

Senate Bill 710

Sponsored by COMMITTEE ON HUMAN SERVICES

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**.

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

1
2 Relating to care facilities; creating new provisions; amending ORS 441.020, 441.710, 441.715, 441.995,
3 443.415, 443.425, 443.430, 443.455, 443.735 and 443.790; and declaring an emergency.

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

CIVIL PENALTIES

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8 **SECTION 1.** ORS 443.455 is amended to read:

9 443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil
10 penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705
11 to 441.745.

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

14 (b) The director [*of Human Services*] shall by rule prescribe a schedule of penalties for [*resi-*
15 *dential care facilities,*] residential training facilities and residential training homes that are not in
16 compliance with ORS 443.400 to 443.455.

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

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

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

27 (b) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365

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 and 163.375.

2 (c) "Serious injury" means physical injury that creates a substantial risk of death or that causes
3 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
4 ment of the function of any bodily organ.

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

9 (5) Civil penalties recovered from a residential training facility, residential training home, resi-
10 dential treatment facility or residential treatment home shall be deposited in the Long Term Care
11 Ombudsman Account established in ORS 441.419.

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

13 441.710. (1) In addition to any other liability or penalty provided by law, the Director of Human
14 Services may impose a civil penalty on a person for any of the following:

15 (a) Violation of any of the terms or conditions of a license issued under ORS 441.015 to 441.087,
16 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a long term
17 care facility, as defined in ORS 442.015.

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

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

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

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

25 (2) In addition to any other liability or penalty provided by law, the Director of the Oregon
26 Health Authority may impose a civil penalty on a person for a violation of ORS 443.880 or 443.881
27 if the facility is a residential treatment facility or a residential treatment home.

28 (3) *[The Director of Human Services may not impose a penalty under subsection (1) of this section*
29 *for violations other than those involving direct patient care or feeding, an adequate staff to patient ra-*
30 *tio, sanitation involving direct patient care or a violation of ORS 441.605 or 443.880 or 443.881 or of*
31 *the rules required to be adopted by ORS 441.610 unless a violation is found on two consecutive surveys*
32 *of a long term care facility.]* The Director of Human Services *[in every case]* **when imposing a pen-**
33 **alty under subsection (1) of this section** shall prescribe a reasonable time for elimination of a
34 violation:

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

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

38 (4) The Director of the Oregon Health Authority may not impose a penalty under subsection (2)
39 of this section for violations other than those involving direct patient care or feeding, an adequate
40 staff to patient ratio, sanitation involving direct patient care or a violation of ORS 443.880 or
41 443.881. The Director of the Oregon Health Authority in every case shall prescribe a reasonable
42 time for elimination of a violation:

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

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

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

2 441.715. (1)[(a)] **The Director of Human Services shall impose civil penalties under ORS**
 3 **441.710 (1) on a long term care facility or a residential care facility as provided in section 5**
 4 **of this 2017 Act.**

5 (2) After public hearing, the Director of Human Services by rule shall adopt objective criteria
 6 for establishing the civil penalty that may be imposed under ORS 441.710 (1) [and] **on residential**
 7 **training facilities and residential training homes. However, the civil penalty may not exceed**
 8 **\$500 for each violation, except as otherwise provided in this subsection or as otherwise re-**
 9 **quired by federal law.**

10 (3) The Director of the Oregon Health Authority by rule shall adopt objective criteria for es-
 11 tablishing the civil penalty that may be imposed under ORS 441.710 (2). However, the civil penalty
 12 may not exceed \$500 for each violation, except as otherwise provided in this subsection [and ORS
 13 441.995] or as otherwise required by federal law.

14 [(b)] (4) Notwithstanding the limitations on the civil penalty in [paragraph (a) of this
 15 subsection] **subsections (2) and (3) of this section**, for any violation involving direct resident care
 16 or feeding, an adequate staff to resident ratio, sanitation involving direct resident care or a violation
 17 of ORS 441.605 or rules required to be adopted under ORS 441.610, a penalty may be imposed for
 18 each day the violation occurs in an amount not to exceed \$500 per day or as otherwise required by
 19 federal law.

20 [(c) *If the Department of Human Services investigates and makes a finding of abuse arising from*
 21 *deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a*
 22 *person with a duty of care toward a resident of a long term care facility and if the abuse resulted in*
 23 *the death, serious injury, rape or sexual abuse of a resident, the department shall impose a civil penalty*
 24 *of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day*
 25 *period. As used in this paragraph:*]

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

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

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

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

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

39 **SECTION 4.** Section 5 of this 2017 Act is added to and made a part of ORS 441.705 to
 40 **441.745.**

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

44 (2)(a) For a minor harm to a resident, the director shall impose a penalty of not less than
 45 **\$250 and not more than \$500 for each violation. The total penalties imposed against a facility**

1 for minor harms committed in a single day may not exceed \$500 multiplied by the number
 2 of licensed beds in the facility.

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

7 (c) For a serious harm to a resident, the director shall impose a penalty of not less than
 8 \$2,500 and not more than \$5,000 for each violation. The total penalties imposed against a fa-
 9 cility for serious harms committed in a single day may not exceed \$5,000 multiplied by the
 10 number of licensed beds in the facility.

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

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

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

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

22 (b) "Rape" means rape in the first, second or third degree as described in ORS 163.355,
 23 163.365 and 163.375.

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

27 (d) "Sexual abuse" means:

28 (A) Any form of sexual contact between an employee of a residential care facility or long
 29 term care facility or a person providing services in the residential care facility or long term
 30 care facility and a resident of that facility, including but not limited to sodomy, sexual
 31 coercion, sexually explicit photographing and sexual harassment.

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

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

38 (5) The department shall adopt rules defining "minor harm," "moderate harm" and "se-
 39 rious harm."

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

41 441.995. (1) In adopting criteria for establishing the amount of civil penalties for violations of
 42 ORS 441.630 to 441.680, the Department of Human Services shall consider:

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

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

45 (c) The gravity of the violation, including the actual or potential threat to the health, safety and

1 well-being of one or more residents;

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

3 (e) The facility's past history of correcting violations and preventing the recurrence of vio-
4 lations.

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

7 (3) If the department finds the facility is responsible for abuse and if the abuse resulted in a
8 resident's death or serious injury, the department shall impose a civil penalty of not less than \$500
9 nor more than \$1,000 for each violation, or as otherwise required by federal law or ORS [441.715
10 (1)(c),] 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 or supersede the
12 department's authority to impose civil penalties pursuant to ORS 441.710 or 441.715 for violations
13 that do not constitute abuse.

14 (5) Facilities assessed civil penalties under this section are entitled to a contested case hearing
15 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, the director of the li-
18 censing agency may impose a civil penalty on a person for any of the following:

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

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

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

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

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

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

27 (a) The director shall impose a civil penalty not to exceed \$500, unless otherwise required by
28 law, on any adult foster home for falsifying resident or facility records or causing another to do so.

29 [(3)] (b) The director shall impose a civil penalty of \$250 on a provider who violates ORS 443.725
30 (3).

31 [(4)] (c) The director shall impose a civil penalty of not less than \$250 [nor] **and not** more than
32 \$500, unless otherwise required by law, on a provider who admits a resident knowing that the
33 resident's care needs exceed the license classification of the provider if the admission places the
34 resident or other residents at grave risk of harm.

35 [(5)(a)] (d)(A) In every case other than those involving the health, safety or welfare of a resi-
36 dent, the director shall prescribe a reasonable time for elimination of a violation but except as
37 provided in [paragraph (b) of this subsection] **subparagraph (B) of this paragraph** shall not pre-
38 scribe a period to exceed 30 days after notice of the violation.

39 [(b)] (B) The director may approve a reasonable amount of time in excess of 30 days if cor-
40 rection of the violation within 30 days is determined to be impossible.

41 [(6)] (e) In imposing a civil penalty, the director shall consider the following factors:

42 [(a)] (A) The past history of the person incurring a penalty in taking all feasible steps or pro-
43 cedures necessary or appropriate to correct any violation.

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

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

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

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

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

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

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

14 **(C)** For a serious harm to a resident, the director shall impose a penalty of not less than
15 **\$1,000 and not more than \$2,500 for each violation. The total penalties imposed against an**
16 **adult foster home for 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 each violation.

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

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

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

29 **(ii)** “Rape” means rape in the first, second or third degree as described in ORS 163.355,
30 **163.365 and 163.375.**

31 **(iii)** “Serious injury” means physical injury that creates a substantial risk of death or
32 **that causes serious and protracted disfigurement, protracted impairment of health or pro-**
33 **tracted loss or impairment of the function of any bodily organ.**

34 **(iv)** “Sexual abuse” means:

35 **(I)** Any form of sexual contact between an employee of an adult foster home or a person
36 **providing services in the adult foster home and a resident of that adult foster home, includ-**
37 **ing but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual**
38 **harassment.**

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

41 **(G)** The department may adopt rules providing for the imposition of a civil penalty
42 **against a resident of an adult foster home, a visitor to a resident of the adult foster home**
43 **or a contractor of the adult foster home for abuse as described in subparagraph (F) of this**
44 **paragraph.**

45 **(b)** The department shall adopt rules defining “minor harm,” “moderate harm” and “se-

1 **rious harm.”**

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

5 **(2) The Department of Human Services may take any action before the operative date**
6 **specified in subsection (1) of this section to enable the department to exercise, on and after**
7 **the operative date specified in subsection (1) of this section, all the duties, functions and**
8 **powers conferred on the department by section 5 of this 2017 Act and the amendments to**
9 **ORS 441.710, 441.715, 441.995, 443.455 and 443.790 by sections 1 to 3, 6 and 7 of this 2017 Act.**

10 **SECTION 9. Section 5 of this 2017 Act and the amendments to ORS 441.710, 441.715,**
11 **441.995, 443.455 and 443.790 by sections 1 to 3, 6 and 7 of this 2017 Act apply only to civil**
12 **penalties imposed for offenses committed on or after the operative date specified in section**
13 **8 of this 2017 Act.**

14
15 **LICENSING**

16
17 **SECTION 10. ORS 441.020 is amended to read:**

18 **441.020. (1) Licenses for health care facilities, except long term **care** facilities as defined in ORS**
19 **442.015, must be obtained from the Oregon Health Authority.**

20 **(2) Licenses for long term care facilities must be obtained from the Department of Human Ser-**
21 **vices.**

22 **(3) Applications shall be upon such forms and shall contain such information as the authority**
23 **or the department may reasonably require, which may include affirmative evidence of ability to**
24 **comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.**

25 **(4) Each application shall be accompanied by the license fee. If the license is denied, the fee**
26 **shall be refunded to the applicant. [*Except as provided in subsection (15) of this section,*] If the license**
27 **is issued, the fee shall be paid into the State Treasury to the credit of:**

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

30 **(b) The Department of Human Services Account for the purpose of carrying out the functions**
31 **of the Department of Human Services under ORS 431A.050 to 431A.080, 441.015 to 441.063 and**
32 **441.196.**

33 **(5) Except as otherwise provided in subsection (8) of this section, for hospitals with:**

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

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

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

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

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

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

40 **(6) A hospital shall pay an annual fee of \$750 for each hospital satellite indorsed under its li-**
41 **cense.**

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

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

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

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

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

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

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

5 **(8) For long term care facilities as defined in ORS 442.015, the annual licensing fee shall**
 6 **be established by the Department of Human Services by rule and must be in an amount**
 7 **sufficient to pay the department's costs of licensing and regulating the facilities.**

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

9 (a) \$1,750 for certified and high complexity noncertified ambulatory surgical centers with more
 10 than two procedure rooms.

11 (b) \$1,250 for certified and high complexity noncertified ambulatory surgical centers with no
 12 more than two procedure rooms.

13 (c) \$1,000 for moderate complexity noncertified ambulatory surgical centers.

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

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

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

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

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

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

26 **[(16)] (15) As used in this section:**

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

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

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

30 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
 31 made to the Department of Human Services or the Oregon Health Authority on forms provided for
 32 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee.
 33 No fee is required of any governmentally operated residential facility.

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

35 (a) *[Defined in ORS 443.400 (7) and (9),]* **Residential training facilities and residential treat-**
 36 **ment facilities** shall be \$60.

37 (b) *[Defined in ORS 443.400 (8) and (10),]* **Residential training homes and residential treat-**
 38 **ment homes** shall be \$30.

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

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

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

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

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

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

45 **(c) Residential care facilities shall be established by the department by rule and must be**

1 **in an amount sufficient to pay the department's costs of licensing and regulating the facili-**
 2 **ties.**

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

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

12 443.425. (1)(a) **Licensure under ORS 443.415 issued by the Department of Human Services**
 13 **is effective for one year from the date of issue unless sooner revoked.**

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

16 (2) Each license shall state:

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

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

19 (c) The address of the premises to which the license applies and the maximum number of resi-
 20 dents to be maintained in such residential facility at any time whether the residential facility is li-
 21 censed as a residential training facility, a residential treatment facility, a residential care
 22 facility[;], a residential training home or residential treatment home; and

23 (d) Such other information as the Department of Human Services or the Oregon Health Au-
 24 thority considers necessary.

25 [(2)] (3) A license is renewable upon submission of an application to the department or the au-
 26 thority and payment of a fee. No fee shall be required of a governmentally operated residential fa-
 27 cility. Filing of an application for renewal before the date of expiration of a license extends the
 28 effective date of expiration of the license until the licensing agency has acted upon such application.
 29 The licensing agency shall refuse to renew a license if the facility is not substantially in compliance
 30 with all applicable laws and rules, or if the State Fire Marshal or the authorized representative
 31 thereof has given notice of noncompliance of facilities under ORS 443.400 (5), (7) and (9) pursuant
 32 to ORS 479.220.

33 [(3)] (4) The [*biennial*] fee required under subsection [(2)] (3) of this section for facilities:

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

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

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

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

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

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

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

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

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

43 443.425. (1)(a) Licensure under ORS 443.415 issued by the Department of Human Services is ef-
 44 fective for one year from the date of issue unless sooner revoked.

45 (b) Licensure under ORS 443.415 issued by the Oregon Health Authority is effective for two

1 years from the date of issue unless sooner revoked.

2 (2) Each license shall state:

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

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

5 (c) The address of the premises to which the license applies and the maximum number of resi-
6 dents to be maintained in such residential facility at any time whether the residential facility is li-
7 censed as a residential training facility, a residential treatment facility, a residential care facility,
8 a residential training home or residential treatment home; and

9 (d) Such other information as the Department of Human Services or the Oregon Health Au-
10 thority considers necessary.

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

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

21 (a) [*Defined in ORS 443.400 (7) and (9)*] **Residential training facilities and residential treat-**
22 **ment facilities** shall be \$60.

23 (b) [*Defined in ORS 443.400 (8) and (10)*] **Residential training homes and residential treat-**
24 **ment homes** shall be \$30.

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

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

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

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

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

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

31 (c) **Residential care facilities shall be established by the department by rule and must be**
32 **in an amount sufficient to pay the department's costs of licensing and regulating the facili-**
33 **ties.**

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

35 443.430. (1) A license under ORS 443.415 is not transferable or applicable to any location, resi-
36 dential facility or management other than that indicated on the application for licensure.

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

38 (a) All moneys collected under ORS 443.400 to 443.455 for the purpose of licensing a residential
39 care facility, residential training facility or residential training home shall be deposited in a special
40 account in the General Fund and are continuously appropriated for payment of expenses incurred
41 by the Department of Human Services in administering ORS 443.400 to 443.455.

42 (b) All moneys collected under ORS 443.400 to 443.455 for the purpose of licensing a residential
43 treatment facility or residential treatment home shall be deposited in a special account in the Gen-
44 eral Fund and are continuously appropriated for payment of expenses incurred by the Oregon Health
45 Authority in administering ORS 443.400 to 443.455.

1 (3) All moneys collected from a residential care facility under ORS [443.415, 443.425 or] 443.455
2 shall be deposited in the Quality Care Fund established in ORS 443.001.

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

4 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be
5 made on forms provided by the licensing agency.

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

8 (b) **Each application submitted to the Department of Human Services must be accompa-**
9 **nyed by a fee established by the department by rule in an amount sufficient to pay the**
10 **department's costs of licensing and regulating the facilities.**

11 [(2)] (3) Upon receipt of an application and fee, the licensing agency shall conduct an investi-
12 gation.

13 [(3)] (4) The licensing agency [shall] **may** not issue an initial license unless:

14 (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to
15 443.825 and the rules of the licensing agency;

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

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

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

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

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

34 (a) The applicant and the adult foster home are in compliance with ORS 443.002 and 443.705 to
35 443.825 and the rules of the licensing agency;

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

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

41 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
42 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
43 sponsible for abuse.

44 [(5)(a)] (6)(a) In seeking an initial license and renewal of a license when an adult foster home
45 has been licensed for less than 24 months, the burden of proof shall be upon the provider and the

1 adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the licensing
2 agency.

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

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

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

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

17 [(7)] (8) A license under ORS 443.725 is effective for one year from the date of issue unless
18 sooner revoked. Each license shall state the name of the resident manager of the adult foster home,
19 the names of all providers who own the adult foster home, the address of the premises to which the
20 license applies, the maximum number of residents and the classification of the adult foster home. If,
21 during the period covered by the license, a resident manager changes, the provider must within 15
22 days request modification of the license. The request must be accompanied by a fee of \$10.

23 [(8)] (9) No license under ORS 443.725 is transferable or applicable to any location, persons op-
24 erating the adult foster home or the person owning the adult foster home other than that indicated
25 on the application for licensing.

26 [(9)] (10) The licensing agency shall not issue a license to operate an additional adult foster
27 home to a provider unless the provider has demonstrated the qualifications and capacity to operate
28 the provider's existing licensed adult foster homes and has demonstrated the ability to provide to
29 the residents of those adult foster homes care that is adequate and substantially free from abuse and
30 neglect.

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

35 (b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve
36 persons who are elderly, have physical disabilities or have developmental disabilities shall be de-
37 posited in the [*Quality Care Fund established in ORS 443.001*] **Department of Human Services**
38 **Account established under ORS 409.060 for the purpose of carrying out the functions of the**
39 **Department of Human Services under ORS 443.725 to 443.780.**

40 [(11)] (12) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the
41 licensing agency may issue a 60-day provisional license to a qualified person if the agency deter-
42 mines that an emergency situation exists after being notified that the licensed provider of an adult
43 foster home is no longer overseeing operation of the adult foster home.

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

