

Enrolled House Bill 2442

Sponsored by Representatives GELSER, TOMEI; Representatives BUCKLEY, COWAN, C EDWARDS, GARRETT, GILLIAM, KAHL, MATTHEWS, STIEGLER, Senators BATES, DEVLIN, DINGFELDER, HASS, MONNES ANDERSON, MONROE, MORRISETTE, SCHRADER, VERGER, WALKER

CHAPTER

AN ACT

Relating to care providers; creating new provisions; amending ORS 124.050, 124.065, 124.070, 430.735, 430.743, 430.745, 441.020, 441.715, 441.745, 441.995, 443.045, 443.325, 443.415, 443.425, 443.430, 443.455, 443.730, 443.735, 443.775, 443.790 and 443.825; appropriating money; and declaring an emergency.

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

SECTION 1. The Quality Care Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Quality Care Fund shall be credited to the Quality Care Fund. Moneys in the fund are continuously appropriated to the Department of Human Services for training, technical assistance, quality improvement initiatives and licensing activities to ensure that high standards for quality of care are met in accordance with rules adopted by the department with respect to:

- (1) A long term care facility as defined in ORS 442.015;
- (2) A residential facility as defined in ORS 443.400, including but not limited to an assisted living facility; and
- (3) An adult foster home as defined in ORS 443.705.

SECTION 2. Notwithstanding section 1 of this 2009 Act, on June 30, 2011, the Department of Human Services shall transfer \$150,000 from the Quality Care Fund established in section 1 of this 2009 Act to the General Fund for general governmental expenses.

NOTE: Section 3 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 4. (1) The Department of Human Services shall report to each regular session of the Legislative Assembly:

- (a) On the safety of individuals receiving developmental disability services including, but not limited to:
 - (A) The average turnover of direct care workers in service settings.
 - (B) A summary of the training provided by the department or its contractors to direct care workers in service settings.
 - (C) A summary of the core competencies required of direct care workers in service settings by the state for licensing or certification.
 - (D) A summary of the average wages of direct care workers in service settings, presented by type of services provided.

(E) The number of complaints of abuse filed as required by ORS 430.765 and received by the department under ORS 430.743, reported by type of allegation.

(F) The number of direct care workers in service settings who were subject to criminal or civil action involving an individual with a developmental disability.

(G) The number of deaths, serious injuries, sexual assaults and rapes alleged to have occurred in service settings.

(b) A schedule of all license fees and civil penalties established by rule pursuant to ORS 441.995, 443.455 and 443.790.

(2) The department shall provide the report described in subsection (1)(a) of this section to the appropriate legislative committees, the Oregon Developmental Disabilities Council and to the agency designated to administer the state protection and advocacy system under ORS 192.517.

(3) As used in this section, "service settings" means any of the following that provide developmental disability services:

(a) An adult foster home as defined in ORS 443.705;

(b) A residential facility as defined in ORS 443.400;

(c) A location where home health services, as defined in ORS 443.005, are received by a resident;

(d) A location where in-home care services, as defined in ORS 443.305, are received by a resident;

(e) An institution under the control of the department under ORS 179.321; and

(f) A domiciliary care facility as defined in ORS 443.205.

SECTION 5. (1) If the Department of Human Services substantiates an allegation of abuse that occurred in a facility, the department shall immediately notify the facility of its findings.

(2) Upon receipt of the notice described in subsection (1) of this section, a facility shall provide written notice of the findings to the individual found to have committed abuse, residents of the facility, the residents' case managers and the residents' guardians.

(3) An application for employment at a facility must inquire whether the applicant has been found to have committed abuse.

(4) As used in this section:

(a) "Abuse" has the meaning given that term in ORS 124.050 and 430.735.

(b) "Facility" means:

(A) A residential facility as defined in ORS 443.400; or

(B) An adult foster home as defined in ORS 443.705.

SECTION 6. (1) The Department of Human Services shall complete a criminal records check under ORS 181.534 on an employee 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, in-home care or support services or a resident of an adult foster home or a residential facility.

(2) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of home health, in-home care or support services or a resident of a residential facility or an adult foster home, of an individual who has been convicted:

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.054 or 167.057;

(b) Of a crime listed in ORS 181.594;

(c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(d) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to (c) of this subsection; or

(e) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a crime described in paragraphs (a) to (d) of this subsection.

(3) Subsection (2) of this section does not apply to a peer support specialist.

(4) If the department has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department shall notify, in writing, the employer and the employee or potential employee.

(5) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705.

(b) "Home health agency" has the meaning given that term in ORS 443.005.

(c) "In-home care agency" has the meaning given that term in ORS 443.305.

(d) "Peer support specialist" means a person who:

(A) Is providing peer support services as defined by the department by rule;

(B) Is under the supervision of a qualified clinical supervisor;

(C) Has completed training required by the department; and

(D) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.

(e) "Residential facility" has the meaning given that term in ORS 443.400.

SECTION 7. (1) The Department of Human Services or a designee of the department shall conduct the investigations and make the findings required by ORS 430.735 to 430.765.

(2) The department shall prescribe by rule policies and procedures for the investigations of allegations of abuse of a person with a developmental disability as described in ORS 430.735 (2)(a) to ensure that the investigations are conducted in a uniform, objective and thorough manner in every county of the state including, but not limited to, policies and procedures that:

(a) Limit the duties of investigators solely to conducting and reporting investigations of abuse;

(b) Establish investigator caseloads based upon the most appropriate investigator-to-complaint ratios;

(c) Establish minimum qualifications for investigators that include the successful completion of training in identified competencies; and

(d) Establish procedures for the screening and investigation of abuse complaints and establish uniform standards for reporting the results of the investigation.

(3) A person employed by or under contract with the department, the designee of the department or a community mental health and developmental disabilities program to provide case management services may not serve as the lead investigator of an allegation of abuse of a person with a developmental disability.

(4) The department shall monitor investigations conducted by a designee of the department.

SECTION 8. (1) The district attorney in each county shall be responsible for developing county multidisciplinary teams to consist of but not be limited to personnel from the community mental health program, the developmental disabilities program, the Department of Human Services or a designee of the department, the local area agency on aging, the district attorney's office, law enforcement and an agency that advocates on behalf of individuals with disabilities, as well as others specially trained in the abuse of adults.

(2) The teams shall develop a written protocol for immediate investigation of and notification procedures for cases of abuse of adults and for interviewing the victims. Each team also shall develop written agreements signed by member agencies that are represented on the team that specify:

- (a) **The role of each member agency;**
 - (b) **Procedures to be followed to assess risks to the adult;**
 - (c) **Guidelines for timely communication between member agencies; and**
 - (d) **Guidelines for completion of responsibilities by member agencies.**
- (3) **Each team member shall have access to training in risk assessment, dynamics of abuse of adults and legally sound interview and investigatory techniques.**
- (4) **All investigations of abuse of adults by the department or its designee and by law enforcement shall be carried out in a manner consistent with the protocols and procedures called for in this section.**
- (5) **All information obtained by the team members in the exercise of their duties is confidential.**
- (6) **Each team shall develop and implement procedures for evaluating and reporting compliance of member agencies with the protocols and procedures required under this section.**
- (7) **Each team shall annually report to the Department of Justice and the Oregon Criminal Justice Commission the number of:**
- (a) **Substantiated allegations of abuse of adults in the county for the preceding 12 months.**
 - (b) **Substantiated allegations of abuse referred to law enforcement because there was reasonable cause found that a crime had been committed.**
 - (c) **Allegations of abuse that were not investigated by law enforcement.**
 - (d) **Allegations of abuse that led to criminal charges.**
 - (e) **Allegations of abuse that led to prosecution.**
 - (f) **Allegations of abuse that led to conviction.**
- SECTION 9.** ORS 124.050 is amended to read:
 124.050. As used in ORS 124.050 to 124.095:
- (1) "Abuse" means one or more of the following:
 - (a) Any physical injury **to an elderly person** caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.
 - (b) Neglect [*which leads to physical harm through withholding of services necessary to maintain health and well-being*].
 - (c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.
 - (d) Willful infliction of physical pain or injury **upon an elderly person.**
 - (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.
 - (f) *Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the person to believe that the threat will be carried out.*
 - (f) **Verbal abuse.**
 - (g) **Financial exploitation.**
 - (h) **Sexual abuse.**
 - (i) **Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.**
 - (j) **A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a licensed physician and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.**
 - (2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.
 - (3) "Facility" means:
 - (a) **A long term care facility as that term is defined in ORS 442.015.**

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) “Financial exploitation” means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) “Intimidation” means compelling or deterring conduct by threat.

[(3)] (6) “Law enforcement agency” means:

(a) Any city or municipal police department.

(b) Any county sheriff’s office.

(c) The Oregon State Police.

(d) Any district attorney.

(7) “Neglect” means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or

(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.

(8) “Person with a disability” means a person described in:

(a) ORS 410.040 (7)(b); or

(b) ORS 410.715.

[(4)] (9) “Public or private official” means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physician and surgeon, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services, county health department or community mental health and developmental disabilities program.

(d) Peace officer.

(e) Member of the clergy.

(f) Licensed clinical social worker.

(g) Physical, speech or occupational therapists.

(h) Senior center employee.

(i) Information and referral or outreach worker.

(j) Licensed professional counselor or licensed marriage and family therapist.

(k) Any public official who comes in contact with elderly persons in the performance of the official’s official duties.

(L) Firefighter or emergency medical technician.

(10) “Services” includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) “Sexual abuse” means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;

(D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 10. ORS 124.065 is amended to read:

124.065. (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report of a possible crime is received by the department under ORS 124.060, the department [may] or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.

(3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the department or the designee of the department its receipt of the notification within two business days.

(4) When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made.

SECTION 11. ORS 124.065, as amended by section 10 of this 2009 Act, is amended to read:

124.065. (1) When a report is required under ORS 124.060, an oral report shall be made immediately by telephone or otherwise to the local office of the Department of Human Services or to a law enforcement agency within the county where the person making the report is at the time of contact. If known, such reports shall contain the names and addresses of the elderly person and any persons responsible for the care of the elderly person, the nature and the extent of the abuse (including any evidence of previous abuse), the explanation given for the abuse and any other information which the person making the report believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator.

(2) When a report of a possible crime is received by the department under ORS 124.060, the department or the designee of the department shall notify the law enforcement agency having jurisdiction within the county where the report was made. If the department or the designee of the department is unable to gain access to the allegedly abused elderly person, the department or the

designee of the department may contact the law enforcement agency for assistance and the agency shall provide assistance.

(3) If the department or the designee of the department determines that there is reason to believe a crime has been committed, the department or the designee of the department shall immediately notify the law enforcement agency having jurisdiction within the county where the report was made. The law enforcement agency shall confirm to the department or the designee of the department its receipt of the notification [*within two business days*].

(4) When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the local office of the department in the county where the report was made.

SECTION 12. ORS 124.070 is amended to read:

124.070. (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. **The investigation shall include a visit to the named elderly person and communication with those individuals having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.**

(2) If the department [*or law enforcement agency conducting the investigation*] finds reasonable cause to believe that [*abuse*] **a crime** has occurred, the department [*or law enforcement agency*] shall notify in writing the appropriate law enforcement agency [*or the local office of the department, respectively. The investigation shall include a visit to the named elderly person and consultation with those individuals having knowledge of the facts of the particular case*]. **If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing.** Upon completion of the evaluation of each case, **the department shall prepare** written findings [*shall be prepared which shall*] **that** include recommended action and a determination of whether protective services are needed.

(3) Within three business days of receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

(b) That the investigative findings have been given to the district attorney for review;
or

(c) That a criminal investigation will take place.

(4) If a law enforcement agency gives the findings of the department to the district attorney for review, within five business days the district attorney shall notify the department that the district attorney has received the findings and shall inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.

(5) If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination within five business days and shall include information explaining the basis for the determination.

SECTION 13. ORS 124.070, as amended by section 12 of this 2009 Act, is amended to read:

124.070. (1) Upon receipt of the report required under ORS 124.060, the Department of Human Services or the law enforcement agency shall cause an investigation to be commenced promptly to determine the nature and cause of the abuse. The investigation shall include a visit to the named elderly person and communication with those individuals having knowledge of the facts of the par-

ticular case. If the alleged abuse occurs in a residential facility, the department shall conduct an investigation regardless of whether the suspected abuser continues to be employed by the facility.

(2) If the department finds reasonable cause to believe that a crime has occurred, the department shall notify in writing the appropriate law enforcement agency. If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the agency shall notify the department in writing. Upon completion of the evaluation of each case, the department shall prepare written findings that include recommended action and a determination of whether protective services are needed.

(3) *[Within three business days of]* **After** receiving notification from the department that there is reasonable cause to believe that a crime has occurred, a law enforcement agency shall notify the department:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

(b) That the investigative findings have been given to the district attorney for review; or

(c) That a criminal investigation will take place.

(4) If a law enforcement agency gives the findings of the department to the district attorney for review, *[within five business days]* the district attorney shall notify the department that the district attorney has received the findings and shall inform the department whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department.

(5) If a district attorney files charges stemming from the findings of the department and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department of the determination *[within five business days]* and shall include information explaining the basis for the determination.

SECTION 14. A person who has personal knowledge that an employee or former employee of the person was found by the Department of Human Services, a law enforcement agency or a court to have committed abuse under ORS 124.005 to 124.040, 124.050 to 124.095 or 124.100 to 124.140, is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse.

SECTION 15. ORS 430.735 is amended to read:

430.735. As used in ORS 430.735 to 430.765:

(1) "Abuse" means one or more of the following:

[(a) Any death caused by other than accidental or natural means.]

(a) Abandonment, including desertion or willful forsaking of a person with a developmental disability or the withdrawal or neglect of duties and obligations owed a person with a developmental disability by a caregiver or other person.

(b) Any physical injury **to an adult** caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(c) Willful infliction of physical pain or injury **upon an adult**.

(d) Sexual *[harassment or exploitation, including but not limited to any sexual contact between an employee of a facility or community program and]* **abuse of an adult.**

(e) Neglect *[that leads to physical harm through withholding of services necessary to maintain health and well-being. For purposes of this paragraph, "neglect" does not include a failure of the state or a community program to provide services due to a lack of funding available to provide the services].*

(f) Verbal abuse of a person with a developmental disability.

(g) Financial exploitation of a person with a developmental disability.

(h) Involuntary seclusion of a person with a developmental disability for the convenience of the caregiver or to discipline the person.

(i) A wrongful use of a physical or chemical restraint upon a person with a developmental disability, excluding an act of restraint prescribed by a licensed physician and any treatment

activities that are consistent with an approved treatment plan or in connection with a court order.

(j) **An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.**

(k) **Any death of an adult caused by other than accidental or natural means.**

(2) "Adult" means a person 18 years of age or older with:

(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) A mental illness who is receiving services from a community program or facility.

(3) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.

(4) [*Care provider*] means an individual or] **"Caregiver" means an individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.**

(5) "Community program" means a community mental health and developmental disabilities program as established in ORS 430.610 to 430.695.

[*Department*] means the Department of Human Services.]

(7) (6) "Facility" means a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.

(7) **"Financial exploitation" means:**

(a) **Wrongfully taking the assets, funds or property belonging to or intended for the use of a person with a developmental disability.**

(b) **Alarming a person with a developmental disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.**

(c) **Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by a person with a developmental disability.**

(d) **Failing to use the income or assets of a person with a developmental disability effectively for the support and maintenance of the person.**

(8) **"Intimidation" means compelling or deterring conduct by threat.**

[*Law enforcement agency*] means:

(a) Any city or municipal police department;

(b) Any county sheriff's office;

(c) The Oregon State Police; or

(d) Any district attorney.

(10) **"Neglect" means:**

(a) **Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a person with a developmental disability that may result in physical harm or significant emotional harm to the person;**

(b) **The failure of a caregiver to make a reasonable effort to protect a person with a developmental disability from abuse; or**

(c) **Withholding of services necessary to maintain the health and well-being of an adult which leads to physical harm of an adult.**

(11) **"Person with a developmental disability" means a person described in subsection (2)(a) of this section.**

[*Public or private official*] means:

(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or podiatric physician and surgeon, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(c) Employee of the Department of Human Services, county health department, community mental health and developmental disabilities program or private agency contracting with a public body to provide any community mental health service;

(d) Peace officer;

(e) Member of the clergy;

(f) Licensed clinical social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist; [or]

(k) Any public official who comes in contact with adults in the performance of the official's duties[.]; or

(L) Firefighter or emergency medical technician.

(13) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an adult.

(14)(a) "Sexual abuse" means:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver;

(D) Any sexual contact between a person with a developmental disability and a relative of the person with a developmental disability other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse of the adult.

(15) "Sexual contact" has the meaning given that term in ORS 163.305.

(16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with a developmental disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 16. ORS 430.743 is amended to read:

430.743. (1) When a report is required under ORS 430.765 (1) and (2), an oral report shall be made immediately by telephone or otherwise to [the designee of] the Department of Human Services, **the designee of the department** or a law enforcement agency within the county where the person making the report is at the time of contact. If known, the report shall include:

(a) The name, age and present location of the allegedly abused adult;

(b) The names and addresses of persons responsible for the adult's care;

(c) The nature and extent of the alleged abuse, including any evidence of previous abuse;

(d) Any information that led the person making the report to suspect that abuse has occurred plus any other information that the person believes might be helpful in establishing the cause of the abuse and the identity of the perpetrator; and

(e) The date of the incident.

(2) When a report is received by the department's designee under this section, the designee shall immediately determine whether **abuse occurred and if** the reported victim has sustained any serious injury. If so, the designee shall immediately notify the department. If there is reason to believe a crime has been committed, the designee shall **immediately** notify the law enforcement agency

having jurisdiction within the county where the report was made. If the designee is unable to gain access to the allegedly abused adult, the designee may contact the law enforcement agency for assistance and the agency shall provide assistance. When a report is received by a law enforcement agency, the agency shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall also immediately notify the department in cases of serious injury or death.

(3) Upon receipt of a report of abuse under this section, the department or its designee shall notify:

(a) The agency providing primary case management services to the adult; and

(b) The guardian or case manager of the adult unless the notification would undermine the integrity of the investigation because the guardian or case manager is suspected of committing abuse.

SECTION 17. ORS 430.745 is amended to read:

430.745. (1) Upon receipt of any report of alleged abuse of an adult, **or upon receipt of a report of a death of an adult that may have been caused by other than accidental or natural means**, the Department of Human Services or its designee shall investigate promptly to determine [*the nature and cause of the abuse*] **if abuse occurred or whether a death was caused by abuse**. If the department or its designee determines that a law enforcement agency is conducting an investigation of the same incident, the department or its designee need not conduct its own investigation.

(2) The department or its designee may enter a facility and inspect and copy records of a facility or community program if necessary for the completion of [*its*] **the** investigation.

(3) In cases in which the department, its designee or the law enforcement agency conducting the investigation finds reasonable cause to believe that an adult has died as a result of abuse, it shall report that information to the appropriate medical examiner. The medical examiner shall complete an investigation as required under ORS chapter 146 and report the findings to the department, its designee or the law enforcement agency.

(4) Upon completion of an investigation conducted by a law enforcement agency, that agency shall provide the department or its designee with a report of its findings and supporting evidence.

(5) If the department or its designee determines that there is reasonable cause to believe that abuse occurred at a facility or that abuse was caused or aided by a person licensed by a licensing agency to provide care or services, [*it*] **the department or its designee** shall immediately notify each appropriate licensing agency and provide each licensing agency with a copy of its investigative findings.

(6) Upon completion of the investigation, the department or its designee shall prepare written findings [*which*] **that** include recommended actions and a determination of whether protective services are needed. **The department or its designee shall provide** appropriate protective services [*shall be provided*] as necessary to prevent further abuse of the adult. Any protective services provided shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence that is available within existing resources.

(7) If the department or its designee determines that there is reason to believe a crime has occurred, the department or its designee shall report the findings to the appropriate law enforcement agency. The law enforcement agency must confirm its receipt of the report to the department or its designee within two business days. Within three business days of receipt of the findings, the agency shall notify the department or its designee:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

(b) That the findings have been given to the district attorney for review; or

(c) That there will be a criminal investigation.

(8) If a law enforcement agency gives the findings of the department or its designee to the district attorney for review, within five business days the district attorney shall notify the department or its designee that the district attorney has received the findings and shall inform the department or its designee whether the findings have been received for review

or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department or its designee.

(9) If a district attorney files charges stemming from a report from the department or its designee and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department or its designee of the determination within five business days and shall include information explaining the basis for the determination.

SECTION 18. ORS 430.745, as amended by section 17 of this 2009 Act, is amended to read:

430.745. (1) Upon receipt of any report of alleged abuse of an adult, or upon receipt of a report of a death of an adult that may have been caused by other than accidental or natural means, the Department of Human Services or its designee shall investigate promptly to determine if abuse occurred or whether a death was caused by abuse. If the department or its designee determines that a law enforcement agency is conducting an investigation of the same incident, the department or its designee need not conduct its own investigation.

(2) The department or its designee may enter a facility and inspect and copy records of a facility or community program if necessary for the completion of the investigation.

(3) In cases in which the department, its designee or the law enforcement agency conducting the investigation finds reasonable cause to believe that an adult has died as a result of abuse, it shall report that information to the appropriate medical examiner. The medical examiner shall complete an investigation as required under ORS chapter 146 and report the findings to the department, its designee or the law enforcement agency.

(4) Upon completion of an investigation conducted by a law enforcement agency, that agency shall provide the department or its designee with a report of its findings and supporting evidence.

(5) If the department or its designee determines that there is reasonable cause to believe that abuse occurred at a facility or that abuse was caused or aided by a person licensed by a licensing agency to provide care or services, the department or its designee shall immediately notify each appropriate licensing agency and provide each licensing agency with a copy of its investigative findings.

(6) Upon completion of the investigation, the department or its designee shall prepare written findings that include recommended actions and a determination of whether protective services are needed. The department or its designee shall provide appropriate protective services as necessary to prevent further abuse of the adult. Any protective services provided shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence that is available within existing resources.

(7) If the department or its designee determines that there is reason to believe a crime has occurred, the department or its designee shall report the findings to the appropriate law enforcement agency. The law enforcement agency must confirm its receipt of the report to the department or its designee. [*within two business days. Within three business days of receipt of the findings,*] The agency shall notify the department or its designee **of its determination**:

(a) That there will be no criminal investigation, including an explanation of why there will be no criminal investigation;

(b) That the findings have been given to the district attorney for review; or

(c) That there will be a criminal investigation.

(8) If a law enforcement agency gives the findings of the department or its designee to the district attorney for review, [*within five business days*] the district attorney shall notify the department or its designee that the district attorney has received the findings and shall inform the department or its designee whether the findings have been received for review or for filing charges. A district attorney shall make the determination of whether to file charges within six months of receiving the findings of the department or its designee.

(9) If a district attorney files charges stemming from a report from the department or its designee and the district attorney makes a determination not to proceed to trial, the district attorney shall notify the department or its designee of the determination [*within five business days*] and shall include information explaining the basis for the determination.

SECTION 19. A person who has personal knowledge that an employee or former employee of the person was found by the Department of Human Services or a law enforcement agency to have committed abuse under ORS 430.735 to 430.765, is immune from civil liability for the disclosure to a prospective employer of the employee or former employee of known facts concerning the abuse.

SECTION 20. ORS 441.020 is amended to read:

441.020. (1) Licenses for health care facilities including long term care facilities, as defined in ORS 442.015, shall be obtained from the Department of Human Services.

(2) Applications shall be upon such forms and shall contain such information as the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

(3) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. **Except as provided in subsection (13) of this section**, if the license is issued, the fee shall be paid into the State Treasury to the credit of the Department of Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607 to 431.619.

(4) Except as otherwise provided in subsection (5) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be \$750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

(e) Two hundred or more beds, the annual license fee shall be \$3,400.

(5) For long term care facilities with:

[(a) Fewer than 16 beds, the annual license fee shall be up to \$120.]

[(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.]

[(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.]

[(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to \$450.]

[(e) Two hundred beds or more, the annual license fee shall be up to \$580.]

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

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

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

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

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

(6) For special inpatient care facilities with:

(a) Fewer than 26 beds, the annual license fee shall be \$750.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

(e) Two hundred beds or more, the annual license fee shall be \$3,400.

(7) For ambulatory surgical centers, the annual license fee shall be \$1,000.

(8) For birthing centers, the annual license fee shall be \$250.

(9) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.

(10) During the time the licenses remain in force, holders *[thereof]* are not required to pay inspection fees to any county, city or other municipality.

(11) Any health care facility license may be indorsed to permit operation at more than one location. *[In such case]* **If so**, the applicable license fee shall be the sum of the license fees *[which]* **that** would be applicable if each location were separately licensed.

(12) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(13) All moneys received pursuant to subsection (5) of this section shall be deposited in the Quality Care Fund established in section 1 of this 2009 Act.

SECTION 21. ORS 441.715 is amended to read:

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

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

(c) **If the Department of Human Services investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a person with a duty of care toward a resident of a long term care facility and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this paragraph:**

(A) **"Negative outcome" includes serious injury, rape, sexual abuse or death.**

(B) **"Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365 and 163.375.**

(C) **"Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.**

(D) **"Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and sexual harassment.**

(2) The penalties assessed under subsection (1)(a) or (b) of this section shall not exceed [\$6,000] **\$7,500** in the aggregate or as otherwise required by federal law with respect to a single long term care facility within any 90-day period.

SECTION 22. ORS 441.745 is amended to read:

441.745. All penalties recovered under ORS 441.710 to 441.740 **and 441.995** shall be [paid into the State Treasury and credited to the General Fund] **deposited in the Quality Care Fund established in section 1 of this 2009 Act.**

SECTION 23. ORS 441.995 is amended to read:

441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of ORS 441.630 to 441.680, the Department of Human Services shall consider:

(a) Any prior violations of laws or rules pertaining to facilities;

(b) The financial benefits, if any, realized by the facility as a result of the violation;

(c) The gravity of the violation, including the actual or potential threat to the health, safety and well-being of one or more residents;

(d) The severity of the actual or potential harm caused by the violation; and

(e) The facility's past history of correcting violations and preventing the recurrence of violations.

(2) The department may impose a civil penalty for abuse in accordance with rules adopted under ORS 441.637 (1). [Facilities assessed civil penalties for abuse shall be entitled to a contested case hearing under ORS chapter 183.]

(3) If the department finds the facility is responsible for abuse and if the abuse resulted in a resident's death or serious injury, the department shall impose a civil penalty of not less than \$500 nor more than \$1,000 for each violation, or as otherwise required by federal law **or ORS 441.715 (1)(c), 443.455 or 443.775.**

(4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the department's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations that do not constitute abuse.

(5) Facilities assessed civil penalties under this section are entitled to a contested case hearing under ORS chapter 183.

SECTION 24. ORS 443.045 is amended to read:

443.045. (1) The Department of Human Services may deny, suspend or revoke the license of any home health agency for failure to comply with ORS 443.005 to 443.095 **or section 6 of this 2009 Act** or with the rules of the department as authorized by ORS 443.085.

(2) License denials, suspensions and revocations, adoption of rules and judicial review thereof shall be in accordance with ORS chapter 183.

SECTION 25. ORS 443.325 is amended to read:

443.325. The Department of Human Services may impose a civil penalty in the manner provided in ORS 183.745 and deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with ORS 443.305 to 443.350 or with rules adopted thereunder. **The department may deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with section 6 of this 2009 Act.** A failure to comply with ORS 443.305 to 443.350 includes, but is not limited to:

(1) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;

(2) Failure to provide the contracted in-home care services; or

(3) Failure to correct deficiencies identified during a department inspection.

SECTION 26. ORS 443.415 is amended to read:

443.415. (1) Applications for licensure to maintain and operate a residential facility shall be made to the Department of Human Services on forms provided for that purpose by the department. Each application shall be accompanied by a fee [*of \$60 for facilities defined in ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes defined in ORS 443.400 (8) and (10)*]. No fee is required of any governmentally operated residential facility.

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

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

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

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

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

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

(C) Fifty to 99 beds, shall be \$1,040.

(D) One hundred to 150 beds, shall be \$1,340.

(E) More than 150 beds, shall be \$1,500.

[2] (3) Upon receipt of an application and fee, the department shall conduct an investigation. The department shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.400 to 443.455 and the rules of the director. Licensure may be denied when a residential facility is not in compliance with ORS 443.400 to 443.455 or the rules of the Director of Human Services. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

SECTION 27. ORS 443.425 is amended to read:

443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless sooner revoked. Each license shall state the name of the person operating the residential facility; the name of the person who owns the facility; the address of the premises to which the license applies and the maximum number of residents to be maintained in such residential facility at any time whether the residential facility is licensed as a residential training facility, a residential treatment facility, a residential care facility; a residential training home or residential treatment home and such other information as the Department of Human Services considers necessary.

(2) A license is renewable upon submission of an application to the department and payment of a fee [*of \$60 for facilities licensed under ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes licensed under ORS 443.400 (8) and (10)*]. No fee shall be required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends

the effective date of expiration of the license until the department has acted upon such application. The department shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal or the authorized representative thereof has given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

(3) The biennial fee required under subsection (2) of this section for facilities:

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

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

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

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

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

(C) Fifty to 99 beds, shall be \$1,040.

(D) One hundred to 150 beds, shall be \$1,340.

(E) More than 150 beds, shall be \$1,500.

SECTION 28. ORS 443.430 is amended to read:

443.430. (1) [No] A license under ORS 443.415 is **not** transferable or applicable to any location, residential facility or management other than that indicated on the application for licensure.

(2) **Except as provided in subsection (3) of this section,** all moneys collected under ORS 443.400 to 443.455 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Services in the administration of ORS 443.400 to 443.455.

(3) All moneys collected from a residential care facility under ORS 443.415, 443.425 or 443.455 shall be deposited in the Quality Care Fund established in section 1 of this 2009 Act.

SECTION 29. ORS 443.455 is amended to read:

443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 [*are considered to be long-term care facilities,*] **shall be** subject to ORS 441.705 to 441.745. [*However,*] The [*Director*] **Department** of Human Services shall exercise the powers conferred under ORS 441.705 to 441.745.

(2) The [*director*] **department** shall by rule prescribe a schedule of penalties appropriate to residential facilities licensed under ORS 443.400 to 443.455.

(3) If the department investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a person with a duty of care toward a resident of a residential facility and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:

(a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

(b) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365 and 163.375.

(c) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(d) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

SECTION 30. ORS 443.730 is amended to read:

443.730. (1) The provider shall furnish the names, addresses and telephone numbers of the substitute caregivers employed or used by the provider to the Department of Human Services upon the request of the department.

(2) The department shall require the provider to furnish information describing the planned operation of the adult foster home, including the use of substitute caregivers and other staff, as part of the license application.

(3) The provider shall not allow a substitute caregiver or other caregiver to provide care to a resident unless the following standards are met and documented:

(a) The department has completed a criminal records check [*for the State of Oregon and has completed or initiated a national criminal records check, if appropriate under ORS 443.735 (3), for the person*] **in accordance with section 6 of this 2009 Act**. The department shall adopt rules to provide for the expedited completion of a criminal records check for the State of Oregon when requested by a licensed provider because of an immediate staffing need.

(b) The substitute caregiver has successfully completed the training required by the department.

(c) The caregiver is able to understand and communicate in oral and written English.

(d) The provider has oriented the caregiver to the residents in the adult foster home, their care needs and the physical characteristics of the home.

(e) The provider has trained the caregiver to meet the routine and emergency needs of the residents.

(4) The department shall establish educational requirements for substitute caregivers and other caregivers designed to impart the practical knowledge and skills necessary to maintain the health, safety and welfare of residents. The training shall include a test established by the department to be completed by the caregiver. The test shall be completed by the caregiver without the help of any other person.

SECTION 31. ORS 443.735 is amended to read:

443.735. (1) Applications for a license to maintain and operate an adult foster home shall be made on forms provided by the Department of Human Services. Each application shall be accompanied by a fee of \$20 per bed requested for licensing.

(2) Upon receipt of an application and fee, the department shall conduct an investigation.

(3) The department shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the department;

(b) The department has completed an inspection of the adult foster home;

(c) The department has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check shall be conducted in accordance with rules adopted under ORS 181.534;

(d) The department has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678; and

(e) The applicant has demonstrated to the department the financial ability and resources necessary to operate the adult foster home. The department shall adopt rules as the department deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the department with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the department regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the department may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The department may not renew a license under this section unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the department;

(b) The department has completed an inspection of the adult foster home;

(c) The department has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.534; and

(d) The department has checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678.

(5)(a) In seeking an initial license and renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the department.

(b) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the department to establish noncompliance with ORS 443.705 to 443.825 and the rules of the department.

(6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of the department, are substantially related to the qualifications, functions or duties of a provider, resident manager, substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in or residing in an adult foster home.

(b) The department shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

(c) A provider may not hire, retain in employment or allow to live in an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse.

(7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the names of all providers who own the adult foster home, the address of the premises to which the license applies, the maximum number of residents and the classification of the home. If, during the period covered by the license, a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of \$10.

(8) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(9) The department shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed home or homes and has demonstrated the ability to provide care to the residents of those homes that is adequate and substantially free from abuse and neglect.

(10)(a) All moneys collected under ORS 443.725 to 443.780 **from adult foster homes that are licensed to serve persons with mental, emotional or behavioral disturbances or alcohol or drug dependence** shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the Department of Human Services.

(b) **All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve persons who are elderly, have physical disabilities or have developmental disabilities shall be deposited in the Quality Care Fund established in section 1 of this 2009 Act.**

(11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the department may issue a 60-day provisional license to a qualified person if the department determines that an emergency situation exists after being notified that the licensed provider of an adult foster home is no longer overseeing operation of the adult foster home.

NOTE: Section 32 was deleted by amendment. Subsequent sections were not renumbered.

SECTION 33. ORS 443.775 is amended to read:

443.775. (1) The Department of Human Services shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and department approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommo-

datations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (9).

(a) An exception to the limit of one resident with nursing care needs may be granted if the provider proves to the department by clear and convincing evidence that such an exception will not jeopardize the care, health, safety or welfare of the residents and that the provider is capable of meeting the additional care needs of the new resident.

(b) The department, and the counties acting under the exemption granted pursuant to ORS 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions granted during the quarter pursuant to paragraph (a) of this subsection.

(2) The provider may not employ a resident manager who does not meet the classification standard for the adult foster home.

(3) The provider shall be able to meet the night care needs of a resident before admitting the resident. The provider shall include night care needs in the resident's care plan.

(4) The provider shall screen a prospective resident before admitting the resident. The screening shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall be given to the prospective resident or the prospective resident's representative.

(5) The department shall make rules to ~~[assure]~~ **ensure** that any employee who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

(6) For adult foster homes in which clients reside for whom the department pays for care, including homes in which the provider and the resident are related, the department may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care.

(7) By order the Director of Human Services may delegate authority under this section to personnel other than of the department.

(8) The department may commence a suit in equity to enjoin maintenance of an adult foster home if:

(a) The home is operated without a valid license under this section; or

(b) After the license to maintain the home is ordered suspended or revoked, a reasonable time for placement of residents in other facilities has been allowed but such placement has not been accomplished.

(9) The department shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care.

(10) **Except as provided in subsection (11) of this section**, any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition of a civil penalty, to be fixed by the ~~[director]~~ **department** by rule, not to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated abuse, a maximum of \$1,000.

(11)(a) If the department determines that there is reasonable cause to believe that abuse occurred in an adult foster home licensed by the department and if the abuse resulted in the death, serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall impose a civil penalty on the adult foster home of not less than \$2,500 for each violation.

(b) This subsection does not apply to adult foster homes licensed by the department to serve only persons with mental illness or with alcohol or drug addiction.

(c) The department shall by rule define "serious injury," "rape," "sexual abuse" and "sexual exploitation" for purposes of this subsection.

(12) All penalties recovered pursuant to this section shall be deposited in the Quality Care Fund established in section 1 of this 2009 Act.

SECTION 34. ORS 443.790 is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 35. ORS 443.825 is amended to read:

443.825. All penalties recovered under ORS 443.790 to 443.815 shall be *[paid into the State Treasury and credited to the General Fund and are available for general governmental expenses]* **deposited in the Quality Care Fund established in section 1 of this 2009 Act.**

SECTION 36. **The Director of Human Services may take any action before the operative dates specified in sections 37 to 40 of this 2009 Act that is necessary to enable the Department of Human Services to carry out, on and after the operative dates specified in sections 37 to 40 of this 2009 Act, the provisions of this 2009 Act.**

SECTION 37. **Except as provided in section 36 of this 2009 Act, sections 1, 4, 5, 7 and 8 of this 2009 Act and the amendments to ORS 124.050, 124.065, 124.070, 430.735, 430.743, 430.745, 441.020, 441.715, 441.745, 441.995, 443.415, 443.425, 443.430, 443.455, 443.735, 443.775, 443.790 and 443.825 by sections 9, 10, 12, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29, 31, 33, 34 and 35 of this 2009 Act become operative on January 1, 2010.**

NOTE: Sections 38 and 39 were deleted by amendment. Subsequent sections were not renumbered.

SECTION 40. **Except as provided in section 36 of this 2009 Act, sections 14 and 19 of this 2009 Act and the amendments to ORS 443.045, 443.325 and 443.730 by sections 24, 25 and 30 of this 2009 Act become operative on September 1, 2009.**

SECTION 41. **The amendments to ORS 124.065, 124.070 and 430.745 by sections 11, 13 and 18 of this 2009 Act become operative on July 1, 2015.**

SECTION 42. **Section 6 of this 2009 Act applies to employees who are hired on or after the effective date of this 2009 Act.**

SECTION 43. **Section 8 of this 2009 Act is repealed January 2, 2015.**

SECTION 44. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by House June 12, 2009

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Chief Clerk of House

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Speaker of House

Passed by Senate June 23, 2009

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President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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Governor

Filed in Office of Secretary of State:

.....M,....., 2009

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Secretary of State