

House Bill 2856

Sponsored by Representative BOONE; Representatives COWAN, GARRARD, GREENLICK, JENSON, KOMP, KOTEK, KRIEGER, NELSON, ROBLAN, TOMEI, WITT, Senators G GEORGE, VERGER

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**.

Requires long term care facilities to serve meals that address nutritional needs of residents.

A BILL FOR AN ACT

1
2 Relating to nutritional needs of residents of long term care facilities; amending ORS 441.605 and
3 443.738.

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

5 **SECTION 1.** ORS 441.605 is amended to read:

6 441.605. It is the intent of the Legislative Assembly that facilities guarantee at a minimum that
7 each resident has the right to be:

8 (1) Fully informed of all resident rights and all facility rules governing resident conduct and
9 responsibilities.

10 (2) Fully informed which services are available and of any additional charges not covered by the
11 daily rates or by Medicare or Medicaid.

12 (3) Informed by a physician of the medical condition of the resident unless medically
13 contraindicated in the medical record, and given the opportunity to participate in planning medical
14 treatment and to refuse experimental research.

15 (4) Transferred or discharged only for medical reasons, or for the welfare of the resident or of
16 other residents of the facility, or for nonpayment and to be given reasonable advance notice to in-
17 sure orderly transfer or discharge.

18 (5) Encouraged and assisted while in the facility to exercise rights as a citizen, and to voice
19 grievances and suggest changes in policies and services to either staff or outside representatives
20 without fear of restraint, interference, coercion, discrimination or reprisal.

21 (6) Allowed either to manage personal finances or be given a quarterly report of account if the
22 facility has been delegated in writing to carry out this responsibility.

23 (7) Free from mental and physical abuse and assured that no chemical or physical restraints
24 will be used except on order of a physician.

25 (8) Assured that medical and personal records are kept confidential and unless the resident
26 transferred, or examination of the records is required by the third party payment contractor, are
27 not released outside the facility. However, nothing in this subsection is intended to prevent a resi-
28 dent from authorizing access to the resident's medical and personal records by another person.

29 (9) Treated with respect and dignity and assured complete privacy during treatment and when
30 receiving personal care.

31 (10) Assured that the resident will not be required to perform services for the facility that are

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 not for therapeutic purposes as identified in the plan of care for the resident.

2 (11) Allowed to associate and communicate privately with persons of the resident’s choice and
 3 send and receive personal mail unopened unless medically contraindicated by the attending physi-
 4 cian in the medical record of the resident.

5 (12) Allowed to participate in activities of social, religious and community groups at the dis-
 6 cretion of the resident unless medically contraindicated.

7 (13) Able to keep and use personal clothing and possessions as space permits unless to do so
 8 infringes on other residents’ rights and unless medically contraindicated and upon the resident’s
 9 request and the facility management’s consent have access to a private locker, chest or chest drawer
 10 that is provided by the resident or the facility that is large enough to accommodate jewelry and
 11 small personal property and that can be locked by the resident although both the resident and the
 12 facility management may have keys.

13 (14) Provided, if married, with privacy for visits by the resident’s spouse. If both spouses are
 14 residents in the facility, they are permitted to share a room.

15 (15) Not required to sign a contract or waiver that waives the resident’s right to collect pay-
 16 ment for lost or stolen articles.

17 **(16) Provided three nutritionally balanced meals each day that meet the nutritional needs**
 18 **of the resident as identified in the resident’s care plan.**

19 **SECTION 2.** ORS 443.738 is amended to read:

20 443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers
 21 and substitute caregivers for adult foster homes shall satisfactorily meet all educational require-
 22 ments established by the Department of Human Services. After consultation with representatives of
 23 providers, educators, residents’ advocates and the Long Term Care Ombudsman, the department
 24 shall adopt by rule standards governing the educational requirements. The rules shall require that
 25 a person may not provide care to any resident prior to acquiring education or supervised training
 26 designed to impart the basic knowledge and skills necessary to maintain the health, safety and
 27 welfare of the resident. Each provider shall document compliance with the educational requirements
 28 for persons subject to the requirements.

29 (2) The rules required under subsection (1) of this section shall include but need not be limited
 30 to the following:

31 (a) A requirement that, before being licensed, a provider successfully completes training that
 32 satisfies a defined curriculum, including demonstrations and practice in physical caregiving,
 33 screening for care and service needs, appropriate behavior towards residents with physical, cogni-
 34 tive and mental disabilities and issues related to architectural accessibility;

35 (b) A requirement that a provider pass a test before being licensed or becoming a resident
 36 manager. The test shall evaluate the ability to understand and respond appropriately to emergency
 37 situations, changes in medical conditions, physicians’ orders and professional instructions, nutri-
 38 tional needs, residents’ preferences and conflicts; and

39 (c) A requirement that, after being licensed, a provider or resident manager successfully com-
 40 pletes continuing education as described in ORS 443.742.

41 (3) After consultation with representatives of providers, educators, residents’ advocates and the
 42 Long Term Care Ombudsman, the department may adopt by rule exceptions to the training re-
 43 quirements of subsections (1) and (2) of this section for persons who are appropriately licensed
 44 medical care professionals in Oregon or who possess sufficient education, training or experience to
 45 warrant an exception. The department may not make any exceptions to the testing requirements.

1 (4) The department may permit a person who has not completed the training or passed the test
2 required in subsection (2)(a) and (b) of this section to act as a resident manager until the training
3 and testing are completed or for 60 days, whichever is shorter, if the department determines that
4 an unexpected and urgent staffing need exists. The licensed provider must notify the department of
5 the situation and demonstrate that the provider is unable to find a qualified resident manager, that
6 the person has met the requirements for a substitute caregiver for the adult foster home and that
7 the provider will provide adequate supervision.

8 (5) Providers shall serve **residents** three nutritionally balanced meals [*to residents*] each day
9 **that meet the nutritional needs of each resident as identified in the resident's care plan.** A
10 menu for the meals for the coming week shall be prepared and posted weekly.

11 (6) Providers shall make available at least six hours of activities each week which are of inter-
12 est to the residents, not including television or movies. The department shall make information
13 about resources for activities available to providers upon request. Providers or substitute caregivers
14 shall be directly involved with residents on a daily basis.

15 (7) Providers shall give at least 30 days' written notice to the residents, and to the legal repre-
16 sentative, guardian or conservator of any resident, before selling, leasing or transferring the adult
17 foster home business or the real property on which the adult foster home is located. Providers shall
18 inform real estate licensees, prospective buyers, lessees and transferees in all written communi-
19 cations that the license to operate an adult foster home is not transferable and shall refer them to
20 the department for information about licensing.

21 (8) If a resident dies or leaves an adult foster home for medical reasons and indicates in writing
22 the intent to not return, the provider may not charge the resident for more than 15 days or the time
23 specified in the provider contract, whichever is less, after the resident has left the adult foster home.
24 The provider has an affirmative duty to take reasonable actions to mitigate the damages by ac-
25 cepting a new resident. However, if a resident dies or leaves an adult foster home due to neglect
26 or abuse by the provider or due to conditions of imminent danger to life, health or safety, the pro-
27 vider may not charge the resident beyond the resident's last day in the home. The provider shall
28 refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

29 (9) Chemical and physical restraints may be used only after considering all other alternatives
30 and only when required to treat a resident's medical symptoms or to maximize a resident's physical
31 functioning. Restraints may not be used for discipline of a resident or for the convenience of the
32 adult foster home. Restraints may be used only as follows:

33 (a) Psychoactive medications may be used only pursuant to a prescription that specifies the
34 circumstances, dosage and duration of use.

35 (b) Physical restraints may be used only pursuant to a qualified practitioner's order that speci-
36 fies the type, circumstances and duration of use in accordance with rules adopted by the department.
37 The rules adopted by the department relating to physical restraints shall include standards for use
38 and training.

39 (10) If the physical characteristics of the adult foster home do not encourage contact between
40 caregivers and residents and among residents, the provider shall demonstrate how regular positive
41 contact will occur. Providers may not place residents who are unable to walk without assistance in
42 a basement, split-level, second story or other area that does not have an exit at ground level.
43 Nonambulatory residents shall be given first floor rooms.

44 (11)(a) The provider may not transfer or discharge a resident from an adult foster home unless
45 the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the

1 welfare of other residents, or due to nonpayment. In such cases, the provider shall give the resident
2 written notice as soon as possible under the circumstances.

3 (b) The provider shall give the resident and the resident's legal representative, guardian or
4 conservator written notice at least 30 days prior to the proposed transfer or discharge, except in a
5 medical emergency including but not limited to a resident's experiencing an increase in level of care
6 needs or engaging in behavior that poses an imminent danger to self or others. In such cases, the
7 provider shall give the resident written notice as soon as possible under the circumstances.

8 (c) The resident has the right to an administrative hearing prior to an involuntary transfer or
9 discharge. If the resident is being transferred or discharged for a medical emergency, or to protect
10 the welfare of the resident or other residents, as defined by rule, the hearing must be held within
11 seven days of the transfer or discharge. The provider shall hold a space available for the resident
12 pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing
13 transfer notices and hearings for residents of long term care facilities shall apply to adult foster
14 homes.

15 (12) The provider may not include any illegal or unenforceable provision in a contract with a
16 resident and may not ask or require a resident to waive any of the resident's rights.

17 (13) Any lessor of a building in which an adult foster home is located may not interfere with the
18 admission, discharge or transfer of any resident in the adult foster home unless the lessor is a pro-
19 vider or coprovider on the license.

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