



Oregon

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**Oregon Department of Human Services
Senate Bill 714 (2021)
Implementation of the Acuity-Based Staffing Tool
December 15, 2021**

SUMMARY:

The Oregon Department of Human Services (ODHS) has developed an acuity-based staffing tool (ABST) as required by House Bill 3359 (2017) and amended by Senate Bill 714 (2021). SB714 requires all residential care and assisted living facilities in Oregon to adopt an ABST:

*Ensure all facilities adopt an acuity-based staffing tool and use the results of the tool to determine the staffing levels necessary to meet the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.*¹

ODHS completed a pilot test of the ABST in mid-September. The results of that pilot were summarized in a report to the Legislative Assembly on October 1, 2021.

SB714 requires ODHS to submit a second report to the legislature by December 15, 2021, summarizing what has been done to implement the law. To fully implement SB714, ODHS has developed several resources including an updated ABST application, new administrative rules, an ABST provider guide, communications materials and training curricula. All elements will be in effect by January 1, 2022.

Next, the department will offer assistance as providers begin to enter data into their selected ABST. ODHS will also continue to train department staff, preparing them to begin regulating facilities on July 1, 2022.

¹ Oregon Laws 2021, chapter 588, Section 2, paragraph (1)

BACKGROUND:

Purpose of an Acuity-Based Staffing Tool

Acuity-based staffing tools are designed to assist facilities in estimating the number of staff required to provide care for residents based on actual resident acuity level. This method is different than a staff-to-resident ratio model, which does not factor individual care needs or resident acuity.

Recommendations of Facility Pilot Project Incorporated

The pilot of the original ABST database underscored the need for an effective database that calculates acuity using a comprehensive list of residents' activities of daily living (ADL). In fact, several residential care and assisted living facilities throughout Oregon already use their own acuity-based staffing tools.

All Residential Care and Assisted Living Facilities Must Adopt an Acuity-Based Staffing Tool

The 2021 Legislative Assembly expressed concern for adequate staffing in residential care and assisted living facilities. They decided, as outlined in SB714, that acuity-based staffing tools can **recommend staffing levels, intensity and qualifications necessary** to meet the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.”² (Emphasis added.)

The primary impact of SB714 is to require all Oregon memory care, residential care and assisted living facilities to adopt an acuity-based staffing tool to determine adequate staffing necessary to meet the unique and specific care needs of their residents. Facilities are not required to use the ABST developed and provided by the department; however facilities must use a comparable staffing tool to determine adequate staffing to meet the scheduled and unscheduled needs of residents.

The process for using an ABST

Each ABST should include a list of activities of daily living (ADLs). Facilities must determine the time it takes to complete each ADL for each resident. The time needed to complete tasks for individual residents is added together to calculate total amount of time required.

² Oregon Laws 2021, chapter 588, Section 2, paragraph (1)

SB714 requires facilities to do two specific things:

- **Select an ABST** - facilities may choose to use the ODHS’ tool or a different tool
- **Adopt an ABST** and use the tool to determine the staffing needs for the facility

New Regulatory Role for ODHS

SB714 requires ODHS to **conduct assessments** to determine if a facility is using an acuity-based staffing tool that meets the requirements of Oregon Administrative Rules and is “consistently staffing to the levels, intensity and qualifications indicated by the acuity-based staffing tool.” According to state law, facilities are responsible for “meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.”³

The Department will use ABST results to **evaluate claims of inadequate staffing**. These assessments will be conducted during each biennial survey of a facility and whenever there is a complaint against a facility alleging insufficient staffing. To ensure consistency, ODHS is required to adopt standards that all facilities must follow when assessing staffing levels.

ODHS staff will be required to **complete a staffing assessment** each time the department:

- Conducts a survey.
- Approves or renews a license, or
- Conducts a complaint investigation with an allegation of:
 - resident abuse,
 - resident injury,
 - resident safety, or
 - staffing level complaints.

³ SB 714 (2021), Section 2, paragraph (3)

ODHS is Developing New Tools

Acuity-Based Staffing Tool

- In October 2021, the ODHS Web Application team updated the **ODHS ABST** (the state-developed acuity tool). The ABST application will be available online for provider access on January 1, 2022. Facilities will have time to access and review the department's tool, allowing them opportunity to assess whether they would prefer to use the ODHS ABST or a different ABST software. Although each facility may select their own ABST software, the software of their choice must address the list of ADLs identified by the department and meet standards the department establishes in rule.

ABST Updated Based on Pilot Facility Recommendations

- The department **worked in partnership with volunteer facilities to pilot the ODHS ABST**. Pilot participants recommended areas of improvement to the ABST. A key recommendation was to revise the ADLs listed in the pilot version of the ABST. In October 2021, Safety, Oversight and Quality (SOQ) staff collaborated with the ODHS web application team to revise the ABST ADLs based on the pilot group suggestions. The database updates were completed by the ODHS web application team in late October 2021.
- Pilot participants also recommended that baseline, preset average staff time for completing ADLs would be helpful information in determining resident-specific caregiver-assisted needs. Making standardized times available in the database would eliminate guesswork by facilities and reduce potential for inaccurate data. The ODHS web application team was unable to complete this update before the January 1, 2022 ABST implementation date; the application enhancement is now planned to be part of a future update to the ABST database.

New Administrative Rules

- SB714 specifically requires the department adopt rules that establish **minimum requirements for an acuity-based staffing tool** utilized by a facility, and the frequency with which a facility must reassess staffing patterns using the tool. The department adopted a temporary administrative rule to regulate this new program. (*The new rule text is included in this report, beginning on page 6.*)
- Rather than immediate permanent rulemaking, the department adopted temporary rules to provide enough time for multiple Rule Advisory Committee (RAC) meetings. An initial RAC meeting was held in November, before finalizing the temporary rule. During the RAC meeting, participants discussed the deadlines and determined the July 1, 2022 date would provide time for providers to enter all resident information into their ABST.
- Additional RACs will be held early in 2022 to receive additional feedback before finalizing the rule. This will allow time for facilities to become more familiar with the administrative rules and with the ABST and allow for more informed feedback before finalizing the administrative rules.

ABST Provider Guide

- The department developed a provider guide to assist facilities with implementation of ABST applications. An ABST workgroup drafted the *ABST Provider Guide* which will be distributed to providers in December 2021 prior to the January 1, 2022 ABST implementation date. The guide has two primary components: guidance on implementing the ODHS ABST, and general guidance for providers who select a different ABST application.
- The goal is to assist all providers, regardless of whether they select the ODHS ABST or another application. There is a level of detail required in developing ABST data that is beyond the detail generally provided in administrative rule. The guide was developed to provide clear instructions for all facilities as they implement an ABST application.

The guide includes instructions on signing in to the ABST application and describes how to apply average time estimates for each ADL. The primary resource for average time estimates for ADLs is a Massachusetts time study (<https://www.masslegalservices.org/content/pca-time-task-and-pca-operating-standards>). Future enhancements to the ODHS ABST will include average time for ADL information within the database application.

Training materials for facilities

- SOQ is developing training materials to support facilities in using an ABST application. These materials include a pre-recorded training video that will be available on the department's website. The department also plans to host live webinars to provide facilities an opportunity to ask questions and provide real time feedback.

Web page

- A web page dedicated to acuity-based staffing information, accessible from the Community-Based Care Licensing website, is currently being developed. (See <https://www.oregon.gov/DHS/PROVIDERS-PARTNERS/LICENSING/CBC/Pages/licensing.aspx>).
- The website will include general program information, a link to the ODHS ABST, the administrative rule, the ABST provider guide, training videos and other information related to acuity-based staffing.

ODHS Protocols

- ODHS is developing procedures for department staff on the evaluation of facility staffing levels. Draft procedures have been prepared for the Community-Based Care Survey team, Licensing Complaint Unit (LCU) and Adult Protective Services (APS).

Deadlines in Implementing the ABST Requirements:

October 1, 2021:

- Completed provider pilot testing of ODHS' ABST
- Published first legislative report

December 2021:

- Publish second legislative report (12/15/21)
- Hold live broadcast CBC News Hour (12/16/21) to present ABST requirements to CBC providers
- Post ABST provider guide
- Launch Acuity-Based Staffing web page

January 1, 2022:

- ODHS ABST application available online
- Post temporary administrative rule
- Begin provider webinar trainings

February 1, 2022:

- All CBC facilities must select an ABST application by this date

July 1, 2022:

- Providers must have fully implemented their ABST application and completed an ABST assessment for all residents
- The department must begin to evaluate facility ABST results and impose conditions and sanctions on facilities that have not met the requirements

CONCLUSION:

SB714 requires residential care and assisted living facilities to develop acuity-based staffing tools to determine staffing levels, intensity and qualifications necessary to meet the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week. The department has developed temporary administrative rules, a model ABST, an ABST provider guide, and other tools to implement SB714. ODHS staff are finalizing guidance materials and a web page that will include information for facilities on how to implement acuity-based staffing tool requirements. The department will also schedule additional Rule Advisory Committee meetings as it works toward developing permanent administrative rule language. ODHS will be training facilities on the new requirements, as facilities begin to implement the program.

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**OREGON DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 54**

RESIDENTIAL CARE AND ASSISTED LIVING FACILITIES

411-054-0005 Definitions

(Only definitions related to the ABST program are included here.)

(4) "Acuity-Based Staffing Tool" means the tool described in ORS 443.432 or an acuity-based staffing tool adopted by a facility that meets requirements established by the Department in OAR 411-054-0050. An ABST is used by a facility to assess the acuity of each resident and determine the amount of staff time necessary to meet the 24-hour scheduled and unscheduled needs of each resident. Facilities may choose to use the tool established by the Department, the ODHS ABST, or use another acuity-based staffing tool.

(87) "Staffing Assessment" means a review conducted by the Department to determine if a facility is using an acuity-based staffing tool according to administrative rule.

(88) "Staffing Levels" means the number of staff required to provide the levels, intensity and qualifications of staff necessary to meet the scheduled and unscheduled needs of each resident 24 hours a day, seven days a week. Staffing levels are established by using an acuity-based staffing tool to determine the amount of time and expertise necessary to provide services to assist with activities of daily living and related tasks.

(89) "Staffing Plan" means a plan outlining the staffing levels required to meet the scheduled and unscheduled needs of all residents within a facility. Staffing plans should be based on the facility's acuity-based staffing tool.

411-054-0037 Acuity-Based Staffing Tool

(1) CHOICE OF ACUITY-BASED STAFFING TOOL: Every facility shall adopt an acuity-based staffing tool (ABST) to determine appropriate staffing levels for the facility. Each facility may choose to adopt the Department's ABST or may choose to adopt a different ABST. Regardless of the ABST the facility selects, all requirements set forth in this rule, in OAR 411-054-0034 (Resident Evaluation), and in the *ABST Provider Guide* must be met.

(2) START DATE: All facilities must select an ABST by February 1, 2022. By July 1, 2022 facilities must fully implement the ABST selected and complete an ABST assessment for each resident.

(3) **FREQUENCY OF UPDATES:** No later than July 1, 2022, an ABST assessment must be completed for each resident. Following this deadline, facilities must review the ABST tool for each resident:

- (a) Before a resident move in, with amendments as appropriate within the first 30 days to address a resident's needs.
- (b) Whenever there is a significant change of condition as defined in OAR 411-054-0005.
- (c) No less than quarterly, preferably at the same time the resident's service plan is updated, as required by OAR 411-054-0034.

(4) **MAINTAIN UPDATED STAFFING PLAN:** Each facility should use the results of an acuity-based staffing tool to develop and routinely update the facility's staffing plan. The ABST must convert evaluated care needs of residents into staff hours to generate a facility staffing plan.

(5) **ABST ELEMENTS:** Each ABST must address activities of daily living and other tasks related to care, as outlined in OAR 411-054-0030 and 411-054-0034. Each ABST must address all the following activities of daily living (ADLs) for each resident and the amount of staff time needed to provide care:

- (a) Personal hygiene such as shaving and mouth care, as described in OAR 411-054-0030(1)(e)(C) and OAR 411-054-0034(5)(g)(B).
- (b) Grooming, such as nail care and brushing hair, as described in OAR 411-054-0030(1)(e)(E) and OAR 411-054-0034(5)(g)(B).
- (c) Dressing and undressing, as described in OAR 411-054-0030(1)(e)(D) and OAR 411-054-0034(5)(g)(B).
- (d) Bowel and bladder management, as described in OAR 411-054-0030(1)(e)(G) and OAR 411-054-0034(5)(g)(A).
- (e) Bathing, as described in OAR 411-054-0030(1)(e)(B) and OAR 411-054-0034(5)(a)(A) and (g)(B).
- (f) Transferring in or out of bed or a chair, as described in OAR 411-054-0030(1)(e)(A) and OAR 411-054-0034(5)(g)(C).
- (g) Repositioning in bed or chair, as described in OAR 411-054-0030(1)(e)(A) and OAR 411-054-0034(5)(g)(G).

(h) Ambulation, escorting to and from meals or activities, as described in OAR 411-054-0030(1)(e)(F) and (G), and OAR 411-057-0160(2)(a).

(i) If multiple staff are required to assist with transferring and completing tasks in previous question, how much additional time is needed, as described in 411-054-0070(1)(a).

(j) Supervising, cueing, or supporting while eating, as described in 411-054-0030(1)(e)(F) and 411-054-0034(5)(a)(g)(D).

(k) Medication administration, passing out medications, as described in 411-054-0030(1)(f), OAR 411-054-0055(2), and OAR 411-054-0070(1).

(l) Providing non-drug interventions for pain management, as described in 411-054-0034(5)(c)(C) and OAR 411-054-0055(6)(c).

(m) Providing treatments (e.g., skin care, wound care, antibiotic treatment), as described in OAR 411-054-0034(5)(l) and OAR 411-054-0055(1).

(n) Cueing or redirecting due to cognitive impairment or dementia, as described in OAR 411-054-003(5)(d), OAR 411-057-0160(2)(a) and (e), and OAR 411-054-0030(1)(e)(H).

(o) Ensuring non-drug interventions for behaviors, as described in OAR 411-054-0030(1)(e)(l) and OAR 411-054-0055(6)(c) and (d).

(p) Assisting with leisure activities, as described in OAR 411-054-0005(27)(b), OAR 411-054-0030(1)(c), and OAR 411-054-0034(5)(a)(B).

(q) Monitoring physical conditions or symptoms, as described in OAR 411-054-0040(1)(2)(a) and (b).

(r) Monitoring behavioral conditions or symptoms, as described in OAR 411-054-0040(1)(2)(a) and (b).

(s) Assisting with communication, assistive devices for hearing, vision, speech, as described in OAR 411-054-0034(5)(f).

(t) Responding to call lights, as described in OAR 411-054-0070(1).

(u) Safety checks, fall prevention, as described in OAR 411-054-0034(5)(n)(A).

(v) Completing resident specific housekeeping or laundry services performed by care staff, as described in OAR 411-054-0005(94) and OAR 411-054-0070(1)(a).

(w) Providing additional care service, such as smoking assistance or pet care, as described in OAR 411-054-0034(5)(n)(H) and OAR 411-054-0070(1).

(6) DETERMINE TIME TO MEET STAFF LEVELS: The ABST must inform facilities as they develop a staffing plan to specify the total number of weekly minutes required to meet the 24-hour scheduled and unscheduled needs of residents.

(7) REVIEW BY DEPARTMENT.

(a) The Department is required to assess facility staffing levels each time the Department conducts a survey, license approval or renewal, or an investigation into a complaint regarding:

(A) Abuse of a resident;

(B) Injury to a resident;

(C) Resident safety; or

(D) Staffing levels.

(b) Each time the Department assesses a facility's staffing levels, the facility is required to provide the Department with the current acuity-based staffing tool data.

(8) REGULATORY ACTION REQUIRED. The Department will impose corrective action or sanctions as defined in OAR 411-054-0110 (Conditions) and according to Oregon Laws 2021, chapter 588, section 4, if the Department determines the facility is:

(a) Not using an ABST.

(b) Not meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.

(c) Using an ABST but is not consistently staffing to the levels, intensity and qualifications indicated by the tool.

(d) Not determining facility staffing requirements with an ABST as required by rule.

Stat. Auth.: ORS 410.070, 443.450, 443.738

Stats. Implemented: ORS 443.400 - 443.455, 443.738, 443.991, 678.710