

B-Engrossed House Bill 3359

Ordered by the House July 4
Including House Amendments dated April 24 and July 4

Sponsored by Representatives MCKEOWN, KENY-GUYER, Senators KRUSE, GELSER, KNOPP; Representatives ALONSO LEON, BYNUM, ESQUIVEL, FAHEY, GOMBERG, MEEK, OLSON, RAYFIELD, SMITH G, SOLLMAN, Senators DEMBROW, MONNES ANDERSON, ROBLAN

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.

Modifies civil penalties, license regulation and licensing fees for certain facilities regulated by Department of Human Services.

Establishes Residential Care Quality Measurement Program and Quality Measurement Council within department to develop quality metrics for residential care facilities, require reporting of quality metrics by residential care facilities, provide reports to individual residential care facilities and compile aggregate information about quality of care in residential care facilities.

Creates new license for conversion facilities.

Requires department to develop and disseminate evidence-informed framework for accurately and equitably assessing residential care facility compliance or noncompliance with regulatory requirements.

Requires department to administer residential care facility enhanced oversight and supervision program. Requires department to take one or more specified actions with respect to residential care facilities with poor performance on quality metrics.

Requires department to utilize and share with residential care facilities, acuity-based staffing tool to evaluate level and type of direct care staffing based upon acuity of residents' needs.

Requires direct care staff in residential care facility and caregivers in adult foster homes to complete training in dementia care that meets specified standards. Requires facilities and homes to dispense drugs to residents using form of packaging that reduces administration errors.

[Limits use of binding arbitration.]

Requires Oregon Medical Board to encourage licensed physicians to obtain continuing medical education in treatment of patients with Alzheimer's disease.

Modifies provisions relating to evacuation of residents from adult foster home.

A BILL FOR AN ACT

Relating to long term care; creating new provisions; amending ORS 409.720, 430.216, 441.020, 441.303, 441.367, 441.402, 441.408, 441.630, 441.637, 441.680, 441.710, 441.715, 441.745, 443.400, 443.415, 443.420, 443.425, 443.440, 443.452, 443.455, 443.760, 443.775 and 443.886; and repealing ORS 441.995 and 443.885.

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

LEGISLATIVE FINDINGS

SECTION 1. (1) The Legislative Assembly finds that:

(a) Residents of Oregon's community-based care facilities are valued citizens of this state and deserve to live lives of autonomy and dignity; and

(b) Support and training for those who serve these valued citizens are important to ensuring that these valued citizens are able to live the lives they deserve.

(2) The Legislative Assembly finds and declares that it is the policy of this state to:

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 (a) Promote the autonomy of residents of Oregon's community-based care facilities and
2 accord them honor, dignity and the ability to choose freely how they live their lives so as to
3 encourage maximum independence and fulfillment; and

4 (b) Ensure that administrators of residential care facilities, which include assisted living
5 and memory care facilities, are licensed by an independent board no later than July 1, 2019.

6
7 **CIVIL PENALTIES**

8
9 **SECTION 2.** Sections 3 to 5 of this 2017 Act are added to and made a part of ORS 441.705
10 to 441.745.

11 **SECTION 3.** In regulating residential care facilities and long term care facilities, the
12 Department of Human Services shall, whenever possible, use a progressive enforcement
13 process that employs a series of actions to encourage and compel compliance with licensing
14 regulations through the application of preventive, positive and progressively more restrictive
15 strategies. Preventive and positive strategies are strategies that include but are not limited
16 to technical assistance, corrective action plans, training and consultation.

17 **SECTION 4.** (1) The Director of Human Services may impose a civil penalty under ORS
18 441.710 on a residential care facility or a long term care facility pursuant to this section.

19 (2)(a) When imposing a civil penalty on a residential care facility or a long term care
20 facility pursuant to this section, the director shall consider:

21 (A) Any prior violations of laws or rules pertaining to the facility and, as a mitigating
22 factor, whether violations were incurred under prior ownership or management of the facil-
23 ity.

24 (B) The financial benefits, if any, realized by the facility as a result of the violation.

25 (C) The facility's past history of correcting violations and preventing the recurrence of
26 violations.

27 (D) The severity and scope of the violation as described in paragraphs (b) and (c) of this
28 subsection.

29 (b) The director shall assess the severity of a violation using the following criteria:

30 (A) Level 1 is a violation that results in no actual harm or in potential for only minor
31 harm.

32 (B) Level 2 is a violation that results in minor harm or potential for moderate harm.

33 (C) Level 3 is a violation that results in moderate harm or potential for serious harm.

34 (D) Level 4 is a violation that results in serious harm or death.

35 (c) The director shall assess the scope of a violation using the following criteria:

36 (A) An isolated violation occurs when one or a very limited number of residents or em-
37 ployees are affected or a very limited area or number of locations within a facility are af-
38 fected.

39 (B) A pattern violation occurs when more than a very limited number of residents or
40 employees are affected, or the situation has occurred in more than a limited number of lo-
41 cations but the locations are not dispersed throughout the facility.

42 (C) A widespread violation occurs when the problems causing the deficiency are pervasive
43 and affect many locations throughout the facility or represent a systemic failure that af-
44 fected, or has the potential to affect, a large portion or all of the residents or employees.

45 (d) As used in this subsection:

1 (A)(i) "Financial loss" means loss of resident property or money as a result of financial
2 exploitation as that term is defined in ORS 124.050.

3 (ii) "Financial loss" does not include loss of resident property or money that results from
4 action or inaction of an individual not employed or contracted with the facility, or that arises
5 from the action or inaction of an individual employed or contracted with the facility if the
6 action or inaction occurs while the individual is not performing employment or contractual
7 duties.

8 (B) "Harm" means a measurable negative impact to a resident's physical, mental, finan-
9 cial or emotional well-being.

10 (C) "Minor harm" means harm resulting in no more than temporary physical, mental or
11 emotional discomfort or pain without loss of function, or in financial loss of less than \$1,000.

12 (D) "Moderate harm" means harm resulting in temporary loss of physical, mental or
13 emotional function, or in financial loss of \$1,000 or more, but less than \$5,000.

14 (E) "Serious harm" means harm resulting in long-term or permanent loss of physical,
15 mental or emotional function, or in financial loss of \$5,000 or more.

16 (3)(a) The director may impose civil penalties as follows:

17 (A) For a level 1 violation, the director may not impose a civil penalty.

18 (B) For a level 2 violation, the director may impose a penalty in an amount no less than
19 \$250 per violation, not to exceed \$500 per violation.

20 (C) For a level 3 violation, the director may impose a civil penalty in an amount no less
21 than \$500 per violation, not to exceed \$1,500 per violation.

22 (D) For a level 4 violation, the director may impose a civil penalty in an amount no less
23 than \$1,500 per violation, not to exceed \$2,500 per violation.

24 (E) For a failure to report abuse of a resident to the Department of Human Services as
25 required by state law, the director may impose a civil penalty in an amount no more than
26 \$1,000 per violation.

27 (b) The penalties imposed under paragraph (a)(A) to (D) of this subsection may not ex-
28 ceed \$20,000 in the aggregate for violations occurring in a single residential care facility or
29 long term care facility within any 90-day period.

30 (c) In imposing civil penalties under this subsection, the director may take into account
31 the scope of the violation.

32 (4)(a) If the department investigates and makes a finding of abuse in a residential care
33 facility or long term care facility arising from deliberate or other than accidental action or
34 inaction that is likely to cause a negative outcome by a person with a duty of care toward
35 a resident of a residential care facility or long term care facility and if the abuse resulted in
36 the death, serious injury, rape or sexual abuse of a resident, the director shall impose a civil
37 penalty on the facility of not less than \$2,500 and not more than \$15,000 for each occurrence
38 of substantiated abuse, not to exceed \$40,000 for all violations occurring in a facility within
39 any 90-day period.

40 (b) As used in this subsection:

41 (A) "Negative outcome" includes serious injury, rape, sexual abuse or death.

42 (B) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second
43 degree as defined in ORS 163.365 and rape in the third degree as defined in ORS 163.355.

44 (C) "Serious injury" means physical injury that creates a substantial risk of death or that
45 causes serious and protracted disfigurement, protracted impairment of health or protracted

1 loss or impairment of the function of any bodily organ.

2 (D) "Sexual abuse" means any form of sexual contact between an employee of a resi-
3 dential care facility or a long term care facility or a person providing services in the facility
4 and a resident of that facility, including but not limited to sodomy, sexual coercion, sexually
5 explicit photographing and sexual harassment.

6 (5) When imposing penalties under this section for a violation that qualifies as abuse
7 under state law and results in less than serious harm as defined in subsection (2) of this
8 section, the director shall reduce the penalty by not less than 25 percent if the facility self-
9 reported the abuse to the department.

10 (6) The department shall identify and track the number of abuse violations that are re-
11 ported to the department by a facility and compile statistics on the rate of self-reporting by
12 facilities as compared to abuse complaints from other sources.

13 (7)(a) When the director notifies a facility of a violation for which a penalty may be im-
14 posed under this section, the director shall describe in the notice the specific remediations
15 that the facility must make to achieve substantial compliance regarding the violation. In the
16 notice, the director shall prescribe a reasonable time for elimination of the violation:

17 (A) Not to exceed 30 days after first notice of a violation; or

18 (B) In cases where the violation requires more than 30 days to correct, such time as is
19 specified in a plan of correction found acceptable by the director.

20 (b) The director shall hold in abeyance a penalty for a level 2 violation or level 3 violation
21 for the period prescribed under paragraph (a) of this subsection. If the facility achieves
22 substantial compliance as described in the notice required under paragraph (a) of this sub-
23 section within the prescribed time period, the director shall withdraw some or all of the
24 penalty.

25 (c) As used in this subsection, "substantial compliance" means a level of compliance with
26 state law and with rules of the department such that any identified deficiencies pose a risk
27 of no more than negligible harm to the health or safety of residents of a facility.

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

29 (a) "Immediate jeopardy" means a situation in which the failure of a residential care fa-
30 cility or a long term care facility to comply with a rule of the Department of Human Services
31 has caused or is likely to cause serious injury, serious harm, serious impairment or death
32 to a resident.

33 (b) "License condition" includes but is not limited to:

34 (A) Restricting the total number of residents;

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

37 (C) Requiring additional staff or staff qualifications;

38 (D) Requiring additional training for staff;

39 (E) Requiring additional documentation; or

40 (F) Restriction of admissions.

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

45 (2)(a) The department may impose a condition on the license of a residential care facility

1 or long term care facility in response to a substantiated finding of rule violation, including
2 but not limited to a substantiated finding of abuse, or in response to a finding of immediate
3 jeopardy, whether or not the finding of immediate jeopardy is substantiated at the time the
4 license condition is imposed.

5 (b) The department shall impose a license condition in a scope and manner that is spe-
6 cifically designed to remediate the finding that led to the license condition.

7 (c) If the department imposes a license condition in response to a finding of immediate
8 jeopardy to residents of the facility, and the finding of immediate jeopardy to residents of the
9 facility is not substantiated within 30 days after the imposition of the license condition, the
10 department shall immediately remove the license condition.

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

14 (i) Describe the acts or omissions of the facility and the circumstances that led to the
15 substantiated finding of rule violation or finding of immediate jeopardy supporting the im-
16 position of the license condition;

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

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

20 (iv) Provide a brief statement describing how the license condition is designed to reme-
21 diate the circumstances that led to the license condition; and

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

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

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

28 (A) A specific description of how the scope and manner of the license condition is de-
29 signed to remediate the findings that led to the license condition; and

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

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

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

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

39 (B) Notify the facility by telephone or electronic means of the findings of the reinspection
40 or reevaluation within five business days after completion of the reinspection or reeval-
41 ation; and

42 (C) Issue a written report to the facility within 30 days after the reinspection or reeval-
43 uation notifying the facility of the department's determinations regarding substantial com-
44 pliance with the requirements necessary for withdrawal of the license condition.

45 (b) If the department finds that the facility has achieved substantial compliance regard-

1 ing the violation for which the license condition was imposed, and finds that systems are in
2 place to ensure similar deficiencies do not reoccur, the department shall withdraw the li-
3 cense condition.

4 (c) If after reinspection or reevaluation the department determines that the violation for
5 which the license condition was imposed continues to exist, the department may not with-
6 draw the license condition, and the department is not obligated to reinspect or reevaluate
7 the facility again for 45 days after the first reinspection or reevaluation. The department
8 shall provide the decision not to withdraw the license condition to the facility in writing and
9 inform the facility of the right to a contested case hearing pursuant to ORS chapter 183.
10 Nothing in this paragraph limits the department's authority to visit or inspect the facility
11 at any time.

12 (d) If the department does not meet the requirements of this subsection, a license con-
13 dition is automatically removed on the date the department failed to meet the requirements
14 of this subsection, unless the Director of Human Services extends the applicable period for
15 no more than 15 business days. The director may not delegate the power to make a deter-
16 mination regarding an extension under this paragraph.

17 **SECTION 6.** ORS 443.455 is amended to read:

18 443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil
19 penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705
20 to 441.745.

21 (2)(a) **The Director of Human Services shall impose penalties on residential care facilities**
22 **pursuant to section 4 of this 2017 Act.**

23 (b) The director [*of Human Services*] shall by rule prescribe a schedule of penalties for [*resi-*
24 *dential care facilities,*] residential training facilities and residential training homes that are not in
25 compliance with ORS 443.400 to 443.455.

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

29 (4) If the department or authority investigates and makes a finding of abuse arising from delib-
30 erate or other than accidental action or inaction that is likely to cause a negative outcome by a
31 person with a duty of care toward a resident of a residential facility, **other than a residential care**
32 **facility**, and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident,
33 the department or authority shall impose a civil penalty of not less than \$2,500 for each occurrence
34 of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:

35 (a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

36 [(b) "*Rape*" means rape in the first, second or third degree as described in ORS 163.355, 163.365
37 and 163.375.]

38 (b) "**Rape**" means rape in the first degree as defined in ORS 163.375, rape in the second
39 degree as defined in ORS 163.365 and rape in the third degree as defined in ORS 163.355.

40 (c) "Serious injury" means physical injury that creates a substantial risk of death or that causes
41 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-
42 ment of the function of any bodily organ.

43 (d) "Sexual abuse" means any form of sexual contact between an employee of a residential fa-
44 cility or a person providing services in the residential facility and a resident of that facility, in-
45 cluding but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual

1 harassment.

2 (5) Civil penalties recovered from a residential training facility, residential training home, resi-
3 dential treatment facility or residential treatment home shall be deposited in the Long Term Care
4 Ombudsman Account established in ORS 441.419.

5 **SECTION 7.** ORS 441.710 is amended to read:

6 441.710. (1)(a) In addition to any other liability or penalty provided by law, the Director of Hu-
7 man Services may impose a civil penalty on a person **pursuant to section 4 of this 2017 Act** for
8 any of the following:

9 [(a)] (A) Violation of any of the terms or conditions of a license issued under ORS 441.015 to
10 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a
11 long term care facility, as defined in ORS 442.015.

12 **(B) Violation of ORS 441.630 to 441.680.**

13 [(b)] (C) Violation of any rule or general order of the Department of Human Services that per-
14 tains to a long term care facility.

15 [(c)] (D) Violation of any final order of the director that pertains specifically to the long term
16 care facility owned or operated by the person incurring the penalty.

17 [(d)] (E) Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

18 [(e)] (F) Violation of ORS 443.880 or 443.881 if the facility is a residential care facility[, *resi-
19 dential training facility or residential training home*].

20 **(b) In addition to any other liability or penalty provided by law, the director may impose
21 a civil penalty on a residential training facility or residential training home for violation of
22 ORS 443.880 or 443.881. The director shall prescribe a reasonable time for elimination of a
23 violation by a residential training facility or residential training home:**

24 **(A) Not to exceed 30 days after first notice of a violation; or**

25 **(B) In cases where the violation requires more than 30 days to correct, such time as is
26 specified in a plan of correction found acceptable by the director.**

27 (2) In addition to any other liability or penalty provided by law, the Director of the Oregon
28 Health Authority may impose a civil penalty on a person for a violation of ORS 443.880 or 443.881
29 if the facility is a residential treatment facility or a residential treatment home.

30 (3) The Director of Human Services may not impose a penalty under subsection (1) of this sec-
31 tion for violations other than those involving direct patient care or feeding, an adequate staff to
32 patient ratio, sanitation involving direct patient care or a violation of ORS 441.605 or 443.880 or
33 443.881 or of the rules required to be adopted by ORS 441.610 unless a violation is found on two
34 consecutive surveys of a long term care facility. [*The Director of Human Services in every case shall
35 prescribe a reasonable time for elimination of a violation:*]

36 [(a) *Not to exceed 30 days after first notice of a violation; or*]

37 [(b) *In cases where the violation requires more than 30 days to correct, such time as is specified
38 in a plan of correction found acceptable by the director.*]

39 (4) The Director of the Oregon Health Authority may not impose a penalty under subsection (2)
40 of this section for violations other than those involving direct patient care or feeding, an adequate
41 staff to patient ratio, sanitation involving direct patient care or a violation of ORS 443.880 or
42 443.881. The director [*of the Oregon Health Authority*] in every case shall prescribe a reasonable time
43 for elimination of a violation:

44 (a) Not to exceed 30 days after first notice of a violation; or

45 (b) In cases where the violation requires more than 30 days to correct, such time as is specified

1 in a plan of correction found acceptable by the director.

2 **SECTION 8.** ORS 441.715 is amended to read:

3 441.715. (1) **The Director of Human Services shall impose civil penalties under ORS 441.710**
4 **(1) on a residential care facility or a long term care facility pursuant to section 4 of this 2017**
5 **Act.**

6 [(1)(a)] (2) After public hearing, the Director of Human Services by rule shall adopt objective
7 criteria for establishing the civil penalty that may be imposed under ORS 441.710 (1) [and] **on res-**
8 **idential training facilities and residential training homes. However, the civil penalty may not**
9 **exceed \$500 for each violation, except as otherwise provided in this section or as otherwise**
10 **required by federal law.**

11 (3) The Director of the Oregon Health Authority by rule shall adopt objective criteria for es-
12 tablishing the civil penalty that may be imposed under ORS 441.710 (2) **on residential treatment**
13 **facilities or residential treatment homes.** However, the civil penalty may not exceed \$500 for
14 each violation, except as otherwise provided in this [subsection and ORS 441.995] **section** or as
15 otherwise required by federal law.

16 [(b)] (4) Notwithstanding the limitations on the civil penalty in [paragraph (a) of this
17 subsection] **subsections (2) and (3) of this section,** for any violation **by a residential training**
18 **facility, residential training home, residential treatment facility or residential treatment**
19 **home** involving direct resident care or feeding, an adequate staff to resident ratio[,] **or** sanitation
20 involving direct resident care [or a violation of ORS 441.605 or rules required to be adopted under
21 ORS 441.610], a penalty may be imposed for each day the violation occurs in an amount not to ex-
22 ceed \$500 per day or as otherwise required by federal law.

23 [(c) If the Department of Human Services investigates and makes a finding of abuse arising from
24 deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a
25 person with a duty of care toward a resident of a long term care facility and if the abuse resulted in
26 the death, serious injury, rape or sexual abuse of a resident, the department shall impose a civil penalty
27 of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day
28 period. As used in this paragraph:]

29 [(A) "Negative outcome" includes serious injury, rape, sexual abuse or death.]

30 [(B) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365
31 and 163.375.]

32 [(C) "Serious injury" means physical injury that creates a substantial risk of death or that causes
33 serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment
34 of the function of any bodily organ.]

35 [(D) "Sexual abuse" means any form of sexual contact between an employee of a long term care
36 facility or a person providing services in the long term care facility and a resident of that facility, in-
37 cluding but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual
38 harassment.]

39 [(2) The penalties assessed under subsection (1)(a) or (b) of this section may not exceed \$7,500 in
40 the aggregate or as otherwise required by federal law with respect to a single long term care facility
41 within any 90-day period.]

42 **SECTION 9.** ORS 443.775 is amended to read:

43 443.775. (1) The licensing agency shall adopt rules governing adult foster homes and the level
44 of care provided in such homes, including the provision of care to more than one person with
45 nursing care needs under specified conditions and agency approval, such as are necessary to protect

1 the health, safety or welfare of the residents and to provide for an appropriate continuum of care,
2 but shall not be inconsistent with the residential nature of the living accommodations and the family
3 atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board
4 of Nursing under ORS 678.150 (8).

5 (a) An exception to the limit of one resident with nursing care needs may be granted if the
6 provider proves to the licensing agency by clear and convincing evidence that such an exception
7 will not jeopardize the care, health, safety or welfare of the residents and that the provider is ca-
8 pable of meeting the additional care needs of the new resident.

9 (b) The licensing agency, and the counties acting under the exemption granted pursuant to ORS
10 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions
11 granted during the quarter pursuant to paragraph (a) of this subsection.

12 (2) The provider may not employ a resident manager who does not meet the classification
13 standard for the adult foster home.

14 (3) The provider shall be able to meet the night care needs of a resident before admitting the
15 resident. The provider shall include night care needs in the resident's care plan.

16 (4) The provider shall screen a prospective resident before admitting the resident. The screening
17 shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs,
18 night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall
19 be given to the prospective resident or the prospective resident's representative.

20 (5) The licensing agency shall make rules to ensure that any employee who makes a complaint
21 pursuant to ORS 443.755 shall be protected from retaliation.

22 (6) For adult foster homes in which clients reside for whom the licensing agency pays for care,
23 including homes in which the provider and the resident are related, the agency may require sub-
24 stantial compliance with its rules relating to standards for care of the client as a condition for
25 paying for care.

26 (7) By order the director of the licensing agency may delegate authority under this section to
27 personnel other than of the licensing agency.

28 (8) The licensing agency may commence a suit in equity to enjoin maintenance of an adult foster
29 home if:

30 (a) The home is operated without a valid license under this section; or

31 (b) After the license to maintain the home is ordered suspended or revoked, a reasonable time
32 for placement of residents in other facilities has been allowed but such placement has not been ac-
33 complished.

34 (9) The licensing agency shall establish by rule the maximum capacity of adult foster homes,
35 including all nonrelated and related persons receiving residential care and day care.

36 *[(10) Except as provided in subsection (11) of this section, any person who violates a provision of*
37 *ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition of a civil*
38 *penalty, to be fixed by the licensing agency by rule, not to exceed \$100 per violation, to a maximum*
39 *of \$250 or, per occurrence of substantiated abuse, a maximum of \$1,000.]*

40 **(10) Except as provided in subsection (11) of this section:**

41 **(a) The Department of Human Services may impose a civil penalty on any person who**
42 **violates a provision of ORS 443.705 to 443.825, or the rules adopted under ORS 443.705 to**
43 **443.825, with regard to an adult foster home serving socially dependent individuals or indi-**
44 **viduals with physical disabilities. The department shall establish the amount of the penalty**
45 **by rule, in an amount not less than \$100 and not more than \$250 per violation, or in the case**

1 of substantiated abuse, not less than \$100 and not more than \$1,000 per violation.

2 (b) The department may impose a civil penalty on any person who violates a provision
3 of ORS 443.705 to 443.825, or the rules adopted under ORS 443.705 to 443.825, with regard to
4 an adult foster home not serving socially dependent individuals or individuals with physical
5 disabilities. The department shall establish the amount of the penalty by rule, in an amount
6 not to exceed \$100 per violation, to a maximum of \$250, or, per occurrence of substantiated
7 abuse, to a maximum of \$1,000.

8 (c) The Oregon Health Authority may impose a civil penalty on any person who violates
9 a provision of ORS 443.705 to 443.825, or the rules adopted under ORS 443.705 to 443.825. The
10 authority shall establish the amount of the penalty by rule, in an amount not to exceed \$100
11 per violation, to a maximum of \$250, or, per occurrence of substantiated abuse, to a maxi-
12 mum of \$1,000.

13 (11)(a) If the licensing agency determines that there is reasonable cause to believe that abuse
14 occurred in an adult foster home licensed by the licensing agency and if the abuse resulted in the
15 death, serious injury, rape, sexual abuse or sexual exploitation of a resident, the licensing agency
16 shall impose a civil penalty on the adult foster home of not less than \$2,500 for each violation.

17 (b) This subsection does not apply to adult foster homes licensed by the licensing agency to
18 serve only persons with mental illness or with alcohol or drug addiction.

19 (c) The licensing agency shall by rule define “serious injury,” “rape,” “sexual abuse” and “sex-
20 ual exploitation” for purposes of this subsection.

21 (12) All penalties recovered pursuant to this section shall be deposited in the Quality Care Fund
22 established in ORS 443.001.

23 **SECTION 10. Sections 3 to 5 of this 2017 Act, the amendments to ORS 441.710, 441.715,**
24 **443.455 and 443.775 by sections 6 to 9 of this 2017 Act and the repeal of ORS 441.995 by section**
25 **46 of this 2017 Act apply only to civil penalties and license conditions imposed for violations**
26 **committed on or after the effective date of this 2017 Act.**

27 28 LICENSING FEES

29
30 **SECTION 11.** ORS 441.020 is amended to read:

31 441.020. (1) Licenses for health care facilities, except long term **care** facilities as defined in ORS
32 442.015, must be obtained from the Oregon Health Authority.

33 (2) Licenses for long term care facilities must be obtained from the Department of Human Ser-
34 vices.

35 (3) Applications shall be upon such forms and shall contain such information as the authority
36 or the department may reasonably require, which may include affirmative evidence of ability to
37 comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.

38 (4)(a) Each application [*shall*] **submitted to the Oregon Health Authority must** be accompa-
39 nied by the license fee. If the license is denied, the fee shall be refunded to the applicant. [*Except*
40 *as provided in subsection (15) of this section,*] If the license is issued, the fee shall be paid into the
41 State Treasury to the credit of:]

42 [(a)] the Oregon Health Authority Fund for the purpose of carrying out the functions of the
43 Oregon Health Authority under ORS 441.015 to 441.063 and 441.196; or

44 (b) **Each application submitted to the Department of Human Services must be accompa-**
45 **nied by the application fee or the annual renewal fee, as applicable. If the license is denied,**

1 **the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into**
2 **the State Treasury to the credit of** the Department of Human Services Account for the purpose
3 of carrying out the functions of the Department of Human Services under ORS 431A.050 to 431A.080,
4 441.015 to 441.063 and 441.196.

5 (5) Except as otherwise provided in subsection (8) of this section, for hospitals with:

6 (a) Fewer than 26 beds, the annual license fee shall be \$1,250.

7 (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,850.

8 (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$3,800.

9 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$6,525.

10 (e) Two hundred or more beds, but fewer than 500 beds, the annual license fee shall be \$8,500.

11 (f) Five hundred or more beds, the annual license fee shall be \$12,070.

12 (6) A hospital shall pay an annual fee of \$750 for each hospital satellite indorsed under its li-
13 cense.

14 (7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority
15 determines that charging the standard fee constitutes a significant financial burden to the facility.

16 (8) For long term care facilities with:

17 (a) One to 15 beds, the [*annual license fee shall be \$180*] **application fee shall be \$2,000 and the**
18 **annual renewal fee shall be \$1,000.**

19 (b) Sixteen to 49 beds, the [*annual license fee shall be \$260*] **application fee shall be \$3,000 and**
20 **the annual renewal fee shall be \$1,500.**

21 (c) Fifty to 99 beds, the [*annual license fee shall be \$520*] **application fee shall be \$4,000 and**
22 **the annual renewal fee shall be \$2,000.**

23 (d) One hundred to 150 beds, the [*annual license fee shall be \$670*] **application fee shall be**
24 **\$5,000 and the annual renewal fee shall be \$2,500.**

25 (e) More than 150 beds, the [*annual license fee shall be \$750*] **application fee shall be \$6,000**
26 **and the annual renewal fee shall be \$3,000.**

27 (9) For ambulatory surgical centers, the annual license fee shall be:

28 (a) \$1,750 for certified and high complexity noncertified ambulatory surgical centers with more
29 than two procedure rooms.

30 (b) \$1,250 for certified and high complexity noncertified ambulatory surgical centers with no
31 more than two procedure rooms.

32 (c) \$1,000 for moderate complexity noncertified ambulatory surgical centers.

33 (10) For birthing centers, the annual license fee shall be \$750.

34 (11) For outpatient renal dialysis facilities, the annual license fee shall be \$2,000.

35 (12) During the time the licenses remain in force, holders are not required to pay inspection fees
36 to any county, city or other municipality.

37 (13) Any health care facility license may be indorsed to permit operation at more than one lo-
38 cation. If so, the applicable license fee shall be the sum of the license fees that would be applicable
39 if each location were separately licensed. The authority may include hospital satellites on a
40 hospital's license in accordance with rules adopted by the authority.

41 (14) Licenses for health maintenance organizations shall be obtained from the Director of the
42 Department of Consumer and Business Services pursuant to ORS 731.072.

43 (15) All moneys received pursuant to subsection (8) of this section shall be deposited in the
44 Quality Care Fund established in ORS 443.001.

45 (16) As used in this section:

1 (a) "Hospital satellite" has the meaning prescribed by the authority by rule.

2 (b) "Procedure room" means a room where surgery or invasive procedures are performed.

3 **SECTION 12.** ORS 443.415 is amended to read:

4 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
5 made to the Department of Human Services or the Oregon Health Authority on forms provided for
6 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee.
7 No fee is required of any governmentally operated residential facility.

8 [(2) *The fee required under subsection (1) of this section for facilities:*]

9 [(a) *Defined in ORS 443.400 (7) and (9), shall be \$60.*]

10 [(b) *Defined in ORS 443.400 (8) and (10), shall be \$30.*]

11 [(c) *Defined in ORS 443.400 (5) with:*]

12 [(A) *One to 15 beds, shall be \$360.*]

13 [(B) *Sixteen to 49 beds, shall be \$520.*]

14 [(C) *Fifty to 99 beds, shall be \$1,040.*]

15 [(D) *One hundred to 150 beds, shall be \$1,340.*]

16 [(E) *More than 150 beds, shall be \$1,500.*]

17 **(2)(a) The application fee for a residential training facility or a residential treatment fa-**
18 **cility is \$60.**

19 **(b) The application fee for a residential training home or a residential treatment home**
20 **is \$30.**

21 **(c) The application fee for a residential care facility is:**

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

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

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

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

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

27 (3) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.
28 The licensing agency shall issue a license to any applicant for operation of a residential facility in
29 compliance with ORS 443.002 and 443.400 to 443.455 and the rules of the licensing agency. Licensure
30 may be denied when a residential facility is not in compliance with ORS 443.002 or 443.400 to
31 443.455 or the rules of the licensing agency. Licensure shall be denied if the State Fire Marshal,
32 **deputy** or [other] **approved** authority has given notice of noncompliance of [facilities defined in ORS
33 443.400 (5), (7) and (9)] **a residential care facility, residential training facility or residential**
34 **treatment facility** pursuant to ORS 479.220.

35 **SECTION 13.** ORS 443.425 is amended to read:

36 443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless
37 sooner revoked. Each license shall state:

38 (a) The name of the person operating the residential facility;

39 (b) The name of the person who owns the **residential** facility;

40 (c) The address of the premises to which the license applies and the maximum number of resi-
41 dents to be maintained in [such] **the** residential facility at any time whether the residential facility
42 is licensed as a residential training facility, a residential treatment facility, a residential care
43 facility[;], a residential training home or residential treatment home; and

44 (d) [Such] Other information [as] **that** the Department of Human Services or the Oregon Health
45 Authority considers necessary.

1 (2) A license is renewable upon submission of an application to the department or the authority
2 and payment of a **renewal** fee. No fee [*shall be*] is required of a governmentally operated residential
3 facility. Filing of an application for renewal before the date of expiration of a license extends the
4 effective date of expiration of the license until the licensing agency has acted upon [*such*] **the**
5 application. The licensing agency shall refuse to renew a license if the facility is not substantially in
6 compliance with all applicable laws and rules, or if the State Fire Marshal, **deputy or approved**
7 **authority** [*or the authorized representative thereof*] has given notice of noncompliance of [*facilities*
8 *under ORS 443.400 (5), (7) and (9)*] **a residential care facility, residential training facility or**
9 **residential treatment facility** pursuant to ORS 479.220.

10 [*(3) The biennial fee required under subsection (2) of this section for facilities:*]

11 [*(a) Defined in ORS 443.400 (7) and (9), shall be \$60.*]

12 [*(b) Defined in ORS 443.400 (8) and (10), shall be \$30.*]

13 [*(c) Defined in ORS 443.400 (5) with:*]

14 [(A) *One to 15 beds, shall be \$360.*]

15 [(B) *Sixteen to 49 beds, shall be \$520.*]

16 [(C) *Fifty to 99 beds, shall be \$1,040.*]

17 [(D) *One hundred to 150 beds, shall be \$1,340.*]

18 [(E) *More than 150 beds, shall be \$1,500.*]

19 **(3)(a) The biennial renewal fee for a residential training facility or a residential treatment**
20 **facility is \$60.**

21 **(b) The biennial renewal fee for a residential training home or a residential treatment**
22 **home is \$30.**

23 **(c) The biennial renewal fee for a residential care facility is:**

24 **(A) For a facility with one to 15 beds, \$1,000.**

25 **(B) For a facility with 16 to 49 beds, \$1,500.**

26 **(C) For a facility with 50 to 99 beds, \$2,000.**

27 **(D) For a facility with 100 to 150 beds, \$2,500.**

28 **(E) For a facility with more than 150 beds, \$3,000.**

29
30 **RESIDENTIAL CARE FACILITIES**

31 **(Quality Measures)**

32
33 **SECTION 14.** Sections 15, 16, 20, 23, 24, 25 and 27 of this 2017 Act are added to and made
34 a part of ORS 443.400 to 443.455.

35 **SECTION 15.** (1) **The Residential Care Quality Measurement Program is established in**
36 **the Department of Human Services. Under the program, the department shall, no later than**
37 **July 1 of each year, publish an annual report, based on data reported by each residential care**
38 **facility under subsection (2) of this section. Excluding data that identifies a resident, the**
39 **report must include data compilation, illustration and narratives to:**

40 **(a) Describe statewide patterns and trends that emerge from the data reported to the**
41 **department under subsection (2) of this section and compliance data maintained by the de-**
42 **partment;**

43 **(b) Identify residential care facilities that substantially failed to report data as required**
44 **by this section;**

45 **(c) Allow residential care facilities and the public to compare a residential care facility's**

1 performance on each quality metric, by demographics, geographic region, facility type and
2 other categories the department believes may be useful to consumers and facilities;

3 (d) Show trends in performance on each of the quality metrics;

4 (e) Identify patterns of performance by geographic regions and other categories the de-
5 partment believes will be useful to consumers;

6 (f) Identify the number, severity and scope of regulatory violations by each geographic
7 region; and

8 (g) Show average timelines for surveys and for investigations of abuse or regulatory
9 noncompliance.

10 (2) Each residential care facility shall report, no later than January 31 of each year and
11 in the form and manner prescribed by the Quality Measurement Council established under
12 section 16 of this 2017 Act, the following quality metrics for the prior calendar year, con-
13 sistent with accepted professional standards and excluding information that identifies a res-
14 ident of the residential care facility:

15 (a) The residential care facility's retention of direct care staff;

16 (b) The number of resident falls in the residential care facility that result in physical
17 injury;

18 (c) The incidence in the residential care facility of the use of antipsychotic medications
19 for nonstandard purposes;

20 (d) The residential care facility's compliance with staff training requirements;

21 (e) The results of an annual resident satisfaction survey conducted by an independent
22 entity that meets the requirements established by the Quality Measurement Council; and

23 (f) A quality metric recommended by the Quality Measurement Council that measures
24 the quality of the resident experience.

25 (3) The department shall make available an annual report to each residential care facility
26 that reports quality metrics under subsection (2) of this section using data compilation, il-
27 lustration and narratives to allow the residential care facility to measure and compare its
28 quality metrics over time.

29 (4) The department shall make available to the public in a standard format and in plain
30 language the data reported by each residential care facility, excluding information that
31 identifies a resident.

32 (5) The department shall, using moneys from the Quality Care Fund established under
33 ORS 443.001:

34 (a) Develop online training modules to address the top two statewide issues identified by
35 surveys or reviews of residential care facilities during the previous year; and

36 (b) Post and regularly update the data used to prepare the report described in subsection
37 (1) of this section.

38 (6) The Quality Measurement Council, in consultation with the department, shall estab-
39 lish a uniform system for residential care facilities to report quality metrics as required by
40 subsection (2) of this section. The system must:

41 (a) Allow for electronic reporting of data, to the greatest extent practicable; and

42 (b) Take into account and utilize existing data reporting systems used by residential care
43 facilities.

44 (7)(a) Quality metric data reported to the department under this section may not be used
45 as the basis for an enforcement action by the department nor may the data be disclosed to

1 another agency for use in an enforcement or regulatory action.

2 (b) Quality metric data are not admissible as evidence in any civil action, including but
3 not limited to judicial, administrative, arbitration or mediation proceedings.

4 (c) Quality metric data reported to the department are not subject to:

5 (A) Civil or administrative subpoena; or

6 (B) Discovery in connection with a civil action, including but not limited to judicial, ad-
7 ministrative, arbitration or mediation proceedings.

8 (8) Subsection (7) of this section does not exempt a residential care facility from com-
9 plying with state law or prohibit the department's use of quality metric data obtained from
10 another source in the normal course of business or compliance activity.

11 **SECTION 16.** (1) The Quality Measurement Council is established in the Department of
12 Human Services to prescribe how the department shall implement the Residential Care
13 Quality Measurement Program established under section 15 of this 2017 Act.

14 (2) The council consists of eight members, appointed by the Governor, as follows:

15 (a) One individual representing the Oregon Patient Safety Commission;

16 (b) One individual representing residential care facilities;

17 (c) One consumer representative from an Alzheimer's advocacy organization;

18 (d) One licensed health care practitioner with experience in geriatrics;

19 (e) Two individuals associated with an academic institution who have expertise in re-
20 search using data and analytics and in community-based care and quality reporting;

21 (f) The Long Term Care Ombudsman or a designee of the Long Term Care Ombudsman;
22 and

23 (g) One individual representing the department.

24 (3)(a) On and after January 1, 2022, the council may update by rule the quality metrics
25 to be reported by residential care facilities under section 15 of this 2017 Act.

26 (b) In developing quality metrics the council shall consider whether the data that must
27 be reported reflect and promote quality care and whether reporting the data is unnecessarily
28 burdensome on residential care facilities.

29 **SECTION 17.** Section 15 of this 2017 Act is amended to read:

30 **Sec. 15.** (1) The Residential Care Quality Measurement Program is established in the Depart-
31 ment of Human Services. Under the program, the department shall, no later than July 1 of each
32 year, publish an annual report, based on data reported by each residential care facility under sub-
33 section (2) of this section. Excluding data that identifies a resident, the report must include data
34 compilation, illustration and narratives to:

35 (a) Describe statewide patterns and trends that emerge from the data reported to the department
36 under subsection (2) of this section and compliance data maintained by the department;

37 (b) Identify residential care facilities that substantially failed to report data as required by this
38 section;

39 (c) Allow residential care facilities and the public to compare a residential care facility's per-
40 formance on each quality metric, by demographics, geographic region, facility type and other cate-
41 gories the department believes may be useful to consumers and facilities;

42 (d) Show trends in performance on each of the quality metrics;

43 (e) Identify patterns of performance by geographic regions and other categories the department
44 believes will be useful to consumers;

45 (f) Identify the number, severity and scope of regulatory violations by each geographic region;

1 and

2 (g) Show average timelines for surveys and for investigations of abuse or regulatory noncom-
3 pliance.

4 (2) Each residential care facility shall report, no later than January 31 of each year and in the
5 form and manner prescribed by the Quality Measurement Council established under section 16 of
6 this 2017 Act, the *[following]* quality metrics **developed by the council under section 16 of this**
7 **2017 Act.** *[for the prior calendar year, consistent with accepted professional standards and excluding*
8 *information that identifies a resident of the residential care facility:]*

9 *[(a) The residential care facility's retention of direct care staff;]*

10 *[(b) The number of resident falls in the residential care facility that result in physical injury;]*

11 *[(c) The incidence in the residential care facility of the use of antipsychotic medications for non-*
12 *standard purposes;]*

13 *[(d) The residential care facility's compliance with staff training requirements;]*

14 *[(e) The results of an annual resident satisfaction survey conducted by an independent entity that*
15 *meets the requirements established by the Quality Measurement Council; and]*

16 *[(f) A quality metric recommended by the Quality Measurement Council that measures the quality*
17 *of the resident experience.]*

18 (3) The department shall make available an annual report to each residential care facility that
19 reports quality metrics under subsection (2) of this section using data compilation, illustration and
20 narratives to allow the residential care facility to measure and compare its quality metrics over
21 time.

22 (4) The department shall make available to the public in a standard format and in plain language
23 the data reported by each residential care facility, excluding information that identifies a resident.

24 (5) The department shall, using moneys from the Quality Care Fund established under ORS
25 443.001:

26 (a) Develop online training modules to address the top two statewide issues identified by surveys
27 or reviews of residential care facilities during the previous year; and

28 (b) Post and regularly update the data used to prepare the report described in subsection (1) of
29 this section.

30 (6) The Quality Measurement Council, in consultation with the department, shall establish a
31 uniform system for residential care facilities to report quality metrics as required by subsection (2)
32 of this section. The system must:

33 (a) Allow for electronic reporting of data, to the greatest extent practicable; and

34 (b) Take into account and utilize existing data reporting systems used by residential care facil-
35 ities.

36 (7)(a) Quality metric data reported to the department under this section may not be used as the
37 basis for an enforcement action by the department nor may the data be disclosed to another agency
38 for use in an enforcement or regulatory action.

39 (b) Quality metric data are not admissible as evidence in any civil action, including but not
40 limited to judicial, administrative, arbitration or mediation proceedings.

41 (c) Quality metric data reported to the department are not subject to:

42 (A) Civil or administrative subpoena; or

43 (B) Discovery in connection with a civil action, including but not limited to judicial, adminis-
44 trative, arbitration or mediation proceedings.

45 (8) Subsection (7) of this section does not exempt a residential care facility from complying with

1 state law or prohibit the department's use of quality metric data obtained from another source in
2 the normal course of business or compliance activity.

3 **SECTION 18.** The amendments to section 15 of this 2017 Act by section 17 of this 2017
4 Act become operative on January 1, 2022.

5 **SECTION 19.** (1) The Department of Human Services shall first publish the report de-
6 scribed in section 15 (1) of this 2017 Act no later than July 1, 2020.

7 (2) A residential care facility shall first report quality metrics under section 15 (2) of this
8 2017 Act no later than January 31, 2020. A residential care facility may voluntarily report
9 quality metrics before January 31, 2020, once the reporting system is able to receive reports.

10
11 (Conversion Facilities)

12
13 **SECTION 20.** (1) A facility that is licensed as a long term care facility under ORS 441.025
14 may apply to the Department of Human Services for licensure as a conversion facility. The
15 department shall issue a conversion facility license upon receipt of an application and a fee
16 that meet requirements established by the department by rule.

17 (2)(a) The department shall adopt rules governing the conversion of a facility's license
18 from a long term care facility license to a residential care facility license and the regulation
19 of the facility during the conversion period.

20 (b) As of the date of licensure as a conversion facility, the conversion facility must be in
21 substantial compliance with applicable state and local laws, rules, codes, ordinances and
22 permit requirements.

23 (3) As used in this section, "substantial compliance" means a level of compliance with
24 state law and with rules of the department such that any identified deficiencies pose a risk
25 of no more than negligible harm to the health or safety of residents.

26 **SECTION 21.** ORS 443.420 is amended to read:

27 443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the di-
28 rector of the licensing agency, be a person:

29 (a) Who demonstrates an understanding and acceptance of the rules governing residential facil-
30 ities;

31 (b) Mentally and physically capable of caring for such residents; and

32 (c) Who employs or utilizes only individuals whose presence does not jeopardize the health,
33 safety or welfare of residents.

34 (2) A residential facility [*shall*] **may** not be operated or maintained in combination with a
35 nursing home or hospital unless:

36 (a) **The residential facility is** licensed, maintained and operated as a separate and distinct
37 part[.]; **or**

38 (b) **The residential facility is licensed as a conversion facility under section 20 of this 2017**
39 **Act.**

40 (3) All physical residential facilities used for residents [*shall*] **must** meet applicable require-
41 ments of the State Fire Marshal.

42 (4) [*Prior to*] **As of the date of** licensure, a residential facility must be in substantial compliance
43 with applicable state and local laws, rules, codes, ordinances and permit requirements.

44 (5) Prior to licensure, a residential facility that proposes to house persons under the age of 21
45 years shall submit written proof to the licensing agency demonstrating that the facility will:

1 (a) Comply with ORS 336.575; and

2 (b) Ensure that the children who reside at the residential facility receive appropriate educa-
3 tional services that are:

4 (A) Comprehensive and age-appropriate;

5 (B) In compliance with requirements of state and federal law; and

6 (C) If applicable, in compliance with the individual education program of the child.

7 (6) Prior to an initial licensure of a residential care facility, the licensing agency shall consider:

8 (a) The license applicant's history of regulatory compliance and operational experience;

9 (b) The willingness of the license applicant to serve underserved populations; and

10 (c) The willingness of the license applicant to contract with the licensing agency to provide
11 services through the state medical assistance program.

12 (7)(a) The licensing agency may not issue an initial license to a residential care facility if the
13 facility has not conducted a market study that assesses the need for the services offered by the fa-
14 cility in the geographic area served by the facility.

15 **(b) This subsection does not apply to a conversion facility licensed under section 20 of**
16 **this 2017 Act.**

17 **SECTION 22.** ORS 441.402 is amended to read:

18 441.402. As used in ORS 441.402 to 441.419:

19 (1) "Designee" means an individual appointed by the Long Term Care Ombudsman to serve as
20 a representative in order to carry out the purpose of ORS 441.402 to 441.419.

21 (2) "Residential facility" includes a:

22 (a) Long term care facility;

23 (b) Residential facility as defined in ORS 443.400, excluding a:

24 (A) Facility housing persons committed under ORS 161.327; and

25 (B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treatment;

26 (c) **Conversion facility licensed under section 20 of this 2017 Act;**

27 [(c)] (d) Licensed adult foster home as defined in ORS 443.705;

28 [(d)] (e) Developmental disability child foster home, as defined in ORS 443.830, that is certified
29 by the Department of Human Services; and

30 [(e)] (f) Continuing care retirement community as defined in ORS 101.020.

31
32 **(Enhanced Oversight and Supervision Program)**

33
34 **SECTION 23. (1) As used in this section, "substantial compliance" means a level of**
35 **compliance with state law and with rules of the Department of Human Services such that**
36 **any identified deficiencies pose a risk of no more than negligible harm to the health or safety**
37 **of residents.**

38 (2)(a) **The department shall develop a framework for assessing the compliance of resi-**
39 **dential care facilities with regulatory requirements and for requiring corrective action that**
40 **accurately and equitably measures compliance and the extent of noncompliance.**

41 (b) **The framework must include but is not limited to measures of the severity and scope**
42 **of a residential care facility's noncompliance.**

43 (c) **The department shall publish the framework on the department's website and shall**
44 **distribute the framework to residential care facilities licensed in this state.**

45 (3) **The department shall administer a residential care facility enhanced oversight and**

1 supervision program that focuses department resources on residential care facilities that
2 consistently demonstrate:

3 (a) A lack of substantial compliance with the requirements of ORS 443.400 to 443.455; or

4 (b) Performance substantially below statewide averages on quality metrics reported un-
5 der the Residential Care Quality Measurement Program established under section 15 of this
6 2017 Act.

7 (4) The residential care facility enhanced oversight and supervision program shall take
8 one or more of the following actions that the department deems necessary to improve the
9 performance of a residential care facility:

10 (a) Increase the frequency of surveys of the residential care facility.

11 (b) Conduct surveys that focus on areas of consistent noncompliance identified by the
12 department.

13 (5) The department shall terminate the enhanced oversight and supervision of a resi-
14 dential care facility:

15 (a) After three years if the residential care facility has shown through at least two con-
16 secutive on-site surveys and reported quality metrics that the residential care facility no
17 longer meets the criteria set forth in subsection (3) of this section; or

18 (b) After one year if the residential care facility submits a written assertion of substan-
19 tial compliance and the department determines that the residential care facility no longer
20 meets the criteria set forth in subsection (3) of this section.

21 (6) Using moneys from the Quality Care Fund established under ORS 443.001, the de-
22 partment shall develop, maintain and periodically update compliance guidelines for residen-
23 tial care facilities serving seniors and persons with disabilities. The guidelines must be made
24 available electronically.

25 (7) This section does not preclude the department from taking any action authorized by
26 ORS 443.400 to 443.455.

27
28 (Acuity-Based Staffing Tool)

29
30 **SECTION 24.** (1) The Department of Human Services shall develop or obtain, maintain
31 and use, in collaboration with residential care facilities, an objective, technology-based,
32 acuity-based staffing tool. The department may use the tool to:

33 (a) Evaluate whether a residential care facility has qualified awake caregivers sufficient
34 in number to meet the 24-hour scheduled and unscheduled needs of each resident; and

35 (b) Assess the number of direct care staff hours required by a particular residential care
36 facility to meet each resident's scheduled and unscheduled needs.

37 (2) The acuity-based staffing tool shall be made available to residential care facilities to:

38 (a) Enable the residential care facilities to assess their staffing needs and determine
39 whether they have a sufficient number of qualified awake caregivers to meet the 24-hour
40 scheduled and unscheduled needs of each resident;

41 (b) Communicate the required staffing needs and each residential care facility's staffing
42 plan to residents, their family members and other persons; and

43 (c) Demonstrate to the department that the residential care facility's staffing plan meets
44 the 24-hour scheduled and unscheduled needs of each resident.

45 (3) The department is not required to use the tool described in this section in every cir-

1 cumstance in which residential care facility staffing is evaluated, but the department must
2 use the tool in collaboration with the facility if the department is considering imposing a
3 staffing requirement on a facility as part of a licensing condition and the department and the
4 facility are not in agreement about whether staffing meets the residents' scheduled and un-
5 scheduled needs or the staffing standards proposed by the department.

6
7 (Direct Care Staff Training)

8
9 **SECTION 25.** (1) In addition to any other training required by law, all direct care staff
10 employed by a residential care facility shall, prior to providing direct care to residents of the
11 facility, complete training in dementia care that includes:

12 (a) Education on the dementia disease process, including the progression of the disease,
13 memory loss, psychiatric and behavioral symptoms;

14 (b) Techniques for understanding and managing behavioral symptoms, including but not
15 limited to reducing the use of antipsychotic medications for nonstandard uses;

16 (c) Strategies for addressing the social needs of persons with dementia and providing
17 them with meaningful activities; and

18 (d) Information on addressing specific aspects of dementia care and ensuring the safety
19 of residents with dementia, including but not limited to how to:

20 (A) Address pain;

21 (B) Provide food and fluids;

22 (C) Prevent wandering and elopement; and

23 (D) Use a person-centered approach.

24 (2) A residential care facility shall provide a certificate of completion to direct care staff
25 who complete the training described in subsection (1) of this section. If a member of the di-
26 rect care staff is employed by a different residential care facility no later than 24 months
27 after completing the training, the facility may elect to not require the staff member to re-
28 peat the training.

29 (3) In addition to the training described in subsection (1) of this section, direct care staff
30 each must complete annually at least six hours of training in dementia care. This training
31 may be part of any existing continuing education requirement imposed by law.

32 (4) All training in dementia care provided to direct care staff must be approved by a
33 private or nonprofit organization that is approved by the Department of Human Services and
34 that has expertise and specializes in educational training for residential care facility staff.

35 (5) All training in dementia care provided to direct care staff must reflect current stan-
36 dards for dementia care and be informed by the best evidence in the care and treatment of
37 dementia.

38 (6) The department shall prescribe by rule how to assess the competency of direct care
39 staff.

40
41 (Suspension of License)

42
43 **SECTION 26.** ORS 443.440 is amended to read:

44 443.440. (1) Except as provided in subsection (2) of this section for residential care facili-
45 ties, the Department of Human Services or the Oregon Health Authority may revoke or suspend the

1 license of any residential facility that is not operated in accordance with ORS 443.002 or 443.400 to
2 443.455 or the rules of the licensing agency. Such revocation or suspension *[shall]* **must** be taken
3 in accordance with rules of the licensing agency and ORS chapter 183. However, in cases where an
4 imminent danger to the health or safety of the residents exists, a license may be suspended imme-
5 diately pending a fair hearing not later than the 10th day after such suspension.

6 **(2)(a) In a case where an imminent danger to the health or safety of the residents exists,**
7 **a residential care facility license may be suspended immediately.**

8 **(b) The residential care facility is entitled to a contested case hearing to appeal an order**
9 **of immediate suspension in accordance with procedures adopted by the Department of Jus-**
10 **tice by rule concerning emergency license suspensions.**

11 **(c) When the Department of Human Services issues an immediate suspension order un-**
12 **der this subsection, the department may:**

13 **(A) Transition all residents of the residential care facility to other residential facilities;**
14 **or**

15 **(B) Appoint a management company with demonstrated skill and experience in operating**
16 **residential facilities to manage the residential care facility and care for the residents of the**
17 **facility. If the facility is unable to pay for the appointed management company, the depart-**
18 **ment shall use funds from the facility trustee account fund to cover the cost.**

19
20 **(Prescription Drug Packaging)**

21
22 **SECTION 27. (1) A residential care facility shall ensure that prescription drugs dispensed**
23 **to residents of the facility are packaged in a manner that reduces errors in the tracking of**
24 **and the administration of the drugs, including but not limited to the use of unit dose systems**
25 **or blister packs.**

26 **(2) Subsection (1) of this section does not apply to residents receiving pharmacy benefits**
27 **through the United States Department of Veterans Affairs if the pharmacy benefits do not**
28 **reimburse the cost of such packaging.**

29
30 **(Memory Care)**

31
32 **SECTION 28. ORS 443.886 is amended to read:**

33 443.886. (1) If a facility intends to provide care for *[patients or]* residents with Alzheimer's dis-
34 ease or other **forms of dementia** by means of an *[Alzheimer's care unit]* **endorsed memory care**
35 **community**, the facility must obtain a *[special indorsement]* **memory care endorsement** on its li-
36 cense or registration.

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

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

44 (b) Continuity of basic care requirements; and

45 (c) Marketing and advertising of the availability of and services from *[Alzheimer's care units]*

1 **endorsed memory care communities.**

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

4 (4) The department shall enforce rules adopted under subsection (2) of this section and shall
5 allow a licensee or registrant to retain the [*special indorsement*] **memory care endorsement** re-
6 quired to care for [*patients and*] residents with Alzheimer’s disease or other **forms of** dementia only
7 [so] **as** long as the licensee or registrant complies with the rules.

8 (5) The [*special indorsement*] **memory care endorsement** may be suspended or revoked in the
9 same manner as the license or registration is suspended or revoked.

10 (6) Unless a facility has obtained the [*indorsement*] **memory care endorsement** required by
11 subsection (1) of this section, the facility [*shall*] **may** not:

12 (a) Advertise the facility as providing an Alzheimer’s care unit **or memory care community**;
13 or

14 (b) Market the facility as providing an Alzheimer’s care unit **or memory care community**.

15 (7) As used in this section:

16 (a) [*“Alzheimer’s care unit”*] **“Endorsed memory care community”** means a special care unit
17 in a designated, separated area for [*patients and*] residents with Alzheimer’s disease or other **forms**
18 **of** dementia that is locked[, *segregated*] or secured to prevent or limit access by a [*patient or*] resi-
19 dent outside the designated or separated area.

20 (b) “Facility” means a [*nursing home,*] **long term care facility**, residential care facility, assisted
21 living facility or any other like facility required to be licensed by the department.

22 (c) “Registry” means a facility will provide the department with information relating to the
23 [*Alzheimer’s care unit*] **endorsed memory care community**, including the number of residents in
24 the [*unit*] **community**, **the** stage of dementia for each resident, **a** description of how services are
25 provided[,] and **the** length of time the [*unit*] **community** has been operating.

26
27 **ADULT FOSTER HOMES**
28 **(Caregiver Training)**
29

30 **SECTION 29. Sections 30 and 31 of this 2017 Act are added to and made a part of ORS**
31 **443.705 to 443.825.**

32 **SECTION 30. (1) As used in this section, “caregiver” means an individual who is respon-**
33 **sible for providing care and services to residents of an adult foster home, including but not**
34 **limited to a caregiver and a substitute caregiver.**

35 **(2) In addition to any other training required by law, all caregivers in an adult foster**
36 **home licensed to serve older adults and persons with physical disabilities by the Department**
37 **of Human Services shall, prior to providing direct care to residents of the adult foster home,**
38 **complete training in dementia care that includes:**

39 **(a) Education on the dementia disease process, including the progression of the disease,**
40 **memory loss, psychiatric and behavioral symptoms;**

41 **(b) Techniques for understanding and managing behavioral symptoms, including but not**
42 **limited to reducing the use of antipsychotic medications for nonstandard uses;**

43 **(c) Strategies for addressing the social needs of persons with dementia and providing**
44 **them with meaningful activities; and**

45 **(d) Information on addressing specific aspects of dementia care and ensuring the safety**

1 of residents with dementia, including but not limited to how to:

- 2 (A) Address pain;
- 3 (B) Provide food and fluids;
- 4 (C) Prevent wandering and elopement; and
- 5 (D) Use a person-centered approach.

6 (3) All training related to dementia care provided to caregivers in an adult foster home
7 licensed by the department must reflect current standards for dementia care and be in-
8 formed by the best evidence in the care and treatment of persons with dementia.

9
10 (Medication Packaging)

11
12 **SECTION 31.** (1) An adult foster home licensed by the Department of Human Services
13 shall ensure that prescription drugs dispensed to residents of the adult foster home are
14 packaged in a manner that reduces errors in the tracking of and the administration of the
15 drugs, including but not limited to the use of unit dose systems or blister packs.

16 (2) Subsection (1) of this section does not apply to residents receiving pharmacy benefits
17 through the United States Department of Veterans Affairs if the pharmacy benefits do not
18 reimburse the cost of such packaging.

19
20 (Evacuation of Residents)

21
22 **SECTION 32.** ORS 443.760 is amended to read:

23 443.760. (1) Adult foster homes that are certified as residential homes as defined in ORS 197.660
24 [shall] **must** meet all state and local building, sanitation, utility and fire code requirements appli-
25 cable to single family dwellings. However, by rule, the licensing agency may adopt more stringent
26 standards upon a finding that there is a significant health or safety threat to residents that neces-
27 sitates a standard not imposed on other single family dwellings.

28 (2) In adopting more stringent standards, the licensing agency shall consult with the Department
29 of Consumer and Business Services and the office of the State Fire Marshal to [insure adequate
30 evacuation of residents.] **ensure that the provider has the ability to evacuate all residents from
31 an adult foster home within:**

32 (a) Three minutes; or

33 (b) A period that meets applicable fire, life and safety requirements if the adult foster
34 home has an interior sprinkler system approved by the appropriate regulatory authorities.

35 [(3) As used in this section, "adequate evacuation" means the ability of a provider to evacuate all
36 residents from the dwelling within three minutes.]

37 [(4)] (3) If a licensed provider rents or leases the premises where the adult foster home is lo-
38 cated, the lessor shall charge a flat rate for the lease or rental.

39
40 **PHYSICIAN EDUCATION IN ALZHEIMER'S DISEASE**

41
42 **SECTION 33.** Section 34 of this 2017 Act is added to and made a part of ORS chapter 677.

43 **SECTION 34.** (1) The Oregon Medical Board shall encourage each physician with a spe-
44 cialty in primary care or geriatrics, or another specialty designated by the board, to obtain
45 continuing medical education in the detection and early diagnosis of Alzheimer's disease and

1 in the appropriate prescribing of antipsychotic drugs to treat patients with Alzheimer’s dis-
2 ease.

3 (2) The continuing medical education described in subsection (1) of this section shall be
4 considered relevant continuing medical education for all licensees of the board and the hours
5 may be applied to any required continuing medical education requirements.

6
7 **DEFINITIONS**

8
9 **SECTION 35.** ORS 443.400 is amended to read:

10 443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise:

11 [(1) “Director” means the director of the licensing agency for the residential facility.]

12 (1) **“Behavioral health needs” means mental, emotional or behavioral disturbances.**

13 (2) **“Conversion facility” means a facility that has applied for, or been issued, a conver-**
14 **sion facility license as described in section 20 of this 2017 Act.**

15 (3) **“Direct care staff” means the employees of a residential facility whose primary re-**
16 **sponsibilities are to provide personal care services to residents, including but not limited to:**

17 (a) **Administering medications;**

18 (b) **Coordinating resident-focused activities;**

19 (c) **Supervising and supporting residents;**

20 (d) **Supporting activities of daily living, including but not limited to bathing, dressing,**
21 **eating and transferring; and**

22 (e) **Serving but not preparing meals.**

23 [(2)] (4) **“Licensing agency” means:**

24 (a) The Department of Human Services, if the residential facility that is licensed, or that the
25 Director of Human Services determines should be licensed, is a residential care facility, residential
26 training facility or residential training home; or

27 (b) The Oregon Health Authority, if the residential facility that is licensed, or that the Director
28 of the Oregon Health Authority determines should be licensed, is a residential treatment facility or
29 residential treatment home.

30 [(3)] (5) **“Resident” means any individual residing in a facility who receives residential care,**
31 **treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be**
32 **a resident if the individual is related by blood or marriage within the fourth degree as determined**
33 **by civil law to the person licensed to operate or maintain the facility.**

34 [(4)] (6) **“Residential care” means services such as supervision; protection; assistance while**
35 **bathing, dressing, grooming or eating; management of money; transportation; recreation; and the**
36 **providing of room and board.**

37 [(5)] (7) **“Residential care facility” means a facility that provides[, for six or more socially de-**
38 **pendent individuals or individuals with physical disabilities,] residential care in one or more buildings**
39 **on contiguous properties[.];**

40 (a) **For six or more socially dependent individuals or individuals with physical disabilities;**
41 **or**

42 (b) **For fewer than six socially dependent individuals or individuals with physical disabil-**
43 **ities if the purpose of the facility is to serve individuals with co-occurring behavioral health**
44 **needs who are more appropriately served in smaller settings.**

45 [(6)] (8) **“Residential facility” means a residential care facility, residential training facility, res-**

1 identical treatment facility, residential training home, [or] residential treatment home **or conversion**
2 **facility**.

3 [(7)] (9) “Residential training facility” means a facility that provides, for six or more individuals
4 with mental retardation or other developmental disabilities, residential care and training in one or
5 more buildings on contiguous properties.

6 [(8)] (10) “Residential training home” means a facility that provides, for five or fewer individuals
7 with mental retardation or other developmental disabilities, residential care and training in one or
8 more buildings on contiguous properties, when so certified and funded by the Department of Human
9 Services.

10 [(9)] (11) “Residential treatment facility” means a facility that provides, for six or more indi-
11 viduals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential
12 care and treatment in one or more buildings on contiguous properties.

13 [(10)] (12) “Residential treatment home” means a facility that provides for five or fewer indi-
14 viduals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential
15 care and treatment in one or more buildings on contiguous properties.

16 [(11)] (13) “Training” means the systematic, planned maintenance, development or enhancement
17 of self-care skills, social skills or independent living skills, or the planned sequence of systematic
18 interactions, activities or structured learning situations designed to meet each resident’s specified
19 needs in the areas of physical, social, emotional and intellectual growth.

20 [(12)] (14) “Treatment” means a planned, individualized program of medical, psychological or
21 rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emo-
22 tional, physical or other symptoms or social, educational or vocational disabilities resulting from or
23 related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

24
25 **CONFORMING AMENDMENTS**

26
27 **SECTION 36.** ORS 409.720 is amended to read:

28 409.720. (1) As used in this section:

29 (a) “Adult foster home” has the meaning given that term in ORS 443.705 (1).

30 (b) “Health care facility” has the meaning given that term in ORS 442.015.

31 (c) “Residential facility” has the meaning given that term in ORS 443.400 [(6)].

32 (2) Every adult foster home, health care facility and residential facility licensed or registered
33 by the Department of Human Services shall:

34 (a) Adopt a plan to provide for the safety of persons who are receiving care at or are residents
35 of the home or facility in the event of an emergency that requires immediate action by the staff of
36 the home or facility due to conditions of imminent danger that pose a threat to the life, health or
37 safety of persons who are receiving care at or are residents of the home or facility; and

38 (b) Provide training to all employees of the home or facility about the responsibilities of the
39 employees to implement the plan required by this section.

40 (3) The department shall adopt by rule the requirements for the plan and training required by
41 this section. The rules adopted shall include, but are not limited to, procedures for the evacuation
42 of the persons who are receiving care at or are residents of the adult foster home, health care fa-
43 cility or residential facility to a place of safety when the conditions of imminent danger require re-
44 location of those persons.

45 **SECTION 37.** ORS 430.216 is amended to read:

1 430.216. (1) The Department of Human Services shall report to each odd-numbered year regular
2 session of the Legislative Assembly:

3 (a) On the safety of individuals receiving developmental disability services including, but not
4 limited to:

5 (A) The average turnover of direct care workers in service settings.

6 (B) A summary of the training provided by the department or its contractors to direct care
7 workers in service settings.

8 (C) A summary of the core competencies required of direct care workers in service settings by
9 the state for licensing or certification.

10 (D) A summary of the average wages of direct care workers in service settings, presented by
11 type of services provided.

12 (E) The number of complaints of abuse filed as required by ORS 430.765 and received by the
13 department under ORS 430.743, reported by type of allegation.

14 (F) The number of direct care workers in service settings who were subject to criminal or civil
15 action involving an individual with a developmental disability.

16 (G) The number of deaths, serious injuries, sexual assaults and rapes alleged to have occurred
17 in service settings.

18 (b) A schedule of all license fees and civil penalties established by the department by rule pur-
19 suant to ORS [441.995,] 443.455 and 443.790.

20 (2) The department shall provide the report described in subsection (1)(a) of this section to the
21 appropriate legislative committees, the Oregon Council on Developmental Disabilities and to the
22 agency designated to administer the state protection and advocacy system under ORS 192.517.

23 (3) As used in this section, "service settings" means any of the following that provide develop-
24 mental disability services:

25 (a) An adult foster home as defined in ORS 443.705;

26 (b) A residential facility as defined in ORS 443.400;

27 (c) A location where home health services, as defined in ORS 443.014, are received by a resident;

28 (d) A location where in-home care services, as defined in ORS 443.305, are received by a resi-
29 dent; and

30 (e) A domiciliary care facility as defined in ORS 443.205.

31 **SECTION 38.** ORS 441.303 is amended to read:

32 441.303. (1) The Facility Fund is established in the State Treasury, separate and distinct from
33 the General Fund, consisting of payments made by facilities to the Department of Human Services
34 as specified in this section. Interest earned by the Facility Fund shall be credited to the fund.
35 Moneys in the fund are continuously appropriated to the department for the purpose of paying:

36 (a) The reasonable expenses of a trustee appointed under ORS 441.281 if funds collected by a
37 trustee under ORS 441.289 and 441.293 are insufficient to meet those expenses; or

38 (b) The reasonable expenses of a temporary manager appointed under ORS 441.333 if funds col-
39 lected by a temporary manager are insufficient to meet those expenses.

40 (2) Each licensee shall pay annually to the department an amount not to exceed the annual li-
41 cense fee **or application fee** for the facility under ORS 441.020 or 443.415. The facility payment shall
42 be due annually on a date fixed by the department and enforced in the same manner as the license
43 fee for the particular facility is payable and enforceable. The amount of payments shall be set so
44 as to acquire in the fund the \$750,000 described in subsection (3) of this section.

45 (3) Whenever the balance of moneys in the fund established under this section reaches \$750,000,

1 the department shall discontinue collecting the facility payment described in subsection (2) of this
2 section. However, whenever the fund balance falls below \$600,000, the department shall reinstitute
3 the facility payment described in subsection (2) of this section until the fund is restored to at least
4 \$750,000. The department's notice of intent to reinstitute the facility payment shall include a sum-
5 mary of the amounts expended by the department from the fund and the balance of the fund on the
6 date of the notice. The department may use reasonable amounts from the fund necessary to admin-
7 ister the fund.

8 (4) Whenever the department is required to use any amount in the fund to meet the expenses
9 of a trustee appointed under ORS 441.281 or a temporary manager appointed under ORS 441.333, the
10 amount used shall constitute a loan to the facility and shall be repayable to the fund under such
11 terms and conditions as the facility and the department agree. The rate of interest shall be set by
12 the department to reflect the prevailing market rate on similar loans. Interest earned under this
13 subsection shall be credited to the fund established under this section.

14 (5) The facility payment described in subsection (2) of this section shall be considered an al-
15 lowable cost in setting the reimbursement rates of a facility by the department.

16 (6) The court may order that the trustee file an undertaking with the clerk of the court. The
17 fund established under this section may serve as surety for the undertaking.

18 **SECTION 39.** ORS 441.367 is amended to read:

19 441.367. (1) The Department of Human Services by rule shall require long term care facilities
20 licensed under ORS 441.020 to provide written and oral notice before or at the time of admission to
21 any resident who does not receive medical assistance under ORS chapter 414, specifying:

22 (a) The base daily rate and any additional expenses reasonably to be expected including medical
23 supplies, pharmacy and doctor visits and the charges for incontinency care, feeding and laundry; and

24 (b) The long term care facility's policy regarding residents who become unable to pay facility
25 charges by reason of exhaustion of all income and resources to or below the level of eligibility for
26 medical assistance.

27 (2) A long term care facility shall give 30 days' notice in writing to all residents of changes in
28 additional expenses or charges.

29 (3) The Director of Human Services may impose a civil penalty for violation of subsection (1)
30 of this section under ORS 441.710 [(1)(b)] (1)(a)(C).

31 **SECTION 40.** ORS 441.408 is amended to read:

32 441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry
33 into residential facilities at any time considered necessary and reasonable by the ombudsman or the
34 designee for the purpose of:

35 (a) Investigating and resolving complaints made by residents or made on their behalf;

36 (b) Interviewing residents, with their consent, in private;

37 (c) Offering the services of the ombudsman or the designee to any resident, in private;

38 (d) Interviewing employees or agents of the facility;

39 (e) Consulting regularly with the facility administration; and

40 (f) Providing services authorized by law or by rule.

41 (2) The Long Term Care Ombudsman shall have access to any resident's records, and to records
42 of any public agency necessary to the duties of the ombudsman, including records on patient abuse
43 complaints made pursuant to ORS 430.735 to 430.765[,] and 441.630 to 441.680 [and 441.995]. The
44 provisions of ORS 192.553 to 192.581 are not intended to limit the access of the Long Term Care
45 Ombudsman to medical records of residents of residential facilities. Designees may have access to

1 individual resident's records, including medical records as authorized by the resident or resident's
2 legal representative, if needed to investigate a complaint.

3 (3) Entry and investigation authorized by this section shall be done in a manner that does not
4 disrupt significantly the providing of nursing, residential or other personal care or treatment to
5 residents.

6 (4) The ombudsman or the designee must show identification to the person in charge of the fa-
7 cility. The resident shall have the right to refuse to communicate with the ombudsman or the
8 designee. The refusal shall be made directly to the ombudsman or the designee and not through an
9 intermediary.

10 (5) The resident shall have the right to participate in planning any course of action to be taken
11 on behalf of the resident by the ombudsman or the designee.

12 **SECTION 41.** ORS 441.630 is amended to read:

13 441.630. As used in ORS 441.630 to 441.680 [and 441.995]:

14 (1) "Abuse" means:

15 (a) Any physical injury to a resident of a long term care facility which has been caused by other
16 than accidental means.

17 (b) Failure to provide basic care or services, which failure results in physical harm or unrea-
18 sonable discomfort or serious loss of human dignity.

19 (c) Sexual contact with a resident caused by an employee, agent or other resident of a long term
20 care facility by force, threat, duress or coercion.

21 (d) Illegal or improper use of a resident's resources for the personal profit or gain of another
22 person.

23 (e) Verbal or mental abuse as prohibited by federal law.

24 (f) Corporal punishment.

25 (g) Involuntary seclusion for convenience or discipline.

26 (2) "Abuse complaint" means any oral or written communication to the department, one of its
27 agents or a law enforcement agency alleging abuse.

28 (3) "Department" means the Department of Human Services or a designee of the department.

29 (4) "Facility" means a long term care facility, as defined in ORS 442.015.

30 (5) "Law enforcement agency" means:

31 (a) Any city or municipal police department.

32 (b) A police department established by a university under ORS 352.121 or 353.125.

33 (c) Any county sheriff's office.

34 (d) The Oregon State Police.

35 (e) Any district attorney.

36 (6) "Public or private official" means:

37 (a) Physician, including any intern or resident.

38 (b) Licensed practical nurse or registered nurse.

39 (c) Employee of the Department of Human Services, a community developmental disabilities
40 program or a long term care facility or person who contracts to provide services to a long term care
41 facility.

42 (d) Employee of the Oregon Health Authority, local health department or community mental
43 health program.

44 (e) Peace officer.

45 (f) Member of the clergy.

- 1 (g) Regulated social worker.
- 2 (h) Physical, speech and occupational therapists.
- 3 (i) Legal counsel for a resident or guardian or family member of the resident.
- 4 (j) Member of the Legislative Assembly.
- 5 (k) Personal support worker, as defined by rule adopted by the Home Care Commission.
- 6 (L) Home care worker, as defined in ORS 410.600.

7 **SECTION 42.** ORS 441.637 is amended to read:

8 441.637. (1) The Department of Human Services shall implement the provisions of ORS 441.630
9 to 441.680 [and 441.995] and shall adopt such rules as are reasonably necessary for the enforcement
10 of ORS 441.630 to 441.680 [and 441.995].

11 (2) Prior to proceeding with the procedures for notice prescribed under ORS 183.335, the de-
12 partment shall submit any proposed rules to an advisory group consisting of representatives of long
13 term care providers, long term care advocates, relevant licensing boards and the department. The
14 department shall consider and respond to the comments of the advisory group that pertain to any
15 proposed rules before the department adopts the rules.

16 **SECTION 43.** ORS 441.680 is amended to read:

17 441.680. A resident who in good faith is under treatment solely by spiritual means through
18 prayer in accordance with the tenets and practices of a recognized church or religious denomination
19 by a duly accredited practitioner thereof shall, for this reason alone, not be considered an abused
20 resident within the meaning of ORS 441.630 to 441.680 [and 441.995].

21 **SECTION 44.** ORS 441.745 is amended to read:

22 441.745. All penalties recovered under ORS 441.710 to 441.740 [and 441.995] shall be deposited
23 in the Quality Care Fund established in ORS 443.001.

24 **SECTION 45.** ORS 443.452 is amended to read:

25 443.452. (1) The [director] **Director of Human Services** shall waive the requirements of ORS
26 443.410 for a residential care facility caring for residents with physical disabilities if:

- 27 (a) Each resident is over 16 years of age;
- 28 (b) No more than five individuals with physical disabilities reside in any one building of the fa-
29 cility; and
- 30 (c) The residential **care** facility complies with the applicable requirements of the State Fire
31 Marshal.

32 (2) As used in this section, "building" means any structure that does not share a common wall
33 or roof with another structure.

34
35 **REPEALS**

36
37 **SECTION 46.** ORS 441.995 and 443.885 are repealed.

38 **SECTION 47.** Section 1 of this 2017 Act is repealed on December 31, 2019.

39
40 **EXPENDITURE LIMITATIONS**

41
42 **SECTION 48.** Notwithstanding any other law limiting expenditures, the limitation on
43 expenditures established by section 2 (3), chapter ___, Oregon Laws 2017 (Enrolled Senate
44 Bill 5526) for the biennium beginning July 1, 2017, as the maximum limit for payment of ex-
45 penses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare

1 receipts and including federal funds for indirect cost recovery, Social Security Supplemental
2 Security Income recoveries and the Child Care and Development Fund, but excluding lottery
3 funds and federal funds not described in this section, collected or received by the Department
4 of Human Services, for aging and people with disabilities and intellectual/developmental dis-
5 abilities programs, is increased by \$1,274,528.

6 SECTION 49. Notwithstanding any other law limiting expenditures, the limitation on
7 expenditures established by section 3 (3), chapter __, Oregon Laws 2017 (Enrolled Senate
8 Bill 5526) for the biennium beginning July 1, 2017, as the maximum limit for payment of ex-
9 penses from federal funds, excluding federal funds described in section 2 of this 2017 Act,
10 collected or received by the Department of Human Services, for aging and people with disa-
11 bilities and intellectual/developmental disabilities programs, is increased by \$1,271,273.

12
13 **CAPTIONS**

14
15 SECTION 50. The unit captions used in this 2017 Act are provided only for the conven-
16 ience of the reader and do not become part of the statutory law of this state or express any
17 legislative intent in the enactment of this 2017 Act.