

# House Bill 4115

Sponsored by Representatives NATHANSON, SCHARF, PHAM H; Representatives GAMBA, JAVADI, WALTERS, WISE, Senator GELSER BLOUIN (Presession filed.)

## 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 makes changes to how often DHS and OHA may require caregivers to get a new background check. The Act requires a CCO to pay certain providers back to the date that the provider enrolled in the state Medicaid program. The Act makes other changes related to the process for vetting certain health care providers. (Flesch Readability Score: 62.4).

Provides that a criminal records check on certain caregivers shall last for three years, subject to exceptions. Requires certain valid criminal records checks to be portable to other care settings.

Requires the authority to publish information about when a credentialed behavioral health provider must undergo a new background check.

Requires a coordinated care organization to reimburse a behavioral health provider retroactively to the date the provider submitted a successful application for enrollment in the state medical assistance program. Prohibits a coordinated care organization from requiring a credentialed behavioral health provider to submit a new credentialing application when the provider changes employer.

Takes effect on the 91st day following adjournment sine die.

## A BILL FOR AN ACT

Relating to health care providers; creating new provisions; amending ORS 181A.195, 181A.200, 443.004 and 443.008; and prescribing an effective date.

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

**SECTION 1.** ORS 443.004 is amended to read:

443.004. (1) **As used in this section:**

(a) **"Adult foster home" has the meaning given that term in ORS 443.705.**

(b) **"Home care worker" has the meaning given that term in ORS 410.600.**

(c) **"Home health agency" has the meaning given that term in ORS 443.014.**

(d) **"In-home care agency" has the meaning given that term in ORS 443.305.**

(e) **"Mental health or substance abuse treatment provider" means:**

(A) **A peer support specialist;**

(B) **An employee of a residential treatment facility or a residential treatment home that is licensed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;**

(C) **An individual who provides treatment or services for persons with substance use disorders; or**

(D) **An individual who provides mental health treatment or services.**

(f) **"Peer support specialist" has the meaning given that term in ORS 414.025.**

(g) **"Personal support worker" has the meaning given that term in ORS 410.600.**

(h) **"Residential facility" has the meaning given that term in ORS 443.400.**

(i) **"Valid criminal records check" means a current, approved criminal records check that was completed by the background check unit of the Department of Human Services pursuant**

**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 **to this section.**

2 [(1)(a)] **(2)(a)** The department [of *Human Services*] or the Oregon Health Authority shall com-  
3 plete a criminal records check under ORS 181A.195 on:

4 (A) An employee of a residential facility or an adult foster home;

5 (B) Any individual who is paid directly or indirectly with public funds who has or will have  
6 contact with a recipient of support services or a resident of an adult foster home or a residential  
7 facility; and

8 (C) A home care worker or personal support worker registering with the Home Care Commission  
9 or renewing a registration with the Home Care Commission.

10 (b) [The department or the authority shall complete the criminal records check under paragraph (a)  
11 of this subsection not more than once during an 18-month period] **A criminal records check under  
12 this subsection shall last for three years** unless the department or the authority:

13 (A) Receives credible evidence of a new criminal conviction;

14 (B) Receives credible evidence to substantiate a complaint of abuse or neglect;

15 (C) Is required by federal law to conduct more frequent criminal records checks;

16 (D) Is notified that a subject individual has changed positions or duties for which there are  
17 different criminal records check requirements; or

18 (E) Determines, under criteria set forth in rules adopted by the department or the authority,  
19 that it would be burdensome for a subject individual to wait for a new criminal records check.

20 [(2)(a)] **(3)(a)** A home health agency shall conduct a criminal background check before hiring  
21 or contracting with an individual and before allowing an individual to volunteer to provide services  
22 on behalf of the home health agency, if the individual will have direct contact with a patient of the  
23 home health agency.

24 (b) An in-home care agency shall conduct a criminal background check before hiring or con-  
25 tracting with an individual and before allowing an individual to volunteer to provide services on  
26 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-  
27 home care agency.

28 (c) The authority shall prescribe by rule the process for conducting a criminal background  
29 check. **Except as provided by the authority by rule, a criminal background check under this  
30 subsection shall last for three years.**

31 **(4)(a) If an individual has a valid criminal records check and is seeking to work in any  
32 of the care settings described in subsections (2) and (3) of this section, the department or  
33 the authority may not require a new criminal records check to be completed solely on the  
34 basis that the individual is seeking to change employer or care setting.**

35 **(b) The department and the authority shall publish on their websites the requirements  
36 and process for a valid criminal records check to be portable to a new employer or care  
37 setting.**

38 [(3)] **(5)** Public funds may not be used to support, in whole or in part, the employment in any  
39 capacity having contact with a recipient of support services or a resident of a residential facility  
40 or an adult foster home, of an individual, other than a mental health or substance abuse treatment  
41 provider, who has been convicted:

42 (a) Of a crime described in ORS 163.095, 163.107, 163.115, 163.118, 163.125, 163.145, 163.149,  
43 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275,  
44 163.465, 163.467, 163.535, 163.537, 163.547, 163.689, 163.700, 163.701, 164.055, 164.057, 164.098, 164.125  
45 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.013, 165.022, 165.032,

1 165.800, 165.803, 167.012, 167.017, 167.057, 167.320 or 167.322;

2 (b) Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,  
3 163.467, 163.700, 163.701, 164.055, 164.125 or 164.377, the date of conviction for which was within the  
4 five years immediately preceding employment in any capacity of an individual, other than a mental  
5 health or substance abuse treatment provider, having contact with a recipient of support services,  
6 a resident of a residential facility or a resident of an adult foster home, when the recipient or resi-  
7 dent is 65 years of age or older;

8 (c) Of a crime listed in ORS 163A.005;

9 (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
10 stance;

11 (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to  
12 (d) of this subsection; or

13 (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a  
14 crime described in paragraphs (a) to (e) of this subsection.

15 [(4)] (6) If the criminal background check conducted by a home health agency or in-home care  
16 agency under subsection [(2)] (3) of this section reveals that the individual who is subject to the  
17 criminal background check has been convicted of any of the crimes described in subsection [(3)] (5)  
18 of this section, the home health agency or in-home care agency may not employ the individual.

19 [(5)] (7) Public funds may not be used to support, in whole or in part, the employment, in any  
20 capacity having contact with a recipient of support services or a resident of a residential facility  
21 or an adult foster home, of a mental health or substance abuse treatment provider who has been  
22 convicted of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime  
23 described in ORS 163.095, 163.107, 163.115, 163.375, 163.405, 163.411 or 163.427.

24 [(6)] (8) Upon the request of a mental health or substance abuse treatment provider, the de-  
25 partment or authority shall maintain a record of the results of any fitness determination made under  
26 ORS 181A.195 (10). The department or authority may disclose the record only to a person the pro-  
27 vider specifically authorizes, by a written release, to receive the information.

28 [(7)] (9) If the department or authority has a record of substantiated abuse committed by an  
29 employee or potential employee of a home health agency, in-home care agency, adult foster home  
30 or residential facility, regardless of whether criminal charges were filed, the department or author-  
31 ity shall notify, in writing, the employer and the employee or potential employee and may conduct  
32 a fitness determination in accordance with this section and ORS 181A.195.

33 [(8) *As used in this section:*]

34 [(a) *“Adult foster home” has the meaning given that term in ORS 443.705.*]

35 [(b) *“Home care worker” has the meaning given that term in ORS 410.600.*]

36 [(c) *“Home health agency” has the meaning given that term in ORS 443.014.*]

37 [(d) *“In-home care agency” has the meaning given that term in ORS 443.305.*]

38 [(e) *“Mental health or substance abuse treatment provider” means:*]

39 [(A) *A peer support specialist;*]

40 [(B) *An employee of a residential treatment facility or a residential treatment home that is licensed*  
41 *under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;*]

42 [(C) *An individual who provides treatment or services for persons with substance use disorders;*  
43 *or]*

44 [(D) *An individual who provides mental health treatment or services.*]

45 [(f) *“Peer support specialist” has the meaning given that term in ORS 414.025.*]

1 [(g) "Personal support worker" has the meaning given that term in ORS 410.600.]

2 [(h) "Residential facility" has the meaning given that term in ORS 443.400.]

3 **SECTION 2.** No later than 90 days after the effective date of this 2026 Act, the Depart-  
4 ment of Human Services and the Oregon Health Authority shall notify facilities or organ-  
5 izations that employ individuals subject to a criminal records check under ORS 443.004 that  
6 the cycle for conducting a new criminal records check on a subject individual has been ex-  
7 tended to three years.

8 **SECTION 3.** The amendments to ORS 443.004 by section 1 of this 2026 Act apply to  
9 criminal records checks completed on or after the effective date of this 2026 Act.

10 **SECTION 4.** (1) As used in this section:

11 (a) "Agency" means an organization that has received a certificate of approval from the  
12 Oregon Health Authority to provide behavioral health services.

13 (b) "Behavioral health provider" means an individual who is licensed, certified or other-  
14 wise authorized to provide behavioral health services in this state.

15 (2) The Oregon Health Authority shall communicate to behavioral health providers and  
16 agencies and publish on the authority's website clear information about:

17 (a) The process by which a credentialed behavioral health provider may update the  
18 provider's contact information or employer with the authority; and

19 (b) When a credentialed behavioral health provider is required to undergo a new back-  
20 ground check.

21 **SECTION 5.** (1) As used in this section:

22 (a) "Agency" has the meaning given that term in section 4 of this 2026 Act.

23 (b) "Behavioral health provider" has the meaning given that term in section 4 of this 2026  
24 Act.

25 (c) "Coordinated care organization" has the meaning given that term in ORS 414.025.

26 (d) "Medical assistance" has the meaning given that term in ORS 414.025.

27 (2) A coordinated care organization shall provide reimbursement for services provided to  
28 a medical assistance recipient by a behavioral health provider retroactively to the date that  
29 the provider submitted to the Oregon Health Authority an application for enrollment in the  
30 medical assistance program that resulted in the assignment of a provider identification  
31 number.

32 (3) If a credentialed behavioral health provider begins working for a new agency, a coor-  
33 dinated care organization may not require the provider to submit a new credentialing appli-  
34 cation based solely on the provider's change in employer.

35 **SECTION 6.** ORS 181A.195 is amended to read:

36 181A.195. (1) As used in this section:

37 (a) "Authorized agency" means state government as defined in ORS 174.111, the Oregon State  
38 Bar or a municipal tax collection agency in a city with a population of 250,000 or more. "Authorized  
39 agency" does not include:

40 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

41 (B) A criminal justice agency, as defined in ORS 181A.010, that is authorized by federal law to  
42 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

43 (b) "Subject individual" means a person from whom an authorized agency may require finger-  
44 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or  
45 nationwide criminal records check.

1 (2)(a) An authorized agency may request that the Department of State Police conduct a criminal  
2 records check on a subject individual for noncriminal justice purposes.

3 (b) An authorized agency may request that the department conduct a criminal records check on  
4 a subject individual who is a contractor or vendor and who provides services to the authorized  
5 agency when access to criminal offender information is required to perform noncriminal justice ad-  
6 ministrative functions on behalf of the authorized agency. Criminal records checks performed under  
7 this paragraph are subject to state and federal criminal offender information access policies. An  
8 authorized agency shall conduct fitness determinations for contractors and vendors in coordination  
9 with the department.

10 (c) If a nationwide criminal records check of a subject individual is necessary, the authorized  
11 agency may request that the department conduct the check, including fingerprint identification,  
12 through the Federal Bureau of Investigation.

13 (3) The Department of State Police shall provide the results of a criminal records check con-  
14 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

15 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to  
16 conduct the criminal records check and may not keep any record of the fingerprints, except that the  
17 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for  
18 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction  
19 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to  
20 the federal bureau but shall continue to process the information through other available resources.

21 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of  
22 State Police, the Department of State Police shall destroy the fingerprint cards and may not retain  
23 facsimiles or other material from which a fingerprint can be reproduced, except that the Department  
24 of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing  
25 information under ORS 181A.205 and for purposes of data security under subsection (12) of this  
26 section.

27 (6) If only a state criminal records check is conducted, after the criminal records check is  
28 completed, the Department of State Police shall destroy the fingerprint cards and the results of the  
29 criminal records check provided to the authorized agency and may not retain facsimiles or other  
30 material from which a fingerprint can be reproduced, except that the Department of State Police  
31 may retain the fingerprint cards and results or create facsimiles for the purpose of providing infor-  
32 mation under ORS 181A.205.

33 (7) An authorized agency may conduct criminal records checks on subject individuals through  
34 the Law Enforcement Data System maintained by the Department of State Police in accordance with  
35 rules adopted, and procedures established, by the Department of State Police.

36 (8) An authorized agency and the Department of State Police shall permit a subject individual  
37 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own  
38 state and national criminal offender records and, if requested by the subject individual, provide the  
39 individual with a copy of the individual's own state and national criminal offender records.

40 (9) Each authorized agency, in consultation with the Department of State Police, may adopt  
41 rules to implement this section and other statutes relating to criminal offender information obtained  
42 through fingerprint-based criminal records checks. The rules may include but need not be limited to:

43 (a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-  
44 ment of Administrative Services under ORS 181A.215 who are subject to criminal records checks  
45 by the authorized agency.

(b) Identifying applicable information that may be required from a subject individual to permit a criminal records check as specified by the Oregon Department of Administrative Services under ORS 181A.215.

(c) Specifying which programs or services are subject to this section.

(d) If the authorized agency uses criminal records checks for agency employment purposes:

(A) Determining when and under what conditions a subject individual may be hired on a preliminary basis pending a criminal records check; and

(B) Defining the conditions under which a subject individual may participate in training, orientation and work activities pending completion of a criminal records check.

(e) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing criminal offender information.

(10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223, 443.735, 475C.770 to 475C.919 and 703.090 and paragraph (d) of this subsection, an authorized agency, using the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall determine whether a subject individual is fit to hold a position, provide services, be employed or be granted a license, certification, registration or permit. If a subject individual is determined to be unfit, then the individual may not hold the position, provide services, be employed or be granted a license, certification, registration or permit.

(b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness determination of an individual under this subsection may request results of a previously made fitness determination from an authorized agency that has already made a fitness determination for the individual. An authorized agency that receives a request under this paragraph shall provide the requested information.

(B) An authorized agency may make a request under this paragraph only for individuals:

(i) Who are applying to hold a position, provide services, be employed or be granted a license, certification, registration or permit;

(ii) Who are in a category of individuals as specified by the Oregon Department of Administrative Services by rule under ORS 181A.215; and

(iii) For whom a fitness determination has already been made.

(c) Except as otherwise provided in ORS 181A.400, in making the fitness determination under this subsection, the authorized agency shall consider:

(A) The nature of the crime;

(B) The facts that support the conviction or pending indictment or that indicate the making of a false statement;

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position, services, employment, license, certification or registration; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit, such as:

(i) The passage of time since the commission of the crime;

(ii) The age of the subject individual at the time of the crime;

(iii) The likelihood of a repetition of offenses or of the commission of another crime;

(iv) The subsequent commission of another relevant crime;

(v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(vi) The recommendation of an employer.

(d) A subject individual is not entitled to a fitness determination under this subsection if the subject individual:

(A) Is or seeks to be employed in any capacity having contact with a recipient of support services or a resident of a residential facility or adult foster home, as provided in ORS 443.004 [(3)] (5), and has been convicted of any crime listed in ORS 443.004 [(3)] (5) or [(5)] (7).

(B) Is prohibited by federal law from holding a position, providing services, being employed or being granted a license, certification, registration or permit for which the fitness determination is requested by an authorized agency.

(11)(a) In conducting a fitness determination regarding a subject individual other than an individual described in paragraph (b) of this subsection, the Department of Human Services or the Oregon Health Authority may not consider:

(A) A conviction that is more than 10 years old unless the conviction is for a crime listed in ORS 443.004 [(3)] (5) or [(5)] (7);

(B) A charge or arrest for which there was no conviction unless the charge or arrest is for a crime listed in ORS 443.004 [(3)] (5) or [(5)] (7);

(C) A conviction on a charge relating to marijuana if the charge is no longer a criminal offense;

(D) A conviction under ORS 813.010 or 830.325, or a misdemeanor conviction under a law in another jurisdiction that imposes criminal penalties for operating a vehicle or boat while under the influence of intoxicants, if the subject individual had no more than one conviction described in this subparagraph in the five-year period prior to the date of the criminal records check;

(E) A deferred sentence, conditional discharge or participation in a diversion program for any crime unless the crime is listed in ORS 443.004 [(3)] (5) and [(5)] (7); and

(F) A pending indictment for a crime unless the crime is listed in ORS 443.004 [(3)] (5) or [(5)] (7).

(b) The department or the authority may consider a charge, arrest, conviction, deferred sentence, conditional discharge, participation in a diversion program or pending indictment that may not be considered under paragraph (a) of this subsection in making a fitness determination for a subject individual who is:

(A) Described in ORS 418.016;

(B) An employee, volunteer, contractor or provider in, or an agent of, a proctor foster home as defined in ORS 418.205 or a child-caring agency as defined in ORS 418.205;

(C) An exempt family child care provider, as defined in ORS 329A.430, the provider's household members who are 16 years of age or older or a frequent visitor of a provider who is subject to a criminal records check;

(D) An employee or volunteer in a facility that:

(i) Provides care to children and is operated by a school district, as defined in ORS 332.002, a political subdivision of this state, a preschool recorded program, as defined in ORS 329A.250, or a government agency; and

(ii) Is not required to be certified under ORS 329A.280; or

(E) An emergency medical services provider, as defined in ORS 682.025, for the purpose of determining the fitness of the emergency medical services provider to receive or hold a license under ORS 670.280.

(12)(a) Criminal offender information is confidential. Authorized agencies and the Department of State Police shall adopt rules to restrict dissemination of information received under this section to persons with a demonstrated and legitimate need to know the information.

(b) For each employee, contractor or vendor of an authorized agency who is required to have access to or review criminal offender information for noncriminal justice purposes, the authorized agency shall:

(A) Conduct a state and nationwide fingerprint-based criminal records check;

(B) Ensure that the employee, contractor or vendor meets the security background check requirements of the Federal Bureau of Investigation Criminal Justice Information Services Security Policy for having unescorted access to criminal offender information; and

(C) Pay fees as required under subsection (9) of this section.

(13) If a subject individual refuses to consent to the criminal records check or refuses to be fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or deny any applicable position, authority to provide services, license, certification, registration or permit.

(14) If an authorized agency requires a criminal records check of employees, prospective employees, contractors, vendors or volunteers or applicants for a license, certification, registration or permit, the application forms of the authorized agency must contain a notice that the person is subject to fingerprinting and a criminal records check.

**SECTION 7.** ORS 181A.200 is amended to read:

181A.200. (1) As used in this section:

(a) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities.

(b) "Native American tribe" has the meaning given that term in ORS 181A.210 (4).

(c) "Qualified entity" means a community mental health program, a community developmental disabilities program, a local health department, the government of a Native American tribe or an agency of a Native American tribe responsible for child welfare or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181A.195, the Department of Human Services, the Oregon Health Authority and the Employment Department may require the fingerprints of a person:

(a) Who is employed by or is applying for employment with either department or the authority;

(b) Who provides or seeks to provide services to either department or the authority as a contractor, subcontractor, vendor or volunteer who:

(A) May have contact with recipients of care;

(B) Has access to personal information about employees of either department or the authority, recipients of care from either department or the authority or members of the public, including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information;

(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules or regulations, or information that is defined as confidential under state or federal laws, rules or regulations;

(D) Has access to property held in trust or to private property in the temporary custody of the state;

(E) Has payroll or fiscal functions or responsibility for:

(i) Receiving, receipting or depositing money or negotiable instruments;

(ii) Billing, collections, setting up financial accounts or other financial transactions; or

(iii) Purchasing or selling property;



1 (F) Provides security, design or construction services for government buildings, grounds or fa-  
2 cilities;

3 (G) Has access to critical infrastructure or secure facilities information; or

4 (H) Is providing information technology services and has control over or access to information  
5 technology systems;

6 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering  
7 programs, persons or qualified entities that provide care;

8 (d) For the purposes of employment decisions by or for qualified entities that are regulated or  
9 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-  
10 thority and that provide care;

11 (e) For the purposes of employment decisions made by a mass transit district or transportation  
12 district for qualified entities that, under contracts with the district or the Oregon Health Authority,  
13 employ persons to operate motor vehicles for the transportation of medical assistance program cli-  
14 ents; or

15 (f) For the purposes of licensure, certification or registration of foster homes by the government  
16 of a Native American tribe or an agency of a Native American tribe responsible for child welfare.

17 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal  
18 records checks on a person through the Law Enforcement Data System maintained by the Depart-  
19 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon  
20 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable  
21 persons.

22 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-  
23 fied entities, in accordance with the rules of the Department of Human Services or the Oregon  
24 Health Authority and the rules of the Department of State Police, information received from the  
25 Law Enforcement Data System. However, any criminal offender records and information furnished  
26 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of  
27 Investigation through the Department of State Police may not be disseminated to qualified entities.

28 (5)(a) Except as otherwise provided in ORS 443.735 and 475C.770 to 475C.919, a qualified entity,  
29 subject to rules adopted by the Oregon Department of Administrative Services under ORS 181A.215,  
30 shall determine under this section whether a person is fit to hold a position, provide services, be  
31 employed or, if the qualified entity has authority to make such a determination, be licensed, certified  
32 or registered. If a person is determined to be unfit, then that person may not hold the position,  
33 provide services or be employed, licensed, certified or registered.

34 (b) A person prohibited from receiving public funds for employment under ORS 443.004 [(3)] (5)  
35 is not entitled to a determination of fitness under this subsection.

36 (c) In making the fitness determination under this subsection, the qualified entity shall consider:

37 (A) The nature of the crime;

38 (B) The facts that support the conviction or pending indictment or indicate the making of a false  
39 statement;

40 (C) The relevancy, if any, of the crime or the false statement to the specific requirements of the  
41 person's present or proposed position, services, employment, license, certification or registration;  
42 and

43 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position,  
44 services, employment, license, certification or registration, such as:

45 (i) The passage of time since the commission of the crime;

- (ii) The age of the person at the time of the crime;
- (iii) The likelihood of a repetition of offenses;
- (iv) The subsequent commission of another relevant crime; and
- (v) The recommendation of an employer.

(6) The Department of Human Services and the Oregon Health Authority, subject to rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall develop systems that maintain information regarding criminal records checks in order to minimize the administrative burden imposed by this section and ORS 181A.195. Records maintained under this subsection are confidential and may not be disseminated except for the purposes of this section and in accordance with the rules of the Department of Human Services, the Oregon Health Authority and the Department of State Police. Nothing in this subsection permits the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

(7) In addition to the rules required by ORS 181A.195, the Department of Human Services and the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

- (a) Specifying which qualified entities are subject to this section;
- (b) Specifying which qualified entities may request criminal offender information;
- (c) Specifying which qualified entities are responsible for deciding, subject to rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, whether a subject individual is not fit for a position, service, license, certification, registration or employment; and
- (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under subsection (5) of this section using the information maintained by the Department of Human Services and the Oregon Health Authority pursuant to subsection (6) of this section.

(8) If a person refuses to consent to the criminal records check or refuses to be fingerprinted, the qualified entity shall deny or terminate the employment of the person, or revoke or deny any applicable position, authority to provide services, employment, license, certification or registration.

(9) If the qualified entity requires a criminal records check of employees or other persons, the application forms of the qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check.

**SECTION 8.** ORS 443.008 is amended to read:

443.008. (1) As used in this section:

(a) "Direct care services" means services provided to clients of the Department of Human Services or the Oregon Health Authority by:

- (A) An adult foster home, as defined in ORS 443.705;
- (B) A home care worker, as defined in ORS 410.600;
- (C) A residential facility, as defined in ORS 443.400; or
- (D) A service provider as defined in ORS 427.101.

(b) "Fitness determination" means the evaluation of whether a subject individual or other individual providing direct care services is fit to hold a position, provide direct care services or be granted a license, certification, registration or permit to provide direct care services.

(c) "Qualified entity" has the meaning given that term in ORS 181A.190.

(d) "Subject individual" means a person who is:

- (A) Employed by or who seeks to be employed by the authority or the department;
- (B) A volunteer or who seeks to be a volunteer to provide care on behalf of the authority or the department; or

1 (C) Providing care or who seeks to provide care on behalf of the authority or the department.

2 (2) The department and the authority shall prescribe by rule the criteria to be considered in  
3 making fitness determination findings of abuse that are substantiated. The criteria must include the  
4 types of substantiated abuse for which a subject individual may be found to be unfit and conditions,  
5 if any, for the reinstatement of a subject individual who is found to be unfit.

6 (3) A subject individual who is found to be unfit is entitled to challenge the fitness determination  
7 in a contested case hearing conducted in accordance with ORS chapter 183. The subject individual  
8 may not challenge a finding of substantiated abuse or criminal conviction that was the basis for the  
9 fitness determination but may contest the weight accorded the evidence, mitigating factors or other  
10 aspects of the evaluation. The individual may be represented by an attorney or other person or, if  
11 the individual is a member of a bargaining unit, by the certified or recognized exclusive represen-  
12 tative for the bargaining unit.

13 (4) This section applies to fitness determinations for providers of direct care services conducted  
14 under ORS 181A.195 (10) or 443.004 [(7)] (9).

15 **SECTION 9. This 2026 Act takes effect on the 91st day after the date on which the 2026**  
16 **regular session of the Eighty-third Legislative Assembly adjourns sine die.**