

Senate Bill 917

Sponsored by Senator GELSER, Representative LIVELY; Senator MONNES ANDERSON

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**.

Prohibits long term care facilities, residential facilities, adult foster homes, child care facilities, child-caring agencies, foster homes, youth care centers, youth offender foster homes or other entities that are licensed, certified or registered to provide care to children, youth, individuals with disabilities or older adults from interfering with disclosure of information by prospective employees, employees or volunteers about treatment of individuals cared for by entity to regulatory agencies, law enforcement authorities or persons acting on behalf of individual.

Makes interfering with disclosure of information about treatment of individual cared for by entity unlawful employment practice.

A BILL FOR AN ACT

1
2 Relating to employers of care providers; creating new provisions; and amending ORS 418.992 and
3 441.710.

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

5 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 441.**

6 **SECTION 2. (1) A long term care facility may not interfere with the disclosure of infor-**
7 **mation by a prospective employee, an employee or a volunteer concerning the treatment of**
8 **a resident in the long term care facility to:**

9 (a) **The Long Term Care Ombudsman, the Department of Human Services, a law**
10 **enforcement agency or other entity with legal or regulatory authority over the long term**
11 **care facility; or**

12 (b) **A family member, guardian, friend or other person who is acting on behalf of the**
13 **resident.**

14 (2) **A long term care facility interferes with the disclosure of information regarding the**
15 **treatment of a resident in the long term care facility by:**

16 (a) **Asking or requiring the prospective employee, employee or volunteer to sign a**
17 **nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-**
18 **unteer from disclosing information concerning the treatment of a resident in the long term**
19 **care facility;**

20 (b) **Training an employee or volunteer not to disclose information concerning the treat-**
21 **ment of a resident in the long term care facility; or**

22 (c) **Taking actions or communicating to the prospective employee, employee or volunteer**
23 **that the prospective employee, employee or volunteer may not disclose information con-**
24 **cerning the treatment of a resident in the long term care facility.**

25 (3) **The department shall revoke or suspend the license of a long term care facility that**
26 **is found to have violated subsection (1) of this section.**

27 **SECTION 3. ORS 441.710 is amended to read:**

28 441.710. (1)(a) In addition to any other liability or penalty provided by law, the Director of Hu-

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 man Services may impose a civil penalty on a person pursuant to ORS 441.731 for any of the fol-
2 lowing:

3 (A) Violation of any of the terms or conditions of a license issued under ORS 441.015 to 441.087,
4 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a long term
5 care facility, as defined in ORS 442.015.

6 (B) Violation of ORS 441.630 to 441.680.

7 (C) Violation of any rule or general order of the Department of Human Services that pertains
8 to a long term care facility.

9 (D) Violation of any final order of the director that pertains specifically to the long term care
10 facility owned or operated by the person incurring the penalty.

11 (E) Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

12 (F) Violation of ORS 443.880 or 443.881 if the facility is a residential care facility.

13 **(G) Violation of section 2 of this 2019 Act.**

14 (b) In addition to any other liability or penalty provided by law, the director may impose a civil
15 penalty on a residential training facility or residential training home for violation of ORS 443.880
16 or 443.881. The director shall prescribe a reasonable time for elimination of a violation by a resi-
17 dential training facility or residential training home:

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

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

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

24 (3) **Unless a violation is found on two consecutive surveys of a long term care facility,** the
25 Director of Human Services may not impose a penalty under subsection (1) of this section for vio-
26 lations other than:

27 (a) Those involving:

28 (A) Direct patient care or feeding[.];

29 (B) An adequate staff to patient ratio[.]; **or**

30 (C) Sanitation [*involving*] **related to** direct patient care [*or*];

31 (b) A violation of ORS 441.605 or **of the rules adopted by ORS 441.610;**

32 (c) **A violation of ORS 443.880 or 443.881** [*or of the rules required to be adopted by ORS 441.610*]
33 *unless a violation is found on two consecutive surveys of a long term care facility*; **or**

34 (d) **A violation of section 2 of this 2019 Act.**

35 (4) The Director of the Oregon Health Authority may not impose a penalty under subsection (2)
36 of this section for violations other than those involving direct patient care or feeding, an adequate
37 staff to patient ratio, sanitation involving direct patient care or a violation of ORS 443.880 or
38 443.881. The director in every case shall prescribe a reasonable time for elimination of a violation:

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

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

42 **SECTION 4. Section 5 of this 2019 Act is added to and made a part of ORS 443.400 to**
43 **443.455.**

44 **SECTION 5. (1) A residential facility may not interfere with the disclosure of information**
45 **by a prospective employee, an employee or a volunteer concerning the treatment of a resi-**

1 dent in the residential facility to:

2 (a) The Long Term Care Ombudsman, the Residential Facilities Ombudsman, the De-
 3 partment of Human Services, a law enforcement agency or other entity with legal or regu-
 4 latory authority over the residential facility; or

5 (b) A family member, guardian, friend or other person who is acting on behalf of the
 6 resident.

7 (2) A residential facility interferes with the disclosure of information regarding the
 8 treatment of a resident in the residential facility by:

9 (a) Asking or requiring the prospective employee, employee or volunteer to sign a
 10 nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-
 11 unteer from disclosing information concerning the treatment of a resident in the residential
 12 facility;

13 (b) Training an employee or volunteer not to disclose information concerning the treat-
 14 ment of a resident in the residential facility; or

15 (c) Taking actions or communicating to the prospective employee, employee or volunteer
 16 that the prospective employee, employee or volunteer may not disclose information con-
 17 cerning the treatment of a resident in the residential facility.

18 (3) The licensing agency shall revoke or suspend the license of a residential facility that
 19 is found to have violated subsection (1) of this section.

20 **SECTION 6.** In addition to any other liability or penalty provided by law, the licensing
 21 agency, as defined in ORS 443.400, may impose a civil penalty, as provided in ORS 183.745,
 22 on a person for a violation of section 5 or 8 of this 2019 Act. The civil penalty is \$500 for each
 23 violation.

24 **SECTION 7.** Section 8 of this 2019 Act is added to and made a part of ORS 443.705 to
 25 443.825.

26 **SECTION 8.** (1) An adult foster home may not interfere with the disclosure of informa-
 27 tion by a prospective employee, an employee or a volunteer concerning the treatment of a
 28 resident in the adult foster home to:

29 (a) The Long Term Care Ombudsman, the Residential Facilities Ombudsman, the De-
 30 partment of Human Services, a law enforcement agency or other entity with legal or regu-
 31 latory authority over the adult foster home; or

32 (b) A family member, guardian, friend or other person who is acting on behalf of the
 33 resident.

34 (2) An adult foster home interferes with the disclosure of information regarding the
 35 treatment of a resident in the adult foster home by:

36 (a) Asking or requiring the prospective employee, employee or volunteer to sign a
 37 nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-
 38 unteer from disclosing information concerning the treatment of a resident in the adult foster
 39 home;

40 (b) Training an employee or volunteer not to disclose information concerning the treat-
 41 ment of a resident in the adult foster home; or

42 (c) Taking actions or communicating to the prospective employee, employee or volunteer
 43 that the prospective employee, employee or volunteer may not disclose information con-
 44 cerning the treatment of a resident in the adult foster home.

45 (3) The licensing agency shall revoke or suspend the license of an adult foster home that

1 is found to have violated subsection (1) of this section.

2 **SECTION 9.** Section 10 of this 2019 Act is added to and made a part of ORS 329A.250 to
3 329A.450.

4 **SECTION 10.** (1) A child care facility may not interfere with the disclosure of information
5 by a prospective employee, an employee or a volunteer concerning the treatment of a child
6 in the child care facility to:

7 (a) The Office of Child Care, a law enforcement agency or other entity with legal or
8 regulatory authority over the child care facility; or

9 (b) A family member, guardian or other person who is acting on behalf of the resident.

10 (2) A child care facility interferes with the disclosure of information regarding the
11 treatment of a child in the child care facility home by:

12 (a) Asking or requiring the prospective employee, employee or volunteer to sign a
13 nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-
14 unteer from disclosing information concerning the treatment of a child in the child care fa-
15 cility;

16 (b) Training an employee or volunteer not to disclose information concerning the treat-
17 ment of a child in the child care facility; or

18 (c) Taking actions or communicating to the prospective employee, employee or volunteer
19 that the prospective employee, employee or volunteer may not disclose information con-
20 cerning the treatment of a child in the child care facility.

21 (3) The office shall revoke or suspend the certification of a child care facility that is
22 found to have violated subsection (1) of this section.

23 **SECTION 11.** Notwithstanding ORS 329A.992, the Office of Child Care shall impose a civil
24 penalty, as provided in ORS 183.745, for the violation of section 10 of this 2019 Act. The civil
25 penalty is \$500 for each violation.

26 **SECTION 12.** Section 13 of this 2019 Act is added to and made a part of ORS 418.205 to
27 418.327.

28 **SECTION 13.** (1) A child-caring agency may not interfere with the disclosure of infor-
29 mation by a prospective employee, an employee or a volunteer concerning the treatment of
30 a child in the care of the child-caring agency to:

31 (a) The Department of Human Services, a law enforcement agency or other entity with
32 legal or regulatory authority over the child-caring agency; or

33 (b) A family member, guardian or other person who is acting on behalf of the child.

34 (2) A child-caring agency interferes with the disclosure of information regarding the
35 treatment of a child in the care of a child-caring agency by:

36 (a) Asking or requiring the prospective employee, employee or volunteer to sign a
37 nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-
38 unteer from disclosing information concerning the treatment of a child in the care of a
39 child-caring agency;

40 (b) Training an employee or volunteer not to disclose information concerning the treat-
41 ment of a child in the care of a child-caring agency; or

42 (c) Taking actions or communicating to the prospective employee, employee or volunteer
43 that the prospective employee, employee or volunteer may not disclose information con-
44 cerning the treatment of a child in the care of a child-caring agency.

45 (3) The department shall revoke or suspend the license, certification or authorization of

1 **a child-caring agency that is found to have violated subsection (1) of this section.**

2 **SECTION 14.** ORS 418.992 is amended to read:

3 418.992. (1) In addition to any other liability or penalty provided by law, the Director of Human
4 Services may impose a civil penalty on a child-caring agency that is subject to ORS 418.205 to
5 418.327, 418.470, 418.475 or 418.950 to 418.970 for any of the following:

6 (a) Violation of any of the terms or conditions of a license, certificate or other authorization
7 issued under ORS 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970.

8 (b) Violation of any rule adopted by, or general order of, the Department of Human Services that
9 pertains to a child-caring agency.

10 (c) Violation of any final order of the director that pertains specifically to the child-caring
11 agency.

12 (d) Violation of the requirement to have a license, certificate or other authorization under ORS
13 418.205 to 418.327, 418.470, 418.475 or 418.950 to 418.970.

14 **(e) Violation of section 13 of this 2019 Act.**

15 (2) The director shall impose a civil penalty not to exceed \$500, unless otherwise required by
16 law, on any child-caring agency for falsifying records, reports, documents or financial statements or
17 for causing another person to do so.

18 (3) The director shall impose a civil penalty of not less than \$250 nor more than \$500, unless
19 otherwise required by law, on a child-caring facility that assumes care or custody of, or provides
20 care or services to, a child knowing that the child's care needs exceed the license, certificate or
21 authorization classification of the child-caring agency if the assumption of care or custody, or pro-
22 vision of care or services, places that child's health, safety or welfare at risk.

23 (4) Unless the health, safety or welfare of a child is at risk, the director in every case shall
24 prescribe a reasonable time for elimination of a violation:

25 (a) Not to exceed 45 days after first notice of a violation; or

26 (b) In cases where the violation requires more than 45 days to correct, such time as is specified
27 in a plan of correction found acceptable by the director.

28 (5) A civil penalty imposed under this section may be remitted or reduced upon such terms and
29 conditions as the director considers proper and consistent with the public health and safety.

30 (6) The department shall adopt rules establishing objective criteria for the imposition and
31 amount of civil penalties under ORS 418.992 to 418.998.

32 **SECTION 15. Section 16 of this 2019 Act is added to and made a part of ORS 418.625 to**
33 **418.645.**

34 **SECTION 16. (1) A foster home may not interfere with the disclosure of information by**
35 **a prospective employee, an employee or a volunteer concerning the treatment of a child in**
36 **the care of the foster home to:**

37 **(a) The Department of Human Services, a law enforcement agency or other entity with**
38 **legal or regulatory authority over the foster home; or**

39 **(b) A family member, guardian or other person who is acting on behalf of the child.**

40 **(2) A foster home interferes with the disclosure of information regarding the treatment**
41 **of a child in the care of a foster home by:**

42 **(a) Asking or requiring the prospective employee, employee or volunteer to sign a**
43 **nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-**
44 **unteer from disclosing information concerning the treatment of a child in the care of a fos-**
45 **ter home;**

1 (b) Training an employee or volunteer not to disclose information concerning the treat-
2 ment of a child in the care of a foster home; or

3 (c) Taking actions or communicating to the prospective employee, employee or volunteer
4 that the prospective employee, employee or volunteer may not disclose information con-
5 cerning the treatment of a child in the care of a foster home.

6 (3) The department shall revoke or suspend the certificate of approval of a foster home
7 that is found to have violated subsection (1) of this section.

8 **SECTION 17.** In addition to any other liability or penalty provided by law, the Director
9 of Human Services shall impose a civil penalty on a foster home, as defined in ORS 418.625,
10 that violates section 16 of this 2019 Act. A civil penalty under this section is \$500 for each
11 violation and shall be imposed as provided in ORS 183.745.

12 **SECTION 18.** Section 19 of this 2019 Act is added to and made a part of ORS 420.855 to
13 420.885.

14 **SECTION 19.** (1) A youth care center may not interfere with the disclosure of informa-
15 tion by a prospective employee, an employee or a volunteer concerning the treatment of a
16 youth in the care of the center to:

17 (a) The Oregon Youth Authority, a law enforcement agency or other entity with legal or
18 regulatory authority over the center; or

19 (b) A family member, guardian or other person who is acting on behalf of the youth.

20 (2) A center interferes with the disclosure of information regarding the treatment of a
21 youth in the care of a center by:

22 (a) Asking or requiring the prospective employee, employee or volunteer to sign a
23 nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-
24 unteer from disclosing information concerning the treatment of a youth in the care of a
25 center;

26 (b) Training an employee or volunteer not to disclose information concerning the treat-
27 ment of a youth in the care of a center; or

28 (c) Taking actions or communicating to the prospective employee, employee or volunteer
29 that the prospective employee, employee or volunteer may not disclose information con-
30 cerning the treatment of a youth in the care of a center.

31 (3) The authority shall revoke or suspend the approval of a center that is found to have
32 violated subsection (1) of this section.

33 **SECTION 20.** (1) In addition to any other liability or penalty provided by law, the Director
34 of the Oregon Youth Authority shall impose a civil penalty, as provided in ORS 183.745, on
35 a youth care center, as defined in ORS 420.855, that violates section 19 of this 2019 Act.

36 (2) A civil penalty under subsection (1) of this section is \$500 for each violation.

37 **SECTION 21.** Section 22 of this 2019 Act is added to and made a part of ORS 420.888 to
38 420.892.

39 **SECTION 22.** (1) A youth offender foster home may not interfere with the disclosure of
40 information by a prospective employee, an employee or a volunteer concerning the treatment
41 of a youth in the care of the youth offender foster home to:

42 (a) The Oregon Youth Authority, a law enforcement agency or other entity with legal or
43 regulatory authority over the youth offender foster home; or

44 (b) A family member, guardian or other person who is acting on behalf of the youth.

45 (2) A youth offender foster home interferes with the disclosure of information regarding

1 the treatment of a youth in the care of a youth offender foster home by:

2 (a) Asking or requiring the prospective employee, employee or volunteer to sign a
 3 nondisclosure or similar agreement prohibiting the prospective employee, employee or vol-
 4 unteer from disclosing information concerning the treatment of a youth in the care of a
 5 youth offender foster home;

6 (b) Training an employee or volunteer not to disclose information concerning the treat-
 7 ment of a youth in the care of a youth offender foster home; or

8 (c) Taking actions or communicating to the prospective employee, employee or volunteer
 9 that the prospective employee, employee or volunteer may not disclose information con-
 10 cerning the treatment of a youth in the care of a youth offender foster home.

11 (3) The authority shall revoke or suspend the certificate of approval of a youth offender
 12 foster home that is found to have violated subsection (1) of this section.

13 **SECTION 23.** (1) In addition to any other liability or penalty provided by law, the Director
 14 of the Oregon Youth Authority shall impose a civil penalty, as provided in ORS 183.745, on
 15 a youth offender foster home, as defined in ORS 420.888, that violates section 22 of this 2019
 16 Act.

17 (2) A civil penalty under subsection (1) of this section is \$500 for each violation.

18 **SECTION 24.** (1) As used in this section, “employer” means:

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

20 (b) A child care provider as defined in ORS 329A.700;

21 (c) A child-caring agency as defined in ORS 418.205;

22 (d) A child-caring facility as defined in ORS 418.950;

23 (e) Community-based structured housing as defined in ORS 443.480;

24 (f) A facility as defined in ORS 430.735;

25 (g) A foster home as defined in ORS 418.625;

26 (h) A long term care facility as defined in ORS 442.015;

27 (i) A residential facility as defined in ORS 443.400;

28 (j) A youth care center as defined in ORS 420.855;

29 (k) A youth offender foster home as defined in ORS 420.888; or

30 (L) Any other entity that is licensed, certified or registered by a public body, as defined
 31 in ORS 174.109, to provide care to children, youth, individuals with disabilities or older adults.

32 (2) It is an unlawful employment practice under ORS chapter 659A for an employer to
 33 violate section 2, 5, 8, 10, 13, 16, 19 or 22 of this 2019 Act or to interfere with an employee’s
 34 disclosure of information concerning the care of an individual cared for by the employer to
 35 regulatory agencies, law enforcement authorities of persons who are acting on behalf of the
 36 individual.

37 (3) A prospective employee, an employee or a volunteer may file a complaint with the
 38 Commissioner of the Bureau of Labor and Industries under ORS 659A.820 or a civil action
 39 under ORS 659A.885, alleging violation of this section.

40 **SECTION 25.** Sections 2, 5 to 13 and 15 to 24 of this 2019 Act and the amendments to ORS
 41 418.992 and 441.710 by sections 3 and 14 of this 2019 Act apply to statements or conduct oc-
 42 ccurring on or after the effective date of this 2019 Act.