

**Enrolled**  
**House Bill 2129**

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

CHAPTER .....

AN ACT

Relating to health services; creating new provisions; amending ORS 113.085, 113.105, 114.515, 114.535, 169.690, 181.537, 279A.050, 401.654, 414.325, 426.005, 426.020, 426.070, 426.074, 427.005, 430.640, 430.672, 431.310, 431.920, 433.004, 433.008, 433.045, 441.020, 441.715, 443.045, 443.325, 443.415, 443.430, 443.440, 443.455, 443.735, 443.775, 685.160, 688.545, 691.405, 701.505 and 735.610 and sections 2, 5 and 9, chapter 736, Oregon Laws 2003, section 38, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), section 3, chapter 121, Oregon Laws 2009 (Enrolled House Bill 2052), sections 2 and 6, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), section 1, chapter 269, Oregon Laws 2009 (Enrolled Senate Bill 166), section 1, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287), section 5, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 596), section 2, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), sections 1, 9, 11, 15, 16, 29, 32, 33, 34, 35, 50 and 51, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), sections 2, 5 and 10, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134), sections 1b, 1c, 13, 22 and 23, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345), and sections 1, 2, 4, 5, 6, 7, 8, 36, 37 and 40, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442); repealing section 1, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), sections 1, 2, 3 and 4, chapter 45, Oregon Laws 2009 (Enrolled Senate Bill 165), section 4, chapter 72, Oregon Laws 2009 (Enrolled Senate Bill 163), section 1, chapter 121, Oregon Laws 2009 (Enrolled House Bill 2052), section 1, chapter 200, Oregon Laws 2009 (Enrolled House Bill 2133), section 2, chapter 382, Oregon Laws 2009 (Enrolled Senate Bill 8), sections 3, 4 and 8, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), section 1, chapter 264, Oregon Laws 2009 (Enrolled Senate Bill 157), sections 2 and 3, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287), sections 198, 296, 383, 625, 627, 633, 685, 1091, 1092, 1109 and 1110, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), section 43, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), sections 3 and 7, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134), section 2, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2194), and sections 20, 21, 24, 25, 28, 29, 31 and 33, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442); and declaring an emergency.

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

**SB 8 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 1. If both House Bill 2009 and Senate Bill 8 become law, section 2, chapter 382, Oregon Laws 2009 (Enrolled Senate Bill 8) (amending ORS 401.654), is repealed and ORS**

**401.654, as amended by section 227, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

401.654. (1) The Oregon Health Authority may establish a registry of emergency health care providers who are available to provide health care services during an emergency or crisis. The authority may require training related to the provision of health care services in an emergency or crisis as a condition of registration.

(2) The authority shall issue identification cards to health care providers included in the registry established under this section that:

(a) Identify the health care provider;

(b) Indicate that the health care provider is registered as an Oregon emergency health care provider;

(c) Identify the license or certification held by the health care provider; and

(d) Identify the health care provider's usual area of practice if that information is available and the authority determines that it is appropriate to provide that information.

(3) The authority by rule shall establish a form for identification cards issued under subsection (2) of this section.

(4) The authority shall support and provide assistance to the Office of Emergency Management in emergencies or crises involving the public health or requiring emergency medical response.

**(5) The authority may enter into agreements with other states to facilitate the registry of out-of-state health care providers in the registry established under this section.**

**SECTION 2. The amendments to ORS 401.654 by section 1 of this 2009 Act become operative on January 1, 2010.**

#### **SB 131 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 3. If both House Bill 2009 and Senate Bill 131 become law, and House Bill 2058 does not become law, section 1, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131) (amending ORS 685.160), is repealed and ORS 685.160, as amended by section 1091, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

685.160. (1) There hereby is created the [*Board of Naturopathic Examiners in the Oregon Health Authority*] **Oregon Board of Naturopathic Medicine**. The board [*shall consist*] **consists** of seven members appointed by the Governor for terms of three years commencing July 1, and until their successors are appointed and qualified. A majority of the members of the board constitutes a quorum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the remainder of the unexpired term. All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

(2) Of the membership of the **Oregon Board of Naturopathic** [*Examiners*] **Medicine**:

[(a) *All members must be citizens of this state.*]

[(b)] (a) Five members shall be naturopaths who have each practiced continuously in this state for the five years immediately prior to the date of appointment.

[(c)] (b) Two shall be members of the general public who do not possess the qualifications set forth in paragraph [(b)] (a) of this subsection.

**(3) All members of the board must be residents of this state.**

[(3)] (4) The board shall carry into effect the provisions of this chapter and is authorized to issue licenses to practice naturopathic medicine in this state. The possession of a common seal by the board hereby is authorized.

**SECTION 4. If both House Bill 2009 and Senate Bill 131 become law, and House Bill 2058 does not become law, section 38, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131), is amended to read:**

**Sec. 38.** (1) The amendments to [*ORS 685.160 by section 1 of this 2009 Act*] **ORS 685.170 by section 28, chapter 43, Oregon Laws 2009 (Enrolled Senate Bill 131)**, are intended to change the name of the "Board of Naturopathic Examiners" to the "Oregon Board of Naturopathic Medicine."

(2) For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the “Board of Naturopathic Examiners,” wherever they occur in Oregon Revised Statutes, other words designating the “Oregon Board of Naturopathic Medicine.”

**SECTION 5. The amendments to ORS 685.160 by section 3 of this 2009 Act become operative on January 1, 2010.**

## SB 151 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 6.** If both House Bill 2009 and Senate Bill 151 become law, section 2, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), is amended to read:

**Sec. 2.** The Director of Human Services, or the director’s designated representative, **or the Director of the Oregon Health Authority, or the director’s designated representative,** may approve in writing attorneys who are eligible to be appointed as personal representatives under ORS 113.085 if the decedent received public assistance pursuant to ORS chapter 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the Director of Human Services or the Director of the Oregon Health Authority when appointed as a personal representative.

**SECTION 7.** If both House Bill 2009 and Senate Bill 151 become law, section 3, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151) (amending ORS 113.085), is repealed and ORS 113.085, as amended by section 76, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition, if there is no will or there is a will and it has been proved, the court shall appoint a qualified person it finds suitable as personal representative, giving preference in the following order:

(a) [To] The executor named in the will.

(b) [To] The surviving spouse of the decedent or the nominee of the surviving spouse of the decedent.

(c) [To] The nearest of kin of the decedent or the nominee of the nearest of kin of the decedent.

[*(d) To the Director of Human Services or a designee, if it appears the decedent received public assistance pursuant to ORS chapter 411.*]

[*(e) To the Director of the Oregon Health Authority or a designee, if it appears the decedent received medical assistance pursuant to ORS chapter 414.*]

**(d) The Director of Human Services, or an attorney approved by the director under section 2, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), if the decedent received public assistance pursuant to ORS chapter 411 or received care at an institution described in ORS 179.321 (1), and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.**

**(e) The Director of the Oregon Health Authority, or an attorney approved by the director under section 2, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), if the decedent received public assistance pursuant to ORS chapter 414 or received care at an institution described in ORS 179.321 (2), and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.**

(f) [To] The Department of Veterans’ Affairs, if the decedent was a protected person under ORS 406.050 (7), and the department has joined in the petition for such appointment.

(g) [To] Any other person.

(2) Except as provided in subsection (3) of this section, the court shall appoint the Department of State Lands as personal representative if it appears that the decedent died wholly intestate and without known heirs. The Attorney General shall represent the Department of State Lands in the administration of the estate. Any funds received by the Department of State Lands in the capacity of personal representative may be deposited in accounts, separate and distinct from the General

Fund, established with the State Treasurer. Interest earned by such account shall be credited to that account.

(3) The court may appoint a person other than the Department of State Lands to administer the estate of a decedent who died wholly intestate and without known heirs if the person filing a petition under ORS 113.035 attaches written authorization from an estate administrator of the Department of State Lands appointed under ORS 113.235 approving the filing of the petition by the person. Except as provided by rule adopted by the Director of the Department of State Lands, an estate administrator may consent to the appointment of another person to act as personal representative only if it appears after investigation that the estate is insolvent.

**SECTION 8.** If both House Bill 2009 and Senate Bill 151 become law, section 4, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151) (amending ORS 113.105), is repealed and ORS 113.105, as amended by section 77, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

113.105. (1) Unless a testator provides in a will that no bond shall be required of the executor of the estate, or unless the personal representative is the sole heir or devisee or is the Department of State Lands, the Department of Veterans' Affairs, the Director of Human Services, [*or a designee or*] the Director of the Oregon Health Authority or [*a designee*] **an attorney approved under section 2, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151)**, the personal representative may not act nor shall letters be issued to the personal representative until the personal representative files with the clerk of the court a bond. The bond shall be executed by a surety company authorized to transact surety business in this state, or by one or more sufficient personal sureties approved by the court. A personal surety must be a resident of this state. The court may, in its discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond shall be for the security and benefit of all interested persons and shall be conditioned upon the personal representative faithfully performing the duties of the trust.

(2) The amount of the bond set by the court shall be adequate to protect interested persons, but in no event shall it be less than \$1,000. In setting the amount of the bond the court shall consider:

- (a) The nature, liquidity and apparent value of the assets of the estate.
- (b) The anticipated income during administration.
- (c) The probable indebtedness and taxes.

(3) Nothing in this section affects the provisions of ORS 709.240, relating to a trust company acting as personal representative.

(4) Notwithstanding any other provisions of this section, a court may, in its discretion, waive the requirement of a bond if all devisees and heirs known to the court agree in writing that the requirement be waived and the signed agreement is filed with the court at the time of filing of the petition for the appointment of a personal representative.

**SECTION 9.** If both House Bill 2009 and Senate Bill 151 become law, section 6, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), is amended to read:

**Sec. 6.** The Director of Human Services, or the director's designated representative, **or the Director of the Oregon Health Authority, or the director's designated representative**, may approve in writing attorneys who are eligible to file an affidavit under ORS 114.515 if the decedent received public assistance pursuant to ORS chapter 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent. An attorney approved under this section does not represent the **Director of Human Services or the Director of the Oregon Health Authority** when the attorney files an affidavit under ORS 114.515.

**SECTION 10.** If both House Bill 2009 and Senate Bill 151 become law, ORS 114.515, as amended by section 7, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), is amended to read:

114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section, any of the following persons may file an affidavit with the clerk of the probate court in any county where there is venue for a proceeding seeking the appointment of a personal representative for the estate:

- (a) One or more of the claiming successors of the decedent.
- (b) If the decedent died testate, any person named as personal representative in the decedent's will.
- (c) The Director of Human Services, **the Director of the Oregon Health Authority** or an attorney approved [*by the director*] under section 6, **chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151)** [*of this 2009 Act*], if the decedent received public assistance pursuant to ORS chapter 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of care may be recovered from the estate of the decedent.
  - (2) An affidavit under this section may be filed only if:
    - (a) The fair market value of the estate is \$200,000 or less;
    - (b) Not more than \$50,000 of the fair market value of the estate is attributable to personal property; and
    - (c) Not more than \$150,000 of the fair market value of the estate is attributable to real property.
  - (3) An affidavit under this section may not be filed until 30 days after the death of the decedent.
  - (4) An affidavit filed under the provisions of this section must contain the information required in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney approved by the Director of Human Services **or the Director of the Oregon Health Authority**, a copy of the document approving the attorney must be attached to the affidavit.
  - (5) In determining fair market value under this section, the fair market value of the entire interest in the property included in the estate shall be used without reduction for liens or other debts.
  - (6) The clerk of the probate court shall charge and collect a fee of \$23 for the filing of any affidavit under this section.
  - (7) Any error or omission in an affidavit filed under this section may be corrected by filing an amended affidavit within four months after the filing of the affidavit.
  - (8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit under this section for the purpose of including property not described in the original affidavit. Copies of all previously filed affidavits must be attached to the supplemental affidavit and all information required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental affidavit may not be filed if by reason of the additional property described in the supplemental affidavit any limitation imposed by subsection (2) of this section is exceeded.

**SECTION 11. If both House Bill 2009 and Senate Bill 151 become law, section 8, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151) (amending ORS 114.535), is repealed and ORS 114.535, as amended by section 80, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

114.535. (1) Any person indebted to the decedent or having possession of personal property belonging to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered by the affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or deliver the personal property to the affiant. Any person who has received property of the decedent under ORS 446.616, 722.262 or 803.094, or any similar statute providing for the transfer of property of an estate which is not being probated shall pay, transfer or deliver the property to the affiant if the person would be required to pay, transfer or deliver the property to a personal representative of the estate. The transferor is discharged and released from any liability or responsibility for the transfer in the same manner and with the same effect as if the property had been transferred, delivered or paid to a personal representative of the estate of the decedent.

(2) A transfer agent of any corporate security registered in the name of the decedent shall change the registered ownership on the books of the corporation to the person entitled thereto on presentation of a certified copy of the affidavit filed under ORS 114.515.

(3) If a person to whom an affidavit is delivered refuses to pay, deliver or transfer any personal property to the affiant or the person entitled to the property as disclosed in the affidavit filed under ORS 114.515, the property may be recovered or its payment, delivery or transfer compelled upon proof of the transferee's entitlement in a proceeding brought for the purpose by or on behalf of the transferee.

*[(4) If the Director of Human Services, the designee of the Director of Human Services, the Director of the Oregon Health Authority or the designee of the Director of the Oregon Health Authority signs the affidavit, the Director of Human Services, the designee of the Director of Human Services, the Director of the Oregon Health Authority or the designee of the Director of the Oregon Health Authority may certify a copy of the affidavit for the purposes described in subsection (1) or (2) of this section.]*

**(4) If the affidavit was signed by the Director of Human Services, the Director of the Oregon Health Authority or an attorney approved under section 6, chapter 262, Oregon Laws 2009 (Enrolled Senate Bill 151), the Director of Human Services, the Director of the Oregon Health Authority or the attorney may certify a copy of the affidavit for the purposes described in subsection (1) or (2) of this section.**

**SECTION 12. The amendments to ORS 113.085, 113.105, 114.515 and 114.535 by sections 7, 8, 10 and 11 of this 2009 Act become operative on January 1, 2010.**

#### **SB 152 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 13. If both House Bill 2009 and Senate Bill 152 become law, section 198, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 279A.050), is repealed and ORS 279A.050, as amended by section 2, chapter 397, Oregon Laws 2009 (Enrolled Senate Bill 152), is amended to read:**

279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting agency shall exercise all procurement authority in accordance with the provisions of the Public Contracting Code.

(b) When a contracting agency has authority under this section to carry out functions described in this section, or has authority to make procurements under a provision of law other than the Public Contracting Code, the contracting agency is not required to exercise that authority in accordance with the provisions of the code if, under ORS 279A.025, the code does not apply to the contract or contracting authority.

(2) Except as otherwise provided in the Public Contracting Code, for state agencies the Director of the Oregon Department of Administrative Services has all the authority to carry out the provisions of the Public Contracting Code.

(3) Except as otherwise provided in the Public Contracting Code, the Director of Transportation has all the authority to:

(a) Procure or supervise the procurement of all services and personal services to construct, acquire, plan, design, maintain and operate passenger terminal facilities and motor vehicle parking facilities in connection with any public transportation system in accordance with ORS 184.689 (5);

(b) Procure or supervise the procurement of all goods, services, public improvements and personal services relating to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation; and

(c) Establish standards for, prescribe forms for and conduct the prequalification of prospective bidders on public improvement contracts related to the operation, maintenance or construction of highways, bridges and other transportation facilities that are subject to the authority of the Department of Transportation.

(4) Except as otherwise provided in the Public Contracting Code, the Secretary of State has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the Secretary of State.

(5) Except as otherwise provided in the Public Contracting Code, the State Treasurer has all the authority to procure or supervise the procurement of goods, services and personal services related to programs under the authority of the State Treasurer.

(6) The state agencies listed in this subsection have all the authority to do the following in accordance with the Public Contracting Code:

(a) The Department of Human Services to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the department's institutions and the procurement

of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing **for the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;**

**(b) The Oregon Health Authority to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for the authority's institutions and the procurement of goods, services and personal services for the construction, demolition, exchange, maintenance, operation and equipping of housing for persons with chronic mental illness, subject to applicable provisions of ORS 426.504;**

*[(A) For persons with chronic mental illness, subject to applicable provisions of ORS 426.504; and]*

*[(B) For the purpose of providing care to individuals with mental retardation or other developmental disabilities, subject to applicable provisions of ORS 427.335;]*

*[(b)] (c) The State Department of Fish and Wildlife to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the State Department of Fish and Wildlife;*

*[(c)] (d) The State Parks and Recreation Department to procure or supervise the procurement of all goods, services, public improvements and personal services relating to state parks;*

*[(d)] (e) The Oregon Department of Aviation to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Department of Aviation;*

*[(e)] (f) The Economic and Community Development Department to procure or supervise the procurement of all goods, services, personal services and public improvements related to its foreign trade offices operating outside the state;*

*[(f)] (g) The Housing and Community Services Department to procure or supervise the procurement of goods, services and personal services as provided in ORS 279A.025 (2)(o);*

*[(g)] (h) The Department of Corrections to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Department of Corrections;*

*[(h)] (i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120, 279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, services and personal services under ORS 179.040 for its institutions;*

*[(i)] (j) The Department of Veterans' Affairs to procure or supervise the procurement of real estate broker and principal real estate broker services related to programs under the department's authority;*

*[(j)] (k) The Oregon Military Department to procure or supervise the procurement of construction materials, equipment, supplies, services and personal services for public improvements, public works or ordinary construction described in ORS 279C.320 that is subject to the authority of the Oregon Military Department;*

*[(k)] (L) The Department of Education, subject to any applicable provisions of ORS 329.075, 329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425), to procure or supervise the procurement of goods, services, personal services and information technology relating to student assessment; and*

*[(L)] (m) Any state agency to conduct a procurement when the agency is specifically authorized by any provision of law other than the Public Contracting Code to enter into a contract.*

(7) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department of Administrative Services has exclusive authority, unless the director delegates this authority, to procure or supervise the procurement of all price agreements on behalf of the state agencies identified in subsection (6)(a) to *[(j)] (k)* of this section under which more than one state agency may

order goods, services or personal services and all state agency information technology contracts. This subsection does not apply to contracts under which the contractor delivers to the state agency information technology products or services incidental to the performance of personal services contracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A state agency identified in subsection (3) or (6)(a) to [(j)] **(k)** of this section may not establish a price agreement or enter into a contract for goods, services or personal services without the approval of the director if the director has established a price agreement for the goods, services or personal services.

#### SB 155 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 14. If both House Bill 2009 and Senate Bill 155 become law, section 383, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 426.020), is repealed and ORS 426.020, as amended by section 1, chapter 59, Oregon Laws 2009 (Enrolled Senate Bill 155), is amended to read:**

426.020. (1) The superintendent of a hospital referred to in ORS 426.010 shall be a person the [Department of Human Services] **Oregon Health Authority** considers qualified to administer the hospital. If the superintendent of any hospital is a physician licensed by the Oregon Medical Board, the superintendent shall serve as chief medical officer.

(2) If the superintendent is not a physician, the Director of [Human Services] **the Oregon Health Authority** or the designee of the director shall designate a physician to serve as chief medical officer. The designated chief medical officer may be an appointed state employee in the unclassified service, a self-employed contractor or an employee of a public or private entity that contracts with the [department] **authority** to provide chief medical officer services. Unless the designated chief medical officer is specifically appointed as a state employee in the unclassified service, the designated chief medical officer shall not be deemed a state employee for purposes of any state statute, rule or policy.

(3)(a) Notwithstanding any other provision of law, the designated chief medical officer may supervise physicians who are employed by the hospital or who provide services at the hospital pursuant to a contract.

(b) The designated chief medical officer may delegate all or part of the authority to supervise other physicians at the hospital to a physician who is employed by the state, a self-employed contractor or an employee of a public or private entity that contracts with the [department] **authority** to provide physician services.

#### SB 157 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 15. If both House Bill 2009 and Senate Bill 157 become law, section 1, chapter 264, Oregon Laws 2009 (Enrolled Senate Bill 157) (amending ORS 181.537), is repealed and ORS 181.537, as amended by section 159, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

181.537. (1) As used in this section:

(a) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities.

(b) "Qualified entity" means a community mental health program, a community developmental disabilities program, a local health department or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

[(2) *The Department of Human Services, the Oregon Health Authority and the Employment Department may require the fingerprints of a person for the purpose of requesting a state or nationwide criminal records check of the person under ORS 181.534:*]

[(a) *For agency employment purposes;*]



**(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Human Services, the Oregon Health Authority and the Employment Department may require the fingerprints of a person:**

**(a) Who is employed by or is applying for employment with either department or the authority;**

**(b) Who provides or seeks to provide services to either department or the authority as a contractor, subcontractor, vendor or volunteer who:**

**(A) May have contact with recipients of care;**

**(B) Has access to personal information about employees of either department or the authority, recipients of care from either department or the authority or members of the public, including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information;**

**(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules or regulations, or information that is defined as confidential under state or federal laws, rules or regulations;**

**(D) Has access to property held in trust or to private property in the temporary custody of the state;**

**(E) Has payroll or fiscal functions or responsibility for:**

**(i) Receiving, receipting or depositing money or negotiable instruments;**

**(ii) Billing, collections, setting up financial accounts or other financial transactions; or**

**(iii) Purchasing or selling property;**

**(F) Provides security, design or construction services for government buildings, grounds or facilities;**

**(G) Has access to critical infrastructure or secure facilities information; or**

**(H) Is providing information technology services and has control over or access to information technology systems;**

*[(b)]* **(c) For the purposes of licensing, certifying, registering or otherwise regulating or administering programs, persons or qualified entities that provide care;**

*[(c)]* **(d) For the purposes of employment decisions by or for qualified entities that are regulated or otherwise subject to oversight by the Department of Human Services or the Oregon Health Authority and that provide care; or**

*[(d)]* **(e) For the purposes of employment decisions made by a mass transit district or transportation district for qualified entities that, under contracts with the district or the Oregon Health Authority, employ persons to operate motor vehicles for the transportation of medical assistance program clients.**

**(3) The Department of Human Services and the Oregon Health Authority may conduct criminal records checks on a person through the Law Enforcement Data System maintained by the Department of State Police, if deemed necessary by the Department of Human Services or the Oregon Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable persons.**

**(4) The Department of Human Services and the Oregon Health Authority may furnish to qualified entities, in accordance with the rules of the Department of Human Services or the Oregon Health Authority and the rules of the Department of State Police, information received from the Law Enforcement Data System. However, any criminal offender records and information furnished to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of Investigation through the Department of State Police may not be disseminated to qualified entities.**

**(5) A qualified entity, using rules adopted by the Department of Human Services or the Oregon Health Authority, shall determine under this section whether a person is fit to hold a position, provide services, be employed or, if the qualified entity has authority to make such a determination, be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS 181.534, any false statements made by the person regarding the criminal history of the person and any refusal to submit or consent to a criminal records check including fingerprint identification. If**

a person is determined to be unfit, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(6) In making the fitness determination under subsection (5) of this section, the qualified entity shall consider:

(a) The nature of the crime;

(b) The facts that support the conviction or pending indictment or indicate the making of the false statement;

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position, services, employment, license, certification or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification or registration. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(7) The Department of Human Services, the Oregon Health Authority and the Employment Department may make fitness determinations based on criminal offender records and information furnished by the Federal Bureau of Investigation through the Department of State Police only as provided in ORS 181.534.

(8) A qualified entity and an employee of a qualified entity acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position, provide services or be employed, licensed, certified or registered. A qualified entity, employee of a qualified entity acting within the course and scope of employment and an employer or employer's agent who in good faith comply with this section and the decision of the qualified entity or employee of the qualified entity acting within the course and scope of employment are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. An employee of the state acting within the course and scope of employment is not liable for defamation or invasion of privacy in connection with the lawful dissemination of information lawfully obtained under this section.

(9) The Department of Human Services and the Oregon Health Authority shall develop systems that maintain information regarding criminal records checks in order to minimize the administrative burden imposed by this section and ORS 181.534. Records maintained under this subsection are confidential and may not be disseminated except for the purposes of this section and in accordance with the rules of the Department of Human Services, the Oregon Health Authority and the Department of State Police. Nothing in this subsection permits the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

(10) In addition to the rules required by ORS 181.534, the Department of Human Services and the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

(a) Specifying which qualified entities are subject to this section;

(b) Specifying which qualified entities may request criminal offender information;

(c) Specifying which qualified entities are responsible for deciding whether a subject individual is not fit for a position, service, license, certification, registration or employment; and

(d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under subsection (5) of this section using the information maintained by the Department of Human Services and the Oregon Health Authority pursuant to subsection (9) of this section.

(11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted, the qualified entity shall deny or terminate the employment of the person, or revoke or deny any applicable position, authority to provide services, employment, license, certification or registration.

(12) If the qualified entity requires a criminal records check of employees or other persons, the application forms of the qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check.

**SECTION 16. The amendments to ORS 181.537 by section 15 of this 2009 Act become operative on January 1, 2010.**

**SB 159 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 17. If both House Bill 2009 and Senate Bill 159 become law, section 625, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 433.004), is repealed and ORS 433.004, as amended by section 2, chapter 268, Oregon Laws 2009 (Enrolled Senate Bill 159), is amended to read:**

433.004. (1) The [Department of Human Services] **Oregon Health Authority** shall by rule:

- (a) Specify reportable diseases;
- (b) Identify those categories of persons who must report reportable diseases and the circumstances under which the reports must be made;
- (c) Prescribe the procedures and forms for making such reports and transmitting the reports to the [department] **authority**; and
- (d) Prescribe measures and methods for investigating the source and controlling reportable diseases.

(2) Persons required under the rules to report reportable diseases shall do so by reporting to the local public health administrator. The local public health administrator shall transmit such reports to the [department] **authority**.

(3) The [department] **authority** or local public health administrator may investigate a case of a reportable disease, disease outbreak or epidemic. The investigation may include, but is not limited to:

- (a) Interviews of:
  - (A) The subject of a reportable disease report;
  - (B) Controls;
  - (C) Health care providers; or
  - (D) Employees of a health care facility.
- (b) Requiring a health care provider, any public or private entity, or an individual who has information necessary for the investigation to:
  - (A) Permit inspection of the information by the [department] **authority** or local public health administrator; and
  - (B) Release the information to the [department] **authority** or local public health administrator.
- (c) Inspection, sampling and testing of real or personal property with consent of the owner or custodian of the property or with an administrative warrant.

(4)(a) The [department] **authority** shall establish by rule the manner in which information may be requested and obtained under subsection (3) of this section.

(b) Information requested may include, but is not limited to, individually identifiable health information related to:

- (A) The case;
- (B) An individual who may be the potential source of exposure or infection;
- (C) An individual who has been or may have been exposed to or affected by the disease;
- (D) Policies, practices, systems or structures that may have affected the likelihood of disease transmission; and
- (E) Factors that may influence an individual's susceptibility to the disease or likelihood of being diagnosed with the disease.

(5) In addition to other grounds for which a state agency may exercise disciplinary action against its licensees or certificate holders, the substantial or repeated failure of a licensee or cer-

tificate holder to report when required to do so under subsection (2) or (3) of this section shall be cause for the exercise of any of the agency's disciplinary powers.

(6) Any person making a report or providing information under this section is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the making of a report or providing information under this section.

**SECTION 18. If both House Bill 2009 and Senate Bill 159 become law, section 627, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 433.008), is repealed and ORS 433.008, as amended by section 3, chapter 268, Oregon Laws 2009 (Enrolled Senate Bill 159), is amended to read:**

433.008. (1)(a) Except as provided in subsection (2) of this section, information obtained by the [Department of Human Services] **Oregon Health Authority** or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak is confidential and is exempt from disclosure under ORS 192.410 to 192.505.

(b) Except as required for the administration or enforcement of public health laws or rules, a state or local public health official or employee may not be examined in an administrative or judicial proceeding about the existence or contents of a reportable disease report or other information received by the [department] **authority** or local public health administrator in the course of an investigation of a reportable disease or disease outbreak.

(2) The [department] **authority** or a local public health administrator may release information obtained during an investigation of a reportable disease or disease outbreak to:

(a) State, local or federal agencies authorized to receive the information under state or federal law;

(b) Health care providers if necessary for the evaluation or treatment of a reportable disease;

(c) Law enforcement officials to the extent necessary to carry out the authority granted to the Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131, 433.138 and 433.142;

(d) A person who may have been exposed to a communicable disease;

(e) A person with information necessary to assist the [department] **authority** or local public health administrator in identifying an individual who may have been exposed to a communicable disease; and

(f) The individual who is the subject of the information or the legal representative of that individual.

(3) The [department] **authority** or local public health administrator may release individually identifiable information under subsection (2)(d) or (e) of this section only if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to other individuals or to the public.

(4) The [department] **authority** or local public health administrator may release only the minimum amount of information necessary to carry out the purpose of the release pursuant to subsection (2) of this section.

(5) A decision not to disclose information under this subsection, if made in good faith, shall not subject the entity or person withholding the information to any liability.

(6) Nothing in this section:

(a) Prevents the [department] **authority** or a local public health administrator from publishing statistical compilations and reports relating to reportable disease investigations if the compilations and reports do not identify individual cases or sources of information;

(b) Affects the confidentiality or admissibility into evidence of information not otherwise confidential or privileged that is obtained from sources other than the [department] **authority**; or

(c) Prevents dispositions of information pursuant to ORS 192.105.

## SB 160 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 19. If both House Bill 2009 and Senate Bill 160 become law, section 633, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 433.045), is repealed and ORS 433.045, as amended by section 1, chapter 30, Oregon Laws 2009 (Enrolled Senate Bill 160), is amended to read:**

433.045. (1) Except as provided in subsection (6) of this section and ORS 433.017, 433.055 (3) and 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining informed consent as described in subsection (2) or (7) of this section.

(2) A physician licensed under ORS chapter 677 shall comply with the requirement of subsection (1) of this section through the procedure in ORS 677.097. Any other licensed health care provider or facility shall comply with the requirement of subsection (1) of this section through a procedure substantially similar to that specified in ORS 677.097. Any other person shall comply with this requirement through use of such forms, procedures and educational materials as the [Department of Human Services] **Oregon Health Authority** shall specify.

(3) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any [Department of Human Services] **authority** rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

(4) Any person who complies with the requirements of this section shall not be subject to an action for civil damages.

(5) An HIV test shall be considered diagnosis of venereal disease for purposes of ORS 109.610.

(6) The [Department of Human Services] **authority** shall prescribe by rule a procedure whereby an individual who is housed in a state institution and is incapable of granting informed consent for an HIV test may be tested.

(7) Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the use of such a test must be revealed to the applicant and the written consent thereof obtained. The consent form shall disclose the purpose of the test and the persons to whom the results may be disclosed.

(8) As used in this section:

(a) "HIV test" means a test of an individual for the presence of human immunodeficiency virus (HIV), or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(b) "Person" includes but is not limited to any health care provider, health care facility, clinical laboratory, blood or sperm bank, insurer, insurance producer, insurance-support organization, as defined in ORS 746.600, government agency, employer, research organization or agent of any of them. For purposes of subsection (3) of this section, "person" does not include an individual acting in a private capacity and not in an employment, occupational or professional capacity.

(c) "State institution" means all campuses of the Oregon State Hospital, the Blue Mountain Recovery Center and the Eastern Oregon Training Center.

## **SB 163 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 20. If both House Bill 2009 and Senate Bill 163 become law, section 4, chapter 72, Oregon Laws 2009 (Enrolled Senate Bill 163) (amending ORS 443.735), is repealed and ORS 443.735, as amended by section 791f, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

443.735. (1) Applications for a license to maintain and operate an adult foster home shall be made on forms provided by the licensing agency. Each application shall be accompanied by a fee of \$20 per bed requested for licensing.

(2) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.

(3) The licensing agency shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the licensing agency;

(b) The licensing agency has completed an inspection of the adult foster home;

(c) The licensing agency has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check shall be conducted in accordance with rules adopted under ORS 181.534;

(d) The licensing agency has [*checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678*] **determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse;** and

(e) The applicant has demonstrated to the licensing agency the financial ability and resources necessary to operate the adult foster home. The licensing agency shall adopt rules as the agency deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the licensing agency with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the agency regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the licensing agency may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The licensing agency may not renew a license under this section unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the licensing agency;

(b) The licensing agency has completed an inspection of the adult foster home;

(c) The licensing agency has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.534; and

(d) The licensing agency has [*checked the record of sanctions available, including the list of nursing assistants who have been found responsible for abuse and whose names have been added to the registry under ORS 441.678*] **determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.**

(5)(a) In seeking an initial license and renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the licensing agency.

(b) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the licensing agency to establish noncompliance with ORS 443.705 to 443.825 and the rules of the agency.

(6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of the licensing agency, are substantially related to the qualifications, functions or duties of a provider, [*resident manager,*] substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in or residing in an adult foster home.

(b) The licensing agency shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

(c) A provider may not hire, retain in employment or allow to live in an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse.

(7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the names of all providers who own the adult foster home, the address of the premises to which the license applies, the maximum number of residents and the classification of the **adult foster** home. If, during the period covered by the license, a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of \$10.

(8) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(9) The licensing agency shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed [*home or*] **adult foster** homes and has demonstrated the ability to provide [*care*] to the residents of those **adult foster** homes **care** that is adequate and substantially free from abuse and neglect.

(10) All moneys collected under ORS 443.725 to 443.780 shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the licensing agency.

(11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the licensing agency may issue a 60-day provisional license to a qualified person if the agency determines that an emergency situation exists after being notified that the licensed provider of an adult foster home is no longer overseeing operation of the adult foster home.

**SECTION 21. The amendments to ORS 443.735 by section 20 of this 2009 Act become operative on January 1, 2010.**

#### **SB 165 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 22. If both House Bill 2009 and Senate Bill 165 become law, section 1, chapter 45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 430.640), is repealed and ORS 430.640, as amended by section 511, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

430.640. (1) The Oregon Health Authority, in carrying out the legislative policy declared in ORS 430.610, subject to the availability of funds, shall:

(a) Assist Oregon counties and groups of Oregon counties in the establishment and financing of community mental health programs operated or contracted for by one or more counties.

(b) If a county declines to operate or contract for a community mental health program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

(c) In an emergency situation when no community mental health program is operating within a county or when a county is unable to provide a service essential to public health and safety, operate the program or service on a temporary basis.

(d) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community mental health program in the same manner in which the authority contracts with a county court or board of county commissioners.

(e) If a county agrees, contract with a public agency or private corporation for all services within one or more of the following program areas:

(A) Mental or emotional disturbances.

(B) Drug abuse.

(C) Alcohol abuse and alcoholism.

(f) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community mental health program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds pro-

vided for services under ORS 430.630 may not be placed in effect without prior approval of the authority. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.630 within the portion of the program for persons with mental or emotional disturbances or within the portion for persons with alcohol or drug dependence may be made without authority approval.

(g) Make all necessary and proper rules to govern the establishment and operation of community mental health programs, including adopting rules defining the range and nature of the services which shall or may be provided under ORS 430.630.

(h) Collect data and evaluate services in the state hospitals in accordance with the same methods prescribed for community mental health programs under ORS 430.665.

(i) Develop guidelines that include, for the development of comprehensive local plans in consultation with local mental health authorities:

(A) The use of integrated services;

(B) The outcomes expected from services and programs provided;

(C) Incentives to reduce the use of state hospitals;

(D) Mechanisms for local sharing of risk for state hospitalization;

(E) The provision of clinically appropriate levels of care based on an assessment of the mental health needs of consumers;

(F) The transition of consumers between levels of care; and

(G) The development, maintenance and continuation of older adult mental health programs with mental health professionals trained in geriatrics.

(j) Work with local mental health authorities to provide incentives for community-based care whenever appropriate while simultaneously ensuring adequate statewide capacity.

(k) Provide technical assistance and information regarding state and federal requirements to local mental health authorities throughout the local planning process required under ORS 430.630 (11).

(L) Provide incentives for local mental health authorities to enhance or increase vocational placements for adults with mental health needs.

(m) Develop or adopt nationally recognized system-level performance measures, linked to the Oregon Benchmarks, for state-level monitoring and reporting of mental health services for children, adults and older adults, including but not limited to quality and appropriateness of services, outcomes from services, structure and management of local plans, prevention of mental health disorders and integration of mental health services with other needed supports.

(n) Develop standardized criteria for each level of care described in ORS 430.630 (11), including protocols for implementation of local plans, strength-based mental health assessment and case planning.

(o) Develop a comprehensive long-term plan for providing appropriate and adequate mental health treatment and services to children, adults and older adults that is derived from the needs identified in local plans, is consistent with the vision, values and guiding principles in the Report to the Governor from the Mental Health Alignment Workgroup, January 2001, and addresses the need for and the role of state hospitals.

(p) Report biennially to the Governor and the Legislative Assembly on the progress of the local planning process and the implementation of the local plans adopted under ORS 430.630 (11)(b) and the state planning process described in paragraph (o) of this subsection, and on the performance measures and performance data available under paragraph (m) of this subsection.

(q) On a periodic basis, not to exceed 10 years, reevaluate the methodology used to estimate prevalence and demand for mental health services using the most current nationally recognized models and data.

(r) Encourage the development of regional local mental health authorities comprised of two or more boards of county commissioners that establish or operate a community mental health program.

(2) The Oregon Health Authority may provide technical assistance and other incentives to assist in the planning, development and implementation of regional local mental health authorities when-



ever the Oregon Health Authority determines that a regional approach will optimize the comprehensive local plan described under ORS 430.630 (11).

(3) The Department of Human Services in carrying out the legislative policy declared in ORS 430.610, subject to the availability of funds, shall:

(a) Assist Oregon counties and groups of Oregon counties in the establishment and financing of community developmental disabilities programs operated or contracted for by one or more counties.

(b) If a county declines to operate or contract for a community developmental disabilities program, contract with another public agency or private corporation to provide the program. The county must be provided with an opportunity to review and comment.

(c) In an emergency situation when no community developmental disabilities program is operating within a county, operate the program or service on a temporary basis.

(d) At the request of the tribal council of a federally recognized tribe of Native Americans, contract with the tribal council for the establishment and operation of a community developmental disabilities program in the same manner in which the department contracts with a county court or board of county commissioners.

(e) If a county agrees, contract with a public agency or private corporation for all developmental disabilities services.

**(f) Operate a program or contract with another entity to operate a program to provide mental retardation and other developmental disabilities services required by ORS 430.630 if a local mental health authority, as defined in ORS 430.630, declines to provide or contract for the provision of mental retardation and other developmental disabilities services.**

[(f)] (g) Approve or disapprove the biennial plan and budget information for the establishment and operation of each community developmental disabilities program. Subsequent amendments to or modifications of an approved plan or budget information involving more than 10 percent of the state funds provided for services under ORS 430.630 may not be placed in effect without prior approval of the department. However, an amendment or modification affecting 10 percent or less of state funds for services under ORS 430.630 within the portion of the program for persons with developmental disabilities may be made without department approval.

[(g)] (h) Make all necessary and proper rules to govern the establishment and operation of community developmental disabilities programs.

(4) The enumeration of duties and functions in subsections (1) and (2) of this section shall not be deemed exclusive nor construed as a limitation on the powers and authority vested in the department or the authority by other provisions of law.

**SECTION 23. If both House Bill 2009 and Senate Bill 165 become law, section 2, chapter 45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 426.005), is repealed and ORS 426.005, as amended by section 381, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

(a) "Authority" means the Oregon Health Authority.

**(b) "Community mental health program director" means the director of an entity that provides the services described in ORS 430.630 (3), (4) and (6).**

[(b)] (c) "Director of the facility" means a superintendent of a state mental hospital, the chief of psychiatric services in a community hospital or the person in charge of treatment and rehabilitation programs at other treatment facilities.

[(c)] (d) "Facility" means a state mental hospital, community hospital, residential facility, detoxification center, day treatment facility or such other facility as the authority determines suitable, any of which may provide diagnosis and evaluation, medical care, detoxification, social services or rehabilitation for committed mentally ill persons.

[(d)] (e) "Mentally ill person" means a person who, because of a mental disorder, is one or more of the following:

(A) Dangerous to self or others.

(B) Unable to provide for basic personal needs and is not receiving such care as is necessary for health or safety.

(C) A person:

(i) With a chronic mental illness, as defined in ORS 426.495;

(ii) Who, within the previous three years, has twice been placed in a hospital or approved inpatient facility by the authority under ORS 426.060;

(iii) Who is exhibiting symptoms or behavior substantially similar to those that preceded and led to one or more of the hospitalizations or inpatient placements referred to in sub-subparagraph (ii) of this subparagraph; and

(iv) Who, unless treated, will continue, to a reasonable medical probability, to physically or mentally deteriorate so that the person will become a person described under either subparagraph (A) or (B) of this paragraph or both.

[(e)] (f) “Nonhospital facility” means any facility, other than a hospital, that is approved by the authority to provide adequate security, psychiatric, nursing and other services to persons under ORS 426.232 or 426.233.

[(f)] (g) “Prehearing period of detention” means a period of time calculated from the initiation of custody during which a person may be detained under ORS 426.228, 426.231, 426.232 or 426.233.

(2) Whenever a community mental health **program** director, director of the facility, superintendent of a state hospital or administrator of a facility is referred to, the reference includes any designee such person has designated to act on the person’s behalf in the exercise of duties.

**SECTION 24. If both House Bill 2009 and Senate Bill 165 become law, section 3, chapter 45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 427.005), is repealed and ORS 427.005 is amended to read:**

427.005. As used in this chapter:

(1) “Adaptive behavior” means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for age and cultural group.

(2) “Care” means:

(a) Supportive services, including, but not limited to, provision of room and board;

(b) Supervision;

(c) Protection; and

(d) Assistance in bathing, dressing, grooming, eating, management of money, transportation or recreation.

[(3)] *“Department” means the Department of Human Services.*

**(3) “Community developmental disabilities program director” means the director of an entity that provides services described in ORS 430.630 to persons with mental retardation or other developmental disabilities.**

(4) “Developmental period” means the period of time between birth and the 18th birthday.

(5) “Director of the facility” means the superintendent of a state training center, or the person in charge of care, treatment and training programs at other facilities.

(6) “Facility” means a state training center, community hospital, group home, activity center, intermediate care facility, community mental health clinic, or such other facility or program as the Department of **Human Services** approves to provide necessary services to persons with mental retardation.

(7) “Incapacitated” means a person is unable, without assistance, to properly manage or take care of personal affairs or is incapable, without assistance, of self-care.

(8) “Independence” means the extent to which persons with mental retardation or developmental disabilities exert control and choice over their own lives.

(9) “Integration” means:

(a) Use by persons with mental retardation or developmental disabilities of the same community resources that are used by and available to other persons;

(b) Participation by persons with mental retardation or developmental disabilities in the same community activities in which persons without disabilities participate, together with regular contact with persons without disabilities; and

(c) Residence by persons with developmental disabilities in homes or in home-like settings that are in proximity to community resources, together with regular contact with persons without disabilities in their community.

(10) "Intellectual functioning" means functioning as assessed by one or more of the individually administered general intelligence tests developed for the purpose.

(11) "Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period. Persons of borderline intelligence may be considered to have mental retardation if there is also serious impairment of adaptive behavior. Definitions and classifications shall be consistent with the "Manual on Terminology and Classification in Mental Retardation" of the American Association on Mental Deficiency[, 1977 Revision]. Mental retardation is synonymous with mental deficiency.

(12) "Minor" means an unmarried person under 18 years of age.

(13) "Physician" means a person licensed by the Oregon Medical Board to practice medicine and surgery.

(14) "Productivity" means engagement in income-producing work by a person with mental retardation or a developmental disability which is measured through improvements in income level, employment status or job advancement or engagement by a person with mental retardation or a developmental disability in work contributing to a household or community.

(15) "Resident" means a person admitted to a state training center either voluntarily or after commitment to the department.

(16) "Significantly subaverage" means a score on a test of intellectual functioning that is two or more standard deviations below the mean for the test.

(17) "State training center" means Eastern Oregon Training Center and any other facility operated by the department for the care, treatment and training of persons with mental retardation.

(18) "Training" means:

(a) The systematic, planned maintenance, development or enhancement of self-care, social or independent living skills; or

(b) The planned sequence of systematic interactions, activities, structured learning situations or education designed to meet each resident's specified needs in the areas of physical, emotional, intellectual and social growth.

(19) "Treatment" means the provision of specific physical, mental, social interventions and therapies which halt, control or reverse processes that cause, aggravate or complicate malfunctions or dysfunctions.

**SECTION 25. If both House Bill 2009 and Senate Bill 165 become law, section 4, chapter 45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 430.672), is repealed and ORS 430.672, as amended by section 514, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

430.672. (1) Except for community mental health programs or community developmental disabilities programs operated by the county, a county may impose only standards, requirements and conditions for mental health or developmental disabilities programs that are substantially similar to the standards, requirements and conditions established for such programs by the Department of Human Services or the Oregon Health Authority.

(2) When a county contracts with a public agency or private corporation for a community mental health program or community developmental disabilities program, the county shall include in the contract only terms that are substantially similar to model contract terms developed by the department under ORS 430.640 [(3)(g)] (3)(h) or the authority under ORS 430.640 (1)(g). The county may not add contractual requirements, including qualifications for contractor selection, that are nonessential to the services provided under ORS 430.630. The county may add contract requirements

that the county considers necessary to ensure the siting and maintenance of facilities of the community mental health program or community developmental disabilities program.

(3) The provisions of subsections (1) and (2) of this section apply only insofar as funds are provided by the department to the county for community developmental disabilities programs or by the authority to the county for community mental health programs.

**SECTION 26.** If both House Bill 2009 and Senate Bill 165 become law, ORS 426.070, as amended by section 385, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

426.070. (1) Any of the following may initiate commitment procedures under this section by giving the notice described under subsection (2) of this section:

- (a) Two persons;
- (b) The county health officer; or
- (c) Any magistrate.

(2) For purposes of subsection (1) of this section, the notice must comply with the following:

- (a) It must be in writing under oath;
- (b) It must be given to the community mental health program director or a designee of the director in the county where the allegedly mentally ill person resides;
- (c) It must state that a person within the county other than the person giving the notice is a mentally ill person and is in need of treatment, care or custody;
- (d) If the commitment proceeding is initiated by two persons under subsection (1)(a) of this section, it may include a request that the court notify the two persons:
  - (A) Of the issuance or nonissuance of a warrant under this section; or
  - (B) Of the court's determination under ORS 426.130 (1); and
- (e) If the notice contains a request under paragraph (d) of this subsection, it must also include the addresses of the two persons making the request.

(3) Upon receipt of a notice under subsections (1) and (2) of this section or when notified by a circuit court that the court received notice under ORS 426.234, the community mental health program director, or designee of the director, shall:

(a) Immediately notify the judge of the court having jurisdiction for that county under ORS 426.060 of the notification described in subsections (1) and (2) of this section.

(b) Immediately notify the Oregon Health Authority if commitment is proposed because the person appears to be a mentally ill person, as defined in ORS 426.005 [(1)(d)(C)] (1)(e)(C). When such notice is received, the authority may verify, to the extent known by the authority, whether or not the person meets the criteria described in ORS 426.005 [(1)(d)(C)(i)] (1)(e)(C)(i) and (ii) and so inform the community mental health program director or designee of the director.

(c) Initiate an investigation under ORS 426.074 to determine whether there is probable cause to believe that the person is in fact a mentally ill person.

(4) Upon completion, a recommendation based upon the investigation report under ORS 426.074 shall be promptly submitted to the court. If the community mental health program director determines that probable cause does not exist to believe that a person released from detention under ORS 426.234 (2)(c) or (3)(b) is a mentally ill person, the community mental health program director shall not submit a recommendation to the court.

(5) When the court receives notice under subsection (3) of this section:

(a) If the court, following the investigation, concludes that there is probable cause to believe that the person investigated is a mentally ill person, it shall, through the issuance of a citation as provided in ORS 426.090, cause the person to be brought before it at a time and place as it may direct, for a hearing under ORS 426.095 to determine whether the person is mentally ill. The person shall be given the opportunity to appear voluntarily at the hearing unless the person fails to appear or unless the person is detained pursuant to paragraph (b) of this subsection.

(b)(A) The judge may cause the allegedly mentally ill person to be taken into custody pending the investigation or hearing by issuing a warrant of detention under this subsection. A judge may only issue a warrant under this subsection if the court finds that there is probable cause to believe

that failure to take the person into custody would pose serious harm or danger to the person or to others.

(B) To cause the custody of a person under this paragraph, the judge must issue a warrant of detention to the community mental health program director or designee, the sheriff of the county or designee, directing that person to take the allegedly mentally ill person into custody and produce the person at the time and place stated in the warrant.

(C) At the time the person is taken into custody, the person shall be informed by the community mental health program director, the sheriff or a designee of the following:

(i) The person's rights with regard to representation by or appointment of counsel as described in ORS 426.100;

(ii) The warning under ORS 426.123; and

(iii) The person's right, if the community mental health program director, sheriff or designee reasonably suspects that the person is a foreign national, to communicate with an official from the consulate of the person's country. A community mental health program director, sheriff or designee is not civilly or criminally liable for failure to provide the information required by this sub-subparagraph. Failure to provide the information required by this sub-subparagraph does not in itself constitute grounds for the exclusion of evidence that would otherwise be admissible in a proceeding.

(D) The court may make any orders for the care and custody of the person prior to the hearing as it considers necessary.

(c) If the notice includes a request under subsection (2)(d)(A) of this section, the court shall notify the two persons of the issuance or nonissuance of a warrant under this subsection.

**SECTION 27.** If both House Bill 2009 and Senate Bill 165 become law, ORS 426.074, as amended by section 387, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

426.074. The following is applicable to an investigation initiated by a community mental health program director, or a designee of the director, as part of commitment procedures under ORS 426.070 and 426.228 to 426.235:

(1) If the allegedly mentally ill person is held in custody before the hearing the investigation shall be completed at least 24 hours before the hearing under ORS 426.095, otherwise the investigation shall comply with the following time schedule:

(a) If the allegedly mentally ill person can be located, the investigator shall contact the person within three judicial days from the date the community mental health program director or a designee receives a notice under ORS 426.070 alleging that the person is mentally ill.

(b) Within 15 days from the date the community mental health program director or a designee receives a notice under ORS 426.070 alleging that a person is mentally ill, one of the following shall occur:

(A) The investigation shall be completed and submitted to the court.

(B) An application for extension shall be made to the court under paragraph (c) of this subsection.

(c) The community mental health program director, a designee or the investigator may file for an extension of the time under paragraph (b) of this subsection only if one of the following occurs:

(A) A treatment option less restrictive than involuntary in-patient commitment is actively being pursued.

(B) The allegedly mentally ill person cannot be located.

(d) A court may grant an extension under paragraph (c) of this subsection for a time and upon the terms and conditions the court considers appropriate.

(2) This subsection establishes a nonexclusive list of provisions applicable to the content of the investigation, as follows:

(a) The investigation conducted should, where appropriate, include an interview or examination of the allegedly mentally ill person in the home of the person or other place familiar to the person.

(b) Whether or not the allegedly mentally ill person consents, the investigation should include interviews with any persons that the investigator has probable cause to believe have pertinent in-

formation regarding the investigation. If the allegedly mentally ill person objects to the contact with any person, the objection shall be noted in the investigator's report.

(c) The investigator shall be allowed access to physicians, nurses or social workers and to medical records compiled during the current involuntary prehearing period of detention to determine probable cause and to develop alternatives to commitment. If commitment is proposed because the person appears to be a mentally ill person as defined in ORS 426.005 [(1)(d)(C)] (1)(e)(C), the investigator shall be allowed access to medical records necessary to verify the existence of criteria described in ORS 426.005 [(1)(d)(C)] (1)(e)(C). The investigator shall include pertinent parts of the medical record in the investigation report. Records and communications described in this paragraph and communications related thereto are not privileged under ORS 40.230, 40.235, 40.240 or 40.250.

(3) A copy of the investigation report shall be provided as soon as possible, but in no event later than 24 hours prior to the hearing, to the allegedly mentally ill person and to that person's counsel. Copies shall likewise be provided to counsel assisting the court, to the examiners and to the court for use in questioning witnesses.

**SECTION 28. The amendments to ORS 426.005, 426.070, 426.074, 427.005, 430.640 and 430.672 by sections 22 to 27 of this 2009 Act become operative on January 1, 2010.**

### SB 166 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 29.** If both House Bill 2009 and Senate Bill 166 become law, section 1, chapter 269, Oregon Laws 2009 (Enrolled Senate Bill 166), is amended to read:

**Sec. 1.** (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to 421.630, the Department of Corrections may lease all or part of the real property and any improvements to the real property known as the Milliron Road Site south of Junction City, Lane County, to the [Department of Human Services] **Oregon Health Authority** for a period of years agreed upon by the department [of Corrections] and the [Department of Human Services] **authority**.

(2) The [Department of Human Services] **authority** may build, own and operate, on the real property leased from the department [of Corrections] under subsection (1) of this section, a hospital to provide diagnosis and evaluation, medical care, detoxification, social services, rehabilitation or other services for individuals committed to the [Department of Human Services] **authority** under ORS 426.130 and individuals committed to a state hospital under ORS 161.327 or 161.370.

(3) The department [of Corrections] and the [Department of Human Services] **authority** are authorized to negotiate and enter into a written agreement transferring ownership of the hospital described in subsection (2) of this section from the [Department of Human Services] **authority** to the department [of Corrections], under terms and conditions acceptable to the agencies.

### SB 287 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 30.** If both House Bill 2009 and Senate Bill 287 become law, section 1, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287), is amended to read:

**Sec. 1.** (1) As used in this section:

(a) "Facility" means:

- (A) A residential training facility as defined in ORS 443.400;
- (B) A residential training home as defined in ORS 443.400;
- (C) A residential treatment facility as defined in ORS 443.400;
- (D) A residential treatment home as defined in ORS 443.400; or
- (E) An adult foster home as defined in ORS 443.705.

(b) "Provider" means a person licensed or a person applying for a license to operate a facility.

(2) The Department of Human Services **or the Oregon Health Authority** may deny, suspend, revoke or refuse to renew a license of a provider if the department **or authority** finds that the provider operates a separate facility that is not or has not been in substantial compliance with rules adopted under ORS 443.400 to 443.455 or 443.705 to 443.825.

**SECTION 31.** If both House Bill 2009 and Senate Bill 287 become law, section 2, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287) (amending ORS 443.415), is repealed and ORS 443.415, as amended by section 780, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

443.415. (1) Applications for licensure to maintain and operate a residential facility shall be made to the Department of Human Services or the Oregon Health Authority on forms provided for that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee of \$60 for facilities defined in ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes defined in ORS 443.400 (8) and (10). No fee is required of any governmentally operated residential facility.

(2) Upon receipt of an application and fee, the licensing agency shall conduct an investigation. The licensing agency shall issue a license to any applicant for operation of a residential facility in compliance with ORS 443.400 to 443.455 and section 1, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287), and the rules of the licensing agency. Licensure may be denied when a residential facility is not in compliance with ORS 443.400 to 443.455 or section 1, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287), or the rules of the licensing agency. Licensure shall be denied if the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

**SECTION 32.** If both House Bill 2009 and Senate Bill 287 become law, section 3, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287) (amending ORS 443.440), is repealed and ORS 443.440, as amended by section 786, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

443.440. The Department of Human Services or the Oregon Health Authority may revoke or suspend the license of any residential facility that is not operated in accordance with ORS 443.400 to 443.455 or section 1, chapter 418, Oregon Laws 2009 (Enrolled Senate Bill 287), or the rules [adopted thereunder] of the licensing agency. Such revocation or suspension shall be taken in accordance with rules of the licensing agency and ORS chapter 183. However, in cases where an imminent danger to the health or safety of the residents exists, a license may be suspended immediately pending a fair hearing not later than the 10th day after such suspension.

**SECTION 33.** The amendments to ORS 443.415 and 443.440 by sections 31 and 32 of this 2009 Act become operative on January 1, 2010.

#### SB 596 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 34.** If both House Bill 2009 and Senate Bill 596 become law, section 5, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 596), is amended to read:

**Sec. 5.** The Director of [Human Services] the Oregon Health Authority may adopt rules before the operative date specified in section 4, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 596) [of this 2009 Act] or take any action before that date that is necessary to carry out the amendments to ORS 453.005, 453.025 and 453.085 by sections 1 to 3, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 596) [of this 2009 Act].

#### SB 876 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 35.** If both House Bill 2009 and Senate Bill 876 become law, section 296, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 414.325), is repealed and ORS 414.325, as amended by section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), is amended to read:

414.325. (1) As used in this section, "legend drug" means any drug requiring a prescription by a practitioner, as defined in ORS 689.005.

(2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in the exercise of professional judgment considers appropriate for the diagnosis or treatment of the patient in the practitioner's care and within the scope of practice. Prescriptions shall be dispensed

in the generic form pursuant to ORS 689.515 and pursuant to rules of the [Department of Human Services] **Oregon Health Authority** unless the practitioner prescribes otherwise and an exception is granted by the [department] **authority**.

(3) Except as provided in subsections (4) and (5) of this section, the [department] **authority** shall place no limit on the type of legend drug that may be prescribed by a practitioner, but the [department] **authority** shall pay only for drugs in the generic form unless an exception has been granted by the [department] **authority**.

(4) Notwithstanding subsection (3) of this section, an exception must be applied for and granted before the [department] **authority** is required to pay for minor tranquilizers and amphetamines and amphetamine derivatives, as defined by rule of the [department] **authority**.

(5)(a) Notwithstanding subsections (1) to (4) of this section and except as provided in paragraph (b) of this subsection, the [department] **authority** is authorized to:

(A) Withhold payment for a legend drug when federal financial participation is not available; and

(B) Require prior authorization of payment for drugs that the [department] **authority** has determined should be limited to those conditions generally recognized as appropriate by the medical profession.

(b) The [department] **authority** may not require prior authorization for therapeutic classes of non-sedating antihistamines and nasal inhalers, as defined by rule by the [department] **authority**, when prescribed by an allergist for treatment of any of the following conditions, as described by the Health Services Commission on the funded portion of its prioritized list of services:

- (A) Asthma;
- (B) Sinusitis;
- (C) Rhinitis; or
- (D) Allergies.

(6)(a) The [department] **authority** shall pay a rural health clinic for a legend drug prescribed and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent medical condition if:

(A) There is not a pharmacy within 15 miles of the clinic;

(B) The prescription is dispensed for a patient outside of the normal business hours of any pharmacy within 15 miles of the clinic; or

(C) No pharmacy within 15 miles of the clinic dispenses legend drugs under this chapter.

(b) As used in this subsection, “urgent medical condition” means a medical condition that arises suddenly, is not life-threatening and requires prompt treatment to avoid the development of more serious medical problems.

(7) Notwithstanding ORS 414.334, the [department] **authority** may conduct prospective drug utilization review prior to payment for drugs for a patient whose prescription drug use exceeded 15 drugs in the preceding six-month period.

(8) Notwithstanding subsection (3) of this section, the [department] **authority** may pay a pharmacy for a particular brand name drug rather than the generic version of the drug after notifying the pharmacy that the cost of the particular brand name drug, after receiving discounted prices and rebates, is equal to or less than the cost of the generic version of the drug.

(9)(a) Within 180 days after the United States patent expires on an immunosuppressant drug used in connection with an organ transplant, the [department] **authority** shall determine whether the drug is a narrow therapeutic index drug.

(b) As used in this subsection, “narrow therapeutic index drug” means a drug that has a narrow range in blood concentrations between efficacy and toxicity and requires therapeutic drug concentration or pharmacodynamic monitoring.

**SECTION 36.** If both House Bill 2009 and Senate Bill 876 become law, section 2, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), is amended to read:

**Sec. 2.** Notwithstanding ORS 414.325 (9)(a), if the United States patent on an immunosuppressant drug used in connection with an organ transplant expired on or after July 1,



2007, and before the effective date of [*this 2009 Act, the Department of Human Services*] **chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 876), the Oregon Health Authority** shall determine whether the drug is a narrow therapeutic index drug as defined in ORS 414.325 (9)(b) before January 1, 2010.

#### HB 2009 CORRECTION

**SECTION 37. Section 685, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 433.850), is repealed.**

#### HB 2052 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 38. If both House Bill 2009 and House Bill 2052 become law, section 1, chapter 121, Oregon Laws 2009 (Enrolled House Bill 2052) (amending ORS 169.690), is repealed and ORS 169.690, as amended by section 117, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

169.690. (1)(a) Before the Department of Corrections, Department of Human Services, Oregon Health Authority, Oregon Youth Authority or any city, county or other public agency establishes a facility described in paragraph [(c)] (b) of this subsection, the city, county, department, authority or agency **shall fully inform the local public safety coordinating council convened under ORS 423.560 of the following:**

(A) **The proposed location, estimated population size and use of the facility;**  
(B) **The proposed number and qualifications of resident professional staff at the facility;**  
(C) **The proposed rules of conduct for residents of the facility; and**  
(D) **Other relevant information that the city, county, department, authority or agency responsible for establishing the facility considers appropriate or that the council requests. Nothing in this subparagraph authorizes the disclosure of information that is protected under state or federal law. [*must designate a citizens advisory committee in the proposed affected geographic area.*]**

[(b) *If there is an established citizens group or neighborhood organization in the affected geographic area which is established or recognized by the city or county where it is located, it shall be asked to nominate the committee. If there is none, the local government body having jurisdiction over the affected area shall appoint a committee selected from residents of the area.*]

[(c)] (b) The facilities to which paragraph (a) of this subsection applies are:

(A) Halfway houses, work release centers or any other domiciliary facilities for persons released from any penal or correctional facility but still in the custody of the city, county or public agency; *[and]*

(B) Youth care centers or other facilities authorized to accept youth offenders under ORS 419C.478[.]; **and**

(C) **Residential treatment homes and residential treatment facilities, as those terms are defined in ORS 443.400, for persons who, as a condition of release under ORS 161.315 to 161.351, are required to live in a secure home or facility.**

[(2) *The local governmental body having jurisdiction over the affected geographic area shall appoint to the citizens advisory committee persons from those nominated under subsection (1) of this section and shall invite the participation of officers of local governments having jurisdiction over the area.*]

[(3) *For each proposed house, center or other facility, the agency responsible for establishing the house, center or facility shall inform fully the citizens advisory committee of each affected geographic area of the following:*]

[(a) *The proposed location, estimated population size and use;*]

[(b) *The numbers and qualifications of resident professional staff;*]

[(c) *The proposed rules of conduct and discipline to be imposed on residents; and*]

*[(d) Such other relevant information as the agency responsible for establishing the house, center or facility considers appropriate or which the advisory committee requests.]*

**[(4)] (2) The [citizens advisory committee] facility advisory subcommittee of the local public safety coordinating council shall advise the city, county, department, authority or agency responsible for establishing the [house, center or] facility as to the suitability of the proposed [house, center or other] facility and may suggest changes in the proposal submitted under subsection [(3)] (1) of this section. The advice shall: [be in writing and must represent the view of the majority of the committee.]**

**(a) Be in writing;**

**(b) Represent the view of the majority of the subcommittee; and**

**(c) Be provided to the city, county, department, authority or agency no more than 60 days after receiving the information described in subsection (1) of this section.**

**[(5)] (3) If the city, county, department, authority or agency responsible for establishing the [house, center or] facility rejects any of the advice of the [citizens advisory committee] facility advisory subcommittee, it must submit its reasons in writing to the [committee] subcommittee.**

*[(6) No person serving on a committee established under this section should be entitled to receive any compensation or reimbursement for service on such committee.]*

**(4) This section does not apply if a board of county commissioners has failed to convene a local public safety coordinating council.**

**(5) As used in this section:**

**(a) “Establishes” includes entering into a contract to provide for the operation of a facility described in subsection (1)(b) of this section.**

**(b) “Secure home or facility” has the meaning given that term in rules adopted by the Oregon Health Authority.**

**SECTION 39.** If both House Bill 2009 and House Bill 2052 become law, section 3, chapter 121, Oregon Laws 2009 (Enrolled House Bill 2052), is amended to read:

**Sec. 3.** The amendments to ORS 169.690 and 423.565 by *[sections 1 and 2 of this 2009 Act]* **section 38 of this 2009 Act and section 2, chapter 121, Oregon Laws 2009 (Enrolled House Bill 2052)**, apply to facilities established on or after the effective date of *[this 2009 Act]* **chapter 121, Oregon Laws 2009 (Enrolled House Bill 2052)**.

**SECTION 40.** The amendments to ORS 169.690 by section 38 of this 2009 Act become operative on January 1, 2010.

## HB 2058 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 41.** If both House Bill 2009 and House Bill 2058 become law, section 1091, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 685.160), is repealed.

**SECTION 42.** If both House Bill 2009 and House Bill 2058 become law, section 1092, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 688.545), is repealed and ORS 688.545, as amended by section 27, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2058), is amended to read:

688.545. (1) There is created a Board of Radiologic Technology. The board consists of nine members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. Each member of the board must be a resident of this state. Of the members of the board:

(a) One must be a radiologist;

(b) One must be a limited permit holder;

(c) Five must be licensed practicing radiologic technologists, one of whom must be a radiation therapist; and

(d) Two must be members of the public. A public member appointed under this paragraph may not be:

(A) Otherwise eligible for appointment to the board; or

(B) The spouse, domestic partner, child, parent or sibling of a radiologist, limited permit holder or radiologic technologist.

(2)(a) Board members required to be limited permit holders or licensed practicing radiologic technologists may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by:

(A) A professional organization representing limited permit holders, if the vacancy is in a limited permit holder position;

(B) A professional organization representing radiation therapists, if the vacancy is in the radiation therapist position; or

(C) A professional organization representing radiologic technologists, if the vacancy is in a radiologic technologist or radiation therapist position.

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(3) The section manager of the Radiation Protection Services Section of the [*Department of Human Services*] **Oregon Health Authority**, or a person appointed by the section manager, shall be an advisory member of the board for the purpose of providing counsel and is not entitled to vote.

(4)(a) The term of office of the members of the board is three years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than three terms end each year. A member is eligible for reappointment.

(b) A board member shall be removed immediately from the board if, during the member's term, the member:

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused;

(C) Is not a limited permit holder or a retired limited permit holder who was a limited permit holder in good standing at the time of retirement, if the board member was appointed to serve on the board as a limited permit holder;

(D) Is not a licensed practicing radiologic technologist or a retired radiologic technologist who was a licensed radiologic technologist in good standing at the time of retirement, if the board member was appointed to serve on the board as a radiologic technologist; or

(E) Is not a licensed practicing radiation therapist or a retired radiation therapist who was a licensed radiation therapist in good standing at the time of retirement, if the board member was appointed to serve on the board as a radiation therapist.

(5) Members of the board are entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

(6) The board shall annually elect a board chairperson and a vice chairperson from the members of the board.

(7) For the purpose of transacting its business, the board shall meet at least once every three months at times and places designated by resolution. Special meetings may also be held at such times as the board may elect or at the call of the chairperson. Notification of the time, place and purpose of any special meeting shall be sent to all members of the board at least 15 days before the date of the meeting. All meetings are subject to ORS 192.610 to 192.690.

(8) Five members of the board constitute a quorum for the transaction of business at any meeting. Five affirmative votes are required to take action.

**SECTION 43.** If both House Bill 2009 and House Bill 2058 become law, ORS 691.405, as amended by section 1108, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read: 691.405. As used in ORS 691.405 to 691.585:

(1) "American Dietetic Association" means the national professional organization of dietitians that provides direction and leadership for quality dietetic practice, education and research.

[(2)] *“Authority” means the Oregon Health Authority.*]

[(3)] (2) “Board” means the Board of Examiners of Licensed Dietitians established under ORS 691.485.

[(4)] (3) “Commission on Dietetic Registration” means the commission on dietetic registration that is a member of the National Commission for Certifying Agencies.

[(5)] (4) “Dietetics practice” means the integration and application of principles derived from the sciences of nutrition, biochemistry, food, management, physiology and behavioral and social sciences to achieve and maintain the health of people through:

(a) Assessing the nutritional needs of clients;

(b) Establishing priorities, goals and objectives that meet nutritional needs of clients;

(c) Advising and assisting individuals or groups on appropriate nutritional intake by integrating information from a nutritional assessment with information on food and other sources of nutrients and meal preparation; and

(d) Evaluating, making changes in and maintaining appropriate standards of quality in food and nutrition services.

[(6)] (5) “Licensed dietitian” means a dietitian licensed as provided in ORS 691.435.

**SECTION 44.** If both House Bill 2009 and House Bill 2058 become law, section 1109, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 691.485), is repealed.

**SECTION 45.** If both House Bill 2009 and House Bill 2058 become law, section 1110, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 692.300), is repealed.

#### HB 2116 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 46.** If both House Bill 2009 and House Bill 2116 become law, section 1, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 1.** (1) The Health System Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Health System Fund shall be credited to the fund.

(2) Amounts in the Health System Fund are continuously appropriated to the [*Department of Human Services*] **Oregon Health Authority** for the purpose of funding the Health Care for All Oregon Children program established in section 27, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [*of this 2009 Act*], health services described in ORS 414.705 (1)(a) to (j) and other health services. Moneys in the fund may also be used by the [*department*] **authority** to:

(a) Provide grants to community health centers and safety net clinics under section 33, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [*of this 2009 Act*].

(b) Pay refunds due under section 41, chapter 736, Oregon Laws 2003, and under section 11, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [*of this 2009 Act*].

(c) Pay administrative costs incurred by the [*department*] **authority** to administer the assessment in section 9, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [*of this 2009 Act*].

(3) The [*department*] **authority** shall develop a system for reimbursement by the [*department*] **authority** to the Office of Private Health Partnerships out of the Health System Fund for costs associated with administering the private health option pursuant to section 30, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [*of this 2009 Act*].

**SECTION 47.** If both House Bill 2009 and House Bill 2116 become law, section 9, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 9.** (1) As used in this section, “Medicaid managed care organization” means the following entities defined in or referred to in ORS 414.736:

(a) A fully capitated health plan.

(b) A physician care organization.

(c) A mental health organization.

(2) No later than 45 days following the end of a calendar quarter, a Medicaid managed care organization shall pay an assessment at a rate of one percent of the gross amount of capitation

payments received by the Medicaid managed care organization during that calendar quarter for providing coverage of health services under ORS 414.705 to 414.750.

(3) The assessment shall be paid to the [Department of Human Services] **Oregon Health Authority** in a manner and form prescribed by the [department] **authority**.

(4) Assessments received by the [department] **authority** under this section shall be deposited in the Health System Fund established in section 1, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act].

(5) The assessment imposed under this section is in addition to and not in lieu of any tax, surcharge or other assessment imposed on a Medicaid managed care organization.

**SECTION 48.** If both House Bill 2009 and House Bill 2116 become law, section 11, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 11.** (1) A Medicaid managed care organization that has paid an amount that is not required under section 9, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] may file a claim for refund with the [Department of Human Services] **Oregon Health Authority**.

(2) Any Medicaid managed care organization that is aggrieved by an action of the [department] **authority** taken pursuant to subsection (1) of this section shall be entitled to notice and an opportunity for a contested case hearing under ORS chapter 183.

**SECTION 49.** If both House Bill 2009 and House Bill 2116 become law, section 15, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 15.** (1) The [Department of Human Services] **Oregon Health Authority** shall establish an adjustment to the capitation rate paid to a Medicaid managed care organization defined in section 9, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act].

(2) The contracts entered into between the [department] **authority** and Medicaid managed care organizations must include provisions that ensure that the adjustment to the capitation rate established under subsection (1) of this section is distributed by the Medicaid managed care organizations to hospitals located in Oregon that receive Medicare reimbursement based upon diagnostic related groups.

(3) The adjustment to the capitation rate paid to Medicaid managed care organizations shall be established in an amount consistent with the legislatively adopted budget and the aggregate assessment imposed pursuant to section 2, chapter 736, Oregon Laws 2003.

**SECTION 50.** If both House Bill 2009 and House Bill 2116 become law, section 16, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 16.** The [Department of Human Services] **Oregon Health Authority** shall promptly seek federal approval necessary to obtain federal financial participation in the costs of programs and services funded with assessments paid under sections 3, 5 and 9, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act].

**SECTION 51.** If both House Bill 2009 and House Bill 2116 become law, section 2, chapter 736, Oregon Laws 2003, as amended by section 1, chapter 780, Oregon Laws 2007, and section 17, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 2.** (1) An assessment is imposed on the net revenue of each hospital in this state that is not a waived hospital. The assessment shall be imposed at a rate determined by the Director of [Human Services] **the Oregon Health Authority** by rule that is the director's best estimate of the rate needed to fund the services and costs identified in section 9, chapter 736, Oregon Laws 2003. The rate of assessment shall be imposed on the net revenue of each hospital subject to assessment. The director shall consult with representatives of hospitals before setting the assessment.

(2) The assessment shall be reported on a form prescribed by the [Department of Human Services] **Oregon Health Authority** and shall contain the information required to be reported by the [department] **authority**. The assessment form shall be filed with the [department] **authority** on or before the 75th day following the end of the calendar quarter for which the assessment is being reported. Except as provided in subsection (6) of this section, the hospital shall pay the assessment at the time the hospital files the assessment report. The payment shall accompany the report.

(3)(a) To the extent permitted by federal law, aggregate assessments imposed under this section may not exceed the total of the following amounts received by the hospitals that are reimbursed by Medicare based on diagnostic related groups:

(A) The adjustment to the capitation rate paid to Medicaid managed care organizations under section 15, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act];

(B) 30 percent of payments made to hospitals on a fee-for-service basis by the [department] **authority** for inpatient hospital services; and

(C) 41 percent of payments made to hospitals on a fee-for-service basis by the [department] **authority** for outpatient hospital services.

(b) Notwithstanding paragraph (a) of this subsection, aggregate assessments imposed for the biennium beginning July 1, 2009, may exceed the total of the amounts described in paragraph (a) of this subsection to the extent necessary to compensate for any reduction of funding in the legislatively adopted budget for that biennium for hospital services under ORS 414.705 to 414.750.

(4) Notwithstanding subsection (3) of this section, a hospital is not guaranteed that any additional moneys paid to the hospital in the form of payments for services shall equal or exceed the amount of the assessment paid by the hospital.

(5) Hospitals operated by the United States Department of Veterans Affairs and pediatric specialty hospitals providing care to children at no charge are exempt from the assessment imposed under this section.

(6)(a) The [Department of Human Services] **authority** shall develop a schedule for collection of the assessment for the calendar quarter ending September 30, 2013, that will result in the collection occurring between December 15, 2013, and the time all Medicaid cost settlements are finalized for that calendar quarter.

(b) The [Department of Human Services] **authority** shall prescribe by rule criteria for late payment of assessments.

**SECTION 52.** If both House Bill 2009 and House Bill 2116 become law, section 5, chapter 736, Oregon Laws 2003, as amended by section 18, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 5.** (1) A hospital that fails to file a report or pay an assessment under section 2, chapter 736, Oregon Laws 2003, by the date the report or payment is due shall be subject to a penalty of up to \$500 per day of delinquency. The total amount of penalties imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which penalties are being imposed.

(2) Penalties imposed under this section shall be collected by the [Department of Human Services] **Oregon Health Authority** and deposited in the [Department of Human Services Account established under ORS 409.060] **Oregon Health Authority Fund established under section 18, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009)**.

(3) Penalties paid under this section are in addition to and not in lieu of the assessment imposed under section 2, chapter 736, Oregon Laws 2003.

**SECTION 53.** If both House Bill 2009 and House Bill 2116 become law, section 9, chapter 736, Oregon Laws 2003, as amended by section 2, chapter 757, Oregon Laws 2005, section 2, chapter 780, Oregon Laws 2007, and section 19, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 9.** (1) The Hospital Quality Assurance Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Hospital Quality Assurance Fund shall be credited to the Hospital Quality Assurance Fund.

(2) Amounts in the Hospital Quality Assurance Fund are continuously appropriated to the [Department of Human Services] **Oregon Health Authority** for the purpose of paying refunds due under section 6, chapter 736, Oregon Laws 2003, and funding services under ORS 414.705 to 414.750, including but not limited to:

(a) Increasing reimbursement rates for inpatient and outpatient hospital services under ORS 414.705 to 414.750;

(b) Maintaining, expanding or modifying services for persons described in ORS 414.025 (2)(s);  
(c) Maintaining or increasing the number of persons described in ORS 414.025 (2)(s) who are enrolled in the medical assistance program; and

(d) Paying administrative costs incurred by the [department] **authority** to administer the assessments imposed under section 2, chapter 736, Oregon Laws 2003.

(3) Except for assessments imposed pursuant to section 2 (3)(b), chapter 736, Oregon Laws 2003, the [department] **authority** may not use moneys from the Hospital Quality Assurance Fund to supplant, directly or indirectly, other moneys made available to fund services described in subsection (2) of this section.

**SECTION 54.** If both House Bill 2009 and House Bill 2116 become law, section 29, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 29.** The [Department of Human Services] **Oregon Health Authority** shall establish fee-for-service reimbursement rates for inpatient hospital services provided by hospitals that receive Medicare reimbursement on the basis of diagnostic related groups as follows:

(1) For the period from October 1, 2009, through September 30, 2013, at the same rate paid by Medicare on the date of the service.

(2) For the period beginning October 1, 2013, at a rate that is 70 percent of the rate paid by Medicare on the date of the service.

**SECTION 55.** If both House Bill 2009 and House Bill 2116 become law, section 32, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 32.** (1) The [Department of Human Services] **Oregon Health Authority** shall apply to the Centers for Medicare and Medicaid Services for any approval necessary to obtain federal financial participation in the costs of programs described in sections 27 and 30, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act], and in implementing the amendment to section 27, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] by section 28, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act].

(2) The [department] **Oregon Health Authority** and the Office of Private Health Partnerships shall adopt rules implementing the Health Care for All Oregon Children program as soon as practicable after receipt of the necessary federal approval and may provide for implementation in stages in accordance with the availability of funding.

(3) Section 27, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] becomes operative on the later of October 1, 2009, or the date on which the [Department of Human Services] **Oregon Health Authority** receives any federal approval required to secure federal financial participation under subsection (1) of this section.

(4) Section 30, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] and the amendments to section 27, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] by section 28, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] become operative on the later of January 1, 2010, or the date on which the [Department of Human Services] **Oregon Health Authority** receives any federal approval required to secure federal financial participation under subsection (1) of this section.

**SECTION 56.** If both House Bill 2009 and House Bill 2116 become law, section 33, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 33.** (1) As used in this section, “community health center or safety net clinic” means a nonprofit medical clinic or school-based health center that provides primary physical health, vision, dental or mental health services to low-income patients without charge or using a sliding scale based on the income of the patient.

(2) The [Department of Human Services] **Oregon Health Authority** shall award grants to community health centers or safety net clinics to ensure the capacity of each grantee to provide health care services to underserved or vulnerable populations, within the limits of funds provided by the Legislative Assembly for this purpose.

(3) The [department] **authority** shall provide outreach for the Health Care for All Oregon Children program, including development and administration of an application assistance program, and

including grants to provide funding to organizations and local groups for outreach and enrollment activities for the program, within the limits of funds provided by the Legislative Assembly for this purpose.

(4) Notwithstanding subsections (2) and (3) of this section, the [department] **authority** shall provide funds for expansion and continuation of school-based health centers.

(5) The [department] **authority** shall by rule adopt criteria for awarding grants and providing funds under this section.

(6) The [department] **authority** shall analyze and evaluate the implementation of the Health Care for All Oregon Children program.

**SECTION 57.** If both House Bill 2009 and House Bill 2116 become law, section 34, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 34.** (1) The [Department of Human Services] **Oregon Health Authority** is responsible for statewide outreach and marketing of the Health Care for All Oregon Children program established in section 27, chapter \_\_\_\_, **Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] and administered by the [department] **authority** and the Office of Private Health Partnerships with the goal of enrolling in those programs all eligible children residing in this state.

(2) To maximize the enrollment and retention of eligible children in the Health Care for All Oregon Children program, the [department] **authority** shall develop and administer a grant program to provide funding to organizations and community based groups to deliver culturally specific and targeted outreach and direct application assistance to:

- (a) Members of racial, ethnic and language minority communities;
- (b) Children living in geographic isolation; and
- (c) Children and family members with additional barriers to accessing health care, such as cognitive, mental health or sensory disorders, physical disabilities or chemical dependency, and children experiencing homelessness.

**SECTION 58.** If both House Bill 2009 and House Bill 2116 become law, section 35, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 35.** (1) The Department of Human Services, **under the direction of the Oregon Health Policy Board and in collaboration with the Oregon Health Authority**, shall implement a streamlined and simple application process for the medical assistance and premium assistance programs administered by the [department] **Oregon Health Authority** and the Office of Private Health Partnerships. The process shall include, but not be limited to:

- (a) An online application that may be submitted via the Internet;
- (b) Application forms that are readable at a sixth grade level and that request the minimum amount of information necessary to begin processing the application; and
- (c) Application assistance from qualified staff to aid individuals who have language, cognitive, physical or geographic barriers to applying for medical assistance or premium assistance.

(2) In developing the simplified application forms, the department shall consult with persons not employed by the department who have experience in serving vulnerable and hard-to-reach populations.

(3) The [department] **Oregon Health Authority** shall facilitate outreach and enrollment efforts to connect eligible individuals with all available publicly funded health programs, including but not limited to the Family Health Insurance Assistance Program.

**SECTION 59.** If both House Bill 2009 and House Bill 2116 become law, section 43, chapter \_\_\_\_, **Oregon Laws 2009 (Enrolled House Bill 2116) (amending ORS 414.428), is repealed.**

**SECTION 60.** If both House Bill 2009 and House Bill 2116 become law, section 50, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 50.** Notwithstanding section 9 (3), chapter 736, Oregon Laws 2003, moneys in the Hospital Quality Assurance Fund established under section 9, chapter 736, Oregon Laws 2003, that were received by the Department of Human Services **or the Oregon Health Authority** prior to January 1, 2010, or if received on or after January 1, 2010, were derived from an assessment liability incurred prior to October 1, 2009, may be used by the [department] **authority**:



(1) During the biennium beginning July 1, 2009, to supplant, directly or indirectly, moneys appropriated to fund health services by the Seventy-fifth Legislative Assembly during the regular legislative session;

(2) To fund increased fee-for-service reimbursement rates for inpatient and outpatient hospital services provided prior to October 1, 2009; and

(3) To fund Medicaid cost settlements owed to hospitals due to the increase in fee-for-service rates under subsection (2) of this section.

**SECTION 61.** If both House Bill 2009 and House Bill 2116 become law, section 51, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

**Sec. 51.** (1) Sections 1 to 12, 15 and 29, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act], the amendments to ORS 731.292 and 731.840 by sections 13 and 25, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] and the amendments to sections 2, 5, 9, 10, 12, 13, 14 and 51, chapter 736, Oregon Laws 2003, by sections 17, 18, 19, 20, 21, 22, 23 and 24, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] become operative on October 1, 2009.

(2) **The amendments to sections 2, 5 and 9, chapter 736, Oregon Laws 2003, by sections 51 to 53 of this 2009 Act and the amendments to sections 1, 9, 11, 15 and 29, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), by sections 46 to 49 and 54 of this 2009 Act become operative on October 1, 2009.**

**SECTION 62.** The amendments to sections 16, 32, 33, 34, 35, 50 and 51, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), by sections 50, 55 to 58, 60 and 61 of this 2009 Act become operative on the effective date of chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116).

#### HB 2133 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 63.** If both House Bill 2009 and House Bill 2133 become law, section 1, chapter 200, Oregon Laws 2009 (Enrolled House Bill 2133) (amending ORS 431.310), is repealed and ORS 431.310, as amended by section 553, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

431.310. (1) For the better protection of the public health, the laboratory of the Oregon Health Authority shall make bacteriological and other examinations of water, milk, blood, secretions or tissues required by any state, county or city institution, or officer, and may make such examinations for any licensed physician in accordance with the rules of the authority.

(2) The authority [shall] **may** establish by rule and collect fees for tests performed in the state public health laboratory, **subject to approval by the Oregon Department of Administrative Services prior to adopting a new fee or changing an existing fee.**[, not to exceed:]

[a) \$50 per test for tests other than newborn screening tests; and]

[b) \$30 per specimen for newborn screening tests.]

(3) All [money received for such tests] **moneys collected under subsection (2) of this section** shall be deposited in the Public Health Account to be used for expenses of the state public health laboratory.

**SECTION 64.** The amendments to ORS 431.310 by section 63 of this 2009 Act become operative on January 1, 2010.

#### HB 2134 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 65.** If both House Bill 2009 and House Bill 2134 become law, section 2, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134), is amended to read:

**Sec. 2.** As used in ORS 431.920 and section 4, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [of this 2009 Act]:

(1) “Certified” and “certification” means an action by the [*Department of Human Services*] **Oregon Health Authority** verifying the successful completion of a training program accredited by the [*department*] **authority** and any other requirements.

(2) “Firm” has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [*of this 2009 Act*].

(3) “Lead-based paint” has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [*of this 2009 Act*].

(4) “Lead-based paint activities” has the meaning given that term in 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [*of this 2009 Act*].

(5) “Renovation” has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [*of this 2009 Act*].

**SECTION 66. If both House Bill 2009 and House Bill 2134 become law, section 3, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134) (amending ORS 431.920), is repealed and ORS 431.920, as amended by section 598, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

431.920. (1) The Oregon Health Authority shall:

[*(1) Develop accreditation programs for training providers;*]

[*(2) Prescribe the requirements for and the manner of testing the competency of license applicants for the protection of the public and as required by federal law;*]

[*(3) Prescribe those actions or circumstances that constitute failure to achieve or maintain competency, or that otherwise are contrary to the public interest, for which the agency may refuse to issue or renew or may suspend or revoke a certification;*]

[*(4) Develop and conduct programs to screen blood lead levels, to identify hazards and to educate the public, including parents, residential dwelling owners and child care facility operators, about the dangers of lead-based paint hazards and of appropriate precautions that should be taken to reduce the possibility of childhood lead poisoning; and*]

[*(5) Impose fees to the extent necessary to pay the costs of the following:*]

[*(a) Certification of training curriculums, up to \$1,500;*]

[*(b) Annual renewal of training providers and curriculums, up to \$500;*]

[*(c) Certification of trainers, up to \$500;*]

[*(d) Annual renewal of trainer’s certification, up to \$250; and*]

[*(e) Certification test, up to \$85.*]

**(a) Certify firms and individuals to perform lead-based paint activities;**

**(b) Certify firms to perform renovation;**

**(c) Accredite training providers to provide lead-based paint activities and renovation training;**

**(d) Develop and approve training programs for lead-based paint activities and renovation;**

**(e) Establish standards based on best practices for the conduct of lead-based paint inspections, risk assessment and abatement services, renovation activities that disturb lead-based paint and the disposal of lead-based paint that are in addition to, not inconsistent with and not in lieu of any other workplace standards required by law;**

**(f) Develop and conduct programs to screen blood lead levels, identify hazards and educate the public, including but not limited to parents, residential dwelling owners, pediatric medical providers and child care facility operators, about the dangers of lead-based paint and about appropriate precautions that may reduce the probability of childhood lead poisoning;**

**(g) Adopt rules necessary to implement the provisions of this section and sections 4 and 5, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134); and**

(h) Establish fees sufficient to recover the costs of implementing the provisions of this section and sections 4 and 5, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134), including but not limited to fees for:

(A) Certification and recertification to perform lead-based paint activities and renovation; and

(B) Accreditation and reaccreditation of lead-based paint training providers.

(2) The Oregon Health Authority may:

(a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property to inspect, investigate, evaluate or conduct tests or take specimens or samples for testing, as necessary to determine compliance with section 4, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134);

(b) Issue subpoenas to determine compliance with section 4, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134);

(c) Suspend, revoke or modify a certification to perform lead-based paint activities or renovation if the holder of the certification fails to comply with state or federal statutes or regulations related to lead-based paint; and

(d) Suspend, revoke or modify a certified renovator's certification if the renovator fails to comply with state or federal statutes or regulations related to lead-based paint.

**SECTION 67.** If both House Bill 2009 and House Bill 2134 become law, section 5, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134), is amended to read:

**Sec. 5.** (1) Any person who violates any provision of, or any rule adopted under, ORS 431.920 or section 4, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134) [of this 2009 Act] shall forfeit and pay to the Public Health Account established under ORS 431.210 a civil penalty of not more than \$5,000 for each violation. Moneys paid to the Public Health Account under this section may be used only for the purposes of lead poisoning prevention, including consumer and industry outreach, public education, blood lead screening and other activities.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) A civil penalty imposed under this section is in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The [Department of Human Services] Oregon Health Authority shall report all civil penalties or sanctions imposed under this section or a rule adopted under ORS 431.920 to each of the following state agencies:

(a) The Construction Contractors Board;

(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and

(c) The Department of Environmental Quality.

**SECTION 68.** If both House Bill 2009 and House Bill 2134 become law, section 7, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134) (amending ORS 701.505), is repealed and ORS 701.505, as amended by section 1112, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

701.505. For the purposes of ORS [431.920 and] 701.500 to 701.515:

(1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in [ORS 701.500] section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134).

(2) "Accredited training program" means a training program that has been accredited by the Oregon Health Authority to provide training for individuals engaged in lead-based paint activities.

[(3) "Certified" means an action by the Oregon Health Authority verifying the successful completion of a training program accredited by the authority and any other requirements.]

(3) "Certified lead-based paint renovation contractor" means a contractor that is licensed by the Construction Contractors Board to conduct lead-based paint renovation under ORS 701.515.

[(4) "Discipline" means a specific type or category of lead-based paint activity.]

[5] “Evaluation” has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 701.500.]

[6] (4) “Inspection” has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in [ORS 701.500] **section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134).**

[7] (5) “Lead-based paint” has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in [ORS 701.500] **section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134).**

[8] (6) “Lead-based paint activities” has the meaning given that term in 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in [ORS 701.500] **section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134).**

[9] “Lead-based paint hazard” means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health effects as established by the appropriate federal agency.]

[10] “Licensed” means a person who has been certified by the Oregon Health Authority in one or more disciplines and has completed the requirements of the Construction Contractors Board.]

[11] “Registered” means a person or business that has met the requirements for registration under this chapter.]

(7) “Lead-based paint activities contractor” means a contractor that is licensed by the Construction Contractors Board to conduct lead-based paint activities under ORS 701.515.

(8) “Renovation” has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134).

**SECTION 69.** If both House Bill 2009 and House Bill 2134 become law, section 10, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134), is amended to read:

**Sec. 10.** (1) A person who violates any provision of, or any rule adopted under, ORS 701.500 to 701.515 shall pay to the Construction Contractors Board Lead-Based Paint Activities Fund established under section 11, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [of this 2009 Act] a civil penalty of not more than \$5,000 for each violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) A civil penalty imposed under this section is in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The board shall report all civil penalties or sanctions imposed under this section to each of the following state agencies:

(a) The [Department of Human Services] **Oregon Health Authority;**

(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and

(c) The Department of Environmental Quality.

**SECTION 70.** The amendments to ORS 431.920 and 701.505 by sections 66 and 68 of this 2009 Act become operative on January 1, 2010.

## HB 2194 / HB 2009 CONFLICT RESOLUTIONS

**SECTION 71.** If both House Bill 2009 and House Bill 2194 become law, section 2, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2194) (amending ORS 735.610), is repealed and ORS 735.610, as amended by section 1118, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

735.610. (1) There is created in the Oregon Health Authority the Oregon Medical Insurance Pool Board. The board shall establish the Oregon Medical Insurance Pool and otherwise carry out the responsibilities of the board under ORS 735.600 to 735.650.

(2) The board shall consist of nine individuals, seven of whom shall be appointed by the Director of the Oregon Health Authority. The Director of the Department of Consumer and Business Services or the director's designee and the Director of the Oregon Health Authority or the director's designee shall be members of the board. The chair of the board shall be elected from among the members of the board. The board shall at all times, to the extent possible, include at least one representative of a domestic insurance company licensed to transact health insurance, one representative of a domestic not-for-profit health care service contractor, one representative of a health maintenance organization, one representative of reinsurers and two members of the general public who are not associated with the medical profession, a hospital or an insurer. **A majority of the voting members of the board constitutes a quorum for the transaction of business. An act by a majority of a quorum is an official act of the board.**

(3) The Director of the Oregon Health Authority may fill any vacancy on the board by appointment.

(4) The board shall have the general powers and authority granted under the laws of this state to insurance companies with a certificate of authority to transact health insurance and the specific authority to:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of ORS 735.600 to 735.650 including the authority to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Recover any assessments for, on behalf of, or against insurers;

(c) Take such legal action as is necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allowances, insurance producers' referral fees, claim reserves or formulas and perform any other actuarial function appropriate to the operation of the pool. Rates may not be unreasonable in relation to the coverage provided, the risk experience and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial and underwriting practices;

(e) Issue policies of insurance in accordance with the requirements of ORS 735.600 to 735.650;

(f) Appoint from among insurers appropriate actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design, and any other function within the authority of the board;

(g) Seek advances to effect the purposes of the pool; and

(h) Establish rules, conditions and procedures for reinsuring risks under ORS 735.600 to 735.650.

(5) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(6) The Director of the Oregon Health Authority shall adopt rules, as provided under ORS chapter 183, implementing policies recommended by the board for the purpose of carrying out ORS 735.600 to 735.650.

(7) In consultation with the board, the Director of the Oregon Health Authority shall employ such staff and consultants as may be necessary for the purpose of carrying out responsibilities under ORS 735.600 to 735.650.

**SECTION 72. The amendments to ORS 735.610 by section 71 of this 2009 Act become operative on January 1, 2010.**

#### **HB 2345 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 73.** If both House Bill 2009 and House Bill 2345 become law, section 1b, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

**Sec. 1b.** (1) The [Department of Human Services] **Oregon Health Authority** shall establish or contract to establish an impaired health professional program. The program must:

(a) Enroll licensees of participating health profession licensing boards who have been diagnosed with alcohol or substance abuse or a mental health disorder;

(b) Require that a licensee sign a written consent prior to enrollment in the program allowing disclosure and exchange of information between the program, the licensee's board, the monitoring entity established under section 1c, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act], the licensee's employer, evaluators and treatment entities in compliance with ORS 179.505 and 42 C.F.R. part 2;

(c) Enter into diversion agreements with enrolled licensees;

(d) Assess and evaluate compliance with diversion agreements by enrolled licensees;

(e) Assess the ability of an enrolled licensee's employer to supervise the licensee and require an enrolled licensee's employer to establish minimum training requirements for supervisors of enrolled licensees;

(f) Report substantial noncompliance with a diversion agreement to the monitoring entity established under section 1c, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] within one business day after the program learns of the substantial noncompliance, including but not limited to information that a licensee:

(A) Engaged in criminal behavior;

(B) Engaged in conduct that caused injury, death or harm to the public, including engaging in sexual impropriety with a patient;

(C) Was impaired in a health care setting in the course of the licensee's employment;

(D) Received a positive toxicology test result as determined by federal regulations pertaining to drug testing;

(E) Violated a restriction on the licensee's practice imposed by the program or the licensee's board;

(F) Was admitted to the hospital for mental illness or adjudged to be mentally incompetent;

(G) Entered into a diversion agreement, but failed to participate in the program; or

(H) Was referred to the program but failed to enroll in the program; and

(g) At least weekly, submit a list of licensees who are enrolled in the program and a list of licensees who successfully complete the program to the monitoring entity established under section 1c, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act].

(2) When the program reports noncompliance to the monitoring entity, the report must include:

(a) A description of the noncompliance;

(b) A copy of a report from the independent third party who diagnosed the licensee under section 1a (2)(a), **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] or subsection (5)(a) of this section stating the licensee's diagnosis;

(c) A copy of the licensee's diversion agreement; and

(d) The licensee's employment status.

(3) The program may not diagnose or treat licensees enrolled in the program.

(4) The diversion agreement required by subsection (1) of this section must:

(a) Require the licensee to consent to disclosure and exchange of information between the program, the licensee's board, the monitoring entity established under section 1c, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act], the licensee's employer, evaluators and treatment providers, in compliance with ORS 179.505 and 42 C.F.R. part 2;

(b) Require that the licensee comply continuously with the agreement for at least two years to successfully complete the program;

(c) Based on an individualized assessment, require that the licensee abstain from mind-altering or intoxicating substances or potentially addictive drugs, unless the drug is approved by the program and prescribed for a documented medical condition by a person authorized by law to prescribe the drug to the licensee;

(d) Require the licensee to report use of mind-altering or intoxicating substances or potentially addictive drugs within 24 hours;

(e) Require the licensee to agree to participate in a treatment plan approved by a third party;

(f) Contain limits on the licensee's practice of the licensee's health profession;

(g) Provide for employer monitoring of the licensee;

(h) Provide that the program may require an evaluation of the licensee's fitness to practice before removing the limits on the licensee's practice of the licensee's health profession;

(i) Require the licensee to submit to random drug or alcohol testing in accordance with federal regulations;

(j) Require the licensee to report at least weekly to the program regarding the licensee's compliance with the agreement;

(k) Require the licensee to report any arrest for or conviction of a misdemeanor or felony crime to the program within three business days after the licensee is arrested or convicted;

(L) Require the licensee to report applications for licensure in other states, changes in employment and changes in practice setting; and

(m) Provide that the licensee is responsible for the cost of evaluations, toxicology testing and treatment.

(5)(a) A licensee of a board participating in the program may self-refer to the program.

(b) The program shall require the licensee to attest that the licensee is not, to the best of the licensee's knowledge, under investigation by the licensee's board. The program shall enroll the licensee on the date on which the licensee attests that the licensee, to the best of the licensee's knowledge, is not under investigation by the licensee's board.

(c) When a licensee self-refers to the program, the program shall:

(A) Require that an independent third party approved by the licensee's board to evaluate alcohol or substance abuse or mental health disorders evaluate the licensee for alcohol or substance abuse or mental health disorders; and

(B) Investigate to determine whether the licensee's practice while impaired has presented or presents a danger to the public.

(6) The [department] **authority** shall adopt rules establishing a fee to be paid by the boards participating in the impaired health professional program for administration of the program.

(7) The [department] **authority** shall arrange for an independent third party to audit the program to ensure compliance with program guidelines. The [department] **authority** shall report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.

(8) The [department] **authority** may adopt rules to carry out this section.

**SECTION 74.** If both House Bill 2009 and House Bill 2345 become law, section 1c, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

**Sec. 1c.** (1) The [Department of Human Services] **Oregon Health Authority** shall contract with an independent third party to establish a monitoring entity for impaired professionals. The monitoring entity shall:

(a) Compare the weekly lists submitted by the impaired health professional program under section 1b, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] to determine if any enrollees are no longer participating in the impaired health professional program; and

(b) Report to a health profession licensing board when:

(A) The monitoring entity receives a report from the impaired health professional program established under section 1b, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] that a licensee is substantially noncompliant with the licensee's diversion agreement;

(B) Comparison of the weekly lists submitted by the impaired health professional program under section 1b, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] shows that a licensee is no longer participating in the impaired health professional program; and

(C) The monitoring entity receives a report from the impaired health professional program under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] that a licensee referred by the board has completed the impaired health professional program.

(2) The monitoring entity may not have any contact with a licensee and has no discretion in deciding whether to make a report required under this section.

(3) The weekly lists submitted by the impaired health professional program under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] are exempt from disclosure under public records law.

(4) If a licensee self-refers to the impaired health professional program, the monitoring entity may not report the licensee's enrollment or successful completion of the impaired health professional program to the licensee's board.

(5) The [department] **authority** shall arrange for an independent third party to audit the monitoring entity to ensure compliance with program guidelines. The [department] **authority** shall report the results of the audit to the Legislative Assembly, the Governor and the health profession licensing boards. The report may not contain individually identifiable information about licensees.

(6) The [department] **authority** may adopt rules assessing fees to health profession licensing boards participating in the program for the costs of administering the monitoring entity.

**SECTION 75.** If both House Bill 2009 and House Bill 2345 become law, section 13, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

**Sec. 13.** The [Department of Human Services] **Oregon Health Authority** shall report on the impaired health professional program established under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] to the Governor, to the Legislative Assembly as provided in ORS 192.245 and to health profession licensing boards as defined in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] on or before January 31, 2011.

**SECTION 76.** If both House Bill 2009 and House Bill 2345 become law, section 22, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

**Sec. 22.** (1) Sections 1 to 1c, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act], the amendments to ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785, 678.112, 678.410, 684.010 and 687.081 by sections 2 to 12, 15 and 18 to 20, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] and the repeal of ORS 677.615, 677.625, 677.635, 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354 and 689.356 by section 14, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] become operative July 1, 2010.

(2) A health profession licensing board as defined in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the board to exercise, on and after the operative date specified in subsection (1) of this section, all the duties, functions and powers conferred on the board by [this 2009 Act] **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**.

(3) The [Department of Human Services] **Oregon Health Authority** may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the [department] **authority** 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] **authority** by [this 2009 Act] **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**.

**SECTION 77.** If both House Bill 2009 and House Bill 2345 become law, section 23, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

**Sec. 23.** (1) Before the operative date specified in section 22, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act], the [Department of Human Services] **Oregon Health Authority** and the health profession licensing boards that opt to participate in the impaired health professional program established under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] shall collaborate to transfer existing impaired professional programs and funding, and licensees who are subject to existing impaired professional programs, to the



impaired health professional program established under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act].

(2) When a licensee is transferred to the impaired health professional program established under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] pursuant to subsection (1) of this section, the program shall honor the terms of the licensee's existing diversion agreement if the terms of the agreement are consistent with the requirements of section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act]. If the terms of the licensee's existing diversion agreement are not consistent with the requirements of section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act], the diversion agreement entered into by the program and the licensee must comply with section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act].

(3) When a licensee who self-referred to an impaired professional program before the effective date of [this 2009 Act] **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, is transferred to the impaired health professional program established under section 1b, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [of this 2009 Act] pursuant to subsection (1) of this section:

(a) The program may not disclose the licensee's enrollment in the program to the licensee's board unless the licensee:

(A) Ceases to participate in the program before completing the program; or

(B) Engages in substantial noncompliance as described in section 1b (1)(f)(A) to (H), **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act].

(b) The program may not disclose the licensee's successful completion of the program to the licensee's board.

## **HB 2442 / HB 2009 CONFLICT RESOLUTIONS**

**SECTION 78.** If both House Bill 2009 and House Bill 2442 become law, section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 1.** The Quality Care Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the Quality Care Fund shall be credited to the Quality Care Fund. Moneys in the fund are continuously appropriated to the Department of Human Services **and the Oregon Health Authority** for training, technical assistance, quality improvement initiatives and licensing activities to ensure that high standards for quality of care are met in accordance with rules adopted [by the department] with respect to:

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

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

(3) An adult foster home as defined in ORS 443.705.

**SECTION 78a.** If both House Bill 2009 and House Bill 2442 become law, section 2, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 2.** Notwithstanding section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)** [of this 2009 Act], on June 30, 2011, the [Department of Human Services shall transfer] **amount of \$150,000 shall be transferred** from the Quality Care Fund established in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, [of this 2009 Act] to the General Fund for general governmental expenses.

**SECTION 79.** If both House Bill 2009 and House Bill 2442 become law, section 4, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 4.** (1) The Department of Human Services shall report to each regular session of the Legislative Assembly:

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) A location where home health services, as defined in ORS 443.005, are received by a resident;

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

(e) An institution under the control of the department under ORS 179.321; and

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

**SECTION 80.** If both House Bill 2009 and House Bill 2442 become law, section 5, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 5.** (1) If the Department of Human Services **or the Oregon Health Authority** substantiates an allegation of abuse that occurred in a facility, the department **or authority** shall immediately notify the facility of its findings.

(2) Upon receipt of the notice described in subsection (1) of this section, a facility shall provide written notice of the findings to the individual found to have committed abuse, residents of the facility, the residents’ case managers and the residents’ guardians.

(3) An application for employment at a facility must inquire whether the applicant has been found to have committed abuse.

(4) As used in this section:

(a) “Abuse” has the meaning given that term in ORS 124.050 and 430.735.

(b) “Facility” means:

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

(B) An adult foster home as defined in ORS 443.705.

**SECTION 81.** If both House Bill 2009 and House Bill 2442 become law, section 6, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 6.** (1) The Department of Human Services **or the Oregon Health Authority** shall complete a criminal records check under ORS 181.534 on an employee of a residential facility, adult foster home, in-home care agency or home health agency, and on any individual who is paid directly or indirectly with public funds who has or will have contact with a recipient of home health, in-home care or support services or a resident of an adult foster home or a residential facility.

(2) Public funds may not be used to support, in whole or in part, the employment in any capacity having contact with a recipient of home health, in-home care or support services or a resident of a residential facility or an adult foster home, of an individual who has been convicted:

(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017, 167.054 or 167.057;

(b) Of a crime listed in ORS 181.594;

(c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled substance;

(d) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a) to (c) of this subsection; or

(e) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to a crime described in paragraphs (a) to (d) of this subsection.

(3) Subsection (2) of this section does not apply to a peer support specialist.

(4) If the department **or authority** has a record of substantiated abuse committed by an employee or potential employee of a home health agency, in-home care agency, adult foster home or residential facility, regardless of whether criminal charges were filed, the department **or authority** shall notify, in writing, the employer and the employee or potential employee.

(5) As used in this section:

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

(b) "Home health agency" has the meaning given that term in ORS 443.005.

(c) "In-home care agency" has the meaning given that term in ORS 443.305.

(d) "Peer support specialist" means a person who:

(A) Is providing peer support services as defined by the [department] **authority** by rule;

(B) Is under the supervision of a qualified clinical supervisor;

(C) Has completed training required by the [department] **authority**; and

(D) Is currently receiving or has formerly received mental health services, or is in recovery from a substance use disorder and meets the abstinence requirements for staff providing services in alcohol or other drug treatment programs.

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

**SECTION 82.** If both House Bill 2009 and House Bill 2442 become law, section 7, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 7.** (1) The Department of Human Services or a designee of the department shall conduct the investigations and make the findings required by ORS 430.735 to 430.765.

(2) The department shall prescribe by rule policies and procedures for the investigations of allegations of abuse of a person with a developmental disability as described in ORS 430.735 (2)(a) to ensure that the investigations are conducted in a uniform, objective and thorough manner in every county of the state including, but not limited to, policies and procedures that:

(a) Limit the duties of investigators solely to conducting and reporting investigations of abuse;

(b) Establish investigator caseloads based upon the most appropriate investigator-to-complaint ratios;

(c) Establish minimum qualifications for investigators that include the successful completion of training in identified competencies; and

(d) Establish procedures for the screening and investigation of abuse complaints and establish uniform standards for reporting the results of the investigation.

(3) A person employed by or under contract with the department, the designee of the department or a community [mental health and] developmental disabilities program to provide case management services may not serve as the lead investigator of an allegation of abuse of a person with a developmental disability.

(4) The department shall monitor investigations conducted by a designee of the department.

**SECTION 83.** If both House Bill 2009 and House Bill 2442 become law, section 8, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 8.** (1) The district attorney in each county shall be responsible for developing county multidisciplinary teams to consist of but not be limited to personnel from the community mental health program, the **community** developmental disabilities program, the Department of Human Services or a designee of the department, **the Oregon Health Authority or a designee of the authority**, the local area agency on aging, the district attorney's office, law enforcement and an agency that advocates on behalf of individuals with disabilities, as well as others specially trained in the abuse of adults.

(2) The teams shall develop a written protocol for immediate investigation of and notification procedures for cases of abuse of adults and for interviewing the victims. Each team also shall develop written agreements signed by member agencies that are represented on the team that specify:

- (a) The role of each member agency;
- (b) Procedures to be followed to assess risks to the adult;
- (c) Guidelines for timely communication between member agencies; and
- (d) Guidelines for completion of responsibilities by member agencies.

(3) Each team member shall have access to training in risk assessment, dynamics of abuse of adults and legally sound interview and investigatory techniques.

(4) All investigations of abuse of adults by the department or its designee **or the authority or its designee** and by law enforcement shall be carried out in a manner consistent with the protocols and procedures called for in this section.

(5) All information obtained by the team members in the exercise of their duties is confidential.

(6) Each team shall develop and implement procedures for evaluating and reporting compliance of member agencies with the protocols and procedures required under this section.

(7) Each team shall annually report to the Department of Justice and the Oregon Criminal Justice Commission the number of:

- (a) Substantiated allegations of abuse of adults in the county for the preceding 12 months.
- (b) Substantiated allegations of abuse referred to law enforcement because there was reasonable cause found that a crime had been committed.
- (c) Allegations of abuse that were not investigated by law enforcement.
- (d) Allegations of abuse that led to criminal charges.
- (e) Allegations of abuse that led to prosecution.
- (f) Allegations of abuse that led to conviction.

**SECTION 84. If both House Bill 2009 and House Bill 2442 become law, section 20, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 441.020), is repealed and ORS 441.020, as amended by section 720, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

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

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

(3) Applications shall be upon such forms and shall contain such information as the authority or the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS 441.055.

(4) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. **Except as provided in subsection (14) of this section**, if the license is issued, the fee shall be paid into the State Treasury to the credit of:

(a) The Oregon Health Authority Fund for the purpose of carrying out the functions of the Oregon Health Authority under ORS 441.015 to 441.063; or

(b) The Department of Human Services Account for the purpose of carrying out the functions of the Department of Human Services under ORS 441.015 to 441.063 and 431.607 to 431.619.

(5) Except as otherwise provided in subsection [(5)] **(6)** of this section, for hospitals with:

- (a) Fewer than 26 beds, the annual license fee shall be \$750.
- (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.

- (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.
- (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
- (e) Two hundred or more beds, the annual license fee shall be \$3,400.
- (6) For long term care facilities with:
  - [(a) Fewer than 16 beds, the annual license fee shall be up to \$120.]
  - [(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.]
  - [(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.]
  - [(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to \$450.]
  - [(e) Two hundred beds or more, the annual license fee shall be up to \$580.]
- (a) One to 15 beds, the annual license fee shall be \$180.**
- (b) Sixteen to 49 beds, the annual license fee shall be \$260.**
- (c) Fifty to 99 beds, the annual license fee shall be \$520.**
- (d) One hundred to 150 beds, the annual license fee shall be \$670.**
- (e) More than 150 beds, the annual license fee shall be \$750.**
- (7) For special inpatient care facilities with:
  - (a) Fewer than 26 beds, the annual license fee shall be \$750.
  - (b) Twenty-six beds or more but fewer than 50 beds, the annual license fee shall be \$1,000.
  - (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.
  - (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.
  - (e) Two hundred beds or more, the annual license fee shall be \$3,400.
- (8) For ambulatory surgical centers, the annual license fee shall be \$1,000.
- (9) For birthing centers, the annual license fee shall be \$250.
- (10) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.
- (11) During the time the licenses remain in force, holders *[thereof]* are not required to pay inspection fees to any county, city or other municipality.
- (12) Any health care facility license may be indorsed to permit operation at more than one location. *[In such case]* **If so**, the applicable license fee shall be the sum of the license fees *[which]* **that** would be applicable if each location were separately licensed.
- (13) Licenses for health maintenance organizations shall be obtained from the Director of the Department of Consumer and Business Services pursuant to ORS 731.072.
- (14) All moneys received pursuant to subsection (6) of this section shall be deposited in the Quality Care Fund established in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442).**

**SECTION 85. If both House Bill 2009 and House Bill 2442 become law, section 21, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 441.715), is repealed and ORS 441.715, as amended by section 741, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), 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 *[ORS 441.637 and 441.995]* **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 fa-**

cility 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, 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 [\$6,000] \$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 86. If both House Bill 2009 and House Bill 2442 become law, section 24, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.045), is repealed and ORS 443.045, as amended by section 772, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

443.045. (1) The Oregon Health Authority may deny, suspend or revoke the license of any home health agency for failure to comply with ORS 443.005 to 443.095 or section 6, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), or with the rules of the authority as authorized by ORS 443.085.

(2) License denials, suspensions and revocations, adoption of rules and judicial review thereof shall be in accordance with ORS chapter 183.

**SECTION 87. If both House Bill 2009 and House Bill 2442 become law, section 25, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.325), is repealed and ORS 443.325, as amended by section 776b, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

443.325. The Oregon Health Authority may impose a civil penalty in the manner provided in ORS 183.745 and deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with ORS 443.305 to 443.350 or with rules adopted thereunder. **The authority may deny, suspend or revoke the license of any in-home care agency licensed under ORS 443.315 for failure to comply with section 6, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442).** A failure to comply with ORS 443.305 to 443.350 includes, but is not limited to:

(1) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;

(2) Failure to provide the contracted in-home care services; or

(3) Failure to correct deficiencies identified during an inspection by the authority.

**SECTION 88. If both House Bill 2009 and House Bill 2442 become law, section 28, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.430), is repealed and ORS 443.430, as amended by section 784, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

443.430. (1) [No] A license under ORS 443.415 is **not** transferable or applicable to any location, residential facility or management other than that indicated on the application for licensure.

**(2) Except as provided in subsection (3) of this section:**

[2(a)] (a) All moneys collected under ORS 443.400 to 443.455 for the purpose of licensing a residential care facility, residential training facility or residential training home shall be deposited in a special account in the General Fund and are continuously appropriated for payment of expenses incurred by the Department of Human Services in administering ORS 443.400 to 443.455.

(b) All moneys collected under ORS 443.400 to 443.455 for the purpose of licensing a residential treatment facility or residential treatment home shall be deposited in a special account in the General Fund and are continuously appropriated for payment of expenses incurred by the Oregon Health Authority in administering ORS 443.400 to 443.455.

**(3) All moneys collected from a residential care facility under ORS 443.415, 443.425 or 443.455 shall be deposited in the Quality Care Fund established in section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442).**

**SECTION 89. If both House Bill 2009 and House Bill 2442 become law, section 29, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.455), is repealed and ORS 443.455, as amended by section 789, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

443.455. (1) 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, sodomy, sexual coercion, sexually explicit photographing and sexual harassment.

**SECTION 89a. If House Bill 2009, House Bill 2442 and Senate Bill 163 all become law, section 31, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.735), is repealed and ORS 443.735, as amended by section 791f, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), and section 20 of this 2009 Act, is amended to read:**

443.735. (1) Applications for a license to maintain and operate an adult foster home shall be made on forms provided by the licensing agency. Each application shall be accompanied by a fee of \$20 per bed requested for licensing.

(2) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.

(3) The licensing agency shall not issue an initial license unless:

(a) The applicant and adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the licensing agency;

(b) The licensing agency has completed an inspection of the adult foster home;

(c) The licensing agency has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check shall be conducted in accordance with rules adopted under ORS 181.534;

(d) The licensing agency has determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse; and

(e) The applicant has demonstrated to the licensing agency the financial ability and resources necessary to operate the adult foster home. The licensing agency shall adopt rules as the agency deems appropriate that establish the financial standards an applicant must meet to qualify for issuance of a license and that protect financial information from public disclosure. The demonstration of financial ability under this paragraph shall include, but need not be limited to, providing the licensing agency with a list of any unsatisfied judgments, pending litigation and unpaid taxes and notifying the agency regarding whether the applicant is in bankruptcy. If the applicant is unable to demonstrate the financial ability and resources required by this paragraph, the licensing agency may require the applicant to furnish a financial guarantee as a condition of initial licensure.

(4) The licensing agency may not renew a license under this section unless:

(a) The applicant and the adult foster home are in compliance with ORS 443.705 to 443.825 and the rules of the licensing agency;

(b) The licensing agency has completed an inspection of the adult foster home;

(c) The licensing agency has completed a criminal records check under ORS 181.534 on the applicant and any person, other than a resident, 16 years of age or older who will be residing in the adult foster home. The criminal records check under this paragraph shall be conducted in accordance with rules adopted under ORS 181.534; and

(d) The licensing agency has determined that the registry maintained under ORS 441.678 contains no finding that the applicant or any nursing assistant employed by the applicant has been responsible for abuse.

(5)(a) In seeking an initial license and renewal of a license when an adult foster home has been licensed for less than 24 months, the burden of proof shall be upon the provider and the adult foster home to establish compliance with ORS 443.705 to 443.825 and the rules of the licensing agency.

(b) In proceedings for renewal of a license when an adult foster home has been licensed for at least 24 continuous months, the burden of proof shall be upon the licensing agency to establish noncompliance with ORS 443.705 to 443.825 and the rules of the agency.

(6)(a) Persons who have been convicted of one or more crimes that, as determined by rules of the licensing agency, are substantially related to the qualifications, functions or duties of a provider, substitute caregiver or other household member of an adult foster home shall be prohibited from operating, working in or residing in an adult foster home.

(b) The licensing agency shall adopt rules that distinguish the criminal convictions and types of abuse that permanently prohibit a person from operating, working in or living in an adult foster home from the convictions and types of abuse that do not permanently prohibit the person from operating, working in or living in an adult foster home.

(c) A provider may not hire, retain in employment or allow to live in an adult foster home, other than as a resident, any person who the provider knows has been convicted of a disqualifying crime or has been found responsible for a disqualifying type of abuse.

(7) A license under ORS 443.725 is effective for one year from the date of issue unless sooner revoked. Each license shall state the name of the resident manager of the adult foster home, the names of all providers who own the adult foster home, the address of the premises to which the license applies, the maximum number of residents and the classification of the adult foster home. If, during the period covered by the license, a resident manager changes, the provider must within 15 days request modification of the license. The request must be accompanied by a fee of \$10.

(8) No license under ORS 443.725 is transferable or applicable to any location, persons operating the adult foster home or the person owning the adult foster home other than that indicated on the application for licensing.

(9) The licensing agency shall not issue a license to operate an additional adult foster home to a provider unless the provider has demonstrated the qualifications and capacity to operate the provider's existing licensed adult foster homes and has demonstrated the ability to provide to the resi-



dents of those adult foster homes care that is adequate and substantially free from abuse and neglect.

(10)(a) All moneys collected under ORS 443.725 to 443.780 **from adult foster homes that are licensed to serve persons with mental, emotional or behavioral disturbances or alcohol or drug dependence** shall be deposited in a special account in the General Fund, and are appropriated continuously for payment of expenses incurred by the [licensing agency] **Oregon Health Authority**.

(b) **All moneys collected under ORS 443.725 to 443.780 from adult foster homes licensed to serve persons who are elderly, have physical disabilities or have developmental disabilities shall be deposited in the Quality Care Fund established in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442).**

(11) Notwithstanding any other provision of this section or ORS 443.725 or 443.738, the licensing agency may issue a 60-day provisional license to a qualified person if the agency determines that an emergency situation exists after being notified that the licensed provider of an adult foster home is no longer overseeing operation of the adult foster home.

**SECTION 90. If both House Bill 2009 and House Bill 2442 become law, section 33, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.775), is repealed and ORS 443.775, as amended by section 791o, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**(12) All penalties recovered pursuant to this section shall be deposited in the Quality Care Fund established in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442).**

**SECTION 91.** If both House Bill 2009 and House Bill 2442 become law, section 36, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 36.** The Director of Human Services **and the Director of the Oregon Health Authority** may take any action before the operative dates specified in sections 37 to 40, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, [of this 2009 Act] that is necessary to enable the Department of Human Services **and the Oregon Health Authority** to carry out, on and after the operative dates specified in sections 37 to 40, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)** [of this 2009 Act], the provisions of [this 2009 Act] **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**.

**SECTION 92.** If both House Bill 2009 and House Bill 2442 become law, section 37, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 37.** Except as provided in section 36, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)** [of this 2009 Act], sections 1, 4, 5, 7 and 8, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, [of this 2009 Act] and the amendments to ORS 124.050, 124.065, 124.070, 430.735, 430.743, 430.745, 441.020, 441.715, 441.745, 441.995, 443.415, 443.425, 443.430, 443.455, 443.735, 443.775, 443.790 and 443.825 by sections 9, 10, 12, 15, 16, 17, [20, 21,] 22, 23, 26, 27, [28, 29, 31, 33,] 34 and 35, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, and sections **84, 85 and 88 to 90 of this 2009 Act** [of this 2009 Act] become operative on January 1, 2010.

**SECTION 93.** If both House Bill 2009 and House Bill 2442 become law, section 40, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

**Sec. 40.** Except as provided in section 36, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)** [of this 2009 Act], sections 14 and 19, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, [of this 2009 Act] and the amendments to ORS 443.045, 443.325 and 443.730 by [sections 24, 25 and 30 of this 2009 Act] **section 30, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, and sections **86 and 87 of this 2009 Act** become operative on September 1, 2009.

## UNIT CAPTIONS

**SECTION 94.** The unit captions used in this 2009 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2009 Act.

**EMERGENCY CLAUSE**

**SECTION 95.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

**Passed by House June 26, 2009**

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Chief Clerk of House

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Speaker of House

**Passed by Senate June 29, 2009**

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President of Senate

**Received by Governor:**

.....M,....., 2009

**Approved:**

.....M,....., 2009

.....  
Governor

**Filed in Office of Secretary of State:**

.....M,....., 2009

.....  
Secretary of State