

Implementation and Impact of HB 3359

Introduction

The Oregon Legislative Assembly in 2017 passed into law [House Bill 3359](#). This bill enacts a variety of changes related to licensed facilities serving older adults and adults with disabilities, including:

- Residential care (RCF) and assisted living facilities (ALF)
- Adult foster homes (AFH) and Multnomah County Adult Care Homes (ACH)
- Nursing facilities (NF)
- Endorsed memory care communities (MCC)

[Click here](#) to learn more about these different facility types.

The bill addresses a variety of topics, including:

- Increased licensing fees and penalties
- Changes to regulatory enforcement
- Changes in medication packaging
- Required dementia training
- Mandated annual quality metrics reporting for facilities
- Creation of two new models of residential care facilities (RCF)

The Department has adopted temporary rules to implement HB 3359. [Click here](#) for more information on temporary rulemaking.

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General information

What does HB 3359 do?

[HB 3359](#), passed in 2017, changes several regulations that govern licensed facilities providing care to older adults and adults with disabilities. The bill addresses the following facility types:

- Residential care facilities (RCFs)
- Assisted living facilities (ALFs)
- Adult foster homes (AFHs) and Multnomah County adult care homes (ACHs)
- Nursing facilities (NFs)
- Endorsed memory care communities (MCCs)

HB 3359 includes different requirements for different facility types. Here is a list of what HB 3359 changes for each setting.

For residential care and assisted living facilities:

- Increases licensing fees and civil penalties;
- Imposes penalties for facility failure to report suspected abuse;
- Changes the processes involved when facilities violate regulations;
- Adds regulatory processes related to placing conditions on a provider's license;
- Requires facilities to have policies and procedures in place designed to limit medication errors, including:

- Ensuring that prescription drugs dispensed to residents are packaged in a manner that reduces errors in tracking and administration.
- Packaging includes, but is not limited to use of unit-dose systems or blister packs.
- Requires facilities to have a written policy describing how non-unit dose prescription drugs will be dispensed safely. For example, when a new resident moves in. (The rule exempts Veterans Affairs medications from the unit-dose requirement and does not apply to over-the counter medications).
- Mandates that all direct-care staff complete required pre-service and annual in-service dementia care training;
- Requires the Department to provide a technology-based, acuity-based staffing tool to assist facilities in determining or evaluating adequate staffing levels;
- Requires facilities to report quality metrics to the Department annually, beginning in 2020;
- Provides a process for nursing facilities to convert to residential care facilities.

For adult foster homes:

- Updates rules related to civil penalties;
- Mandates that all direct care staff complete required dementia care training;
- Requires facilities to have policies and procedures in place designed to limit medication errors, including ensuring that prescription drugs dispensed to residents are packaged in a manner that reduces errors in tracking and administration. This packaging includes, but is not limited to use of unit-dose systems or blister packs;
- Changes fire and life safety requirements to allow homes with approved sprinkler systems to have additional evacuation time.

For nursing facilities:

- Increases licensing fees and amounts for civil penalties;
- Imposes penalties for failure to report abuse;
- Changes the processes involved when facilities violate regulations;
- Adds regulatory processes related to placing conditions on a provider's license;
- Provides a process for nursing facilities to convert to residential care facilities.

How do I learn more about implementation of the bill?

The Aging and People with Disabilities program provided informational webinars for providers and other interested parties on implementation of the bill. Three webinars were held and covered the changes for Community Based Care, Adult Foster Homes and Nursing facilities.

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Fees

What are the new licensing fees?

The new fee structure for residential care facilities and assisted living facilities is:

- Initial licensing fees for residential care facilities, assisted living facilities, and nursing facilities: (for new building or recently purchased building)

1-15 beds: \$2,000

16-49 beds: \$3,000

50-99 beds: \$4,000

100-150 beds: \$5,000

151 or more beds: \$6,000

- Renewal fees for residential care facilities, assisted living facilities, and nursing facilities:

1-15 beds: \$1,000

16-49 beds: \$1,500

50-99 beds: \$2,000

100-150 beds: \$2,500

151 or more beds: \$3,000

Please note: Nursing facilities and adult foster homes renew their licenses annually, while residential care facilities and assisted living facilities renew their licenses every two years.

How have the penalties changed?

Violations are categorized according to level. Level 1 violations are the least serious and level 4 violations are the most serious. The new penalty structure for nursing facilities and residential care and assisted living facilities is as follows:

Level 1 violation:

- A Level 1 violation exists when no actual harm has occurred to any resident(s), but there is potential for minor harm due to the violation.
- No penalty can be imposed for a Level 1 violation.

Level 2 violation:

- A Level 2 violation exists when there is minor harm or potential for moderate harm to any resident(s).
- Level 2 harm involves a penalty of no less than \$250 per violation, not to exceed \$500 per violation.

Level 3 violation:

- A Level 3 violation exists when there is moderate harm or potential for serious harm to any resident(s).
- Level 3 harm involves a penalty of no less than \$500 per violation, not to exceed \$1,500 per violation.

Level 4 violation:

- A Level 4 violation exists when serious harm or death occurs to any resident(s).
- Level 4 harm involves a penalty of no less than \$1,500 per violation, not to exceed \$2,500 per violation.

Elevated violation:

- This most serious level of violation is defined by abuse that was:
 - Deliberate or other than accidental
 - Caused by a person with a duty of care toward the resident
 - Resulted in serious injury, rape, sexual abuse, or death of resident.
- These cases will result in a penalty of no less than \$2,500 and no more than \$15,000 per occurrence.

Limits to total amounts of civil penalties that may be imposed:

The Department may not impose civil penalties exceeding \$20,000 for all violations in a single facility within a 90-day period EXCEPT in cases that involve serious injury, rape, sexual abuse, or death; in these cases, the Department may not impose civil penalties exceeding \$40,000 for all violations in a single facility within a 90-day period.

These caps increase the prior 90-day caps of \$7,500 for regular violations and \$15,000 for elevated violations.

Note: Penalties for adult foster homes have not changed.

How will the Department determine what level of penalty to assess?

The Department follows a specific process to determine the appropriate penalty amount for any given violation. This process takes into account the following, as directed by House Bill 3359:

- The scope (number of people affected) and severity (seriousness) of the violation.
- Whether the violation caused actual or potential harm to resident(s).
- Whether the violation was found to be abuse or potential abuse.
- Whether other mitigating factors exist.

What must the Department include in a notice of penalty?

When the Department notifies a facility of a violation for which a penalty may be imposed, the department must describe in the notice the specific remediations that the facility must make to achieve substantial compliance.

What opportunities do providers have to reduce a penalty?

- If a provider self-reports abuse and the abuse resulted in less than serious harm, the Department must reduce the penalty by not less than 25 percent.

- The Department is required to hold a penalty for a Level 2 or 3 violation in abeyance for the period the Department specifies to remediate the violation. If providers achieve substantial compliance within this time period, the Department must withdraw some or all of the penalty.

Will providers be able to appeal penalties?

Yes. Providers' due process rights have not changed. Facilities still have the ability to appeal the Department's decision(s). Notices sent to facilities by the Department contain detailed information on how to submit appeals.

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Reporting

What are the new rules regarding self-reporting of abuse?

- Reporting: When abuse is witnessed or suspected, facilities are required to report it to their local adult protective services (APS) field office within 24 hours. This includes weekends. Facilities must also report these incidents to the police if criminal activity is suspected. This is not a new law.
- Penalty: As of January 1, 2018, if a facility does not self-report abuse, the Department may impose a \$1,000 penalty. (This does not apply to adult foster homes.)
- Department tracking: The department is now required to identify and track the number of self-reported incidents of abuse.

How do providers/facilities self-report potential abuse?

When abuse is witnessed or suspected, facilities are required to report it to their local adult protective services (APS) field office within 24 hours. This includes weekends. Facilities must also report these incidents to the police if criminal activity is suspected. This is not a new law.

As of January 1, 2018, if a facility does not self-report abuse, the Department may impose a \$1,000 penalty. (This does not apply to adult foster homes.)

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Licensing

What is new regarding imposition of a condition on a license?

As of January 1, 2018, the Department must include specified information in the order imposing a condition on licensure. This information includes:

- A specific description of how the scope and manner of the license condition is designed to remediate the violation;
- A specific description of the requirements for withdrawal of the license condition.

Also, the Department must adhere to specified timeframes when they re-inspect or re-evaluate – or the condition is automatically withdrawn. Following imposition of a license condition, the department must:

- Within 15 business days of receipt of a facility’s written assertion of substantial compliance, re-inspect or re-evaluate the facility to determine substantial compliance;
- Within five business days of the reinspection or reevaluation, notify the facility by telephone or email of the findings of the reinspection;
- And, within 30 days after the re-inspection or re-evaluation, the facility will issue a written report notifying the facility of the department’s determinations regarding substantial compliance.

Finally, the Department may only impose a condition on licensure involving a restriction of admission if the Department makes a finding of immediate jeopardy to existing or future residents.

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[Resources](#)

When will the acuity tool be available?

The draft acuity tool is currently available as an Excel spreadsheet. The Department is in the process of converting the Excel version of the tool to a web-based format that will be more user-friendly. Current plans call for the web-based tool to be available before the end of 2018. Facilities wishing to use the current version of the acuity tool should contact their assigned Safety, Oversight and Quality policy analyst, who will provide the tool upon request. (This tool is only for residential care facilities and assisted living facilities. It is not used by nursing facilities or adult foster homes.) The tool must be used collaboratively between the Department and a facility if a licensing condition with staffing requirements is being considered and there is disagreement about the number of staff required.

The tool is intended to assist facilities in determining or evaluating adequate staffing levels, according to the care and service needs (acuity) of each resident. Facilities may use the tool any time; however, it is required to be used in collaboration with the Department, if there is disagreement regarding a proposed Department-imposed staffing requirement.

What is the Quality Measurement Council? How can I serve?

The purpose of the Residential Care Quality Measurement Program is to develop a uniform quality metrics reporting system to measure and compare performance of residential care and assisted living facilities across the state. The system will be established by a Quality Measurement Council, in consultation with the Department. The Council will consist of eight individuals appointed by the Governor.

The Council will develop the program. The first year of data collection will start in 2019 for reporting by January 31, 2020. Initially, residential care and assisted living facilities will be required to report the following metrics:

- Retention of direct care staff.
- Number of resident falls that result in injury.
- Incidence of use of antipsychotic medications for non-standard purposes.
- Compliance with staff training requirements.
- Results of annual resident satisfaction survey conducted by an independent entity.

Each residential care facility and assisted living facility shall submit the required quality metrics data to the Department. The first reporting cycle will begin with facilities reporting 2019 data by January 31, 2020. Metrics data will then continue to be required by January 31st of every year after that. (This reporting requirement does not apply to nursing facilities or adult foster homes.) The Department, in conjunction with the Quality Measurement Council, will create a user-friendly system for facilities to submit their data and collaborate with provider organizations to ensure facilities have ample opportunity to submit required data.

The Department will compile the information received from all residential care facilities and assisted living facilities and publish an annual report. The first report will be published July 1, 2020.

Anyone interested in serving on the Council will need to complete an [interest form](#) and then submit the form to the Governor's Office.

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[Training](#)

What are the new training requirements I've been hearing about?

Because many facility settings have a large number of residents living with dementia (both diagnosed and undiagnosed), House Bill 3359 included requirements related to dementia care training. Pre-service and ongoing annual dementia care continuing education is required for all direct caregivers, including those working in non-endorsed memory care assisted living and residential care communities. Training requirements include:

- Pre-service (prior to providing care) training in specified topics related to dementia care for new staff.
- Six hours of annual in-service training dedicated to dementia care. (This does not apply to adult foster home caregivers.)
- Dementia training curriculum must be pre-approved by a Department-selected entity to meet the requirements of HB 3359. The Department has selected three pre-approving entities through a request for applications (RFA) process. They are the:
 - Alzheimer's Association, Oregon Chapter
 - Leading Age of Oregon

- Oregon Health Care Association
- In addition to required training, facilities must ensure and document that all direct care staff have demonstrated competency in their duties.

Are the new requirements only applicable to new employees?

No. All direct care staff, regardless of hire date, must complete required pre-service dementia care training curriculum, including all adult foster home caregivers. The pre-service training also will count toward the six hours of dementia continuing education required for direct care staff in residential care and assisted living facilities. (Adult foster homes do not currently have a six-hour continuing education requirement specifically related to dementia care.)

Can employees work prior to completing the pre-service dementia training?

Direct care staff in residential care and assisted living facilities, as well as adult foster homes, who are already employed, or are hired by December 31, 2018, can continue to provide care before they complete the pre-service dementia training. Direct care staff hired after December 31, 2018 must complete the required pre-service dementia care training prior to providing direct care.

After January 1, 2019, if a facility hires a direct care worker who has completed the approved pre-service training elsewhere in Oregon, will the new hire have to retake the training for their new job?

For employees in residential care or assisted living facilities, any approved pre-service dementia training (curriculum pre-approved by a Department-selected entity) taken in the past 24 months meets the pre-service dementia care training requirement. However, facilities may elect to require staff to complete additional training at any time to ensure all staff are competent.

Here is a breakdown of how the requirement applies to staff:

- All employees hired before December 31, 2018, may work before completing pre-service dementia training, but must complete pre-service dementia training by December 31, 2018.
- Employees hired on January 1, 2019, or later may not begin working prior to completing the pre-service dementia training.
- All pre-service dementia training counts towards the annual six hours of dementia training requirement for residential care and assisted living direct care staff. (Adult foster homes do not currently have a six-hour continuing education requirement specifically related to dementia care.)
- All dementia training, including pre-service dementia training, counts towards the 12 hours of continuing education required for direct care staff in residential care and assisted living facilities, as well as adult foster homes.

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Facilities/Facility Types

What is a conversion facility?

A conversion facility is a nursing facility that has decided to “convert” its license to that of a residential care facility. The facility must go through the federal process of “closing” the nursing facility before going through a state process for “converting” the building to a residential care facility.

What are intensive care communities?

Intensive Intervention Care (IIC) facilities are small residential care facilities designed to serve individuals with high behavioral and mental health needs. Five or fewer people can live in a single IIC home.

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Drugs/Medications

What are the unit dose packaging requirements?

As of July 1, 2018, assisted living and residential care facilities must have unit dose dispensing systems or blister packs as the primary packaging system for prescription drugs. Sometimes a community may not have the immediate ability to ensure unit dose packaging, including when a new resident presents with prescription drugs not packaged in that manner. To address this issue, the new law requires communities to have a written policy describing how non-unit dose prescription drugs will be dispensed safely. Adult foster homes that are not able to install unit packing systems should follow the existing administrative rule.

Veterans Affairs medications are exempted from this requirement, and the requirement also does not apply to over-the-counter medications.

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