

# Senate Bill 739

Sponsored by Senators GELSER BLOUIN, PATTERSON (Pre-session filed.)

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**. The statement includes a measure digest written in compliance with applicable readability standards.

Digest: The Act changes oversight laws for certain types of long term care facilities. (Flesch Readability Score: 63.4).

Modifies the requirements for investigations of a residential care facility following a complaint of a licensing violation. Prohibits exceptions to statutory licensing requirements for residential care facilities. Requires an administrator of a new residential care facility to retain a consultant with experience in providing residential care. Requires the Department of Human Services to conduct regular inspections of new residential care facilities. Requires residential care facilities to notify the department of an administrator absence or change. Prohibits a person from serving as an interim residential care facility administrator without a license. Prohibits issuing a memory care endorsement unless an applicant has at least two years' experience operating a licensed residential care facility or long term care facility.

## A BILL FOR AN ACT

1  
2 Relating to long term care oversight; creating new provisions; and amending ORS 441.736, 443.416,  
3 443.441, 443.886 and 678.720.

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

5 **SECTION 1.** ORS 443.441 is amended to read:

6 443.441. (1) As used in this section:

7 (a) "Consistently" means regularly and typically.

8 (b) "Direct care staff" means staff who provide services for residents that include assistance  
9 with daily living, medication administration, 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 care staff in sufficient numbers  
14 to meet the scheduled and unscheduled needs of each resident 24 hours a day as prescribed by rule,  
15 the Department of Human Services shall conduct an assessment, in accordance with rules for home  
16 and community-based settings adopted by the Centers for Medicare and Medicaid Services, and  
17 consider whether the facility consistently:

18 (a) Implements and maintains a current person-centered service plan for each resident as re-  
19 quired by rule by the Centers for Medicare and Medicaid Services;

20 (b) Provides timely access, 24 hours a day, to all supports needed for activities of daily living  
21 including eating, hydration, toileting, hygiene, bathing, dressing, oral care and other supports in-  
22 cluded in the resident's person-centered service plan;

23 (c) Provides a timely response to issues impacting the dignity of the resident, including but not  
24 limited to wet or soiled briefs, clothing or linens; and

25 (d) Delivers care according to the schedule and procedures outlined in the resident's person-

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 centered service plan, including but not limited to wound care, medication administration, pain  
2 control, behavior support, cueing and repositioning.

3 (3) For a **complaint of a licensing violation that alleges harm or the potential of severe**  
4 **harm to a resident**, a complaint of a licensing violation, other than abuse, that alleges [*harm or*]  
5 potential harm to a resident or [*for*] a complaint that a facility does not have qualified awake direct  
6 care staff in sufficient numbers to meet the scheduled and unscheduled needs of each resident 24  
7 hours a day:

8 (a) The department shall begin an **on-site complaint** investigation without undue delay, **as**  
9 **follows:**

10 (A) **Within 24 hours or before the end of the next business day for a complaint that al-**  
11 **leges a licensing violation resulting in death or serious physical injury; and**

12 (B) **Within seven days for all other complaints; and**

13 (b) The investigator shall:

14 (A) Assess whether the facility has qualified awake direct care staff in sufficient numbers to  
15 consistently meet the scheduled and unscheduled needs of each resident 24 hours a day pursuant to  
16 the criteria prescribed by rule under subsection (2) of this section; [*and*]

17 (B) **Interview relevant witnesses, including residents, staff, family members and staff or**  
18 **volunteers from the Long Term Care Ombudsman; and**

19 [*(B)*] (C) Write an investigation report that includes:

20 (i) The investigator's personal observations;

21 (ii) A review of documents and records;

22 (iii) A summary of all witness statements; [*and*]

23 (iv) A statement of the factual basis for the findings for each incident or problem alleged in the  
24 complaint, including the investigator's assessment of staffing levels and whether the facility has  
25 qualified awake direct care staff in sufficient numbers to consistently meet the scheduled and un-  
26 scheduled needs of each resident 24 hours a day;

27 (v) **Information about any additional licensing violations, contract violations or**  
28 **allegations of abuse observed or reported during the course of the investigation; and**

29 (vi) **A summary of any compliance deficiencies of the facility or substantiated allegations**  
30 **of abuse against the facility in the 12 months preceding the investigation.**

31 (4) **A complaint investigation under subsection (3) of this section is separate from, and**  
32 **not a replacement for, an adult protective services investigation. The department may initi-**  
33 **ate a complaint investigation before or at the same time as an adult protective services in-**  
34 **vestigation.**

35 **SECTION 2.** ORS 441.736 is amended to read:

36 441.736. (1) As used in this section:

37 (a) "Immediate jeopardy" means a situation in which the failure of a residential care facility or  
38 a long term care facility to comply with a rule of the Department of Human Services has caused  
39 or is likely to cause serious injury, serious harm, serious impairment or death to a resident.

40 (b) "License condition" includes but is not limited to:

41 (A) Restricting the total number of residents;

42 (B) Restricting the number and impairment level of residents based upon the capacity of the  
43 licensee and staff to meet the health and safety needs of all residents;

44 (C) Requiring additional staff or staff qualifications;

45 (D) Requiring additional training for staff;

1 (E) Requiring additional documentation; or

2 (F) Restriction of admissions.

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

6 (2)(a) The department may impose a condition on the license of a residential care facility or long  
7 term care facility in response to a substantiated finding of rule violation, including but not limited  
8 to a substantiated finding of abuse[, and].

9 **(b) The department shall immediately** impose a condition on the license in response to a  
10 finding of immediate jeopardy, whether or not the finding of immediate jeopardy is substantiated at  
11 the time the license condition is imposed.

12 [(b)] (c) The department shall impose a license condition in a scope and manner that is specif-  
13 ically designed to remediate the finding that led to the license condition.

14 [(c)] (d) If the department imposes a license condition in response to a finding of immediate  
15 jeopardy to residents of the facility, and the finding of immediate jeopardy to residents of the facility  
16 is not substantiated within 30 days after the imposition of the license condition, the department shall  
17 immediately remove the license condition.

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

21 (i) Describe the acts or omissions of the facility and the circumstances that led to the substan-  
22 tiated finding of rule violation or finding of immediate jeopardy supporting the imposition of the li-  
23 cense condition;

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

26 (iii) Provide a brief statement identifying the nature of the license condition;

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

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

30 (B) If the threat to residents of a facility is so imminent that the department determines it is  
31 not safe or practical to give the facility advance notice, the department must provide the notice  
32 required under this paragraph within 48 hours of issuing an order imposing the license condition.

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

34 (A) A specific description of how the scope and manner of the license condition is designed to  
35 remediate the findings that led to the license condition; and

36 (B) A specific description of the requirements for withdrawal of the license condition.

37 (3) The department may impose a license condition that includes a restriction on admissions to  
38 the facility only if the department makes a finding of immediate jeopardy that is likely to present  
39 an immediate jeopardy to future residents upon admission.

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

41 (A) Within 15 business days of receipt of the facility's written assertion of substantial compli-  
42 ance with the requirements set forth by the department for withdrawal of the license condition, re-  
43 inspect or reevaluate the facility to determine whether the facility has achieved substantial  
44 compliance with the requirements;

45 (B) Notify the facility by telephone or electronic means of the findings of the reinspection or

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

(C) Issue a written report to the facility within 30 days after the reinspection or reevaluation notifying the facility of the department’s determinations regarding substantial compliance with the requirements necessary for withdrawal of the license condition.

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

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

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

**SECTION 3. Sections 4 to 6 and 8 of this 2025 Act are added to and made a part of ORS 443.400 to 443.455.**

**SECTION 4. (1) The Department of Human Services may not grant a residential care facility’s request for an exception to the requirements of ORS 443.400 to 443.455 or any other licensing requirements prescribed by state or federal statute.**

**(2) Before granting a residential care facility’s request for an exception to a licensing requirement prescribed by the department by rule, the department shall:**

**(a) Provide 14 days’ notice to the Long Term Care Ombudsman of the exception request and the department’s intent to approve the request;**

**(b) Provide the Long Term Care Ombudsman’s response, if any, to the Director of Human Services or the director’s designee; and**

**(c) Receive approval from the director or the director’s designee.**

**(3) The department shall publish any exception request approved under subsection (2) of this section on the department’s website.**

**SECTION 5. If the Department of Human Services determines that a residential care facility has failed to comply with the requirements of ORS 443.400 to 443.455 or rules adopted to implement ORS 443.400 to 443.455, the department shall:**

**(1) Issue a deficiency notice to the facility; and**

**(2) Conduct an on-site visit to confirm that the facility fully corrects the deficiency in a timely manner.**

**SECTION 6. (1) As used in this section, “administrator” means a residential care facility administrator as defined in ORS 678.710.**

**(2) When the Department of Human Services issues an initial license to a residential care facility under ORS 443.415, the administrator shall retain the services of a consultant with experience in providing residential care.**

**(3) A consultant shall be retained under this section for:**

1 (a) At least the first six months of the residential care facility's operation; or

2 (b) At least the first 12 months of the residential care facility's operation if the admin-  
 3 istrator has less than two years' experience in directly managing a residential care facility,  
 4 including an assisted living facility, in this state.

5 (4) Before the residential care facility may admit a resident, the administrator shall no-  
 6 tify the department of:

7 (a) The name and contact information of the consultant retained under this section; and

8 (b) The start and end dates of the contract with the consultant.

9 (5) If the services of the consultant retained under this section are terminated by either  
 10 the consultant or the administrator before the expected termination date, the administrator  
 11 shall immediately notify the department of the termination, retain the services of a new  
 12 consultant and notify the department of:

13 (a) The name and contact information of the new consultant; and

14 (b) The start and end dates of the contract with the new consultant.

15 (6) A consultant retained under this section shall:

16 (a) Offer on-site services, including monthly visits to the residential care facility and  
 17 more frequent visits if the consultant identifies any compliance or safety concerns.

18 (b) Provide monthly reports to the department regarding the operation of the residential  
 19 care facility, including the facility's compliance with staffing, safety or other licensing re-  
 20 quirements.

21 **SECTION 7.** ORS 443.416 is amended to read:

22 443.416. (1)(a) The Director of Human Services or authorized representative shall [*periodically*]  
 23 visit and inspect every residential care facility, residential training facility or residential training  
 24 home to determine whether it is maintained and operated in accordance with ORS 443.400 to 443.455  
 25 and the rules of the director, and to consult with and advise management concerning methods of  
 26 care, treatment, training, records, housing and equipment. Employees of the Department of Human  
 27 Services and the State Fire Marshal or authorized representative on request shall be permitted ac-  
 28 cess to the premises and records of individuals in the facility or home that are pertinent to fire  
 29 safety.

30 (b) After an initial license is issued under ORS 443.415 to a residential care facility, the  
 31 department shall conduct:

32 (A) Monthly in-person inspections for at least the first six months of operation; and

33 (B) At least quarterly in-person inspections until the facility has operated for at least 24  
 34 months.

35 (c) At least eight of the inspections conducted under paragraph (b) of this subsection,  
 36 including at least three in the first six months of operation, must be conducted at unex-  
 37 pected times and intervals such that the facility does not have advance notice of the in-  
 38 spection.

39 (2) The Director of the Oregon Health Authority or authorized representative shall periodically  
 40 visit and inspect every residential treatment facility or residential treatment home to determine  
 41 whether it is maintained and operated in accordance with ORS 443.400 to 443.455 and the rules of  
 42 the director, and to consult with and advise management concerning methods of care, treatment,  
 43 training, records, housing and equipment. Employees of the Oregon Health Authority and the State  
 44 Fire Marshal or authorized representative on request shall be permitted access to the premises and  
 45 records of individuals in the facility or home that are pertinent to fire safety.

1       **SECTION 8.** (1) As used in this section, “administrator” means a residential care facility  
2 administrator as defined in ORS 678.710.

3       (2) If an administrator will be absent from a residential care facility for more than 10  
4 consecutive business days or for more than 20 calendar days in any 90-day period, the resi-  
5 dential care facility shall immediately notify the Department of Human Services.

6       (3) If a residential care facility has a change in administrator, the residential care facility  
7 shall notify the department within one business day. The notification must include informa-  
8 tion regarding the new administrator’s active license issued under ORS 678.710 to 678.820 and  
9 an affirmation that the new administrator has an approved background check.

10       (4) The department shall adopt rules to impose enhanced oversight of a residential care  
11 facility that has a change in administrator three or more times in any 18-month period.

12       **SECTION 9.** ORS 678.720 is amended to read:

13       678.720. (1)(a) Unless an individual holds an active license issued under ORS 678.710 to 678.820,  
14 an individual may not:

15       (A) Practice or offer to practice as a nursing home administrator; or

16       (B) Use in connection with the name of the individual the words or letters “nursing home ad-  
17 ministrator,” “NHA” or any other words, letters or abbreviations or insignia tending to indicate that  
18 the individual is a licensed nursing home administrator.

19       (b) A nursing home must be conducted or operated under the supervision of a nursing home  
20 administrator who holds an active license issued under ORS 678.710 to 678.820.

21       (2)(a) Unless an individual holds an active license issued under ORS 678.710 to 678.820, an in-  
22 dividual may not:

23       (A) Practice or offer to practice as a residential care facility administrator, **including on an**  
24 **interim basis; [or]**

25       (B) Use in connection with the name of the individual the words or letters “residential care fa-  
26 cility administrator,” “RCFA” or any other words, letters or abbreviations or insignia tending to  
27 indicate that the individual is a licensed residential care facility administrator; **or**

28       (C) **Assume the duties of a residential care facility administrator under any alternative**  
29 **title.**

30       (b) [*Subject to rules adopted under paragraph (c) of this subsection,*] A residential care facility  
31 must be conducted or operated under the supervision of a residential care facility administrator who  
32 holds an active license issued under ORS 678.710 to 678.820.

33       [*(c) The Department of Human Services shall adopt rules to allow a residential care facility to be*  
34 *operated by an individual who is not a residential care facility administrator who holds an active li-*  
35 *cence under ORS 678.710 to 678.820 in transitional, emergency and similar situations.*]

36       **SECTION 10.** ORS 443.886 is amended to read:

37       443.886. (1) If a facility intends to provide care for residents with Alzheimer’s disease or other  
38 forms of dementia by means of an endorsed memory care community, the facility must obtain a  
39 memory care endorsement on its license or registration. **A memory care endorsement may be**  
40 **issued only if the applicant has at least two years of experience operating a licensed resi-**  
41 **dential care facility, including an assisted living facility, or long term care facility as defined**  
42 **in ORS 442.015.**

43       (2) The Department of Human Services, with the input from representatives of advocate groups  
44 and the long term care industry, shall adopt by rule standards that ensure that the special needs  
45 of any resident with Alzheimer’s disease or other form of dementia who is cared for in an endorsed

1 memory care community are met and that quality care is provided. The standards must include but  
2 are not limited to provisions for:

3 (a) Care planning, including physical design, staffing, staff training, safety, egress control, indi-  
4 vidual care planning, admission policy, family involvement, therapeutic activities and social services;

5 (b) Continuity of basic care requirements; and

6 (c) Marketing and advertising of the availability of and services from endorsed memory care  
7 communities.

8 (3) The department shall adopt a fee schedule for memory care endorsement, taking into account  
9 the type of facility and the number of residents.

10 (4) The department shall enforce rules adopted under subsection (2) of this section and ORS  
11 443.889 and shall allow a licensee or registrant to retain the memory care endorsement required to  
12 care for residents with Alzheimer's disease or other forms of dementia only as long as the licensee  
13 or registrant complies with the rules.

14 (5) The memory care endorsement may be suspended or revoked in the same manner as the li-  
15 cense or registration is suspended or revoked.

16 (6) Unless a facility has obtained the memory care endorsement required by subsection (1) of  
17 this section, the facility may not:

18 (a) Advertise the facility as providing an Alzheimer's care unit or memory care community; or

19 (b) Market the facility as providing an Alzheimer's care unit or memory care community.

20 **SECTION 11. (1) The amendments to ORS 443.441 by section 1 of this 2025 Act apply to**  
21 **complaints submitted on or after the effective date of this 2025 Act.**

22 **(2) The amendments to ORS 441.736 by section 2 of this 2025 Act apply to findings of**  
23 **immediate jeopardy made on or after the effective date of this 2025 Act.**

24 **(3) Section 4 of this 2025 Act applies to requests for exceptions made on or after the ef-**  
25 **fective date of this 2025 Act.**

26 **(4) Section 5 of this 2025 Act applies to compliance determinations made on or after the**  
27 **effective date of this 2025 Act.**

28 **(5) Section 6 of this 2025 Act and the amendments to ORS 443.416 by section 7 of this 2025**  
29 **Act apply to initial licenses issued on or after the effective date of this 2025 Act.**

30 **(6) Section 8 of this 2025 Act applies to administrator absences beginning, and adminis-**  
31 **trator changes occurring, on or after the effective date of this 2025 Act.**

32 **(7) The amendments to ORS 443.886 by section 10 of this 2025 Act apply to memory care**  
33 **endorsements issued on or after the effective date of this 2025 Act.**

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