

Senate Bill 809

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

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**.

Requires Department of Human Services and Oregon Health Authority to prescribe by rule criteria for making fitness determinations. Provides subject individuals with right to contested case hearing to challenge evaluation of fitness.

A BILL FOR AN ACT

1
2 Relating to determining the fitness of individuals to provide care using public funds; creating new
3 provisions; and amending ORS 443.004.

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

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

6 (a) **“Direct care services” means services provided to clients of the Department of Hu-**
7 **man Services or the Oregon Health Authority by:**

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

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

10 (C) **A home health agency, as defined in ORS 443.014;**

11 (D) **An in-home care agency, as defined in ORS 443.305;**

12 (E) **A peer support specialist, as defined in ORS 414.025;**

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

14 (G) **Any other business or organization that provides care or placement services for**
15 **children, older adults or persons with disabilities.**

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

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

20 (d) **“Subject individual” has the meaning given that term in ORS 181A.190.**

21 (2) **The department and the authority shall prescribe by rule the criteria for making fit-**
22 **ness determinations. The criteria must include the types of substantiated abuse for which a**
23 **subject individual may be found to be unfit and conditions, if any, for the reinstatement of**
24 **a subject individual who is found to be unfit.**

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

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 **(4) This section applies to fitness determinations under ORS 181A.190 (4), 181A.195 (10)**
2 **or 443.004 (7) and any other fitness determination made by the department or the authority.**

3 **SECTION 2.** ORS 443.004 is amended to read:

4 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
5 a criminal records check under ORS 181A.195 on:

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

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

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

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

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

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

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

26 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
27 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
28 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
29 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
30 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

31 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
32 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
33 five years immediately preceding employment in any capacity of an individual, other than a mental
34 health or substance abuse treatment provider, having contact with a recipient of support services,
35 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
36 dent is 65 years of age or older;

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

38 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
39 stance;

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

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

44 (4) If the criminal background check conducted by a home health agency or in-home care agency
45 under subsection (2) of this section reveals that the individual who is subject to the criminal back-

1 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
 2 home health agency or in-home care agency may not employ the individual.

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

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

12 (7) If the department or authority has a record of substantiated abuse committed by an employee
 13 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
 14 tial facility, regardless of whether criminal charges were filed, the department or authority shall
 15 **conduct a fitness determination, in accordance with ORS 181A.195, and** notify, in writing, the
 16 employer and the employee or potential employee **of the department’s or the authority’s deter-**
 17 **mination.**

18 (8) As used in this section:

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

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

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

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

23 (e) “Mental health or substance abuse treatment provider” means:

24 (A) A peer support specialist;

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

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

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

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

31 (g) “Residential facility” has the meaning given that term in ORS 443.400.

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

34 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
 35 a criminal records check under ORS 181A.195 on:

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

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

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

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

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

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

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

11 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
12 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
13 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125 (5)(c) or
14 (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032, 165.800,
15 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

16 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,
17 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the
18 five years immediately preceding employment in any capacity of an individual, other than a mental
19 health or substance abuse treatment provider, having contact with a recipient of support services,
20 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-
21 dent is 65 years of age or older;

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

23 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-
24 stance;

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

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

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

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

38 (6) Upon the request of a mental health or substance abuse treatment provider, the department
39 or authority shall maintain a record of the results of any fitness determination made under ORS
40 181A.195 (10). The department or authority may disclose the record only to a person the provider
41 specifically authorizes, by a written release, to receive the information.

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

1 employer and the employee or potential employee **of the department's or the authority's deter-**
2 **mination.**

3 (8) As used in this section:

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

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

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

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

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

9 (A) A peer support specialist;

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

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

13 or

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

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

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

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

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