

Requested by SENATE COMMITTEE ON HUMAN SERVICES

**PROPOSED AMENDMENTS TO
SENATE BILL 1532**

1 On page 1 of the printed bill, line 3, delete “, 430.216”.

2 Delete lines 8 through 22 and delete page 2.

3 On page 3, delete lines 1 through 34 and insert:

4 **“SECTION 1.** ORS 441.736 is amended to read:

5 “441.736. (1) As used in this section:

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

10 “(b) ‘License condition’ includes but is not limited to:

11 “(A) Restricting the total number of residents;

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

15 “(C) Requiring additional staff or staff qualifications;

16 “(D) Requiring additional training for staff;

17 “(E) Requiring additional documentation; or

18 “(F) Restriction of admissions.

19 **“(c) ‘Preliminary finding’ means an objective finding based on the**
20 **available evidence at the time that the department conducts an initial**
21 **investigation of a complaint.**

1 “[~~(c)~~] **(d)** ‘Substantial compliance’ means a level of compliance with state
2 law and with rules of the department such that any identified deficiencies
3 pose a risk of no more than negligible harm to the health or safety of resi-
4 dents of a residential care facility or a long term care facility.

5 “[~~(2)(a)~~] *The department may impose a condition on the license of a resi-
6 dential care facility or long term care facility in response to a substantiated
7 finding of rule violation, including but not limited to a substantiated finding
8 of abuse, and shall impose a condition on the license in response to a finding
9 of immediate jeopardy, whether or not the finding of immediate jeopardy is
10 substantiated at the time the license condition is imposed.*]

11 **“(2) The department may impose a condition on the license of a
12 residential care facility or long term care facility in response to a
13 substantiated finding of rule violation, including but not limited to a
14 substantiated finding of abuse.**

15 **“(3) The department shall impose a condition on the license of a
16 residential care facility or long term care facility in response to:**

17 **“(a) A preliminary finding of immediate jeopardy that is reasonably
18 likely to result in a substantiated finding; or**

19 **“(b) A substantiated finding of immediate jeopardy.**

20 **“(4)(a) Before the department may make a preliminary finding of
21 immediate jeopardy, the department must, at a minimum, provide an
22 opportunity for the facility to provide initial information or evidence
23 to the department regarding the allegations in the complaint.**

24 **“(b) If the department imposes a license condition based on a pre-
25 liminary finding of immediate jeopardy and the preliminary finding is
26 not substantiated within 30 days after the imposition of the license
27 condition, the department shall immediately notify the facility and
28 remove the license condition.**

29 “[~~(b)~~] **(5)** The department shall impose a license condition in a scope and
30 manner that is specifically designed to remediate the finding that led to the

1 license condition.

2 “[(c) *If the department imposes a license condition in response to a finding*
3 *of immediate jeopardy to residents of the facility, and the finding of immediate*
4 *jeopardy to residents of the facility is not substantiated within 30 days after*
5 *the imposition of the license condition, the department shall immediately re-*
6 *move the license condition.*]

7 “[(d)(A)] **(6)(a)** Except as provided in [*subparagraph (B) of this*
8 *paragraph*] **paragraph (b) of this subsection**, the department shall provide
9 a facility with a notice of impending imposition of license condition at least
10 48 hours before issuing an order imposing a license condition. The notice
11 must:

12 “[(i)] **(A)** Describe the acts or omissions of the facility and the circum-
13 stances that led to the substantiated finding of rule violation or finding of
14 immediate jeopardy supporting the imposition of the license condition;

15 “[(ii)] **(B)** Describe why the acts or omissions and the circumstances cre-
16 ate a situation for which the imposition of a license condition is warranted;

17 “[(iii)] **(C)** Provide a brief statement identifying the nature of the license
18 condition;

19 “[(iv)] **(D)** Provide a brief statement describing how the license condition
20 is designed to remediate the circumstances that led to the license condition;
21 and

22 “[(v)] **(E)** Provide a brief statement of the requirements for withdrawal
23 of the license condition.

24 “[(B)] **(b)** If the threat to residents of a facility is so imminent that the
25 department determines it is not safe or practical to give the facility advance
26 notice, the department must provide the notice required under this [*para-*
27 *graph*] **subsection** within 48 hours of issuing an order imposing the license
28 condition.

29 “[(e)] **(7)** An order imposing a license condition must include:

30 “[(A)] **(a)** A specific description of how the scope and manner of the li-

1 cense condition is designed to remediate the findings that led to the license
2 condition; and

3 “[(B)] (b) A specific description of the requirements for withdrawal of the
4 license condition.

5 **“(8) For a license condition that is imposed in response to a pre-
6 liminary finding or substantiated finding of immediate jeopardy, the
7 order must also include a summary of the evidence demonstrating
8 that:**

9 **“(a) The facility has failed to meet one or more health, safety or
10 quality rules or regulations;**

11 **“(b) As a result of the facility’s noncompliance with one or more
12 health, safety or quality rules or regulations, serious injury, serious
13 harm, serious impairment or death has occurred or is likely to occur
14 if the noncompliance is not corrected;**

15 **“(c) The facility has not demonstrated that the noncompliance with
16 one or more health, safety or quality rules or regulations has been
17 corrected; and**

18 **“(d) At the time the license condition is imposed, there is a current
19 need for immediate corrective action by the facility to prevent serious
20 injury, serious harm, serious impairment or death from occurring or
21 recurring.**

22 “[(3)] (9) The department may impose a license condition that includes a
23 restriction on admissions to the facility only if the department makes a
24 finding of immediate jeopardy that is likely to present an immediate jeopardy
25 to future residents upon admission.

26 “[(4)(a)] (10)(a) Following the imposition of a license condition on a fa-
27 cility, the department shall:

28 “(A) Within 15 business days of receipt of the facility’s written assertion
29 of substantial compliance with the requirements set forth by the department
30 for withdrawal of the license condition, reinspect or reevaluate the facility

1 to determine whether the facility has achieved substantial compliance with
2 the requirements;

3 “(B) Notify the facility by telephone or electronic means of the findings
4 of the reinspection or reevaluation within five business days after completion
5 of the reinspection or reevaluation; and

6 “(C) Issue a written report to the facility within 30 days after the rein-
7 spection or reevaluation notifying the facility of the department’s determi-
8 nations regarding substantial compliance with the requirements necessary
9 for withdrawal of the license condition.

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

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

23 “(d) If the department does not meet the requirements of this subsection,
24 a license condition is automatically removed on the date the department
25 failed to meet the requirements of this subsection, unless the Director of
26 Human Services extends the applicable period for no more than 15 business
27 days. The director may not delegate the power to make a determination re-
28 garding an extension under this paragraph.”

29 On page 4, delete lines 9 through 39 and insert:

30 “**NOTE:** Section 4 was deleted by amendment. Subsequent sections were

1 not renumbered.”.

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