

# Senate Bill 50

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## 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**.

Consolidates reporting procedures for abuse of elderly persons and individuals with disabilities. Removes from definition of abuse specified crimes. Makes failure to report abuse of persons with disabilities by individuals with duty to report Class A violation, punishable by maximum fine of \$720.

## A BILL FOR AN ACT

Relating to mandatory reporting; creating new provisions; amending ORS 36.220, 36.222, 40.460, 124.005, 124.990, 163.206, 409.025, 410.040, 410.080, 410.160, 410.230, 410.240, 410.300, 430.216, 430.731, 430.735, 430.737, 430.743, 430.745, 430.746, 430.747, 430.753, 430.755, 430.756, 430.757, 430.763, 430.765, 430.768, 441.117, 441.624, 441.637, 441.650, 441.675, 441.676, 441.677, 441.678, 441.685, 441.703, 441.715, 441.995, 443.004, 443.455, 443.735, 443.775 and 675.580; and repealing ORS 124.050, 124.055, 124.060, 124.065, 124.070, 124.075, 124.077, 124.080, 124.085, 124.090, 124.095, 441.630, 441.635, 441.640, 441.645, 441.655, 441.660, 441.665, 441.671, 441.679 and 441.680 and section 41, chapter 837, Oregon Laws 2009.

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

## NEW ABUSE INVESTIGATION REQUIREMENTS

**SECTION 1. (1) Upon completion of an investigation required by ORS 430.745, the designated agency shall determine whether the reported incident or problem occurred and, if so, whether the incident or problem:**

**(a) Did not involve a perpetrator but placed the adult or elderly person at risk of harm or abuse or subjected the adult or elderly person to neglect, verbal mistreatment or financial exploitation; or**

**(b) Involved abuse by a perpetrator.**

**(2) For each incident or problem described in subsection (1)(a) of this section:**

**(a) That occurred in a facility, the designated agency shall require the facility to:**

**(A) Take actions necessary to ensure the safety and well-being of the residents who were or could have been impacted by the incident or problem;**

**(B) Report, in writing, to the designated agency the actions taken or to be taken under subparagraph (A) of this paragraph;**

**(C) Submit to monitoring determined necessary by the designated agency according to procedures adopted by the designated agency by rule to ensure the safety and well-being of the facility's residents; and**

**(D) Permit the designated agency to provide any protective services the agency deter-**

**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 mines necessary.

2 (b) In addition to the requirements of paragraph (a) of this subsection, for a facility other  
3 than a facility licensed to provide services to persons with developmental disabilities, the  
4 Department of Human Services shall comply with the requirements of ORS 441.677.

5 (c) In a setting other than a facility, the designated agency shall determine the need for  
6 protective services and take the steps determined necessary to provide protective services  
7 in accordance with subsection (4) of this section.

8 (3) For each incident or problem described in subsection (1)(b) of this section:

9 (a) That occurred in a facility licensed by the Department of Human Services other than  
10 a facility licensed to serve persons with developmental disabilities, the department or its  
11 designee shall:

12 (A) Comply with the requirements of ORS 441.650 and 441.677; and

13 (B) In the letter of determination required by ORS 441.677, specify whether the incident  
14 or problem involved physical abuse, neglect, abandonment, sexual abuse, financial exploita-  
15 tion, involuntary seclusion, wrongful restraint or verbal mistreatment.

16 (b) In a facility licensed to serve persons with developmental disabilities, the department  
17 or its designee shall prepare a written report that includes:

18 (A) Any recommended actions;

19 (B) A determination of whether protective services are needed; and

20 (C) Whether the incident or problem involved physical abuse, neglect, abandonment,  
21 sexual abuse, financial exploitation, involuntary seclusion, wrongful restraint or verbal mis-  
22 treatment.

23 (c) In a facility licensed by the Oregon Health Authority, the authority or its designee  
24 shall prepare a written report that includes:

25 (A) Any recommended actions;

26 (B) A determination of whether protective services are needed; and

27 (C) Whether the incident or problem involved physical abuse, sexual abuse or the with-  
28 holding of services.

29 (d) In a setting other than a facility, the designated agency shall prepare a written report  
30 that includes:

31 (A) A determination of whether protective services are needed; and

32 (B) Specification of whether the incident or problem involved physical abuse, neglect,  
33 abandonment, sexual abuse, financial exploitation, involuntary seclusion, wrongful restraint  
34 or verbal mistreatment.

35 (4) If the designated agency determines that protective services are needed under this  
36 section or ORS 430.745, the agency shall provide services from available resources that the  
37 agency deems necessary to prevent further abuse, harm or risk of harm to the adult or el-  
38 derly person. All protective services shall be provided in a manner that is least intrusive to  
39 the adult or elderly person and that allows for the greatest degree of independence for the  
40 adult or elderly person.

41 (5) If the designated agency or the law enforcement unit conducting an investigation has  
42 reasonable cause to believe that an adult or elderly person has died as a result of abuse, the  
43 agency or unit shall report the information to the appropriate medical examiner. The medical  
44 examiner shall complete an investigation as required by ORS chapter 146 and report the re-  
45 sults of the investigation to the agency or unit.

1 (6) If the designated agency determines that an incident or problem involved abuse by a  
 2 perpetrator who is licensed or certified by an agency that regulates health practitioners, the  
 3 designated agency shall immediately notify and provide a copy of its investigative findings  
 4 to the regulatory agency.

5 (7)(a) If the designated agency finds that abuse occurred in a residential facility or adult  
 6 foster home, the agency shall immediately notify the facility or home of its findings.

7 (b) Upon receipt of the notice described in paragraph (a) of this subsection, the facility  
 8 or home shall provide the notice to any individual found to have committed abuse, residents  
 9 of the facility or home, the residents' case managers and the residents' guardians.

10 **SECTION 2.** (1) Before employing a registered nurse, licensed practical nurse or nursing  
 11 assistant, a facility shall contact the Oregon State Board of Nursing to inquire whether the  
 12 individual:

13 (a) Is licensed or certified by the board;

14 (b) Has been the subject of any disciplinary action by the board; and

15 (c) Has had a finding of abuse, neglect or misappropriation of resident property by the  
 16 individual entered into the registry described in ORS 441.678, if the individual is a nursing  
 17 assistant.

18 (2) An application for employment at a residential facility or adult foster home must in-  
 19 quire whether the applicant has been found to have committed abuse.

20 (3) A facility may not employ or retain in employment:

21 (a) Any individual found by a court of law to have abused, neglected or mistreated a  
 22 resident of a facility; or

23 (b) A nursing assistant if a finding of abuse, neglect or misappropriation of resident  
 24 property has been entered in the registry described in ORS 441.678 regarding the nursing  
 25 assistant.

26  
 27 **CONSOLIDATION OF ABUSE REPORTING STATUTES**

28  
 29 **SECTION 3.** Sections 1 and 2 of this 2011 Act and ORS 430.731, 430.768, 441.637, 441.650,  
 30 441.675, 441.676, 441.677 and 441.678 and section 8, chapter 837, Oregon Laws 2009, are added  
 31 to and made a part of ORS 430.735 to 430.765.

32 **SECTION 4.** ORS 430.731 is amended to read:

33 430.731. [(1) *The Department of Human Services or a designee of the department shall conduct the*  
 34 *investigations and make the findings required by ORS 430.735 to 430.765.*]

35 [(2) *The department shall prescribe by rule policies and procedures for the investigations of*  
 36 *allegations of abuse of a person with a developmental disability as described in ORS 430.735 (2)(a) to*  
 37 *ensure that the investigations are conducted in a uniform, objective and thorough manner in every*  
 38 *county of the state including, but not limited to, policies and procedures that:*]

39 [(a) *Limit the duties of investigators solely to conducting and reporting investigations of abuse;*]

40 [(b) *Establish investigator caseloads based upon the most appropriate investigator-to-complaint ra-*  
 41 *tios;*]

42 [(c) *Establish minimum qualifications for investigators that include the successful completion of*  
 43 *training in identified competencies; and*]

44 [(d) *Establish procedures for the screening and investigation of abuse complaints and establish*  
 45 *uniform standards for reporting the results of the investigation.*]

1        *[(3) A person employed by or under contract with the department, the designee of the department*  
 2 *or a community developmental disabilities program to provide case management services may not serve*  
 3 *as the lead investigator of an allegation of abuse of a person with a developmental disability.]*

4        *[(4) The department shall monitor investigations conducted by a designee of the department.]*

5        **(1) The Department of Human Services shall prescribe by rule policies and procedures for**  
 6 **investigating allegations of abuse, neglect, verbal mistreatment and financial exploitation of**  
 7 **persons with developmental disabilities to ensure that the investigations are conducted in a**  
 8 **uniform, objective and thorough manner in every county of the state. The policies and pro-**  
 9 **cedures shall set forth, but are not limited to, the following:**

10        **(a) The duties of investigators, which shall be limited to conducting and reporting inves-**  
 11 **tigations of abuse, neglect, verbal mistreatment and financial exploitation;**

12        **(b) Investigator caseloads, which shall be based on the most appropriate investigator-to-**  
 13 **complaint ratios;**

14        **(c) The minimum qualifications for investigators, which shall include the successful**  
 15 **completion of training in identified competencies; and**

16        **(d) Uniform standards for screening and investigating complaints and for reporting the**  
 17 **results of the investigation.**

18        **(2) A person employed by or under contract with the department, the designee of the**  
 19 **department or a community developmental disabilities program that provides case manage-**  
 20 **ment services may not serve as the lead investigator of an allegation of abuse, neglect,**  
 21 **verbal mistreatment or financial exploitation of a person with a developmental disability.**

22        **(3) The department shall monitor investigations conducted by a designee of the depart-**  
 23 **ment.**

24        **SECTION 5.** ORS 430.735 is amended to read:

25        430.735. As used in ORS 430.735 to 430.765, **unless the context requires otherwise:**

26        *[(1) "Abuse" means one or more of the following:]*

27        *[(a) Abandonment, including desertion or willful forsaking of a person with a developmental disa-*  
 28 *bility or the withdrawal or neglect of duties and obligations owed a person with a developmental dis-*  
 29 *ability by a caregiver or other person.]*

30        *[(b) Any physical injury to an adult caused by other than accidental means, or that appears to be*  
 31 *at variance with the explanation given of the injury.]*

32        *[(c) Willful infliction of physical pain or injury upon an adult.]*

33        *[(d) Sexual abuse of an adult.]*

34        *[(e) Neglect.]*

35        *[(f) Verbal abuse of a person with a developmental disability.]*

36        *[(g) Financial exploitation of a person with a developmental disability.]*

37        *[(h) Involuntary seclusion of a person with a developmental disability for the convenience of the*  
 38 *caregiver or to discipline the person.]*

39        *[(i) A wrongful use of a physical or chemical restraint upon a person with a developmental disa-*  
 40 *bility, excluding an act of restraint prescribed by a licensed physician and any treatment activities that*  
 41 *are consistent with an approved treatment plan or in connection with a court order.]*

42        *[(j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427,*  
 43 *163.465 or 163.467.]*

44        *[(k) Any death of an adult caused by other than accidental or natural means.]*

45        *[(2) "Adult" means a person 18 years of age or older with:]*

1        [(a) A developmental disability who is currently receiving services from a community program or  
2 facility or was previously determined eligible for services as an adult by a community program or fa-  
3 cility; or]

4        [(b) A mental illness who is receiving services from a community program or facility.]

5        [(3) “Adult protective services” means the necessary actions taken to prevent abuse or exploitation  
6 of an adult, to prevent self-destructive acts and to safeguard an adult’s person, property and funds,  
7 including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an  
8 adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest  
9 degree of independence.]

10       [(4) “Caregiver” means an individual, whether paid or unpaid, or a facility that has assumed re-  
11 sponsibility for all or a portion of the care of an adult as a result of a contract or agreement.]

12       [(5) “Community program” means a community mental health program or a community develop-  
13 mental disabilities program as established in ORS 430.610 to 430.695.]

14       [(6) “Facility” means a residential treatment home or facility, residential care facility, adult foster  
15 home, residential training home or facility or crisis respite facility.]

16       [(7) “Financial exploitation” means:]

17       [(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a person  
18 with a developmental disability.]

19       [(b) Alarming a person with a developmental disability by conveying a threat to wrongfully take  
20 or appropriate money or property of the person if the person would reasonably believe that the threat  
21 conveyed would be carried out.]

22       [(c) Misappropriating, misusing or transferring without authorization any money from any account  
23 held jointly or singly by a person with a developmental disability.]

24       [(d) Failing to use the income or assets of a person with a developmental disability effectively for  
25 the support and maintenance of the person.]

26       [(8) “Intimidation” means compelling or deterring conduct by threat.]

27       [(9) “Law enforcement agency” means:]

28       [(a) Any city or municipal police department;]

29       [(b) Any county sheriff’s office;]

30       [(c) The Oregon State Police; or]

31       [(d) Any district attorney.]

32       [(10) “Neglect” means:]

33       [(a) Failure to provide the care, supervision or services necessary to maintain the physical and  
34 mental health of a person with a developmental disability that may result in physical harm or signif-  
35 icant emotional harm to the person;]

36       [(b) The failure of a caregiver to make a reasonable effort to protect a person with a developmental  
37 disability from abuse; or]

38       [(c) Withholding of services necessary to maintain the health and well-being of an adult which  
39 leads to physical harm of an adult.]

40       [(11) “Person with a developmental disability” means a person described in subsection (2)(a) of this  
41 section.]

42       [(12) “Public or private official” means:]

43       [(a) Physician, naturopathic physician, osteopathic physician, psychologist, chiropractor or  
44 podiatric physician and surgeon, including any intern or resident;]

45       [(b) Licensed practical nurse, registered nurse, nurse’s aide, home health aide or employee of an

1 *in-home health service;]*

2 *[(c) Employee of the Department of Human Services or Oregon Health Authority, county health*  
 3 *department, community mental health program or community developmental disabilities program or*  
 4 *private agency contracting with a public body to provide any community mental health service;]*

5 *[(d) Peace officer;]*

6 *[(e) Member of the clergy;]*

7 *[(f) Regulated social worker;]*

8 *[(g) Physical, speech or occupational therapist;]*

9 *[(h) Information and referral, outreach or crisis worker;]*

10 *[(i) Attorney;]*

11 *[(j) Licensed professional counselor or licensed marriage and family therapist;]*

12 *[(k) Any public official who comes in contact with adults in the performance of the official's duties;*  
 13 *or]*

14 *[(L) Firefighter or emergency medical technician.]*

15 *[(13) "Services" includes but is not limited to the provision of food, clothing, medicine, housing,*  
 16 *medical services, assistance with bathing or personal hygiene or any other service essential to the*  
 17 *well-being of an adult.]*

18 *[(14)(a) "Sexual abuse" means:]*

19 *[(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting*  
 20 *to a sexual act under ORS 163.315;]*

21 *[(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material*  
 22 *or language;]*

23 *[(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served*  
 24 *by the facility or caregiver;]*

25 *[(D) Any sexual contact between a person with a developmental disability and a relative of the*  
 26 *person with a developmental disability other than a spouse; or]*

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

28 *[(b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid*  
 29 *caregiver who is the spouse of the adult.]*

30 *[(15) "Sexual contact" has the meaning given that term in ORS 163.305.]*

31 *[(16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with a*  
 32 *developmental disability through the use of:]*

33 *[(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or]*

34 *[(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual*  
 35 *comments.]*

36 **(1) "Abuse" means:**

37 **(a) When committed against a person with a developmental disability, an elderly person,**  
 38 **a person with a physical disability or a resident of a facility:**

39 **(A) Physical abuse.**

40 **(B) Abandonment.**

41 **(C) Sexual abuse.**

42 **(D) Involuntary seclusion of an individual for the convenience of a caregiver or to disci-**  
 43 **pline the individual.**

44 **(E) A wrongful use of a physical or chemical restraint upon an individual, excluding an**  
 45 **act of restraint prescribed by a licensed physician and any treatment activities that are**

1 consistent with an approved treatment plan, or in connection with a court order.

2 (F) Wrongful conduct committed with a disregard for an individual’s health, safety or  
3 well-being that leads to neglect, verbal mistreatment or financial exploitation.

4 (b) When committed against a person with a mental illness, one or more of the following:

5 (A) Physical abuse.

6 (B) Sexual abuse.

7 (C) Withholding of services necessary to maintain the health and well-being of an indi-  
8 vidual that leads to physical harm of the individual.

9 (2) “Adult” means an individual who is a:

10 (a) Person with a developmental disability;

11 (b) Person with a physical disability;

12 (c) Resident of a facility; or

13 (d) Person with a mental illness.

14 (3) “Adult foster home” has the meaning given that term in ORS 443.705.

15 (4) “Caregiver” means a person, whether paid or unpaid, or a facility that has assumed  
16 responsibility for all or a portion of the care of an individual as a result of a contract or  
17 agreement.

18 (5) “Community program” means a community developmental disabilities program or a  
19 community mental health program established under ORS 430.610 to 430.695.

20 (6) “Designated agency” means the Department of Human Services or the Oregon Health  
21 Authority, whichever is responsible for receiving and investigating reports of abuse, neglect,  
22 verbal mistreatment and financial exploitation.

23 (7) “Elderly person” means any individual 65 years of age or older who is not a resident.

24 (8) “Facility” means:

25 (a) A long term care facility.

26 (b) A residential facility.

27 (c) An adult foster home.

28 (9) “Financial exploitation” means:

29 (a) Wrongfully taking the assets, funds or property belonging to or intended for the use  
30 of a person with a developmental disability, a person with a physical disability, an elderly  
31 person or a resident of a facility;

32 (b) Alarming a person with a developmental disability, a person with a physical disability,  
33 an elderly person or a resident of a facility by conveying a threat to wrongfully take or ap-  
34 propriate money or property of the individual if the individual could reasonably believe that  
35 the threat will be carried out;

36 (c) Misappropriating, misusing or transferring without authorization any money from any  
37 account held jointly or singly by a person with a developmental disability, a person with a  
38 physical disability, an elderly person or a resident of a facility; or

39 (d) Failing to use the income or assets of a person with a developmental disability, a  
40 person with a physical disability, an elderly person or a resident of a facility for the benefit,  
41 support and maintenance of the individual.

42 (10) “Intimidation” means compelling or deterring conduct by threat.

43 (11) “Law enforcement unit” means:

44 (a) Any city or municipal police department;

45 (b) Any county sheriff’s office;

1 (c) The Oregon State Police; or

2 (d) Any district attorney.

3 (12) "Long term care facility" means a long term care facility as defined in ORS 442.015  
4 that is licensed by the Department of Human Services.

5 (13) "Neglect" means:

6 (a) Failure to provide the care, supervision or services necessary to maintain the physical  
7 or mental health of a person with a developmental disability, a person with a physical disa-  
8 bility, an elderly person or a resident of a facility resulting in a risk of physical harm or  
9 significant emotional harm to the individual.

10 (b) The failure of a caregiver to make reasonable efforts to protect an individual from  
11 abuse or neglect.

12 (14) "Person with a developmental disability" means an individual 18 years of age or older  
13 who is receiving services from a community developmental disabilities program or a facility,  
14 or who was previously determined eligible for services by a community developmental disa-  
15 bilities program or a facility.

16 (15) "Person with a mental illness" means an individual 18 years of age or older with a  
17 mental illness who is receiving services from a community mental health program or a fa-  
18 cility.

19 (16) "Person with a physical disability" means an individual 18 years of age or older who  
20 may be in need of protective services and who:

21 (a) Has or is regarded as having a physical impairment that substantially limits one or  
22 more major life activities; or

23 (b) Has a brain injury as described in ORS 410.715.

24 (17) "Physical abuse" means any physical pain or injury caused by willful or wrongful  
25 conduct.

26 (18) "Protective services" means the services provided by the designated agency in re-  
27 sponse to the need for protection from abuse, harm or a risk of abuse or harm of an adult  
28 or an elderly person.

29 (19) "Public or private official" means:

30 (a) A physician, naturopathic physician, osteopathic physician, psychologist, chiropractor,  
31 physician assistant or podiatric physician and surgeon, including an intern or resident as  
32 those terms are defined in ORS 677.010.

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

35 (c) An employee of the Department of Human Services, a community developmental dis-  
36 abilities program, an area agency on aging or a private agency contracting with a public body  
37 to provide a service to a person with a developmental disability.

38 (d) An employee of the Oregon Health Authority, a county health department, a com-  
39 munity mental health program or a private agency contracting with a public body to provide  
40 any community mental health service.

41 (e) A peace officer.

42 (f) A member of the clergy.

43 (g) A regulated social worker.

44 (h) A physical, speech or occupational therapist.

45 (i) An information and referral or outreach worker.



- 1 (j) A crisis worker.
- 2 (k) A licensed professional counselor or licensed marriage and family therapist.
- 3 (L) A public official who comes in contact with adults in the performance of the official's
- 4 official duties.
- 5 (m) A firefighter or emergency medical technician.
- 6 (n) A provider of adult foster care or an employee of the provider.
- 7 (o) An audiologist.
- 8 (p) A speech-language pathologist.
- 9 (q) A senior center employee.
- 10 (r) An employee of a long term care facility or person who contracts to provide services
- 11 to a long term care facility.
- 12 (s) Legal counsel for:
  - 13 (A) A resident of a long term care facility or a guardian or family member of the resi-
  - 14 dent;
  - 15 (B) A person with a developmental disability or a guardian or family member of the
  - 16 person; or
  - 17 (C) A person with a mental illness or a guardian or family member of the person.
- 18 (20) "Resident" means any individual receiving room, board, care or services in a facility.
- 19 (21) "Residential facility" means a residential care facility as defined in ORS 443.400,
- 20 which includes an assisted living facility, or a residential training facility or residential
- 21 training home as those terms are defined in ORS 443.400.
- 22 (22) "Services" includes but is not limited to the provision of food, clothing, medicine,
- 23 housing, medical services, assistance with bathing or personal hygiene or any other service
- 24 essential to the well-being of an individual.
- 25 (23)(a) "Sexual abuse" means:
  - 26 (A) Sexual contact with an individual who does not consent or is considered incapable of
  - 27 consenting to a sexual act under ORS 163.315;
  - 28 (B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit
  - 29 material or language;
  - 30 (C) Any sexual contact between an employee or agent of a facility or a paid caregiver and
  - 31 an individual served by the facility or caregiver;
  - 32 (D) Any sexual contact between an individual and a relative of the individual other than
  - 33 a spouse; or
  - 34 (E) Any sexual contact that is achieved through force, trickery, threat or coercion.
- 35 (b) "Sexual abuse" does not mean consensual sexual contact between an individual and
- 36 a paid caregiver who is the spouse of the individual.
- 37 (24) "Sexual contact" has the meaning given that term in ORS 163.305.
- 38 (25) "Verbal mistreatment" means conduct that threatens significant physical harm or
- 39 threatens or causes significant emotional harm to a person with a developmental disability,
- 40 a person with a physical disability, a person with a mental illness or an elderly person
- 41 through the use of:
  - 42 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or
  - 43 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappro-
  - 44 priate sexual comments.
- 45 **SECTION 6.** ORS 430.737 is amended to read:

1 430.737. The Legislative Assembly finds that for the purpose of preventing abuse and safe-  
 2 guarding and enhancing the welfare of **elderly persons and** adults [*with mental illness or develop-*  
 3 *mental disabilities*] **who are vulnerable to abuse**, it is necessary and in the public interest to  
 4 require mandatory reports and thorough and unbiased investigations of [*adults with mental illness*  
 5 *or developmental disabilities who are allegedly abused*] **suspected abuse, neglect, verbal mis-**  
 6 **treatment and financial exploitation of elderly persons and adults.**

7 **SECTION 7.** ORS 430.743 is amended to read:

8 430.743. [(1) When a report is required under ORS 430.765 (1) and (2), an oral report shall be made  
 9 immediately by telephone or otherwise to the Department of Human Services, the designee of the de-  
 10 partment or a law enforcement agency within the county where the person making the report is at the  
 11 time of contact. If known, the report shall include:]

12 [(a) The name, age and present location of the allegedly abused adult;]

13 [(b) The names and addresses of persons responsible for the adult's care;]

14 [(c) The nature and extent of the alleged abuse, including any evidence of previous abuse;]

15 [(d) Any information that led the person making the report to suspect that abuse has occurred plus  
 16 any other information that the person believes might be helpful in establishing the cause of the abuse  
 17 and the identity of the perpetrator; and]

18 [(e) The date of the incident.]

19 [(2) When a report is received by the department's designee under this section, the designee shall  
 20 immediately determine whether abuse occurred and if the reported victim has sustained any serious  
 21 injury. If so, the designee shall immediately notify the department. If there is reason to believe a crime  
 22 has been committed, the designee shall immediately notify the law enforcement agency having jurisdic-  
 23 tion within the county where the report was made. If the designee is unable to gain access to the  
 24 allegedly abused adult, the designee may contact the law enforcement agency for assistance and the  
 25 agency shall provide assistance. When a report is received by a law enforcement agency, the agency  
 26 shall immediately notify the law enforcement agency having jurisdiction if the receiving agency does  
 27 not. The receiving agency shall also immediately notify the department in cases of serious injury or  
 28 death.]

29 [(3) Upon receipt of a report of abuse under this section, the department or its designee shall  
 30 notify:]

31 [(a) The agency providing primary case management services to the adult; and]

32 [(b) The guardian or case manager of the adult unless the notification would undermine the integ-  
 33 rity of the investigation because the guardian or case manager is suspected of committing abuse.]

34 (1) **When a report under ORS 430.765 is received by a designated agency, the designated**  
 35 **agency may notify the law enforcement unit having jurisdiction within the county where the**  
 36 **report was made. If the law enforcement unit receiving a report does not have jurisdiction,**  
 37 **the unit shall immediately notify the law enforcement unit having jurisdiction and the local**  
 38 **office of the designated agency in the county where the report was made.**

39 (2) **If the designated agency determines that there is reason to believe a crime has been**  
 40 **committed, the designated agency shall immediately provide notice of its determination to**  
 41 **the law enforcement unit having jurisdiction within the county where the report was made.**  
 42 **The law enforcement unit shall confirm to the designated agency within two business days**  
 43 **the unit's receipt of the notice.**

44 (3) **The law enforcement unit shall inform the designated agency within three business**  
 45 **days after the unit's receipt of the notice under subsection (2) of this section:**

1 (a) Why there will not be a criminal investigation;

2 (b) That the notice of the designated agency's determination has been given to the dis-  
3 trict attorney for review; or

4 (c) That a criminal investigation will take place.

5 (4) Upon completion of an investigation by a law enforcement unit, the unit shall provide  
6 the designated agency with a report of its findings and supporting evidence.

7 (5) If a law enforcement unit gives the designated agency's notice of the determination  
8 to the district attorney for review, within five business days of receipt the district attorney  
9 shall confirm receipt of the notice to the designated agency and shall inform the designated  
10 agency whether the notice has been received for review or for filing charges. A district at-  
11 torney shall decide whether to file charges within six months of receiving the notice of de-  
12 termination of the designated agency.

13 (6) If a district attorney files charges stemming from the notice of determination by the  
14 designated agency and the district attorney decides not to proceed to trial, the district at-  
15 torney shall inform the designated agency of the decision within five business days and shall  
16 include information explaining the basis for the decision.

17 **SECTION 8.** ORS 430.743, as amended by section 7 of this 2011 Act, is amended to read:

18 430.743. (1) When a report under ORS 430.765 is received by a designated agency, the designated  
19 agency may notify the law enforcement unit having jurisdiction within the county where the report  
20 was made. If the law enforcement unit receiving a report does not have jurisdiction, the unit shall  
21 immediately notify the law enforcement unit having jurisdiction and the local office of the desig-  
22 nated agency in the county where the report was made.

23 (2) If the designated agency determines that there is reason to believe a crime has been com-  
24 mitted, the designated agency shall immediately provide notice of its determination to the law  
25 enforcement unit having jurisdiction within the county where the report was made. The law  
26 enforcement unit shall confirm to the designated agency [*within two business days*] the unit's receipt  
27 of the notice.

28 (3) **After receiving the notice of the designated agency's determination,** the law enforce-  
29 ment unit shall inform the designated agency [*within three business days after the unit's receipt of the*  
30 *notice under subsection (2) of this section*]:

31 (a) Why there will not be a criminal investigation;

32 (b) That the notice of the designated agency's determination has been given to the district at-  
33 torney for review; or

34 (c) That a criminal investigation will take place.

35 (4) Upon completion of an investigation by a law enforcement unit, the unit shall provide the  
36 designated agency with a report of its findings and supporting evidence.

37 (5) If a law enforcement unit gives the designated agency's notice of the determination to the  
38 district attorney for review, [*within five business days of receipt*] the district attorney shall confirm  
39 receipt of the notice to the designated agency and shall inform the designated agency whether the  
40 notice has been received for review or for filing charges. A district attorney shall decide whether  
41 to file charges within six months of receiving the notice of determination of the designated agency.

42 (6) If a district attorney files charges stemming from the notice of determination by the desig-  
43 nated agency and the district attorney decides not to proceed to trial, the district attorney shall  
44 inform the designated agency of the decision [*within five business days*] and shall include information  
45 explaining the basis for the decision.

1       **SECTION 9. The amendments to ORS 430.743 by section 8 of this 2011 Act become oper-**  
 2       **ative on July 1, 2015.**

3       **SECTION 10.** ORS 430.745, as amended by section 18, chapter 837, Oregon Laws 2009, is  
 4 amended to read:

5       430.745. [(1) Upon receipt of any report of alleged abuse of an adult, or upon receipt of a report  
 6 of a death of an adult that may have been caused by other than accidental or natural means, the De-  
 7 partment of Human Services or its designee shall investigate promptly to determine if abuse occurred  
 8 or whether a death was caused by abuse. If the department or its designee determines that a law  
 9 enforcement agency is conducting an investigation of the same incident, the department or its designee  
 10 need not conduct its own investigation.]

11       [(2) The department or its designee may enter a facility and inspect and copy records of a facility  
 12 or community program if necessary for the completion of the investigation.]

13       [(3) In cases in which the department, its designee or the law enforcement agency conducting the  
 14 investigation finds reasonable cause to believe that an adult has died as a result of abuse, it shall re-  
 15 port that information to the appropriate medical examiner. The medical examiner shall complete an  
 16 investigation as required under ORS chapter 146 and report the findings to the department, its designee  
 17 or the law enforcement agency.]

18       [(4) Upon completion of an investigation conducted by a law enforcement agency, that agency shall  
 19 provide the department or its designee with a report of its findings and supporting evidence.]

20       [(5) If the department or its designee determines that there is reasonable cause to believe that abuse  
 21 occurred at a facility or that abuse was caused or aided by a person licensed by a licensing agency to  
 22 provide care or services, the department or its designee shall immediately notify each appropriate li-  
 23 censing agency and provide each licensing agency with a copy of its investigative findings.]

24       [(6) Upon completion of the investigation, the department or its designee shall prepare written  
 25 findings that include recommended actions and a determination of whether protective services are  
 26 needed. The department or its designee shall provide appropriate protective services as necessary to  
 27 prevent further abuse of the adult. Any protective services provided shall be undertaken in a manner  
 28 that is least intrusive to the adult and provides for the greatest degree of independence that is available  
 29 within existing resources.]

30       [(7) If the department or its designee determines that there is reason to believe a crime has oc-  
 31 curred, the department or its designee shall report the findings to the appropriate law enforcement  
 32 agency. The law enforcement agency must confirm its receipt of the report to the department or its  
 33 designee. The agency shall notify the department or its designee of its determination:]

34       [(a) That there will be no criminal investigation, including an explanation of why there will be no  
 35 criminal investigation,]

36       [(b) That the findings have been given to the district attorney for review; or]

37       [(c) That there will be a criminal investigation.]

38       [(8) If a law enforcement agency gives the findings of the department or its designee to the district  
 39 attorney for review, the district attorney shall notify the department or its designee that the district  
 40 attorney has received the findings and shall inform the department or its designee whether the findings  
 41 have been received for review or for filing charges. A district attorney shall make the determination  
 42 of whether to file charges within six months of receiving the findings of the department or its  
 43 designee.]

44       [(9) If a district attorney files charges stemming from a report from the department or its designee  
 45 and the district attorney makes a determination not to proceed to trial, the district attorney shall notify

1 *the department or its designee of the determination and shall include information explaining the basis*  
 2 *for the determination.]*

3 **(1)(a) Upon receipt of any report under ORS 430.765 that leads the designated agency to**  
 4 **believe than an adult or elderly person is or may be experiencing abuse, neglect, verbal**  
 5 **mistreatment or financial exploitation, or a report of a death of an adult or elderly person**  
 6 **that may have been caused by other than accidental or natural means, the designated agency**  
 7 **shall investigate promptly to determine if protective services are needed and shall provide**  
 8 **protective services as necessary.**

9 **(b) The Department of Human Services or the Oregon Health Authority shall be the**  
 10 **designated agency for the investigation of a report described in subsection (1) of this section**  
 11 **and for the completion of the requirements specified in ORS 430.735 to 430.765 as follows:**

12 **(A) The department shall investigate all reports involving:**

13 **(i) A person with a developmental disability;**

14 **(ii) A person with a physical disability;**

15 **(iii) An elderly person; or**

16 **(iv) A resident of a facility that is licensed by the department.**

17 **(B) The authority shall investigate all reports involving:**

18 **(i) A person with a mental illness;**

19 **(ii) A resident of an adult foster home licensed by the authority; or**

20 **(iii) A person with a mental illness residing in a residential treatment home or residential**  
 21 **treatment facility as those terms are defined in ORS 443.400.**

22 **(C) The department or the authority may appoint a designee to conduct the investigation**  
 23 **and make findings as required by ORS 430.735 to 430.765.**

24 **(c) If the designated agency determines that a law enforcement unit is conducting an**  
 25 **investigation of the same incident, the designated agency need not conduct its own investi-**  
 26 **gation.**

27 **(2) If the designated agency determines prior to the completion of an investigation that**  
 28 **an elderly person or adult has suffered abuse or is at risk of abuse and is in need of imme-**  
 29 **diate protective services, the agency shall provide protective services as described in section**  
 30 **1 of this 2011 Act.**

31 **(3) If the designated agency is unable to gain access to an elderly person or adult who**  
 32 **has suffered abuse or is at risk of abuse, the appropriate law enforcement unit may be con-**  
 33 **tacted for assistance and the law enforcement unit shall provide assistance.**

34 **(4) The designated agency may enter a facility and inspect and copy records of a facility**  
 35 **or community program if necessary for the completion of the investigation.**

36 **(5) If an elderly person or adult who has suffered abuse or is at risk of abuse is a resident**  
 37 **of a facility that is licensed by the department, other than a facility licensed to provide ser-**  
 38 **vices to persons with developmental disabilities, the department shall investigate as required**  
 39 **under this section and ORS 441.650.**

40 **(6) Upon receipt of a report under ORS 430.765, if the abuse or incident was alleged to**  
 41 **have been committed against a person with a developmental disability or a person with a**  
 42 **mental illness, the designated agency or its designee shall notify:**

43 **(a) The agency providing primary case management services to the person; and**

44 **(b) The guardian or case manager of the person unless notification would undermine the**  
 45 **integrity of the investigation because the guardian or case manager is suspected of com-**

1 **mitting abuse.**

2 **SECTION 11.** ORS 430.746 is amended to read:

3 430.746. Any designee of the Department of Human Services **or the Oregon Health Authority**  
 4 who makes a determination or conducts an investigation [*under ORS 430.743 or 430.745*] **into al-**  
 5 **leged abuse, neglect, verbal mistreatment or financial exploitation of a person with a devel-**  
 6 **opmental disability or a person with a mental illness** shall receive training and consultation that  
 7 is necessary to allow the designee to make the determination or conduct a thorough and unbiased  
 8 investigation. The training required under this section shall address the cultural and social diversity  
 9 of the people of this state.

10 **SECTION 12.** ORS 430.747 is amended to read:

11 430.747. (1) In carrying out its duties under ORS 430.735 to 430.765, a law enforcement [*agency*]  
 12 **unit** or the [*Department of Human Services' designee*] **designated agency** may photograph or cause  
 13 to have photographed any [*victim*] **elderly person or adult** who is the subject of the investigation  
 14 for purposes of preserving evidence of the condition of the [*victim*] **elderly person or adult** at the  
 15 time of investigation unless the [*victim*] **elderly person or adult** knowingly refuses to be photo-  
 16 graphed.

17 (2) [*For purposes of ORS 430.763,*] Photographs taken under authority of subsection (1) of this  
 18 section shall be [*considered case records*] **confidential in accordance with ORS 430.763.**

19 **SECTION 13.** ORS 430.753 is amended to read:

20 430.753. (1) Anyone participating in good faith in making a report of **suspected abuse, neglect,**  
 21 **verbal mistreatment or financial exploitation** pursuant to ORS [*430.743 and*] 430.765 [*(1) and (2)*  
 22 *and*] who has reasonable grounds for making the report[,] shall have immunity from any civil li-  
 23 ability that might otherwise be incurred or imposed with respect to the making or content of the  
 24 report. The participant shall have the same immunity with respect to participating in any judicial  
 25 proceeding resulting from the report.

26 (2) The identity of the person making the report shall be treated as confidential information and  
 27 shall be disclosed only with the consent of that person, by judicial order or as otherwise permitted  
 28 by ORS 430.763.

29 **SECTION 14.** ORS 430.755 is amended to read:

30 430.755. (1) A facility, community program or person shall not retaliate against any person who  
 31 reports in good faith suspected abuse [*or against the allegedly abused adult with respect to any*  
 32 *report*], **neglect, verbal mistreatment or financial exploitation committed against an elderly**  
 33 **person or adult, including a victim who reports in good faith alleged abuse, neglect, verbal**  
 34 **mistreatment or financial exploitation.**

35 (2) Any facility, community program or person that retaliates against any person because of a  
 36 report of suspected abuse, **neglect, verbal mistreatment or financial exploitation** shall be liable  
 37 in a private action to that person for actual damages and, in addition, a penalty up to \$1,000,  
 38 notwithstanding any other remedy provided by law.

39 [(3)(a) *Any adverse action is evidence of retaliation if taken within 90 days of a report.*]

40 [(b)] (3) [*For purposes of this subsection, "adverse action"*] **As used in this section, "retaliate"**  
 41 means any **adverse** action taken by a facility, community program or person involved in a report  
 42 against the person [*making*] **who made** the report, [*or against the adult with respect to whom the*  
 43 *report was made because of the report, and includes but is*] **including but** not limited to:

44 [(A)] (a) Discharge or transfer from the facility, except for clinical reasons;

45 [(B)] (b) Discharge from or termination of employment;

1 [(C)] (c) Demotion or reduction in remuneration for services; [or]  
 2 [(D)] (d) Restriction or prohibition of access to the facility or its residents; or  
 3 (e) Harassment.

4 **SECTION 15.** ORS 430.756 is amended to read:

5 430.756. A person who has personal knowledge that an employee or former employee of the  
 6 person was found [by the Department of Human Services or a law enforcement agency] to have com-  
 7 mitted abuse, **neglect, verbal mistreatment or financial exploitation** under ORS 430.735 to  
 8 430.765[,] is immune from civil liability for the disclosure to a prospective employer of the employee  
 9 or former employee of known facts concerning the abuse, **neglect, verbal mistreatment or fi-**  
 10 **ancial exploitation.**

11 **SECTION 16.** ORS 430.757 is amended to read:

12 430.757. **The Department of Human Services and the Oregon Health Authority shall**  
 13 **maintain** a proper record of all reports **and investigations** of abuse, **neglect, verbal mistreat-**  
 14 **ment or financial exploitation** made under ORS **430.735 to 430.765** [430.743 and 430.765 (1) and (2)]  
 15 shall be maintained by the Department of Human Services].

16 **SECTION 17.** ORS 430.763 is amended to read:

17 430.763. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of persons who  
 18 made reports [of abuse,] **under ORS 430.765, the alleged victim and** witnesses of alleged abuse,  
 19 **neglect, verbal mistreatment or financial exploitation,** and [the affected adults and] materials  
 20 [under ORS 430.747] maintained under the provisions of ORS **430.747 and 430.757,** are confidential  
 21 and are not accessible for public inspection. However, the Department of Human Services **and the**  
 22 **Oregon Health Authority** shall make this information and any investigative report available to:

- 23 (a) Any law enforcement [agency, to] **unit;**
- 24 (b) Any public agency that licenses or certifies [facilities] **the facility** or licenses or certifies the  
 25 persons practicing therein; [and to]
- 26 (c) Any public **or private** agency providing protective services for the **elderly person or**  
 27 **adult,** if appropriate. The department shall also make this information and any investigative report  
 28 available to any private agency providing protective services for the adult and to;
- 29 (d) **The office of the Long Term Care Ombudsman if the alleged victim is a resident of a**  
 30 **facility; and**

31 (e) The system described in ORS 192.517 (1) **if the alleged victim is a person with a devel-**  
 32 **opmental disability.**

33 (2) When [this] information **described in subsection (1) of this section** and any investigative  
 34 report [is] **are** made available to a private agency, the confidentiality requirements of this section  
 35 apply to the private agency.

36 **SECTION 18.** ORS 430.765 is amended to read:

37 430.765. (1) Any public or private official who has reasonable cause to believe that any **elderly**  
 38 **person or** adult with whom the official comes in contact while acting in an official capacity[,] has  
 39 suffered **or is at risk of** abuse, **neglect, verbal mistreatment or financial exploitation,** or that  
 40 any person with whom the official comes in contact while acting in an official capacity has [abused  
 41 an] **subjected an elderly person or adult to abuse, neglect, verbal mistreatment or financial**  
 42 **exploitation,** shall report or cause a report to be made in the manner required in [ORS 430.743]  
 43 **subsection (2) of this section.**

44 (2) **When a report is required under subsection (1) of this section, an oral report shall**  
 45 **immediately be made by telephone or in person to the designated agency as specified in ORS**

1 **430.745 or a law enforcement unit within the county where the person making the report**  
 2 **came in contact with the elderly person or adult. If known, the report shall include:**

3 (a) **The name, age and present location of the elderly person or adult who is alleged to**  
 4 **have suffered or to be at risk of abuse, neglect, verbal mistreatment or financial exploitation;**

5 (b) **The names and addresses of persons responsible for the care of the elderly person or**  
 6 **adult;**

7 (c) **The name of the person accused of abuse, neglect, verbal mistreatment or financial**  
 8 **exploitation;**

9 (d) **The nature and extent of and any evidence of previous abuse, neglect, verbal mis-**  
 10 **treatment or financial exploitation;**

11 (e) **Any information that led the person making the report to suspect that the elderly**  
 12 **person or adult has suffered or is at risk of abuse, neglect, verbal mistreatment or financial**  
 13 **exploitation, and any other information that the person believes might be helpful in estab-**  
 14 **lishing the cause of the abuse, neglect, verbal mistreatment or financial exploitation or the**  
 15 **incident that resulted in abuse, neglect, verbal mistreatment or financial exploitation; and**

16 (f) **The date of the alleged abuse, neglect, verbal mistreatment or financial exploitation**  
 17 **or the incident resulting in abuse, neglect, verbal mistreatment or financial exploitation.**

18 [(2)] (3) *[Nothing contained in]* ORS 40.225 to 40.295 *[affects]* **do not affect** the duty to report  
 19 imposed by *[subsections (1) and (2) of]* this section, except that a psychiatrist, psychologist, member  
 20 of the clergy or attorney shall not be required to report such information communicated by a person  
 21 if the communication is privileged under ORS 40.225 to 40.295.

22 [(3)] (4) An **elderly person or** adult who *[in good faith is voluntarily under]* **voluntarily chooses**  
 23 treatment solely by spiritual means through prayer in accordance with the tenets and practices of  
 24 a recognized church or religious denomination by a duly accredited practitioner thereof shall **not**  
 25 for this reason alone *[not]* be considered subjected to *[abuse]* **neglect** under ORS 430.735 to 430.765.

26 **SECTION 19.** ORS 430.768 is amended to read:

27 430.768. (1) When the Department of Human Services investigates a report of abuse under ORS  
 28 430.735 to 430.765 at a residential training home as defined in ORS 443.400 that is operated by the  
 29 department or **the Oregon Health Authority investigates** a report of abuse at a state hospital  
 30 described in ORS 426.010, the department **and the authority** shall address in the written report of  
 31 *[its]* **the department's or the authority's** findings whether the *[person]* **individual** alleged to be  
 32 responsible for the abuse was acting in self-defense.

33 (2) The department **and the authority** shall make a finding that the allegation of abuse is un-  
 34 substantiated if the department **or the authority** finds that:

35 (a) The *[person]* **individual** was acting in self-defense in response to the use or imminent use of  
 36 physical force;

37 (b) The amount of force used was reasonably necessary to protect the *[person]* **individual** from  
 38 violence or assault; and

39 (c) The *[person]* **individual** used the least restrictive procedures necessary under the circum-  
 40 stances in accordance with an approved behavior management plan or other method of response  
 41 approved by the department **or authority** by rule.

42 (3) Notwithstanding ORS 179.505, the department **and the authority** shall disclose to the *[per-*  
 43 *son]* **individual** alleged to be responsible for the abuse a copy of its findings under subsection (1)  
 44 of this section if the allegation of abuse is substantiated.

45 (4) If *[a person]* **an individual** makes a claim of self-defense during an investigation of a report



1 of abuse and the allegation is found to be substantiated, the [person] **individual** may ask the Direc-  
 2 tor of Human Services **or the Director of the Oregon Health Authority** to review the finding.  
 3 The director shall appoint a review team to conduct the review and make a recommendation [to the  
 4 director] under procedures adopted by the [director] **department or the authority** by rule.

5 (5) As used in this section, “self-defense” means the use of physical force upon another person  
 6 in self-defense or to defend a third person.

7 **SECTION 20.** ORS 441.650 is amended to read:

8 441.650. [(1) Upon receipt of the oral or written report required under ORS 441.640, or of an abuse  
 9 complaint, the area agency on aging, the Department of Human Services or the law enforcement agency  
 10 shall cause an investigation to be commenced as follows:]

11 [(a) Within two hours, if the complaint alleges that a resident’s health or safety is in imminent  
 12 danger or that the resident has recently died, been hospitalized or been treated in an emergency room;  
 13 or]

14 [(b) Prior to the end of the next working day, if the complaint alleges that circumstances exist that  
 15 could result in abuse and that the circumstances could place a resident’s health or safety in imminent  
 16 danger.]

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

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

23 [(b) The status of the investigation;]

24 [(c) Whether an abuse complaint was initially filed at the direction of the administration of the  
 25 facility;]

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

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

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

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

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

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

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

38 [(d) The long term care facility.]

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

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

44 [(6)] (1) In investigating [an abuse complaint, the investigator] **a report of abuse in a facility**  
 45 **licensed by the Department of Human Services, other than a facility licensed to serve per-**

1 **sons with developmental disabilities, the department** shall:

2 (a) Make an unannounced visit to the facility, except as provided by ORS 441.690, to determine  
3 the nature and cause of the abuse of the resident;

4 (b) Interview all available witnesses identified by any source as having personal knowledge rel-  
5 evant to the **suspected** abuse [*complaint*], such interviews to be private unless the witness expressly  
6 requests the interview not to be private;

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

9 (d) Write an investigation report that includes:

10 (A) The investigator's personal observations;

11 (B) A review of documents and records;

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

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

15 [(7)] **(2)** [*Within five working days of completion of the investigation and not later than 60 days*  
16 *from completion of the initial status report described in subsection (2) of this section, the investigator*  
17 *shall provide the department with the written report required by subsection (6) of this section.*] The  
18 department shall make the investigation report **described in subsection (1)(d) of this section**  
19 available upon request after the letter of determination is complete. When copies of the report are  
20 made available, the names of the resident involved, the [*complainant*] **person who made the report**  
21 and any individuals interviewed by the investigator shall be deleted from the copies.

22 **SECTION 21.** ORS 441.677 is amended to read:

23 441.677. (1) Within 60 days of [*receipt of the investigation documents and the written report de-*  
24 *scribed in ORS 441.650 (6)(d) and 441.676 (2)(d)*] **completion of a written report described in ORS**  
25 **441.650 or section 1 (3) of this 2011 Act**, the Department of Human Services shall prepare a writ-  
26 ten letter of determination that states the department's determinations concerning each incident or  
27 problem alleged in the complaint. [*The department shall determine whether the alleged incident or*  
28 *problem was substantiated or unsubstantiated or whether the department was unable to substantiate the*  
29 *alleged incident or problem. The department shall adopt by rule definitions for the terms "substanti-*  
30 *ated," "unsubstantiated" and "unable to substantiate."*] If the department determines that an incident  
31 or problem alleged in the complaint [*is substantiated*] **occurred**, the letter of determination shall  
32 state whether the [*substantiated*] incident **or problem** was abuse or [*violation of another rule*] **an**  
33 **incident or problem that was not abuse but created a risk of harm to a resident.** If abuse is  
34 [*substantiated*] **found to have occurred**, the letter of determination shall state whether the facility  
35 or an individual, or both, was responsible. The department shall adopt by rule criteria for deter-  
36 mining responsibility for [*substantiated*] abuse. **If the incident or problem was not abuse, the**  
37 **letter of determination shall state whether a violation of another rule occurred.**

38 **(2) If the department determines that a corrective action is necessary for a facility based**  
39 **on a determination made under subsection (1) of this section, the department shall impose**  
40 **such corrective actions as are allowed and necessary by state or federal law, including but**  
41 **not limited to facility monitoring, imposing new training requirements, taking quality im-**  
42 **provement actions, imposing civil penalties or taking actions against a facility's license. The**  
43 **department shall adopt by rule factors for making determinations to require such corrective**  
44 **actions.**

45 **(3) If the department determines that the incident or problem was not abuse, the cor-**

1 **rective action required under subsection (2) of this section must be based on factors that**  
 2 **include but are not limited to whether the facility:**

3 **(a) Voluntarily reported the incident or problem;**

4 **(b) Took reasonable steps to identify the incident or problem and to prevent further oc-**  
 5 **currences of the incident or problem;**

6 **(c) Participated in the department's investigation to a reasonable extent; and**

7 **(d) Took reasonable steps to protect the health, safety and well-being of the facility's**  
 8 **residents.**

9 **(4) If the department determines that the incident or problem was abuse, the corrective**  
 10 **action required under subsection (2) of this section must be based on factors that include**  
 11 **but are not limited to whether the:**

12 **(a) Department has found repeated abuse or violation of rules in the facility;**

13 **(b) Facility failed to voluntarily report the incident or problem;**

14 **(c) Facility failed to take reasonable steps to prevent further occurrences of the incident**  
 15 **or problem;**

16 **(d) Facility failed to participate in the department's investigation to a reasonable extent;**  
 17 **and**

18 **(e) Health, safety or well-being of the facility's residents will continue to be at risk**  
 19 **without the imposition of sanctions or penalties.**

20 [(2)] (5) A copy of the letter of determination shall be placed in the facility's complaint file.  
 21 Copies shall be sent to the facility, the complainant and the local office of the department. The fa-  
 22 cility and the complainant receiving the letter of determination shall be given 10 days to respond  
 23 with additional information and shall be informed of the appeals process.

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

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

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

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

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

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

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

41 **SECTION 22.** ORS 441.678 is amended to read:

42 441.678. [(1) *If a nursing assistant found by the Department of Human Services to be responsible*  
 43 *for abuse does not respond to the department within 30 days after notice of the opportunity for a con-*  
 44 *tested case hearing, the department shall place the abuse finding in the registry maintained under this*  
 45 *section.]*

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

4        **(1) The Department of Human Services shall adopt by rule definitions of “abuse,” “neg-**  
 5 **lect” and “misappropriation of resident property” for the purposes of this section, which**  
 6 **must include at a minimum all actions or failures to act defined as abuse, neglect or mis-**  
 7 **appropriation of resident property under 42 C.F.R. 488.301.**

8        *[(3)] (2) The department shall maintain a nursing assistant registry that contains, at a minimum,*  
 9 *the information required by 42 C.F.R. 483.156.*

10        **(3) If the department finds in an investigation conducted under ORS 441.676 that a**  
 11 **nursing assistant was responsible for abuse, neglect or misappropriation of resident prop-**  
 12 **erty, the department shall provide written notice of its findings to the nursing assistant at**  
 13 **the nursing assistant’s last known address. The notice must include:**

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

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

16        **(c) An explanation of the nursing assistant’s right to a contested case hearing conducted**  
 17 **in accordance with ORS chapter 183; and**

18        **(d) The department’s obligation under subsection (4) of this section to enter a substan-**  
 19 **tiated finding in the nursing assistant registry.**

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

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

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

25        **SECTION 23.** ORS 441.715 is amended to read:

26        441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective  
 27 criteria for establishing the civil penalty that may be imposed under ORS 441.710 (1) and the Di-  
 28 rector of the Oregon Health Authority by rule shall adopt objective criteria for establishing the civil  
 29 penalty that may be imposed under ORS 441.710 (2). However, the civil penalty may not exceed \$500  
 30 for each violation, except as otherwise provided in this subsection and ORS 441.995 or as otherwise  
 31 required by federal law.

32        (b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for  
 33 any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation  
 34 involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under  
 35 ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed  
 36 \$500 per day or as otherwise required by federal law.

37        *[(c) If the Department of Human Services investigates and makes a finding of abuse arising from*  
 38 *deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a*  
 39 *person with a duty of care toward a resident of a long term care facility and if the abuse resulted in*  
 40 *the death, serious injury, rape or sexual abuse of a resident, the department shall impose a civil penalty*  
 41 *of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day*  
 42 *period. As used in this paragraph:]*

43        *[(A) “Negative outcome” includes serious injury, rape, sexual abuse or death.]*

44        *[(B) “Rape” means rape in the first, second or third degree as described in ORS 163.355, 163.365*  
 45 *and 163.375.]*

1 [(C) "Serious injury" means physical injury that creates a substantial risk of death or that causes  
 2 serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment  
 3 of the function of any bodily organ.]

4 [(D) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to  
 5 unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and  
 6 sexual harassment.]

7 (2) The penalties assessed under subsection (1)[(a) or (b)] of this section may not exceed \$7,500  
 8 in the aggregate or as otherwise required by federal law with respect to a single long term care  
 9 facility within any 90-day period.

10 **SECTION 24.** ORS 441.995 is amended to read:

11 441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of  
 12 ORS [441.630 to 441.680,] **430.735 to 430.765 when those violations involve a resident of a long**  
 13 **term care facility**, the Department of Human Services shall consider:

14 (a) Any prior violations of laws or rules pertaining to [facilities] **the long term care facility**;

15 (b) The financial benefits, if any, realized by the **long term care** facility as a result of the vio-  
 16 lation;

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

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

20 (e) The **long term care** facility's past history of correcting violations and preventing the re-  
 21 currence of violations.

22 (2) The department may impose a civil penalty for abuse in accordance with rules adopted under  
 23 ORS 441.637 (1).

24 (3) If the department finds the **long term care** facility is responsible for abuse and if the abuse  
 25 resulted in a resident's death or serious injury **other than that described in subsection (4) of this**  
 26 **section**, the department shall impose a civil penalty of not less than \$500 nor more than \$1,000 for  
 27 each violation, or as otherwise required by federal law or ORS [441.715 (1)(c),] 443.455 [or 443.775].

28 (4)(a) **If the department investigates and makes a finding of substantiated abuse arising**  
 29 **from deliberate or other than accidental action or inaction by a person with a duty of care**  
 30 **toward a resident of a long term care facility and if the abuse resulted in or was likely to**  
 31 **result in a negative outcome, the department shall impose a civil penalty of not less than**  
 32 **\$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period.**

33 (b) **As used in this subsection:**

34 (A) **"Negative outcome" includes serious injury, rape sexual abuse or death.**

35 (B) **"Rape" means rape in the first, second or third degree as described in ORS 163.355,**  
 36 **163.365 and 163.375.**

37 (C) **"Serious injury" means physical injury that creates a substantial risk of death or that**  
 38 **causes serious and protracted disfigurement, protracted impairment of health or protracted**  
 39 **loss or impairment of the function of any bodily organ.**

40 (D) **"Sexual abuse" means any form of nonconsensual sexual contact, including but not**  
 41 **limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit**  
 42 **photographing and sexual harassment.**

43 [(4)] (5) Nothing in ORS 441.637 and this section is intended to expand, replace or supersede the  
 44 department's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations  
 45 that do not constitute abuse.

1        [(5)] **(6) Long term care** facilities assessed civil penalties under this section are entitled to a  
 2 contested case hearing under ORS chapter 183.

3        **SECTION 25.** ORS 443.455 is amended to read:

4        443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS  
 5 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

6        (2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential  
 7 care facilities, residential training facilities and residential training homes that are not in compli-  
 8 ance with ORS 443.400 to 443.455.

9        (3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties  
 10 for residential treatment facilities and residential treatment homes that are not in compliance with  
 11 ORS 443.400 to 443.455.

12        **(4)(a) Notwithstanding the schedules of penalties prescribed under subsections (2) and (3)**  
 13 **of this section**, if the Department of Human Services or Oregon Health Authority investigates  
 14 and makes a finding of **substantiated** abuse arising from deliberate or other than accidental action  
 15 or inaction [*that is likely to cause a negative outcome*] by a person with a duty of care toward a  
 16 resident of a residential facility and if the abuse resulted in [*the death, serious injury, rape or sexual*  
 17 *abuse of a resident*] **or was likely to result in a negative outcome**, the department or authority  
 18 shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not  
 19 to exceed \$15,000 in any 90-day period.

20        **(b)** As used in this subsection:

21        [(a)] **(A)** “Negative outcome” includes serious injury, rape, sexual abuse or death.

22        [(b)] **(B)** “Rape” means rape in the first, second or third degree as described in ORS 163.355,  
 23 163.365 and 163.375.

24        [(c)] **(C)** “Serious injury” means physical injury that creates a substantial risk of death or that  
 25 causes serious and protracted disfigurement, protracted impairment of health or protracted loss or  
 26 impairment of the function of any bodily organ.

27        [(d)] **(D)** “Sexual abuse” means any form of nonconsensual sexual contact, including but not  
 28 limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photo-  
 29 graphing and sexual harassment.

30        **SECTION 26.** ORS 443.735 is amended to read:

31        443.735. (1) Applications for a license to maintain and operate an adult foster home shall be  
 32 made on forms provided by the licensing agency. Each application shall be accompanied by a fee  
 33 of \$20 per bed requested for licensing.

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

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

36        (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to  
 37 443.825 and the rules of the licensing agency;

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

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

43        (d) The licensing agency has determined that [*the registry maintained under ORS 441.678 con-*  
 44 *tains no finding that the applicant or any nursing assistant employed by the applicant has been re-*  
 45 *sponsible for abuse*] **no finding has been entered into the nursing assistant registry under ORS**

1 **441.678 (4) regarding the applicant or any nursing assistant employed by the applicant;** and

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

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

12 (a) The applicant and the 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 under this paragraph shall be conducted in accord-  
18 ance with rules adopted under ORS 181.534; and

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*] **no finding has been entered into the nursing assistant registry under ORS**  
22 **441.678 (4) regarding the applicant or any nursing assistant employed by the applicant.**

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

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

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

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

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

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

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

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

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

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

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

20 **SECTION 27.** ORS 443.775 is amended to read:

21 443.775. (1)(a) The licensing agency shall adopt rules governing adult foster homes and the level  
22 of care provided in such homes, including the provision of care to more than one person with  
23 nursing care needs under specified conditions and agency approval, such as are necessary to protect  
24 the health, safety or welfare of the residents and to provide for an appropriate continuum of care,  
25 but shall not be inconsistent with the residential nature of the living accommodations and the family  
26 atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board  
27 of Nursing under ORS 678.150 (8).

28 [(a)] (b) An exception to the limit of one resident with nursing care needs may be granted if the  
29 provider proves to the licensing agency by clear and convincing evidence that such an exception  
30 will not jeopardize the care, health, safety or welfare of the residents and that the provider is ca-  
31 pable of meeting the additional care needs of the new resident.

32 [(b)] (c) The licensing agency, and the counties acting under the exemption granted pursuant to  
33 ORS 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of ex-  
34 ceptions granted during the quarter pursuant to paragraph [(a)] (b) of this subsection.

35 (2) The provider may not employ a resident manager who does not meet the classification  
36 standard for the adult foster home.

37 (3) The provider shall be able to meet the night care needs of a resident before admitting the  
38 resident. The provider shall include night care needs in the resident's care plan.

39 (4) The provider shall screen a prospective resident before admitting the resident. The screening  
40 shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs,  
41 night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall  
42 be given to the prospective resident or the prospective resident's representative.

43 (5) The licensing agency shall make rules to ensure that any employee who makes a complaint  
44 pursuant to ORS 443.755 shall be protected from retaliation.

45 (6) For adult foster homes in which clients reside for whom the licensing agency pays for care,



1 including homes in which the provider and the resident are related, the agency may require sub-  
 2 stantial compliance with its rules relating to standards for care of the client as a condition for  
 3 paying for care.

4 (7) By order the director of the licensing agency may delegate authority under this section to  
 5 personnel other than of the licensing agency.

6 (8) The licensing agency may commence a suit in equity to enjoin maintenance of an adult foster  
 7 home if:

8 (a) The home is operated without a valid license under this section; or

9 (b) After the license to maintain the home is ordered suspended or revoked, a reasonable time  
 10 for placement of residents in other facilities has been allowed but such placement has not been ac-  
 11 complished.

12 (9) The licensing agency shall establish by rule the maximum capacity of adult foster homes,  
 13 including all nonrelated and related persons receiving residential care and day care.

14 (10) Except as provided in subsection (11) of this section, any person who violates a provision  
 15 of ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition of a  
 16 civil penalty, to be fixed by the licensing agency by rule, not to exceed \$100 per violation, to a  
 17 maximum of \$250 or, per occurrence of substantiated abuse, a maximum of \$1,000.

18 *[(11)(a) If the licensing agency determines that there is reasonable cause to believe that abuse oc-  
 19 curred in an adult foster home licensed by the licensing agency and if the abuse resulted in the death,  
 20 serious injury, rape, sexual abuse or sexual exploitation of a resident, the licensing agency shall impose  
 21 a civil penalty on the adult foster home of not less than \$2,500 for each violation.]*

22 **(11)(a) If the licensing agency investigates and makes a finding of substantiated abuse  
 23 arising from deliberate or other than accidental action or inaction by a person with a duty  
 24 of care toward a resident of an adult foster home and if the abuse resulted in or was likely  
 25 to result in a negative outcome, the agency shall impose a civil penalty of not less than \$2,500  
 26 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As  
 27 used in this paragraph:**

28 **(A) “Negative outcome” includes serious injury, rape, sexual abuse or death.**

29 **(B) “Rape” means rape in the first, second or third degree as described in ORS 163.355,  
 30 163.365 and 163.375.**

31 **(C) “Serious injury” means physical injury that creates a substantial risk of death or that  
 32 causes serious and protracted disfigurement, protracted impairment of health or protracted  
 33 loss or impairment of the function of any bodily organ.**

34 **(D) “Sexual abuse” means any form of nonconsensual sexual contact, including but not  
 35 limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit  
 36 photographing and sexual harassment.**

37 (b) This subsection does not apply to adult foster homes licensed by the licensing agency to  
 38 serve only persons with mental illness or with alcohol or drug addiction.

39 *[(c) The licensing agency shall by rule define “serious injury,” “rape,” “sexual abuse” and “sexual  
 40 exploitation” for purposes of this subsection.]*

41 (12) All penalties recovered pursuant to this section shall be deposited in the Quality Care Fund  
 42 established in ORS 443.001.

43  
 44 **CONFORMING AMENDMENTS**  
 45

**SECTION 28.** ORS 36.220 is amended to read:

36.220. (1) Except as provided in ORS 36.220 to 36.238:

(a) Mediation communications are confidential and may not be disclosed to any other person.

(b) The parties to a mediation may agree in writing that all or part of the mediation communications are not confidential.

(2) Except as provided in ORS 36.220 to 36.238:

(a) The terms of any mediation agreement are not confidential.

(b) The parties to a mediation may agree that all or part of the terms of a mediation agreement are confidential.

(3) Statements, memoranda, work products, documents and other materials, otherwise subject to discovery, that were not prepared specifically for use in a mediation, are not confidential.

(4) Any document that, before its use in a mediation, was a public record as defined in ORS 192.410 remains subject to disclosure to the extent provided by ORS 192.410 to 192.505.

(5) Any mediation communication relating to child abuse that is made to a person who is required to report child abuse under the provisions of ORS 419B.010 is not confidential to the extent that the person is required to report the communication under the provisions of ORS 419B.010. Any mediation communication relating to elder abuse that is made to a person who is required to report elder abuse under the provisions of ORS [124.050 to 124.095] **430.735 to 430.765** is not confidential to the extent that the person is required to report the communication under the provisions of ORS [124.050 to 124.095] **430.735 to 430.765**.

(6) A mediation communication is not confidential if the mediator or a party to the mediation reasonably believes that disclosing the communication is necessary to prevent a party from committing a crime that is likely to result in death or substantial bodily injury to a specific person.

(7) A party to a mediation may disclose confidential mediation communications to a person if the party's communication with that person is privileged under ORS 40.010 to 40.585 or other provision of law. A party may disclose confidential mediation communications to any other person for the purpose of obtaining advice concerning the subject matter of the mediation, if all parties to the mediation so agree.

(8) The confidentiality of mediation communications and agreements in a mediation in which a public body is a party, or in which a state agency is mediating a dispute as to which the state agency has regulatory authority, is subject to ORS 36.224, 36.226 and 36.230.

**SECTION 29.** ORS 36.222 is amended to read:

36.222. (1) Except as provided in ORS 36.220 to 36.238, mediation communications and mediation agreements that are confidential under ORS 36.220 to 36.238 are not admissible as evidence in any subsequent adjudicatory proceeding, and may not be disclosed by the parties or the mediator in any subsequent adjudicatory proceeding.

(2) A party may disclose confidential mediation communications or agreements in any subsequent adjudicative proceeding if all parties to the mediation agree in writing to the disclosure.

(3) A mediator may disclose confidential mediation communications or confidential mediation agreements in a subsequent adjudicatory proceeding if all parties to the mediation, the mediator, and the mediation program, if any, agree in writing to the disclosure.

(4) In any proceeding to enforce, modify or set aside a mediation agreement, confidential mediation communications and confidential mediation agreements may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a party, the court may seal any part of the record of the proceeding to prevent further disclosure of mediation communications or agree-

1 ments to persons other than the parties to the agreement.

2 (5) In an action for damages or other relief between a party to a mediation and a mediator or  
 3 mediation program, confidential mediation communications or confidential mediation agreements  
 4 may be disclosed to the extent necessary to prosecute or defend the matter. At the request of a  
 5 party, the court may seal any part of the record of the proceeding to prevent further disclosure of  
 6 the mediation communications or agreements.

7 (6) A mediator may disclose confidential mediation communications directly related to child  
 8 abuse or elder abuse if the mediator is a person who has a duty to report child abuse under ORS  
 9 419B.010 or elder abuse under ORS [124.050 to 124.095] **430.735 to 430.765**.

10 (7) The limitations on admissibility and disclosure in subsequent adjudicatory proceedings im-  
 11 posed by this section apply to any subsequent judicial proceeding, administrative proceeding or ar-  
 12 bitration proceeding. The limitations on disclosure imposed by this section include disclosure during  
 13 any discovery conducted as part of a subsequent adjudicatory proceeding, and no person who is  
 14 prohibited from disclosing information under the provisions of this section may be compelled to re-  
 15 veal confidential communications or agreements in any discovery proceeding conducted as part of  
 16 a subsequent adjudicatory proceeding. Any confidential mediation communication or agreement that  
 17 may be disclosed in a subsequent adjudicatory proceeding under the provisions of this section may  
 18 be introduced into evidence in the subsequent adjudicatory proceeding.

19 **SECTION 30.** ORS 40.460 is amended to read:

20 40.460. The following are not excluded by ORS 40.455, even though the declarant is available  
 21 as a witness:

22 (1) (Reserved.)

23 (2) A statement relating to a startling event or condition made while the declarant was under  
 24 the stress of excitement caused by the event or condition.

25 (3) A statement of the declarant's then existing state of mind, emotion, sensation or physical  
 26 condition, such as intent, plan, motive, design, mental feeling, pain or bodily health, but not includ-  
 27 ing a statement of memory or belief to prove the fact remembered or believed unless it relates to  
 28 the execution, revocation, identification, or terms of the declarant's will.

29 (4) Statements made for purposes of medical diagnosis or treatment and describing medical his-  
 30 tory, or past or present symptoms, pain or sensations, or the inception or general character of the  
 31 cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment.

32 (5) A memorandum or record concerning a matter about which a witness once had knowledge  
 33 but now has insufficient recollection to enable the witness to testify fully and accurately, shown to  
 34 have been made or adopted by the witness when the matter was fresh in the memory of the witness  
 35 and to reflect that knowledge correctly. If admitted, the memorandum or record may be read into  
 36 evidence but may not itself be received as an exhibit unless offered by an adverse party.

37 (6) A memorandum, report, record, or data compilation, in any form, of acts, events, conditions,  
 38 opinions, or diagnoses, made at or near the time by, or from information transmitted by, a person  
 39 with knowledge, if kept in the course of a regularly conducted business activity, and if it was the  
 40 regular practice of that business activity to make the memorandum, report, record, or data compi-  
 41 lation, all as shown by the testimony of the custodian or other qualified witness, unless the source  
 42 of information or the method of circumstances of preparation indicate lack of trustworthiness. The  
 43 term "business" as used in this subsection includes business, institution, association, profession, oc-  
 44 cupation, and calling of every kind, whether or not conducted for profit.

45 (7) Evidence that a matter is not included in the memoranda, reports, records, or data compila-

1 tions, and in any form, kept in accordance with the provisions of subsection (6) of this section, to  
2 prove the nonoccurrence or nonexistence of the matter, if the matter was of a kind of which a  
3 memorandum, report, record, or data compilation was regularly made and preserved, unless the  
4 sources of information or other circumstances indicate lack of trustworthiness.

5 (8) Records, reports, statements or data compilations, in any form, of public offices or agencies,  
6 including federally recognized American Indian tribal governments, setting forth:

7 (a) The activities of the office or agency;

8 (b) Matters observed pursuant to duty imposed by law as to which matters there was a duty to  
9 report, excluding, in criminal cases, matters observed by police officers and other law enforcement  
10 personnel; or

11 (c) In civil actions and proceedings and against the government in criminal cases, factual  
12 findings, resulting from an investigation made pursuant to authority granted by law, unless the  
13 sources of information or other circumstances indicate lack of trustworthiness.

14 (9) Records or data compilations, in any form, of births, fetal deaths, deaths or marriages, if the  
15 report thereof was made to a public office, including a federally recognized American Indian tribal  
16 government, pursuant to requirements of law.

17 (10) To prove the absence of a record, report, statement or data compilation, in any form, or the  
18 nonoccurrence or nonexistence of a matter of which a record, report, statement or data compilation,  
19 in any form, was regularly made and preserved by a public office or agency, including a federally  
20 recognized American Indian tribal government, evidence in the form of a certification in accordance  
21 with ORS 40.510, or testimony, that diligent search failed to disclose the record, report, statement  
22 or data compilation, or entry.

23 (11) Statements of births, marriages, divorces, deaths, legitimacy, ancestry, relationship by blood  
24 or marriage, or other similar facts of personal or family history, contained in a regularly kept record  
25 of a religious organization.

26 (12) A statement of fact contained in a certificate that the maker performed a marriage or other  
27 ceremony or administered a sacrament, made by a member of the clergy, a public official, an official  
28 of a federally recognized American Indian tribal government or any other person authorized by the  
29 rules or practices of a religious organization or by law to perform the act certified, and purporting  
30 to have been issued at the time of the act or within a reasonable time thereafter.

31 (13) Statements of facts concerning personal or family history contained in family bibles,  
32 genealogies, charts, engravings on rings, inscriptions on family portraits, engravings on urns, crypts,  
33 or tombstones, or the like.

34 (14) The record of a document purporting to establish or affect an interest in property, as proof  
35 of content of the original recorded document and its execution and delivery by each person by whom  
36 it purports to have been executed, if the record is a record of a public office, including a federally  
37 recognized American Indian tribal government, and an applicable statute authorizes the recording  
38 of documents of that kind in that office.

39 (15) A statement contained in a document purporting to establish or affect an interest in prop-  
40 erty if the matter stated was relevant to the purpose of the document, unless dealings with the  
41 property since the document was made have been inconsistent with the truth of the statement or  
42 the purport of the document.

43 (16) Statements in a document in existence 20 years or more the authenticity of which is es-  
44 tablished.

45 (17) Market quotations, tabulations, lists, directories, or other published compilations, generally

1 used and relied upon by the public or by persons in particular occupations.

2 (18) (Reserved.)

3 (18a)(a) A complaint of sexual misconduct, complaint of abuse as defined in ORS 107.705 or  
4 419B.005, complaint of abuse of an elderly person, as those terms are defined in ORS [124.050]  
5 **430.735**, or a complaint relating to a violation of ORS 163.205 or 164.015 in which a person 65 years  
6 of age or older is the victim, made by the witness after the commission of the alleged misconduct  
7 or abuse at issue. Except as provided in paragraph (b) of this subsection, such evidence must be  
8 confined to the fact that the complaint was made.

9 (b) A statement made by a person concerning an act of abuse as defined in ORS 107.705 or  
10 419B.005, a statement made by a person concerning an act of abuse of an elderly person, as those  
11 terms are defined in ORS [124.050] **430.735**, or a statement made by a person concerning a violation  
12 of ORS 163.205 or 164.015 in which a person 65 years of age or older is the victim, is not excluded  
13 by ORS 40.455 if the declarant either testifies at the proceeding and is subject to cross-examination,  
14 or is unavailable as a witness but was chronologically or mentally under 12 years of age when the  
15 statement was made or was 65 years of age or older when the statement was made. However, if a  
16 declarant is unavailable, the statement may be admitted in evidence only if the proponent estab-  
17 lishes that the time, content and circumstances of the statement provide indicia of reliability, and  
18 in a criminal trial that there is corroborative evidence of the act of abuse and of the alleged  
19 perpetrator's opportunity to participate in the conduct and that the statement possesses indicia of  
20 reliability as is constitutionally required to be admitted. No statement may be admitted under this  
21 paragraph unless the proponent of the statement makes known to the adverse party the proponent's  
22 intention to offer the statement and the particulars of the statement no later than 15 days before  
23 trial, except for good cause shown. For purposes of this paragraph, in addition to those situations  
24 described in ORS 40.465 (1), the declarant shall be considered "unavailable" if the declarant has a  
25 substantial lack of memory of the subject matter of the statement, is presently incompetent to tes-  
26 tify, is unable to communicate about the abuse or sexual conduct because of fear or other similar  
27 reason or is substantially likely, as established by expert testimony, to suffer lasting severe emo-  
28 tional trauma from testifying. Unless otherwise agreed by the parties, the court shall examine the  
29 declarant in chambers and on the record or outside the presence of the jury and on the record. The  
30 examination shall be conducted immediately prior to the commencement of the trial in the presence  
31 of the attorney and the legal guardian or other suitable person as designated by the court. If the  
32 declarant is found to be unavailable, the court shall then determine the admissibility of the evidence.  
33 The determinations shall be appealable under ORS 138.060 (1)(c) or (2)(a). The purpose of the ex-  
34 amination shall be to aid the court in making its findings regarding the availability of the declarant  
35 as a witness and the reliability of the statement of the declarant. In determining whether a state-  
36 ment possesses indicia of reliability under this paragraph, the court may consider, but is not limited  
37 to, the following factors:

38 (A) The personal knowledge of the declarant of the event;

39 (B) The age and maturity of the declarant or extent of disability if the declarant is a person  
40 with a developmental disability;

41 (C) Certainty that the statement was made, including the credibility of the person testifying  
42 about the statement and any motive the person may have to falsify or distort the statement;

43 (D) Any apparent motive the declarant may have to falsify or distort the event, including bias,  
44 corruption or coercion;

45 (E) The timing of the statement of the declarant;

1 (F) Whether more than one person heard the statement;

2 (G) Whether the declarant was suffering pain or distress when making the statement;

3 (H) Whether the declarant's young age or disability makes it unlikely that the declarant fabri-  
 4 cated a statement that represents a graphic, detailed account beyond the knowledge and experience  
 5 of the declarant;

6 (I) Whether the statement has internal consistency or coherence and uses terminology appro-  
 7 priate to the declarant's age or to the extent of the declarant's disability if the declarant is a person  
 8 with a developmental disability;

9 (J) Whether the statement is spontaneous or directly responsive to questions; and

10 (K) Whether the statement was elicited by leading questions.

11 (c) This subsection applies to all civil, criminal and juvenile proceedings.

12 (d) This subsection applies to a child declarant, a declarant who is an elderly person as defined  
 13 in ORS [124.050] **430.735** or an adult declarant with a developmental disability. For the purposes of  
 14 this subsection, "developmental disability" means any disability attributable to mental retardation,  
 15 autism, cerebral palsy, epilepsy or other disabling neurological condition that requires training or  
 16 support similar to that required by persons with mental retardation, if either of the following apply:

17 (A) The disability originates before the person attains 22 years of age, or if the disability is at-  
 18 tributable to mental retardation the condition is manifested before the person attains 18 years of  
 19 age, the disability can be expected to continue indefinitely, and the disability constitutes a sub-  
 20 stantial handicap to the ability of the person to function in society.

21 (B) The disability results in a significant subaverage general intellectual functioning with con-  
 22 current deficits in adaptive behavior that are manifested during the developmental period.

23 (19) Reputation among members of a person's family by blood, adoption or marriage, or among  
 24 a person's associates, or in the community, concerning a person's birth, adoption, marriage, divorce,  
 25 death, legitimacy, relationship by blood or adoption or marriage, ancestry, or other similar fact of  
 26 a person's personal or family history.

27 (20) Reputation in a community, arising before the controversy, as to boundaries of or customs  
 28 affecting lands in the community, and reputation as to events of general history important to the  
 29 community or state or nation in which located.

30 (21) Reputation of a person's character among associates of the person or in the community.

31 (22) Evidence of a final judgment, entered after a trial or upon a plea of guilty, but not upon a  
 32 plea of no contest, adjudging a person guilty of a crime other than a traffic offense, to prove any  
 33 fact essential to sustain the judgment, but not including, when offered by the government in a  
 34 criminal prosecution for purposes other than impeachment, judgments against persons other than the  
 35 accused. The pendency of an appeal may be shown but does not affect admissibility.

36 (23) Judgments as proof of matters of personal, family or general history, or boundaries, essen-  
 37 tial to the judgment, if the same would be provable by evidence of reputation.

38 (24) Notwithstanding the limits contained in subsection (18a) of this section, in any proceeding  
 39 in which a child under 12 years of age at the time of trial, or a person with a developmental disa-  
 40 bility as described in subsection (18a)(d) of this section, may be called as a witness to testify con-  
 41 cerning an act of abuse, as defined in ORS 419B.005, or sexual conduct performed with or on the  
 42 child or person with a developmental disability by another, the testimony of the child or person with  
 43 a developmental disability taken by contemporaneous examination and cross-examination in another  
 44 place under the supervision of the trial judge and communicated to the courtroom by closed-circuit  
 45 television or other audiovisual means. Testimony will be allowed as provided in this subsection only

1 if the court finds that there is a substantial likelihood, established by expert testimony, that the  
2 child or person with a developmental disability will suffer severe emotional or psychological harm  
3 if required to testify in open court. If the court makes such a finding, the court, on motion of a  
4 party, the child, the person with a developmental disability or the court in a civil proceeding, or on  
5 motion of the district attorney, the child or the person with a developmental disability in a criminal  
6 or juvenile proceeding, may order that the testimony of the child or the person with a developmental  
7 disability be taken as described in this subsection. Only the judge, the attorneys for the parties, the  
8 parties, individuals necessary to operate the equipment and any individual the court finds would  
9 contribute to the welfare and well-being of the child or person with a developmental disability may  
10 be present during the testimony of the child or person with a developmental disability.

11 (25)(a) Any document containing data prepared or recorded by the Oregon State Police pursuant  
12 to ORS 813.160 (1)(b)(C) or (E), or pursuant to ORS 475.235 (4), if the document is produced by data  
13 retrieval from the Law Enforcement Data System or other computer system maintained and operated  
14 by the Oregon State Police, and the person retrieving the data attests that the information was re-  
15 trieved directly from the system and that the document accurately reflects the data retrieved.

16 (b) Any document containing data prepared or recorded by the Oregon State Police that is  
17 produced by data retrieval from the Law Enforcement Data System or other computer system  
18 maintained and operated by the Oregon State Police and that is electronically transmitted through  
19 public or private computer networks under an electronic signature adopted by the Oregon State  
20 Police if the person receiving the data attests that the document accurately reflects the data re-  
21 ceived.

22 (c) Notwithstanding any statute or rule to the contrary, in any criminal case in which docu-  
23 ments are introduced under the provisions of this subsection, the defendant may subpoena the ana-  
24 lyst, as defined in ORS 475.235 (6), or other person that generated or keeps the original document  
25 for the purpose of testifying at the preliminary hearing and trial of the issue. Except as provided  
26 in ORS 44.550 to 44.566, no charge shall be made to the defendant for the appearance of the analyst  
27 or other person.

28 (26)(a) A statement that purports to narrate, describe, report or explain an incident of domestic  
29 violence, as defined in ORS 135.230, made by a victim of the domestic violence within 24 hours after  
30 the incident occurred, if the statement:

31 (A) Was recorded, either electronically or in writing, or was made to a peace officer as defined  
32 in ORS 161.015, corrections officer, youth correction officer, parole and probation officer, emergency  
33 medical technician or firefighter; and

34 (B) Has sufficient indicia of reliability.

35 (b) In determining whether a statement has sufficient indicia of reliability under paragraph (a)  
36 of this subsection, the court shall consider all circumstances surrounding the statement. The court  
37 may consider, but is not limited to, the following factors in determining whether a statement has  
38 sufficient indicia of reliability:

39 (A) The personal knowledge of the declarant.

40 (B) Whether the statement is corroborated by evidence other than statements that are subject  
41 to admission only pursuant to this subsection.

42 (C) The timing of the statement.

43 (D) Whether the statement was elicited by leading questions.

44 (E) Subsequent statements made by the declarant. Recantation by a declarant is not sufficient  
45 reason for denying admission of a statement under this subsection in the absence of other factors

1 indicating unreliability.

2 (27) A report prepared by a forensic scientist that contains the results of a presumptive test  
 3 conducted by the forensic scientist as described in ORS 475.235, if the forensic scientist attests that  
 4 the report accurately reflects the results of the presumptive test.

5 (28)(a) A statement not specifically covered by any of the foregoing exceptions but having  
 6 equivalent circumstantial guarantees of trustworthiness, if the court determines that:

7 (A) The statement is relevant;

8 (B) The statement is more probative on the point for which it is offered than any other evidence  
 9 that the proponent can procure through reasonable efforts; and

10 (C) The general purposes of the Oregon Evidence Code and the interests of justice will best be  
 11 served by admission of the statement into evidence.

12 (b) A statement may not be admitted under this subsection unless the proponent of it makes  
 13 known to the adverse party the intention to offer the statement and the particulars of it, including  
 14 the name and address of the declarant, sufficiently in advance of the trial or hearing, or as soon as  
 15 practicable after it becomes apparent that such statement is probative of the issues at hand, to  
 16 provide the adverse party with a fair opportunity to prepare to meet it.

17 **SECTION 31.** ORS 124.005 is amended to read:

18 124.005. As used in ORS 124.005 to 124.040:

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

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

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

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

27 (d) Willful infliction of physical pain or injury.

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

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

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

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



1 (2) “Elderly person” means any person 65 years of age or older who is not [subject to the pro-  
 2 visions of ORS 441.640 to 441.665] **receiving care in a long term care facility as defined in ORS**  
 3 **442.015.**

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

7 (4) “Interfere” means to interpose in a way that hinders or impedes.

8 (5) “Intimidate” means to compel or deter conduct by a threat.

9 (6) “Menace” means to act in a threatening manner.

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

11 (8) “Person with a disability” means a person described in:

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

13 (b) ORS 410.715.

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

16 (10) “Sweepstakes” means:

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

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

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

24 (11) “Sweepstakes promotion” means an offer to participate in a sweepstakes.

25 **SECTION 32.** ORS 124.990 is amended to read:

26 124.990. A person who violates ORS [124.060] **430.765** commits a Class A violation.

27 **SECTION 33.** ORS 163.206 is amended to read:

28 163.206. ORS 163.200 and 163.205 do not apply:

29 (1) To a person acting pursuant to a court order, an advance directive or a power of attorney  
 30 for health care pursuant to ORS 127.505 to 127.660 or a POLST, as defined in ORS 127.663;

31 (2) To a person withholding or withdrawing life-sustaining procedures or artificially adminis-  
 32 tered nutrition and hydration pursuant to ORS 127.505 to 127.660;

33 (3) When a competent person refuses food, physical care or medical care;

34 (4) To a person who provides an elderly person or a dependent person who is at least 15 years  
 35 of age with spiritual treatment through prayer from a duly accredited practitioner of spiritual  
 36 treatment as provided in ORS [124.095] **430.765 (4)**, in lieu of medical treatment, in accordance with  
 37 the tenets and practices of a recognized church or religious denomination of which the elderly or  
 38 dependent person is a member or an adherent; or

39 (5) To a duly accredited practitioner of spiritual treatment as provided in ORS [124.095] **430.765**  
 40 **(4).**

41 **SECTION 34.** ORS 409.025 is amended to read:

42 409.025. As used in this section and ORS 409.027:

43 (1) “Abuse and neglect report” means a report retained by the Department of Human Services  
 44 in accordance with ORS [124.085,] 419B.030 or 430.757 or a similar report filed in another state.

45 (2) “Care” means treatment, education, training, instruction, placement services, recreational

1 opportunities or case management, supervision of such services for clients of the department or de-  
2 partment administration and support services for clients.

3 (3) "Subject individual" means a person who is:

4 (a) Employed or who seeks to be employed by the department to provide care;

5 (b) A volunteer or who seeks to be a volunteer to provide care on behalf of the department; or

6 (c) Providing care or who seeks to provide care on behalf of the department or another person.

7 **SECTION 35.** ORS 410.040 is amended to read:

8 410.040. As used in ORS 409.010, 410.040 to 410.320[,] **and** 411.159 [*and 441.630*]:

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

12 (a) The desires and goals of the person;

13 (b) The right of the person to live as independently as possible, in the least restrictive envi-  
14 ronment; and

15 (c) The cost of the living arrangement compared to other types of living arrangements, based  
16 on the criteria in paragraphs (a) and (b) of this subsection.

17 (2) "Area agency" means:

18 (a) An established or proposed type A or type B Area Agency on Aging within a planning and  
19 service area designated under Section 305 of the Older Americans Act; or

20 (b) Any public or nonprofit private agency which is designated as a type A or type B Area  
21 Agency on Aging under Section 305 of the Older Americans Act.

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

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

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

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

29 (7) "Person with a disability" means a person with a physical or mental disability:

30 (a) Who is eligible for Supplemental Security Income or for general assistance; and

31 (b) Who meets one of the following criteria:

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

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

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

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

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

45 (10) "Title XIX" means long term care and health services programs in Title XIX of the Social

1 Security Act available to elderly persons and persons with disabilities.

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

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

5 (b) That provides a service to elderly persons.

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

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

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

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

13 **SECTION 36.** ORS 410.080 is amended to read:

14 410.080. (1) The Department of Human Services is the designated single state agency for all  
15 federal programs under ORS 409.010, 410.040 to 410.320[,] **and** 411.159 [*and 441.630*].

16 (2) Except as provided in ORS 410.070 (2)(d) and 410.100, the administration of services to clients  
17 under ORS 409.010, 410.040 to 410.320[,] **and** 411.159 [*and 441.630*] shall be through area agencies,  
18 and shall comply with all applicable federal regulations.

19 **SECTION 37.** ORS 410.160 is amended to read:

20 410.160. Nothing in ORS 409.010, 410.040 to 410.320[,] **and** 411.159 [*and 441.630*] extends estate  
21 claims requirements and procedures related to certain Title XIX services under current Oregon  
22 statutes and federal regulations to other services.

23 **SECTION 38.** ORS 410.230 is amended to read:

24 410.230. Nothing in ORS 409.010, 410.040 to 410.320[,] **and** 411.159 [*and 441.630*] requires an area  
25 agency or local governmental unit to expend local funds for the purpose of maintaining or expanding  
26 services to elderly persons and persons with disabilities.

27 **SECTION 39.** ORS 410.240 is amended to read:

28 410.240. On and after October 1, 1981, a type A area agency shall operate in the same manner  
29 as it operated with local administrative responsibility for Title III of the Older Americans Act and  
30 Oregon Project Independence before October 1, 1981. Nothing in ORS 409.010, 410.040 to 410.320[,]  
31 **and** 411.159 [*and 441.630*] requires a type A area agency to become a type B area agency.

32 **SECTION 40.** ORS 410.300 is amended to read:

33 410.300. (1) A type B area agency may contract with the Department of Human Services for  
34 services of state employees or have such employees transferred to employment by the area agency  
35 by transfer agreement.

36 (2) State employees whose services have been contracted to a type B area agency shall be  
37 supervised for program purposes by the area agency.

38 (3) If state employees are transferred to a type B area agency, the provisions of ORS 236.610 to  
39 236.640 shall apply.

40 (4) Prior to transfer of any state employee to any other public employer under ORS 409.010,  
41 410.040 to 410.320[,] **and** 411.159 [*and 441.630*], at a date to be determined by the Director of Human  
42 Services, each type B area agency shall prepare a plan in coordination with local staff of the de-  
43 partment for implementation of ORS 409.010, 410.040 to 410.320[,] **and** 411.159 [*and 441.630*]. The  
44 plan shall show how statutory responsibilities are to be met and how all staff are to be utilized.

45 **SECTION 41.** ORS 430.216 is amended to read:

1 430.216. (1) The Department of Human Services shall report to each regular session of the Leg-  
 2 islative Assembly:

3 (a) On the safety of individuals receiving developmental disability services including, but not  
 4 limited to:

5 (A) The average turnover of direct care workers in service settings.

6 (B) A summary of the training provided by the department or its contractors to direct care  
 7 workers in service settings.

8 (C) A summary of the core competencies required of direct care workers in service settings by  
 9 the state for licensing or certification.

10 (D) A summary of the average wages of direct care workers in service settings, presented by  
 11 type of services provided.

12 (E) The number of [*complaints*] **reports** of abuse, **neglect, verbal mistreatment and financial**  
 13 **exploitation** filed as required by ORS 430.765 and received by the department under ORS 430.743,  
 14 reported by type of allegation.

15 (F) The number of direct care workers in service settings who were subject to criminal or civil  
 16 action involving an individual with a developmental disability.

17 (G) The number of deaths, serious injuries, sexual assaults and rapes alleged to have occurred  
 18 in service settings.

19 (b) A schedule of all license fees and civil penalties established by the department by rule pur-  
 20 suant to ORS 441.995, 443.455 and 443.790.

21 (2) The department shall provide the report described in subsection (1)(a) of this section to the  
 22 appropriate legislative committees, the Oregon Developmental Disabilities Council and to the agency  
 23 designated to administer the state protection and advocacy system under ORS 192.517.

24 (3) As used in this section, “service settings” means any of the following that provide develop-  
 25 mental disability services:

26 (a) An adult foster home as defined in ORS 443.705;

27 (b) A residential facility as defined in ORS 443.400;

28 (c) A location where home health services, as defined in ORS 443.005, are received by a resident;

29 (d) A location where in-home care services, as defined in ORS 443.305, are received by a resi-  
 30 dent;

31 (e) An institution under the control of the department under ORS 179.321; and

32 (f) A domiciliary care facility as defined in ORS 443.205.

33 **SECTION 42.** ORS 441.117 is amended to read:

34 441.117. (1) The Long Term Care Ombudsman and each designee shall have the right of entry  
 35 into long term care facilities at any time considered necessary and reasonable by the ombudsman  
 36 or the designee for the purpose of:

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

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

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

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

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

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

43 (2) The Long Term Care Ombudsman shall have access to any resident’s records, and to records  
 44 of any public agency necessary to the duties of the office, including records on patient abuse com-  
 45 plaints made pursuant to ORS [441.630 to 441.680 and 441.995] **430.735 to 430.765**. Nothing contained

1 in ORS 192.518 to 192.529 is intended to limit the access of the Long Term Care Ombudsman to  
 2 medical records of residents of long term care facilities. Designees may have access to individual  
 3 resident's records, including medical records as authorized by the resident or resident's legal rep-  
 4 resentative, if needed to investigate a complaint.

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

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

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

12 **SECTION 43.** ORS 441.624 is amended to read:

13 441.624. (1) ORS [124.050, 124.080,] 410.190, **430.735 to 430.765**, 441.020 to 441.057, 441.060,  
 14 441.061, 441.067, 441.073, 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.331 to 441.341,  
 15 441.367, 441.600, 441.610, [441.630, 441.650 to 441.665,] 441.685, 441.690, 441.703 and 441.705 to 441.720  
 16 address the consolidation of the regulatory functions of licensing, certification, inspection of care,  
 17 utilization review, abuse reporting and abuse investigation.

18 (2) It is legislative intent that:

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

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

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

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

27 **SECTION 44.** ORS 441.637 is amended to read:

28 441.637. (1) The Department of Human Services shall implement the provisions of ORS [441.630  
 29 to 441.680 and 441.995] **430.735 to 430.765 related to long term care facilities** and shall adopt such  
 30 rules as are reasonably necessary for the enforcement of **the provisions of ORS [441.630 to 441.680**  
 31 **and 441.995] 430.735 to 430.765 related to long term care facilities.**

32 (2) Prior to proceeding with the procedures for notice prescribed under ORS 183.335, the de-  
 33 partment shall submit any proposed rules to an advisory group consisting of representatives of long  
 34 term care providers, long term care advocates, relevant licensing boards and the department. The  
 35 department shall consider and respond to the comments of the advisory group that pertain to any  
 36 proposed rules before the department adopts the rules.

37 **SECTION 45.** ORS 441.675 is amended to read:

38 441.675. In the case of abuse of a resident in a long term care facility, the privileges extended  
 39 under ORS 40.225 to 40.295 shall not be a ground for excluding evidence regarding the abuse of [a]  
 40 **the** resident, or the cause [thereof] **of the abuse**, in any judicial proceeding resulting from a report  
 41 made pursuant to ORS [441.640] **430.765.**

42 **SECTION 46.** ORS 441.676 is amended to read:

43 441.676. (1) For complaints of **long term care facility** licensing violations other than [abuse]  
 44 **complaints made under ORS 430.765**, the Department of Human Services shall cause an investi-  
 45 gation to be completed within 90 days of the receipt of the complaint.

1 (2) Except in cases where the investigation is part of nursing facility surveyor activity pursuant  
 2 to federal law, an investigator investigating a complaint other than a complaint of abuse shall:

3 (a) Make an unannounced visit to the **long term care** facility, while complying with ORS  
 4 441.690;

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

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

10 (d) Write an investigation report that includes:

11 (A) The investigator's personal observations;

12 (B) A review of documents and records;

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

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

16 **(3) If the department determines during an investigation under this section that abuse**  
 17 **may have occurred, the department shall follow the procedures described in ORS 430.735 to**  
 18 **430.765.**

19 **SECTION 47.** ORS 441.685 is amended to read:

20 441.685. (1) Upon receipt of a report under ORS [441.645 to 441.680] **430.735 to 430.765 related**  
 21 **to a long term care facility**, or upon receipt of a complaint **other than an abuse complaint** by  
 22 a resident, [or] legal guardian of a resident[,] or [other] public or private official, as defined in ORS  
 23 [441.630] **430.735**, by the Department of Human Services, the Director of Human Services may des-  
 24 ignate monitors who shall observe the activities of the facility and report to the director. The  
 25 monitors may be designated without prior notice to the operator or owner of the facility. The mon-  
 26 itors shall observe the operations of the facility for a period of not to exceed 10 days, assist the  
 27 facility by advising it on how to comply with state requirements and shall submit a written report  
 28 periodically to the director on the operation and condition of the facility.

29 (2) The monitors shall have access to the facilities to the extent necessary to carry out their  
 30 duties. The monitors shall also have access to all records pertaining to the operation of the facility.

31 (3) Upon completion of their investigations, the monitors shall file a final report with the di-  
 32 rector and may:

33 (a) Find that problems in the facility have been resolved and recommend that further action by  
 34 the department is unnecessary;

35 (b) Find that the problems in the facility are continuing but the facility owner, operator or other  
 36 controlling person can resolve them within a period of not more than three months, and that during  
 37 the three-month period the health and welfare of the residents of the facility are not jeopardized  
 38 thereby; or

39 (c) Find that the problems of the facility have not been resolved and the department should take  
 40 steps to obtain compliance with resident care standards and continue monitoring for an additional  
 41 period.

42 (4) Associations representing long term care facilities may initiate a peer review process for any  
 43 facility that is a member of the association and that is the subject of any complaint filed against it  
 44 under ORS [441.630 to 441.685] **430.735 to 430.765**, 678.037 and 678.155 or any other provision of law.  
 45 The report of the peer review process shall be submitted to the department. The peer review de-

1 scribed in this subsection is in addition to and not in lieu of any other investigation, observation  
 2 or report of the monitors otherwise required or authorized by ORS [441.630 to 441.685] **430.735 to**  
 3 **430.765**, 678.037 and 678.155. The association and persons conducting the peer review process acting  
 4 in good faith shall not be subject to an action for civil damages as a result thereof.

5 (5) As used in this section:

6 [(a) "Department" means the Department of Human Services.]

7 [(b) "Director" means the Director of Human Services.]

8 [(c)] (a) "Facility" means a long term care facility as defined in ORS 442.015.

9 [(d)] (b) "Monitor" means an agent of the director designated by the director to observe the  
 10 operation of a facility.

11 **SECTION 48.** ORS 441.703 is amended to read:

12 441.703. (1) Except as provided in subsection (2) of this section, the Department of Human Ser-  
 13 vices shall maintain a listing of all long term care facilities, as defined in ORS 442.015, by name and  
 14 address and for each indicating:

15 (a) The complaint file number.

16 (b) The category of the complaint, whether staffing, food, patient care or other.

17 (c) A brief description of the complaint.

18 (d) The department's finding.

19 (e) Action taken by the department.

20 (f) Fines assessed, if any.

21 (g) Fines paid, if any.

22 (2) The department shall maintain a separate listing of all complaints it considers unsupported  
 23 by findings indicating the information required by subsection (1)(a) to (d) of this section.

24 (3) The information described in subsections (1) and (2) of this section shall be noted in summary  
 25 form on annual cover sheets for the file on a particular facility. The cover sheets shall not contain  
 26 any of the information made confidential under ORS [441.671] **430.763**. Copies of the cover sheets  
 27 shall be made available to the public at cost on request. Upon such request, the department shall  
 28 provide only copies of the cover sheets described in subsection (1) of this section unless the infor-  
 29 mation described in subsection (2) of this section is specifically requested.

30 (4) The listing maintained pursuant to subsection (1) of this section shall contain the following  
 31 notice:

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32  
 33  
 34 NOTICE: This cover sheet does not contain information on complaints that the Department of  
 35 Human Services considers unsupported by findings or on complaints still under investigation by the  
 36 department. The department will make information regarding such complaints available upon re-  
 37 quest.

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38  
 39  
 40 (5) The department shall provide a written explanation summarizing the complaint system with  
 41 each copy of a cover sheet provided under subsection (3) of this section.

42 **SECTION 49.** ORS 443.004, as amended by section 12, chapter 93, Oregon Laws 2010, is  
 43 amended to read:

44 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete  
 45 a criminal records check under ORS 181.534 on:

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

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

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

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

11 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,  
12 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,  
13 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,  
14 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017,  
15 167.054 or 167.057;

16 (b) Of a crime listed in ORS 181.594;

17 (c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
18 stance;

19 (d) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to  
20 (c) of this subsection; or

21 (e) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a  
22 crime described in paragraphs (a) to (d) of this subsection.

23 (3) Subsection (2) of this section does not apply to:

24 (a) A peer support specialist; or

25 (b) An employee of a residential treatment facility or a residential treatment home that is li-  
26 censed under ORS 443.415 to provide for individuals with alcohol or drug dependence.

27 (4) If the department or authority has a record of substantiated abuse, **neglect, verbal mis-**  
28 **treatment or financial exploitation** committed by an employee or potential employee of a home  
29 health agency, in-home care agency, adult foster home or residential facility, regardless of whether  
30 criminal charges were filed, the department or authority shall notify, in writing, the employer and  
31 the employee or potential employee.

32 (5) As used in this section:

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

34 (b) **"Financial exploitation" has the meaning given that term in ORS 430.735.**

35 [(b)] (c) "Home care worker" has the meaning given that term in ORS 410.600.

36 [(c)] (d) "Home health agency" has the meaning given that term in ORS 443.005.

37 [(d)] (e) "In-home care agency" has the meaning given that term in ORS 443.305.

38 (f) **"Neglect" has the meaning given that term in ORS 430.735.**

39 [(e)] (g) "Peer support specialist" means a person who:

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

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

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

43 (D) Is currently receiving or has formerly received mental health services, or is in recovery from  
44 a substance use disorder and meets the abstinence requirements for staff providing services in al-  
45cohol or other drug treatment programs.



1 [(f)] (h) “Residential facility” has the meaning given that term in ORS 443.400.

2 [(g)] (i) “Residential treatment facility” has the meaning given that term in ORS 443.400.

3 [(h)] (j) “Residential treatment home” has the meaning given that term in ORS 443.400.

4 (k) **“Verbal mistreatment” has the meaning given that term in ORS 430.735.**

5 **SECTION 50.** ORS 443.004, as amended by sections 12 and 13, chapter 93, Oregon Laws 2010,  
6 is amended to read:

7 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete  
8 a criminal records check under ORS 181.534 on:

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

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

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

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

19 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,  
20 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,  
21 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,  
22 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017,  
23 167.054 or 167.057;

24 (b) Of a crime listed in ORS 181.594;

25 (c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
26 stance;

27 (d) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to  
28 (c) of this subsection; or

29 (e) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a  
30 crime described in paragraphs (a) to (d) of this subsection.

31 (3) Subsection (2) of this section does not apply to a peer support specialist.

32 (4) If the department or authority has a record of substantiated abuse, **neglect, verbal mis-**  
33 **treatment or financial exploitation** committed by an employee or potential employee of a home  
34 health agency, in-home care agency, adult foster home or residential facility, regardless of whether  
35 criminal charges were filed, the department or authority shall notify, in writing, the employer and  
36 the employee or potential employee.

37 (5) As used in this section:

38 (a) “Adult foster home” has the meaning given that term in ORS 443.705.

39 (b) **“Financial exploitation” has the meaning given that term in ORS 430.735.**

40 [(b)] (c) “Home care worker” has the meaning given that term in ORS 410.600.

41 [(c)] (d) “Home health agency” has the meaning given that term in ORS 443.005.

42 [(d)] (e) “In-home care agency” has the meaning given that term in ORS 443.305.

43 (f) **“Neglect” has the meaning given that term in ORS 430.735.**

44 [(e)] (g) “Peer support specialist” means a person who:

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

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

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

3 (D) Is currently receiving or has formerly received mental health services, or is in recovery from  
4 a substance use disorder and meets the abstinence requirements for staff providing services in al-  
5cohol or other drug treatment programs.

6 [(f)] (h) "Residential facility" has the meaning given that term in ORS 443.400.

7 (i) "Verbal mistreatment" has the meaning given that term in ORS 430.735.

8 **SECTION 51.** ORS 675.580 is amended to read:

9 675.580. (1) A regulated social worker or any employee of the regulated social worker may not  
10 disclose any communication given by a client in the course of noninvestigatory professional activity  
11 when the communication was given to enable the regulated social worker to aid the client, except  
12 when:

13 (a) The client or a person legally responsible for the client's affairs gives consent to the dis-  
14 closure;

15 (b) The client initiates legal action or makes a complaint against the regulated social worker  
16 to the State Board of Licensed Social Workers;

17 (c) The board requests the information as part of an investigation or proceeding;

18 (d) The communication reveals a clear intent to commit a crime that reasonably is expected to  
19 result in physical injury to a person;

20 (e) The communication reveals that a minor was the victim of a crime, abuse or neglect;

21 (f) Disclosure of the communication is necessary to obtain further professional assistance for the  
22 client; or

23 (g) Disclosure of the communication is otherwise required by ORS [124.060,] 419B.010 or 430.765.

24 (2) Nothing in this section is intended to prevent a regulated social worker who is a public  
25 employee from disclosing communications from a client when the disclosure is made in the per-  
26 formance of the regulated social worker's duty as a public employee and the public employer has  
27 determined that the disclosure is necessary in the performance of the duty of the regulated social  
28 worker as a public employee.

29  
30 **CAPTIONS**

31  
32 **SECTION 52.** The unit captions used in this 2011 Act are provided only for the conven-  
33 ience of the reader and do not become part of the statutory law of this state or express any  
34 legislative intent in the enactment of this 2011 Act.

35  
36 **REPEALS**

37  
38 **SECTION 53.** ORS 124.050, 124.055, 124.060, 124.065, 124.070, 124.075, 124.077, 124.080,  
39 124.085, 124.090, 124.095, 441.630, 441.635, 441.640, 441.645, 441.655, 441.660, 441.665, 441.671,  
40 441.679 and 441.680 and section 41, chapter 837, Oregon Laws 2009, are repealed.