

House Bill 2139

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**.

Modifies grounds for court to order appointment of trustee and allows for appointment of temporary manager by Department of Human Services for long term care facility or residential care facility. Increases amount of moneys in Facility Fund established to pay costs of trustee or temporary manager. Modifies procedure for assessing deficiency against person legally responsible for facility for expenses of trustee. Establishes procedure for assessing deficiency for expenses of temporary manager.

Imposes criminal penalty for violating order of exclusion by trustee.

A BILL FOR AN ACT

1
2 Relating to temporary appointment of person to ensure care facility compliance; creating new pro-
3 visions; amending ORS 441.281, 441.286, 441.289, 441.293, 441.296, 441.301, 441.303, 441.312,
4 441.316, 441.318, 441.323, 441.624 and 441.990; and appropriating money.

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

6 **SECTION 1.** ORS 441.281 is amended to read:

7 441.281. (1) The Director of Human Services may petition the circuit court for **Marion County**
8 **or for** the county in which a facility is located for an order appointing a trustee to administer the
9 facility for a period not to exceed 18 months.

10 (2) The court shall hold a hearing on a petition filed under *[subsection (1) of]* this section within
11 10 days of the filing of the petition. The petition shall be placed at the head of the docket.

12 (3) The petition and notice of the hearing shall be served on the person *[or body]* legally re-
13 sponsible for the facility. Service at the facility to the individual in charge shall be considered ser-
14 vice on the *[owner]* **person legally responsible for the facility**.

15 (4) If the court determines at the hearing that grounds exist **under ORS 441.286** for the ap-
16 pointment of a trustee under *[ORS 441.286]* **this section**, the court shall enter the order.

17 (5) **If there exists a serious and immediate risk of harm or death to patients of a facility,**
18 **the director may file with the petition described in subsection (1) of this section an ex parte**
19 **motion for the preliminary appointment of a trustee. The motion shall be supported by affi-**
20 **davits demonstrating the qualifications of the proposed trustee and the need for an immedi-**
21 **ate appointment of a trustee to protect the patients prior to a hearing. If the court grants**
22 **the motion for the preliminary appointment of a trustee, the court shall set a hearing on the**
23 **merits of the petition within five judicial days. Pending the court's order on the petition de-**
24 **scribed in subsection (1) of this section, a preliminary trustee appointed pursuant to this**
25 **subsection shall have all of the powers and duties described in ORS 441.289.**

26 **SECTION 2.** ORS 441.286 is amended to read:

27 441.286. *[The grounds for the appointment of a trustee shall be]* **There are grounds for the ap-**
28 **pointment of a trustee under ORS 441.281 if a court finds** that the health and welfare of patients

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 in a facility are [now] or in the immediate future will be in jeopardy **and the finding is based on**
 2 **one or more of the following:**

3 [(1) *Sufficient prior surveys or investigations of complaints resulting in the determination that the*
 4 *complaints are supported by findings, and evidence that the Department of Human Services has at-*
 5 *tempted by findings of survey deficiencies and imposition of civil penalties to bring the long term care*
 6 *facility into compliance with statute and rules.*]

7 **(1) Prior inspections or investigations of complaints by the Department of Human Ser-**
 8 **VICES revealed that the facility was not in compliance with rules of the department and the**
 9 **department’s attempts to bring the facility into compliance are unsuccessful.**

10 **(2) [No improvement in patient care, health and welfare] The health and welfare of patients**
 11 **at the facility are in jeopardy due to continued noncompliance of the facility over a seven-day**
 12 **period after [the survey] an inspection or investigation [as defined by] of a complaint, demon-**
 13 **strated by one or more of the following:**

14 (a) Physicians’ orders **are** not being followed correctly.

15 (b) [The lack of, or inadequate] Direct patient care **is lacking or inadequate** to the point that
 16 [the] **a patient has suffered** or is suffering physical harm.

17 (c) [Deficient staffing] **The levels of staffing are deficient** to the point of causing physical or
 18 mental harm to [the] **a patient.**

19 (d) **The department has determined that a** physical injury to a patient of a [long term care
 20 *facility which has been determined by the department to be*] **facility has been** caused by other than
 21 accidental means and [for which the administrator] **the person legally responsible for the opera-**
 22 **tion of the facility** has not taken necessary action.

23 (3) The person [or body] legally responsible **for the facility** is unwilling or unable[, or both,] to
 24 upgrade the quality of patient care to the level necessary to protect the health and welfare of the
 25 patients.

26 (4) The facility is insolvent.

27 (5) The department has revoked or suspended the license of the facility.

28 (6) The [operator intends] **person legally responsible for the facility intends to cease oper-**
 29 **ations and** to close the facility and has not made adequate arrangements for relocation of the
 30 [residents] **patients.**

31 (7) The [facility refuses to allow the] monitors **are refused** access to the facility.

32 **(8) The person legally responsible for the facility agreed to the appointment of a tempo-**
 33 **rary manager under section 15 of this 2009 Act, but subsequently revoked consent for a**
 34 **temporary manager or is interfering with the ability of the temporary manager to operate**
 35 **the facility.**

36 **SECTION 3.** ORS 441.289 is amended to read:

37 441.289. A trustee appointed under ORS [441.286] **441.281:**

38 (1) May exercise any powers and shall perform any duties required by the court.

39 (2) Shall operate the facility in such a manner as to protect the health and welfare of the pa-
 40 tients.

41 (3) Shall have the same rights to possession of the building in which the facility is located and
 42 of all goods and fixtures in the building at the time the petition for the appointment of the trustee
 43 is filed as the person [or body] legally responsible would have had if the trustee had not been ap-
 44 pointed.

45 (4) Shall take such action as is reasonably necessary to protect and conserve the assets and

1 property the trustee takes in possession, or the proceeds of any transfer thereof, and may use them
2 only in the performance of the powers and duties set forth in this section and by order of the court.

3 (5) May receive and spend the facility's income and encumber its assets to the extent specifically
4 authorized by the court and do all acts necessary or appropriate to promote the health and safety
5 of the [residents] **patients**.

6 (6) Shall have the power to maintain an action to reach the assets of the parent corporation if
7 it appears to the court that the parent corporation is the actual controlling owner of the facility
8 and that the named owner is not in control of the facility.

9 (7) May use the building, fixtures, furnishings and any accompanying consumable goods in the
10 provision of care and services to patients at the time the petition for the appointment of the trustee
11 was filed.

12 (8) Shall collect payments for all goods and services provided to patients during the period of
13 the trust, at the same rate of payment charged by the facility at the time the petition for the ap-
14 pointment of the trustee was filed, unless a different rate is set by the court.

15 (9) May correct or eliminate any deficiency in the structure or furnishings of the facility which
16 endangers the health or welfare of the patients while they remain in the facility. However, the total
17 cost of correction [shall] **may** not exceed \$3,000 unless the court orders expenditures for this pur-
18 pose in excess of \$3,000 upon application by the trustee.

19 (10) May make contracts and hire agents and employees to assist the trustee in carrying out the
20 powers and duties described in this section, subject to approval by the court.

21 (11) Except as provided in ORS 441.296, shall honor all leases, mortgages and secured trans-
22 actions governing the building in which this facility is located and all goods and fixtures in the
23 building of which the trustee has taken possession, but only to the extent of payments which, in the
24 case of a rental agreement, are for the use of the property during the period of the trust, or which,
25 in the case of a purchase agreement, come due during the period of the trust.

26 (12) May direct, manage and discharge employees of the facility, subject to any contract rights
27 they may have.

28 (13) Shall pay employees at the same rate of compensation, including benefits, that the employ-
29 ees would have received from the owner, operator or other controlling person, except the trustee
30 shall compensate employees only for time actually worked during the period of the trust and shall
31 not be responsible for reimbursement for vacations or periods of sick leave. However, in no case
32 shall a trustee compensate any employee of a facility in an amount which is less than the minimum
33 amount required by law.

34 (14) Shall be entitled to take possession of all property or assets belonging to patients [which]
35 **that** are in the possession of the long term care facility.

36 (15) Shall preserve and protect all property, assets and records of patients of which the trustee
37 takes possession.

38 (16) **May prohibit any person, including any person legally responsible for the facility,**
39 **from entering or remaining on the premises if in the opinion of the trustee the person is**
40 **interfering or has materially interfered with the ability of the trustee to exercise the powers**
41 **and duties under this section.**

42 [(16)] (17) [Shall,] If the facility ceases to operate **and closes** during the period of the trust and
43 any patient is transferred as a result [thereof], **shall** ensure that:

44 (a) Transportation of the patient, the patient's belongings and the medical record to the new
45 location is provided.

1 (b) Aid for locating alternative placements is available to the patient or the patient's legal rep-
 2 resentative.

3 (c) Each patient is physically and mentally prepared for transfer to avoid possible trauma due
 4 to the transfer.

5 (d) Each patient or the patient's legal representative is permitted to participate in the selection
 6 of the new placement.

7 [(17)] (18) Is an agent of the state for purposes of ORS 30.260 to 30.300 for which the Department
 8 of Human Services shall be assessed and the department may use the [account] **Facility Fund** es-
 9 tablished under ORS 441.303 to pay the assessment.

10 **SECTION 4.** ORS 441.293 is amended to read:

11 441.293. (1) A person who is served with notice of an order of the court appointing a trustee,
 12 with the trustee's name and address, shall be liable to pay the trustee for any goods or services
 13 provided by the trustee after the date of the order if the person would have been liable for the goods
 14 or services as supplied by the person [or body] legally responsible for the facility. The trustee shall
 15 give a receipt for each payment and shall keep a copy of each receipt on file. The trustee shall de-
 16 posit amounts received in a special account and may use this or any other similar account for dis-
 17 bursements.

18 (2) The trustee may bring an action to enforce the liability created by subsection (1) of this
 19 section. Proof of payment to the trustee is as effective in favor of the person making the payment
 20 as payment of the amount to the person who would have been entitled to receive the sum so paid.

21 (3) A patient shall not be discharged, nor shall any contract or rights be forfeited or impaired,
 22 nor shall forfeiture or liability be increased, by reason of an omission to pay a person [or body] le-
 23 gally responsible for the facility a sum paid to the trustee.

24 **SECTION 5.** ORS 441.296 is amended to read:

25 441.296. (1) A trustee is not required to honor any lease, mortgage, secured transaction or other
 26 wholly or partially executory contract entered into by the person [or body] legally responsible for
 27 the facility if in the judgment of the court the terms thereof are unconscionable.

28 (2) If the trustee is in possession of real estate or goods subject to a lease, mortgage or security
 29 interest which the trustee is permitted to avoid under subsection (1) of this section, and if the real
 30 estate or goods are necessary for the continued operation of the facility, the trustee may apply to
 31 the court to set a reasonable rental. The court shall hold a hearing on the application within 15
 32 days. The trustee shall send notice of the application to any known owners of the property involved
 33 at least 10 days prior to the hearing. Payment by the trustee of the amount determined by the court
 34 to be reasonable is a defense to any action against the trustee for payment or for possession of the
 35 goods or real estate subject to the lease or mortgage involved by any person who received such
 36 notice. However, the payment does not relieve the person [or body] legally responsible for the fa-
 37 cility of any liability for the difference between the amount paid by the trustee and the amount due
 38 under the original lease or mortgage involved.

39 **SECTION 6.** ORS 441.301 is amended to read:

40 441.301. If funds collected under ORS 441.289 and 441.293 are insufficient to meet the expenses
 41 of performing the powers and duties conferred on the trustee by ORS 441.277 to 441.323 **or on the**
 42 **temporary manager pursuant to section 15 of this 2009 Act**, or if there are insufficient funds
 43 on hand to meet those expenses, the Department of Human Services may draw from the [supple-
 44 mental funds created under] **Facility Fund established in ORS 441.303** to pay those expenses. [Op-
 45 erating funds collected under this section and] **Moneys drawn under this section that are not**

1 applied to the expenses of the trust shall be used to reimburse the fund for advances made under
2 this section.

3 **SECTION 7.** ORS 441.303 is amended to read:

4 441.303. (1) *[To establish and maintain a fund to meet expenses of a trustee if moneys collected*
5 *under ORS 441.289 and 441.293 are insufficient, the Department of Human Services shall require a*
6 *payment equal to the equivalent of the annual license fee for the facility.]* **The Facility Fund is es-**
7 **tablished in the State Treasury, separate and distinct from the General Fund, consisting of**
8 **payments made by facilities to the Department of Human Services as specified in this sec-**
9 **tion. Interest earned by the Facility Fund shall be credited to the fund. Moneys in the fund**
10 **are continuously appropriated to the department for the purpose of paying:**

11 (a) **The reasonable expenses of a trustee appointed under ORS 441.281 if funds collected**
12 **by a trustee under ORS 441.289 and 441.293 are insufficient to meet those expenses;**

13 (b) **The reasonable expenses of a temporary manager appointed under section 15 of this**
14 **2009 Act if funds collected by a temporary manager are insufficient to meet those expenses;**
15 **or**

16 (c) **A money judgment entered against the department under section 17 of this 2009 Act.**

17 (2) **Each facility shall pay annually to the department an amount not less than the annual**
18 **license fee for the facility under ORS 441.020 or 443.415.** The facility payment shall be due an-
19 nually on a date fixed by the department and enforced in the same manner as the license fee for the
20 particular facility is payable and enforceable. The amount of payments shall be set so as to acquire
21 in the *[account the \$300,000]* **fund the \$500,000** described in subsection (3) of this section *[at the end*
22 *of six years from the initial payment year].*

23 *[(2) Funds collected under this section and, notwithstanding ORS 293.140, all interest earned on*
24 *cash balances thereof invested by the State Treasurer shall be maintained as a fund in the State*
25 *Treasury, separate and distinct from the General Fund, and are continuously appropriated to the de-*
26 *partment to pay the expenses of the trust.]*

27 (3) Whenever **the balance of moneys in** the fund established under this section reaches
28 *[\$300,000]* **\$500,000**, the department shall discontinue collecting the **facility** payment described in
29 subsection *[(1)]* (2) of this section. However, whenever the fund **balance** falls below *[\$300,000]*
30 **\$400,000**, the department shall reinstitute the **facility** payment described in subsection *[(1)]* (2) of
31 this section until the fund is restored to **at least \$500,000.** *[\$300,000. If the amount collected would*
32 *raise more than required, the department shall prorate the payment of each facility so as to raise no*
33 *more than required.]* The department may use reasonable amounts from the fund necessary to ad-
34 minister the fund.

35 (4) Whenever the department is required to use any amount in the fund *[to operate a facility*
36 *under ORS 441.289 and 441.293]* **to meet the expenses of a trustee appointed under ORS 441.281**
37 **or a temporary manager appointed under section 15 of this 2009 Act**, the amount used shall
38 constitute a loan to the facility and shall be repayable to the fund under such terms and conditions
39 as the facility and the department agree. The rate of interest shall be set by the department to re-
40 flect the prevailing market rate on similar loans. *[The]* **Interest earned under this subsection** shall
41 be credited to the *[separate fund described in subsection (2) of]* **fund established under** this section.

42 (5) The *[assessment imposed under]* **facility payment described in subsection (2) of** this section
43 shall be considered an allowable cost in setting the reimbursement rates of a facility by the de-
44 partment.

45 (6) The court may order that the trustee file an undertaking with the clerk of the court. The

1 fund *[collected]* **established** under this section may serve as surety for the undertaking.

2 **SECTION 8.** ORS 441.312 is amended to read:

3 441.312. Notwithstanding other provisions of law concerning licensing of long term care facilities, a license renewal may be issued to a facility placed in trust under ORS *[441.286]* **441.281**. The duration of a license issued under this section is limited to the duration of the trust.

6 **SECTION 9.** ORS 441.316 is amended to read:

7 441.316. (1) The court may terminate a trust if the time period specified in the order appointing the trustee lapses or if the patients in the facility have been provided with care in another facility or upon petition of the person *[or body]* legally responsible for the facility if the person *[or body]* legally responsible intends to discontinue the operation of or close the facility during the period of the trust. The court may use its discretion in terminating a trust upon petition of the person *[or body]* legally responsible for the facility to determine whether discontinuance or closure will promote the health and safety of the patients.

14 (2) At the expiration of the period for which the trustee was appointed, the court shall make a determination as to the future of the facility based upon evidence presented to the court. At that time the court may decide to:

17 (a) Order the Department of Human Services to issue a new license to the owners~~],~~ *body]* or person legally responsible for the facility and permit the facility to continue in operation;

19 (b) Extend the period of appointment of the trustee by not more than 90 days; or

20 (c) Order the department without further administrative hearing to revoke the license of the facility.

22 (3) Nothing in ORS 441.277 to 441.323 is intended to limit or prohibit any person *[or body]* legally responsible for the facility from ceasing the operation of and closing a facility during the period of the trust. However, the person *[or body]* legally responsible intending to do so shall give written notice of the intended action of the trustee pursuant to rules of the department. The trustee may continue to operate the facility for a period of not more than 60 days after notice is received. The person *[or body]* legally responsible shall be liable for any expenses incurred in the operation of the facility during this period.

29 **SECTION 10.** ORS 441.318 is amended to read:

30 441.318. (1) Within 60 days following the creation of the trust by the court, and every 60 days thereafter, and within 30 days after the termination of the trust, the trustee shall give the court and the Department of Human Services a complete accounting of all property of which the trustee has taken possession, all funds collected under ORS 441.289 and 441.293 and all expenses incurred by the trust. The trustee shall prepare *[a report]* and file *[it]* **a report** with the court and the department making recommendations concerning the current condition of the facility and projections for future operation of the facility and the conditions of the health and welfare of the patients.

37 (2)(a) If the *[operating]* funds collected by the trustee under ORS 441.289 and 441.293 exceed the reasonable expenses of the trust, the court shall order payment of the surplus to the person *[or body]* legally responsible after reimbursement to the department of *[funds]* **amounts** contributed **from the Facility Fund established** under ORS 441.303.

41 (b) If the *[operating]* funds are insufficient to cover the reasonable expenses of the trust, **the department may move the court for an order requiring** the person *[or body]* legally responsible for the facility *[shall be liable for]* **to pay** the deficiency **to the department**. *[The person or body legally responsible for the facility may apply to the court to determine the reasonableness of any expense incurred by the trust.]* **The motion shall contain the following statement in bold:**

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Notice to _____

The Department of Human Services has filed this motion to recover from you costs incurred as a result of the operation of a facility under ORS 441.277 to 441.323. The court may enter a money judgment against you if you fail to respond to this motion within 20 days of service of this motion upon you.

(c) The department shall serve the motion personally or by first class mail at the last-known address of the person alleged to be liable for the deficiency. If the person fails to file a response to the motion within 20 days of service, the court shall enter an order and judgment accordingly. If the person files a timely response, the court shall set a date for a hearing at which the court shall determine whether the person is legally responsible for the facility and the expenses incurred by the trust are reasonable.

(d) The person *[or body]* legally responsible for the facility *[shall not be responsible]* is not liable for expenses in excess of what the court finds to be reasonable. The court shall enter a money judgment against the person legally responsible for the facility in an amount that does not exceed the reasonable expenses. Payment recovered from the person *[or body]* legally responsible for the facility shall be credited to reimburse the *[account for funds contributed by the department]* Facility Fund established under ORS 441.303.

(3) The department shall have a lien for any deficiency established under subsection (2) of this section upon any beneficial interest, direct or indirect, of any person *[or body]* legally responsible for the operation of the facility *[operation]*, of any person *[or body]* legally responsible for the building in which the facility is located or the land on which the facility is located and any fixtures, equipment or goods used in the operation of the facility and the proceeds from any conveyance of such property made by the person *[or body]* legally responsible within one year prior to the filing of the petition for appointment of a trustee.

(4) The lien provided in subsection (3) of this section is prior to any lien or other interest *[which]* that originates subsequent to the filing of a petition for appointment of a trustee under ORS *[441.286]* 441.281, except for a construction lien arising out of work performed with the express consent of the trustee.

SECTION 11. ORS 441.323 is amended to read:

441.323. (1) Nothing in ORS 441.277 to 441.323 is intended:

(a) To relieve any person *[or body]* legally responsible for the facility placed in trust under ORS 441.281 or under temporary management pursuant to section 15 of this 2009 Act of any civil or criminal liability incurred, or any duty imposed by law by reason of acts or omissions of the person *[or body]* legally responsible prior to the appointment of a trustee under ORS *[441.286]* 441.281.

(b) To suspend any obligation of the person *[or body]* legally responsible for payment of taxes or other operating and maintenance expenses of the facility or payment of mortgages or other liens during the term of the trust or the temporary management.

(2) *[No person or body]* A person legally responsible *[shall]* for the facility may not be held professionally liable for acts or omissions of the trustee or the trustee’s employees during the term of the trust or of the temporary manager or the temporary manager’s employees during the

1 **period of temporary management.**

2 **SECTION 12.** ORS 441.624 is amended to read:

3 441.624. (1) ORS 124.050, 124.080, 410.190, 441.020 to 441.057, 441.060, 441.061, 441.067, 441.073,
4 441.085, 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.367, 441.600, 441.610, 441.630,
5 441.650 to 441.665, 441.685, 441.690, 441.703 and 441.705 to 441.720 **and sections 14 to 18 of this**
6 **2009 Act** address the consolidation of the regulatory functions of licensing, certification, inspection
7 of care, utilization review, abuse reporting and abuse investigation.

8 (2) It is legislative intent that:

9 (a) The Department of Human Services focus administrative effort on the integration and con-
10 sistent application and interpretation of the regulatory functions at the nursing facility level;

11 (b) Surveys and other reports, especially with respect to client assessment, be consistently and
12 reliably performed throughout the state;

13 (c) Positive and negative findings and sanctions be proportional to the strengths and problems
14 identified, within the limits of federal statute and regulations; and

15 (d) The interpretation of regulatory criteria be independent of influence from budgetary limita-
16 tions.

17 **SECTION 13.** ORS 441.990, as amended by section 9, chapter 602, Oregon Laws 2007, is
18 amended to read:

19 441.990. (1) Violation of ORS 441.015 (1) is a violation punishable, upon conviction, by a fine of
20 not more than \$100 for the first violation and not more than \$500 for each subsequent violation.
21 Each day of continuing violation after a first conviction shall be considered a subsequent violation.

22 (2) Any person who willfully prevents, interferes with, or attempts to impede in any way the
23 work of any duly authorized representative of the Department of Human Services in the lawful
24 carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

25 (3) The removal of the notice required by ORS 441.030 (5) by any person other than an official
26 of the department is a Class C misdemeanor.

27 **(4) Any person who, after being excluded by a trustee pursuant to ORS 441.289 (16), re-**
28 **remains upon the premises of a facility or returns to a facility violates ORS 164.245.**

29 **SECTION 14.** As used in sections 14 to 18 of this 2009 Act, “facility” has the meaning
30 given that term in ORS 441.277.

31 **SECTION 15.** (1) **The Department of Human Services, with the consent of the person le-**
32 **gally responsible for a facility, may appoint for a period not to exceed six months a tempo-**
33 **rary manager to assume control of the day-to-day operation of the facility if the department**
34 **determines that the health or safety of patients in a facility are, or in the immediate future**
35 **will be, in jeopardy based upon:**

36 (a) **The facility’s unwillingness or inability to comply with department rules in the oper-**
37 **ation of the facility;**

38 (b) **The imminent insolvency of the facility;**

39 (c) **The department’s revocation or suspension of the license of the facility; or**

40 (d) **The department’s determination that the person legally responsible for the operation**
41 **of the facility intends to cease operations and to close the facility without adequate ar-**
42 **rangements for the relocation of the patients.**

43 (2) **A temporary manager has all of the duties and powers, as prescribed by the depart-**
44 **ment by rule or as agreed upon between the department and the person legally responsible**
45 **for the facility, that are necessary to ensure the safety and well-being of the patients and**

1 the continued operation of the facility.

2 (3) The department shall compensate a temporary manager as agreed upon by the de-
 3 partment and the person legally responsible for the facility. Compensation of a temporary
 4 manager and compensation of any employees or agents of the temporary manager reasonably
 5 necessary to assist the temporary manager in the operation of the facility shall be considered
 6 a reasonable expense for the purpose of withdrawing funds from the Facility Fund estab-
 7 lished in ORS 441.303.

8 **SECTION 16.** (1) Within 30 days following the appointment of a temporary manager under
 9 section 15 of this 2009 Act, and every 30 days thereafter and within 30 days after the termi-
 10 nation of the period of temporary management, the temporary manager shall give the De-
 11 partment of Human Services and the person legally responsible for the facility a complete
 12 accounting of all property that the temporary manager has taken possession, all funds col-
 13 lected and all expenses incurred by the temporary manager on behalf of the facility and the
 14 expenditure of any funds withdrawn from the Facility Fund established under ORS 441.303
 15 to pay those expenses.

16 (2) If a facility's income or assets are insufficient to meet the expenses of a temporary
 17 manager in the operation of the facility, the department may withdraw funds from the Fa-
 18 cility Fund established under ORS 441.303 to pay those expenses.

19 (3) If the department withdraws funds from the Facility Fund established under ORS
 20 441.303 to pay the expenses of the temporary manager, the person legally responsible for the
 21 facility shall be liable to the department for the deficiency.

22 (4) The department shall provide an opportunity to contest the deficiency in accordance
 23 with ORS chapter 183. The notice of the right to hearing shall conform to ORS 183.415 and
 24 shall explain:

25 (a) That the department finds the person to be legally responsible for the facility;

26 (b) The amount of the deficiency; and

27 (c) That the department may have a lien for the amount of the deficiency against the real
 28 property, personal property and other beneficial interest, direct or indirect, of the person
 29 legally responsible for the facility and any such property or interest conveyed within one
 30 year prior to the appointment of the temporary manager.

31 (5) The department shall have a lien for any deficiency established under subsection (4)
 32 of this section, upon any real property, personal property and other beneficial interest, direct
 33 or indirect, of the person legally responsible for the facility and the proceeds of any
 34 conveyance of any such property or interest made by the person legally responsible for the
 35 facility within one year prior to the appointment of the temporary manager.

36 (6) The lien authorized by subsection (5) of this section is prior to any lien or other in-
 37 terest that arises subsequent to the appointment of a temporary manager, except for a
 38 construction lien arising out of work begun before the appointment and continued with the
 39 express consent of the temporary manager.

40 (7) The lien provided in subsection (5) of this section may be recorded in the County Clerk
 41 Lien Record maintained under ORS 205.130.

42 (8) Income received by the temporary manager on behalf of the facility and not applied
 43 to the operating expenses of the facility and any deficiency recovered by the department
 44 under this section shall be used to reimburse the Facility Fund established under ORS 441.303
 45 for any withdrawal of funds from the fund made pursuant this section.

1 **SECTION 17.** (1) In any action or proceeding brought against a temporary manager in the
2 temporary manager's official capacity for acts committed while carrying out the powers and
3 duties authorized by the Department of Human Services by rule or as agreed upon between
4 the department and the person legally responsible for the facility, the temporary manager
5 shall be considered an agent of the department under ORS 30.260 to 30.300.

6 (2) A temporary manager may be held liable in an individual capacity only for the man-
7 ager's own gross negligence, intentional acts or breach of fiduciary duty.

8 **SECTION 18.** The Department of Human Services shall adopt rules necessary to imple-
9 ment sections 14 to 18 of this 2009 Act, including but not limited to the criteria for the ap-
10 pointment of a temporary manager of a facility, the qualifications of a temporary manager
11 and the powers and duties of a temporary manager.

12 **SECTION 19.** On the effective date of this 2009 Act, all moneys in the fund established
13 under ORS 441.303 are transferred to the Facility Fund established by the amendments to
14 ORS 441.303 by section 7 of this 2009 Act.
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