Compliance Data Report for Oregon Community-based Care Facilities

2021 Annual Report

Aging and People with Disabilities
Safety, Oversight & Quality
Oregon Department of Human Services

July 2022

Oregon Department of Human Services

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Contents

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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

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 compliance data is collected from the Department's licensing survey inspections, investigations into complaints of abuse, and investigations into complaints of licensing requirement violations. Some of the compliance data (severity and scope data) specifically measure the *performance of Oregon's facilities*. Other data such as timelines for surveys, investigations, and final agency corrective action decisions measure 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 continued to impact the management of facilities and influence this year's data.

COVID-19 also negatively impacted the Department's ability to complete standard surveys for most of 2021, as had happened during the first year of reporting. In 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 facilities prevent and reduce the effects of COVID-19.

Beginning in 2020, the Department worked to hire additional surveyors to fill vacancies. The Community-Based Care (CBC) program had positions previously approved to help address an increase in workload due to an ever-growing number of residential care and assisted living facilities across Oregon. With surveyors focused on addressing COVID-19, it became essential to fill these new positions as

soon as possible. Since January 2020, the CBC program has hired 13 new surveyors and the Nursing Facility program has hired six new surveyors. Beginning March 2021, some survey staff resumed standard survey activities, while other surveyors continued to assist facilities address the pandemic.

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 during 2020, but luckily were able to return to onsite investigations during the spring of 2021.

The 2021 long term care facility data indicate:

- There were fewer surveys this year than pre-pandemic years.
- Despite the ongoing pandemic, the Department managed to conduct 191 surveys in 2021 (191).
- The Department is working to "catch up" with re-licensing surveys to get all facilities back on a 24-month re-licensing survey schedule. As of the end of 2021, 202 of the 507 Community-Based Care facilities exceeded the 24-month deadline for a renewal interval.
- Most complaints in 2021 dealt with licensing issues, rather than allegations of abuse.
- There were fewer abuse and licensing violations this year than in pre-pandemic years. Like 2020, the pandemic 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.

INTRODUCTION

Requirement to Report Compliance Data

The Oregon Department of Human Services (ODHS) regulates residential care and assisted living facilities, including endorsed memory care communities. These facilities are collectively referred to as "community-based care" facilities. House Bill 3359 (2017)[1] 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 a facility or an investigation prompted by a complaint, the Department will take necessary actions to enforce regulations if the facility is not in substantial compliance. 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.[2]

This is the second annual compliance report; the data in this report concerns regulatory action taken by the Department in 2021. It should be noted there is a companion report, *Quality Measurement Program Report for Oregon's Community-Based Care Facilities 2021*. This report deals with the data reported by facilities for the second year of quality metrics data reporting.

Effects of COVID-19

In 2021, the Department continued to respond to the COVID-19 virus outbreaks in Oregon's long-term care settings. Facilities experiencing outbreaks continued to be required to implement the mandatory process developed in 2020: when a suspected or confirmed COVID-19 case(s) was reported to ODHS, an Executive Order (EO) was 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

[1] The statutory requirement for this report is codified as ORS 443.446

[2] ltclicensing.oregon.gov

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.

COMMUNITY-BASED CARE IN OREGON

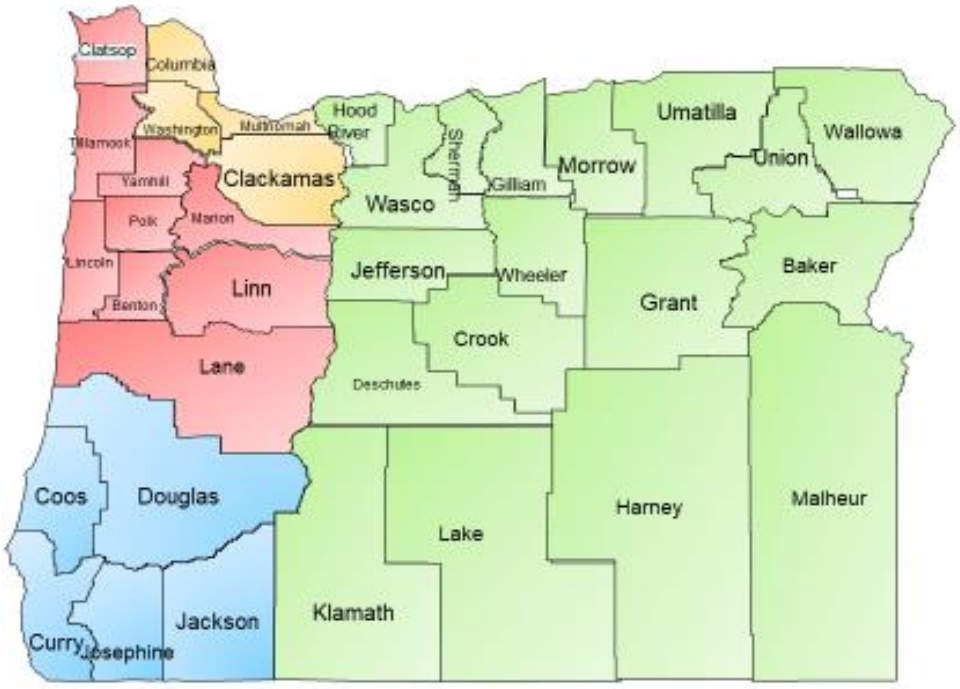
Residential Care Facilities and Assisted Living Facilities

Oregon had a total of 570 licensed community-based care facilities in 2021; 558 of those facilities were licensed for the entire year, with 12 facilities either closing or opening during 2021.

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.



Breakdown of Facilities in Each Geographic Region

Region	Number of Facilities	Percentage
Eastern	93	17
Portland Metro	215	39
Southern	85	15
W V & No. Coast	165	30
Total	**558**	**100**

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 endorsed 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[3].

[3] Oregon Administrative Rule (OAR) 411-054-0005(79)

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 equitable to the level of noncompliance. SOQ employs a positive and progressive approach to corrective action when 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 requiring SOQ to take immediate action to ensure residents' health and safety. SOQ uses a *Scope & Severity Matrix* to assess how many residents were impacted and how severely residents were affected. A link to the Compliance Framework Guide Community-Based Care (Residential Care and Assisted Living) included here, provides detailed information outlining SOQ regulatory processes.

Corrective Action Process

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

Type of investigation	***Staff that Investigates***
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 complaint 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 regulatory 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 failure to substantially comply with licensing rules; and/or
- Failure to self-report abuse or suspected abuse.

SURVEYS

Process for Conducting Surveys

Survey inspections are initiated by a variety of circumstances, including but not limited to:

- ***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[4]

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 nursing services
- Observation of residents' daily care
- Interviews with direct care staff and residents to determine ability to meet residents' scheduled and unscheduled needs
- Evaluation of service plans for individual residents
- Staff training
- Review of training files of selected employees
- Fire and life safety

[4] 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 survey findings. During the exit conference, surveyors present an explanation of the findings; 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 correct deficiencies; and what to expect concerning survey revisits.

The facility has 10 business days to develop and submit a *Plan of Correction (POC)* outlining their proposed plan to correct the deficiencies.[5] The POC describes measures the facility will take 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 action beyond the POC, the team forwards that information to the CAC and Operations Policy Analyst (OPA) for processing.

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

As in 2020, COVID-19 continued to negatively impact the Department's ability to complete standard surveys for much of 2021. Once COVID-19 began to infect facility residents and staff in 2020, survey teams stopped conducting standard 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 are continuing to work hard to get all facilities surveyed, and to get back to a standard survey schedule.

[5] OAR 411-054-0105(2)(a)

Determining Scope and Severity of Survey Violations
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	
"**Scope**" refers to the number of residents or locations within a facility that are affected.	**Isolated** - 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.
	Pattern - 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.
	Widespread - 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.
SEVERITY	
"**Severity**" refers to the seriousness of the violation, or the harm (or potential for harm) the violation has caused. "Harm" is defined as a measurable negative impact to a resident's physical, mental, financial or emotional well-being.	**Minor harm** 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.
	Moderate harm 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.
	Serious harm means harm resulting in long-term or permanent loss of physical, mental or emotional function, or in financial loss of $5,000 or more.

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

All survey citations issued in 2021 are listed in the following grid:

SEVERITY OF HARM	SCOPE OF HARM		
	Isolated	**Pattern**	**Widespread**
	1-25% of sampled residents are affected	**26-74% of sampled residents are affected**	**> 75% of residents or many locations throughout facility affected**
Level 4	**J**	**K**	**L**
Immediate Jeopardy - 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.	**42**	**7**	34
Level 3	**G**	**H**	**I**
Moderate Harm - Moderate harm or potential for serious harm which significantly impacts the residents' quality of life or physical function**.**	**86**	**32**	**10**
Level 2	**D**	**E**	**F**
Minor Harm - Minimal harm which does not significantly impact residents' quality of life or physical function; or no harm, w/ potential for moderate harm.	**707**	**1,270**	**1,041**
Level 1	**A**	**B**	**C**
No actual Harm - No harm, or potential for minimal harm *Technical Assistance (TA) only*	**214** (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[6].
- Surveys may result in "0 level" harm or in "no citations."
- Survey teams determine scope and severity for surveys.

[6] **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.

Survey Citations – Comparing 2021 and 2020 Data

There were many more citations in 2021 as compared to 2020, given that the survey teams resumed conducting "standard" surveys in Spring of 2021. Survey teams were still entering facilities that had cases of COVID-19 to help the facilities prevent and overcome COVID-19. However, as of March 2021, survey staff began to resume survey activities in an effort to complete re-licensure surveys.

For this reason, there were a total of 3443 citations in 2021, as opposed to only 799 in 2020. Here is a comparison of the total number of harm citations for the two years:

	2021	2020
Level 4 = Immediate Jeopardy	**83**	**26**
Level 3 = Moderate Harm	**128**	**33**
Level 2 = Minor Harm	**3,018**	**658**
Level 1 = No actual Harm *Technical Assistance (TA) only*	**214**	**82**
Total # of Citations	**3,443**	**799**

Statewide and Regional Data

A total of 191 surveys were conducted in 2021, as opposed to only 61 surveys during 2020. The 2021 surveys were conducted as follows:

- 10 - initial licensure requests
- 157 - re-licensure surveys
- 24 - change in ownership of the facility

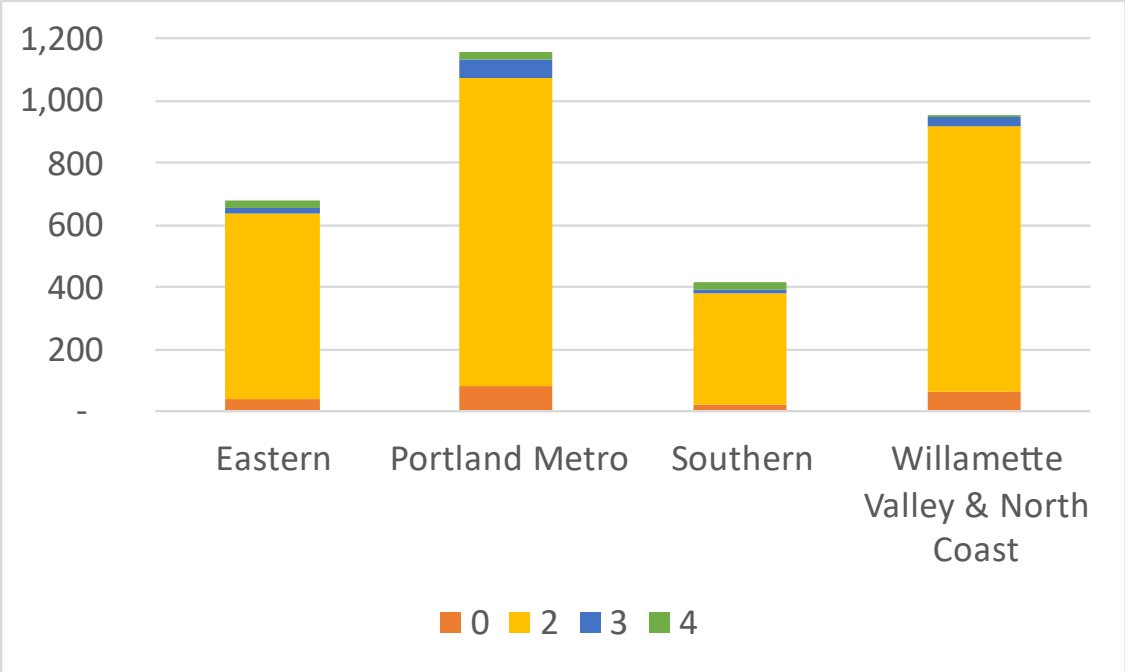
The most dramatic difference between 2021 and 2020 is the number of re-licensure surveys. That is because the scheduling of this survey type is the only survey timing under the control of SOQ. The program has to conduct surveys whenever a new facility opens or a facility has a change in owner (CHOW); those

surveys are driven by facility actions and have to be conducted. The re-licensure surveys, however, are controlled by the Department; when COVID-19 began, the re-licensing schedule was dramatically curtailed. The survey team resumed a more normal re-licensure survey schedule in 2021, although the team was still handling Executive Orders for COVID-9 for all of 2021.

During 2021, the survey team also conducted 140 revisits to follow-up with facilities and determine if previous violations had been corrected. In 2020, only 111 revisits were conducted.

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 pages.

Chart 1. Regional Comparison of Severity Citations for Survey



Survey Timelines

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 of the facility's assertion of compliance.[7]

[7] 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

The survey team resumed "normal" surveys early in the year while continuing to enter COVID-positive facilities to assist those facilities with infection control. During 2021:

- The survey team conducted 191 surveys and 140 revisits total.
- There were 157 re-licensure surveys conducted during 2021.
- 202 facilities (out of 570 CBC facilities total) were behind the required 24-month deadline for re-licensure survey as of December 31, 2021.
- 100% of requested revisits to review license conditions were completed within 15 days

Lessons Learned from Survey

- The COVID-19 pandemic continued to have a distinct effect on the standard survey process during 2021/
- The survey team was able to conduct a larger number of "standard" surveys, as opposed to 2020.
- Due to the pandemic, the 24-month timeline for completing re-licensure surveys continued to be extended.
- Survey staff are working diligently to catch up on the re-licensure survey backlog, to get back into compliance with the 24-month requirement.

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[8] alleging abuse, the complaint is sent to Adult Protective Services (APS). The complaint is screened to determine if it meets the definition of abuse as defined in law[9], and an investigation is started. screened to determine if the allegation meets the definition of abuse. If the complaint meets the definition of abuse as defined in law[10], an investigation is started.

Adult Protective Services (APS) The Adult Protective Services (APS) is an office separate from SOQ, but still within the APD program of ODHS. APS investigators are located in local offices (ODHS APD offices and Type B AAA offices) around the state; however, the Central APS Unit is located in Salem. APS investigates incidents of abuse or suspected abuse and then compiles information and reports outlining findings of the investigations.

Local Case Management Each local office or Type B AAA office has a team of case managers who work with Medicaid consumers in that area. They frequently visit consumers living in long terms care settings, and SOQ works in conjunction with them to ensure consumers living in licensed settings are receiving quality care and services.

The APD Central Delivery Supports Unit is responsible for the administration of Specific Needs Contracts for Adult Foster Homes, Assisted Living Facilities, Residential Care Facilities, and Specialized Living Programs. The intent of the specific needs contract is to provide services to specific target group populations with a complex level of care that exceeds the care rendered in standard community-based care settings.

Specific Needs Contracts are developed in accordance with local communities in response to the specific needs of their populations. Contracts are awarded to established and experienced providers who have met a rigorous set of qualifications and a have demonstrated the ability to soundly serve the specialized target group. Although SOQ is responsible for re-licensure of these facilities with Specific Needs Contracts, SOQ and the APD Central Delivery

[8] Complaints may come from anyone, including facility staff, residents, family members, volunteers, etc.
[9] OAR 411-020-0002(1)
[10] OAR 411-020-0002(1)

Supports Unit work collaboratively to ensure facilities adhere to applicable licensing rules, as well as to the agreed-upon terms of their Specific Needs Contract.

Oregon Administrative Rule[11] 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, whether substantiated or unsubstantiated, are documented in an investigation report. The reports are delivered to SOQ for processing and appropriate regulatory action. Results of substantiated APS reports are publicly posted[12] when all due process opportunities have been exercised or timelines have expired.

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.

[11] Each element of "abuse" is described in OAR 411-020-0002(1)

[12] ltclicensing.oregon.gov

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:
Elevated	**Serious injury, sexual abuse, rape, or death** 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.	**$2,500 to $15,000**
Level 4	**Serious harm**: This means there is long-term or permanent loss of physical, mental or emotional function or financial loss of $5,000 or more.	**$1,500 to $2,500**
Level 3	**Moderate harm or potential for serious harm**: 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.	**$500 to $1,5000**
Level 2	**Minor harm or potential for moderate harm**: 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.	**$250 to $500**
Level 1	**No actual harm or potential for minor harm**: 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.	**Technical Assistance only** **No $ fine**

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

Scope of Harm	
Isolated:	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
Pattern:	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
Widespread:	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 above scope and severity chart.

All instances of substantiated abuse violations will receive a civil penalty. Licensing violations will only result in civil penalties if the licensing violation(s) has not been remedied, as required by prior correction action, and is determined to be a severity level 2 or higher.

Once the severity of the level of harm and the scope of the violation have been determined, the next step before finalizing the civil penalty amount involves applying aggravating and mitigating factors.

The corrective action coordinator goes through the following process to apply the factors listed below, to determine if the amount of civil penalty should be increased or reduced.

Does the facility have a history of similar violations? The corrective action coordinator will pull the corrective action history of the facility to determine if the

facility has had similar violations in the past. This history will be used to answer the questions below concerning aggravating and mitigating factors.

Based on the following, should the penalty be increased or decreased?

Aggravating factors (increase civil penalty amount):

- Facility's history – the facility had prior similar violations.
- Failure to remedy – the facility failed to satisfactorily correct prior similar violations or failed to prevent a recurrence of similar violations.
- Financial benefit – the facility or facility employees gained financially as a result of the violation.

Mitigating factors (decrease civil penalty amount):

- Facility's history of correcting past violations – the facility corrected previous violations and prevented the recurrence of violations.
- Facility's ownership/management history – the previous violations happened under prior ownership/management.
- Self-report – the facility self-reported immediately.

Apply Civil Penalty Matrix

Once the corrective action coordinator has reviewed all relevant information, identified responsible parties, determined severity and scope of the violation, and applied both mitigating and aggravating factors, the final step is to determine the appropriate corrective action. It is current Department policy that, if substantiated abuse is involved, a civil penalty will always be imposed.

Using the chart below, the corrective action coordinator begins at the "None or Both Factors Apply" point on the appropriate severity row (Level 1, Level 2, etc.).

Then, the corrective action coordinator considers whether any aggravating or mitigating factors apply. If the answer to any of the aggravating factors questions is "yes," the civil penalty is increased to the top of the penalty range.

After determining scope and severity of harm and reviewing both mitigating and aggravating factors, the corrective action coordinator will make a determination as to the appropriate civil penalty amount.

Civil Penalty Chart

Severity Level	Mitigating Factors Apply	None or Both Factors Apply	Aggravating Factors Apply	Penalty Range
Level 1	0	0	0	0
Level 2	$250	$375	$500	$250 - $500
Level 3	$500	$1,000	$1,500	$500 - $1,500
Level 4	$1,500	$2,000	$2,500	$1,500 - $2,500
Elevated Abuse	$2,500	$8,500	$15,000	$2,500 - $15,000

(The Department does not issue civil penalties for Level 1 violations, as these represent no actual harm or potential for only minor harm. For example: a facility failed to give a resident their daily multi-vitamin in the morning, as preferred, but realized the error and gave it several hours later. The resident experienced no harm as a result.)

Civil Penalty for Failure to Self-Report Abuse

As of January 1, 2018, ODHS may issue a fine of up to $1,000 for each instance in which a facility fails to report abuse of a resident to ODHS as required by state law. In these instances, ODHS generally issues a violation and a $750 penalty for the first instance of failure to self-report. Each subsequent instance generally results in a violation and a penalty of $1,000.

If a facility self-reports, the penalty amounts for substantiated abuse may be reduced as follows:

- In the case of substantiated allegations of level 2 abuse (minor harm or potential for moderate harm) or level 3 abuse (moderate harm or potential for serious harm), facilities that self-report incidents will receive a 25% reduction in the civil penalty amount.
- Facilities may also submit documentation that they have acted to remediate the issue leading to the level 2 or level 3 abuse violation to receive an additional reduction of 10% reduction in the civil penalty amount.

These reductions will not be applied to level 4 (serious harm or death) violations. It is crucial that facilities understand when and how to report abuse and suspected abuse. Detailed information related to these issues may be found in the *Abuse Reporting and Investigation Guide for Providers*.

Applying Other Sanctions

As discussed above, all substantiated abuse violations will receive a civil penalty. However, in addition to a financial penalty, there are other sanctions that may be imposed for substantiated abuse violation(s).

Statewide and Regional Data

A total of 4,610 abuse investigations were concluded during 2021, as compared to 3,983 abuse investigations in 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).

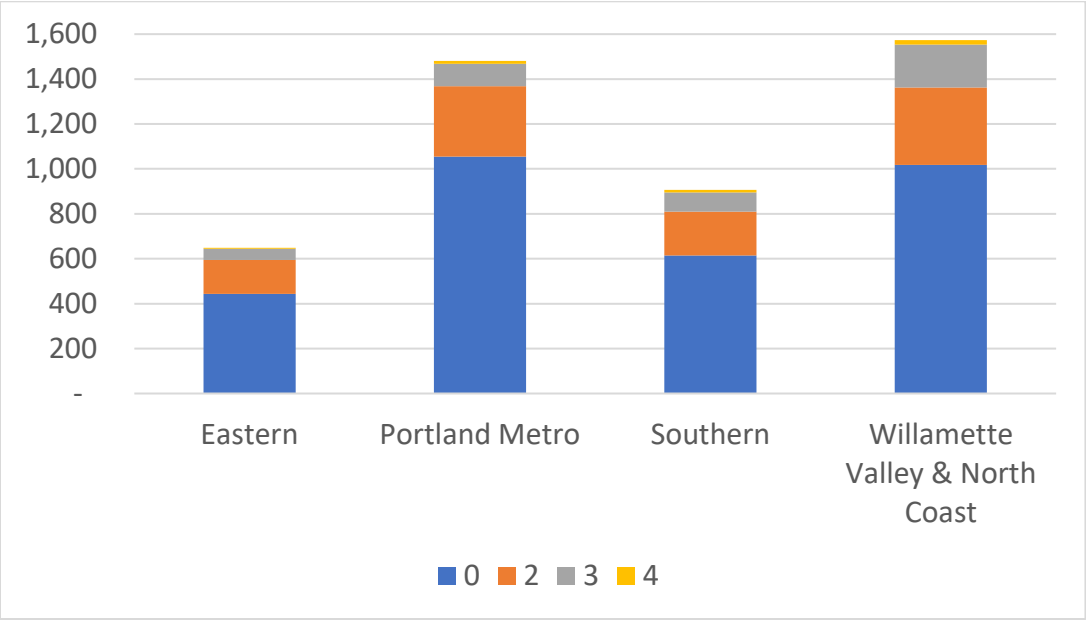
The following chart shows the number of final determinations issued for substantiated abuse violations for 2021:

Severity	No Pattern	Limited Pattern	Widespread Pattern
Elevated harm	1	0	2
Level 4	31	17	17
Level 3	189	190	242
Level 2	439	937	10
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

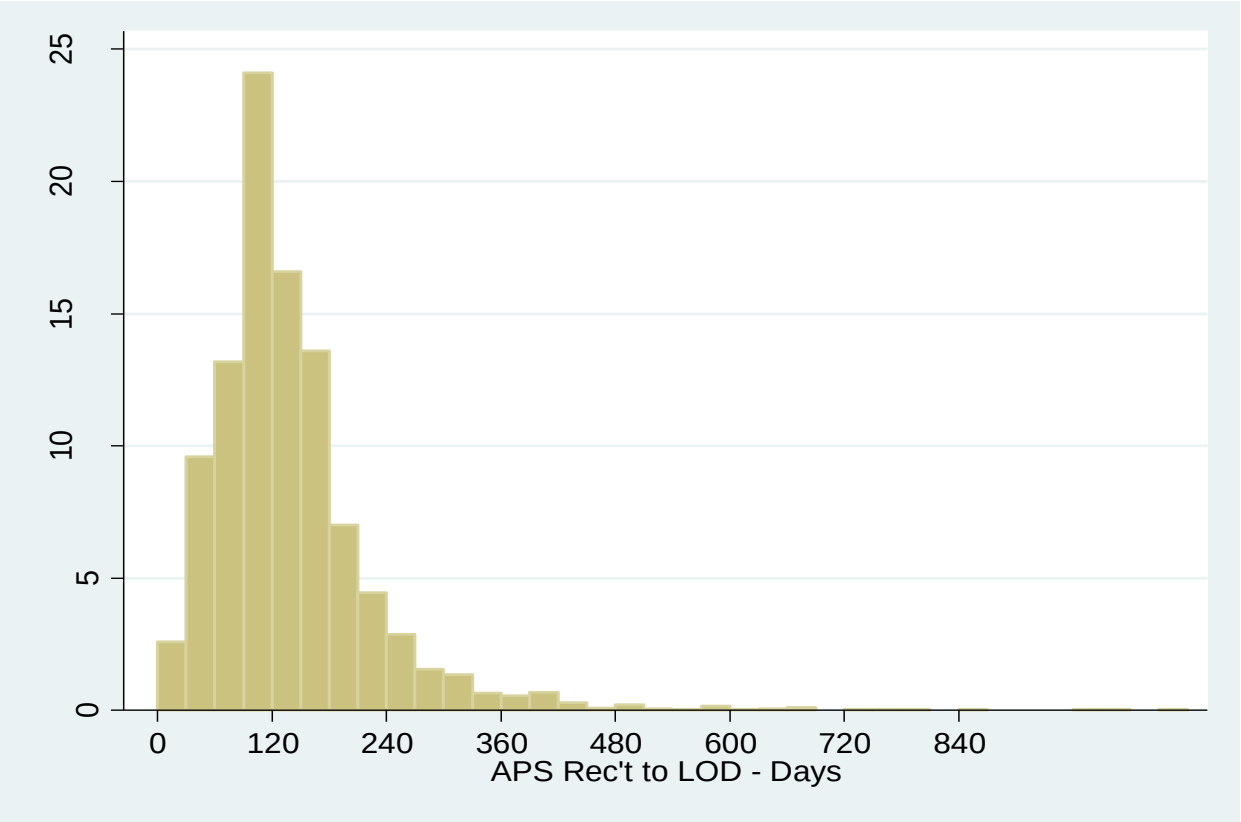


Timelines to Investigate Abuse and Issue Determinations

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.

In 2021, 50% of APS abuse investigations took longer than 120 days to complete, as opposed to 56% during 2020. During the first year of the pandemic, as the APS investigators acclimated to working remotely, there was an adjustment in procedure, and a delay in the time necessary to complete the abuse investigation process. For 2021, the second year of the pandemic, the APS team has improved the time required to complete the process, but approximately half of their cases still require longer than 120 days to be completed.

Chart 3. Timelines for ODHS to Issue Determinations for Abuse



In 2020, 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. In 2021, COVID-9 continued to be a challenge to completing and processing reports concerning abuse violations.

Lessons Learned from Abuse Complaint Investigations

- 2020 and 2021 were both unusual years, due to the COVID-19 pandemic.
- Fewer abuse allegations were reported both years; 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 50% of abuse investigations. This was an improvement over the 56% of cases in 2020 that extended beyond 120 days. This extended deadline is due, in large part, to shifting staff focus onto the care and safety of residents during the pandemic.
- APS was able to complete a much larger number of abuse investigations in 2021 (4,610) as compared to 2020 (3,983).

INVESTIGATIONS OF ALLEGED LICENSING VIOLATIONS

Process for Investigating Alleged Licensing Violations

The Licensing Complaint Unit (LCU) 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 potentially 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 to 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:

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

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 2021, there were 1,468 licensing investigations conducted by the Licensing Complaint Unit, as compared to 513 investigations in 2020. 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.

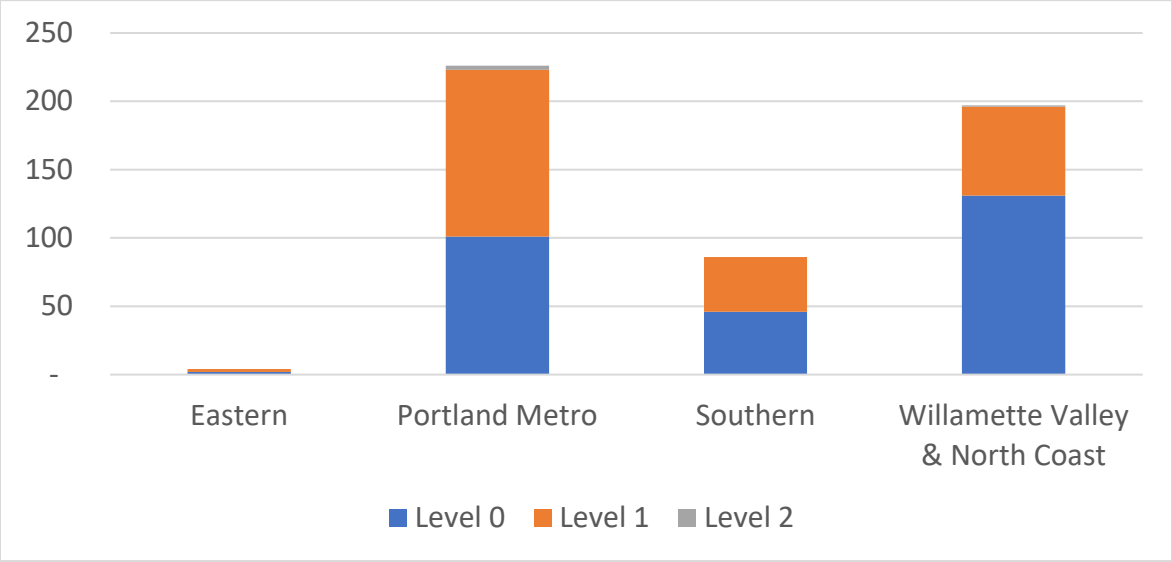
For the 1,468 licensing investigations conducted by the Licensing Complaint Unit in 2021, here are the severity levels and the action taken:

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

Note: Most LCU investigations, if substantiated, result in technical assistance only. The licensing complaints that result in sanctions generally come from the Survey teams.[13]

[13] A listing of the licensing violations that resulted in sanctions can be found on page 13 of this report.

Chart 4. Regional Comparison of Severity - Licensing Violations



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 2021, a total of 1,468 licensing investigations were completed. This is obviously a dramatic increase over the 513 licensing investigations completed in 2020. We believe there are two reasons for this increase:

- At the outset of the pandemic, the LCU team was instructed to not go into the field and or conduct onsite investigations until a formal process was established for addressing COVID-19. Now that the LCU compliance specialists are back in the field full-time, they have been able to catch up on the backlog created during 2020.
- Also, the LCU team has made a diligent effort to enter all cases into the new data system, resulting in a large collection of earlier investigation materials being entered into the data system in a short period of time.

However, the data concerning the timelines for LCU investigations is skewed and does not accurately reflect the time it took for these investigations to be concluded. Staff believe there are two key reasons for this glitch in the data:

- LCU investigations have only recently been added to the same reporting databases as APS investigations and surveys, and the start date for investigations is not accurately dated, in the system.
- Given that the new process requires LCU compliance specialists to perform investigations and enter data in a manner similar to surveyors, the LCU team has been working to enter a large backlog of cases into the new data system.

Lessons Learned from Licensing Investigations

- 2021 was an unusual year, due to continuation of the COVID-19 pandemic. Since the Licensing Complaint Unit visits in early 2020 were suspended, due to the pandemic, there was an initial backlog of complaints, while a new COVID-19 in-person process was being developed by the Department.
- Despite the backlog in 2020, the LCU compliance specialists have been back in the field for well over a year, and are continuing to catch up with the backlog. This is the reason for the much greater number of investigations being processed during 2021, as opposed to last year.

COVID-19 RESPONSE

Executive Orders were required for all of 2021

During 2021, the Department continued to follow the direction Governor Brown set in March of 2020, with the outbreak of the COVID-19 virus. 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.

In 2020, the Department developed an “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. The EO process remained in place until Spring 2022, when the Governor issued a

statement that all state agencies were to return to a more “normal” process, allowing us to end the EO process.

Throughout 2021, when a suspected or confirmed case(s) was reported to SOQ, an Executive Order (EO) was sent to the facility. The EO was not a disciplinary measure and was not listed as a part of the provider’s compliance history. EOs served as a public notice of COVID-19 to the community, were posted at the facility, and were listed on the ODHS COVID-19 website. The second purpose of an Executive Order (EO) was to outline infection control practices the facility must immediately implement to prevent a potential COVID-19 increase.

The EO outlined 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 inspected facilities to ensure infection control practices were in place.

When a facility had not made consistent progress controlling the spread of the virus, SOQ was authorized to take 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 (1,411) Executive Orders issued for residential care and assisted living facilities during 2021. In fact, 255 more EOs were issued in 2021 than in the first year of the pandemic. The COVID-19 virus continued to prove very difficult to combat and eradicate.

Timelines for Issuing Executive Orders for COVID-19

Of 1,411 Executive Orders issued this year, 1,387 were issued within one day - the day a facility informed SOQ of positive or suspected COVID-19 in the facility. No Executive Orders took longer than five days to issue this year, as compared to 2020, during which 21 EOs took longer than 30 days to issue.

Lessons Learned from COVID-19

- This was another unusual year, due to the continuation of the COVID-19 pandemic; future years should show different data outcomes.
- Responding effectively to emergencies required immediate collaboration and communication between the Oregon Health Authority and the Department, as well as among the programs within the Department.
- There were many (1,411) Executive Orders issued for Community-Based Care facilities during 2021. The fact there were more EOs issued in 2021 than in 2020 (1,156) is testament to how difficult it is to fight this disease.
- 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 collected 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 whey 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. Although Executive Orders are no longer required, they were required for all of 2021.

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.

Oregon Department of Human Services

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