

2021

# Legislative Report



**OHCA**  
OREGON HEALTH  
CARE ASSOCIATION

*Improving lives by advancing  
quality care in Oregon since 1950*



# LETTER FROM THE CEO

Dear OHCA Members,

Oregon's 81st Legislative Assembly adjourned "sine die" on June 26, 2021. Oregon Health Care Association's (OHCA) government relations team was able to deliver historic victories for long term care providers, residents, and caregivers that will support the sector in critical areas and advance quality care throughout our state.

This session presented unique challenges and opportunities for our team. The Oregon State Capitol was closed to the public because of the pandemic, so most legislative business was conducted virtually. Lobbying remotely required OHCA to find new ways to connect with lawmakers. Despite reduced in-person interactions, lawmakers had important budget decisions to make as Oregon's economy and revenues came roaring back due in part to aid from the federal government.

The pandemic placed a spotlight on our sector, which meant OHCA had to ensure the perspectives of providers were heard and that policy decisions in Salem reflected our commitment to leading the nation in providing and funding quality care for seniors and people living with disabilities. Ultimately, we are proud of the results we achieved.

We focused our agenda on bringing stability and support to our members. We advocated for higher Medicaid reimbursement rates for providers, pursued new ways to relieve workforce challenges, and improved infrastructure and economic resilience in long term care. I'm pleased to report that we were successful on all fronts. The Legislature approved cost-of-living-adjustments to rates for assisted living, residential care, and memory care facilities as well as in-home care agencies, and fully re-based rates for nursing facilities. What's more, the Legislature extended the five percent enhanced rate related to COVID-19 for another nine months (which otherwise would have expired on June 30, 2021), and funded an additional, optional rate increase designed to help alleviate the pressure of rising caregiver wages.

On the policy front, the passage of HB 2397A marked the conclusion of OHCA's multi-year effort to ensure local governments are prohibited from levying new fines, fees, and bed taxes or their own regulatory requirements for care in long term care settings. Several potentially detrimental legislative proposals were introduced at the beginning of session, including staffing ratios in community-based care and extensive financial disclosure requirements. Our team worked hard to improve these concepts and ensure our voices were heard.

Now, our government relations team turns its focus to implementation of these significant new investments and programs. This report is an overview of the legislation impacting long term care and senior housing providers considered by lawmakers in the 2021 session. We hope it is a valuable resource.

We are grateful to you, our OHCA members. Success would not have been possible without your participation and support. When we needed your advocacy, you delivered. Thank you! Please never hesitate to contact myself, any member of the OHCA staff, or our board members if we can be of service.



**Phil Bentley**  
President and CEO  
Oregon Health Care Association





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# BUDGET

Last year, Oregon was in the midst of a global pandemic and Governor Brown implemented restrictions on businesses, health care providers, schools, and other social activities to reduce the spread of COVID-19.

As lawmakers approached the 2021 session, concerns about a significant budget deficit loomed.

The Governor's proposed budget for the 2021-23 biennium flat funded reimbursement rates for home and community-based care providers, putting OHCA in the position of having to fight hard for adequate funding for the sector.

Despite the fears of a significant budget shortfall, Oregon's economic recovery from the downturn was fast and strong due in large part to unprecedented levels of federal aid and supplemental stimulus payments.

Lawmakers ended up with \$1 billion more in General Fund resources than expected plus \$2.6 billion of federal funds from the American Rescue Plan Act.

By the end of session, the legislature approved the budget for the Oregon Department of Human Services (ODHS) that included funding for our key budget priorities.

## OHCA'S BUDGET AGENDA

### Full Rebasing of the Skilled Nursing Facility Rates - FUNDED

The Legislature approved a full rebasing of skilled nursing facility rates, consistent with the provider tax law that was extended for six years in the 2018 legislative session.



OHCA staff, including Phil Bentley (right), testified virtually throughout the 2021 Legislative Session.

### **Cost of Living Adjustments for Home and Community-Based Care - FUNDED**

The ODHS budget includes five percent annual COLAs for assisted living facilities, residential care facilities, memory care endorsed units, and in-home care agencies effective July 1, 2021, with an additional five percent bump on July 1, 2022.

### **COVID-19 Add-On Extension - FUNDED**

The Legislature extended the five percent enhanced Medicaid rate for providers related to COVID-19 for another nine months, through March 31, 2022. This temporary rate bump was set to expire on June 30, 2021.

### **Long Term Care Health Care Trust (SB 800) - FUNDED**

Senate Bill (SB) 800 establishes a public-private partnership that is dedicated to improving access to better health insurance for long term care workers while reducing costs for employers.

This program provides state funds that leverage federal matching funds and are combined with provider funds to provide quality health insurance for long term care workers at a lower cost.

The program will be administered through a labor-employer trust arrangement. It is a voluntary program for providers who choose to participate.

The trust will be seeded with \$30 million from the state to promote early stability, affordability, and optimized benefit and plan design. OHCA will be engaging with providers and other stakeholders on next steps around implementation.

### **Long Term Care 'Safe and Healthy Facilities' Fund - FUNDED**

Many long term care facilities are facing the need for improvements and upgrades to their facilities in the wake of the pandemic, wildfires, extreme heat and cold, and other emergencies.

OHCA developed a state-backed grant fund that will help providers cover some of these costs.

The Legislature allocated \$30 million for this grant fund intended to help providers pay for updates to HVAC and air quality systems, backup power sources, infection prevention practices, telehealth, and more to improve building safety and emergency preparedness.

ODHS will develop rules and criteria for provider applications in the coming months.



### **Wage Add-on Option - FUNDED (Voluntary and NOT Included in the Current ODHS Rate Sheet)**

In addition to the rate adjustments, the legislature approved an optional program designed to alleviate rapidly rising labor costs due to the workforce shortage. ODHS will conduct rule making on program criteria and implementation effective October 1, 2021, that will include:

**For skilled nursing facilities:** An additional Medicaid rate increase of four percent for providers that pay a starting hourly wage of \$17.00 for a CNA in year one of biennium, and \$17.50 in year two of the biennium.

**For community-based care and in-home care agencies:** An additional Medicaid rate enhancement of 10 percent for providers that pay a starting hourly wage of \$15.00 for direct caregivers in year one, and \$15.50 an hour in year two of the biennium.

# BILLS THAT PASSED

## LONG TERM CARE SECTOR

### **House Bill (HB) 2397A: Uniform Standards of Care and EMS Pilot Program - PASSED**

Following the repeal of the City of McMinnville's ordinance that imposed new fines and fees on long term care facilities and unique city-wide standards of care, OHCA recognized the need to preserve uniform standards of care and preempt such local ordinances from being introduced in the future.

HB 2397A achieves this goal in addition to establishing a Senior Emergency Medical Services (EMS) Innovation Program within ODHS to fund pilot programs that offer innovative strategies to address EMS needs.

### **HB 2970B: Administrator Licensure Technical Fix - PASSED**

In 2018, the Legislature passed a law that requires all residential care administrators to be licensed through the Oregon Health Authority's Health Licensing Office.

Among the criteria that applicants needed to meet was a high school diploma or its equivalent. The Health Licensing Office interpreted that statute to require that prospective licensees provide physical copies of their high school diplomas.

HB 2970 fixes this unintentional barrier to licensure for qualified administrators by providing the Health Licensing Office with flexibility in proof of educational requirements.

### **Senate Bill (SB) 39B: Nurse Delegation Standards - PASSED**

SB 39B was brought forward by the Oregon State Board of Nursing (OSBN) to align the law with current nursing practice. It removes statutory language prohibiting RNs from delegating non-injectable medications like insulin, a common practice.

OHCA worked with OSBN on a clarifying amendment to ensure that rule making on nurse delegation standards and medication administration in community-based care settings is clear and unchanged.

### **SB 97: Ombudsman Confidentiality - PASSED**

SB 97 ensures confidentiality for residents in a residential treatment facility (these are not residential care facilities caring for seniors) in the event of a complaint made to the Residential Facilities Ombudsman. It prohibits testimony or documents from the Residential Facilities Ombudsman's Office in administrative or judicial proceedings arising from complaints made to the office concerning residents. Disclosure in some limited circumstances is allowed.

OHCA was neutral on this policy.

### **SB 266B: Regulatory Enforcement on Staffing in Community-Based Care - PASSED**

Initially, SB 266B would have upended the compliance framework for community-based care settings by adding several new requirements and changing definitions of key terms.

OHCA worked with the bill's proponent to successfully amend the bill in a manner that preserves current standards while enhancing enforcement of appropriate facility staffing.

SB 266B will require ODHS to consider whether a facility is staffing to the scheduled and unscheduled needs of residents--a standard that already applies to providers today in administrative rule--when responding to a complaint investigation or during a survey.

### **SB 703A: Costs of Care Study - PASSED**

In its original form, OHCA opposed SB 703, which would have required new annual financial disclosure from community-based care providers to the state and added two labor union representatives to the Quality Metrics Council. Through negotiations with stakeholders, the bill was amended to remove all financial reporting requirements.

SB 703A now directs ODHS to conduct a study on the costs of long term care in Oregon, adds one caregiver to the Quality Metrics Council, and requires providers to submit their Uniform Disclosure Statement to ODHS.

### **SB 714A: Acuity-Based Staffing in Community-Based Care - PASSED**

Originally SB 714, which OHCA opposed, would have mandated minimum staff ratios in community-based care settings. OHCA worked on an amendment that refocused the bill, removing ratio requirements.

The final version of SB 714A requires ODHS to complete its staff acuity tool and make it available at no cost to providers. It also calls for department rule making establishing minimum requirements for an acuity-based staffing tool a facility may adopt, and the frequency with which a facility must reassess its staffing patterns with this tool, and requires that memory care communities use an acuity-based staffing tool of their choosing when developing staffing plans. Finally, the bill requires the department to assess facility staffing levels whenever it conducts a survey, license approval or renewal, or specified complaint investigation.

## TORT LIABILITY & LEGAL

### **SB 193A: Non-Economic Damages for Non-Wrongful Death Claims - PASSED**

SB 193A repeals the statutory cap of \$500,000 on non-eco-



conomic damages for claims for bodily injury. The bill retains the cap for wrongful death claims, which is important for OHCA members as we see those claims more commonly in long term care settings.

Proponents of the bill assert that recent Oregon Supreme Court rulings support the repeal, although it is not clear the Court has ruled the cap does not apply in every case. OHCA opposed this bill because of the potential impact on providers.

### **SB 567B: Anti-Discrimination in Health Care - PASSED**

SB 567B prohibits licensed or certified health care providers or individuals acting on behalf of a provider from denying, limiting, or restricting medical treatment or resources based on a patient's race, color, national origin, sex, sexual orientation, gender identity, age, or disability. Disability Rights Oregon was the lead proponent of the measure. SB 567B will have the greatest impacts in hospital and doctor-patient settings with lesser impacts in long term care.

### **SB199A: Updates Advance Directive Laws in Oregon - PASSED**

SB 199A contains a new Oregon Advance Directive for Health Care form. The form is intended to be completed by a patient or an appointed health care representative and yield clearer direction for end-of-life care. Previous advance directive forms remain effective.

## **EMPLOYMENT**

### **HB 2818B: Oregon Equal Pay Act Exemptions - PASSED**

The Bureau of Labor and Industries (BOLI) released guidance asserting that vaccine incentives provided by employers to employees may potentially violate the Oregon Equal Pay Act.

OHCA and other business groups advocated for an amendment that would make it clear that the definition of "compensation" in the Oregon Equal Pay Act does not include vaccine incentives or retention bonuses. This offers certainty to providers who have offered or wish to offer monetary or nonmonetary incentives to employees who receive the COVID-19 vaccine.

### **HB 3398A: Delay in Implementation of Paid Family Leave - PASSED**

HB 3398A will slow the implementation of Oregon's Paid Family Medical Leave Insurance program. The Employment Department will adopt rules for the program by September 1, 2022, instead of September 1, 2021, and employers will begin making contributions to the program on January 1, 2023 instead of January 1, 2022.

### **HB 3389A: Unemployment Insurance Tax Relief for Employers - PASSED**



This bill recognizes the shortfall in the state Unemployment Compensation Trust Fund arising from the prolonged COVID-19 public health crisis and provides some tax relief to employers by modifying the calculation and payment of unemployment insurance taxes. It also extends the look back period used to determine Unemployment Compensation Trust Fund solvency to avoid an automatic payroll increase to replenish the fund. Finally, it allows employers to defer payment until June 30, 2022, of up to one-third of tax owed in 2021 if their tax rate increased by at least half of a percent between 2020 and 2021.

### **HB 3178: Unemployment Insurance for Part-Time Workers - PASSED**

Early in the pandemic, lawmakers passed a bill to allow part-time workers to earn more money while still collecting benefits. The bill, however, included a technical issue that blocked its implementation. In response, lawmakers passed HB 3178, which fixes the previous bill and implements a small program that will provide \$75 million in benefits to about 20,000 workers.

### **SB 172B: Unemployment Insurance Overpayments - PASSED**

SB 172B allows the Oregon Employment Department to deduct all or part of unemployment insurance benefits that were overpaid to claimants against future weekly benefits and would forgive any outstanding overpayments after five years.

# BILLS THAT DID NOT PASS

## LONG TERM CARE SECTOR

### House Bill (HB) 2327A: Emergency Preparedness in Long Term Care - FAILED

OHCA put HB 2327A forward to advance and institutionalize better planning and communication between the state and providers during public health emergencies and natural disasters. Unfortunately, the bill did not pass and OHCA will contemplate reintroducing some aspects of it in future sessions.

### HB 2394: Social Isolation Prevention - FAILED

One provision of HB 2327A related to preventing social isolation among residents in long term care was introduced as a standalone concept, with added applicability to Developmental Disability care settings. OHCA supported HB 2394.

### HB 2252: Removes the Cap on Residents in Adult Foster Homes - FAILED

HB 2252 would have removed this cap for how many residents could live in Adult Foster Homes (AFH).

OHCA opposed the measure because of concerns about impact on census for other providers as well as issues related to

maintaining infectious disease best practices with an unlimited number of residents in AFHs.

### HB 3345: Study of Community-Based Care Staff Ratios - FAILED

HB 3345 would have required a study of staffing ratios in community-based care settings and factors that contribute to the cost of care in long term residential care facilities.

### HB 2348: Plant-Based Meal Mandate - FAILED

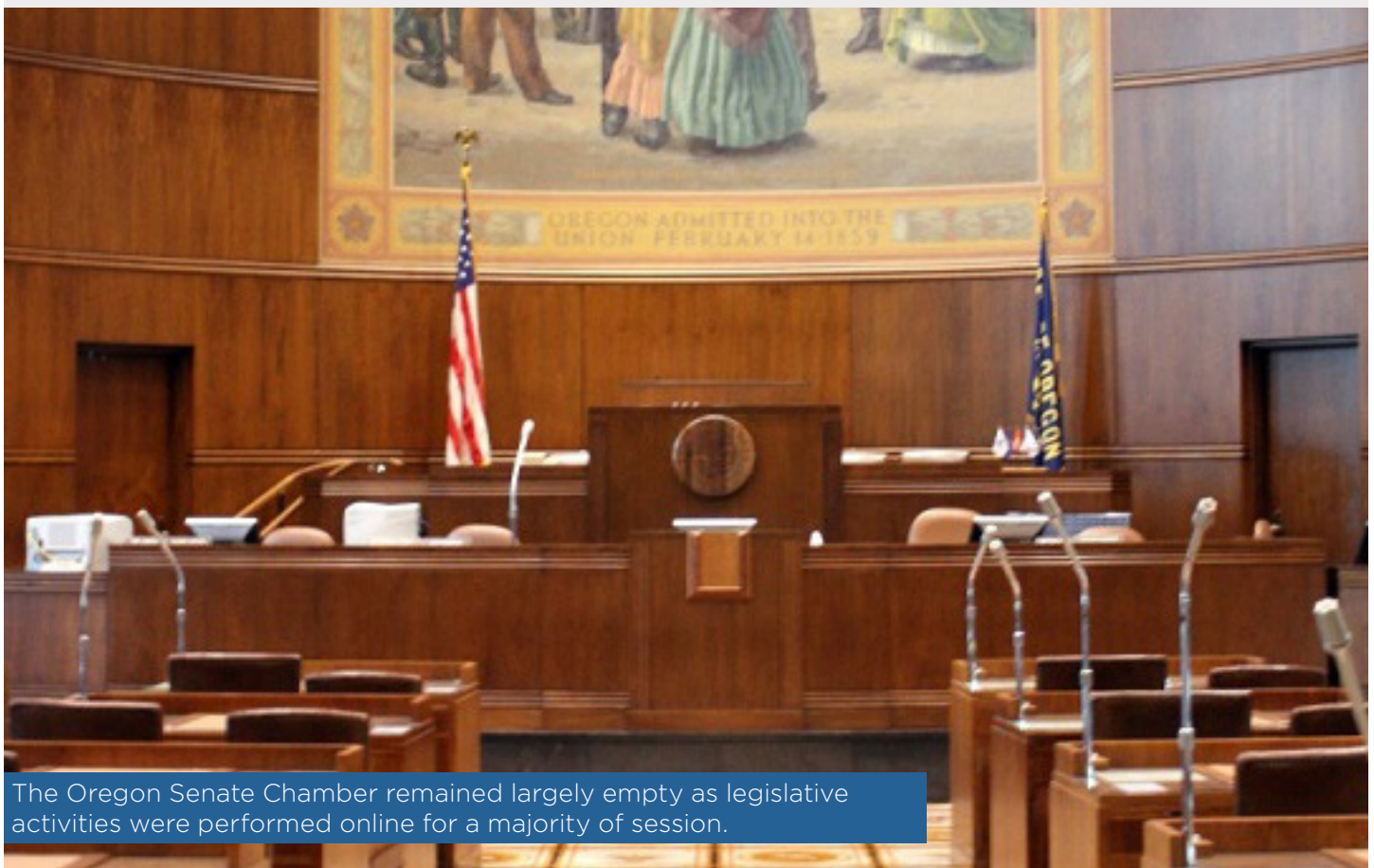
HB 2348 would have required hospitals and long term care facilities to make plant-based meals and beverages available to patients, residents, staff, and visitors. It also would have prohibited hospitals from serving processed meat, which drew opposition from several groups.

A similar concept was introduced and failed in 2019.

### HB 3128 - Supporter Visit Mandates - FAILED

HB 3128 would have allowed residents of long term care facilities to designate “support persons” who could provide certain care services and be present with residents at all times.

OHCA opposed the bill because it imposed increased burdens



The Oregon Senate Chamber remained largely empty as legislative activities were performed online for a majority of session.

and liability exposure on providers and would have created many unintended consequences for residents' health, safety, and privacy both in and out of a pandemic.

### **Senate Bill (SB) 431 & SB 435: COVID-19 Response Legislation - FAILED**

This was a pair of bills supported by SEIU Local 503 that directed the Oregon Health Authority (OHA) to impose new public health and emergency preparedness requirements on long term care providers.

OHCA opposed these bills because they would have been burdensome on providers and imbued OHA with new authority over long term care that it does not currently have.

### **SB 431: Wage Pass Through - FAILED**

This bill, supported by SEIU Local 503, would have required long term care facilities and in-home care agencies to pass-through to specified employees at least 90 percent of the increased funding provided by Medicaid rates. OHCA was strongly opposed to this bill.

### **SB 432: Wage Floor - FAILED**

This bill, supported by SEIU Local 503, would have required long term care facilities and in-home care agencies to pass-through to specified employees at least 90 percent of the increased funding provided to them through Medicaid and to pay employees no less than \$16/hour or a base salary of \$2,752/month. OHCA was strongly opposed to this bill.

### **SB 433: State-Wide Long Term Care Labor-Management Committee - FAILED**

This bill, supported by SEIU Local 503, would have required ODHS to adopt rules supporting a Long Term Quality Workforce Employer and Labor Partnership in which employers would have the option to participate.

Rules would have included requirements for the partnership to establish long term care training and staffing standards for participating facilities. The partnership would have been eligible to receive funding to support increased reimbursement to raise wages of direct care staff in nursing facilities and community-based care settings. OHCA opposed this bill.

## **TORT LIABILITY**

### **HB 2205: Private Attorneys General Act - FAILED**

HB 2205 would allow for private attorneys to file lawsuits in the name of the State of Oregon against an employer alleging violations to Oregon's labor laws. This policy was modelled after California's "Private Attorneys General Act." OHCA opposed the bill along with other business groups.

## **CAMPAIGNS & ELECTIONS**

### **HB 2680A: Campaign Finance Reform - FAILED**

HB 2680A would have established limits on political giving to candidates for legislative and state-wide office. The bill created a new definitions of political action committees (PAC) and different expenditure limits for those committees.

OHCA is involved in campaign finance reform conversations about the direct impact on our PAC and ability to effectively engage in elections. HB 2680A would have created an imbalance in how business groups and organized labor could engage in elections and political donations. Lawmakers eventually stripped out campaign finance limits from the bill.

We anticipate a potential ballot measure(s) in the coming years that would impose limits on campaign contributions and expenditures, establish "small donor PACs," create a public financing program for campaigns, and more.

# OHCA PAC AND ADVOCACY

The Oregon Health Care Association's Political Action Committee (OHCA PAC) exists to support candidates and ballot measures that reinforce OHCA's mission of promoting high quality care and services in the long term care profession in Oregon. OHCA PAC is proud to play an active role in the political process. The PAC is funded by voluntary donations from OHCA members, including our business partners.

## WHY SUPPORT OHCA PAC?

The more that OHCA members actively participate in OHCA PAC, the more that OHCA PAC can accomplish each campaign cycle. Supporting successful campaigns allows OHCA PAC to form relationships with elected officials and make sure they are well-informed about the needs of the individuals OHCA members serve.

## HOW CAN YOUR ORGANIZATION SUPPORT OHCA PAC?

Include your monthly contribution amounts on OHCA invoices.

Make additional contributions directly to OHCA PAC.

Contact OHCA about potential opportunities to host a legislator in your community.

## GRASSROOTS ADVOCACY

OHCA encourages members to get involved in advocating for long term care. The most important way for members to advocate for quality care is by responding to OHCA requests to reach out to legislators on certain issues. Your participation in these efforts is critical.



# OHCA GOVERNMENT RELATIONS TEAM



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