

# Oregon Implementation of SB 714: Acuity-Based Staffing Tool

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# Policy Goals & Expectations

## SB 714 (2021)

- Require licensed community-based care facilities (memory care, assisted living, residential care) use and update an Acuity-Based Staffing Tool (ABST) of their choice that allows them to consider resident acuity in determining staffing levels.
- Hold facilities accountable to utilizing an ABST and ensure staffing levels are reflective of overall resident acuity.
- Require ODHS to design a State ABST in a timely manner.
- Protect a facility's right to use *their own* ABST so long as the tool meets minimum qualitative requirements. Most proprietary ABSTs are integrated with Electronic Health Records software systems.

# How ABSTs Function

## What to Know:

- ABST does not produce a staffing plan or staffing ratios for a facility. Instead, an ABST generates a range of estimated task times related to a resident's assessed Activities of Daily Living (ADL) and informs the facility's development of a staffing plan or staffing levels.
- ABST does not produce exact minutes because a task can take more or less time on any given day based on various factors and resident's daily needs.
- ABST must consider both scheduled and unscheduled needs of a resident.
- Many proprietary ABSTs typically pull data straight from the service plans that are updated at admission, with significant change in condition, and quarterly at minimum.

# Required Components of the ABST

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

- (a) Personal hygiene such as shaving and mouth care, as described in OAR 411-054-0030(1)(e)(C) and OAR 411-054-0034(5)(g)(B).
- (b) Grooming, such as nail care and brushing hair, as described in OAR 411-054-0030(1)(e)(E) and OAR 411-054-0034(5)(g)(B).
- (c) Dressing and undressing, as described in OAR 411-054-0030(1)(e)(D) and OAR 411-054-0034(5)(g)(B).
- (d) Bowel and bladder management, as described in OAR 411-054-0030(1)(e)(G) and OAR 411-054-0034(5)(g)(A).
- (e) Bathing, as described in OAR 411-054-0030(1)(e)(B) and OAR 411-054-0034(5)(a)(A) and (g)(B).
- (f) Transferring in or out of bed or a chair, as described in OAR 411-054-0030(1)(e)(A) and OAR 411-054-0034(5)(g)(C).
- (g) Repositioning in bed or chair, as described in OAR 411-054-0030(1)(e)(A) and OAR 411-054-0034(5)(g)(G).
- (h) Ambulation, escorting to and from meals or activities, as described in OAR 411-054-0030(1)(e)(F) and (G), and OAR 411-057-0160(2)(a).
- (i) If multiple staff are required to assist with transferring and completing tasks in previous question, how much additional time is needed, as described in 411-054-0070(1)(a).
- (j) Supervising, cueing, or supporting while eating, as described in 411-054-0030(1)(e)(F) and 411-054-0034(5)(a)(g)(D).
- (k) Medication administration, passing out medications, as described in 411-054-0030(1)(f), OAR 411-054-0055(2), and OAR 411-054-0070(1).

# Required Components of the ABST

- (l) Providing non-drug interventions for pain management, as described in 411-054-0034(5)(c)(C) and OAR 411-054-0055(6)(c).
- (m) Providing treatments (e.g., skin care, wound care, antibiotic treatment), as described in OAR 411-054-0034(5)(l) and OAR 411-054-0055(1).
- (n) Cueing or redirecting due to cognitive impairment or dementia, as described in OAR 411-054-0034(5)(d), OAR 411-057-0160(2)(a) and (e), and OAR 411-054-0030(1)(e)(H).
- (o) Ensuring non-drug interventions for behaviors, as described in OAR 411-054-0030(1)(e)(l) and OAR 411-054-0055(6)(c) and (d).
- (p) Assisting with leisure activities, as described in OAR 411-054-0005(27)(b), OAR 411-054-0030(1)(c), and OAR 411-054-0034(5)(a)(B).
- (q) Monitoring physical conditions or symptoms, as described in OAR 411-054-0040(1)(2)(a) and (b).
- (r) Monitoring behavioral conditions or symptoms, as described in OAR 411-054-0040(1)(2)(a) and (b).
- (s) Assisting with communication, assistive devices for hearing, vision, speech, as described in OAR 411-054-0034(5)(f).
- (t) Responding to call lights, as described in OAR 411-054-0070(1)
- (u) Safety checks, fall prevention, as described in OAR 411-054-0034(5)(n)(A).
- (v) Completing resident specific housekeeping or laundry services performed by care staff, as described in OAR 411-054-0005(96) and OAR 411-054-0070(1)(a).
- (w) Providing additional care service, such as smoking assistance or pet care, as described in OAR 411-054-0034(5)(n)(H) and OAR 411-054-0070(1).

# Other Considerations

Resident acuity is *one* component of developing a staffing plan and there are existing rules around staffing prior to the passage of SB 714 under OAR 411-054-00070. Other components include:

- Facility structural design (e.g., two or more detached buildings, multiple floors, etc.)
- Fire safety evacuation standards
- Resident census (e.g., # of residents moving in or out, or who many be out of the community for a period of time).
- Staff experience/capabilities of staff
- Presence of residents who require two-person assistance
- Use of technology if applicable
- Most listed in current rule are other considerations such as disruptions to normal facility operations (e.g., illness outbreaks, weather-related events, etc.)

# Enforcement of ABST

- **REGULATORY ACTION REQUIRED.** The Department will impose corrective action or sanctions as defined in OAR 411-054-0110 (Conditions) and according to Oregon Laws 2021, chapter 588, section 2, if the Department determines the facility is:
  - (a) Not using an ABST.
  - (b) Not meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.
  - (c) Using an ABST but is not consistently staffing to the levels, intensity and qualifications indicated by the tool.
  - (d) Not determining facility staffing requirements with an ABST as required by rule.

# Issue #1: Provider's Ability to Choose Their Own ASBT Has Been Eroded

- Interpretation of rules
- Design requirements
  - Requirement of *separately* listing each of the 22 ADLs and disallowing bundling.
  - Requirement of a zero (0) value if a resident does not require minutes an ADL.
  - Requirement of a timestamp in the ABST for each resident upon quarterly service plan review even if there are no changes to the time needed to provide services.
- Many providers have abandoned their proprietary tools and just use the states tool due to compliance and ease



# Issue #2: Conditions on Licenses Related to ABST

Conditions related to the ASBT should be reserved for circumstances resulting in consistent understaffing.

- The Department has other enforcement mechanisms to ensure compliance including sanctions, citations, corrective actions including civil penalties and fines, that would be more appropriate for technical issues related to a facility's ABST.
- Without publicly available detail as to why the facility received the ABST condition is potentially misleading for consumers and damaging for providers.
- The statutory requirement for "six-month continuous monitoring" is not needed once a condition has been lifted.
- Conditions related to the ABST have been imposed even if a facility has met or exceeded staffing requirements.
- Number of Conditions skyrocketed and impacted communities and reputation as well as funding defaults.

# Proposed Solutions

Clarifying statutory and administrative rule adjustments are currently in Legislative Session

## ▪ **Overview of Proposed Statutory Revisions**

### • Conditions:

- Provide clarity and appropriate discretion to the Department on when it *must* impose a condition on a license related to the ABST to reduce conditions solely tied to a tool's design and format.
- When a condition related to the ABST is imposed, the Department will require continuous monitoring for six months *or until the condition is lifted*.

### • Tool Design:

- Ensure the minimum qualifications of the tool are feasible for facilities to implement.
- Provide stability for facilities that choose to use their own ABST.

## ▪ **Overview of Administrative Rule and Other Policy Adjustments**

- Establish a process for ODHS to review and validate proprietary ABSTs for quality assurance.
- Provide interpretive guidance/FAQ resource for facilities to ensure clear expectations and a pathway to compliance.

# Demo of State Program- ODHS

<https://www.oregon.gov/odhs/licensing/community-based-care/Pages/acuity-based-staffing.aspx>

- <https://lrcfacilityportal.oregon.gov/ABST/FacilitySection/Details/2599>