

House Bill 3132

Sponsored by Representative GORSEK; Representatives CLEM, DEMBROW, DOHERTY, GELSER, GOMBERG, GREENLICK, KENY-GUYER, MATTHEWS, REARDON, WHISNANT, WILLIAMSON

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 licensing agency to adopt rules to ensure that caregivers in licensed residential facilities and adult foster homes have practical knowledge and skills necessary to maintain health, safety and welfare of residents. Requires providers to annually report to licensing agency on compliance with training requirements.

A BILL FOR AN ACT

1
2 Relating to the training of residential care staff; amending ORS 443.420, 443.450, 443.730 and 443.738.

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

4 **SECTION 1.** ORS 443.420 is amended to read:

5 443.420. (1) A person applying for a license under ORS 443.415 **or for a renewal of a license**
6 **under ORS 443.425** must, in the judgment of the director of the licensing agency, be a person:

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

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

10 (c) Who employs or utilizes only individuals whose presence does not jeopardize the health,
11 safety or welfare of residents **and who have met the training requirements adopted in accord-**
12 **ance with ORS 443.450.**

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

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

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

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

21 (a) Comply with ORS 336.575; and

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

24 (A) Comprehensive and age-appropriate;

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

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

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

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

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

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

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

4 **SECTION 2.** ORS 443.450 is amended to read:

5 443.450. (1) For a residential care facility, residential training facility or residential training
6 home, the Director of Human Services shall adopt rules governing:

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

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

9 (c) Care or training to be provided;

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

11 (e) Any other factors affecting the care or training provided.

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

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

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

16 (c) Treatment to be provided;

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

18 (e) Any other factors affecting the treatment provided.

19 **(3)(a) The training requirements adopted under this section must ensure that each per-**
20 **son with patient care responsibilities has the practical knowledge and skills necessary to**
21 **maintain the health, safety and welfare of the residents.**

22 **(b) A residential facility shall annually report to the licensing agency on the facility's**
23 **compliance with the training requirements.**

24 [(3)] (4) Distinct rules shall be adopted for homes of five or fewer residents, for facilities of six
25 or more but fewer than 16 residents, and for facilities for 16 or more residents. The rules shall dif-
26 ferentiate among categories of residents.

27 [(4)] (5) For purposes of this section, "categories" refers to different populations of residents,
28 differentiated by, but not limited to, age and need, as defined by the Department of Human Services
29 or the Oregon Health Authority by rule.

30 **SECTION 3.** ORS 443.730 is amended to read:

31 443.730. (1) The provider shall furnish the names, addresses and telephone numbers of the sub-
32 stitute caregivers employed or used by the provider to the licensing agency upon the request of the
33 agency.

34 (2) The licensing agency shall require the provider to furnish information describing the planned
35 operation of the adult foster home, including the use of substitute caregivers and other staff, as part
36 of the license application.

37 (3) The provider shall not allow a substitute caregiver or other caregiver to provide care to a
38 resident unless the following standards are met and documented:

39 (a) The licensing agency has completed a criminal records check in accordance with ORS
40 443.004. The licensing agency shall adopt rules to provide for the expedited completion of a criminal
41 records check for the State of Oregon when requested by a licensed provider because of an imme-
42 diate staffing need.

43 (b) The substitute caregiver has successfully completed the training required by the licensing
44 agency.

45 (c) The caregiver is able to understand and communicate in oral and written English.

1 (d) The provider has oriented the caregiver to the residents in the adult foster home, their care
2 needs and the physical characteristics of the home.

3 (e) The provider has trained the caregiver to meet the routine and emergency needs of the res-
4 idents.

5 (4)(a) The licensing agency shall establish educational **and training** requirements for substitute
6 caregivers and other caregivers [*designed to impart the*] **to ensure that the substitute caregivers**
7 **and other caregivers have the** practical knowledge and skills necessary to maintain the health,
8 safety and welfare of residents.

9 (b) The training shall include a test established by the licensing agency to be completed by the
10 caregiver. The test shall be completed by the caregiver without the help of any other person.

11 (c) **A provider shall document and report to the licensing agency annually the provider's**
12 **compliance with the educational and training requirements for caregivers.**

13 **SECTION 4.** ORS 443.738 is amended to read:

14 443.738. (1) Except as provided in subsection (3) of this section, all providers, resident managers
15 and substitute caregivers for adult foster homes shall satisfactorily meet all educational **and**
16 **training** requirements established by the licensing agency. After consultation with representatives
17 of providers, educators, residents' advocates and the Long Term Care Ombudsman, the licensing
18 agency shall adopt by rule standards governing the educational **and training** requirements. The
19 rules shall require that a person may not provide care to any resident [*prior to acquiring education*
20 *or supervised training designed to impart the basic*] **unless the person has the practical** knowledge
21 and skills necessary to maintain the health, safety and welfare of the resident. Each provider shall
22 document **and report to the licensing agency annually the provider's** compliance with the edu-
23 cational **and training** requirements for persons subject to the requirements.

24 (2) The rules required under subsection (1) of this section shall include but need not be limited
25 to the following:

26 (a) A requirement that, before being licensed, a provider successfully completes training that
27 satisfies a defined curriculum, including demonstrations and practice in physical caregiving,
28 screening for care and service needs, appropriate behavior toward residents with physical, cognitive
29 and mental disabilities and issues related to architectural accessibility;

30 (b) A requirement that a provider pass a test before being licensed or becoming a resident
31 manager. The test shall evaluate the ability to understand and respond appropriately to emergency
32 situations, changes in medical conditions, physicians' orders and professional instructions, nutri-
33 tional needs, residents' preferences and conflicts; and

34 (c) A requirement that, after being licensed, a provider or resident manager successfully com-
35 pletes continuing education as described in ORS 443.742.

36 (3) After consultation with representatives of providers, educators, residents' advocates and the
37 Long Term Care Ombudsman, the licensing agency may adopt by rule exceptions to the training
38 requirements of subsections (1) and (2) of this section for persons who are appropriately licensed
39 medical care professionals in Oregon or who possess sufficient education, training or experience to
40 warrant an exception. The licensing agency may not make any exceptions to the testing require-
41 ments.

42 (4) The licensing agency may permit a person who has not completed the training or passed the
43 test required in subsection (2)(a) and (b) of this section to act as a resident manager until the
44 training and testing are completed or for 60 days, whichever is shorter, if the licensing agency de-
45 termines that an unexpected and urgent staffing need exists. The licensed provider must notify the

1 licensing agency of the situation and demonstrate that the provider is unable to find a qualified
2 resident manager, that the person has met the requirements for a substitute caregiver for the adult
3 foster home and that the provider will provide adequate supervision.

4 (5) Providers shall serve three nutritionally balanced meals to residents each day. A menu for
5 the meals for the coming week shall be prepared and posted weekly.

6 (6) Providers shall make available at least six hours of activities each week which are of inter-
7 est to the residents, not including television or movies. The licensing agency shall make information
8 about resources for activities available to providers upon request. Providers or substitute caregivers
9 shall be directly involved with residents on a daily basis.

10 (7) Providers shall give at least 30 days' written notice to the residents, and to the legal repre-
11 sentative, guardian or conservator of any resident, before selling, leasing or transferring the adult
12 foster home business or the real property on which the adult foster home is located. Providers shall
13 inform real estate licensees, prospective buyers, lessees and transferees in all written communi-
14 cations that the license to operate an adult foster home is not transferable and shall refer them to
15 the licensing agency for information about licensing.

16 (8) If a resident dies or leaves an adult foster home for medical reasons and indicates in writing
17 the intent to not return, the provider may not charge the resident for more than 15 days or the time
18 specified in the provider contract, whichever is less, after the resident has left the adult foster home.
19 The provider has an affirmative duty to take reasonable actions to mitigate the damages by ac-
20 cepting a new resident. However, if a resident dies or leaves an adult foster home due to neglect
21 or abuse by the provider or due to conditions of imminent danger to life, health or safety, the pro-
22 vider may not charge the resident beyond the resident's last day in the home. The provider shall
23 refund any advance payments within 30 days after the resident dies or leaves the adult foster home.

24 (9) Chemical and physical restraints may be used only after considering all other alternatives
25 and only when required to treat a resident's medical symptoms or to maximize a resident's physical
26 functioning. Restraints may not be used for discipline of a resident or for the convenience of the
27 adult foster home. Restraints may be used only as follows:

28 (a) Psychoactive medications may be used only pursuant to a prescription that specifies the
29 circumstances, dosage and duration of use.

30 (b) Physical restraints may be used only pursuant to a qualified practitioner's order that speci-
31 fies the type, circumstances and duration of use in accordance with rules adopted by the licensing
32 agency. The rules adopted by the licensing agency relating to physical restraints shall include
33 standards for use and training.

34 (10) If the physical characteristics of the adult foster home do not encourage contact between
35 caregivers and residents and among residents, the provider shall demonstrate how regular positive
36 contact will occur. Providers may not place residents who are unable to walk without assistance in
37 a basement, split-level, second story or other area that does not have an exit at ground level.
38 Nonambulatory residents shall be given first floor rooms.

39 (11)(a) The provider may not transfer or discharge a resident from an adult foster home unless
40 the transfer or discharge is necessary for medical reasons, for the welfare of the resident or for the
41 welfare of other residents, or due to nonpayment. In such cases, the provider shall give the resident
42 written notice as soon as possible under the circumstances.

43 (b) The provider shall give the resident and the resident's legal representative, guardian or
44 conservator written notice at least 30 days prior to the proposed transfer or discharge, except in a
45 medical emergency including but not limited to a resident's experiencing an increase in level of care

1 needs or engaging in behavior that poses an imminent danger to self or others. In such cases, the
2 provider shall give the resident written notice as soon as possible under the circumstances.

3 (c) The resident has the right to an administrative hearing prior to an involuntary transfer or
4 discharge. If the resident is being transferred or discharged for a medical emergency, or to protect
5 the welfare of the resident or other residents, as defined by rule, the hearing must be held within
6 seven days of the transfer or discharge. The provider shall hold a space available for the resident
7 pending receipt of an administrative order. ORS 441.605 (4) and the rules thereunder governing
8 transfer notices and hearings for residents of long term care facilities shall apply to adult foster
9 homes.

10 (12) The provider may not include any illegal or unenforceable provision in a contract with a
11 resident and may not ask or require a resident to waive any of the resident's rights.

12 (13) Any lessor of a building in which an adult foster home is located may not interfere with the
13 admission, discharge or transfer of any resident in the adult foster home unless the lessor is a pro-
14 vider or coprovider on the license.

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