

Enrolled
Senate Bill 556

Sponsored by Senator GELSER; Senator PATTERSON (Pre-session filed.)

CHAPTER

AN ACT

Relating to in-person inspections; amending ORS 441.025, 441.060, 441.062, 441.157, 443.019, 443.415, 443.436, 443.705 and 443.860 and section 12b, chapter 19, Oregon Laws 2020 (first special session); and declaring an emergency.

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

SECTION 1. ORS 441.025, as amended by section 4, chapter 592, Oregon Laws 2019, is amended to read:

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

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

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

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

(2)(a) Upon receipt of a license fee and an application to operate a long term care facility, the Department of Human Services shall review the application and conduct an *[on-site]* **in-person site** inspection of the long term care facility, including an inspection of the kitchen and other areas where food is prepared for residents. The department shall issue a license if the department finds that the applicant and long term care facility comply with ORS 441.015 to 441.087 and the rules of the department provided that it does not receive within the time specified a certificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

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

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

(B) The long term care facility is found not to be in substantial compliance, following the *[on-site]* **in-person site** inspection, with ORS 441.015 to 441.087 and 443.012 and the rules of the department;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) Rules to ensure that a long term care facility complies with ORS 443.012.

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

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

(a) Offer or provide services beyond the scope of the license classification assigned by the authority or department; or

(b) Assume a descriptive title or represent itself under a descriptive title other than the classification assigned by the authority or department.

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

SECTION 2. ORS 441.060 is amended to read:

441.060. (1) The Oregon Health Authority shall make or cause to be made [*on-site*] **in-person site** inspections of health care facilities licensed under ORS 441.025 (1) at least once every three years.

(2) The authority and the Department of Human Services may prescribe by rule that any licensee or prospective applicant desiring to make specified types of alteration or addition to its facilities or to construct new facilities shall, before commencing such alteration, addition or new construction, either prior to or after receiving a certificate of need pursuant to ORS 442.315, if required, submit plans and specifications therefor to the authority or the department for preliminary inspection and approval or recommendations with respect to compliance with the rules authorized by ORS 441.025 and 443.420 and for compliance with National Fire Protection Association standards when the facility is also to be Medicare or Medicaid certified.

(3) The authority or the department may require by rule payment of a fee for project review services at a variable rate, dependent on total project cost.

(4) For health care facilities, the authority shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program.

(5) For long term care facilities and residential care facilities, the department shall develop a review fee schedule as minimally necessary to support the staffing level and expenses required to administer the program. The fee for project review of residential care facilities shall equal two-thirds that required of health care facilities.

(6) The authority or the department may also conduct an on-site review of projects as a prerequisite to licensure of new facilities, major renovations and expansions. The authority and the department shall, at least annually, with the advice of the facilities covered by the review, present proposed rule changes regarding facility design and construction to such agencies for their consideration.

(7) The authority shall publish a state submissions guide for health care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.

(8) The department shall publish a state submissions guide for long term care facility and residential care facility projects and advise project sponsors of applicable requirements of federal, state and local regulatory agencies.

SECTION 3. ORS 441.062 is amended to read:

441.062. (1) In conducting inspections for the purpose of licensing health care facilities under ORS 441.020, the Oregon Health Authority and the Department of Human Services shall avoid unnecessary facility disruption by coordinating inspections performed by the authority or the department with inspections performed by other federal, state and local agencies that have responsibility for health care facility licensure.

(2) Whenever possible, the authority and the department shall avoid duplication of inspections by accepting inspection reports or surveys prepared by other state agencies that have responsibility for health care facility licensure for purposes of the inspection required for licensure.

(3) In lieu of an [*on-site*] **in-person site** inspection as required by ORS 441.025 and 441.060, the authority or the department may accept a certification or accreditation from a federal agency or an accrediting body approved by the authority or the department that the state licensing standards have been met, if:

(a) The certification or accreditation is recognized by the authority or the department as addressing the standards and condition of participation requirements of the Centers for Medicare and Medicaid Services and other standards set by the authority or the department;

(b) The health care facility notifies the authority or the department to participate in any exit interview conducted by the federal agency or accrediting body; and

(c) The health care facility provides copies of all documentation concerning the certification or accreditation requested by the authority or the department.

(4) The authority and the department shall adopt rules necessary to implement this section.

SECTION 4. ORS 441.157 is amended to read:

441.157. (1) For the sole purpose of verifying compliance with the requirements of ORS 441.152 to 441.177 and 441.192, the Oregon Health Authority shall audit each hospital in this state once every three years, at the time of conducting an [*on-site*] **in-person site** inspection of the hospital under ORS 441.025.

(2) When conducting an audit pursuant to this section, the authority shall:

(a) If the authority provides notice of the audit to the hospital, provide notice of the audit to the cochairs of the hospital nurse staffing committee established pursuant to ORS 441.154;

(b) Interview both cochairs of the hospital nurse staffing committee;

(c) Review any other hospital record and conduct any other interview or site visit that is necessary to verify that the hospital is in compliance with the requirements of ORS 441.152 to 441.177 and 441.192; and

(d) Within 60 days after issuing an order requiring a hospital to implement a plan to correct a violation of ORS 441.152 to 441.177 or 441.192, conduct an investigation of the hospital to ensure compliance with the order.

(3) Following an investigation conducted pursuant to subsection (2) of this section, the authority shall provide in writing a report of the authority's findings to the hospital and the cochairs of the hospital nurse staffing committee.

(4) The authority shall compile and maintain for public inspection an annual report of audits and investigations conducted pursuant to this section.

(5) The costs of audits required by this section may be paid out of funds from licensing fees paid by hospitals under ORS 441.020.

SECTION 5. ORS 443.019 is amended to read:

443.019. (1) The Oregon Health Authority shall conduct an [*on-site*] **in-person site** inspection of a home health agency and a caregiver registry prior to licensure and at least once every three years thereafter.

(2) In lieu of an [*on-site*] **in-person site** inspection, the authority may accept a certification or accreditation from a federal agency or an accrediting body approved by the authority that the state licensing standards have been met, if:

(a) The certification or accreditation is recognized by the authority as addressing the standards and conditions of participation requirements of the Centers for Medicare and Medicaid Services and any additional standards set by the authority;

(b) The agency or registry notifies the authority to participate in any exit interview conducted by the federal agency or accrediting body; and

(c) The agency or registry provides copies of all documentation concerning the certification or accreditation requested by the authority.

SECTION 6. ORS 443.415, as amended by section 5, chapter 592, Oregon Laws 2019, 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)(a) The application fee for a residential training facility or a residential treatment facility is \$60.

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

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

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

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

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

- (C) For a facility with 50 to 99 beds, \$4,000.
- (D) For a facility with 100 to 150 beds, \$5,000.
- (E) For a facility with more than 150 beds, \$6,000.

(3) Upon receipt of an application and fee, the licensing agency shall conduct an *[on-site]* **in-person site** inspection, including, for residential care facilities, an inspection of the kitchen and other areas where food is prepared for residents. The licensing agency shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.002 and 443.400 to 443.455 and the rules of the licensing agency. Licensure may be denied when a residential facility is not in compliance with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency. Licensure shall be denied if the State Fire Marshal, deputy or approved authority has given notice of noncompliance of a residential care facility, residential training facility or residential treatment facility pursuant to ORS 479.220.

SECTION 7. ORS 443.436 is amended to read:

443.436. (1) As used in this section, “substantial compliance” means a level of compliance with state law and with rules of the Department of Human Services such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents.

(2)(a) The department shall develop a framework for assessing the compliance of residential care facilities with regulatory requirements and for requiring corrective action that accurately and equitably measures compliance and the extent of noncompliance.

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

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

(3) The department shall administer a residential care facility enhanced oversight and supervision program that focuses department resources on residential care facilities that consistently demonstrate:

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

(b) Performance substantially below statewide averages on quality metrics reported under the Residential Care Quality Measurement Program established under ORS 443.446.

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

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

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

(5) The department shall terminate the enhanced oversight and supervision of a residential care facility:

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

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

(6) Using moneys from the Quality Care Fund established under ORS 443.001, the department shall develop, maintain and periodically update compliance guidelines for residential care facilities serving seniors and persons with disabilities. The guidelines must be made available electronically.

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

SECTION 8. ORS 443.705 is amended to read:

443.705. As used in ORS 443.705 to 443.825:

(1) "Adult foster home" means any family home or facility in which residential care is provided in a homelike environment for five or fewer adults who are not related to the provider by blood or marriage.

(2) "Licensed adult foster home" means a home which has been investigated and approved by the licensing agency. This includes an *[on-site]* **in-person site** inspection of the facility.

(3) "Licensing agency" means:

(a) The Department of Human Services for adult foster homes licensed by the department.

(b) The Oregon Health Authority for adult foster homes licensed by the authority.

(4) "Provider" means any person operating an adult foster home and includes a resident manager. "Provider" does not include the owner or lessor of the building in which the adult foster home is located or the owner or lessor of the land on which the adult foster home is situated unless the owner or lessor is also the operator of the adult foster home.

(5) "Residential care" means the provision of room and board and services that assist the resident in activities of daily living, such as assistance with bathing, dressing, grooming, eating, medication management, money management or recreation.

(6) "Substitute caregiver" means any person who provides care and services in an adult foster home under the jurisdiction of the licensing agency in the absence of the provider or resident manager.

SECTION 9. ORS 443.860 is amended to read:

443.860. (1) A person may not establish, conduct or maintain a hospice program providing hospice services, or hold itself out to the public as a hospice program, without obtaining a license from the Oregon Health Authority.

(2) The authority:

(a) Shall adopt rules to carry out the provisions of ORS 443.850 to 443.869, including but not limited to rules for licensure that require an *[on-site]* **in-person site** inspection of each licensed hospice program at least once every three years.

(b) May accept certification by a federal agency or accreditation by an accrediting organization approved by the authority as evidence of compliance with the requirements for licensure adopted under paragraph (a) of this subsection if:

(A) The certification or accreditation meets standards and conditions established for hospice programs by the Centers for Medicare and Medicaid Services;

(B) The hospice program invites the authority to participate in any exit interview conducted by the agency or organization; and

(C) The hospice program provides the authority with copies of all documentation requested by the authority concerning the certification or accreditation.

(3) The fee to obtain or renew a hospice program license is \$1,140.

(4) The authority shall prescribe by rule the form and manner for application for or renewal of a license. The authority shall issue a license to an applicant that has the necessary qualifications, meets all requirements established by the authority by rule and has paid the fee.

(5) A license issued under this section is valid for one year and is not transferable. A license may be renewed by payment of the fee and demonstration of compliance with requirements for renewal established by the authority by rule.

SECTION 10. Section 12b, chapter 19, Oregon Laws 2020 (first special session), is amended to read:

Sec. 12b. A program is a qualified residential treatment program if it:

(1) Provides residential care and treatment to a child who, based on an independent assessment described in section 13b, **chapter 19, Oregon Laws 2020 (first special session)**, *[of this 2020 special session Act,]* requires specialized, evidence-based, as defined by the Department of Human Services by rule, supports and services related to the effects of trauma or mental, emotional or behavioral health needs.

(2) Uses a trauma-informed treatment model that is designed to address the needs, including clinical needs as appropriate, of the child.

(3) Ensures that the staff at the facility includes licensed or registered nurses licensed under ORS chapter 678 and other licensed clinical staff who:

(a) Provide care within their licensed scope of practice;

(b) Are [on site] **on-site** according to the treatment model identified in subsection (2) of this section; and

(c) Are available 24 hours per day and seven days per week.

(4) Facilitates the involvement of the child’s family, as defined in ORS 418.575, in the child’s treatment program, to the extent appropriate and in the child’s best interests.

(5) Facilitates outreach to the child’s family, as defined in ORS 418.575, documents how outreach is made and maintains contact information for any known biological relatives or fictive kin, as defined by the department by rule.

(6) Documents how the program integrates family into the child’s treatment process, including after discharge, and how sibling connections are maintained.

(7) Provides discharge planning and family-based after-care support for at least six months following the child’s discharge from the program.

(8) Is licensed and accredited in accordance with requirements adopted by the department by rule. The rules adopted by the department under this subsection must:

(a) Be consistent with federal licensure and accreditation requirements for qualified residential treatment programs [and];

(b) Require that the qualified residential treatment program maintain site-specific accreditation from a nationally recognized organization; **and**

(c) **Require an in-person site inspection.**

SECTION 11. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by Senate April 21, 2021

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Lori L. Brocker, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 2, 2021

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Tina Kotek, Speaker of House

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State