

Senate Bill 434

Sponsored by Senator MANNING JR (at the request of Kyndall Mason) (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**.

Requires Oregon Health Authority to adopt rules governing facilities that provide community-based care to elderly individuals and individuals with disabilities to ensure planning by facilities and safeguards for occupants in event of natural disaster or pandemic. Requires facilities to develop emergency preparedness plan and submit plan for approval to Occupational Safety and Health Division of the Department of Consumer and Business Services.

A BILL FOR AN ACT

1
2 Relating to disaster planning; creating new provisions; and amending ORS 441.025, 443.415 and
3 443.735.

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

5 **SECTION 1. (1) As used in this section, "facility" means:**

6 (a) **A residential facility, as defined in ORS 443.400;**

7 (b) **A long term care facility, as defined in ORS 442.015;**

8 (c) **A conversion facility, as defined in ORS 443.400;**

9 (d) **An adult foster home, as defined in ORS 443.705; and**

10 (e) **Any other facility as prescribed by the Oregon Health Authority by rule that provides**
11 **community-based care to elderly individuals or individuals with physical or mental disabili-**
12 **ties.**

13 (2) **The Oregon Health Authority shall adopt rules for facilities that include:**

14 (a) **Requirements concerning the availability of personal protective equipment for occu-**
15 **pants of a facility consistent with guidelines issued by the Centers for Disease Control and**
16 **Prevention;**

17 (b) **Standards for cleaning and disinfecting personal protective equipment;**

18 (c) **Standards concerning the frequency of and procedures for screening occupants of a**
19 **facility for infectious diseases;**

20 (d) **Requirements for evacuation plans in the event of various scenarios of natural dis-**
21 **asters;**

22 (e) **Standards for heating, ventilation and air conditioning systems to ensure proper**
23 **ventilation that minimizes indoor pollutants and filters small particulate matter;**

24 (f) **Staff training required in preparation for natural disasters and pandemics and proto-**
25 **cols for updating training and information to address rapidly changing conditions; and**

26 (g) **A requirement that a facility develop, in collaboration with the staff of the facility,**
27 **an emergency preparedness plan for the protection of all occupants of the facility in the**
28 **event of a natural disaster or pandemic and update the plan in response to new federal or**
29 **state guidelines.**

30 (3) **The emergency preparedness plan must be translated into the preferred languages of**

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 **staff of the facility and presented to staff at a mandatory staff meeting. Newly hired staff**
2 **must be trained in the plan's protocols and there must be mandatory staff meetings to dis-**
3 **cuss any changes to the plan or protocols.**

4 **(4) A facility shall submit its emergency preparedness plan to the Occupational Safety**
5 **and Health Division of the Department of Consumer and Business Services for approval.**

6 **SECTION 2. The Director of the Department of Consumer and Business Services shall**
7 **establish procedures for a facility to submit for approval the facility's emergency**
8 **preparedness plan under section 1 of this 2021 Act.**

9 **SECTION 3. ORS 441.025, as amended by section 4, chapter 592, Oregon Laws 2019, is amended**
10 **to read:**

11 441.025. (1)(a) Upon receipt of a license fee and an application to operate a health care facility
12 other than a long term care facility, the Oregon Health Authority shall review the application and
13 conduct an on-site inspection of the health care facility. The authority shall issue a license if it finds
14 that the applicant and health care facility comply with ORS 441.015 to 441.087 and the rules of the
15 authority provided that the authority does not receive within the time specified a certificate of
16 noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS
17 479.215.

18 (b) The authority shall, following payment of the fee, annually renew each license issued under
19 this subsection unless:

20 (A) The health care facility's license has been suspended or revoked; or

21 (B) The State Fire Marshal, a deputy or an approved authority has issued a certificate of non-
22 compliance pursuant to ORS 479.215.

23 (2)(a) Upon receipt of a license fee and an application to operate a long term care facility, the
24 Department of Human Services shall review the application and conduct an on-site inspection of the
25 long term care facility, including an inspection of the kitchen and other areas where food is pre-
26 pared for residents. The department shall issue a license if the department finds that the applicant
27 and long term care facility comply with ORS 441.015 to 441.087, **443.012 and section 1 of this 2021**
28 **Act** and the rules of the department provided that it does not receive within the time specified a
29 certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pur-
30 suant to ORS 479.215.

31 (b) The department shall, following an on-site inspection and payment of the fee, annually renew
32 each license issued under this subsection unless:

33 (A) The long term care facility's license has been suspended or revoked;

34 (B) The long term care facility is found not to be in substantial compliance, following the on-site
35 inspection, with ORS 441.015 to 441.087 and 443.012 **and section 1 of this 2021 Act** and the rules
36 of the department;

37 (C) The long term care facility has failed an inspection of the kitchen or other areas where food
38 is prepared for residents that was conducted by the department in accordance with ORS 443.417,
39 except as provided in ORS 443.417 (2); or

40 (D) The State Fire Marshal, a deputy or an approved authority has issued a certificate of non-
41 compliance pursuant to ORS 479.215.

42 (3) Each license shall be issued only for the premises and persons or governmental units named
43 in the application and shall not be transferable or assignable.

44 (4) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by
45 rule of the authority or the department.

1 (5) No license shall be issued or renewed for any health care facility or health maintenance
2 organization that is required to obtain a certificate of need under ORS 442.315 until a certificate
3 of need has been granted. An ambulatory surgical center is not subject to the certificate of need
4 requirements in ORS 442.315.

5 (6) No license shall be issued or renewed for any skilled nursing facility or intermediate care
6 facility, unless the applicant has included in the application the name and such other information
7 as may be necessary to establish the identity and financial interests of any person who has incidents
8 of ownership in the facility representing an interest of 10 percent or more thereof. If the person
9 having such interest is a corporation, the name of any stockholder holding stock representing an
10 interest in the facility of 10 percent or more shall also be included in the application. If the person
11 having such interest is any other entity, the name of any member thereof having incidents of own-
12 ership representing an interest of 10 percent or more in the facility shall also be included in the
13 application.

14 (7) A license may be denied to any applicant for a license or renewal thereof or any stockholder
15 of any such applicant who has incidents of ownership in the health care facility representing an
16 interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for
17 the facility, if during the five years prior to the application the applicant or any stockholder of the
18 applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has
19 divested that interest after receiving from the authority or the department written notice that the
20 authority or the department intends to suspend or revoke the license or to decertify the facility from
21 eligibility to receive payments for services provided under this section.

22 (8) The Department of Human Services may not issue or renew a license for a long term care
23 facility, unless the applicant has included in the application the identity of any person who has in-
24 cident of ownership in the long term care facility who also has a financial interest in any pharmacy,
25 as defined in ORS 689.005.

26 (9) The authority shall adopt rules for each type of health care facility, except long term care
27 facilities, to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

28 (a) Establishing classifications and descriptions for the different types of health care facilities
29 that are licensed under ORS 441.015 to 441.087; and

30 (b) Standards for patient care and safety, adequate professional staff organizations, training of
31 staff for whom no other state regulation exists, suitable delineation of professional privileges and
32 adequate staff analyses of clinical records.

33 (10) The department shall adopt rules for each type of long term care facility to carry out the
34 purposes of ORS 441.015 to 441.087 including, but not limited to:

35 (a) Establishing classifications and descriptions for the different types of long term care facili-
36 ties that are licensed under ORS 441.015 to 441.087;

37 (b) Standards for patient care and safety, adequate professional staff organizations, training of
38 staff for whom no other state regulation exists, suitable delineation of professional privileges and
39 adequate staff analyses of clinical records; and

40 (c) Rules to ensure that a long term care facility complies with ORS 443.012 **and section 1 of**
41 **this 2021 Act.**

42 (11) The authority or department may not adopt a rule requiring a health care facility to serve
43 a specific food as long as the necessary nutritional food elements are present in the food that is
44 served.

45 (12) A health care facility licensed by the authority or department may not:

1 (a) Offer or provide services beyond the scope of the license classification assigned by the au-
 2 thority or department; or

3 (b) Assume a descriptive title or represent itself under a descriptive title other than the classi-
 4 fication assigned by the authority or department.

5 (13) A health care facility must reapply for licensure to change the classification assigned or the
 6 type of license issued by the authority or department.

7 **SECTION 4.** ORS 443.415, as amended by section 5, chapter 592, Oregon Laws 2019, is amended
 8 to read:

9 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
 10 made to the Department of Human Services or the Oregon Health Authority on forms provided for
 11 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee.
 12 No fee is required of any governmentally operated residential facility.

13 (2)(a) The application fee for a residential training facility or a residential treatment facility is
 14 \$60.

15 (b) The application fee for a residential training home is \$50.

16 (c) The application fee for a residential treatment home is \$30.

17 (d) The application fee for a residential care facility is:

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

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

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

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

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

23 (3) Upon receipt of an application and fee, the licensing agency shall conduct an on-site in-
 24 spection, including, for residential care facilities, an inspection of the kitchen and other areas where
 25 food is prepared for residents. The licensing agency shall issue a license to any applicant for oper-
 26 ation of a residential facility in compliance with ORS 443.002, **443.012** and 443.400 to 443.455 **and**
 27 **section 1 of this 2021 Act** and the rules of the licensing agency. Licensure may be denied when a
 28 residential facility is not in compliance with ORS 443.002, **443.012** or 443.400 to 443.455 **or section**
 29 **1 of this 2021 Act** or the rules of the licensing agency. Licensure shall be denied if the State Fire
 30 Marshal, deputy or approved authority has given notice of noncompliance of a residential care fa-
 31 cility, residential training facility or residential treatment facility pursuant to ORS 479.220.

32 **SECTION 5.** ORS 443.735, as amended by section 7, chapter 592, Oregon Laws 2019, is amended
 33 to read:

34 443.735. (1)(a) Applications for a license to maintain and operate an adult foster home shall be
 35 made on forms provided by the licensing agency.

36 (b) Each application submitted to the Department of Human Services for an adult foster home
 37 serving individuals with intellectual or developmental disabilities shall be accompanied by a fee of
 38 \$50 per bed requested for licensing.

39 (c) Each application submitted to the Oregon Health Authority, or to the Department of Human
 40 Services for an adult foster home not serving individuals with intellectual or developmental disa-
 41 bilities, shall be accompanied by a fee of \$20 per bed requested for licensing.

42 (2) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.

43 (3) The licensing agency shall not issue an initial license unless:

44 (a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to
 45 443.825 **and section 1 of this 2021 Act** and the rules of the licensing agency;

1 (b) The licensing agency has completed an inspection of the adult foster home;

2 (c) The licensing agency has completed a criminal records check under ORS 181A.195 on the
3 applicant and any person, other than a resident, 16 years of age or older who will be residing in the
4 adult foster home. The criminal records check shall be conducted in accordance with rules adopted
5 under ORS 181A.195;

6 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
7 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
8 sponsible for abuse; and

9 (e) The applicant has demonstrated to the licensing agency the financial ability and resources
10 necessary to operate the adult foster home. The licensing agency shall adopt rules as the agency
11 deems appropriate that establish the financial standards an applicant must meet to qualify for issu-
12 ance of a license and that protect financial information from public disclosure. The demonstration
13 of financial ability under this paragraph shall include, but need not be limited to, providing the li-
14 censing agency with a list of any unsatisfied judgments, pending litigation and unpaid taxes and
15 notifying the agency regarding whether the applicant is in bankruptcy. If the applicant is unable to
16 demonstrate the financial ability and resources required by this paragraph, the licensing agency may
17 require the applicant to furnish a financial guarantee as a condition of initial licensure.

18 (4) The licensing agency may not renew a license under this section unless:

19 (a) The applicant and the adult foster home are in compliance with ORS 443.002, 443.012 and
20 443.705 to 443.825 **and section 1 of this 2021 Act** and the rules of the licensing agency;

21 (b) The licensing agency has completed an inspection of the adult foster home;

22 (c) The licensing agency has completed a criminal records check under ORS 181A.195 on the
23 applicant and any person, other than a resident, 16 years of age or older who will be residing in the
24 adult foster home. The criminal records check under this paragraph shall be conducted in accord-
25 ance with rules adopted under ORS 181A.195; and

26 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-
27 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-
28 sponsible for abuse.

29 (5)(a) In seeking an initial license and renewal of a license when an adult foster home has been
30 licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster
31 home to establish compliance with ORS 443.705 to 443.825 and the rules of the licensing agency.

32 (b) In proceedings for renewal of a license when an adult foster home has been licensed for at
33 least 24 continuous months, the burden of proof shall be upon the licensing agency to establish
34 noncompliance with ORS 443.705 to 443.825 and the rules of the agency.

35 (6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of
36 the licensing agency, are substantially related to the qualifications, functions or duties of a provider,
37 substitute caregiver or other household member of an adult foster home shall be prohibited from
38 operating, working in or residing in an adult foster home.

39 (b) The licensing agency shall adopt rules that distinguish the criminal convictions and types
40 of abuse that permanently prohibit a person from operating, working in or living in an adult foster
41 home from the convictions and types of abuse that do not permanently prohibit the person from
42 operating, working in or living in an adult foster home.

43 (c) A provider may not hire, retain in employment or allow to live in an adult foster home, other
44 than as a resident, any person who the provider knows has been convicted of a disqualifying crime
45 or has been found responsible for a disqualifying type of abuse.

1 (7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner
2 revoked. Each license shall state the name of the resident manager of the adult foster home, the
3 names of all providers who own the adult foster home, the address of the premises to which the li-
4 cense applies, the maximum number of residents and the classification of the adult foster home. If,
5 during the period covered by the license, a resident manager changes, the provider must within 15
6 days request modification of the license. The request must be accompanied by a fee of \$10.

7 (8) No license under ORS 443.725 is transferable or applicable to any location, persons operating
8 the adult foster home or the person owning the adult foster home other than that indicated on the
9 application for licensing.

10 (9) The licensing agency shall not issue a license to operate an additional adult foster home to
11 a provider unless the provider has demonstrated the qualifications and capacity to operate the
12 provider's existing licensed adult foster homes and has demonstrated the ability to provide to the
13 residents of those adult foster homes care that is adequate and substantially free from abuse and
14 neglect.

15 (10)(a) All moneys collected under ORS 443.725 to 443.780 from adult foster homes that are li-
16 censed to serve persons with mental, emotional or behavioral disturbances or alcohol or drug de-
17 pendence shall be deposited in a special account in the General Fund, and are appropriated
18 continuously for payment of expenses incurred by the Oregon Health Authority.

19 (b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve
20 persons who are elderly, have physical disabilities or have developmental disabilities shall be de-
21 posited in the Quality Care Fund established in ORS 443.001.

22 (11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the licensing
23 agency may issue a 60-day provisional license to a qualified person if the agency determines that
24 an emergency situation exists after being notified that the licensed provider of an adult foster home
25 is no longer overseeing operation of the adult foster home.

26