

Enrolled
House Bill 2650

Sponsored by Representative BARKER; Representative OLSON (Presession filed.)

CHAPTER

AN ACT

Relating to criminal records checks; creating new provisions; amending ORS 443.004; repealing section 15, chapter 93, Oregon Laws 2010; and declaring an emergency.

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

SECTION 1. ORS 443.004, as amended by sections 12 and 13, chapter 93, Oregon Laws 2010, is amended to read:

443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete a criminal records check under ORS 181.534 on:

(a) An employee of a residential facility[,] **or an** adult foster home[, *in-home care agency or home health agency*];

(b) Any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of [*home health, in-home care or*] support services or a resident of an adult foster home or a residential facility; and

(c) A home care worker registering with the Home Care Commission or renewing a registration with the Home Care Commission.

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

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

(c) The authority shall prescribe by rule the process for conducting a criminal background check.

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

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.054 or 167.057;

(b) Of a crime listed in ORS 181.594;

(c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

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

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

[(3) Subsection (2) of this section does not apply to a peer support specialist.]

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

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

(6) Upon the request of a mental health or substance abuse treatment provider, the department or authority shall maintain a record of the results of any fitness determination made under ORS 181.534 (11) and (12). The department or authority may disclose the record only to a person the provider specifically authorizes, by a written release, to receive the information.

[(4)] **(7) If the department or authority has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department or authority shall notify, in writing, the employer and the employee or potential employee.**

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

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

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

(c) "Home health agency" has the meaning given that term in ORS 443.005.

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

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

(A) A peer support specialist;

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

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

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

[(e)] **(f) "Peer support specialist" means a person who:**

(A) Is providing peer support services as defined by the authority by rule;

(B) Is under the supervision of a qualified clinical supervisor;

(C) Has completed training required by the authority; and

(D) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.

[(f)] **(g) "Residential facility" has the meaning given that term in ORS 443.400.**

SECTION 2. The amendments to ORS 443.004 by section 1 of this 2011 Act apply to individuals providing care or treatment paid for with public funds before, on or after the effective date of this 2011 Act.

SECTION 3. Section 15, chapter 93, Oregon Laws 2010, is repealed.

SECTION 4. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by House May 4, 2011

Received by Governor:

Repassed by House June 17, 2011

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Ramona Kenady Line, Chief Clerk of House

Approved:

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Bruce Hanna, Speaker of House

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John Kitzhaber, Governor

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Arnie Roblan, Speaker of House

Filed in Office of Secretary of State:

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Passed by Senate June 15, 2011

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Peter Courtney, President of Senate

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Kate Brown, Secretary of State