

Requested by Representative SALINAS

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2327**

1 In line 2 of the printed bill, after “care” insert “; creating new provisions;  
2 and amending ORS 441.087, 443.012 and 443.416”.

3 Delete lines 4 through 12 and insert:

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

5 **“(a) ‘Emergency response plan’ means a protocol established by a**  
6 **long term care provider to respond to a public health emergency, in-**  
7 **cluding procedures for quarantining infected residents in the event of**  
8 **a disease outbreak, as defined in ORS 431A.005, at the provider’s fa-**  
9 **cility.**

10 **“(b) ‘Long term care provider’ includes:**

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

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

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

15 **“(c) ‘Personal protective equipment’ includes specialized clothing**  
16 **or equipment worn as protection against a hazard, such as face masks,**  
17 **face shields and gowns.**

18 **“(d) ‘Public health emergency’ means a public health emergency**  
19 **declared under ORS 433.441.**

20 **“(2) The Department of Human Services, in collaboration with the**  
21 **Oregon Health Authority, shall:**

1       “(a) Adopt rules to ensure that long term care providers have the  
2 appropriate resources to enable them to prepare for public health  
3 emergencies and to respond to public health emergencies, including  
4 rules establishing:

5       “(A) Requirements for the use and availability of personal protec-  
6 tive equipment and the use of the equipment by the residents, con-  
7 sistent with guidelines issued by the United States Centers for Disease  
8 Control and Prevention or other state or federal agencies;

9       “(B) Standards for cleaning and disinfecting personal protective  
10 equipment;

11       “(C) Requirements for the frequency of and procedures for screen-  
12 ing residents for infectious diseases;

13       “(D) Requirements for evacuation plans under various scenarios of  
14 public health emergencies;

15       “(E) Requirements for training staff in preparation for public health  
16 emergencies, including but not limited to training staff on the ele-  
17 ments of the emergency response plan that direct or relate to staff  
18 preparation and response to a public health emergency, and updating  
19 staff training and information to address rapidly changing conditions;

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

27       “(G) A requirement that a long term care provider make the  
28 provider’s emergency response plan available upon request in lan-  
29 guages other than English if translation services are available and  
30 that if translation services are not available the department shall

1 provide translation services to enable the provider to make the emer-  
2 gency response plan available in other languages; and

3 “(H) A requirement that a long term care provider post, in a lo-  
4 cation commonly accessed by employees, materials prepared and pro-  
5 vided by the department informing employees that an emergency  
6 response plan exists and will be made available upon request in lan-  
7 guages other than English if translation services are available.

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

10 “(c) Develop and update as necessary a long term care rapid re-  
11 sponse plan to be implemented in the event of a public health emer-  
12 gency. The plan must include but is not limited to requirements for  
13 department staff with education or experience and competence in long  
14 term care disease prevention and control to provide immediate con-  
15 sultation and technical assistance to long term care providers and  
16 recommendations for evidence-based best practices in responding to  
17 the emergency and protecting the health and safety of the residents.

18 “(d) Adopt by rule requirements for a long term care provider to  
19 include in the provider’s emergency response plan an isolation pre-  
20 vention plan that must be provided to any resident or member of the  
21 public upon request. The isolation prevention plan must ensure, to the  
22 greatest extent practicable, that:

23 “(A) Residents can continue to engage in in-person contact and  
24 communication with other residents and with family members, friends  
25 and other external support systems during a public health emergency  
26 to the extent that the resident desires such contact and communi-  
27 cation and the in-person contact is consistent with the circumstances  
28 of the public health emergency, orders that have been issued to ad-  
29 dress the public health emergency and the provider’s emergency re-  
30 sponse plan.

1       **“(B) If in-person contact and communication is physically impossi-**  
2 **ble due to guidelines, requirements or other official limitations im-**  
3 **posed on in-person contact and communication, residents, including**  
4 **residents who are physically isolated due to the provider’s emergency**  
5 **response plan, can engage, as they reasonably desire, in face-to-face,**  
6 **verbal or auditory contact and communication with other residents**  
7 **and with family members, friends and other external support systems**  
8 **through the use of electronic or virtual means or methods, including**  
9 **but not limited to computer technology, the Internet, social media,**  
10 **videoconferencing or other technological means or methods.**

11       **“(C) The provider offers to residents who experience cognitive**  
12 **impairments that limit their ability to express their desire for virtual**  
13 **contact or communication with family members, friends or other ex-**  
14 **ternal support systems the opportunity for such communication, in-**  
15 **cluding by reaching out to inform individuals listed on the resident’s**  
16 **care plan that virtual contact is available.**

17       **“(D) Notwithstanding subparagraph (C) of this paragraph, a resi-**  
18 **dent may not be required to engage in virtual contact or communi-**  
19 **cation.**

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

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

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

1       **“(B) A supply of personal protective equipment that the provider**  
2 **may access during an emergency to the extent that personal protective**  
3 **equipment is reasonably available.**

4       **“(C) A backup power source, which need not be installed or inte-**  
5 **grated into a facility’s infrastructure, that the provider may use dur-**  
6 **ing a power outage for the purpose of operating critical appliances**  
7 **including refrigeration and portable heating and cooling devices nec-**  
8 **essary to preserve medications, supplies or other equipment critical**  
9 **to a resident’s care or immediate safety on a temporary basis.**

10       **“(f) Provide financial assistance to long term care providers that**  
11 **are preparing for, responding to or recovering from a public health**  
12 **emergency to purchase equipment required under paragraph (e) of this**  
13 **subsection from available funds that are continuously appropriated to**  
14 **the department for expenditure on each type of long term care pro-**  
15 **vider. The department may establish a separate account for this pur-**  
16 **pose.**

17       **“(g) Ensure a supply of personal protective equipment sufficient to**  
18 **meet the anticipated needs of long term care providers during a public**  
19 **health emergency, distributed to a long term care provider upon re-**  
20 **quest when the provider’s supply reaches critical levels and in a**  
21 **manner that preserves to the greatest extent practicable a supply of**  
22 **personal protective equipment for all long term care providers who**  
23 **may request it.**

24       **“(h) Be advised by the Long Term Care Emergency Preparedness**  
25 **and Response Team created in subsection (3) of this section in the**  
26 **adoption of rules under this subsection.**

27       **“(3) The Long Term Care Emergency Preparedness and Response**  
28 **Team is created in the Department of Human Services and consists**  
29 **of 16 members with education and experience in emergency**  
30 **preparedness and response in the long term care industry, appointed**

1 by the Governor as follows:

2 “(a) Two members from the department;

3 “(b) Two members from the Oregon Health Authority;

4 “(c) Two members representing skilled nursing facilities;

5 “(d) Two members representing residential care facilities;

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

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

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

10 “(h) The Long Term Care Ombudsman;

11 “(i) Two members who are direct care workers employed by a long  
12 term care provider; and

13 “(j) One consumer of long term care.

14 “(4) Members of the Long Term Care Emergency Preparedness and  
15 Response Team serve as volunteers and are not entitled to compen-  
16 sation or reimbursement for serving on the team.

17 “(5) The Long Term Care Emergency Preparedness and Response  
18 Team shall:

19 “(a) Confer with residents in long term care provider facilities as  
20 necessary and appropriate to assist in developing recommendations  
21 under this subsection;

22 “(b) Apply, when appropriate and practicable, available health eq-  
23 uity information and impacts on rural communities in developing  
24 recommendations under this subsection; and

25 “(c) Advise the department in:

26 “(A) How to coordinate with the Oregon Health Authority in pre-  
27 paring for emergencies and how to communicate with the authority  
28 and long term care providers in the event of an impending or declared  
29 public health emergency;

30 “(B) How to direct and coordinate the responses of state agencies

1 and public health authorities to an impending or declared public  
2 health emergency;

3 “(C) Developing plans to address staffing shortages caused by im-  
4 pending or declared public health emergencies;

5 “(D) Developing plans for the distribution of vaccines and other  
6 treatments for infectious diseases to long term care providers, and the  
7 providers’ staff and residents;

8 “(E) Developing guidance or rules to implement during impending  
9 or declared public health emergencies to support residents’ access to  
10 care and to promote the safety of residents and staff, which may in-  
11 clude waiving certain staffing or training requirements;

12 “(F) Developing methodologies to support the isolation prevention  
13 plans developed by long term care providers under subsection (2)(d)  
14 of this section; and

15 “(G) How to identify the need for resources and how to distribute  
16 needed resources including but not limited to personal protective  
17 equipment during an impending or declared public health emergency.

18 “(6) If an impending or declared public health emergency primarily  
19 involves the spread of an infectious disease, the authority and the de-  
20 partment shall consult with the Long Term Care Emergency  
21 Preparedness and Response Team regarding:

22 “(a) The testing of:

23 “(A) residents, volunteers and staff of the long term care provider;

24 “(B) Other individuals who enter the facility to provide services to  
25 the staff or residents of the facility;

26 “(C) Staff of the department, the authority, a local health authority  
27 or municipality;

28 “(D) The Long Term Care Ombudsman or the ombudsman’s  
29 designee; or

30 “(E) Any other public official who enters the facility to perform

1 **official duties;**

2 **“(b) The appropriate testing methodology;**

3 **“(c) The timing and frequency of testing; and**

4 **“(d) A specific laboratory or laboratories designated to receive and**  
5 **process the tests.**

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

12 **“(b) Documentation, statements or other information developed or**  
13 **arising from the consultation are confidential and privileged and:**

14 **“(A) May not be used by any state agency in an enforcement or**  
15 **regulatory action regarding the long term care provider.**

16 **“(B) Are not admissible in evidence in any civil action, including**  
17 **but not limited to a judicial, administrative, arbitration or mediation**  
18 **proceeding.**

19 **“(C) Are not subject to a civil or administrative subpoena.**

20 **“(D) Are not subject to discovery in connection with a civil action,**  
21 **including but not limited to a judicial, administrative, arbitration or**  
22 **mediation proceeding.**

23 **“(E) Shall be considered a patient safety record described in ORS**  
24 **442.820 (3).**

25 **“(c) This subsection does not limit the regulatory or enforcement**  
26 **authority of any state agency or prohibit state agencies from accessing**  
27 **records of a long term care provider as permitted under state or fed-**  
28 **eral laws.**

29 **“(d) Paragraph (b) of this subsection does not apply to records re-**  
30 **garding the diagnosis and treatment of a resident or to records created**



1 in the ordinary course of business.

2 **“SECTION 2. The Department of Human Services shall develop**  
3 **training to be made available to local public health authorities or ap-**  
4 **prove training by third parties to support local public health authori-**  
5 **ties in understanding the responsibilities of long term care facilities**  
6 **and the emergency needs and unique needs of residents of each of the**  
7 **following types of long term care:**

8 **“(1) Skilled nursing facilities, as defined in ORS 442.015;**

9 **“(2) Intermediate care facilities, as defined in ORS 442.015;**

10 **“(3) Residential care facilities, as defined in ORS 443.400; and**

11 **“(4) Facilities with memory care endorsements, as described in ORS**  
12 **443.886.**

13 **“SECTION 3. ORS 441.087 is amended to read:**

14 **“441.087. (1) The Department of Human Services shall, in addition to any**  
15 **inspections conducted pursuant to complaints filed against long term care**  
16 **facilities, conduct at least one general inspection of each long term care fa-**  
17 **cility in the state each calendar year, including, but not limited to, entering**  
18 **the facility, interviewing residents and reviewing records. No advance notice**  
19 **shall be given of any inspection conducted pursuant to this section.**

20 **“(2) Any state employee giving advance notice in violation of subsection**  
21 **(1) of this section shall be suspended from all duties without pay for a period**  
22 **of at least 10 working days, or for a longer period as determined by the Di-**  
23 **rector of Human Services.**

24 **“(3) If an on-site inspection is foreclosed by a public health emer-**  
25 **gency, as defined in section 1 of this 2021 Act, the department shall**  
26 **conduct a virtual inspection by electronic means. A virtual inspection**  
27 **must include all elements of an on-site inspection described in sub-**  
28 **section (1) of this section that are capable of being performed virtu-**  
29 **ally.**

30 **“SECTION 4. ORS 443.012 is amended to read:**

1 “443.012. (1) As used in this section and ORS 443.417:  
2 “(a) ‘Disease outbreak’ has the meaning given that term in ORS 431A.005.  
3 “(b) ‘Facility’ means:  
4 “(A) A long term care facility, as defined in ORS 442.015;  
5 “(B) A conversion facility, as defined in ORS 443.400; and  
6 “(C) A residential care facility, as defined in ORS 443.400, including a  
7 residential care facility with a memory care endorsement.  
8 “(2) An administrator of a facility and the employees of the facility, as  
9 specified by the Department of Human Services by rule, must receive train-  
10 ing in recognizing disease outbreaks and infection control at the time of  
11 hiring, unless the administrator or the employee has received the training  
12 at another facility within the 24-month period prior to the time of hiring,  
13 and annually as part of, and not in addition to, the administrator or  
14 employee’s continuing education requirements.  
15 “(3) The department, in consultation with the Oregon Health Authority,  
16 shall prescribe by rule the requirements for the training, which must include  
17 at least the following:  
18 “(a) How to properly prevent and contain disease outbreaks based on the  
19 current best evidence in the field of infection and disease outbreak identifi-  
20 cation, prevention and control; and  
21 “(b) The responsibility of staff members to report disease outbreaks under  
22 ORS 433.004.  
23 “(4) The training may be provided in person, in writing, by webinar or  
24 by other electronic means. The department shall make online trainings  
25 available.  
26 “(5)(a) A facility must establish and maintain infection prevention and  
27 control protocols designed to provide a safe, sanitary and comfortable envi-  
28 ronment and to prevent the development and transmission of communicable  
29 diseases.  
30 “(b) A facility must designate an individual to be responsible for carrying

1 out the infection prevention and control protocols and to serve as the pri-  
2 mary point of contact for the department regarding disease outbreaks. The  
3 individual must:

4 “(A) Be qualified by education, training and experience or certification;  
5 and

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

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

14 “(7) The department, in coordination with the authority, shall **develop**  
15 **uniform recommendations for evidence-based best practices and pro-**  
16 **ocols for preventing and responding to disease outbreaks, consistent**  
17 **with existing guidance and rules and:**

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

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

25 **“SECTION 5.** ORS 443.416 is amended to read:

26 “443.416. (1) The Director of Human Services or authorized representative  
27 shall periodically visit and inspect every residential care facility, residential  
28 training facility or residential training home, **including a facility with a**  
29 **memory care endorsement under ORS 443.886**, to determine whether it  
30 is maintained and operated in accordance with ORS 443.400 to 443.455 and

1 the rules of the director, and to consult with and advise management con-  
2 cerning methods of care, treatment, training, records, housing and equip-  
3 ment. Employees of the Department of Human Services and the State Fire  
4 Marshal or authorized representative on request shall be permitted access  
5 to the premises and records of individuals in the facility or home that are  
6 pertinent to fire safety.

7 “(2) The Director of the Oregon Health Authority or authorized repre-  
8 sentative shall periodically visit and inspect every residential treatment fa-  
9 cility or residential treatment home to determine whether it is maintained  
10 and operated in accordance with ORS 443.400 to 443.455 and the rules of the  
11 director, and to consult with and advise management concerning methods of  
12 care, treatment, training, records, housing and equipment. Employees of the  
13 Oregon Health Authority and the State Fire Marshal or authorized repre-  
14 sentative on request shall be permitted access to the premises and records  
15 of individuals in the facility or home that are pertinent to fire safety.

16 **“(3) If a visit to a facility or home is foreclosed by a public health**  
17 **emergency, as defined in section 1 of this 2021 Act, the Director of**  
18 **Human Services or authorized representative or the Director of the**  
19 **Oregon Health Authority or authorized representative shall conduct a**  
20 **virtual inspection by electronic means. A virtual inspection must in-**  
21 **clude all elements required for a visit or inspection under subsections**  
22 **(1) and (2) of this section that are capable of being performed**  
23 **virtually.”.**

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