

# DRAFT

## SUMMARY

Digest: The Act changes the way that DHS makes a place that houses and takes care of people who are elderly or who have disabilities use a certain tool to make sure that the place has enough staff to meet the needs of the people who live there. The Act changes the meaning of “child in care” that is used when DHS looks into complaints of abuse to include more types of children who have been taken from their homes by DHS. (Flesch Readability Score: 67.3).

Modifies the enforcement by the Department of Human Services of the requirements for residential care facilities to use acuity-based staffing tools to ensure sufficient staffing levels to meet residents’ scheduled and unscheduled needs at all times.

Modifies the definition of “child in care” for purposes of child abuse statutes to include a child who is in the protective custody of the department and is receiving certain care or services from the department, its agents, contractors or employees or any other person acting in loco parentis.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to care for vulnerable individuals; amending ORS 418.257 and  
3 443.889; and declaring an emergency.

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

5 **SECTION 1.** ORS 443.889 is amended to read:

6 443.889. (1) The Department of Human Services shall adopt rules:

7 (a) Establishing minimum requirements for an acuity-based staffing tool  
8 adopted by a facility and the frequency with which a facility must reassess  
9 the facility’s staffing patterns with the acuity-based staffing tool.

10 (b) Establishing requirements for the design of an acuity-based staffing  
11 tool adopted by a facility to ensure that the tool recommends staffing levels,

1 intensity and qualifications necessary to meet the scheduled and unscheduled  
2 needs of all residents 24 hours a day, seven days a week.

3 (c) For carrying out subsection [(4)] (5) of this section.

4 **(2) Before finalizing any changes to rules adopted under subsection**  
5 **(1)(a) or (b) of this section, to promote quality care or sufficient**  
6 **staffing levels the department shall assess the administrative and op-**  
7 **erational impact on facilities and on the safety and rights of the resi-**  
8 **dents and staff of facilities.**

9 [(2)] (3) The department shall assess the staffing levels of a facility, at a  
10 minimum, each time the department conducts a survey, license approval or  
11 renewal or an investigation into a complaint regarding:

- 12 (a) Abuse of a resident;
- 13 (b) Injury to a resident;
- 14 (c) Resident safety; or
- 15 (d) Staffing levels.

16 [(3)] (4) The assessment under subsection [(2)] (3) of this section must  
17 include a determination of whether the facility is:

- 18 (a) Using an acuity-based staffing tool that meets the requirements of  
19 rules adopted under subsection (1) of this section;
- 20 (b) Recalculating the facility's staffing patterns using the acuity-based  
21 staffing tool with the frequency required by rules adopted under subsection  
22 (1) of this section;
- 23 (c) Consistently staffing to the levels, intensity and qualifications indi-  
24 cated by the acuity-based staffing tool; and
- 25 (d) Consistently meeting the scheduled and unscheduled needs of all res-  
26 idents 24 hours a day, seven days a week.

27 [(4)] (5) If the department finds, during an assessment under subsection  
28 [(2)] (3) of this section, that a facility is:

- 29 (a) Not using an acuity-based staffing tool, the department shall require  
30 the facility to adopt the acuity-based staffing tool developed by the depart-  
31 ment **until the facility has in place the facility's own acuity-based**

1 **staffing tool.**

2 (b) **Using an acuity-based staffing tool but is** not meeting the sched-  
3 uled and unscheduled needs of all residents 24 hours a day, seven days a  
4 week, the department shall:

5 (A) Place a condition on the facility's license as provided in ORS 441.736  
6 (1)(b)(A), (B), (C) or (F) [*until the facility implements an acuity-based staffing*  
7 *tool and meets the minimum staffing levels identified by the department as*  
8 *necessary to meet the scheduled and unscheduled needs of all residents 24*  
9 *hours a day, seven days a week; and*];

10 **(B) Establish staffing levels in a corrective action plan;**

11 [~~(B)~~] **(C) Impose fines, penalties or conditions required by law or that the**  
12 **department deems necessary to compel compliance; and**

13 **(D) Continuously monitor the facility for compliance with the**  
14 **staffing levels indicated by the acuity-based staffing tool for six**  
15 **months or until the department removes the condition placed under**  
16 **subparagraph (A) of this paragraph.**

17 (c) Using an acuity-based staffing tool but [*is not consistently staffing to*  
18 *the levels, intensity and qualifications indicated by the tool or is not recalcu-*  
19 *lating the facility's staffing patterns with the tool at the frequency required*  
20 *by rule*] **the tool does not meet the requirements of the rules adopted**  
21 **under subsection (1)(a) and (b) of this section or the facility is not**  
22 **reassessing its staffing patterns at the frequency required by the**  
23 **rules, the department shall:**

24 (A) Assess whether the facility is meeting the scheduled and unscheduled  
25 needs of all residents 24 hours a day, seven days a week; **and**

26 (B) [*Place a condition on the facility's license as provided in ORS 441.736*  
27 *(1)(b)(A), (B), (C) or (F) until the facility implements an acuity-based staffing*  
28 *tool and demonstrates the facility's ability to meet the scheduled and un-*  
29 *scheduled needs of all residents 24 hours a day, seven days a week; and*] **Im-**  
30 **pose fines, penalties or conditions on the facility's license that are**  
31 **required by law or that the department deems necessary to compel**

1 **compliance.**

2 [(C) *Continuously monitor the facility, for at least six months, for compli-*  
3 *ance with the staffing levels, intensity and qualifications indicated by the*  
4 *acuity-based staffing tool].*

5 [(d) *Not meeting the scheduled and unscheduled needs of all residents 24*  
6 *hours a day, seven days a week, the department shall establish staffing stan-*  
7 *dards in a corrective action plan and place a condition on the facility's license*  
8 *as provided in ORS 441.736 (1)(b)(A), (B), (C) or (F) until the facility complies*  
9 *with the corrective action plan.*]

10 **SECTION 2.** ORS 418.257 is amended to read:

11 418.257. As used in ORS 418.257 to 418.259:

12 (1) "Abuse" means one or more of the following:

13 (a) Any physical injury to a child in care caused by other than accidental  
14 means, or that appears to be at variance with the explanation given of the  
15 injury.

16 (b) Neglect of a child in care.

17 (c) Abandonment, including desertion or willful forsaking of a child in  
18 care or the withdrawal or neglect of duties and obligations owed a child in  
19 care by a child-caring agency, caretaker, certified foster home, developmental  
20 disabilities residential facility or other person.

21 (d) Willful infliction of physical pain or injury upon a child in care.

22 (e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411,  
23 163.415, 163.425, 163.427, 163.465, 163.467 or 163.525.

24 (f) Verbal abuse.

25 (g) Financial exploitation.

26 (h) Sexual abuse.

27 (i) The use of restraint or involuntary seclusion of a child in care in vi-  
28 olation of ORS 418.521 or 418.523.

29 (2) "Certified foster home" means a foster home certified by the Depart-  
30 ment of Human Services and subject to ORS 418.625 to 418.645.

31 (3)(a) "Child in care" means a person under 21 years of age who:

1 (A) Is residing in or receiving care or services from:

2 [(A)] (i) A child-caring agency or proctor foster home subject to ORS  
3 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970;

4 [(B)] (ii) A certified foster home; or

5 [(C)] (iii) A developmental disabilities residential facility; or

6 (B) Is in the protective custody of the department and is receiving  
7 supervision, care, transportation or other services from:

8 (i) The department or any person acting on behalf of the depart-  
9 ment as an agent, contractor or employee; or

10 (ii) Any person or entity if the supervision, care, transportation or  
11 other services are consistent with those typically provided by a parent  
12 or guardian, a certified foster home, a developmental disabilities resi-  
13 dential facility, a child-caring agency, a proctor foster home or any  
14 other person or entity acting in loco parentis.

15 (b) "Child in care" does not include a person under 21 years of age who  
16 is residing in or receiving services from any of the entities listed in par-  
17 agraph (a) of this subsection when the care provided is in the home of the  
18 child by the child's parent.

19 (4) "Developmental disabilities residential facility" means a residential  
20 facility or foster home for children who are 17 years of age or younger and  
21 receiving developmental disability services that is subject to ORS 443.400 to  
22 443.455, 443.830 and 443.835.

23 (5)(a) "Financial exploitation" means:

24 (A) Wrongfully taking the assets, funds or property belonging to or in-  
25 tended for the use of a child in care.

26 (B) Alarming a child in care by conveying a threat to wrongfully take or  
27 appropriate moneys or property of the child in care if the child would rea-  
28 sonably believe that the threat conveyed would be carried out.

29 (C) Misappropriating, misusing or transferring without authorization any  
30 moneys from any account held jointly or singly by a child in care.

31 (D) Failing to use the income or assets of a child in care effectively for

1 the support and maintenance of the child in care.

2 (b) “Financial exploitation” does not include age-appropriate discipline  
3 that may involve the threat to withhold, or the withholding of, privileges.

4 (6) “Intimidation” means compelling or deterring conduct by threat. “In-  
5 timidation” does not include age-appropriate discipline that may involve the  
6 threat to withhold privileges.

7 (7) “Involuntary seclusion” has the meaning given that term in ORS  
8 418.519.

9 (8) “Law enforcement agency” means:

10 (a) Any city or municipal police department.

11 (b) Any county sheriff’s office.

12 (c) The Oregon State Police.

13 (d) Any district attorney.

14 (e) A police department established by a university under ORS 352.121 or  
15 353.125.

16 (9) “Neglect” means:

17 (a) Failure to provide the care, supervision or services necessary to  
18 maintain the physical and mental health of a child in care; or

19 (b) The failure of a child-caring agency, proctor foster home, certified  
20 foster home, developmental disabilities residential facility, caretaker or other  
21 person to make a reasonable effort to protect a child in care from abuse.

22 (10) “Restraint” has the meaning given that term in ORS 418.519.

23 (11) “Services” includes but is not limited to the provision of food,  
24 clothing, medicine, housing, medical services, assistance with bathing or  
25 personal hygiene or any other service essential to the well-being of a child  
26 in care.

27 (12) “Sexual abuse” means:

28 (a) Sexual harassment, sexual exploitation or inappropriate exposure to  
29 sexually explicit material or language;

30 (b) Any sexual contact between a child in care and an employee of a  
31 child-caring agency, proctor foster home, certified foster home, develop-

1 mental disabilities residential facility, caretaker or other person responsible  
2 for the provision of care or services to a child in care;

3 (c) Any sexual contact between a person and a child in care that is un-  
4 lawful under ORS chapter 163 and not subject to a defense under that  
5 chapter; or

6 (d) Any sexual contact that is achieved through force, trickery, threat or  
7 coercion.

8 (13) "Sexual contact" has the meaning given that term in ORS 163.305.

9 (14) "Sexual exploitation" means sexual exploitation as described in ORS  
10 419B.005 (1)(a)(E).

11 (15) "Verbal abuse" means to threaten significant physical or emotional  
12 harm to a child in care through the use of:

13 (a) Derogatory or inappropriate names, insults, verbal assaults, profanity  
14 or ridicule; or

15 (b) Harassment, coercion, threats, intimidation, humiliation, mental cru-  
16 elty or inappropriate sexual comments.

17 **SECTION 3. This 2024 Act being necessary for the immediate pres-**  
18 **ervation of the public peace, health and safety, an emergency is de-**  
19 **clared to exist, and this 2024 Act takes effect on its passage.**

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