

D R A F T

SUMMARY

Modifies provisions related to imposition of civil penalties on long term care facilities, residential care facilities and adult foster homes by Department of Human Services.

Requires residential facility licensed by department to renew license every year, rather than every two years.

Directs department to adopt licensing fees for long term care facilities, residential care facilities and adult foster homes that are sufficient to pay costs of licensing and regulating facilities and homes.

Directs department to deposit fees collected from adult foster homes in Department of Human Services Account.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to care facilities; creating new provisions; amending ORS 441.020, 441.710, 441.715, 441.995, 443.415, 443.425, 443.430, 443.455, 443.735 and 443.790; and declaring an emergency.

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

CIVIL PENALTIES

SECTION 1. ORS 443.455 is amended to read:

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

(2)(a) The Director of Human Services shall impose penalties on residential care facilities as set forth in section 5 of this 2017 Act.

(b) The director [*of Human Services*] shall by rule prescribe a schedule

1 of penalties for [*residential care facilities,*] residential training facilities and
2 residential training homes that are not in compliance with ORS 443.400 to
3 443.455.

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

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

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

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

19 (c) "Serious injury" means physical injury that creates a substantial risk
20 of death or that causes serious and protracted disfigurement, protracted
21 impairment of health or protracted loss or impairment of the function of any
22 bodily organ.

23 (d) "Sexual abuse" means any form of sexual contact between an employee
24 of a residential facility or a person providing services in the residential fa-
25 cility and a resident of that facility, including but not limited to sodomy,
26 sexual coercion, sexually explicit photographing and sexual harassment.

27 (5) Civil penalties recovered from a residential training facility, residen-
28 tial training home, residential treatment facility or residential treatment
29 home shall be deposited in the Long Term Care Ombudsman Account estab-
30 lished in ORS 441.419.

31 **SECTION 2.** ORS 441.710 is amended to read:

1 441.710. (1) In addition to any other liability or penalty provided by law,
2 the Director of Human Services may impose a civil penalty on a person for
3 any of the following:

4 (a) Violation of any of the terms or conditions of a license issued under
5 ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342,
6 442.344 and 442.400 to 442.463 for a long term care facility, as defined in ORS
7 442.015.

8 (b) Violation of any rule or general order of the Department of Human
9 Services that pertains to a long term care facility.

10 (c) Violation of any final order of the director that pertains specifically
11 to the long term care facility owned or operated by the person incurring the
12 penalty.

13 (d) Violation of ORS 441.605 or of rules required to be adopted under ORS
14 441.610.

15 (e) Violation of ORS 443.880 or 443.881 if the facility is a residential care
16 facility, residential training facility or residential training home.

17 (2) In addition to any other liability or penalty provided by law, the Di-
18 rector of the Oregon Health Authority may impose a civil penalty on a per-
19 son for a violation of ORS 443.880 or 443.881 if the facility is a residential
20 treatment facility or a residential treatment home.

21 (3) *[The Director of Human Services may not impose a penalty under sub-*
22 *section (1) of this section for violations other than those involving direct pa-*
23 *tient care or feeding, an adequate staff to patient ratio, sanitation involving*
24 *direct patient care or a violation of ORS 441.605 or 443.880 or 443.881 or of the*
25 *rules required to be adopted by ORS 441.610 unless a violation is found on two*
26 *consecutive surveys of a long term care facility.]* The Director of Human Ser-
27 vices *[in every case]* **when imposing a penalty under subsection (1) of this**
28 **section** shall prescribe a reasonable time for elimination of a violation:

29 (a) Not to exceed 30 days after first notice of a violation; or

30 (b) In cases where the violation requires more than 30 days to correct,
31 such time as is specified in a plan of correction found acceptable by the di-

1 rector.

2 (4) The Director of the Oregon Health Authority may not impose a pen-
3 alty under subsection (2) of this section for violations other than those in-
4 volving direct patient care or feeding, an adequate staff to patient ratio,
5 sanitation involving direct patient care or a violation of ORS 443.880 or
6 443.881. The Director of the Oregon Health Authority in every case shall
7 prescribe a reasonable time for elimination of a violation:

8 (a) Not to exceed 30 days after first notice of a violation; or

9 (b) In cases where the violation requires more than 30 days to correct,
10 such time as is specified in a plan of correction found acceptable by the di-
11 rector.

12 **SECTION 3.** ORS 441.715 is amended to read:

13 441.715. (1)[(a)] **The Director of Human Services shall impose civil**
14 **penalties under ORS 441.710 (1) on a long term care facility or a resi-**
15 **dential care facility as provided in section 5 of this 2017 Act.**

16 (2) After public hearing, the Director of Human Services by rule shall
17 adopt objective criteria for establishing the civil penalty that may be im-
18 posed under ORS 441.710 (1) [and] **on residential training facilities and**
19 **residential training homes. However, the civil penalty may not exceed**
20 **\$500 for each violation, except as otherwise provided in this subsection**
21 **or as otherwise required by federal law.**

22 (3) The Director of the Oregon Health Authority by rule shall adopt ob-
23 jective criteria for establishing the civil penalty that may be imposed under
24 ORS 441.710 (2). However, the civil penalty may not exceed \$500 for each
25 violation, except as otherwise provided in this subsection [and ORS
26 441.995] or as otherwise required by federal law.

27 [(b)] (4) Notwithstanding the limitations on the civil penalty in [para-
28 graph (a) of this subsection] **subsections (2) and (3) of this section,** for any
29 violation involving direct resident care or feeding, an adequate staff to res-
30 ident ratio, sanitation involving direct resident care or a violation of ORS
31 441.605 or rules required to be adopted under ORS 441.610, a penalty may be

1 imposed for each day the violation occurs in an amount not to exceed \$500
2 per day or as otherwise required by federal law.

3 *[(c) If the Department of Human Services investigates and makes a finding
4 of abuse arising from deliberate or other than accidental action or inaction
5 that is likely to cause a negative outcome by a person with a duty of care to-
6 ward a resident of a long term care facility and if the abuse resulted in the
7 death, serious injury, rape or sexual abuse of a resident, the department shall
8 impose a civil penalty of not less than \$2,500 for each occurrence of substanti-
9 ated abuse, not to exceed \$15,000 in any 90-day period. As used in this para-
10 graph:]*

11 *[(A) “Negative outcome” includes serious injury, rape, sexual abuse or
12 death.]*

13 *[(B) “Rape” means rape in the first, second or third degree as described in
14 ORS 163.355, 163.365 and 163.375.]*

15 *[(C) “Serious injury” means physical injury that creates a substantial risk
16 of death or that causes serious and protracted disfigurement, protracted
17 impairment of health or protracted loss or impairment of the function of any
18 bodily organ.]*

19 *[(D) “Sexual abuse” means any form of sexual contact between an employee
20 of a long term care facility or a person providing services in the long term care
21 facility and a resident of that facility, including but not limited to sodomy,
22 sexual coercion, sexually explicit photographing and sexual harassment.]*

23 *[(2) The penalties assessed under subsection (1)(a) or (b) of this section may
24 not exceed \$7,500 in the aggregate or as otherwise required by federal law with
25 respect to a single long term care facility within any 90-day period.]*

26 **SECTION 4. Section 5 of this 2017 Act is added to and made a part
27 of ORS 441.705 to 441.745.**

28 **SECTION 5. (1) In addition to any other liability or penalty provided
29 by law, the Director of Human Services may impose a civil penalty
30 under ORS 441.710 (1) on a residential care facility or a long term care
31 facility in the amount set forth in subsection (2) of this section.**

1 **(2)(a) For a minor harm to a resident, the director shall impose a**
2 **penalty of not less than \$250 and not more than \$500 for each violation.**
3 **The total penalties imposed against a facility for minor harms com-**
4 **mitted in a single day may not exceed \$500 multiplied by the number**
5 **of licensed beds in the facility.**

6 **(b) For a moderate harm to a resident, the director shall impose a**
7 **penalty of not less than \$500 and not more than \$2,500 for each vio-**
8 **lation. The total penalties imposed against a facility for moderate**
9 **harms committed in a single day may not exceed \$2,500 multiplied by**
10 **the number of licensed beds in the facility.**

11 **(c) For a serious harm to a resident, the director shall impose a**
12 **penalty of not less than \$2,500 and not more than \$5,000 for each vio-**
13 **lation. The total penalties imposed against a facility for serious harms**
14 **committed in a single day may not exceed \$5,000 multiplied by the**
15 **number of licensed beds in the facility.**

16 **(d) For a failure to report suspected abuse of a resident, \$1,000 for**
17 **each violation.**

18 **(e) For a failure to perform corrective action noted on a survey that**
19 **remains uncorrected on the date prescribed by the department, \$2,500**
20 **for each violation.**

21 **(3) If the Department of Human Services investigates and makes a**
22 **finding of abuse arising from deliberate or other than accidental**
23 **action or inaction that is likely to cause a negative outcome by a**
24 **person with a duty of care toward a resident of a residential care fa-**
25 **ility or a long term care facility and if the abuse resulted in the**
26 **death, serious injury, rape or sexual abuse of a resident, the director**
27 **shall impose a civil penalty, in addition to any penalty imposed under**
28 **subsection (2) of this section, of not less than \$5,000 and not more than**
29 **\$15,000 for each occurrence of substantiated abuse. As used in this**
30 **subsection:**

31 **(a) “Negative outcome” includes serious injury, rape, sexual abuse**

1 or death.

2 (b) "Rape" means rape in the first, second or third degree as de-
3 scribed in ORS 163.355, 163.365 and 163.375.

4 (c) "Serious injury" means physical injury that creates a substan-
5 tial risk of death or that causes serious and protracted disfigurement,
6 protracted impairment of health or protracted loss or impairment of
7 the function of any bodily organ.

8 (d) "Sexual abuse" means:

9 (A) Any form of sexual contact between an employee of a residen-
10 tial care facility or long term care facility or a person providing ser-
11 vices in the residential care facility or long term care facility and a
12 resident of that facility, including but not limited to sodomy, sexual
13 coercion, sexually explicit photographing and sexual harassment.

14 (B) Sexual abuse committed by a resident of the facility against
15 another resident of the facility, as defined by rule of the department.

16 (4) The department may adopt rules providing for the imposition
17 of a civil penalty against a resident of a residential care facility or long
18 term care facility, a visitor to a resident of the facility or a contractor
19 of the facility for abuse as described in subsection (3) of this section.

20 (5) The department shall adopt rules defining "minor harm,"
21 "moderate harm" and "serious harm."

22 **SECTION 6.** ORS 441.995 is amended to read:

23 441.995. (1) In adopting criteria for establishing the amount of civil pen-
24 alties for violations of ORS 441.630 to 441.680, the Department of Human
25 Services shall consider:

26 (a) Any prior violations of laws or rules pertaining to facilities;

27 (b) The financial benefits, if any, realized by the facility as a result of the
28 violation;

29 (c) The gravity of the violation, including the actual or potential threat
30 to the health, safety and well-being of one or more residents;

31 (d) The severity of the actual or potential harm caused by the violation;

1 and

2 (e) The facility's past history of correcting violations and preventing the
3 recurrence of violations.

4 (2) The department may impose a civil penalty for abuse in accordance
5 with rules adopted under ORS 441.637 (1).

6 (3) If the department finds the facility is responsible for abuse and if the
7 abuse resulted in a resident's death or serious injury, the department shall
8 impose a civil penalty of not less than \$500 nor more than \$1,000 for each
9 violation, or as otherwise required by federal law or ORS [441.715 (1)(c),]
10 443.455 or 443.775 **or section 5 (3) of this 2017 Act.**

11 (4) Nothing in ORS 441.637 and this section is intended to expand, replace
12 or supersede the department's authority to impose civil penalties pursuant
13 to ORS 441.710 or 441.715 for violations that do not constitute abuse.

14 (5) Facilities assessed civil penalties under this section are entitled to a
15 contested case hearing under ORS chapter 183.

16 **SECTION 7.** ORS 443.790 is amended to read:

17 443.790. (1) In addition to any other liability or penalty provided by law,
18 the director of the licensing agency may impose a civil penalty on a person
19 for any of the following:

20 (a) Violation of any of the terms or conditions of a license issued under
21 ORS 443.735.

22 (b) Violation of any rule or general order of the licensing agency that
23 pertains to a facility.

24 (c) Violation of any final order of the director that pertains specifically
25 to the facility owned or operated by the person incurring the penalty.

26 (d) Violation of ORS 443.745 or of rules required to be adopted under ORS
27 443.775.

28 (e) Violation of the requirement to have a license under ORS 443.725 (1).

29 (2) **When the Director of the Oregon Health Authority imposes a**
30 **civil penalty under this section:**

31 (a) The director shall impose a civil penalty not to exceed \$500, unless

1 otherwise required by law, on any adult foster home for falsifying resident
2 or facility records or causing another to do so.

3 [(3)] (b) The director shall impose a civil penalty of \$250 on a provider
4 who violates ORS 443.725 (3).

5 [(4)] (c) The director shall impose a civil penalty of not less than \$250
6 [nor] **and not** more than \$500, unless otherwise required by law, on a pro-
7 vider who admits a resident knowing that the resident's care needs exceed
8 the license classification of the provider if the admission places the resident
9 or other residents at grave risk of harm.

10 [(5)(a)] (d)(A) In every case other than those involving the health, safety
11 or welfare of a resident, the director shall prescribe a reasonable time for
12 elimination of a violation but except as provided in [paragraph (b) of this
13 subsection] **subparagraph (B) of this paragraph** shall not prescribe a pe-
14 riod to exceed 30 days after notice of the violation.

15 [(b)] (B) The director may approve a reasonable amount of time in excess
16 of 30 days if correction of the violation within 30 days is determined to be
17 impossible.

18 [(6)] (e) In imposing a civil penalty, the director shall consider the fol-
19 lowing factors:

20 [(a)] (A) The past history of the person incurring a penalty in taking all
21 feasible steps or procedures necessary or appropriate to correct any vio-
22 lation.

23 [(b)] (B) Any prior violations of statutes, rules or orders pertaining to
24 facilities.

25 [(c)] (C) The economic and financial conditions of the person incurring
26 the penalty.

27 [(d)] (D) The immediacy and extent to which the violation threatens or
28 threatened the health, safety or welfare of one or more residents.

29 [(7)] (f) The [licensing agency] **authority** shall adopt rules establishing
30 objective criteria for the imposition and amount of civil penalties under this
31 [section] **subsection**.

1 **(3)(a) When the Director of Human Services imposes a civil penalty**
2 **under this section:**

3 **(A) For a minor harm to a resident, the director shall impose a**
4 **penalty of not less than \$250 and not more than \$500 for each violation.**
5 **The total penalties imposed against an adult foster home for minor**
6 **harms committed in a single day may not exceed \$500 multiplied by**
7 **the number of licensed beds in the adult foster home.**

8 **(B) For a moderate harm to a resident, the director shall impose a**
9 **penalty of not less than \$500 and not more than \$1,000 for each vio-**
10 **lation. The total penalties imposed against an adult foster home for**
11 **moderate harms committed in a single day may not exceed \$1,000**
12 **multiplied by the number of licensed beds in the adult foster home.**

13 **(C) For a serious harm to a resident, the director shall impose a**
14 **penalty of not less than \$1,000 and not more than \$2,500 for each vio-**
15 **lation. The total penalties imposed against an adult foster home for**
16 **serious harms committed in a single day may not exceed \$2,500**
17 **multiplied by the number of licensed beds in the adult foster home.**

18 **(D) For a failure to report suspected abuse of a resident, \$500 for**
19 **each violation.**

20 **(E) For a failure to perform corrective action noted on a survey**
21 **that remains uncorrected on the date prescribed by the department,**
22 **\$2,500 for each violation.**

23 **(F) If the Department of Human Services investigates and makes**
24 **a finding of abuse arising from deliberate or other than accidental**
25 **action or inaction that is likely to cause a negative outcome by a**
26 **person with a duty of care toward a resident of an adult foster home**
27 **and if the abuse resulted in the death, serious injury, rape or sexual**
28 **abuse of a resident, the director shall impose a civil penalty, in addi-**
29 **tion to any penalty imposed under subparagraphs (A) to (E) of this**
30 **paragraph, of not less than \$2,500 and not more than \$5,000 for each**
31 **occurrence of substantiated abuse. As used in this subparagraph:**

1 (i) **“Negative outcome” includes serious injury, rape, sexual abuse**
2 **or death.**

3 (ii) **“Rape” means rape in the first, second or third degree as de-**
4 **scribed in ORS 163.355, 163.365 and 163.375.**

5 (iii) **“Serious injury” means physical injury that creates a substan-**
6 **tial risk of death or that causes serious and protracted disfigurement,**
7 **protracted impairment of health or protracted loss or impairment of**
8 **the function of any bodily organ.**

9 (iv) **“Sexual abuse” means:**

10 (I) **Any form of sexual contact between an employee of an adult**
11 **foster home or a person providing services in the adult foster home**
12 **and a resident of that adult foster home, including but not limited to**
13 **sodomy, sexual coercion, sexually explicit photographing and sexual**
14 **harassment.**

15 (II) **Sexual abuse committed by a resident of the facility against**
16 **another resident of the facility, as defined by rule of the department.**

17 (G) **The department may adopt rules providing for the imposition**
18 **of a civil penalty against a resident of an adult foster home, a visitor**
19 **to a resident of the adult foster home or a contractor of the adult**
20 **foster home for abuse as described in subparagraph (F) of this para-**
21 **graph.**

22 (b) **The department shall adopt rules defining “minor harm,”**
23 **“moderate harm” and “serious harm.”**

24 **SECTION 8. (1) Section 5 of this 2017 Act and the amendments to**
25 **ORS 441.710, 441.715, 441.995, 443.455 and 443.790 by sections 1 to 3, 6 and**
26 **7 of this 2017 Act become operative on January 1, 2018.**

27 (2) **The Department of Human Services may take any action before**
28 **the operative date specified in subsection (1) of this section to enable**
29 **the department to exercise, on and after the operative date specified**
30 **in subsection (1) of this section, all the duties, functions and powers**
31 **conferred on the department by section 5 of this 2017 Act and the**

1 **amendments to ORS 441.710, 441.715, 441.995, 443.455 and 443.790 by**
2 **sections 1 to 3, 6 and 7 of this 2017 Act.**

3 **SECTION 9. Section 5 of this 2017 Act and the amendments to ORS**
4 **441.710, 441.715, 441.995, 443.455 and 443.790 by sections 1 to 3, 6 and 7**
5 **of this 2017 Act apply only to civil penalties imposed for offenses**
6 **committed on or after the operative date specified in section 8 of this**
7 **2017 Act.**

8

9

LICENSING

10

11 **SECTION 10.** ORS 441.020 is amended to read:

12 441.020. (1) Licenses for health care facilities, except long term **care** fa-
13 cilities as defined in ORS 442.015, must be obtained from the Oregon Health
14 Authority.

15 (2) Licenses for long term care facilities must be obtained from the De-
16 partment of Human Services.

17 (3) Applications shall be upon such forms and shall contain such infor-
18 mation as the authority or the department may reasonably require, which
19 may include affirmative evidence of ability to comply with such reasonable
20 standards and rules as may lawfully be prescribed under ORS 441.025.

21 (4) Each application shall be accompanied by the license fee. If the li-
22 cense is denied, the fee shall be refunded to the applicant. [*Except as pro-*
23 *vided in subsection (15) of this section,*] If the license is issued, the fee shall
24 be paid into the State Treasury to the credit of:

25 (a) The Oregon Health Authority Fund for the purpose of carrying out the
26 functions of the Oregon Health Authority under ORS 441.015 to 441.063 and
27 441.196; or

28 (b) The Department of Human Services Account for the purpose of car-
29 rying out the functions of the Department of Human Services under ORS
30 431A.050 to 431A.080, 441.015 to 441.063 and 441.196.

31 (5) Except as otherwise provided in subsection (8) of this section, for

1 hospitals with:

2 (a) Fewer than 26 beds, the annual license fee shall be \$1,250.

3 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee
4 shall be \$1,850.

5 (c) Fifty or more beds but fewer than 100 beds, the annual license fee
6 shall be \$3,800.

7 (d) One hundred beds or more but fewer than 200 beds, the annual license
8 fee shall be \$6,525.

9 (e) Two hundred or more beds, but fewer than 500 beds, the annual license
10 fee shall be \$8,500.

11 (f) Five hundred or more beds, the annual license fee shall be \$12,070.

12 (6) A hospital shall pay an annual fee of \$750 for each hospital satellite
13 indorsed under its license.

14 (7) The authority may charge a reduced hospital fee or hospital satellite
15 fee if the authority determines that charging the standard fee constitutes a
16 significant financial burden to the facility.

17 [(8) *For long term care facilities with:*]

18 [(a) *One to 15 beds, the annual license fee shall be \$180.*]

19 [(b) *Sixteen to 49 beds, the annual license fee shall be \$260.*]

20 [(c) *Fifty to 99 beds, the annual license fee shall be \$520.*]

21 [(d) *One hundred to 150 beds, the annual license fee shall be \$670.*]

22 [(e) *More than 150 beds, the annual license fee shall be \$750.*]

23 **(8) For long term care facilities as defined in ORS 442.015, the an-**
24 **nu****al licensing fee shall be established by the Department of Human**
25 **Serv****ices by rule and must be in an amount sufficient to pay the**
26 **de****partment's costs of licensing and regulating the facilities.**

27 (9) For ambulatory surgical centers, the annual license fee shall be:

28 (a) \$1,750 for certified and high complexity noncertified ambulatory sur-
29 gical centers with more than two procedure rooms.

30 (b) \$1,250 for certified and high complexity noncertified ambulatory sur-
31 gical centers with no more than two procedure rooms.

1 (c) \$1,000 for moderate complexity noncertified ambulatory surgical cen-
2 ters.

3 (10) For birthing centers, the annual license fee shall be \$750.

4 (11) For outpatient renal dialysis facilities, the annual license fee shall
5 be \$2,000.

6 (12) During the time the licenses remain in force, holders are not required
7 to pay inspection fees to any county, city or other municipality.

8 (13) Any health care facility license may be indorsed to permit operation
9 at more than one location. If so, the applicable license fee shall be the sum
10 of the license fees that would be applicable if each location were separately
11 licensed. The authority may include hospital satellites on a hospital's license
12 in accordance with rules adopted by the authority.

13 (14) Licenses for health maintenance organizations shall be obtained from
14 the Director of the Department of Consumer and Business Services pursuant
15 to ORS 731.072.

16 *[(15) All moneys received pursuant to subsection (8) of this section shall
17 be deposited in the Quality Care Fund established in ORS 443.001.]*

18 *[(16)]* (15) As used in this section:

19 (a) "Hospital satellite" has the meaning prescribed by the authority by
20 rule.

21 (b) "Procedure room" means a room where surgery or invasive procedures
22 are performed.

23 **SECTION 11.** ORS 443.415 is amended to read:

24 443.415. (1) Applications for licensure to maintain and operate a residen-
25 tial facility shall be made to the Department of Human Services or the
26 Oregon Health Authority on forms provided for that purpose by the appro-
27 priate licensing agency. Each application shall be accompanied by a fee. No
28 fee is required of any governmentally operated residential facility.

29 (2) The fee required under subsection (1) of this section for *[facilities]*:

30 (a) *[Defined in ORS 443.400 (7) and (9),]* **Residential training facilities**
31 **and residential treatment facilities** shall be \$60.

1 (b) *[Defined in ORS 443.400 (8) and (10),]* **Residential training homes**
2 **and residential treatment homes** shall be \$30.

3 *[(c) Defined in ORS 443.400 (5) with:]*

4 *[(A) One to 15 beds, shall be \$360.]*

5 *[(B) Sixteen to 49 beds, shall be \$520.]*

6 *[(C) Fifty to 99 beds, shall be \$1,040.]*

7 *[(D) One hundred to 150 beds, shall be \$1,340.]*

8 *[(E) More than 150 beds, shall be \$1,500.]*

9 (c) **Residential care facilities shall be established by the department**
10 **by rule and must be in an amount sufficient to pay the department's**
11 **costs of licensing and regulating the facilities.**

12 (3) Upon receipt of an application and fee, the licensing agency shall
13 conduct an investigation. The licensing agency shall issue a license to any
14 applicant for operation of a residential facility in compliance with ORS
15 443.002 and 443.400 to 443.455 and the rules of the licensing agency.
16 Licensure may be denied when a residential facility is not in compliance
17 with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency.
18 Licensure shall be denied if the State Fire Marshal or other authority has
19 given notice of noncompliance of *[facilities defined in ORS 443.400 (5), (7)*
20 *and (9)]* **a residential care facility, residential training facility or resi-**
21 **dential treatment facility** pursuant to ORS 479.220.

22 **SECTION 12.** ORS 443.425 is amended to read:

23 443.425. (1)(a) **Licensure under ORS 443.415 issued by the Department**
24 **of Human Services is effective for one year from the date of issue**
25 **unless sooner revoked.**

26 (b) Licensure under ORS 443.415 **issued by the Oregon Health Au-**
27 **thority** is effective for two years from the date of issue unless sooner re-
28 voked.

29 (2) Each license shall state:

30 (a) The name of the person operating the residential facility;

31 (b) The name of the person who owns the facility;

1 (c) The address of the premises to which the license applies and the
2 maximum number of residents to be maintained in such residential facility
3 at any time whether the residential facility is licensed as a residential
4 training facility, a residential treatment facility, a residential care
5 facility[;], a residential training home or residential treatment home; and

6 (d) Such other information as the Department of Human Services or the
7 Oregon Health Authority considers necessary.

8 [(2)] (3) A license is renewable upon submission of an application to the
9 department or the authority and payment of a fee. No fee shall be required
10 of a governmentally operated residential facility. Filing of an application for
11 renewal before the date of expiration of a license extends the effective date
12 of expiration of the license until the licensing agency has acted upon such
13 application. The licensing agency shall refuse to renew a license if the fa-
14 cility is not substantially in compliance with all applicable laws and rules,
15 or if the State Fire Marshal or the authorized representative thereof has
16 given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9)
17 pursuant to ORS 479.220.

18 [(3)] (4) The [biennial] fee required under subsection [(2)] (3) of this sec-
19 tion for facilities:

20 (a) Defined in ORS 443.400 (7) and (9), shall be \$60.

21 (b) Defined in ORS 443.400 (8) and (10), shall be \$30.

22 (c) Defined in ORS 443.400 (5) with:

23 (A) One to 15 beds, shall be \$360.

24 (B) Sixteen to 49 beds, shall be \$520.

25 (C) Fifty to 99 beds, shall be \$1,040.

26 (D) One hundred to 150 beds, shall be \$1,340.

27 (E) More than 150 beds, shall be \$1,500.

28 **SECTION 13.** ORS 443.425, as amended by section 12 of this 2017 Act, is
29 amended to read:

30 443.425. (1)(a) Licensure under ORS 443.415 issued by the Department of
31 Human Services is effective for one year from the date of issue unless sooner

1 revoked.

2 (b) Licensure under ORS 443.415 issued by the Oregon Health Authority
3 is effective for two years from the date of issue unless sooner revoked.

4 (2) Each license shall state:

5 (a) The name of the person operating the residential facility;

6 (b) The name of the person who owns the facility;

7 (c) The address of the premises to which the license applies and the
8 maximum number of residents to be maintained in such residential facility
9 at any time whether the residential facility is licensed as a residential
10 training facility, a residential treatment facility, a residential care facility,
11 a residential training home or residential treatment home; and

12 (d) Such other information as the Department of Human Services or the
13 Oregon Health Authority considers necessary.

14 (3) A license is renewable upon submission of an application to the de-
15 partment or the authority and payment of a fee. No fee shall be required of
16 a governmentally operated residential facility. Filing of an application for
17 renewal before the date of expiration of a license extends the effective date
18 of expiration of the license until the licensing agency has acted upon such
19 application. The licensing agency shall refuse to renew a license if the fa-
20 cility is not substantially in compliance with all applicable laws and rules,
21 or if the State Fire Marshal or the authorized representative thereof has
22 given notice of noncompliance of [*facilities under ORS 443.400 (5), (7) and*
23 **(9) a residential training facility, residential treatment facility or**
24 **residential care facility** pursuant to ORS 479.220.

25 (4) The fee required under subsection (3) of this section for [*facilities*]:

26 (a) [*Defined in ORS 443.400 (7) and (9),*] **Residential training facilities**
27 **and residential treatment facilities** shall be \$60.

28 (b) [*Defined in ORS 443.400 (8) and (10),*] **Residential training homes**
29 **and residential treatment homes** shall be \$30.

30 [*(c) Defined in ORS 443.400 (5) with:*]

31 [*(A) One to 15 beds, shall be \$360.*]

1 *[(B) Sixteen to 49 beds, shall be \$520.]*

2 *[(C) Fifty to 99 beds, shall be \$1,040.]*

3 *[(D) One hundred to 150 beds, shall be \$1,340.]*

4 *[(E) More than 150 beds, shall be \$1,500.]*

5 **(c) Residential care facilities shall be established by the department**
6 **by rule and must be in an amount sufficient to pay the department's**
7 **costs of licensing and regulating the facilities.**

8 **SECTION 14.** ORS 443.430 is amended to read:

9 443.430. (1) A license under ORS 443.415 is not transferable or applicable
10 to any location, residential facility or management other than that indicated
11 on the application for licensure.

12 (2) Except as provided in subsection (3) of this section:

13 (a) All moneys collected under ORS 443.400 to 443.455 for the purpose of
14 licensing a residential care facility, residential training facility or residen-
15 tial training home shall be deposited in a special account in the General
16 Fund and are continuously appropriated for payment of expenses incurred
17 by the Department of Human Services in administering ORS 443.400 to
18 443.455.

19 (b) All moneys collected under ORS 443.400 to 443.455 for the purpose of
20 licensing a residential treatment facility or residential treatment home shall
21 be deposited in a special account in the General Fund and are continuously
22 appropriated for payment of expenses incurred by the Oregon Health Au-
23 thority in administering ORS 443.400 to 443.455.

24 (3) All moneys collected from a residential care facility under ORS
25 *[443.415, 443.425 or]* 443.455 shall be deposited in the Quality Care Fund es-
26 tablished in ORS 443.001.

27 **SECTION 15.** ORS 443.735 is amended to read:

28 443.735. (1) Applications for a license to maintain and operate an adult
29 foster home shall be made on forms provided by the licensing agency.

30 **(2)(a)** Each application **submitted to the Oregon Health Authority**
31 shall be accompanied by a fee of \$20 per bed requested for licensing.

1 **(b) Each application submitted to the Department of Human Ser-**
2 **vices must be accompanied by a fee established by the department by**
3 **rule in an amount sufficient to pay the department's costs of licensing**
4 **and regulating the facilities.**

5 [(2)] **(3)** Upon receipt of an application and fee, the licensing agency shall
6 conduct an investigation.

7 [(3)] **(4)** The licensing agency [*shall*] **may** not issue an initial license un-
8 less:

9 (a) The applicant and adult foster home are in compliance with ORS
10 443.002 and 443.705 to 443.825 and the rules of the licensing agency;

11 (b) The licensing agency has completed an inspection of the adult foster
12 home;

13 (c) The licensing agency has completed a criminal records check under
14 ORS 181A.195 on the applicant and any person, other than a resident, 16
15 years of age or older who will be residing in the adult foster home. The
16 criminal records check shall be conducted in accordance with rules adopted
17 under ORS 181A.195;

18 (d) The licensing agency has determined that the registry maintained un-
19 der ORS 441.678 contains no finding that the applicant or any nursing as-
20 sistant employed by the applicant has been responsible for abuse; and

21 (e) The applicant has demonstrated to the licensing agency the financial
22 ability and resources necessary to operate the adult foster home. The li-
23 censing agency shall adopt rules as the agency deems appropriate that es-
24 tablish the financial standards an applicant must meet to qualify for issuance
25 of a license and that protect financial information from public disclosure.
26 The demonstration of financial ability under this paragraph shall include,
27 but need not be limited to, providing the licensing agency with a list of any
28 unsatisfied judgments, pending litigation and unpaid taxes and notifying the
29 agency regarding whether the applicant is in bankruptcy. If the applicant is
30 unable to demonstrate the financial ability and resources required by this
31 paragraph, the licensing agency may require the applicant to furnish a fi-

1 nancial guarantee as a condition of initial licensure.

2 (4) The licensing agency may not renew a license under this section un-
3 less:

4 (a) The applicant and the adult foster home are in compliance with ORS
5 443.002 and 443.705 to 443.825 and the rules of the licensing agency;

6 (b) The licensing agency has completed an inspection of the adult foster
7 home;

8 (c) The licensing agency has completed a criminal records check under
9 ORS 181A.195 on the applicant and any person, other than a resident, 16
10 years of age or older who will be residing in the adult foster home. The
11 criminal records check under this paragraph shall be conducted in accord-
12 ance with rules adopted under ORS 181A.195; and

13 (d) The licensing agency has determined that the registry maintained un-
14 der ORS 441.678 contains no finding that the applicant or any nursing as-
15 sistant employed by the applicant has been responsible for abuse.

16 [(5)(a)] **(6)(a)** In seeking an initial license and renewal of a license when
17 an adult foster home has been licensed for less than 24 months, the burden
18 of proof shall be upon the provider and the adult foster home to establish
19 compliance with ORS 443.705 to 443.825 and the rules of the licensing agency.

20 (b) In proceedings for renewal of a license when an adult foster home has
21 been licensed for at least 24 continuous months, the burden of proof shall
22 be upon the licensing agency to establish noncompliance with ORS 443.705
23 to 443.825 and the rules of the agency.

24 [(6)(a)] **(7)(a)** Persons who have been convicted of one or more crimes
25 that, as determined by rules of the licensing agency, are substantially related
26 to the qualifications, functions or duties of a provider, substitute caregiver
27 or other household member of an adult foster home shall be prohibited from
28 operating, working in or residing in an adult foster home.

29 (b) The licensing agency shall adopt rules that distinguish the criminal
30 convictions and types of abuse that permanently prohibit a person from op-
31 erating, working in or living in an adult foster home from the convictions

1 and types of abuse that do not permanently prohibit the person from oper-
2 ating, working in or living in an adult foster home.

3 (c) A provider may not hire, retain in employment or allow to live in an
4 adult foster home, other than as a resident, any person who the provider
5 knows has been convicted of a disqualifying crime or has been found re-
6 sponsible for a disqualifying type of abuse.

7 [(7)] (8) A license under ORS 443.725 is effective for one year from the
8 date of issue unless sooner revoked. Each license shall state the name of the
9 resident manager of the adult foster home, the names of all providers who
10 own the adult foster home, the address of the premises to which the license
11 applies, the maximum number of residents and the classification of the adult
12 foster home. If, during the period covered by the license, a resident manager
13 changes, the provider must within 15 days request modification of the li-
14 cense. The request must be accompanied by a fee of \$10.

15 [(8)] (9) No license under ORS 443.725 is transferable or applicable to any
16 location, persons operating the adult foster home or the person owning the
17 adult foster home other than that indicated on the application for licensing.

18 [(9)] (10) The licensing agency shall not issue a license to operate an ad-
19 ditional adult foster home to a provider unless the provider has demonstrated
20 the qualifications and capacity to operate the provider's existing licensed
21 adult foster homes and has demonstrated the ability to provide to the resi-
22 dents of those adult foster homes care that is adequate and substantially free
23 from abuse and neglect.

24 [(10)(a)] (11)(a) All moneys collected under ORS 443.725 to 443.780 from
25 adult foster homes that are licensed to serve persons with mental, emotional
26 or behavioral disturbances or alcohol or drug dependence shall be deposited
27 in a special account in the General Fund, and are appropriated continuously
28 for payment of expenses incurred by the Oregon Health Authority.

29 (b) All moneys collected under ORS 443.725 to 443.780 from adult foster
30 homes licensed to serve persons who are elderly, have physical disabilities
31 or have developmental disabilities shall be deposited in the [*Quality Care*

1 *Fund established in ORS 443.001*] **Department of Human Services Ac-**
2 **count established under ORS 409.060 for the purpose of carrying out**
3 **the functions of the Department of Human Services under ORS 443.725**
4 **to 443.780.**

5 [(11)] (12) Notwithstanding any other provision of this section or ORS
6 443.725 or 443.738, the licensing agency may issue a 60-day provisional license
7 to a qualified person if the agency determines that an emergency situation
8 exists after being notified that the licensed provider of an adult foster home
9 is no longer overseeing operation of the adult foster home.

10 **SECTION 16. (1) The amendments to ORS 443.425 by section 12 of**
11 **this 2017 Act become operative on January 1, 2018.**

12 **(2) The amendments to ORS 441.020, 443.415, 443.425, 443.430 and**
13 **443.735 by sections 10, 11 and 13 to 15 of this 2017 Act become operative**
14 **on October 1, 2018.**

15 **(2) The Department of Human Services may take any action before**
16 **the operative dates specified in subsections (1) and (2) of this section**
17 **to enable the department to exercise, on and after the operative date**
18 **specified in subsection (1) of this section, all of the duties, functions**
19 **and powers conferred on the department by the amendments to ORS**
20 **441.020, 443.415, 443.425, 443.430 and 443.735 by sections 10 to 15 of this**
21 **2017 Act.**

22 **SECTION 17. The amendments to ORS 443.425 by section 12 of this**
23 **2017 Act apply only to licenses issued or renewed on or after the op-**
24 **erative date specified in section 16 of this 2017 Act.**

25

26

CAPTIONS

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28 **SECTION 18. The unit captions used in this 2017 Act are provided**
29 **only for the convenience of the reader and do not become part of the**
30 **statutory law of this state or express any legislative intent in the**
31 **enactment of this 2017 Act.**

EMERGENCY CLAUSE

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SECTION 19. This 2017 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect on its passage.
