

SB 739 -3, -5 STAFF MEASURE SUMMARY

Senate Committee On Human Services

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Sub-Referral To: Joint Committee On Ways and Means

Meeting Dates: 3/18, 4/1, 4/3, 4/8, 4/9

WHAT THE MEASURE DOES:

The measure modifies the requirements and procedures for the Department of Human Services (ODHS) to enforce regulations and investigate reported licensing violations and other deficiencies in residential care facilities and memory care facilities. The measure specifies the authority for ODHS to grant exceptions to licensing requirements for residential care facilities. The measure imposes additional requirements on residential care facility administrators and prohibits unlicensed individuals from acting as administrators. The measure specifies additional requirements for ODHS to issue memory care endorsements.

Detailed Summary:

Complaint Investigations (Section 1)

- Modifies requirements for ODHS to respond to a complaint of a licensing violation in a residential care facility or memory care facility.
- Requires ODHS to begin an investigation of a residential or memory care facility in response to a complaint of a licensing violation that alleges harm or the potential of severe harm to a resident.
- Specifies that the investigation must be on-site and begin:
 - Within 24 hours of a complaint that alleges a licensing violation resulting in death or serious physical injury; and
 - Within seven days for all other complaints.
- Requires an investigator to interview relevant witnesses, including residents, staff, family members, and personnel from the Long Term Care Ombudsman.
- Specifies additional content of the investigation report, including:
 - Information about any additional licensing violations, contract violations, or allegations of abuse that are observed during the investigation; and
 - A summary of any compliance deficiencies or substantiated abuse allegations related to the facility from the previous 12 months.
- Clarifies that a complaint investigation may occur alongside a separate adult protective services investigation.
- Applies to complaints submitted on or after the measure's effective date.

Conditions on Licenses (Section 2)

- Requires ODHS to impose a condition on the license of a residential care facility or long term care facility immediately in response to a finding of immediate jeopardy.
- Applies to findings of immediate jeopardy made on or after the measure's effective date.

Nonsubstantive Statutory Organization (Section 3)

- Specifies that Sections 4 to 6 and Section 8 are added to statutes relating to regulation of residential care facilities.

Exceptions to Licensing Requirements (Section 4)

- Prohibits ODHS from granting a request for an exception to licensing requirements prescribed in state or federal statute.

- Prescribes procedure for ODHS to grant a request for exception to a licensing requirement prescribed in administrative rule that includes notification to the Long Term Care Ombudsman within 14 days and approval from the Director of Human Services.
- Requires ODHS to publish all approved exception requests to its website.
- Applies to requests for exceptions made on or after the measure's effective date.

Deficiency Notices (Section 5)

- Requires ODHS, upon determining that a residential care facility has failed to comply with applicable statutes or rules, to issue a deficiency notice and conduct an on-site visit to confirm timely correction of the deficiency.
- Applies to compliance determinations made on or after the measure's effective date.

Administrators of Newly Licensed Facilities (Section 6)

- Specifies requirements for an administrator of a newly licensed residential care facility to hire and retain a consultant, and to notify ODHS about the consultant's employment before admitting a resident.
- Specifies the duties of a contractor, including making regular visits to the facility and providing monthly reports to ODHS.
- Applies to initial licenses issued on or after the measure's effective date.

Regular Inspections (Section 7)

- Modifies requirements for ODHS to conduct regular inspections of residential care facilities.
- Specifies the frequency for ODHS to conduct periodic and unannounced inspections of facilities that are newly licensed.
- Applies to initial licenses issued on or after the measure's effective date.

Administrator Absences or Changes (Section 8)

- Establishes procedures for an administrator of a residential care facility to notify ODHS about an upcoming absence or change in administrator.
- Authorizes ODHS to adopt rules to allow enhanced oversight of a residential care facility that has had three or more administrators in an 18-month period.
- Applies to administrator absences or changes that occur on or after the measure's effective date.

Unlicensed Facility Administrators (Section 9)

- Prohibits an individual from acting as or assuming the duties of a residential care facility on an interim basis or under an alternative title without holding an active license.
- Rescinds the authority of ODHS to adopt rules that allow an individual to act as an administrator in a transitional or emergency situation.

Memory Care Endorsements (Section 10)

- Requires that ODHS may only issue a memory care endorsement if the applicant has at least two years of experience operating a licensed residential care facility, including an assisted living facility or long term care facility.
- Applies to memory care endorsements issued on or after the measure's effective date.

Applicable Dates (Section 11)

- Specifies dates on which provisions apply.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

ISSUES DISCUSSED:

- Background of recent incidents at memory care facilities
- Provisions of amendment

- Authority of a regulatory agency to waive a requirement under state or federal statute

EFFECT OF AMENDMENT:

-3 The amendment replaces the measure. The amendment modifies the requirements and procedures for the Department of Human Services (ODHS) to enforce regulations and investigate reported licensing violations and other deficiencies in residential care facilities and memory care facilities. The amendment imposes additional requirements on residential care facility administrators and specifies circumstances to allow unlicensed facility administrators in emergencies. The amendment requires ODHS to issue memory care endorsements only to experienced applicants. The amendment requires facilities to collect contact information for individuals related to residents to be notified about regulatory actions and abuse findings.

Detailed Summary:

Complaint Investigations (Section 1)

- Modifies requirements for ODHS to respond to a complaint of a licensing violation in a residential care facility or memory care facility.
- Requires ODHS to begin an on-site complaint investigation within 24 hours or the end of the next business day for a complaint that alleges a licensing violation resulting in death or serious physical injury.
- Requires that the investigation report contain information about any additional licensing violations, contract violations, or allegations of abuse that are observed during the investigation.
- Clarifies that a complaint investigation may occur alongside a separate adult protective services investigation.
- Requires ODHS, upon finding a substantiated violation, to:
 - Notify the Long Term Care Ombudsman (LTCO) about the investigation's findings and any enforcement action taken; and
 - Provide LTCO and the facility with a redacted summary report of the investigation's findings.
- Requires a facility to share the summary report with interested parties and the public if the investigation found that the facility's violation resulted in death, harm, or potential harm of a resident.
- Applies to complaints submitted on or after the measure's effective date.

Conditions on Licenses (Section 2)

- Requires ODHS to impose a condition on the license of a residential care facility or long term care facility immediately in response to a finding of immediate jeopardy.
- Requires that ODHS, when notifying a facility of its intent to impose a licensing condition, inform the facility of its duty to share the summary report with interested parties and the public.
- Requires a facility that receives notice of a licensing condition to immediately post the notice publicly, provide a copy of the notice to each resident, member of a resident's care team, and new and prospective resident.
- Applies to findings of immediate jeopardy made on or after the measure's effective date.

Non-substantive Statutory Organization (Section 3)

- Specifies that Sections 4 to 6 and Section 8 are added to statutes relating to regulation of residential care facilities.

Exceptions to Licensing Requirements (Section 4)

- Prohibits ODHS from granting a request for an exception to licensing requirements prescribed in state or federal statute.
- Prescribes procedure for ODHS, under explicit authority, to grant a request for exception to a licensing requirement that includes:
 - Notification to LTCO within seven days;
 - The licensing exception to be published on the facility's website and shared publicly with residents and members of their care teams, except for certain situations involving only a resident and their spouse; and
 - Notification to legislative committees twice per year.

- Applies to requests for exceptions made on or after the measure's effective date.

Deficiency Notices (Section 5)

- Requires ODHS, upon determining after a facility survey, complaint investigation, or site visit that a residential care facility has failed to comply with applicable statutes or rules, to issue a deficiency notice and conduct an on-site visit to confirm timely correction of the deficiency.
- Applies to compliance determinations made on or after the measure's effective date.

Administrators of Newly Licensed Facilities (Section 6)

- Specifies requirements for an administrator of a newly licensed residential care facility to hire and retain a consultant, and to notify ODHS about the consultant's employment status before admitting a resident.
- Requires that the consultant have experience operating a facility with a memory care endorsement if the newly licensed facility has a memory care endorsement.
- Applies requirements to facility management with limited experience in Oregon or who previously operated a facility that had a condition placed on its license.
- Applies to initial licenses issued on or after the measure's effective date.

Regular Inspections (Section 7)

- Modifies requirements for ODHS to conduct regular inspections of residential care facilities.
- Requires ODHS to conduct at least one unannounced inspection of a newly licensed facility between three and six months after admitting a resident.
- Applies to initial licenses issued on or after the measure's effective date.

Administrator Absences or Changes (Section 8)

- Establishes procedures for an administrator of a residential care facility to notify ODHS about an upcoming absence or change in administrator.
- Prescribes the information that must be shared with ODHS and residents when a facility undergoes a change in administrator.
- Authorizes ODHS to adopt rules to allow enhanced oversight of a residential care facility that has had three or more administrators in a 24-month period.
- Applies to administrator absences or changes that occur on or after the measure's effective date.

Unlicensed Facility Administrators (Section 9)

- Specifies requirements, to be adopted by rule, for an unlicensed individual to temporarily act as a residential care facility administrator in an emergency situation, including:
 - A facility may not retain an unlicensed administrator for more than 30 days in 18 months;
 - A facility with an unlicensed administrator must retain a licensed consultant; and
 - A facility must immediately notify and provide certain information to ODHS, LTCO, and all residents and associated contact persons.
- Clarifies that a nursing home administrator or residential care facility administrator may delegate duties and authority to an employee during off-duty hours and absences, up to 28 days.

Memory Care Endorsements (Section 10)

- Requires that ODHS may only issue a memory care endorsement if the applicant has at least two years of experience operating a licensed residential care facility, including an assisted living facility or long term care facility.
- Applies to memory care endorsements issued on or after the measure's effective date.

Information Provided Upon Admission (Section 11)

- Requires a residential care facility to obtain information about residents' designated contact persons who will be notified about a change in management or ownership, findings of abuse, licensing violations or conditions,

and other regulatory actions taken by ODHS.

Notice of Substantiated Abuse (Section 12)

- Modifies requirements for ODHS and OHA to notify residents and other individuals about a substantiated finding of abuse in a facility to include conservators, legal representatives, and residents' designated contact persons.
- Applies to notices of substantiated abuse issued on or after the measure's effective date.

Applicable Dates (Section 13)

- Specifies dates on which provisions apply.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

-5 The amendment replaces the measure. The amendment modifies the requirements and procedures for the Department of Human Services (ODHS) to enforce regulations and investigate reported licensing violations and other deficiencies in residential care facilities and memory care facilities. The amendment modifies the processes for ODHS and the Oregon Health Authority (OHA) to inspect and issue licenses for residential facilities and adult foster homes. The amendment requires facilities to notify certain persons and entities about regulatory actions and abuse findings. The amendment specifies additional requirements for memory care endorsements.

Detailed Summary:

Complaint Investigations (Section 1)

- Modifies requirements for ODHS to respond to a complaint of a licensing violation in a residential care facility or memory care facility.
- Requires ODHS to begin an on-site investigation within 24 hours or the end of the next business for a complaint that alleges a licensing violation resulting in death, serious harm, or serious physical injury.
- Requires the ODHS investigator to:
 - Assess whether a facility has sufficient staff only if the complaint may be related to insufficient staffing; and
 - Privately interview all available witnesses related to the complaint.
 - determine whether any observed licensing violations warrant the initiation of a new, separate investigation.
- Clarifies that a complaint investigation may occur alongside a separate adult protective services investigation.
- Requires ODHS to inform the Long Term Care Ombudsman (LTCO) within 90 days of initiating an investigation into a licensing violation.
- Requires ODHS, upon finding a substantiated violation, to:
 - Notify the Long Term Care Ombudsman (LTCO) about the investigation's findings and any enforcement action taken; and
 - Provide LTCO and the facility with a redacted summary report of the investigation's findings.
- Requires a facility to provide notice of a substantiated finding within 72 hours of receiving the summary report to all residents and any designated contact persons under certain circumstances.
- Specifies additional requirements for a facility if ODHS has imposed a licensing condition that includes a restriction on admissions.
- Applies to complaints submitted on or after the measure's effective date.

Non-substantive Statutory Organization (Section 2)

- Specifies that Sections 4 to 6 and Section 8 are added to statutes relating to regulation of residential care facilities.

Exceptions to Licensing Requirements (Section 3)

This Summary has not been adopted or officially endorsed by action of the committee.

- Prohibits ODHS from granting a request for an exception to statutory licensing requirements without explicit statutory authorization or to temporarily modify a licensing requirement due to a state of emergency.
- Requires ODHS to notify LTCO of any exceptions granted within seven days and to notify interim legislative committees twice per year.
- Applies to requests for exceptions made on or after the measure's effective date.

Administrators of Newly Licensed Facilities (Section 4)

- Directs ODHS to adopt rules that establish procedures for increased communication and technical assistance between the department and a residential care facility whose administrator changes more than three times in two years.

Information Provided Upon Admission and Application for Admission (Sections 5 & 13)

- Requires a residential care facility, upon admitting a resident to a facility, to obtain information about residents' designated contact persons who will be notified about licensing violations, abuse findings, and placement in enhanced oversight, unless the resident or their guardian or legal representatives waives this provision.
- Requires a residential care facility, upon receiving an application from a prospective resident or their representative, to provide a summary explanation of the licensing and survey process provided by ODHS.
- Applies to applications for admission to a residential care facility made on or after the measure's effective date.

Notice of Substantiated Abuse (Section 6)

- Modifies requirements for ODHS and OHA to notify residents and other individuals about a substantiated finding of abuse in a facility to include residents' designated contact persons.

Residential Facility License Applications, Inspections, and Renewal (Sections 7 to 9 and 14)

- Modifies requirements and procedures for ODHS and OHA to issue residential facility licenses to applicants in accordance with inspection and licensing requirements.
- Requires that applicants for a residential facility license include information on the application regarding the facility's proposed policies and procedures for the following:
 - Staff and administrator training;
 - Service planning;
 - Medication administration;
 - Food preparation and distribution;
 - Safety;
 - Emergency response; and
 - Facility closure.
- Specifies that ODHS and OHA may only grant an initial license if a facility is in compliance with current laws and regulations, an inspection has been completed, and the license application has been reviewed and approved.
- Clarifies that ODHS and OHA have authority to deny, suspend, revoke, or refuse to renew a license if a provider operates another facility that is not in substantial compliance with current laws and regulations.
- Requires that ODHS and OHA conduct inspections:
 - When a license application is received;
 - Between 90 and 120 days of when a facility is issued an initial license or changes ownership; and
 - At other times according to the agency's discretion.
- Requires that an inspection be completed by ODHS or OHA before a residential facility license is issued.
- Requires an applicant for a license to operate a residential care facility to maintain a consultant or management company for at least six months if the applicant does not have experience with residential care facilities in Oregon.

- Directs ODHS to adopt rules establishing minimum qualifications and required tasks for consultants or management companies and specifies requirements.
- Authorizes ODHS to extend the required period of consultation beyond six months upon determining that the facility is not in substantial compliance with applicable laws, rules, or regulations.
- Requires ODHS to be notified if a contract with a consultant or management company is terminated early.
- Applies to licenses issued or renewed on or after the measure's effective date.

Adult Foster Home Licensure and Inspections (Sections 10 and 11)

- Defines "substantial compliance" as a level of compliance with state law and administrative rules such that an identified deficiency poses no more than negligible harm to residents' health or safety.
- Modifies requirements and procedures for ODHS and OHA to issue adult foster home licenses to applicants in accordance with inspection and licensing requirements.
- Requires that applicants for an adult foster home license include information on the application regarding the home's proposed policies and procedures for the following:
 - Staff and administrator training;
 - Service planning;
 - Medication administration;
 - Food preparation and distribution;
 - Safety;
 - Emergency response;
 - Succession planning; and
 - Facility closure.
- Authorizes ODHS to adopt rules that prescribe an application fee for adult foster homes serving older adults and individuals with physical disabilities.
- Requires ODHS or OHA to conduct an in-person site inspection and to review and approve the policies described in the application before issuing an initial license.
- Authorizes ODHS to extend an adult foster home license by two years, while remaining on a two-year renewal cycle, if it determines that the home is in substantial compliance with current laws and regulations for three years.
- Specifies requirements for ODHS and OHA to conduct inspections of an adult foster home to verify compliance with current laws and regulations and provide the provider with methods of care, treatment, training, records, housing, and equipment.
- Requires that ODHS and OHA conduct on-site inspections:
 - When a license application is received;
 - Annually, regardless of whether the adult foster home is on a two-year license renewal cycle;
 - Between 90 and 120 days of when a facility is issued an initial license; and
 - At other times according to the agency's discretion.
- Applies to licenses issued or renewed on or after the measure's effective date.

Memory Care Endorsements (Section 12)

- Requires that rules adopted by ODHS regarding standards for memory care facility endorsements include provisions for:
 - Facility design;
 - Administrator training;
 - Elopement notifications;
 - Transfer policy; and
 - Procedures for emergency evacuation and facility closures.
- Applies to memory care endorsements issued on or after the measure's effective date.

Enhanced Oversight and Supervision Program (Section 15)

- Requires a residential care facility that is in the enhanced oversight and supervision program to notify current and prospective residents and designated contact persons about the facility's participation in the program and termination from the program.

Applicable Dates (Section 16)

- Specifies dates on which provisions apply.

REVENUE: May have revenue impact, but no statement yet issued

FISCAL: May have fiscal impact, but no statement yet issued

BACKGROUND:

On December 25, 2023, a resident of Mt. Hood Senior Living, a secure memory care facility in Sandy, was found dead outside after having left the facility unsupervised and, due to the person's dementia, did not return before succumbing to cold weather. A subsequent [investigative report](#) issued by the state's [Long Term Care Ombudsman](#) found that the facility was in violation of numerous licensing regulations that are required of residential care facilities with memory care endorsements. Additionally, the report criticized the Oregon Department of Human Services' (ODHS) response to previous complaints about the facility, as well as its decision to immediately close the facility and relocate the residents to other facilities with known safety issues. The report identified gaps in policy and issued several recommendations related to regulatory enforcement, unlicensed facility administrators, exceptions to licensing regulations, and other issues.

Residential care facilities, including assisted living facilities and facilities with a memory care endorsement, are regulated by the [Aging and People with Disabilities \(APD\)](#) division of ODHS, while residential treatment facilities for mental illness are regulated by the Oregon Health Authority (OHA). Oregon law empowers ODHS and OHA to conduct regular inspections and enforce health and safety requirements and licensing regulations through civil penalties and revoking, suspending, or imposing a condition on a license ([ORS chapter 443](#)). Oregon law also charges ODHS with investigation of suspected abuse or neglect of a vulnerable adult, including those in residential facilities ([ORS chapter 124](#)). ODHS maintains a [searchable website](#) with information about abuse findings and regulatory actions in residential facilities.