

Senate Bill 1521

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

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 an emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to care for vulnerable individuals; amending ORS 418.257 and 443.889; and declaring an
3 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 adopted by a facility and
8 the frequency with which a facility must reassess the facility's staffing patterns with the acuity-
9 based staffing tool.

10 (b) Establishing requirements for the design of an acuity-based staffing tool adopted by a facility
11 to ensure that the tool recommends staffing levels, intensity and qualifications necessary to meet the
12 scheduled and unscheduled needs of all residents 24 hours a day, seven days a week.

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

14 **(2) Before finalizing any changes to rules adopted under subsection (1)(a) or (b) of this**
15 **section, to promote quality care or sufficient staffing levels the department shall assess the**
16 **administrative and operational impact on facilities and on the safety and rights of the resi-**
17 **dents and staff of facilities.**

18 [(2)] (3) The department shall assess the staffing levels of a facility, at a minimum, each time the
19 department conducts a survey, license approval or renewal or an investigation into a complaint re-
20 garding:

21 (a) Abuse of a resident;

22 (b) Injury to a resident;

23 (c) Resident safety; or

24 (d) Staffing levels.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 [(3)] (4) The assessment under subsection [(2)] (3) of this section must include a determination
2 of whether the facility is:

3 (a) Using an acuity-based staffing tool that meets the requirements of rules adopted under sub-
4 section (1) of this section;

5 (b) Recalculating the facility's staffing patterns using the acuity-based staffing tool with the
6 frequency required by rules adopted under subsection (1) of this section;

7 (c) Consistently staffing to the levels, intensity and qualifications indicated by the acuity-based
8 staffing tool; and

9 (d) Consistently meeting the scheduled and unscheduled needs of all residents 24 hours a day,
10 seven days a week.

11 [(4)] (5) If the department finds, during an assessment under subsection [(2)] (3) of this section,
12 that a facility is:

13 (a) Not using an acuity-based staffing tool, the department shall require the facility to adopt the
14 acuity-based staffing tool developed by the department **until the facility has in place the facility's**
15 **own acuity-based staffing tool.**

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

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

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

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

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

28 (c) Using an acuity-based staffing tool but [*is not consistently staffing to the levels, intensity and*
29 *qualifications indicated by the tool or is not recalculating the facility's staffing patterns with the tool*
30 *at the frequency required by rule]* **the tool does not meet the requirements of the rules adopted**
31 **under subsection (1)(a) and (b) of this section or the facility is not reassessing its staffing**
32 **patterns at the frequency required by the rules, the department shall:**

33 (A) Assess whether the facility is meeting the scheduled and unscheduled needs of all residents
34 24 hours a day, seven days a week; **and**

35 (B) [*Place a condition on the facility's license as provided in ORS 441.736 (1)(b)(A), (B), (C) or (F)*
36 *until the facility implements an acuity-based staffing tool and demonstrates the facility's ability to meet*
37 *the scheduled and unscheduled needs of all residents 24 hours a day, seven days a week; and]* **Impose**
38 **fines, penalties or conditions on the facility's license that are required by law or that the**
39 **department deems necessary to compel compliance.**

40 [(C)] *Continuously monitor the facility, for at least six months, for compliance with the staffing*
41 *levels, intensity and qualifications indicated by the acuity-based staffing tool.]*

42 [(d)] *Not meeting the scheduled and unscheduled needs of all residents 24 hours a day, seven days*
43 *a week, the department shall establish staffing standards in a corrective action plan and place a con-*
44 *dition on the facility's license as provided in ORS 441.736 (1)(b)(A), (B), (C) or (F) until the facility*
45 *complies with the corrective action plan.]*

SECTION 2. ORS 418.257 is amended to read:

418.257. As used in ORS 418.257 to 418.259:

(1) “Abuse” means one or more of the following:

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

(b) Neglect of a child in care.

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

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

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

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) The use of restraint or involuntary seclusion of a child in care in violation of ORS 418.521 or 418.523.

(2) “Certified foster home” means a foster home certified by the Department of Human Services and subject to ORS 418.625 to 418.645.

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

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

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

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

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

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

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

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

(b) “Child in care” does not include a person under 21 years of age who is residing in **or receiving services from** any of the entities listed in paragraph (a) of this subsection when the care provided is in the home of the child by the child’s parent.

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

(5)(a) “Financial exploitation” means:

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

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

1 (C) Misappropriating, misusing or transferring without authorization any moneys from any ac-
2 count held jointly or singly by a child in care.

3 (D) Failing to use the income or assets of a child in care effectively for the support and main-
4 tenance of the child in care.

5 (b) "Financial exploitation" does not include age-appropriate discipline that may involve the
6 threat to withhold, or the withholding of, privileges.

7 (6) "Intimidation" means compelling or deterring conduct by threat. "Intimidation" does not in-
8 clude age-appropriate discipline that may involve the threat to withhold privileges.

9 (7) "Involuntary seclusion" has the meaning given that term in ORS 418.519.

10 (8) "Law enforcement agency" means:

11 (a) Any city or municipal police department.

12 (b) Any county sheriff's office.

13 (c) The Oregon State Police.

14 (d) Any district attorney.

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

16 (9) "Neglect" means:

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

19 (b) The failure of a child-caring agency, proctor foster home, certified foster home, develop-
20 mental disabilities residential facility, caretaker or other person to make a reasonable effort to
21 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, clothing, medicine, housing,
24 medical services, assistance with bathing or personal hygiene or any other service essential to the
25 well-being of a child in care.

26 (12) "Sexual abuse" means:

27 (a) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit mate-
28 rial or language;

29 (b) Any sexual contact between a child in care and an employee of a child-caring agency,
30 proctor foster home, certified foster home, developmental disabilities residential facility, caretaker
31 or other person responsible for the provision of care or services to a child in care;

32 (c) Any sexual contact between a person and a child in care that is unlawful under ORS chapter
33 163 and not subject to a defense under that chapter; or

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

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

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

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

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

40 (b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate
41 sexual comments.

42 **SECTION 3. This 2024 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2024 Act takes effect**
44 **on its passage.**