

Senate Bill 413

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary for Oregon Health Care 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**.

Modifies responsibilities of Department of Human Services when responding to complaints regarding residential facilities licensed by department. Modifies definition of "abuse" of residents in facilities. Limits duration of disqualification from direct care services due to certain criminal convictions. Allows employment following disqualification if found fit for position.

Removes right of complainant to accompany investigator to site of alleged abuse. Removes authority of investigator to photograph victim of abuse for purpose of preserving evidence. Removes immunity from civil and criminal liability for person reporting resident abuse in good faith.

Authorizes civil penalties against facilities for certain substantiated claims of resident abuse or neglect.

A BILL FOR AN ACT

1
2 Relating to protective services in licensed care facilities; creating new provisions; amending ORS
3 441.117, 441.624, 441.630, 441.635, 441.650, 441.671, 441.675, 441.676, 441.677, 441.678, 441.679,
4 441.995, 443.004 and 443.735; and repealing ORS 441.655, 441.660, 441.665, 441.690 and 441.695.

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

6 **SECTION 1.** ORS 441.630 is amended to read:

7 441.630. As used in ORS 441.630 to 441.680 and 441.995:

8 [(1) "Abuse" means:]

9 [(a) Any physical injury to a resident of a long term care facility which has been caused by other
10 than accidental means.]

11 [(b) Failure to provide basic care or services, which failure results in physical harm or unreason-
12 able discomfort or serious loss of human dignity.]

13 [(c) Sexual contact with a resident caused by an employee, agent or other resident of a long term
14 care facility by force, threat, duress or coercion.]

15 [(d) Illegal or improper use of a resident's resources for the personal profit or gain of another
16 person.]

17 [(e) Verbal or mental abuse as prohibited by federal law.]

18 [(f) Corporal punishment.]

19 [(g) Involuntary seclusion for convenience or discipline.]

20 [(2) "Abuse complaint" means any oral or written communication to the department, one of its
21 agents or a law enforcement agency alleging abuse.]

22 [(3) "Department" means the Department of Human Services or a designee of the department.]

23 (1) **"Complaint" means any oral or written communication to the Department of Human
24 Services that pertains to a facility's failure to comply with department rules or to deficien-
25 cies in the care or treatment of a resident in the facility.**

26 [(4)] (2) **"Facility" means:**

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 (a) A long term care facility[, *as defined in ORS 442.015.*];

2 (b) **A licensed adult foster home, as defined in ORS 443.705, that is licensed by the de-**
3 **partment; or**

4 (c) **A residential care facility as defined in ORS 443.400.**

5 [(5)] (3) “Law enforcement agency” means:

6 (a) Any city or municipal police department.

7 (b) Any county sheriff’s office.

8 (c) The Oregon State Police.

9 (d) Any district attorney.

10 [(6)] (4) “Public or private official” means:

11 (a) Physician, including any intern or resident.

12 (b) Licensed practical nurse or registered nurse.

13 (c) Employee of the Department of Human Services, a community developmental disabilities
14 program or a [*long term care*] facility or person who contracts to provide services to a [*long term*
15 *care*] facility.

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

18 (e) Peace officer.

19 (f) Member of the clergy.

20 (g) Regulated social worker.

21 (h) Physical, speech and occupational therapists.

22 (i) Legal counsel for a resident or guardian or family member of the resident.

23 (5) **“Resident abuse” means the commission of one or more of the following acts by an**
24 **operator, employee or contractor of a facility against a resident of the facility:**

25 (a) **Willful or wrongful conduct that results in any physical injury to a resident.**

26 (b) **Sexual contact by force, threat, duress or coercion.**

27 (c) **Illegal or wrongful use of a resident’s resources for the personal profit or gain of**
28 **another person.**

29 (d) **Verbal or mental abuse as prohibited by 42 C.F.R. 483.13.**

30 (e) **Corporal punishment.**

31 (f) **Involuntary seclusion for convenience or discipline.**

32 (6)(a) **“Resident neglect” means the failure of an operator, employee or contractor of a**
33 **facility to provide basic care or services that results in physical harm, unreasonable dis-**
34 **comfort or serious loss of human dignity to a resident.**

35 (b) **“Resident neglect” does not include a decision to forgo medical care for a resident if**
36 **the decision is consistent with the resident’s previously executed advance directive, physician**
37 **order for life-sustaining treatment or power of attorney for health care, or otherwise as**
38 **authorized by law.**

39 (7) **“Wrongful” means an act or omission that violates a legal duty, infringes on another**
40 **individual’s rights or is contrary to law, and that is committed by a person with an improper**
41 **motive, by improper means or for an improper purpose.**

42 **SECTION 2.** ORS 441.635 is amended to read:

43 441.635. The Legislative Assembly finds that for the purpose of [*preventing abuse,*] safeguarding
44 and enhancing the welfare of residents and assuring the dignity and care to which residents are
45 entitled, it is necessary and in the public interest to require [*mandatory reports and*] investigations

1 of *[allegedly abused residents]* **complaints of neglect and abuse and to enhance the quality of**
 2 **care provided to residents of facilities.**

3 **SECTION 3.** ORS 441.650 is amended to read:

4 441.650. *[(1)] Upon receipt of [the oral or written report required under ORS 441.640, or of an*
 5 *abuse complaint, the area agency on aging,] a **complaint**, the Department of Human Services or [the*
 6 *law enforcement agency] **its designee** shall cause an investigation to be *[commenced as follows:]*
 7 **conducted. The department or its designee shall:***

8 *[(a) Within two hours, if the complaint alleges that a resident's health or safety is in imminent*
 9 *danger or that the resident has recently died, been hospitalized or been treated in an emergency room;*
 10 *or]*

11 *[(b) Prior to the end of the next working day, if the complaint alleges that circumstances exist that*
 12 *could result in abuse and that the circumstances could place a resident's health or safety in imminent*
 13 *danger.]*

14 *[(2) If the law enforcement agency conducting the investigation finds reasonable cause to believe*
 15 *that abuse has occurred, the law enforcement agency shall notify in writing the local office of the area*
 16 *agency or the department as appropriate. Except in cases where the investigation is part of nursing*
 17 *facility surveyor activity pursuant to federal law, the area agency or the department shall complete an*
 18 *initial status report within two working days of the start of the investigation that includes:]*

19 *[(a) A summary of the complaint that identifies each alleged incident or problem;]*

20 *[(b) The status of the investigation;]*

21 *[(c) Whether an abuse complaint was initially filed at the direction of the administration of the*
 22 *facility;]*

23 *[(d) A determination of whether protection of the resident is needed and whether the facility must*
 24 *take action;]*

25 *[(e) The name and telephone number of the investigator; and]*

26 *[(f) The projected date that the investigation report will be completed and a statement that the re-*
 27 *port will be available upon request after the department issues a letter of determination.]*

28 *[(3) The initial status report described in subsection (2) of this section shall be provided either in*
 29 *person or by mail to the following individuals as soon as practicable, but no later than two working*
 30 *days after its completion:]*

31 *[(a) The complainant, unless the complainant waives the requirement;]*

32 *[(b) If the complaint involves a specific resident, the resident or a person designated to receive in-*
 33 *formation concerning the resident;]*

34 *[(c) A representative of the Long Term Care Ombudsman, upon request; and]*

35 *[(d) The long term care facility.]*

36 *[(4) The initial status report described in subsection (2) of this section shall be available for public*
 37 *inspection.]*

38 *[(5) When copies of the initial status report described in subsection (2) of this section are made*
 39 *available to individuals listed in subsection (3) of this section, the names of the resident involved, the*
 40 *complainant and any individuals interviewed by the investigator shall be deleted from the copies.]*

41 *[(6) In investigating an abuse complaint, the investigator shall:]*

42 *[(a)] (1) Make an unannounced visit to the facility[, except as provided by ORS 441.690,] to de-*
 43 *termine the nature [and cause of the abuse of the resident] **of the complaint;***

44 *[(b)] (2) Interview all available witnesses identified by any source as having personal knowledge*
 45 *relevant to the [abuse] complaint, such interviews to be private unless the witness expressly re-*

1 quests the interview not to be private;

2 [(c)] (3) Make personal inspection of all physical circumstances that are relevant and material
3 and that are susceptible to objective observation; and

4 [(d)] (4) **No later than 60 days after the date of the complaint**, write an investigation report
5 that includes:

6 [(A)] (a) The investigator's personal observations;

7 [(B)] (b) A review of documents and records;

8 [(C)] (c) A summary of all witness statements; and

9 [(D)] (d) A statement of the factual basis for the findings for each incident or problem alleged
10 in the complaint.

11 [(7) *Within five working days of completion of the investigation and not later than 60 days from
12 completion of the initial status report described in subsection (2) of this section, the investigator shall
13 provide the department with the written report required by subsection (6) of this section. The depart-
14 ment shall make the investigation report available upon request after the letter of determination is
15 complete. When copies of the report are made available, the names of the resident involved, the
16 complainant and any individuals interviewed by the investigator shall be deleted from the copies.*]

17 **SECTION 4.** ORS 441.671 is amended to read:

18 441.671. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of complainants
19 and residents [*compiled under the provisions of ORS 441.640 to 441.660*], **health information re-
20 garding the residents, an investigation report under ORS 441.650 compiled in response to an
21 incident reported to the Department of Human Services by the facility and any corrective
22 actions taken in response to the report** are confidential and are not accessible for public in-
23 spection. However, the department [*of Human Services*] shall make the information available to any
24 law enforcement agency, to any public agency which licenses or certifies [*long term care*] facilities
25 or licenses or certifies the persons practicing the healing arts therein and to the Long Term Care
26 Ombudsman.

27 (2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505
28 apply to all records and reports compiled under ORS 441.640 to 441.665.

29 **SECTION 5.** ORS 441.675 is amended to read:

30 441.675. In the case of **resident** abuse [*of a resident*] in a [*long term care*] facility, the privileges
31 extended under ORS 40.225 to 40.295 shall not be a ground for excluding evidence regarding the
32 [*abuse of a*] resident **abuse**, or the cause thereof, in any judicial proceeding resulting from a report
33 made pursuant to ORS 441.640.

34 **SECTION 6.** ORS 441.677 is amended to read:

35 441.677. [(1) *Within 60 days of receipt of the investigation documents and the written report de-
36 scribed in ORS 441.650 (6)(d) and 441.676 (2)(d), the Department of Human Services shall prepare a
37 written letter of determination that states the department's determinations concerning each incident or
38 problem alleged in the complaint. The department shall determine whether the alleged incident or
39 problem was substantiated or unsubstantiated or whether the department was unable to substantiate the
40 alleged incident or problem. The department shall adopt by rule definitions for the terms "substanti-
41 ated," "unsubstantiated" and "unable to substantiate." If the department determines that an incident
42 or problem alleged in the complaint is substantiated, the letter of determination shall state whether the
43 substantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of
44 determination shall state whether the facility or an individual, or both, was responsible. The depart-
45 ment shall adopt by rule criteria for determining responsibility for substantiated abuse.*]

1 [(2) A copy of the letter of determination shall be placed in the facility's complaint file. Copies shall
2 be sent to the facility, the complainant and the local office of the department. The facility and the
3 complainant receiving the letter of determination shall be given 10 days to respond with additional in-
4 formation and shall be informed of the appeals process.]

5 [(3) If the department determines that an individual who holds a license or certificate for a health
6 occupation is directly responsible for the abuse, the department shall send a copy of its letter of deter-
7 mination and investigation report to the state agency responsible for licensing or certifying the indi-
8 vidual in the health occupation. In instances involving conduct of a nursing assistant, the department
9 shall give the nursing assistant 10 days to respond with additional information. The department also
10 shall notify by mail the nursing assistant implicated in the investigation of:]

11 [(a) The nature of the allegations;]

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

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

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

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

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

22 **(1) Upon the completion of a complaint investigation, the Department of Human Services**
23 **shall determine whether the complaint is substantiated, unsubstantiated or whether the de-**
24 **partment is unable to substantiate the complaint.**

25 **(2) If the department determines that the complaint is substantiated, the department**
26 **shall determine whether:**

27 **(a) The incident described in the complaint involved resident abuse or resident neglect;**
28 **and**

29 **(b) The conduct was wrongful.**

30 **(3) If the department determines that a complaint of resident abuse or wrongful resident**
31 **neglect is substantiated, the department shall do all of the following:**

32 **(a) Require corrective actions, including but not limited to facility monitoring, employee**
33 **training and quality control improvements, or impose civil penalties or license suspension**
34 **or termination. Before imposing civil penalties or license suspension or revocation, the de-**
35 **partment shall consider whether the facility:**

36 **(A) Reported the incident;**

37 **(B) Took reasonable steps to identify the incident and to prevent further occurrences of**
38 **the incident.**

39 **(C) Cooperated in the department's investigation.**

40 **(D) Took steps to protect the health, safety and well-being of the residents.**

41 **(b) Issue a written notice to any individual determined to be responsible for the resident**
42 **abuse or wrongful resident neglect specifying the nature of the complaint and the**
43 **department's finding of resident abuse or wrongful resident neglect.**

44 **(c) Send a copy of any letter of determination and the investigation report to the facility**
45 **employing the individual.**

1 (d) Send a copy of any letter of determination and the investigation report to any state
2 agency that licenses or certifies the individual.

3 (4) If the department determines that a complaint is substantiated and the conduct or
4 condition is not resident abuse or wrongful resident neglect but causes or has the potential
5 to cause more than minimal harm to a resident, the department may require corrective
6 actions, including but not limited to facility monitoring, employee training and quality con-
7 trol improvements. Requirements for corrective actions shall be based on consideration of,
8 at a minimum, whether the facility:

9 (a) Reported the incident; and

10 (b) Took steps to protect the health, safety and well-being of the residents.

11 (5) The department shall issue a letter of determination that includes all of the following:

12 (a) The determinations under subsections (1) to (4) of this section.

13 (b) Corrective actions required by the department.

14 (c) The facility's options and rights with respect to the required corrective actions.

15 (d) Notice that additional corrective actions may be required if the facility does not take
16 the corrective actions required initially.

17 (6) The department shall place a copy of the letter of determination in the facility's
18 complaint file. A copy of the letter shall be sent to the facility, the complainant and the local
19 office of the department. The facility and the complainant receiving the letter of determi-
20 nation shall be given 10 days to respond in writing with additional information and shall be
21 informed of the appeals process.

22 (7) A facility's written response shall be maintained in the facility's complaint file.

23 **SECTION 7.** ORS 441.678 is amended to read:

24 441.678. (1) The Department of Human Services shall maintain a nursing assistant regis-
25 try that contains, at a minimum, the information required by 42 C.F.R. 483.156.

26 (2) If a nursing assistant is found by the department [*of Human Services*] to be responsible for
27 [*abuse*] resident neglect that was not caused by factors beyond the control of the nursing
28 assistant or for resident abuse, the department shall notify the nursing assistant in writing
29 at the nursing assistant's last known address:

30 (a) Of the nature of the alleged neglect or abuse, including any relevant dates and times;

31 (b) Of the nursing assistant's right to a contested case hearing in accordance with ORS
32 chapter 183 to dispute the allegations of neglect or abuse;

33 (c) That the department must report substantiated findings of neglect or abuse to the
34 registry maintained under this section; and

35 (d) That the nursing assistant's failure to request a hearing within 30 days after the date
36 of the notice will result in a final order containing a finding of resident neglect or resident
37 abuse and a report to the registry maintained under this section.

38 (3) If the nursing assistant does not respond to the department within 30 days after the date
39 of the notice of the opportunity for a contested case hearing, the department shall enter a final
40 order and place the [*abuse*] finding of resident neglect or resident abuse in the registry main-
41 tained under this section.

42 [(2)] (4) [*If a nursing assistant is found to be responsible for abuse, the nursing assistant is entitled*
43 [*to a contested case hearing under ORS chapter 183.*] Upon a finding of resident neglect or resident
44 abuse in a final order issued in connection with a contested case hearing, the department shall
45 place the finding in the registry maintained under this section.

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

3 **SECTION 8.** ORS 441.679 is amended to read:

4 441.679. (1) Before employing a registered nurse, licensed practical nurse or nursing assistant,
 5 a long term care facility shall contact the Oregon State Board of Nursing and inquire:

6 (a) Whether the person is currently licensed or certified by the board *[and]*;

7 (b) Whether there has been any disciplinary action against the person *[or substantiated abuse*
 8 *findings against a nursing assistant]*; **and**

9 **(c) Whether a finding of resident neglect or resident abuse for which the person is re-**
 10 **sponsible has been entered into the registry maintained under ORS 441.678.**

11 (2) A facility shall not employ or retain in employment:

12 (a) Any person found by a court of law to have abused, neglected or mistreated a person re-
 13 ceiving long term care services[, *nor shall a facility employ or retain in employment*]; **or**

14 (b) Any nursing assistant against whom a finding of **resident neglect or** resident abuse has
 15 been entered into the registry maintained under ORS 441.678.

16 **SECTION 9.** ORS 443.004, as amended by sections 12 and 13, chapter 93, Oregon Laws 2010, is
 17 amended to read:

18 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
 19 a criminal records check under ORS 181.534 on:

20 (a) An employee of a residential facility, adult foster home, in-home care agency or home health
 21 agency;

22 (b) Any individual who is paid directly or indirectly with public funds who has or will have
 23 contact with a recipient of home health, in-home care or support services or a resident of an adult
 24 foster home or a residential facility; and

25 (c) A home care worker registering with the Home Care Commission or renewing a registration
 26 with the Home Care Commission.

27 (2) Public funds may not be used to support, in whole or in part, the employment in any capacity
 28 having contact with a recipient of home health, in-home care or support services or a resident of a
 29 residential facility or an adult foster home, of an individual who has been convicted **of:**

30 (a) *[Of]* A crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
 31 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
 32 163.467, 163.535, 163.537, 163.689, 163.700, *[164.055,]* 164.057, *[164.098, 164.125 (5)(c) or (d), 164.215,]*
 33 164.225, 164.325, *[164.377 (2) or (3),]* 164.405, 164.415, *[165.022,]* 165.032, *[165.800,]* 165.803, 167.012,
 34 167.017, 167.054 or 167.057;

35 **(b) A crime described in ORS 164.055, 164.098, 164.125 (5)(c) or (d), 164.215, 164.377 (2) or**
 36 **(3), 165.022 or 165.800;**

37 *[(b)]* (c) *[Of]* A crime listed in ORS 181.594;

38 *[(c)]* (d) In the last 10 years, *[of]* a crime involving the delivery or manufacture of a controlled
 39 substance;

40 *[(d)]* (e) *[Of]* An attempt, conspiracy or solicitation to commit a crime described in paragraphs
 41 (a) to *[(c)]* (d) of this subsection; or

42 *[(e)]* (f) *[Of]* A crime in another jurisdiction that is substantially equivalent, as defined by rule,
 43 to a crime described in paragraphs (a) to *[(d)]* (e) of this subsection.

44 **(3) If a qualified entity determines under ORS 181.537 (7) that an individual is fit to hold**
 45 **a position, the individual may be employed using public funds if:**

1 (a) At least seven years have passed since a conviction or incarceration for any crime
 2 described in subsection (2)(a) or (c) of this section, for an attempt, conspiracy or solicitation
 3 to commit a crime described in subsection (2)(a) or (c) of this section or for a crime in an-
 4 other jurisdiction that is substantially equivalent, as defined by rule, to a crime described in
 5 subsection (2)(a) or (c) of this section; or

6 (b) At least four years have passed since a conviction or incarceration for any crime
 7 described in subsection (2)(b) of this section, for an attempt, conspiracy or solicitation to
 8 commit a crime described in subsection (2)(b) of this section or for a crime in another ju-
 9 risdiction that is substantially equivalent, as defined by rule, to a crime described in sub-
 10 section (2)(b) of this section.

11 [(3)] (4) Subsection (2) of this section does not apply to a peer support specialist.

12 [(4)] (5) If the department or authority has a record of substantiated abuse committed by an
 13 employee or potential employee of a home health agency, in-home care agency, adult foster home
 14 or residential facility, regardless of whether criminal charges were filed, the department or author-
 15 ity shall notify, in writing, the employer and the employee or potential employee.

16 [(5)] (6) As used in this section:

17 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

18 (b) "Home care worker" has the meaning given that term in ORS 410.600.

19 (c) "Home health agency" has the meaning given that term in ORS 443.005.

20 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

21 (e) "Peer support specialist" means a person who:

22 (A) Is providing peer support services as defined by the authority by rule;

23 (B) Is under the supervision of a qualified clinical supervisor;

24 (C) Has completed training required by the authority; and

25 (D) Is currently receiving or has formerly received mental health services, or is in recovery from
 26 a substance use disorder and meets the abstinence requirements for staff providing services in al-
 27 cohool or other drug treatment programs.

28 (f) "Residential facility" has the meaning given that term in ORS 443.400.

29 **SECTION 10. ORS 441.655, 441.660, 441.665, 441.690 and 441.695 are repealed.**

30 **SECTION 11.** ORS 441.117 is amended to read:

31 441.117. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
 32 into long term care facilities at any time considered necessary and reasonable by the ombudsman
 33 or the designee for the purpose of:

34 (a) Investigating and resolving complaints by residents or on their behalf;

35 (b) Interviewing residents, with their consent, in private;

36 (c) Offering the services of the ombudsman or designee to any resident, in private;

37 (d) Interviewing employees or agents of the long term care facility;

38 (e) Consulting regularly with the facility administration; and

39 (f) Providing services authorized by law or by rule.

40 (2) The Long Term Care Ombudsman shall have access to any resident's records, and to records
 41 of any public agency necessary to the duties of the office, including records on [patient abuse] com-
 42 plaints made pursuant to ORS 441.630 to 441.680 and 441.995. Nothing contained in ORS 192.518 to
 43 192.529 is intended to limit the access of the Long Term Care Ombudsman to medical records of
 44 residents of long term care facilities. Designees may have access to individual resident's records,
 45 including medical records as authorized by the resident or resident's legal representative, if needed

1 to investigate a complaint.

2 (3) Entry and investigation authorized by this section shall be done in a manner that does not
3 disrupt significantly the providing of nursing or other personal care to residents.

4 (4) The ombudsman or the designee must show identification to the person in charge of the fa-
5 cility. The resident shall have the right to refuse to communicate with the ombudsman or designee.
6 The refusal shall be made directly to the ombudsman or designee and not through an intermediary.

7 (5) The resident shall have the right to participate in planning any course of action to be taken
8 on behalf of the resident by the ombudsman or the designee.

9 **SECTION 12.** ORS 441.624 is amended to read:

10 441.624. (1) ORS 124.050, 124.080, 410.190, 441.020 to 441.057, 441.060, 441.061, 441.067, 441.073,
11 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.331 to 441.341, 441.367, 441.600, 441.610,
12 441.630, 441.650 to 441.665, 441.685, [441.690,] 441.703 and 441.705 to 441.720 address the consol-
13 idation of the regulatory functions of licensing, certification, inspection of care, utilization review,
14 abuse reporting and abuse investigation.

15 (2) It is legislative intent that:

16 (a) The Department of Human Services focus administrative effort on the integration and con-
17 sistent application and interpretation of the regulatory functions at the nursing facility level;

18 (b) Surveys and other reports, especially with respect to client assessment, be consistently and
19 reliably performed throughout the state;

20 (c) Positive and negative findings and sanctions be proportional to the strengths and problems
21 identified, within the limits of federal statute and regulations; and

22 (d) The interpretation of regulatory criteria be independent of influence from budgetary limita-
23 tions.

24 **SECTION 13.** ORS 441.676 is amended to read:

25 441.676. (1) For complaints of licensing violations other than abuse, the Department of Human
26 Services shall cause an investigation to be completed within 90 days of the receipt of the complaint.

27 (2) Except **as provided in ORS 441.650**, in cases where the investigation is part of nursing fa-
28 cility surveyor activity pursuant to federal law, an investigator [*investigating a complaint other than*
29 *a complaint of abuse*] shall:

30 (a) Make an unannounced visit to the facility[, *while complying with ORS 441.690*];

31 (b) Interview all available witnesses identified by any source as having personal knowledge rel-
32 evant to the complaint, such interviews to be private unless the witness expressly requests the
33 interview not to be private;

34 (c) Make personal inspection of all physical circumstances that are relevant and material and
35 that are susceptible to objective observation; and

36 (d) Write an investigation report that includes:

37 (A) The investigator's personal observations;

38 (B) A review of documents and records;

39 (C) A summary of all witness statements; and

40 (D) A statement of the factual basis for the findings for each incident or problem alleged in the
41 complaint.

42 **SECTION 14.** ORS 441.995 is amended to read:

43 441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of
44 ORS 441.630 to 441.680, the Department of Human Services shall consider:

45 (a) Any prior violations of laws or rules pertaining to facilities;

1 (b) The financial benefits, if any, realized by the facility as a result of the violation;

2 (c) The gravity of the violation, including the actual or potential threat to the health, safety and
3 well-being of one or more residents;

4 (d) The severity of the actual or potential harm caused by the violation; and

5 (e) The facility's past history of correcting violations and preventing the recurrence of vio-
6 lations.

7 (2) The department may impose a civil penalty for **resident** abuse in accordance with rules
8 adopted under ORS 441.637 (1).

9 (3) If the department finds the facility is responsible for **resident** abuse and if the abuse resulted
10 in a resident's death or serious injury, the department shall impose a civil penalty of not less than
11 \$500 nor more than \$1,000 for each violation, or as otherwise required by federal law or ORS 441.715
12 (1)(c), 443.455 or 443.775.

13 (4) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the
14 department's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations
15 that do not constitute **resident** abuse.

16 (5) Facilities assessed civil penalties under this section are entitled to a contested case hearing
17 under ORS chapter 183.

18 **SECTION 15.** ORS 443.735 is amended to read:

19 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
20 made on forms provided by the licensing agency. Each application shall be accompanied by a fee
21 of \$20 per bed requested for licensing.

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

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

24 (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to
25 443.825 and the rules of the licensing agency;

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

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

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 **resident** abuse **or resident neglect**; and

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

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

44 (a) The applicant and the adult foster home are in compliance with ORS 443.002 and 443.705 to
45 443.825 and the rules of the licensing agency;

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

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

6 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
7 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
8 sponsible for **resident abuse or resident neglect**.

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

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

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

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

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

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

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

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

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

44 (b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve
45 persons who are elderly, have physical disabilities or have developmental disabilities shall be de-

1 posited in the Quality Care Fund established in ORS 443.001.

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

6 **SECTION 16. The amendments to ORS 443.004 by section 9 of this 2011 Act apply to em-**
7 **ployees who were hired on or after July 28, 2009.**

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