

D R A F T

SUMMARY

Requires that fitness determination be conducted before hiring individuals with specified criminal history if individual will have direct contact with resident of residential facility or adult foster home or persons who receive in-home services or supports.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to direct care providers; amending ORS 443.004; and declaring an
3 emergency.

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

5 **SECTION 1.** ORS 443.004 is amended to read:

6 443.004. (1) The Department of Human Services or the Oregon Health
7 Authority shall complete a criminal records check under ORS 181.534 on:

8 (a) An employee of a residential facility or an adult foster home;

9 (b) Any individual who is paid directly or indirectly with public funds
10 who has or will have contact with a recipient of support services or a resi-
11 dent of an adult foster home or a residential facility; and

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

14 (2)(a) A home health agency shall conduct a criminal background check
15 before hiring or contracting with an individual and before allowing an indi-
16 vidual to volunteer to provide services on behalf of the home health agency,
17 if the individual will have direct contact with a patient of the home health
18 agency.

19 (b) An in-home care agency shall conduct a criminal background check

1 before hiring or contracting with an individual and before allowing an indi-
2 vidual to volunteer to provide services on behalf of the in-home care agency,
3 if the individual will have direct contact with a client of the in-home care
4 agency.

5 (c) The authority shall prescribe by rule the process for conducting a
6 criminal background check.

7 (3) Public funds may not be used to support, in whole or in part, the
8 employment, in any capacity having contact with a recipient of support ser-
9 vices or a resident of a residential facility or an adult foster home, of an
10 individual, other than a mental health or substance abuse treatment pro-
11 vider, who has been convicted:

12 [(a) *Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145,*
13 *163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235,*
14 *163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547,*
15 *163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225,*
16 *164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,*
17 *165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;*]

18 [(b)] (a) [Notwithstanding paragraph (a) of this subsection,] Of a crime
19 described in ORS 163.465, 163.467, 163.700, 164.055, 164.125 or 164.377, the date
20 of conviction for which was within the five years immediately preceding
21 employment in any capacity of an individual, other than a mental health or
22 substance abuse treatment provider, having contact with a recipient of sup-
23 port services, a resident of a residential facility or a resident of an adult
24 foster home, when the recipient or resident is 65 years of age or older;

25 [(c)] (b) Of a crime listed in ORS 181.805;

26 [(d)] (c) In the last 10 years, of a crime involving the delivery or manu-
27 facture of a controlled substance;

28 [(e)] (d) Of an attempt, conspiracy or solicitation to commit a crime de-
29 scribed in paragraphs (a) to [(d)] (c) of this subsection; or

30 [(f)] (e) Of a crime in another jurisdiction that is substantially equivalent,
31 as defined by rule, to a crime described in paragraphs (a) to [(e)] (d) of this

1 subsection.

2 **(4) A determination of fitness in accordance with ORS 181.534 and**
3 **181.537 must be conducted before an individual who will be paid using**
4 **public funds in whole or in part may be employed in any capacity in**
5 **which the individual will have contact with a recipient of support**
6 **services or a resident of a residential facility or adult foster home,**
7 **other than a mental health or substance abuse treatment provider, if**
8 **the individual has been convicted of a crime described in ORS 163.095,**
9 **163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187,**
10 **163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,**
11 **163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 164.055, 164.057, 164.098,**
12 **164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405,**
13 **164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057,**
14 **167.320 or 167.322.**

15 [(4)] (5) If the criminal background check conducted by a home health
16 agency or in-home care agency under subsection (2) of this section reveals
17 that the individual who is subject to the criminal background check has been
18 convicted of any of the crimes described in subsection (3) **or (4)** of this sec-
19 tion, the home health agency or in-home care agency may not employ the
20 individual.

21 [(5)] (6) Public funds may not be used to support, in whole or in part, the
22 employment, in any capacity having contact with a recipient of support ser-
23 vices or a resident of a residential facility or an adult foster home, of a
24 mental health or substance abuse treatment provider who has been convicted
25 of committing, or convicted of an attempt, conspiracy or solicitation to
26 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411
27 or 163.427.

28 [(6)] (7) Upon the request of a mental health or substance abuse treatment
29 provider, the department or authority shall maintain a record of the results
30 of any fitness determination made under ORS 181.534 (11) and (12). The de-
31 partment or authority may disclose the record only to a person the provider

1 specifically authorizes, by a written release, to receive the information.

2 [(7)] (8) If the department or authority has a record of substantiated abuse
3 committed by an employee or potential employee of a home health agency,
4 in-home care agency, adult foster home or residential facility, regardless of
5 whether criminal charges were filed, the department or authority shall no-
6 tify, in writing, the employer and the employee or potential employee.

7 [(8)] (9) As used in this section:

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

9 (b) "Home care worker" has the meaning given that term in ORS 410.600.

10 (c) "Home health agency" has the meaning given that term in ORS
11 443.005.

12 (d) "In-home care agency" has the meaning given that term in ORS
13 443.305.

14 (e) "Mental health or substance abuse treatment provider" means:

15 (A) A peer support specialist;

16 (B) An employee of a residential treatment facility or a residential treat-
17 ment home that is licensed under ORS 443.415 to provide treatment for in-
18 dividuals with alcohol or drug dependence;

19 (C) An individual who provides treatment or services for persons with
20 substance use disorders; or

21 (D) An individual who provides mental health treatment or services.

22 (f) "Peer support specialist" means a person who:

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

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

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

26 (D) Is currently receiving or has formerly received mental health services,
27 or is in recovery from a substance use disorder and meets the abstinence
28 requirements for staff providing services in alcohol or other drug treatment
29 programs.

30 (g) "Residential facility" has the meaning given that term in ORS 443.400.

31 **SECTION 2. This 2015 Act being necessary for the immediate pres-**

1 **ervation of the public peace, health and safety, an emergency is de-**
2 **clared to exist, and this 2015 Act takes effect on its passage.**

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