

HOUSE AMENDMENTS TO HOUSE BILL 2442

By COMMITTEE ON HUMAN SERVICES

April 22

- 1 On page 1 of the printed bill, line 2, delete “124.005, 124.020,” and insert “124.050,”.
2 In line 3, delete “124.100, 124.105, 180.090,”.
3 In line 5, delete “and section 2, chapter 204, Oregon Laws 2005; repealing ORS 430.746”.
4 On page 2, delete lines 13 and 14 and insert:
5 “(3) The website must notify the users that the:
6 “(a) Database does not contain records of abuse that occurred before July 1, 2003; and
7 “(b) Definition of ‘abuse’ in ORS 124.050 and 430.735 changed on January 1, 2010, in accordance
8 with the amendments to ORS 124.050 and 430.735 by sections 9 and 15 of this 2009 Act.”.
9 In line 29, delete “2010” and insert “2011”.
10 Delete lines 32 through 45.
11 On page 3, delete lines 1 through 20 and insert:
12 **“SECTION 4. (1) The Department of Human Services shall report to each regular session**
13 **of the Legislative Assembly:**
14 **“(a) On the safety of individuals receiving developmental disability services including, but**
15 **not limited to:**
16 **“(A) The average turnover of direct care workers in service settings.**
17 **“(B) A summary of the training provided by the department or its contractors to direct**
18 **care workers in service settings.**
19 **“(C) A summary of the core competencies required of direct care workers in service**
20 **settings by the state for licensing or certification.**
21 **“(D) A summary of the average wages of direct care workers in service settings, pre-**
22 **sented by type of services provided.**
23 **“(E) The number of complaints of abuse filed as required by ORS 430.765 and received by**
24 **the department under ORS 430.743, reported by type of allegation.**
25 **“(F) The number of direct care workers in service settings who were subject to criminal**
26 **or civil action involving an individual with a developmental disability.**
27 **“(G) The number of deaths, serious injuries, sexual assaults and rapes alleged to have**
28 **occurred in service settings.**
29 **“(b) A schedule of all license fees and civil penalties established by rule pursuant to ORS**
30 **441.995, 443.455 and 443.790.**
31 **“(2) The department shall provide the report described in subsection (1)(a) of this section**
32 **to the appropriate legislative committees, the Oregon Developmental Disabilities Council and**
33 **to the agency designated to administer the state protection and advocacy system under ORS**
34 **192.517.**
35 **“(3) As used in this section, ‘service settings’ means any of the following that provide**

1 **developmental disability services:**

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

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

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

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

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

9 **“(f) A domiciliary care facility as defined in ORS 443.205.”.**

10 In line 21, delete “finds that abuse” and insert “substantiates an allegation of abuse that”.

11 In line 29, delete “124.005” and insert “124.050”.

12 In line 37, after the period delete the rest of the line and delete lines 38 through 41.

13 In line 42, delete “(3)” and insert “(2)”.

14 On page 4, line 4, delete “164.135, 164.162, 164.170,” and delete “165.013,”.

15 In line 5, delete “165.055 (4)(b),”.

16 Delete lines 9 through 45 and insert:

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

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

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

22 **“(4) If the department has a record of substantiated abuse committed by an employee or poten-**
23 **tial employee of a home health agency, in-home care agency, adult foster home or residential facility,**
24 **regardless of whether criminal charges were filed, the department shall notify, in writing, the em-**
25 **ployer and the employee or potential employee.**

26 **“(5) As used in this section:**

27 **“(a) ‘Adult foster home’ has the meaning given that term in ORS 443.705.**

28 **“(b) ‘Home health agency’ has the meaning given that term in ORS 443.005.**

29 **“(c) ‘In-home care agency’ has the meaning given that term in ORS 443.305.**

30 **“(d) ‘Peer support specialist’ means a person who:**

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

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

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

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

37 **“(e) ‘Residential facility’ has the meaning given that term in ORS 443.400.**

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

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

45 **“(a) Limit the duties of investigators solely to conducting and reporting investigations**

1 of abuse;

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

4 “(c) Establish minimum qualifications for investigators that include the successful com-
5 pletion of training in identified competencies; and

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

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

12 “(4) The department shall monitor investigations conducted by a designee of the depart-
13 ment and shall immediately and appropriately respond to any violation of the rules adopted
14 pursuant to this section.

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

21 On page 5, line 2, delete “vulnerable”.

22 In line 6, delete “vulnerable”.

23 In line 10, delete “vulnerable”.

24 In line 11, delete “vulnerable” and delete “Office of Investigations and”.

25 In line 12, delete “Training” and insert “department or its designee”.

26 In line 21, delete “vulnerable”.

27 Delete lines 29 through 45 and delete pages 6 through 29.

28 On page 30, delete lines 1 through 38 and insert:

29 “**SECTION 9.** ORS 124.050 is amended to read:

30 “124.050. As used in ORS 124.050 to 124.095:

31 “(1) ‘Abuse’ means one or more of the following:

32 “(a) Any physical injury **to an elderly person** caused by other than accidental means, or which
33 appears to be at variance with the explanation given of the injury.

34 “(b) Neglect [*which leads to physical harm through withholding of services necessary to maintain*
35 *health and well-being*].

36 “(c) Abandonment, including desertion or willful forsaking of an elderly person or the with-
37 drawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

38 “(d) Willful infliction of physical pain or injury **upon an elderly person**.

39 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425,
40 163.427, 163.465 or 163.467.

41 “[*f*] *Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly*
42 *person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate*
43 *money or property, which threat reasonably would be expected to cause the person to believe that the*
44 *threat will be carried out.*]

45 “(f) **Verbal abuse.**

1 **“(g) Financial exploitation.**
2 **“(h) Sexual abuse.**
3 **“(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to**
4 **discipline the person.**
5 **“(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an**
6 **act of restraint prescribed by a licensed physician and any treatment activities that are**
7 **consistent with an approved treatment plan or in connection with a court order.**
8 “(2) ‘Elderly person’ means any person 65 years of age or older who is not subject to the pro-
9 visions of ORS 441.640 to 441.665.
10 **“(3) ‘Facility’ means:**
11 **“(a) A long term care facility as that term is defined in ORS 442.015.**
12 **“(b) A residential facility as that term is defined in ORS 443.400, including but not limited**
13 **to an assisted living facility.**
14 **“(c) An adult foster home as that term is defined in ORS 443.705.**
15 **“(4) ‘Financial exploitation’ means:**
16 **“(a) Wrongfully taking the assets, funds or property belonging to or intended for the use**
17 **of an elderly person or a person with a disability.**
18 **“(b) Alarming an elderly person or a person with a disability by conveying a threat to**
19 **wrongfully take or appropriate money or property of the person if the person would reason-**
20 **ably believe that the threat conveyed would be carried out.**
21 **“(c) Misappropriating, misusing or transferring without authorization any money from**
22 **any account held jointly or singly by an elderly person or a person with a disability.**
23 **“(d) Failing to use the income or assets of an elderly person or a person with a disability**
24 **effectively for the support and maintenance of the person.**
25 **“(5) ‘Intimidation’ means compelling or deterring conduct by threat.**
26 “[(3)] (6) ‘Law enforcement agency’ means:
27 “(a) Any city or municipal police department.
28 “(b) Any county sheriff’s office.
29 “(c) The Oregon State Police.
30 “(d) Any district attorney.
31 **“(7) ‘Neglect’ means:**
32 **“(a) Failure to provide the care, supervision or services necessary to maintain the phys-**
33 **ical and mental health of an elderly person that may result in physical harm or significant**
34 **emotional harm to the elderly person; or**
35 **“(b) The failure of a caregiver to make a reasonable effort to protect an elderly person**
36 **from abuse.**
37 **“(8) ‘Person with a disability’ means a person described in:**
38 **“(a) ORS 410.040 (7)(b); or**
39 **“(b) ORS 410.715.**
40 “[(4)] (9) ‘Public or private official’ means:
41 “(a) Physician, naturopathic physician, osteopathic physician, chiropractor or podiatric physi-
42 cian and surgeon, including any intern or resident.
43 “(b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of
44 an in-home health service.
45 “(c) Employee of the Department of Human Services, county health department or community

1 mental health and developmental disabilities program.

2 “(d) Peace officer.

3 “(e) Member of the clergy.

4 “(f) Licensed clinical social worker.

5 “(g) Physical, speech or occupational therapists.

6 “(h) Senior center employee.

7 “(i) Information and referral or outreach worker.

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

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

11 “(L) Firefighter or emergency medical technician.

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

15 “(11)(a) ‘Sexual abuse’ means:

16 “(A) Sexual contact with an elderly person who does not consent or is considered inca-
17 pable of consenting to a sexual act under ORS 163.315;

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

20 “(C) Any sexual contact between an employee of a facility or paid caregiver and an el-
21 derly person served by the facility or caregiver;

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

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

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

27 “(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.

28 “(13) ‘Verbal abuse’ means to threaten significant physical or emotional harm to an el-
29 derly person or a person with a disability through the use of:

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

32 “(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inap-
33 propriate sexual comments.

34 “**SECTION 10.** ORS 124.065 is amended to read:

35 “124.065. (1) When a report is required under ORS 124.060, an oral report shall be made imme-
36 diately by telephone or otherwise to the local office of the Department of Human Services or to a
37 law enforcement agency within the county where the person making the report is at the time of
38 contact. If known, such reports shall contain the names and addresses of the elderly person and any
39 persons responsible for the care of the elderly person, the nature and the extent of the abuse (in-
40 cluding any evidence of previous abuse), the explanation given for the abuse and any other infor-
41 mation which the person making the report believes might be helpful in establishing the cause of
42 the abuse and the identity of the perpetrator.

43 “(2) When a report of a possible crime is received by the department under ORS 124.060, the
44 department [may] or the designee of the department shall notify the law enforcement agency
45 having jurisdiction within the county where the report was made. If the department or the designee

1 **of the department** is unable to gain access to the allegedly abused elderly person, the department
2 **or the designee of the department** may contact the law enforcement agency for assistance and the
3 agency shall provide assistance.

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

9 “(4) When a report is received by a law enforcement agency, the agency shall immediately no-
10 tify the law enforcement agency having jurisdiction if the receiving agency does not. The receiving
11 agency shall also immediately notify the local office of the department in the county where the re-
12 port was made.

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

14 “124.065. (1) When a report is required under ORS 124.060, an oral report shall be made imme-
15 diately by telephone or otherwise to the local office of the Department of Human Services or to a
16 law enforcement agency within the county where the person making the report is at the time of
17 contact. If known, such reports shall contain the names and addresses of the elderly person and any
18 persons responsible for the care of the elderly person, the nature and the extent of the abuse (in-
19 cluding any evidence of previous abuse), the explanation given for the abuse and any other infor-
20 mation which the person making the report believes might be helpful in establishing the cause of
21 the abuse and the identity of the perpetrator.

22 “(2) When a report of a possible crime is received by the department under ORS 124.060, the
23 department or the designee of the department shall notify the law enforcement agency having ju-
24 risdiction within the county where the report was made. If the department or the designee of the
25 department is unable to gain access to the allegedly abused elderly person, the department or the
26 designee of the department may contact the law enforcement agency for assistance and the agency
27 shall provide assistance.

28 “(3) If the department or the designee of the department determines that there is reason to be-
29 lieve a crime has been committed, the department or the designee of the department shall imme-
30 diately notify the law enforcement agency having jurisdiction within the county where the report
31 was made. The law enforcement agency shall confirm to the department or the designee of the de-
32 partment its receipt of the notification [*within two business days*].

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

37 “**SECTION 12.** ORS 124.070 is amended to read:

38 “124.070. (1) Upon receipt of the report required under ORS 124.060, the Department of Human
39 Services or the law enforcement agency shall cause an investigation to be commenced promptly to
40 determine the nature and cause of the abuse. **The investigation shall include a visit to the named**
41 **elderly person and communication with those individuals having knowledge of the facts of**
42 **the particular case. If the alleged abuse occurs in a residential facility, the department shall**
43 **conduct an investigation regardless of whether the suspected abuser continues to be em-**
44 **ployed by the facility.**

45 “(2) If the department [*or law enforcement agency conducting the investigation*] finds reasonable

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

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

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

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

16 “(c) **That a criminal investigation will take place.**

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

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

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

28 “124.070. (1) Upon receipt of the report required under ORS 124.060, the Department of Human
29 Services or the law enforcement agency shall cause an investigation to be commenced promptly to
30 determine the nature and cause of the abuse. The investigation shall include a visit to the named
31 elderly person and communication with those individuals having knowledge of the facts of the par-
32 ticular case. If the alleged abuse occurs in a residential facility, the department shall conduct an
33 investigation regardless of whether the suspected abuser continues to be employed by the facility.

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

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

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

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

1 “(c) That a criminal investigation will take place.

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

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

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

16 **“SECTION 15.** ORS 430.735 is amended to read:

17 “430.735. As used in ORS 430.735 to 430.765:

18 “(1) ‘Abuse’ means one or more of the following:

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

20 **“(a) Abandonment, including desertion or willful forsaking of a person with a develop-
21 mental disability or the withdrawal or neglect of duties and obligations owed a person with
22 a developmental disability by a caregiver or other person.**

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

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

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

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

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

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

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

36 **“(i) A wrongful use of a physical or chemical restraint upon a person with a develop-
37 mental disability, excluding an act of restraint prescribed by a licensed physician and any
38 treatment activities that are consistent with an approved treatment plan or in connection
39 with a court order.**

40 **“(j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425,
41 163.427, 163.465 or 163.467.**

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

43 “(2) ‘Adult’ means a person 18 years of age or older with:

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

1 or facility; or

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

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

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

11 “(5) ‘Community program’ means a community mental health and developmental disabilities
12 program as established in ORS 430.610 to 430.695.

13 “[*(6) ‘Department’ means the Department of Human Services.*]

14 “[*(7)*] **(6) ‘Facility’ means a residential treatment home or facility, residential care facility, adult**
15 **foster home, residential training home or facility or crisis respite facility.**

16 **“(7) ‘Financial exploitation’ means:**

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

19 **“(b) Alarming a person with a developmental disability by conveying a threat to**
20 **wrongfully take or appropriate money or property of the person if the person would reason-**
21 **ably believe that the threat conveyed would be carried out.**

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

24 **“(d) Failing to use the income or assets of a person with a developmental disability ef-**
25 **fectively for the support and maintenance of the person.**

26 **“(8) ‘Intimidation’ means compelling or deterring conduct by threat.**

27 “[*(8)*] **(9) ‘Law enforcement agency’ means:**

28 **“(a) Any city or municipal police department;**

29 **“(b) Any county sheriff’s office;**

30 **“(c) The Oregon State Police; or**

31 **“(d) Any district attorney.**

32 **“(10) ‘Neglect’ means:**

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

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

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

40 **“(11) ‘Person with a developmental disability’ means a person described in subsection**
41 **(2)(a) of this section.**

42 “[*(9)*] **(12) ‘Public or private official’ means:**

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

45 **“(b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of**

1 an in-home health service;

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

5 “(d) Peace officer;

6 “(e) Member of the clergy;

7 “(f) Licensed clinical social worker;

8 “(g) Physical, speech or occupational therapist;

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

10 “(i) Attorney;

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

12 “(k) Any public official who comes in contact with adults in the performance of the official’s
13 duties[.]; **or**

14 **“(L) Firefighter or emergency medical technician.**

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

18 **“(14)(a) ‘Sexual abuse’ means:**

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

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

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

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

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

28 **“(b) ‘Sexual abuse’ does not mean consensual sexual contact between an adult and a paid
29 caregiver who is the spouse of the adult.**

30 **“(15) ‘Sexual contact’ has the meaning given that term in ORS 163.305.**

31 **“(16) ‘Verbal abuse’ means to threaten significant physical or emotional harm to a person
32 with a developmental disability through the use of:**

33 **“(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule;
34 or**

35 **“(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inap-
36 propriate sexual comments.**

37 **“SECTION 16.** ORS 430.743 is amended to read:

38 “430.743. (1) When a report is required under ORS 430.765 (1) and (2), an oral report shall be
39 made immediately by telephone or otherwise to [*the designee of*] the Department of Human
40 Services, **the designee of the department** or a law enforcement agency within the county where
41 the person making the report is at the time of contact. If known, the report shall include:

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

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

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

45 “(d) Any information that led the person making the report to suspect that abuse has occurred

1 plus any other information that the person believes might be helpful in establishing the cause of the
2 abuse and the identity of the perpetrator; and

3 “(e) The date of the incident.

4 “(2) When a report is received by the department’s designee under this section, the designee
5 shall immediately determine whether **abuse occurred and if** the reported victim has sustained any
6 serious injury. If so, the designee shall immediately notify the department. If there is reason to be-
7 lieve a crime has been committed, the designee shall **immediately** notify the law enforcement
8 agency having jurisdiction within the county where the report was made. If the designee is unable
9 to gain access to the allegedly abused adult, the designee may contact the law enforcement agency
10 for assistance and the agency shall provide assistance. When a report is received by a law
11 enforcement agency, the agency shall immediately notify the law enforcement agency having juris-
12 diction if the receiving agency does not. The receiving agency shall also immediately notify the de-
13 partment in cases of serious injury or death.

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

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

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

20 “**SECTION 17.** ORS 430.745 is amended to read:

21 “430.745. (1) Upon receipt of any report of alleged abuse of an adult, **or upon receipt of a re-**
22 **port of a death of an adult that may have been caused by other than accidental or natural**
23 **means,** the Department of Human Services or its designee shall investigate promptly to determine
24 [*the nature and cause of the abuse*] **if abuse occurred or whether a death was caused by abuse.**
25 If the department or its designee determines that a law enforcement agency is conducting an in-
26 vestigation of the same incident, the department or its designee need not conduct its own investi-
27 gation.

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

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

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

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

42 “(6) Upon completion of the investigation, the department or its designee shall prepare written
43 findings [*which*] **that** include recommended actions and a determination of whether protective ser-
44 vices are needed. **The department or its designee shall provide** appropriate protective services
45 [*shall be provided*] as necessary to prevent further abuse of the adult. Any protective services pro-

1 vided shall be undertaken in a manner that is least intrusive to the adult and provides for the
2 greatest degree of independence that is available within existing resources.

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

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

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

11 **“(c) That there will be a criminal investigation.**

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

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

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

23 **“430.745. (1) Upon receipt of any report of alleged abuse of an adult, or upon receipt of a report**
24 **of a death of an adult that may have been caused by other than accidental or natural means, the**
25 **Department of Human Services or its designee shall investigate promptly to determine if abuse oc-**
26 **curred or whether a death was caused by abuse. If the department or its designee determines that**
27 **a law enforcement agency is conducting an investigation of the same incident, the department or its**
28 **designee need not conduct its own investigation.**

29 **“(2) The department or its designee may enter a facility and inspect and copy records of a fa-**
30 **cility or community program if necessary for the completion of the investigation.**

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

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

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

43 **“(6) Upon completion of the investigation, the department or its designee shall prepare written**
44 **findings that include recommended actions and a determination of whether protective services are**
45 **needed. The department or its designee shall provide appropriate protective services as necessary**

1 to prevent further abuse of the adult. Any protective services provided shall be undertaken in a
2 manner that is least intrusive to the adult and provides for the greatest degree of independence that
3 is available within existing resources.

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

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

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

12 “(c) That there will be a criminal investigation.

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

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

23 In line 39, delete “24” and insert “19”.

24 In line 41, delete “430.745” and insert “430.735 to 430.765”.

25 In line 44, delete “25” and insert “20”.

26 On page 32, line 1, delete “26” and insert “21”.

27 Delete lines 11 through 16 and insert:

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

34 “(A) ‘Negative outcome’ includes serious injury, rape, sexual abuse or death.

35 “(B) ‘Rape’ means rape in the first, second or third degree as described in ORS 163.355, 163.365
36 and 163.375.

37 “(C) ‘Serious injury’ means physical injury that creates a substantial risk of death or that causes
38 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
39 ment of the function of any bodily organ.

40 “(D) ‘Sexual abuse’ means any form of nonconsensual sexual contact, including but not limited
41 to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and
42 sexual harassment.”.

43 In line 17, delete “\$6,000” and insert “\$7,500”.

44 In line 20, delete “27” and insert “22”.

45 In line 24, delete “28” and insert “23”.

1 On page 33, line 1, delete “29” and insert “24”.

2 In line 7, delete “30” and insert “25”.

3 In line 18, delete “31” and insert “26”.

4 In line 39, delete “32” and insert “27”.

5 On page 34, line 20, delete “33” and insert “28”.

6 In line 29, delete “34” and insert “29”.

7 In lines 35 through 40, delete the boldfaced material and begin a new paragraph and insert:

8 “(3) If the department investigates and makes a finding of abuse arising from deliberate or other

9 than accidental action or inaction that is likely to cause a negative outcome by a person with a duty

10 of care toward a resident of a residential facility and if the abuse resulted in the death, serious in-

11 jury, rape or sexual abuse of a resident, the department shall impose a civil penalty of not less than

12 \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As

13 used in this subsection:

14 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or death.

15 “(b) ‘Rape’ means rape in the first, second or third degree as described in ORS 163.355, 163.365

16 and 163.375.

17 “(c) ‘Serious injury’ means physical injury that creates a substantial risk of death or that causes

18 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-

19 ment of the function of any bodily organ.

20 “(d) ‘Sexual abuse’ means any form of nonconsensual sexual contact, including but not limited

21 to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and

22 sexual harassment.”.

23 In line 41, delete “35” and insert “30”.

24 On page 35, line 21, delete “36” and insert “31”.

25 In line 24, restore the bracketed material and delete the boldfaced material.

26 On page 37, line 2, delete “socially dependent” and insert “elderly”.

27 In line 9, delete “37” and insert “32”.

28 Delete lines 32 through 45.

29 On page 38, delete lines 1 through 36 and insert:

30 “**SECTION 33.** ORS 443.775 is amended to read:

31 “443.775. (1) The Department of Human Services shall adopt rules governing adult foster homes

32 and the level of care provided in such homes, including the provision of care to more than one

33 person with nursing care needs under specified conditions and department approval, such as are

34 necessary to protect the health, safety or welfare of the residents and to provide for an appropriate

35 continuum of care, but shall not be inconsistent with the residential nature of the living accommo-

36 dations and the family atmosphere of the home. The rules shall be consistent with rules adopted by

37 the Oregon State Board of Nursing under ORS 678.150 (9).

38 “(a) An exception to the limit of one resident with nursing care needs may be granted if the

39 provider proves to the department by clear and convincing evidence that such an exception will not

40 jeopardize the care, health, safety or welfare of the residents and that the provider is capable of

41 meeting the additional care needs of the new resident.

42 “(b) The department, and the counties acting under the exemption granted pursuant to ORS

43 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions

44 granted during the quarter pursuant to paragraph (a) of this subsection.

45 “(2) The provider may not employ a resident manager who does not meet the classification

1 standard for the adult foster home.

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

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

8 “(5) The department shall make rules to [assure] **ensure** that any employee who makes a com-
9 plaint pursuant to ORS 443.755 shall be protected from retaliation.

10 “(6) For adult foster homes in which clients reside for whom the department pays for care, in-
11 cluding homes in which the provider and the resident are related, the department may require sub-
12 stantial compliance with its rules relating to standards for care of the client as a condition for
13 paying for care.

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

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

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

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

22 “(9) The department shall establish by rule the maximum capacity of adult foster homes, in-
23 cluding all nonrelated and related persons receiving residential care and day care.

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

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

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

35 “(c) **The department shall by rule define ‘serious injury,’ ‘rape,’ ‘sexual abuse’ and ‘sexual**
36 **exploitation’ for purposes of this subsection.**

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

39 In line 37, delete “39” and insert “34”.

40 On page 39, line 24, delete “40” and insert “35”.

41 Delete lines 28 through 45 and delete page 40 and insert:

42 “**SECTION 36. The Director of Human Services may take any action before the operative**
43 **dates specified in sections 37 to 40 of this 2009 Act that is necessary to enable the Depart-**
44 **ment of Human Services to carry out, on and after the operative dates specified in sections**
45 **37 to 40 of this 2009 Act, the provisions of this 2009 Act.**

1 **“SECTION 37.** Except as provided in section 36 of this 2009 Act, sections 1, 4, 5, 7 and 8
2 of this 2009 Act and the amendments to ORS 124.050, 124.065, 124.070, 430.735, 430.743, 430.745,
3 441.020, 441.715, 441.745, 441.995, 443.415, 443.425, 443.430, 443.455, 443.735, 443.775, 443.790 and
4 443.825 by sections 9, 10, 12, 15, 16, 17, 20, 21, 22, 23, 26, 27, 28, 29, 31, 33, 34 and 35 of this 2009
5 Act become operative on January 1, 2010.

6 **“SECTION 38.** Except as provided in section 36 of this 2009 Act, section 2 of this 2009 Act
7 and the amendments to ORS 443.740 by section 32 of this 2009 Act become operative on
8 January 1, 2011.

9 **“SECTION 39.** Except as provided in section 36 of this 2009 Act, section 3 of this 2009 Act
10 becomes operative on September 1, 2010.

11 **“SECTION 40.** Except as provided in section 36 of this 2009 Act, sections 14 and 19 of this
12 2009 Act and the amendments to ORS 443.045, 443.325 and 443.730 by sections 24, 25 and 30
13 of this 2009 Act become operative on September 1, 2009.

14 **“SECTION 41.** The amendments to ORS 124.065, 124.070 and 430.745 by sections 11, 13 and
15 18 of this 2009 Act become operative on July 1, 2015.

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

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

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

22
