

House Bill 3598

Sponsored by COMMITTEE ON HUMAN SERVICES (at the request of Grover C. Simmons for Independent Adult Foster Home Association)

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**.

Increases maximum number of residents in adult foster home from five to six. Requires licensing agency to schedule in advance on-site inspection of adult foster home conducted for purposes of granting initial license or renewing license. Allows adult foster home provider to forgo comprehensive criminal records check of employee under specified circumstances. Prohibits exemption of county from application of adult foster home provisions unless licensing and inspection programs of county comply with statutory requirements.

A BILL FOR AN ACT

1
2 Relating to adult foster homes; amending ORS 197.660, 443.705, 443.735, 443.755 and 443.780.

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

4 **SECTION 1.** ORS 443.705 is amended to read:

5 443.705. As used in ORS 443.705 to 443.825:

6 (1) "Adult foster home" means any family home or facility in which residential care is provided
7 in a homelike environment for [*five*] **six** or fewer adults who are not related to the provider by blood
8 or marriage.

9 (2) "Licensed adult foster home" means a home [*which*] **that** has been investigated and approved
10 by the licensing agency. This includes an on-site inspection of the facility.

11 (3) "Licensing agency" means:

12 (a) The Department of Human Services for adult foster homes licensed by the department.

13 (b) The Oregon Health Authority for adult foster homes licensed by the authority.

14 (4) "Provider" means any person operating an adult foster home and includes a resident man-
15 ager. "Provider" does not include the owner or lessor of the building in which the adult foster home
16 is located or the owner or lessor of the land on which the adult foster home is situated unless the
17 owner or lessor is also the operator of the adult foster home.

18 (5) "Residential care" means the provision of room and board and services that assist the resi-
19 dent in activities of daily living, such as assistance with bathing, dressing, grooming, eating,
20 medication management, money management or recreation.

21 (6) "Substitute caregiver" means any person who provides care and services in an adult foster
22 home under the jurisdiction of the licensing agency in the absence of the provider or resident
23 manager.

24 **SECTION 2.** ORS 443.735 is amended to read:

25 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
26 made on forms provided by the licensing agency. Each application shall be accompanied by a fee
27 of \$20 per bed requested for licensing.

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

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 **and schedule an appointment with the applicant to conduct an on-site inspection.**

2 (3) The licensing agency *[shall]* **may** not issue an initial license unless:

3 (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to
4 443.825 and the rules of the licensing agency;

5 (b) The licensing agency has completed *[an]* **the on-site** inspection of the adult foster home;

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

10 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
11 tains no 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 licensing agency the financial ability and resources
14 necessary to operate the adult foster home. The licensing agency shall adopt rules as the agency
15 deems appropriate that establish the financial standards an applicant must meet to qualify for issu-
16 ance of a license and that protect financial information from public disclosure. The demonstration
17 of financial ability under this paragraph shall include, but need not be limited to, providing the li-
18 censing agency with a list of any unsatisfied judgments, pending litigation and unpaid taxes and
19 notifying the agency regarding whether the applicant is in bankruptcy. If the applicant is unable to
20 demonstrate the financial ability and resources required by this paragraph, the licensing agency may
21 require the applicant to furnish a financial guarantee as a condition of initial licensure.

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

23 (a) The applicant and the adult foster home are in compliance with ORS 443.002 and 443.705 to
24 443.825 and the rules of the licensing agency;

25 (b) The licensing agency has completed an **on-site** inspection of the adult foster home;

26 (c) **Except as provided in subsection (6)(d) of this section,** the licensing agency has com-
27 pleted a criminal records check under ORS 181.534 on the applicant and any person, other than a
28 resident, 16 years of age or older who will be residing in the adult foster home. The criminal records
29 check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.534;
30 and

31 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
32 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
33 sponsible for abuse.

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

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

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

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

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

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

6 **(d) Notwithstanding any other provision of this subsection or ORS 181.534 or 181.537, the**
 7 **licensing agency may not require a comprehensive criminal records check on:**

8 **(A) An individual who is employed by a provider, who has successfully completed a**
 9 **criminal records check that was conducted by the provider or the licensing agency and who**
 10 **is being transferred or promoted to another position by the same provider; or**

11 **(B) An individual who has successfully completed a criminal records check in the same**
 12 **or another county if the criminal records check was required for similar work that ended**
 13 **without a significant lapse of time prior to the individual's employment with a provider.**

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] **may** not issue a license to operate an additional adult foster
 24 home to a provider unless the provider has demonstrated the qualifications and capacity to operate
 25 the provider's existing licensed adult foster homes and has demonstrated the ability to provide to
 26 the 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 3.** ORS 443.755 is amended to read:

40 443.755. (1) The licensing agency staff shall be permitted access to enter and inspect all licensed
 41 adult foster homes. The licensing agency shall be permitted access to enter and inspect any unli-
 42 censed adult foster home upon the receipt of an oral or written complaint, or in case the agency
 43 itself has cause to believe that an adult foster home is operating without a license or there exists
 44 a threat to the health, safety or welfare of any resident. The licensing agency staff shall be per-
 45 mitted access to the residents of adult foster homes in order to interview residents privately and to

1 inspect residents' records. **An on-site inspection conducted in accordance with ORS 443.735 (2)**
 2 **or (4)(b) must be scheduled with a provider in advance.**

3 (2) The state or local fire inspectors shall be permitted access to enter and inspect adult foster
 4 homes regarding fire safety upon request of the licensing agency.

5 (3)(a) The licensing agency shall provide to each licensed adult foster home in the state in
 6 writing in clear concise language readily comprehensible by the average person a copy of the in-
 7 spection report of the most recent inspection of that home conducted by the agency.

8 (b) The provider shall post the inspection report in the entry or equally prominent place and
 9 shall, upon request, provide a copy of the information to each resident of, or person applying for
 10 admission to, the home, or the legal representative, guardian or conservator of the resident or ap-
 11 plicant.

12 **SECTION 4.** ORS 443.780 is amended to read:

13 443.780. (1) The director of the licensing agency may exempt from the license, inspection and fee
 14 provisions of ORS 443.705 to 443.825 adult foster homes in those counties where there is a county
 15 agency [*which*] **that** provides [*similar*] programs for licensing and inspection that the director finds
 16 [*are equal to or superior to*] **comply with** the requirements of ORS 443.705 to 443.825.

17 (2) ORS 443.775 (5) applies regardless of any exceptions granted to a county agency.

18 **SECTION 5.** ORS 197.660 is amended to read:

19 197.660. As used in ORS 197.660 to 197.670, 215.213, 215.263, 215.283, 215.284 and 443.422:

20 (1) "Residential facility" means a residential care, residential training or residential treatment
 21 facility, as those terms are defined in ORS 443.400, that provides residential care alone or in con-
 22 junction with treatment or training or a combination thereof for six to fifteen individuals who need
 23 not be related. Staff persons required to meet licensing requirements shall not be counted in the
 24 number of facility residents, and need not be related to each other or to any resident of the resi-
 25 dential facility.

26 (2) "Residential home" means a residential treatment or training home, as defined in ORS
 27 443.400, a residential facility registered under ORS 443.480 to 443.500 or an adult foster home li-
 28 censed under ORS 443.705 to 443.825 that provides residential care alone or in conjunction with
 29 treatment or training or a combination thereof [*for five or fewer individuals who need not be*
 30 *related*]. Staff persons required to meet licensing requirements shall not be counted in the number
 31 of facility residents, and need not be related to each other or to any resident of the residential home.

32 (3) "Zoning requirement" means any standard, criteria, condition, review procedure, permit re-
 33 quirement or other requirement adopted by a city or county under the authority of ORS chapter 215
 34 or 227 that applies to the approval or siting of a residential facility or residential home. A zoning
 35 requirement does not include a state or local health, safety, building, occupancy or fire code re-
 36 quirement.

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