OHCA
OREGON HEALTH CARE ASSOCIATION

Oregon's Voice for Long Term Care & Senior Housing

March 18, 2025

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

Re: SB 739 (-3); OHCA is Opposed and Suggested Amendments

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

Oregon Health Care Association represents long term care providers across the continuum, and unfortunately, we are opposed to the -3 amendment to SB 739.

We would like to acknowledge the Chair Gelser Blouin, LPRO staff, and all the stakeholders and consumer advocates who have participated in workgroup meetings about this bill. The safety and wellbeing of residents living in community-based care settings is our collective priority.

The workgroup's discussion focused on the base bill. The -3 reflects some small, positive changes from the base bill, but there are significant *new* policy provisions in the amendment that are deeply concerning. The policies in the -3 set unreasonable expectations and would be very expensive to implement and we fear would have many unintended consequences.

Oregon has one of the most, if not the most, comprehensive and complex regulatory systems for community-based care in the nation. Assisted living, residential care, and memory care facilities have regulations around staffing standards, training standards, and quality measures just to name a few. OHCA has supported most, if not all, of those standards over the last few decades because we want regulations that drive quality care outcomes for the Oregonians we serve.

But there must be a balance. Instead of focusing on how to enforce existing laws and rules and providing the Oregon Department of Human Services (ODHS) and facilities with the resources they need, the -3 amendment adds new, sometimes duplicative requirements and costs.

This could result in high-quality providers no longer being able to afford to operate in Oregon, especially in rural areas where finding administrators is already a challenge and resources are scarce. And certainly, Medicaid reimbursement does not cover the costs generated by the -3 amendment. Medicaid rates already underfund the cost of care in assisted living by an average of $1,000 a month

per resident[1], and the ODHS is struggling to emerge from the pandemic and catch up with a backlog of work and mandates.

Below are some of our most pressing concerns with this concept:

Significant Expansion of Mandated Consultant Requirements
The bill significantly expands the situations in which a facility must retain the services of a consultant without a reasonable relationship to quality care. This comes at a high financial cost to the provider and there is no guarantee that there are enough qualified consultants to meet these new demands.

Under existing rules, an applicant who does not have experience in the management of assisted living or residential care facilities in Oregon must employ the services of a consultant *or* a management company with such experience for a period of *at least* the first six months of operation.

The -3 eliminates the option of using a management company as the support, and we would like to see that option restored. And it extends the requirement to retain a consultant to an operator who has had a condition the license of one of its facilities in the preceding two years, or if the administrator of the building has not been an administrator in Oregon in the last 12 months. The bill also expands the obligation to hire a consultant to a period of *12 months* for applicants seeking a memory care endorsement.

While well-intended, these standards are not reasonable, and they do not contemplate the realities and nuances of current regulations and how ODHS applies conditions on licenses today.

For instance, when the acuity-based staffing tool (ABST) law was implemented in 2023, statute required the Department to place conditions on licenses for multiple reasons related to the ABST, including for hyper-technical violations like the facility's tool grouped certain activities of daily living (ADL) under an umbrella category versus separately listing out all 22 ADLs.

That example is relevant because if the -3 amendment passed, it would mean many high-quality, high-performing operators would be prohibited from opening a new facility without incurring the costs of a consultant. Ultimately, this results in barriers for Oregonians accessing the care they need at a time when demand is rising.

There is also no reasonable basis to require a facility to hire a consultant if its administrator has not been a licensed administrator in Oregon in the last 12 months.

The fact that the administrator has been issued a license in Oregon demonstrates that the individual met the qualifications outlined in law, and to the extent it applies to an administrator who simply has not worked in the state the past year, is an impediment to career options for these individuals. It also penalizes qualified professionals who may move for career opportunities or take time off for personal reasons by making their hire more expensive due to the need for the operator to also pay for a consultant.

[1] Portland State University. Wage and Cost Study of Oregon Assisted Living and Residential Care Providers, 2022. https://pdxscholar.library.pdx.edu/cgi/viewcontent.cgi?article=1125&context=aging_pub.

Significant Expansion of Consumer Notifications
The second area of new policy in the -3 that OHCA has major concerns with is the consumer notification provisions. The bill would make disclosure requirements in assisted living facilities more intensive than other types of care settings, including hospitals, nursing facilities and adult foster homes where arguably a more fragile resident population is being served.

The bill requires facilities to "immediately provide" a copy of reports to residents and their designated contacts, for which there is no limit, when the department determines a licensing violation resulted in the "death, harm, or potential harm to a resident" *or* when ODHS imposes a condition on a license of a facility. The term "potential to harm" is very broad and could include almost any citation handed down by ODHS as we are experiencing increasingly subjective and inconsistent interpretations of the scope and severity guidelines by state surveyors. Moreover, one of these licensing violations does not automatically mean a facility is not in substantial compliance with the regulations or that they are performing substantially below statewide averages on quality metrics.

The bill also requires facilities to post reports and notices in the facility's entryway and on its website as well as give these reports to each *applicant* for admission and each new resident anytime the department imposes a condition on a license.

This a huge operational lift, especially for smaller facilities, some of which do not have websites or whose websites are very basic, and there is no technical staff on hand to be frequently making changes to it.

Not only that, but this shifts the responsibility of ODHS to have a clear, concise, functioning and consumer-friendly website onto providers, which already provides all this regulatory information publicly. The policy question at hand is what the appropriate threshold is for when residents should be proactively notified about regulatory actions against a facility and the manner in which those notifications should occur.

Residents receive many notifications today, including changes to their level of care, changes in the rates to their services, ownership changes, monthly newsletters, menus, and more. The notices that directly impact the care, treatment and services that they receive will be diluted if we inundate residents with notices because we set the wrong threshold in this bill.

Ensuring Scope on Community-Based Care
Section 2 seeks to amend a statute that applies to both residential care facilities and nursing facilities. We would like to ensure that SB 739 focuses specifically on community-based care facilities.

Rule Waivers/Exceptions
Section 4 of the -3 outlines the exception and waiver process and bars ODHS from granting a request for an exception for any licensing requirement prescribed by state or federal statute. We think this could be too restrictive and prevent them from responding quickly and efficiently to emergencies. As opposed to a blanket prohibition, we think the better course is to allow for exceptions/waivers with specific parameters, such as end dates and periodic reviews, to ensure we do not compromise Oregon's values around quality, resident health and safety, and person-centered care.

Changes to Facility Administrators
OHCA has questions and concerns about the provision of the bill related to what facilities must do in the case of emergencies when a facility may have lost an administrator for any reason. We would like to have further conversation about changes to this part of the bill.

Recommended Changes
OHCA has policy changes that we offered the workgroup and will continue to offer this committee, which would address the following issues that I believe there is consensus on. Those include:

- Ensuring new and inexperienced owners and operators have enhanced, more frequent oversight and accountability mechanisms in place so they are successful.

- Standardizing and providing clarity on the expectations and relationships between consultants and facilities.

- Supporting meaningful access to information for consumers from a facility and establishing the right threshold for when facilities proactively notify residents of regulatory actions and the way those notifications occur. And we would recommend using the scope and severity matrix as a starting place for that conversation, but it can't simply be connected to a condition on a license or the term "potential to harm," so more work needs to be done to determine that appropriate threshold.

- And lastly, we appreciate that there are clearer guidelines in the bill for when the Department must start certain complaint investigations, but there must also be set expectations and rules on how long they take to complete. All too often complaint investigations are open for months or years, which hurts everyone involved.

Thank you for the committee's time and consideration and we look forward to working with stakeholders to make positive changes to this legislation as we all seek to support our long term care system.

Sincerely,

Libby Batlan
Senior Vice President of Government Relations
Oregon Health Care Association