

House Bill 4159

Sponsored by Representative BREWER; Representatives PARRISH, J SMITH (Presession filed.)

SUMMARY

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

Modifies definition of "treatment" for purpose of describing residential facilities that are subject to licensing requirements. Excludes facility from licensing requirements if facility provides access to substantially less than 24-hour on-site care. Directs Oregon Health Authority and Department of Human Services to identify which agency is responsible with respect to residential facility operating without license. Requires certificate of need for residential treatment facility to be based on community need within 10-mile radius.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to residential facilities; amending ORS 443.400, 443.405, 443.410, 443.420 and 443.455; and
3 declaring an emergency.

4 Whereas the Legislative Assembly finds that residential facilities provide needed care and ser-
5 vices to thousands of Oregonians who have disabilities and who might otherwise be institutionalized;
6 and

7 Whereas the Legislative Assembly finds that the protection of the health, safety and well-being
8 of the residents of residential facilities is an important function of licensing agencies; and

9 Whereas the Legislative Assembly finds that consistent interpretation, application and enforce-
10 ment of regulatory standards is necessary and desirable for the protection of residential facility
11 residents; and

12 Whereas it is the Legislative Assembly's intent that licensing agencies provide training and
13 guidelines for employees assigned to licensing and enforcement to encourage consistency; and

14 Whereas it is the intent of the Legislative Assembly that licensing agencies take vigorous action
15 to ensure that inspections and investigations are carried out as required by law; now, therefore,

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

17 **SECTION 1.** ORS 443.400 is amended to read:

18 443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise:

19 (1) "Director" means the director of the licensing agency for the residential facility.

20 (2) "Licensing agency" means:

21 (a) The Department of Human Services, if the residential facility that is licensed, or that the
22 Director of Human Services determines should be licensed, is a residential care facility, residential
23 training facility or residential training home; or

24 (b) The Oregon Health Authority, if the residential facility that is licensed, or that the Director
25 of the Oregon Health Authority determines should be licensed, is a residential treatment facility or
26 residential treatment home.

27 (3) "Resident" means any individual residing in a facility who receives residential care, treat-
28 ment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be a

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 resident if the individual is related by blood or marriage within the fourth degree as determined by
 2 civil law to the person licensed to operate or maintain the facility.

3 (4) "Residential care" means services such as supervision; protection; assistance while bathing,
 4 dressing, grooming or eating; management of money; transportation; recreation; and the providing
 5 of room and board.

6 (5) "Residential care facility" means a facility that provides, for six or more socially dependent
 7 individuals or individuals with physical disabilities, residential care in one or more buildings on
 8 contiguous properties.

9 (6) "Residential facility" means a residential care facility, residential training facility, residen-
 10 tial treatment facility, residential training home or residential treatment home.

11 (7) "Residential training facility" means a facility that provides, for six or more individuals with
 12 mental retardation or other developmental disabilities, residential care and training in one or more
 13 buildings on contiguous properties.

14 (8) "Residential training home" means a facility that provides, for five or fewer individuals with
 15 mental retardation or other developmental disabilities, residential care and training in one or more
 16 buildings on contiguous properties, when so certified and funded by the Department of Human Ser-
 17 vices.

18 (9) "Residential treatment facility" means a facility that provides, for six or more individuals
 19 with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care
 20 and treatment in one or more buildings on contiguous properties.

21 (10) "Residential treatment home" means a facility that provides for five or fewer individuals
 22 with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care
 23 and treatment in one or more buildings on contiguous properties.

24 (11) "Training" means the systematic, planned maintenance, development or enhancement of
 25 self-care skills, social skills or independent living skills, or the planned sequence of systematic
 26 interactions, activities or structured learning situations designed to meet each resident's specified
 27 needs in the areas of physical, social, emotional and intellectual growth.

28 (12) "Treatment" means [*a planned,*] **an individualized program of medication management,**
 29 **or a planned individualized program of** medical, psychological or rehabilitative procedures, expe-
 30 riences and activities, designed to relieve or minimize mental, emotional, physical or other symptoms
 31 or social, educational or vocational disabilities resulting from or related to the mental or emotional
 32 disturbance, physical disability or alcohol or drug problem.

33 **SECTION 2.** ORS 443.405 is amended to read:

34 443.405. For purposes of ORS 443.400 to 443.455 and 443.991, "residential facility" does not in-
 35 clude:

36 (1) A residential school;

37 (2) A state or local correctional facility, other than a local facility for persons enrolled in work
 38 release programs maintained under ORS 144.460;

39 (3) A youth correction facility as defined in ORS 420.005;

40 (4) A youth care center operated by a county juvenile department under administrative control
 41 of a juvenile court pursuant to ORS 420.855 to 420.885;

42 (5) A juvenile detention facility as defined in ORS 419A.004;

43 (6) A nursing home;

44 (7) A hospital;

45 (8) A place primarily engaged in recreational activities;

1 (9) A foster home; or

2 (10) A place [*providing*] **where there is access to on-site care [*and*] or treatment on sub-**
 3 **stantially** less than a 24-hour basis.

4 **SECTION 3.** ORS 443.410 is amended to read:

5 443.410. (1) A license issued by the Department of Human Services is required in order to op-
 6 erate or maintain a residential care facility, residential training facility or residential training home.

7 (2) A license issued by the Oregon Health Authority is required in order to operate or maintain
 8 a residential treatment facility or residential treatment home.

9 (3) A facility may not be subject to licensing by both the department and the authority under
 10 this section. If a facility could be licensed under either subsection (1) or (2) of this section, the Di-
 11 rector of Human Services and the Director of the Oregon Health Authority shall determine the
 12 category of licensure that applies to the facility.

13 **(4) The authority, in conjunction with the department, shall determine which agency has**
 14 **jurisdiction regarding a residential facility suspected of operating without a license.**

15 **SECTION 4.** ORS 443.420 is amended to read:

16 443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the di-
 17 rector of the licensing agency, be a person:

18 (a) Who demonstrates an understanding and acceptance of the rules governing residential facil-
 19 ities;

20 (b) Mentally and physically capable of caring for such residents; and

21 (c) Who employs or utilizes only individuals whose presence does not jeopardize the health,
 22 safety or welfare of residents.

23 (2) A residential facility shall not be operated or maintained in combination with a nursing home
 24 or hospital unless licensed, maintained and operated as a separate and distinct part.

25 (3) All physical residential facilities used for residents shall meet applicable requirements of the
 26 State Fire Marshal.

27 (4) Prior to licensure, a residential facility must be in substantial compliance with applicable
 28 state and local laws, rules, codes, ordinances and permit requirements.

29 (5) Prior to licensure, a residential facility that proposes to house persons under the age of 21
 30 years shall submit written proof to the licensing agency demonstrating that the facility will:

31 (a) Comply with ORS 336.575; and

32 (b) Ensure that the children who reside at the residential facility receive appropriate educa-
 33 tional services that are:

34 (A) Comprehensive and age-appropriate;

35 (B) In compliance with requirements of state and federal law; and

36 (C) If applicable, in compliance with the individual education program of the child.

37 (6) Prior to an initial licensure of a residential care facility, the licensing agency shall consider:

38 (a) The license applicant's history of regulatory compliance and operational experience;

39 (b) The need in the local community for the services offered by the license applicant, as dem-
 40 onstrated by a market study produced by the license applicant;

41 (c) The willingness of the license applicant to serve underserved populations; and

42 (d) The willingness of the license applicant to contract with the licensing agency to provide
 43 services through the state medical assistance program.

44 **(7) Prior to an initial licensure of a residential treatment facility, the licensing agency**
 45 **shall consider:**

- 1 (a) The license applicant's history of regulatory compliance and operational experience;
- 2 (b) The need within a 10-mile radius of the proposed location for the services offered by
- 3 the license applicant, as demonstrated by a market study produced by the license applicant;
- 4 (c) The willingness of the license applicant to serve underserved populations; and
- 5 (d) The willingness of the license applicant to contract with the licensing agency to pro-
- 6 vide services through the state medical assistance program.

7 **SECTION 5.** ORS 443.455 is amended to read:

8 443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS
9 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

10 (2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential
11 care facilities, residential training facilities and residential training homes that are not in compli-
12 ance with ORS 443.400 to 443.455, **including operating without a license.**

13 (3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties
14 for residential treatment facilities and residential treatment homes that are not in compliance with
15 ORS 443.400 to 443.455, **including operating without a license.**

16 (4) If the department or authority investigates and makes a finding of abuse arising from delib-
17 erate or other than accidental action or inaction that is likely to cause a negative outcome by a
18 person with a duty of care toward a resident of a residential facility and if the abuse resulted in the
19 death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose
20 a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed
21 \$15,000 in any 90-day period. As used in this subsection:

22 (a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

23 (b) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365
24 and 163.375.

25 (c) "Serious injury" means physical injury that creates a substantial risk of death or that causes
26 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
27 ment of the function of any bodily organ.

28 (d) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited
29 to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit photographing and
30 sexual harassment.

31 **SECTION 6. This 2012 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
33 **on its passage.**

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