

House Bill 2055

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor John A. Kitzhaber for Department of Human Services)

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**.

Requires Department of Human Services to adopt rules defining "abuse, neglect or misappropriation of resident property" for purposes of nursing assistant registry to conform definition to federal law.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to nursing assistant registry; amending ORS 441.677, 441.678, 441.679 and 443.735; and de-
3 claring an emergency.

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

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

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

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

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

28 *[(a) The nature of the allegations;]*

29 *[(b) The date and time of occurrence;]*

30 *[(c) The right to a contested case hearing conducted in accordance with ORS chapter 183;]*

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

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

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

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

10 441.678. *[(1) If a nursing assistant found by the Department of Human Services to be responsible*
 11 *for abuse does not respond to the department within 30 days after notice of the opportunity for a con-*
 12 *tested case hearing, the department shall place the abuse finding in the registry maintained under this*
 13 *section.]*

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

17 **(1) As used in this section, "abuse, neglect or misappropriation of resident property" has**
 18 **the meaning given that term in rules adopted by the Department of Human Services. The**
 19 **definition adopted by the department shall, at a minimum, include all actions or inactions**
 20 **defined as abuse, neglect or misappropriation of resident property under 42 C.F.R. 488.301.**

21 *[(3)] (2) The department shall maintain a nursing assistant registry that contains, at a minimum,*
 22 *the information required by 42 C.F.R. 483.156.*

23 **(3) If the department finds, in an investigation of an abuse complaint that a nursing as-**
 24 **stant is responsible for abuse, neglect or misappropriation of resident property, the de-**
 25 **partment shall provide written notice to the nursing assistant at the nursing assistant's**
 26 **last-known address that includes:**

27 **(a) The nature of the allegations;**

28 **(b) The date and time of the occurrence;**

29 **(c) The right to a contested case hearing conducted in accordance with ORS chapter 183;**
 30 **and**

31 **(d) The department's obligation under subsection (4) of this section to enter the sub-**
 32 **stantiated finding in the nursing assistant registry.**

33 **(4) The department shall enter a finding in the nursing assistant registry if:**

34 **(a) The department determines in a contested case hearing that the finding is substan-**
 35 **tiated; or**

36 **(b) The nursing assistant fails to request a contested case hearing within 30 days after**
 37 **mailing of the notice described in subsection (3) of this section.**

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

39 441.679. (1) Before employing a registered nurse, licensed practical nurse or nursing assistant,
 40 a long term care facility shall contact the Oregon State Board of Nursing and inquire whether:

41 **(a) The person is currently licensed or certified by the board [and whether];**

42 **(b) There has been any disciplinary action against the person [or substantiated abuse findings**
 43 **against a nursing assistant.]; and**

44 **(c) A nursing assistant has a finding of abuse, neglect or misappropriation of resident**
 45 **property entered into the registry maintained under ORS 441.678.**

1 (2) A facility shall not employ or retain in employment any person found by a court of law to
 2 have abused, neglected or mistreated a person receiving long term care services, nor shall a facility
 3 employ or retain in employment any nursing assistant against whom a finding of [*resident*] abuse,
 4 **neglect or misappropriation of resident property** has been entered into the registry maintained
 5 under ORS 441.678.

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

7 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
 8 made on forms provided by the licensing agency. Each application shall be accompanied by a fee
 9 of \$20 per bed requested for licensing.

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

11 (3) The licensing agency shall not issue an initial license unless:

12 (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to
 13 443.825 and the rules of the licensing agency;

14 (b) The licensing agency has completed an inspection of the adult foster home;

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

19 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
 20 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
 21 sponsible for abuse, **neglect or misappropriation of resident property**; and

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

31 (4) The licensing agency may not renew a license under this section unless:

32 (a) The applicant and the adult foster home are in compliance with ORS 443.002 and 443.705 to
 33 443.825 and the rules of the licensing agency;

34 (b) The licensing agency has completed an inspection of the adult foster home;

35 (c) The licensing agency has completed a criminal records check under ORS 181.534 on the ap-
 36 plicant and any person, other than a resident, 16 years of age or older who will be residing in the
 37 adult foster home. The criminal records check under this paragraph shall be conducted in accord-
 38 ance with rules adopted under ORS 181.534; and

39 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
 40 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
 41 sponsible for abuse, **neglect or misappropriation of resident property**.

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

45 (b) In proceedings for renewal of a license when an adult foster home has been licensed for at

1 least 24 continuous months, the burden of proof shall be upon the licensing agency to establish
 2 noncompliance with ORS 443.705 to 443.825 and the rules of the agency.

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

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

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

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

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

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

28 (10)(a) All moneys collected under ORS 443.725 to 443.780 from adult foster homes that are li-
 29 censed to serve persons with mental, emotional or behavioral disturbances or alcohol or drug de-
 30 pendence shall be deposited in a special account in the General Fund, and are appropriated
 31 continuously for payment of expenses incurred by the Oregon Health Authority.

32 (b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve
 33 persons who are elderly, have physical disabilities or have developmental disabilities shall be de-
 34 posited in the Quality Care Fund established in ORS 443.001.

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

39 **SECTION 5. This 2011 Act being necessary for the immediate preservation of the public**
 40 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
 41 **on its passage.**