

2023 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 82nd Legislative Assembly adjourned on June 25, 2023. OHCA's government relations team delivered key victories for long term care providers, residents, and caregivers that will support the sector over the next two years, including substantial increases to Medicaid rates. Our success is made possible by your support and engagement. We are grateful to the thousands of OHCA members who responded to our action alerts. Thank you!

This session was certainly unique. Legislators, staff, lobbyists, and members of the public returned in-person to the state capitol for the first time since the beginning of the pandemic. Pre-COVID-19 norms largely stopped there, however. The capitol itself is undergoing significant construction, which resulted in half of the building being closed. And then, toward the end of session, we had significant political disruptions in the Senate.

On May 3 most Senate Republicans and one Independent began boycotting floor sessions in protest of policy measures they opposed. In doing so, they denied the Senate a quorum which prevents the Senate from passing bills. The Republican walkout lasted 44 days, the longest in the state's history. To complicate matters further, the recent passage of Ballot Measure 113 means all but two Republican senators accumulated more than 10 unexcused absences. The unexcused absences could mean they are disqualified from running for the Legislature again unless they are successful with a legal challenge to the ballot measure.

OHCA's legislative agenda was grounded in bringing stability and support to our members coming out of the pandemic. We advocated for higher base Medicaid reimbursement rates for all providers, pursued relief to workforce challenges that are made worse by some temporary staffing agencies, and supported legislation to increase the perspective of long term care on key state Boards and Commissions.

Despite a legislative environment that was trimming the growth in state spending due to evaporating Federal funds and a record-sized kicker refund to be paid next year, OHCA's government relations team achieved all of our budget asks.

For nursing facilities, the Legislature fully rebased rates resulting in a 14% increase in the basic rate. The rebase covers the loss of the 9% in temporary add-ons and then boosts rates an additional 5%. This was the second consecutive year that nursing facility rates rebased more than 10% annually.

For home and community-based care providers, the Legislature made both the COVID Add-On and the Wage Add-On permanent, resulting in a 15% cost-of-living-adjustment (COLA) to base rates for assisted living, residential care, and memory care communities and in-home care agencies. A 15% COLA is the largest single-year adjustment to long term care Medicaid rates in the state's history. On top of this, the Legislature approved an additional 5% COLA for home and community-based care providers effective July 1, 2024.

On the policy front, the passage of legislation, HB 2665, to contain temporary staffing agency costs and improve quality was a hard-fought victory that few other states have been able to achieve. Additionally, several potentially detrimental legislative proposals were introduced this session, and our team was generally successful in either improving or opposing those concepts.

We will spend the next year focused on implementing newly adopted legislation through the agencies and continuing implementation of legislation that was passed in prior sessions. We will also prepare for the next legislative session in early 2024. This report is an overview of the legislation impacting long term care and senior housing providers considered by lawmakers in the 2023 session. Again, thank you for your support and engagement this session. It is an honor to represent you in the state capitol.



Phil Bentley
President and CEO



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BUDGET

House Bill (HB) 5026 was the budget bill for the Oregon Department of Human Services (ODHS), which included funding for long term care services and supports and Medicaid reimbursement. As a result of OHCA's advocacy, HB 5026 is a significant improvement over Medicaid rates funded in the Governor's Recommended Budget, which would have resulted in cuts for nearly all providers.

While there is more work to do to ensure that Medicaid rates meet provider's costs and improve access to care for Oregonians, the 2023-25 budget will help bring stability to the sector in the near term.

OHCA'S BUDGET AGENDA

Medicaid Rate Cost of Living Adjustments for Assisted Living, Residential Care, Memory Care-Endorsed Facilities, and In-Home Care Agencies - FUNDED

The ODHS budget provides funding to make the 5% COVID Add-On and the 10% Wage Add-On permanent, integrating them into the base rate effective July 1, 2023. Both of these Add-ons were previously set to expire on June 30, 2023.

For any providers that participated in the Enhanced Wage Add-On Program, this will mean a flat rate (no reduction) in the first year of the biennium. For providers not in the program, this will mean a 10% increase in the base rate in the first year of the biennium.

In the second year of the biennium, effective July 1, 2024, the ODHS budget provided funding for a 5% COLA.

As part of this rate package, the Legislature asked ODHS to conduct a survey of providers to understand direct caregiver wages and report back to the Legislature in February 2025.

Full Rebasing of Medicaid Rates for Nursing Facilities - FUNDED

The ODHS budget approved full rebasing of nursing facility rates consistent with state law. The rebased rates resulted in a 14% increase in the basic rate. The rebase covers the loss of the 9% in temporary add-ons and then boosts rates an additional 5%. This was the second consecutive year that nursing facility rates rebased more than 10% annually.

The new provider tax and rebased rates go into effect July 1, 2023.

Home and Community-Based Care Medicaid Rate and Wage Study - FUNDED

In the Budget Reconciliation bill released at the end of session, the Legislature included a budget note that requires ODHS to conduct a comprehensive rate and wage study across home and community-based service delivery systems, with a focus on providers of in-home and residential care to individuals receiving services through the Office of Developmental Disabilities Services and the Office of Aging and People with Disabilities.

The report will provide:

- An analysis of the different required qualifications to provide services in a particular setting,
- The different service delivery models and service requirements for the service delivery model,
- The levels of acuity among recipients of the services provided, and
- The costs and benefits of recommendations designed to standardize the compensation of direct care workers across programs and service delivery models.

ODHS is required to report on the findings and recommendations no later than September 2024.

This has the potential to be significantly impactful for community-based care and in-home care agencies on both the funding and regulatory fronts. OHCA will engage with ODHS as it implements this legislative requirement and makes policy and rate recommendations.

Senate Bill (SB) 5225 - Essential Worker Health Care Trust - FUNDED

The Legislature provided \$20 million General Fund, matched by federal funds through nursing facility supplemental payments, for the Essential Worker Health Care Trust (EWHCT) for the 2023-2025 biennium. The EWHCT is a labor-management trust between certain nursing facilities and SEIU Local 503. The trust provides high-quality, low-cost health insurance benefits for thousands of long term care employees and their family members and is funded by the state and federal governments, employers, and employees. This \$20 million investment allows the Trust to expand enrollment over the next two years.

BILLS THAT PASSED

LONG TERM CARE SECTOR

HB 2665 - Regulation of Temporary Staffing Agencies - PASSED

In response to the workforce crisis and challenges providers have had with temporary staffing agencies, OHCA introduced HB 2665 to further regulate quality and contain costs from these agencies. This bill tackles the requirement that temporary staffing agency staff be properly trained and adequately licensed, adds regulatory requirements, and clamps down on the rate hikes that long term care facilities and hospitals are facing when trying to secure temporary staff.

HB 2665 directs the Oregon Health Authority (OHA) to set annual maximum rates that temporary staffing agencies may charge providers beginning in 2025. Waivers from the maximum rates are outlined in the measure. OHCA will engage with OHA and other stakeholders over the coming year as this bill is implemented.

HB 2600 - Long Term Care Representation on Oregon State Board of Nursing - PASSED

Another of OHCA's priority bills, this bill addresses the lack of long term care representation on the Oregon State Board of Nursing (OSBN). HB 2600 requires the Governor to consider more types of licensed care settings other than hospitals when making appointments to the Board.



Meredith Coba, OHCA Director of Legislative and Political Affairs, testifies in favor of HB 2600 in front of a House committee.

SB 226 - Exceptions for Long Term Care Nurses to Execute Out-of-State Physicians' Orders - PASSED

SB 226 allows a nurse working in a long term care facility or for an in-home care agency to execute medical orders from an out-of-state physician for a period of 90 days until that resident or client can find an Oregon-based physician. Under current law, RNs are prohibited from doing so, which can pose a problem or disrupt continuity of care for nurses working in facilities located near the border or when a facility admits a resident from a different state who does not yet have an in-state doctor.

SB 227 - Expansion of Temporary License for Out-of-State Nurse - PASSED

During emergencies declared by the Governor, this bill allows OSBN to issue limited licenses to practice nursing to nurses licensed in other jurisdictions and to issue limited certificates as nursing assistant to nursing assistants authorized to practice in other jurisdictions.

HB 3396 - Health Care Workforce and Post-Acute Placement Package - PASSED

HB 3396 is a policy package that combines numerous health care focused initiatives including:

- \$15 million to OHA to reimburse providers for nurse clinical capacity in skilled nursing facilities and hospitals,
- \$5 million to OSBN to explore pathways to better support nurse educators financially and incentivize increasing the nursing workforce, and
- \$500,000 for the Joint Task Force on Hospital Discharge Challenges where long term care, hospitals, and labor will recommend policy funding initiatives to remove barriers for hospital discharge to appropriate care settings. Recommendations are due in September 2024. OHCA will provide representation on this task force to ensure the outcomes are advantageous and appropriate.

SB 1043 - Ensures Opioid Medication is Received by Patient Upon Discharge - PASSED

SB 1043 was brought forward by Governor Kotek to expand access to overdose reversal medication like Nalaxone and Narcan.

It requires health care facilities, including skilled nursing and residential care/assisted living facilities, that are actively treating residents for opioid use disorders to provide two doses of overdose reversal medication upon discharge to a non-licensed setting.

BILLS THAT PASSED CONTINUED

SB 99 - LGBTQIA2S+ Long Term Care Resident Rights and Staff Training - PASSED

SB 99 establishes the Long-Term Care LGBTQIA2S+ Resident Bill of Rights and new training requirements for all long term care administrators and staff. It also establishes a subcommittee focused on LGBTQIA2S+ seniors within the Governor's Commission on Senior Services. OHCA worked closely on this policy to make it manageable for providers, and we intend to provide training options.

EMPLOYMENT

SB 851 - Respectful Workplace Policy - PASSED

This bill originally focused on psychological abuse in the workplace, but feedback from the employer community led to amendments that were much less burdensome. SB 851 requires the Bureau of Labor and Industries (BOLI) to prepare a model respectful workplace policy that employers may adopt. In doing so, the Bureau will create informational materials available to employers that identify the harms to employees and employers caused by workplace bullying.

SB 907 - Aligns Good Faith Refusal to Work with the Federal Language - PASSED

SB 907 as originally introduced was rooted in farmworker protections but applied broadly to all businesses, which was problematic for long term care providers because it would have allowed employees to refuse to work for a broad range of reasons. Based on feedback from OHCA and other employers, the amended bill simply aligns the state's law around refusal to expose oneself to a hazardous work condition with federal OSHA standards.

HEALTH CARE POLICY AND WORKFORCE

HB 2697 - Hospital Nurse Staffing Ratios - PASSED

The highest priority for the nurses union this session, HB 2697 requires hospitals to establish new staffing committees and develop staffing plans. Most notably, nurse-to-patient ratios were implemented over 12-hour shift making Oregon one of the first states in the nation to do so. The bill specifies which hospital units are subject to the ratio requirements and when exceptions can be made.

SB 420 - Traumatic Brain Injury - PASSED

SB 420 requires ODHS to provide resource coordination and navigation services to individuals with brain injuries and to establish the Brain Injury Advisory Committee.

SB 523 - Nursing Degree Expansion in Community Colleges - PASSED

SB 523 allows community colleges to offer a program leading to a Bachelor of Science in Nursing after a study found that only about 72% of Oregon's annual demand for new RNs is met by Oregon's current nursing education programs.

HOUSING AND LANDLORD/TENANT LAW

SB 611 - Caps Annual Rent Increases - PASSED

This bill lowers residential rental increase limits from the Consumer Price Index (CPI) +7% up to 10%, whichever is less, and expands tenant protections. Oregon's existing rent control law is similarly tied to inflation but does not have an upper limit. The updated rent cap does not apply to buildings built less than 15 years ago.

CHILDCARE ACCESS AND AFFORDABILITY

HB 2991 - Study to Expand the Childcare Workforce - PASSED

HB 2991 directs the Department of Early Learning and Care to commission an independent study to identify barriers to a high-quality early childhood workforce and provide guidance for future professional development specific to the needs of early childhood workforce in Oregon.

HB 3005 - Childcare Infrastructure Fund - PASSED

Under this bill, the Oregon Business Development Department (OBDD) must administer a \$50 million financial assistance program for childcare providers to cover the costs of expansion and improvements of childcare facilities and services and establishes the Early Childhood Infrastructure Fund. Pending implementation by OBDD, long term care providers could be eligible grantees for the infrastructure funds.

HB 2468 - Family Childcare in Rental Property - PASSED

This bill allows tenants to use rented units as childcare facilities, supporting in-home childcare providers and expanding care options for parents.



Libby Batlan, OHCA Senior Vice President of Government Relations, testifies in favor of Senate Bill 226 in front of a Senate committee.

HB 2683 - Decrease Barriers to Accessing Childcare - PASSED

HB 2683 expands access to Oregon's Employment Related Day Care (ERDC) program, establishing independent bases of eligibility that includes household income, employment status, involvement with child welfare, and a child or family's use of homelessness services, among other eligibility criteria. These changes will help decrease financial barriers many low-income, working families face in accessing childcare.

HB 3235 - Tax Credit for Young Children- PASSED

Included in the Early Childcare budget is \$75 million to invest in a proposed \$1,000 tax credit per child providing needed relief for families with up to six dependents from ages zero to five.

BEHAVIORAL HEALTH

The Legislature passed a \$153 million Behavioral Health Care Delivery Budget Framework aimed at strengthening the state's behavioral health workforce, stabilizing mobile crisis funding, and supporting response and recovery resources to ensure access to high-quality, affordable services for everyone who needs them.

Investments include:

- \$2.6 million for recovery schools (House Bill 2767)
- \$37.1 million for OHA programming (SB 5525), including:

- \$15 million for construction of additional substance use disorder (SUD) facility capacity.
- \$7 million for civil commitment services through Community Mental Health (CMHP) Programs.
- \$6 million for transitional case management services for houseless patients released from the Oregon State Hospital.
- \$6 million to expand the Health Care Provider Incentive Program (HCPPIP).
- \$3.1 million to advance training opportunities for pediatricians and child psychiatrists.
- House Bill 2757 – Dedicating funding for the 9-8-8, the suicide prevention and behavioral health crisis hotline.
- \$10 million through the Criminal Justice Commission to fund justice-involved mental health or substance abuse disorders (IMPACTS) grants (Senate Bill 5506).
- \$50 million to build out physical and provider capacity within the behavioral health system.

BILLS THAT DID NOT PASS

LONG TERM CARE SECTOR

SB 703 - Revised CNA Test – FAILED

This bill specified that a certified nursing assistant (CNA) must pass an examination developed by the National Council of State Boards of Nursing (NCSBN). The bill also required that the exam be offered in English and Spanish. OHCA expressed concerns with community colleges and other health care providers that the vendor that provides the NCSBN test could inhibit broad access to CNA testing, which was concerning given the current workforce shortage. It is expected this concept will be worked on by OSBN in the interim.

HB 2046 - Study of Licensed Practical Nurses (LPNs) – FAILED

To advance and utilize all parts of the health care workforce, HB 2046 would have required OSBN to study scope of practice of LPNs. OHCA was neutral on HB 2046 and would welcome LPN scope of practice to be clarified.

HB 2869 - State Plan on Aging – FAILED

HB 2869 would have established a Multi-Sector Plan on Aging to represent aging service providers, education, business, the public sector, and consumers to develop goals and a framework to ensure Oregon is an age-friendly state. OHCA supported this bill.

SB 570 - Agency with Choice – FAILED

Brought forward by SEIU Local 503, SB 570 would have required ODHS to contract with up to two Agency with Choice providers in the in-home care space. OHCA heavily negotiated amendments to the bill that improved it significantly. Due to an incredibly high fiscal to set up this program, the bill failed this session though we expect to see it again in a future session.

SB 602 - Long Term Care Prevailing Wage and Worker Standards Board – FAILED

This bill would have developed a Long Term Care Wage Board at the Bureau of Labor and Industries and required a prevailing wage for all long term care employees in Oregon. OHCA strongly opposed the bill as a measure that would drive up the cost of care with no funding source. We expect this concept to come back in a future session.

SB 796 - Establishes the Oregon Memory Net Pilot Project to Enhance Memory Assessments – FAILED

OHCA was supportive of this policy that would have established the Oregon Memory Net pilot project to provide an opportunity for primary care providers to refer for memory assessment at a neurology clinic for patients showing signs of cognitive decline or impairment but who have not been diagnosed with Alzheimer's disease or other forms of dementia.

HB 2745 – Bed Reporting Requirement for Long Term Care Providers – FAILED

HB 2745 would have required long term care facilities to participate in the Oregon Capacity System and regularly report bed availability. OHCA opposed this legislation.

SB 100 - Regulatory Oversight Study of Long Term Care – FAILED

Senate Bill 100 was introduced as a place-holder bill for the session and was not used. This bill would have required ODHS to study the department's regulatory oversight of long term care facilities.

SB 400 - Study of Skilled Nursing Facility Operations – FAILED

This bill would have required ODHS to study emerging issues related to skilled nursing facility reporting requirements, licensing requirements, staffing requirements, and reimbursement rates and was introduced but did not receive a public hearing.

SB 402 - Quality of Long Term Care Services and Workforce – FAILED

This bill would have directed ODHS to take specified steps to enhance capacity of the long term care workforce and increase the quality of long term care services. This bill did not receive a public hearing.

SB 855 - Residential Care Facility Sprinkler System Review – FAILED

OHCA made a point that more regulatory oversight at this time was burdensome; this bill would have required the ODHS to review and update, as needed, rules regarding installation and maintenance of sprinkler systems in residential care facilities.

HB 2778 - Backup Power Requirements for Long Term Care

This bill would have required ODHS to adopt rules requiring long term care facilities to acquire and maintain backup power sources. This bill did not receive a public hearing.

HB 2408 and HB 2748 - Nurse Licensure Compact – FAILED

HB 2748 and HB 2408 would have enacted the interstate Nurse Licensure Compact, allowing Oregon to join an interstate agreement that allows nurses to hold a single license issued by a Compact member state that permits the nurse to practice in any other Compact-member state. Both bills were opposed by the Oregon nurses' union.

HB 2868 - ODHS Case Managers Study – FAILED

HB 2868 would have required ODHS to study workload of case managers in the aging and disability services division of the department. OHCA would welcome an opportunity to streamline case management in long term care.

SB 1077 - Medicaid Advisory Committee - FAILED

OHCA was neutral on this measure that would have required ODHS to consult with the Medicaid Advisory Committee regarding long term services and supports provided through programs administered by the department.

SB 528 - Changes to Guardianship Protective Proceedings - FAILED

SB 528 required the director of public defense services to contract with the designated advocacy system (which is currently Disability Rights Oregon) to provide legal services to respondents and protected persons in protective proceedings and to provide education services to courts and visitors regarding the rights of respondents and protected persons to court-appointed counsel in protective proceedings.

SB 793 - Medical Decision-Making by Guardian - FAILED

This bill would have allowed a guardian to make medical decisions on behalf of a protected person and created a rebuttable presumption that a protected person consents to ordinary, necessary, and preventive medical care. OHCA expressed concerns about this measure because of the confusion it could create for long term care providers.

HB 2744 - Rural RN Income Tax Credit - FAILED

HB 2744 would have added registered nurses who are a nursing faculty members to the types of providers eligible for an income tax credit allowed to rural medical providers. OHCA was neutral on this bill; however, we urged the Legislature to support all rural health care workers in various ways.

HB 3013 - Pharmacy Benefit Managers - PASSED

This bill establishes new requirements for a pharmacy benefit manager (PBM) contracting, auditing, and finalizing business reimbursements in Oregon, including licensure.

EMPLOYMENT AND TAX LAW

HB 2138 - Paid Family and Medical Leave Insurance Repeal - FAILED

This bill would have repealed provisions of the paid family and medical leave insurance program and created an income or corporate excise tax credit allowed to employers who provided certain family and medical leave benefits to employees.

HB 2200 - State Agency Vaccine Mandate Repeal - FAILED

This bill would have prohibited any state agency entity in the executive branch of government from implementing or enforcing rules requiring vaccination against COVID-19.

SB 158 - Pass-Through Business Alternative Income Tax and Credit - FAILED

SB 158 would have extended the pass-through entity elective tax program (PTE-E) from tax year 2023 to 2025. The extension of the program could have helped providers reduce their tax burden.

SB 56 - Medical Exemption from Commercial Activities Tax - FAILED

SB 56 would have added categories of commercial activity exempt from the Commercial Activities Tax (CAT) based on specified programs providing the payment; the specified programs were responsible for over \$20 billion in health care spending in Oregon for 2020. The bill would also have created an exemption for medications dispensed or administered in clinical settings outside of a hospital.

SB 140 - Commercial Activities Tax Adjustments - FAILED

SB 140 would have adjusted the CAT; specifically it would have raised the tax exemption level from \$1 million to \$2 million, reduced the expense deduction to 30% (from current 35%) for companies between \$2-10 million in corporate activities, and raised the tax rate for companies with corporate activities greater than \$10 million to .615% (from current .57%). OHCA opposed this measure.

CAMPAIGNS AND ELECTIONS

HB 2003 - Campaign Finance Reform - FAILED

HB 2003 would have placed limits on campaign contributions that may be accepted and raised by candidates and political committees. Though it did not have the support to pass this session, it is expected that an interim work group will be convened to continue refining the proposal with the goal of having a legislative referral in 2024 asking voters to weigh in on campaign finance reform. OHCA will be engaged in the interim on the potential future of campaign finance.

WORKFORCE DEVELOPMENT

HB 2954 - Piloting Childcare for Long Term Care Employees - FAILED

One of OHCA's priority bills this session, the bill would have initiated a pilot program in an area of the state with great need of long term care and childcare for an entire year. The bill was warmly received in the policy committee, however, it was ultimately not funded this session.

HB 2774 - Paid Sick Leave Tax Credit - FAILED

This bill would have created an income tax credit for certain employers that are required to provide paid sick leave.

HB 3285 - Disclosure of Pay on Job Postings - FAILED

This bill would have made it an unlawful practice for employers or employment agencies to advertise jobs, promotions, or transfer opportunities without disclosing pay range and employment benefits in job listings.

HB 3205 - Clarification on Retention and Hiring Bonuses in Oregon Pay Equity Act - FAILED

This bill requires the Bureau of Labor and Industries to conduct rulemaking to determine whether the payment of bonuses is based on one or more factors under existing pay equity laws.

BILLS THAT DID NOT PASS CONTINUED

HB 2800: Age Discrimination - FAILED

This bill clarified the meaning of “because of age” in employment discrimination law and established a new unlawful employment practice. We expect to see this bill come back next session and will work to make the policy sensible for employers.

HB 2457 - Direct Support Professional Wage - FAILED

This bill would have required ODHS to reimburse agencies that employ direct support professionals (DSPs) at a sufficient rate to allow DSPs to earn at least 150% of the Portland area minimum wage.

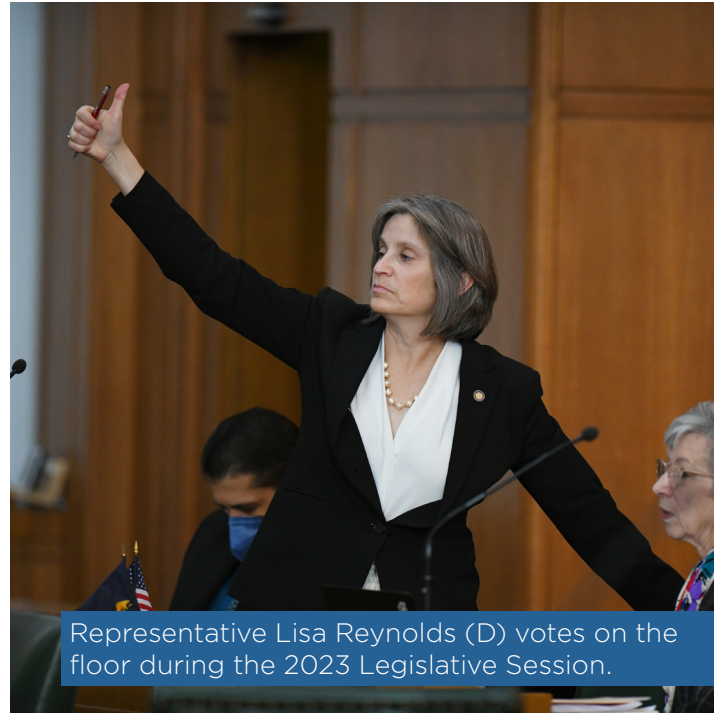
HOUSING AND LANDLORD/TENANT LAW

HB 2169 - Residential Rent Increase Limits - FAILED

HB 2169 would have exempted residential tenancies within 25 miles of the coastline from maximum limits on rent increases.

SB 799 - Non-payment of Rent Termination Postponement - FAILED

This bill would have prohibited a landlord from moving forward with termination of a lease agreement or eviction if the tenant had applied for rental assistance (while that application is pending) and extended the notice period from 72-144 hours to 10-13 days for someone to pay before evicting them.



Representative Lisa Reynolds (D) votes on the floor during the 2023 Legislative Session.

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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