

Requested by Senator GELSER BLOUIN

**PROPOSED AMENDMENTS TO
SENATE BILL 792**

1 In line 2 of the printed bill, after “services” insert “; creating new pro-
2 visions; and amending ORS 427.900, 443.415, 443.455 and 443.735”.

3 Delete lines 4 through 8 and insert:

4 **“SECTION 1. Section 2 of this 2023 Act is added to and made a part
5 of ORS chapter 427.**

6 **“SECTION 2. (1) The Department of Human Services shall establish
7 application fees for initial licenses and for renewals of licenses sub-
8 mitted by:**

9 **“(a) Residential training homes and residential training facilities,
10 as defined in ORS 443.400, for licenses under ORS 443.410.**

11 **“(b) Adult foster homes, as defined in ORS 443.705, that provide
12 residential care to adults with intellectual or developmental disabili-
13 ties, for licenses under ORS 443.735.**

14 **“(c) Facilities or other persons certified by the department to pro-
15 vide developmental disability services, as defined in ORS 427.101.**

16 **“(2)(a) Fees collected under subsection (1)(a) and (c) of this section
17 shall be deposited in the Department of Human Services Account es-
18 tablished in ORS 409.060 to be used for the licensing and certification
19 of entities described in subsection (1) of this section.**

20 **“(b) Fees collected under subsection (1)(b) of this section shall be
21 deposited to the Quality Care Fund established in ORS 443.001.**

1 **“(3) The department shall prescribe by rule criteria for the waiver**
2 **or reduction of any fee under this section when appropriate without**
3 **compromising the quality of care provided or the safety of the recipi-**
4 **ents of the residential care or developmental disability services.**

5 **“(4) No later than every five years the department shall review fees**
6 **established under this section and make adjustments if necessary.**

7 **“SECTION 3.** ORS 443.415 is amended to read:

8 “443.415. (1) Applications for licensure to maintain and operate a resi-
9 dential facility shall be made to the Department of Human Services or the
10 Oregon Health Authority on forms provided for that purpose by the appro-
11 priate licensing agency. Each application shall be accompanied by a fee. No
12 fee is required of any governmentally operated residential facility.

13 “(2)(a) The application fee for a residential [*training facility or a resi-*
14 *dential*] treatment facility is \$60.

15 “(b) The application fee for a residential training home [*is \$50*] **or resi-**
16 **dential training facility shall be prescribed by the department pursu-**
17 **ant to section 2 of this 2023 Act.**

18 “(c) The application fee for a residential treatment home is \$30.

19 “(d) The application fee for a residential care facility is:

20 “(A) For a facility with one to 15 beds, \$2,000.

21 “(B) For a facility with 16 to 49 beds, \$3,000.

22 “(C) For a facility with 50 to 99 beds, \$4,000.

23 “(D) For a facility with 100 to 150 beds, \$5,000.

24 “(E) For a facility with more than 150 beds, \$6,000.

25 “(3) Upon receipt of an application and fee, the licensing agency shall
26 conduct an in-person site inspection, including, for residential care facilities,
27 an inspection of the kitchen and other areas where food is prepared for res-
28 idents. The licensing agency shall issue a license to any applicant for oper-
29 ation of a residential facility in compliance with ORS 443.002 and 443.400 to
30 443.455 and the rules of the licensing agency. Licensure may be denied when

1 a residential facility is not in compliance with ORS 443.002 or 443.400 to
2 443.455 or the rules of the licensing agency. Licensure shall be denied if the
3 State Fire Marshal, deputy or approved authority has given notice of non-
4 compliance of a residential care facility, residential training facility or res-
5 idential treatment facility pursuant to ORS 479.220.

6 **“SECTION 4.** ORS 443.735 is amended to read:

7 “443.735. (1)(a) Applications for a license to maintain and operate an adult
8 foster home shall be made on forms provided by the licensing agency.

9 “(b) Each application submitted to the Department of Human Services for
10 an adult foster home serving individuals with intellectual or developmental
11 disabilities shall be accompanied by a fee [*of \$50 per bed requested for li-*
12 *ensing*] **prescribed by the department under section 2 of this 2023 Act.**

13 “(c) Each application submitted to the Oregon Health Authority, or to the
14 Department of Human Services for an adult foster home not serving indi-
15 viduals with intellectual or developmental disabilities, shall be accompanied
16 by a fee of \$20 per bed requested for licensing.

17 “(2) Upon receipt of an application and fee, the licensing agency shall
18 conduct an investigation.

19 “(3) The licensing agency shall not issue an initial license unless:

20 “(a) The applicant and adult foster home are in compliance with ORS
21 443.002 and 443.705 to 443.825 and the rules of the licensing agency;

22 “(b) The licensing agency has completed an inspection of the adult foster
23 home;

24 “(c) The licensing agency has completed a criminal records check under
25 ORS 181A.195 on the applicant and any person, other than a resident, 16
26 years of age or older who will be residing in the adult foster home. The
27 criminal records check shall be conducted in accordance with rules adopted
28 under ORS 181A.195;

29 “(d) The licensing agency has determined that the registry maintained
30 under ORS 441.678 contains no finding that the applicant or any nursing

1 assistant employed by the applicant has been responsible for abuse; and

2 “(e) The applicant has demonstrated to the licensing agency the financial
3 ability and resources necessary to operate the adult foster home. The li-
4 censing agency shall adopt rules as the agency deems appropriate that es-
5 tablish the financial standards an applicant must meet to qualify for issuance
6 of a license and that protect financial information from public disclosure.
7 The demonstration of financial ability under this paragraph shall include,
8 but need not be limited to, providing the licensing agency with a list of any
9 unsatisfied judgments, pending litigation and unpaid taxes and notifying the
10 agency regarding whether the applicant is in bankruptcy. If the applicant is
11 unable to demonstrate the financial ability and resources required by this
12 paragraph, the licensing agency may require the applicant to furnish a fi-
13 nancial guarantee as a condition of initial licensure.

14 “(4) The licensing agency may not renew a license under this section un-
15 less:

16 “(a) The applicant and the adult foster home are in compliance with ORS
17 443.002, 443.012 and 443.705 to 443.825 and the rules of the licensing agency;

18 “(b) The licensing agency has completed an inspection of the adult foster
19 home;

20 “(c) The licensing agency has completed a criminal records check under
21 ORS 181A.195 on the applicant and any person, other than a resident, 16
22 years of age or older who will be residing in the adult foster home. The
23 criminal records check under this paragraph shall be conducted in accord-
24 ance with rules adopted under ORS 181A.195; and

25 “(d) The licensing agency has determined that the registry maintained
26 under ORS 441.678 contains no finding that the applicant or any nursing
27 assistant employed by the applicant has been responsible for abuse.

28 “(5)(a) In seeking an initial license and renewal of a license when an
29 adult foster home has been licensed for less than 24 months, the burden of
30 proof shall be upon the provider and the adult foster home to establish

1 compliance with ORS 443.705 to 443.825 and the rules of the licensing agency.

2 “(b) In proceedings for renewal of a license when an adult foster home
3 has been licensed for at least 24 continuous months, the burden of proof shall
4 be upon the licensing agency to establish noncompliance with ORS 443.705
5 to 443.825 and the rules of the agency.

6 “(6)(a) Persons who have been convicted of one or more crimes that, as
7 determined by rules of the licensing agency, are substantially related to the
8 qualifications, functions or duties of a provider, substitute caregiver or other
9 household member of an adult foster home shall be prohibited from operat-
10 ing, working in or residing in an adult foster home.

11 “(b) The licensing agency shall adopt rules that distinguish the criminal
12 convictions and types of abuse that permanently prohibit a person from op-
13 erating, working in or living in an adult foster home from the convictions
14 and types of abuse that do not permanently prohibit the person from oper-
15 ating, working in or living in an adult foster home.

16 “(c) A provider may not hire, retain in employment or allow to live in
17 an adult foster home, other than as a resident, any person who the provider
18 knows has been convicted of a disqualifying crime or has been found re-
19 sponsible for a disqualifying type of abuse.

20 “(7) A license under ORS 443.725 is effective for one year from the date
21 of issue unless sooner revoked. Each license shall state the name of the
22 resident manager of the adult foster home, the names of all providers who
23 own the adult foster home, the address of the premises to which the license
24 applies, the maximum number of residents and the classification of the adult
25 foster home. If, during the period covered by the license, a resident manager
26 changes, the provider must within 15 days request modification of the li-
27 cense. The request must be accompanied by a fee of \$10.

28 “(8) No license under ORS 443.725 is transferable or applicable to any
29 location, persons operating the adult foster home or the person owning the
30 adult foster home other than that indicated on the application for licensing.

1 “(9) The licensing agency shall not issue a license to operate an addi-
2 tional adult foster home to a provider unless the provider has demonstrated
3 the qualifications and capacity to operate the provider’s existing licensed
4 adult foster homes and has demonstrated the ability to provide to the resi-
5 dents of those adult foster homes care that is adequate and substantially free
6 from abuse and neglect.

7 “(10)(a) All moneys collected under ORS 443.725 to 443.780 from adult
8 foster homes that are licensed to serve persons with mental, emotional or
9 behavioral disturbances or alcohol or drug dependence shall be deposited in
10 a special account in the General Fund, and are appropriated continuously for
11 payment of expenses incurred by the Oregon Health Authority.

12 “(b) All moneys collected under ORS 443.725 to 443.780 from adult foster
13 homes licensed to serve persons who are elderly[,] **or** have physical disabili-
14 ties [*or have developmental disabilities*] shall be deposited in the Quality Care
15 Fund established in ORS 443.001.

16 “(11) Notwithstanding any other provision of this section or ORS 443.725
17 or 443.738, the licensing agency may issue a 60-day provisional license to a
18 qualified person if the agency determines that an emergency situation exists
19 after being notified that the licensed provider of an adult foster home is no
20 longer overseeing operation of the adult foster home.

21 **“SECTION 5.** ORS 427.900 is amended to read:

22 “427.900. (1) The Department of Human Services shall adopt by rule civil
23 penalties to be imposed, in accordance with ORS 183.745, [*on any provider*
24 *contracting with the department to provide intellectual or developmental disa-*
25 *bility services*] for a violation of a statutory requirement or a rule adopted
26 by the department applicable to the provision of services described in ORS
27 409.010 (2) **by any provider contracting with the department to provide**
28 **intellectual or developmental disability services including, but not**
29 **limited to:**

30 **“(a) Residential training homes or residential training facilities, as**

1 **defined in ORS 443.400;**

2 **“(b) Adult foster homes, as defined in ORS 443.705, that provide**
3 **residential care to individuals with intellectual or developmental disa-**
4 **bilities; and**

5 **“(c) Persons certified by the department to provide developmental**
6 **disability services, as defined in ORS 427.101.**

7 **“(2) This section may not be construed to supersede ORS 418.992 or**
8 **441.710 or any other statute that prescribes criteria for or limitations on the**
9 **imposition of a civil penalty.**

10 **“(3) Moneys collected by the department pursuant to rules adopted under**
11 **this section shall be transferred to the State Treasury for deposit to the**
12 **Department of Human Services Account established under ORS 409.060 and**
13 **may be used by the division of the department that provides developmental**
14 **disabilities services for system improvements and the implementation of**
15 **policies.**

16 **“(4) No later than every five years, the department shall review and**
17 **update, if appropriate, civil penalties established under this section.**

18 **“(5) Civil penalties recovered from a residential training facility or**
19 **a residential training home shall be deposited in the Long Term Care**
20 **Ombudsman Account established in ORS 441.419.**

21 **“SECTION 6.** ORS 443.455 is amended to read:

22 **“443.455. (1) Except as provided in subsection (5) of this section, for pur-**
23 **poses of imposing civil penalties, residential facilities approved under ORS**
24 **443.400 to 443.455 are subject to ORS 441.705 to 441.745.**

25 **“(2)[(a)] The Director of Human Services shall impose penalties on resi-**
26 **dential care facilities pursuant to ORS 441.731.**

27 **“(b) The director shall [by rule prescribe a schedule of] impose penalties**
28 **[for] pursuant to ORS 427.900 on residential training facilities and resi-**
29 **dential training homes that are not in compliance with ORS 443.400 to**
30 **443.455.**

1 “(3) The Director of the Oregon Health Authority shall by rule prescribe
2 a schedule of penalties for residential treatment facilities and residential
3 treatment homes that are not in compliance with ORS 443.400 to 443.455.

4 “(4) If the Department of Human Services or the Oregon Health Authority
5 investigates and makes a finding of abuse arising from deliberate or other
6 than accidental action or inaction that is likely to cause a negative outcome
7 by a person with a duty of care toward a resident of a residential facility,
8 other than a residential care facility, and if the abuse resulted in the death,
9 serious injury, rape or sexual abuse of a resident, the department or au-
10 thority shall impose a civil penalty of not less than \$2,500 for each occur-
11 rence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As
12 used in this subsection:

13 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or
14 death.

15 “(b) ‘Rape’ means rape in the first degree as defined in ORS 163.375, rape
16 in the second degree as defined in ORS 163.365 and rape in the third degree
17 as defined in ORS 163.355.

18 “(c) ‘Serious injury’ means physical injury that creates a substantial risk
19 of death or that causes serious and protracted disfigurement, protracted
20 impairment of health or protracted loss or impairment of the function of any
21 bodily organ.

22 “(d) ‘Sexual abuse’ means any form of sexual contact between an employee
23 of a residential facility or a person providing services in the residential fa-
24 cility and a resident of that facility, including but not limited to sodomy,
25 sexual coercion, sexually explicit photographing and sexual harassment.

26 “(5) Civil penalties recovered from a [*residential training facility, resi-*
27 *dential training home,*] residential treatment facility or residential treatment
28 home shall be deposited in the Long Term Care Ombudsman Account estab-
29 lished in ORS 441.419.”.

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