

Enrolled
Senate Bill 86

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CHAPTER

AN ACT

Relating to licensing of residential facilities; creating new provisions; and amending ORS 443.420, 443.421 and 443.425.

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

SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 443.400 to 443.455.

SECTION 2. (1) The Department of Human Services or the Oregon Health Authority may revoke, suspend or impose conditions on the license of any residential training facility or residential training home based on criteria adopted by the licensing agency by rule, including but not limited to when:

- (a) There exists a threat to the health, safety or welfare of a resident;**
- (b) There is reliable evidence of abuse, neglect or exploitation of a resident; or**
- (c) The facility or home is out of compliance with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency.**

(2) In cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately.

SECTION 3. ORS 443.420 is amended to read:

443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the director of the licensing agency, be a person:

- (a) Who demonstrates an understanding and acceptance of the rules governing residential facilities;**
- (b) Mentally and physically capable of caring for such residents; and**
- (c) Who employs or utilizes only individuals whose presence does not jeopardize the health, safety or welfare of residents.**

(2) A residential facility may not be operated or maintained in combination with a nursing home or hospital unless:

- (a) The residential facility is licensed, maintained and operated as a separate and distinct part;**
- or**
- (b) The residential facility is licensed as a conversion facility under ORS 443.431.**

(3) All physical residential facilities used for residents must meet applicable requirements of the State Fire Marshal.

(4) As of the date of licensure, a residential facility must be in substantial compliance with applicable state and local laws, rules, codes, ordinances and permit requirements.

(5) Prior to licensure, a residential facility that proposes to house persons under the age of 21 years shall submit written proof to the licensing agency demonstrating that the facility will:

(a) Comply with ORS 336.575; and

(b) Ensure that the children who reside at the residential facility receive appropriate educational services that are:

(A) Comprehensive and age-appropriate;

(B) In compliance with requirements of state and federal law; and

(C) If applicable, in compliance with the individual education program of the child.

(6) Prior to an initial licensure of a residential care facility, the licensing agency shall consider:

(a) The license applicant's history of regulatory compliance and operational experience;

(b) The willingness of the license applicant to serve underserved populations; and

(c) The willingness of the license applicant to contract with the licensing agency to provide services through the state medical assistance program.

(7)(a) The licensing agency may not issue an initial license to a residential care facility if the facility has not conducted a market study that assesses the need for the services offered by the facility in the geographic area served by the facility.

(b) This subsection does not apply to a conversion facility licensed under ORS 443.431.

(8) Prior to the issuance of an initial license to a residential training facility or a residential training home, and upon an application for a renewal of a license of a residential training facility or a residential training home, the licensing agency shall consider the license applicant's history of regulatory and safety compliance and operational experience in this state or any other jurisdiction as prescribed by rule by the licensing agency.

SECTION 4. ORS 443.421 is amended to read:

443.421. (1) Except as provided in subsection (2) of this section [*for residential care facilities*], the Department of Human Services or the Oregon Health Authority may revoke or suspend the license of any residential **care** facility that is not operated in accordance with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency. Such revocation or suspension must be taken in accordance with rules of the licensing agency and ORS chapter 183. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension.

(2)(a) In a case where an imminent danger to the health or safety of the residents exists, a residential care facility license may be suspended immediately.

(b) The residential care facility is entitled to a contested case hearing to appeal an order of immediate suspension in accordance with procedures adopted by the Department of Justice by rule concerning emergency license suspensions.

(c) When the Department of Human Services issues an immediate suspension order under this subsection, the department may:

(A) Transition all residents of the residential care facility to other residential facilities; or

(B) Appoint a management company with demonstrated skill and experience in operating residential facilities to manage the residential care facility and care for the residents of the facility. If the facility is unable to pay for the appointed management company, the department shall use funds from the facility trustee account fund to cover the cost.

SECTION 5. ORS 443.425, as amended by section 6, chapter 592, Oregon Laws 2019, is amended to read:

443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless sooner revoked. Each license shall state:

(a) The name of the person operating the residential facility;

(b) The name of the person who owns the residential facility **and, for a residential training facility or a residential training home, all persons with an ownership interest of five percent or more;**

(c) The address of the premises to which the license applies and the maximum number of residents to be maintained in the residential facility at any time whether the residential facility is li-

censed as a residential training facility, a residential treatment facility, a residential care facility, a residential training home or residential treatment home; and

(d) Other information that the Department of Human Services or the Oregon Health Authority considers necessary.

(2) A license is renewable upon submission of an application to the department or the authority and payment of a renewal fee. No fee is required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends the effective date of expiration of the license until the licensing agency has acted upon the application. The licensing agency shall refuse to renew a license if:

(a) The facility is not substantially in compliance with all applicable laws and rules;

(b) For a residential care facility, the facility has failed an inspection of the kitchen or other areas where food is prepared for residents that was conducted by the department in accordance with ORS 443.417, except as provided in ORS 443.417 (2); or

(c) The State Fire Marshal, deputy or approved authority has given notice of noncompliance of a residential care facility, residential training facility or residential treatment facility pursuant to ORS 479.220.

(3)(a) The biennial renewal fee for a residential training facility or a residential treatment facility is \$60.

(b) The biennial renewal fee for a residential training home is \$50.

(c) The biennial renewal fee for a residential treatment home is \$30.

(d) The biennial renewal fee for a residential care facility is:

(A) For a facility with one to 15 beds, \$1,000.

(B) For a facility with 16 to 49 beds, \$1,500.

(C) For a facility with 50 to 99 beds, \$2,000.

(D) For a facility with 100 to 150 beds, \$2,500.

(E) For a facility with more than 150 beds, \$3,000.

Passed by Senate April 7, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 2, 2021

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Tina Kotek, Speaker of House

Received by Governor:

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Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State