

# House Bill 2442

Sponsored by Representatives GELSER, TOMEI; Representatives BUCKLEY, CAMERON, COWAN, C EDWARDS, GARRETT, GILLIAM, KAHL, MATTHEWS, STIEGLER

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes Quality Care Fund. Continuously appropriates moneys in fund to Department of Human Services for purposes of maintaining Consumer Information Database for Developmental Disability Services and 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 department. Requires that moneys from certain fees and civil penalties be deposited in fund.

Requires department to create Consumer Information Database for Developmental Disability Services as searchable website. Requires that substantiated complaints of abuse in residential facilities and adult foster homes be entered into database. Requires written notification of availability of database to residents of those facilities and homes.

Authorizes department to establish licensing fees for adult foster homes.

Modifies licensing fees for residential facilities.

Establishes \$2,500 civil penalty for specified types of abuse and makes other changes to civil penalties.

Revises definition of abuse of vulnerable adults. Establishes Office of Investigations and Training within Department of Human Services to investigate reports of abuse. Requires office to investigate all reports of abuse. Makes employer immune from civil liability for disclosing substantiated findings of abuse by employee or former employee to prospective employer.

Establishes timelines for communications between office, law enforcement and district attorney concerning reports of abuse of vulnerable adults. Requires district attorney to establish multidisciplinary team for vulnerable adults.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to care providers; creating new provisions; amending ORS 124.005, 124.020, 124.065, 124.070,  
3 124.100, 124.105, 180.090, 430.735, 430.743, 430.745, 441.020, 441.715, 441.745, 441.995, 443.045,  
4 443.325, 443.415, 443.425, 443.430, 443.455, 443.730, 443.735, 443.740, 443.775, 443.790 and 443.825  
5 and section 2, chapter 204, Oregon Laws 2005; repealing ORS 430.746; appropriating money; and  
6 declaring an emergency.

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

8 **SECTION 1. The Quality Care Fund is established in the State Treasury, separate and**  
9 **distinct from the General Fund. Interest earned by the Quality Care Fund shall be credited**  
10 **to the Quality Care Fund. Moneys in the fund are continuously appropriated to the Depart-**  
11 **ment of Human Services for the creation of the Consumer Information Database for Devel-**  
12 **opmental Disability Services described in section 2 of this 2009 Act and for training, technical**  
13 **assistance, quality improvement initiatives and licensing activities to ensure that high stan-**  
14 **dards for quality of care are met in accordance with rules adopted by the department with**  
15 **respect to:**

16 (1) **A long term care facility as defined in ORS 442.015;**

17 (2) **A residential facility as defined in ORS 443.400, including but not limited to an assisted**  
18 **living facility; and**

19 (3) **An adult foster home as defined in ORS 443.705.**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1       **SECTION 2.** (1) The Department of Human Services shall create and maintain a database  
 2 containing records of all substantiated complaints of abuse occurring on or after July 1, 2003,  
 3 in a facility, and other information as prescribed by the department by rule. Each record  
 4 shall contain a narrative description of the abuse written in a manner that can be easily  
 5 understood by the general public. The database may not include individuals' names, Social  
 6 Security numbers, dates of birth or other personally identifiable information. The database  
 7 shall be known as the Consumer Information Database for Developmental Disability Services.

8       (2) The database must be available to the public through a website and must be  
 9 searchable by the:

- 10       (a) Name of the facility;
- 11       (b) Street address and city where the facility is located; and
- 12       (c) Name of the business entity operating the facility.

13       (3) The website must notify the users that the database does not contain records of abuse  
 14 or violations that occurred before July 1, 2003.

15       (4) The facility information described in subsection (2) of this section shall be perma-  
 16 nently maintained in the database.

17       (5) Upon admission and at each subsequent case planning meeting with a resident, a fa-  
 18 cility must provide written notice to the resident, the resident's case manager and the resi-  
 19 dent's guardian. The notice must explain:

- 20       (a) How to access the database; and
- 21       (b) How, when and where to report suspected abuse.
- 22       (6) As used in this section:

- 23       (a) "Abuse" has the meaning given that term in ORS 430.735.
- 24       (b) "Facility" means:

25       (A) A residential facility as defined in ORS 443.400, including an assisted living facility  
 26 but excluding a residential treatment facility as defined in ORS 443.400 (9) or a residential  
 27 treatment home as defined in ORS 443.400 (10); or

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

29       **SECTION 3.** No later than March 1, 2010, a facility as defined in section 2 of this 2009  
 30 Act shall provide the notice described in section 2 (5) of this 2009 Act to all of the facility's  
 31 residents, the residents' case managers and the residents' guardians.

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

34       (a) On the safety of individuals receiving developmental disability services including, but  
 35 not limited to:

- 36       (A) The average turnover of direct care workers in service settings.
- 37       (B) A summary of the training provided by the department or its contractors to direct  
 38 care workers in service settings.
- 39       (C) A summary of the core competencies required of direct care workers in service set-  
 40 tings by the state for licensing or certification.

41       (D) A summary of the average wages of direct care workers in service settings, presented  
 42 by type of services provided.

43       (E) The number of complaints of abuse filed under ORS 124.012 and received by the de-  
 44 partment under ORS 124.065 and 430.743, reported by type of allegation.

45       (F) The number of direct care workers in service settings who were subject to criminal

1 or civil action as a result of on-the-job conduct.

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

4 (b) A schedule of all license fees and civil penalties established by rule pursuant to ORS  
5 441.995, 443.455, 443.735 and 443.790.

6 (2) The department shall provide the report described in subsection (1)(a) of this section  
7 to the appropriate legislative committees, the Oregon Developmental Disabilities Council and  
8 to the agency designated to administer the state protection and advocacy system under ORS  
9 192.517.

10 (3) As used in this section, "service settings" means:

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

12 (b) Substitute care as defined in ORS 419A.004;

13 (c) A residential facility as defined in ORS 443.400;

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

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

18 (f) A developmental disability child foster home as defined in ORS 443.830;

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

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

21 **SECTION 5.** (1) If the Department of Human Services finds that abuse occurred in a fa-  
22 cility, the department shall immediately notify the facility of its findings.

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

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

28 (4) As used in this section:

29 (a) "Abuse" has the meaning given that term in ORS 124.005 and 430.735.

30 (b) "Facility" means:

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

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

33 **SECTION 6.** (1) The Department of Human Services shall complete a criminal records  
34 check under ORS 181.534 on an employee of a residential facility, adult foster home, in-home  
35 care agency or home health agency, and on any individual who is paid directly or indirectly  
36 with public funds who has or will have contact with a recipient of home health, in-home care  
37 or support services or a resident of an adult foster home or a residential facility. For the  
38 purpose of conducting a criminal records check, the department shall require fingerprints.

39 (2) With the consent of the employee, the department shall retain the fingerprint cards  
40 obtained under this section and may use the retained fingerprint cards for subsequent  
41 criminal records checks of that employee.

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

1 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,  
2 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275,  
3 163.465, 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d),  
4 164.135, 164.162, 164.170, 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013,  
5 165.022, 165.032, 165.055 (4)(b), 165.800, 165.803, 167.012, 167.017, 167.054 or 167.057;

6 (b) Of a crime listed in ORS 181.594;

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

9 (d) Of a crime constituting domestic violence;

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

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

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

18 (5) As used in this section:

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

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

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

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

23 **SECTION 7.** (1) The Office of Investigations and Training is established within the De-  
24 partment of Human Services.

25 (2) Investigators from the office shall be responsible for conducting the investigations  
26 and making the written findings on behalf of the department that are required under ORS  
27 124.050 to 124.095 and 430.735 to 430.765. The investigators:

28 (a) May not be employed by or under contract with a community mental health and de-  
29 velopmental disabilities program;

30 (b) May not be employed by or under contract with the department to provide case  
31 management services;

32 (c) Shall receive training, as prescribed by the department by rule, that is necessary to  
33 allow the investigators to make determinations and conduct thorough and unbiased investi-  
34 gations; and

35 (d) Shall be required to maintain minimum competencies in protective service investi-  
36 gations, as prescribed by the department by rule.

37 (3) The training required under this section shall address the cultural and social diversity  
38 of the people of this state.

39 **SECTION 8.** (1) The district attorney in each county shall be responsible for developing  
40 county multidisciplinary teams for vulnerable adults to consist of but not be limited to per-  
41 sonnel from the community mental health program, the developmental disabilities program,  
42 the Office of Investigations and Training, the local area agency on aging, the district attor-  
43 ney's office, the local police, the sheriff's office and an agency that advocates on behalf of  
44 individuals with disabilities, as well as others specially trained in the abuse of vulnerable  
45 adults.

1 (2) The teams shall develop a written protocol for immediate investigation of and notifi-  
 2 cation procedures for cases of abuse of vulnerable adults and for interviewing the victims.  
 3 Each team also shall develop written agreements signed by member agencies that are re-  
 4 presented on the team that specify:

- 5 (a) The role of each member agency;
- 6 (b) Procedures to be followed to assess risks to the vulnerable adult;
- 7 (c) Guidelines for timely communication between member agencies; and
- 8 (d) Guidelines for completion of responsibilities by member agencies.

9 (3) Each team member shall have access to training in risk assessment, dynamics of  
 10 abuse of vulnerable adults and legally sound interview and investigatory techniques.

11 (4) All investigations of abuse of vulnerable adults by the Office of Investigations and  
 12 Training and by law enforcement shall be carried out in a manner consistent with the pro-  
 13 tocols and procedures called for in this section.

14 (5) All information obtained by the team members in the exercise of their duties is con-  
 15 fidential.

16 (6) Each team shall develop and implement procedures for evaluating and reporting  
 17 compliance of member agencies with the protocols and procedures required under this sec-  
 18 tion.

19 (7) Each team shall annually report to the Department of Justice and the Oregon Crim-  
 20 inal Justice Commission the number of:

- 21 (a) Substantiated allegations of abuse of vulnerable adults in the county for the preceding  
 22 12 months.
- 23 (b) Substantiated allegations of abuse referred to law enforcement because there was  
 24 reasonable cause found that a crime had been committed.
- 25 (c) Allegations of abuse that were not investigated by law enforcement.
- 26 (d) Allegations of abuse that led to criminal charges.
- 27 (e) Allegations of abuse that led to prosecution.
- 28 (f) Allegations of abuse that led to conviction.

29 **SECTION 9.** In the third calendar quarter of 2010, 2012 and 2014, the Department of Hu-  
 30 man Services, the Department of Justice and the Oregon Criminal Justice Commission shall  
 31 report to the interim judiciary committee and the appropriate interim human services com-  
 32 mittee in each house of the Legislative Assembly, the rate of prosecution of crimes against  
 33 vulnerable victims that are reported by the county multidisciplinary teams for vulnerable  
 34 adults under section 8 of this 2009 Act.

35 **SECTION 10.** ORS 124.005 is amended to read:

36 124.005. As used in ORS 124.005 to 124.040:

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

38 (a) **Any death caused by other than accidental or natural means.**

39 (b) Any physical injury caused by other than accidental means, or that appears to be at vari-  
 40 ance with the explanation given of the injury.

41 [(b)] (c) Neglect [*that leads to physical harm through withholding of services necessary to maintain*  
 42 *health and well-being*].

43 [(c)] (d) Abandonment, including desertion or willful forsaking of [*an elderly person or a person*  
 44 *with a disability*] **a vulnerable adult** or the withdrawal or neglect of duties and obligations owed  
 45 [*an elderly person or a person with a disability*] **a vulnerable adult** by a caregiver or other person.

1           [(d)] (e) Willful infliction of physical pain or injury.

2           [(e)] (f) Use of derogatory or inappropriate names, [*phrases or*] **insults, verbal assaults**, pro-  
 3 fanity, ridicule, harassment, coercion, threats, [*cursing,*] intimidation, **humiliation** or inappropriate  
 4 sexual comments or [*conduct*] **mental cruelty** of such a nature as to threaten significant physical  
 5 or emotional harm to [*the elderly person or person with a disability*] **a vulnerable adult or provoke**  
 6 **fear, agitation, confusion or severe depression in a vulnerable adult.**

7           [(f)] (g) Causing any sweepstakes promotion to be mailed to [*an elderly person or a person with*  
 8 *a disability*] **a vulnerable adult** who had received sweepstakes promotional material in the United  
 9 States mail, **who** spent more than \$500 in the preceding year on any sweepstakes promotions, or any  
 10 combination of sweepstakes promotions from the same service, regardless of the identities of the  
 11 originators of the sweepstakes promotion, and who represented to the court that the person felt the  
 12 need for the court’s assistance to prevent the person from incurring further expense.

13           **(h) Wrongfully taking property belonging to or intended for the use of a vulnerable adult.**

14           [(g)] (i) [*Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly*  
 15 *person or person with a disability*] **Subjecting a vulnerable adult** to alarm by conveying a threat  
 16 to wrongfully take or appropriate money or property, which threat reasonably would be expected  
 17 to cause the [*elderly person or person with a disability*] **vulnerable adult** to believe that the threat  
 18 will be carried out.

19           [(h) *Sexual contact with a nonconsenting elderly person or person with a disability or with an el-*  
 20 *derly person or person with a disability considered incapable of consenting to a sexual act as described*  
 21 *in ORS 163.315. As used in this paragraph, “sexual contact” has the meaning given that term in ORS*  
 22 *163.305.*]

23           **(j) Sexual abuse.**

24           **(k) Isolation.**

25           (2) “Elderly person” means any person 65 years of age or older [*who is not subject to the pro-*  
 26 *visions of ORS 441.640 to 441.665*].

27           **(3) “Exploitation” means:**

28           **(a) The use or attempted use of the funds, assets or property of a vulnerable adult with**  
 29 **the intent of depriving the vulnerable adult of the use, benefit or possession of the funds,**  
 30 **assets or property for the benefit of a person other than the vulnerable adult by a person:**

31           **(A) In a position of trust or confidence with the vulnerable adult; or**

32           **(B) Who knows or should have known that the vulnerable adult lacks the capacity to**  
 33 **consent to the use.**

34           **(b) A breach of fiduciary duty by an attorney, guardian or other person in a fiduciary**  
 35 **relationship with a vulnerable adult.**

36           **(c) A wrongful taking of the personal assets of a vulnerable adult.**

37           **(d) The misappropriation, misuse or unauthorized transfer of moneys from an account**  
 38 **of a vulnerable adult, whether the account is individual or joint.**

39           **(e) The intentional or negligent failure to effectively use the income or assets of a vul-**  
 40 **nerable adult for the support and maintenance of the vulnerable adult.**

41           **(4) “Facility” means:**

42           **(a) A long term facility as defined in ORS 442.015.**

43           **(b) A residential facility as defined in ORS 443.400, including but not limited to an assisted**  
 44 **living facility.**

45           **(c) An adult foster home as defined in ORS 443.705.**

1           [(3)] (5) “Guardian petitioner” means a guardian or guardian ad litem for an elderly person or  
 2 a person with a disability who files a petition under ORS 124.005 to 124.040 on behalf of the elderly  
 3 person or person with a disability.

4           [(4)] (6) “Interfere” means to interpose in a way that hinders or impedes.

5           [(5)] (7) “Intimidate” means to compel or deter conduct by a threat.

6           (8) **“Isolation” means an intentional act, excluding an act prescribed by a licensed phy-  
 7 sician and treatment activities consistent with an approved treatment plan or in connection  
 8 with a court order, that:**

9           **(a) Is intended to prevent a vulnerable adult from having contact with a family member,  
 10 friend or other person concerned for the welfare of the vulnerable adult.**

11           **(b) Prevents a vulnerable adult from receiving mail, a telephone call or other communi-  
 12 cation with a family member, friend or other person concerned for the welfare of the vul-  
 13 nerable adult.**

14           **(c) Physically or chemically restrains a vulnerable adult for the purpose of preventing  
 15 contact with a family member, friend or other person concerned for the welfare of the vul-  
 16 nerable adult.**

17           **(d) Confines a vulnerable adult to a restricted area for the purpose of preventing contact  
 18 with a family member, friend or other person concerned for the welfare of the vulnerable  
 19 adult.**

20           [(6)] (9) “Menace” means to act in a threatening manner.

21           [(7)] (10) “Molest” means to annoy, disturb or persecute with hostile intent or injurious effect.

22           (11) **“Neglect” means:**

23           **(a) A failure of or omission by a caregiver to provide the care, supervision and services  
 24 necessary to maintain the physical and mental health of a vulnerable adult that results in  
 25 or would be reasonably expected to result in physical or emotional harm to the vulnerable  
 26 adult; or**

27           **(b) A failure of a caregiver to make a reasonable effort to protect a vulnerable adult from  
 28 abuse, neglect or exploitation that results in or would be reasonably expected to result in  
 29 physical or emotional harm to the vulnerable adult.**

30           [(8)] (12) “Person with a disability” means a person described in:

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

32           (b) ORS 410.715.

33           [(9)] (13) “Petitioner” means an elderly person or a person with a disability who files a petition  
 34 under ORS 124.005 to 124.040.

35           (14) **“Services” includes but is not limited to food, clothing, medicine, bathing, personal  
 36 hygiene, proper housing, medical services or assistance that a reasonable person would con-  
 37 sider essential for the well-being of a vulnerable adult.**

38           (15) **“Sexual abuse” means:**

39           **(a) Sexual activity, exposure to sexually explicit material or language or sexual contact  
 40 against the will of a vulnerable adult by force, trickery, threat or coercion.**

41           **(b) Sexual activity or contact with a person incapable of giving consent according to ORS  
 42 163.315.**

43           **(c) Any sexual contact between an employee of a facility or a paid caregiver and a vul-  
 44 nerable adult served by the facility or caregiver.**

45           **(d) Any sexual contact between a vulnerable adult and a relative of the vulnerable adult**

1 **other than a spouse or domestic partner.**

2 [(10)] (16) "Sweepstakes" means:

3 (a) A procedure for awarding a prize that is based on chance;

4 (b) A procedure in which a person is required to purchase anything, pay anything of value or  
5 make a donation as a condition of winning a prize or of receiving or obtaining information about a  
6 prize; or

7 (c) A procedure that is advertised in a way that creates a reasonable impression that a payment  
8 of anything of value, **the** purchase of anything or making a donation is a condition of winning a  
9 prize or receiving or obtaining information about a prize.

10 [(11)] (17) "Sweepstakes promotion" means an offer to participate in a sweepstakes.

11 (18) **"Vulnerable adult" means an elderly person or a person with a disability who depends**  
12 **on the assistance of another person for one or more activities of daily living including, but**  
13 **not limited to, personal care, hygiene, toileting, eating, dressing, bathing, medication man-**  
14 **agement, employment, cooking, financial management or personal safety.**

15 **SECTION 11.** ORS 124.020 is amended to read:

16 124.020. (1) When a petitioner or guardian petitioner files a petition under ORS 124.010, the  
17 circuit court shall hold an ex parte hearing in person or by telephone on the day the petition is filed  
18 or on the following judicial day. Upon a showing that the elderly person or person with a disability  
19 named in the petition has been the victim of abuse committed by the respondent within 180 days  
20 preceding the filing of the petition and that there is an immediate and present danger of further  
21 abuse to the person, the court shall, if requested by the petitioner or guardian petitioner, order, for  
22 a period of one year or until the order is withdrawn or amended, whichever is sooner:

23 (a) That the respondent be required to move from the residence of the elderly person or person  
24 with a disability, if in the sole name of the person or if jointly owned or rented by the person and  
25 the respondent, or if the parties are married to each other;

26 (b) That a peace officer accompany the party who is leaving or has left the parties' residence  
27 to remove essential personal effects of the party;

28 (c) That the respondent be restrained from abusing, intimidating, molesting, interfering with or  
29 menacing the elderly person or person with a disability, or attempting to abuse, intimidate, molest,  
30 interfere with or menace the person;

31 (d) That the respondent be restrained from entering, or attempting to enter, on any premises  
32 when it appears to the court that such restraint is necessary to prevent the respondent from abus-  
33 ing, intimidating, molesting, interfering with or menacing the elderly person or person with a disa-  
34 bility;

35 (e) That the respondent be:

36 (A) Restrained, effective on a date not less than 150 days from the date of the order, from  
37 mailing the elderly person or person with a disability any sweepstakes promotion;

38 (B) Required to remove the elderly person or person with a disability from the respondent's  
39 sweepstakes promotion mailing list or place the person on a list of persons to whom sweepstakes  
40 promotions may not be mailed; and

41 (C) Required to promptly refund any payment received in any form from the elderly person or  
42 person with a disability after the date the order is entered by the court; or

43 (f) Except as provided in subsection (2) of this section, other relief that the court considers  
44 necessary to provide for the safety and welfare of the elderly person or person with a disability.

45 (2)(a) If the court finds that the elderly person or person with a disability has been the victim



1 of abuse as defined in ORS 124.005 [(1)(g)] **(1)(h) or (i)**, the court may order only relief that the  
2 court considers necessary to prevent or remedy the wrongful taking or appropriation of the money  
3 or property of the person, including but not limited to:

4 (A) Directing the respondent to refrain from exercising control over the money or property of  
5 the person;

6 (B) Requiring the respondent to return custody or control of the money or property of the per-  
7 son to the person;

8 (C) Requiring the respondent to follow the instructions of the guardian or conservator of the  
9 person; or

10 (D) Prohibiting the respondent from transferring the money or property of the elderly person  
11 or person with a disability to any person other than the elderly person or person with a disability.

12 (b) The court may not use a restraining order issued under ORS 124.005 to 124.040:

13 (A) To allow any person other than the elderly person or person with a disability to assume  
14 responsibility for managing any of the money or property of the elderly person or person with a  
15 disability; or

16 (B) For relief that is more appropriately obtained in a protective proceeding filed under ORS  
17 chapter 125 including, but not limited to, giving control and management of the financial accounts  
18 or property of the elderly person or person with a disability for any purpose other than the relief  
19 granted under paragraph (a) of this subsection.

20 (3) The showing required under subsection (1) of this section may be made by testimony of:

21 (a) The elderly person or person with a disability;

22 (b) The guardian or guardian ad litem of the elderly person or person with a disability;

23 (c) Witnesses to the abuse; or

24 (d) Adult protective services workers who have conducted an investigation.

25 (4) Immediate and present danger under this section includes but is not limited to situations in  
26 which the respondent has recently threatened the elderly person or person with a disability with  
27 additional abuse.

28 (5) When a guardian petitioner files a petition on behalf of an elderly person or a person with  
29 a disability, the guardian petitioner shall provide information about the person and not about the  
30 guardian petitioner where the petition, order or related forms described in subsection (6) of this  
31 section require information about the petitioner.

32 (6) An instruction brochure shall be available from the clerk of the court explaining the rights  
33 set forth under ORS 124.005 to 124.040. The petition, order and related forms shall be available from  
34 the clerk of the court and shall be in substantially the following form:

35 \_\_\_\_\_

36  
37 IN THE CIRCUIT COURT OF  
38 THE STATE OF OREGON FOR  
39 THE COUNTY OF \_\_\_\_\_

40  
41 \_\_\_\_\_, ) PETITION FOR  
42 Petitioner ) RESTRAINING ORDER  
43 (your name) ) TO PREVENT ABUSE  
44 ) OF ELDERLY  
45 ) PERSONS OR

1 ) PERSONS WITH  
 2 vs. ) DISABILITIES  
 3 )  
 4 ) NO. \_\_\_\_\_  
 5 \_\_\_\_\_, )  
 6 Respondent )  
 7 (person to be )  
 8 restrained) )

9  
 10 YOU MUST PROVIDE COMPLETE AND TRUTHFUL INFORMATION. IF YOU DO NOT, THE  
 11 COURT MAY DISMISS ANY RESTRAINING ORDER AND MAY ALSO HOLD YOU IN CON-  
 12 TEMPT OF COURT.

13 If you wish to have your residential address or telephone number withheld from  
 14 respondent, use a contact address and telephone number so the Court and the  
 15 Sheriff can reach you if necessary.

16 ATTACH ADDITIONAL PAGES  
 17 IF NECESSARY.

18  
 19 I am the Petitioner and I state that the following information is true:

20  
 21 I am a resident of \_\_\_\_\_ County, Oregon.

22  
 23 Respondent is a resident of \_\_\_\_\_ County, Oregon.

24  
 25 I am either 65 years of age or older (I am \_\_\_\_\_ years of age) or I am a person with a disability  
 26 (CIRCLE THE ONE THAT DESCRIBES YOU).

- 27 1. CHECK AND FILL OUT ANY SECTION(S) that apply to you and respondent:
- 28 \_\_\_ A. Respondent and I have been living together since \_\_\_\_\_, \_\_\_\_ (year).
  - 29 \_\_\_ B. Respondent and I lived together from \_\_\_\_\_, \_\_\_\_ (year), to \_\_\_\_\_,
  - 30 \_\_\_ (year).
  - 31 \_\_\_ C. I have been under the care of respondent since \_\_\_\_\_, \_\_\_\_ (year).
  - 32 \_\_\_ D. I was under the care of respondent from \_\_\_\_\_, \_\_\_\_ (year), to \_\_\_\_\_,
  - 33 \_\_\_ (year).
  - 34 \_\_\_ E. Respondent has sent me sweepstakes promotions.
  - 35 \_\_\_ F. None of the above.
- 36 2. To qualify for a restraining order, respondent must have done one or more of the following:
- 37 Within the last 180 days, respondent has:
- 38 \_\_\_ A. Caused me physical injury by other than accidental means.
  - 39 \_\_\_ B. Attempted to cause me physical injury by other than accidental means.
  - 40 \_\_\_ C. Placed me in fear of immediate serious physical injury.
  - 41 \_\_\_ D. Caused me physical harm by withholding services necessary to maintain my health and
  - 42 \_\_\_ well-being.
  - 43 \_\_\_ E. Abandoned or deserted me by withdrawing or neglecting to perform duties and obli-
  - 44 \_\_\_ gations.
  - 45 \_\_\_ F. Used derogatory or inappropriate names, phrases or profanity, ridicule, harassment,

- 1 coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct
- 2 of such a nature as to place me in fear of significant physical or emotional harm.
- 3 — G. Sent me sweepstakes promotions, and I feel the need for the court’s assistance to
- 4 protect me from further expense. I am an elderly person or a person with a disability.
- 5 In the past year, I spent more than \$500 on sweepstakes promotions that I received in
- 6 the United States mail.
- 7 — H. Wrongfully taken or appropriated my money or property, or alarmed me by conveying
- 8 a threat to me that my money or property would be wrongfully taken or appropriated,
- 9 which I reasonably believed would be carried out.
- 10 — I. Had nonconsensual sexual contact with me or sexual contact to which I was incapable
- 11 of consenting.

12 NOTICE TO PETITIONER: Sweepstakes companies are allowed up to 150 days to stop sending  
 13 you sweepstakes entry materials. For a time after the court issues a restraining order, you may re-  
 14 ceive additional solicitations from respondent. However, beginning on the date the restraining order  
 15 is issued, the respondent must immediately reject any further orders from you and must return any  
 16 money you send to the company after the date the restraining order is issued.

17

18 3. Any period of time after the abuse occurred during which respondent was incarcerated (in  
 19 jail or prison) or lived more than 100 miles from your home is not counted as part of the  
 20 180-day period, and you may still be eligible for a restraining order.  
 21 Respondent was incarcerated from \_\_\_\_\_, \_\_\_\_ (year),  
 22 to \_\_\_\_\_, \_\_\_\_ (year).  
 23 Respondent lived more than 100 miles from my home from \_\_\_\_\_, \_\_\_\_ (year), to  
 24 \_\_\_\_\_, \_\_\_\_ (year).

25

26 4. Did the abuse happen within the last 180 days not including the times respondent was  
 27 incarcerated (in jail or prison) or lived more than 100 miles from your home? Yes No

28

29 Date and location of abuse:  
 30 \_\_\_\_\_  
 31 \_\_\_\_\_

32 How did respondent injure or threaten to injure you?  
 33 \_\_\_\_\_  
 34 \_\_\_\_\_  
 35 \_\_\_\_\_

36

37 5. Are there incidents other than those described in question 4 above, in which respondent in-  
 38 jured or threatened to injure you? If yes, explain:  
 39 \_\_\_\_\_  
 40 \_\_\_\_\_  
 41 \_\_\_\_\_

42

43 6. The abuse I am complaining about was witnessed by \_\_\_\_\_ (affidavit attached).  
 44 Other persons with knowledge of the abuse are \_\_\_\_\_ (affidavit attached).

45

1 7. I am in immediate and present danger of further abuse by respondent because:

2 \_\_\_\_\_  
3 \_\_\_\_\_  
4 \_\_\_\_\_

6 8. In any of the above incidents:

8 Were drugs, alcohol or weapons involved? Yes No  
9 Did you need medical help? Yes No  
10 Were the police or the courts involved? Yes No

12 If you have circled yes to any of the above questions, explain:

13 \_\_\_\_\_  
14 \_\_\_\_\_

16 9. A. There (is) (is not) another Elderly Persons and Persons With Disabilities Abuse Pre-  
17 vention Act or Abuse Prevention Act proceeding pending between respondent and me.  
18 It is filed in \_\_\_\_\_ (County), \_\_\_\_\_ (State), and I am (Petitioner) or (Re-  
19 spondent) in that case.

20 The case number of the case is: \_\_\_\_\_

21 B. There (is) (is not) another lawsuit pending between respondent and me for divorce,  
22 annulment or legal separation.

23 If yes, type of lawsuit: \_\_\_\_\_

24 It is filed in \_\_\_\_\_ (County), \_\_\_\_\_ (State).

25 C. There (is) (is not) a protective proceeding filed in \_\_\_\_\_ (County), \_\_\_\_\_  
26 (State).

27 10. Respondent may be required to move from your residence if it is in your sole name, or if it  
28 is jointly owned or rented by you and respondent, or if you and respondent are married.

29 I (do) (do not) want respondent to move from my residence.

30 My residence is:

31 Owned Leased Rented

32 By: \_\_\_\_\_

34 PETITIONER ASKS THE COURT TO GRANT THE RELIEF INDICATED IN THE "PETITIONER'S  
35 REQUEST" COLUMN OF THE PROPOSED RESTRAINING ORDER, WHICH IS ATTACHED.

38 PETITIONER MUST NOTIFY THE COURT  
39 OF ANY CHANGE OF ADDRESS.

41 ALL NOTICES OF HEARING WILL  
42 BE SENT TO THIS ADDRESS  
43 AND DISMISSALS MAY BE  
44 ENTERED IF YOU DO NOT APPEAR  
45 AT A SCHEDULED HEARING.

1 If you wish to have your residential address or telephone number withheld from  
2 respondent, use a contact address and telephone number so the Court and the  
3 Sheriff can reach you if necessary.

4

5

6

\_\_\_\_\_ )  
PETITIONER

7

8

STATE OF OREGON )

9

) ss.

10

County of \_\_\_\_\_ )

11

12

SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

13

14

\_\_\_\_\_  
NOTARY PUBLIC FOR OREGON

15

My commission expires: \_\_\_\_\_

16

17

RELEVANT DATA

18

19

RESPONDENT \_\_\_\_\_

20

Sex \_\_\_\_\_ Telephone # \_\_\_\_\_

21

Residence Address \_\_\_\_\_

22

City/State/Zip \_\_\_\_\_

23

County \_\_\_\_\_

24

Birthdate \_\_\_\_\_ Age \_\_\_\_\_

25

Race \_\_\_\_\_

26

Height \_\_\_\_\_ Weight \_\_\_\_\_

27

Eye Color \_\_\_\_\_

28

Hair Color \_\_\_\_\_

29

30

PETITIONER (you) \_\_\_\_\_

GUARDIAN PETITIONER

31

Sex \_\_\_\_\_ \*Telephone # \_\_\_\_\_

Name \_\_\_\_\_

32

\*Residence Address \_\_\_\_\_

Address \_\_\_\_\_

33

City/State/Zip \_\_\_\_\_

34

County \_\_\_\_\_

Telephone # \_\_\_\_\_

35

Birthdate \_\_\_\_\_ Age \_\_\_\_\_

36

Race \_\_\_\_\_

37

Height \_\_\_\_\_ Weight \_\_\_\_\_

38

Eye Color \_\_\_\_\_

39

Hair Color \_\_\_\_\_

40

41

\*If you wish to have your residential address or telephone number withheld from re-  
spondent, use a contact address and telephone number so the Court and the Sheriff can  
reach you if necessary.

42

43

44

PLEASE FILL OUT THIS INFORMATION

45

TO AID IN SERVICE OF

THE RESTRAINING ORDER

1  
2  
3  
4  
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Where is respondent most likely to be located?

Residence Hours \_\_\_\_\_

Employment Hours \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Employment Hours \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Description of vehicle \_\_\_\_\_

\_\_\_\_\_

Does respondent have any weapons or access to weapons? Explain:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Is there anything about respondent's character, past behavior or the present situation that indicates

that respondent may be a danger to self or others? Explain:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

IN THE CIRCUIT COURT OF  
THE STATE OF OREGON  
FOR THE COUNTY OF \_\_\_\_\_

\_\_\_\_\_, )

Petitioner )

(your name) ) RESTRAINING ORDER

) TO PREVENT ABUSE

) OF ELDERLY PERSONS

vs. ) OR PERSONS WITH

) DISABILITIES

1 )  
 2 ) NO. \_\_\_\_\_  
 3 \_\_\_\_\_,  
 4 Respondent )  
 5 (person to be restrained) )  
 6 )

7 TO THE RESPONDENT:  
 8 VIOLATION OF THIS RESTRAINING ORDER  
 9 MAY RESULT IN YOUR ARREST AND IN  
 10 CIVIL AND/OR CRIMINAL PENALTIES.  
 11 REVIEW THIS ORDER CAREFULLY.  
 12 EACH PROVISION MUST BE OBEYED.  
 13 SEE YOUR RIGHTS TO A HEARING.

14 The Court, having reviewed the petition, makes the following findings:  
 15

16 Judge's Initials

- 17 — Petitioner has been abused by respondent as defined by ORS 124.005;
- 18 — The abuse of petitioner by respondent occurred within the last 180 days as provided in ORS
- 19 124.010;
- 20 — There is an immediate and present danger of further abuse to petitioner.

21  
 22 IT IS HEREBY ORDERED that:

<u>Petitioner's Request</u>	<u>Judge's Initials</u>
24 [ ] 1. Respondent is restrained (prohibited) from intimidating, 25 molesting, interfering with or menacing petitioner, or 26 attempting to intimidate, molest, interfere with or menace 27 petitioner.	_____
28 [ ] 2. Respondent is restrained (prohibited) from entering, or 29 attempting to enter: 30 (Include names and address unless withheld for safety reasons.)	_____
31 [ ] Petitioner's residence.	_____
32 [ ] Petitioner's business or place of employment.	_____
33 [ ] Petitioner's school.	_____
34 [ ] Other locations.	_____
35 [ ] 3. Respondent is restrained (prohibited) from:	
36 [ ] Contacting, or attempting to contact, petitioner by telephone.	_____
37 [ ] Contacting, or attempting to contact, petitioner by mail.	_____
38 [ ] 4. Respondent shall move from and not return to the re- 39 sidence located at _____ except with a 40 peace officer in order to remove essential personal effects 41 of the respondent, including, but not limited to: 42 clothing, toiletries, medications, Social Security cards, 43 birth certificates, identification and tools of the trade.	_____
44 [ ] 5. A peace officer shall accompany the petitioner to the 45 parties' residence in order to remove essential personal	_____

- 1 effects of petitioner, including, but not limited to:
- 2 clothing, toiletries, medications, Social Security cards,
- 3 birth certificates, identification and tools of the trade.
- 4 [ ] 6. Beginning on a date not less than 150 \_\_\_\_\_
- 5 days from the date of this order, the respondent shall
- 6 not mail the petitioner any further sweepstakes promotions.
- 7 [ ] 7. Respondent shall remove the petitioner from \_\_\_\_\_
- 8 the respondent's sweepstakes promotion mailing list or
- 9 shall place the petitioner on the respondent's list of
- 10 persons to whom sweepstakes promotions may not be mailed.
- 11 [ ] 8. Respondent shall refund any payment received \_\_\_\_\_
- 12 in any form from the petitioner after the date
- 13 this order is entered by the court.
- 14 [ ] 9. Other relief: \_\_\_\_\_
- 15 \_\_\_\_\_
- 16 \_\_\_\_\_
- 17 [ ] 10. No further service is necessary because respondent \_\_\_\_\_
- 18 appeared in person before the Court.

19

20 IT IS FURTHER ORDERED that:

21 SECURITY AMOUNT FOR VIOLATION OF ANY PROVISION OF THIS ORDER IS \$5,000

22 unless otherwise specified.

23 Other Amount ( \$ )

24

25 THE ABOVE PROVISIONS OF THIS RESTRAINING ORDER ARE IN EFFECT FOR

26 A PERIOD OF ONE YEAR OR UNTIL THE ORDER IS VACATED, MODIFIED OR

27 SUPERSEDED, WHICHEVER OCCURS FIRST.

28

29 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

30

31 \_\_\_\_\_

32 CIRCUIT COURT JUDGE (signature)

33 \_\_\_\_\_

34 CIRCUIT COURT JUDGE (printed)

35 \_\_\_\_\_

36

37

38 IN THE CIRCUIT COURT OF

39 THE STATE OF OREGON

40 FOR THE COUNTY OF \_\_\_\_\_

41

42 )

43 \_\_\_\_\_, ) NO. \_\_\_\_\_

44 Petitioner, )

45 vs. ) AFFIDAVIT OF PROOF



1 \_\_\_\_\_, ) OF SERVICE  
2 Respondent. )  
3 )  
4 )  
5 STATE OF )  
6 OREGON )  
7 ) ss.  
8 County of \_\_\_\_\_ )

9 I am a resident of the State of Oregon. I am a competent person 18 years of age or older. I am  
10 not an attorney for or a party to this case, or an officer, director or employee of any party to this  
11 case.

12 On the \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_, I served the Restraining Order to Prevent Abuse of  
13 Elderly Persons or Persons With Disabilities and the Petition for Restraining Order to Prevent  
14 Abuse of Elderly Persons or Persons With Disabilities in this case personally upon the above-named  
15 respondent in \_\_\_\_\_ County by delivering to the respondent a copy of those papers, each  
16 of which was certified to be a true copy of each original.

17 \_\_\_\_\_  
18 Signature of \_\_\_\_\_

20 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

21 \_\_\_\_\_  
22 NOTARY PUBLIC FOR OREGON  
23 My Commission Expires: \_\_\_\_\_  
24 \_\_\_\_\_

25  
26  
27 IN THE CIRCUIT COURT OF  
28 THE STATE OF OREGON  
29 FOR THE COUNTY OF \_\_\_\_\_

30  
31 )  
32 \_\_\_\_\_, ) NO. \_\_\_\_\_  
33 Petitioner, )  
34 vs. ) MOTION AND ORDER  
35 \_\_\_\_\_, ) OF DISMISSAL  
36 Respondent. )  
37 )

38 Comes now petitioner, \_\_\_\_\_, and moves this Court for an order allowing the voluntary  
39 withdrawal and dismissal of the Restraining Order on file herein.

40 \_\_\_\_\_  
41 Petitioner

42 SUBSCRIBED AND SWORN TO before me this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_\_.

43 \_\_\_\_\_  
44 NOTARY PUBLIC FOR OREGON  
45 My Commission Expires: \_\_\_\_\_





1 turned to the clerk of the court. The clerk of the court shall notify the petitioner or guardian  
2 petitioner, at the address provided by the petitioner or guardian petitioner, of the error or omission.

3 (b) After accepting the order and petition, cannot complete service within 10 days, the sheriff  
4 shall notify the petitioner or guardian petitioner, at the address provided by the petitioner or  
5 guardian petitioner, that the documents have not been served. If the petitioner or guardian  
6 petitioner does not respond within 10 days, the county sheriff shall hold the order and petition for  
7 future service and file a return to the clerk of the court showing that service was not completed.

8 (9)(a) Within 30 days after a restraining order is served on the respondent under this section  
9 or within 30 days after notice is served on the elderly person or person with a disability under ORS  
10 124.024, the respondent, elderly person or person with a disability may request a court hearing upon  
11 any relief granted. The hearing request form shall be available from the clerk of the court and shall  
12 be in substantially the form provided in subsection (6) of this section.

13 (b) If the respondent, elderly person or person with a disability requests a hearing under para-  
14 graph (a) of this subsection, the clerk of the court shall notify the petitioner or guardian petitioner  
15 of the date and time of such hearing, and shall supply the petitioner or guardian petitioner with a  
16 copy of the request for a hearing. The petitioner or guardian petitioner shall give to the clerk of the  
17 court information sufficient to allow such notification.

18 (c) The hearing is not limited to the issues raised in the request for hearing form and may in-  
19 clude testimony from witnesses to the abuse and adult protective services workers. The hearing may  
20 be held in person or by telephone. If the respondent, elderly person or person with a disability seeks  
21 to raise an issue at the hearing not previously raised in the request for hearing form, the petitioner  
22 or guardian petitioner is entitled to a reasonable continuance for the purpose of preparing a re-  
23 sponse to the issue.

24 (d) The court shall exercise its discretion in a manner that protects the elderly person or person  
25 with a disability from traumatic confrontation with the respondent.

26 **SECTION 12.** ORS 124.065 is amended to read:

27 124.065. (1) When a report is required under ORS 124.060, an oral report shall be made imme-  
28 diately by telephone or otherwise to the local office of the Department of Human Services or to a  
29 law enforcement agency within the county where the person making the report is at the time of  
30 contact. If known, such reports shall contain the names and addresses of the elderly person and any  
31 persons responsible for the care of the elderly person, the nature and the extent of the abuse (in-  
32 cluding any evidence of previous abuse), the explanation given for the abuse and any other infor-  
33 mation which the person making the report believes might be helpful in establishing the cause of  
34 the abuse and the identity of the perpetrator. **If the local office of the Department of Human  
35 Services receives a report, the office shall immediately refer the report to the Office of In-  
36 vestigations and Training.**

37 (2) When a report **of a possible crime** is received by the department under ORS 124.060, the  
38 *[department may]* **investigator from the Office of Investigations and Training shall** notify the  
39 law enforcement agency having jurisdiction within the county where the report was made. If the  
40 *[department]* **investigator** is unable to gain access to the allegedly abused elderly person, the *[de-*  
41 *partment]* **investigator** may contact the law enforcement agency for assistance and the agency shall  
42 provide assistance.

43 **(3) If an investigator determines that there is reason to believe a crime has been com-**  
44 **mitted, the investigator shall immediately notify the law enforcement agency having juris-**  
45 **isdiction within the county where the report was made. The law enforcement agency shall**

1 **confirm to the Office of Investigations and Training its receipt of the notification within two**  
 2 **business days.**

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

7 **SECTION 13.** ORS 124.065, as amended by section 12 of this 2009 Act, is amended to read:

8 124.065. (1) When a report is required under ORS 124.060, an oral report shall be made imme-  
 9 diately by telephone or otherwise to the local office of the Department of Human Services or to a  
 10 law enforcement agency within the county where the person making the report is at the time of  
 11 contact. If known, such reports shall contain the names and addresses of the elderly person and any  
 12 persons responsible for the care of the elderly person, the nature and the extent of the abuse (in-  
 13 cluding any evidence of previous abuse), the explanation given for the abuse and any other infor-  
 14 mation which the person making the report believes might be helpful in establishing the cause of  
 15 the abuse and the identity of the perpetrator. If the local office of the Department of Human Ser-  
 16 vices receives a report, the office shall immediately refer the report to the Office of Investigations  
 17 and Training.

18 (2) When a report of a possible crime is received by the department under ORS 124.060, the in-  
 19 vestigator from the Office of Investigations and Training shall notify the law enforcement agency  
 20 having jurisdiction within the county where the report was made. If the investigator is unable to  
 21 gain access to the allegedly abused elderly person, the investigator may contact the law enforcement  
 22 agency for assistance and the agency shall provide assistance.

23 (3) If an investigator determines that there is reason to believe a crime has been committed, the  
 24 investigator shall immediately notify the law enforcement agency having jurisdiction within the  
 25 county where the report was made. The law enforcement agency shall confirm to the Office of In-  
 26 vestigations and Training its receipt of the notification [*within two business days*].

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

31 **SECTION 14.** ORS 124.070 is amended to read:

32 124.070. (1) Upon receipt of the report required under ORS 124.060, the **Office of Investigations**  
 33 **and Training in the** Department of Human Services or the law enforcement agency shall cause an  
 34 investigation to be commenced promptly to determine the nature and cause of the abuse. **The in-**  
 35 **vestigation shall include a visit to the named elderly person and consultation with those in-**  
 36 **dividuals having knowledge of the facts of the particular case. If the alleged abuse occurs**  
 37 **in a residential facility, the office shall conduct an investigation regardless of whether the**  
 38 **suspected abuser continues to be employed by the facility.**

39 (2) If the [*department*] **investigator from the office** [*or law enforcement agency*] conducting the  
 40 investigation finds reasonable cause to believe that [*abuse*] **a crime** has occurred, the [*department*]  
 41 **investigator** [*or law enforcement agency*] shall notify in writing the appropriate law enforcement  
 42 agency [*or the local office of the department, respectively. The investigation shall include a visit to the*  
 43 *named elderly person and consultation with those individuals having knowledge of the facts of the*  
 44 *particular case*]. **If the law enforcement agency conducting the investigation finds reasonable**  
 45 **cause to believe that abuse has occurred, the agency shall notify in writing the local office**

1 **of the department.** Upon completion of the evaluation of each case, **an investigator shall prepare**  
 2 written findings [*shall be prepared which shall*] **that** include recommended action and a determi-  
 3 nation of whether protective services are needed.

4 **(3) Within three business days of receiving notification from the Office of Investigations**  
 5 **and Training that there is reasonable cause to believe that a crime has occurred, a law**  
 6 **enforcement agency shall notify the office:**

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

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

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

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

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

22 **SECTION 15.** ORS 124.070, as amended by section 14 of this 2009 Act, is amended to read:

23 124.070. (1) Upon receipt of the report required under ORS 124.060, the Office of Investigations  
 24 and Training in the Department of Human Services or the law enforcement agency shall cause an  
 25 investigation to be commenced promptly to determine the nature and cause of the abuse. The in-  
 26 vestigation shall include a visit to the named elderly person and consultation with those individuals  
 27 having knowledge of the facts of the particular case. If the alleged abuse occurs in a residential  
 28 facility, the office shall conduct an investigation regardless of whether the suspected abuser con-  
 29 tinues to be employed by the facility.

30 (2) If the investigator from the office conducting the investigation finds reasonable cause to be-  
 31 lieve that a crime has occurred, the investigator shall notify in writing the appropriate law  
 32 enforcement agency. If the law enforcement agency conducting the investigation finds reasonable  
 33 cause to believe that abuse has occurred, the agency shall notify in writing the local office of the  
 34 department. Upon completion of the evaluation of each case, an investigator shall prepare written  
 35 findings that include recommended action and a determination of whether protective services are  
 36 needed.

37 (3) [*Within three business days of*] **After** receiving notification from the Office of Investigations  
 38 and Training that there is reasonable cause to believe that a crime has occurred, a law enforcement  
 39 agency shall notify the office:

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

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

43 (c) That a criminal investigation will take place.

44 (4) If a law enforcement agency gives the findings of the office to the district attorney for re-  
 45 view, [*within five business days*] the district attorney shall notify the office that the district attorney

1 has received the findings and shall inform the office whether the findings have been received for  
 2 review or for filing charges. A district attorney shall make the determination of whether to file  
 3 charges within six months of receiving the findings of the office.

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

8 **SECTION 16.** ORS 124.100 is amended to read:

9 124.100. (1) As used in ORS 124.100 to 124.140:

10 (a) “Elderly person” means a person 65 years of age or older.

11 (b) “Financially incapable” has the meaning given that term in ORS 125.005.

12 (c) “Incapacitated” has the meaning given that term in ORS 125.005.

13 (d) “Person with a disability” means a person:

14 (A) With a physical or mental impairment that:

15 [(A)] (i) Is likely to continue without substantial improvement for no fewer than 12 months or  
 16 to result in death; and

17 [(B)] (ii) Prevents performance of substantially all the ordinary duties of occupations in which  
 18 an individual not having the physical or mental impairment is capable of engaging, having due re-  
 19 gard to the training, experience and circumstances of the person with the physical or mental  
 20 impairment[.]; **or**

21 **(B) Is a vulnerable adult as defined in ORS 430.735.**

22 (e) “Vulnerable person” means:

23 (A) An elderly person;

24 (B) A financially incapable person;

25 (C) An incapacitated person; or

26 (D) A person with a disability who is susceptible to force, threat, duress, coercion, persuasion  
 27 or physical or emotional injury because of the person’s physical or mental impairment.

28 (2) A vulnerable person who suffers injury, damage or death by reason of physical abuse or fi-  
 29 nancial abuse may bring an action against any person who has caused the physical or financial  
 30 abuse or who has permitted another person to engage in physical or financial abuse. The court shall  
 31 award the following to a plaintiff who prevails in an action under this section:

32 (a) An amount equal to three times all economic damages, as defined in ORS 31.710, resulting  
 33 from the physical or financial abuse, or [~~\$500~~] **\$1,000**, whichever amount is greater.

34 (b) An amount equal to three times all noneconomic damages, as defined by ORS 31.710, result-  
 35 ing from the physical or financial abuse.

36 (c) Reasonable attorney fees incurred by the plaintiff.

37 (d) Reasonable fees for the services of a conservator or guardian ad litem incurred by reason  
 38 of the litigation of a claim brought under this section.

39 (3) An action may be brought under this section only by:

40 (a) A vulnerable person;

41 (b) A guardian, conservator or attorney-in-fact for a vulnerable person;

42 (c) A personal representative for the estate of a decedent who was a vulnerable person at the  
 43 time the cause of action arose; or

44 (d) A trustee for a trust on behalf of the trustor or the spouse of the trustor who is a vulnerable  
 45 person.

1 (4) An action may be brought under this section only for physical abuse described in ORS  
2 124.105 or for financial abuse described in ORS 124.110.

3 (5) An action may be brought under this section against a person for permitting another person  
4 to engage in physical or financial abuse if the person knowingly acts or fails to act under circum-  
5 stances in which a reasonable person should have known of the physical or financial abuse.

6 (6) A person commencing an action under this section must serve a copy of the complaint on the  
7 Attorney General within 30 days after the action is commenced.

8 **SECTION 17.** ORS 124.105 is amended to read:

9 124.105. (1) An action may be brought under ORS 124.100 for physical abuse if the defendant  
10 engaged in conduct against a vulnerable person that would constitute any of the following:

- 11 (a) Assault, under the provisions of ORS 163.160, 163.165, 163.175 and 163.185.
- 12 (b) Menacing, under the provisions of ORS 163.190.
- 13 (c) Recklessly endangering another person, under the provisions of ORS 163.195.
- 14 (d) Criminal mistreatment, under the provisions of ORS 163.200 and 163.205.
- 15 (e) Rape, under the provisions of ORS 163.355, 163.365 and 163.375.
- 16 (f) Sodomy, under the provisions of ORS 163.385, 163.395 and 163.405.
- 17 (g) Unlawful sexual penetration, under the provisions of ORS 163.408 and 163.411.
- 18 (h) Sexual abuse, under the provisions of ORS 163.415, 163.425 and 163.427.
- 19 (i) Strangulation, under ORS 163.187.

20 (2) An action may be brought under ORS 124.100 for physical abuse if the defendant used any  
21 unreasonable physical constraint on the vulnerable person or subjected the vulnerable person to  
22 prolonged or continued deprivation of food or water.

23 (3) An action may be brought under ORS 124.100 for physical abuse if the defendant used a  
24 physical or chemical restraint, or psychotropic medication on the vulnerable person without an or-  
25 der from a physician licensed in the State of Oregon or under any of the following conditions:

- 26 (a) For the purpose of punishing the vulnerable person.
- 27 (b) For any purpose not consistent with the purposes authorized by a physician.
- 28 (c) For a period significantly beyond that for which the restraint or medication was authorized  
29 by a physician.

30 **(4) An action may be brought under ORS 124.100 for physical abuse if the vulnerable**  
31 **person died as a result of abuse, as defined in ORS 430.735, by the defendant.**

32 **SECTION 18. A person who has personal knowledge that an employee or former employee**  
33 **of the person was found by the Department of Human Services, a law enforcement agency**  
34 **or a court to have committed abuse under ORS 124.005 to 124.040, 124.050 to 124.095 or 124.100**  
35 **to 124.140, is immune from civil liability for the disclosure to a prospective employer of the**  
36 **employee or former employee of known facts concerning the abuse.**

37 **SECTION 19.** ORS 180.090 is amended to read:

38 180.090. (1) In making investigations of and conducting special prosecutions for violations or  
39 alleged violations of the criminal laws of the state, the Attorney General may call upon the De-  
40 partment of State Police or any other peace officer or department for assistance in making such  
41 investigations or, in the discretion of the Attorney General, may employ special investigators for  
42 such purpose.

43 **(2) The Attorney General shall employ a forensic investigator with the knowledge and**  
44 **skills to assist in the investigation of allegations of criminal abuse against vulnerable adults**  
45 **under ORS 124.070 and 430.745.**



1       **SECTION 20.** ORS 430.735 is amended to read:

2       430.735. As used in ORS 430.735 to 430.765:

3       (1) “Abuse” means one or more of the following:

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

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

7       (c) Willful infliction of physical pain or injury.

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

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

14       **(d) Neglect.**

15       **(e) Abandonment, including desertion or willful forsaking of a vulnerable adult or the**  
16 **withdrawal or neglect of duties and obligations owed a vulnerable adult by a caregiver or**  
17 **other person.**

18       **(f) Use of derogatory or inappropriate names, insults, verbal assaults, profanity, ridicule,**  
19 **harassment, coercion, threats, intimidation, humiliation or inappropriate sexual comments**  
20 **or mental cruelty of such a nature as to threaten significant physical or emotional harm to**  
21 **a vulnerable adult or provoke fear, agitation, confusion or severe depression in a vulnerable**  
22 **adult.**

23       **(g) Causing any sweepstakes promotion to be mailed to a vulnerable adult who had re-**  
24 **ceived sweepstakes promotional material in the United States mail, who spent more than**  
25 **\$500 in the preceding year on any sweepstakes promotions, or any combination of**  
26 **sweepstakes promotions from the same service, regardless of the identities of the originators**  
27 **of the sweepstakes promotion, and who represented to the court that the person felt the**  
28 **need for the court’s assistance to prevent the person from incurring further expense.**

29       **(h) Wrongfully taking property belonging to or intended for the use of a vulnerable adult.**

30       **(i) Subjecting a vulnerable adult to alarm by conveying a threat to wrongfully take or**  
31 **appropriate money or property, which threat reasonably would be expected to cause the**  
32 **vulnerable adult to believe that the threat will be carried out.**

33       **(j) Sexual abuse.**

34       **(k) Isolation.**

35       [(2) *“Adult” means a person 18 years of age or older with:*]

36       [(a) *A developmental disability who is currently receiving services from a community program or*  
37 *facility or was previously determined eligible for services as an adult by a community program or fa-*  
38 *ility; or]*

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

40       [(3)] **(2) “Adult protective services” means the necessary actions taken to prevent abuse or ex-**  
41 **ploitation of an adult, to prevent self-destructive acts and to safeguard an adult’s person, property**  
42 **and funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken**  
43 **to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides**  
44 **for the greatest degree of independence.**

45       [(4)] **(3) “Care provider” means an individual or facility that has assumed responsibility for all**

1 or a portion of the care of an adult as a result of a contract or agreement.

2 [(5)] (4) “Community program” means a community mental health and developmental disabilities  
3 program as established in ORS 430.610 to 430.695.

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

5 (5) “Exploitation” means:

6 (a) The use or attempted use of the funds, assets or property of a vulnerable adult with  
7 the intent of depriving the vulnerable adult of the use, benefit or possession of the funds,  
8 assets or property for the benefit of a person other than the vulnerable adult by a person:

9 (A) In a position of trust or confidence with the vulnerable adult; or

10 (B) Who knows or should have known the vulnerable adult lacks the capacity to consent  
11 to the use.

12 (b) A breach of fiduciary duty by an attorney, guardian or other person in a fiduciary  
13 relationship with a vulnerable adult.

14 (c) A wrongful taking of the personal assets of a vulnerable adult.

15 (d) The misappropriation, misuse or unauthorized transfer of moneys from an account  
16 of a vulnerable adult, whether the account is individual or joint.

17 (e) The intentional or negligent failure to effectively use the income or assets of a vul-  
18 nerable adult for the support and maintenance of the vulnerable adult.

19 [(7)] (6) “Facility” means a residential treatment home or facility, residential care facility, adult  
20 foster home, residential training home or facility or crisis respite facility.

21 (7) “Intimidate” means to compel or deter conduct by a threat.

22 (8) “Isolation” means an intentional act, excluding an act prescribed by a licensed phy-  
23 sician and treatment activities consistent with an approved treatment plan or in connection  
24 with a court order, that:

25 (a) Is intended to prevent a vulnerable adult from having contact with a family member,  
26 friend or other person concerned for the welfare of the vulnerable adult.

27 (b) Prevents a vulnerable adult from receiving mail, a telephone call or other communi-  
28 cation with a family member, friend or other person concerned for the welfare of the vul-  
29 nerable adult.

30 (c) Physically or chemically restrains a vulnerable adult for the purpose of preventing  
31 contact with a family member, friend or other person concerned for the welfare of the vul-  
32 nerable adult.

33 (d) Confines a vulnerable adult to a restricted area for the purpose of preventing contact  
34 with a family member, friend or other person concerned for the welfare of the vulnerable  
35 adult.

36 [(8)] (9) “Law enforcement agency” means:

37 (a) Any city or municipal police department;

38 (b) Any county sheriff’s office;

39 (c) The Oregon State Police; or

40 (d) Any district attorney.

41 (10) “Neglect” means:

42 (a) A failure of or omission by a caregiver to provide the care, supervision and services  
43 necessary to maintain the physical and mental health of a vulnerable adult that results in  
44 or would be reasonably expected to result in physical or emotional harm to the vulnerable  
45 adult; or

1       **(b) A failure of a caregiver to make a reasonable effort to protect a vulnerable adult from**  
2 **abuse, neglect or exploitation that results in or would be reasonably expected to result in**  
3 **physical or emotional harm to the vulnerable adult.**

4       [(9)] (11) “Public or private official” means:

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

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

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

12       (d) Peace officer;

13       (e) Member of the clergy;

14       (f) Licensed clinical social worker;

15       (g) Physical, speech or occupational therapist;

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

17       (i) Attorney;

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

19       (k) Any public official who comes in contact with adults in the performance of the official’s du-  
20 ties.

21       **(12) “Services” includes but is not limited to food, clothing, medicine, bathing, personal**  
22 **hygiene, proper housing, medical services or assistance that a reasonable person would con-**  
23 **sider essential for the well-being of a vulnerable adult.**

24       **(13) “Sexual abuse” means:**

25       **(a) Sexual activity, exposure to sexually explicit material or language or sexual contact**  
26 **against the will of a vulnerable adult by force, trickery, threat or coercion.**

27       **(b) Sexual activity or contact with a person incapable of giving consent according to ORS**  
28 **163.315.**

29       **(c) Any sexual contact between an employee of a facility or a community program or a**  
30 **paid caregiver and a vulnerable adult served by the facility, community program or**  
31 **caregiver.**

32       **(d) Any sexual contact between a vulnerable adult and a relative of the vulnerable adult**  
33 **other than a spouse or domestic partner.**

34       **(14) “Sweepstakes” means:**

35       **(a) A procedure for awarding a prize that is based on chance;**

36       **(b) A procedure in which a person is required to purchase anything, pay anything of value**  
37 **or make a donation as a condition of winning a prize or of receiving or obtaining information**  
38 **about a prize; or**

39       **(c) A procedure that is advertised in a way that creates a reasonable impression that a**  
40 **payment of anything of value, the purchase of anything or making a donation is a condition**  
41 **of winning a prize or receiving or obtaining information about a prize.**

42       **(15) “Sweepstakes promotion” means an offer to participate in a sweepstakes.**

43       **(16) “Vulnerable adult” means a person 18 years of age or older with:**

44       **(a) A developmental disability, autism spectrum disorder or mental retardation who de-**  
45 **pends on the assistance of another person to perform self-care and self-management includ-**

1 **ing, but not limited to, personal care, hygiene, toileting, eating, dressing, bathing, medication**  
 2 **management, employment, cooking, financial management or personal safety; or**

3 **(b) A mental illness who is receiving services from a community program or facility or**  
 4 **who was previously determined eligible for services as an adult by a community program or**  
 5 **facility who depends on the assistance of another person to perform self-care and self-**  
 6 **management including, but not limited to, personal care, hygiene, toileting, eating, dressing,**  
 7 **bathing, medication management, employment, cooking, financial management or personal**  
 8 **safety.**

9 **SECTION 21.** ORS 430.743 is amended to read:

10 430.743. (1) When a report is required under ORS 430.765 (1) and (2), an oral report shall be  
 11 made immediately by telephone or otherwise to *[the designee of]* the Department of Human Services  
 12 or a law enforcement agency within the county where the person making the report is at the time  
 13 of contact. If known, the report shall include:

- 14 (a) The name, age and present location of the allegedly abused adult;
- 15 (b) The names and addresses of persons responsible for the adult's care;
- 16 (c) The nature and extent of the alleged abuse, including any evidence of previous abuse;
- 17 (d) Any information that led the person making the report to suspect that abuse has occurred  
 18 plus any other information that the person believes might be helpful in establishing the cause of the  
 19 abuse and the identity of the perpetrator; and
- 20 (e) The date of the incident.

21 (2) When a report is received by the *[department's designee]* **department** under this section, the  
 22 *[designee]* **department** shall immediately **refer the report to the Office of Investigations and**  
 23 **Training to determine whether abuse occurred and if** the reported victim has sustained any seri-  
 24 ous injury. *[If so, the designee shall immediately notify the department.]* If there is reason to believe  
 25 a crime has been committed, the *[designee]* **office** shall notify the law enforcement agency having  
 26 jurisdiction within the county where the report was made **and shall provide its findings.** If the  
 27 *[designee]* **office** is unable to gain access to the allegedly abused adult, the *[designee]* **office** may  
 28 contact the law enforcement agency for assistance and the agency shall provide assistance. When  
 29 a report is received by a law enforcement agency, the agency shall immediately notify the law  
 30 enforcement agency having jurisdiction if the receiving agency does not. The receiving agency shall  
 31 also immediately notify the department in cases of serious injury or death.

32 **(3) Upon receipt of a report of abuse under this section, the investigator shall notify:**

- 33 **(a) The agency providing primary case management services to the vulnerable adult; and**
- 34 **(b) The guardian or case manager of the vulnerable adult unless the notification would**  
 35 **undermine the integrity of the investigation because the guardian or case manager is sus-**  
 36 **pected of committing abuse.**

37 **SECTION 22.** ORS 430.745 is amended to read:

38 430.745. (1) Upon receipt of any report of alleged abuse of an adult, the Department of Human  
 39 Services *[or its designee]* shall **refer the report to the Office of Investigations and Training to**  
 40 investigate promptly to determine the nature and cause of the abuse. **If the alleged abuse is**  
 41 **committed in a residential facility, the office shall conduct the investigation regardless of**  
 42 **whether the suspected abuser continues to be employed by the facility.** *[If the department or*  
 43 *its designee determines that a law enforcement agency is conducting an investigation of the same inci-*  
 44 *dent, the department or its designee need not conduct its own investigation.]*

45 (2) *[The department or its designee]* **An inspector from the office** may enter a facility and in-

1 spect and copy records of a facility or community program if necessary for the completion of *[its]*  
 2 **the** investigation.

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

8 (4) Upon completion of an investigation conducted by a law enforcement agency, that agency  
 9 shall provide the *[department or its designee]* **office** with a report of its findings and supporting ev-  
 10 idence.

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

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

22 (7) **If the investigator determines that there is reason to believe a crime has occurred,**  
 23 **the investigator shall report the findings to the appropriate law enforcement agency. The law**  
 24 **enforcement agency must confirm its receipt of the report to the Office of Investigations and**  
 25 **Training within two business days. Within three days of receipt of the findings, the agency**  
 26 **shall notify the office:**

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

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

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

31 (8) **If a law enforcement agency gives the findings of the investigator to the district at-**  
 32 **torney for review, within five business days the district attorney shall notify the office that**  
 33 **the district attorney has received the findings and shall inform the office whether the**  
 34 **findings have been received for review or for filing charges. A district attorney shall make**  
 35 **the determination of whether to file charges within six months of receiving the findings of**  
 36 **the office.**

37 (9) **If a district attorney files charges stemming from a report from the office and the**  
 38 **district attorney makes a determination not to proceed to trial, the district attorney shall**  
 39 **notify the office of the determination within five days and shall include information explain-**  
 40 **ing the basis for the determination.**

41 **SECTION 23.** ORS 430.745, as amended by section 22 of this 2009 Act, is amended to read:

42 430.745. (1) Upon receipt of any report of alleged abuse of an adult, the Department of Human  
 43 Services shall refer the report to the Office of Investigations and Training to investigate promptly  
 44 to determine the nature and cause of the abuse. If the alleged abuse is committed in a residential  
 45 facility, the office shall conduct the investigation regardless of whether the suspected abuser con-

1 tinues to be employed by the facility.

2 (2) An inspector from the office may enter a facility and inspect and copy records of a facility  
3 or community program if necessary for the completion of the investigation.

4 (3) In cases in which the office or the law enforcement agency conducting the investigation finds  
5 reasonable cause to believe that an adult has died as a result of abuse, it shall report that infor-  
6 mation to the appropriate medical examiner. The medical examiner shall complete an investigation  
7 as required under ORS chapter 146 and report the findings to the office or the law enforcement  
8 agency.

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

11 (5) If the investigator from the office determines that there is reasonable cause to believe that  
12 abuse occurred at a facility or that abuse was caused or aided by a person licensed by a licensing  
13 agency to provide care or services, the investigator shall immediately notify each appropriate li-  
14 censing agency and provide each licensing agency with a copy of its investigative findings.

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

21 (7) If the investigator determines that there is reason to believe a crime has occurred, the in-  
22 vestigator shall report the findings to the appropriate law enforcement agency. The law enforcement  
23 agency must confirm its receipt of the report to the Office of Investigations and Training. [*within*  
24 *two business days. Within three days of receipt of the findings,*] The agency shall notify the office  
25 **of its determination:**

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

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

29 (c) That there will be a criminal investigation.

30 (8) If a law enforcement agency gives the findings of the investigator to the district attorney for  
31 review, [*within five business days*] the district attorney shall notify the office that the district at-  
32 torney has received the findings and shall inform the office whether the findings have been received  
33 for review or for filing charges. A district attorney shall make the determination of whether to file  
34 charges within six months of receiving the findings of the office.

35 (9) If a district attorney files charges stemming from a report from the office and the district  
36 attorney makes a determination not to proceed to trial, the district attorney shall notify the office  
37 of the determination [*within five days*] and shall include information explaining the basis for the  
38 determination.

39 **SECTION 24. A person who has personal knowledge that an employee or former employee**  
40 **of the person was found by the Department of Human Services or a law enforcement agency**  
41 **to have committed abuse under ORS 430.745, is immune from civil liability for the disclosure**  
42 **to a prospective employer of the employee or former employee of known facts concerning the**  
43 **abuse.**

44 **SECTION 25.** ORS 441.020 is amended to read:

45 441.020. (1) Licenses for health care facilities including long term care facilities, as defined in

1 ORS 442.015, shall be obtained from the Department of Human Services.

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

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

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

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

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

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

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

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

16 (5) For long term care facilities with:

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

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

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

20 *[(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to*  
21 *\$450.]*

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

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

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

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

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

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

28 (6) For special inpatient care facilities with:

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

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

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

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

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

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

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

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

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

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

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

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

1        **SECTION 26.** ORS 441.715 is amended to read:

2        441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective  
 3 criteria for establishing the civil penalty that may be imposed under ORS 441.710. However, the civil  
 4 penalty may not exceed \$500 for each violation, except as otherwise provided in [*ORS 441.637 and*  
 5 *441.995*] **this subsection and ORS 441.995 or as otherwise required by federal law.**

6        (b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for  
 7 any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation  
 8 involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under  
 9 ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed  
 10 \$500 per day **or as otherwise required by federal law.**

11        **(c) If the Department of Human Services determines that there is reasonable cause to**  
 12 **believe that abuse occurred in a long term care facility and if the abuse resulted in the death,**  
 13 **serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall**  
 14 **impose a civil penalty of not less than \$2,500 for each violation. The department shall by rule**  
 15 **define “serious injury,” “rape,” “sexual abuse” and “sexual exploitation” for the purposes of**  
 16 **this paragraph.**

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

20        **SECTION 27.** ORS 441.745 is amended to read:

21        441.745. All penalties recovered under ORS 441.710 to 441.740 **and 441.995** shall be [*paid into the*  
 22 *State Treasury and credited to the General Fund*] **deposited in the Quality Care Fund established**  
 23 **in section 1 of this 2009 Act.**

24        **SECTION 28.** ORS 441.995 is amended to read:

25        441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of  
 26 ORS 441.630 to 441.680, the Department of Human Services shall consider:

- 27        (a) Any prior violations of laws or rules pertaining to facilities;
- 28        (b) The financial benefits, if any, realized by the facility as a result of the violation;
- 29        (c) The gravity of the violation, including the actual or potential threat to the health, safety and  
 30 well-being of one or more residents;
- 31        (d) The severity of the actual or potential harm caused by the violation; and
- 32        (e) The facility’s past history of correcting violations and preventing the recurrence of vio-  
 33 lations.

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

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

41        (4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the de-  
 42 partment’s authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations that  
 43 do not constitute abuse.

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



**SECTION 29.** 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 30.** 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 31.** 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 32.** 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

1 such other information as the Department of Human Services considers necessary.

2 (2) A license is renewable upon submission of an application to the department and payment of  
 3 a fee [of \$60 for facilities licensed under ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes li-  
 4 censed under ORS 443.400 (8) and (10)]. No fee shall be required of a governmentally operated resi-  
 5 dential facility. Filing of an application for renewal before the date of expiration of a license extends  
 6 the effective date of expiration of the license until the department has acted upon such application.  
 7 The department shall refuse to renew a license if the facility is not substantially in compliance with  
 8 all applicable laws and rules, or if the State Fire Marshal or the authorized representative thereof  
 9 has given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9) pursuant to ORS  
 10 479.220.

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

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

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

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

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

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

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

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

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

20 **SECTION 33.** ORS 443.430 is amended to read:

21 443.430. (1) [No] A license under ORS 443.415 is **not** transferable or applicable to any location,  
 22 residential facility or management other than that indicated on the application for licensure.

23 (2) **Except as provided in subsection (3) of this section,** all moneys collected under ORS  
 24 443.400 to 443.455 shall be deposited in a special account in the General Fund, and are appropriated  
 25 continuously for payment of expenses incurred by the Department of Human Services in the admin-  
 26 istration of ORS 443.400 to 443.455.

27 **(3) All moneys collected from a residential care facility under ORS 443.415, 443.425 or**  
 28 **443.455 shall be deposited in the Quality Care Fund established in section 1 of this 2009 Act.**

29 **SECTION 34.** ORS 443.455 is amended to read:

30 443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS  
 31 443.400 to 443.455 [are considered to be long-term care facilities,] **shall be** subject to ORS 441.705 to  
 32 441.745. [However,] The [Director] **Department** of Human Services shall exercise the powers con-  
 33 ferred under ORS 441.705 to 441.745.

34 (2) The [director] **department** shall by rule prescribe a schedule of penalties appropriate to  
 35 residential facilities licensed under ORS 443.400 to 443.455. **If the department determines that**  
 36 **there is reasonable cause to believe that abuse occurred at a residential facility and if the**  
 37 **abuse resulted in the death, serious injury, rape, sexual abuse or sexual exploitation of a**  
 38 **resident, the department shall impose a civil penalty of not less than \$2,500 for each vio-**  
 39 **lation. The department shall by rule define “serious injury,” “rape,” “sexual abuse” and**  
 40 **“sexual exploitation” for purposes of this subsection.**

41 **SECTION 35.** ORS 443.730 is amended to read:

42 443.730. (1) The provider shall furnish the names, addresses and telephone numbers of the sub-  
 43 stitute caregivers employed or used by the provider to the Department of Human Services upon the  
 44 request of the department.

45 (2) The department shall require the provider to furnish information describing the planned op-

1 eration of the adult foster home, including the use of substitute caregivers and other staff, as part  
2 of the license application.

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

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

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

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

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

14 (e) The provider has trained the caregiver to meet the routine and emergency needs of the res-  
15 idents.

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

21 **SECTION 36.** ORS 443.735 is amended to read:

22 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be  
23 made on forms provided by the Department of Human Services. Each application shall be accompa-  
24 nied by a fee [*of \$20 per bed requested for licensing*] **established by the department by rule**.

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

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

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

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

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

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

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

- 1 (4) The department may not renew a license under this section unless:
- 2 (a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and
- 3 the rules of the department;
- 4 (b) The department has completed an inspection of the adult foster home;
- 5 (c) The department has completed a criminal records check under ORS 181.534 on the applicant
- 6 and any person, other than a resident, 16 years of age or older who will be residing in the adult
- 7 foster home. The criminal records check under this paragraph shall be conducted in accordance with
- 8 rules adopted under ORS 181.534; and
- 9 (d) The department has checked the record of sanctions available, including the list of nursing
- 10 assistants who have been found responsible for abuse and whose names have been added to the
- 11 registry under ORS 441.678.
- 12 (5)(a) In seeking an initial license and renewal of a license when an adult foster home has been
- 13 licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster
- 14 home to establish compliance with ORS 443.705 to 443.825 and the rules of the department.
- 15 (b) In proceedings for renewal of a license when an adult foster home has been licensed for at
- 16 least 24 continuous months, the burden of proof shall be upon the department to establish noncom-
- 17 pliance with ORS 443.705 to 443.825 and the rules of the department.
- 18 (6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of
- 19 the department, are substantially related to the qualifications, functions or duties of a provider,
- 20 resident manager, substitute caregiver or other household member of an adult foster home shall be
- 21 prohibited from operating, working in or residing in an adult foster home.
- 22 (b) The department shall adopt rules that distinguish the criminal convictions and types of abuse
- 23 that permanently prohibit a person from operating, working in or living in an adult foster home from
- 24 the convictions and types of abuse that do not permanently prohibit the person from operating,
- 25 working in or living in an adult foster home.
- 26 (c) A provider may not hire, retain in employment or allow to live in an adult foster home, other
- 27 than as a resident, any person who the provider knows has been convicted of a disqualifying crime
- 28 or has been found responsible for a disqualifying type of abuse.
- 29 (7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner
- 30 revoked. Each license shall state the name of the resident manager of the adult foster home, the
- 31 names of all providers who own the adult foster home, the address of the premises to which the li-
- 32 cense applies, the maximum number of residents and the classification of the home. If, during the
- 33 period covered by the license, a resident manager changes, the provider must within 15 days request
- 34 modification of the license. The request must be accompanied by a fee of \$10.
- 35 (8) No license under ORS 443.725 is transferable or applicable to any location, persons operating
- 36 the adult foster home or the person owning the adult foster home other than that indicated on the
- 37 application for licensing.
- 38 (9) The department shall not issue a license to operate an additional adult foster home to a
- 39 provider unless the provider has demonstrated the qualifications and capacity to operate the pro-
- 40 vider's existing licensed home or homes and has demonstrated the ability to provide care to the
- 41 residents of those homes that is adequate and substantially free from abuse and neglect.
- 42 (10)(a) All moneys collected under ORS 443.725 to 443.780 **from adult foster homes that are**
- 43 **licensed to serve persons with mental, emotional or behavioral disturbances or alcohol or**
- 44 **drug dependence** shall be deposited in a special account in the General Fund, and are appropriated
- 45 continuously for payment of expenses incurred by the Department of Human Services.

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

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

9       **SECTION 37.** ORS 443.740 is amended to read:

10       443.740. (1) The Department of Human Services shall maintain current information on all li-  
11 censed adult foster homes and shall make that information available to prospective residents and  
12 other interested members of the public at local department offices or area agencies on aging li-  
13 censing offices throughout the state.

14       (2) The information shall include:

15       (a) The location of the adult foster home;

16       (b) A brief description of the physical characteristics of the home;

17       (c) The name and mailing address of the provider;

18       (d) The license classification of the home and the date the provider was first licensed to operate  
19 that home;

20       (e) The date of the last inspection, the name and telephone number of the office that performed  
21 the inspection and a summary of the findings;

22       (f) Copies of all complaint investigations involving the home, together with the findings of the  
23 department, the actions taken by the department and the outcome of the complaint investigation;

24       (g) An explanation of the terms used in the investigation report;

25       (h) Any license conditions, suspensions, denials, revocations, civil penalties, exceptions or other  
26 actions taken by the department involving the home; and

27       (i) Whether care is provided primarily by the licensed provider, a resident manager or other  
28 arrangement.

29       (3) Any list of adult foster homes maintained or distributed by the department or a local li-  
30 censing office shall include notification to the reader of the availability of public records concerning  
31 the homes, **including but not limited to the database described in section 2 of this 2009 Act.**

32       **SECTION 38.** ORS 443.775 is amended to read:

33       443.775. (1) The Department of Human Services shall adopt rules governing adult foster homes  
34 and the level of care provided in such homes, including the provision of care to more than one  
35 person with nursing care needs under specified conditions and department approval, such as are  
36 necessary to protect the health, safety or welfare of the residents and to provide for an appropriate  
37 continuum of care, but shall not be inconsistent with the residential nature of the living accommo-  
38 dations and the family atmosphere of the home. The rules shall be consistent with rules adopted by  
39 the Oregon State Board of Nursing under ORS 678.150 (9).

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

44       (b) The department, and the counties acting under the exemption granted pursuant to ORS  
45 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions

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

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

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

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

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

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

16 (7) By order the Director of Human Services may delegate authority under this section to per-  
17 sonnel other than of the department.

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

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

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

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

26 (10) Any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted there-  
27 under may be subjected to the imposition of a civil penalty, to be fixed by the *[director]* **department**  
28 by rule. [*, not to exceed \$100 per violation, to a maximum of \$250 or, per occurrence of substantiated*  
29 *abuse, a maximum of \$1,000.*] **If the department determines that there is reasonable cause to**  
30 **believe that abuse occurred in an adult foster home and if the abuse resulted in the death,**  
31 **serious injury, rape, sexual abuse or sexual exploitation of a resident, the department shall**  
32 **impose a civil penalty of not less than \$2,500 for each violation. The department shall by rule**  
33 **define "serious injury," "rape," "sexual abuse" and "sexual exploitation" for purposes of this**  
34 **subsection.**

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

37 **SECTION 39.** ORS 443.790 is amended to read:

38 443.790. (1) In addition to any other liability or penalty provided by law, the Director of Human  
39 Services may impose a civil penalty on a person for any of the following:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 40.** ORS 443.825 is amended to read:

25 443.825. All penalties recovered under ORS 443.790 to 443.815 shall be *[paid into the State*  
 26 *Treasury and credited to the General Fund and are available for general governmental expenses]* **de-**  
 27 **posited in the Quality Care Fund established in section 1 of this 2009 Act.**

28 **SECTION 41.** Section 2, chapter 204, Oregon Laws 2005, as amended by section 359, chapter  
 29 70, Oregon Laws 2007, is amended to read:

30 **Sec. 2.** (1) In carrying out the provisions of section 2, chapter 290, Oregon Laws 1987, the Public  
 31 Utility Commission shall adopt rules to prohibit the termination of local exchange residential service  
 32 if the termination would significantly endanger a customer, or a person in the household of the  
 33 customer, who is:

34 (a) At risk of domestic violence, as defined in ORS 135.230;

35 (b) At risk of unwanted sexual contact, as defined in ORS 163.305;

36 (c) A person with a disability, as defined in ORS 124.005, who is at risk of abuse, as defined in  
 37 ORS 124.005 [(1)(a), (d) or (e)] **(1)(b), (e) or (f)**;

38 (d) An elderly person, as defined in ORS 124.005, who is at risk of abuse, as defined in ORS  
 39 124.005 [(1)(a), (d) or (e)] **(1)(b), (e) or (f)**; or

40 (e) A victim of stalking, as described in ORS 163.732.

41 (2) A customer may establish that termination of local exchange residential service would sig-  
 42 nificantly endanger the customer, or a person in the household of the customer, by providing a  
 43 telecommunications public utility with an affidavit signed by the customer stating that termination  
 44 would place the customer, or a person in the household of the customer, at significant risk of do-  
 45 mestic violence, as defined in ORS 135.230, or of unwanted sexual contact, as defined in ORS

1 163.305. The customer must attach to the affidavit a copy of an order issued under ORS 30.866,  
 2 107.700 to 107.735, 124.005 to 124.040 or 163.738 that restrains another person from contact with the  
 3 customer, or a person in the household of the customer, or a copy of any other court order that  
 4 restrains another person from contact with the customer, or a person in the household of the cus-  
 5 tomer, by reason of a risk described in subsection (1) of this section or by reason of stalking.

6 (3) The commission shall require that each telecommunications public utility establish proce-  
 7 dures for submitting and receiving affidavits under subsection (2) of this section.

8 (4) This section does not apply to termination of any telecommunication service other than local  
 9 exchange residential service.

10 (5) A customer submitting an affidavit as provided by subsection (2) of this section is not ex-  
 11 cused from paying for telecommunication service. Customers are required to enter into a reasonable  
 12 payment agreement with the telecommunications public utility if an overdue balance exists. Local  
 13 exchange residential service may be terminated if a customer refuses to enter into or fails to abide  
 14 by the terms of a reasonable payment agreement.

15 (6) Nothing in this section prevents the termination of local exchange residential service if the  
 16 telecommunications public utility providing the service does not have the technical ability to ter-  
 17 minate toll telecommunication service without also terminating local exchange residential service.

18 **SECTION 42. The Director of Human Services may take any action before the operative**  
 19 **dates specified in sections 43 and 44 of this 2009 Act that is necessary to enable the Depart-**  
 20 **ment of Human Services to carry out, on and after the operative dates specified in sections**  
 21 **43 and 44 of this 2009 Act, the provisions of this 2009 Act.**

22 **SECTION 43. Except as provided in section 42 of this 2009 Act, sections 1 to 5 and 7 to**  
 23 **9 of this 2009 Act, the amendments to ORS 124.020, 124.065, 124.070, 124.100, 124.105, 180.090,**  
 24 **430.743, 430.745, 441.020, 441.715, 441.745, 441.995, 443.415, 443.425, 443.430, 443.455, 443.735,**  
 25 **443.740, 443.775, 443.790 and 443.825 by sections 11, 12, 14, 16, 17, 19, 21, 22, 25, 26, 27, 28, 31,**  
 26 **32, 33, 34, 36, 37, 38, 39 and 40 of this 2009 Act and the repeal of ORS 430.746 by section 47**  
 27 **of this 2009 Act become operative on January 1, 2010.**

28 **SECTION 44. Except as provided in section 42 of this 2009 Act, sections 18 and 24 of this**  
 29 **2009 Act and the amendments to ORS 124.005, 430.735, 443.045, 443.325 and 443.730 and section**  
 30 **2, chapter 204, Oregon Laws 2005, by sections 10, 20, 29, 30, 35 and 41 of this 2009 Act become**  
 31 **operative on September 1, 2009.**

32 **SECTION 45. The amendments to ORS 124.065, 124.070 and 430.745 by sections 13, 15 and**  
 33 **23 of this 2009 Act become operative on July 1, 2015.**

34 **SECTION 46. Section 6 of this 2009 Act applies to employees who are hired on or after**  
 35 **the effective date of this 2009 Act.**

36 **SECTION 47. ORS 430.746 is repealed.**

37 **SECTION 48. Section 8 of this 2009 Act is repealed January 2, 2015.**

38 **SECTION 49. This 2009 Act being necessary for the immediate preservation of the public**  
 39 **peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect**  
 40 **on its passage.**