

# House Bill 2791

Sponsored by Representative GELSER; Representatives BOONE, MAURER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes licensing requirements for adult day services programs.

### A BILL FOR AN ACT

1  
2 Relating to adult day services programs; creating new provisions; amending ORS 410.485, 410.490,  
3 433.835, 443.350 and 443.775; repealing ORS 410.495; and appropriating money.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. As used in sections 1 to 5 of this 2007 Act, "adult day services" means ser-**  
6 **vices provided at a community-based group program that:**

7 (1) **Are designed to meet the needs of 10 or more adults with functional or cognitive**  
8 **impairments through individual plans of care;**

9 (2) **Are structured and comprehensive; and**

10 (3) **Provide a variety of health, social and related support services in a protective setting**  
11 **during part of the day but that provide less than 24-hour care.**

12 **SECTION 2. (1) A person may not operate or maintain an adult day services program**  
13 **without obtaining a license from the Department of Human Services.**

14 (2) **Applications for licensure to maintain and operate an adult day services program shall**  
15 **be made to the department on forms provided for that purpose by the department and must**  
16 **be accompanied by the required fee established under section 5 of this 2007 Act.**

17 (3) **Upon receipt of an application and fee, the department shall conduct an investigation**  
18 **to determine if the applicant is in compliance with the rules adopted under section 4 of this**  
19 **2007 Act. The department shall issue a license to any applicant determined to be in compli-**  
20 **ance with sections 1 to 5 of this 2007 Act and the rules adopted under section 4 of this 2007**  
21 **Act.**

22 (4) **A license issued under this section is valid for two years. A license may be renewed**  
23 **by payment of the required renewal fee and by demonstration of compliance with require-**  
24 **ments for license renewal.**

25 (5) **A license issued under this section is not transferable.**

26 **SECTION 3. The Department of Human Services may deny, suspend or revoke the license**  
27 **of an adult day services program licensed under section 2 of this 2007 Act for failing to**  
28 **comply with sections 1 to 5 of this 2007 Act or the rules adopted under section 4 of this 2007**  
29 **Act. Action under this section shall be taken in accordance with the rules of the department**  
30 **and ORS chapter 183.**

31 **SECTION 4. (1) The Department of Human Services shall adopt rules governing the im-**  
32 **plementation and administration of sections 1 to 5 of this 2007 Act, including but not limited**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 to:

- 2 (a) Program components;
- 3 (b) Physical properties of the facility;
- 4 (c) Qualifications of professional and ancillary staff;
- 5 (d) Staffing ratios; and
- 6 (e) Program administration.

7 (2) An adult day services program shall conduct criminal background checks on all indi-  
8 viduals employed by or providing services to individuals in the adult day services program.

9 **SECTION 5.** (1) The Department of Human Services shall adopt by rule a schedule of  
10 required fees for initial licensure and renewal. The fees established under this subsection are  
11 subject to the prior approval of the Oregon Department of Administrative Services. The fees  
12 may not exceed the cost of administering the provisions of sections 1 to 5 of this 2007 Act.

13 (2) All fees received pursuant to subsection (1) of this section shall be deposited in the  
14 State Treasury and credited to an account designated by the Department of Human Services.  
15 Such moneys are continuously appropriated to the department for the administration of  
16 sections 1 to 5 of this 2007 Act.

17 **SECTION 6.** The provisions of sections 1 to 5 of this 2007 Act do not apply to organiza-  
18 tions licensed, registered, accredited or certified under ORS 101.030, 441.015, 443.410, 443.725  
19 or 443.860.

20 **SECTION 7.** ORS 410.485 is amended to read:

21 410.485. The Legislative Assembly finds that there is a need for the Department of Human Ser-  
22 vices to promote the availability of adult day [*care*] services and that flexibility in the combination  
23 of adult day [*care*] **services** with other community-based services gives individuals who would oth-  
24 erwise be placed in restrictive care settings a greater variety of choices.

25 **SECTION 8.** ORS 410.490 is amended to read:

26 410.490. [(1) *To provide greater flexibility and availability of services, the Department of Human*  
27 *Services shall apply for waiver of federal statutory and regulatory requirements to make adult day care*  
28 *services available under ORS chapter 414.*]

29 [(2)] (1) The Department of Human Services shall adopt rules consistent with the rules adopted  
30 under [*ORS 410.495,*] **section 4 of this 2007 Act** that include a provision identifying adult day  
31 [*care*] **services** as a service available for recipients eligible for medical assistance.

32 [(3)] (2) As used in ORS 410.485 and this section, “adult day [*care*] **services**” [*means*  
33 *community-based group programs designed to meet the needs of functionally and cognitively impaired*  
34 *adults through individual plans of care that are structured, comprehensive and provide a variety of*  
35 *health, social and related support services in protective settings during part of the day but provide less*  
36 *than 24-hour care*] **has the meaning given that term in section 1 of this 2007 Act.**

37 **SECTION 9.** ORS 410.495 is repealed.

38 **SECTION 10.** ORS 433.835 is amended to read:

39 433.835. As used in ORS 433.835 to 433.875:

40 (1) “Enclosed area” means all space between a floor and a ceiling that is enclosed on all sides  
41 by solid walls or windows, exclusive of doors or passageways, that extend from the floor to the  
42 ceiling, including all space therein screened by partitions that do not extend to the ceiling.

43 (2) “Place of employment” means every enclosed area under the control of a public or private  
44 employer that employees frequent during the course of employment, including but not limited to  
45 work areas, employee lounges, rest rooms, conference rooms, classrooms, cafeterias and hallways.

1 “Place of employment” does not include a private residence unless it is used as a child care facility  
 2 as defined in ORS 657A.250, a facility providing adult day *[care]* **services** as defined in *[ORS*  
 3 *410.490]* **section 1 of this 2007 Act** or a health care facility as defined in ORS 442.015.

4 (3) “Public place” means any enclosed indoor area open to and frequented by the public, except  
 5 those public places subject to ORS 441.815, including but not limited to restaurants, as defined in  
 6 ORS 624.010, retail stores, banks, commercial establishments, educational facilities, nursing homes,  
 7 auditoriums, arenas, meeting rooms and grocery stores.

8 (4) “Smoking instrument” means any cigar, cigarette, pipe or other smoking equipment.

9 **SECTION 11.** ORS 443.350 is amended to read:

10 443.350. The provisions of ORS 443.305 to 443.350 do not apply to organizations licensed, regis-  
 11 tered, **accredited** or certified under ORS 101.030, *[410.495,]* 443.410, 443.485, 443.725, 443.860 or  
 12 443.886.

13 **SECTION 12.** ORS 443.775 is amended to read:

14 443.775. (1) The Department of Human Services shall adopt rules governing adult foster homes  
 15 and the level of care provided in such homes, including the provision of care to more than one  
 16 person with nursing care needs under specified conditions and department approval, such as are  
 17 necessary to protect the health, safety or welfare of the residents and to provide for an appropriate  
 18 continuum of care, but shall not be inconsistent with the residential nature of the living accommo-  
 19 dations and the family atmosphere of the home. The rules shall be consistent with rules adopted by  
 20 the Oregon State Board of Nursing under ORS 678.150 (9).

21 (a) An exception to the limit of one resident with nursing care needs may be granted if the  
 22 provider proves to the department by clear and convincing evidence that such an exception will not  
 23 jeopardize the care, health, safety or welfare of the residents and that the provider is capable of  
 24 meeting the additional care needs of the new resident.

25 (b) The department, and the counties acting under the exemption granted pursuant to ORS  
 26 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions  
 27 granted during the quarter pursuant to paragraph (a) of this subsection.

28 (2) The provider may not employ a resident manager who does not meet the classification  
 29 standard for the adult foster home.

30 (3) The provider shall be able to meet the night care needs of a resident before admitting the  
 31 resident. The provider shall include night care needs in the resident’s care plan.

32 (4) The provider shall screen a prospective resident before admitting the resident. The screening  
 33 shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs,  
 34 night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall  
 35 be given to the prospective resident or the prospective resident’s representative.

36 (5) The department shall make rules to assure that any employee who makes a complaint pur-  
 37 suant to ORS 443.755 shall be protected from retaliation.

38 (6) For adult foster homes in which clients reside for whom the department pays for care, in-  
 39 cluding homes in which the provider and the resident are related, the department may require sub-  
 40 stantial compliance with its rules relating to standards for care of the client as a condition for  
 41 paying for care.

42 (7) By order the Director of Human Services may delegate authority under this section to per-  
 43 sonnel other than of the department.

44 (8) The department may commence a suit in equity to enjoin maintenance of an adult foster  
 45 home if:

1 (a) The home is operated without a valid license under this section; or

2 (b) After the license to maintain the home is ordered suspended or revoked, a reasonable time  
3 for placement of residents in other facilities has been allowed but such placement has not been ac-  
4 complished.

5 (9) The department shall establish by rule the maximum capacity of adult foster homes, including  
6 all nonrelated and related persons receiving residential care and **adult** day [*care*] **services**.

7 (10) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted there-  
8 under may be subjected to the imposition of a civil penalty, to be fixed by the director by rule, not  
9 to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated abuse, a  
10 maximum of \$1,000.

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