

Enrolled Senate Bill 809

Sponsored by Senator GELSER, Representative GORSEK; Representative KENY-GUYER

CHAPTER

AN ACT

Relating to determining the fitness of individuals to provide care using public funds; creating new provisions; and amending ORS 443.004.

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

SECTION 1. (1) As used in this section:

(a) **“Direct care services” means services provided to clients of the Department of Human Services or the Oregon Health Authority by:**

(A) **An adult foster home, as defined in ORS 443.705;**

(B) **A home care worker, as defined in ORS 410.600;**

(C) **A residential facility, as defined in ORS 443.400; or**

(D) **A provider of specialized supports or support services for adults as defined in ORS 427.101.**

(b) **“Fitness determination” means the evaluation of whether a subject individual or other individual providing direct care services is fit to hold a position, provide direct care services or be granted a license, certification, registration or permit to provide direct care services.**

(c) **“Qualified entity” has the meaning given that term in ORS 181A.190.**

(d) **“Subject individual” means a person who is:**

(A) **Employed by or who seeks to be employed by the authority or the department;**

(B) **A volunteer or who seeks to be a volunteer to provide care on behalf of the authority or the department; or**

(C) **Providing care or who seeks to provide care on behalf of the authority or the department.**

(2) **The department and the authority shall prescribe by rule the criteria to be considered in making fitness determination findings of abuse that are substantiated. The criteria must include the types of substantiated abuse for which a subject individual may be found to be unfit and conditions, if any, for the reinstatement of a subject individual who is found to be unfit.**

(3) **A subject individual who is found to be unfit is entitled to challenge the fitness determination in a contested case hearing conducted in accordance with ORS chapter 183. The subject individual may not challenge a finding of substantiated abuse or criminal conviction that was the basis for the fitness determination but may contest the weight accorded the evidence, mitigating factors or other aspects of the evaluation. The individual may be represented by an attorney or other person or, if the individual is a member of a bargaining unit, by the certified or recognized exclusive representative for the bargaining unit.**

(4) This section applies to fitness determinations for providers of direct care services conducted under ORS 181A.195 (10) or 443.004 (7).

SECTION 2. ORS 443.004 is amended to read:

443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181A.195 on:

- (a) An employee of a residential facility or an adult foster home;
- (b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and
- (c) A home care worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

(2)(a) A home health agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the home health agency, if the individual will have direct contact with a patient of the home health agency.

(b) An in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the in-home care agency, if the individual will have direct contact with a client of the in-home care agency.

(c) The authority shall prescribe by rule the process for conducting a criminal background check.

(3) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of an individual, other than a mental health or substance abuse treatment provider, who has been convicted:

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

(b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the five years immediately preceding employment in any capacity of an individual, other than a mental health or substance abuse treatment provider, having contact with a recipient of support services, a resident of a residential facility or a resident of an adult foster home, when the recipient or resident is 65 years of age or older;

(c) Of a crime listed in ORS 163A.005;

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to (d) of this subsection; or

(f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a crime described in paragraphs (a) to (e) of this subsection.

(4) If the criminal background check conducted by a home health agency or in-home care agency under subsection (2) of this section reveals that the individual who is subject to the criminal background check has been convicted of any of the crimes described in subsection (3) of this section, the home health agency or in-home care agency may not employ the individual.

(5) Public funds may not be used to support, in whole or in part, the employment, in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of a mental health or substance abuse treatment provider who has been convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

(6) Upon the request of a mental health or substance abuse treatment provider, the department or authority shall maintain a record of the results of any fitness determination made under ORS 181A.195 (10). The department or authority may disclose the record only to a person the provider specifically authorizes, by a written release, to receive the information.

(7) If the department or authority has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department or authority shall notify, in writing, the employer and the employee or potential employee **and may conduct a fitness determination in accordance with this section and ORS 181A.195.**

(8) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705.

(b) "Home care worker" has the meaning given that term in ORS 410.600.

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

(d) "In-home care agency" has the meaning given that term in ORS 443.305.

(e) "Mental health or substance abuse treatment provider" means:

(A) A peer support specialist;

(B) An employee of a residential treatment facility or a residential treatment home that is licensed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

(C) An individual who provides treatment or services for persons with substance use disorders;
or

(D) An individual who provides mental health treatment or services.

(f) "Peer support specialist" has the meaning given that term in ORS 414.025.

(g) "Residential facility" has the meaning given that term in ORS 443.400.

SECTION 3. ORS 443.004, as amended by section 24, chapter 75, Oregon Laws 2018, is amended to read:

443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181A.195 on:

(a) An employee of a residential facility or an adult foster home;

(b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of support services or a resident of an adult foster home or a residential facility; and

(c) A home care worker or personal support worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

(2)(a) A home health agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the home health agency, if the individual will have direct contact with a patient of the home health agency.

(b) An in-home care agency shall conduct a criminal background check before hiring or contracting with an individual and before allowing an individual to volunteer to provide services on behalf of the in-home care agency, if the individual will have direct contact with a client of the in-home care agency.

(c) The authority shall prescribe by rule the process for conducting a criminal background check.

(3) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of an individual, other than a mental health or substance abuse treatment provider, who has been convicted:

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

(b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the five years immediately preceding employment in any capacity of an individual, other than a mental health or substance abuse treatment provider, having contact with a recipient of support services, a resident of a residential facility or a resident of an adult foster home, when the recipient or resident is 65 years of age or older;

(c) Of a crime listed in ORS 163A.005;

(d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to (d) of this subsection; or

(f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a crime described in paragraphs (a) to (e) of this subsection.

(4) If the criminal background check conducted by a home health agency or in-home care agency under subsection (2) of this section reveals that the individual who is subject to the criminal background check has been convicted of any of the crimes described in subsection (3) of this section, the home health agency or in-home care agency may not employ the individual.

(5) Public funds may not be used to support, in whole or in part, the employment, in any capacity having contact with a recipient of support services or a resident of a residential facility or an adult foster home, of a mental health or substance abuse treatment provider who has been convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

(6) Upon the request of a mental health or substance abuse treatment provider, the department or authority shall maintain a record of the results of any fitness determination made under ORS 181A.195 (10). The department or authority may disclose the record only to a person the provider specifically authorizes, by a written release, to receive the information.

(7) If the department or authority has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department or authority shall notify, in writing, the employer and the employee or potential employee **and may conduct a fitness determination in accordance with this section and ORS 181A.195.**

(8) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705.

(b) "Home care worker" has the meaning given that term in ORS 410.600.

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

(d) "In-home care agency" has the meaning given that term in ORS 443.305.

(e) "Mental health or substance abuse treatment provider" means:

(A) A peer support specialist;

(B) An employee of a residential treatment facility or a residential treatment home that is licensed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

(C) An individual who provides treatment or services for persons with substance use disorders;
or

(D) An individual who provides mental health treatment or services.

(f) "Peer support specialist" has the meaning given that term in ORS 414.025.

(g) "Personal support worker" has the meaning given that term in ORS 410.600.

(h) "Residential facility" has the meaning given that term in ORS 443.400.

Passed by Senate May 14, 2019

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 18, 2019

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2019

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Kate Brown, Governor

Filed in Office of Secretary of State:

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