

Enrolled
House Bill 2057

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)

CHAPTER

AN ACT

Relating to persons with disabilities; amending ORS 124.005, 124.050 and 410.040; and declaring an emergency.

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

SECTION 1. ORS 410.040 is amended to read:

410.040. As used in ORS 409.010, 410.040 to 410.320, 411.159 and 441.630:

(1) "Appropriate living arrangement" means any arrangement for an elderly person or a person with a disability in a residential setting which is appropriate for the person considering, in order of priority, the following criteria:

- (a) The desires and goals of the person;
- (b) The right of the person to live as independently as possible, in the least restrictive environment; and
- (c) The cost of the living arrangement compared to other types of living arrangements, based on the criteria in paragraphs (a) and (b) of this subsection.

(2) "Area agency" means:

- (a) An established or proposed type A or type B Area Agency on Aging within a planning and service area designated under Section 305 of the Older Americans Act; or
- (b) Any public or nonprofit private agency which is designated as a type A or type B Area Agency on Aging under Section 305 of the Older Americans Act.

(3) "Area agency board" means the local policy-making board which directs the actions of the area agency within state and federal laws and regulations.

(4) "Department" means the Department of Human Services.

(5) "Elderly person" means a person who is served by a type A area agency or type B area agency or by the department and who is 60 years of age or older.

(6) "Local government" means a political subdivision of the state whose authority is general or a combination of units of general purpose local governments.

(7) "Person with a disability" means a person with a physical or mental [*disability:*] **impairment that substantially limits one or more major life activities.**

[*(a) Who is eligible for Supplemental Security Income or for general assistance; and*]

[*(b) Who meets one of the following criteria:*]

[*(A) Has mental retardation or a developmental disability or is mentally or emotionally disturbed, and resides in or needs placement in a residential program administered by the department.*]

[*(B) Is an alcohol or drug abuser and resides in or needs placement in a residential program administered by the department.*]

[(C) Has a physical or mental disability other than those described in subparagraphs (A) and (B) of this paragraph.]

(8) "Preadmission screening" means a professional program within the department or type B area agencies, with staff that includes registered nurses and social workers, that assesses the needs of clients and recommends appropriate placements in residential programs administered by the department or type B area agencies.

(9) "Protective services" means a service to be provided by the department directly or through type B area agencies, in response to the need for protection from harm or neglect to elderly persons and persons with disabilities.

(10) "Title XIX" means long term care and health services programs in Title XIX of the Social Security Act available to elderly persons and persons with disabilities.

(11) "Type A area agency" means an area agency:

(a) For which either the local government or the area agency board does not agree to accept local administrative responsibility for Title XIX; and

(b) That provides a service to elderly persons.

(12) "Type B area agency" means an area agency:

(a) For which the local government agrees to accept local administrative responsibility for Title XIX;

(b) That provides a service to elderly persons or to elderly persons and persons with disabilities who require services similar to those required by elderly persons; and

(c) That uses the term "disabled services" or "disability services" in its title to communicate the fact that it provides services to both populations described in paragraph (b) of this subsection.

SECTION 2. ORS 124.005 is amended to read:

124.005. As used in ORS 124.005 to 124.040:

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

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

(b) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(c) Abandonment, including desertion or willful forsaking of an elderly person or a person with a disability or the withdrawal or neglect of duties and obligations owed an elderly person or a person with a disability by a caregiver or other person.

(d) Willful infliction of physical pain or injury.

(e) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to the elderly person or person with a disability.

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

(g) Wrongfully taking or appropriating money or property, or knowingly subjecting an elderly person or person with a disability to alarm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the elderly person or person with a disability to believe that the threat will be carried out.

(h) Sexual contact with a nonconsenting elderly person or person with a disability or with an elderly person or person with a disability considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Guardian petitioner" means a guardian or guardian ad litem for an elderly person or a person with a disability who files a petition under ORS 124.005 to 124.040 on behalf of the elderly person or person with a disability.

(4) "Interfere" means to interpose in a way that hinders or impedes.

(5) "Intimidate" means to compel or deter conduct by a threat.

(6) "Menace" means to act in a threatening manner.

(7) "Molest" means to annoy, disturb or persecute with hostile intent or injurious effect.

(8) "Person with a disability" means a person described in:

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

(b) ORS 410.715.

(9) "Petitioner" means an elderly person or a person with a disability who files a petition under ORS 124.005 to 124.040.

(10) "Sweepstakes" means:

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

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

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

(11) "Sweepstakes promotion" means an offer to participate in a sweepstakes.

SECTION 3. ORS 124.050 is amended to read:

124.050. As used in ORS 124.050 to 124.095:

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

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a licensed physician and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(7) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or

(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.

(8) "Person with a disability" means a person described in:

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

(b) ORS 410.715.

(9) "Public or private official" means:

(a) Physician, naturopathic physician, osteopathic physician, chiropractor, physician assistant or podiatric physician and surgeon, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services or community developmental disabilities program.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech or occupational therapist.

(i) Senior center employee.

(j) Information and referral or outreach worker.

(k) Licensed professional counselor or licensed marriage and family therapist.

(L) Any public official who comes in contact with elderly persons in the performance of the official's official duties.

(m) Firefighter or emergency medical technician.

(n) Psychologist.

(o) Provider of adult foster care or an employee of the provider.

(p) Audiologist.

(q) Speech-language pathologist.

(10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) "Sexual abuse" means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;

(D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 4. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House March 3, 2011

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Ramona Kenady Line, Chief Clerk of House

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Passed by Senate May 3, 2011

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State