

Enrolled
House Bill 2684

Sponsored by Representative RAYFIELD, Senator STEINER HAYWARD; Representatives ALONSO LEON, KENY-GUYER, MCLAIN, MEEK, Senator DEVLIN (Presession filed.)

CHAPTER

AN ACT

Relating to residential facilities; creating new provisions; and amending ORS 127.646, 443.400, 443.415, 443.425, 443.735 and 456.559.

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

SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 443.400 to 443.455.

SECTION 2. It is the intent of the Legislative Assembly that, when the Legislative Assembly approves increases in funding of services provided by residential training facilities or residential training homes, wages and health benefits paid to direct support professionals in the residential training facilities or residential training homes be increased at a comparable rate.

SECTION 3. A residential training facility or residential training home licensed by the Department of Human Services shall submit annual staffing data to a nationally standardized reporting survey organization specified by the Department of Human Services. The department shall obtain state-specific data from the nationally standardized reporting survey organization, disaggregated by provider.

SECTION 4. ORS 443.415 is amended to read:

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

(2) The fee required under subsection (1) of this section for facilities:

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

(b) Defined in ORS 443.400 (8), shall be \$50.

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

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

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

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

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

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

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

(3) Upon receipt of an application and fee, the licensing agency shall conduct an investigation. The licensing agency shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.002 and 443.400 to 443.455 and the rules of the licensing agency. Licensure

may be denied when a residential facility is not in compliance with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

SECTION 5. ORS 443.425 is amended to read:

443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless sooner revoked. Each license shall state the name of the person operating the residential facility; the name of the person who owns the facility; the address of the premises to which the license applies and the maximum number of residents to be maintained in such residential facility at any time whether the residential facility is licensed as a residential training facility, a residential treatment facility, a residential care facility; a residential training home or residential treatment home and such other information as the Department of Human Services or the Oregon Health Authority considers necessary.

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

(3) The biennial fee required under subsection (2) of this section for facilities:

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

(b) Defined in ORS 443.400 (8), shall be \$50.

~~[(b)]~~ (c) Defined in ORS 443.400 ~~[(8) and]~~ (10), shall be \$30.

~~[(c)]~~ (d) Defined in ORS 443.400 (5) with:

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

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

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

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

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

SECTION 6. ORS 443.735 is amended to read:

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

(b) Each application submitted to the Department of Human Services for an adult foster home serving individuals with intellectual or developmental disabilities shall be accompanied by a fee of \$50 per bed requested for licensing.

(c) Each application submitted to the Oregon Health Authority, or to the Department of Human Services for an adult foster home not serving individuals with intellectual or developmental disabilities, shall be accompanied by a fee of \$20 per bed requested for licensing.

(2) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.

(3) The licensing agency shall not issue an initial license unless:

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

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

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

(d) The licensing agency has determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse; and

(e) The applicant has demonstrated to the licensing agency the financial ability and resources necessary to operate the adult foster home. The licensing agency shall adopt rules as the agency deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the licensing agency with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the agency regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the licensing agency may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The licensing agency may not renew a license under this section unless:

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

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

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

(d) The licensing agency has determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.

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

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

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

(b) The licensing agency shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

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

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

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

(9) The licensing agency shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed adult foster homes and has demonstrated the ability to provide to the residents of those adult foster homes care that is adequate and substantially free from abuse and neglect.

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

(b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve persons who are elderly, have physical disabilities or have developmental disabilities shall be deposited in the Quality Care Fund established in ORS 443.001.

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

SECTION 7. The amendments to ORS 443.415, 443.425 and 443.735 by sections 4 to 6 of this 2017 Act apply to applications for licensure or renewal of licensure made on or after January 1, 2018.

SECTION 8. ORS 127.646 is amended to read:

127.646. As used in ORS 127.646 to 127.654:

(1) "Health care organization" means a home health agency, hospice program, hospital, long term care facility or health maintenance organization.

(2) "Health maintenance organization" has the meaning given that term in ORS 750.005, except that "health maintenance organization" includes only those organizations that participate in the federal Medicare or Medicaid programs.

(3) "Home health agency" has the meaning given that term in ORS 443.014.

(4) "Hospice program" has the meaning given that term in ORS 443.850.

(5) "Hospital" has the meaning given that term in ORS 442.015. "Hospital" does not include a special inpatient care facility.

(6) "Long term care facility" has the meaning given that term in ORS 442.015, except that "long term care facility" does not include an intermediate care facility for individuals with [*mental retardation*] **intellectual or developmental disabilities**.

SECTION 9. ORS 443.400 is amended to read:

443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise:

(1) "Director" means the director of the licensing agency for the residential facility.

(2) "Licensing agency" means:

(a) The Department of Human Services, if the residential facility that is licensed, or that the Director of Human Services determines should be licensed, is a residential care facility, residential training facility or residential training home; or

(b) The Oregon Health Authority, if the residential facility that is licensed, or that the Director of the Oregon Health Authority determines should be licensed, is a residential treatment facility or residential treatment home.

(3) "Resident" means any individual residing in a facility who receives residential care, treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be a resident if the individual is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility.

(4) "Residential care" means services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

(5) "Residential care facility" means a facility that provides, for six or more socially dependent individuals or individuals with physical disabilities, residential care in one or more buildings on contiguous properties.

(6) "Residential facility" means a residential care facility, residential training facility, residential treatment facility, residential training home or residential treatment home.

(7) “Residential training facility” means a facility that provides, for six or more individuals with [*mental retardation or other*] **intellectual or** developmental disabilities, residential care and training in one or more buildings on contiguous properties.

(8) “Residential training home” means a facility that provides, for five or fewer individuals with [*mental retardation or other*] **intellectual or** developmental disabilities, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the Department of Human Services.

(9) “Residential treatment facility” means a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

(10) “Residential treatment home” means a facility that provides for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

(11) “Training” means the systematic, planned maintenance, development or enhancement of self-care skills, social skills or independent living skills, or the planned sequence of systematic interactions, activities or structured learning situations designed to meet each resident’s specified needs in the areas of physical, social, emotional and intellectual growth.

(12) “Treatment” means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

SECTION 10. ORS 456.559, as amended by section 6, chapter 61, Oregon Laws 2016, is amended to read:

456.559. (1) The Housing and Community Services Department shall:

(a) Maintain current housing data and information concerning available programs, status of funding, programs planned or undertaken which might conflict with, overlap, duplicate or supersede other planned or existing programs and call these to the attention of appropriate state agencies, governmental bodies and public or private housing sponsors.

(b) Provide to appropriate state agencies, governmental bodies and public or private housing sponsors such advisory and educational services as will assist them in the development of housing plans and projects.

(c) Subject to the approval of the Oregon Housing Stability Council, make noninterest bearing advances, in accordance with ORS 456.710 and the policies of the department, to qualified nonprofit sponsors for development costs of housing projects until mortgage funds are released to repay the advances as provided in ORS 456.710.

(d) Advise and assist appropriate state agencies, governmental bodies and public or private housing sponsors, cities and counties, in all programs and activities which are designed or might tend to fulfill the purposes of ORS 456.548 to 456.725 and ORS chapter 458.

(e) Encourage and assist in the planning, development, construction, rehabilitation and conservation of dwelling units for persons and families of lower income.

(f) Be the central state department to apply for, receive and distribute, on behalf of appropriate state agencies, governmental bodies and public or private housing sponsors in the state, grants, gifts, contributions, loans, credits or assistance from the federal government or any other source for housing programs except when the donor, grantor, or lender of such funds specifically directs some other agency to administer them. Moneys received under this section shall be deposited with the State Treasurer in an account separate and distinct from the General Fund. Interest earned by the account shall be credited to the account.

(g) For the purposes of acquiring moneys, credits or other assistance from any agency or instrumentality of the United States or from any public corporation chartered by the United States, comply with any applicable agreements or restrictions for the receipt of such assistance and become a member of any such association or public corporation chartered by the United States.

(h) Assist individuals, appropriate state agencies, governmental bodies and public or private housing sponsors through a program which provides housing information, planning, educational services and technical assistance.

(i) Comply with the requirements of ORS 443.225 in assisting in the development of any housing for residential care, training or treatment for persons with [*mental retardation,*] **intellectual or developmental disabilities** or mental or emotional disturbances.

(2) Except as otherwise provided in ORS 456.625 (7) and sections 1 to 3, chapter 61, Oregon Laws 2016, the department may not itself develop, construct, rehabilitate or conserve housing units; and neither the department nor any housing sponsor, including but not limited to any association, corporation, cooperative housing authority or urban renewal agency organized to provide housing and other facilities pursuant to ORS 456.548 to 456.725, may own, acquire, construct, purchase, lease, operate or maintain utility facilities, including facilities for the generation of electricity, for the distribution of gas and electricity, and for the conveyance of telephone and telegraph messages.

(3) In accordance with the provisions of this section and with the advice of the council, the department shall establish statewide priorities for housing programs. State agencies shall coordinate their housing programs with the department. All state agencies intending to apply for federal funds for use in planning, developing or managing housing, or rendering assistance to governmental bodies or sponsors or individuals involved therein shall submit a description of the proposed activity to the department for review not less than 30 days prior to the intended date of submission of the application to the federal agency. The department shall determine whether the proposal would result in a program that would overlap, duplicate or conflict with any other housing program in the state. If the department finds overlapping or duplication or conflict, it shall recommend modifications in the application. The Oregon Department of Administrative Services shall consider these recommendations in making its decision to approve or disapprove the application. The department shall complete its review and forward its recommendations within 15 working days after receipt of the notification. Failure of the department to complete the review within that time shall constitute approval of the application by the department.

(4) The Director of the Housing and Community Services Department may participate in discussions and deliberations of the council. The director may suggest policies and rules to the council, including those necessary to stimulate and increase the supply of housing for persons and families of lower income.

Passed by House July 5, 2017

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate July 7, 2017

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

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Dennis Richardson, Secretary of State