

**Enrolled**  
**Senate Bill 163**

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CHAPTER .....

AN ACT

Relating to nursing assistants; amending ORS 441.677, 441.678, 441.679 and 443.735.

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

**SECTION 1.** ORS 441.677 is amended to read:

441.677. (1) Within 60 days of receipt of the investigation documents and the written report described in ORS 441.650 (6)(d) and 441.676 (2)(d), the Department of Human Services shall prepare a written letter of determination that states the department's determinations concerning each incident or problem alleged in the complaint. The department shall determine whether the alleged incident or problem was substantiated or unsubstantiated or whether the department was unable to substantiate the alleged incident or problem. The department shall adopt by rule definitions for the terms "substantiated," "unsubstantiated" and "unable to substantiate." If the department determines that an incident or problem alleged in the complaint is substantiated, the letter of determination shall state whether the substantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of determination shall state whether the facility or an individual, or both, was responsible. The department shall adopt by rule criteria for determining responsibility for substantiated abuse.

(2) A copy of the letter of determination shall be placed in the facility's complaint file. Copies shall be sent to the facility, the complainant and the local office of the department. The facility and the complainant receiving the letter of determination shall be given 10 days to respond with additional information and shall be informed of the appeals process.

(3) If the department determines that an individual who holds a license or certificate for a health occupation is directly responsible for the abuse, the department shall send a copy of its letter of determination and investigation report to the state agency responsible for licensing or certifying the individual in the health occupation. In instances involving conduct of a nursing assistant, the department shall give the nursing assistant 10 days to respond with additional information. The department also shall notify by mail the nursing assistant implicated in the investigation of:

- (a) The nature of the allegations;
- (b) The date and time of occurrence;
- (c) The right to *[an administrative review under ORS 441.678]* **a contested case hearing conducted in accordance with ORS chapter 183;**

(d) The department's *[intent]* **obligation** to report the substantiated findings *[to]* **in** the registry maintained under ORS *[678.150]* **441.678** after the nursing assistant has had an opportunity for *[administrative review]* **a contested case hearing**; and

(e) The fact that the nursing assistant's failure to request *[an administrative review]* **a contested case hearing** within 30 days from the date of the notice will result in the department's reporting the substantiated findings *[to the]* **in the** registry maintained under ORS *[678.150]* **441.678**.

(4) Notice sent to the nursing assistant's last-known address is sufficient to meet the requirements of subsection (3) of this section.

**SECTION 2.** ORS 441.678 is amended to read:

441.678. (1) If a nursing assistant found by the Department of Human Services to be responsible for abuse does not respond to the department within 30 days after notice of the opportunity for *[an administrative review,]* **a contested case hearing**, the department shall *[notify the Oregon State Board of Nursing, which shall place the abuse finding in the registry maintained under ORS 678.150.]* **place the abuse finding in the registry maintained under this section.**

**(2) If a nursing assistant is found to be responsible for abuse, the nursing assistant is entitled to a contested case hearing under ORS chapter 183. Upon a finding of abuse in a final order, the department shall place the finding in the registry maintained under this section.**

**(3) The department shall maintain a nursing assistant registry that contains, at a minimum, the information required by 42 C.F.R. 483.156.**

*[(2) If a nursing assistant is found to be responsible for abuse, neglect or misappropriation of a resident's funds, the nursing assistant is entitled to an administrative review under subsection (3) of this section. If, after the review, the nursing assistant is found responsible, the department shall notify the Oregon State Board of Nursing of its finding, which shall place the finding in the registry maintained under ORS 678.150.]*

*[(3) The administrative review shall be conducted by a panel of three persons, consisting of one person from the department's management staff who is responsible for the monitoring of nursing homes, one person who is a registered nurse and who is on the staff of the Oregon State Board of Nursing and one person who is on the staff of the department but not directly involved in the monitoring of nursing homes and who has expertise in areas related to nursing care in a facility.]*

**SECTION 3.** ORS 441.679 is amended to read:

441.679. (1) Before employing a registered nurse, licensed practical nurse or nursing assistant, a long term care facility shall contact the Oregon State Board of Nursing and inquire whether the person is currently licensed or certified by the board and whether there has been any disciplinary action against the person or substantiated abuse findings against a nursing assistant.

(2) A facility shall not employ or retain in employment any person found *[responsible in an administrative procedure that is not appealed or in]* **by** a court of law *[for abusing, neglecting or mistreating]* **to have abused, neglected or mistreated** a person receiving long term care services, nor shall a facility employ or retain in employment any nursing assistant against whom a finding of resident abuse has been entered into the registry maintained under ORS *[678.150]* **441.678**.

**SECTION 4.** ORS 443.735 is amended to read:

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

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

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

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

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

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

(d) The department has [*checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678*] **determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse;** and

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

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

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

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

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

(d) The department has [*checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678*] **determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.**

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

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

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

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

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

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

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

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

(10) All moneys collected under ORS 443.725 to 443.780 shall be deposited in a special account in the General Fund, and are [appropriated] continuously **appropriated to the department for the purpose of carrying out the provisions of ORS 443.705 to 443.825.** [for payment of expenses incurred by the Department of Human Services.]

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

**Passed by Senate March 12, 2009**

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Secretary of Senate

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President of Senate

**Passed by House April 13, 2009**

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Speaker of House

**Received by Governor:**

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**Approved:**

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

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Governor

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