

2009 Regular Legislative Session
FISCAL ANALYSIS OF PROPOSED LEGISLATION
Prepared by the Oregon Legislative Fiscal Office

MEASURE NUMBER: HB 2442

STATUS: A Engrossed

SUBJECT: Establishes Quality Care Fund. Continuously appropriates moneys in fund to Department of Human Services (DHS) for the purposes of establishing and maintaining the Consumer Information Database for Developmental Disability Services. Authorizes DHS to establish licensing fees for adult foster homes. Modifies licensing fees for residential facilities.

GOVERNMENT UNIT AFFECTED: The Department of Human Services, Oregon Judicial Department, Oregon Public Defense Services Commission, District Attorney in each county

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DATE: April 14, 2009

	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES – Department of Human Services		
General Funds		
Personal Services (Licensing and Investigations)	\$ 159,532	\$ 203,079
Personal Services (Database)	\$ 84,461	\$ 326,288
Services & Supplies (Database Hosting/Storage)	\$ 11,520	\$ 46,080
Total General Fund	\$ 255,513	\$ 575,447
Other Funds		
Personal Services (Licensing and Investigations)	\$ -0-	\$ -0-
Personal Services (Database)	\$ 263,812	\$ -0-
Services & Supplies (Database Hosting/Storage)	\$ 105,299	\$ -0-
Total Other Funds	\$ 369,111	\$ -0-
Total Funds		
Personal Services (Licensing and Investigations)	\$ 159,532	\$ 203,079
Personal Services (Database)	\$ 348,273	\$ 326,288
Services & Supplies (Database Hosting/Storage)	\$ 116,819	\$ 46,080
Total Funds	\$ 624,624	\$ 575,447

EXPENDITURES -- Other Agencies – see comments below.

	<u>2009-2011</u>	<u>2011-2013</u>
REVENUES – Department of Human Services:		
Civil Penalty Reversion to Other Fund – General Fund	\$ (143,500)	\$ (143,500)
Civil Penalty Revenue – Other Funds	\$ 143,500	\$ 143,500
Care Facility License Fees – Other Funds	\$ 301,925	\$ 301,925

	<u>2009-2011</u>	<u>2011-2013</u>
POSITIONS / FTE – Department of Human Services		
Database		
Information Systems Specialist 8 (Permanent Full-Time)	1/0.64	1/1.00
Information Systems Specialist 8 (Limited Duration)	2/0.33	-0-
Information Systems Specialist 7 (Limited Duration)	1/0.21	-0-
Operations and Policy Analyst 3 (Permanent Full Time)	1/0.64	1/1.00
Operations and Policy Analyst 2 (Limited Duration)	2/0.33	-0-
Investigations and Training		
Compliance Specialist 3 (Permanent Full-Time)	1/0.75	1/1.00
Office Specialist 2 (Permanent Part-Time)	1/0.38	1/0.50
Total	9/3.28	4/3.50

EFFECTIVE DATE: On Passage

LOCAL GOVERNMENT MANDATE: This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

ANALYSIS: House Bill 2442 establishes the Quality Care Fund and continuously appropriates moneys in the fund to the Department of Human Services (DHS) for the creation of the Consumer Information Database for Developmental Disability Services (CIDDDS) and for training, technical assistance, quality improvement initiatives and licensing activities to meet high standards for quality of care in accordance with rules adopted by DHS. The bill modifies definitions regarding abuse as well as notification, reporting and investigation procedures for DHS and law enforcement agencies.

DHS – Quality Care Fund

This bill establishes the Quality Care Fund operative January 1, 2010. The Quality Care Fund would consist of interest earned by the fund, licensing fees and civil penalties collected from long-term care facilities, residential facilities and adult foster homes. Historically, moneys collected as state civil penalties have been directed to the General Fund. This bill channels these funds to the Quality Care Fund resulting in an increase in Other Funds but a decrease in General Fund revenue.

DHS – Consumer Information Database for Developmental Disability Services

This measure requires DHS to create the Consumer Information Database for Developmental Disability Services to be operative January 1, 2011. This database must be a dynamic (live and updatable), searchable, Internet-based website that lists residential facilities, including assisted living facilities and adult foster homes, and makes available to the public information on substantiated complaints of abuse against the facilities which have occurred on or after July 1, 2003. Each record must contain a narrative description of the abuse written in a manner that can be easily understood by the general public. The database must not include personally identifiable information. The provisions of the database require staffing to develop and maintain the database as well as software/hardware and associated State Data Center server hosting and data storage costs. DHS anticipates establishing one permanent full-time ISS8 position in the Administrative Services Division, and one permanent full time Operations and Policy Analyst 3 position in the Seniors and People with Disabilities Division to be responsible for coordinating the development efforts and on-going maintenance of the database. The remainder of the database staffing will be achieved through contracts and short-term, limited duration positions. The total cost of the database is estimated at \$465,092 (\$95,981 General Funds and \$369,111 Other Funds) for the 2009-11 biennium.

The Legislative Fiscal Office notes that the fiscal analysis for the Consumer Information Database for Developmental Disability Services serve as a high-level preliminary estimate. If this bill passes, DHS will have to complete more thorough option analyses, feasibility studies and quality business cases with associated revised cost estimates for this proposed information technology project.

DHS anticipates using Other Funds to pay some of the costs needed to develop the database during the 2009-11 biennium. However, its fiscal impact assumes that once the development phase is completed, ongoing maintenance of the database and related staffing will be supported with General Fund. This assumes that Other Funds revenue from the Quality Care Fund will be dedicated, beginning in the 2011-13 biennium, to the training, technical assistance, quality improvement initiatives and licensing activities authorized, but not mandated, by the bill. The Governor's 2009-11 recommended budget had proposed such an initiative to be funded by the increased fees and civil penalties included in this bill. The Legislative Fiscal Office notes that funding for the database and other activities for the 2011-13 biennium would be subject to legislative review in 2011.

DHS – Notification, Reporting and Investigation Requirements

Operative September 1, 2010, facilities must inform clients upon admission of the existence of the Consumer Information Database for Developmental Disability Services database. This notice must include how to access the database as well as how, when and where to report suspected abuse. No later than March 1, 2011, facilities must provide notification of the database to all residents, case managers and guardians. This notification will be done either via an informational pamphlet or letter.

The bill directs DHS to complete a criminal records check on employees of a residential facility, adult foster home, in-home care agency or home health agency, and on any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of home health and facility care. This is current practice for the department.

Operative January 1, 2010, DHS must report to the regular session of the Legislative Assembly on the safety of individuals receiving developmental disability services regarding training provided, core competencies, turnover rates, and average wages of direct care workers in service settings. Additional information required in the reports to the regular session of the Legislative Assembly includes: the number of abuse complaints filed and received by DHS reported by the type of allegation; number of direct care workers in service settings who were subject to criminal and civil action involving an individual with developmental disabilities; number of deaths, serious injuries, assaults that have occurred in service settings; and a schedule of all license fees and civil penalties established by rule.

DHS must notify a facility immediately if abuse is found. The facility must notify, in writing, the abuse findings to the reported perpetrator, residents of the facility, the resident's case managers and resident's guardians. In addition, the facility must include in its application for employment, an inquiry of whether the applicant has been found to have committed abuse.

Under current law, when a report is required under the Elderly Person and Persons with Disabilities Abuse Prevention Act, an oral report must be made immediately by telephone or otherwise to the local office of DHS or to a law enforcement agency within the county where the person making the report is at the time of contact. HB 2442 requires that if the report is made to DHS or a designee, the department or designee shall immediately notify the law enforcement agency having jurisdiction in the county where the report was made. The law enforcement agency shall confirm to DHS or a designee its receipt of the notification within two days.

HB 2442 requires DHS or a designee to conduct investigations and make the findings required by Oregon Revised Statutes 430.735 to 430.765. DHS must prescribe rules, policies and procedures to ensure investigations are conducted in a uniform, objective and thorough manner in every county. Changes to current statutes include: limiting duties of investigators to conducting and reporting investigations of abuse; establishment of investigator caseloads based upon the most appropriate investigator-to-complaint ratios; minimum qualifications for investigators that include successful completion of training in identified competencies; procedures for screening and investigation of complaints, uniform standards for reporting investigation results; separation of duties for case managers and investigations; monitoring investigations conducted by the department's designee and reporting of any violation of rules.

In order to comply with these modified notification, reporting and investigation requirements, DHS anticipates establishing two permanent positions in the Administrative Services Division Office of Investigations and Training (1.13 FTE and \$159,532 General Fund for the 2009-11 biennium).

DHS – Licensing, Fees and Civil Penalties

HB 2442 adjusts fees and fee schedules for adult foster homes, residential care and assisted living facilities. Licenses now assessed on an annual basis will move to a two-year renewal beginning January 1, 2010. DHS anticipates the adjusted fees and fee schedules will increase Other Funds by \$301,925.

This bill establishes a \$2,500 civil penalty for specified types of abuse occurring in long term care facilities or residential facilities. If DHS determines that there is a reasonable cause to believe that abuse occurred in a long-term care facility and if the abuse resulted in the death, serious injury, rape, sexual abuse or a negative outcome for a resident, DHS is required to impose a civil penalty of not less than \$2,500 for each violation, up to \$15,000 in any 90 day period. Serious injury, rape, sexual abuse and a negative outcome are defined. Revenue from the civil penalties will be deposited into the Quality Care Fund. The \$143,500 estimated civil penalty amount is based on figures from the last full biennial period, the 2005-07 biennium. Historically, moneys collected as state civil penalties have been reverted back to the General Fund. This bill channels these funds to the Quality Care Fund resulting in an increase in Other Funds but a decrease in General Fund revenues.

Public Defense Services Commission

The Public Defense Services Commission reports that if this bill passes, the fiscal impact to the Office of Public Defense Services (OPDS) is indeterminate but minimal assuming that increased reporting requirements may increase the number of abuse and violations of restraining order charges filed.

The Oregon Judicial Department

The Oregon Judicial Department (OJD) states that passage of this measure would have an indeterminate fiscal impact on the Department. This measure's broadening of definitions and modification of investigatory process may increase the following OJD activities: [1] civil actions and filings in the circuit courts [2] imposition of civil penalties [3] appeals of the imposition of penalties [4] criminal caseload related to the Elderly and Disabled Persons Abuse Prevention Act (EDPAPA) [5] debt collection [6] judgment enforcement. In addition, there may be costs related to confidentiality issues with respect to the Consumer Information Database for Developmental Disability Services.

District Attorneys

HB 2442 will have a fiscal impact on the district attorney in each county. Operative January 1, 2010 and sunseting January 2, 2015, this measure requires the district attorney in each county to develop multidisciplinary teams to develop a written protocol for investigation, notification and interviewing. Each team is required to develop written agreements signed by member agencies specifying the role of each agency. In addition, each team is required to have access to training in risk assessment, dynamics of abuse and legally sound interview and investigatory techniques. Each multidisciplinary team must submit an annual report with detailed statistics of allegations of abuse for the preceding 12 months to the Department of Justice and the Oregon Criminal Justice Commission. The bill does not specify what the Department of Justice and the Oregon Criminal Justice Commission must do with the reports submitted. The bill also stipulates notification requirements for district attorneys. District attorneys will need an indeterminate amount of resources for forming their multidisciplinary teams and providing training as well as establishing information tracking systems so they can meet the reporting requirements of the bill. Since the State generally only pays for the salaries of the 36 District Attorneys, it is assumed that county funding will have to cover these costs.