

House Bill 2138

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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**.

Prescribes new requirements for registration of continuing care retirement communities. Adds reporting requirements for initial and annual disclosure statements. Establishes rights of residents and obligations of providers of continuing care retirement communities.

A BILL FOR AN ACT

1
2 Relating to continuing care retirement communities; creating new provisions; and amending ORS
3 101.020, 101.030, 101.050, 101.055, 101.060, 101.070, 101.080, 101.090, 101.110 and 101.130.

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

5 **SECTION 1.** ORS 101.020 is amended to read:

6 101.020. As used in this chapter:

7 (1) **"Affiliated organization" means any profit or not-for-profit corporation, limited li-**
8 **ability company, partnership, sole proprietorship, sponsoring entity or other form of legal**
9 **entity:**

10 (a) **That is the lessor of the real property on which the facilities of the provider are sit-**
11 **uated;**

12 (b) **That a provider has identified in its disclosure statement pursuant to ORS 101.050**
13 **(1)(e); or**

14 (c) **In which any director or executive officer of a provider or of any manager of a pro-**
15 **vider has an equity or debtor financial interest in excess of \$10,000.**

16 (2) **"Applicant" means a provider that has submitted an application and disclosure**
17 **statement to register as a continuing care retirement community.**

18 [(1)] (3) **"Application fee" means a fee charged to an individual or individuals, prior to execution**
19 **of a residency agreement, apart from an entrance fee.**

20 [(2)] (4) **"Audited financial statement" means a provider's financial statement that has been**
21 **prepared in accordance with generally accepted accounting principles and that has been audited by**
22 **an independent certified public accountant in accordance with generally accepted auditing standards**
23 **and includes notes to the financial statement that state whether or not the **continuing care re-****
24 **tirement community is in compliance with its reserve requirements.**

25 [(3)] (5) **"Closed [*system*] bed long term care facility" means a **licensed** long term care facility**
26 **in a continuing care retirement community that is used exclusively by [*the continuing care retirement***
27 **community's residents.] **individuals receiving long term care services under a residency agree-****
28 **ment.**

29 [(4)] (6) **"Continuing care" means directly furnishing or indirectly making available, upon pay-**
30 **ment of an entrance fee and under a residency agreement, housing and health related services[, *in-***

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 *cluding nursing or assistance with activities of daily living,]* for a period greater than one year to an
 2 individual not related by blood or marriage to the continuing care retirement community provider
 3 that is furnishing care[, *whether provided in the community or in another setting designated by the*
 4 *residency agreement*].

5 [(5)] (7) “Continuing care retirement community” or [*“community”*] “**CCRC**” means any provider
 6 that **is registered with the Department of Human Services and** agrees to furnish continuing care
 7 to a resident under a residency agreement.

8 [(6) *“Department” means the Department of Human Services.*]

9 [(7)] (8) “Entrance fee” means an initial or deferred transfer to a provider of a sum of money
 10 or other property made or promised to be made as full or partial consideration for acceptance of
 11 one or more residents in a **continuing care retirement** community. A fee that is less than the sum
 12 of the regular periodic charges for one year of residency is not an entrance fee.

13 (9) **“Health related services” includes, but is not limited to, nursing care, assistance with**
 14 **activities of daily living, long term care and rehabilitative services.**

15 [(8)] (10) “Living unit” means a room, apartment, cottage or other area set aside for the exclu-
 16 sive use of the resident.

17 [(9)] (11) “Manager” means a person, corporation, partnership, association or other legal entity
 18 that enters into a contractual arrangement with the provider to manage the continuing care retire-
 19 ment community. However, “manager” does not include individuals employed by the provider or
 20 corporations affiliated with the provider or other legal entities within the provider’s supervision or
 21 control.

22 [(10)] (12) “New continuing care retirement community” [*or “new community”*] means a [*commu-*
 23 *nity established*] **continuing care retirement community registered** by a provider on or after
 24 January 1, 1990. [*“New community”*] **“New continuing care retirement community”** does not
 25 mean the remodeling or expansion of an existing continuing care retirement community’s facility on
 26 the same or an adjacent site.

27 [(11)] (13) “Omit a material fact” means the failure to state a material fact required to be stated
 28 in any disclosure statement or registration.

29 (14) **“Open bed long term care facility” means a licensed long term care facility in a**
 30 **continuing care retirement community that admits persons who have not signed a residency**
 31 **agreement or have not paid an entrance fee.**

32 [(12)] (15) “Provider” means an owner or operator, whether a natural person, partnership, trust,
 33 limited liability company, corporation or unincorporated association, however organized, of a new
 34 or existing continuing care retirement community, whether operated for profit or not, that provides,
 35 plans to provide or agrees to provide continuing care [*for an entrance fee.*] **to one or more unre-**
 36 **lated residents under a residency agreement.**

37 (16) **“Regular periodic charges” means basic monthly fees charged to a resident on an**
 38 **ongoing basis.**

39 [(13)] (17) “Residency agreement” means [*the*] **a contract** [*or contracts*] between a provider and
 40 a resident for the provision of continuing care **for a period greater than one year.**

41 [(14)] (18) “Resident” means a person who enters into a residency agreement with a provider
 42 or who is designated in a residency agreement to be a person being provided with continuing care
 43 [*in a community*].

44 (19) **“Residents’ council” means a body of residents of a continuing care retirement**
 45 **community who are elected by the residents and recognized by the provider as representing**

1 **the interests of the residents.**

2 [(15)] (20) "Solicit" means all actions of a provider in seeking to have individuals pay an appli-
3 cation fee or enter into a residency agreement by any means including, without limitation, personal,
4 telephone, mail or any media distributed or communicated by any means.

5 **SECTION 2.** ORS 101.030 is amended to read:

6 101.030. (1) A **new continuing care retirement community** provider shall register with the
7 Department of Human Services before the provider:

8 (a) Enters into a residency agreement with a nonresident;

9 [(b) Extends the terms of a resident's existing residency agreement; or]

10 [(c)] (b) Solicits either a **prospective** resident or nonresident to pay an application fee or exe-
11 cute a residency agreement; **or**

12 (c) **Collects an entrance fee.**

13 (2) The provider shall apply for registration with the department on forms prescribed by the
14 department. The application shall include a disclosure statement as described in ORS 101.050. **The**
15 **disclosure statement must include an explanation, in boldfaced type, whether and in what**
16 **manner and amount entrance fees are refunded to prospective residents in the event a pro-**
17 **spective resident withdraws from the residency agreement prior to occupancy.**

18 (3) Within 10 business days after receipt of the **completed** application for registration [*from*]
19 **of** a new continuing care retirement community, the department shall issue a notice of filing to the
20 [*provider*] applicant. Within 60 days of the notice of filing, the department shall enter an order reg-
21 istering the provider or rejecting the registration. If no order of rejection is entered within 60 days
22 from the date of notice of filing, the provider shall be considered registered unless the provider [*has*
23 *consented*] **and the department agree** in writing to an extension of time. If no order of rejection
24 is entered within the time period as so extended, the provider shall be considered registered.

25 (4) If the department determines that the requirements of ORS 101.050, **101.060, 101.070 and**
26 **101.090** [*and 101.130*] have been met, it shall enter an order registering the provider. If the depart-
27 ment determines that any of the requirements of ORS 101.050, **101.060, 101.070 or 101.090** [*and*
28 *101.130*] have not been met, the department shall notify the applicant that the application for reg-
29 istration must be corrected within 30 days in such particulars as are designated by the department.
30 If the requirements are not met within the time allowed, the department may enter an order re-
31 jecting the registration. The order shall include the findings of fact upon which the order is based
32 and which shall not become effective until 20 days after the end of the foregoing 30-day period.
33 During the 20-day period, the applicant may petition for reconsideration and shall be entitled to a
34 hearing. An order of rejection shall not take effect, in any event, until such time as the hearing,
35 once requested, has been given to the applicant and a decision is rendered by the administrative law
36 judge that sustains the department's decision to reject the registration.

37 **SECTION 3.** ORS 101.050 is amended to read:

38 101.050. (1) After entry of an order registering the provider and before the provider enters into
39 any residency agreement with or on behalf of the prospective resident, the provider shall notify
40 prospective residents of their right to review the initial disclosure statement and shall make copies
41 of the statement available upon request. The initial disclosure statement shall be available during
42 regular business hours in the business office of the continuing care retirement community. The text
43 of the initial disclosure statement shall contain the following information:

44 (a) **The rights and requirements contained in section 12 of this 2009 Act.**

45 [(a)] (b) The names of the individual or individuals who constitute the provider or, if the pro-

1 vider is a partnership, limited liability company, corporation or other legal entity, whether for profit
 2 or not for profit, the *[names of]* **name of the legal entity and each of** the officers, directors, trus-
 3 tees or managing general partners of the *[provider]* **legal entity** and a description of each *[such]*
 4 individual's duties on behalf of the *[provider]* **legal entity**.

5 *[(b)]* **(c)** The business address of the provider and a statement of whether the provider is an in-
 6 dividual, partnership, limited liability company, corporation or other legal entity.

7 *[(c)]* **(d)** *[With respect to a provider that is operated for profit,]* The names and business addresses
 8 of any individual having any more than a 10 percent **direct or indirect** ownership or beneficial in-
 9 terest in the provider, **the percentage of the direct or indirect ownership or beneficial interest**
 10 and a description of *[such]* **each** individual's interest in or occupation with the provider.

11 *[(d)(A)]* **(e)(A)** A statement as to whether the provider is or is not affiliated with any other or-
 12 ganization of any kind, the extent of the affiliation, if any, and the extent to which any of the *[af-*
 13 *filiate]* **affiliated** organizations are responsible for the financial and contractual obligations of the
 14 provider; and

15 **(B)** The provision of the Internal Revenue Code, if any, under which the provider or any *[of the*
 16 *provider's affiliates]* **affiliated organization** is exempt from the payment of federal income taxes.

17 *[(e)]* **(f)** The location and general description of the continuing care retirement community, **in-**
 18 **cluding the location and number of living units and licensed long term care beds considered**
 19 **part of the CCRC**, and any other care facilities, *[both existing and proposed,]* owned or operated
 20 by the provider. The provider must disclose the following about any proposed continuing care re-
 21 tirement community or other care facilities:

- 22 **(A)** The estimated completion date or dates;
- 23 **(B)** A statement as to whether or not construction has begun; and
- 24 **(C)** Any contingencies subject to which construction may be deferred.

25 **(g) The number of open bed long term care facility beds operated by the CCRC.**

26 *[(f)]* **(h)** A description of services provided or proposed to be furnished by the provider under its
 27 residency agreements including, without limitation[,];

28 **(A)** The extent to which medical care *[or assisted living is]*, **long term care or health related**
 29 **services are furnished, and the locations where the services will be furnished. If the services**
 30 **are furnished at a facility that is not registered as part of the CCRC's campus, the provider**
 31 **shall state the location where the services are furnished and any additional fees associated**
 32 **with the services; and**

33 **(B)** The services made available by the continuing care retirement community at an extra
 34 charge over and above the entrance fee. *[and periodic charges provided for in the residency agree-*
 35 *ment.]*

36 *[(g)]* **(i)** A description of all fees required of each resident, including the entrance fee, **regular**
 37 periodic charges and the manner in which any additional fees or **regular** periodic charges will be
 38 determined. The description shall include:

39 **(A)** The circumstances under which the resident will be permitted to remain in the continuing
 40 care retirement community in the event the resident is unable to pay **regular** periodic or other
 41 charges;

42 **(B)** The terms and conditions under which the residency agreement may be canceled by the
 43 provider or the resident or in the event of the death of the resident prior to or following occupancy
 44 of the living unit;

45 **(C)** The percentage of the entrance fee refund required by ORS 101.080 and the manner in which

1 this percentage is calculated;

2 (D) The conditions under which a living unit occupied by a resident may be made available by
 3 the provider to another resident other than on the death of the resident executing the residency
 4 agreement;

5 (E) The manner by which the provider may adjust **regular** periodic charges or other recurring
 6 fees; *[and]*

7 (F) A statement of the fees to be charged if the resident marries or divorces while at the des-
 8 ignated continuing care retirement community, the terms concerning *[the entry or departure of a*
 9 *spouse to the community]* **a resident's spouse's entry to or departure from a CCRC** and the con-
 10 sequences if a new spouse does not meet the requirements for entry; **and**

11 **(G) The terms and conditions for the transfer of a resident out of the CCRC.**

12 *[(h)]* (j) The provider's most recent audited financial statement prepared in accordance with
 13 generally accepted accounting principles by a certified public accountant. This audited financial
 14 statement *[shall]* **must** not have been prepared more than 16 months prior to the date of the initial
 15 application for registration.

16 *[(i)]* (k) A copy of the residency agreement or agreements offered to the prospective resident
 17 by the provider.

18 *[(j)]* (L) A statement on the cover page in a prominent location and typeface that registration
 19 of the continuing care retirement community does not constitute approval, recommendation or in-
 20 dorsement of the *[community]* **CCRC** by the Department of Human Services, and that such registra-
 21 tion does not evidence the accuracy or completeness of the information set forth in the disclosure
 22 statement.

23 *[(k)]* (m) Copies of the primary written brochures and written promotional materials furnished
 24 to prospective residents.

25 **(n) A full description of all contracts that the provider has entered into with affiliated**
 26 **organizations and an explanation of the financial impact that the contracts may have on**
 27 **residents.**

28 **(o) An affidavit signed by an authorized representative of the CCRC confirming that the**
 29 **application and disclosure statement are complete and accurate.**

30 (2) Any *[person]* **individual or legal entity** named in subsection *[(1)(a) or (c)]* **(1)(b) or (d)** of this
 31 section and any proposed or existing manager must disclose:

32 (a) Business experience in operation or management of the continuing care retirement commu-
 33 nity or other **licensed long term care** facilities;

34 (b) Whether the person *[or manager]* has been convicted of a crime;

35 (c) Whether the person *[or manager]* has been a party to any civil action in which a judgment
 36 for damages was obtained or in which an injunction was issued against the person *[or proposed*
 37 *manager]* for fraud, embezzlement, fraudulent conversion or misappropriation of property;

38 (d) Whether the person *[or manager]* has had any state or federal permits or licenses suspended
 39 or revoked, **or if a state or federal authority has disqualified the person from providing ser-**
 40 **VICES in the Medicare or Medicaid program** in connection with the *[person or proposed*
 41 *manager's]* **person's** business activities; and

42 (e) The identity of any business or professional service entity in which the person *[or proposed*
 43 *manager]* has a 10 percent or greater ownership interest and which the provider intends to employ
 44 to provide goods, services or any other things of value.

45 (3) In the event subsection (2)(e) of this section applies, the person *[or manager]* must disclose

1 the anticipated costs to the provider or a statement that such costs cannot presently be estimated.

2 (4) In addition to complying with all the provisions of this section, the provider must submit on
 3 behalf of a new continuing care retirement community a statement of the anticipated source and
 4 application of funds used or to be used in the purchase or construction of the [community] CCRC,
 5 including:

6 (a) An estimate of the cost of purchasing or constructing and equipping the [community which]
 7 **CCRC that** the provider expects to incur or become obligated for prior to the commencement of the
 8 operation of the [community] CCRC;

9 (b) A description of any mortgage loan or other long term financing intended to be used for the
 10 financing of the [community] CCRC;

11 (c) An estimate of the total entrance fees to be received from the residents at or prior to the
 12 commencement of operation of the continuing care retirement community based on projected occu-
 13 pancy at the time the [community] CCRC commences operation; and

14 (d) An estimate of the funds, if any, anticipated to be necessary to pay for start-up losses.

15 **SECTION 4.** ORS 101.055 is amended to read:

16 101.055. (1) The governing body or a designated representative of the provider shall hold
 17 meetings with the [residents of the continuing care retirement community] **residents' council or**
 18 **meetings that are open to all of the residents in a continuing care retirement community** at
 19 least twice a year for the purpose of free discussion of subjects that may include, but are not limited
 20 to, facility income, expenditures, financial trends, resident concerns and proposed changes in policy,
 21 programs and services. The meetings shall be open to a designated personal representative of a
 22 resident. [*The provider shall report the dates of the meetings in the annual disclosure statement to the*
 23 *Department of Human Services.*] **In addition, the provider shall present for discussion any issue**
 24 **the residents' council or any resident of the CCRC identifies orally or in writing 14 days or**
 25 **more prior to the date of the meeting.**

26 (2) The provider shall give residents **at least 45 days'** notice of proposed changes in fees, **reg-**
 27 **ular periodic charges** or services. [*and allow residents a reasonable opportunity to comment on the*
 28 *proposed changes before they become effective.*] **At least 30 days before an increase in regular**
 29 **periodic charges takes effect, the provider shall hold a meeting with the residents' council**
 30 **or a meeting that is open to all of the residents of a CCRC to present the reasons for the**
 31 **proposed increase and any data supporting the need for the increase. A meeting described**
 32 **in subsection (1) of this section may be used for this purpose. At least 14 days prior to the**
 33 **meeting, the provider shall post in a conspicuous location and make available to each resi-**
 34 **dent an agenda for the meeting. At the meeting, the provider shall make available an ac-**
 35 **counting of:**

36 (a) **Actual and projected income and expenses for the CCRC's current fiscal year;**

37 (b) **Projected income and expenses for the following fiscal year; and**

38 (c) **The current charges for each living unit in the CCRC and the proposed increase to**
 39 **each charge.**

40 (3) **A provider shall review the CCRC budget with the residents' council or a committee**
 41 **appointed by the council during the budget planning process.**

42 (4) **A provider shall make available to the residents' council or a committee appointed**
 43 **by the council, at least twice each year, a financial statement for the CCRC that compares**
 44 **actual costs to budgeted costs, broken down by expense category.**

45 (5) **A provider shall maintain and make available to any resident, upon request, minutes**

1 of the meetings of the provider's governing body. The provider may remove from the minutes
 2 information regarding any matters discussed in executive session or that relate to litigation,
 3 personnel, competitive advantage or an individual resident's personal affairs, but may not
 4 remove information regarding the annual budget, increases in regular periodic charges, pro-
 5 vider indebtedness or expansion in new or existing facilities. A provider shall retain the
 6 minutes for no less than three years from the date the minutes were created.

7 (6) The governing body of a provider shall allow at least one resident from each CCRC
 8 operated in this state by the provider to participate as a nonvoting resident representative
 9 on the governing body or along with the owners or managers. The resident representative
 10 may be excluded from any executive session and from discussion of confidential matters or
 11 matters related to litigation, personnel, competitive advantage or an individual resident's
 12 personal affairs. The resident representative may not be excluded from discussion of matters
 13 relating to the annual budget, increases in regular periodic charges, provider indebtedness
 14 or expansion in new or existing facilities.

15 (7) The resident representative described in subsection (6) of this section and the repre-
 16 sentative's alternate must be elected by a majority vote of the residents' council of each
 17 CCRC or by a majority vote of all residents of a CCRC. The representative is responsible for
 18 submitting the representative's name, address, electronic mail address and telephone number
 19 to the provider. The provider may establish the term for representatives and the procedures
 20 for election and replacement of a representative and an alternate.

21 (8) A provider shall send to each resident representative and alternate, at the same time
 22 and in the same manner as other members of the governing body, owners or managers of
 23 the provider, the notice of meeting and any written materials relevant to the discussions in
 24 which the resident representative may participate under subsection (6) of this section.

25 (9) The provider shall pay all reasonable travel expenses for a resident representative or
 26 alternate to attend meetings of the governing body and meetings of governing body com-
 27 mittees.

28 (10) Nothing in this chapter prohibits a provider from allowing greater resident partic-
 29 ipation than the minimum requirements set forth in this chapter including, but not limited
 30 to, the requirement:

31 (a) Under subsection (1) of this section to hold meetings with the residents' council or
 32 meetings that are open to all of the residents twice each year.

33 (b) Under subsection (6) of this section to allow one elected resident representative for
 34 each CCRC to participate in the provider's governing body or along with owners or managers.

35 **SECTION 5.** ORS 101.060 is amended to read:

36 101.060. (1) A provider shall establish and maintain at all times:

37 (a) A debt service liquid reserve in an amount equal to or exceeding the total of all principal
 38 and interest payments due during the next 12 months on account of a mortgage loan or other long
 39 term financing of the continuing care retirement community taking into consideration any antic-
 40 ipated refinancing; and

41 (b) An operating liquid reserve in an amount equal to or exceeding the total of the
 42 [community's] CCRC's projected operating expenses for three months. **For the purpose of calcu-**
 43 **lating the amount required for the operating liquid reserve, projected operating expenses**
 44 **include any anticipated expenses associated with providing housing or health related services**
 45 **under all residency agreements.**

1 (2) The Department of Human Services may require a provider not meeting its reserve require-
 2 ments to place the reserves in an escrow account.

3 (3) The notes to the provider’s annual audited financial statements shall state whether or not
 4 the reserve requirements have been met.

5 (4) The department may allow withdrawal or borrowing from the reserves in an amount not
 6 greater than 20 percent of the provider’s total **required** reserves. The withdrawal or borrowing can
 7 be approved by the department only if required for making an emergency repair or replacement of
 8 equipment, to cover catastrophic loss that is not able to be covered by insurance or for debt service
 9 in a potential default situation. No withdrawal or borrowing may be made from a reserve without
 10 the approval of the department. All funds borrowed shall be repaid to the reserve within 18 months
 11 in accordance with a payment plan approved by the department.

12 **SECTION 6.** ORS 101.070 is amended to read:

13 101.070. (1) As a condition of registration for a new **continuing care retirement** community,
 14 the Department of Human Services shall require that the provider establish an escrow account with
 15 a bank, trust company or other escrow agent and that any entrance fees received by the provider
 16 prior to the date the resident is permitted to occupy the living unit in the [community] **CCRC** be
 17 placed in the escrow account.

18 (2) *[These funds shall be released by the department at such time]* **Upon written request by the**
 19 **provider, the department shall approve the release of the funds from escrow if** the department
 20 is satisfied that:

21 (a) The provider **has received a certificate of occupancy by local authorities and** has col-
 22 lected no less than 10 percent of each individual resident’s entrance fee for no less than 50 percent
 23 of the total number of units;

24 (b) Anticipated proceeds of any first mortgage loan or other long term financing commitment
 25 plus funds from other sources in the actual possession of the provider are equal to not less than:

26 (A) Fifty percent of the aggregate cost of constructing or purchasing and equipping and fur-
 27 nishing the [community] **CCRC**; and

28 (B) Fifty percent of the funds, which the provider estimated in its disclosure pursuant to ORS
 29 101.050, to fund start-up losses of the [community] **CCRC**; and

30 (c) A commitment has been received by the provider for any permanent mortgage loan or other
 31 long term financing commitment, which commitment the provider disclosed pursuant to ORS 101.050,
 32 and any conditions of this commitment prior to disbursement of funds thereunder, other than com-
 33 pletion of the construction or closing of the purchase of the [community] **CCRC**, have been sub-
 34 stantially satisfied.

35 (3) In the event a prospective resident withdraws from the residency agreement prior to occu-
 36 pancy, the entrance fee described in ORS 101.080 *[shall]* **may** not be refunded to the prospective
 37 resident until such time as the prospective resident’s unit has been resold.

38 (4) If the entrance fees in an escrow account are not released within [36] **48** months after the
 39 escrow account is opened, entrance fees paid, less the escrow fee, shall be returned to the residents
 40 unless an extension is granted by the department.

41 (5) Nothing in this section requires the escrow of any nonrefundable application fee charged to
 42 prospective residents.

43 (6) An entrance fee held in escrow may be returned by the escrow agent, at any time, to the
 44 person or persons who paid the fee to the provider upon receipt by the escrow agent of notice from
 45 the provider that such person is entitled to a refund of the entrance fee.

SECTION 7. ORS 101.080 is amended to read:

101.080. (1) Any provider that requires any resident, as a condition of occupancy or use of the facility, to pay an entrance fee, prior to or during the first six months of occupancy in addition to monthly payments, shall provide that a percentage of that entrance fee be refunded to the resident if the residency agreement is terminated, other than by reason of death of the resident, within the first six months of occupancy.

(2) The percentage of the entrance fee to be refunded and the manner in which this percentage is calculated shall be written in boldfaced type in the residency agreement and disclosed in the initial **and annual** disclosure *[statement]* **statements** required by ORS 101.050 **and 101.130**.

SECTION 8. ORS 101.090 is amended to read:

101.090. A closed *[system]* **bed** long term care facility shall be subject to the same requirements as all other long term care facilities, as defined by ORS 442.015, except that it shall be exempt from the certificate of need process provided by ORS 442.315. However, any closed *[system]* **bed** long term care facility which initiates under this exemption any new institutional health services, as defined in ORS 442.015, and which subsequently accepts patients who are not residents of the continuing care retirement community, shall become subject to certificate of need review for such new institutional health services at the time that nonresident patients begin to be admitted.

SECTION 9. ORS 101.110 is amended to read:

101.110. (1) The registration of a provider shall remain in effect until revoked, after notice and hearing, upon written findings of fact by the Department of Human Services that the provider has:

(a) *[Willfully]* Violated any provision of this chapter or any rule or order adopted under this chapter;

(b) Failed to file an annual disclosure statement required by ORS 101.130;

(c) Failed to make available to prospective and current residents the disclosure statements required by ORS 101.050 and 101.130;

(d) Delivered to prospective residents a disclosure statement as provided by ORS 101.050 and 101.130 that makes an untrue statement of material fact or omits a material fact and the provider, at the time of the delivery of the disclosure statement, *[had actual knowledge]* **knew or should have known** of the misstatement or omission; *[or]*

(e) Failed to comply with the terms of a cease and desist order described in ORS 101.120[.];

(f) Failed to establish and maintain reserves required by ORS 101.060; or

(g) Failed to place reserves in an escrow account when required by the department under ORS 101.060.

(2) Findings of fact in support of revocation, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(3) If the department finds, after notice and hearing, that the provider has been guilty of a violation for which revocation could be ordered, it may first issue a cease and desist order. If the cease and desist order is or cannot be effective in remedying the violation, the department may, after notice and hearing, order that the registration be revoked.

(4) If the department revokes a provider's registration, the provider shall supply the department with a list of the names and addresses of all residents who have entered into residency agreements with the provider.

SECTION 10. ORS 101.130 is amended to read:

101.130. (1) The provider shall file *[annually]* with the Department of Human Services an annual disclosure statement **for the provider's fiscal year that satisfies the requirements of this sec-**

1 **tion and ORS 101.050.** *[for the end of the provider's fiscal year.]* The statement shall be filed within
 2 four months following the end of the provider's fiscal year unless the time is extended by the de-
 3 partment.

4 (2) **In addition to the information required for an initial statement under ORS 101.050,** the
 5 annual disclosure statement shall *[consist of]* **include:**

6 (a) An audited financial statement prepared in accordance with generally accepted accounting
 7 principles for the preceding fiscal year; *[and]*

8 (b) **A disclosure of** *[shall disclose]* any change in ownership or manager[.];

9 (c) **The frequency of residents' council meetings and the dates of the meetings; and**

10 (d) **Copies of all notices of changes in regular periodic charges or notices of proposed**
 11 **changes in fees or services that were given to residents during the provider's most recently**
 12 **completed fiscal year.**

13 (3) **The provider may not make changes to any of the documents included in the annual**
 14 **disclosure statement until the proposed changes have been disclosed to the department.**

15 **SECTION 11.** Section 12 of this 2009 Act is added to and made a part of ORS chapter 101.

16 **SECTION 12.** (1) **A provider must assist a resident, upon request, in the exercise of the**
 17 **resident's rights as a citizen of the United States and as a resident of this state. A resident**
 18 **has the right to exercise all rights that do not infringe upon the rights or safety of other**
 19 **residents.**

20 (2) **A resident has the right to review a provider's disclosure statements.**

21 (3) **A provider may not discriminate or impose any requirement or restriction based on**
 22 **sex, marital status, race, color, sexual orientation or national origin of a resident, a pro-**
 23 **spective resident or a resident's visitor.**

24 (4) **A provider shall make reasonable accommodations to ensure that services are acces-**
 25 **sible to residents who have disabilities.**

26 (5) **A provider shall treat each resident with respect and dignity at all times, and ensure**
 27 **privacy for each resident during rehabilitation or treatment and when receiving personal**
 28 **care services.**

29 (6) **A resident has the right to associate and communicate privately with persons of the**
 30 **resident's choice and to send and receive mail that is not opened by the provider.**

31 (7) **A resident has the right to be free from abuse as defined in ORS 124.005.**

32 (8) **The residents' council has the right to meet with the provider no less than twice each**
 33 **year and must be allowed free discussion at the meetings of subjects that may include, but**
 34 **need not be limited to, facility income, expenditures, financial trends, resident concerns,**
 35 **proposed changes in policy, programs and services, and any other issue identified by the**
 36 **council or a resident under ORS 101.055 (1).**

37 (9) **A resident has the right to participate in social, religious and community activities**
 38 **at the discretion of the resident.**

39 (10) **A resident has the right to be fully informed, prior to or at the time of admission**
 40 **and during the resident's period of residency, of services available in the continuing care**
 41 **retirement community, whether the provider participates in the Medicare or Medicaid pro-**
 42 **grams and the consequences of the participation or lack of participation by the provider in**
 43 **the Medicare or Medicaid programs.**

44 (11) **A resident has the right to refuse medication, treatment, care or participation in**
 45 **clinical trials or other research.**

1 (12) A resident has the right to obtain treatment, care and services, including but not
2 limited to home health and hospice care, from persons providing health care who have not
3 entered into a contract with or are not affiliated with the provider, subject to policies of the
4 CCRC regarding the provision of services by persons that are not under contract.

5 (13) A resident has the right to submit grievances and to suggest changes in policies and
6 services either orally or in writing to staff or other individuals without fear of restraint,
7 interference, coercion, discrimination or reprisal by the provider. A provider must listen to
8 and respond promptly to a grievance or suggestion from a resident.

9 (14) A resident has the right to be free from harassment by other residents and to
10 peaceful enjoyment of the CCRC without interference from other residents.

11 (15) A provider shall keep clinical and personal records of residents confidential. A resi-
12 dent or an authorized representative of the resident has the right to a prompt inspection of
13 the records pertaining to the resident's care. The provider shall provide photocopies or
14 electronic copies of a resident's records to the resident or the authorized representative at
15 a reasonable charge.

16 (16) A resident has the right to receive 30 days' prior notice of proposed changes in fees
17 or services. The provider must allow residents a reasonable opportunity to comment on the
18 proposed changes before the changes become effective.

19