

DRAFT

SUMMARY

Digest: The Act changes oversight laws for certain types of long term care facilities. (Flesch Readability Score: 63.4).

Modifies the requirements for investigations of a residential care facility following a complaint of a licensing violation. Prohibits exceptions to statutory licensing requirements for residential care facilities. Requires an administrator of a new residential care facility to retain a consultant with experience in providing residential care. Requires the Department of Human Services to conduct regular inspections of new residential care facilities. Requires residential care facilities to notify the department of an administrator absence or change. Prohibits a person from serving as an interim residential care facility administrator without a license. Prohibits issuing a memory care endorsement unless an applicant has at least two years' experience operating a licensed residential care facility or long term care facility.

A BILL FOR AN ACT

Relating to long term care oversight; creating new provisions; and amending
ORS 441.736, 443.416, 443.441, 443.886 and 678.720.

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

SECTION 1. ORS 443.441 is amended to read:

443.441. (1) As used in this section:

(a) "Consistently" means regularly and typically.

(b) "Direct care staff" means staff who provide services for residents that include assistance with daily living, medication administration, resident-focused activities, supervision and support.

(c) "Facility" includes a:

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

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

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

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

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

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

(d) Delivers care according to the schedule and procedures outlined in the resident's person-centered service plan, including but not limited to wound care, medication administration, pain control, behavior support, cueing and repositioning.

(3) For **a complaint of a licensing violation that alleges harm or the potential of severe harm to a resident**, a complaint of a licensing violation, other than abuse, that alleges [*harm or*] potential harm to a resident or [*for*] a complaint that a facility does not have qualified awake direct care staff in sufficient numbers to meet the scheduled and unscheduled needs of each resident 24 hours a day:

(a) The department shall begin an **on-site complaint** investigation without undue delay, **as follows**:

(A) Within 24 hours or before the end of the next business day for a complaint that alleges a licensing violation resulting in death or serious physical injury; and

1 **(B) Within seven days for all other complaints; and**

2 (b) The investigator shall:

3 (A) Assess whether the facility has qualified awake direct care staff in
4 sufficient numbers to consistently meet the scheduled and unscheduled needs
5 of each resident 24 hours a day pursuant to the criteria prescribed by rule
6 under subsection (2) of this section; *[and]*

7 **(B) Interview relevant witnesses, including residents, staff, family**
8 **members and staff or volunteers from the Long Term Care Ombuds-**
9 **man; and**

10 ~~[(B)]~~ (C) Write an investigation report that includes:

11 (i) The investigator's personal observations;

12 (ii) A review of documents and records;

13 (iii) A summary of all witness statements; *[and]*

14 (iv) A statement of the factual basis for the findings for each incident or
15 problem alleged in the complaint, including the investigator's assessment of
16 staffing levels and whether the facility has qualified awake direct care staff
17 in sufficient numbers to consistently meet the scheduled and unscheduled
18 needs of each resident 24 hours a day;

19 **(v) Information about any additional licensing violations, contract**
20 **violations or allegations of abuse observed or reported during the**
21 **course of the investigation; and**

22 **(vi) A summary of any compliance deficiencies of the facility or**
23 **substantiated allegations of abuse against the facility in the 12 months**
24 **preceding the investigation.**

25 **(4) A complaint investigation under subsection (3) of this section is**
26 **separate from, and not a replacement for, an adult protective services**
27 **investigation. The department may initiate a complaint investigation**
28 **before or at the same time as an adult protective services investi-**
29 **gation.**

30 **SECTION 2.** ORS 441.736 is amended to read:

31 441.736. (1) As used in this section:

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

(b) “License condition” includes but is not limited to:

(A) Restricting the total number of residents;

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

(C) Requiring additional staff or staff qualifications;

(D) Requiring additional training for staff;

(E) Requiring additional documentation; or

(F) Restriction of admissions.

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

(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].

(b) The department shall immediately impose a condition on the license 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.

[(b)] **(c)** The department shall impose a license condition in a scope and manner that is specifically designed to remediate the finding that led to the license condition.

[(c)] **(d)** If the department imposes a license condition in response to a finding of immediate jeopardy to residents of the facility, and the finding of immediate jeopardy to residents of the facility is not substantiated within

30 days after the imposition of the license condition, the department shall immediately remove the license condition.

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

(i) Describe the acts or omissions of the facility and the circumstances that led to the substantiated finding of rule violation or finding of immediate jeopardy supporting the imposition of the license condition;

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

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

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

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

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

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

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

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

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

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

3 (A) Within 15 business days of receipt of the facility's written assertion
4 of substantial compliance with the requirements set forth by the department
5 for withdrawal of the license condition, reinspect or reevaluate the facility
6 to determine whether the facility has achieved substantial compliance with
7 the requirements;

8 (B) Notify the facility by telephone or electronic means of the findings
9 of the reinspection or reevaluation within five business days after completion
10 of the reinspection or reevaluation; and

11 (C) Issue a written report to the facility within 30 days after the rein-
12 spection or reevaluation notifying the facility of the department's determi-
13 nations regarding substantial compliance with the requirements necessary
14 for withdrawal of the license condition.

15 (b) If the department finds that the facility has achieved substantial
16 compliance regarding the violation for which the license condition was im-
17 posed, and finds that systems are in place to ensure similar deficiencies do
18 not reoccur, the department shall withdraw the license condition.

19 (c) If after reinspection or reevaluation the department determines that
20 the violation for which the license condition was imposed continues to exist,
21 the department may not withdraw the license condition, and the department
22 is not obligated to reinspect or reevaluate the facility again for 45 days after
23 the first reinspection or reevaluation. The department shall provide the de-
24 cision not to withdraw the license condition to the facility in writing and
25 inform the facility of the right to a contested case hearing pursuant to ORS
26 chapter 183. Nothing in this paragraph limits the department's authority to
27 visit or inspect the facility at any time.

28 (d) If the department does not meet the requirements of this subsection,
29 a license condition is automatically removed on the date the department
30 failed to meet the requirements of this subsection, unless the Director of
31 Human Services extends the applicable period for no more than 15 business

1 days. The director may not delegate the power to make a determination re-
2 garding an extension under this paragraph.

3 **SECTION 3. Sections 4 to 6 and 8 of this 2025 Act are added to and**
4 **made a part of ORS 443.400 to 443.455.**

5 **SECTION 4. (1) The Department of Human Services may not grant**
6 **a residential care facility's request for an exception to the require-**
7 **ments of ORS 443.400 to 443.455 or any other licensing requirements**
8 **prescribed by state or federal statute.**

9 **(2) Before granting a residential care facility's request for an ex-**
10 **ception to a licensing requirement prescribed by the department by**
11 **rule, the department shall:**

12 **(a) Provide 14 days' notice to the Long Term Care Ombudsman of**
13 **the exception request and the department's intent to approve the re-**
14 **quest;**

15 **(b) Provide the Long Term Care Ombudsman's response, if any, to**
16 **the Director of Human Services or the director's designee; and**

17 **(c) Receive approval from the director or the director's designee.**

18 **(3) The department shall publish any exception request approved**
19 **under subsection (2) of this section on the department's website.**

20 **SECTION 5. If the Department of Human Services determines that**
21 **a residential care facility has failed to comply with the requirements**
22 **of ORS 443.400 to 443.455 or rules adopted to implement ORS 443.400 to**
23 **443.455, the department shall:**

24 **(1) Issue a deficiency notice to the facility; and**

25 **(2) Conduct an on-site visit to confirm that the facility fully cor-**
26 **rects the deficiency in a timely manner.**

27 **SECTION 6. (1) As used in this section, "administrator" means a**
28 **residential care facility administrator as defined in ORS 678.710.**

29 **(2) When the Department of Human Services issues an initial li-**
30 **cense to a residential care facility under ORS 443.415, the administra-**
31 **tor shall retain the services of a consultant with experience in**

1 providing residential care.

2 (3) A consultant shall be retained under this section for:

3 (a) At least the first six months of the residential care facility's
4 operation; or

5 (b) At least the first 12 months of the residential care facility's op-
6 eration if the administrator has less than two years' experience in di-
7 rectly managing a residential care facility, including an assisted living
8 facility, in this state.

9 (4) Before the residential care facility may admit a resident, the
10 administrator shall notify the department of:

11 (a) The name and contact information of the consultant retained
12 under this section; and

13 (b) The start and end dates of the contract with the consultant.

14 (5) If the services of the consultant retained under this section are
15 terminated by either the consultant or the administrator before the
16 expected termination date, the administrator shall immediately notify
17 the department of the termination, retain the services of a new con-
18 sultant and notify the department of:

19 (a) The name and contact information of the new consultant; and

20 (b) The start and end dates of the contract with the new consultant.

21 (6) A consultant retained under this section shall:

22 (a) Offer on-site services, including monthly visits to the residential
23 care facility and more frequent visits if the consultant identifies any
24 compliance or safety concerns.

25 (b) Provide monthly reports to the department regarding the oper-
26 ation of the residential care facility, including the facility's compliance
27 with staffing, safety or other licensing requirements.

28 **SECTION 7.** ORS 443.416 is amended to read:

29 443.416. (1)(a) The Director of Human Services or authorized represen-
30 tative shall [periodically] visit and inspect every residential care facility,
31 residential training facility or residential training home to determine

whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and the rules of the director, and to consult with and advise management concerning methods of care, treatment, training, records, housing and equipment. Employees of the Department of Human Services and the State Fire Marshal or authorized representative on request shall be permitted access to the premises and records of individuals in the facility or home that are pertinent to fire safety.

(b) After an initial license is issued under ORS 443.415 to a residential care facility, the department shall conduct:

(A) Monthly in-person inspections for at least the first six months of operation; and

(B) At least quarterly in-person inspections until the facility has operated for at least 24 months.

(c) At least eight of the inspections conducted under paragraph (b) of this subsection, including at least three in the first six months of operation, must be conducted at unexpected times and intervals such that the facility does not have advance notice of the inspection.

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

SECTION 8. (1) As used in this section, “administrator” means a residential care facility administrator as defined in ORS 678.710.

(2) If an administrator will be absent from a residential care facility for more than 10 consecutive business days or for more than 20 calendar days in any 90-day period, the residential care facility shall im-

1 **mediately notify the Department of Human Services.**

2 **(3) If a residential care facility has a change in administrator, the**
 3 **residential care facility shall notify the department within one busi-**
 4 **ness day. The notification must include information regarding the new**
 5 **administrator's active license issued under ORS 678.710 to 678.820 and**
 6 **an affirmation that the new administrator has an approved back-**
 7 **ground check.**

8 **(4) The department shall adopt rules to impose enhanced oversight**
 9 **of a residential care facility that has a change in administrator three**
 10 **or more times in any 18-month period.**

11 **SECTION 9.** ORS 678.720 is amended to read:

12 678.720. (1)(a) Unless an individual holds an active license issued under
 13 ORS 678.710 to 678.820, an individual may not:

14 (A) Practice or offer to practice as a nursing home administrator; or

15 (B) Use in connection with the name of the individual the words or letters
 16 "nursing home administrator," "NHA" or any other words, letters or abbreviations or insignia tending to indicate that the individual is a licensed
 17 nursing home administrator.
 18

19 (b) A nursing home must be conducted or operated under the supervision
 20 of a nursing home administrator who holds an active license issued under
 21 ORS 678.710 to 678.820.

22 (2)(a) Unless an individual holds an active license issued under ORS
 23 678.710 to 678.820, an individual may not:

24 (A) Practice or offer to practice as a residential care facility administra-
 25 tor, **including on an interim basis; [or]**

26 (B) Use in connection with the name of the individual the words or letters
 27 "residential care facility administrator," "RCFA" or any other words, letters
 28 or abbreviations or insignia tending to indicate that the individual is a li-
 29 censed residential care facility administrator; **or**

30 **(C) Assume the duties of a residential care facility administrator**
 31 **under any alternative title.**

(b) *[Subject to rules adopted under paragraph (c) of this subsection,]* A residential care facility must be conducted or operated under the supervision of a residential care facility administrator who holds an active license issued under ORS 678.710 to 678.820.

[(c) The Department of Human Services shall adopt rules to allow a residential care facility to be operated by an individual who is not a residential care facility administrator who holds an active license under ORS 678.710 to 678.820 in transitional, emergency and similar situations.]

SECTION 10. ORS 443.886 is amended to read:

443.886. (1) If a facility intends to provide care for residents with Alzheimer's disease or other forms of dementia by means of an endorsed memory care community, the facility must obtain a memory care endorsement on its license or registration. **A memory care endorsement may be issued only if the applicant has at least two years of experience operating a licensed residential care facility, including an assisted living facility, or long term care facility as defined in ORS 442.015.**

(2) The Department of Human Services, with the input from representatives of advocate groups and the long term care industry, shall adopt by rule standards that ensure that the special needs of any resident with Alzheimer's disease or other form of dementia who is cared for in an endorsed memory care community are met and that quality care is provided. The standards must include but are not limited to provisions for:

(a) Care planning, including physical design, staffing, staff training, safety, egress control, individual care planning, admission policy, family involvement, therapeutic activities and social services;

(b) Continuity of basic care requirements; and

(c) Marketing and advertising of the availability of and services from endorsed memory care communities.

(3) The department shall adopt a fee schedule for memory care endorsement, taking into account the type of facility and the number of residents.

(4) The department shall enforce rules adopted under subsection (2) of this

1 section and ORS 443.889 and shall allow a licensee or registrant to retain the
2 memory care endorsement required to care for residents with Alzheimer's
3 disease or other forms of dementia only as long as the licensee or registrant
4 complies with the rules.

5 (5) The memory care endorsement may be suspended or revoked in the
6 same manner as the license or registration is suspended or revoked.

7 (6) Unless a facility has obtained the memory care endorsement required
8 by subsection (1) of this section, the facility may not:

9 (a) Advertise the facility as providing an Alzheimer's care unit or memory
10 care community; or

11 (b) Market the facility as providing an Alzheimer's care unit or memory
12 care community.

13 **SECTION 11. (1) The amendments to ORS 443.441 by section 1 of this**
14 **2025 Act apply to complaints submitted on or after the effective date**
15 **of this 2025 Act.**

16 **(2) The amendments to ORS 441.736 by section 2 of this 2025 Act**
17 **apply to findings of immediate jeopardy made on or after the effective**
18 **date of this 2025 Act.**

19 **(3) Section 4 of this 2025 Act applies to requests for exceptions made**
20 **on or after the effective date of this 2025 Act.**

21 **(4) Section 5 of this 2025 Act applies to compliance determinations**
22 **made on or after the effective date of this 2025 Act.**

23 **(5) Section 6 of this 2025 Act and the amendments to ORS 443.416**
24 **by section 7 of this 2025 Act apply to initial licenses issued on or after**
25 **the effective date of this 2025 Act.**

26 **(6) Section 8 of this 2025 Act applies to administrator absences be-**
27 **ginning, and administrator changes occurring, on or after the effective**
28 **date of this 2025 Act.**

29 **(7) The amendments to ORS 443.886 by section 10 of this 2025 Act**
30 **apply to memory care endorsements issued on or after the effective**
31 **date of this 2025 Act.**

