

Sara A. Gelser
State Senator
District 8



Oregon State Senate

Updated Amendment Request for SB 266 (4/1/2021)

Substantial Compliance: Please change the definition of “Substantial Compliance” for assisted throughout the appropriate statutes to:

- “Substantial compliance” **means the facility is consistently able to meet the scheduled and unscheduled needs of all residents 24 hours a day and the facility** has a level of compliance with state law and with rules of the Department of Human Services such that any identified deficiencies *[pose a risk of no more than negligible harm to the health or safety of residents.]*

- (a) **Do not violate the rights of residents; and**
- (b) **Pose no more than negligible risk of harm to the health, safety and welfare of the residents**

Please make the following amendment to ORS 441.650 (3)

Add new “(e)”

“(e) The licensing agency for the facility”

Please make the following amendments to ORS 441.676

- (1) For complaints of licensing violations other than abuse, the Department of Human Services shall cause an investigation to be completed within 90 days of the receipt of the complaint.
- (2) **If a complaint of a licensing violation other than abuse alleges harm or potential harm to a resident, of if the complaint alleges the facility is not able to meet the scheduled and unscheduled needs of all residents 24 hours a day, the investigation shall commence immediately.**
- (3) [2] Except in cases where the investigation is part of nursing facility surveyor activity pursuant to federal law, an investigator investigating a complaint other than a complaint of abuse shall:
 - (a) Make an unannounced visit to the facility, while complying with ORS 441.690;

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- (b) Interview all available witnesses identified by any source as having personal knowledge relevant to the complaint, such as interviews to be private unless the witness expressly requests the interview not to be private;
- (c) Make personal inspection of all physical circumstances that are relevant and material and that are susceptible to objective observation;
- (d) **If the complaint alleged harm or potential harm of a resident, injury to a resident or if the complaint was regarding staffing levels or the ability of the facility to meet the scheduled and unscheduled needs of all residents 24 hours a day, assess the staffing levels of the facility and the facility's ability to meet the scheduled and unscheduled needs of all residents; and**
- (e) *[d]* Write and investigation report that includes:
 - A. The investigator's personal observations;
 - B. A review of documents and records;
 - C. A summary of all witness statements;
 - D. If the investigator assessed staffing levels of the facility and the facility's ability to meet the scheduled and unscheduled needs of all residents 24 hours a day as required in (d) of this section, a statement of the investigator's findings; and**
 - E. *[D]* A statement for the factual basis for the findings for each incident or problem alleged in the complaint.

Changes to ORS 441.726

441.726 In regulating residential care facilities and long term care facilities, the Department of Human Services shall:

- (a) Prioritize the health, welfare, safety and rights of residents;**
- (b) Encourage and compel compliance with licensing regulations through the application of preventive and progressively more restrictive strategies, including but not limited to technical assistance, corrective action plans, training and consultation, before corrective action measures become necessary as required by ORS 443.436, 441/731 or 441.736. *[Preventive and positive strategies are strategies that include but are not limited to technical assistance, corrective action plans, training and consultation.]; and***
- (D) Utilize corrective action measures that impose progressively more restrictive strategies as described in ORS 443.436 by issuing civil penalties when required under ORS 441.731, or by placing a condition on a facility when required under ORS 441.731**

Changes to ORS 443.436

443.436 (1) As used in this section, "substantial compliance" means **the facility is consistently able to meet the scheduled and unscheduled needs of all residents 24 hours a day and** the facility has a level of compliance with state law and with rules of the Department of Human Services such that any identified deficiencies *[pose a risk of no more than negligible harm to the health or safety of residents.]*

- (a) Do not violate the rights of residents; and**
- (b) Pose no more than negligible risk of harm to the health, safety and welfare of the residents**

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

(b) The framework must include but is not limited to measures of:

(A) The severity and scope of a residential care facility's noncompliance;

(B) The residential care facility's ability to meet the scheduled and unscheduled needs of residents 24 hours a day; and

(C) The impact of any deficiencies on the rights, health, safety and welfare of residents

(c) The department shall publish the framework on the department's website and shall distribute the framework to residential care facilities licensed in this state **no later January 1, 2022.**

(3) The department shall administer a residential care facility enhanced oversight and supervision program that focuses department resources on residential care facilities that demonstrate:

(a) A lack of substantial compliance with the requirements of, **and rules established for implementing, ORS 443.400 to 443.455; or**

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

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

(a) Increase the frequency of surveys of the residential care facility;

(b) Conduct surveys that focus on areas of consistent noncompliance identified by the department; or

(c) Require one or more license conditions described in ORS 441.736.

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

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

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

(6) The Department shall provide notice to the public on the Department's long term care facility database website of any residential care facility in the enhanced oversight and supervision program.

(7) The enhanced oversight and supervision program shall be fully implemented no later than January 1, 2022.

(8) The Department shall report to the appropriate legislative committee by January 1, 2022 about the implementation of the framework and the enhanced oversight and supervision program required in ORS 443.436 as amended by this legislation.

(9) [(6)] Using moneys from the Quality Care Fund established under ORS 443.001, the department shall develop, maintain and periodically update compliance guidelines for residential

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care facilities serving seniors and persons with disabilities. The guidelines must be made available electronically.

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

Changes to 441.736 (1)(G)

(1) (G) “Substantial compliance” means **the facility is consistently able to meet the scheduled and unscheduled needs of all residents 24 hours a day** and the facility has a level of compliance with state law and with rules of the Department of Human Services such that any identified deficiencies: *[pose a risk of no more than negligible harm to the health or safety of residents.]*

(a) Do not violate the rights of residents; and

(b) Pose no more than negligible risk of harm to the health, safety and welfare of the residents

Changes to 441.736 (2)(a)

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

New Section: Rulemaking regarding scheduled and unscheduled needs

The Department shall adopt by rule no later than January 1, 2022 standards to be considered when determining whether a facility is able to meet the scheduled and unscheduled needs of all residents 24 hours a day. The rules shall, at a minimum:

- Meet all requirements under the Home and Community Based Services settings rule as outlined by CFR 441.530
- Require that each resident has a current person centered person plan developed and implemented in full compliance with CFR 441.540
- Address immediate access, 24 hour a day, to all supports needed for activities of daily living, including but not limited to eating, hydration, toileting, hygiene, bathing, dressing, dental care and activities
- Require immediate response to issues impacting dignity, including but not limited to, wet or soiled briefs, clothing or linens
- Ensure care is provided according to the schedule and procedures outlined in each resident’s treatment plan, including but not limited to wound care, medication administration, pain control, behavior support, cueing and repositioning.