

Senate Bill 163

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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**.

Provides right to contested case hearing to dispute finding by Department of Human Services that nursing assistant is responsible for abuse of resident in long term care.

Requires Oregon State Board of Nursing to maintain nursing assistant registry that contains information required by federal law, including finding of abuse.

A BILL FOR AN ACT

1
2 Relating to nursing assistants; amending ORS 441.677, 441.678, 441.679, 443.735 and 678.442.

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

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

5 441.677. (1) Within 60 days of receipt of the investigation documents and the written report de-
6 scribed in ORS 441.650 (6)(d) and 441.676 (2)(d), the Department of Human Services shall prepare a
7 written letter of determination that states the department's determinations concerning each incident
8 or problem alleged in the complaint. The department shall determine whether the alleged incident
9 or problem was substantiated or unsubstantiated or whether the department was unable to sub-
10 stantiate the alleged incident or problem. The department shall adopt by rule definitions for the
11 terms "substantiated," "unsubstantiated" and "unable to substantiate." If the department determines
12 that an incident or problem alleged in the complaint is substantiated, the letter of determination
13 shall state whether the substantiated incident was abuse or violation of another rule. If abuse is
14 substantiated, the letter of determination shall state whether the facility or an individual, or both,
15 was responsible. The department shall adopt by rule criteria for determining responsibility for sub-
16 stantiated abuse.

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

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

27 (a) The nature of the allegations;

28 (b) The date and time of occurrence;

29 (c) The right to [*an administrative review under ORS 441.678*] **a contested case hearing con-**

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 **ducted in accordance with ORS chapter 183;**

2 (d) The department's *[intent]* **obligation** to report the substantiated findings to **the Oregon**
 3 **State Board of Nursing for inclusion** in the registry maintained under ORS [678.150] **678.442** after
 4 the nursing assistant has had an opportunity for *[administrative review]* **a contested case hearing;**
 5 and

6 (e) The fact that the nursing assistant's failure to request *[an administrative review]* **a contested**
 7 **case hearing** within 30 days from the date of the notice will result in the department's reporting
 8 the substantiated findings to the **board for inclusion of the findings in the** registry maintained
 9 under ORS [678.150] **678.442**.

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

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

13 441.678. (1) If a nursing assistant found by the Department of Human Services to be responsible
 14 for abuse does not respond to the department within 30 days after notice of the opportunity for *[an*
 15 *administrative review,]* **a contested case hearing**, the department shall notify the Oregon State
 16 Board of Nursing, which shall place the abuse finding in the registry maintained under ORS
 17 [678.150] **678.442**.

18 (2) If a nursing assistant is found to be responsible for abuse, *[neglect or misappropriation of a*
 19 *resident's funds,]* the nursing assistant is entitled to *[an administrative review under subsection (3)*
 20 *of this section]* **a contested case hearing under ORS chapter 183**. *[If, after the review, the nursing*
 21 *assistant is found responsible,]* **Upon finding in a final order in a contested case that a nursing**
 22 **assistant is responsible for abuse**, the department shall notify the Oregon State Board of Nursing
 23 of its finding, *[which]* **and the board** shall place the finding in the registry maintained under ORS
 24 [678.150] **678.442**.

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

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

31 441.679. (1) Before employing a registered nurse, licensed practical nurse or nursing assistant,
 32 a long term care facility shall contact the Oregon State Board of Nursing and inquire whether the
 33 person is currently licensed or certified by the board and whether there has been any disciplinary
 34 action against the person or substantiated abuse findings against a nursing assistant.

35 (2) A facility shall not employ or retain in employment any person found *[responsible in an ad-*
 36 *ministrative procedure that is not appealed or in]* **by** a court of law *[for abusing, neglecting or mis-*
 37 *treating]* **to have abused, neglected or mistreated** a person receiving long term care services, nor
 38 shall a facility employ or retain in employment any nursing assistant against whom a finding of
 39 resident abuse has been entered into the registry maintained under ORS [678.150] **678.442**.

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

41 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
 42 made on forms provided by the Department of Human Services. Each application shall be accompa-
 43 nied by a fee of \$20 per bed requested for licensing.

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

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

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

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

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

8 (d) The department has [*checked the record of sanctions available, including the list of nursing*
9 *assistants who have been found responsible for abuse and whose names have been added to the registry*
10 *under ORS 441.678*] **determined that the registry maintained under ORS 678.442 contains no**
11 **finding that the applicant or any nursing assistant employed by the applicant has been re-**
12 **sponsible for abuse;** and

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

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

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

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

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

30 (d) The department has [*checked the record of sanctions available, including the list of nursing*
31 *assistants who have been found responsible for abuse and whose names have been added to the registry*
32 *under ORS 441.678*] **determined that the registry maintained under ORS 678.442 contains no**
33 **finding that the applicant or any nursing assistant employed by the applicant has been re-**
34 **sponsible for abuse.**

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

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

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

45 (b) The department shall adopt rules that distinguish the criminal convictions and types of abuse

1 that permanently prohibit a person from operating, working in or living in an adult foster home from
 2 the convictions and types of abuse that do not permanently prohibit the person from operating,
 3 working in or living in an adult foster home.

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

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

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

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

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

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

29 **SECTION 5.** ORS 678.442 is amended to read:

30 678.442. (1) The Oregon State Board of Nursing shall establish standards for certifying and shall
 31 certify as a nursing assistant any person who applies [*therefor*], shows completion of an approved
 32 training program for nursing assistants and passes a board approved examination.

33 (2) In the manner prescribed in ORS chapter 183, the board may revoke or suspend a certificate
 34 issued under this section or may reprimand a nursing assistant for the following reasons:

35 (a) Conviction of the certificate holder of a crime where such crime bears demonstrable re-
 36 lationship to the duties of a nursing assistant. A copy of the record of such conviction, certified to
 37 by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

38 (b) Any willful fraud or misrepresentation in applying for or procuring a certificate or renewal
 39 thereof.

40 (c) Use of any controlled substance or intoxicating liquor to an extent or in a manner dangerous
 41 or injurious to the certificate holder or others or to an extent that such use impairs the ability to
 42 conduct safely the duties of a nursing assistant.

43 (d) Violation of any provisions of ORS 678.010 to 678.445 or rules adopted thereunder.

44 (e) Physical or mental condition that makes the certificate holder unable to perform safely the
 45 duties of a nursing assistant.

1 (f) Conduct unbecoming a nursing assistant in the performance of duties.

2 (3) The board shall establish by rule a procedure for the biennial renewal of nursing assistant
3 certificates. The certificate renewal procedure shall be substantially like the procedure established
4 for the licensing of nurses under ORS 678.101.

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

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