

Senate Bill 851

Sponsored by COMMITTEE ON HEALTH CARE, HUMAN SERVICES AND RURAL HEALTH POLICY (at the request of United Seniors of Oregon, Oregon State Council for Retired Citizens, Oregon Alliance for Retired Americans, Parkinson's Resources of Oregon)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Requires Department of Human Services to adopt rules prescribing rights of residents in residential care facilities, residential training facilities and residential training homes. Expands authority of department in denying, revoking or suspending license for violation of resident's rights to include long term care facility and residential care facility. Expands authority of department to impose civil penalty for violation of resident's rights to include residential care facility, residential training facility and residential training home.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to residential care; amending ORS 441.025, 441.030, 441.710 and 443.450; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 441.025 is amended to read:

6 441.025. (1) Upon receipt of a license fee and an application to operate a health care facility
7 other than a long term care facility, the Oregon Health Authority shall review the application and
8 conduct an on-site inspection of the health care facility. The authority shall issue a license if it finds
9 that the applicant and health care facility comply with ORS 441.015 to 441.063 and the rules of the
10 authority provided that the authority does not receive within the time specified a certificate of
11 noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS
12 479.215.

13 (2) Upon receipt of a license fee and an application to operate a long term care facility, the
14 Department of Human Services shall review the application and conduct an on-site inspection of the
15 long term care facility. The department shall issue a license if the department finds that the appli-
16 cant and long term care facility comply with *[ORS 441.015 to 441.063 and 441.087]* **this chapter** and
17 the rules of the department provided that it does not receive within the time specified a certificate
18 of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS
19 479.215.

20 (3) Each license, unless sooner suspended or revoked, shall be renewable annually for the cal-
21 endar year upon payment of the fee, provided that a certificate of noncompliance has not been is-
22 sued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

23 (4) Each license shall be issued only for the premises and persons or governmental units named
24 in the application and shall not be transferable or assignable.

25 (5) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by
26 rule of the authority or the department.

27 (6) No license shall be issued or renewed for any health care facility or health maintenance

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 organization that is required to obtain a certificate of need under ORS 442.315 until a certificate
2 of need has been granted. An ambulatory surgical center is not subject to the certificate of need
3 requirements in ORS 442.315.

4 (7) No license shall be issued or renewed for any skilled nursing facility or intermediate care
5 facility, unless the applicant has included in the application the name and such other information
6 as may be necessary to establish the identity and financial interests of any person who has incidents
7 of ownership in the facility representing an interest of 10 percent or more thereof. If the person
8 having such interest is a corporation, the name of any stockholder holding stock representing an
9 interest in the facility of 10 percent or more shall also be included in the application. If the person
10 having such interest is any other entity, the name of any member thereof having incidents of own-
11 ership representing an interest of 10 percent or more in the facility shall also be included in the
12 application.

13 (8) A license may be denied to any applicant for a license or renewal thereof or any stockholder
14 of any such applicant who has incidents of ownership in the health care facility representing an
15 interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for
16 the facility, if during the five years prior to the application the applicant or any stockholder of the
17 applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has
18 divested that interest after receiving from the authority or the department written notice that the
19 authority or the department intends to suspend or revoke the license or to decertify the facility from
20 eligibility to receive payments for services provided under this section.

21 (9) The Department of Human Services may not issue or renew a license for a long term care
22 facility, unless the applicant has included in the application the identity of any person who has in-
23 cident of ownership in the long term care facility who also has a financial interest in any pharmacy,
24 as defined in ORS 689.005.

25 (10) The authority shall adopt rules for each type of health care facility, except long term care
26 facilities, to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

27 (a) Establishing classifications and descriptions for the different types of health care facilities
28 that are licensed under ORS 441.015 to 441.087; and

29 (b) Standards for patient care and safety, adequate professional staff organizations, training of
30 staff for whom no other state regulation exists, suitable delineation of professional privileges and
31 adequate staff analyses of clinical records.

32 (11) The department shall adopt rules for each type of long term care facility to carry out the
33 [purposes of ORS 441.015 to 441.087] **provisions of this chapter** including, but not limited to:

34 (a) Establishing classifications and descriptions for the different types of long term care facili-
35 ties that are licensed under ORS 441.015 to 441.087; and

36 (b) Standards for patient care and safety, adequate professional staff organizations, training of
37 staff for whom no other state regulation exists, suitable delineation of professional privileges and
38 adequate staff analyses of clinical records.

39 (12) The authority or department may not adopt a rule requiring a health care facility to serve
40 a specific food as long as the necessary nutritional food elements are present in the food that is
41 served.

42 (13) A health care facility licensed by the authority or department may not:

43 (a) Offer or provide services beyond the scope of the license classification assigned by the au-
44 thority or department; or

45 (b) Assume a descriptive title or represent itself under a descriptive title other than the classi-

1 fication assigned by the authority or department.

2 (14) A health care facility must reapply for licensure to change the classification assigned or the
3 type of license issued by the authority or department.

4 **SECTION 2.** ORS 441.030 is amended to read:

5 441.030. (1) The Oregon Health Authority or the Department of Human Services may assess a
6 civil penalty and, pursuant to ORS 479.215, shall deny, suspend or revoke a license, in any case
7 where the State Fire Marshal, or the representative of the State Fire Marshal, certifies that there
8 is a failure to comply with all applicable laws, lawful ordinances and rules relating to safety from
9 fire.

10 (2) The authority may:

11 (a) Assess a civil penalty or deny, suspend or revoke a license of a health care facility other
12 than a long term care facility in any case where it finds that there has been a substantial failure
13 to comply with ORS 441.015 to 441.063 or the rules or minimum standards adopted under ORS
14 441.015 to 441.063.

15 (b) Assess a civil penalty or suspend or revoke a license issued under ORS 441.025 for failure
16 to comply with an authority order arising from a health care facility's substantial lack of compliance
17 with the provisions of ORS 441.015 to 441.063, 441.162 or 441.166 or the rules adopted under ORS
18 441.015 to 441.063, 441.162 or 441.166.

19 (c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty im-
20 posed under ORS 441.170.

21 (3) The department may:

22 (a) Assess a civil penalty or deny, suspend or revoke a long term care facility's license in any
23 case where it finds that there has been a substantial failure to comply with ORS 441.015 to
24 441.063, [or] 441.087, **441.357 to 441.367, 441.600 to 441.625 or 441.630 to 441.680** or the rules or
25 minimum standards adopted under ORS 441.015 to 441.063, [or] 441.087, **441.357 to 441.367, 441.600**
26 **to 441.625 or 441.630 to 441.680.**

27 (b) Assess a civil penalty or suspend or revoke a long term care facility's license issued under
28 ORS 441.025 for failure to comply with a department order arising from a long term care facility's
29 substantial lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084, [or] 441.087,
30 **441.357 to 441.367, 441.600 to 441.625 or 441.630 to 441.680** or the rules adopted under ORS 441.015
31 to 441.063, 441.084, [or] 441.087, **441.357 to 441.367, 441.600 to 441.625 or 441.630 to 441.680.**

32 (c) Suspend or revoke a license issued under ORS 441.025 for failure to pay a civil penalty im-
33 posed under ORS 441.710.

34 (d) Order a long term care facility licensed under ORS 441.025 to restrict the admission of pa-
35 tients when the department finds an immediate threat to patient health and safety arising from
36 failure of the long term care facility to be in compliance with ORS 441.015 to 441.063, 441.084, [or]
37 441.087, **441.357 to 441.367, 441.600 to 441.625 or 441.630 to 441.680** and the rules adopted under
38 ORS 441.015 to 441.063, 441.084, [or] 441.087, **441.357 to 441.367, 441.600 to 441.625 or 441.630 to**
39 **441.680.**

40 (4) Any long term care facility that has been ordered to restrict the admission of patients pur-
41 suant to subsection (3)(d) of this section shall post a notice of the restriction, provided by the de-
42 partment, on all doors providing ingress to and egress from the facility, for the duration of the
43 restriction.

44 **SECTION 3.** ORS 441.710 is amended to read:

45 441.710. (1) In addition to any other liability or penalty provided by law, the Director of Human

1 Services may impose a civil penalty on a person for any of the following:

2 (a) Violation of any of the terms or conditions of a license issued under ORS 441.015 to 441.087,
 3 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a long term
 4 care facility, as defined in ORS 442.015.

5 (b) Violation of any rule or general order of the Department of Human Services that pertains
 6 to a long term care facility.

7 (c) Violation of any final order of the director that pertains specifically to the long term care
 8 facility owned or operated by the person incurring the penalty.

9 (d) Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

10 (e) Violation of ORS 443.880 or 443.881 if the facility is a residential care facility, residential
 11 training facility or residential training home.

12 **(f) Violation of the rights established by the department by rule for residents of resi-**
 13 **dential care facilities, residential training facilities and residential training homes under ORS**
 14 **443.450.**

15 (2) In addition to any other liability or penalty provided by law, the Director of the Oregon
 16 Health Authority may impose a civil penalty on a person for a violation of ORS [~~441.880 or~~
 17 ~~441.881~~] **443.880 or 443.881** if the facility is a residential treatment facility or a residential treatment
 18 home.

19 (3) The Director of Human Services may not impose a penalty under subsection (1) of this sec-
 20 tion for violations other than those involving direct patient care or feeding, an adequate staff to
 21 patient ratio, sanitation involving direct patient care or a violation of ORS 441.605 or 443.880 or
 22 443.881 or of the rules required to be adopted by ORS 441.610 unless a violation is found on two
 23 consecutive surveys of a long term care facility. The Director of Human Services in every case shall
 24 prescribe a reasonable time for elimination of a violation:

25 (a) Not to exceed 30 days after first notice of a violation; or

26 (b) In cases where the violation requires more than 30 days to correct, such time as is specified
 27 in a plan of correction found acceptable by the director.

28 (4) The Director of the Oregon Health Authority may not impose a penalty under subsection (2)
 29 of this section for violations other than those involving direct patient care or feeding, an adequate
 30 staff to patient ratio, sanitation involving direct patient care or a violation of ORS 443.880 or
 31 443.881. The Director of the Oregon Health Authority in every case shall prescribe a reasonable
 32 time for elimination of a violation:

33 (a) Not to exceed 30 days after first notice of a violation; or

34 (b) In cases where the violation requires more than 30 days to correct, such time as is specified
 35 in a plan of correction found acceptable by the director.

36 **SECTION 4.** ORS 443.450 is amended to read:

37 443.450. (1) For a residential care facility, residential training facility or residential training
 38 home, the Director of Human Services shall adopt rules governing:

39 (a) The physical properties of the facility or home;

40 (b) Storage, preparation and serving of food;

41 (c) Care or training to be provided;

42 (d) The number, experience and training of the staff;

43 **(e) The rights of residents, consistent with the rights afforded long term care facility**
 44 **residents under ORS 441.605; and**

45 [~~e~~] **(f)** Any other factors affecting the care or training provided.

1 (2) For a residential treatment facility or residential treatment home, the Director of the Oregon
2 Health Authority shall adopt rules governing:

- 3 (a) The physical properties of the facility or home;
- 4 (b) Storage, preparation and serving of food;
- 5 (c) Treatment to be provided;
- 6 (d) The number, experience and training of the staff; and
- 7 (e) Any other factors affecting the treatment provided.

8 (3) Distinct rules shall be adopted for homes of five or fewer residents, for facilities of six or
9 more but fewer than 16 residents, and for facilities for 16 or more residents. The rules shall differ-
10 entiate among categories of residents.

11 (4) For purposes of this section, “categories” refers to different populations of residents, differ-
12 entiated by, but not limited to, age and need, as defined by the Department of Human Services or
13 the [authority] **Oregon Health Authority** by rule.

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

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