

Requested by Senator BURDICK (at the request of Dan Torres)

**PROPOSED AMENDMENTS TO
SENATE BILL 809**

1 On page 1 of the printed bill, delete lines 10 through 12.

2 In line 13, delete “(F)” and insert “(C)”.

3 Delete lines 14 and 15 and insert:

4 “(D) A provider of specialized supports or support services for adults as
5 defined in ORS 427.101.”.

6 Delete line 20 and insert:

7 “(d) ‘Subject individual’ means a person who is:

8 “(A) Employed by or who seeks to be employed by the authority or the
9 department;

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

12 “(C) Providing care or who seeks to provide care on behalf of the au-
13 thority or the department.”.

14 In line 21, delete “making” and insert “considering in”.

15 In line 22, after “determinations” insert “findings of abuse that are sub-
16 stantiated”.

17 Delete pages 2 through 5 and insert:

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

20 “**SECTION 2.** ORS 443.004 is amended to read:

21 “443.004. (1) The Department of Human Services or the Oregon Health

1 Authority shall complete a criminal records check under ORS 181A.195 on:

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

3 “(b) Any individual who is paid directly or indirectly with public funds
4 who has or will have contact with a recipient of support services or a resi-
5 dent of an adult foster home or a residential facility; and

6 “(c) A home care worker registering with the Home Care Commission or
7 renewing a registration with the Home Care Commission.

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

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

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

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

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

1 “(b) Notwithstanding paragraph (a) of this subsection, of a crime de-
2 scribed in ORS 163.465, 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377,
3 the date of conviction for which was within the five years immediately pre-
4 ceding employment in any capacity of an individual, other than a mental
5 health or substance abuse treatment provider, having contact with a recipi-
6 ent of support services, a resident of a residential facility or a resident of
7 an adult foster home, when the recipient or resident is 65 years of age or
8 older;

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

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

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

14 “(f) Of a crime in another jurisdiction that is substantially equivalent,
15 as defined by rule, to a crime described in paragraphs (a) to (e) of this sub-
16 section.

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

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

29 “(6) Upon the request of a mental health or substance abuse treatment
30 provider, the department or authority shall maintain a record of the results

1 of any fitness determination made under ORS 181A.195 (10). The department
2 or authority may disclose the record only to a person the provider specif-
3 ically authorizes, by a written release, to receive the information.

4 “(7) If the department or authority has a record of substantiated abuse
5 committed by an employee or potential employee of a home health agency,
6 in-home care agency, adult foster home or residential facility, regardless of
7 whether criminal charges were filed, the department or authority shall no-
8 tify, in writing, the employer and the employee or potential employee **and**
9 **may conduct a fitness determination in accordance with this section**
10 **and ORS 181A.195.**

11 “(8) As used in this section:

12 “(a) ‘Adult foster home’ has the meaning given that term in ORS 443.705.

13 “(b) ‘Home care worker’ has the meaning given that term in ORS 410.600.

14 “(c) ‘Home health agency’ has the meaning given that term in ORS
15 443.014.

16 “(d) ‘In-home care agency’ has the meaning given that term in ORS
17 443.305.

18 “(e) ‘Mental health or substance abuse treatment provider’ means:

19 “(A) A peer support specialist;

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

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

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

26 “(f) ‘Peer support specialist’ has the meaning given that term in ORS
27 414.025.

28 “(g) ‘Residential facility’ has the meaning given that term in ORS 443.400.

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

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

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

4 “(b) Any individual who is paid directly or indirectly with public funds
5 who has or will have contact with a recipient of support services or a resi-
6 dent of an adult foster home or a residential facility; and

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

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

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

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

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

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5 the date of conviction for which was within the five years immediately pre-
6 ceding employment in any capacity of an individual, other than a mental
7 health or substance abuse treatment provider, having contact with a recipi-
8 ent of support services, a resident of a residential facility or a resident of
9 an adult foster home, when the recipient or resident is 65 years of age or
10 older;

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

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

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17 as defined by rule, to a crime described in paragraphs (a) to (e) of this sub-
18 section.

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20 or in-home care agency under subsection (2) of this section reveals that the
21 individual who is subject to the criminal background check has been con-
22 victed of any of the crimes described in subsection (3) of this section, the
23 home health agency or in-home care agency may not employ the individual.

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25 employment, in any capacity having contact with a recipient of support ser-
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27 mental health or substance abuse treatment provider who has been convicted
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29 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411
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2 provider, the department or authority shall maintain a record of the results
3 of any fitness determination made under ORS 181A.195 (10). The department
4 or authority may disclose the record only to a person the provider specif-
5 ically authorizes, by a written release, to receive the information.

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7 committed by an employee or potential employee of a home health agency,
8 in-home care agency, adult foster home or residential facility, regardless of
9 whether criminal charges were filed, the department or authority shall no-
10 tify, in writing, the employer and the employee or potential employee **and**
11 **may conduct a fitness determination in accordance with this section**
12 **and ORS 181A.195.**

13 “(8) As used in this section:

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26 substance use disorders; or

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

28 “(f) ‘Peer support specialist’ has the meaning given that term in ORS
29 414.025.

30 “(g) ‘Personal support worker’ has the meaning given that term in ORS

1 410.600.

2 “(h) ‘Residential facility’ has the meaning given that term in ORS

3 443.400.”.

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