

A-Engrossed House Bill 3617

Ordered by the House February 12
Including House Amendments dated February 12

Sponsored by COMMITTEE ON ELECTIONS, ETHICS AND RULES (at the request of House Interim Committee on Human Services and Women's Wellness)

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.

Creates Quality Care Fund. Continuously appropriates moneys in fund to Department of Human Services for *[purpose of providing technical assistance to specified care providers and ensuring]* **purposes of training, technical assistance, quality improvement initiatives and licensing activities to ensure** that high standards for quality of care are met in accordance with rules adopted by department. Requires that moneys from certain fees and civil penalties be deposited in fund.

Requires department to create *[database of abuse records]* **Database of Quality Care Violations** searchable on Internet. Requires that substantiated complaints of abuse **or of quality care standard violations** in residential facilities and adult foster homes be entered into database. Requires written notification of availability of database to residents of those facilities and homes.

Authorizes department to establish licensing fees for *[specified facilities and]* adult foster homes.

Establishes licensing fees for residential facilities.

[Removes maximum and establishes minimum for specified civil penalties.]

Establishes licensing fees for residential facilities. Establishes \$2,500 civil penalty for specified types of abuse and makes other changes to civil penalties.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to care providers; creating new provisions; amending ORS 430.745, 441.020, 441.715, 441.745,
3 441.995, 443.415, 443.425, 443.430, 443.455, 443.735, 443.740, 443.775, 443.790 and 443.825; appro-
4 priating money; and declaring an emergency.

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

6 **SECTION 1. The Quality Care Fund is established in the State Treasury, separate and**
7 **distinct from the General Fund. Interest earned by the Quality Care Fund shall be credited**
8 **to the Quality Care Fund. Moneys in the fund are continuously appropriated to the Depart-**
9 **ment of Human Services for the purposes of training, technical assistance, quality improve-**
10 **ment initiatives and licensing activities to ensure that high standards for quality of care are**
11 **met in accordance with rules adopted by the department with respect to:**

12 (1) A long term care facility as defined in ORS 442.015;

13 (2) A residential facility as defined in ORS 443.400, including but not limited to an assisted
14 living facility; and

15 (3) An adult foster home as defined in ORS 443.705.

16 **SECTION 2. (1) The Department of Human Services shall create and maintain a database**
17 **containing records of all substantiated complaints of abuse and all violations of quality care**
18 **standards, adopted by the department by rule, occurring on or after January 1, 2003, in a**
19 **facility. The database may not include individuals' Social Security numbers, addresses or**
20 **dates of birth. The database shall be known as the Database of Quality Care Violations.**

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 (2) The database must be available to the public through the Internet and must be
2 searchable by the name of the facility, the name of the adult foster home provider, the name
3 of the owner or agency operating the facility and the name of a facility employee found to
4 have committed abuse or to have violated a quality care standard.

5 (3) The names of persons described in subsection (2) of this section shall be permanently
6 maintained in the database. The name of an adult foster home provider or facility employee
7 may be removed from the database after five consecutive years without a substantiated
8 complaint of abuse or violation of a quality care standard. The department shall remove the
9 name of the provider or employee within 14 days of receipt of a written request if the re-
10 quirements for removal are met.

11 (4) Upon admission and at each subsequent case planning meeting, a facility must provide
12 written notice to the resident, the resident's case manager and the resident's guardian. The
13 notice must explain:

14 (a) How to access the database; and

15 (b) How, when and where to report suspected abuse.

16 (5) As used in this section:

17 (a) "Abuse" means one or more of the following:

18 (A) Any death of an adult that is caused by other than accidental or natural means.

19 (B) Any physical injury to an adult that is caused by other than accidental means, or that
20 appears to be at variance with the explanation given for the injury.

21 (C) Willful infliction of physical pain or injury on an adult.

22 (D) Sexual harassment or exploitation of an adult, including but not limited to any sexual
23 contact between an employee of a facility or community program, as defined in ORS 430.735,
24 and an adult.

25 (E) Neglect that leads to physical harm to an adult through the withholding of services
26 necessary to maintain health and well-being. For purposes of this subparagraph, "neglect"
27 does not include a failure of the state or a community program, as defined in ORS 430.735,
28 to provide services due to a lack of funding available to provide the services.

29 (b) "Adult" means a person 18 years of age or older with a developmental disability who
30 is currently receiving services from a facility or community program, as defined in ORS
31 430.735, or was previously determined eligible for services as an adult by a facility or com-
32 munity program.

33 (c) "Facility" means:

34 (A) A residential facility as defined in ORS 443.400, including an assisted living facility
35 but excluding a residential treatment facility as defined in ORS 443.400 (9) or a residential
36 treatment home as defined in ORS 443.400 (10); or

37 (B) An adult foster home as defined in ORS 443.705.

38 **SECTION 3.** No later than August 1, 2008, a facility as defined in section 2 of this 2008
39 Act shall provide the notice described in section 2 (4) of this 2008 Act to all of the facility's
40 residents, the residents' case managers and the residents' guardians.

41 **SECTION 4.** The Department of Human Services shall report to each regular session of
42 the Legislative Assembly a schedule of all license fees and civil penalties established by rule
43 pursuant to ORS 441.995, 443.455, 443.735 and 443.790.

44 **SECTION 5.** ORS 430.745 is amended to read:

45 430.745. (1) Upon receipt of any report of alleged abuse of an adult, the Department of Human

1 Services or its designee shall investigate promptly to determine the nature and cause of the abuse.
2 If the department or its designee determines that a law enforcement agency is conducting an in-
3 vestigation of the same incident, the department or its designee need not conduct its own investi-
4 gation.

5 (2) The department or its designee may enter a facility and inspect and copy records of a facility
6 or community program if necessary for the completion of its investigation.

7 (3) In cases in which the department, its designee or the law enforcement agency conducting the
8 investigation finds reasonable cause to believe that an adult has died as a result of abuse, it shall
9 report that information to the appropriate medical examiner. The medical examiner shall complete
10 an investigation as required under ORS chapter 146 and report the findings to the department, its
11 designee or the law enforcement agency.

12 (4) Upon completion of an investigation conducted by a law enforcement agency, that agency
13 shall provide the department or its designee with a report of its findings and supporting evidence.

14 (5) If the department or its designee determines that there is reasonable cause to believe that
15 abuse occurred at a facility or that abuse was caused or aided by a person licensed by a licensing
16 agency to provide care or services:

17 (a) **The department** [, *it*] shall immediately notify each appropriate licensing agency and pro-
18 vide each licensing agency with a copy of [*its*] **the department's** investigative findings; **and**

19 (b) **The facility shall immediately provide written notice of the department's investigative**
20 **findings to the residents of the facility, the residents' case managers and the residents'**
21 **guardians.**

22 (6) Upon completion of the investigation, the department or its designee shall prepare written
23 findings which include recommended actions and a determination of whether protective services are
24 needed. Appropriate protective services shall be provided as necessary to prevent further abuse of
25 the adult. Any protective services provided shall be undertaken in a manner that is least intrusive
26 to the adult and provides for the greatest degree of independence that is available within existing
27 resources.

28 (7) **The application for employment at a facility must inquire whether the applicant has**
29 **been determined under subsection (5) of this section to have caused or aided abuse.**

30 **SECTION 6.** ORS 441.020 is amended to read:

31 441.020. (1) Licenses for health care facilities including long term care facilities, as defined in
32 ORS 442.015, shall be obtained from the Department of Human Services.

33 (2) Applications shall be upon such forms and shall contain such information as the department
34 may reasonably require, which may include affirmative evidence of ability to comply with such
35 reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

36 (3) Each application shall be accompanied by the license fee. If the license is denied, the fee
37 shall be refunded to the applicant. **Except as provided in subsection (13) of this section,** if the
38 license is issued, the fee shall be paid into the State Treasury to the credit of the Department of
39 Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607
40 to 431.619.

41 (4) Except as otherwise provided in subsection (5) of this section, for hospitals with:

42 (a) Fewer than 26 beds, the annual license fee shall be \$750.

43 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

44 (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.

45 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

1 (e) Two hundred or more beds, the annual license fee shall be \$3,400.

2 (5) For long term care facilities with:

3 [(a) Fewer than 16 beds, the annual license fee shall be up to \$120.]

4 [(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.]

5 [(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.]

6 [(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to
7 \$450.]

8 [(e) Two hundred beds or more, the annual license fee shall be up to \$580.]

9 **(a) One to 15 beds, the annual license fee shall be \$180.**

10 **(b) Sixteen to 49 beds, the annual license fee shall be \$260.**

11 **(c) Fifty to 99 beds, the annual license fee shall be \$520.**

12 **(d) One hundred to 150 beds, the annual license fee shall be \$670.**

13 **(e) More than 150 beds, the annual license fee shall be \$750.**

14 (6) For special inpatient care facilities with:

15 (a) Fewer than 26 beds, the annual license fee shall be \$750.

16 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

17 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.

18 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

19 (e) Two hundred beds or more, the annual license fee shall be \$3,400.

20 (7) For ambulatory surgical centers, the annual license fee shall be \$1,000.

21 (8) For birthing centers, the annual license fee shall be \$250.

22 (9) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.

23 (10) During the time the licenses remain in force holders *[thereof]* are not required to pay in-
24 spection fees to any county, city or other municipality.

25 (11) Any health care facility license may be indorsed to permit operation at more than one lo-
26 cation. *[In such case]* **If so**, the applicable license fee shall be the sum of the license fees which
27 would be applicable if each location were separately licensed.

28 (12) Licenses for health maintenance organizations shall be obtained from the Director of the
29 Department of Consumer and Business Services pursuant to ORS 731.072.

30 **(13) All moneys received pursuant to subsection (5) of this section shall be deposited in**
31 **the Quality Care Fund established in section 1 of this 2008 Act.**

32 **SECTION 7.** ORS 441.715 is amended to read:

33 441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective
34 criteria for establishing the civil penalty that may be imposed under ORS 441.710. However, the civil
35 penalty may not exceed \$500 for each violation, except as otherwise provided in *[ORS 441.637 and*
36 *441.995]* **this subsection and ORS 441.995 or as otherwise required by federal law.**

37 (b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for
38 any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation
39 involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under
40 ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed
41 \$500 per day **or as otherwise required by federal law.**

42 (c) **If the Department of Human Services determines that there is reasonable cause to**
43 **believe that abuse occurred in a long term care facility and if the abuse resulted in the death,**
44 **serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall**
45 **impose a civil penalty of not less than \$2,500 for each violation. The department shall by rule**

1 **define “serious injury,” “rape,” “sexual abuse” and “sexual exploitation” for the purposes of**
2 **this paragraph.**

3 (2) The penalties assessed under subsection (1)(a) or (b) of this section shall not exceed \$6,000
4 in the aggregate or as otherwise required by federal law with respect to a single long term care
5 facility within any 90-day period.

6 **SECTION 8.** ORS 441.745 is amended to read:

7 441.745. All penalties recovered under ORS 441.710 to 441.740 **and 441.995** shall be [*paid into the*
8 *State Treasury and credited to the General Fund*] **deposited in the Quality Care Fund established**
9 **in section 1 of this 2008 Act.**

10 **SECTION 9.** ORS 443.415 is amended to read:

11 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
12 made to the Department of Human Services on forms provided for that purpose by the department.
13 Each application shall be accompanied by a fee [*of \$60 for facilities defined in ORS 443.400 (5), (7)*
14 *and (9) and a fee of \$30 for homes defined in ORS 443.400 (8) and (10)*]. No fee is required of any
15 governmentally operated residential facility.

16 **(2) The fee under subsection (1) of this section for facilities:**

17 **(a) Defined in ORS 443.400 (7) and (9), shall be \$60.**

18 **(b) Defined in ORS 443.400 (8) and (10), shall be \$30.**

19 **(c) Defined in ORS 443.400 (5) with:**

20 **(A) One to 15 beds, shall be \$360.**

21 **(B) Sixteen to 49 beds, shall be \$520.**

22 **(C) Fifty to 99 beds, shall be \$1,040.**

23 **(D) One hundred to 150 beds, shall be \$1,340.**

24 **(E) More than 150 beds, shall be \$1,500.**

25 [(2)] (3) Upon receipt of an application and fee, the department shall conduct an investigation.
26 The department shall issue a license to any applicant for operation of a residential facility in com-
27 pliance with ORS 443.400 to 443.455 and the rules of the director. Licensure may be denied when a
28 residential facility is not in compliance with ORS 443.400 to 443.455 or the rules of the Director of
29 Human Services. Licensure shall be denied if the State Fire Marshal or other authority has given
30 notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

31 **SECTION 10.** ORS 441.995 is amended to read:

32 441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of
33 ORS 441.630 to 441.680, the Department of Human Services shall consider:

34 (a) Any prior violations of laws or rules pertaining to facilities;

35 (b) The financial benefits, if any, realized by the facility as a result of the violation;

36 (c) The gravity of the violation, including the actual or potential threat to the health, safety and
37 well-being of one or more residents;

38 (d) The severity of the actual or potential harm caused by the violation; and

39 (e) The facility’s past history of correcting violations and preventing the recurrence of vio-
40 lations.

41 (2) The department may impose a civil penalty for abuse in accordance with rules adopted under
42 ORS 441.637 (1). [*Facilities assessed civil penalties for abuse shall be entitled to a contested case*
43 *hearing under ORS chapter 183.*]

44 (3) If the department finds the facility is responsible for abuse and if the abuse resulted in a
45 resident’s death or serious injury, the department shall impose a civil penalty of not less than \$500

1 nor more than \$1,000 for each violation, or as otherwise required by federal law, **ORS 441.715 (1)(c),**
2 **443.455 or 443.775.**

3 (4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the de-
4 partment's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations that
5 do not constitute abuse.

6 **(5) Facilities assessed civil penalties shall be entitled to a contested case hearing under**
7 **ORS chapter 183.**

8 **SECTION 11.** ORS 443.425 is amended to read:

9 443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless
10 sooner revoked. Each license shall state the name of the person operating the residential facility;
11 the name of the person who owns the facility; the address of the premises to which the license ap-
12 plies and the maximum number of residents to be maintained in such residential facility at any time
13 whether the residential facility is licensed as a residential training facility, a residential treatment
14 facility, a residential care facility; a residential training home or residential treatment home and
15 such other information as the Department of Human Services considers necessary.

16 (2) A license is renewable upon submission of an application to the department and payment of
17 a fee [*of \$60 for facilities licensed under ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes li-*
18 *icensed under ORS 443.400 (8) and (10)]. No fee shall be required of a governmentally operated resi-*
19 *dential facility. Filing of an application for renewal before the date of expiration of a license extends*
20 *the effective date of expiration of the license until the department has acted upon such application.*
21 *The department shall refuse to renew a license if the facility is not substantially in compliance with*
22 *all applicable laws and rules, or if the State Fire Marshal or the authorized representative thereof*
23 *has given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9) pursuant to ORS*
24 *479.220.*

25 **(3) The biennial fee under subsection (2) of this section for facilities:**

26 **(a) Defined in ORS 443.400 (7) and (9), shall be \$60.**

27 **(b) Defined in ORS 443.400 (8) and (10), shall be \$30.**

28 **(c) Defined in ORS 443.400 (5) with:**

29 **(A) One to 15 beds, shall be \$360.**

30 **(B) Sixteen to 49 beds, shall be \$520.**

31 **(C) Fifty to 99 beds, shall be \$1,040.**

32 **(D) One hundred to 150 beds, shall be \$1,340.**

33 **(E) More than 150 beds, shall be \$1,500.**

34 **SECTION 12.** ORS 443.430 is amended to read:

35 443.430. (1) [*No*] A license under ORS 443.415 is **not** transferable or applicable to any location,
36 residential facility or management other than that indicated on the application for licensure.

37 (2) **Except as provided in subsection (3) of this section,** all moneys collected under ORS
38 443.400 to 443.455 shall be deposited in a special account in the General Fund, and are appropriated
39 continuously for payment of expenses incurred by the Department of Human Services in the admin-
40 istration of ORS 443.400 to 443.455.

41 **(3) All moneys collected from a residential care facility under ORS 443.415, 443.425 or**
42 **443.455 shall be deposited in the Quality Care Fund established in section 1 of this 2008 Act.**

43 **SECTION 13.** ORS 443.455 is amended to read:

44 443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS
45 443.400 to 443.455 [*are considered to be long-term care facilities,*] **shall be** subject to ORS 441.705 to

1 441.745. [However,] The [Director] **Department** of Human Services shall exercise the powers con-
2 ferred under ORS 441.705 to 441.745.

3 (2) The [director] **department** shall by rule prescribe a schedule of penalties appropriate to
4 residential facilities licensed under ORS 443.400 to 443.455. **If the department determines that**
5 **there is reasonable cause to believe that abuse occurred at a residential facility and if the**
6 **abuse resulted in the death, serious injury, rape, sexual abuse or sexual exploitation of a**
7 **resident, the department shall impose a civil penalty of not less than \$2,500 for each vio-**
8 **lation. The department shall by rule define “serious injury,” “rape,” “sexual abuse” and**
9 **“sexual exploitation” for purposes of this subsection.**

10 **SECTION 14.** ORS 443.735 is amended to read:

11 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
12 made on forms provided by the Department of Human Services. Each application shall be accompa-
13 nied by a fee [of \$20 per bed requested for licensing] **established by the department by rule.**

14 (2) Upon receipt of an application and fee, the department shall conduct an investigation.

15 (3) The department shall not issue an initial license unless:

16 (a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the
17 rules of the department;

18 (b) The department has completed an inspection of the adult foster home;

19 (c) The department has completed a criminal records check under ORS 181.534 on the applicant
20 and any person, other than a resident, 16 years of age or older who will be residing in the adult
21 foster home. The criminal records check shall be conducted in accordance with rules adopted under
22 ORS 181.534;

23 (d) The department has checked the record of sanctions available, including the list of nursing
24 assistants who have been found responsible for abuse and whose names have been added to the
25 registry under ORS 441.678; and

26 (e) The applicant has demonstrated to the department the financial ability and resources nec-
27 essary to operate the adult foster home. The department shall adopt rules as the department deems
28 appropriate that establish the financial standards an applicant must meet to qualify for issuance of
29 a license and that protect financial information from public disclosure. The demonstration of finan-
30 cial ability under this paragraph shall include, but need not be limited to, providing the department
31 with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the de-
32 partment regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate
33 the financial ability and resources required by this paragraph, the department may require the ap-
34 plicant to furnish a financial guarantee as a condition of initial licensure.

35 (4) The department may not renew a license under this section unless:

36 (a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and
37 the rules of the department;

38 (b) The department has completed an inspection of the adult foster home;

39 (c) The department has completed a criminal records check under ORS 181.534 on the applicant
40 and any person, other than a resident, 16 years of age or older who will be residing in the adult
41 foster home. The criminal records check under this paragraph shall be conducted in accordance with
42 rules adopted under ORS 181.534; and

43 (d) The department has checked the record of sanctions available, including the list of nursing
44 assistants who have been found responsible for abuse and whose names have been added to the
45 registry under ORS 441.678.

1 (5)(a) In seeking an initial license and renewal of a license when an adult foster home has been
2 licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster
3 home to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

4 (b) In proceedings for renewal of a license when an adult foster home has been licensed for at
5 least 24 continuous months, the burden of proof shall be upon the department to establish noncom-
6 pliance with ORS 443.705 to 443.825 and the rules of the department.

7 (6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of
8 the department, are substantially related to the qualifications, functions or duties of a provider,
9 resident manager, substitute caregiver or other household member of an adult foster home shall be
10 prohibited from operating, working in or residing in an adult foster home.

11 (b) The department shall adopt rules that distinguish the criminal convictions and types of abuse
12 that permanently prohibit a person from operating, working in or living in an adult foster home from
13 the convictions and types of abuse that do not permanently prohibit the person from operating,
14 working in or living in an adult foster home.

15 (c) A provider may not hire, retain in employment or allow to live in an adult foster home, other
16 than as a resident, any person who the provider knows has been convicted of a disqualifying crime
17 or has been found responsible for a disqualifying type of abuse.

18 (7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner
19 revoked. Each license shall state the name of the resident manager of the adult foster home, the
20 names of all providers who own the adult foster home, the address of the premises to which the li-
21 cense applies, the maximum number of residents and the classification of the home. If, during the
22 period covered by the license, a resident manager changes, the provider must within 15 days request
23 modification of the license. The request must be accompanied by a fee of \$10.

24 (8) No license under ORS 443.725 is transferable or applicable to any location, persons operating
25 the adult foster home or the person owning the adult foster home other than that indicated on the
26 application for licensing.

27 (9) The department shall not issue a license to operate an additional adult foster home to a
28 provider unless the provider has demonstrated the qualifications and capacity to operate the pro-
29 vider's existing licensed home or homes and has demonstrated the ability to provide care to the
30 residents of those homes that is adequate and substantially free from abuse and neglect.

31 (10)(a) All moneys collected under ORS 443.725 to 443.780 **from adult foster homes that are**
32 **licensed to serve persons with mental, emotional or behavioral disturbances or alcohol or**
33 **drug dependence** shall be deposited in a special account in the General Fund, and are appropriated
34 continuously for payment of expenses incurred by the Department of Human Services.

35 **(b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed**
36 **to serve persons who are socially dependent, have physical disabilities or have developmental**
37 **disabilities shall be deposited in the Quality Care Fund established in section 1 of this 2008**
38 **Act.**

39 (11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the depart-
40 ment may issue a 60-day provisional license to a qualified person if the department determines that
41 an emergency situation exists after being notified that the licensed provider of an adult foster home
42 is no longer overseeing operation of the adult foster home.

43 **SECTION 15.** ORS 443.740 is amended to read:

44 443.740. (1) The Department of Human Services shall maintain current information on all li-
45 censed adult foster homes and shall make that information available to prospective residents and

1 other interested members of the public at local department offices or area agencies on aging li-
2 censing offices throughout the state.

3 (2) The information shall include:

4 (a) The location of the adult foster home;

5 (b) A brief description of the physical characteristics of the home;

6 (c) The name and mailing address of the provider;

7 (d) The license classification of the home and the date the provider was first licensed to operate
8 that home;

9 (e) The date of the last inspection, the name and telephone number of the office that performed
10 the inspection and a summary of the findings;

11 (f) Copies of all complaint investigations involving the home, together with the findings of the
12 department, the actions taken by the department and the outcome of the complaint investigation;

13 (g) An explanation of the terms used in the investigation report;

14 (h) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other
15 actions taken by the department involving the home; and

16 (i) Whether care is provided primarily by the licensed provider, a resident manager or other
17 arrangement.

18 (3) Any list of adult foster homes maintained or distributed by the department or a local li-
19 censing office shall include notification to the reader of the availability of public records concerning
20 the homes, **including but not limited to the database described in section 2 of this 2008 Act.**

21 **SECTION 16.** ORS 443.775 is amended to read:

22 443.775. (1) The Department of Human Services shall adopt rules governing adult foster homes
23 and the level of care provided in such homes, including the provision of care to more than one
24 person with nursing care needs under specified conditions and department approval, such as are
25 necessary to protect the health, safety or welfare of the residents and to provide for an appropriate
26 continuum of care, but shall not be inconsistent with the residential nature of the living accommo-
27 dations and the family atmosphere of the home. The rules shall be consistent with rules adopted by
28 the Oregon State Board of Nursing under ORS 678.150 (9).

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

33 (b) The department, and the counties acting under the exemption granted pursuant to ORS
34 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions
35 granted during the quarter pursuant to paragraph (a) of this subsection.

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

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

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

44 (5) The department shall make rules to [assure] **ensure** that any employee who makes a com-
45 plaint pursuant to ORS 443.755 shall be protected from retaliation.

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

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

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

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

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

13 (9) The department shall establish by rule the maximum capacity of adult foster homes, including
14 all nonrelated and related persons receiving residential care and day care.

15 (10) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted there-
16 under may be subjected to the imposition of a civil penalty, to be fixed by the [director] **department**
17 by rule. [*not to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated*
18 *abuse, a maximum of \$1,000.*] **If the department determines that there is reasonable cause to**
19 **believe that abuse occurred in an adult foster home and if the abuse resulted in the death,**
20 **serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall**
21 **impose a civil penalty of not less than \$2,500 for each violation. The department shall by rule**
22 **define “serious injury,” “rape,” “sexual abuse” and “sexual exploitation” for purposes of this**
23 **subsection.**

24 (11) **All penalties recovered pursuant to this section shall be deposited in the Quality Care**
25 **Fund established in section 1 of this 2008 Act.**

26 **SECTION 17.** ORS 443.790 is amended to read:

27 443.790. (1) In addition to any other liability or penalty provided by law, the Director of Human
28 Services may impose a civil penalty on a person for any of the following:

29 (a) Violation of any of the terms or conditions of a license issued under ORS 443.735.

30 (b) Violation of any rule or general order of the Department of Human Services that pertains
31 to a facility.

32 (c) Violation of any final order of the director that pertains specifically to the facility owned
33 or operated by the person incurring the penalty.

34 (d) Violation of ORS 443.745 or of rules required to be adopted under ORS 443.775.

35 (2) The director shall impose a civil penalty of not to exceed \$500, **unless otherwise required**
36 **by law**, on any adult foster home for falsifying resident or facility records or causing another to do
37 so.

38 (3) The director shall impose a civil penalty of \$250 on a provider who violates ORS 443.725 (3).

39 (4) The director shall impose a civil penalty of not less than \$250 nor more than \$500, **unless**
40 **otherwise required by law**, on a provider who admits a resident knowing that the resident’s care
41 needs exceed the license classification of the provider if the admission places the resident or other
42 residents at grave risk of harm.

43 (5)(a) In every case other than those involving the health, safety or welfare of a resident, the
44 director shall prescribe a reasonable time for elimination of a violation but except as provided in
45 paragraph (b) of this subsection shall not prescribe a period to exceed 30 days after notice of the

1 violation.

2 (b) The director may approve a reasonable amount of time in excess of 30 days if correction of
3 the violation within 30 days is determined to be impossible.

4 (6) In imposing a civil penalty, the director shall consider the following factors:

5 (a) The past history of the person incurring a penalty in taking all feasible steps or procedures
6 necessary or appropriate to correct any violation.

7 (b) Any prior violations of statutes, rules or orders pertaining to facilities.

8 (c) The economic and financial conditions of the person incurring the penalty.

9 (d) The immediacy and extent to which the violation threatens or threatened the health, safety
10 or welfare of one or more residents.

11 (7) The department shall adopt rules establishing objective criteria for the imposition and
12 amount of civil penalties under this section.

13 **SECTION 18.** ORS 443.825 is amended to read:

14 443.825. All penalties recovered under ORS 443.790 to 443.815 shall be [*paid into the State*
15 *Treasury and credited to the General Fund and are available for general governmental expenses*] **de-**
16 **posited in the Quality Care Fund established in section 1 of this 2008 Act.**

17 **SECTION 19.** **Except as provided in section 20 of this 2008 Act, sections 1 to 4 of this 2008**
18 **Act and the amendments to statutes by sections 5 to 18 of this 2008 Act become operative**
19 **on July 1, 2008.**

20 **SECTION 20.** **The Director of Human Services may take any action before the operative**
21 **date specified in section 19 of this 2008 Act that is necessary to enable the Department of**
22 **Human Services to carry out, on and after the operative date specified in section 19 of this**
23 **2008 Act, the provisions of sections 1 to 4 of this 2008 Act and the amendments to statutes**
24 **by sections 5 to 18 of this 2008 Act.**

25 **SECTION 21.** **This 2008 Act being necessary for the immediate preservation of the public**
26 **peace, health and safety, an emergency is declared to exist, and this 2008 Act takes effect**
27 **on its passage.**

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