

# House Bill 2684

Sponsored by Representative RAYFIELD, Senator STEINER HAYWARD (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Establishes minimum hourly wage rate of \$15 per hour for employees who provide direct care to residents of residential training facility or residential training home.

Requires residential training facility or residential training home to submit annual financial statement to Department of Human Services.

Modifies civil penalties for occurrences of substantiated abuse in residential training facility or residential training home.

Authorizes private action against residential training facility or residential training home for retaliation for reports of abuse of adult.

Directs Director of Human Services to adopt rules requiring residential training facility or residential training home to employ staff sufficient to meet individual needs of resident.

Modifies licensing fee for residential training home.

Directs director or authorized representative to inspect residential training facility or residential training home at least annually.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to residential facilities; creating new provisions; amending ORS 430.755, 443.415, 443.435,  
3 443.450, 443.455 and 659A.885; and declaring an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2017 Act are added to and made a part of ORS 443.400**  
6 **to 443.455.**

7 **SECTION 2. (1) The minimum hourly wage rate for every employee of a residential**  
8 **training facility or residential training home who provides direct care to residents of the**  
9 **facility or home is \$15 per hour.**

10 **(2) The Department of Human Services may adopt rules implementing this section.**

11 **SECTION 3. In accordance with rules adopted by the Department of Human Services, a**  
12 **residential training facility or residential training home shall submit an annual financial**  
13 **statement to the department no later than October 31 of each year. The statement must**  
14 **include, for the 12 months ending on June 30 of that year:**

15 **(1) Accounting information prescribed by the department by rule.**

16 **(2) The identity of the owner of real property used by the residential training facility or**  
17 **residential training home and copies of any lease agreements or contracts entered into by**  
18 **the facility or home.**

19 **(3) An accounting of payments made by the residential training facility or residential**  
20 **training home to subcontractors identifying the services rendered.**

21 **(4) An accounting of payments made by the residential training facility or residential**  
22 **training home to service providers funded by Medicare.**

23 **(5) The number of employees at the residential training facility or residential training**  
24 **home.**

**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       **(6) An accounting of the hours worked by and compensation paid to employees who pro-**  
 2 **vide direct care at the residential training facility or residential training home.**

3       **(7) Any other information required by the department by rule.**

4       **SECTION 4.** ORS 443.455 is amended to read:

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

8       (2)(a) The Director of Human Services shall by rule prescribe a schedule of penalties for resi-  
 9 dential care facilities, residential training facilities and residential training homes that are not in  
 10 compliance with ORS 443.400 to 443.455.

11       **(b) The Department of Human Services shall impose a civil penalty of not less than \$2,500**  
 12 **for each occurrence of substantiated abuse that resulted in the death, serious injury, rape**  
 13 **or sexual abuse of a resident of a residential training facility or residential training home.**  
 14 **The civil penalty may not exceed \$15,000 in any 90-day period.**

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

18       (4) If the department or authority investigates and makes a finding of abuse arising from delib-  
 19 erate or other than accidental action or inaction that is likely to cause a negative outcome by a  
 20 person with a duty of care toward a resident of a residential facility and if the abuse resulted in the  
 21 death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose  
 22 a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed  
 23 \$15,000 in any 90-day period. As used in this subsection:

24       (a) “Negative outcome” includes serious injury, rape, sexual abuse or death.

25       (b) “Rape” means rape in the first, second or third degree as described in ORS 163.355, 163.365  
 26 and 163.375.

27       (c) “Serious injury” means physical injury that creates a substantial risk of death or that causes  
 28 serious and protracted disfigurement, protracted impairment of health or protracted loss or impair-  
 29 ment of the function of any bodily organ.

30       (d) “Sexual abuse” means any form of sexual contact between an employee of a residential fa-  
 31 cility or a person providing services in the residential facility and a resident of that facility, in-  
 32 cluding but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual  
 33 harassment.

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

37       **SECTION 5. The amendments to ORS 443.455 by section 4 of this 2017 Act apply to oc-**  
 38 **currences of substantiated abuse occurring on or after January 1, 2018.**

39       **SECTION 6.** ORS 430.755 is amended to read:

40       430.755. (1) A facility, community program or person [*shall*] **may** not retaliate against any per-  
 41 son who reports in good faith suspected abuse or against the allegedly abused adult with respect to  
 42 any report.

43       **(2) A residential training facility or residential training home, as defined in ORS 443.400,**  
 44 **may not retaliate against any person who reports in good faith suspected abuse or against**  
 45 **the allegedly abused adult with respect to any report. In addition to any other remedy pro-**

1 **vided by law, a residential training facility or residential training home that violates this**  
 2 **subsection is liable in a private action under ORS 659A.885.**

3 [(2)] (3) Any facility, community program or person that retaliates against any person because  
 4 of a report of suspected abuse [shall be] is liable in a private action to that person for actual dam-  
 5 ages and, in addition, a penalty up to \$1,000, notwithstanding any other remedy provided by law.

6 [(3)(a)] (4)(a) Any adverse action is evidence of retaliation if taken within 90 days of a report.

7 (b) For purposes of this subsection, “adverse action” means any action taken by a facility,  
 8 community program or person involved in a report against the person making the report or against  
 9 the adult with respect to whom the report was made because of the report, and includes but is not  
 10 limited to:

11 (A) Discharge or transfer from the facility, except for clinical reasons;

12 (B) Discharge from or termination of employment;

13 (C) Demotion or reduction in remuneration for services; or

14 (D) Restriction or prohibition of access to the facility or its residents.

15 **SECTION 7.** ORS 659A.885, as amended by section 5, chapter 73, Oregon Laws 2016, is amended  
 16 to read:

17 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
 18 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
 19 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
 20 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
 21 court may order back pay in an action under this subsection only for the two-year period imme-  
 22 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
 23 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
 24 year period immediately preceding the filing of the action. In any action under this subsection, the  
 25 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
 26 cept as provided in subsection (3) of this section:

27 (a) The judge shall determine the facts in an action under this subsection; and

28 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall  
 29 review the judgment pursuant to the standard established by ORS 19.415 (3).

30 (2) An action may be brought under subsection (1) of this section alleging a violation of ORS  
 31 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.233, 476.574, 652.355, 653.060, 653.601  
 32 to 653.661, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088,  
 33 659A.103 to 659A.145, 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228,  
 34 659A.230, 659A.233, 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306,  
 35 659A.309, 659A.315, 659A.318, 659A.320, 659A.355, 659A.421, 653.547 or 653.549.

36 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 37 **430.755 (2)**, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069, 659A.082, 659A.103 to  
 38 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262, 659A.290, 659A.318,  
 39 659A.421, 653.547 or 653.549:

40 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
 41 compensatory damages or \$200, whichever is greater, and punitive damages;

42 (b) At the request of any party, the action shall be tried to a jury;

43 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-  
 44 ment pursuant to the standard established by ORS 19.415 (1); and

45 (d) Any attorney fee agreement shall be subject to approval by the court.

1 (4) In any action under subsection (1) of this section alleging a violation of ORS 652.355 or  
 2 653.060, the court may award, in addition to the relief authorized under subsection (1) of this section,  
 3 compensatory damages or \$200, whichever is greater.

4 (5) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574  
 5 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this  
 6 section, compensatory damages or \$250, whichever is greater.

7 (6) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,  
 8 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil  
 9 penalty in the amount of \$720.

10 (7) Any individual against whom any distinction, discrimination or restriction on account of  
 11 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
 12 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
 13 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
 14 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
 15 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
 16 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
 17 section:

18 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
 19 compensatory and punitive damages;

20 (b) The operator or manager of the place of public accommodation, the employee or person  
 21 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all  
 22 damages awarded in the action;

23 (c) At the request of any party, the action shall be tried to a jury;

24 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

25 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-  
 26 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable  
 27 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;  
 28 and

29 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the  
 30 judgment pursuant to the standard established by ORS 19.415 (1).

31 (8) When the commissioner or the Attorney General has reasonable cause to believe that a  
 32 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 33 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied  
 34 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
 35 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
 36 manner as a person or group of persons may file a civil action under this section. In a civil action  
 37 filed under this subsection, the court may assess against the respondent, in addition to the relief  
 38 authorized under subsections (1) and (3) of this section, a civil penalty:

39 (a) In an amount not exceeding \$50,000 for a first violation; and

40 (b) In an amount not exceeding \$100,000 for any subsequent violation.

41 (9) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
 42 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
 43 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
 44 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
 45 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court

determines that the commissioner had no objectively reasonable basis for asserting the claim or for appealing an adverse decision of the trial court.

(10) In an action under subsection (1) or (8) of this section alleging a violation of ORS 659A.145 or 659A.421 or discrimination under federal housing law:

(a) “Aggrieved person” includes a person who believes that the person:

(A) Has been injured by an unlawful practice or discriminatory housing practice; or

(B) Will be injured by an unlawful practice or discriminatory housing practice that is about to occur.

(b) An aggrieved person in regard to issues to be determined in an action may intervene as of right in the action. The Attorney General may intervene in the action if the Attorney General certifies that the case is of general public importance. The court may allow an intervenor prevailing party costs and reasonable attorney fees at trial and on appeal.

**SECTION 8. The amendments to ORS 430.755 and 659A.885 by sections 6 and 7 of this 2017 Act apply to causes of action arising on or after January 1, 2018.**

**SECTION 9.** ORS 443.450 is amended to read:

443.450. (1)(a) For a residential care facility, residential training facility or residential training home, the Director of Human Services shall adopt rules governing:

[(a)] (A) The physical properties of the facility or home;

[(b)] (B) Storage, preparation and serving of food;

[(c)] (C) Care or training to be provided;

[(d)] (D) The number, experience and training of the staff; and

[(e)] (E) Any other factors affecting the care or training provided.

**(b) For a residential training facility or residential training home, the director shall adopt rules under paragraph (a) of this subsection that require the facility or home to employ staff sufficient to meet the individual needs of the residents of the facility or home.**

(2) For a residential treatment facility or residential treatment home, the Director of the Oregon Health Authority shall adopt rules governing:

(a) The physical properties of the facility or home;

(b) Storage, preparation and serving of food;

(c) Treatment to be provided;

(d) The number, experience and training of the staff; and

(e) Any other factors affecting the treatment provided.

(3) Distinct rules shall be adopted for homes of five or fewer residents, for facilities of six or more but fewer than 16 residents, and for facilities for 16 or more residents. The rules shall differentiate among categories of residents.

(4) For purposes of this section, “categories” refers to different populations of residents, differentiated by, but not limited to, age and need, as defined by the Department of Human Services or the Oregon Health Authority by rule.

**SECTION 10.** ORS 443.415 is amended to read:

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

(2) The fee required under subsection (1) of this section for facilities:

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

1 **(b) Defined in ORS 443.400 (8), shall be \$50.**

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

3 [(c)] (d) Defined in ORS 443.400 (5) with:

4 (A) One to 15 beds, shall be \$360.

5 (B) Sixteen to 49 beds, shall be \$520.

6 (C) Fifty to 99 beds, shall be \$1,040.

7 (D) One hundred to 150 beds, shall be \$1,340.

8 (E) More than 150 beds, shall be \$1,500.

9 (3) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.  
 10 The licensing agency shall issue a license to any applicant for operation of a residential facility in  
 11 compliance with ORS 443.002 and 443.400 to 443.455 and the rules of the licensing agency. Licensure  
 12 may be denied when a residential facility is not in compliance with ORS 443.002 or 443.400 to  
 13 443.455 or the rules of the licensing agency. Licensure shall be denied if the State Fire Marshal or  
 14 other authority has given notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9)  
 15 pursuant to ORS 479.220.

16 **SECTION 11. The amendments to ORS 443.415 by section 10 of this 2017 Act apply to ap-**  
 17 **lications for licensure made on or after January 1, 2018.**

18 **SECTION 12.** ORS 443.435 is amended to read:

19 443.435. (1) The Director of Human Services or authorized representative shall periodically visit  
 20 and inspect every residential care facility[, *residential training facility or residential training home*]  
 21 to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and  
 22 the rules of the director, and to consult with and advise management concerning methods of care,  
 23 treatment, training, records, housing and equipment. Employees of the Department of Human Ser-  
 24 vices and the State Fire Marshal or authorized representative on request shall be permitted access  
 25 to the premises and records of individuals in the facility [*or home*] that are pertinent to fire safety.

26 **(2) The Director of Human Services or authorized representative shall visit and inspect**  
 27 **every residential training facility and residential training home at least annually to deter-**  
 28 **mine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and**  
 29 **the rules of the director, and to consult with and advise management concerning methods**  
 30 **of care, treatment, training, records, housing and equipment. Employees of the Department**  
 31 **of Human Services and the State Fire Marshal or authorized representative on request shall**  
 32 **be permitted access to the premises and records of individuals in the facility or home that**  
 33 **are pertinent to fire safety.**

34 [(2)] (3) The Director of the Oregon Health Authority or authorized representative shall peri-  
 35 odically visit and inspect every residential treatment facility or residential treatment home to de-  
 36 termine whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and the  
 37 rules of the director, and to consult with and advise management concerning methods of care,  
 38 treatment, training, records, housing and equipment. Employees of the Oregon Health Authority and  
 39 the State Fire Marshal or authorized representative on request shall be permitted access to the  
 40 premises and records of individuals in the facility or home that are pertinent to fire safety.

41 **SECTION 13. (1) Sections 2 and 3 of this 2017 Act and the amendments to ORS 430.755,**  
 42 **443.415, 443.435, 443.450, 443.455 and 659A.885 by sections 4, 6, 7, 9, 10 and 12 of this 2017 Act**  
 43 **become operative on January 1, 2018.**

44 **(2) The Department of Human Services may take any action before the operative date**  
 45 **specified in subsection (1) of this section to enable the department to exercise, on and after**

1 the operative date specified in subsection (1) of this section, all the duties, functions and  
2 powers conferred on the department by sections 2 and 3 of this 2017 Act and the amendments  
3 to ORS 430.755, 443.415, 443.435, 443.450, 443.455 and 659A.885 by sections 4, 6, 7, 9, 10 and 12  
4 of this 2017 Act.

5 SECTION 14. This 2017 Act being necessary for the immediate preservation of the public  
6 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect  
7 on its passage.

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