

HOUSE AMENDMENTS TO HOUSE BILL 3617

By COMMITTEE ON HUMAN SERVICES AND WOMEN'S WELLNESS

February 12

1 On page 1 of the printed bill, line 2, delete "430.757," and after "441.020," insert "441.715,".

2 In line 3, before "443.415," insert "441.995," and after "443.775" insert ", 443.790".

3 In line 9, delete "purpose of providing technical assistance and ensuring" and insert "purposes
4 of training, technical assistance, quality improvement initiatives and licensing activities to
5 ensure".

6 Delete line 17 and insert "containing records of all substantiated complaints of abuse and all
7 violations of quality care standards, adopted by the department by rule, occurring on or after Jan-
8 uary 1, 2003, in a facility. The database may not include individuals' Social Security numbers, ad-
9 dresses or dates of birth. The database shall be known as the Database of Quality Care
10 Violations."

11 In line 21, after "abuse" insert "or to have violated a quality care standard".

12 After line 21, insert:

13 "(3) The names of persons described in subsection (2) of this section shall be permanently
14 maintained in the database. The name of an adult foster home provider or facility employee may be
15 removed from the database after five consecutive years without a substantiated complaint of abuse
16 or violation of a quality care standard. The department shall remove the name of the provider or
17 employee within 14 days of receipt of a written request if the requirements for removal are met."

18 In line 22, delete "(3)" and insert "(4)".

19 On page 2, line 2, delete "(4)" and insert "(5)".

20 Delete line 3 and insert:

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

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

23 "(B) Any physical injury to an adult that is caused by other than accidental means, or that ap-
24 pears to be at variance with the explanation given for the injury.

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

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

29 "(E) Neglect that leads to physical harm to an adult through the withholding of services nec-
30 essary to maintain health and well-being. For purposes of this subparagraph, 'neglect' does not in-
31 clude a failure of the state or a community program, as defined in ORS 430.735, to provide services
32 due to a lack of funding available to provide the services.

33 "(b) 'Adult' means a person 18 years of age or older with a developmental disability who is
34 currently receiving services from a facility or community program, as defined in ORS 430.735, or
35 was previously determined eligible for services as an adult by a facility or community program."

1 In line 4, delete “(b)” and insert “(c)”.

2 In line 5, after “including” delete the rest of the line and line 6 and insert “an assisted living
3 facility but excluding a residential treatment facility as defined in ORS 443.400 (9) or a residential
4 treatment home as defined in ORS 443.400 (10); or”.

5 In line 9, delete “(3)” and insert “(4)”.

6 In line 12, after “fees” delete the rest of the line and line 13 and insert “and civil penalties es-
7 tablished by rule pursuant to ORS 441.995, 443.455, 443.735 and 443.790.”.

8 Delete line 45.

9 On page 3, delete lines 1 through 6.

10 In line 7, delete “7” and insert “6”.

11 In line 24, restore the bracketed material.

12 Delete line 31 and insert:

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

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

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

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

17 “(e) More than 150 beds, the annual license fee shall be \$750.”.

18 On page 4, after line 4, insert:

19 “**SECTION 7.** ORS 441.715 is amended to read:

20 “441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objec-
21 tive criteria for establishing the civil penalty that may be imposed under ORS 441.710. However, the
22 civil penalty may not exceed \$500 for each violation, except as otherwise provided in [*ORS 441.637*
23 *and 441.995*] **this subsection and ORS 441.995 or as otherwise required by federal law.**

24 “(b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for
25 any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation
26 involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under
27 ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed
28 \$500 per day **or as otherwise required by federal law.**

29 “(c) **If the Department of Human Services determines that there is reasonable cause to**
30 **believe that abuse occurred in a long term care facility and if the abuse resulted in the death,**
31 **serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall**
32 **impose a civil penalty of not less than \$2,500 for each violation. The department shall by rule**
33 **define ‘serious injury,’ ‘rape,’ ‘sexual abuse’ and ‘sexual exploitation’ for the purposes of this**
34 **paragraph.**

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

38 In lines 13 and 14, delete the boldfaced material.

39 After line 14, insert:

40 “(2) The fee under subsection (1) of this section for facilities:

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

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

43 “(c) Defined in ORS 443.400 (5) with:

44 “(A) One to 15 beds, shall be \$360.

45 “(B) Sixteen to 49 beds, shall be \$520.

1 “(C) Fifty to 99 beds, shall be \$1,040.
2 “(D) One hundred to 150 beds, shall be \$1,340.
3 “(E) More than 150 beds, shall be \$1,500.”
4 In line 15, delete “(2)” and insert “(3)”.
5 After line 20, insert:
6 “**SECTION 10.** ORS 441.995 is amended to read:
7 “441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of
8 ORS 441.630 to 441.680, the Department of Human Services shall consider:
9 “(a) Any prior violations of laws or rules pertaining to facilities;
10 “(b) The financial benefits, if any, realized by the facility as a result of the violation;
11 “(c) The gravity of the violation, including the actual or potential threat to the health, safety
12 and well-being of one or more residents;
13 “(d) The severity of the actual or potential harm caused by the violation; and
14 “(e) The facility’s past history of correcting violations and preventing the recurrence of vio-
15 lations.
16 “(2) The department may impose a civil penalty for abuse in accordance with rules adopted un-
17 der ORS 441.637 (1). [*Facilities assessed civil penalties for abuse shall be entitled to a contested case*
18 *hearing under ORS chapter 183.*]
19 “(3) If the department finds the facility is responsible for abuse and if the abuse resulted in a
20 resident’s death or serious injury, the department shall impose a civil penalty of not less than \$500
21 nor more than \$1,000 for each violation, or as otherwise required by federal law, **ORS 441.715 (1)(c),**
22 **443.455 or 443.775.**
23 “(4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the
24 department’s authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations
25 that do not constitute abuse.
26 “**(5) Facilities assessed civil penalties shall be entitled to a contested case hearing under**
27 **ORS chapter 183.**”
28 In line 21, delete “10” and insert “11”.
29 In line 31, delete the boldfaced material.
30 After line 37, insert:
31 “(3) The biennial fee under subsection (2) of this section for facilities:
32 “(a) Defined in ORS 443.400 (7) and (9), shall be \$60.
33 “(b) Defined in ORS 443.400 (8) and (10), shall be \$30.
34 “(c) Defined in ORS 443.400 (5) with:
35 “(A) One to 15 beds, shall be \$360.
36 “(B) Sixteen to 49 beds, shall be \$520.
37 “(C) Fifty to 99 beds, shall be \$1,040.
38 “(D) One hundred to 150 beds, shall be \$1,340.
39 “(E) More than 150 beds, shall be \$1,500.”
40 In line 38, delete “11” and insert “12”.
41 In line 41, after “(2)” insert “Except as provided in subsection (3) of this section,” and restore
42 the bracketed material.
43 In line 42, restore the bracketed material.
44 In line 43, restore the bracketed material and after “443.455” insert “.
45 “(3) All moneys collected from a residential care facility under ORS 443.415, 443.425 or 443.455

1 shall be deposited in”.

2 In line 45, delete “12” and insert “13”.

3 On page 5, line 9, delete “\$_____” and insert “\$2,500”.

4 In line 12, delete “13” and insert “14”.

5 On page 6, line 33, after “(10)” insert “(a)” and after “443.780” insert “from adult foster homes
6 that are licensed to serve persons with mental, emotional or behavioral disturbances or alcohol or
7 drug dependence” and restore the bracketed material.

8 In line 34, restore the bracketed material.

9 In line 35, restore the bracketed material and before “the” insert “.

10 “(b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve
11 persons who are socially dependent, have physical disabilities or have developmental disabilities,
12 shall be deposited in”.

13 In line 40, delete “14” and insert “15”.

14 On page 7, line 18, delete “15” and insert “16”.

15 On page 8, line 18, delete “\$_____” and insert “\$2,500”.

16 After line 22, insert:

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

18 “443.790. (1) In addition to any other liability or penalty provided by law, the Director of Human
19 Services may impose a civil penalty on a person for any of the following:

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

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

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

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

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

29 “(3) The director shall impose a civil penalty of \$250 on a provider who violates ORS 443.725
30 (3).

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

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

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

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

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

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

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

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

3 “(7) The department shall adopt rules establishing objective criteria for the imposition and
4 amount of civil penalties under this section.”.

5 In line 23, delete “16” and insert “18”.

6 In line 27, delete “17” and insert “19” and delete “18” and insert “20”.

7 In line 28, delete “16” and insert “18”.

8 In line 30, delete “18” and insert “20”.

9 In line 31, delete “17” and insert “19”.

10 In line 32, delete “17” and insert “19”.

11 In line 34, delete “16” and insert “18”.

12 In line 35, delete “19” and insert “21”.

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