

HOUSE AMENDMENTS TO HOUSE BILL 4151

By COMMITTEE ON HUMAN SERVICES AND HOUSING

February 13

1 On page 1 of the printed bill, line 2, delete “441.373 and 441.677” and insert “124.050, 441.373,
2 441.677, 441.715 and 443.455”.

3 In line 3, delete “repealing ORS 441.679;”.

4 In line 7, after “commenced” insert “by the Department of Human Services”.

5 In line 8, delete “of Human Services or a law enforcement agency”.

6 In line 9, after “124.060” insert “, unless there is an ongoing concurrent criminal investigation,
7 in which case the department may take a reasonable amount of additional time in which to complete
8 the investigation”.

9 On page 2, line 37, delete “, develop and standardize” and insert “the development and stand-
10 ardization of”.

11 On page 3, delete lines 21 through 45 and insert:

12 **“SECTION 6. (1) As used in this section:**

13 **“(a) ‘Facility’ means:**

14 **“(A) A long term care facility as defined in ORS 442.015;**

15 **“(B) A residential care facility as defined in ORS 443.400, including but not limited to an
16 assisted living facility; and**

17 **“(C) An adult foster home as defined in ORS 443.705, but does not include adult foster
18 homes licensed to provide care to persons with developmental disabilities or mental illness.**

19 **“(b) ‘Home care worker’ has the meaning given that term in ORS 410.600.**

20 **“(2) The Department of Human Services shall create and regularly update a registry of
21 all persons who work or are seeking to work:**

22 **“(a) In a facility; or**

23 **“(b) As a home care worker.**

24 **“(3) A facility shall report information required pursuant to rules adopted by the de-
25 partment regarding persons who work or are seeking to work at the facility for maintenance
26 of the registry established under subsection (2) of this section.**

27 **“(4) The department shall adopt rules establishing:**

28 **“(a) The information that must be reported by facilities;**

29 **“(b) The form and frequency of reporting by facilities;**

30 **“(c) Procedures and standards for the administration of the registry; and**

31 **“(d) Guidelines and procedures for requests for and release of information from the reg-
32 istry.”.**

33 On page 4, delete lines 1 through 12.

34 In line 13, delete “9” and insert “7”.

35 On page 5, line 36, delete “10” and insert “8”.

1 On page 7, after line 25, insert:

2 “**SECTION 9.** ORS 124.050, as amended by section 5, chapter 352, Oregon Laws 2013, is
3 amended to read:

4 “124.050. As used in ORS 124.050 to 124.095:

5 “(1) ‘Abuse’ means one or more of the following:

6 “(a) Any physical injury to an elderly person caused by other than accidental means, or which
7 appears to be at variance with the explanation given of the injury.

8 “(b) Neglect.

9 “(c) Abandonment, including desertion or willful forsaking of an elderly person or the with-
10 drawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

11 “(d) Willful infliction of physical pain or injury upon an elderly person.

12 “(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425,
13 163.427, 163.465, [or] 163.467 or **163.525**.

14 “(f) Verbal abuse.

15 “(g) Financial exploitation.

16 “(h) Sexual abuse.

17 “(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline
18 the person.

19 “(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act
20 of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities
21 that are consistent with an approved treatment plan or in connection with a court order.

22 “(2) ‘Elderly person’ means any person 65 years of age or older who is not subject to the pro-
23 visions of ORS 441.640 to 441.665.

24 “(3) ‘Facility’ means:

25 “(a) A long term care facility as that term is defined in ORS 442.015.

26 “(b) A residential facility as that term is defined in ORS 443.400, including but not limited to
27 an assisted living facility.

28 “(c) An adult foster home as that term is defined in ORS 443.705.

29 “(4) ‘Financial exploitation’ means:

30 “(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an
31 elderly person or a person with a disability.

32 “(b) Alarming an elderly person or a person with a disability by conveying a threat to
33 wrongfully take or appropriate money or property of the person if the person would reasonably be-
34 lieve that the threat conveyed would be carried out.

35 “(c) Misappropriating, misusing or transferring without authorization any money from any ac-
36 count held jointly or singly by an elderly person or a person with a disability.

37 “(d) Failing to use the income or assets of an elderly person or a person with a disability ef-
38 fectively for the support and maintenance of the person.

39 “(5) ‘Intimidation’ means compelling or deterring conduct by threat.

40 “(6) ‘Law enforcement agency’ means:

41 “(a) Any city or municipal police department.

42 “(b) Any county sheriff’s office.

43 “(c) The Oregon State Police.

44 “(d) Any district attorney.

45 “(e) A police department established by a university under ORS 352.383 or 353.125.

1 “(7) ‘Neglect’ means[.]
2 “[*(a) Failure to provide the care, supervision or services necessary to maintain the physical and*
3 *mental health of an elderly person that may result in physical harm or significant emotional harm to*
4 *the elderly person; or]*
5 “[*(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from*
6 *abuse] **failure to provide basic care or services that are necessary to maintain the health or***
7 **safety of an elderly person.**
8 “(8) ‘Person with a disability’ means a person described in:
9 “(a) ORS 410.040 (7); or
10 “(b) ORS 410.715.
11 “(9) ‘Public or private official’ means:
12 “(a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician
13 or chiropractor, including any intern or resident.
14 “(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse’s aide, home health
15 aide or employee of an in-home health service.
16 “(c) Employee of the Department of Human Services or community developmental disabilities
17 program.
18 “(d) Employee of the Oregon Health Authority, county health department or community mental
19 health program.
20 “(e) Peace officer.
21 “(f) Member of the clergy.
22 “(g) Regulated social worker.
23 “(h) Physical, speech or occupational therapist.
24 “(i) Senior center employee.
25 “(j) Information and referral or outreach worker.
26 “(k) Licensed professional counselor or licensed marriage and family therapist.
27 “(L) Member of the Legislative Assembly.
28 “(m) Firefighter or emergency medical services provider.
29 “(n) Psychologist.
30 “(o) Provider of adult foster care or an employee of the provider.
31 “(p) Audiologist.
32 “(q) Speech-language pathologist.
33 “(r) Attorney.
34 “(s) Dentist.
35 “(t) Optometrist.
36 “(u) Chiropractor.
37 “(10) ‘Services’ includes but is not limited to the provision of food, clothing, medicine, housing,
38 medical services, assistance with bathing or personal hygiene or any other service essential to the
39 well-being of an elderly person.
40 “(11)(a) ‘Sexual abuse’ means:
41 “(A) Sexual contact with an elderly person who does not consent or is considered incapable of
42 consenting to a sexual act under ORS 163.315;
43 “[*(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material*
44 *or language;]*
45 “**(B) Verbal or physical harassment of a sexual nature, including but not limited to severe**

1 **or pervasive exposure to sexually explicit material or language;**

2 **“(C) Sexual exploitation;**

3 **“[(C)] (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly**
4 **person served by the facility or caregiver; or**

5 **“[(D) Any sexual contact between an elderly person and a relative of the elderly person other than**
6 **a spouse; or]**

7 **“(E) Any sexual contact that is achieved through force, trickery, threat or coercion.**

8 **“(b) ‘Sexual abuse’ does not mean consensual sexual contact between an elderly person and a**
9 **paid caregiver [who is the spouse of the elderly person].**

10 **“(12) ‘Sexual contact’ has the meaning given that term in ORS 163.305.**

11 **“(13) ‘Verbal abuse’ means to threaten significant physical or emotional harm to an elderly**
12 **person or a person with a disability through the use of:**

13 **“(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or**

14 **“(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate**
15 **sexual comments.**

16 **“SECTION 10. ORS 441.715 is amended to read:**

17 **“441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objec-**
18 **tive criteria for establishing the civil penalty that may be imposed under ORS 441.710 (1) and the**
19 **Director of the Oregon Health Authority by rule shall adopt objective criteria for establishing the**
20 **civil penalty that may be imposed under ORS 441.710 (2). However, the civil penalty may not exceed**
21 **\$500 for each violation, except as otherwise provided in this subsection and ORS 441.995 or as oth-**
22 **erwise required by federal law.**

23 **“(b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for**
24 **any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation**
25 **involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under**
26 **ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed**
27 **\$500 per day or as otherwise required by federal law.**

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

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, 163.365**
36 **and 163.375.**

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

40 **“(D) ‘Sexual abuse’ means any form of [nonconsensual sexual contact, including but not limited to**
41 **unwanted or inappropriate touching,] **sexual contact between an employee of a long term care****
42 **facility or a person providing services in the long term care facility and a resident of that**
43 **facility, including but not limited to sodomy, sexual coercion, sexually explicit photographing and**
44 **sexual harassment.**

45 **“(2) The penalties assessed under subsection (1)(a) or (b) of this section may not exceed \$7,500**

1 in the aggregate or as otherwise required by federal law with respect to a single long term care
2 facility within any 90-day period.

3 **“SECTION 11.** ORS 443.455 is amended to read:

4 “443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil
5 penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705
6 to 441.745.

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

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

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

19 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or death.

20 “(b) ‘Rape’ means rape in the first, second or third degree as described in ORS 163.355, 163.365
21 and 163.375.

22 “(c) ‘Serious injury’ means physical injury that creates a substantial risk of death or that causes
23 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
24 ment of the function of any bodily organ.

25 “(d) ‘Sexual abuse’ means any form of [*nonconsensual sexual contact, including but not limited to*
26 *unwanted or inappropriate touching,*] **sexual contact between an employee of a residential facility**
27 **or a person providing services in the residential facility and a resident of that facility, in-**
28 **cluding but not limited to** sodomy, sexual coercion, sexually explicit photographing and sexual
29 harassment.

30 “(5) Civil penalties recovered from a residential training facility, residential training home, resi-
31 dential treatment facility or residential treatment home shall be deposited in the Long Term Care
32 Ombudsman Account established in ORS 441.153.

33 **“SECTION 12. The amendments to ORS 124.050, 441.715 and 443.455 by sections 9 to 11**
34 **of this 2014 Act become operative on January 1, 2015.”.**

35 In line 26, delete “11” and insert “13”.

36 In line 31, delete “12” and insert “14”.

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