

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

MEASURE NUMBER: HB 2442

STATUS: B-Engrossed

SUBJECT: Establishes Quality Care Fund. Continuously appropriates moneys in fund to Department of Human Services (DHS) for training, technical assistance, quality improvement initiatives and licensing activities to ensure high standards for quality of care. 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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	<u>2009-2011</u>	<u>2011-2013</u>
EXPENDITURES – Department of Human Services		
Other Funds (Fees and Civil Penalties)		
Personal Services	\$ 172,370	\$ 252,964
Services & Supplies	\$ 129,567	\$ 39,069
Total Other Funds	\$ 301,937	\$ 292,033
Federal Funds (Federal Medicaid Match)		
Personal Services	\$ 172,363	\$ 250,932
Services & Supplies	\$ 129,551	\$ 39,057
Total Federal Funds	\$ 301,914	\$ 289,989
Total Funds		
Personal Services	\$ 344,733	\$ 503,896
Services & Supplies	\$ 259,118	\$ 78,126
Total Funds	\$ 603,851	\$ 582,022

EXPENDITURES -- Other Agencies – See Analysis Section

REVENUES – Department of Human Services:

Other Funds (Fees and Civil Penalties)	\$ 551,925	\$ 551,925
Other Funds (transfer to General Fund)*	\$ (150,000)	\$ -0-
General Fund (net of transfer from Other Funds)*	\$ -0-	\$ (150,000)
Federal Funds (Federal Medicaid Match)	\$ 301,925	\$ 289,989

POSITIONS / FTE – Department of Human Services

Investigations and Training Corrective Action Staff	4/3.00	4/4.00
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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 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, Licensing, Fees and Civil Penalties

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.

This measure 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 \$250,000 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. The bill specifies that DHS transfer \$150,000 from the Quality Care Fund to the General Fund for general governmental expenses on June 30, 2011, so the net General Fund impact for 2009-11 is expected to be zero. The \$150,000 is the estimated amount of civil penalties that would have been collected under current law. However, the bill does not provide for ongoing transfers.

DHS – Notification, Reporting and Investigation Requirements

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.

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.

DHS must notify a facility 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 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 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.

In order to comply with these modified notification, reporting and investigation requirements, DHS anticipates establishing four permanent positions (3.00 FTE and \$344,733 Personal Services Total Funds and \$259,118 Services & Supplies for the 2009-11 biennium). These resources will be allocated to the enhancement and maintenance of the long-term care facility licensing and regulatory activities, as well as to provide training and technical assistance to providers and staff.

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.

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.