

**Enrolled**  
**Senate Bill 287**

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CHAPTER .....

AN ACT

Relating to licensing of residential facility; creating new provisions; and amending ORS 443.415, 443.440 and 443.735.

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

**SECTION 1.** (1) **As used in this section:**

(a) **“Facility” means:**

- (A) **A residential training facility as defined in ORS 443.400;**
- (B) **A residential training home as defined in ORS 443.400;**
- (C) **A residential treatment facility as defined in ORS 443.400;**
- (D) **A residential treatment home as defined in ORS 443.400; or**
- (E) **An adult foster home as defined in ORS 443.705.**

(b) **“Provider” means a person licensed or a person applying for a license to operate a facility.**

(2) **The Department of Human Services may deny, suspend, revoke or refuse to renew a license of a provider if the department finds that the provider operates a separate facility that is not or has not been in substantial compliance with rules adopted under ORS 443.400 to 443.455 or 443.705 to 443.825.**

**SECTION 2.** 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) 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 section 1 of this 2009 Act** or the rules of the [Director of Human Services] **department**. 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 3.** ORS 443.440 is amended to read:

443.440. The Department of Human Services may revoke or suspend the license of any residential facility that is not operated in accordance with ORS 443.400 to 443.455 **or section 1 of this 2009**

**Act** or the rules [adopted thereunder] of the department. Such revocation or suspension shall be taken in accordance with rules of the department and ORS chapter 183. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension.

**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 section 1 of this 2009 Act** and the rules of the department;

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

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

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

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

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

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 **and section 1 of this 2009 Act** and the rules of the department;

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

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

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

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

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

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

(b) The department shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from

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

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

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

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

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

(10) 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 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 May 5, 2009**

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Secretary of Senate

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President of Senate

**Passed by House June 2, 2009**

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Speaker of House

**Received by Governor:**

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

**Approved:**

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

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Governor

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