

A-Engrossed
House Bill 2684

Ordered by the House July 1
Including House Amendments dated July 1

Sponsored by Representative RAYFIELD, Senator STEINER HAYWARD; Representatives ALONSO LEON, MEEK
(Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Establishes minimum hourly wage rate of \$15 per hour for employees who provide direct care to residents of residential training facility or residential training home.]

[Requires residential training facility or residential training home to submit annual financial statement to Department of Human Services.]

[Modifies civil penalties for occurrences of substantiated abuse in residential training facility or residential training home.]

[Authorizes private action against residential training facility or residential training home for retaliation for reports of abuse of adult.]

[Directs Director of Human Services to adopt rules requiring residential training facility or residential training home to employ staff sufficient to meet individual needs of resident.]

[Modifies licensing fee for residential training home.]

[Directs director or authorized representative to inspect residential training facility or residential training home at least annually.]

[Declares emergency, effective on passage.]

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

Requires residential training facilities and residential training homes licensed by Department of Human Services to submit annual staffing data to reporting survey organization.

Increases licensure fees for residential training homes and adult foster homes serving individuals with intellectual or developmental disabilities.

Updates terminology.

A BILL FOR AN ACT

1
2 Relating to residential facilities; creating new provisions; and amending ORS 127.646, 443.400,
3 443.415, 443.425, 443.735 and 456.559.

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

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

7 **SECTION 2. It is the intent of the Legislative Assembly that, when the Legislative As-**
8 **sembly approves increases in funding of services provided by residential training facilities**
9 **or residential training homes, wages and health benefits paid to direct support professionals**
10 **in the residential training facilities or residential training homes be increased at a compa-**
11 **table rate.**

12 **SECTION 3. A residential training facility or residential training home licensed by the**
13 **Department of Human Services shall submit annual staffing data to a nationally standardized**
14 **reporting survey organization specified by the Department of Human Services. The depart-**
15 **ment shall obtain state-specific data from the nationally standardized reporting survey or-**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted.
New sections are in **boldfaced** type.

1 **ganization, disaggregated by provider.**

2 **SECTION 4.** ORS 443.415 is amended to read:

3 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
4 made to the Department of Human Services or the Oregon Health Authority on forms provided for
5 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee.
6 No fee is required of any governmentally operated residential facility.

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

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

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

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

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

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

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

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

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

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

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

24 **SECTION 5.** ORS 443.425 is amended to read:

25 443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless
26 sooner revoked. Each license shall state the name of the person operating the residential facility;
27 the name of the person who owns the facility; the address of the premises to which the license ap-
28 plies and the maximum number of residents to be maintained in such residential facility at any time
29 whether the residential facility is licensed as a residential training facility, a residential treatment
30 facility, a residential care facility; a residential training home or residential treatment home and
31 such other information as the Department of Human Services or the Oregon Health Authority con-
32 siders necessary.

33 (2) A license is renewable upon submission of an application to the department or the authority
34 and payment of a fee. No fee shall be required of a governmentally operated residential facility.
35 Filing of an application for renewal before the date of expiration of a license extends the effective
36 date of expiration of the license until the licensing agency has acted upon such application. The li-
37 censing agency shall refuse to renew a license if the facility is not substantially in compliance with
38 all applicable laws and rules, or if the State Fire Marshal or the authorized representative thereof
39 has given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9) pursuant to ORS
40 479.220.

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

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

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

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

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

- 1 (A) One to 15 beds, shall be \$360.
- 2 (B) Sixteen to 49 beds, shall be \$520.
- 3 (C) Fifty to 99 beds, shall be \$1,040.
- 4 (D) One hundred to 150 beds, shall be \$1,340.
- 5 (E) More than 150 beds, shall be \$1,500.

6 **SECTION 6.** ORS 443.735 is amended to read:

7 443.735. (1)(a) Applications for a license to maintain and operate an adult foster home shall be
8 made on forms provided by the licensing agency.

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

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

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

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

17 (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to
18 443.825 and the rules of the licensing agency;

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

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

24 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
25 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
26 sponsible for abuse; and

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

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

37 (a) The applicant and the adult foster home are in compliance with ORS 443.002 and 443.705 to
38 443.825 and the rules of the licensing agency;

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

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

44 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
45 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-

1 sponsible for abuse.

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

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

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

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

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

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

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

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

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

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

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

44 **SECTION 7. The amendments to ORS 443.415, 443.425 and 443.735 by sections 4 to 6 of this**
45 **2017 Act apply to applications for licensure or renewal of licensure made on or after January**

1 **1, 2018.**

2 **SECTION 8.** ORS 127.646 is amended to read:

3 127.646. As used in ORS 127.646 to 127.654:

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

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

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

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

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

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

16 **SECTION 9.** ORS 443.400 is amended to read:

17 443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise:

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

19 (2) "Licensing agency" means:

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

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

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

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

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

36 (6) "Residential facility" means a residential care facility, residential training facility, residen-
37 tial treatment facility, residential training home or residential treatment home.

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

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

45 (9) "Residential treatment facility" means a facility that provides, for six or more individuals

1 with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care
2 and treatment in one or more buildings on contiguous properties.

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

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

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

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

16 456.559. (1) The Housing and Community Services Department shall:

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

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

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

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

31 (e) Encourage and assist in the planning, development, construction, rehabilitation and conser-
32 vation of dwelling units for persons and families of lower income.

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

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

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

1 services and technical assistance.

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

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

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

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

30