

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
SENATE BILL 266**

1 In line 2 of the printed bill, after “facilities” insert “creating new pro-
2 visions; amending ORS 441.650, 441.676, 441.677, 441.705, 441.726, 441.731,
3 441.736, 443.431 and 443.436; and prescribing an effective date.”.

4 Delete lines 4 through 12 and insert:

5 **“SECTION 1. (1) As used in this section, ‘facility’ includes a:**

6 **“(a) Residential facility as defined in ORS 443.400; and**

7 **“(b) Facility with a memory care endorsement under ORS 443.886.**

8 **“(2) The Department of Human Services shall adopt by rule stan-
9 dards for determining whether a facility is meeting the scheduled and
10 unscheduled needs of all residents of the facility 24 hours a day, seven
11 days a week. The rules must include but are not limited to standards:**

12 **“(a) That are consistent with requirements for home and
13 community-based settings adopted by rule by the Centers for Medicare
14 and Medicaid Services;**

15 **“(b) To require each resident to have a current person-centered
16 service plan as required by the Centers for Medicare and Medicaid
17 Services;**

18 **“(c) For immediate access, 24 hours a day, to all supports needed
19 for activities of daily living, including eating, hydration, toileting,
20 hygiene, bathing, dressing, dental care and other activities;**

21 **“(d) For immediately responding to issues impacting a resident’s**

1 **dignity, including but not limited to wet or soiled briefs, clothing or**
2 **linens; and**

3 **“(e) To ensure that care is provided according to the schedule and**
4 **procedures outlined in each resident’s treatment plan, including but**
5 **not limited to wound care, medication administration, pain control,**
6 **behavior support, cueing and repositioning.**

7 **SECTION 2. The Department of Human Services shall adopt by rule**
8 **standards for determining whether a long term care facility, as defined**
9 **in ORS 442.015, is meeting the scheduled and unscheduled needs of all**
10 **residents of the facility 24 hours a day, seven days a week. The rules**
11 **must include but are not limited to standards:**

12 **“(1) That are consistent with requirements for home and**
13 **community-based settings adopted by rule by the Centers for Medicare**
14 **and Medicaid Services;**

15 **“(2) To require each resident to have a current person-centered**
16 **service plan as required by the Centers for Medicare and Medicaid**
17 **Services;**

18 **“(3) For immediate access, 24 hours a day, to all supports needed**
19 **for activities of daily living, including eating, hydration, toileting,**
20 **hygiene, bathing, dressing, dental care and other activities;**

21 **“(4) For immediately responding to issues impacting a resident’s**
22 **dignity, including but not limited to wet or soiled briefs, clothing or**
23 **linens; and**

24 **“(5) To ensure that care is provided according to the schedule and**
25 **procedures outlined in each resident’s treatment plan, including but**
26 **not limited to wound care, medication administration, pain control,**
27 **behavior support, cueing and repositioning.**

28 **“SECTION 3. ORS 441.650 is amended to read:**

29 **“441.650. (1) Upon receipt of the oral or written report required under**
30 **ORS 441.640, or of an abuse complaint, the area agency on aging, the De-**

1 department of Human Services or the law enforcement agency shall cause an
2 investigation to be commenced as follows:

3 “(a) Within two hours, if the complaint alleges that a resident’s health
4 or safety is in imminent danger or that the resident has recently died, been
5 hospitalized or been treated in an emergency room; or

6 “(b) Prior to the end of the next working day, if the complaint alleges
7 that circumstances exist that could result in abuse and that the circum-
8 stances could place a resident’s health or safety in imminent danger.

9 “(2) If the law enforcement agency conducting the investigation finds
10 reasonable cause to believe that abuse has occurred, the law enforcement
11 agency shall notify in writing the local office of the area agency or the de-
12 partment as appropriate. Except in cases where the investigation is part of
13 nursing facility surveyor activity pursuant to federal law, the area agency
14 or the department shall complete an initial status report within two working
15 days of the start of the investigation that includes:

16 “(a) A summary of the complaint that identifies each alleged incident or
17 problem;

18 “(b) The status of the investigation;

19 “(c) Whether an abuse complaint was initially filed at the direction of the
20 administration of the facility;

21 “(d) A determination of whether protection of the resident is needed and
22 whether the facility must take action;

23 “(e) The name and telephone number of the investigator; and

24 “(f) The projected date that the investigation report will be completed and
25 a statement that the report will be available upon request after the depart-
26 ment issues a letter of determination.

27 “(3) The initial status report described in subsection (2) of this section
28 shall be provided either in person or by mail to the following individuals as
29 soon as practicable, but no later than two working days after its completion:

30 “(a) The complainant, unless the complainant waives the requirement;

1 “(b) If the complaint involves a specific resident, the resident or a person
2 designated to receive information concerning the resident;

3 “(c) A representative of the Long Term Care Ombudsman, upon request;
4 [*and*]

5 “(d) The long term care facility; **and**

6 **“(e) The agency that licenses the facility.**

7 “(4) The initial status report described in subsection (2) of this section
8 shall be available for public inspection.

9 “(5) When copies of the initial status report described in subsection (2)
10 of this section are made available to individuals listed in subsection (3) of
11 this section, the names of the resident involved, the complainant and any
12 individuals interviewed by the investigator shall be deleted from the copies.

13 “(6) In investigating an abuse complaint, the investigator shall:

14 “(a) Make an unannounced visit to the facility, except as provided by ORS
15 441.690, to determine the nature and cause of the abuse of the resident;

16 “(b) Interview all available witnesses identified by any source as having
17 personal knowledge relevant to the abuse complaint, such interviews to be
18 private unless the witness expressly requests the interview not to be private;

19 “(c) Make personal inspection of all physical circumstances that are rel-
20 evant and material and that are susceptible to objective observation; and

21 “(d) Write an investigation report that includes:

22 “(A) The investigator’s personal observations;

23 “(B) A review of documents and records;

24 “(C) A summary of all witness statements; and

25 “(D) A statement of the factual basis for the findings for each incident
26 or problem alleged in the complaint.

27 “(7) Within five working days of completion of the investigation and not
28 later than 60 days from completion of the initial status report described in
29 subsection (2) of this section, the investigator shall provide the department
30 with the written report required by subsection (6) of this section. The de-

1 department shall make the investigation report available upon request after the
2 letter of determination is complete. When copies of the report are made
3 available, the names of the resident involved, the complainant and any indi-
4 viduals interviewed by the investigator shall be deleted from the copies.

5 **“SECTION 4.** ORS 441.676 is amended to read:

6 **“441.676. (1)(a) Except as provided in paragraph (b) of this sub-**
7 **section,** for complaints of licensing violations other than abuse, the De-
8 partment of Human Services shall cause an investigation to be completed
9 within 90 days of the receipt of the complaint.

10 **“(b) For complaints of licensing violations other than abuse that**
11 **allege harm or potential harm to a resident or for complaints that a**
12 **facility is not able to meet the scheduled and unscheduled needs of all**
13 **residents 24 hours a day, seven days a week, the department shall**
14 **cause an investigation to begin immediately.**

15 **“(2) Except in cases where the investigation is part of nursing facility**
16 **surveyor activity pursuant to federal law, an investigator investigating a**
17 **complaint other than a complaint of abuse shall:**

18 **“(a) Make an unannounced visit to the facility, while complying with ORS**
19 **441.690;**

20 **“(b) Interview all available witnesses identified by any source as having**
21 **personal knowledge relevant to the complaint, such interviews to be private**
22 **unless the witness expressly requests the interview not to be private;**

23 **“(c) Make personal inspection of all physical circumstances that are rel-**
24 **evant and material and that are susceptible to objective observation; [and]**

25 **“(d) Assess the staffing levels of the facility and the facility’s ability**
26 **to meet the scheduled and unscheduled needs of all of the residents**
27 **24 hours a day, seven days a week, if the complaint:**

28 **“(A) Alleges harm or potential harm to a resident;**

29 **“(B) Alleges injury to a resident; or**

30 **“(C) Concerns staffing levels or the ability of the facility to meet**

1 **the scheduled and unscheduled needs of all of the residents 24 hours**
2 **a day, seven days a week; and**

3 “[*d*] (e) Write an investigation report that includes:

4 “(A) The investigator’s personal observations;

5 “(B) A review of documents and records;

6 “(C) A summary of all witness statements; and

7 “(D) A statement of the factual basis for the findings for each incident
8 or problem alleged in the complaint **including, if applicable, the**
9 **investigator’s assessment of staffing levels and the facility’s ability to**
10 **meet the scheduled and unscheduled needs of all of the residents 24**
11 **hours a day, seven days a week.**

12 **“SECTION 5.** ORS 441.726 is amended to read:

13 “441.726. (1) In regulating residential care facilities and long term care
14 facilities, the Department of Human Services shall[, *whenever possible, use*]
15 **prioritize the health, welfare, safety and rights of residents by em-**
16 **ploying** a progressive enforcement process that employs a series of actions
17 to encourage and compel compliance with licensing regulations [*through*
18 *the*], **beginning with the** application of [*preventive, positive and progres-*
19 *sively more restrictive strategies.*] preventive and positive strategies [*are*
20 *strategies*] that include but are not limited to technical assistance, corrective
21 action plans, training and consultation.

22 **“(2) The department shall use progressively more restrictive strat-**
23 **egies if preventive and positive strategies fail to achieve substantial**
24 **compliance, including by imposing license conditions under ORS**
25 **441.736 or, for residential care facilities, taking additional steps dic-**
26 **tated by the framework established under ORS 443.436.**

27 **“SECTION 6.** ORS 441.731 is amended to read:

28 “441.731. (1) The Director of Human Services may impose a civil penalty
29 under ORS 441.710 on a residential care facility or a long term care facility
30 pursuant to this section.

1 “(2)(a) When imposing a civil penalty on a residential care facility or a
2 long term care facility pursuant to this section, the director shall consider:

3 “(A) Any prior violations of laws or rules pertaining to the facility and,
4 as a mitigating factor, whether violations were incurred under prior owner-
5 ship or management of the facility.

6 “(B) The financial benefits, if any, realized by the facility as a result of
7 the violation.

8 “(C) The facility’s past history of correcting violations and preventing the
9 recurrence of violations.

10 “(D) The severity and scope of the violation as described in paragraphs
11 (b) and (c) of this subsection.

12 “(b) The director shall assess the severity of a violation using the fol-
13 lowing criteria:

14 “(A) Level 1 is a violation that results in no actual harm or in potential
15 for only minor harm.

16 “(B) Level 2 is a violation that results in minor harm or potential for
17 moderate harm.

18 “(C) Level 3 is a violation that results in moderate harm or potential for
19 serious harm.

20 “(D) Level 4 is a violation that results in serious harm or death.

21 “(c) The director shall assess the scope of a violation using the following
22 criteria:

23 “(A) An isolated violation occurs when one or a very limited number of
24 residents or employees are affected or a very limited area or number of lo-
25 cations within a facility are affected.

26 “(B) A pattern violation occurs when more than a very limited number
27 of residents or employees are affected, or the situation has occurred in more
28 than a limited number of locations but the locations are not dispersed
29 throughout the facility.

30 “(C) A widespread violation occurs when the problems causing the defi-

1 ciency are pervasive and affect many locations throughout the facility or
2 represent a systemic failure that affected, or has the potential to affect, a
3 large portion or all of the residents or employees.

4 “(d) As used in this subsection:

5 “(A)(i) ‘Financial loss’ means loss of resident property or money as a re-
6 sult of financial exploitation as that term is defined in ORS 124.050.

7 “(ii) ‘Financial loss’ does not include loss of resident property or money
8 that results from action or inaction of an individual not employed or con-
9 tracted with the facility, or that arises from the action or inaction of an
10 individual employed or contracted with the facility if the action or inaction
11 occurs while the individual is not performing employment or contractual
12 duties.

13 “(B) ‘Harm’ means a measurable negative impact to a resident’s physical,
14 mental, financial or emotional well-being.

15 “(C) ‘Minor harm’ means harm resulting in no more than temporary
16 physical, mental or emotional discomfort or pain without loss of function,
17 or in financial loss of less than \$1,000.

18 “(D) ‘Moderate harm’ means harm resulting in temporary loss of physical,
19 mental or emotional function, or in financial loss of \$1,000 or more, but less
20 than \$5,000.

21 “(E) ‘Serious harm’ means harm resulting in long-term or permanent loss
22 of physical, mental or emotional function, or in financial loss of \$5,000 or
23 more.

24 “(3)(a) The director may impose civil penalties as follows:

25 “(A) For a level 1 violation, the director may not impose a civil penalty.

26 “(B) For a level 2 violation, the director may impose a penalty in an
27 amount no less than \$250 per violation, not to exceed \$500 per violation.

28 “(C) For a level 3 violation, the director may impose a civil penalty in
29 an amount no less than \$500 per violation, not to exceed \$1,500 per violation.

30 “(D) For a level 4 violation, the director may impose a civil penalty in

1 an amount no less than \$1,500 per violation, not to exceed \$2,500 per vio-
2 lation.

3 “(E) For a failure to report abuse of a resident to the Department of
4 Human Services as required by state law, the director may impose a civil
5 penalty in an amount no more than \$1,000 per violation.

6 “(b) The penalties imposed under paragraph (a)(A) to (D) of this sub-
7 section may not exceed \$20,000 in the aggregate for violations occurring in
8 a single residential care facility or long term care facility within any 90-day
9 period.

10 “(c) In imposing civil penalties under this subsection, the director may
11 take into account the scope of the violation.

12 “(4)(a) If the department investigates and makes a finding of abuse in a
13 residential care facility or long term care facility arising from deliberate or
14 other than accidental action or inaction that is likely to cause a negative
15 outcome by a person with a duty of care toward a resident of a residential
16 care facility or long term care facility and if the abuse resulted in the death,
17 serious injury, rape or sexual abuse of a resident, the director shall impose
18 a civil penalty on the facility of not less than \$2,500 and not more than
19 \$15,000 for each occurrence of substantiated abuse, not to exceed \$40,000 for
20 all violations occurring in a facility within any 90-day period.

21 “(b) As used in this subsection:

22 “(A) ‘Negative outcome’ includes serious injury, rape, sexual abuse or
23 death.

24 “(B) ‘Rape’ means rape in the first degree as defined in ORS 163.375, rape
25 in the second degree as defined in ORS 163.365 and rape in the third degree
26 as defined in ORS 163.355.

27 “(C) ‘Serious injury’ means physical injury that creates a substantial risk
28 of death or that causes serious and protracted disfigurement, protracted
29 impairment of health or protracted loss or impairment of the function of any
30 bodily organ.

1 “(D) ‘Sexual abuse’ means any form of sexual contact between an em-
2 ployee of a residential care facility or a long term care facility or a person
3 providing services in the facility and a resident of that facility, including
4 but not limited to sodomy, sexual coercion, sexually explicit photographing
5 and sexual harassment.

6 “(5) When imposing penalties under this section for a violation that
7 qualifies as abuse under state law and results in less than serious harm as
8 defined in subsection (2) of this section, the director shall reduce the penalty
9 by not less than 25 percent if the facility self-reported the abuse to the de-
10 partment.

11 “(6) The department shall identify and track the number of abuse vio-
12 lations that are reported to the department by a facility and compile statis-
13 tics on the rate of self-reporting by facilities as compared to abuse
14 complaints from other sources.

15 “(7)(a) When the director notifies a facility of a violation for which a
16 penalty may be imposed under this section, the director shall describe in the
17 notice the specific remediations that the facility must make to achieve sub-
18 stantial compliance regarding the violation. In the notice, the director shall
19 prescribe a reasonable time for elimination of the violation:

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

21 “(B) In cases where the violation requires more than 30 days to correct,
22 such time as is specified in a plan of correction found acceptable by the di-
23 rector.

24 “(b) The director shall hold in abeyance a penalty for a level 2 violation
25 or level 3 violation for the period prescribed under paragraph (a) of this
26 subsection. If the facility achieves substantial compliance as described in the
27 notice required under paragraph (a) of this subsection within the prescribed
28 time period, the director shall withdraw some or all of the penalty.

29 “(c) As used in this subsection, ‘substantial compliance’ means a **facility:**

30 “(A) **Is consistently able to meet the scheduled and unscheduled**

1 **needs of all of the residents 24 hours a day, seven days a week; and**

2 **“(B) Has a** level of compliance with state law and with rules of the de-
3 partment such that any identified deficiencies:

4 **“(i) Pose a risk of no more than negligible harm to the health, [or] wel-**
5 **fare and** safety of residents of a facility; **and**

6 **“(ii) Do not violate the rights of residents.**

7 **“SECTION 7.** ORS 441.736 is amended to read:

8 “441.736. (1) As used in this section:

9 **“(a) ‘Immediate jeopardy’** means a situation in which the failure of a
10 residential care facility or a long term care facility to comply with a rule
11 of the Department of Human Services has caused or is likely to cause serious
12 injury, serious harm, serious impairment or death to a resident.

13 **“(b) ‘License condition’** includes but is not limited to:

14 **“(A) Restricting the total number of residents;**

15 **“(B) Restricting the number and impairment level of residents based upon**
16 **the capacity of the licensee and staff to meet the health and safety needs of**
17 **all residents;**

18 **“(C) Requiring additional staff or staff qualifications;**

19 **“(D) Requiring additional training for staff;**

20 **“(E) Requiring additional documentation; or**

21 **“(F) Restriction of admissions.**

22 **“(c) ‘Substantial compliance’** means a **facility:**

23 **“(A) Is consistently able to meet the scheduled and unscheduled**
24 **needs of all of the residents 24 hours a day, seven days a week; and**

25 **“(B) Has a** level of compliance with state law and with rules of the de-
26 partment such that any identified deficiencies:

27 **“(i) Pose a risk of no more than negligible harm to the health, [or] wel-**
28 **fare and** safety of residents of a residential care facility or a long term care
29 facility; **and**

30 **“(ii) Do not violate the rights of residents.**

1 “(2)(a) The department may impose a condition on the license of a resi-
2 dential care facility or long term care facility in response to a substantiated
3 finding of rule violation, including but not limited to a substantiated finding
4 of abuse, [*or*] **and shall impose a condition on the license** in response to
5 a finding of immediate jeopardy, whether or not the finding of immediate
6 jeopardy is substantiated at the time the license condition is imposed.

7 “(b) The department shall impose a license condition in a scope and
8 manner that is specifically designed to remediate the finding that led to the
9 license condition.

10 “(c) If the department imposes a license condition in response to a finding
11 of immediate jeopardy to residents of the facility, and the finding of imme-
12 diate jeopardy to residents of the facility is not substantiated within 30 days
13 after the imposition of the license condition, the department shall imme-
14 diately remove the license condition.

15 “(d)(A) Except as provided in subparagraph (B) of this paragraph, the
16 department shall provide a facility with a notice of impending imposition of
17 license condition at least 48 hours before issuing an order imposing a license
18 condition. The notice must:

19 “(i) Describe the acts or omissions of the facility and the circumstances
20 that led to the substantiated finding of rule violation or finding of immediate
21 jeopardy supporting the imposition of the license condition;

22 “(ii) Describe why the acts or omissions and the circumstances create a
23 situation for which the imposition of a license condition is warranted;

24 “(iii) Provide a brief statement identifying the nature of the license con-
25 dition;

26 “(iv) Provide a brief statement describing how the license condition is
27 designed to remediate the circumstances that led to the license condition;
28 and

29 “(v) Provide a brief statement of the requirements for withdrawal of the
30 license condition.

1 “(B) If the threat to residents of a facility is so imminent that the de-
2 partment determines it is not safe or practical to give the facility advance
3 notice, the department must provide the notice required under this paragraph
4 within 48 hours of issuing an order imposing the license condition.

5 “(e) An order imposing a license condition must include:

6 “(A) A specific description of how the scope and manner of the license
7 condition is designed to remediate the findings that led to the license con-
8 dition; and

9 “(B) A specific description of the requirements for withdrawal of the li-
10 cense condition.

11 “(3) The department may impose a license condition that includes a re-
12 striction on admissions to the facility only if the department makes a finding
13 of immediate jeopardy that is likely to present an immediate jeopardy to fu-
14 ture residents upon admission.

15 “(4)(a) Following the imposition of a license condition on a facility, the
16 department shall:

17 “(A) Within 15 business days of receipt of the facility’s written assertion
18 of substantial compliance with the requirements set forth by the department
19 for withdrawal of the license condition, reinspect or reevaluate the facility
20 to determine whether the facility has achieved substantial compliance with
21 the requirements;

22 “(B) Notify the facility by telephone or electronic means of the findings
23 of the reinspection or reevaluation within five business days after completion
24 of the reinspection or reevaluation; and

25 “(C) Issue a written report to the facility within 30 days after the rein-
26 spection or reevaluation notifying the facility of the department’s determi-
27 nations regarding substantial compliance with the requirements necessary
28 for withdrawal of the license condition.

29 “(b) If the department finds that the facility has achieved substantial
30 compliance regarding the violation for which the license condition was im-

1 posed, and finds that systems are in place to ensure similar deficiencies do
2 not reoccur, the department shall withdraw the license condition.

3 “(c) If after reinspection or reevaluation the department determines that
4 the violation for which the license condition was imposed continues to exist,
5 the department may not withdraw the license condition, and the department
6 is not obligated to reinspect or reevaluate the facility again for 45 days after
7 the first reinspection or reevaluation. The department shall provide the de-
8 cision not to withdraw the license condition to the facility in writing and
9 inform the facility of the right to a contested case hearing pursuant to ORS
10 chapter 183. Nothing in this paragraph limits the department’s authority to
11 visit or inspect the facility at any time.

12 “(d) If the department does not meet the requirements of this subsection,
13 a license condition is automatically removed on the date the department
14 failed to meet the requirements of this subsection, unless the Director of
15 Human Services extends the applicable period for no more than 15 business
16 days. The director may not delegate the power to make a determination re-
17 garding an extension under this paragraph.

18 **“SECTION 8.** ORS 443.431 is amended to read:

19 “443.431. (1) A facility that is licensed as a long term care facility under
20 ORS 441.025 may apply to the Department of Human Services for licensure
21 as a conversion facility. The department shall issue a conversion facility li-
22 cense upon receipt of an application and a fee that meet requirements es-
23 tablished by the department by rule.

24 “(2)(a) The department shall adopt rules governing the conversion of a
25 facility’s license from a long term care facility license to a residential care
26 facility license and the regulation of the facility during the conversion pe-
27 riod.

28 “(b) As of the date of licensure as a conversion facility, the conversion
29 facility must be in substantial compliance with applicable state and local
30 laws, rules, codes, ordinances and permit requirements.

1 “(3) As used in this section, ‘substantial compliance’ means a **facility:**

2 “(a) **Is consistently able to meet the scheduled and unscheduled**
3 **needs of all of the residents 24 hours a day, seven days a week; and**

4 “(b) **Has a level of compliance with state law and with rules of the de-**
5 **partment such that any identified deficiencies:**

6 “(A) **Pose a risk of no more than negligible harm to the health, [or]**
7 **welfare and safety of residents; and**

8 “(B) **Do not violate the rights of residents.**

9 “**SECTION 9.** ORS 443.436 is amended to read:

10 “443.436. (1) As used in this section, ‘substantial compliance’ means a
11 **facility:**

12 “(a) **Is consistently able to meet the scheduled and unscheduled**
13 **needs of all of the residents 24 hours a day, seven days a week; and**

14 “(b) **Has a level of compliance with state law and with rules of the De-**
15 **partment of Human Services such that any identified deficiencies:**

16 “(A) **Pose a risk of no more than negligible harm to the health, [or]**
17 **welfare and safety of residents; and**

18 “(B) **Do not violate the rights of residents.**

19 “(2)(a) The department shall develop a framework for assessing the com-
20 pliance of residential care facilities with regulatory requirements and for
21 requiring corrective action that accurately and equitably measures compli-
22 ance and the extent of noncompliance.

23 “(b) The framework must include but is not limited to measures of:

24 “(A) The severity and scope of a residential care facility’s
25 noncompliance;

26 “(B) **The facility’s ability to meet the scheduled and unscheduled**
27 **needs of all of the residents 24 hours a day, seven days a week; and**

28 “(C) **The impact of any compliance deficiencies on the rights,**
29 **health, welfare and safety of the residents.**

30 “(c) The department shall publish the framework on the department’s

1 website and shall distribute the framework to residential care facilities li-
2 censed in this state.

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

6 “(a) A lack of substantial compliance with the requirements of ORS
7 443.400 to 443.455 **or rules adopted to implement ORS 443.400 to 443.455;**
8 or

9 “(b) Performance substantially below statewide averages on quality met-
10 rics reported under the Residential Care Quality Measurement Program es-
11 tablished under ORS 443.446.

12 “(4) The residential care facility enhanced oversight and supervision pro-
13 gram shall take one or more of the following actions that the department
14 deems necessary to improve the performance of a residential care facility:

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

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

18 “(c) **Impose one or more conditions on the license of the facility**
19 **under ORS 441.736.**

20 “(5) The department shall terminate the enhanced oversight and super-
21 vision of a residential care facility:

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

26 “(b) After one year if the residential care facility submits a written as-
27 ssertion of substantial compliance and the department determines that the
28 residential care facility no longer meets the criteria set forth in subsection
29 (3) of this section.

30 “(6) **The department shall publish notice on the department’s**

1 **website, including any website where the public can access a database**
2 **of long term care facilities, of any residential care facility that is in**
3 **the enhanced oversight and supervision program.**

4 “[6] (7) Using moneys from the Quality Care Fund established under
5 ORS 443.001, the department shall develop, maintain and periodically update
6 compliance guidelines for residential care facilities serving seniors and per-
7 sons with disabilities. The guidelines must be made available electronically.

8 “[7] (8) This section does not preclude the department from taking any
9 action authorized by ORS 443.400 to 443.455.

10 **“SECTION 10.** ORS 441.705 is amended to read:

11 “441.705. As used in ORS 441.705 to 441.745:

12 “(1) ‘Direct patient care or feeding’ means any care provided directly to
13 or for any patient related to that patient’s physical, medical and dietary
14 well-being as defined by rules of:

15 “(a) The Department of Human Services when the facility is a long term
16 care facility, as defined in ORS 442.015, or a residential care facility, resi-
17 dential training facility or residential training home[, *as those terms are de-*
18 *fined in ORS 443.400*]; and

19 “(b) The Oregon Health Authority if the facility is a residential treatment
20 facility or a residential treatment home[, *as defined in ORS 443.400*].

21 “(2) ‘Person’ means a licensee of a long term care facility, a residential
22 care facility, a residential training facility, a residential treatment facility,
23 a residential training home or a residential treatment home, or an unlicensed
24 person who the Director of Human Services finds should be licensed to op-
25 erate a long term care facility, a residential care facility, a residential
26 training facility or a residential training home, or an unlicensed person who
27 the Director of the Oregon Health Authority finds should be licensed to op-
28 erate a residential treatment facility or residential treatment home.
29 ‘Person’ does not mean an employee of a licensee or unlicensed person who
30 the Director of Human Services or the Director of the Oregon Health Au-

1 thority finds should be licensed.

2 “(3) ‘Residential care facility’, ‘residential training facility’, ‘resi-
3 dential training home’, ‘residential treatment facility’ and ‘residential
4 treatment home’ have the meanings given those terms in ORS 443.400.

5 “[3] (4) ‘Staff to patient ratio’ means the number and training of persons
6 providing direct patient care as defined in rules of the:

7 “(a) Department if the facility is a long term care facility, a residential
8 care or residential training facility or a residential training home; or

9 “(b) Authority if the facility is a residential treatment facility or a resi-
10 dential treatment home.

11 “**SECTION 11.** ORS 441.677 is amended to read:

12 “441.677. (1) Within 60 days of receipt of the investigation documents and
13 the written report described in ORS 441.650 (6)(d) and 441.676 [(2)(d)] (2)(e),
14 but in no case longer than 120 days after an investigation has been com-
15 menced pursuant to ORS 441.650 or 441.676, the investigation shall be com-
16 pleted and the Department of Human Services shall prepare a written letter
17 of determination that states the department’s determinations concerning each
18 incident or problem alleged in the complaint. The department shall determine
19 whether the alleged incident or problem was substantiated or unsubstanti-
20 ated or whether the department was unable to substantiate the alleged inci-
21 dent or problem. The department shall adopt by rule definitions for the terms
22 ‘substantiated,’ ‘unsubstantiated’ and ‘unable to substantiate.’ If the depart-
23 ment determines that an incident or problem alleged in the complaint is
24 substantiated, the letter of determination shall state whether the substanti-
25 ated incident was abuse or violation of another rule. If abuse is substanti-
26 ated, the letter of determination shall state whether the facility or an
27 individual, or both, was responsible. The department shall adopt by rule
28 criteria for determining responsibility for substantiated abuse.

29 “(2) A copy of the letter of determination shall be placed in the facility’s
30 complaint file. Copies shall be sent to the facility, the complainant and the

1 local office of the department. The facility and the complainant receiving
2 the letter of determination shall be given 10 days to respond with additional
3 information and shall be informed of the appeals process.

4 “(3) If the department determines that an individual who holds a license
5 or certificate for a health occupation is directly responsible for the abuse,
6 the department shall send a copy of its letter of determination and investi-
7 gation report to the state agency responsible for licensing or certifying the
8 individual in the health occupation. In instances involving conduct of a
9 nursing assistant, the department shall give the nursing assistant 10 days to
10 respond with additional information. The department also shall notify by
11 mail the nursing assistant implicated in the investigation of:

12 “(a) The nature of the allegations;

13 “(b) The date and time of occurrence;

14 “(c) The right to a contested case hearing conducted in accordance with
15 ORS chapter 183;

16 “(d) The department’s obligation to report the substantiated findings in
17 the registry maintained under ORS 441.678 after the nursing assistant has
18 had an opportunity for a contested case hearing; and

19 “(e) The fact that the nursing assistant’s failure to request a contested
20 case hearing within 30 days from the date of the notice will result in the
21 department’s reporting the substantiated findings in the registry maintained
22 under ORS 441.678.

23 “(4) Notice sent to the nursing assistant’s last-known address is sufficient
24 to meet the requirements of subsection (3) of this section.

25 **“SECTION 12. The Department of Human Services shall adopt final**
26 **rules in accordance with sections 1 and 2 of this 2021 Act no later than**
27 **January 1, 2022.**

28 **“SECTION 13. No later than January 1, 2022, the Department of**
29 **Human Services shall:**

30 **“(1) Publish and distribute to residential care facilities the frame-**

1 work described in ORS 443.436 (2).

2 “(2) Fully implement the enhanced oversight and supervision pro-
3 gram described in ORS 443.436.

4 “(3) Report to the appropriate interim committees of the Legislative
5 Assembly, in the manner provided in ORS 192.245, on the publishing
6 and distribution of the framework and the implementation of the en-
7 hanced oversight and supervision program.

8 “SECTION 14. This 2021 Act takes effect on the 91st day after the
9 date on which the 2021 regular session of the Eighty-first Legislative
10 Assembly adjourns sine die.”

11
