



# Oregon

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Oregon Department of Human Services  
Office of Developmental Disabilities Services (ODDS)  
Senate Bill 1548 Legislative Report  
2022 Regular Session

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Relating to Licensing, Endorsement, and Certification Fees and the  
Administration of Civil Penalties for I/DD Services

In accordance with Senate Bill 1548, enacted March 23, 2022, the Oregon Department of Human Services (“the Department”), Office of Developmental Disabilities Services (ODDS) respectfully submits the following report, which contains recommendations for modernizing the licensing, certification, and endorsement fee schedules and the administration of civil penalties related to services provided to individuals with intellectual or developmental disabilities. This report represents engagement with community members and partners in the intellectual and/or developmental disabilities services community including services providers who would be most impacted by changes to fee schedules and administration of civil penalties. Participants in that collaborative effort represented a variety of roles, including services providers, case management entities, Residential Facilities Ombudsmen, and advocates.

The Senate Bill (“SB 1548”) addresses the need for an update to ODDS’ approach to fees and civil penalties. Currently, there is only a nominal fee required for the application for a license for a residential setting which includes adult foster homes, host homes, and 24-hour residential group home settings. There are no fees required for Medicaid agency licenses or endorsements to provide other services such as community living supports, employment services, or supported living.

This report is formatted to align with the layout of section four of SB 1548. Beneath the bill language is the summary of information as required by the bill, and feedback from the community member and partner discussion related to the report topics. Meetings were held with community members and partners on July 28, 2022 to address civil penalty administration and on August 2, 2022 to address licensing, certification and endorsement fees. This feedback is referenced in relevant sections, and a can be found in Appendix A of this report.

**SECTION 6. No later than October 1, 2022, the Department of Human Services and the Oregon Health Authority shall provide to the interim committees of the**

**Legislative Assembly related to human services and to health a report, in the manner provided in ORS 192.245, recommendations for modernizing the licensing, certification, and endorsement fee schedules and the administration of civil penalties related to services provided to individuals with intellectual or developmental disabilities including, at a minimum:**

**(1) How fees and penalties may be adjusted for inflation**

ODDS recommends statutory changes to require fee and penalty schedules developed by the Department with a directive that the schedules are updated, at a minimum, every five years to account for inflation, provider rate changes, and other factors such as changing operating costs.

**Community Feedback on Tying Fees and Penalties to Inflation:**

Community members and partners largely agreed that fee and penalty schedules needed updating and ongoing evaluation and adjustment. The group did express concerns about tying the schedules to inflation, primarily due to provider service rates themselves not being tied to inflation.

**(2) Whether the department should have the authority to decrease or waive fees in certain circumstances**

ODDS recommends statutory authority to waive fees or penalties when appropriate without compromising quality or safety. Statutory authority would allow ODDS the flexibility to:

- Reduce fees to incentivize provider development in under-resourced areas of the state.
- Invest civil penalties in specific trainings that address areas of deficiency.
- Waive or reduce fees in other appropriate situations based on trends and service system needs. For example, reducing fees to encourage application by prospective providers from an underrepresented population or to a provider who may bring a needed skill area such as language access for non-English speaking individuals.

ODDS is committed to working with its community partners to develop fee and penalty reduction or waiver criteria through the public rulemaking process.

### **Community Feedback on Fee or Penalty Reductions**

Community members and partners in general acknowledged the need for fees to be in place but expressed concerns about fairness and equity if fees were to be waived or in some situations reduced.

This concept was met with mixed reactions from our community members and partners. Although there may be some reasons to decrease or waive fees in certain circumstances, there was concern about equitable application and functionality of such discretion.

Waiving fees in general was not supported, but in some situations decreasing fees as an incentive for regulatory compliance and corrective action in response to a violation may be an effective tool. Fee reductions could also be applied to offset provider costs when they agree to invest in training to improve compliance or quality of service delivery.

### **(3) Whether licensing, certification, or endorsement fees should be required for agencies providing supported living, community living supports or other licenses, certifications, and endorsements offered by the division of the department that is responsible for developmental disabilities services**

ODDS recommends that fees be required for all application types.

### **Community Feedback and Recommendations:**

Community members and partners were in consensus that application fees should apply to all license, certification, and endorsement types. Participants noted that different fees would be appropriate for different license, certification, and endorsement types, to reflect the different infrastructure and business operation needs of different provider types.

**(4) Whether licensing, certification, or endorsement fees should reflect the size of the agency or number of individuals served by the agency**

ODDS does not recommend adjustment of fees based on the size of the agency or number of individuals served by the agency. ODDS resources necessary to process and complete the application licensing, certification, or endorsement do not differ based upon the size of an agency or number of individuals served. Adjusting fees based on size or number of service recipients could become complex as capacity of programs fluctuate and size-based fees may serve as a disincentive for providers to grow capacity or expand operations across service types.

*Community Feedback and Recommendations:*

Community members and partners were not favorable to the concept of adjusting fees based on size of agency or number of persons served by a provider and were in agreement with ODDS' explanation above. Participants in the meeting were given some examples of other state approaches to the licensing fees that addressed size of agencies (large, serving 50+ individuals; small less than 49; and independent providers) as well as different fees for initial applications versus renewal.

**(5) The extent to which licensing, certification, and endorsement fees cover the cost of licensing, certification, and endorsement activities;**

ODDS recommends fees to aid in covering the cost of licensing, certification, and endorsement activities. ODDS finds that the amount of resources necessary to process a new 24-hour group home license application, particularly for a provider who is new to ODDS service operations, are significantly greater than an application for an established provider or to complete a license, certificate, or endorsement renewal. Current budgetary resources are not adequate to meet the workload demand for licensing activities. The additional monetary resources would enhance operations and allow for the addition of licensing staff.

<b>Average Cost of Licensing Staff for Licenses and Agency Certifications</b>			
<b>License/Certificate</b>	<b>Initial or Renewal</b>	<b>Staffing Costs</b>	<b>Notes</b>
Medicaid Agency Certificate	Initial	\$800-\$1200	Varies based on incomplete applications and processing back and forth
	Renewal	\$500-\$700	Generally less work as foundation has already been set
24-Hour Residential Group Home Setting License	Initial	\$500-\$750	Varies due to location of home and travel/staffing costs based on location
	Renewal	\$500-\$750	Varies due to location of home and travel/staffing costs based on location

**ODDS proposes the following fee structure for consideration:**

- New Agencies: \$1000
- Renewal Agency: \$500
- New 24-hour group home: \$500
- Renewal 24 Hour group home: \$250

*Community Feedback and Recommendations:*

Community members and partners were not favorable to this concept, with licensing activities already being funded positions in current ODDS operating budgets. Several providers offered an alternative with a request that the licensing, certification, and endorsement fees be applied as an investment into provider training and technical assistance resources. ODDS presented information to community members about the staffing resources that are necessary to provide follow-up support and process applications. Following receipt of this information, community members expressed favorability of the concept of using some portion of licensing fees to expand licensing staffing resources while also using revenue to develop training and technical assistance.

**(6) Any legislative changes to simplify civil penalties or structure civil penalties to ensure fairness, equity, and effectiveness in improving the quality of services to individuals with intellectual or developmental disabilities**

ODDS recommends that civil penalties for all services and settings be consolidated into one statute with the application of civil penalties being consistently applied. Currently, ORS 427.900 contains broad language for the application of civil penalties

for ODDS-contracted providers. The civil penalty language in statute for residential training homes (which apply to 24-hour residential and host home settings) and adult foster homes contained in ORS 443 restrict the options for application of civil penalties that would otherwise be available under the authority of the 427 statute.

ORS 427.900(1) states, “The Department of Human Services shall adopt by rule civil penalties to be imposed in accordance with ORS 183.745 (Civil penalty procedures), on any provider contracting with the department to provide intellectual or developmental disability services for a violation of statutory requirement or a rule adopted by the department applicable to the provision of services described in ORS 409.010 (2).” ODDS recommends no changes to this statute.

However, ODDS recommends an update to ORS 443.455 related to civil penalties for residential facilities. These changes would remove residential training homes and facilities from this statute section, which limits the options available under ORS 427.900. Below is the recommendation with removed language struck through and new language bolded:

#### ORS 443.455 Civil Penalties

- (1) Except as provided in subsection (5) of this section, for purposes of imposing civil penalties, residential **care facilities, residential treatment facilities, and residential treatment homes** approved under ORS 443.400 (Definitions for ORS 443.400 to 443.455) to 443.455 (Civil Penalties) are subject to ORS 441.705 (Definitions for ORS 441.705 to 441.745) to 441.745 (Penalties to Quality Care Fund).
- (2)(a) The Director of Human Services shall impose penalties on residential care facilities pursuant to ORS 441.731 (Civil Penalties).  
(b) ~~The director shall by rule prescribe a schedule of penalties for residential training facilities and residential training homes that are not in compliance with ORS 443.400 (Definitions for ORS 443.400 to 443.455) to 443.455 (Civil Penalties).~~

By removing the struck-through language above, only the civil penalty authority granted under ORS 427.900 would apply to residential training homes and residential training facilities.

Another recommendation is to update the statutory language related to Adult Foster Homes licensed by ODDS. ORS 443.790 allows the director of the licensing agency to impose civil penalties. The recommendation would be call out ODDS-licensed

settings with the rule authority granted by ORS 427.900 for civil penalties. This could be achieved by adding the following language to ORS 427.900:

**ORS 443.790:**

**(8) ORS 443.790 (8) Civil Penalties shall apply to ODDS-licensed foster homes in accordance with ORS 427.900.**

**ORS 427.900:**

**(4) ORS 427.900 (Authority to Impose Civil Penalties) shall apply to settings licensed, endorsed, or certified by the Department of Human Services Office of Developmental Disabilities Services.**

*Community Feedback on Statutory Consolidation:*

Participants were generally in support of a simplified, consolidated statutory authority for the application of civil penalties for ODDS providers.

**(7) Any legislative changes necessary to implement modern, sustainable and equitable licensing, certification and endorsement fee and civil penalty schedules.**

In order to implement modern, sustainable, and equitable licensing, certification and endorsement fee and civil penalty schedules, there needs to be simple, clear language that grants authority to the Department to establish fee and penalty schedules.

Civil penalty schedules can be addressed through the changes recommended in subsection (6) of this report to consolidate civil penalty authority and allow for the adoption of rules for civil penalties and payment schedules.

Additional statutory changes would be necessary to adequately address licensing, certification, and endorsement fees as these are not addressed for ODDS services except for residential training facilities, residential training homes, and adult foster homes.

ODDS recommends the adoption of statutory authority to create rules and an application fee schedule for licensing, certification, and endorsement under Chapter 427 of Oregon Revised Statute, such as,

**ORS 421.XXX(X) “The Department of Human Services shall adopt by rule licensing, certification, and endorsement standards and fees for any provider any provider contracting with the department to provide intellectual or developmental disability services.”**

With this additional language, the statutes that are specific to application fees for residential training facilities, residential training homes, and adult foster homes may be removed. The proposed, new statute language would apply to these settings in addition to all other licensed, certified, or endorsed services and settings under the authority of ODDS. Below is the recommendation with removed language struck through and new language **bolded**:

ORS 443.415 License applications-

(2) (a) The application fee for a ~~residential training facility~~ or a residential treatment facility is \$60.

~~(b) The application for a residential training home is \$50.~~

ORS 443.735 Issuance of license-

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

~~(b) Each application submitted to the Department of Human Services for an adult foster home serving individuals with intellectual or developmental disabilities shall be accompanied by a fee of \$50 per bed requested for licensing.~~

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

*Community Feedback on Fees and Penalty Schedules:*

Community members and partners were in support of a simplified, standard approach to licensing, certification, and endorsement fees and civil penalty schedule.



## Appendix A: Community Member and Partner Feedback

ODDS met with community members and partners on July 28, 2022 to address civil penalty administration and on August 2, 2022 to address licensing, certification and endorsement fees. Participation was open to anyone. Below is a list of participants as well as a summary of the comments, concerns and suggestions provided by participants:

### July 28, 2022- Civil Penalties

#### Participants:

Rose Herrera	Tad Larez	Shannon McCurry
Carrie Brickey	Loralei Lavoie	Lisandra Sepulveda
Cindy Bailey	Keri Ridenour	Nancy Robertson
Malinda Malone	Danya Ochoa	Natasha Atkinson
Angie Templeton	Amanda Stephens	Carla Tazumal
Barbara Hedrick	Cindy Koza	Jessica Denison
Joanna Fuhrman	Kim Kerby-Mellow	Gina Braden
Anna Hiser	Katie Rose	Samantha Fine
Desi Rodriguez	Julia Ansberry	Kathleen Skillingstad
Tracy Young	Lois Gibson	Shannon Troyer
Jeff Waldpole	Terra Zumwalt	Jared Weekly
Kimberly Mintrone	Carrie Phillips	Caitlin Shockley
Elayna McNurlin	Erin Fleming	
Alice Miller	Tiffani Olson	
Rachel Harmon	Gary Zenzen	

#### Comments:

##### *Subsection 1- How penalties may be adjusted for inflation*

- One participant suggested tying the fee schedule to the Western District CPI, but also pointed out that provider rates aren't adjusted to inflation and recommended penalty schedules adjust when rates are increased.
- Another participant asked if there was room to question the approach of civil penalties and as if there were any data or sources that show civil penalties improve quality. Could there be a difference depending on when there is an egregious situation versus a situation where a provider may simply need more support.
- No inflation adjustment. Perhaps a schedule that could be reviewed and updated at 5 or 10-year intervals. Expressed feeling that civil penalties are already burdensome and there is no inflation adjustment for rates.
- Question of what the intended outcome of a civil penalty is
- Could the cost of the remediation required by the provider serve as a civil penalty rather than a set, flat fee.

*Subsection 2- Should the department have the authority to decrease or waive fees*

- It doesn't make sense to look at size since most fees are tied to a specific situation
- Should there be consideration of profit versus non-profit
- Fees should only be applied in the egregious situations
- By the time a civil penalty is actually issued, there has already been a lot of technical assistance and support provided to the provider. The civil penalty is the only thing that makes the change happen.
- APD foster homes use a "look back" approach where if an issue is present more than two follow-ups, a civil penalty is applied.
- Penalties are given when it is the fault of the employee and the agency did everything they were supposed to. If the penalty is a result of a substantiation of wrongdoing by an employee and not the agency, there is no appeal process for the agency even though the fine is levied to the agency. It was suggested that civil penalties differentiate when there is an agency as an accused person. Most civil penalties come from protective services investigations
- It feels inequitable because agencies with rigorous policies and practices are more likely to make reports as a conscientious effort, but these same programs are then subject to more fines.
- Costs of civil penalties are also impacted when a staff leaves. The agency is fined for the staff who is no longer employed and they also have to absorb the cost of hiring and training new staff. Perhaps there is a way to adjust a fine to put towards resources.
- Could there be a point system used to determine when and amount of civil penalties? Discussion about whether there should be look backs and if this would penalize larger agencies who may have more points but are also serving more people and are generally in greater compliance.

*Subsections 6 & 7 -Recommended legislative changes*

- Need to remove application of civil penalties when the provider is not culpable
- Adjustments can be made to apply resources to training and providers submit proof/re-assessment of training to reduce or eliminate penalties.
- Where do civil penalties go? (Civil penalties issued for residential facilities and training homes are directed to the residential facilities ombudsman). Could money collected be used to support the system to improve training and quality?
- Don't hold providers accountable when they have done everything right. The system should be more focused on assisting than punishing.

August 2, 2022- Licensing, Certification, and Endorsement Fees

Participants:

Rose Herrera	Jesse DeHerrera	Amanda Stephens
Kim Kerby-Mellow	Kimberly Mintrone	Amanda Hamer
Vicky Smith	Tracy Young	Saroje Irwin
Tarah Murfin	Danya Ochoa	Samantha Fine
Carrie Brickey	Sarah Swenson	Kelly Graves
Emily Smith	Joanna Fuhrman	Jessica Denison
Amanda Dalton	Michelle Silbernagel	Ali Brown
Jeff Waldpole	Natasha Atkinson	Darlene O'Keefe
Angie Templeton	Cindy Koza	Julia Ansberry
Erin Fleming	Terra Zumwalt	Caitlin Shockley
Cindy Bailey	Nancy Robertson	

Comments:

*Subsection 1- How licensing, certification, and endorsement fees may be adjusted for inflation*

- Rates are not adjusted for inflation, so fees should not be adjusted this way.

*Subsection 2- Should the department have the authority to decrease or waive fees in certain circumstances*

- Fees should be equally applied across services and settings
- Fees should be applied equally, but there could be a subsidy fund

*Subsection 3- Should the licensing, certification, and endorsement fees apply to supported living, community living supports, and other licenses, certifications, and endorsements*

- Why should there be licensing fees?
- All endorsements should have a fee. Many service types have a lot of variability but there still should be a set fee
- Endorsements should be able to apply statewide
- Perhaps there could be consideration of a rubric that determines fees such as facility versus non-facility-based services or other factors for equitability
- Fees make sense for the investment of providers when considering their applications. Currently, there are many providers applying to be endorsed for anything without thorough consideration. Having a fee for each endorsement, license, or certificate would give pause and consideration to the application process.

- Licensing fees are not the way to address provider readiness
- Subsection 4- Should licensing, certification, and endorsement fees reflect the size of the agency or number of individuals served by the agency*

- Why should there be licensing fees?
- Fees need to increase in general but should be more of a lump sum assessment rather than based on capacity. Better to focus on site versus capacity of a site.
- There is a significant amount of resources for licensing, certification, and endorsement of new providers as opposed to experienced providers or renewal applications
- Lump sums are far more simple than adjustments based on size or number served

*Subsection 5- The extent to which licensing, certification, and endorsement fees cover the cost of licensing, certification, and endorsement activities*

- There is a lot of engagement and technical assistance provided for new providers. There is a significant difference between the volume of resources applied to a new provider versus an established provider.
- There should be a distinction between an initial license and a renewal license, particularly since the renewal process is much less resource intensive on the part of licensing.
- Participants expressed preference for the licensing fees to be used to invest in training and quality improvement rather than for funding staff. It was felt that licensing staff are already funded and the money collected from fees should be re-invested into the provider and services system. Funds could go towards creating and updating core comps for services.

*Subsection 7- Any legislative changes necessary to implement modern, sustainable, and equitable licensing, certification, and endorsement fee and civil penalty schedules*

- Request for a bill note requiring a study of what purpose and effectiveness fees and civil penalties have.
- Would like more time to talk about fees in general and direct where they go, particularly with the intention that fees should go to quality improvement
- Greater clarity regarding the licensing process

## Appendix B: Current Civil Penalty ORS Application for Residential Training Homes and Facilities (24-Hour and Host Homes)

### ORS 443.455 Civil Penalties

- (1) Residential Facilities are subject to ORS 441.705 to 441.745
- (2)(a) Impose penalties pursuant to 441.731
- (2)(b) Prescribe a schedule of penalties for violation of ORS 443.400 to 443.455
- (4) Abuse resulting in death, serious injury, rape, or sexual abuse= enhanced civil penalty

### ORS 441.731

- (2)(a)(A)-(D) Consider priors, financial benefit, history of correction and prevention, and severity and scope
- (2)(b)(A)-(D) Level 1-Level 4/(2)(c)(A)-(C) Isolated, pattern, or widespread

### ORS 441.710 & 441.715

- 441.701(1)(b) Civil penalty for violation of responsibility for property and transfer of property
- 441.715(2) Up to \$500 for each violation per 441.710
- 441.715(4) Any violation other than 441.715(2), a penalty for each day not to exceed \$500/day