

Enrolled
Senate Bill 792

Sponsored by COMMITTEE ON HUMAN SERVICES

CHAPTER

AN ACT

Relating to providers of developmental disability services; creating new provisions; and amending ORS 427.900, 443.415, 443.455 and 443.735.

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

SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS chapter 427.

SECTION 2. (1) The Department of Human Services shall establish application fees for initial and renewal license, certification and endorsement applications submitted by:

(a) Residential training homes and residential training facilities, as defined in ORS 443.400, for licenses under ORS 443.410.

(b) Adult foster homes, as defined in ORS 443.705, that provide residential care to adults with intellectual or developmental disabilities, for licenses under ORS 443.735.

(c) Facilities or other persons certified by the department to provide developmental disability services, as defined in ORS 427.101.

(2)(a) Fees collected under subsection (1)(a) and (c) of this section shall be deposited in the Department of Human Services Account established in ORS 409.060 to be used for the licensing and certification of entities described in subsection (1) of this section.

(b) Fees collected under subsection (1)(b) of this section shall be deposited to the Quality Care Fund established in ORS 443.001.

(3) The department shall prescribe by rule criteria for the waiver or reduction of any fee under this section when appropriate without compromising the quality of care provided or the safety of the recipients of the residential care or developmental disability services.

(4) No less frequently than every five years, the department shall review fees established under this section and make adjustments if necessary.

SECTION 3. ORS 443.415 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] or residential training facility shall be prescribed by the department pursuant to section 2 of this 2023 Act.

(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 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 4. ORS 443.735 is amended to read:

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

(b) Each application submitted to the Department of Human Services for an adult foster home serving individuals with intellectual or developmental disabilities shall be accompanied by a fee [*of \$50 per bed requested for licensing*] **prescribed by the department under section 2 of this 2023 Act.**

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

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

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

(a) The applicant and adult foster home are in compliance with ORS 443.002 and 443.705 to 443.825 and the rules of the licensing agency;

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

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

(d) The licensing agency has determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse; and

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

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

(a) The applicant and the adult foster home are in compliance with ORS 443.002, 443.012 and 443.705 to 443.825 and the rules of the licensing agency;

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

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

(d) The licensing agency has determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.

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

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

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

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

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

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

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

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

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

(b) All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve persons who are elderly[,] **or** have physical disabilities [*or have developmental disabilities*] shall be deposited in the Quality Care Fund established in ORS 443.001.

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

SECTION 5. ORS 427.900 is amended to read:

427.900. (1) The Department of Human Services shall adopt by rule civil penalties to be imposed, in accordance with ORS 183.745, [*on any provider contracting with the department to provide intellectual or developmental disability services*] for a violation of a statutory requirement or a rule adopted by the department applicable to the provision of services described in ORS 409.010 (2) **by any provider contracting with the department to provide intellectual or developmental disability services including, but not limited to:**

- (a) Residential training homes or residential training facilities, as defined in ORS 443.400;
- (b) Adult foster homes, as defined in ORS 443.705, that provide residential care to individuals with intellectual or developmental disabilities; and
- (c) Persons certified by the department to provide developmental disability services, as defined in ORS 427.101.

(2) This section may not be construed to supersede ORS 418.992 or 441.710 or any other statute that prescribes criteria for or limitations on the imposition of a civil penalty.

(3) Moneys collected by the department pursuant to rules adopted under this section shall be transferred to the State Treasury for deposit to the Department of Human Services Account established under ORS 409.060 and may be used by the division of the department that provides developmental disabilities services for system improvements and the implementation of policies.

(4) **No less frequently than every five years, the department shall review and update, if appropriate, civil penalties established under this section.**

(5) **Civil penalties recovered from a residential training facility or a residential training home shall be deposited in the Long Term Care Ombudsman Account established in ORS 441.419.**

SECTION 6. ORS 443.455 is amended to read:

443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

(2)[(a)] The Director of Human Services shall impose penalties on residential care facilities pursuant to ORS 441.731.

(b) The director shall *[by rule prescribe a schedule of]* **impose** penalties *[for]* **pursuant to ORS 427.900** on residential training facilities and residential training homes that are not in compliance with ORS 443.400 to 443.455.

(3) The Director of the Oregon Health Authority shall by rule prescribe a schedule of penalties for residential treatment facilities and residential treatment homes that are not in compliance with ORS 443.400 to 443.455.

(4) If the Department of Human Services or the Oregon Health Authority investigates and makes a finding of abuse arising from deliberate or other than accidental action or inaction that is likely to cause a negative outcome by a person with a duty of care toward a resident of a residential facility, other than a residential care facility, and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:

(a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

(b) "Rape" means rape in the first degree as defined in ORS 163.375, rape in the second degree as defined in ORS 163.365 and rape in the third degree as defined in ORS 163.355.

(c) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(d) "Sexual abuse" means any form of sexual contact between an employee of a residential facility or a person providing services in the residential facility and a resident of that facility, including but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

(5) Civil penalties recovered from a *[residential training facility, residential training home,]* residential treatment facility or residential treatment home shall be deposited in the Long Term Care Ombudsman Account established in ORS 441.419.

Passed by Senate April 11, 2023

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Lori L. Brocker, Secretary of Senate

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Rob Wagner, President of Senate

Passed by House May 24, 2023

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Dan Rayfield, Speaker of House

Received by Governor:

.....M,....., 2023

Approved:

.....M,....., 2023

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Tina Kotek, Governor

Filed in Office of Secretary of State:

.....M,....., 2023

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Secretary of State