

Senate Bill 86

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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**.

Authorizes licensing agency to impose conditions on license to operate residential facility and to consider performance and experience of applicant or licensee in other states or jurisdictions. Requires agency to adopt rules for imposition of conditions.

A BILL FOR AN ACT

1
2 Relating to licensing of residential facilities; amending ORS 443.400, 443.415, 443.420, 443.421 and
3 443.425.

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

5 **SECTION 1.** ORS 443.400 is amended to read:

6 443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise:

7 (1) **“Applicant” means any person listed on an application for a license to operate a res-**
8 **idential facility and any person with an ownership interest of five percent or more in the**
9 **facility.**

10 [(1)] (2) “Behavioral health needs” means mental, emotional or behavioral disturbances.

11 [(2)] (3) “Conversion facility” means a facility that has applied for, or been issued, a conversion
12 facility license as described in ORS 443.431.

13 [(3)] (4) “Direct care staff” means the employees of a residential facility whose primary respon-
14 sibilities are to provide personal care services to residents, including but not limited to:

15 (a) Administering medications;

16 (b) Coordinating resident-focused activities;

17 (c) Supervising and supporting residents;

18 (d) Supporting activities of daily living, including but not limited to bathing, dressing, eating and
19 transferring; and

20 (e) Serving but not preparing meals.

21 [(4)] (5) “Licensing agency” means:

22 (a) The Department of Human Services, if the residential facility that is licensed, or that the
23 Director of Human Services determines should be licensed, is a residential care facility, residential
24 training facility or residential training home; or

25 (b) The Oregon Health Authority, if the residential facility that is licensed, or that the Director
26 of the Oregon Health Authority determines should be licensed, is a residential treatment facility or
27 residential treatment home.

28 [(5)] (6) “Resident” means any individual residing in a facility who receives residential care,
29 treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be
30 a resident if the individual is related by blood or marriage within the fourth degree as determined

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 by civil law to the person licensed to operate or maintain the facility.

2 [(6)] (7) “Residential care” means services such as supervision; protection; assistance while
3 bathing, dressing, grooming or eating; management of money; transportation; recreation; and the
4 providing of room and board.

5 [(7)] (8) “Residential care facility” means a facility that provides residential care in one or more
6 buildings on contiguous properties:

7 (a) For six or more socially dependent individuals or individuals with physical disabilities; or

8 (b) For fewer than six socially dependent individuals or individuals with physical disabilities if
9 the purpose of the facility is to serve individuals with co-occurring behavioral health needs who are
10 more appropriately served in smaller settings.

11 [(8)] (9) “Residential facility” means a residential care facility, residential training facility, res-
12 idential treatment facility, residential training home, residential treatment home or conversion fa-
13 cility.

14 [(9)] (10) “Residential training facility” means a facility that provides, for six or more individuals
15 with intellectual or developmental disabilities, residential care and training in one or more buildings
16 on contiguous properties.

17 [(10)] (11) “Residential training home” means a facility that provides, for five or fewer individ-
18 uals with intellectual or developmental disabilities, residential care and training in one or more
19 buildings on contiguous properties, when so certified and funded by the Department of Human Ser-
20 vices.

21 [(11)] (12) “Residential treatment facility” means a facility that provides, for six or more indi-
22 viduals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential
23 care and treatment in one or more buildings on contiguous properties.

24 [(12)] (13) “Residential treatment home” means a facility that provides for five or fewer indi-
25 viduals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential
26 care and treatment in one or more buildings on contiguous properties.

27 [(13)] (14) “Training” means the systematic, planned maintenance, development or enhancement
28 of self-care skills, social skills or independent living skills, or the planned sequence of systematic
29 interactions, activities or structured learning situations designed to meet each resident’s specified
30 needs in the areas of physical, social, emotional and intellectual growth.

31 [(14)] (15) “Treatment” means a planned, individualized program of medical, psychological or
32 rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emo-
33 tional, physical or other symptoms or social, educational or vocational disabilities resulting from or
34 related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

35 **SECTION 2.** ORS 443.415, as amended by section 5, chapter 592, Oregon Laws 2019, is amended
36 to read:

37 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be
38 made to the Department of Human Services or the Oregon Health Authority on forms provided for
39 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee.
40 No fee is required of any governmentally operated residential facility.

41 (2)(a) The application fee for a residential training facility or a residential treatment facility is
42 \$60.

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

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

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

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

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

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

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

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

6 (3) Upon receipt of an application and fee, the licensing agency shall conduct an on-site in-
 7 spection, including, for residential care facilities, an inspection of the kitchen and other areas where
 8 food is prepared for residents. The licensing agency:

9 (a) Shall issue a license to any applicant for operation of a residential facility in compliance
 10 with ORS 443.002 and 443.400 to 443.455 and the rules of the licensing agency. [*Licensure may be*
 11 *denied*]

12 (b) **May deny a license or impose conditions on a license** when a residential facility is not
 13 in compliance with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency.
 14 [*Licensure shall be denied*]

15 (c) **Shall deny a license** if the State Fire Marshal, deputy or approved authority has given no-
 16 tice of noncompliance of a residential care facility, residential training facility or residential treat-
 17 ment facility pursuant to ORS 479.220.

18 **SECTION 3.** ORS 443.420 is amended to read:

19 443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the di-
 20 rector of the licensing agency, be a person:

21 (a) Who demonstrates an understanding and acceptance of the rules governing residential facil-
 22 ities;

23 (b) Mentally and physically capable of caring for such residents; and

24 (c) Who employs or utilizes only individuals whose presence does not jeopardize the health,
 25 safety or welfare of residents.

26 (2) A residential facility may not be operated or maintained in combination with a nursing home
 27 or hospital unless:

28 (a) The residential facility is licensed, maintained and operated as a separate and distinct part;
 29 or

30 (b) The residential facility is licensed as a conversion facility under ORS 443.431.

31 (3) All physical residential facilities used for residents must meet applicable requirements of the
 32 State Fire Marshal.

33 (4) As of the date of licensure, a residential facility must be in substantial compliance with ap-
 34 plicable state and local laws, rules, codes, ordinances and permit requirements.

35 (5) Prior to licensure, a residential facility that proposes to house persons under the age of 21
 36 years shall submit written proof to the licensing agency demonstrating that the facility will:

37 (a) Comply with ORS 336.575; and

38 (b) Ensure that the children who reside at the residential facility receive appropriate educa-
 39 tional services that are:

40 (A) Comprehensive and age-appropriate;

41 (B) In compliance with requirements of state and federal law; and

42 (C) If applicable, in compliance with the individual education program of the child.

43 (6) Prior to an initial licensure of a residential care facility, **and upon an application for re-**
 44 **newal of a license**, the licensing agency shall consider:

45 (a) The license applicant's history of regulatory **and safety** compliance and operational experi-

1 ence **in this state or any other jurisdiction, as provided in rules adopted by the licensing**
 2 **agency;**

3 (b) The willingness of the license applicant to serve underserved populations; and

4 (c) The willingness of the license applicant to contract with the licensing agency to provide
 5 services through the state medical assistance program.

6 (7)(a) The licensing agency may not issue an initial license to a residential care facility if the
 7 facility has not conducted a market study that assesses the need for the services offered by the fa-
 8 cility in the geographic area served by the facility.

9 (b) This subsection does not apply to a conversion facility licensed under ORS 443.431.

10 **SECTION 4.** ORS 443.421 is amended to read:

11 443.421. (1) Except as provided in subsection (2) of this section for residential care facilities, the
 12 Department of Human Services or the Oregon Health Authority may revoke, [or] suspend **or impose**
 13 **conditions on** the license of any residential facility that is not operated in accordance with ORS
 14 443.002 or 443.400 to 443.455 or the rules of the licensing agency. Such revocation or suspension
 15 must be taken in accordance with rules of the licensing agency and ORS chapter 183. [*However, In*
 16 *cases where an imminent danger to the health or safety of the residents exists, a license may be sus-*
 17 *sended immediately pending a fair hearing not later than the 10th day after such suspension.*]

18 **(2) The department shall adopt by rule the criteria for imposing conditions, including but**
 19 **not limited to when:**

20 **(a) There exists a threat to the health, safety or welfare of a resident;**

21 **(b) There is reliable evidence of abuse, neglect or exploitation of a resident; or**

22 **(c) The facility is out of compliance with ORS 443.002 or 443.400 to 443.455 or the rules**
 23 **of the licensing agency.**

24 [(2)(a)] **(3)(a)** In a case where an imminent danger to the health or safety of the residents exists,
 25 a residential care facility license may be suspended immediately.

26 (b) The residential care facility is entitled to a contested case hearing to appeal an order of
 27 immediate suspension in accordance with procedures adopted by the Department of Justice by rule
 28 concerning emergency license suspensions.

29 (c) When the Department of Human Services issues an immediate suspension order under this
 30 subsection, the department may:

31 (A) Transition all residents of the residential care facility to other residential facilities; or

32 (B) Appoint a management company with demonstrated skill and experience in operating resi-
 33 dential facilities to manage the residential care facility and care for the residents of the facility. If
 34 the facility is unable to pay for the appointed management company, the department shall use funds
 35 from the facility trustee account fund to cover the cost.

36 **SECTION 5.** ORS 443.425, as amended by section 6, chapter 592, Oregon Laws 2019, is amended
 37 to read:

38 443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless
 39 sooner revoked. Each license shall state:

40 (a) The name of the person operating the residential facility;

41 (b) The name of the person who owns the residential facility **and all persons with an owner-**
 42 **ship interest of five percent or more;**

43 (c) The address of the premises to which the license applies and the maximum number of resi-
 44 dents to be maintained in the residential facility at any time whether the residential facility is li-
 45 censed as a residential training facility, a residential treatment facility, a residential care facility,

1 a residential training home or residential treatment home; and

2 (d) Other information that the Department of Human Services or the Oregon Health Authority
3 considers necessary.

4 (2) A license is renewable upon submission of an application to the department or the authority
5 and payment of a renewal fee. No fee is required of a governmentally operated residential facility.
6 Filing of an application for renewal before the date of expiration of a license extends the effective
7 date of expiration of the license until the licensing agency has acted upon the application. The li-
8 censing agency shall refuse to renew a license if:

9 (a) The facility is not substantially in compliance with all applicable laws and rules;

10 (b) For a residential care facility, the facility has failed an inspection of the kitchen or other
11 areas where food is prepared for residents that was conducted by the department in accordance with
12 ORS 443.417, except as provided in ORS 443.417 (2); or

13 (c) The State Fire Marshal, deputy or approved authority has given notice of noncompliance of
14 a residential care facility, residential training facility or residential treatment facility pursuant to
15 ORS 479.220.

16 (3)(a) The biennial renewal fee for a residential training facility or a residential treatment fa-
17 cility is \$60.

18 (b) The biennial renewal fee for a residential training home is \$50.

19 (c) The biennial renewal fee for a residential treatment home is \$30.

20 (d) The biennial renewal fee for a residential care facility is:

21 (A) For a facility with one to 15 beds, \$1,000.

22 (B) For a facility with 16 to 49 beds, \$1,500.

23 (C) For a facility with 50 to 99 beds, \$2,000.

24 (D) For a facility with 100 to 150 beds, \$2,500.

25 (E) For a facility with more than 150 beds, \$3,000.

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