

A-Engrossed
House Bill 2327

Ordered by the House April 19
Including House Amendments dated April 19

Sponsored by Representative SALINAS; Representative PRUSAK (Presession filed.)

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.

[Requires Department of Human Services to study and make recommendations to interim committees of Legislative Assembly, no later than September 15, 2022, for legislative changes needed to increase access to long term care for all Oregonians.]

[Sunsets January 2, 2023.]

Requires Department of Human Services, in collaboration with Oregon Health Authority, to adopt by rule specified requirements to ensure that skilled nursing facilities, residential care facilities and facilities with memory care endorsements have appropriate resources to prepare for and respond to public health emergencies. Requires department to adopt rules requiring facilities to have isolation prevention plan as part of facility's emergency response plan. Requires department to develop and update long term care rapid response plan for department staff. Requires department to provide financial assistance to facilities to purchase equipment necessary to respond to public health emergency.

Creates Long Term Care Emergency Preparedness and Response Team in department to advise and consult with department in matters related to emergencies. Specifies membership.

Requires department to develop training for local public health authorities in understanding responsibilities of long term care facilities and needs of residents in skilled nursing facilities, intermediate care facilities, residential care facilities and facilities with memory care endorsements.

If on-site inspection is foreclosed by public health emergency, requires department to conduct virtual inspection by electronic means of long term care facilities, residential care facilities, residential training facilities and residential training homes, including facilities with memory care endorsements.

A BILL FOR AN ACT

1
2 Relating to long term care; creating new provisions; and amending ORS 441.087, 443.012 and 443.416.

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

4 **SECTION 1. (1) As used in this section and section 2 of this 2021 Act:**

5 (a) **"Declared emergency" includes:**

6 (A) **A state of emergency declared under ORS 401.165.**

7 (B) **A public health emergency.**

8 (b) **"Emergency" has the meaning given the term in ORS 401.025.**

9 (c) **"Emergency response plan" means a protocol established by a long term care provider**
10 **to respond to a public health emergency, including procedures for quarantining infected**
11 **residents in the event of a disease outbreak, as defined in ORS 431A.005, at the provider's**
12 **facility.**

13 (d) **"Long term care provider" includes:**

14 (A) **A skilled nursing facility, as defined in ORS 442.015;**

15 (B) **A residential care facility, as defined in ORS 443.400; and**

16 (C) **A facility with a memory care endorsement, as described in ORS 443.886.**

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 (e) "Personal protective equipment" includes specialized clothing or equipment worn as
2 protection against a hazard, such as face masks, face shields and gowns.

3 (f) "Public health emergency" means a public health emergency declared under ORS
4 433.441.

5 (2) The Department of Human Services, in collaboration with the Oregon Health Au-
6 thority, shall:

7 (a) Adopt rules to ensure that long term care providers have the appropriate resources
8 to enable them to prepare for public health emergencies and to respond to public health
9 emergencies, including rules establishing:

10 (A) Requirements for the use and availability of personal protective equipment and the
11 use of the equipment by the residents, consistent with guidelines issued by the United States
12 Centers for Disease Control and Prevention or other state or federal agencies;

13 (B) Standards for cleaning and disinfecting personal protective equipment;

14 (C) Requirements for the frequency of and procedures for screening residents for infec-
15 tious diseases;

16 (D) Requirements for evacuation plans under various scenarios of public health emer-
17 gencies;

18 (E) Requirements for training staff in preparation for public health emergencies, includ-
19 ing but not limited to training staff on the elements of the emergency response plan that
20 direct or relate to staff preparation and response to a public health emergency, and updating
21 staff training and information to address rapidly changing conditions;

22 (F) A requirement for a long term care provider to update its emergency response plan,
23 in collaboration with staff, to prepare for public health emergencies or in response to new
24 federal or state guidelines related to disaster responses by long term care providers, includ-
25 ing a requirement that staff receive notice of any significant updates to the emergency re-
26 sponse plan if the updates affect staff preparation or response to a public health emergency;

27 (G) A requirement that a long term care provider make the provider's emergency re-
28 sponse plan available upon request in languages other than English if the department pro-
29 vides translation services; and

30 (H) A requirement that a long term care provider post, in a location commonly accessed
31 by employees, materials prepared and provided by the department informing employees that
32 an emergency response plan exists and will be made available upon request in languages
33 other than English if translation services are available.

34 (b) Study and distribute best practices for systems that reduce air pollutants and the
35 spread of infectious disease.

36 (c) Develop and update as necessary a long term care rapid response plan to be imple-
37 mented in the event of a public health emergency. The plan must include but is not limited
38 to requirements for department staff with education or experience and competence in long
39 term care disease prevention and control to provide immediate consultation and technical
40 assistance to long term care providers and recommendations for evidence-based best prac-
41 tices in responding to the emergency and protecting the health and safety of the residents.

42 (d) Adopt by rule requirements for a long term care provider to include in the provider's
43 emergency response plan an isolation prevention plan that must be provided to any resident
44 or member of the public upon request. The isolation prevention plan must ensure, to the
45 greatest extent practicable, that:

1 (A) Residents can continue to engage in in-person contact and communication with other
2 residents and with family members, friends and other external support systems during a
3 public health emergency to the extent that the resident desires such contact and communi-
4 cation and the in-person contact is consistent with the circumstances of the public health
5 emergency, orders that have been issued to address the public health emergency and the
6 provider's emergency response plan.

7 (B) If in-person contact and communication is physically impossible due to guidelines,
8 requirements or other official limitations imposed on in-person contact and communication,
9 residents, including residents who are physically isolated due to the provider's emergency
10 response plan, can engage, as they reasonably desire, in face-to-face, verbal or auditory
11 contact and communication with other residents and with family members, friends and other
12 external support systems through the use of electronic or virtual means or methods, in-
13 cluding but not limited to computer technology, the Internet, social media, videoconferencing
14 or other technological means or methods.

15 (C) The provider offers to residents who experience cognitive impairments that limit
16 their ability to express their desire for virtual contact or communication with family mem-
17 bers, friends or other external support systems the opportunity for such communication,
18 including by reaching out to inform individuals listed on the resident's care plan that virtual
19 contact is available.

20 (D) Residents who have disabilities that impede their ability to communicate, including
21 but not limited to residents who are blind, deaf or deaf-blind or have cognitive limitations,
22 including Alzheimer's disease or other forms of dementia, have access to assistive and sup-
23 portive technology as necessary to facilitate their face-to-face, verbal or auditory contact
24 and communication with other residents and with family members, friends and other ex-
25 ternal support systems.

26 (E) Notwithstanding subparagraphs (C) and (D) of this paragraph, a resident may not be
27 required to engage in virtual contact or communication.

28 (e) Adopt by rule requirements for long term care providers to acquire and maintain:

29 (A) Technological equipment necessary to ensure that a provider can comply with the
30 requirements of paragraph (d) of this subsection.

31 (B) A supply of personal protective equipment that the provider may access during an
32 emergency to the extent that personal protective equipment is reasonably available.

33 (C) A backup power source, which need not be installed or integrated into a facility's
34 infrastructure, that the provider may use during a power outage for the purpose of operating
35 critical appliances including refrigeration and portable heating and cooling devices necessary
36 to preserve medications, supplies or other equipment critical to a resident's care or imme-
37 diate safety on a temporary basis.

38 (f) Provide financial assistance to long term care providers that are preparing for, re-
39 sponding to or recovering from a public health emergency to purchase equipment required
40 under paragraph (e) of this subsection from available funds that are continuously appropri-
41 ated to the department for expenditure on each type of long term care provider. The de-
42 partment may establish a separate account for this purpose.

43 (g) Collaborate with appropriate state and local agencies to provide a supply of personal
44 protective equipment sufficient to meet the anticipated needs of long term care providers
45 during a public health emergency, facilitate the distribution to long term care providers upon

1 request when a provider's supply reaches critical levels and in a manner that preserves to
2 the greatest extent practicable a supply of personal protective equipment for all long term
3 care providers who may request it.

4 (h) Be advised by the Long Term Care Emergency Preparedness and Response Team
5 created in section 2 of this 2021 Act in the adoption of rules under this subsection.

6 (3) The consultation, technical assistance and recommendations described in subsection
7 (2)(c) of this section must be provided separate from any compliance activity. Adherence to
8 any recommendation does not guarantee that the department or the authority will find a
9 long term care provider to be in compliance with regulatory requirements during a subse-
10 quent survey or inspection.

11 **SECTION 2.** (1) The Long Term Care Emergency Preparedness and Response Team is
12 created in the Department of Human Services and consists of 16 members with education
13 and experience in emergency preparedness and response in the long term care industry, ap-
14 pointed by the Governor as follows:

15 (a) Two members from the department;

16 (b) Two members from the Oregon Health Authority;

17 (c) Two members representing skilled nursing facilities;

18 (d) Two members representing residential care facilities;

19 (e) One member from a local public health authority;

20 (f) One member from the Office of Emergency Management;

21 (g) Two members who are health care providers with expertise in long term care and
22 public health epidemiology and disaster response;

23 (h) The Long Term Care Ombudsman;

24 (i) Two members who are direct care workers employed by a long term care provider;
25 and

26 (j) One consumer of long term care.

27 (2) Members of the Long Term Care Emergency Preparedness and Response Team serve
28 as volunteers and are not entitled to compensation or reimbursement for serving on the
29 team.

30 (3) The Long Term Care Emergency Preparedness and Response Team shall:

31 (a) Confer with residents in long term care provider facilities as necessary and appro-
32 priate to assist in developing recommendations under this subsection;

33 (b) Apply, when appropriate and practicable, available health equity information and im-
34 pacts on rural communities in developing recommendations under this subsection; and

35 (c) Advise the department in:

36 (A) How to coordinate with the Oregon Health Authority in preparing for emergencies
37 and how to communicate with the authority and long term care providers in the event of an
38 impending or declared emergency;

39 (B) How to coordinate the responses of state agencies and local public health authorities
40 to an impending or declared emergency;

41 (C) Developing plans to address staffing shortages caused by impending or declared
42 emergencies;

43 (D) Developing plans for the distribution of vaccines and other treatments for infectious
44 diseases to long term care providers, and the providers' staff and residents;

45 (E) Developing guidance or rules to implement during impending or declared emergencies

1 to support residents' access to care and to promote the safety of residents and staff, which
2 may include waiving certain staffing or training requirements;

3 (F) Developing methodologies to support the isolation prevention plans developed by long
4 term care providers under section 1 (2)(d) of this 2021 Act; and

5 (G) How to identify the need for resources and how to distribute and acquire needed re-
6 sources including but not limited to personal protective equipment during an impending or
7 declared emergency.

8 (4) If an impending or declared emergency primarily involves the spread of an infectious
9 disease, the authority and the department shall consult with the Long Term Care Emergency
10 Preparedness and Response Team, including in the development of guidance regarding the
11 methodology, timing and frequency of testing residents, volunteers and staff of the long term
12 care provider, and others who enter the facility who may need to be tested.

13 **SECTION 3.** The Department of Human Services shall develop training to be made
14 available to local public health authorities or approve training by third parties to support
15 local public health authorities in understanding the responsibilities of long term care facili-
16 ties and the emergency needs and unique needs of residents of each of the following types
17 of long term care:

- 18 (1) Skilled nursing facilities, as defined in ORS 442.015;
- 19 (2) Intermediate care facilities, as defined in ORS 442.015;
- 20 (3) Residential care facilities, as defined in ORS 443.400; and
- 21 (4) Facilities with memory care endorsements, as described in ORS 443.886.

22 **SECTION 4.** ORS 441.087 is amended to read:

23 441.087. (1) The Department of Human Services shall, in addition to any inspections conducted
24 pursuant to complaints filed against long term care facilities, conduct at least one general inspection
25 of each long term care facility in the state each calendar year, including, but not limited to, entering
26 the facility, interviewing residents and reviewing records. No advance notice shall be given of any
27 inspection conducted pursuant to this section.

28 (2) Any state employee giving advance notice in violation of subsection (1) of this section shall
29 be suspended from all duties without pay for a period of at least 10 working days, or for a longer
30 period as determined by the Director of Human Services.

31 (3) **If an on-site inspection is foreclosed by a public health emergency, as defined in sec-**
32 **tion 1 of this 2021 Act, the department shall conduct a virtual inspection by electronic**
33 **means. A virtual inspection must include all elements of an on-site inspection described in**
34 **subsection (1) of this section that are capable of being performed virtually.**

35 **SECTION 5.** ORS 443.012 is amended to read:

36 443.012. (1) As used in this section and ORS 443.417:

37 (a) "Disease outbreak" has the meaning given that term in ORS 431A.005.

38 (b) "Facility" means:

39 (A) A long term care facility, as defined in ORS 442.015;

40 (B) A conversion facility, as defined in ORS 443.400; and

41 (C) A residential care facility, as defined in ORS 443.400, including a residential care facility
42 with a memory care endorsement.

43 (2) An administrator of a facility and the employees of the facility, as specified by the Depart-
44 ment of Human Services by rule, must receive training in recognizing disease outbreaks and in-
45 fection control at the time of hiring, unless the administrator or the employee has received the

1 training at another facility within the 24-month period prior to the time of hiring, and annually as
2 part of, and not in addition to, the administrator or employee's continuing education requirements.

3 (3) The department, in consultation with the Oregon Health Authority, shall prescribe by rule
4 the requirements for the training, which must include at least the following:

5 (a) How to properly prevent and contain disease outbreaks based on the current best evidence
6 in the field of infection and disease outbreak identification, prevention and control; and

7 (b) The responsibility of staff members to report disease outbreaks under ORS 433.004.

8 (4) The training may be provided in person, in writing, by webinar or by other electronic means.
9 The department shall make online trainings available.

10 (5)(a) A facility must establish and maintain infection prevention and control protocols designed
11 to provide a safe, sanitary and comfortable environment and to prevent the development and trans-
12 mission of communicable diseases.

13 (b) A facility must designate an individual to be responsible for carrying out the infection pre-
14 vention and control protocols and to serve as the primary point of contact for the department re-
15 garding disease outbreaks. The individual must:

16 (A) Be qualified by education, training and experience or certification; and

17 (B) Complete specialized training in infection prevention and control protocols within three
18 months of being designated under this paragraph, unless the designee has received the specialized
19 training within the 24-month period prior to the time of the designation.

20 (6) Upon hiring a new staff member, a facility shall provide to the staff member information
21 about the rights and responsibility of facility staff members to report disease outbreaks under ORS
22 433.004 and the safeguards for staff members who report disease outbreaks.

23 (7) The department, in coordination with the authority, shall **develop uniform recommen-**
24 **dations for evidence-based best practices and protocols for preventing and responding to**
25 **disease outbreaks, consistent with existing guidance and rules and:**

26 (a) Communicate regularly with facility administrators [*to recommend best practices and protocols*
27 *for preventing and responding to disease outbreaks*] **and licensees regarding the recommendations**
28 and provide contacts for local public health authorities; and

29 (b) Provide notification to the facilities in a community where there is an elevated risk of an
30 infectious disease outbreak and the residents and staff may be at risk of exposure to the disease
31 outbreak.

32 **SECTION 6.** ORS 443.416 is amended to read:

33 443.416. (1) The Director of Human Services or authorized representative shall periodically visit
34 and inspect every residential care facility, residential training facility or residential training home,
35 **including a facility with a memory care endorsement under ORS 443.886**, to determine whether
36 it is maintained and operated in accordance with ORS 443.400 to 443.455 and the rules of the di-
37 rector, and to consult with and advise management concerning methods of care, treatment, training,
38 records, housing and equipment. Employees of the Department of Human Services and the State Fire
39 Marshal or authorized representative on request shall be permitted access to the premises and re-
40 cords of individuals in the facility or home that are pertinent to fire safety.

41 (2) The Director of the Oregon Health Authority or authorized representative shall periodically
42 visit and inspect every residential treatment facility or residential treatment home to determine
43 whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and the rules of
44 the director, and to consult with and advise management concerning methods of care, treatment,
45 training, records, housing and equipment. Employees of the Oregon Health Authority and the State

1 Fire Marshal or authorized representative on request shall be permitted access to the premises and
2 records of individuals in the facility or home that are pertinent to fire safety.

3 **(3) If a visit to a facility or home is foreclosed by a public health emergency, as defined**
4 **in section 1 of this 2021 Act, the Director of Human Services or authorized representative**
5 **or the Director of the Oregon Health Authority or authorized representative shall conduct**
6 **a virtual inspection by electronic means. A virtual inspection must include all elements re-**
7 **quired for a visit or inspection under subsections (1) and (2) of this section that are capable**
8 **of being performed virtually.**

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