

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 3359**

1 On page 1 of the printed A-engrossed bill, line 2, after “provisions;” delete
2 the rest of the line and delete line 3 and insert “amending ORS 409.720,
3 430.216, 441.020, 441.303, 441.367, 441.402, 441.408, 441.630, 441.637, 441.680,
4 441.710, 441.715, 441.745, 443.400, 443.415, 443.420, 443.425, 443.440, 443.452,
5 443.455, 443.760, 443.775 and 443.886; and repealing ORS 441.995 and
6 443.885.”.

7 Delete lines 5 through 13 and delete pages 2 through 15 and insert:
8

9 **“LEGISLATIVE FINDINGS**

10
11 **“SECTION 1. (1) The Legislative Assembly finds that:**

12 **“(a) Residents of Oregon’s community-based care facilities are val-**
13 **ued citizens of this state and deserve to live lives of autonomy and**
14 **dignity; and**

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

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

20 **“(a) Promote the autonomy of residents of Oregon’s community-**
21 **based care facilities and accord them honor, dignity and the ability to**

1 choose freely how they live their lives so as to encourage maximum
2 independence and fulfillment; and

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

6
7 “CIVIL PENALTIES

8
9 “SECTION 2. Sections 3 to 5 of this 2017 Act are added to and made
10 a part of ORS 441.705 to 441.745.

11 “SECTION 3. In regulating residential care facilities and long term
12 care facilities, the Department of Human Services shall, whenever
13 possible, use a progressive enforcement process that employs a series
14 of actions to encourage and compel compliance with licensing regu-
15 lations through the application of preventive, positive and progres-
16 sively more restrictive strategies. Preventive and positive strategies
17 are strategies that include but are not limited to technical assistance,
18 corrective action plans, training and consultation.

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

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

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

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

30 “(C) The facility’s past history of correcting violations and pre-

1 venting the recurrence of violations.

2 “(D) The severity and scope of the violation as described in para-
3 graphs (b) and (c) of this subsection.

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

6 “(A) Level 1 is a violation that results in no actual harm or in po-
7 tential for only minor harm.

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

10 “(C) Level 3 is a violation that results in moderate harm or poten-
11 tial for serious harm.

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

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

15 “(A) An isolated violation occurs when one or a very limited num-
16 ber of residents or employees are affected or a very limited area or
17 number of locations within a facility are affected.

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

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

26 “(d) As used in this subsection:

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

29 “(ii) ‘Financial loss’ does not include loss of resident property or
30 money that results from action or inaction of an individual not em-

1 **ployed or contracted with the facility, or that arises from the action**
2 **or inaction of an individual employed or contracted with the facility**
3 **if the action or inaction occurs while the individual is not performing**
4 **employment or contractual duties.**

5 **“(B) ‘Harm’ means a measurable negative impact to a resident’s**
6 **physical, mental, financial or emotional well-being.**

7 **“(C) ‘Minor harm’ means harm resulting in no more than tempo-**
8 **rary physical, mental or emotional discomfort or pain without loss of**
9 **function, or in financial loss of less than \$1,000.**

10 **“(D) ‘Moderate harm’ means harm resulting in temporary loss of**
11 **physical, mental or emotional function, or in financial loss of \$1,000**
12 **or more, but less than \$5,000.**

13 **“(E) ‘Serious harm’ means harm resulting in long-term or perma-**
14 **nent loss of physical, mental or emotional function, or in financial loss**
15 **of \$5,000 or more.**

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

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

19 **“(B) For a level 2 violation, the director may impose a penalty in**
20 **an amount no less than \$250 per violation, not to exceed \$500 per vio-**
21 **lation.**

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

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

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

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

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

7 **“(4)(a) If the department investigates and makes a finding of abuse**
8 **in a residential care facility or long term care facility arising from**
9 **deliberate or other than accidental action or inaction that is likely to**
10 **cause a negative outcome by a person with a duty of care toward a**
11 **resident of a residential care facility or long term care facility and if**
12 **the abuse resulted in the death, serious injury, rape or sexual abuse**
13 **of a resident, the director shall impose a civil penalty on the facility**
14 **of not less than \$2,500 and not more than \$15,000 for each occurrence**
15 **of substantiated abuse, not to exceed \$40,000 for all violations occur-**
16 **ring in a facility within any 90-day period.**

17 **“(b) As used in this subsection:**

18 **“(A) ‘Negative outcome’ includes serious injury, rape, sexual abuse**
19 **or death.**

20 **“(B) ‘Rape’ means rape in the first degree as defined in ORS 163.375,**
21 **rape in the second degree as defined in ORS 163.365 and rape in the**
22 **third degree as defined in ORS 163.355.**

23 **“(C) ‘Serious injury’ means physical injury that creates a substan-**
24 **tial risk of death or that causes serious and protracted disfigurement,**
25 **protracted impairment of health or protracted loss or impairment of**
26 **the function of any bodily organ.**

27 **“(D) ‘Sexual abuse’ means any form of sexual contact between an**
28 **employee of a residential care facility or a long term care facility or**
29 **a person providing services in the facility and a resident of that facil-**
30 **ity, including but not limited to sodomy, sexual coercion, sexually ex-**

1 **licit photographing and sexual harassment.**

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

7 **“(6) The department shall identify and track the number of abuse**
8 **violations that are reported to the department by a facility and com-**
9 **pile statistics on the rate of self-reporting by facilities as compared to**
10 **abuse complaints from other sources.**

11 **“(7)(a) When the director notifies a facility of a violation for which**
12 **a penalty may be imposed under this section, the director shall de-**
13 **scribe in the notice the specific remediations that the facility must**
14 **make to achieve substantial compliance regarding the violation. In the**
15 **notice, the director shall prescribe a reasonable time for elimination**
16 **of the violation:**

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

18 **“(B) In cases where the violation requires more than 30 days to**
19 **correct, such time as is specified in a plan of correction found ac-**
20 **ceptable by the director.**

21 **“(b) The director shall hold in abeyance a penalty for a level 2 vio-**
22 **lation or level 3 violation for the period prescribed under paragraph**
23 **(a) of this subsection. If the facility achieves substantial compliance**
24 **as described in the notice required under paragraph (a) of this sub-**
25 **section within the prescribed time period, the director shall withdraw**
26 **some or all of the penalty.**

27 **“(c) As used in this subsection, “substantial compliance” means a**
28 **level of compliance with state law and with rules of the department**
29 **such that any identified deficiencies pose a risk of no more than neg-**
30 **ligible harm to the health or safety of residents of a facility.**

1 **“SECTION 5. (1) As used in this section:**

2 **“(a) ‘Immediate jeopardy’ means a situation in which the failure**
3 **of a residential care facility or a long term care facility to comply with**
4 **a rule of the Department of Human Services has caused or is likely**
5 **to cause serious injury, serious harm, serious impairment or death to**
6 **a resident.**

7 **“(b) ‘License condition’ includes but is not limited to:**

8 **“(A) Restricting the total number of residents;**

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

12 **“(C) Requiring additional staff or staff qualifications;**

13 **“(D) Requiring additional training for staff;**

14 **“(E) Requiring additional documentation; or**

15 **“(F) Restriction of admissions.**

16 **“(c) ‘Substantial compliance’ means a level of compliance with state**
17 **law and with rules of the department such that any identified defi-**
18 **ciencies pose a risk of no more than negligible harm to the health or**
19 **safety of residents of a residential care facility or a long term care**
20 **facility.**

21 **“(2)(a) The department may impose a condition on the license of a**
22 **residential care facility or long term care facility in response to a**
23 **substantiated finding of rule violation, including but not limited to a**
24 **substantiated finding of abuse, or in response to a finding of immedi-**
25 **ate jeopardy, whether or not the finding of immediate jeopardy is**
26 **substantiated at the time the license condition is imposed.**

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

30 **“(c) If the department imposes a license condition in response to a**

1 finding of immediate jeopardy to residents of the facility, and the
2 finding of immediate jeopardy to residents of the facility is not sub-
3 stantiated within 30 days after the imposition of the license condition,
4 the department shall immediately remove the license condition.

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

9 “(i) Describe the acts or omissions of the facility and the circum-
10 stances that led to the substantiated finding of rule violation or find-
11 ing of immediate jeopardy supporting the imposition of the license
12 condition;

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

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

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

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

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

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

29 “(A) A specific description of how the scope and manner of the li-
30 cense condition is designed to remediate the findings that led to the

1 **license condition; and**

2 **“(B) A specific description of the requirements for withdrawal of**
3 **the license condition.**

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

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

10 **“(A) Within 15 business days of receipt of the facility’s written as-**
11 **sertion of substantial compliance with the requirements set forth by**
12 **the department for withdrawal of the license condition, reinspect or**
13 **reevaluate the facility to determine whether the facility has achieved**
14 **substantial compliance with the requirements;**

15 **“(B) Notify the facility by telephone or electronic means of the**
16 **findings of the reinspection or reevaluation within five business days**
17 **after completion of the reinspection or reevaluation; and**

18 **“(C) Issue a written report to the facility within 30 days after the**
19 **reinspection or reevaluation notifying the facility of the department’s**
20 **determinations regarding substantial compliance with the require-**
21 **ments necessary for withdrawal of the license condition.**

22 **“(b) If the department finds that the facility has achieved substan-**
23 **tial compliance regarding the violation for which the license condition**
24 **was imposed, and finds that systems are in place to ensure similar**
25 **deficiencies do not reoccur, the department shall withdraw the license**
26 **condition.**

27 **“(c) If after reinspection or reevaluation the department determines**
28 **that the violation for which the license condition was imposed con-**
29 **tinues to exist, the department may not withdraw the license condi-**
30 **tion, and the department is not obligated to reinspect or reevaluate**

1 the facility again for 45 days after the first reinspection or reevalua-
2 tion. The department shall provide the decision not to withdraw the
3 license condition to the facility in writing and inform the facility of
4 the right to a contested case hearing pursuant to ORS chapter 183.
5 Nothing in this paragraph limits the department's authority to visit
6 or inspect the facility at any time.

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

13 **“SECTION 6.** ORS 443.455 is amended to read:

14 “443.455. (1) Except as provided in subsection (5) of this section, for pur-
15 poses of imposing civil penalties, residential facilities approved under ORS
16 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

17 “(2)(a) **The Director of Human Services shall impose penalties on**
18 **residential care facilities pursuant to section 4 of this 2017 Act.**

19 “(b) The director [*of Human Services*] shall by rule prescribe a schedule
20 of penalties for [*residential care facilities,*] residential training facilities and
21 residential training homes that are not in compliance with ORS 443.400 to
22 443.455.

23 “(3) The Director of the Oregon Health Authority shall by rule prescribe
24 a schedule of penalties for residential treatment facilities and residential
25 treatment homes that are not in compliance with ORS 443.400 to 443.455.

26 “(4) If the department or authority investigates and makes a finding of
27 abuse arising from deliberate or other than accidental action or inaction that
28 is likely to cause a negative outcome by a person with a duty of care toward
29 a resident of a residential facility, **other than a residential care facility,**
30 and if the abuse resulted in the death, serious injury, rape or sexual abuse

1 of a resident, the department or authority shall impose a civil penalty of not
2 less than \$2,500 for each occurrence of substantiated abuse, not to exceed
3 \$15,000 in any 90-day period. As used in this subsection:

4 “(a) ‘Negative outcome’ includes serious injury, rape, sexual abuse or
5 death.

6 “[*(b) ‘Rape’ means rape in the first, second or third degree as described in*
7 *ORS 163.355, 163.365 and 163.375.*]

8 “(b) **‘Rape’ means rape in the first degree as defined in ORS 163.375,**
9 **rape in the second degree as defined in ORS 163.365 and rape in the**
10 **third degree as defined in ORS 163.355.**

11 “(c) ‘Serious injury’ means physical injury that creates a substantial risk
12 of death or that causes serious and protracted disfigurement, protracted
13 impairment of health or protracted loss or impairment of the function of any
14 bodily organ.

15 “(d) ‘Sexual abuse’ means any form of sexual contact between an employee
16 of a residential facility or a person providing services in the residential fa-
17 cility and a resident of that facility, including but not limited to sodomy,
18 sexual coercion, sexually explicit photographing and sexual harassment.

19 “(5) Civil penalties recovered from a residential training facility, resi-
20 dential training home, residential treatment facility or residential treatment
21 home shall be deposited in the Long Term Care Ombudsman Account estab-
22 lished in ORS 441.419.

23 “**SECTION 7.** ORS 441.710 is amended to read:

24 “441.710. (1)(a) In addition to any other liability or penalty provided by
25 law, the Director of Human Services may impose a civil penalty on a person
26 **pursuant to section 4 of this 2017 Act** for any of the following:

27 “[*(a)*] **(A)** Violation of any of the terms or conditions of a license issued
28 under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990,
29 442.342, 442.344 and 442.400 to 442.463 for a long term care facility, as defined
30 in ORS 442.015.

1 **“(B) Violation of ORS 441.630 to 441.680.**

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

4 “[(c)] (D) Violation of any final order of the director that pertains spe-
5 cifically to the long term care facility owned or operated by the person in-
6 curring the penalty.

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

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

11 **“(b) In addition to any other liability or penalty provided by law,
12 the director may impose a civil penalty on a residential training fa-
13 cility or residential training home for violation of ORS 443.880 or
14 443.881. The director shall prescribe a reasonable time for elimination
15 of a violation by a residential training facility or residential training
16 home:**

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

18 **“(B) In cases where the violation requires more than 30 days to
19 correct, such time as is specified in a plan of correction found ac-
20 ceptable by the director.**

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

25 “(3) The Director of Human Services may not impose a penalty under
26 subsection (1) of this section for violations other than those involving direct
27 patient care or feeding, an adequate staff to patient ratio, sanitation in-
28 volving direct patient care or a violation of ORS 441.605 or 443.880 or 443.881
29 or of the rules required to be adopted by ORS 441.610 unless a violation is
30 found on two consecutive surveys of a long term care facility. [*The Director*

1 *of Human Services in every case shall prescribe a reasonable time for elimi-*
2 *nation of a violation:]*

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

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

7 “(4) The Director of the Oregon Health Authority may not impose a pen-
8 alty under subsection (2) of this section for violations other than those in-
9 volving direct patient care or feeding, an adequate staff to patient ratio,
10 sanitation involving direct patient care or a violation of ORS 443.880 or
11 443.881. The director [*of the Oregon Health Authority*] in every case shall
12 prescribe a reasonable time for elimination of a violation:

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

14 “(b) In cases where the violation requires more than 30 days to correct,
15 such time as is specified in a plan of correction found acceptable by the di-
16 rector.

17 “**SECTION 8.** ORS 441.715 is amended to read:

18 “441.715. (1) **The Director of Human Services shall impose civil pen-**
19 **alties under ORS 441.710 (1) on a residential care facility or a long term**
20 **care facility pursuant to section 4 of this 2017 Act.**

21 “[*(1)(a)*] (2) After public hearing, the Director of Human Services by rule
22 shall adopt objective criteria for establishing the civil penalty that may be
23 imposed under ORS 441.710 (1) [*and*] **on residential training facilities and**
24 **residential training homes. However, the civil penalty may not exceed**
25 **\$500 for each violation, except as otherwise provided in this section or**
26 **as otherwise required by federal law.**

27 “(3) The Director of the Oregon Health Authority by rule shall adopt
28 objective criteria for establishing the civil penalty that may be imposed un-
29 der ORS 441.710 (2) **on residential treatment facilities or residential**
30 **treatment homes.** However, the civil penalty may not exceed \$500 for each

1 violation, except as otherwise provided in this [*subsection and ORS 441.995*]
2 **section** or as otherwise required by federal law.

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

12 “[*(c) If the Department of Human Services investigates and makes a finding*
13 *of abuse arising from deliberate or other than accidental action or inaction*
14 *that is likely to cause a negative outcome by a person with a duty of care to-*
15 *ward a resident of a long term care facility and if the abuse resulted in the*
16 *death, serious injury, rape or sexual abuse of a resident, the department shall*
17 *impose a civil penalty of not less than \$2,500 for each occurrence of substanti-*
18 *ated abuse, not to exceed \$15,000 in any 90-day period. As used in this para-*
19 *graph:*]

20 “[*(A) ‘Negative outcome’ includes serious injury, rape, sexual abuse or*
21 *death.*]

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

24 “[*(C) ‘Serious injury’ means physical injury that creates a substantial risk*
25 *of death or that causes serious and protracted disfigurement, protracted*
26 *impairment of health or protracted loss or impairment of the function of any*
27 *bodily organ.*]

28 “[*(D) ‘Sexual abuse’ means any form of sexual contact between an employee*
29 *of a long term care facility or a person providing services in the long term care*
30 *facility and a resident of that facility, including but not limited to sodomy,*

1 *sexual coercion, sexually explicit photographing and sexual harassment.]*

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

5 **“SECTION 9.** ORS 443.775 is amended to read:

6 “443.775. (1) The licensing agency shall adopt rules governing adult foster
7 homes and the level of care provided in such homes, including the provision
8 of care to more than one person with nursing care needs under specified
9 conditions and agency approval, such as are necessary to protect the health,
10 safety or welfare of the residents and to provide for an appropriate
11 continuum of care, but shall not be inconsistent with the residential nature
12 of the living accommodations and the family atmosphere of the home. The
13 rules shall be consistent with rules adopted by the Oregon State Board of
14 Nursing under ORS 678.150 (8).

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

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

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

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

29 “(4) The provider shall screen a prospective resident before admitting the
30 resident. The screening shall include but is not limited to diagnosis,

1 medications, personal care needs, nursing care needs, night care needs, nu-
2 tritional needs, activities and lifestyle preferences. A copy of the screening
3 shall be given to the prospective resident or the prospective resident's rep-
4 resentative.

5 “(5) The licensing agency shall make rules to ensure that any employee
6 who makes a complaint pursuant to ORS 443.755 shall be protected from re-
7 taliation.

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

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

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

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

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

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

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

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

29 “(a) **The Department of Human Services may impose a civil penalty**
30 **on any person who violates a provision of ORS 443.705 to 443.825, or the**

1 rules adopted under ORS 443.705 to 443.825, with regard to an adult
2 foster home serving socially dependent individuals or individuals with
3 physical disabilities. The department shall establish the amount of the
4 penalty by rule, in an amount not less than \$100 and not more than
5 \$250 per violation, or in the case of substantiated abuse, not less than
6 \$100 and not more than \$1,000 per violation.

7 “(b) The department may impose a civil penalty on any person who
8 violates a provision of ORS 443.705 to 443.825, or the rules adopted un-
9 der ORS 443.705 to 443.825, with regard to an adult foster home not
10 serving socially dependent individuals or individuals with physical
11 disabilities. The department shall establish the amount of the penalty
12 by rule, in an amount not to exceed \$100 per violation, to a maximum
13 of \$250, or, per occurrence of substantiated abuse, to a maximum of
14 \$1,000.

15 “(c) The Oregon Health Authority may impose a civil penalty on
16 any person who violates a provision of ORS 443.705 to 443.825, or the
17 rules adopted under ORS 443.705 to 443.825. The authority shall estab-
18 lish the amount of the penalty by rule, in an amount not to exceed
19 \$100 per violation, to a maximum of \$250, or, per occurrence of sub-
20 stantiated abuse, to a maximum of \$1,000.

21 “(11)(a) If the licensing agency determines that there is reasonable cause
22 to believe that abuse occurred in an adult foster home licensed by the li-
23 censing agency and if the abuse resulted in the death, serious injury, rape,
24 sexual abuse or sexual exploitation of a resident, the licensing agency shall
25 impose a civil penalty on the adult foster home of not less than \$2,500 for
26 each violation.

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

30 “(c) The licensing agency shall by rule define ‘serious injury,’ ‘rape,’

1 ‘sexual abuse’ and ‘sexual exploitation’ for purposes of this subsection.

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

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

9
10 **“LICENSING FEES**

11
12 **“SECTION 11.** ORS 441.020 is amended to read:

13 “441.020. (1) Licenses for health care facilities, except long term **care** fa-
14 cilities as defined in ORS 442.015, must be obtained from the Oregon Health
15 Authority.

16 “(2) Licenses for long term care facilities must be obtained from the De-
17 partment of Human Services.

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

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

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

30 “(b) **Each application submitted to the Department of Human Ser-**

1 **vices must be accompanied by the application fee or the annual re-**
2 **newal fee, as applicable. If the license is denied, the fee shall be**
3 **refunded to the applicant. If the license is issued, the fee shall be paid**
4 **into the State Treasury to the credit of** the Department of Human Ser-
5 vices Account for the purpose of carrying out the functions of the Depart-
6 ment of Human Services under ORS 431A.050 to 431A.080, 441.015 to 441.063
7 and 441.196.

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

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

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

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

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

17 “(e) Two hundred or more beds, but fewer than 500 beds, the annual li-
18 cense fee shall be \$8,500.

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

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

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

25 “(8) For long term care facilities with:

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

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

30 “(c) Fifty to 99 beds, the [*annual license fee shall be \$520*] **application fee**

1 **shall be \$4,000 and the annual renewal fee shall be \$2,000.**

2 “(d) One hundred to 150 beds, the [*annual license fee shall be \$670*] **ap-**
3 **plication fee shall be \$5,000 and the annual renewal fee shall be**
4 **\$2,500.**

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

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

8 “(a) \$1,750 for certified and high complexity noncertified ambulatory sur-
9 gical centers with more than two procedure rooms.

10 “(b) \$1,250 for certified and high complexity noncertified ambulatory sur-
11 gical centers with no more than two procedure rooms.

12 “(c) \$1,000 for moderate complexity noncertified ambulatory surgical cen-
13 ters.

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

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

17 “(12) During the time the licenses remain in force, holders are not re-
18 quired to pay inspection fees to any county, city or other municipality.

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

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

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

29 “(16) As used in this section:

30 “(a) ‘Hospital satellite’ has the meaning prescribed by the authority by

1 rule.

2 “(b) ‘Procedure room’ means a room where surgery or invasive procedures
3 are performed.

4 **“SECTION 12.** ORS 443.415 is amended to read:

5 “443.415. (1) Applications for licensure to maintain and operate a resi-
6 dential facility shall be made to the Department of Human Services or the
7 Oregon Health Authority on forms provided for that purpose by the appro-
8 priate licensing agency. Each application shall be accompanied by a fee. No
9 fee is required of any governmentally operated residential facility.

10 “[*(2) The fee required under subsection (1) of this section for facilities:*]

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

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

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

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

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

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

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

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

19 **“(2)(a) The application fee for a residential training facility or a
20 residential treatment facility is \$60.**

21 **“(b) The application fee for a residential training home or a resi-
22 dential treatment home is \$30.**

23 **“(c) The application fee for a residential care facility is:**

24 **“(A) For a facility with one to 15 beds, \$2,000.**

25 **“(B) For a facility with 16 to 49 beds, \$3,000.**

26 **“(C) For a facility with 50 to 99 beds, \$4,000.**

27 **“(D) For a facility with 100 to 150 beds, \$5,000.**

28 **“(E) For a facility with more than 150 beds, \$6,000.**

29 **“(3) Upon receipt of an application and fee, the licensing agency shall
30 conduct an investigation. The licensing agency shall issue a license to any**

1 applicant for operation of a residential facility in compliance with ORS
2 443.002 and 443.400 to 443.455 and the rules of the licensing agency.
3 Licensure may be denied when a residential facility is not in compliance
4 with ORS 443.002 or 443.400 to 443.455 or the rules of the licensing agency.
5 Licensure shall be denied if the State Fire Marshal, **deputy** or *[other]* **ap-**
6 **proved** authority has given notice of noncompliance of *[facilities defined in*
7 *ORS 443.400 (5), (7) and (9)]* **a residential care facility, residential train-**
8 **ing facility or residential treatment facility** pursuant to ORS 479.220.

9 **“SECTION 13.** ORS 443.425 is amended to read:

10 “443.425. (1) Licensure under ORS 443.415 is effective for two years from
11 the date of issue unless sooner revoked. Each license shall state:

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

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

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

19 **“(d)** *[Such]* Other information *[as]* **that** the Department of Human Ser-
20 vices or the Oregon Health Authority considers necessary.

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

1 **residential training facility or residential treatment facility** pursuant
2 to ORS 479.220.

3 “[**(3)** *The biennial fee required under subsection (2) of this section for fa-*
4 *cilities:*]

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

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

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

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

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

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

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

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

13 “[**(3)(a)** **The biennial renewal fee for a residential training facility**
14 **or a residential treatment facility is \$60.**

15 “[**(b)** **The biennial renewal fee for a residential training home or a**
16 **residential treatment home is \$30.**

17 “[**(c)** **The biennial renewal fee for a residential care facility is:**

18 “[**(A)** **For a facility with one to 15 beds, \$1,000.**

19 “[**(B)** **For a facility with 16 to 49 beds, \$1,500.**

20 “[**(C)** **For a facility with 50 to 99 beds, \$2,000.**

21 “[**(D)** **For a facility with 100 to 150 beds, \$2,500.**

22 “[**(E)** **For a facility with more than 150 beds, \$3,000.**

23

24 **“RESIDENTIAL CARE FACILITIES**

25 **“(Quality Measures)**

26

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

29 **“SECTION 15. (1) The Residential Care Quality Measurement Pro-**
30 **gram is established in the Department of Human Services. Under the**

1 program, the department shall, no later than July 1 of each year,
2 publish an annual report, based on data reported by each residential
3 care facility under subsection (2) of this section. Excluding data that
4 identifies a resident, the report must include data compilation, illus-
5 tration and narratives to:

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

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

11 “(c) Allow residential care facilities and the public to compare a
12 residential care facility’s performance on each quality metric, by de-
13 mographics, geographic region, facility type and other categories the
14 department believes may be useful to consumers and facilities;

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

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

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

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

22 “(2) Each residential care facility shall report, no later than Janu-
23 ary 31 of each year and in the form and manner prescribed by the
24 Quality Measurement Council established under section 16 of this 2017
25 Act, the following quality metrics for the prior calendar year, con-
26 sistent with accepted professional standards and excluding information
27 that identifies a resident of the residential care facility:

28 “(a) The residential care facility’s retention of direct care staff;

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

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

3 “(d) The residential care facility’s compliance with staff training
4 requirements;

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

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

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

15 “(4) The department shall make available to the public in a stand-
16 ard format and in plain language the data reported by each residential
17 care facility, excluding information that identifies a resident.

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

20 “(a) Develop online training modules to address the top two state-
21 wide issues identified by surveys or reviews of residential care facilities
22 during the previous year; and

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

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

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

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

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

7 **“(2) The council consists of eight members, appointed by the Gov-**
8 **ernor, as follows:**

9 **“(a) One individual representing the Oregon Patient Safety Com-**
10 **mission;**

11 **“(b) One individual representing residential care facilities;**

12 **“(c) One consumer representative from an Alzheimer’s advocacy**
13 **organization;**

14 **“(d) One licensed health care practitioner with experience in**
15 **geriatrics;**

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

19 **“(f) The Long Term Care Ombudsman or a designee of the Long**
20 **Term Care Ombudsman; and**

21 **“(g) One individual representing the department.**

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

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

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

30 **“Sec. 15. (1) The Residential Care Quality Measurement Program is es-**

1 tablished in the Department of Human Services. Under the program, the de-
2 partment shall, no later than July 1 of each year, publish an annual report,
3 based on data reported by each residential care facility under subsection (2)
4 of this section. Excluding data that identifies a resident, the report must
5 include data compilation, illustration and narratives to:

6 “(a) Describe statewide patterns and trends that emerge from the data
7 reported to the department under subsection (2) of this section and compli-
8 ance data maintained by the department;

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

11 “(c) Allow residential care facilities and the public to compare a resi-
12 dential care facility’s performance on each quality metric, by demographics,
13 geographic region, facility type and other categories the department believes
14 may be useful to consumers and facilities;

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

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

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

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

22 “(2) Each residential care facility shall report, no later than January 31
23 of each year and in the form and manner prescribed by the Quality Meas-
24 urement Council established under section 16 of this 2017 Act, the
25 *[following]* quality metrics **developed by the council under section 16 of**
26 **this 2017 Act.** *[for the prior calendar year, consistent with accepted profes-*
27 *sional standards and excluding information that identifies a resident of the*
28 *residential care facility:]*

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

30 “[*(b) The number of resident falls in the residential care facility that result*

1 *in physical injury;*

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

4 *“(d) The residential care facility’s compliance with staff training require-*
5 *ments;*

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

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

11 “(3) The department shall make available an annual report to each resi-
12 dential care facility that reports quality metrics under subsection (2) of this
13 section using data compilation, illustration and narratives to allow the res-
14 idential care facility to measure and compare its quality metrics over time.

15 “(4) The department shall make available to the public in a standard
16 format and in plain language the data reported by each residential care fa-
17 cility, excluding information that identifies a resident.

18 “(5) The department shall, using moneys from the Quality Care Fund es-
19 tablished under ORS 443.001:

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

23 “(b) Post and regularly update the data used to prepare the report de-
24 scribed in subsection (1) of this section.

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

29 “(a) Allow for electronic reporting of data, to the greatest extent practi-
30 cable; and

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

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

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

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

12

13 **“(Conversion Facilities)**

14

15 **“SECTION 20. (1) A facility that is licensed as a long term care fa-
16 cility under ORS 441.025 may apply to the Department of Human Ser-
17 vices for licensure as a conversion facility. The department shall issue
18 a conversion facility license upon receipt of an application and a fee
19 that meet requirements established by the department by rule.**

20 **“(2)(a) The department shall adopt rules governing the conversion
21 of a facility’s license from a long term care facility license to a resi-
22 dential care facility license and the regulation of the facility during
23 the conversion period.**

24 **“(b) As of the date of licensure as a conversion facility, the con-
25 version facility must be in substantial compliance with applicable state
26 and local laws, rules, codes, ordinances and permit requirements.**

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

1 **“SECTION 21.** ORS 443.420 is amended to read:

2 “443.420. (1) A person applying for a license under ORS 443.415 must, in
3 the judgment of the director of the licensing agency, be a person:

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

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

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

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

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

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

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

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

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

23 “(a) Comply with ORS 336.575; and

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

26 “(A) Comprehensive and age-appropriate;

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

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

30 “(6) Prior to an initial licensure of a residential care facility, the licens-

1 ing agency shall consider:

2 “(a) The license applicant’s history of regulatory compliance and opera-
3 tional experience;

4 “(b) The willingness of the license applicant to serve underserved popu-
5 lations; and

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

8 “(7)(a) The licensing agency may not issue an initial license to a resi-
9 dential care facility if the facility has not conducted a market study that
10 assesses the need for the services offered by the facility in the geographic
11 area served by the facility.

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

14 “**SECTION 22.** ORS 441.402 is amended to read:

15 “441.402. As used in ORS 441.402 to 441.419:

16 “(1) ‘Designee’ means an individual appointed by the Long Term Care
17 Ombudsman to serve as a representative in order to carry out the purpose
18 of ORS 441.402 to 441.419.

19 “(2) ‘Residential facility’ includes a:

20 “(a) Long term care facility;

21 “(b) Residential facility as defined in ORS 443.400, excluding a:

22 “(A) Facility housing persons committed under ORS 161.327; and

23 “(B) Facility licensed by the Oregon Health Authority to provide alcohol
24 and drug treatment;

25 “(c) **Conversion facility licensed under section 20 of this 2017 Act;**

26 “[c] (d) Licensed adult foster home as defined in ORS 443.705;

27 “[d] (e) Developmental disability child foster home, as defined in ORS
28 443.830, that is certified by the Department of Human Services; and

29 “[e] (f) Continuing care retirement community as defined in ORS
30 101.020.

1 “(Enhanced Oversight and Supervision Program)

2
3 **“SECTION 23. (1) As used in this section, ‘substantial compliance’**
4 **means a level of compliance with state law and with rules of the De-**
5 **partment of Human Services such that any identified deficiencies pose**
6 **a risk of no more than negligible harm to the health or safety of res-**
7 **idents.**

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

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

14 **“(c) The department shall publish the framework on the**
15 **department’s website and shall distribute the framework to residential**
16 **care facilities licensed in this state.**

17 **“(3) The department shall administer a residential care facility en-**
18 **hanced oversight and supervision program that focuses department**
19 **resources on residential care facilities that consistently demonstrate:**

20 **“(a) A lack of substantial compliance with the requirements of ORS**
21 **443.400 to 443.455; or**

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

25 **“(4) The residential care facility enhanced oversight and supervision**
26 **program shall take one or more of the following actions that the de-**
27 **partment deems necessary to improve the performance of a residential**
28 **care facility:**

29 **“(a) Increase the frequency of surveys of the residential care facil-**
30 **ity.**

1 **“(b) Conduct surveys that focus on areas of consistent noncompli-**
2 **ance identified by the department.**

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

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

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

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

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

20

21 **“(Acuity-Based Staffing Tool)**

22

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

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

30 **“(b) Assess the number of direct care staff hours required by a**

1 particular residential care facility to meet each resident's scheduled
2 and unscheduled needs.

3 “(2) The acuity-based staffing tool shall be made available to resi-
4 dential care facilities to:

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

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

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

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

23

24 “(Direct Care Staff Training)

25

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

30 “(a) Education on the dementia disease process, including the

1 **progression of the disease, memory loss, psychiatric and behavioral**
2 **symptoms;**

3 **“(b) Techniques for understanding and managing behavioral symp-**
4 **toms, including but not limited to reducing the use of antipsychotic**
5 **medications for nonstandard uses;**

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

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

11 **“(A) Address pain;**

12 **“(B) Provide food and fluids;**

13 **“(C) Prevent wandering and elopement; and**

14 **“(D) Use a person-centered approach.**

15 **“(2) A residential care facility shall provide a certificate of com-**
16 **pletion to direct care staff who complete the training described in**
17 **subsection (1) of this section. If a member of the direct care staff is**
18 **employed by a different residential care facility no later than 24**
19 **months after completing the training, the facility may elect to not**
20 **require the staff member to repeat the training.**

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

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

29 **“(5) All training in dementia care provided to direct care staff must**
30 **reflect current standards for dementia care and be informed by the**

1 **best evidence in the care and treatment of dementia.**

2 **“(6) The department shall prescribe by rule how to assess the com-**
3 **petency of direct care staff.**

4

5 **“(Suspension of License)**

6

7 **“SECTION 26.** ORS 443.440 is amended to read:

8 **“443.440. (1) Except as provided in subsection (2) of this section for**
9 **residential care facilities,** the Department of Human Services or the
10 Oregon Health Authority may revoke or suspend the license of any residen-
11 tial facility that is not operated in accordance with ORS 443.002 or 443.400
12 to 443.455 or the rules of the licensing agency. Such revocation or suspension
13 [shall] **must** be taken in accordance with rules of the licensing agency and
14 ORS chapter 183. However, in cases where an imminent danger to the health
15 or safety of the residents exists, a license may be suspended immediately
16 pending a fair hearing not later than the 10th day after such suspension.

17 **“(2)(a) In a case where an imminent danger to the health or safety**
18 **of the residents exists, a residential care facility license may be sus-**
19 **pending immediately.**

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

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

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

28 **“(B) Appoint a management company with demonstrated skill and**
29 **experience in operating residential facilities to manage the residential**
30 **care facility and care for the residents of the facility. If the facility is**

1 **unable to pay for the appointed management company, the department**
2 **shall use funds from the facility trustee account fund to cover the**
3 **cost.**

4

5 **“(Prescription Drug Packaging)**

6

7 **“SECTION 27. (1) A residential care facility shall ensure that pre-**
8 **scription drugs dispensed to residents of the facility are packaged in**
9 **a manner that reduces errors in the tracking of and the adminis-**
10 **tration of the drugs, including but not limited to the use of unit dose**
11 **systems or blister packs.**

12 **“(2) Subsection (1) of this section does not apply to residents re-**
13 **ceiving pharmacy benefits through the United States Department of**
14 **Veterans Affairs if the pharmacy benefits do not reimburse the cost**
15 **of such packaging.**

16

17 **“(Memory Care)**

18

19 **“SECTION 28. ORS 443.886 is amended to read:**

20 **“443.886. (1) If a facility intends to provide care for [*patients or*] residents**
21 **with Alzheimer’s disease or other **forms of** dementia by means of an**
22 **[*Alzheimer’s care unit*] **endorsed memory care community**, the facility**
23 **must obtain a [*special indorsement*] **memory care endorsement** on its li-**
24 **cence or registration.**

25 **“(2) The Department of Human Services, with the input from represen-**
26 **tatives of advocate groups and the long term care industry, shall adopt by**
27 **rule standards that ensure that the special needs of any [*Alzheimer’s patient***
28 ***or*] resident **with Alzheimer’s disease or other form of dementia** who is**
29 **cared for in [*a special unit*] **an endorsed memory care community** are**
30 **met and that quality care is provided. The standards must include but are**

1 not limited to provisions for:

2 “(a) Care planning, including physical design, staffing, staff training,
3 safety, egress control, individual care planning, admission policy, family in-
4 volvement, therapeutic activities and social services;

5 “(b) Continuity of basic care requirements; and

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

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

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

16 “(5) The *[special indorsement]* **memory care endorsement** may be sus-
17 pended or revoked in the same manner as the license or registration is sus-
18 pended or revoked.

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

22 “(a) Advertise the facility as providing an Alzheimer’s care unit **or**
23 **memory care community**; or

24 “(b) Market the facility as providing an Alzheimer’s care unit **or memory**
25 **care community**.

26 “(7) As used in this section:

27 “(a) *[‘Alzheimer’s care unit’]* **‘Endorsed memory care community’**
28 means a special care unit in a designated, separated area for *[patients and]*
29 residents with Alzheimer’s disease or other **forms of** dementia that is
30 locked¹, *[segregated]* or secured to prevent or limit access by a *[patient or]*

1 resident outside the designated or separated area.

2 “(b) ‘Facility’ means a [*nursing home*,] **long term care facility**, residen-
3 tial care facility, assisted living facility or any other like facility required
4 to be licensed by the department.

5 “(c) ‘Registry’ means a facility will provide the department with infor-
6 mation relating to the [*Alzheimer’s care unit*] **endorsed memory care**
7 **community**, including the number of residents in the [*unit*] **community**,
8 **the** stage of dementia for each resident, **a** description of how services are
9 provided[,] and **the** length of time the [*unit*] **community** has been operating.

10

11

“ADULT FOSTER HOMES

12

“(Caregiver Training)

13

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

16 **“SECTION 30. (1)** As used in this section, ‘caregiver’ means an in-
17 dividual who is responsible for providing care and services to residents
18 of an adult foster home, including but not limited to a caregiver and
19 a substitute caregiver.

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

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

28 **“(b)** Techniques for understanding and managing behavioral symp-
29 toms, including but not limited to reducing the use of antipsychotic
30 medications for nonstandard uses;

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

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

13 “(a) **Three minutes; or**

14 “(b) **A period that meets applicable fire, life and safety require-**
15 **ments if the adult foster home has an interior sprinkler system ap-**
16 **proved by the appropriate regulatory authorities.**

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

19 “[*(4)*] **(3)** If a licensed provider rents or leases the premises where the
20 adult foster home is located, the lessor shall charge a flat rate for the lease
21 or rental.

22

23 “PHYSICIAN EDUCATION IN ALZHEIMER’S DISEASE

24

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

27 “**SECTION 34.** (1) **The Oregon Medical Board shall encourage each**
28 **physician with a specialty in primary care or geriatrics, or another**
29 **specialty designated by the board, to obtain continuing medical edu-**
30 **cation in the detection and early diagnosis of Alzheimer’s disease and**

1 in the appropriate prescribing of antipsychotic drugs to treat patients
2 with Alzheimer's disease.

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

7

8

“DEFINITIONS

9

10 “**SECTION 35.** ORS 443.400 is amended to read:

11 “443.400. As used in ORS 443.400 to 443.455 and 443.991, unless the context
12 requires otherwise:

13 “[*(1) ‘Director’ means the director of the licensing agency for the residential*
14 *facility.*]

15 “(1) **‘Behavioral health needs’ means mental, emotional or behav-**
16 **ioral disturbances.**

17 “(2) **‘Conversion facility’ means a facility that has applied for, or**
18 **been issued, a conversion facility license as described in section 20 of**
19 **this 2017 Act.**

20 “(3) **‘Direct care staff’ means the employees of a residential facility**
21 **whose primary responsibilities are to provide personal care services to**
22 **residents, including but not limited to:**

23 “(a) **Administering medications;**

24 “(b) **Coordinating resident-focused activities;**

25 “(c) **Supervising and supporting residents;**

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

28 “(e) **Serving but not preparing meals.**

29 “[*(2)*] (4) **‘Licensing agency’ means:**

30 “(a) The Department of Human Services, if the residential facility that is

1 licensed, or that the Director of Human Services determines should be li-
2 censed, is a residential care facility, residential training facility or residen-
3 tial training home; or

4 “(b) The Oregon Health Authority, if the residential facility that is li-
5 censed, or that the Director of the Oregon Health Authority determines
6 should be licensed, is a residential treatment facility or residential treatment
7 home.

8 “[3] (5) ‘Resident’ means any individual residing in a facility who re-
9 ceives residential care, treatment or training. For purposes of ORS 443.400
10 to 443.455, an individual is not considered to be a resident if the individual
11 is related by blood or marriage within the fourth degree as determined by
12 civil law to the person licensed to operate or maintain the facility.

13 “[4] (6) ‘Residential care’ means services such as supervision; protection;
14 assistance while bathing, dressing, grooming or eating; management of
15 money; transportation; recreation; and the providing of room and board.

16 “[5] (7) ‘Residential care facility’ means a facility that provides[, *for six*
17 *or more socially dependent individuals or individuals with physical disabili-*
18 *ties,*] residential care in one or more buildings on contiguous properties[.]:

19 **“(a) For six or more socially dependent individuals or individuals**
20 **with physical disabilities; or**

21 **“(b) For fewer than six socially dependent individuals or individuals**
22 **with physical disabilities if the purpose of the facility is to serve indi-**
23 **viduals with co-occurring behavioral health needs who are more ap-**
24 **propriately served in smaller settings.**

25 “[6] (8) ‘Residential facility’ means a residential care facility, residential
26 training facility, residential treatment facility, residential training home,
27 [or] residential treatment home **or conversion facility.**

28 “[7] (9) ‘Residential training facility’ means a facility that provides, for
29 six or more individuals with mental retardation or other developmental dis-
30 abilities, residential care and training in one or more buildings on contig-

1 uous properties.

2 “[8] (10) ‘Residential training home’ means a facility that provides, for
3 five or fewer individuals with mental retardation or other developmental
4 disabilities, residential care and training in one or more buildings on con-
5 tiguous properties, when so certified and funded by the Department of Hu-
6 man Services.

7 “[9] (11) ‘Residential treatment facility’ means a facility that provides,
8 for six or more individuals with mental, emotional or behavioral disturb-
9 ances or alcohol or drug dependence, residential care and treatment in one
10 or more buildings on contiguous properties.

11 “[10] (12) ‘Residential treatment home’ means a facility that provides for
12 five or fewer individuals with mental, emotional or behavioral disturbances
13 or alcohol or drug dependence, residential care and treatment in one or more
14 buildings on contiguous properties.

15 “[11] (13) ‘Training’ means the systematic, planned maintenance, devel-
16 opment or enhancement of self-care skills, social skills or independent living
17 skills, or the planned sequence of systematic interactions, activities or
18 structured learning situations designed to meet each resident’s specified
19 needs in the areas of physical, social, emotional and intellectual growth.

20 “[12] (14) ‘Treatment’ means a planned, individualized program of med-
21 ical, psychological or rehabilitative procedures, experiences and activities
22 designed to relieve or minimize mental, emotional, physical or other symp-
23 toms or social, educational or vocational disabilities resulting from or re-
24 lated to the mental or emotional disturbance, physical disability or alcohol
25 or drug problem.

26

27 **“CONFORMING AMENDMENTS**

28

29 **“SECTION 36.** ORS 409.720 is amended to read:

30 “409.720. (1) As used in this section:

1 “(a) ‘Adult foster home’ has the meaning given that term in ORS 443.705
2 (1).

3 “(b) ‘Health care facility’ has the meaning given that term in ORS 442.015.

4 “(c) ‘Residential facility’ has the meaning given that term in ORS 443.400
5 [(6)].

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

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

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

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

23 “**SECTION 37.** ORS 430.216 is amended to read:

24 “430.216. (1) The Department of Human Services shall report to each
25 odd-numbered year regular session of the Legislative Assembly:

26 “(a) On the safety of individuals receiving developmental disability ser-
27 vices including, but not limited to:

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

29 “(B) A summary of the training provided by the department or its con-
30 tractors to direct care workers in service settings.

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

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

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

8 “(F) The number of direct care workers in service settings who were
9 subject to criminal or civil action involving an individual with a develop-
10 mental disability.

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

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

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

19 “(3) As used in this section, ‘service settings’ means any of the following
20 that provide developmental disability services:

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

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

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

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

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

28 “**SECTION 38.** ORS 441.303 is amended to read:

29 “441.303. (1) The Facility Fund is established in the State Treasury, sep-
30 arate and distinct from the General Fund, consisting of payments made by

1 facilities to the Department of Human Services as specified in this section.
2 Interest earned by the Facility Fund shall be credited to the fund. Moneys
3 in the fund are continuously appropriated to the department for the purpose
4 of paying:

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

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

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

18 “(3) Whenever the balance of moneys in the fund established under this
19 section reaches \$750,000, the department shall discontinue collecting the fa-
20 cility payment described in subsection (2) of this section. However, whenever
21 the fund balance falls below \$600,000, the department shall reinstitute the
22 facility payment described in subsection (2) of this section until the fund is
23 restored to at least \$750,000. The department’s notice of intent to reinstitute
24 the facility payment shall include a summary of the amounts expended by the
25 department from the fund and the balance of the fund on the date of the
26 notice. The department may use reasonable amounts from the fund necessary
27 to administer the fund.

28 “(4) Whenever the department is required to use any amount in the fund
29 to meet the expenses of a trustee appointed under ORS 441.281 or a tempo-
30 rary manager appointed under ORS 441.333, the amount used shall constitute

1 a loan to the facility and shall be repayable to the fund under such terms
2 and conditions as the facility and the department agree. The rate of interest
3 shall be set by the department to reflect the prevailing market rate on sim-
4 ilar loans. Interest earned under this subsection shall be credited to the fund
5 established under this section.

6 “(5) The facility payment described in subsection (2) of this section shall
7 be considered an allowable cost in setting the reimbursement rates of a fa-
8 cility by the department.

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

12 **“SECTION 39.** ORS 441.367 is amended to read:

13 “441.367. (1) The Department of Human Services by rule shall require long
14 term care facilities licensed under ORS 441.020 to provide written and oral
15 notice before or at the time of admission to any resident who does not re-
16 ceive medical assistance under ORS chapter 414, specifying:

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

20 “(b) The long term care facility’s policy regarding residents who become
21 unable to pay facility charges by reason of exhaustion of all income and re-
22 sources to or below the level of eligibility for medical assistance.

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

25 “(3) The Director of Human Services may impose a civil penalty for vio-
26 lation of subsection (1) of this section under ORS 441.710 [(1)(b)] (1)(a)(C).

27 **“SECTION 40.** ORS 441.408 is amended to read:

28 “441.408. (1) The Long Term Care Ombudsman and each designee shall
29 have the right of entry into residential facilities at any time considered
30 necessary and reasonable by the ombudsman or the designee for the purpose

1 of:

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

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

5 “(c) Offering the services of the ombudsman or the designee to any resi-
6 dent, in private;

7 “(d) Interviewing employees or agents of the facility;

8 “(e) Consulting regularly with the facility administration; and

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

10 “(2) The Long Term Care Ombudsman shall have access to any resident’s
11 records, and to records of any public agency necessary to the duties of the
12 ombudsman, including records on patient abuse complaints made pursuant
13 to ORS 430.735 to 430.765[,] **and** 441.630 to 441.680 [*and 441.995*]. The pro-
14 visions of ORS 192.553 to 192.581 are not intended to limit the access of the
15 Long Term Care Ombudsman to medical records of residents of residential
16 facilities. Designees may have access to individual resident’s records, in-
17 cluding medical records as authorized by the resident or resident’s legal
18 representative, if needed to investigate a complaint.

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

22 “(4) The ombudsman or the designee must show identification to the per-
23 son in charge of the facility. The resident shall have the right to refuse to
24 communicate with the ombudsman or the designee. The refusal shall be made
25 directly to the ombudsman or the designee and not through an intermediary.

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

29 **“SECTION 41.** ORS 441.630 is amended to read:

30 “441.630. As used in ORS 441.630 to 441.680 [*and 441.995*]:

1 “(1) ‘Abuse’ means:

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

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

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

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

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

11 “(f) Corporal punishment.

12 “(g) Involuntary seclusion for convenience or discipline.

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

15 “(3) ‘Department’ means the Department of Human Services or a designee
16 of the department.

17 “(4) ‘Facility’ means a long term care facility, as defined in ORS 442.015.

18 “(5) ‘Law enforcement agency’ means:

19 “(a) Any city or municipal police department.

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

22 “(c) Any county sheriff’s office.

23 “(d) The Oregon State Police.

24 “(e) Any district attorney.

25 “(6) ‘Public or private official’ means:

26 “(a) Physician, including any intern or resident.

27 “(b) Licensed practical nurse or registered nurse.

28 “(c) Employee of the Department of Human Services, a community devel-
29 opmental disabilities program or a long term care facility or person who
30 contracts to provide services to a long term care facility.

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

3 “(e) Peace officer.

4 “(f) Member of the clergy.

5 “(g) Regulated social worker.

6 “(h) Physical, speech and occupational therapists.

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

9 “(j) Member of the Legislative Assembly.

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

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

13 **“SECTION 42.** ORS 441.637 is amended to read:

14 “441.637. (1) The Department of Human Services shall implement the
15 provisions of ORS 441.630 to 441.680 [*and 441.995*] and shall adopt such rules
16 as are reasonably necessary for the enforcement of ORS 441.630 to 441.680
17 [*and 441.995*].

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

24 **“SECTION 43.** ORS 441.680 is amended to read:

25 “441.680. A resident who in good faith is under treatment solely by spir-
26 itual means through prayer in accordance with the tenets and practices of
27 a recognized church or religious denomination by a duly accredited practi-
28 tioner thereof shall, for this reason alone, not be considered an abused resi-
29 dent within the meaning of ORS 441.630 to 441.680 [*and 441.995*].

30 **“SECTION 44.** ORS 441.745 is amended to read:

1 “441.745. All penalties recovered under ORS 441.710 to 441.740 [*and*
2 *441.995*] shall be deposited in the Quality Care Fund established in ORS
3 443.001.

4 **“SECTION 45.** ORS 443.452 is amended to read:

5 “443.452. (1) The [*director*] **Director of Human Services** shall waive the
6 requirements of ORS 443.410 for a residential care facility caring for resi-
7 dents with physical disabilities if:

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

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

11 “(c) The residential **care** facility complies with the applicable require-
12 ments of the State Fire Marshal.

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

15

16 **“REPEALS**

17

18 **“SECTION 46.** ORS 441.995 and 443.885 are repealed.

19 **“SECTION 47.** Section 1 of this 2017 Act is repealed on December
20 **31, 2019.**

21

22 **“CAPTIONS**

23

24 **“SECTION 48.** The unit captions used in this 2017 Act are provided
25 **only for the convenience of the reader and do not become part of the**
26 **statutory law of this state or express any legislative intent in the**
27 **enactment of this 2017 Act.”.**

28