Enrolled
House Bill 3359

Sponsored by Representatives MCKEOWN, KENY-GUYER, Senators KRUSE, GELSER, KNOPP; Representatives ALONSO LEON, BYNUM, ESQUIVEL, EVANS, FAHEY, GOMBERG, LININGER, MALSTROM, MCLAIN, MEEK, NOBLE, OLSON, RAYFIELD, SMITH G, SOLLMAN, WILLIAMSON, Senators DEMBROW, MONNES ANDERSON, ROBLAN

CHAPTER .....

AN ACT

Relating to long term care; creating new provisions; amending ORS 409.720, 430.216, 441.020, 441.303, 441.367, 441.408, 441.630, 441.637, 441.680, 441.710, 441.715, 441.745, 443.400, 443.415, 443.420, 443.425, 443.440, 443.452, 443.455, 443.760, 443.775 and 443.886 and section 1, chapter 441, Oregon Laws 2017 (Enrolled Senate Bill 58); and repealing ORS 441.995 and 443.885.

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

LEGISLATIVE FINDINGS

SECTION 1. (1) The Legislative Assembly finds that:

(a) Residents of Oregon's community-based care facilities are valued citizens of this state and deserve to live lives of autonomy and dignity; and

(b) Support and training for those who serve these valued citizens are important to ensuring that these valued citizens are able to live the lives they deserve.

(2) The Legislative Assembly finds and declares that it is the policy of this state to:

(a) Promote the autonomy of residents of Oregon's community-based care facilities and accord them honor, dignity and the ability to choose freely how they live their lives so as to encourage maximum independence and fulfillment; and

(b) Ensure that administrators of residential care facilities, which include assisted living and memory care facilities, are licensed by an independent board no later than July 1, 2019.

CIVIL PENALTIES

SECTION 2. Sections 3 to 5 of this 2017 Act are added to and made a part of ORS 441.705 to 441.745.

SECTION 3. In regulating residential care facilities and long term care facilities, the Department of Human Services shall, whenever possible, use a progressive enforcement process that employs a series of actions to encourage and compel compliance with licensing regulations through the application of preventive, positive and progressively more restrictive strategies. Preventive and positive strategies are strategies that include but are not limited to technical assistance, corrective action plans, training and consultation.

SECTION 4. (1) The Director of Human Services may impose a civil penalty under ORS 441.710 on a residential care facility or a long term care facility pursuant to this section.

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

(A) Any prior violations of laws or rules pertaining to the facility and, as a mitigating factor, whether violations were incurred under prior ownership or management of the facility.

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

(C) The facility's past history of correcting violations and preventing the recurrence of violations.

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

(b) The director shall assess the severity of a violation using the following criteria:

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

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

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

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

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

(A) An isolated violation occurs when one or a very limited number of residents or employees are affected or a very limited area or number of locations within a facility are affected.

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

(C) A widespread violation occurs when the problems causing the deficiency are pervasive and affect many locations throughout the facility or represent a systemic failure that affected, or has the potential to affect, a large portion or all of the residents or employees.

(d) As used in this subsection:

(A)(i) "Financial loss" means loss of resident property or money as a result of financial exploitation as that term is defined in ORS 124.050.

(ii) "Financial loss" does not include loss of resident property or money that results from action or inaction of an individual not employed or contracted with the facility, or that arises from the action or inaction of an individual employed or contracted with the facility if the action or inaction occurs while the individual is not performing employment or contractual duties.

(B) "Harm" means a measurable negative impact to a resident's physical, mental, financial or emotional well-being.

(C) "Minor harm" means harm resulting in no more than temporary physical, mental or emotional discomfort or pain without loss of function, or in financial loss of less than $1,000.

(D) "Moderate harm" means harm resulting in temporary loss of physical, mental or emotional function, or in financial loss of $1,000 or more, but less than $5,000.

(E) "Serious harm" means harm resulting in long-term or permanent loss of physical, mental or emotional function, or in financial loss of $5,000 or more.

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

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

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

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

(D) For a level 4 violation, the director may impose a civil penalty in an amount no less than $1,500 per violation, not to exceed $2,500 per violation.

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

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

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

(4)(a) If the department investigates and makes a finding of abuse in a residential care facility or long term care facility 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 care facility or long term care facility and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the director shall impose a civil penalty on the facility of not less than $2,500 and not more than $15,000 for each occurrence of substantiated abuse, not to exceed $40,000 for all violations occurring in a facility within any 90-day period.

(b) 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 care facility or a long term care facility or a person providing services in the facility and a resident of that facility, including but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

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

(6) The department shall identify and track the number of abuse violations that are reported to the department by a facility and compile statistics on the rate of self-reporting by facilities as compared to abuse complaints from other sources.

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

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

(B) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

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

(c) As used in this subsection, "substantial compliance" means a level of compliance with state law and with rules of the department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents of a facility.

<u>SECTION 5.</u> (1) As used in this section:

(a) "Immediate jeopardy" means a situation in which the failure of a residential care facility or a long term care facility to comply with a rule of the Department of Human Services

has caused or is likely to cause serious injury, serious harm, serious impairment or death to a resident.

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

(A) Restricting the total number of residents;

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

(C) Requiring additional staff or staff qualifications;

(D) Requiring additional training for staff;

(E) Requiring additional documentation; or

(F) Restriction of admissions.

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

(2)(a) The department may impose a condition on the license of a residential care facility or long term care facility in response to a substantiated finding of rule violation, including but not limited to a substantiated finding of abuse, or in response to a finding of immediate jeopardy, whether or not the finding of immediate jeopardy is substantiated at the time the license condition is imposed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Within 15 business days of receipt of the facility's written assertion of substantial compliance with the requirements set forth by the department for withdrawal of the license

condition, reinspect or reevaluate the facility to determine whether the facility has achieved substantial compliance with the requirements;

(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 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 section 4 of this 2017 Act.

(b) The director [*of Human Services*] shall by rule prescribe a schedule of penalties for [*residential care facilities,*] 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 or 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, second or third degree as described in ORS 163.355, 163.365 and 163.375.*]

(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.

SECTION 7. ORS 441.710 is amended to read:

441.710. (1)**(a)** In addition to any other liability or penalty provided by law, the Director of Human Services may impose a civil penalty on a person **pursuant to section 4 of this 2017 Act** for any of the following:

[*(a)*] **(A)** Violation of any of the terms or conditions of a license issued under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 for a long term care facility, as defined in ORS 442.015.

(B) Violation of ORS 441.630 to 441.680.

[*(b)*] **(C)** Violation of any rule or general order of the Department of Human Services that pertains to a long term care facility.

[*(c)*] **(D)** Violation of any final order of the director that pertains specifically to the long term care facility owned or operated by the person incurring the penalty.

[*(d)*] **(E)** Violation of ORS 441.605 or of rules required to be adopted under ORS 441.610.

[*(e)*] **(F)** Violation of ORS 443.880 or 443.881 if the facility is a residential care facility[, *residential training facility or residential training home*].

(b) In addition to any other liability or penalty provided by law, the director may impose a civil penalty on a residential training facility or residential training home for violation of ORS 443.880 or 443.881. The director shall prescribe a reasonable time for elimination of a violation by a residential training facility or residential training home:

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

(B) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

(2) In addition to any other liability or penalty provided by law, the Director of the Oregon Health Authority may impose a civil penalty on a person for a violation of ORS 443.880 or 443.881 if the facility is a residential treatment facility or a residential treatment home.

(3) The Director of Human Services may not impose a penalty under subsection (1) of this section for violations other than those involving direct patient care or feeding, an adequate staff to patient ratio, sanitation involving direct patient care or a violation of ORS 441.605 or 443.880 or 443.881 or of the rules required to be adopted by ORS 441.610 unless a violation is found on two consecutive surveys of a long term care facility. [*The Director of Human Services in every case shall prescribe a reasonable time for elimination of a violation:*]

[*(a) Not to exceed 30 days after first notice of a violation; or*]

[*(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.*]

(4) The Director of the Oregon Health Authority may not impose a penalty under subsection (2) of this section for violations other than those involving direct patient care or feeding, an adequate staff to patient ratio, sanitation involving direct patient care or a violation of ORS 443.880 or 443.881. The director [*of the Oregon Health Authority*] in every case shall prescribe a reasonable time for elimination of a violation:

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

(b) In cases where the violation requires more than 30 days to correct, such time as is specified in a plan of correction found acceptable by the director.

SECTION 8. ORS 441.715 is amended to read:

441.715. **(1) The Director of Human Services shall impose civil penalties under ORS 441.710 (1) on a residential care facility or a long term care facility pursuant to section 4 of this 2017 Act.**

[*(1)(a)*] **(2)** After public hearing, the Director of Human Services by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710 (1) [*and*] **on residential training facilities and residential training homes. However, the civil penalty may not exceed $500 for each violation, except as otherwise provided in this section or as otherwise required by federal law.**

(3) The Director of the Oregon Health Authority by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710 (2) **on residential treatment facilities or residential treatment homes**. However, the civil penalty may not exceed $500 for each violation, except as otherwise provided in this [*subsection and ORS 441.995*] **section** or as otherwise required by federal law.

[*(b)*] **(4)** Notwithstanding the limitations on the civil penalty in [*paragraph (a) of this subsection*] **subsections (2) and (3) of this section**, for any violation **by a residential training facility, residential training home, residential treatment facility or residential treatment home** involving direct resident care or feeding, an adequate staff to resident ratio[,] **or** sanitation involving direct resident care [*or a violation of ORS 441.605 or rules required to be adopted under ORS 441.610*], a penalty may be imposed for each day the violation occurs in an amount not to exceed $500 per day or as otherwise required by federal law.

[*(c) If the Department of Human Services 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 long term care facility and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department 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 paragraph:*]

[*(A) "Negative outcome" includes serious injury, rape, sexual abuse or death.*]

[*(B) "Rape" means rape in the first, second or third degree as described in ORS 163.355, 163.365 and 163.375.*]

[*(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 long term care facility or a person providing services in the long term care facility and a resident of that facility, including but not limited to sodomy, sexual coercion, sexually explicit photographing and sexual harassment.*]

[*(2) The penalties assessed under subsection (1)(a) or (b) of this section may not exceed $7,500 in the aggregate or as otherwise required by federal law with respect to a single long term care facility within any 90-day period.*]

SECTION 9. ORS 443.775 is amended to read:

443.775. (1) The licensing agency shall adopt rules governing adult foster homes and the level of care provided in such homes, including the provision of care to more than one person with nursing care needs under specified conditions and agency approval, such as are necessary to protect the health, safety or welfare of the residents and to provide for an appropriate continuum of care, but shall not be inconsistent with the residential nature of the living accommodations and the family atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board of Nursing under ORS 678.150 (8).

(a) An exception to the limit of one resident with nursing care needs may be granted if the provider proves to the licensing agency by clear and convincing evidence that such an exception will not jeopardize the care, health, safety or welfare of the residents and that the provider is capable of meeting the additional care needs of the new resident.

(b) The licensing agency, and the counties acting under the exemption granted pursuant to ORS 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions granted during the quarter pursuant to paragraph (a) of this subsection.

(2) The provider may not employ a resident manager who does not meet the classification standard for the adult foster home.

(3) The provider shall be able to meet the night care needs of a resident before admitting the resident. The provider shall include night care needs in the resident's care plan.

(4) The provider shall screen a prospective resident before admitting the resident. The screening shall include but is not limited to diagnosis, medications, personal care needs, nursing care needs, night care needs, nutritional needs, activities and lifestyle preferences. A copy of the screening shall be given to the prospective resident or the prospective resident's representative.

(5) The licensing agency shall make rules to ensure that any employee who makes a complaint pursuant to ORS 443.755 shall be protected from retaliation.

(6) For adult foster homes in which clients reside for whom the licensing agency pays for care, including homes in which the provider and the resident are related, the agency may require substantial compliance with its rules relating to standards for care of the client as a condition for paying for care.

(7) By order the director of the licensing agency may delegate authority under this section to personnel other than of the licensing agency.

(8) The licensing agency may commence a suit in equity to enjoin maintenance of an adult foster home if:

(a) The home is operated without a valid license under this section; or

(b) After the license to maintain the home is ordered suspended or revoked, a reasonable time for placement of residents in other facilities has been allowed but such placement has not been accomplished.

(9) The licensing agency shall establish by rule the maximum capacity of adult foster homes, including all nonrelated and related persons receiving residential care and day care.

[*(10) Except as provided in subsection (11) of this section, any person who violates a provision of ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition of a civil penalty, to be fixed by the licensing agency by rule, not to exceed $100 per violation, to a maximum of $250 or, per occurrence of substantiated abuse, a maximum of $1,000.*]

(10) Except as provided in subsection (11) of this section:

(a) The Department of Human Services may impose a civil penalty on any person who violates a provision of ORS 443.705 to 443.825, or the rules adopted under ORS 443.705 to 443.825, with regard to an adult foster home serving socially dependent individuals or individuals with physical disabilities. The department shall establish the amount of the penalty by rule, in an amount not less than $100 and not more than $250 per violation, or in the case of substantiated abuse, not less than $100 and not more than $1,000 per violation.

(b) The department may impose a civil penalty on any person who violates a provision of ORS 443.705 to 443.825, or the rules adopted under ORS 443.705 to 443.825, with regard to an adult foster home not serving socially dependent individuals or individuals with physical disabilities. The department shall establish the amount of the penalty by rule, in an amount not to exceed $100 per violation, to a maximum of $250, or, per occurrence of substantiated abuse, to a maximum of $1,000.

(c) The Oregon Health Authority may impose a civil penalty on any person who violates a provision of ORS 443.705 to 443.825, or the rules adopted under ORS 443.705 to 443.825. The authority shall establish the amount of the penalty by rule, in an amount not to exceed $100 per violation, to a maximum of $250, or, per occurrence of substantiated abuse, to a maximum of $1,000.

(11)(a) If the licensing agency determines that there is reasonable cause to believe that abuse occurred in an adult foster home licensed by the licensing agency and if the abuse resulted in the

death, serious injury, rape, sexual abuse or sexual exploitation of a resident, the licensing agency shall impose a civil penalty on the adult foster home of not less than $2,500 for each violation.

(b) This subsection does not apply to adult foster homes licensed by the licensing agency to serve only persons with mental illness or with alcohol or drug addiction.

(c) The licensing agency shall by rule define "serious injury," "rape," "sexual abuse" and "sexual exploitation" for purposes of this subsection.

(12) All penalties recovered pursuant to this section shall be deposited in the Quality Care Fund established in ORS 443.001.

SECTION 10. Sections 3 to 5 of this 2017 Act, the amendments to ORS 441.710, 441.715, 443.455 and 443.775 by sections 6 to 9 of this 2017 Act and the repeal of ORS 441.995 by section 46 of this 2017 Act apply only to civil penalties and license conditions imposed for violations committed on or after the effective date of this 2017 Act.

LICENSING FEES

SECTION 11. ORS 441.020 is amended to read:

441.020. (1) Licenses for health care facilities, except long term **care** facilities as defined in ORS 442.015, must be obtained from the Oregon Health Authority.

(2) Licenses for long term care facilities must be obtained from the Department of Human Services.

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.025.

(4)**(a)** Each application [*shall*] **submitted to the Oregon Health Authority must** be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. [*Except as provided in subsection (15) of this section,*] If the license is issued, the fee shall be paid into the State Treasury to the credit of[:]

[*(a)*] the Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063 and 441.196; or

(b) **Each application submitted to the Department of Human Services must be accompanied by the application fee or the annual renewal fee, as applicable. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of** the Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 431A.050 to 431A.080, 441.015 to 441.063 and 441.196.

(5) Except as otherwise provided in subsection (8) of this section, for hospitals with:

(a) Fewer than 26 beds, the annual license fee shall be $1,250.

(b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be $1,850.

(c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be $3,800.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be $6,525.

(e) Two hundred or more beds, but fewer than 500 beds, the annual license fee shall be $8,500.

(f) Five hundred or more beds, the annual license fee shall be $12,070.

(6) A hospital shall pay an annual fee of $750 for each hospital satellite indorsed under its license.

(7) The authority may charge a reduced hospital fee or hospital satellite fee if the authority determines that charging the standard fee constitutes a significant financial burden to the facility.

(8) For long term care facilities with:

(a) One to 15 beds, the [*annual license fee shall be $180*] **application fee shall be $2,000 and the annual renewal fee shall be $1,000.**

(b) Sixteen to 49 beds, the [*annual license fee shall be $260*] **application fee shall be $3,000 and the annual renewal fee shall be $1,500.**

(c) Fifty to 99 beds, the [*annual license fee shall be $520*] **application fee shall be $4,000 and the annual renewal fee shall be $2,000.**

(d) One hundred to 150 beds, the [*annual license fee shall be $670*] **application fee shall be $5,000 and the annual renewal fee shall be $2,500.**

(e) More than 150 beds, the [*annual license fee shall be $750*] **application fee shall be $6,000 and the annual renewal fee shall be $3,000.**

(9) For ambulatory surgical centers, the annual license fee shall be:

(a) $1,750 for certified and high complexity noncertified ambulatory surgical centers with more than two procedure rooms.

(b) $1,250 for certified and high complexity noncertified ambulatory surgical centers with no more than two procedure rooms.

(c) $1,000 for moderate complexity noncertified ambulatory surgical centers.

(10) For birthing centers, the annual license fee shall be $750.

(11) For outpatient renal dialysis facilities, the annual license fee shall be $2,000.

(12) During the time the licenses remain in force, holders are not required to pay inspection fees to any county, city or other municipality.

(13) Any health care facility license may be indorsed to permit operation at more than one location. If so, the applicable license fee shall be the sum of the license fees that would be applicable if each location were separately licensed. The authority may include hospital satellites on a hospital's license in accordance with rules adopted by the authority.

(14) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.

(15) All moneys received pursuant to subsection (8) of this section shall be deposited in the Quality Care Fund established in ORS 443.001.

(16) As used in this section:

(a) "Hospital satellite" has the meaning prescribed by the authority by rule.

(b) "Procedure room" means a room where surgery or invasive procedures are performed.

SECTION 12. 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) The fee required under subsection (1) of this section for facilities:*]

[*(a) Defined in ORS 443.400 (7) and (9), shall be $60.*]

[*(b) Defined in ORS 443.400 (8) and (10), shall be $30.*]

[*(c) Defined in ORS 443.400 (5) with:*]

[*(A) One to 15 beds, shall be $360.*]

[*(B) Sixteen to 49 beds, shall be $520.*]

[*(C) Fifty to 99 beds, shall be $1,040.*]

[*(D) One hundred to 150 beds, shall be $1,340.*]

[*(E) More than 150 beds, shall be $1,500.*]

(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 or a residential treatment home is $30.

(c) 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 investigation. 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 [*other*] **approved** authority has given notice of noncompliance of [*facilities defined in ORS 443.400 (5), (7) and (9)*] **a residential care facility, residential training facility or residential treatment facility** pursuant to ORS 479.220.

SECTION 12a. If House Bill 2684 becomes law, section 12 of this 2017 Act (amending ORS 443.415) is repealed and ORS 443.415, as amended by section 4, chapter ___, Oregon Laws 2017 (Enrolled House Bill 2684), 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) The fee required under subsection (1) of this section for facilities:*]

[*(a) Defined in ORS 443.400 (7) and (9), shall be $60.*]

[*(b) Defined in ORS 443.400 (8), shall be $50.*]

[*(c) Defined in ORS 443.400 (10), shall be $30.*]

[*(d) Defined in ORS 443.400 (5) with:*]

[*(A) One to 15 beds, shall be $360.*]

[*(B) Sixteen to 49 beds, shall be $520.*]

[*(C) Fifty to 99 beds, shall be $1,040.*]

[*(D) One hundred to 150 beds, shall be $1,340.*]

[*(E) More than 150 beds, shall be $1,500.*]

(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.

(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 investigation. 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 [*other*] **approved** authority has given notice of noncompliance of [*facilities defined in ORS 443.400 (5), (7) and (9)*] **a residential care facility, residential training facility or residential treatment facility** pursuant to ORS 479.220.

SECTION 13. ORS 443.425 is amended to read:

443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless sooner revoked. Each license shall state:

(a) The name of the person operating the residential facility;

(b) The name of the person who owns the **residential** facility;

(c) The address of the premises to which the license applies and the maximum number of residents to be maintained in [*such*] **the** residential facility at any time whether the residential facility is licensed as a residential training facility, a residential treatment facility, a residential care facility[;], a residential training home or residential treatment home; and

(d) [*Such*] Other information [*as*] **that** the Department of Human Services or the Oregon Health Authority considers necessary.

(2) A license is renewable upon submission of an application to the department or the authority and payment of a **renewal** fee. No fee [*shall be*] **is** required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends the effective date of expiration of the license until the licensing agency has acted upon [*such*] **the** application. The licensing agency shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal, **deputy or approved authority** [*or the authorized representative thereof*] has given notice of noncompliance of [*facilities under ORS 443.400 (5), (7) and (9)*] **a residential care facility, residential training facility or residential treatment facility** pursuant to ORS 479.220.

[*(3) The biennial fee required under subsection (2) of this section for facilities:*]

[*(a) Defined in ORS 443.400 (7) and (9), shall be $60.*]

[*(b) Defined in ORS 443.400 (8) and (10), shall be $30.*]

[*(c) Defined in ORS 443.400 (5) with:*]

[*(A) One to 15 beds, shall be $360.*]

[*(B) Sixteen to 49 beds, shall be $520.*]

[*(C) Fifty to 99 beds, shall be $1,040.*]

[*(D) One hundred to 150 beds, shall be $1,340.*]

[*(E) More than 150 beds, shall be $1,500.*]

(3)(a) The biennial renewal fee for a residential training facility or a residential treatment facility is $60.

(b) The biennial renewal fee for a residential training home or a residential treatment home is $30.

(c) The biennial renewal fee for a residential care facility is:

(A) For a facility with one to 15 beds, $1,000.

(B) For a facility with 16 to 49 beds, $1,500.

(C) For a facility with 50 to 99 beds, $2,000.

(D) For a facility with 100 to 150 beds, $2,500.

(E) For a facility with more than 150 beds, $3,000.

SECTION 13a. If House Bill 2684 becomes law, section 13 of this 2017 Act (amending ORS 443.425) is repealed and ORS 443.425, as amended by section 5, chapter ___, Oregon Laws 2017 (Enrolled House Bill 2684), is amended to read:

443.425. (1) Licensure under ORS 443.415 is effective for two years from the date of issue unless sooner revoked. Each license shall state:

(a) The name of the person operating the residential facility;

(b) The name of the person who owns the **residential** facility;

(c) The address of the premises to which the license applies and the maximum number of residents to be maintained in [*such*] **the** residential facility at any time whether the residential facility is licensed as a residential training facility, a residential treatment facility, a residential care facility[*;*], a residential training home or residential treatment home; and

(d) [*Such*] Other information [*as*] **that** the Department of Human Services or the Oregon Health Authority considers necessary.

(2) A license is renewable upon submission of an application to the department or the authority and payment of a **renewal** fee. No fee [*shall be*] **is** required of a governmentally operated residential facility. Filing of an application for renewal before the date of expiration of a license extends the effective date of expiration of the license until the licensing agency has acted upon [*such*] **the** application. The licensing agency shall refuse to renew a license if the facility is not substantially in compliance with all applicable laws and rules, or if the State Fire Marshal, **deputy or approved authority** [*or the authorized representative thereof*] has given notice of noncompliance of [*facilities under ORS 443.400 (5), (7) and (9)*] **a residential care facility, residential training facility or residential treatment facility** pursuant to ORS 479.220.

[*(3) The biennial fee required under subsection (2) of this section for facilities:*]

[*(a) Defined in ORS 443.400 (7) and (9), shall be $60.*]

[*(b) Defined in ORS 443.400 (8), shall be $50.*]

[*(c) Defined in ORS 443.400 (10), shall be $30.*]

[*(d) Defined in ORS 443.400 (5) with:*]

[*(A) One to 15 beds, shall be $360.*]

[*(B) Sixteen to 49 beds, shall be $520.*]

[*(C) Fifty to 99 beds, shall be $1,040.*]

[*(D) One hundred to 150 beds, shall be $1,340.*]

[*(E) More than 150 beds, shall be $1,500.*]

(3)(a) The biennial renewal fee for a residential training facility or a residential treatment facility is $60.

(b) The biennial renewal fee for a residential training home is $50.

(c) The biennial renewal fee for a residential treatment home is $30.

(d) The biennial renewal fee for a residential care facility is:

(A) For a facility with one to 15 beds, $1,000.

(B) For a facility with 16 to 49 beds, $1,500.

(C) For a facility with 50 to 99 beds, $2,000.

(D) For a facility with 100 to 150 beds, $2,500.

(E) For a facility with more than 150 beds, $3,000.

RESIDENTIAL CARE FACILITIES
(Quality Measures)

SECTION 14. Sections 15, 16, 20, 23, 24, 25 and 27 of this 2017 Act are added to and made a part of ORS 443.400 to 443.455.

SECTION 15. (1) The Residential Care Quality Measurement Program is established in the Department of Human Services. Under the program, the department shall, no later than July 1 of each year, publish an annual report, based on data reported by each residential care facility under subsection (2) of this section. Excluding data that identifies a resident, the report must include data compilation, illustration and narratives to:

(a) Describe statewide patterns and trends that emerge from the data reported to the department under subsection (2) of this section and compliance data maintained by the department;

(b) Identify residential care facilities that substantially failed to report data as required by this section;

(c) Allow residential care facilities and the public to compare a residential care facility's performance on each quality metric, by demographics, geographic region, facility type and other categories the department believes may be useful to consumers and facilities;

(d) Show trends in performance on each of the quality metrics;

(e) Identify patterns of performance by geographic regions and other categories the department believes will be useful to consumers;

(f) Identify the number, severity and scope of regulatory violations by each geographic region; and

(g) Show average timelines for surveys and for investigations of abuse or regulatory noncompliance.

(2) Each residential care facility shall report, no later than January 31 of each year and in the form and manner prescribed by the Quality Measurement Council established under section 16 of this 2017 Act, the following quality metrics for the prior calendar year, consistent with accepted professional standards and excluding information that identifies a resident of the residential care facility:

(a) The residential care facility's retention of direct care staff;

(b) The number of resident falls in the residential care facility that result in physical injury;

(c) The incidence in the residential care facility of the use of antipsychotic medications for nonstandard purposes;

(d) The residential care facility's compliance with staff training requirements;

(e) The results of an annual resident satisfaction survey conducted by an independent entity that meets the requirements established by the Quality Measurement Council; and

(f) A quality metric recommended by the Quality Measurement Council that measures the quality of the resident experience.

(3) The department shall make available an annual report to each residential care facility that reports quality metrics under subsection (2) of this section using data compilation, illustration and narratives to allow the residential care facility to measure and compare its quality metrics over time.

(4) The department shall make available to the public in a standard format and in plain language the data reported by each residential care facility, excluding information that identifies a resident.

(5) The department shall, using moneys from the Quality Care Fund established under ORS 443.001:

(a) Develop online training modules to address the top two statewide issues identified by surveys or reviews of residential care facilities during the previous year; and

(b) Post and regularly update the data used to prepare the report described in subsection (1) of this section.

(6) The Quality Measurement Council, in consultation with the department, shall establish a uniform system for residential care facilities to report quality metrics as required by subsection (2) of this section. The system must:

(a) Allow for electronic reporting of data, to the greatest extent practicable; and

(b) Take into account and utilize existing data reporting systems used by residential care facilities.

(7)(a) Quality metric data reported to the department under this section may not be used as the basis for an enforcement action by the department nor may the data be disclosed to another agency for use in an enforcement or regulatory action.

(b) Quality metric data are not admissible as evidence in any civil action, including but not limited to judicial, administrative, arbitration or mediation proceedings.

(c) Quality metric data reported to the department are not subject to:

(A) Civil or administrative subpoena; or

(B) Discovery in connection with a civil action, including but not limited to judicial, administrative, arbitration or mediation proceedings.

(8) Subsection (7) of this section does not exempt a residential care facility from complying with state law or prohibit the department's use of quality metric data obtained from another source in the normal course of business or compliance activity.

SECTION 16. (1) The Quality Measurement Council is established in the Department of Human Services to prescribe how the department shall implement the Residential Care Quality Measurement Program established under section 15 of this 2017 Act.

(2) The council consists of eight members, appointed by the Governor, as follows:

(a) One individual representing the Oregon Patient Safety Commission;

(b) One individual representing residential care facilities;

(c) One consumer representative from an Alzheimer's advocacy organization;

(d) One licensed health care practitioner with experience in geriatrics;

(e) Two individuals associated with an academic institution who have expertise in research using data and analytics and in community-based care and quality reporting;

(f) The Long Term Care Ombudsman or a designee of the Long Term Care Ombudsman; and

(g) One individual representing the department.

(3)(a) On and after January 1, 2022, the council may update by rule the quality metrics to be reported by residential care facilities under section 15 of this 2017 Act.

(b) In developing quality metrics the council shall consider whether the data that must be reported reflect and promote quality care and whether reporting the data is unnecessarily burdensome on residential care facilities.

SECTION 17. Section 15 of this 2017 Act is amended to read:

Sec. 15. (1) The Residential Care Quality Measurement Program is established in the Department of Human Services. Under the program, the department shall, no later than July 1 of each year, publish an annual report, based on data reported by each residential care facility under subsection (2) of this section. Excluding data that identifies a resident, the report must include data compilation, illustration and narratives to:

(a) Describe statewide patterns and trends that emerge from the data reported to the department under subsection (2) of this section and compliance data maintained by the department;

(b) Identify residential care facilities that substantially failed to report data as required by this section;

(c) Allow residential care facilities and the public to compare a residential care facility's performance on each quality metric, by demographics, geographic region, facility type and other categories the department believes may be useful to consumers and facilities;

(d) Show trends in performance on each of the quality metrics;

(e) Identify patterns of performance by geographic regions and other categories the department believes will be useful to consumers;

(f) Identify the number, severity and scope of regulatory violations by each geographic region; and

(g) Show average timelines for surveys and for investigations of abuse or regulatory noncompliance.

(2) Each residential care facility shall report, no later than January 31 of each year and in the form and manner prescribed by the Quality Measurement Council established under section 16 of this 2017 Act, the [*following*] quality metrics **developed by the council under section 16 of this 2017 Act.** [*for the prior calendar year, consistent with accepted professional standards and excluding information that identifies a resident of the residential care facility:*]

[*(a) The residential care facility's retention of direct care staff;*]

[*(b) The number of resident falls in the residential care facility that result in physical injury;*]

[*(c) The incidence in the residential care facility of the use of antipsychotic medications for nonstandard purposes;*]

[*(d) The residential care facility's compliance with staff training requirements;*]

[*(e) The results of an annual resident satisfaction survey conducted by an independent entity that meets the requirements established by the Quality Measurement Council; and*]

[*(f) A quality metric recommended by the Quality Measurement Council that measures the quality of the resident experience.*]

(3) The department shall make available an annual report to each residential care facility that reports quality metrics under subsection (2) of this section using data compilation, illustration and narratives to allow the residential care facility to measure and compare its quality metrics over time.

(4) The department shall make available to the public in a standard format and in plain language the data reported by each residential care facility, excluding information that identifies a resident.

(5) The department shall, using moneys from the Quality Care Fund established under ORS 443.001:

(a) Develop online training modules to address the top two statewide issues identified by surveys or reviews of residential care facilities during the previous year; and

(b) Post and regularly update the data used to prepare the report described in subsection (1) of this section.

(6) The Quality Measurement Council, in consultation with the department, shall establish a uniform system for residential care facilities to report quality metrics as required by subsection (2) of this section. The system must:

(a) Allow for electronic reporting of data, to the greatest extent practicable; and

(b) Take into account and utilize existing data reporting systems used by residential care facilities.

(7)(a) Quality metric data reported to the department under this section may not be used as the basis for an enforcement action by the department nor may the data be disclosed to another agency for use in an enforcement or regulatory action.

(b) Quality metric data are not admissible as evidence in any civil action, including but not limited to judicial, administrative, arbitration or mediation proceedings.

(c) Quality metric data reported to the department are not subject to:

(A) Civil or administrative subpoena; or

(B) Discovery in connection with a civil action, including but not limited to judicial, administrative, arbitration or mediation proceedings.

(8) Subsection (7) of this section does not exempt a residential care facility from complying with state law or prohibit the department's use of quality metric data obtained from another source in the normal course of business or compliance activity.

SECTION 18. The amendments to section 15 of this 2017 Act by section 17 of this 2017 Act become operative on January 1, 2022.

SECTION 19. (1) The Department of Human Services shall first publish the report described in section 15 (1) of this 2017 Act no later than July 1, 2020.

(2) A residential care facility shall first report quality metrics under section 15 (2) of this 2017 Act no later than January 31, 2020. A residential care facility may voluntarily report quality metrics before January 31, 2020, once the reporting system is able to receive reports.

(Conversion Facilities)

SECTION 20. (1) A facility that is licensed as a long term care facility under ORS 441.025 may apply to the Department of Human Services for licensure as a conversion facility. The department shall issue a conversion facility license upon receipt of an application and a fee that meet requirements established by the department by rule.

(2)(a) The department shall adopt rules governing the conversion of a facility's license from a long term care facility license to a residential care facility license and the regulation of the facility during the conversion period.

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

(3) As used in this section, "substantial compliance" means a level of compliance with state law and with rules of the department such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents.

SECTION 21. ORS 443.420 is amended to read:

443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the director of the licensing agency, be a person:

(a) Who demonstrates an understanding and acceptance of the rules governing residential facilities;

(b) Mentally and physically capable of caring for such residents; and

(c) Who employs or utilizes only individuals whose presence does not jeopardize the health, safety or welfare of residents.

(2) A residential facility [*shall*] **may** not be operated or maintained in combination with a nursing home or hospital unless:

(a) The residential facility is licensed, maintained and operated as a separate and distinct part[.]**; or**

(b) The residential facility is licensed as a conversion facility under section 20 of this 2017 Act.

(3) All physical residential facilities used for residents [*shall*] **must** meet applicable requirements of the State Fire Marshal.

(4) [*Prior to*] **As of the date of** licensure, a residential facility must be in substantial compliance with applicable state and local laws, rules, codes, ordinances and permit requirements.

(5) Prior to licensure, a residential facility that proposes to house persons under the age of 21 years shall submit written proof to the licensing agency demonstrating that the facility will:

(a) Comply with ORS 336.575; and

(b) Ensure that the children who reside at the residential facility receive appropriate educational services that are:

(A) Comprehensive and age-appropriate;

(B) In compliance with requirements of state and federal law; and

(C) If applicable, in compliance with the individual education program of the child.

(6) Prior to an initial licensure of a residential care facility, the licensing agency shall consider:

(a) The license applicant's history of regulatory compliance and operational experience;

(b) The willingness of the license applicant to serve underserved populations; and

(c) The willingness of the license applicant to contract with the licensing agency to provide services through the state medical assistance program.

(7)**(a)** The licensing agency may not issue an initial license to a residential care facility if the facility has not conducted a market study that assesses the need for the services offered by the facility in the geographic area served by the facility.

(b) This subsection does not apply to a conversion facility licensed under section 20 of this 2017 Act.

SECTION 22. Section 1, chapter 441, Oregon Laws 2017 (Enrolled Senate Bill 58), is amended to read:

Sec. 1. As used in sections 1 to 8**, chapter 441, Oregon Laws 2017 (Enrolled Senate Bill 58)** [*of this 2017 Act*]:

(1) "Administrative action" means an action, inaction or decision by an owner, employee or agent of a residential facility or by a state, local, social service or health agency that could affect the health, safety, welfare or rights of residents of the facility.

(2) "Designee" means an individual appointed by the Residential Facilities Ombudsman in accordance with section 4**, chapter 441, Oregon Laws 2017 (Enrolled Senate Bill 58)** [*of this 2017 Act*].

(3) "Legal representative" means a person to whom a resident or a court has granted legal authority to permit access to the resident's personal information and medical records.

(4) "Long Term Care Ombudsman" means the individual appointed by the Governor under ORS 441.403.

(5) "Resident" means an individual who resides in a residential facility.

(6)(a) "Residential facility" means one of the following:

(A) A residential training facility, as defined in ORS 443.400.

(B) A residential training home, as defined in ORS 443.400.

(C) A licensed adult foster home as defined in ORS 443.705 that serves persons with mental illness or developmental disabilities.

(D) A developmental disability child foster home, as defined in ORS 443.830.

(E) A residential treatment facility, as defined in ORS 443.400.

(F) A residential treatment home, as defined in ORS 443.400.

(G) A conversion facility licensed under section 20 of this 2017 Act.

(b) "Residential facility" does not include a:

(A) Secured facility housing persons committed under ORS 161.327; or

(B) Facility licensed by the Oregon Health Authority to provide alcohol and drug treatment.

(7) "Residential Facilities Ombudsman Program" means the services provided by the Residential Facilities Ombudsman.

(Enhanced Oversight and Supervision Program)

SECTION 23. (1) As used in this section, "substantial compliance" means a level of compliance with state law and with rules of the Department of Human Services such that any identified deficiencies pose a risk of no more than negligible harm to the health or safety of residents.

(2)(a) The department shall develop a framework for assessing the compliance of residential care facilities with regulatory requirements and for requiring corrective action that accurately and equitably measures compliance and the extent of noncompliance.

(b) The framework must include but is not limited to measures of the severity and scope of a residential care facility's noncompliance.

(c) The department shall publish the framework on the department's website and shall distribute the framework to residential care facilities licensed in this state.

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

(a) A lack of substantial compliance with the requirements of ORS 443.400 to 443.455; or

(b) Performance substantially below statewide averages on quality metrics reported under the Residential Care Quality Measurement Program established under section 15 of this 2017 Act.

(4) The residential care facility enhanced oversight and supervision program shall take one or more of the following actions that the department deems necessary to improve the performance of a residential care facility:

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

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

(5) The department shall terminate the enhanced oversight and supervision of a residential care facility:

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

(b) After one year if the residential care facility submits a written assertion of substantial compliance and the department determines that the residential care facility no longer meets the criteria set forth in subsection (3) of this section.

(6) Using moneys from the Quality Care Fund established under ORS 443.001, the department shall develop, maintain and periodically update compliance guidelines for residential care facilities serving seniors and persons with disabilities. The guidelines must be made available electronically.

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

(Acuity-Based Staffing Tool)

SECTION 24. (1) The Department of Human Services shall develop or obtain, maintain and use, in collaboration with residential care facilities, an objective, technology-based, acuity-based staffing tool. The department may use the tool to:

(a) Evaluate whether a residential care facility has qualified awake caregivers sufficient in number to meet the 24-hour scheduled and unscheduled needs of each resident; and

(b) Assess the number of direct care staff hours required by a particular residential care facility to meet each resident's scheduled and unscheduled needs.

(2) The acuity-based staffing tool shall be made available to residential care facilities to:

(a) Enable the residential care facilities to assess their staffing needs and determine whether they have a sufficient number of qualified awake caregivers to meet the 24-hour scheduled and unscheduled needs of each resident;

(b) Communicate the required staffing needs and each residential care facility's staffing plan to residents, their family members and other persons; and

(c) Demonstrate to the department that the residential care facility's staffing plan meets the 24-hour scheduled and unscheduled needs of each resident.

(3) The department is not required to use the tool described in this section in every circumstance in which residential care facility staffing is evaluated, but the department must use the tool in collaboration with the facility if the department is considering imposing a staffing requirement on a facility as part of a licensing condition and the department and the facility are not in agreement about whether staffing meets the residents' scheduled and unscheduled needs or the staffing standards proposed by the department.

(Direct Care Staff Training)

SECTION 25. (1) In addition to any other training required by law, all direct care staff employed by a residential care facility shall, prior to providing direct care to residents of the facility, complete training in dementia care that includes:

(a) Education on the dementia disease process, including the progression of the disease, memory loss, psychiatric and behavioral symptoms;

(b) Techniques for understanding and managing behavioral symptoms, including but not limited to reducing the use of antipsychotic medications for nonstandard uses;

(c) Strategies for addressing the social needs of persons with dementia and providing them with meaningful activities; and

(d) Information on addressing specific aspects of dementia care and ensuring the safety of residents with dementia, including but not limited to how to:

(A) Address pain;

(B) Provide food and fluids;

(C) Prevent wandering and elopement; and

(D) Use a person-centered approach.

(2) A residential care facility shall provide a certificate of completion to direct care staff who complete the training described in subsection (1) of this section. If a member of the direct care staff is employed by a different residential care facility no later than 24 months after completing the training, the facility may elect to not require the staff member to repeat the training.

(3) In addition to the training described in subsection (1) of this section, direct care staff each must complete annually at least six hours of training in dementia care. This training may be part of any existing continuing education requirement imposed by law.

(4) All training in dementia care provided to direct care staff must be approved by a private or nonprofit organization that is approved by the Department of Human Services and that has expertise and specializes in educational training for residential care facility staff.

(5) All training in dementia care provided to direct care staff must reflect current standards for dementia care and be informed by the best evidence in the care and treatment of dementia.

(6) The department shall prescribe by rule how to assess the competency of direct care staff.

(Suspension of License)

SECTION 26. ORS 443.440 is amended to read:

443.440. **(1) Except as provided in subsection (2) of this section for residential care facilities,** the Department of Human Services or the Oregon Health Authority may revoke or suspend the license of any residential facility that is not operated in accordance with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency. Such revocation or suspension [*shall*] **must** be taken in accordance with rules of the licensing agency and ORS chapter 183. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension.

(2)(a) In a case where an imminent danger to the health or safety of the residents exists, a residential care facility license may be suspended immediately.

(b) The residential care facility is entitled to a contested case hearing to appeal an order of immediate suspension in accordance with procedures adopted by the Department of Justice by rule concerning emergency license suspensions.

(c) When the Department of Human Services issues an immediate suspension order under this subsection, the department may:

(A) Transition all residents of the residential care facility to other residential facilities; or

(B) Appoint a management company with demonstrated skill and experience in operating residential facilities to manage the residential care facility and care for the residents of the facility. If the facility is unable to pay for the appointed management company, the department shall use funds from the facility trustee account fund to cover the cost.

(Prescription Drug Packaging)

SECTION 27. (1) A residential care facility shall ensure that prescription drugs dispensed to residents of the facility are packaged in a manner that reduces errors in the tracking of and the administration of the drugs, including but not limited to the use of unit dose systems or blister packs.

(2) Subsection (1) of this section does not apply to residents receiving pharmacy benefits through the United States Department of Veterans Affairs if the pharmacy benefits do not reimburse the cost of such packaging.

(Memory Care)

SECTION 28. ORS 443.886 is amended to read:

443.886. (1) If a facility intends to provide care for [*patients or*] residents with Alzheimer's disease or other **forms of** dementia by means of an [*Alzheimer's care unit*] **endorsed memory care community**, the facility must obtain a [*special indorsement*] **memory care endorsement** on its license or registration.

(2) The Department of Human Services, with the input from representatives of advocate groups and the long term care industry, shall adopt by rule standards that ensure that the special needs of any [*Alzheimer's patient or*] resident **with Alzheimer's disease or other form of dementia** who is cared for in [*a special unit*] **an endorsed memory care community** are met and that quality care is provided. The standards must include but are not limited to provisions for:

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

(b) Continuity of basic care requirements; and

(c) Marketing and advertising of the availability of and services from [*Alzheimer's care units*] **endorsed memory care communities.**

(3) The department shall adopt a fee schedule for [*indorsement*] **memory care endorsement,** taking into account the type of facility and the number of [*patients and*] residents.

(4) The department shall enforce rules adopted under subsection (2) of this section and shall allow a licensee or registrant to retain the [*special indorsement*] **memory care endorsement** required to care for [*patients and*] residents with Alzheimer's disease or other **forms of** dementia only [*so*] **as** long as the licensee or registrant complies with the rules.

(5) The [*special indorsement*] **memory care endorsement** may be suspended or revoked in the same manner as the license or registration is suspended or revoked.

(6) Unless a facility has obtained the [*indorsement*] **memory care endorsement** required by subsection (1) of this section, the facility [*shall*] **may** not:

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

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

(7) As used in this section:

(a) [*"Alzheimer's care unit"*] **"Endorsed memory care community"** means a special care unit in a designated, separated area for [*patients and*] residents with Alzheimer's disease or other **forms of** dementia that is locked[, *segregated*] or secured to prevent or limit access by a [*patient or*] resident outside the designated or separated area.

(b) "Facility" means a [*nursing home,*] **long term care facility,** residential care facility, assisted living facility or any other like facility required to be licensed by the department.

(c) "Registry" means a facility will provide the department with information relating to the [*Alzheimer's care unit*] **endorsed memory care community,** including the number of residents in the [*unit*] **community, the** stage of dementia for each resident, **a** description of how services are provided[,] and **the** length of time the [*unit*] **community** has been operating.

ADULT FOSTER HOMES
(Caregiver Training)

SECTION 29. Sections 30 and 31 of this 2017 Act are added to and made a part of ORS 443.705 to 443.825.

SECTION 30. (1) As used in this section, "caregiver" means an individual who is responsible for providing care and services to residents of an adult foster home, including but not limited to a caregiver and a substitute caregiver.

(2) In addition to any other training required by law, all caregivers in an adult foster home licensed to serve older adults and persons with physical disabilities by the Department of Human Services shall, prior to providing direct care to residents of the adult foster home, complete training in dementia care that includes:

(a) Education on the dementia disease process, including the progression of the disease, memory loss, psychiatric and behavioral symptoms;

(b) Techniques for understanding and managing behavioral symptoms, including but not limited to reducing the use of antipsychotic medications for nonstandard uses;

(c) Strategies for addressing the social needs of persons with dementia and providing them with meaningful activities; and

(d) Information on addressing specific aspects of dementia care and ensuring the safety of residents with dementia, including but not limited to how to:

(A) Address pain;

(B) Provide food and fluids;

(C) Prevent wandering and elopement; and

(D) Use a person-centered approach.

(3) All training related to dementia care provided to caregivers in an adult foster home licensed by the department must reflect current standards for dementia care and be informed by the best evidence in the care and treatment of persons with dementia.

(Medication Packaging)

SECTION 31. **(1) An adult foster home licensed by the Department of Human Services shall ensure that prescription drugs dispensed to residents of the adult foster home are packaged in a manner that reduces errors in the tracking of and the administration of the drugs, including but not limited to the use of unit dose systems or blister packs.**

(2) Subsection (1) of this section does not apply to residents receiving pharmacy benefits through the United States Department of Veterans Affairs if the pharmacy benefits do not reimburse the cost of such packaging.

(Evacuation of Residents)

SECTION 32. ORS 443.760 is amended to read:

443.760. (1) Adult foster homes that are certified as residential homes as defined in ORS 197.660 [*shall*] **must** meet all state and local building, sanitation, utility and fire code requirements applicable to single family dwellings. However, by rule, the licensing agency may adopt more stringent standards upon a finding that there is a significant health or safety threat to residents that necessitates a standard not imposed on other single family dwellings.

(2) In adopting more stringent standards, the licensing agency shall consult with the Department of Consumer and Business Services and the office of the State Fire Marshal to [*insure adequate evacuation of residents.*] **ensure that the provider has the ability to evacuate all residents from an adult foster home within:**

(a) Three minutes; or

(b) A period that meets applicable fire, life and safety requirements if the adult foster home has an interior sprinkler system approved by the appropriate regulatory authorities.

[*(3) As used in this section, "adequate evacuation" means the ability of a provider to evacuate all residents from the dwelling within three minutes.*]

[*(4)*] **(3)** If a licensed provider rents or leases the premises where the adult foster home is located, the lessor shall charge a flat rate for the lease or rental.

PHYSICIAN EDUCATION IN ALZHEIMER'S DISEASE

SECTION 33. **Section 34 of this 2017 Act is added to and made a part of ORS chapter 677.**

SECTION 34. **(1) The Oregon Medical Board shall encourage each physician with a specialty in primary care or geriatrics, or another specialty designated by the board, to obtain continuing medical education in the detection and early diagnosis of Alzheimer's disease and in the appropriate prescribing of antipsychotic drugs to treat patients with Alzheimer's disease.**

(2) The continuing medical education described in subsection (1) of this section shall be considered relevant continuing medical education for all licensees of the board and the hours may be applied to any required continuing medical education requirements.

DEFINITIONS

SECTION 35. ORS 443.400 is amended to read:

443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context requires otherwise:

[*(1) "Director" means the director of the licensing agency for the residential facility.*]

(1) "Behavioral health needs" means mental, emotional or behavioral disturbances.

(2) "Conversion facility" means a facility that has applied for, or been issued, a conversion facility license as described in section 20 of this 2017 Act.

(3) "Direct care staff" means the employees of a residential facility whose primary responsibilities are to provide personal care services to residents, including but not limited to:

(a) Administering medications;

(b) Coordinating resident-focused activities;

(c) Supervising and supporting residents;

(d) Supporting activities of daily living, including but not limited to bathing, dressing, eating and transferring; and

(e) Serving but not preparing meals.

[*(2)*] **(4)** "Licensing agency" means:

(a) The Department of Human Services, if the residential facility that is licensed, or that the Director of Human Services determines should be licensed, is a residential care facility, residential training facility or residential training home; or

(b) The Oregon Health Authority, if the residential facility that is licensed, or that the Director of the Oregon Health Authority determines should be licensed, is a residential treatment facility or residential treatment home.

[*(3)*] **(5)** "Resident" means any individual residing in a facility who receives residential care, treatment or training. For purposes of ORS 443.400 to 443.455, an individual is not considered to be a resident if the individual is related by blood or marriage within the fourth degree as determined by civil law to the person licensed to operate or maintain the facility.

[*(4)*] **(6)** "Residential care" means services such as supervision; protection; assistance while bathing, dressing, grooming or eating; management of money; transportation; recreation; and the providing of room and board.

[*(5)*] **(7)** "Residential care facility" means a facility that provides[*, for six or more socially dependent individuals or individuals with physical disabilities,*] residential care in one or more buildings on contiguous properties[.]**:**

(a) For six or more socially dependent individuals or individuals with physical disabilities; or

(b) For fewer than six socially dependent individuals or individuals with physical disabilities if the purpose of the facility is to serve individuals with co-occurring behavioral health needs who are more appropriately served in smaller settings.

[*(6)*] **(8)** "Residential facility" means a residential care facility, residential training facility, residential treatment facility, residential training home, [*or*] residential treatment home **or conversion facility**.

[*(7)*] **(9)** "Residential training facility" means a facility that provides, for six or more individuals with mental retardation or other developmental disabilities, residential care and training in one or more buildings on contiguous properties.

[*(8)*] **(10)** "Residential training home" means a facility that provides, for five or fewer individuals with mental retardation or other developmental disabilities, residential care and training in one or more buildings on contiguous properties, when so certified and funded by the Department of Human Services.

[*(9)*] **(11)** "Residential treatment facility" means a facility that provides, for six or more individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

[*(10)*] **(12)** "Residential treatment home" means a facility that provides for five or fewer individuals with mental, emotional or behavioral disturbances or alcohol or drug dependence, residential care and treatment in one or more buildings on contiguous properties.

[*(11)*] **(13)** "Training" means the systematic, planned maintenance, development or enhancement of self-care skills, social skills or independent living skills, or the planned sequence of systematic interactions, activities or structured learning situations designed to meet each resident's specified needs in the areas of physical, social, emotional and intellectual growth.

[*(12)*] **(14)** "Treatment" means a planned, individualized program of medical, psychological or rehabilitative procedures, experiences and activities designed to relieve or minimize mental, emotional, physical or other symptoms or social, educational or vocational disabilities resulting from or related to the mental or emotional disturbance, physical disability or alcohol or drug problem.

CONFORMING AMENDMENTS

SECTION 36. ORS 409.720 is amended to read:

409.720. (1) As used in this section:

(a) "Adult foster home" has the meaning given that term in ORS 443.705 (1).

(b) "Health care facility" has the meaning given that term in ORS 442.015.

(c) "Residential facility" has the meaning given that term in ORS 443.400 [*(6)*].

(2) Every adult foster home, health care facility and residential facility licensed or registered by the Department of Human Services shall:

(a) Adopt a plan to provide for the safety of persons who are receiving care at or are residents of the home or facility in the event of an emergency that requires immediate action by the staff of the home or facility due to conditions of imminent danger that pose a threat to the life, health or safety of persons who are receiving care at or are residents of the home or facility; and

(b) Provide training to all employees of the home or facility about the responsibilities of the employees to implement the plan required by this section.

(3) The department shall adopt by rule the requirements for the plan and training required by this section. The rules adopted shall include, but are not limited to, procedures for the evacuation of the persons who are receiving care at or are residents of the adult foster home, health care facility or residential facility to a place of safety when the conditions of imminent danger require relocation of those persons.

SECTION 37. ORS 430.216 is amended to read:

430.216. (1) The Department of Human Services shall report to each odd-numbered year regular session of the Legislative Assembly:

(a) On the safety of individuals receiving developmental disability services including, but not limited to:

(A) The average turnover of direct care workers in service settings.

(B) A summary of the training provided by the department or its contractors to direct care workers in service settings.

(C) A summary of the core competencies required of direct care workers in service settings by the state for licensing or certification.

(D) A summary of the average wages of direct care workers in service settings, presented by type of services provided.

(E) The number of complaints of abuse filed as required by ORS 430.765 and received by the department under ORS 430.743, reported by type of allegation.

(F) The number of direct care workers in service settings who were subject to criminal or civil action involving an individual with a developmental disability.

(G) The number of deaths, serious injuries, sexual assaults and rapes alleged to have occurred in service settings.

(b) A schedule of all license fees and civil penalties established by the department by rule pursuant to ORS [*441.995,*] 443.455 and 443.790.

(2) The department shall provide the report described in subsection (1)(a) of this section to the appropriate legislative committees, the Oregon Council on Developmental Disabilities and to the agency designated to administer the state protection and advocacy system under ORS 192.517.

(3) As used in this section, "service settings" means any of the following that provide developmental disability services:

(a) An adult foster home as defined in ORS 443.705;

(b) A residential facility as defined in ORS 443.400;

(c) A location where home health services, as defined in ORS 443.014, are received by a resident;

(d) A location where in-home care services, as defined in ORS 443.305, are received by a resident; and

(e) A domiciliary care facility as defined in ORS 443.205.

SECTION 38. ORS 441.303 is amended to read:

441.303. (1) The Facility Fund is established in the State Treasury, separate and distinct from the General Fund, consisting of payments made by facilities to the Department of Human Services

as specified in this section. Interest earned by the Facility Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the department for the purpose of paying:

(a) The reasonable expenses of a trustee appointed under ORS 441.281 if funds collected by a trustee under ORS 441.289 and 441.293 are insufficient to meet those expenses; or

(b) The reasonable expenses of a temporary manager appointed under ORS 441.333 if funds collected by a temporary manager are insufficient to meet those expenses.

(2) Each licensee shall pay annually to the department an amount not to exceed the annual license fee **or application fee** for the facility under ORS 441.020 or 443.415. The facility payment shall be due annually on a date fixed by the department and enforced in the same manner as the license fee for the particular facility is payable and enforceable. The amount of payments shall be set so as to acquire in the fund the $750,000 described in subsection (3) of this section.

(3) Whenever the balance of moneys in the fund established under this section reaches $750,000, the department shall discontinue collecting the facility payment described in subsection (2) of this section. However, whenever the fund balance falls below $600,000, the department shall reinstitute the facility payment described in subsection (2) of this section until the fund is restored to at least $750,000. The department's notice of intent to reinstitute the facility payment shall include a summary of the amounts expended by the department from the fund and the balance of the fund on the date of the notice. The department may use reasonable amounts from the fund necessary to administer the fund.

(4) Whenever the department is required to use any amount in the fund to meet the expenses of a trustee appointed under ORS 441.281 or a temporary manager appointed under ORS 441.333, the amount used shall constitute a loan to the facility and shall be repayable to the fund under such terms and conditions as the facility and the department agree. The rate of interest shall be set by the department to reflect the prevailing market rate on similar loans. Interest earned under this subsection shall be credited to the fund established under this section.

(5) The facility payment described in subsection (2) of this section shall be considered an allowable cost in setting the reimbursement rates of a facility by the department.

(6) The court may order that the trustee file an undertaking with the clerk of the court. The fund established under this section may serve as surety for the undertaking.

SECTION 39. ORS 441.367 is amended to read:

441.367. (1) The Department of Human Services by rule shall require long term care facilities licensed under ORS 441.020 to provide written and oral notice before or at the time of admission to any resident who does not receive medical assistance under ORS chapter 414, specifying:

(a) The base daily rate and any additional expenses reasonably to be expected including medical supplies, pharmacy and doctor visits and the charges for incontinency care, feeding and laundry; and

(b) The long term care facility's policy regarding residents who become unable to pay facility charges by reason of exhaustion of all income and resources to or below the level of eligibility for medical assistance.

(2) A long term care facility shall give 30 days' notice in writing to all residents of changes in additional expenses or charges.

(3) The Director of Human Services may impose a civil penalty for violation of subsection (1) of this section under ORS 441.710 [*(1)(b)*] **(1)(a)(C)**.

SECTION 40. ORS 441.408 is amended to read:

441.408. (1) The Long Term Care Ombudsman and each designee shall have the right of entry into residential facilities at any time considered necessary and reasonable by the ombudsman or the designee for the purpose of:

(a) Investigating and resolving complaints made by residents or made on their behalf;

(b) Interviewing residents, with their consent, in private;

(c) Offering the services of the ombudsman or the designee to any resident, in private;

(d) Interviewing employees or agents of the facility;

(e) Consulting regularly with the facility administration; and

(f) Providing services authorized by law or by rule.

(2) The Long Term Care Ombudsman shall have access to any resident's records, and to records of any public agency necessary to the duties of the ombudsman, including records on patient abuse complaints made pursuant to ORS 430.735 to 430.765[,] **and** 441.630 to 441.680 [*and 441.995*]. The provisions of ORS 192.553 to 192.581 are not intended to limit the access of the Long Term Care Ombudsman to medical records of residents of residential facilities. Designees may have access to individual resident's records, including medical records as authorized by the resident or resident's legal representative, if needed to investigate a complaint.

(3) Entry and investigation authorized by this section shall be done in a manner that does not disrupt significantly the providing of nursing, residential or other personal care or treatment to residents.

(4) The ombudsman or the designee must show identification to the person in charge of the facility. The resident shall have the right to refuse to communicate with the ombudsman or the designee. The refusal shall be made directly to the ombudsman or the designee and not through an intermediary.

(5) The resident shall have the right to participate in planning any course of action to be taken on behalf of the resident by the ombudsman or the designee.

SECTION 41. ORS 441.630 is amended to read:

441.630. As used in ORS 441.630 to 441.680 [*and 441.995*]:

(1) "Abuse" means:

(a) Any physical injury to a resident of a long term care facility which has been caused by other than accidental means.

(b) Failure to provide basic care or services, which failure results in physical harm or unreasonable discomfort or serious loss of human dignity.

(c) Sexual contact with a resident caused by an employee, agent or other resident of a long term care facility by force, threat, duress or coercion.

(d) Illegal or improper use of a resident's resources for the personal profit or gain of another person.

(e) Verbal or mental abuse as prohibited by federal law.

(f) Corporal punishment.

(g) Involuntary seclusion for convenience or discipline.

(2) "Abuse complaint" means any oral or written communication to the department, one of its agents or a law enforcement agency alleging abuse.

(3) "Department" means the Department of Human Services or a designee of the department.

(4) "Facility" means a long term care facility, as defined in ORS 442.015.

(5) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) A police department established by a university under ORS 352.121 or 353.125.

(c) Any county sheriff's office.

(d) The Oregon State Police.

(e) Any district attorney.

(6) "Public or private official" means:

(a) Physician, including any intern or resident.

(b) Licensed practical nurse or registered nurse.

(c) Employee of the Department of Human Services, a community developmental disabilities program or a long term care facility or person who contracts to provide services to a long term care facility.

(d) Employee of the Oregon Health Authority, local health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech and occupational therapists.

(i) Legal counsel for a resident or guardian or family member of the resident.

(j) Member of the Legislative Assembly.

(k) Personal support worker, as defined by rule adopted by the Home Care Commission.

(L) Home care worker, as defined in ORS 410.600.

SECTION 42. ORS 441.637 is amended to read:

441.637. (1) The Department of Human Services shall implement the provisions of ORS 441.630 to 441.680 [*and 441.995*] and shall adopt such rules as are reasonably necessary for the enforcement of ORS 441.630 to 441.680 [*and 441.995*].

(2) Prior to proceeding with the procedures for notice prescribed under ORS 183.335, the department shall submit any proposed rules to an advisory group consisting of representatives of long term care providers, long term care advocates, relevant licensing boards and the department. The department shall consider and respond to the comments of the advisory group that pertain to any proposed rules before the department adopts the rules.

SECTION 43. ORS 441.680 is amended to read:

441.680. A resident who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for this reason alone, not be considered an abused resident within the meaning of ORS 441.630 to 441.680 [*and 441.995*].

SECTION 44. ORS 441.745 is amended to read:

441.745. All penalties recovered under ORS 441.710 to 441.740 [*and 441.995*] shall be deposited in the Quality Care Fund established in ORS 443.001.

SECTION 45. ORS 443.452 is amended to read:

443.452. (1) The [*director*] **Director of Human Services** shall waive the requirements of ORS 443.410 for a residential care facility caring for residents with physical disabilities if:

(a) Each resident is over 16 years of age;

(b) No more than five individuals with physical disabilities reside in any one building of the facility; and

(c) The residential **care** facility complies with the applicable requirements of the State Fire Marshal.

(2) As used in this section, "building" means any structure that does not share a common wall or roof with another structure.

REPEALS

SECTION 46. ORS 441.995 and 443.885 are repealed.

SECTION 47. Section 1 of this 2017 Act is repealed on December 31, 2019.

EXPENDITURE LIMITATIONS

SECTION 48. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 2 (3), chapter ___, Oregon Laws 2017 (Enrolled Senate Bill 5526) for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts and Medicare receipts and including federal funds for indirect cost recovery, Social Security Supplemental Security Income recoveries and the Child Care and Development Fund, but excluding lottery funds and federal funds not described in this section, collected or received by the Department of Human Services, for aging and people with disabilities and intellectual/developmental disabilities programs, is increased by $1,274,528.

SECTION 49. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 3 (3), chapter ___, Oregon Laws 2017 (Enrolled Senate Bill 5526) for the biennium beginning July 1, 2017, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2 of this 2017 Act, collected

or received by the Department of Human Services, for aging and people with disabilities and intellectual/developmental disabilities programs, is increased by $1,271,273.

CAPTIONS

SECTION 50. The unit captions used in this 2017 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2017 Act.

Passed by House July 5, 2017

Repassed by House July 7, 2017

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate July 7, 2017

.....
Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2017

Approved:

.....M.,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2017

.....
Dennis Richardson, Secretary of State