

CHAPTER 104

AN ACT

HB 4151

Relating to vulnerable persons; creating new provisions; amending ORS 124.050, 441.373, 441.677, 441.715 and 443.455 and section 23, chapter 70, Oregon Laws 2012; and declaring an emergency.

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

SECTION 1. Section 2 of this 2014 Act is added to and made a part of ORS 124.050 to 124.095.

SECTION 2. (1) Investigations commenced by the Department of Human Services pursuant to ORS 124.070 must be completed by the department on or before 120 days after receipt of the report of abuse made under ORS 124.060, unless there is an ongoing concurrent criminal investigation, in which case the department may take a reasonable amount of additional time in which to complete the investigation.

(2) Upon completion of an investigation in accordance with subsection (1) of this section, a written report shall be prepared that includes information as required by rule adopted by the department, including but not limited to the following:

(a) The date and location of the report of abuse and of the incident of abuse that was reported;

(b) The dates that the investigation was commenced and completed and by what entity;

(c) A description of documents and records reviewed during the investigation;

(d) An identification of any witness statements that were obtained during the investigation; and

(e) A statement of the factual basis for any findings and a summary of the findings made as a result of the investigation.

SECTION 3. ORS 441.677 is amended to read:

441.677. (1) Within 60 days of receipt of the investigation documents and the written report described in ORS 441.650 (6)(d) and 441.676 (2)(d), but in no case longer than 120 days after an investigation has been commenced pursuant to ORS 441.650 or 441.676, the investigation shall be completed and the Department of Human Services shall prepare a written letter of determination that states the department's determinations concerning each incident or problem alleged in the complaint. The department shall determine whether the alleged incident or problem was substantiated or unsubstantiated or whether the department was unable to substantiate the alleged incident or problem. The department shall adopt by rule definitions for the terms "substantiated," "unsubstantiated" and "unable to substantiate." If the department determines that an incident or problem alleged in the complaint

is substantiated, the letter of determination shall state whether the substantiated incident was abuse or violation of another rule. If abuse is substantiated, the letter of determination shall state whether the facility or an individual, or both, was responsible. The department shall adopt by rule criteria for determining responsibility for substantiated abuse.

(2) A copy of the letter of determination shall be placed in the facility's complaint file. Copies shall be sent to the facility, the complainant and the local office of the department. The facility and the complainant receiving the letter of determination shall be given 10 days to respond with additional information and shall be informed of the appeals process.

(3) If the department determines that an individual who holds a license or certificate for a health occupation is directly responsible for the abuse, the department shall send a copy of its letter of determination and investigation report to the state agency responsible for licensing or certifying the individual in the health occupation. In instances involving conduct of a nursing assistant, the department shall give the nursing assistant 10 days to respond with additional information. The department also shall notify by mail the nursing assistant implicated in the investigation of:

(a) The nature of the allegations;

(b) The date and time of occurrence;

(c) The right to a contested case hearing conducted in accordance with ORS chapter 183;

(d) The department's obligation to report the substantiated findings in the registry maintained under ORS 441.678 after the nursing assistant has had an opportunity for a contested case hearing; and

(e) The fact that the nursing assistant's failure to request a contested case hearing within 30 days from the date of the notice will result in the department's reporting the substantiated findings in the registry maintained under ORS 441.678.

(4) Notice sent to the nursing assistant's last-known address is sufficient to meet the requirements of subsection (3) of this section.

SECTION 4. The Department of Human Services shall adopt policies and guidelines to plan for the development and standardization of resources and technologies to:

(1) Create a database, registry or other electronic record of reports of abuse made under ORS 124.060 and 441.640 and investigations of abuse conducted pursuant to ORS 124.070 and 441.650 with information including, but not limited to:

(a) The date and location of the report of abuse and the incident of abuse that was reported;

(b) If applicable, the date that the initial status report required under ORS 441.650 was completed and a summary of the information required to be contained in the initial status report as set forth in ORS 441.650;

(c) The date that the investigation was commenced and by what entity;

(d) Any actions taken during the course of the investigation, including but not limited to the actions required under ORS 441.650 (6);

(e) The date that a written report, including but not limited to the written report required under ORS 441.650 (6) and section 2 of this 2014 Act, was completed and a summary of the information contained in the written report; and

(f) The disposition of the report of abuse or the investigation of the report, including but not limited to the date and time that the investigation, if applicable, was completed and the date that a letter of determination under ORS 441.677 was prepared;

(2) Standardize procedures and protocols for making and responding to reports of abuse made under ORS 124.060 and 441.640;

(3) Standardize procedures and protocols for investigations of reports of abuse conducted pursuant to ORS 124.070 and 441.650; and

(4) Promote and coordinate communication and information sharing with law enforcement agencies regarding reports and investigations of abuse under ORS 124.060, 124.070, 441.640 and 441.650.

SECTION 5. The Department of Human Services shall report to the committees of the Legislative Assembly with subject matter jurisdiction over abuse of vulnerable persons regarding implementation of policies and guidelines planned for, developed and standardized pursuant to section 4 of this 2014 Act on or before January 1, 2015.

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

(a) "Facility" means:

(A) A long term care facility as defined in ORS 442.015;

(B) A residential care facility as defined in ORS 443.400, including but not limited to an assisted living facility; and

(C) An adult foster home as defined in ORS 443.705, but does not include adult foster homes licensed to provide care to persons with developmental disabilities or mental illness.

(b) "Home care worker" has the meaning given that term in ORS 410.600.

(2) The Department of Human Services shall augment the department's existing criminal background check system with a regularly updated registry of all persons who work or are seeking to work:

(a) In a facility; or

(b) As a home care worker.

(3) A facility shall report information required pursuant to rules adopted by the department regarding persons who work or are seeking to work at the facility for maintenance of the registry established under subsection (2) of this section.

(4) The department shall adopt rules establishing:

(a) The information that must be reported by facilities;

(b) The form and frequency of reporting by facilities;

(c) Procedures and standards for the administration of the registry; and

(d) Guidelines and procedures for requests for and release of information from the registry.

SECTION 7. ORS 441.373 is amended to read:

441.373. (1) As used in this section:

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

[(a)] (b) "Area agency" has the meaning given that term in ORS 410.040.

[(b)] (c) "Long term care facility" has the meaning given that term in ORS 442.015.

[(c)] (d) "Move from a long term care facility" has the meaning given that term in ORS 441.357.

[(d)] (e) "Residential care facility" has the meaning given that term in ORS 443.400.

(2) If the Department of Human Services or an area agency knows that a person who is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805, is applying for admission to an adult foster home, a long term care facility or a residential care facility, the department or area agency shall notify the home or facility of the person's status as a sex offender.

(3) When a person who is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805, applies for admission to an adult foster home, a long term care facility or a residential care facility, the person shall notify the home or facility of the person's status as a sex offender.

(4) An adult foster home, a long term care facility or a residential care facility may refuse admission to a person who is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805.

(5)(a) An adult foster home may transfer or discharge a resident without reasonable advance notice of the transfer or discharge if:

(A) The home was not notified prior to admission of the resident that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805;

(B) The home learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805; and

(C) The resident meets the criteria established by the department by rule for transfer or discharge under this subsection.

(b) The home shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for con-

testing the move at the time the home transfers or discharges the resident.

[(5)] **(6)** Notwithstanding ORS 441.362 and 441.605 (4), the department may move a resident from a long term care facility without providing 30 days' written notice to the resident if the department or area agency learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805. The department shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move at the time the department moves the resident.

[(6)(a)] **(7)(a)** Notwithstanding ORS 441.605 (4), a long term care facility may transfer or discharge a resident without reasonable advance notice of the transfer or discharge if:

(A) The facility was not notified prior to admission of the resident that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805;

(B) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805; and

(C) The resident meets the criteria established by the department by rule for transfer or discharge under this subsection.

(b) The facility shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move at the time the facility transfers or discharges the resident.

[(7)(a)] **(8)(a)** A residential care facility may transfer or discharge a resident without reasonable advance notice of the transfer or discharge if:

(A) The facility was not notified prior to admission of the resident that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805;

(B) The facility learns that the resident is on probation, parole or post-prison supervision after being convicted of a sex crime, as defined in ORS 181.805; and

(C) The resident meets the criteria established by the department by rule for transfer or discharge under this subsection.

(b) The facility shall give the resident a copy of a written notice containing information about the resident's right to a hearing in accordance with ORS chapter 183 and the grounds for contesting the move at the time the facility transfers or discharges the resident.

[(8)] **(9)** If a resident requests a hearing under subsection (5), (6), [or] (7) **or** (8) of this section, the hearing must be held within five business days of the move, transfer or discharge of the resident.

[(9)] **(10)** The department shall establish the criteria required by subsections [(6)(a)(C) and (7)(a)(C)] **(5)(a)(C), (7)(a)(C) and (8)(a)(C)** of this section so

that application of the criteria results in the identification of only those persons who present a current risk of harm to another person within the **home or facility**.

SECTION 8. Section 23, chapter 70, Oregon Laws 2012, as amended by section 8, chapter 352, Oregon Laws 2013, is amended to read:

Sec. 23. (1)(a) It is the intent of the Legislative Assembly to recreate the Oregon Elder Abuse Work Group, first established on June 21, 2011, by section 1, chapter 444, Oregon Laws 2011, and repealed on February 29, 2012, so that the work group may complete its work as set forth in this section and section 1, chapter 444, Oregon Laws 2011.

(b) It is the intent of the Legislative Assembly to rename the Oregon Elder Abuse Work Group as the Oregon Elder Abuse Prevention Work Group and to expand the scope of the work group's responsibilities as set forth in this section.

(2) The Oregon Elder Abuse **Prevention** Work Group shall consist of 22 members appointed as follows:

(a) The President of the Senate shall appoint two members from among members of the Senate who shall cease being members of the work group upon ceasing to be members of the Legislative Assembly.

(b) The Speaker of the House of Representatives shall appoint two members from among members of the House of Representatives who shall cease being members of the work group upon ceasing to be members of the Legislative Assembly.

(c) The Governor shall appoint 12 members as follows:

(A) The Long Term Care Ombudsman appointed under ORS 441.103;

(B) Three members representing long term care providers for elderly persons;

(C) Two members representing law enforcement agencies, one of whom shall be a representative from the Oregon District Attorneys Association and one of whom shall be a representative from a local law enforcement agency with expertise in investigating elder abuse;

(D) Two members representing consumers who are elderly persons;

(E) An officer of a bank, as defined in ORS 706.008;

(F) An officer of a credit union, as defined in ORS 723.008;

(G) A representative of unionized health care workers who is recommended by a local affiliate of the Service Employees International Union; and

(H) A member of the Oregon Patient Safety Commission established under ORS 442.820.

(d) The chairperson of the Governor's Commission on Senior Services created under ORS 410.320 shall appoint one member.

(e) The Director of Human Services shall appoint two members as follows:

(A) One member with expertise in elder abuse services and investigations; and

(B) One member representing the office or department within the Department of Human Services that performs criminal background checks of individuals providing services to elderly persons or conducting elder abuse investigations.

(f) The Attorney General shall appoint a deputy or assistant attorney general with expertise in the investigation of criminal offenses that have been committed against vulnerable persons.

(g) The Board of Governors of the Oregon State Bar shall appoint two members as follows:

(A) A lawyer whose practice is concentrated on elder law; and

(B) A criminal defense lawyer.

(3) The work group shall meet at times and places specified by the call of the chairperson or of a majority of the members of the work group.

(4) The work group shall study and make recommendations on [*the definition of elder abuse, including but not limited to*]:

(a) Aligning definitions of abuse of vulnerable persons across populations, agencies, service providers and law enforcement;

(b) Defining abuse of vulnerable persons for purposes of investigation and for purposes of making determinations that abuse of vulnerable persons has or has not occurred; [*and*]

(c) Defining abuse of vulnerable persons for purposes of abuse data reporting systems[.];

(d) The criminal background check system and its role in prevention and investigation of abuse of vulnerable persons;

(e) The process involved in conducting investigations of abuse of vulnerable persons;

(f) Vulnerable persons abuse data reporting systems; and

(g) Information that could be made available to the public regarding abuse of vulnerable persons and investigations of abuse of vulnerable persons.

(5) A majority of the members of the work group constitutes a quorum for the transaction of business.

(6) Official action by the work group requires the approval of a majority of the members of the work group.

(7) The work group shall elect two of its members to serve as cochairpersons.

(8) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(9) The work group shall meet at times and places specified by the call of the cochairpersons or of a majority of the members of the work group.

(10) The work group may adopt rules necessary for the operation of the work group.

(11) The work group shall make a report, and may include recommendations for legislation, to interim committees of the Legislative Assembly related to the provision of services to elderly persons and investigation of elder abuse no later than [*February 1, 2014*] **December 31, 2014**.

(12) The work group may accept donations of staff support, office space and equipment from advo-

cacy or service provider organizations to assist the work group in the performance of its functions.

(13) Notwithstanding ORS 171.072, members of the work group who are members of the Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volunteers on the work group. Other members of the work group are not entitled to compensation or reimbursement for expenses and serve as volunteers on the work group.

(14) All agencies of state government as defined in ORS 174.111 are directed to assist the work group in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the work group consider necessary to perform their duties.

SECTION 9. ORS 124.050, as amended by section 5, chapter 352, Oregon Laws 2013, is amended to read:

124.050. As used in ORS 124.050 to 124.095:

(1) "Abuse" means one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465, [*or*] 163.467 or **163.525**.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677 and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.383 or 353.125.

(7) "Neglect" means[:]

[(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or]

[(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse]
failure to provide basic care or services that are necessary to maintain the health or safety of an elderly person.

(8) "Person with a disability" means a person described in:

(a) ORS 410.040 (7); or

(b) ORS 410.715.

(9) "Public or private official" means:

(a) Physician or physician assistant licensed under ORS chapter 677, naturopathic physician or chiropractor, including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services or community developmental disabilities program.

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

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech or occupational therapist.

(i) Senior center employee.

(j) Information and referral or outreach worker.

(k) Licensed professional counselor or licensed marriage and family therapist.

(L) Member of the Legislative Assembly.

(m) Firefighter or emergency medical services provider.

(n) Psychologist.

(o) Provider of adult foster care or an employee of the provider.

(p) Audiologist.

(q) Speech-language pathologist.

(r) Attorney.

(s) Dentist.

(t) Optometrist.

(u) Chiropractor.

(10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) "Sexual abuse" means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

[(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;]

(B) Verbal or physical harassment of a sexual nature, including but not limited to severe or pervasive exposure to sexually explicit material or language;

(C) Sexual exploitation;

[(C)] (D) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver; or

[(D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or]

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver *[who is the spouse of the elderly person]*.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 10. ORS 441.715 is amended to read:

441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710 (1) and the Director of the Oregon Health Authority by rule shall adopt objective criteria for establishing the civil penalty that may be imposed under ORS 441.710 (2). However, the civil penalty may not exceed \$500 for each violation, except as otherwise provided in this subsection and ORS 441.995 or as otherwise required by federal law.

(b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under ORS

441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed \$500 per day or as otherwise required by federal law.

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

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

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

(C) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(D) "Sexual abuse" means any form of *[nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching,]* **sexual contact between an employee of a long term care facility or a person providing services in the long term care facility and a resident of that facility, including but not limited to** sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

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

SECTION 11. ORS 443.455 is amended to read:

443.455. (1) Except as provided in subsection (5) of this section, for purposes of imposing civil penalties, residential facilities approved under ORS 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

(2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential care facilities, residential training facilities and residential training homes that are not in compliance with ORS 443.400 to 443.455.

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

(4) If the department or authority investigates and makes a finding of abuse arising from deliberate

or other than accidental action or inaction that is likely to cause a negative outcome by a person with a duty of care toward a resident of a residential facility and if the abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the department or authority shall impose a civil penalty of not less than \$2,500 for each occurrence of substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:

(a) "Negative outcome" includes serious injury, rape, sexual abuse or death.

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

(c) "Serious injury" means physical injury that creates a substantial risk of death or that causes serious and protracted disfigurement, protracted impairment of health or protracted loss or impairment of the function of any bodily organ.

(d) "Sexual abuse" means any form of *[nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching,]* **sexual contact between an employee of a residential facility or a person providing services in the residential facility and a resident of that facility, including but not limited to** sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

(5) Civil penalties recovered from a residential training facility, residential training home, residential treatment facility or residential treatment home shall be deposited in the Long Term Care Ombudsman Account established in ORS 441.153.

SECTION 12. The amendments to ORS 124.050, 441.715 and 443.455 by sections 9 to 11 of this 2014 Act become operative on January 1, 2015.

SECTION 13. (1) Section 6 of this 2014 Act becomes operative on January 1, 2015.

(2) The Department of Human Services may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the department by section 6 of this 2014 Act.

SECTION 14. This 2014 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2014 Act takes effect on its passage.

Approved by the Governor April 1, 2014

Filed in the office of Secretary of State April 2, 2014

Effective date April 1, 2014