

## SENATE AMENDMENTS TO SENATE BILL 266

By COMMITTEE ON HUMAN SERVICES, MENTAL HEALTH AND RECOVERY

April 26

1 In line 2 of the printed bill, after “facilities” insert “; creating new provisions; amending ORS  
2 441.650, 441.676, 441.677, 441.705, 441.726, 441.736 and 443.436; and prescribing an effective date”.

3 Delete lines 4 through 12 and insert:

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

5 **“(a) ‘Consistently’ means regularly and typically.**

6 **“(b) ‘Direct care staff’ means staff who provide services for residents that include as-**  
7 **sistance with daily living, medication administration, resident-focused activities, supervision**  
8 **and support.**

9 **“(c) ‘Facility’ includes a:**

10 **“(A) Residential care facility as defined in ORS 443.400; and**

11 **“(B) Facility with a memory care endorsement under ORS 443.886.**

12 **“(2) In determining whether a facility has qualified awake direct care staff in sufficient**  
13 **numbers to meet the scheduled and unscheduled needs of each resident 24 hours a day as**  
14 **prescribed by rule, the Department of Human Services shall conduct an assessment, in ac-**  
15 **cordance with rules for home and community-based settings adopted by the Centers for**  
16 **Medicare and Medicaid Services, and consider whether the facility consistently:**

17 **“(a) Implements and maintains a current person-centered service plan for each resident**  
18 **as required by rule by the Centers for Medicare and Medicaid Services;**

19 **“(b) Provides timely access, 24 hours a day, to all supports needed for activities of daily**  
20 **living including eating, hydration, toileting, hygiene, bathing, dressing, oral care and other**  
21 **supports included in the resident’s person-centered service plan;**

22 **“(c) Provides a timely response to issues impacting the dignity of the resident, including**  
23 **but not limited to wet or soiled briefs, clothing or linens; and**

24 **“(d) Delivers care according to the schedule and procedures outlined in the resident’s**  
25 **person-centered service plan, including but not limited to wound care, medication adminis-**  
26 **tration, pain control, behavior support, cueing and repositioning.**

27 **“SECTION 2. ORS 441.650 is amended to read:**

28 **“441.650. (1) Upon receipt of the oral or written report required under ORS 441.640, or of an**  
29 **abuse complaint, the area agency on aging, the Department of Human Services or the law enforce-**  
30 **ment agency shall cause an investigation to be commenced as follows:**

31 **“(a) Within two hours, if the complaint alleges that a resident’s health or safety is in imminent**  
32 **danger or that the resident has recently died, been hospitalized or been treated in an emergency**  
33 **room; or**

34 **“(b) Prior to the end of the next working day, if the complaint alleges that circumstances exist**  
35 **that could result in abuse and that the circumstances could place a resident’s health or safety in**

1 imminent danger.

2 “(2) If the law enforcement agency conducting the investigation finds reasonable cause to be-  
3 lieve that abuse has occurred, the law enforcement agency shall notify in writing the local office  
4 of the area agency or the department as appropriate. Except in cases where the investigation is part  
5 of nursing facility surveyor activity pursuant to federal law, the area agency or the department shall  
6 complete an initial status report within two working days of the start of the investigation that in-  
7 cludes:

8 “(a) A summary of the complaint that identifies each alleged incident or problem;

9 “(b) The status of the investigation;

10 “(c) Whether an abuse complaint was initially filed at the direction of the administration of the  
11 facility;

12 “(d) A determination of whether protection of the resident is needed and whether the facility  
13 must take action;

14 “(e) The name and telephone number of the investigator; and

15 “(f) The projected date that the investigation report will be completed and a statement that the  
16 report will be available upon request after the department issues a letter of determination.

17 “(3) The initial status report described in subsection (2) of this section shall be provided either  
18 in person or by mail to the following individuals as soon as practicable, but no later than two  
19 working days after its completion:

20 “(a) The complainant, unless the complainant waives the requirement;

21 “(b) If the complaint involves a specific resident, the resident or a person designated to receive  
22 information concerning the resident;

23 “(c) A representative of the Long Term Care Ombudsman, upon request; *[and]*

24 “(d) The long term care facility; **and**

25 “(e) **The agency that licenses the facility.**

26 “(4) The initial status report described in subsection (2) of this section shall be available for  
27 public inspection.

28 “(5) When copies of the initial status report described in subsection (2) of this section are made  
29 available to individuals listed in subsection (3) of this section, the names of the resident involved,  
30 the complainant and any individuals interviewed by the investigator shall be deleted from the copies.

31 “(6) In investigating an abuse complaint, the investigator shall:

32 “(a) Make an unannounced visit to the facility, except as provided by ORS 441.690, to determine  
33 the nature and cause of the abuse of the resident;

34 “(b) Interview all available witnesses identified by any source as having personal knowledge  
35 relevant to the abuse complaint, such interviews to be private unless the witness expressly requests  
36 the interview not to be private;

37 “(c) Make personal inspection of all physical circumstances that are relevant and material and  
38 that are susceptible to objective observation; and

39 “(d) Write an investigation report that includes:

40 “(A) The investigator’s personal observations;

41 “(B) A review of documents and records;

42 “(C) A summary of all witness statements; and

43 “(D) A statement of the factual basis for the findings for each incident or problem alleged in the  
44 complaint.

45 “(7) Within five working days of completion of the investigation and not later than 60 days from

1 completion of the initial status report described in subsection (2) of this section, the investigator  
2 shall provide the department with the written report required by subsection (6) of this section. The  
3 department shall make the investigation report available upon request after the letter of determi-  
4 nation is complete. When copies of the report are made available, the names of the resident in-  
5 volved, the complainant and any individuals interviewed by the investigator shall be deleted from  
6 the copies.

7 **“SECTION 3.** ORS 441.676 is amended to read:

8 **“441.676. (1) As used in this section:**

9 **“(a) ‘Consistently’ means regularly and typically.**

10 **“(b) ‘Direct care staff’ means staff who provide services for residents that include as-**  
11 **sistance with daily living, medication administration, resident-focused activities, supervision**  
12 **and support.**

13 **[(1)] (2)(a) Except as provided in paragraph (b) of this subsection,** for complaints of licensing  
14 violations other than abuse, the Department of Human Services shall cause an investigation to be  
15 completed within 90 days of the receipt of the complaint.

16 **“(b) For complaints of licensing violations other than abuse that allege harm or potential**  
17 **harm to a resident or for complaints that a facility does not have qualified awake direct care**  
18 **staff in sufficient numbers to meet the scheduled and unscheduled needs of each resident 24**  
19 **hours a day, the department shall cause an investigation to begin without undue delay.**

20 **[(2)] (3)** Except in cases where the investigation is part of nursing facility surveyor activity  
21 pursuant to federal law, an investigator investigating a complaint other than a complaint of abuse  
22 shall:

23 **“(a) Make an unannounced visit to the facility, while complying with ORS 441.690;**

24 **“(b) Interview all available witnesses identified by any source as having personal knowledge**  
25 **relevant to the complaint, such interviews to be private unless the witness expressly requests the**  
26 **interview not to be private;**

27 **“(c) Make personal inspection of all physical circumstances that are relevant and material and**  
28 **that are susceptible to objective observation; [and]**

29 **“(d) Assess whether the facility has qualified awake direct care staff in sufficient num-**  
30 **bers to consistently meet the scheduled and unscheduled needs of each resident 24 hours a**  
31 **day, if the complaint:**

32 **“(A) Alleges harm or potential harm to a resident;**

33 **“(B) Alleges injury to a resident; or**

34 **“(C) Concerns staffing levels or the ability of the facility’s direct care staff to consist-**  
35 **ently meet the scheduled and unscheduled needs of each resident 24 hours a day; and**

36 **[(d)] (e)** Write an investigation report that includes:

37 **“(A) The investigator’s personal observations;**

38 **“(B) A review of documents and records;**

39 **“(C) A summary of all witness statements; and**

40 **“(D) A statement of the factual basis for the findings for each incident or problem alleged in the**  
41 **complaint including, if applicable, the investigator’s assessment of staffing levels and whether**  
42 **the facility has qualified awake direct care staff in sufficient numbers to consistently meet**  
43 **the scheduled and unscheduled needs of each resident 24 hours a day.**

44 **“SECTION 4.** ORS 441.726 is amended to read:

45 **“441.726. (1) In regulating residential care facilities and long term care facilities, the Depart-**

1 ment of Human Services shall[, *whenever possible, use*] **prioritize the health, welfare, safety and**  
2 **rights of residents.**

3 **“(2) The department may, as appropriate, use** a progressive enforcement process that em-  
4 ploys a series of actions to encourage and compel compliance with licensing regulations through the  
5 application of preventive, positive and progressively more restrictive strategies. Preventive and  
6 positive strategies are strategies that include but are not limited to technical assistance, corrective  
7 action plans, training and consultation.

8 **“(3) This section does not restrict the ability of the department to use more restrictive**  
9 **strategies when necessary to achieve substantial compliance or to protect the health, wel-**  
10 **fare, safety and rights of residents, including by imposing license conditions under ORS**  
11 **441.736 or, for residential care facilities, taking additional steps dictated by the framework**  
12 **established under ORS 443.436.**

13 **“SECTION 5.** ORS 441.736 is amended to read:

14 “441.736. (1) As used in this section:

15 “(a) ‘Immediate jeopardy’ means a situation in which the failure of a residential care facility or  
16 a long term care facility to comply with a rule of the Department of Human Services has caused  
17 or is likely to cause serious injury, serious harm, serious impairment or death to a resident.

18 “(b) ‘License condition’ includes but is not limited to:

19 “(A) Restricting the total number of residents;

20 “(B) Restricting the number and impairment level of residents based upon the capacity of the  
21 licensee and staff to meet the health and safety needs of all residents;

22 “(C) Requiring additional staff or staff qualifications;

23 “(D) Requiring additional training for staff;

24 “(E) Requiring additional documentation; or

25 “(F) Restriction of admissions.

26 “(c) ‘Substantial compliance’ means a level of compliance with state law and with rules of the  
27 department such that any identified deficiencies pose a risk of no more than negligible harm to the  
28 health or safety of residents of a residential care facility or a long term care facility.

29 “(2)(a) The department may impose a condition on the license of a residential care facility or  
30 long term care facility in response to a substantiated finding of rule violation, including but not  
31 limited to a substantiated finding of abuse, [*or*] **and shall impose a condition on the license** in  
32 response to a finding of immediate jeopardy, whether or not the finding of immediate jeopardy is  
33 substantiated at the time the license condition is imposed.

34 “(b) The department shall impose a license condition in a scope and manner that is specifically  
35 designed to remediate the finding that led to the license condition.

36 “(c) If the department imposes a license condition in response to a finding of immediate jeopardy  
37 to residents of the facility, and the finding of immediate jeopardy to residents of the facility is not  
38 substantiated within 30 days after the imposition of the license condition, the department shall im-  
39 mediately remove the license condition.

40 “(d)(A) Except as provided in subparagraph (B) of this paragraph, the department shall provide  
41 a facility with a notice of impending imposition of license condition at least 48 hours before issuing  
42 an order imposing a license condition. The notice must:

43 “(i) Describe the acts or omissions of the facility and the circumstances that led to the sub-  
44 stantiated finding of rule violation or finding of immediate jeopardy supporting the imposition of the  
45 license condition;

1 “(ii) Describe why the acts or omissions and the circumstances create a situation for which the  
2 imposition of a license condition is warranted;

3 “(iii) Provide a brief statement identifying the nature of the license condition;

4 “(iv) Provide a brief statement describing how the license condition is designed to remediate the  
5 circumstances that led to the license condition; and

6 “(v) Provide a brief statement of the requirements for withdrawal of the license condition.

7 “(B) If the threat to residents of a facility is so imminent that the department determines it is  
8 not safe or practical to give the facility advance notice, the department must provide the notice  
9 required under this paragraph within 48 hours of issuing an order imposing the license condition.

10 “(e) An order imposing a license condition must include:

11 “(A) A specific description of how the scope and manner of the license condition is designed to  
12 remediate the findings that led to the license condition; and

13 “(B) A specific description of the requirements for withdrawal of the license condition.

14 “(3) The department may impose a license condition that includes a restriction on admissions  
15 to the facility only if the department makes a finding of immediate jeopardy that is likely to present  
16 an immediate jeopardy to future residents upon admission.

17 “(4)(a) Following the imposition of a license condition on a facility, the department shall:

18 “(A) Within 15 business days of receipt of the facility’s written assertion of substantial compli-  
19 ance with the requirements set forth by the department for withdrawal of the license condition, re-  
20 inspect or reevaluate the facility to determine whether the facility has achieved substantial  
21 compliance with the requirements;

22 “(B) Notify the facility by telephone or electronic means of the findings of the reinspection or  
23 reevaluation within five business days after completion of the reinspection or reevaluation; and

24 “(C) Issue a written report to the facility within 30 days after the reinspection or reevaluation  
25 notifying the facility of the department’s determinations regarding substantial compliance with the  
26 requirements necessary for withdrawal of the license condition.

27 “(b) If the department finds that the facility has achieved substantial compliance regarding the  
28 violation for which the license condition was imposed, and finds that systems are in place to ensure  
29 similar deficiencies do not reoccur, the department shall withdraw the license condition.

30 “(c) If after reinspection or reevaluation the department determines that the violation for which  
31 the license condition was imposed continues to exist, the department may not withdraw the license  
32 condition, and the department is not obligated to reinspect or reevaluate the facility again for 45  
33 days after the first reinspection or reevaluation. The department shall provide the decision not to  
34 withdraw the license condition to the facility in writing and inform the facility of the right to a  
35 contested case hearing pursuant to ORS chapter 183. Nothing in this paragraph limits the  
36 department’s authority to visit or inspect the facility at any time.

37 “(d) If the department does not meet the requirements of this subsection, a license condition is  
38 automatically removed on the date the department failed to meet the requirements of this sub-  
39 section, unless the Director of Human Services extends the applicable period for no more than 15  
40 business days. The director may not delegate the power to make a determination regarding an ex-  
41 tension under this paragraph.

42 “**SECTION 6.** ORS 443.436 is amended to read:

43 “443.436. (1) As used in this section[,]:

44 “(a) ‘**Consistently**’ means regularly and typically.

45 “(b) ‘Substantial compliance’ means a level of compliance with state law and with rules of the

1 Department of Human Services such that any identified deficiencies pose a risk of no more than  
2 negligible harm to the health or safety of residents.

3 “(2)(a) The department shall develop a framework for assessing the compliance of residential  
4 care facilities with regulatory requirements and for requiring corrective action that accurately and  
5 equitably measures compliance and the extent of noncompliance.

6 “(b) The framework must include but is not limited to measures of the severity and scope of a  
7 residential care facility’s noncompliance, **including but not limited to:**

8 **“(A) Whether the facility has qualified awake direct care staff in sufficient numbers to**  
9 **consistently meet the scheduled and unscheduled needs of each resident 24 hours a day; and**

10 **“(B) The impact of any compliance deficiencies on the rights, health, welfare and safety**  
11 **of the residents.**

12 “(c) The department shall publish the framework on the department’s website and shall distrib-  
13 ute the framework to residential care facilities licensed in this state.

14 “(3) The department shall administer a residential care facility enhanced oversight and super-  
15 vision program that focuses department resources on residential care facilities that consistently  
16 demonstrate:

17 “(a) A lack of substantial compliance with the requirements of ORS 443.400 to 443.455 **or rules**  
18 **adopted to implement ORS 443.400 to 443.455;** or

19 “(b) Performance substantially below statewide averages on quality metrics reported under the  
20 Residential Care Quality Measurement Program established under ORS 443.446.

21 “(4) The residential care facility enhanced oversight and supervision program shall take one or  
22 more of the following actions that the department deems necessary to improve the performance of  
23 a residential care facility:

24 “(a) Increase the frequency of surveys of the residential care facility.

25 “(b) Conduct surveys that focus on areas of consistent noncompliance identified by the depart-  
26 ment.

27 **“(c) Impose one or more conditions on the license of the facility under ORS 441.736.**

28 “(5) The department shall terminate the enhanced oversight and supervision of a residential care  
29 facility:

30 “(a) After three years if the residential care facility has shown through at least two consecutive  
31 on-site surveys and reported quality metrics that the residential care facility no longer meets the  
32 criteria set forth in subsection (3) of this section; or

33 “(b) After one year if the residential care facility submits a written assertion of substantial  
34 compliance and the department determines that the residential care facility no longer meets the  
35 criteria set forth in subsection (3) of this section.

36 **“(6) The department shall publish notice on the department’s website, including any**  
37 **website where the public can access a database of long term care facilities, of any residential**  
38 **care facility that is in the enhanced oversight and supervision program.**

39 “[6] (7) Using moneys from the Quality Care Fund established under ORS 443.001, the depart-  
40 ment shall develop, maintain and periodically update compliance guidelines for residential care fa-  
41 cilities serving seniors and persons with disabilities. The guidelines must be made available  
42 electronically.

43 “[7] (8) This section does not preclude the department from taking any action authorized by  
44 ORS 443.400 to 443.455.

45 **“SECTION 7. ORS 441.705 is amended to read:**

1 “441.705. As used in ORS 441.705 to 441.745:

2 “(1) ‘Direct patient care or feeding’ means any care provided directly to or for any patient re-  
3 lated to that patient’s physical, medical and dietary well-being as defined by rules of:

4 “(a) The Department of Human Services when the facility is a long term care facility, as defined  
5 in ORS 442.015, or a residential care facility, residential training facility or residential training  
6 home[, *as those terms are defined in ORS 443.400*]; and

7 “(b) The Oregon Health Authority if the facility is a residential treatment facility or a residen-  
8 tial treatment home[, *as defined in ORS 443.400*].

9 “(2) ‘Person’ means a licensee of a long term care facility, a residential care facility, a residen-  
10 tial training facility, a residential treatment facility, a residential training home or a residential  
11 treatment home, or an unlicensed person who the Director of Human Services finds should be li-  
12 censed to operate a long term care facility, a residential care facility, a residential training facility  
13 or a residential training home, or an unlicensed person who the Director of the Oregon Health Au-  
14 thority finds should be licensed to operate a residential treatment facility or residential treatment  
15 home. ‘Person’ does not mean an employee of a licensee or unlicensed person who the Director of  
16 Human Services or the Director of the Oregon Health Authority finds should be licensed.

17 “**(3) ‘Residential care facility,’ ‘residential training facility,’ ‘residential training home,’**  
18 **‘residential treatment facility’ and ‘residential treatment home’ have the meanings given**  
19 **those terms in ORS 443.400.**

20 “[3] (4) ‘Staff to patient ratio’ means the number and training of persons providing direct pa-  
21 tient care as defined in rules of the:

22 “(a) Department if the facility is a long term care facility, a residential care or residential  
23 training facility or a residential training home; or

24 “(b) Authority if the facility is a residential treatment facility or a residential treatment home.

25 “**SECTION 8.** ORS 441.677 is amended to read:

26 “441.677. (1) Within 60 days of receipt of the investigation documents and the written report  
27 described in ORS 441.650 (6)(d) and 441.676 [(2)(d)] **(3)(e)**, but in no case longer than 120 days after  
28 an investigation has been commenced pursuant to ORS 441.650 or 441.676, the investigation shall  
29 be completed and the Department of Human Services shall prepare a written letter of determination  
30 that states the department’s determinations concerning each incident or problem alleged in the  
31 complaint. The department shall determine whether the alleged incident or problem was substanti-  
32 ated or unsubstantiated or whether the department was unable to substantiate the alleged incident  
33 or problem. The department shall adopt by rule definitions for the terms ‘substantiated,’ ‘unsub-  
34 substantiated’ and ‘unable to substantiate.’ If the department determines that an incident or problem  
35 alleged in the complaint is substantiated, the letter of determination shall state whether the sub-  
36 stantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of  
37 determination shall state whether the facility or an individual, or both, was responsible. The de-  
38 partment shall adopt by rule criteria for determining responsibility for substantiated abuse.

39 “(2) A copy of the letter of determination shall be placed in the facility’s complaint file. Copies  
40 shall be sent to the facility, the complainant and the local office of the department. The facility and  
41 the complainant receiving the letter of determination shall be given 10 days to respond with addi-  
42 tional information and shall be informed of the appeals process.

43 “(3) If the department determines that an individual who holds a license or certificate for a  
44 health occupation is directly responsible for the abuse, the department shall send a copy of its letter  
45 of determination and investigation report to the state agency responsible for licensing or certifying

1 the individual in the health occupation. In instances involving conduct of a nursing assistant, the  
2 department shall give the nursing assistant 10 days to respond with additional information. The de-  
3 partment also shall notify by mail the nursing assistant implicated in the investigation of:

4 “(a) The nature of the allegations;

5 “(b) The date and time of occurrence;

6 “(c) The right to a contested case hearing conducted in accordance with ORS chapter 183;

7 “(d) The department’s obligation to report the substantiated findings in the registry maintained  
8 under ORS 441.678 after the nursing assistant has had an opportunity for a contested case hearing;  
9 and

10 “(e) The fact that the nursing assistant’s failure to request a contested case hearing within 30  
11 days from the date of the notice will result in the department’s reporting the substantiated findings  
12 in the registry maintained under ORS 441.678.

13 “(4) Notice sent to the nursing assistant’s last-known address is sufficient to meet the require-  
14 ments of subsection (3) of this section.

15 **“SECTION 9. No later than April 1, 2022, the Department of Human Services shall:**

16 **“(1) Publish and distribute to residential care facilities the framework described in ORS**  
17 **443.436 (2).**

18 **“(2) Fully implement the enhanced oversight and supervision program described in ORS**  
19 **443.436.**

20 **“(3) Report to the appropriate interim committees of the Legislative Assembly, in the**  
21 **manner provided in ORS 192.245, on the publishing and distribution of the framework and the**  
22 **implementation of the enhanced oversight and supervision program.**

23 **“SECTION 10. This 2021 Act takes effect on the 91st day after the date on which the 2021**  
24 **regular session of the Eighty-first Legislative Assembly adjourns sine die.”.**