesses; and*
  - *Can be presented in plain language and in a meaningful manner to consumers."*

Section 3:

OHCA generally supports this section. Transitioning from paper reporting makes sense in the 21st Century and it could be worthwhile for ODHS to assess the magnitude of resources and expertise required to make this a reality.

OHCA's Requested Changes to Section 3:

- We would simply request the addition of the language below to ensure privacy laws are adhered to.
  - "SECTION 3. (1) As used in this section, 'long term care facility' has the meaning given that term in ORS 442.015. "(2) The Department of Human Services shall study the feasibility of developing and implementing an online portal to collect information, including licensure materials and other reports, directly from long term care facilities and share the information directly to the public **while maintaining compliance with any and all state and federal privacy requirements**."

Section 4:

Section 4 of the -1 amendment requires ODHS to study and make recommendations around notice requirements upon a change of nursing facility ownership.

OHCA supports ensuring that the public is made aware of changes in ownership in the appropriate time and manner. Currently, Oregon currently requires a licensee and a prospective licensee to *each* notify ODHS in writing of a contemplated change of ownership **at least 45 days** prior to the proposed date of transfer. Furthermore, the timeline to report changes in ownership for a nursing facility is within **30 days** of the change.[2] According to the CMS guidelines, any changes in ownership (such as mergers, acquisitions, or changes in the legal entity that controls the facility) must also be reported to Medicare. Facilities utilize various

[2] OAR 411-085-0025

factors to inform residents and staff of ownership changes, including written communications, town hall meetings, and more.

Section 4(2)(d) requires ODHS to study and make recommendations specifically related to *"Whether the notice should include an opportunity for members of the public to submit information to the department before the department may approve the change."* This requirement is incredibly concerning as we believe it could result in being a barrier to transactions that could inhibit quality care and reduce innovation. It also leaves open what would occur of a person or entity objects to a change in ownership.

OHCA Requested Changes to Section 4:

- Remove Section 4(2)(d).
- Insert language that focuses the scope and frame of the study to *"whether the information to be collected:*
    - *Is a primary factor for consumers who are considering where to receive care.*
    - *Creates additional costs on long term care facilities.*
    - *Is unnecessarily burdensome on long term care facilities.*
    - *Creates an adverse impact on small businesses; and*
    - *Can be presented in plain language and in a meaningful manner to consumers."*