

# 2020 Annual Report

## Compliance Data Report for Oregon Community-Based Care Facilities



Aging and People with Disabilities  
Safety, Oversight & Quality

# Compliance Data Report for Oregon Community-Based Care Facilities 2020 Annual Report

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# Oregon

Kate Brown, Governor

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July 1, 2021

### **Introduction to the 2020 Compliance Data Report**

Dear Readers of the Annual Metrics and Compliance Reports

During the past year, 2020, we experienced a worldwide pandemic. COVID-19 disproportionately affected residents of long-term care facilities. As the state agency that regulates community-based care facilities, nursing facilities, and adult foster homes, the Oregon Department of Human Services developed a process for regulating and guiding facilities affected by COVID-19.

2020 was also the first year Oregon's community-based care facilities (which include residential care facilities, assisted living facilities, and memory care communities) were required to report on specific Quality Metrics. HB 3359 (2017), requires creation of a Quality Measurement Council to develop the methods facilities must use to measure performance on five quality metrics. However, given the pandemic, the Council decided to allow facilities to report on simplified metrics. (See the *Quality Measurement Report for Community-Based Care Facilities 2020 Annual Report*)

House Bill 3359 requires ODHS to report annually on the compliance actions taken during the preceding year. These include regulatory actions based on surveys, Adult Protective Services abuse investigations, and Licensing Complaint Unit investigations of licensing complaints. COVID-19 affected the timelines for ODHS to issue final decisions concerning regulatory actions in 2020.

We are pleased to provide this report concerning regulatory compliance data.

Sincerely,

Jack Honey, Administrator of Safety, Oversight & Quality  
Aging & People with Disabilities  
Oregon Department of Human Services

# Executive Summary of Compliance Report

## Regulatory Compliance Data Must Be Reported by the Department

HB 3359, passed by the Oregon Legislative Assembly in 2017, required the Oregon Department of Human Services (ODHS) to annually “*identify the number, severity and scope of regulatory violations by each geographic region, and show average timelines for surveys and for investigations of abuse or regulatory noncompliance.*”

This is the first year ODHS has issued the report, required to be an annual report moving forward. This compliance data is collected from the Department’s licensing survey inspections, investigations into complaints of abuse, and investigations into complaints of violation of licensing requirements. Some of the compliance data (severity and scope data) specifically measures the performance of Oregon’s facilities. Measuring the timelines for surveys, investigations, and final agency corrective action decisions measures the performance of ODHS.

The report lists both the statewide data and facility data by region. Not surprisingly, there are more facilities in the Portland Metro region and the Willamette Valley and North Coast region than in the Eastern Region or the Southern Region. Per number of residents, the four regions appear roughly comparable, with no region indicating a larger number of compliance issues.

When COVID-19 infected the first Oregon long-term care facility in March 2020, facilities and ODHS regulation were dramatically impacted. COVID-19 affected the management of facilities and also influenced this year’s data.

COVID-19 also negatively impacted the Department’s ability to complete standard surveys for most of 2020. Once COVID-19 began to infect facility residents and staff, survey teams stopped conducting surveys. Instead surveyors entered facilities that had cases of COVID-19, to help the facilities prevent and overcome COVID-19. During March 2021, survey staff resumed survey activities and they are currently working to get all facilities surveyed.

The pandemic also affected the Department’s ability to investigate allegations of abuse. Staff who investigate abuse allegations were not able to enter facilities to investigate in person. There were fewer reports of abuse to investigate; likely,

because family members and other individuals were not in facilities. It is likely incidents of abuse were not reported because of these extenuating circumstances.

The 2020 long term care facility data indicate:

- There were fewer surveys this year than previous years, due to the pandemic.
- Given the pandemic, the Department needs to “catch up” on re-licensing surveys to get all facilities back on a 24-month re-licensing survey deadline.
- Most complaints dealt with licensing issues, rather than allegations of abuse.
- There were fewer abuse and licensing violations this year than in previous years. However, the pandemic circumstances resulted in decreased complaint allegations, given that family members and others were not allowed customary facility access, as before the pandemic.
- The four regions of the state had roughly similar numbers of abuse and licensing violations.

The Department has now issued the first annual report of compliance data. However, given the COVID-19 pandemic, this year’s data may well end up being atypical when compared to future data. Regardless, we are pleased this first report is completed, and look forward to presenting upcoming compliance data reports.

## INTRODUCTION

### Requirement to Report Compliance Data

The Oregon Department of Human Services (ODHS) regulates residential care and assisted living facilities, including memory care communities. These facilities are collectively referred to as “community-based care” facilities. House Bill 3359 (2017)<sup>1</sup> requires ODHS annually publish a report concerning community-based care facilities to:

*“Identify the number, severity and scope of regulatory violations by each geographic region, and show average timelines for surveys and for investigations of abuse or regulatory noncompliance.”*

After gathering information through a survey of the facility or an investigation prompted by a complaint, the Department will take action and enforce regulation if a facility is not in substantial compliance with state regulations. If ODHS imposes corrective action against a facility, the Department tracks that action, to ensure the regulatory issue is addressed. All information concerning the results of surveys or compliance investigations are listed, by facility, on the *Oregon Long Term Care Licensing* website.<sup>2</sup>

This is the first annual compliance report; the data in this report concerns regulatory action taken by the Department in 2020. It should be noted there is a companion report, *Quality Measurement Program Report for Oregon’s Community-Based Care Facilities 2020*. This report deals with the data reported by facilities for the first year of quality metrics data reporting.

### Effects of COVID-19

In March 2020, the COVID-19 virus infected the first of Oregon’s long-term care settings. ODHS developed a mandatory process for facilities experiencing outbreaks. When a suspected or confirmed COVID-19 case(s) is reported to ODHS, an Executive Order (EO) is imposed on the facility. The EO is not a disciplinary measure and is not listed as a part of the facility’s compliance history. However, EOs serve as a public notice of COVID-19 in the facility and are posted on the ODHS COVID-19 website. An EO lists the steps that must be taken by a facility with suspected or confirmed COVID-19, to address COVID-19 and protect the safety of residents.

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<sup>1</sup> The statutory requirement for this report is codified as ORS 443.446

<sup>2</sup> Itclicensing.oregon.gov

## COMMUNITY-BASED CARE IN OREGON

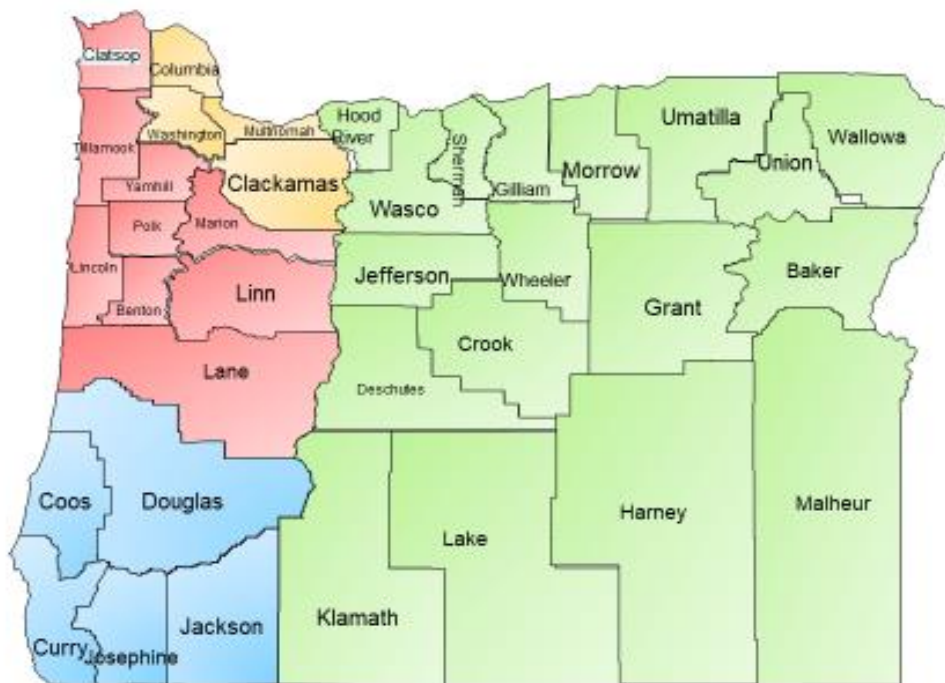
### Residential Care Facilities and Assisted Living Facilities

Oregon had a total of 564 licensed community-based care facilities in 2020; 549 of those facilities were licensed for the entire year, with 15 facilities either closing or opening during 2020.

### Geographic Regions

HB 3359 requires this report to include data on facilities broken down by geographic region. For purposes of this report, there are four regions identified as the Eastern, Portland Metro, Southern and Willamette Valley/ Northern Coast. Below is a breakdown that shows the counties within those four regions.

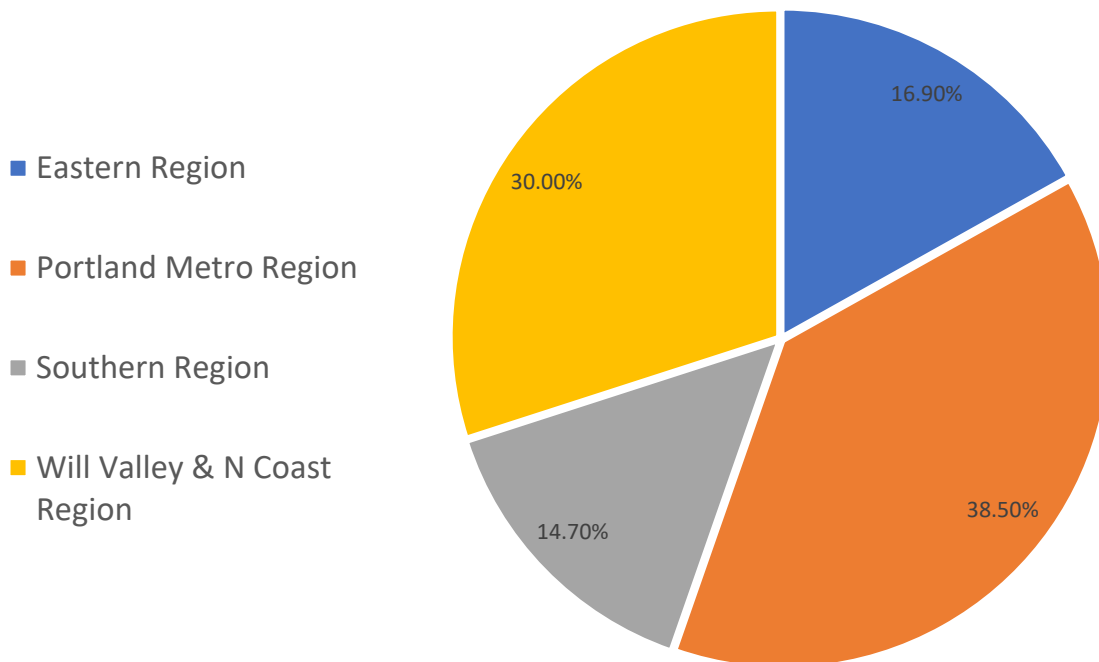
1. **Eastern Region** – Eighteen counties that include Baker, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Klamath, Lake, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, and Wasco.
2. **Portland Metro Region** – Four counties that include Clackamas, Columbia, Multnomah, and Washington.
3. **Southern Region** – Five counties that include Coos, Curry, Douglas, Jackson, and Josephine.
4. **Willamette and Northern Coast (WV & NC)** – Nine counties including Clatsop, Benton, Lane, Lincoln, Linn, Marion, Polk, Tillamook and Yamhill.





Region	Number of Facilities	Percentage
Eastern	93	16.9
Portland Metro	212	38.5
Southern	79	14.7
Willamette V & No. Ct	165	30.0
<b>Total</b>	<b>549</b>	<b>100</b>

**Figure 1. Percentage of Facilities in Each Region**



## **REGULATION OF COMMUNITY-BASED CARE FACILITIES**

The Safety, Oversight & Quality unit (SOQ), within the Aging & People with Disabilities (APD) Program of ODHS regulates residential care and assisted living facilities, including memory care communities. After gathering information through a survey of the facility or an investigation prompted by a complaint, SOQ will take regulatory action if a facility is not in substantial compliance with state regulations. A facility is in “substantial compliance” with state statute and

administrative rule when SOQ determines a facility’s deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility<sup>3</sup>.

If a facility is not in substantial compliance with state law, progressive corrective action and enforcement is implemented. This means any action imposed on a facility will be in balance to the level of noncompliance. SOQ employs a positive and progressive approach to corrective action whenever possible. Although the Department strives to impose the least restrictive action, there are times when noncompliance with rules places facility residents at a level of risk that requires SOQ to take immediate action to ensure residents’ safety. SOQ uses a *Scope & Severity Matrix* to assess how many residents were impacted and how severely residents were affected.

### **Corrective Action Process**

ODHS applies corrective action(s) based on information gathered from the following Department investigations:

<b><i>Type of investigation</i></b>	<b><i>Staff that Investigates</i></b>
Surveys	CBC Survey Team
Complaints of alleged abuse	Adult Protective Services (APS) staff
Complaints of alleged licensing violations	Licensing Complaint Unit (LCU) staff

Once a survey or investigation is completed by the appropriate staff, the investigative report is sent to SOQ CBC Corrective Action Coordinators (CACs) for processing. The CACs review documentation to determine the appropriate sanction for a specific violation. This involves determining the scope (how many people were affected) and severity (how serious was the issue) of a violation and applying mitigating and aggravating factors to determine appropriate action.

The CACs use the information from Survey, APS, and LCU to issue sanctions for three basic types of violations:

- Abuse violations for substantiated abuse resulting in harm or risk of serious harm to a resident;
- Licensing violations for failures to substantially comply with licensing rules; and/or
- Failure to self-report abuse or suspected abuse.

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<sup>3</sup> Oregon Administrative Rule (OAR) 411-054-0005(79)

## SURVEYS

### Process for Conducting Surveys

Survey inspections are prompted by any of the following circumstances:

- **Initial licensure** (conducted for new facilities, within six months of opening)
- **Re-licensure** (conducted for every licensed facility every 24 months)
- **Change in ownership of the facility** (conducted within 6 months of change)
- **Multiple complaints** concerning a facility<sup>4</sup>

Every two years, a survey is conducted at each licensed community-based care facility to determine a facility's level of substantial compliance. Prior to initiating a re-licensure survey visit, the survey team collects information from a variety of internal ODHS partners and the Long-Term Care Ombudsman. The information includes complaints and concerns that have been investigated since the last licensure survey and helps inform the survey team about potential issues.

Re-licensure surveys are comprehensive, multiple-day inspections. A survey begins with the survey team making an unannounced on-site visit at the facility.

During the survey, the following areas are evaluated:

- Overall physical environment of facility
- Resident living areas
- Kitchen and food service areas
- Medication and treatment administration
- Move-in process
- Review of residents' records
- Review staff training
- Review nursing services
- Observation of residents' daily care
- Interviews with direct care staff and residents to determine ability to meet residents' needs
- Evaluation of service plans for individual residents
- Review of training files of selected employees
- Fire and life safety

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<sup>4</sup> The data for these complaint-based surveys is included in the data concerning abuse determinations and licensing violation determinations, since that data will have originated as one of those complaint types.

Surveyors use a combination of methods, including interviews, observations, and record reviews to determine a facility's level of substantial compliance. After compiling information, surveyors determine if citations should be issued, and the level of any citations.

Once the onsite survey is complete, surveyors hold an exit conference with facility staff to discuss findings of the survey. During the exit conference, the following will be discussed: an explanation of the findings and what they mean in terms of substantial compliance with required rules; the timeline for completion of the written survey report; any requirement(s) for the facility to fix any problems; and what to expect concerning survey revisits.

The facility then has 10 business days to develop a *Plan of Correction (POC)* outlining how the facility proposes to fix the deficiencies, and submit that POC to SOQ.<sup>5</sup> The POC describes measures that will be taken by the facility to correct any violations and systemic issues, prevent recurrence, and ensure substantial compliance is maintained. The survey team coordinator reviews the POC to determine if the POC sufficiently addresses the issues identified by the survey team.

If the survey team determines violations have occurred warranting regulatory enforcement beyond the POC, the team forwards that information to the CAC and OPA for processing.

Following a survey, the survey staff will revisit the facility to determine if the POC has been implemented and citations have been corrected. If a facility is cited for noncompliance, then a survey revisit(s) is also conducted, to determine if the facility has corrected the previously cited violations.

COVID-19 negatively impacted the Department's ability to complete standard surveys for most of 2020. Once COVID-19 began to infect facility residents and staff, survey teams stopped conducting surveys. Instead surveyors entered facilities that had cases of COVID-19, to help the facilities prevent and overcome COVID-19. During March 2021, Survey staff resumed survey activities and they are currently working to get all facilities surveyed.

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<sup>5</sup> OAR 411-054-0105(2)(a)

## Determining Scope and Severity of Surveys

The Department considers the scope and severity of each violation to determine the appropriate corrective action to take.

It is important to understand the definitions of the terms “scope” and “severity:”

SCOPE	
<p>“<b>Scope</b>” refers to the number of residents or locations within a facility that are affected.</p>	<p><b>Isolated</b> - one or a very limited number of residents or employees are affected or a very limited area or number of locations within a facility are affected.</p>
	<p><b>Pattern</b> - more than a very limited number of residents or employees are affected, or the situation has occurred in more than a limited number of locations, but the locations are not dispersed throughout the facility.</p>
	<p><b>Widespread</b> - the problems causing the deficiency are pervasive and affect many locations throughout the facility or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.</p>
SEVERITY	
<p>“<b>Severity</b>” refers to the seriousness of the violation, or the harm (or potential for harm) the violation has caused.</p> <p>“Harm” is defined as a measurable negative impact to a resident’s physical, mental, financial or emotional well-being.</p>	<p><b>Minor harm</b> means harm resulting in no more than temporary physical, mental or emotional discomfort or pain without loss of function, or in financial loss of less than \$1,000.</p>
	<p><b>Moderate harm</b> means harm resulting in temporary loss of physical, mental or emotional function, or in financial loss of \$1,000 or more, but less than \$5,000.</p>
	<p><b>Serious harm</b> means harm resulting in long-term or permanent loss of physical, mental or emotional function, or in financial loss of \$5,000 or more.</p>

Every violation that is cited is categorized by level of scope and severity. The grid on the following page is used when ranking scope and severity of each violation.

All survey citations issued in 2020 are listed in the following grid:

SEVERITY OF HARM	SCOPE OF HARM		
	<u>Isolated</u>	<u>Pattern</u>	<u>Widespread</u>
	1-25% of sampled residents are affected	26-74% of sampled residents are affected	> 75% of residents or many locations throughout facility affected
<u>Level 4</u>	J	K	L
<b>Immediate Jeopardy</b> - the failure of the facility to comply with the rules has caused or is likely to cause injury, serious harm, serious impairment or death to a resident. Immediate correction is required to protect resident health and safety.	26	0	0
<u>Level 3</u>	G	H	I
<b>Moderate Harm</b> - Moderate harm or potential for serious harm which significantly impacts the residents' quality of life or physical function.	17	6	10
<u>Level 2</u>	D	E	F
<b>Minor Harm</b> - Minimal harm which does not significantly impact residents' quality of life or physical function; or no harm, w/ potential for moderate harm.	148	265	245
<u>Level 1</u>	A	B	C
<b>No actual Harm</b> - No harm, or potential for minimal harm <i>Technical Assistance (TA) only</i>	82 (Citations are lumped together since no corrective action is taken at this level. Only TA.)		

Unique characteristics of regulatory enforcement using the survey process:

- This is a facility-wide review, so scope is considered.
- The highest level of harm that can be encountered during a survey is referred to as “Immediate Jeopardy” or “IJ.” This term is unique to survey<sup>6</sup>.
- Surveys may result in “0 level” harm or in “no citations.”
- Survey teams determine scope and severity for surveys.

<sup>6</sup> **Immediate Jeopardy** occurs if the survey team encounters a situation in which the failure of the facility to comply with a rule of the Department has caused or is likely to cause serious injury, serious harm, serious impairment or death to a resident. The team will identify an immediate jeopardy. In these cases, the survey team will not exit the facility until the facility has submitted an approved plan which ensures immediate safety for residents specifically addressing the situation(s) that led to an immediate jeopardy.

### Statewide and Regional Data

Once COVID-19 cases began to appear among facility residents and staff, survey teams stopped conducting surveys. Instead, surveyors entered facilities that had cases of COVID-19 to help the facilities prevent and overcome COVID-19. During March 2021, survey staff resumed survey activities and they are currently working to get all facilities surveyed for re-licensure.

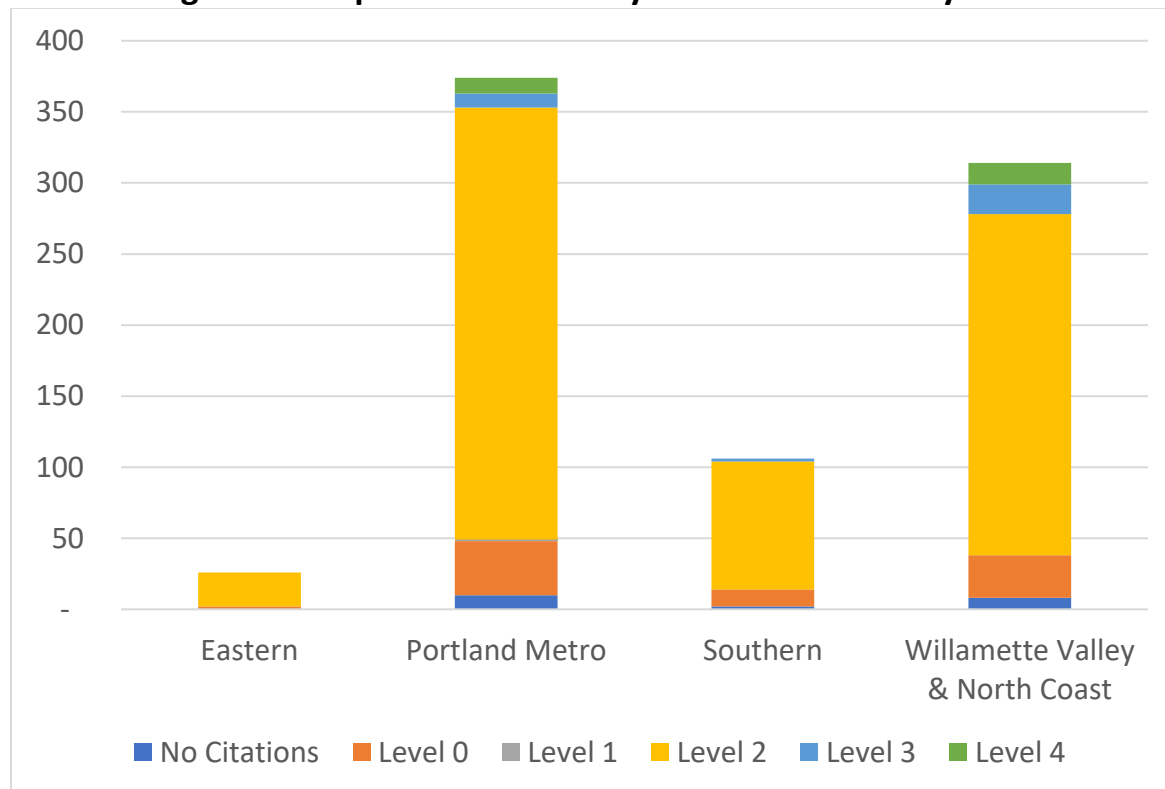
During 2020, a total of 61 surveys were conducted. These surveys were conducted as follows:

- 17 - initial licensure requests
- 34 - re-licensure surveys
- 10 - change in ownership of the facility

During 2020, the survey team also conducted 111 revisits to follow-up with facilities and determine if previous violations had been corrected.

To see the severity and scope of all citations from surveys, see the data in each grid section in the Severity & Scope Grid provided on the previous page.

**Chart 1. Regional Comparison of Severity Citations for Survey**



## Timelines for Surveys

There are two required deadlines associated with survey:

1. Each community-based care facility is required to be surveyed once every other year, for a “re-licensure” survey.
2. Survey re-visits to determine if a licensing condition can be lifted must be completed within 15 days.<sup>7</sup>

Given the pandemic, the normal schedule for conducting re-licensure surveys was disrupted. Instead, the survey team stopped doing “normal” surveys early in the year and started primarily going into COVID-positive facilities to assist those facilities with infection control. During 2020:

- Survey team conducted 61 surveys and 111 revisits total.
- There were 34 re-licensure surveys conducted during 2020.
- 202 facilities (out of 549 CBC facilities total) were behind the required 24-month deadline for re-licensure survey as of December 31, 2020.
- 100% of requested revisits to review license conditions were completed within 15 days

### Lessons Learned from Survey

- 2020 was an unusual year, due to the COVID-19 pandemic.
- Fewer surveys than usual were conducted, due to the pandemic.
- Due to the pandemic, the 24-month timeline for completing re-licensure surveys was extended.
- Survey staff are currently working hard to catch up on the re-licensure survey backlog, to get back into compliance with the 24-month requirement.

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<sup>7</sup> Revisits are required when a facility indicates they are “back in compliance” following a citation(s). The facility contacts SOQ in writing once the facility believes the condition has been addressed. SOQ then has 15 days to revisit the facility to determine whether the facility has corrected the deficient practice for which they were cited. If the Department does not meet this deadline, the condition on the license must be removed.



## INVESTIGATIONS OF POTENTIAL ABUSE

### Process for Investigating Abuse

When ODHS receives a complaint<sup>8</sup> alleging abuse, the complaint is screened to determine if the allegation would meet the definition of abuse. If the complaint meets the definition of abuse as defined in law<sup>9</sup>, an investigation is started. The Adult Protective Services (APS) unit conducts investigations of potential abuse in residential care and assisted living facilities. APS is an office separate from Safety, Oversight & Quality, but still within the Aging and People with Disabilities program of ODHS. APS investigators are located in local DHS and AAA offices around the state. APS investigates complaints of alleged abuse to determine if abuse actually occurred.

APS is required to conduct a complete, thorough and objective facility investigation when a resident is reported to have been abused by a facility staff, contractor or volunteer of the facility and the reported concern, if true, meets the APS definition of abuse. State law<sup>10</sup> defines the following types of abuse:

- Physical Abuse
- Neglect
- Abandonment
- Verbal or Emotional Abuse
- Financial Exploitation
- Sexual Abuse
- Involuntary Seclusion
- Wrongful Use of a Physical or Chemical Restraint

All complaint investigations are documented in an investigation report, regardless of outcome, and all facility investigation reports are delivered to SOQ for processing and appropriate regulatory action. Results of substantiated APS reports are publicly posted<sup>11</sup> when all due process opportunities have been exercised or timelines have expired.

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<sup>8</sup> Complaints may come from anyone, including facility staff, residents, family members, volunteers, etc.

<sup>9</sup> OAR 411-020-0002(1)

<sup>10</sup> Each element of "abuse" is described in OAR 411-020-0002(1)

<sup>11</sup> Itclicensing.oregon.gov

## Determining Scope and Severity for Substantiated Abuse

Corrective action for substantiated abuse is issued according first to the level of harm or potential for harm that a resident or residents have experienced or to which they are exposed, and second, the scope of that harm.

### Scope and Severity of Substantiated Abuse Violations

Severity of harm (level of harm) is ranked according to the following definitions:

Level of Harm:	Definition:	Civil Penalty:
<b>Elevated</b>	<b><u>Serious injury, sexual abuse, rape, or death</u></b> that arose from deliberate or by other than accidental action or inaction that is likely to cause a negative outcome by a person with duty of care toward resident, and if the abuse resulted in the death, serious injury, rape, or sexual abuse of a resident, the action was likely to cause a negative outcome.	<b>\$2,500 to \$15,000</b>
<b>Level 4</b>	<b><u>Serious harm</u></b> : This means there is long-term or permanent loss of physical, mental or emotional function or financial loss of \$5,000 or more.	<b>\$1,500 to \$2,500</b>
<b>Level 3</b>	<b><u>Moderate harm or potential for serious harm</u></b> : This means there is temporary loss of physical, mental or emotional function, or potential for long-term or permanent loss of physical, mental or emotional function, or financial loss of \$1,000 or more, but less than \$5,000, or potential financial loss of \$5,000 or more.	<b>\$500 to \$1,500</b>
<b>Level 2</b>	<b><u>Minor harm or potential for moderate harm</u></b> : This means there is no more than temporary physical, mental or emotional discomfort or pain without loss of function, there is potential for temporary loss of physical, mental or emotional function or there is financial loss of less than \$1,000, or potential financial loss of \$1,000 or more, but less than \$5,000.	<b>\$250 to \$500</b>
<b>Level 1</b>	<b><u>No actual harm or potential for minor harm</u></b> : This means no actual harm occurs, or there is potential for no more than temporary physical, mental or emotional discomfort or pain without loss of function or potential for financial loss of under \$1000.	<b>Technical Assistance only No \$ fine</b>

**Scope of harm** (number of residents or locations within a facility that are affected) is characterized according to the following definitions:

<b>Scope of Harm</b>	
<b>Isolated:</b>	One or a very limited number of residents or employees are affected or a very limited area or number of locations within a facility are affected
<b>Pattern:</b>	More than a very limited number of residents or employees are affected, or the situation has occurred in more than a limited number of locations but is not dispersed throughout the facility
<b>Widespread:</b>	Problems causing the deficiency are pervasive and affect many locations throughout the facility or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees

All instances of substantiated abuse violations are subject to sanctions. Corrective Action Coordinators (CACs) promote substantial compliance with regulation by determining the appropriate sanction for the specific violation. As a first step, staff rank the severity of a violation, according to the severity chart on the previous page.

In determining the amount of civil penalties for substantiated abuse, the agency may take into account the scope of the violation. Completed APS investigations each address only a single individual resident. Since these investigations are submitted to the Corrective Action Coordinators one investigation at a time, it is impossible for CACs to know the full scope of a violation at the time the initial investigation is submitted.

Instead, as each individual investigation is submitted, the CACs determine if aggravating and/or mitigating factors apply that that investigation. This means that as more investigations are submitted concerning a potential widespread violation, that scope can be determined, and the sanctions are increased accordingly.

The aggravating and mitigating factors are then applied to the severity level of the harm to determine a civil penalty amount or other appropriate sanction.

- **Aggravating factors** may increase a civil penalty amount. Aggravating factors include: the facility’s prior history, failure to satisfactorily correct similar problems in the past, and whether the violation resulted in a financial benefit to the facility.
- **Mitigating factors** may decrease the civil penalty amount. Mitigating factors include: the facility quickly correcting previous violations, the fact that violations happened during prior ownership/management, and whether the facility self-reported immediately.

Unique characteristics of the APS abuse corrective action process:

- APS investigations do not determine “scope” in the same manner as survey because each investigation is only focused on a single resident. Instead, for each violation, the aggravating and mitigating factors are considered in determining if the facility has a history or pattern of similar abuse. That information is the “scope” of abuse violations.
- There are no Level 1 abuse determinations. By definition, Level 1 on the scope/severity grid does not include harm. Instead, any Level 1 determinations would be a licensing sanction.
- Any substantiated abuse violation requires the facility pay a civil penalty.
- “Elevated harm” is a term that applies only in cases involving abuse.

Substantiated licensing or abuse violations above Level 1 are published on the Licensed Long-Term Care Settings Search website.<sup>12</sup>

### **Statewide and Regional Data**

A total of 2,243 abuse investigations were concluded during 2020; these investigations resulted in a total of 1,054 violations cited for 2020. A final agency determination was delivered to the appropriate facility for each of these violations, except those with no harm or potential for harm (Level 1).

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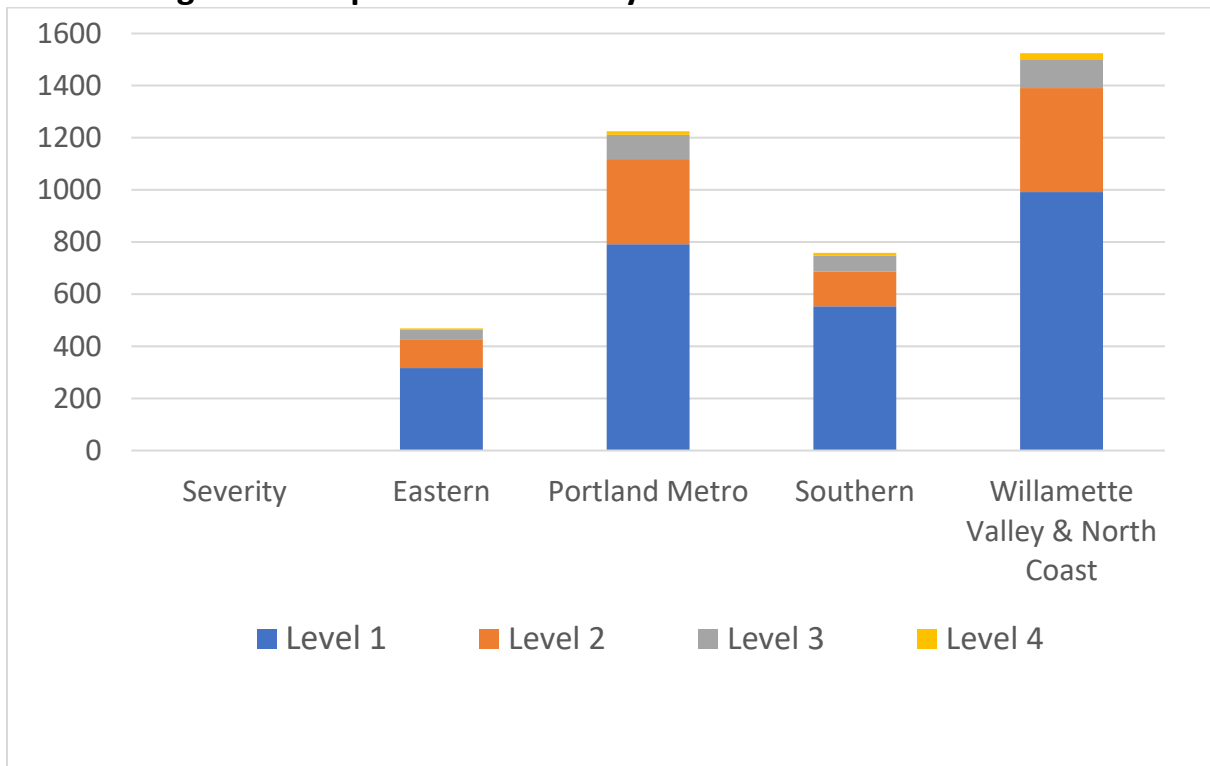
<sup>12</sup> <https://ltlicensing.oregon.gov/Facilities>

The following chart shows the number of final determinations issued for substantiated abuse violations for 2020:

Severity	No Pattern	Limited Pattern	Widespread Pattern
Elevated harm	5	0	4
Level 4	13	0	22
Level 3	136	3	138
Level 2	295	0	438
Level 1	0		

The preceding grid lists almost no violations as “Limited Pattern.” The reason is that all violations are reviewed to determine if there is a previous history or “pattern” for that type of abuse. If there is no history of similar violations, the violation amount will be “mitigated,” and the violation will be recorded in the “No Pattern” column for that level of harm. Likewise, if there is a history of similar violations, the violation amount will be “aggravated,” and the violation will be recorded in the “Widespread Pattern” column. The three (3) violations listed in the middle column were due to facilities having both mitigating and aggravating characteristics in their history.

**Chart 2. Regional Comparison of Severity – Abuse Determinations**

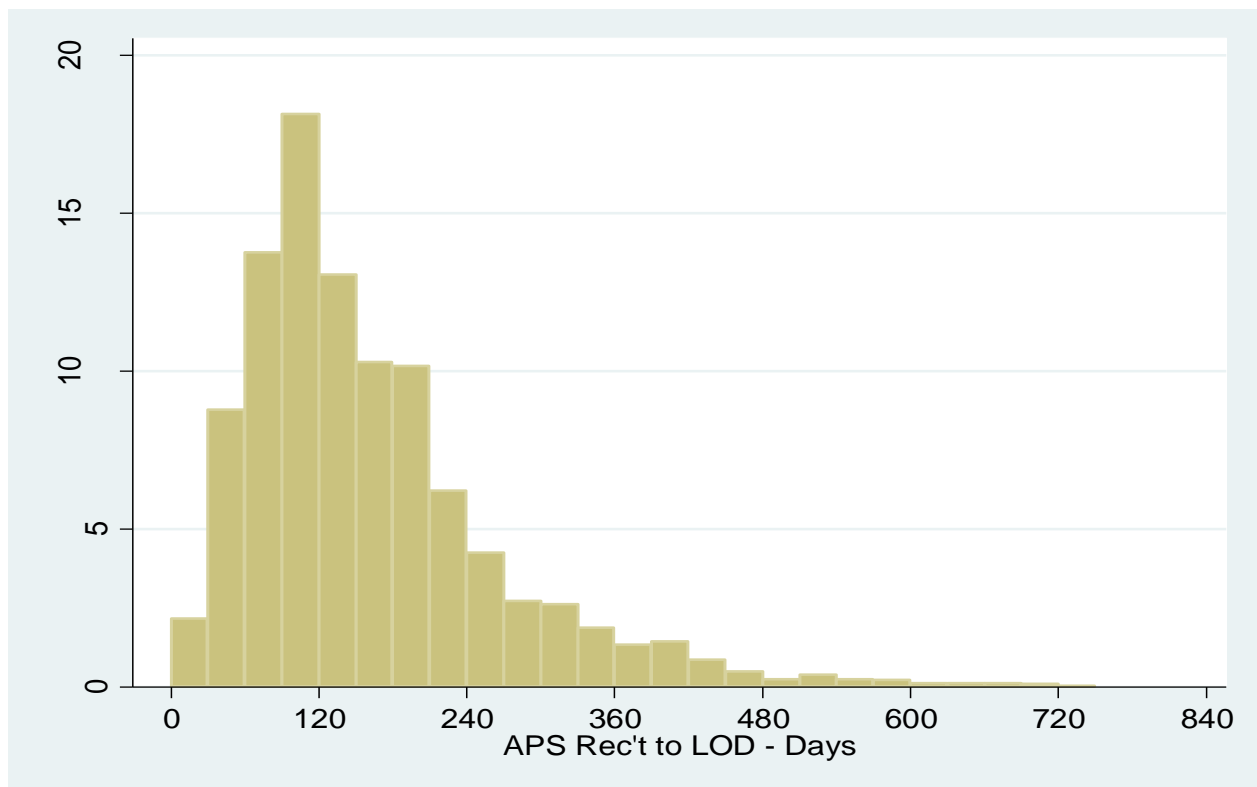


### Timelines to Investigate Abuse and Issue Determinations

ODHS has 120 days to complete an investigation and assess a regulatory response. By internal policy, APS generally uses 60 days to draft a complaint investigation report. The report is forwarded to SOQ and up to 60 additional days are used to process the report and deliver a completed investigation report and corresponding determination to the facility.

Fifty-six percent (56%) of the 2020 APS complaint investigations took longer than 120 days to complete.

**Chart 3. Timelines for ODHS to Issue Determinations for Abuse**



Once COVID-19 became prevalent in Oregon’s long-term care facilities, the Department focused on developing guidance for facilities concerning control of COVID-19 and issuing Executive Orders to facilities with staff or residents with suspected or positive COVID-19. These factors negatively influenced the timeliness for processing complaint investigation reports. The second reason for the longer timelines involves a new data system developed by the Department in 2019. It has taken time to correctly transfer information from the old data system to the new. It has also taken time to revise aspects of the new data system which initially did not work properly.

### **Lessons Learned from Abuse Complaint Investigations**

- 2020 was an unusual year, due to the COVID-19 pandemic.
- Fewer abuse allegations were reported this year. It is believed this was due to the pandemic.
- The timeline for completing abuse complaint investigations was longer than the required 120-day deadline for 56% of abuse investigations.
- This extended deadline is due, in large part, to shifting staff focus onto the care and safety of residents during the pandemic. Also, the Department was implementing a new data reporting system during 2020, and it took time to completely execute that new data system.

## **INVESTIGATIONS OF ALLEGED LICENSING VIOLATIONS**

### **Process for Investigating Alleged Licensing Violations**

The Licensing Complaint Unit (LCU), a team within SOQ, investigates allegations of licensing violations in RCFs and ALFs. Licensing violations are violations of state regulations that did not result in an abuse or neglect of care outcome.

Common licensing complaints include allegations such as:

- Failure to provide sufficient staffing numbers
- Failure to maintain a homelike environment
- Failure to keep facility clean
- Failure to assist residents with activities of daily living
- Failed to provide nutritious, palatable meals
- Failed to deliver medications in accordance with prescription

Although licensing complaint circumstances could result in harm (abuse) if not corrected, a licensing investigation is conducted if there is not an alleged harm outcome to a resident(s). If LCU finds actual harm or potential for serious harm, that case is referred to APS for investigation.

When SOQ receives a complaint related to a potential licensing violation, an LCU compliance specialist visits the facility to investigate. An LCU investigation is narrower in scope than a survey inspection and is focused on specific alleged incidents or practices involving individual residents. Licensing violations can also result from deficiencies discovered during a survey.

If a complaint is confirmed, the LCU compliance specialist provides technical assistance to help the facility correct the problem. The intent is for the LCU specialist to help the facility come back into substantial compliance without the need for a complaint investigation or additional review.

However, if a non-compliance issue reaches a level beyond technical assistance, LCU compliance specialists have the authority to report rule violations to a corrective action coordinator, for the CAC to review and assess for regulatory action.



### Determining Scope and Severity of Licensing Violations

The same Severity grid used for abuse allegations is applied to licensing violations. However, with few exceptions, licensing violations are generally Level 1 (occasionally Level 2) on the severity grid:

<b>Level 2</b>	<b>Minor harm or potential for moderate harm</b> = no more than temporary physical, mental or emotional discomfort or pain without loss of function; potential for temporary loss of physical, mental or emotional function.	<b>\$250 to \$500</b>
<b>Level 1</b>	<b>No harm or with potential for minimal harm</b> = no actual harm occurs, or there is potential for no more than temporary physical, mental, or emotional discomfort or pain without loss of function.	<b>Technical Assistance only No \$ fine</b>

### Determining Appropriate Sanctions

Once the Corrective Action Coordinators have evidence from survey, APS, or LCU that a licensing violation has occurred, the CAC may issue a license condition.

“License conditions” include but are not limited to:

- Restricting the total number of residents;
- Restricting the number and impairment level of residents based upon the capacity of the licensee and staff to meet the health and safety needs of all residents;
- Requiring additional staff or staff qualifications;
- Requiring additional training for staff;
- Requiring additional documentation; or
- Restriction of admissions

Licensing violations generally result in a sanction if previous violation(s) are not fixed, and the violation is a severity level 2 or higher. Civil penalties are not imposed for a licensing violation until other sanctions have been imposed without resolving the issue. All allegations, whether substantiated or not substantiated, result in a Letter of Determination, which becomes part of a facility’s compliance history.

### Statewide and Regional Data

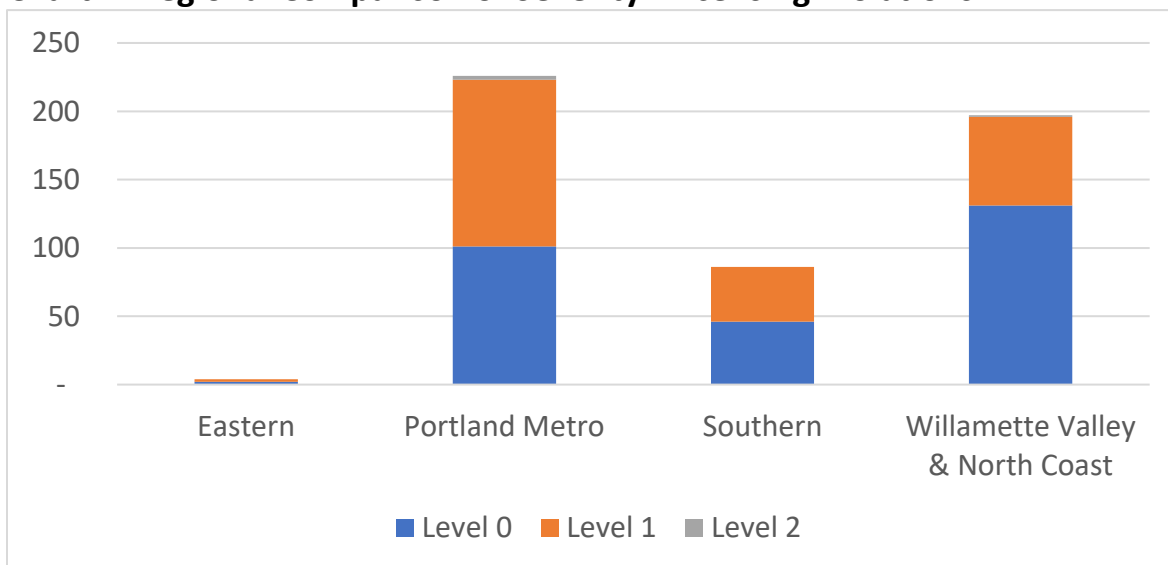
During 2020, there were 513 licensing investigations conducted by the Licensing Complaint Unit. Most of these complaints were determined to be “level 1,” and therefore only required technical assistance, and not did not require taking corrective action against the facility.

For the 513 licensing investigations conducted by the Licensing Complaint Unit in 2020, here are the severity levels of these violations:

Severity	Definition of level	# of cases	Action taken
Level 2	Minor harm or potential for moderate harm	4	Other sanction
Level 1	No actual harm or potential for minimal harm	229	TA only
Level 0	Allegation not substantiated	280	nothing

Again, please note that most LCU investigations result in technical assistance only, or a determination that the allegation that was investigated was not substantiated at all. The licensing complaints that result in sanctions generally come from the Survey teams.<sup>13</sup>

**Chart 4. Regional Comparison of Severity - Licensing Violations**



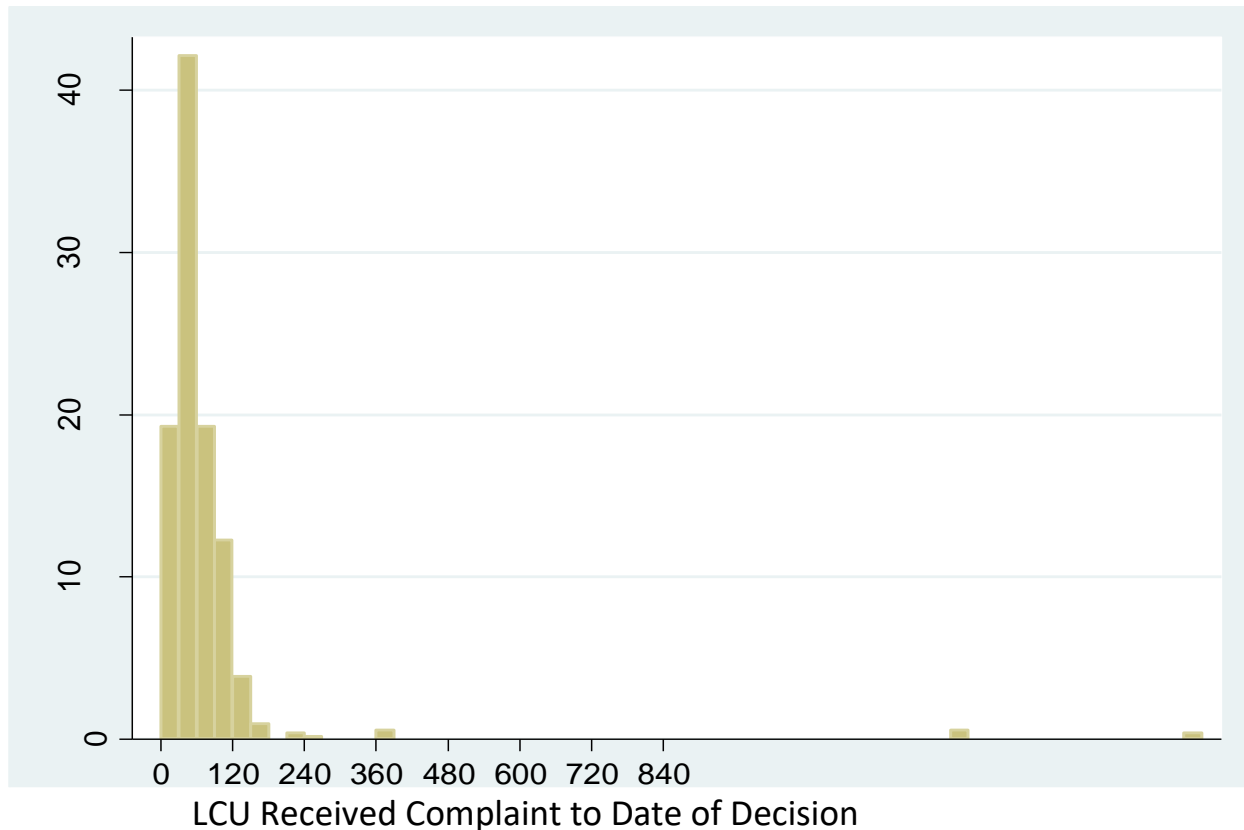
<sup>13</sup> A listing of the licensing violations that resulted in sanctions can be found on page 13 of this report.

### Timelines for Issuing Determinations for Licensing Violations

Investigations of licensing violations are not legally bound by the same 120-day investigation requirement that exists for abuse investigations. However, SOQ works to meet the same 120-day deadline for issuing final decisions.

During 2020, a total of 513 licensing investigations were completed. Of these violations, only 36, or 7%, took longer than 120 days to issue a final decision.

**Chart 5. Timelines for Issuing Licensing Complaint Decisions**



#### Lessons Learned from Licensing Investigations

- 2020 was an unusual year, due to the COVID-19 pandemic. Since the Licensing Complaint Unit visits need to be conducted in-person, there was an initial backlog of complaints, while a new COVID-19 in-person process was being developed by the Department.
- In spite of the initial backlog, the LCU investigators started conducting in-person investigations soon after the Survey team did the same.
- Only 7% of the LCU reports took longer than 120 days to process.

## COVID-19 RESPONSE

### Process for Issuing Executive Orders

The first COVID-19 outbreak in an Oregon long-term care facility occurred in March of 2020. The fact that elderly citizens proved more susceptible to the virus meant that it was imperative the Department work with facilities to take action to attempt to eradicate COVID-19 in each facility where it surfaced. Governor Kate Brown directed ODHS to work with the Oregon Health Authority (OHA) to develop guidance for facilities concerning COVID-19 and develop a new regulatory tool to require facilities take steps necessary to eradicate the disease.

The Department developed a new “Executive Order” process to regulate how facilities respond to COVID-19 circumstances. Facilities are required to report to SOQ any staff or resident identified as having suspected or confirmed COVID-19. When a suspected or confirmed case(s) is reported to SOQ, an Executive Order (EO) is sent to the facility. The EO is not a disciplinary measure and will not be listed as a part of the provider’s compliance history. EOs serve as a public notice of COVID-19 to the community, are posted at the facility, and are listed on the DHS COVID-19 website. The second purpose of an Executive Order (EO) is to outline infection control practices the facility must immediately implement to prevent a potential COVID-19 increase.

The EO outlines the conditions the facility must adhere to, which may include but is not limited to the following:

- Limit admissions and readmissions unless there is written approval obtained from SOQ.
- Restrict visitation, including cancelling any approved outdoor or other special visitation plans.
- Restriction of all congregate activities and events.
- Provide training on infection control for all staff.
- Relocating of resident(s) to private room if available.
- Cohort and isolate residents, as appropriate, according to COVID-19 status, with fully dedicated staff assigned to the individual units.
- Immediately report any changes in staff or residents’ COVID-19 status to SOQ.
- Notification of family members and/or authorized representatives.
- Implement outbreak testing of all residents, facility staff and associated staff per OAR 411-060-0030.

Within 48 to 72 hours of an EO being issued, either surveyors or LCU staff will inspect the facility to ensure infection control practices are in place.

When a facility has not made consistent progress controlling the spread of the virus, SOQ may use corrective action such as a license condition. The license condition related to COVID-19 pandemic routinely requires a facility to hire a consultant to work with the facility to implement practices to contain and prevent further infection.

### **Statewide and Regional Data**

There were many (1,156) Executive Orders issued for residential care and assisted living facilities during 2020. The COVID-19 virus proved very difficult to combat and eradicate.

### **Timelines for Issuing Executive Orders for COVID-19**

Of 1,156 Executive Orders issued, 779 were issued the day a facility informed SOQ of positive or suspected COVID-19 in the facility. Another 156 were issued within 1 day, and 21 of the EOs took longer than 30 days to issue.

#### **Lessons Learned from COVID-19**

- This was an unusual year, and future years should show different data outcomes.
- Responding effectively to emergencies requires immediate collaboration and communication between the Oregon Health Authority and the Department, as well as among the programs within the Department.
- There were many (1,156) Executive Orders addressing COVID-10 during 2020. This virus proved challenging to combat in elderly communities.
- Facilities will benefit by developing comprehensive infectious disease protocols in response to future outbreaks or other emergencies.

## GLOSSARY

**Adult Protective Services (APS)** – The office within Aging and People with Disabilities responsible for coordinating and conducting investigations and providing protective services when there are reports of neglect and abuse of vulnerable adults over the age of 65 and disabilities who reside in their homes or in community-based care settings and adult foster homes.

**Aging and People with Disabilities (APD)** - A program within the Department of Human Services that oversees and coordinates programs for seniors and adults who live with disabilities. Within APD is the Safety, Oversight and Quality (SOQ) Unit that is responsible for the licensing and regulatory oversight of long-term care facilities in Oregon.

**Assisted Living Facility (ALF)** - A community-based care facility that provides residential care services to seniors and adults who live with disabilities. Residents in ALFs have their own apartment which includes living/bedroom space, kitchenette, and accessible toilet/shower room. These facilities are licensed per [Oregon Administrative Rule Chapter 411, Division 54](#).

**Community Based Care (CBC) Program** – A residential care program within the Safety, Oversight and Quality Unit that is responsible for the licensing, inspecting and corrective action of residential care and assisted living facilities.

**Community Based Care (CBC) Facilities** – Residential care facilities and assisted living facilities, including memory care communities, are collectively referred to as community based care facilities, and are all regulated by the CBC program of Safety, Oversight, & Quality.

**Corrective Action** – The action taken against a facility when they are substantially out of compliance either due to a complaint(s) or licensing survey. Typical actions include a civil penalty or license condition that spells out the steps that a facility needs to do to come into compliance.

**Endorsed Memory Care Community (MCC)** – A special care unit within a facility or a separate building that specializes in caring for people with Alzheimer’s disease and other forms of dementia. In addition to meeting endorsement requirements, facilities must also meet the licensing requirements of a residential

care facility, assisted living facility, or nursing facility. These facilities are endorsed per [Oregon Administrative Chapter 411, Division 57](#).

**Executive Order (EO)** – For purposes of the COVID-19 pandemic, this is a notification to facilities that they must adopt more stringent infection control practices including, staff training on appropriate infection control practices, cohorting of residents, restriction of admissions, the logging of screening of all visitors, etc. The EO is lifted with documentation that the suspected case is negative or there is no longer a confirmed case for either staff or residents.

**License Condition** – A provision attached to a new or existing license that limits or restricts the scope of the license or imposes additional requirements on the licensee

**Licensing Complaint Unit (LCU)** - The team investigates complaints that allege a CBC facility is out of compliance with licensing rules.

**Oregon Department of Human Services (ODHS)** – Also known as the “Department”, this agency oversees and coordinates services for children, families, seniors, and people with disabilities.

**Quality Metrics Application (QMA)** – The web-based portal where facilities are required to report their metrics.

**Quality Measurement Council (QMC)** – Governor appointed council of eight members that prescribe how ODHS shall implement the Quality Measurement Program. See [ORS 443.447](#).

**Quality Measurement Program (QMP)** – The legislative mandated program established within the ODHS that provides for comparison of facilities based on the reporting of quality metrics as set forth in [ORS 443.446](#) and [443.447](#).

**Residential Care Facility (RCF)** – A facility that provides residential care services that can accommodate six or more seniors and/or adults that live with disabilities. These settings may be apartment style buildings, or large homes. Residents may share rooms, toilet, and bathing rooms. Most memory care communities are licensed as RCFs. These facilities are licensed per [Oregon administrative rule Chapter 411, Division 54](#) and are considered “Community-Based Care” facilities.

**Safety, Oversight and Quality (SOQ) Unit** – The unit within the Department of Human Services, Aging and People with Disabilities that licenses and oversees regulatory compliance for adult foster homes, nursing facilities and residential care and assisted living facilities.

You can get this document in other languages, large print, braille or a format you prefer. Contact the Oregon Department of Human Services' Community Based Care Program, Safety, Oversight & Quality at 503-373-2227 or email [CBC.TEAM@dhsola.state.or.us](mailto:CBC.TEAM@dhsola.state.or.us). We accept all relay calls or you can dial 711.