

House Bill 3359

Sponsored by Representatives MCKEOWN, KENY-GUYER, Senators KRUSE, GELSER, KNOPP; Representatives ALONSO LEON, ESQUIVEL, GOMBERG, OLSON, RAYFIELD, SMITH G, Senators DEMBROW, MONNES ANDERSON, ROBLAN

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 **as introduced**.

Creates Dementia Community Assistance Program in Department of Human Services to provide grants to community organizations providing assistance and training to individuals who care for persons with dementia who live at home.

Establishes Residential Care Quality Measurement Program and Quality Measurement Council within department to develop quality metrics for residential care facilities, require reporting of quality metrics by residential care facilities, provide reports to individual residential care facilities and compile aggregate information about quality of care in residential care facilities.

Requires department to develop and disseminate evidence-informed framework for accurately and equitably assessing residential care facility compliance or noncompliance with regulatory requirements.

Requires department to administer residential care facility advanced standing program to reward residential care facilities for positive performance on quality metrics. Requires department to impose specified penalties on residential care facilities for poor performance on quality metrics.

Requires department to utilize and share with residential care facilities, tool to evaluate level and type of direct care staffing based upon acuity of residents' needs.

Requires direct care staff in residential care facility and caregivers in adult foster homes to complete training in dementia care that meets specified standards.

Requires Oregon Medical Board to encourage licensed physicians to obtain continuing medical education in treatment of patients with Alzheimer's disease.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to long term care; creating new provisions; amending ORS 443.400 and 443.452; and de-
3 claring an emergency.

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

LEGISLATIVE FINDINGS

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8 **SECTION 1. The Legislative Assembly finds that residents of Oregon's community-based**
9 **care facilities are valued citizens of this state and deserve to live a life of autonomy and**
10 **dignity. The Legislative Assembly finds and declares that it is the policy of this state to**
11 **promote the autonomy of these citizens and accord them honor, dignity and the ability to**
12 **freely choose how they live their lives so as to encourage maximum independence and ful-**
13 **fillment.**

DEMENTIA COMMUNITY ASSISTANCE PROGRAM

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17 **SECTION 2. (1) The Dementia Community Assistance Program is created in the Depart-**
18 **ment of Human Services to respond to the needs of local communities in caring for persons**
19 **with dementia. The program shall provide grants to entities that will work together to**

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 provide the services described in subsection (2) of this section. Grantees shall be entities
2 that:

3 (a) Function primarily to provide services to families who are caring for a person with
4 dementia in order to postpone or prevent the person's need for placement in a residential
5 care facility; and

6 (b) Provide consistent, uniform and evidence-informed training in dementia care to care
7 providers in all segments of the community-based care continuum.

8 (2) Grantees of the Dementia Community Assistance Program shall:

9 (a) Establish and facilitate self-help groups for family members of persons with dementia
10 who reside in their own homes;

11 (b) Provide training programs and support for volunteers, family members and providers
12 of community-based care, to enable them to provide proper care to persons with dementia
13 in their own homes or in community-based settings;

14 (c) Assist in developing day care programs and other types of congregate care offering
15 respite services to individuals caring for persons with dementia;

16 (d) Recruit, train and supervise volunteers providing respite care;

17 (e) Work with the department to distribute educational materials regarding community
18 resources and options for caring for persons with dementia;

19 (f) Conduct outreach and provide counseling, education and support to families of persons
20 with dementia; and

21 (g) Work with the department to explore alternative mechanisms for delivering inter-
22 vention services to families to delay the institutionalization of persons with dementia.

23
24 **RESIDENTIAL CARE FACILITIES; QUALITY MEASURES**

25
26 **SECTION 3.** Sections 4 to 8 of this 2017 Act are added to and made a part of ORS 443.400
27 to 443.455.

28 **SECTION 4.** (1) The Residential Care Quality Measurement Program is established in the
29 Department of Human Services. The department shall:

30 (a) Use aggregate information, excluding information that identifies individuals or resi-
31 dential care facilities, to publish an annual report describing statewide patterns and trends
32 that emerge from the information reported to the department under subsection (2) of this
33 section and compliance data maintained by the department;

34 (b) Provide an annual report to each residential care facility that reports quality metrics
35 under subsection (2) of this section to allow the facility to measure and compare its quality
36 metrics over time; and

37 (c) Make available to the public in a standard format and in plain language the informa-
38 tion reported by each residential care facility.

39 (2) Residential care facilities shall report annually, in the form and manner prescribed
40 by the department, the following quality metrics consistent with accepted professional stan-
41 dards:

42 (a) The residential care facility's retention of direct care staff;

43 (b) The number of resident falls in the residential care facility that result in physical
44 injury;

45 (c) The incidence in the residential care facility of the use of antipsychotic medications

1 for nonstandard purposes;

2 (d) The residential care facility's compliance with staff training requirements; and

3 (e) A metric recommended by the Quality Measurement Council established under section
4 5 of this 2017 Act that measures the quality of the resident experience.

5 (3) The department shall establish a uniform system for residential care facilities to re-
6 port quality metrics as required by subsection (2) of this section. The system must:

7 (a) Allow for electronic reporting of data, to the greatest extent practicable; and

8 (b) Take into account and utilize existing data reporting systems used by residential care
9 facilities.

10 (4)(a) Quality metric information reported to the department under this section may not
11 be used as the basis for an enforcement action by the department nor may it be disclosed
12 to another agency for use in an enforcement or regulatory action.

13 (b) Quality metric information is not admissible as evidence in any civil action, including
14 but not limited to a judicial, administrative, arbitration or mediation proceeding.

15 (c) Quality metric information reported to the department is not subject to:

16 (A) Civil or administrative subpoena; or

17 (B) Discovery in connection with a civil action, including but not limited to a judicial,
18 administrative, arbitration or mediation proceeding.

19 **SECTION 5.** (1) The Quality Measurement Council is established in the Department of
20 Human Services consisting of six members, appointed by the Governor, as follows:

21 (a) One individual representing the Oregon Patient Safety Commission;

22 (b) One individual representing residential care facilities;

23 (c) One consumer representative from an Alzheimers' advocacy organization;

24 (d) One licensed health care practitioner with experience in geriatrics;

25 (e) One individual with expertise in research using data and analytics; and

26 (f) One individual, associated with an academic institution, who has expertise in
27 community-based care and quality reporting.

28 (2) The council shall develop and annually update the quality metrics to be reported by
29 residential care facilities under section 4 of this 2017 Act. The department shall adopt the
30 quality metrics by rule.

31 (3) In developing quality metrics the council shall consider whether the information re-
32 ported reflects and promotes quality care and whether it is reasonable to require a residen-
33 tial care facility to report the information.

34
35 **ENHANCED REGULATORY OVERSIGHT**

36
37 **SECTION 6.** (1) The Department of Human Services shall develop an evidence-informed
38 framework for assessing compliance with regulatory requirements and requiring corrective
39 action that accurately and equitably measures compliance and the extent of noncompliance.
40 The department shall publish the framework on the department's website and shall distribute
41 the framework to residential care facilities licensed in this state.

42 (2) The department shall administer a residential care facility advanced standing program
43 that rewards residential care facilities for positive performance and penalizes poor perform-
44 ance, based on the extent to which a facility:

45 (a) Substantially complies with the regulatory framework described in subsection (1) of

1 this section on a consistent basis;

2 (b) Has implemented self-directed quality improvement activities; and

3 (c) Has demonstrated quality improvement in the metrics reported to the Residential
4 Care Quality Measurement Program.

5 (2) The residential care facility advanced standing program rewards for positive per-
6 formance shall include one or more of the following:

7 (a) Less frequent surveys of the residential care facility.

8 (b) Abbreviated surveys of the residential care facility.

9 (c) Other positive incentives as determined by the department.

10 (3) The residential care facility advanced standing program penalties for poor perform-
11 ance include one or both of the following:

12 (a) An increase in the frequency of surveys of the residential care facility as the de-
13 partment deems necessary to improve performance.

14 (b) Surveys that focus on areas of noncompliance identified by the department.

15
16 **ACUITY-BASED STAFFING TOOL**

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18 **SECTION 7.** (1) The Department of Human Services shall utilize an objective,
19 technology-based, acuity-based staffing tool to:

20 (a) Evaluate whether the level and type of direct care staff at a particular residential
21 care facility meets the residents' acuity needs if the department suspects that the level and
22 type of direct care staffing may be inadequate; and

23 (b) Determine the level and type of direct care staff that is required at the particular
24 residential care facility to meet the residents' acuity needs.

25 (2) The acuity-based staffing tool described in subsection (1) of this section shall be made
26 available to residential care facilities to enable the facilities to assess their own staffing
27 needs and to communicate the required staffing standards and each facility's staffing plan
28 to residents, families and other persons.

29
30 **RESIDENTIAL CARE FACILITY DIRECT CARE STAFF TRAINING**

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32 **SECTION 8.** (1) In addition to any other training required by law, all direct care staff
33 employed by a residential care facility shall, prior to providing direct care to residents of the
34 facility, complete training in dementia care that includes:

35 (a) Education on the dementia disease process, including the progression of the disease,
36 memory loss, psychiatric and behavioral symptoms;

37 (b) Techniques for understanding and managing behavioral symptoms;

38 (c) Strategies for addressing the social needs of persons with dementia and providing
39 them with meaningful activities; and

40 (d) Information on addressing specific aspects of dementia care and ensuring the safety
41 of residents with dementia, including but not limited to how to:

42 (A) Address pain;

43 (B) Provide food and fluids; and

44 (C) Prevent wandering and elopement.

45 (2) A residential care facility shall provide a certificate of completion to direct care staff

1 who complete the training described in subsection (1) of this section. If a member of the di-
2 rect care staff is employed by a different residential care facility no later than 24 months
3 after completing the training, the staff member may not be required to repeat the training.

4 (3) In addition to the training described in subsection (1) of this section, direct care staff
5 each must annually complete at least four hours of training in dementia care. This training
6 may be part of any existing continuing education requirement imposed by law.

7 (4) All training provided to direct care staff related to dementia care must reflect current
8 standards for dementia care and be informed by the best evidence in the care and treatment
9 of persons with dementia.

10
11 **ADULT FOSTER HOMES CAREGIVER TRAINING**

12
13 **SECTION 9.** Section 10 of this 2017 Act is added to and made a part of ORS 443.705 to
14 443.825.

15 **SECTION 10.** (1) As used in this section, “caregiver” means an individual who is respon-
16 sible for providing care and services to residents of an adult foster home, including but not
17 limited to a provider and a substitute caregiver.

18 (2) In addition to any other training required by law, all caregivers in an adult foster
19 home shall, prior to providing direct care to residents of the home, complete training in
20 dementia care that includes:

21 (a) Education on the dementia disease process, including the progression of the disease,
22 memory loss, psychiatric and behavioral symptoms;

23 (b) Techniques for understanding and managing behavioral symptoms;

24 (c) Strategies for addressing the social needs of persons with dementia and providing
25 them with meaningful activities; and

26 (d) Information on addressing specific aspects of dementia care and ensuring the safety
27 of residents with dementia, including but not limited to how to:

28 (A) Address pain;

29 (B) Provide food and fluids; and

30 (C) Prevent wandering and elopement.

31 (3) An adult foster home shall provide a certificate of completion to a caregiver who
32 completes the training described in subsection (2) of this section. If a caregiver is employed
33 by a different adult foster home no later than 24 months after completing the training, the
34 caregiver may not be required to repeat the training.

35 (4) In addition to the training described in subsection (2) of this section, caregivers each
36 must annually complete at least four hours of training in dementia care. This training may
37 be part of existing continuing education requirements imposed by law.

38 (5) All training provided to caregivers related to dementia care must reflect current
39 standards for dementia care and be informed by the best evidence in the care and treatment
40 of persons with dementia.

41
42 **PHYSICIAN EDUCATION IN ALZHEIMER’S DISEASE**

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44 **SECTION 11.** Section 12 of this 2017 Act is added to and made a part of ORS chapter 677.

45 **SECTION 12.** (1) The Oregon Medical Board shall encourage each physician with a spe-

1 cialty in primary care or geriatrics, or another specialty designated by the board, to obtain
 2 continuing medical education in the detection and early diagnosis of Alzheimer’s disease and
 3 the appropriate prescribing of antipsychotic drugs to treat patients Alzheimer’s disease.

4 (2) The continuing medical education described in subsection (1) of this section shall be
 5 considered relevant continuing medical education for all licensees of the board and the hours
 6 may be applied to any required continuing medical education requirements.

7
 8 **SUBSEQUENT AMENDMENTS TO SECTION 4 OF ACT**
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10 **SECTION 13.** Section 4 of this 2017 Act is amended to read:

11 **Sec. 4.** (1) The Residential Care Quality Measurement Program is established in the Department
 12 of Human Services. The department shall:

13 (a) Use aggregate information, excluding information that identifies individuals or residential
 14 care facilities, to publish an annual report describing statewide patterns and trends that emerge
 15 from the information reported to the department under subsection (2) of this section and compliance
 16 data maintained by the department;

17 (b) Provide an annual report to each residential care facility that reports quality metrics under
 18 subsection (2) of this section to allow the facility to measure and compare its quality metrics over
 19 time; and

20 (c) Make available to the public in a standard format and in plain language the information re-
 21 ported by each residential care facility.

22 (2) Residential care facilities shall report annually, in the form and manner prescribed by the
 23 department, the *[following]* quality metrics **developed by the Quality Measurement Council under**
 24 **section 5 of this 2017 Act.** *[consistent with accepted professional standards:]*

25 *[(a) The residential care facility’s retention of direct care staff;]*

26 *[(b) The number of resident falls in the residential care facility that result in physical injury;]*

27 *[(c) The incidence in the residential care facility of the use of antipsychotic medications for non-*
 28 *standard purposes;]*

29 *[(d) The residential care facility’s compliance with staff training requirements; and]*

30 *[(e) A metric recommended by the Quality Measurement Council established under section 5 of this*
 31 *2017 Act that measures the quality of the resident experience.]*

32 (3) The department shall establish a uniform system for residential care facilities to report
 33 quality metrics as required by subsection (2) of this section. The system must:

34 (a) Allow for electronic reporting of data, to the greatest extent practicable; and

35 (b) Take into account and utilize existing data reporting systems used by residential care facil-
 36 ities.

37 (4)(a) Quality metric information reported to the department under this section may not be used
 38 as the basis for an enforcement action by the department nor may it be disclosed to another agency
 39 for use in an enforcement or regulatory action.

40 (b) Quality metric information is not admissible as evidence in any civil action, including but
 41 not limited to a judicial, administrative, arbitration or mediation proceeding.

42 (c) Quality metric information reported to the department is not subject to:

43 (A) Civil or administrative subpoena; or

44 (B) Discovery in connection with a civil action, including but not limited to a judicial, adminis-
 45 trative, arbitration or mediation proceeding.

DEFINITIONS

SECTION 14. 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.]

(1) "Direct care staff" means the employees of a residential facility whose primary responsibilities are to provide personal care services to residents, including but not limited to:

- (a) Administering medications;**
- (b) Coordinating resident-focused activities;**
- (c) Supervising and supporting residents; and**
- (d) Serving but not preparing meals.**

(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 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 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

1 interactions, activities or structured learning situations designed to meet each resident’s specified
2 needs in the areas of physical, social, emotional and intellectual growth.

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

7
8 **CONFORMING AMENDMENTS**

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10 **SECTION 15.** ORS 443.452 is amended to read:

11 443.452. (1) The [*director*] **Director of Human Services** shall waive the requirements of ORS
12 443.410 for a residential care facility caring for residents with physical disabilities if:

13 (a) Each resident is over 16 years of age;

14 (b) No more than five individuals with physical disabilities reside in any one building of the fa-
15 cility; and

16 (c) The residential **care** facility complies with the applicable requirements of the State Fire
17 Marshal.

18 (2) As used in this section, “building” means any structure that does not share a common wall
19 or roof with another structure.

20
21 **OPERATIVE DATES**

22
23 **SECTION 16.** Sections 1 to 12 of this 2017 Act and the amendments to ORS 443.400 and
24 443.452 by sections 14 and 15 of this 2017 Act become operative on January 1, 2018.

25 **SECTION 17.** The amendments to section 4 of this 2017 Act by section 13 of this 2017 Act
26 become operative on January 1, 2022.

27 **SECTION 18.** The Department of Human Services may take any steps prior to the oper-
28 ative date specified in section 16 of this 2017 Act that are necessary to carry out sections 1
29 to 12 of this 2017 Act and the amendments to ORS 443.400 and 443.452 by sections 14 and 15
30 of this 2017 Act on the operative date specified in section 16 of this 2017 Act.

31
32 **CAPTIONS**

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34 **SECTION 19.** The unit captions used in this 2017 Act are provided only for the conven-
35 ience of the reader and do not become part of the statutory law of this state or express any
36 legislative intent in the enactment of this 2017 Act.

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38 **EMERGENCY CLAUSE**

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40 **SECTION 20.** This 2017 Act being necessary for the immediate preservation of the public
41 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
42 on its passage.