

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, 441.736 and
3 443.436; and prescribing an effective date”.

4 Delete lines 4 through 12 and insert:

5 **“SECTION 1. (1) As used in this section:**

6 **“(a) ‘Consistently’ means regularly and typically.**

7 **“(b) ‘Direct care staff’ means staff who provide services for resi-
8 dents that include assistance with daily living, medication adminis-
9 tration, resident-focused activities, supervision and support.**

10 **“(c) ‘Facility’ includes a:**

11 **“(A) Residential care facility as defined in ORS 443.400; and**

12 **“(B) Facility with a memory care endorsement under ORS 443.886.**

13 **“(2) In determining whether a facility has qualified awake direct
14 care staff in sufficient numbers to meet the scheduled and unsched-
15 uled needs of each resident 24 hours a day as prescribed by rule, the
16 Department of Human Services shall conduct an assessment, in ac-
17 cordance with rules for home and community-based settings adopted
18 by the Centers for Medicare and Medicaid Services, and consider
19 whether the facility consistently:**

20 **“(a) Implements and maintains a current person-centered service
21 plan for each resident as required by rule by the Centers for Medicare**

1 **and Medicaid Services;**

2 **“(b) Provides timely access, 24 hours a day, to all supports needed**
3 **for activities of daily living including eating, hydration, toileting, hy-**
4 **giene, bathing, dressing, oral care and other supports included in the**
5 **resident’s person-centered service plan;**

6 **“(c) Provides a timely response to issues impacting the dignity of**
7 **the resident, including but not limited to wet or soiled briefs, clothing**
8 **or linens; and**

9 **“(d) Delivers care according to the schedule and procedures outlined**
10 **in the resident’s person-centered service plan, including but not lim-**
11 **ited to wound care, medication administration, pain control, behavior**
12 **support, cueing and repositioning.**

13 **“SECTION 2.** ORS 441.650 is amended to read:

14 **“441.650. (1) Upon receipt of the oral or written report required under**
15 **ORS 441.640, or of an abuse complaint, the area agency on aging, the De-**
16 **partment of Human Services or the law enforcement agency shall cause an**
17 **investigation to be commenced as follows:**

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

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

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

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

3 “(b) The status of the investigation;

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

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

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

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

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

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

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

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

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

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

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

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

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

29 “(a) Make an unannounced visit to the facility, except as provided by ORS
30 441.690, to determine the nature and cause of the abuse of the resident;

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

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

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

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

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

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

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

12 “(7) Within five working days of completion of the investigation and not
13 later than 60 days from completion of the initial status report described in
14 subsection (2) of this section, the investigator shall provide the department
15 with the written report required by subsection (6) of this section. The de-
16 partment shall make the investigation report available upon request after the
17 letter of determination is complete. When copies of the report are made
18 available, the names of the resident involved, the complainant and any indi-
19 viduals interviewed by the investigator shall be deleted from the copies.

20 **“SECTION 3.** ORS 441.676 is amended to read:

21 **“441.676. (1) As used in this section:**

22 **“(a) ‘Consistently’ means regularly and typically.**

23 **“(b) ‘Direct care staff’ means staff who provide services for resi-**
24 **dents that include assistance with daily living, medication adminis-**
25 **tration, resident-focused activities, supervision and support.**

26 **[(1)] (2)(a) Except as provided in paragraph (b) of this subsection,** for
27 complaints of licensing violations other than abuse, the Department of Hu-
28 man Services shall cause an investigation to be completed within 90 days of
29 the receipt of the complaint.

30 **“(b) For complaints of licensing violations other than abuse that**

1 **allege harm or potential harm to a resident or for complaints that a**
2 **facility does not have qualified awake direct care staff in sufficient**
3 **numbers to meet the scheduled and unscheduled needs of each resi-**
4 **dent 24 hours a day, the department shall cause an investigation to**
5 **begin without undue delay.**

6 “[2)] (3) Except in cases where the investigation is part of nursing fa-
7 cility surveyor activity pursuant to federal law, an investigator investigating
8 a complaint other than a complaint of abuse shall:

9 “(a) Make an unannounced visit to the facility, while complying with ORS
10 441.690;

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

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

16 “(d) **Assess whether the facility has qualified awake direct care staff**
17 **in sufficient numbers to consistently meet the scheduled and un-**
18 **scheduled needs of each resident 24 hours a day, if the complaint:**

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

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

21 “(C) **Concerns staffing levels or the ability of the facility’s direct**
22 **care staff to consistently meet the scheduled and unscheduled needs**
23 **of each resident 24 hours a day; and**

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

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

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

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

28 “(D) A statement of the factual basis for the findings for each incident
29 or problem alleged in the complaint **including, if applicable, the**
30 **investigator’s assessment of staffing levels and whether the facility**

1 **has qualified awake direct care staff in sufficient numbers to consist-**
2 **ently meet the scheduled and unscheduled needs of each resident 24**
3 **hours a day.**

4 **“SECTION 4.** ORS 441.726 is amended to read:

5 “441.726. (1) In regulating residential care facilities and long term care
6 facilities, the Department of Human Services shall[, *whenever possible, use*]
7 **prioritize the health, welfare, safety and rights of residents.**

8 **“(2) The department may, as appropriate, use** a progressive enforce-
9 ment process that employs a series of actions to encourage and compel
10 compliance with licensing regulations through the application of preventive,
11 positive and progressively more restrictive strategies. Preventive and posi-
12 tive strategies are strategies that include but are not limited to technical
13 assistance, corrective action plans, training and consultation.

14 **“(3) This section does not restrict the ability of the department to**
15 **use more restrictive strategies when necessary to achieve substantial**
16 **compliance or to protect the health, welfare, safety and rights of res-**
17 **idents, including by imposing license conditions under ORS 441.736 or,**
18 **for residential care facilities, taking additional steps dictated by the**
19 **framework established under ORS 443.436.**

20 **“SECTION 5.** ORS 441.736 is amended to read:

21 “441.736. (1) As used in this section:

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

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

27 “(A) Restricting the total number of residents;

28 “(B) Restricting the number and impairment level of residents based upon
29 the capacity of the licensee and staff to meet the health and safety needs of
30 all residents;

1 “(C) Requiring additional staff or staff qualifications;

2 “(D) Requiring additional training for staff;

3 “(E) Requiring additional documentation; or

4 “(F) Restriction of admissions.

5 “(c) ‘Substantial compliance’ means a level of compliance with state law
6 and with rules of the department such that any identified deficiencies pose
7 a risk of no more than negligible harm to the health or safety of residents
8 of a residential care facility or a long term care facility.

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

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

18 “(c) If the department imposes a license condition in response to a finding
19 of immediate jeopardy to residents of the facility, and the finding of imme-
20 diate jeopardy to residents of the facility is not substantiated within 30 days
21 after the imposition of the license condition, the department shall imme-
22 diately remove the license condition.

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

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

30 “(ii) Describe why the acts or omissions and the circumstances create a

1 situation for which the imposition of a license condition is warranted;

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

4 “(iv) Provide a brief statement describing how the license condition is
5 designed to remediate the circumstances that led to the license condition;
6 and

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

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

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

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

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

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

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

25 “(A) Within 15 business days of receipt of the facility’s written assertion
26 of substantial compliance with the requirements set forth by the department
27 for withdrawal of the license condition, reinspect or reevaluate the facility
28 to determine whether the facility has achieved substantial compliance with
29 the requirements;

30 “(B) Notify the facility by telephone or electronic means of the findings

1 of the reinspection or reevaluation within five business days after completion
2 of the reinspection or reevaluation; and

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

7 “(b) If the department finds that the facility has achieved substantial
8 compliance regarding the violation for which the license condition was im-
9 posed, and finds that systems are in place to ensure similar deficiencies do
10 not reoccur, the department shall withdraw the license condition.

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

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

26 **“SECTION 6.** ORS 443.436 is amended to read:

27 “443.436. (1) As used in this section[,]:

28 **“(a) ‘Consistently’ means regularly and typically.**

29 **“(b) ‘Substantial compliance’ means a level of compliance with state law**
30 **and with rules of the Department of Human Services such that any identified**

1 deficiencies pose a risk of no more than negligible harm to the health or
2 safety of residents.

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

7 “(b) The framework must include but is not limited to measures of the
8 severity and scope of a residential care facility’s noncompliance, **including**
9 **but not limited to:**

10 “(A) **Whether the facility has qualified awake direct care staff in**
11 **sufficient numbers to consistently meet the scheduled and unsched-**
12 **uled needs of each resident 24 hours a day; and**

13 “(B) **The impact of any compliance deficiencies on the rights,**
14 **health, welfare and safety of the residents.**

15 “(c) The department shall publish the framework on the department’s
16 website and shall distribute the framework to residential care facilities li-
17 censed in this state.

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

21 “(a) A lack of substantial compliance with the requirements of ORS
22 443.400 to 443.455 **or rules adopted to implement ORS 443.400 to 443.455;**
23 or

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

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

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

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

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

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

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

11 “(b) After one year if the residential care facility submits a written as-
12 sertion of substantial compliance and the department determines that the
13 residential care facility no longer meets the criteria set forth in subsection
14 (3) of this section.

15 “(6) **The department shall publish notice on the department’s**
16 **website, including any website where the public can access a database**
17 **of long term care facilities, of any residential care facility that is in**
18 **the enhanced oversight and supervision program.**

19 “[6] (7) Using moneys from the Quality Care Fund established under
20 ORS 443.001, the department shall develop, maintain and periodically update
21 compliance guidelines for residential care facilities serving seniors and per-
22 sons with disabilities. The guidelines must be made available electronically.

23 “[7] (8) This section does not preclude the department from taking any
24 action authorized by ORS 443.400 to 443.455.

25 “**SECTION 7.** ORS 441.705 is amended to read:

26 “441.705. As used in ORS 441.705 to 441.745:

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

30 “(a) The Department of Human Services when the facility is a long term

1 care facility, as defined in ORS 442.015, or a residential care facility, resi-
2 dential training facility or residential training home[, *as those terms are de-*
3 *defined in ORS 443.400*]; and

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

6 “(2) ‘Person’ means a licensee of a long term care facility, a residential
7 care facility, a residential training facility, a residential treatment facility,
8 a residential training home or a residential treatment home, or an unlicensed
9 person who the Director of Human Services finds should be licensed to op-
10 erate a long term care facility, a residential care facility, a residential
11 training facility or a residential training home, or an unlicensed person who
12 the Director of the Oregon Health Authority finds should be licensed to op-
13 erate a residential treatment facility or residential treatment home.
14 ‘Person’ does not mean an employee of a licensee or unlicensed person who
15 the Director of Human Services or the Director of the Oregon Health Au-
16 thority finds should be licensed.

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

20 “[3] (4) ‘Staff to patient ratio’ means the number and training of persons
21 providing direct patient care as defined in rules of the:

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

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

26 “**SECTION 8.** ORS 441.677 is amended to read:

27 “441.677. (1) Within 60 days of receipt of the investigation documents and
28 the written report described in ORS 441.650 (6)(d) and 441.676 [(2)(d)] (3)(e),
29 but in no case longer than 120 days after an investigation has been com-
30 menced pursuant to ORS 441.650 or 441.676, the investigation shall be com-

1 pleted and the Department of Human Services shall prepare a written letter
2 of determination that states the department’s determinations concerning each
3 incident or problem alleged in the complaint. The department shall determine
4 whether the alleged incident or problem was substantiated or unsubstanti-
5 ated or whether the department was unable to substantiate the alleged inci-
6 dent or problem. The department shall adopt by rule definitions for the terms
7 ‘substantiated,’ ‘unsubstantiated’ and ‘unable to substantiate.’ If the depart-
8 ment determines that an incident or problem alleged in the complaint is
9 substantiated, the letter of determination shall state whether the substanti-
10 ated incident was abuse or violation of another rule. If abuse is substanti-
11 ated, the letter of determination shall state whether the facility or an
12 individual, or both, was responsible. The department shall adopt by rule
13 criteria for determining responsibility for substantiated abuse.

14 “(2) A copy of the letter of determination shall be placed in the facility’s
15 complaint file. Copies shall be sent to the facility, the complainant and the
16 local office of the department. The facility and the complainant receiving
17 the letter of determination shall be given 10 days to respond with additional
18 information and shall be informed of the appeals process.

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

27 “(a) The nature of the allegations;

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

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

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

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

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

10 **“SECTION 9. No later than April 1, 2022, the Department of Human
11 Services shall:**

12 **“(1) Publish and distribute to residential care facilities the frame-
13 work described in ORS 443.436 (2).**

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

16 **“(3) Report to the appropriate interim committees of the Legislative
17 Assembly, in the manner provided in ORS 192.245, on the publishing
18 and distribution of the framework and the implementation of the en-
19 hanced oversight and supervision program.**

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

23