



STATE OF OREGON  
LEGISLATIVE COUNSEL COMMITTEE

June 30, 2017

Senator Sara Gelser  
900 Court Street NE S405  
Salem OR 97301

Re: -4 amendments to A-engrossed House Bill 3359

Dear Senator Gelser:

You asked several questions about the -4 amendments to A-engrossed House Bill 3359.

**1. Do the definitions in section 4 apply to section 5 of the amendments?**

No. There are two sets of definitions in subsections (2) and (4) of section 4 of the bill, defining terms such as "serious harm" and "serious injury." Each of these sets of definitions begins with the phrase "[a]s used in this subsection:". Thus, these definitions apply only to the specified subsections in section 4, and not to any other provision of law.

**2. Section 5 of the amendments uses terms such as "serious harm" and "serious injury," which are not defined in section 5. Does the Department of Human Services have the authority to define "serious harm" and "serious injury" for purposes of section 5?**

Yes. Because the terms are not defined for purposes of section 5, they have their plain and ordinary meaning and the Department of Human Services may interpret them as part of its rulemaking authority.<sup>1</sup> The department (or an adjudicator) might look to the definitions in section 4 for guidance about these terms, but the department is not bound by those definitions with regard to the language of section 5.

**3. Would the Department of Human Services have the authority to deem circumstances including but not limited to inappropriate restraint, broken bones, black eyes, sexual assault, neglect, physical abuse, willful infliction of pain and other dangers as triggers for immediate jeopardy under section 5 of the amendments?**

The answer to this question would depend on the circumstances of each case, but as discussed above, if the department interprets "serious harm" or "serious impairment" to include these circumstances, the department could use them as the basis for a finding of immediate jeopardy under section 5 of the amendments.

**4. Would the changes to licensing requirements in the amendments apply to any programs beyond Aging and People with Disabilities? Specifically, can you confirm**

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<sup>1</sup> ORS 410.070.

**that the amendments would not impact licensing requirements for developmental disabilities programs, child welfare programs and child care programs?**

The Aging and People with Disabilities program of the Department of Human Services is not established in statute, so it is difficult to determine what specific program within the department would regulate the facilities affected by the amendments. However, we can detail what kinds of facilities are affected by the changes in the amendments.

Sections 4 and 5 apply only to residential care facilities (facilities for socially dependent individuals or individuals with physical disabilities) and long term care facilities regulated by the Department of Human Services.<sup>2</sup> These facilities do not serve people with developmental disabilities or children.

The amendments to ORS 441.710, 441.715 and 443.455 (sections 6 to 8 of the amendments) establish new standards and processes that apply only to the Department of Human Services' regulation of residential care facilities and long term care facilities, while retaining the current standards and processes for the department's regulation of residential training facilities and residential training homes, which are facilities serving individuals with "mental retardation or other developmental disabilities."<sup>3</sup>

The amendments to ORS 443.775 (section 9) establishes new standards for civil penalties imposed by the department on adult foster homes serving socially dependent individuals or individuals with physical disabilities, while retaining the current standards for civil penalties imposed by the department on adult foster homes not serving socially dependent individuals or individuals with physical disabilities and civil penalties imposed on adult foster homes by the Oregon Health Authority.

The amendments to ORS 441.020 (section 11) change the licensing fees for long term care facilities regulated by the Department of Human Services, while retaining the current licensing fees for other health care facilities regulated by the Oregon Health Authority.

The amendments to ORS 443.415 and 443.425 (sections 12 and 13) change the licensing fees for residential care facilities, while retaining the current licensing fees for residential training facilities and residential training homes.

Sections 15 to 19, 23, 24, 25 and 27 of the amendments apply only to residential care facilities.

Section 20 and the amendments to ORS 441.402 and 443.420 (sections 21 and 22) apply only to long term care facilities seeking to convert to residential care facilities.

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<sup>2</sup> "Residential care facility" is defined in ORS 443.400 as a facility providing services for "socially dependent individuals or individuals with physical disabilities." "Long term care facility" is defined in ORS 442.015 as:

[A] permanent facility with inpatient beds, providing:

(A) Medical services, including nursing services but excluding surgical procedures except as may be permitted by the rules of the Director of Human Services; and

(B) Treatment for two or more unrelated patients.

(b) "Long term care facility" includes skilled nursing facilities and intermediate care facilities but does not include facilities licensed and operated pursuant to ORS 443.400 to 443.455.

<sup>3</sup> ORS 443.400.

The amendments to ORS 443.440 (section 26) change the standards for suspension of a residential care facility license while retaining the standards for suspension of the licenses of other residential facilities.

Section 34 and the amendments to ORS 443.886 (section 28) apply to facilities for residents with Alzheimer's disease or other forms of dementia.

Sections 29 to 31 apply to adult foster homes licensed by the Department of Human Services, but do not affect adult foster homes licensed by the Oregon Health Authority.

The amendments to ORS 443.760 (section 32) address evacuation of residents from all adult foster homes, whether regulated by the Department of Human Services or the Oregon Health Authority.

The remainder of the bill consists of definitions and conforming amendments.

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Very truly yours,

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