

**A-Engrossed**  
**House Bill 2129**

Ordered by the House June 25  
Including House Amendments dated June 25

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)

**SUMMARY**

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

*[Requires Health Resources Commission to conduct comparative effectiveness research and to disseminate research findings. Requires Health Services Commission to develop or identify and to disseminate evidence-based health care guidelines. Requires Office for Oregon Health Policy and Research to coordinate work of both commissions. Requires public bodies and public purchasers of health care to pursue purchasing strategies that encourage adoption of research findings and evidence-based health care guidelines.]*

*[Appropriates moneys from General Fund to Department of Human Services for purposes of Act.]*

**Resolves certain House Bill 2009 conflicts.**

Declares emergency, effective *[July 1, 2009]* **on passage.**

**A BILL FOR AN ACT**

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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 \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 151), section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 166), section 1, chapter \_\_\_, 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 \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 8), sections 3, 4 and 8, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 151), section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 157), sections 2 and 3, chapter \_\_\_, 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

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 House Bill 2009), section 43, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), sections  
2 3 and 7, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134), section 2, chapter \_\_\_,  
3 Oregon Laws 2009 (Enrolled House Bill 2194), and sections 20, 21, 24, 25, 28, 29, 31 and 33,  
4 chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442); and declaring an emergency.

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

6  
7 **SB 8 / HB 2009 CONFLICT RESOLUTIONS**

8  
9 **SECTION 1. If both House Bill 2009 and Senate Bill 8 become law, section 2, chapter \_\_\_,**  
10 **Oregon Laws 2009 (Enrolled Senate Bill 8) (amending ORS 401.654), is repealed and ORS**  
11 **401.654, as amended by section 227, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
12 **is amended to read:**

13 401.654. (1) The Oregon Health Authority may establish a registry of emergency health care  
14 providers who are available to provide health care services during an emergency or crisis. The au-  
15 thority may require training related to the provision of health care services in an emergency or  
16 crisis as a condition of registration.

17 (2) The authority shall issue identification cards to health care providers included in the regis-  
18 try established under this section that:

19 (a) Identify the health care provider;

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

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

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

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

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

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

31 **SECTION 2. The amendments to ORS 401.654 by section 1 of this 2009 Act become oper-**  
32 **ative on January 1, 2010.**

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

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

40 685.160. (1) There hereby is created the [*Board of Naturopathic Examiners in the Oregon Health*  
41 *Authority*] **Oregon Board of Naturopathic Medicine.** The board [*shall consist*] **consists** of seven  
42 members appointed by the Governor for terms of three years commencing July 1, and until their  
43 successors are appointed and qualified. A majority of the members of the board constitutes a quo-  
44 rum. If there is a vacancy for any cause, the Governor shall appoint a member to serve for the re-  
45 mainder of the unexpired term. All appointments of members of the board by the Governor are

1 subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

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

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

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

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

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

9 *[(3)] (4)* The board shall carry into effect the provisions of this chapter and is authorized to issue  
10 licenses to practice naturopathic medicine in this state. The possession of a common seal by the  
11 board hereby is authorized.

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

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

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

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

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24  
25 **SB 151 / HB 2009 CONFLICT RESOLUTIONS**

26  
27 **SECTION 6.** If both House Bill 2009 and Senate Bill 151 become law, section 2, chapter \_\_\_\_,  
28 Oregon Laws 2009 (Enrolled Senate Bill 151), is amended to read:

29 **Sec. 2.** The Director of Human Services, or the director’s designated representative, **or the**  
30 **Director of the Oregon Health Authority, or the director’s designated representative**, may  
31 approve in writing attorneys who are eligible to be appointed as personal representatives under ORS  
32 113.085 if the decedent received public assistance pursuant to ORS chapter 411 or 414 or received  
33 care at an institution as defined in ORS 179.010, and it appears that the assistance or the cost of  
34 care may be recovered from the estate of the decedent. An attorney approved under this section  
35 does not represent the Director **of Human Services or the Director of the Oregon Health Au-**  
36 **thority** when appointed as a personal representative.

37 **SECTION 7. If both House Bill 2009 and Senate Bill 151 become law, section 3, chapter**  
38 **\_\_, Oregon Laws 2009 (Enrolled Senate Bill 151) (amending ORS 113.085), is repealed and ORS**  
39 **113.085, as amended by section 76, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
40 **is amended to read:**

41 113.085. (1) Except as provided in subsection (2) of this section, upon the filing of the petition,  
42 if there is no will or there is a will and it has been proved, the court shall appoint a qualified person  
43 it finds suitable as personal representative, giving preference in the following order:

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

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

1 decedent.

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

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

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

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

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

17 (f) [To] The Department of Veterans' Affairs, if the decedent was a protected person under ORS  
18 406.050 (7), and the department has joined in the petition for such appointment.

19 (g) [To] Any other person.

20 (2) Except as provided in subsection (3) of this section, the court shall appoint the Department  
21 of State Lands as personal representative if it appears that the decedent died wholly intestate and  
22 without known heirs. The Attorney General shall represent the Department of State Lands in the  
23 administration of the estate. Any funds received by the Department of State Lands in the capacity  
24 of personal representative may be deposited in accounts, separate and distinct from the General  
25 Fund, established with the State Treasurer. Interest earned by such account shall be credited to that  
26 account.

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

34 **SECTION 8. If both House Bill 2009 and Senate Bill 151 become law, section 4, chapter  
35 \_\_, Oregon Laws 2009 (Enrolled Senate Bill 151) (amending ORS 113.105), is repealed and ORS  
36 113.105, as amended by section 77, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009),  
37 is amended to read:**

38 113.105. (1) Unless a testator provides in a will that no bond shall be required of the executor  
39 of the estate, or unless the personal representative is the sole heir or devisee or is the Department  
40 of State Lands, the Department of Veterans' Affairs, the Director of Human Services, [or a designee  
41 or] the Director of the Oregon Health Authority or [a designee] **an attorney approved under sec-  
42 tion 2, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill 151)**, the personal representative  
43 may not act nor shall letters be issued to the personal representative until the personal represen-  
44 tative files with the clerk of the court a bond. The bond shall be executed by a surety company  
45 authorized to transact surety business in this state, or by one or more sufficient personal sureties

1 approved by the court. A personal surety must be a resident of this state. The court may, in its  
2 discretion, require a bond notwithstanding any provision in a will that no bond is required. The bond  
3 shall be for the security and benefit of all interested persons and shall be conditioned upon the  
4 personal representative faithfully performing the duties of the trust.

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

7 (a) The nature, liquidity and apparent value of the assets of the estate.

8 (b) The anticipated income during administration.

9 (c) The probable indebtedness and taxes.

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

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

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

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

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

28 114.515. (1) If the estate of a decedent meets the requirements of subsection (2) of this section,  
29 any of the following persons may file an affidavit with the clerk of the probate court in any county  
30 where there is venue for a proceeding seeking the appointment of a personal representative for the  
31 estate:

32 (a) One or more of the claiming successors of the decedent.

33 (b) If the decedent died testate, any person named as personal representative in the decedent's  
34 will.

35 (c) The Director of Human Services, **the Director of the Oregon Health Authority** or an at-  
36 torney approved [*by the director*] under section 6, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled Sen-**  
37 **ate Bill 151)** [*of this 2009 Act*], if the decedent received public assistance pursuant to ORS chapter  
38 411 or 414 or received care at an institution as defined in ORS 179.010, and it appears that the as-  
39 sistance or the cost of care may be recovered from the estate of the decedent.

40 (2) An affidavit under this section may be filed only if:

41 (a) The fair market value of the estate is \$200,000 or less;

42 (b) Not more than \$50,000 of the fair market value of the estate is attributable to personal  
43 property; and

44 (c) Not more than \$150,000 of the fair market value of the estate is attributable to real property.

45 (3) An affidavit under this section may not be filed until 30 days after the death of the decedent.

1 (4) An affidavit filed under the provisions of this section must contain the information required  
2 in ORS 114.525 and shall be made a part of the probate records. If the affiant is an attorney ap-  
3 proved by the Director of Human Services **or the Director of the Oregon Health Authority**, a  
4 copy of the document approving the attorney must be attached to the affidavit.

5 (5) In determining fair market value under this section, the fair market value of the entire in-  
6 terest in the property included in the estate shall be used without reduction for liens or other debts.

7 (6) The clerk of the probate court shall charge and collect a fee of \$23 for the filing of any af-  
8 fidavit under this section.

9 (7) Any error or omission in an affidavit filed under this section may be corrected by filing an  
10 amended affidavit within four months after the filing of the affidavit.

11 (8) One or more supplemental affidavits may be filed at any time after the filing of an affidavit  
12 under this section for the purpose of including property not described in the original affidavit.  
13 Copies of all previously filed affidavits must be attached to the supplemental affidavit and all infor-  
14 mation required in ORS 114.525 must be reflected in the supplemental affidavit. A supplemental af-  
15 fidavit may not be filed if by reason of the additional property described in the supplemental  
16 affidavit any limitation imposed by subsection (2) of this section is exceeded.

17 **SECTION 11. If both House Bill 2009 and Senate Bill 151 become law, section 8, chapter**  
18 **\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 151) (amending ORS 114.535), is repealed and ORS**  
19 **114.535, as amended by section 80, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
20 **is amended to read:**

21 114.535. (1) Any person indebted to the decedent or having possession of personal property be-  
22 longing to the estate, to whom a certified copy of the affidavit filed under ORS 114.515 is delivered  
23 by the affiant on or after the 10th day following the filing of the affidavit, shall pay, transfer or  
24 deliver the personal property to the affiant. Any person who has received property of the decedent  
25 under ORS 446.616, 722.262 or 803.094, or any similar statute providing for the transfer of property  
26 of an estate which is not being probated shall pay, transfer or deliver the property to the affiant if  
27 the person would be required to pay, transfer or deliver the property to a personal representative  
28 of the estate. The transferor is discharged and released from any liability or responsibility for the  
29 transfer in the same manner and with the same effect as if the property had been transferred, de-  
30 livered or paid to a personal representative of the estate of the decedent.

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

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

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

44 (4) **If the affidavit was signed by the Director of Human Services, the Director of the**  
45 **Oregon Health Authority or an attorney approved under section 6, chapter \_\_\_, Oregon Laws**

1 **2009 (Enrolled Senate Bill 151), the Director of Human Services, the Director of the Oregon**  
2 **Health Authority or the attorney may certify a copy of the affidavit for the purposes de-**  
3 **scribed in subsection (1) or (2) of this section.**

4 **SECTION 12. The amendments to ORS 113.085, 113.105, 114.515 and 114.535 by sections 7,**  
5 **8, 10 and 11 of this 2009 Act become operative on January 1, 2010.**

6  
7 **SB 152 / HB 2009 CONFLICT RESOLUTIONS**

8  
9 **SECTION 13. If both House Bill 2009 and Senate Bill 152 become law, section 198, chapter**  
10 **\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 279A.050), is repealed and**  
11 **ORS 279A.050, as amended by section 2, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill**  
12 **152), is amended to read:**

13 279A.050. (1)(a) Except as otherwise provided in the Public Contracting Code, a contracting  
14 agency shall exercise all procurement authority in accordance with the provisions of the Public  
15 Contracting Code.

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

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

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

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

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

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

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

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

42 (6) The state agencies listed in this subsection have all the authority to do the following in ac-  
43 cordance with the Public Contracting Code:

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

1 of goods, services and personal services for the construction, demolition, exchange, maintenance,  
2 operation and equipping of housing **for the purpose of providing care to individuals with mental**  
3 **retardation or other developmental disabilities, subject to applicable provisions of ORS**  
4 **427.335;**

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

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

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

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

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

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

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

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

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

33 *[(h)] (i) The Department of Corrections, subject to any applicable provisions of ORS 279A.120,*  
34 *279A.125, 279A.145 and 283.110 to 283.395, to procure or supervise the procurement of goods, ser-*  
35 *vices and personal services under ORS 179.040 for its institutions;*

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

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

43 *[(k)] (L) The Department of Education, subject to any applicable provisions of ORS 329.075,*  
44 *329.085 and 329.485 and the federal No Child Left Behind Act of 2001 (P.L. 107-110, 115 Stat. 1425),*  
45 *to procure or supervise the procurement of goods, services, personal services and information tech-*



1 nology relating to student assessment; and

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

4 (7) Notwithstanding this section and ORS 279A.140 (1), the Director of the Oregon Department  
5 of Administrative Services has exclusive authority, unless the director delegates this authority, to  
6 procure or supervise the procurement of all price agreements on behalf of the state agencies iden-  
7 tified in subsection (6)(a) to [(j)] (k) of this section under which more than one state agency may  
8 order goods, services or personal services and all state agency information technology contracts.  
9 This subsection does not apply to contracts under which the contractor delivers to the state agency  
10 information technology products or services incidental to the performance of personal services con-  
11 tracts described in ORS chapter 279C or construction contracts described in ORS chapter 279C. A  
12 state agency identified in subsection (3) or (6)(a) to [(j)] (k) of this section may not establish a price  
13 agreement or enter into a contract for goods, services or personal services without the approval of  
14 the director if the director has established a price agreement for the goods, services or personal  
15 services.

16  
17 **SB 155 / HB 2009 CONFLICT RESOLUTIONS**

18  
19 **SECTION 14. If both House Bill 2009 and Senate Bill 155 become law, section 383, chapter**  
20 **\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 426.020), is repealed and**  
21 **ORS 426.020, as amended by section 1, chapter 59, Oregon Laws 2009 (Enrolled Senate Bill**  
22 **155), is amended to read:**

23 426.020. (1) The superintendent of a hospital referred to in ORS 426.010 shall be a person the  
24 [Department of Human Services] **Oregon Health Authority** considers qualified to administer the  
25 hospital. If the superintendent of any hospital is a physician licensed by the Oregon Medical Board,  
26 the superintendent shall serve as chief medical officer.

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

35 (3)(a) Notwithstanding any other provision of law, the designated chief medical officer may su-  
36 pervise physicians who are employed by the hospital or who provide services at the hospital pursu-  
37 ant to a contract.

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

42  
43 **SB 157 / HB 2009 CONFLICT RESOLUTIONS**

44  
45 **SECTION 15. If both House Bill 2009 and Senate Bill 157 become law, section 1, chapter**

1 **\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 157) (amending ORS 181.537), is repealed and ORS**  
2 **181.537, as amended by section 159, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
3 **is amended to read:**

4 181.537. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (H) **Is providing information technology services and has control over or access to in-**  
40 **formation technology systems;**

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

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

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

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

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

16          (5) A qualified entity, using rules adopted by the Department of Human Services or the Oregon  
17          Health Authority, shall determine under this section whether a person is fit to hold a position,  
18          provide services, be employed or, if the qualified entity has authority to make such a determination,  
19          be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS  
20          181.534, any false statements made by the person regarding the criminal history of the person and  
21          any refusal to submit or consent to a criminal records check including fingerprint identification. If  
22          a person is determined to be unfit, then that person may not hold the position, provide services or  
23          be employed, licensed, certified or registered.

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

26               (a) The nature of the crime;

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

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

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

37          (7) The Department of Human Services, the Oregon Health Authority and the Employment De-  
38          partment may make fitness determinations based on criminal offender records and information fur-  
39          nished by the Federal Bureau of Investigation through the Department of State Police only as  
40          provided in ORS 181.534.

41          (8) A qualified entity and an employee of a qualified entity acting within the course and scope  
42          of employment are immune from any civil liability that might otherwise be incurred or imposed for  
43          determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,  
44          provide services or be employed, licensed, certified or registered. A qualified entity, employee of a  
45          qualified entity acting within the course and scope of employment and an employer or employer's

1 agent who in good faith comply with this section and the decision of the qualified entity or employee  
2 of the qualified entity acting within the course and scope of employment are not liable for the fail-  
3 ure to hire a prospective employee or the decision to discharge an employee on the basis of the  
4 qualified entity's decision. An employee of the state acting within the course and scope of employ-  
5 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination  
6 of information lawfully obtained under this section.

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

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

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

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

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

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

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

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

30 **SECTION 16. The amendments to ORS 181.537 by section 15 of this 2009 Act become op-**  
31 **erative on January 1, 2010.**

32  
33 **SB 159 / HB 2009 CONFLICT RESOLUTIONS**

34  
35 **SECTION 17. If both House Bill 2009 and Senate Bill 159 become law, section 625, chapter**  
36 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 433.004), is repealed and**  
37 **ORS 433.004, as amended by section 2, chapter \_\_, Oregon Laws 2009 (Enrolled Senate Bill**  
38 **159), is amended to read:**

39 433.004. (1) The [*Department of Human Services*] **Oregon Health Authority** shall by rule:

40 (a) Specify reportable diseases;

41 (b) Identify those categories of persons who must report reportable diseases and the circum-  
42 stances under which the reports must be made;

43 (c) Prescribe the procedures and forms for making such reports and transmitting the reports to  
44 the [*department*] **authority**; and

45 (d) Prescribe measures and methods for investigating the source and controlling reportable dis-

1 eases.

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

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

8 (a) Interviews of:

9 (A) The subject of a reportable disease report;

10 (B) Controls;

11 (C) Health care providers; or

12 (D) Employees of a health care facility.

13 (b) Requiring a health care provider, any public or private entity, or an individual who has in-  
14 formation necessary for the investigation to:

15 (A) Permit inspection of the information by the [department] **authority** or local public health  
16 administrator; and

17 (B) Release the information to the [department] **authority** or local public health administrator.

18 (c) Inspection, sampling and testing of real or personal property with consent of the owner or  
19 custodian of the property or with an administrative warrant.

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

22 (b) Information requested may include, but is not limited to, individually identifiable health in-  
23 formation related to:

24 (A) The case;

25 (B) An individual who may be the potential source of exposure or infection;

26 (C) An individual who has been or may have been exposed to or affected by the disease;

27 (D) Policies, practices, systems or structures that may have affected the likelihood of disease  
28 transmission; and

29 (E) Factors that may influence an individual's susceptibility to the disease or likelihood of being  
30 diagnosed with the disease.

31 (5) In addition to other grounds for which a state agency may exercise disciplinary action  
32 against its licensees or certificate holders, the substantial or repeated failure of a licensee or cer-  
33 tificate holder to report when required to do so under subsection (2) or (3) of this section shall be  
34 cause for the exercise of any of the agency's disciplinary powers.

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

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

42 433.008. (1)(a) Except as provided in subsection (2) of this section, information obtained by the  
43 [Department of Human Services] **Oregon Health Authority** or a local public health administrator  
44 in the course of an investigation of a reportable disease or disease outbreak is confidential and is  
45 exempt from disclosure under ORS 192.410 to 192.505.

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

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

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

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

11 (c) Law enforcement officials to the extent necessary to carry out the authority granted to the  
12 Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131,  
13 433.138 and 433.142;

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

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

18 (f) The individual who is the subject of the information or the legal representative of that indi-  
19 vidual.

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

24 (4) The [department] authority or local public health administrator may release only the mini-  
25 mum amount of information necessary to carry out the purpose of the release pursuant to subsection  
26 (2) of this section.

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

29 (6) Nothing in this section:

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

33 (b) Affects the confidentiality or admissibility into evidence of information not otherwise confi-  
34 dential or privileged that is obtained from sources other than the [department] authority; or

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

36  
37 **SB 160 / HB 2009 CONFLICT RESOLUTIONS**

38  
39 **SECTION 19. If both House Bill 2009 and Senate Bill 160 become law, section 633, chapter**  
40 **\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 433.045), is repealed and**  
41 **ORS 433.045, as amended by section 1, chapter 30, Oregon Laws 2009 (Enrolled Senate Bill**  
42 **160), is amended to read:**

43 433.045. (1) Except as provided in subsection (6) of this section and ORS 433.017, 433.055 (3) and  
44 433.080, no person shall subject the blood of an individual to an HIV test without first obtaining  
45 informed consent as described in subsection (2) or (7) of this section.

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

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

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

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

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

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

24 (8) As used in this section:

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

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

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

35  
36 **SB 163 / HB 2009 CONFLICT RESOLUTIONS**

37  
38 **SECTION 20. If both House Bill 2009 and Senate Bill 163 become law, section 4, chapter**  
39 **72, Oregon Laws 2009 (Enrolled Senate Bill 163) (amending ORS 443.735), is repealed and ORS**  
40 **443.735, as amended by section 791f, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
41 **is amended to read:**

42 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be  
43 made on forms provided by the licensing agency. Each application shall be accompanied by a fee  
44 of \$20 per bed requested for licensing.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

29 **SECTION 21. The amendments to ORS 443.735 by section 20 of this 2009 Act become op-**  
30 **erative on January 1, 2010.**

31  
32 **SB 165 / HB 2009 CONFLICT RESOLUTIONS**

33  
34 **SECTION 22. If both House Bill 2009 and Senate Bill 165 become law, section 1, chapter**  
35 **45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 430.640), is repealed and ORS**  
36 **430.640, as amended by section 511, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
37 **is amended to read:**

38 430.640. (1) The Oregon Health Authority, in carrying out the legislative policy declared in ORS  
39 430.610, subject to the availability of funds, shall:

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

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

45 (c) In an emergency situation when no community mental health program is operating within a

1 county or when a county is unable to provide a service essential to public health and safety, operate  
2 the program or service on a temporary basis.

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

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

9 (A) Mental or emotional disturbances.

10 (B) Drug abuse.

11 (C) Alcohol abuse and alcoholism.

12 (f) Approve or disapprove the biennial plan and budget information for the establishment and  
13 operation of each community mental health program. Subsequent amendments to or modifications  
14 of an approved plan or budget information involving more than 10 percent of the state funds pro-  
15 vided for services under ORS 430.630 may not be placed in effect without prior approval of the au-  
16 thority. However, an amendment or modification affecting 10 percent or less of state funds for  
17 services under ORS 430.630 within the portion of the program for persons with mental or emotional  
18 disturbances or within the portion for persons with alcohol or drug dependence may be made with-  
19 out authority approval.

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

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

25 (i) Develop guidelines that include, for the development of comprehensive local plans in consul-  
26 tation with local mental health authorities:

27 (A) The use of integrated services;

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

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

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

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

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

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

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

38 (k) Provide technical assistance and information regarding state and federal requirements to  
39 local mental health authorities throughout the local planning process required under ORS 430.630  
40 (11).

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

43 (m) Develop or adopt nationally recognized system-level performance measures, linked to the  
44 Oregon Benchmarks, for state-level monitoring and reporting of mental health services for children,  
45 adults and older adults, including but not limited to quality and appropriateness of services, out-

1 comes from services, structure and management of local plans, prevention of mental health disorders  
2 and integration of mental health services with other needed supports.

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

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

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

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

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

20 (2) The Oregon Health Authority may provide technical assistance and other incentives to assist  
21 in the planning, development and implementation of regional local mental health authorities when-  
22 ever the Oregon Health Authority determines that a regional approach will optimize the compre-  
23 hensive local plan described under ORS 430.630 (11).

24 (3) The Department of Human Services in carrying out the legislative policy declared in ORS  
25 430.610, subject to the availability of funds, shall:

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

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

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

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

38 (e) If a county agrees, contract with a public agency or private corporation for all develop-  
39 mental disabilities services.

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

44 [(f)] (g) Approve or disapprove the biennial plan and budget information for the establishment  
45 and operation of each community developmental disabilities program. Subsequent amendments to or

1 modifications of an approved plan or budget information involving more than 10 percent of the state  
2 funds provided for services under ORS 430.630 may not be placed in effect without prior approval  
3 of the department. However, an amendment or modification affecting 10 percent or less of state  
4 funds for services under ORS 430.630 within the portion of the program for persons with develop-  
5 mental disabilities may be made without department approval.

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

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

11 **SECTION 23. If both House Bill 2009 and Senate Bill 165 become law, section 2, chapter**  
12 **45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 426.005), is repealed and ORS**  
13 **426.005, as amended by section 381, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
14 **is amended to read:**

15 426.005. (1) As used in ORS 426.005 to 426.390, unless the context requires otherwise:

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

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

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

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

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

28 (A) Dangerous to self or others.

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

31 (C) A person:

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

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

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

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

41 [(e)] (f) "Nonhospital facility" means any facility, other than a hospital, that is approved by the  
42 authority to provide adequate security, psychiatric, nursing and other services to persons under ORS  
43 426.232 or 426.233.

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

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

4 **SECTION 24. If both House Bill 2009 and Senate Bill 165 become law, section 3, chapter**  
5 **45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 427.005), is repealed and ORS**  
6 **427.005 is amended to read:**

7 427.005. As used in this chapter:

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

10 (2) "Care" means:

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

12 (b) Supervision;

13 (c) Protection; and

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

16 [(3) "Department" means the Department of Human Services.]

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

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

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

23 (6) "Facility" means a state training center, community hospital, group home, activity center,  
24 intermediate care facility, community mental health clinic, or such other facility or program as the  
25 Department of Human Services approves to provide necessary services to persons with mental re-  
26 tardation.

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

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

31 (9) "Integration" means:

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

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

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

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

42 (11) "Mental retardation" means significantly subaverage general intellectual functioning exist-  
43 ing concurrently with deficits in adaptive behavior and manifested during the developmental period.  
44 Persons of borderline intelligence may be considered to have mental retardation if there is also se-  
45 rious impairment of adaptive behavior. Definitions and classifications shall be consistent with the

1 “Manual on Terminology and Classification in Mental Retardation” of the American Association on  
2 Mental Deficiency[, 1977 Revision]. Mental retardation is synonymous with mental deficiency.

3 (12) “Minor” means an unmarried person under 18 years of age.

4 (13) “Physician” means a person licensed by the Oregon Medical Board to practice medicine and  
5 surgery.

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

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

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

14 (17) “State training center” means Eastern Oregon Training Center and any other facility op-  
15 erated by the department for the care, treatment and training of persons with mental retardation.

16 (18) “Training” means:

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

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

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

25 **SECTION 25. If both House Bill 2009 and Senate Bill 165 become law, section 4, chapter**  
26 **45, Oregon Laws 2009 (Enrolled Senate Bill 165) (amending ORS 430.672), is repealed and ORS**  
27 **430.672, as amended by section 514, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
28 **is amended to read:**

29 430.672. (1) Except for community mental health programs or community developmental disabil-  
30 ities programs operated by the county, a county may impose only standards, requirements and con-  
31 ditions for mental health or developmental disabilities programs that are substantially similar to the  
32 standards, requirements and conditions established for such programs by the Department of Human  
33 Services or the Oregon Health Authority.

34 (2) When a county contracts with a public agency or private corporation for a community men-  
35 tal health program or community developmental disabilities program, the county shall include in the  
36 contract only terms that are substantially similar to model contract terms developed by the depart-  
37 ment under ORS 430.640 [(3)(g)] **(3)(h)** or the authority under ORS 430.640 (1)(g). The county may  
38 not add contractual requirements, including qualifications for contractor selection, that are nones-  
39 sential to the services provided under ORS 430.630. The county may add contract requirements that  
40 the county considers necessary to ensure the siting and maintenance of facilities of the community  
41 mental health program or community developmental disabilities program.

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

45 **SECTION 26. If both House Bill 2009 and Senate Bill 165 become law, ORS 426.070, as amended**

1 by section 385, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009), is amended to read:

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

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

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

8 (a) It must be in writing under oath;

9 (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;

10 (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;

11 (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:

- 12 (A) Of the issuance or nonissuance of a warrant under this section; or
- 13 (B) Of the court's determination under ORS 426.130 (1); and

14 (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.

15 (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:

16 (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.

17 (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.

18 (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.

19 (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.

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

21 (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.

22 (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

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

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

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

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

11 (ii) The warning under ORS 426.123; and

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

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

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

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

24 426.074. The following is applicable to an investigation initiated by a community mental health  
25 program director, or a designee of the director, as part of commitment procedures under ORS  
26 426.070 and 426.228 to 426.235:

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

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

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

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

37 (B) An application for extension shall be made to the court under paragraph (c) of this sub-  
38 section.

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

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

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

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



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

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

5 (b) Whether or not the allegedly mentally ill person consents, the investigation should include  
6 interviews with any persons that the investigator has probable cause to believe have pertinent in-  
7 formation regarding the investigation. If the allegedly mentally ill person objects to the contact with  
8 any person, the objection shall be noted in the investigator’s report.

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

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

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

23  
24 **SB 166 / HB 2009 CONFLICT RESOLUTIONS**

25  
26 **SECTION 29.** If both House Bill 2009 and Senate Bill 166 become law, section 1, chapter \_\_\_\_,  
27 Oregon Laws 2009 (Enrolled Senate Bill 166), is amended to read:

28 **Sec. 1.** (1) Notwithstanding ORS 421.611 to 421.630 or any actions taken under ORS 421.611 to  
29 421.630, the Department of Corrections may lease all or part of the real property and any improve-  
30 ments to the real property known as the Milliron Road Site south of Junction City, Lane County,  
31 to the [Department of Human Services] **Oregon Health Authority** for a period of years agreed upon  
32 by the department [of Corrections] and the [Department of Human Services] **authority**.

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

38 (3) The department [of Corrections] and the [Department of Human Services] **authority** are au-  
39 thorized to negotiate and enter into a written agreement transferring ownership of the hospital de-  
40 scribed in subsection (2) of this section from the [Department of Human Services] **authority** to the  
41 department [of Corrections], under terms and conditions acceptable to the agencies.

42  
43 **SB 287 / HB 2009 CONFLICT RESOLUTIONS**

44  
45 **SECTION 30.** If both House Bill 2009 and Senate Bill 287 become law, section 1, chapter \_\_\_\_,

1 Oregon Laws 2009 (Enrolled Senate Bill 287), is amended to read:

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

3 (a) "Facility" means:

4 (A) A residential training facility as defined in ORS 443.400;

5 (B) A residential training home as defined in ORS 443.400;

6 (C) A residential treatment facility as defined in ORS 443.400;

7 (D) A residential treatment home as defined in ORS 443.400; or

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

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

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

14 **SECTION 31. If both House Bill 2009 and Senate Bill 287 become law, section 2, chapter**  
15 **\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 287) (amending ORS 443.415), is repealed and ORS**  
16 **443.415, as amended by section 780, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
17 **is amended to read:**

18 443.415. (1) Applications for licensure to maintain and operate a residential facility shall be  
19 made to the Department of Human Services or the Oregon Health Authority on forms provided for  
20 that purpose by the appropriate licensing agency. Each application shall be accompanied by a fee  
21 of \$60 for facilities defined in ORS 443.400 (5), (7) and (9) and a fee of \$30 for homes defined in ORS  
22 443.400 (8) and (10). No fee is required of any governmentally operated residential facility.

23 (2) Upon receipt of an application and fee, the licensing agency shall conduct an investigation.  
24 The licensing agency shall issue a license to any applicant for operation of a residential facility in  
25 compliance with ORS 443.400 to 443.455 **and section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled**  
26 **Senate Bill 287)**, and the rules of the licensing agency. Licensure may be denied when a residential  
27 facility is not in compliance with ORS 443.400 to 443.455 **or section 1, chapter \_\_\_, Oregon Laws**  
28 **2009 (Enrolled Senate Bill 287)**, or the rules of the licensing agency. Licensure shall be denied if  
29 the State Fire Marshal or other authority has given notice of noncompliance of facilities defined in  
30 ORS 443.400 (5), (7) and (9) pursuant to ORS 479.220.

31 **SECTION 32. If both House Bill 2009 and Senate Bill 287 become law, section 3, chapter**  
32 **\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 287) (amending ORS 443.440), is repealed and ORS**  
33 **443.440, as amended by section 786, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009),**  
34 **is amended to read:**

35 443.440. The Department of Human Services or the Oregon Health Authority may revoke or  
36 suspend the license of any residential facility that is not operated in accordance with ORS 443.400  
37 to 443.455 **or section 1, chapter \_\_\_, Oregon Laws 2009 (Enrolled Senate Bill 287)**, or the rules  
38 *[adopted thereunder]* **of the licensing agency**. Such revocation or suspension shall be taken in ac-  
39 cordance with rules of the licensing agency and ORS chapter 183. However, in cases where an im-  
40 mminent danger to the health or safety of the residents exists, a license may be suspended  
41 immediately pending a fair hearing not later than the 10th day after such suspension.

42 **SECTION 33. The amendments to ORS 443.415 and 443.440 by sections 31 and 32 of this**  
43 **2009 Act become operative on January 1, 2010.**

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

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

8  
9                                   **SB 876 / HB 2009 CONFLICT RESOLUTIONS**

10  
11       **SECTION 35.** If both House Bill 2009 and Senate Bill 876 become law, section 296, chapter  
12 \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009) (amending ORS 414.325), is repealed and  
13 **ORS 414.325, as amended by section 1, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled Senate Bill**  
14 **876), is amended to read:**

15       414.325. (1) As used in this section, “legend drug” means any drug requiring a prescription by  
16 a practitioner, as defined in ORS 689.005.

17       (2) A licensed practitioner may prescribe such drugs under this chapter as the practitioner in  
18 the exercise of professional judgment considers appropriate for the diagnosis or treatment of the  
19 patient in the practitioner’s care and within the scope of practice. Prescriptions shall be dispensed  
20 in the generic form pursuant to ORS 689.515 and pursuant to rules of the [*Department of Human*  
21 *Services*] **Oregon Health Authority** unless the practitioner prescribes otherwise and an exception  
22 is granted by the [*department*] **authority**.

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

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

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

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

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

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

- 41       (A) Asthma;
- 42       (B) Sinusitis;
- 43       (C) Rhinitis; or
- 44       (D) Allergies.

45       (6)(a) The [*department*] **authority** shall pay a rural health clinic for a legend drug prescribed

1 and dispensed under this chapter by a licensed practitioner at the rural health clinic for an urgent  
2 medical condition if:

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

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

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

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

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

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

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

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

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

25 **Sec. 2.** Notwithstanding ORS 414.325 (9)(a), if the United States patent on an  
26 immunosuppressant drug used in connection with an organ transplant expired on or after July 1,  
27 2007, and before the effective date of [*this 2009 Act, the Department of Human Services*] **chapter \_\_\_\_,**  
28 **Oregon Laws 2009 (Enrolled Senate Bill 876), the Oregon Health Authority** shall determine  
29 whether the drug is a narrow therapeutic index drug as defined in ORS 414.325 (9)(b) before January  
30 1, 2010.

31  
32 **HB 2009 CORRECTION**

33  
34 **SECTION 37.** Section 685, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2009)  
35 (amending ORS 433.850), is repealed.

36  
37 **HB 2052 / HB 2009 CONFLICT RESOLUTIONS**

38  
39 **SECTION 38.** If both House Bill 2009 and House Bill 2052 become law, section 1, chapter  
40 121, Oregon Laws 2009 (Enrolled House Bill 2052) (amending ORS 169.690), is repealed and  
41 ORS 169.690, as amended by section 117, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill  
42 2009), is amended to read:

43 169.690. (1)(a) Before the Department of Corrections, Department of Human Services, Oregon  
44 Health Authority, Oregon Youth Authority or any city, county or other public agency establishes  
45 a facility described in paragraph [(c)] (b) of this subsection, the city, county, department, authority

1 or agency **shall fully inform the local public safety coordinating council convened under ORS**  
2 **423.560 of the following:**

3 **(A) The proposed location, estimated population size and use of the facility;**

4 **(B) The proposed number and qualifications of resident professional staff at the facility;**

5 **(C) The proposed rules of conduct for residents of the facility; and**

6 **(D) Other relevant information that the city, county, department, authority or agency**  
7 **responsible for establishing the facility considers appropriate or that the council requests.**  
8 **Nothing in this subparagraph authorizes the disclosure of information that is protected un-**  
9 **der state or federal law.** *[must designate a citizens advisory committee in the proposed affected ge-*  
10 *ographic area.]*

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

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

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

19 **(B) Youth care centers or other facilities authorized to accept youth offenders under ORS**  
20 **419C.478[.]; and**

21 **(C) Residential treatment homes and residential treatment facilities, as those terms are**  
22 **defined in ORS 443.400, for persons who, as a condition of release under ORS 161.315 to**  
23 **161.351, are required to live in a secure home or facility.**

24 *[(2) The local governmental body having jurisdiction over the affected geographic area shall ap-*  
25 *point to the citizens advisory committee persons from those nominated under subsection (1) of this sec-*  
26 *tion and shall invite the participation of officers of local governments having jurisdiction over the*  
27 *area.]*

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

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

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

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

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

36 *[(4) (2) The [citizens advisory committee] **facility advisory subcommittee of the local public***  
37 **safety coordinating council** shall advise the **city, county, department, authority or** agency re-  
38 sponsible for establishing the *[house, center or]* facility as to the suitability of the proposed *[house,*  
39 *center or other]* facility and may suggest changes in the proposal submitted under subsection *[(3)*  
40 *(1) of this section. The advice shall: [be in writing and must represent the view of the majority of the*  
41 *committee.]*

42 **(a) Be in writing;**

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

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



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

3 (B) A professional organization representing radiation therapists, if the vacancy is in the radi-  
4 ation therapist position; or

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

7 (b) In selecting the members of the board, the Governor shall strive to balance the represen-  
8 tation on the board according to:

9 (A) Geographic areas of this state; and

10 (B) Ethnic group.

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

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

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

19 (A) Is not a resident of this state;

20 (B) Has been absent from three consecutive board meetings, unless at least one absence is ex-  
21 cused;

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

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

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

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

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

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

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

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

45 691.405. As used in ORS 691.405 to 691.585:

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

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

4 [(3)] (2) “Board” means the Board of Examiners of Licensed Dietitians established under ORS  
5 691.485.

6 [(4)] (3) “Commission on Dietetic Registration” means the commission on dietetic registration  
7 that is a member of the National Commission for Certifying Agencies.

8 [(5)] (4) “Dietetics practice” means the integration and application of principles derived from the  
9 sciences of nutrition, biochemistry, food, management, physiology and behavioral and social sciences  
10 to achieve and maintain the health of people through:

11 (a) Assessing the nutritional needs of clients;

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

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

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

18 [(6)] (5) “Licensed dietitian” means a dietitian licensed as provided in ORS 691.435.

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

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

23  
24 **HB 2116 / HB 2009 CONFLICT RESOLUTIONS**

25  
26 **SECTION 46.** If both House Bill 2009 and House Bill 2116 become law, section 1, chapter \_\_,  
27 Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

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

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

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

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

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

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

45 **SECTION 47.** If both House Bill 2009 and House Bill 2116 become law, section 9, chapter \_\_,



1 Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

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

4 (a) A fully capitated health plan.

5 (b) A physician care organization.

6 (c) A mental health organization.

7 (2) No later than 45 days following the end of a calendar quarter, a Medicaid managed care  
8 organization shall pay an assessment at a rate of one percent of the gross amount of capitation  
9 payments received by the Medicaid managed care organization during that calendar quarter for  
10 providing coverage of health services under ORS 414.705 to 414.750.

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

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

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

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

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

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

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

28 **Sec. 15.** (1) The *[Department of Human Services]* **Oregon Health Authority** shall establish an  
29 adjustment to the capitation rate paid to a Medicaid managed care organization defined in section  
30 **9, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2116)** *[of this 2009 Act]*.

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

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

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

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

45 **SECTION 51.** If both House Bill 2009 and House Bill 2116 become law, section 2, chapter 736,

1 Oregon Laws 2003, as amended by section 1, chapter 780, Oregon Laws 2007, and section 17, chapter  
2 \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116), is amended to read:

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

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

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

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

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

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

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

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

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

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

38 (b) The [Department of Human Services] **authority** shall prescribe by rule criteria for late pay-  
39 ment of assessments.

40 **SECTION 52.** If both House Bill 2009 and House Bill 2116 become law, section 5, chapter 736,  
41 Oregon Laws 2003, as amended by section 18, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill  
42 2116), is amended to read:

43 **Sec. 5.** (1) A hospital that fails to file a report or pay an assessment under section 2, chapter  
44 736, Oregon Laws 2003, by the date the report or payment is due shall be subject to a penalty of  
45 up to \$500 per day of delinquency. The total amount of penalties imposed under this section for each

1 reporting period may not exceed five percent of the assessment for the reporting period for which  
2 penalties are being imposed.

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

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

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

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

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

20 (a) Increasing reimbursement rates for inpatient and outpatient hospital services under ORS  
21 414.705 to 414.750;

22 (b) Maintaining, expanding or modifying services for persons described in ORS 414.025 (2)(s);

23 (c) Maintaining or increasing the number of persons described in ORS 414.025 (2)(s) who are  
24 enrolled in the medical assistance program; and

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

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

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

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

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

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

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

42 **Sec. 32.** (1) The [*Department of Human Services*] **Oregon Health Authority** shall apply to the  
43 Centers for Medicare and Medicaid Services for any approval necessary to obtain federal financial  
44 participation in the costs of programs described in sections 27 and 30, **chapter \_\_, Oregon Laws**  
45 **2009 (Enrolled House Bill 2116)** [*of this 2009 Act*], and in implementing the amendment to section

1 27, **chapter** \_\_\_, **Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] by section 28,  
 2 **chapter** \_\_\_, **Oregon Laws 2009 (Enrolled House Bill 2116)** [of this 2009 Act].

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

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

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

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

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

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

27 (3) The [department] **authority** shall provide outreach for the Health Care for All Oregon Chil-  
 28 dren program, including development and administration of an application assistance program, and  
 29 including grants to provide funding to organizations and local groups for outreach and enrollment  
 30 activities for the program, within the limits of funds provided by the Legislative Assembly for this  
 31 purpose.

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

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

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

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

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

45 (2) To maximize the enrollment and retention of eligible children in the Health Care for All

1 Oregon Children program, the [department] **authority** shall develop and administer a grant program  
2 to provide funding to organizations and community based groups to deliver culturally specific and  
3 targeted outreach and direct application assistance to:

4 (a) Members of racial, ethnic and language minority communities;

5 (b) Children living in geographic isolation; and

6 (c) Children and family members with additional barriers to accessing health care, such as cog-  
7 nitive, mental health or sensory disorders, physical disabilities or chemical dependency, and children  
8 experiencing homelessness.

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

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

16 (a) An online application that may be submitted via the Internet;

17 (b) Application forms that are readable at a sixth grade level and that request the minimum  
18 amount of information necessary to begin processing the application; and

19 (c) Application assistance from qualified staff to aid individuals who have language, cognitive,  
20 physical or geographic barriers to applying for medical assistance or premium assistance.

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

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

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

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

31 **Sec. 50.** Notwithstanding section 9 (3), chapter 736, Oregon Laws 2003, moneys in the Hospital  
32 Quality Assurance Fund established under section 9, chapter 736, Oregon Laws 2003, that were re-  
33 ceived by the Department of Human Services **or the Oregon Health Authority** prior to January  
34 1, 2010, or if received on or after January 1, 2010, were derived from an assessment liability incurred  
35 prior to October 1, 2009, may be used by the [department] **authority**:

36 (1) During the biennium beginning July 1, 2009, to supplant, directly or indirectly, moneys ap-  
37 propriated to fund health services by the Seventy-fifth Legislative Assembly during the regular leg-  
38 islative session;

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

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

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

45 **Sec. 51.** (1) Sections 1 to 12, 15 and 29, chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill

1 **2116** [of this 2009 Act], the amendments to ORS 731.292 and 731.840 by sections 13 and 25, **chapter**  
2 **\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] and the amendments to  
3 sections 2, 5, 9, 10, 12, 13, 14 and 51, chapter 736, Oregon Laws 2003, by sections 17, 18, 19, 20, 21,  
4 22, 23 and 24, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2116)**, [of this 2009 Act] be-  
5 come operative on October 1, 2009.

6 (2) **The amendments to sections 2, 5 and 9, chapter 736, Oregon Laws 2003, by sections**  
7 **51 to 53 of this 2009 Act and the amendments to sections 1, 9, 11, 15 and 29, chapter \_\_\_,**  
8 **Oregon Laws 2009 (Enrolled House Bill 2116), by sections 46 to 49 and 54 of this 2009 Act be-**  
9 **come operative on October 1, 2009.**

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

14  
15 **HB 2133 / HB 2009 CONFLICT RESOLUTIONS**

16  
17 **SECTION 63.** If both House Bill 2009 and House Bill 2133 become law, section 1, chapter  
18 **200, Oregon Laws 2009 (Enrolled House Bill 2133) (amending ORS 431.310), is repealed and**  
19 **ORS 431.310, as amended by section 553, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill**  
20 **2009), is amended to read:**

21 431.310. (1) For the better protection of the public health, the laboratory of the Oregon Health  
22 Authority shall make bacteriological and other examinations of water, milk, blood, secretions or  
23 tissues required by any state, county or city institution, or officer, and may make such examinations  
24 for any licensed physician in accordance with the rules of the authority.

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

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

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

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

33 **SECTION 64.** The amendments to ORS 431.310 by section 63 of this 2009 Act become op-  
34 **erative on January 1, 2010.**

35  
36 **HB 2134 / HB 2009 CONFLICT RESOLUTIONS**

37  
38 **SECTION 65.** If both House Bill 2009 and House Bill 2134 become law, section 2, chapter \_\_\_,  
39 Oregon Laws 2009 (Enrolled House Bill 2134), is amended to read:

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

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

45 (2) "Firm" has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant

1 to the authorities described in section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
2 **2134) [of this 2009 Act].**

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

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

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

12 **SECTION 66. If both House Bill 2009 and House Bill 2134 become law, section 3, chapter**  
13 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2134) (amending ORS 431.920), is repealed and**  
14 **ORS 431.920, as amended by section 598, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
15 **2009), is amended to read:**

16 431.920. (1) The Oregon Health Authority shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (g) Adopt rules necessary to implement the provisions of this section and sections 4 and  
2 5, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2134); and

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

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

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

9 (2) The Oregon Health Authority may:

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

14 (b) Issue subpoenas to determine compliance with section 4, chapter \_\_, Oregon Laws  
15 2009 (Enrolled House Bill 2134);

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

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

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

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

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

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

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

35 (a) The Construction Contractors Board;

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

38 (c) The Department of Environmental Quality.

39 **SECTION 68.** If both House Bill 2009 and House Bill 2134 become law, section 7, chapter  
40 \_\_, Oregon Laws 2009 (Enrolled House Bill 2134) (amending ORS 701.505), is repealed and  
41 ORS 701.505, as amended by section 1112, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill  
42 2009), is amended to read:

43 701.505. For the purposes of ORS [431.920 and] 701.500 to 701.515:

44 (1) "Abatement" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R. 745.223  
45 and as further defined pursuant to the authorities described in [ORS 701.500] section 1, chapter



1 **\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134).**

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

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

6 (3) **"Certified lead-based paint renovation contractor" means a contractor that is licensed  
7 by the Construction Contractors Board to conduct lead-based paint renovation under ORS  
8 701.515.**

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

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

12 [(6)] (4) "Inspection" has the meaning given that term in P.L. 102-550, section 1004, 40 C.F.R.  
13 745.223 and as further defined pursuant to the authorities described in [ORS 701.500] **section 1,  
14 chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134).**

15 [(7)] (5) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and  
16 as further defined pursuant to the authorities described in [ORS 701.500] **section 1, chapter \_\_\_,  
17 Oregon Laws 2009 (Enrolled House Bill 2134).**

18 [(8)] (6) "Lead-based paint activities" has the meaning given that term in 40 C.F.R. 745.223 and  
19 as further defined pursuant to the authorities described in [ORS 701.500] **section 1, chapter \_\_\_,  
20 Oregon Laws 2009 (Enrolled House Bill 2134).**

21 [(9) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-  
22 contaminated dust, lead-contaminated soil, lead-contaminated paint that is deteriorated or present in  
23 accessible surfaces, friction surfaces or impact surfaces that would result in adverse human health ef-  
24 fects as established by the appropriate federal agency.]

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

27 [(11) "Registered" means a person or business that has met the requirements for registration under  
28 this chapter.]

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

31 (8) **"Renovation" has the meaning given that term in 40 C.F.R. 745.83 and as further de-  
32 fined pursuant to the authorities described in section 1, chapter \_\_\_, Oregon Laws 2009 (En-  
33 rolled House Bill 2134).**

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

36 **Sec. 10.** (1) A person who violates any provision of, or any rule adopted under, ORS 701.500 to  
37 701.515 shall pay to the Construction Contractors Board Lead-Based Paint Activities Fund estab-  
38 lished under section 11, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2134)** [of this 2009  
39 Act] a civil penalty of not more than \$5,000 for each violation.

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

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

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

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

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

3 (c) The Department of Environmental Quality.

4 **SECTION 70. The amendments to ORS 431.920 and 701.505 by sections 66 and 68 of this**  
5 **2009 Act become operative on January 1, 2010.**

6  
7 **HB 2194 / HB 2009 CONFLICT RESOLUTIONS**

8  
9 **SECTION 71. If both House Bill 2009 and House Bill 2194 become law, section 2, chapter**  
10 **\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2194) (amending ORS 735.610), is repealed and**  
11 **ORS 735.610, as amended by section 1118, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill**  
12 **2009), is amended to read:**

13 735.610. (1) There is created in the Oregon Health Authority the Oregon Medical Insurance Pool  
14 Board. The board shall establish the Oregon Medical Insurance Pool and otherwise carry out the  
15 responsibilities of the board under ORS 735.600 to 735.650.

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

27 (3) The Director **of the Oregon Health Authority** may fill any vacancy on the board by ap-  
28 pointment.

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

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

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

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

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

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

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

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

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

7 (5) Each member of the board is entitled to compensation and expenses as provided in ORS  
8 292.495.

9 (6) The Director of the Oregon Health Authority shall adopt rules, as provided under ORS  
10 chapter 183, implementing policies recommended by the board for the purpose of carrying out ORS  
11 735.600 to 735.650.

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

15 **SECTION 72. The amendments to ORS 735.610 by section 71 of this 2009 Act become op-**  
16 **erative on January 1, 2010.**

17  
18 **HB 2345 / HB 2009 CONFLICT RESOLUTIONS**

19  
20 **SECTION 73.** If both House Bill 2009 and House Bill 2345 become law, section 1b, chapter \_\_\_,  
21 Oregon Laws 2009 (Enrolled House Bill 2345), is amended to read:

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

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

26 (b) Require that a licensee sign a written consent prior to enrollment in the program allowing  
27 disclosure and exchange of information between the program, the licensee's board, the monitoring  
28 entity established under section 1c, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**  
29 [*of this 2009 Act*], the licensee's employer, evaluators and treatment entities in compliance with ORS  
30 179.505 and 42 C.F.R. part 2;

31 (c) Enter into diversion agreements with enrolled licensees;

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

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

36 (f) Report substantial noncompliance with a diversion agreement to the monitoring entity es-  
37 tablished under section 1c, **chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, [*of this*  
38 *2009 Act*] within one business day after the program learns of the substantial noncompliance, in-  
39 cluding but not limited to information that a licensee:

40 (A) Engaged in criminal behavior;

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

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

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

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

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

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

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

6 (g) At least weekly, submit a list of licensees who are enrolled in the program and a list of  
7 licensees who successfully complete the program to the monitoring entity established under section  
8 1c, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act].

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

10 (a) A description of the noncompliance;

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

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

15 (d) The licensee's employment status.

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

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

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

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

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

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

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

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

32 (g) Provide for employer monitoring of the licensee;

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

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

37 (j) Require the licensee to report at least weekly to the program regarding the licensee's com-  
38 pliance with the agreement;

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

41 (L) Require the licensee to report applications for licensure in other states, changes in employ-  
42 ment and changes in practice setting; and

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (A) The monitoring entity receives a report from the impaired health professional program es-  
28 tablished under section 1b, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, *[of this*  
29 *2009 Act]* that a licensee is substantially noncompliant with the licensee's diversion agreement;

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

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

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

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

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

44 (5) The *[department]* **authority** shall arrange for an independent third party to audit the moni-  
45 toring entity to ensure compliance with program guidelines. The *[department]* **authority** shall report

1 the results of the audit to the Legislative Assembly, the Governor and the health profession licens-  
2 ing boards. The report may not contain individually identifiable information about licensees.

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

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

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

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

14 **Sec. 22.** (1) Sections 1 to 1c, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** *[of*  
15 *this 2009 Act]*, the amendments to ORS 179.505, 192.690, 675.410, 675.510, 675.583, 675.600, 675.785,  
16 678.112, 678.410, 684.010 and 687.081 by sections 2 to 12, 15 and 18 to 20, **chapter \_\_\_\_, Oregon Laws**  
17 **2009 (Enrolled House Bill 2345)**, *[of this 2009 Act]* and the repeal of ORS 677.615, 677.625, 677.635,  
18 677.645, 677.655, 677.665, 677.677, 684.103, 684.157, 689.342, 689.344, 689.346, 689.348, 689.352, 689.354  
19 and 689.356 by section 14, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, *[of this*  
20 *2009 Act]* become operative July 1, 2010.

21 (2) A health profession licensing board as defined in section 1, **chapter \_\_\_\_, Oregon Laws 2009**  
22 **(Enrolled House Bill 2345)**, *[of this 2009 Act]* may take any action before the operative date speci-  
23 fied in subsection (1) of this section that is necessary to enable the board to exercise, on and after  
24 the operative date specified in subsection (1) of this section, all the duties, functions and powers  
25 conferred on the board by *[this 2009 Act]* **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill**  
26 **2345)**.

27 (3) The *[Department of Human Services]* **Oregon Health Authority** may take any action before  
28 the operative date specified in subsection (1) of this section that is necessary to enable the *[depart-*  
29 *ment]* **authority** to exercise, on and after the operative date specified in subsection (1) of this sec-  
30 tion, all the duties, functions and powers conferred on the *[department]* **authority** by *[this 2009*  
31 *Act]* **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**.

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

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

42 (2) When a licensee is transferred to the impaired health professional program established under  
43 section 1b, **chapter \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2345)**, *[of this 2009 Act]* pursuant  
44 to subsection (1) of this section, the program shall honor the terms of the licensee's existing diver-  
45 sion agreement if the terms of the agreement are consistent with the requirements of section 1b,

1 **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act]. If the terms of the  
2 licensee's existing diversion agreement are not consistent with the requirements of section 1b,  
3 **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act], the diversion  
4 agreement entered into by the program and the licensee must comply with section 1b, **chapter \_\_,**  
5 **Oregon Laws 2009 (Enrolled House Bill 2345)** [of this 2009 Act].

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

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

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

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

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

17  
18 **HB 2442 / HB 2009 CONFLICT RESOLUTIONS**

19  
20 **SECTION 78.** If both House Bill 2009 and House Bill 2442 become law, section 1, chapter \_\_,  
21 Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

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

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

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

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

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

34 **Sec. 2.** Notwithstanding section 1, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**  
35 [of this 2009 Act], on June 30, 2011, the [Department of Human Services shall transfer] **amount of**  
36 **\$150,000 shall be transferred** from the Quality Care Fund established in section 1, **chapter \_\_,**  
37 **Oregon Laws 2009 (Enrolled House Bill 2442)**, [of this 2009 Act] to the General Fund for general  
38 governmental expenses.

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

41 **Sec. 4.** (1) The Department of Human Services shall report to each regular session of the Leg-  
42 islative Assembly:

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

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

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

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

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

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

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

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

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

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

18 (3) As used in this section, "service settings" means any of the following that provide develop-  
19 mental disability services:

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

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

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

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

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

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

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

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

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

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

37 (4) As used in this section:

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

39 (b) "Facility" means:

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

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

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

44 **Sec. 6.** (1) The Department of Human Services **or the Oregon Health Authority** shall complete  
45 a criminal records check under ORS 181.534 on an employee of a residential facility, adult foster



1 home, in-home care agency or home health agency, and on any individual who is paid directly or  
2 indirectly with public funds who has or will have contact with a recipient of home health, in-home  
3 care or support services or a resident of an adult foster home or a residential facility.

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

7 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,  
8 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,  
9 163.467, 163.535, 163.537, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215,  
10 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012, 167.017,  
11 167.054 or 167.057;

12 (b) Of a crime listed in ORS 181.594;

13 (c) In the last 10 years, of a crime involving the delivery or manufacture of a controlled sub-  
14 stance;

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

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

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

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

24 (5) As used in this section:

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

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

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

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

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

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

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

32 (D) Is currently receiving or has formerly received mental health services, or is in recovery from  
33 a substance use disorder and meets the abstinence requirements for staff providing services in al-  
34cohol or other drug treatment programs.

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

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

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

40 (2) The department shall prescribe by rule policies and procedures for the investigations of  
41 allegations of abuse of a person with a developmental disability as described in ORS 430.735 (2)(a)  
42 to ensure that the investigations are conducted in a uniform, objective and thorough manner in ev-  
43ery county of the state including, but not limited to, policies and procedures that:

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

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

1 ratios;

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

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

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

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

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

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

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

23 (a) The role of each member agency;

24 (b) Procedures to be followed to assess risks to the adult;

25 (c) Guidelines for timely communication between member agencies; and

26 (d) Guidelines for completion of responsibilities by member agencies.

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

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

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

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

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

37 (a) Substantiated allegations of abuse of adults in the county for the preceding 12 months.

38 (b) Substantiated allegations of abuse referred to law enforcement because there was reasonable  
39 cause found that a crime had been committed.

40 (c) Allegations of abuse that were not investigated by law enforcement.

41 (d) Allegations of abuse that led to criminal charges.

42 (e) Allegations of abuse that led to prosecution.

43 (f) Allegations of abuse that led to conviction.

44 **SECTION 84.** If both House Bill 2009 and House Bill 2442 become law, section 20, chapter  
45 \_\_\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 441.020), is repealed and

1 **ORS 441.020, as amended by section 720, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill**  
2 **2009), is amended to read:**

3 441.020. (1) Licenses for health care facilities, except long term facilities as defined in ORS  
4 442.015, must be obtained from the Oregon Health Authority.

5 (2) Licenses for long term care facilities must be obtained from the Department of Human Ser-  
6 vices.

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

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

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

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

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

18 (a) Fewer than 26 beds, the annual license fee shall be \$750.

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

20 (c) Fifty or more beds but fewer than 100 beds, the annual license fee shall be \$1,900.

21 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

22 (e) Two hundred or more beds, the annual license fee shall be \$3,400.

23 (6) For long term care facilities with:

24 [(a) Fewer than 16 beds, the annual license fee shall be up to \$120.]

25 [(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.]

26 [(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.]

27 [(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to  
28 \$450.]

29 [(e) Two hundred beds or more, the annual license fee shall be up to \$580.]

30 **(a) One to 15 beds, the annual license fee shall be \$180.**

31 **(b) Sixteen to 49 beds, the annual license fee shall be \$260.**

32 **(c) Fifty to 99 beds, the annual license fee shall be \$520.**

33 **(d) One hundred to 150 beds, the annual license fee shall be \$670.**

34 **(e) More than 150 beds, the annual license fee shall be \$750.**

35 (7) For special inpatient care facilities with:

36 (a) Fewer than 26 beds, the annual license fee shall be \$750.

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

38 (c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be \$1,900.

39 (d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be \$2,900.

40 (e) Two hundred beds or more, the annual license fee shall be \$3,400.

41 (8) For ambulatory surgical centers, the annual license fee shall be \$1,000.

42 (9) For birthing centers, the annual license fee shall be \$250.

43 (10) For outpatient renal dialysis facilities, the annual license fee shall be \$1,500.

44 (11) During the time the licenses remain in force, holders [thereof] are not required to pay in-  
45 spection fees to any county, city or other municipality.

1 (12) Any health care facility license may be indorsed to permit operation at more than one lo-  
2 cation. *[In such case]* **If so**, the applicable license fee shall be the sum of the license fees *[which]*  
3 **that** would be applicable if each location were separately licensed.

4 (13) Licenses for health maintenance organizations shall be obtained from the Director of the  
5 Department of Consumer and Business Services pursuant to ORS 731.072.

6 (14) **All moneys received pursuant to subsection (6) of this section shall be deposited in**  
7 **the Quality Care Fund established in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled**  
8 **House Bill 2442).**

9 **SECTION 85. If both House Bill 2009 and House Bill 2442 become law, section 21, chapter**  
10 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 441.715), is repealed and**  
11 **ORS 441.715, as amended by section 741, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
12 **2009), is amended to read:**

13 441.715. (1)(a) After public hearing, the Director of Human Services by rule shall adopt objective  
14 criteria for establishing the civil penalty that may be imposed under ORS 441.710 (1) and the Di-  
15 rector of the Oregon Health Authority by rule shall adopt objective criteria for establishing the civil  
16 penalty that may be imposed under ORS 441.710 (2). However, the civil penalty may not exceed \$500  
17 for each violation, except as otherwise provided in *[ORS 441.637 and 441.995]* **this subsection and**  
18 **ORS 441.995 or as otherwise required by federal law.**

19 (b) Notwithstanding the limitations on the civil penalty in paragraph (a) of this subsection, for  
20 any violation involving direct resident care or feeding, an adequate staff to resident ratio, sanitation  
21 involving direct resident care or a violation of ORS 441.605 or rules required to be adopted under  
22 ORS 441.610, a penalty may be imposed for each day the violation occurs in an amount not to exceed  
23 \$500 per day **or as otherwise required by federal law.**

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

30 (A) **“Negative outcome” includes serious injury, rape, sexual abuse or death.**

31 (B) **“Rape” means rape in the first, second or third degree as described in ORS 163.355,**  
32 **163.365 and 163.375.**

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

36 (D) **“Sexual abuse” means any form of nonconsensual sexual contact, including but not**  
37 **limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit**  
38 **photographing and sexual harassment.**

39 (2) The penalties assessed under subsection (1)(a) **or (b)** of this section may not exceed  
40 *[\$6,000]* **\$7,500** in the aggregate or as otherwise required by federal law with respect to a single long  
41 term care facility within any 90-day period.

42 **SECTION 86. If both House Bill 2009 and House Bill 2442 become law, section 24, chapter**  
43 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.045), is repealed and**  
44 **ORS 443.045, as amended by section 772, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
45 **2009), is amended to read:**

1 443.045. (1) The Oregon Health Authority may deny, suspend or revoke the license of any home  
2 health agency for failure to comply with ORS 443.005 to 443.095 **or section 6, chapter \_\_, Oregon**  
3 **Laws 2009 (Enrolled House Bill 2442)**, or with the rules of the authority as authorized by ORS  
4 443.085.

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

7 **SECTION 87. If both House Bill 2009 and House Bill 2442 become law, section 25, chapter**  
8 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.325), is repealed and**  
9 **ORS 443.325, as amended by section 776b, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
10 **2009), is amended to read:**

11 443.325. The Oregon Health Authority may impose a civil penalty in the manner provided in  
12 ORS 183.745 and deny, suspend or revoke the license of any in-home care agency licensed under ORS  
13 443.315 for failure to comply with ORS 443.305 to 443.350 or with rules adopted thereunder. **The**  
14 **authority may deny, suspend or revoke the license of any in-home care agency licensed under**  
15 **ORS 443.315 for failure to comply with section 6, chapter \_\_, Oregon Laws 2009 (Enrolled**  
16 **House Bill 2442).** A failure to comply with ORS 443.305 to 443.350 includes, but is not limited to:

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

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

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

21 **SECTION 88. If both House Bill 2009 and House Bill 2442 become law, section 28, chapter**  
22 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.430), is repealed and**  
23 **ORS 443.430, as amended by section 784, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
24 **2009), is amended to read:**

25 443.430. (1) [No] A license under ORS 443.415 is **not** transferable or applicable to any location,  
26 residential facility or management other than that indicated on the application for licensure.

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

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

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

36 **(3) All moneys collected from a residential care facility under ORS 443.415, 443.425 or**  
37 **443.455 shall be deposited in the Quality Care Fund established in section 1, chapter \_\_,**  
38 **Oregon Laws 2009 (Enrolled House Bill 2442).**

39 **SECTION 89. If both House Bill 2009 and House Bill 2442 become law, section 29, chapter**  
40 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.455), is repealed and**  
41 **ORS 443.455, as amended by section 789, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
42 **2009), is amended to read:**

43 443.455. (1) For purposes of imposing civil penalties, residential facilities approved under ORS  
44 443.400 to 443.455 are subject to ORS 441.705 to 441.745.

45 (2) The Director of Human Services shall by rule prescribe a schedule of penalties for residential

1 care facilities, residential training facilities and residential training homes that are not in compli-  
2 ance with ORS 443.400 to 443.455.

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

6 (4) **If the department or authority investigates and makes a finding of abuse arising from**  
7 **deliberate or other than accidental action or inaction that is likely to cause a negative out-**  
8 **come by a person with a duty of care toward a resident of a residential facility and if the**  
9 **abuse resulted in the death, serious injury, rape or sexual abuse of a resident, the depart-**  
10 **ment or authority shall impose a civil penalty of not less than \$2,500 for each occurrence of**  
11 **substantiated abuse, not to exceed \$15,000 in any 90-day period. As used in this subsection:**

12 (a) **“Negative outcome” includes serious injury, rape, sexual abuse or death.**

13 (b) **“Rape” means rape in the first, second or third degree as described in ORS 163.355,**  
14 **163.365 and 163.375.**

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

18 (d) **“Sexual abuse” means any form of nonconsensual sexual contact, including but not**  
19 **limited to unwanted or inappropriate touching, sodomy, sexual coercion, sexually explicit**  
20 **photographing and sexual harassment.**

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

25 443.735. (1) Applications for a license to maintain and operate an adult foster home shall be  
26 made on forms provided by the licensing agency. Each application shall be accompanied by a fee  
27 of \$20 per bed requested for licensing.

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

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

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

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

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

37 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-  
38 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-  
39 sponsible for abuse; and

40 (e) The applicant has demonstrated to the licensing agency the financial ability and resources  
41 necessary to operate the adult foster home. The licensing agency shall adopt rules as the agency  
42 deems appropriate that establish the financial standards an applicant must meet to qualify for issu-  
43 ance of a license and that protect financial information from public disclosure. The demonstration  
44 of financial ability under this paragraph shall include, but need not be limited to, providing the li-  
45 censing agency with a list of any unsatisfied judgments, pending litigation and unpaid taxes and

1 notifying the agency regarding whether the applicant is in bankruptcy. If the applicant is unable to  
2 demonstrate the financial ability and resources required by this paragraph, the licensing agency may  
3 require the applicant to furnish a financial guarantee as a condition of initial licensure.

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

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

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

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

12 (d) The licensing agency has determined that the registry maintained under ORS 441.678 con-  
13 tains no finding that the applicant or any nursing assistant employed by the applicant has been re-  
14 sponsible for abuse.

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

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

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

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

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

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

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

41 (9) The licensing agency shall not issue a license to operate an additional adult foster home to  
42 a provider unless the provider has demonstrated the qualifications and capacity to operate the pro-  
43 vider's existing licensed adult foster homes and has demonstrated the ability to provide to the resi-  
44 dents of those adult foster homes care that is adequate and substantially free from abuse and  
45 neglect.

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

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

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

14 **SECTION 90. If both House Bill 2009 and House Bill 2442 become law, section 33, chapter**  
15 **\_\_, Oregon Laws 2009 (Enrolled House Bill 2442) (amending ORS 443.775), is repealed and**  
16 **ORS 443.775, as amended by section 791o, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill**  
17 **2009), is amended to read:**

18 443.775. (1) The licensing agency shall adopt rules governing adult foster homes and the level  
19 of care provided in such homes, including the provision of care to more than one person with  
20 nursing care needs under specified conditions and agency approval, such as are necessary to protect  
21 the health, safety or welfare of the residents and to provide for an appropriate continuum of care,  
22 but shall not be inconsistent with the residential nature of the living accommodations and the family  
23 atmosphere of the home. The rules shall be consistent with rules adopted by the Oregon State Board  
24 of Nursing under ORS 678.150 (9).

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

29 (b) The licensing agency, and the counties acting under the exemption granted pursuant to ORS  
30 443.780, shall report on a quarterly basis to the Legislative Assembly on the number of exceptions  
31 granted during the quarter pursuant to paragraph (a) of this subsection.

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

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

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

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

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



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

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

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

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

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

11 (10) **Except as provided in subsection (11) of this section**, any person who violates a pro-  
12 vision of ORS 443.705 to 443.825 or the rules adopted thereunder may be subjected to the imposition  
13 of a civil penalty, to be fixed by the [director] **licensing agency** by rule, not to exceed \$100 per vi-  
14 olation, to a maximum of \$250 or, per occurrence of substantiated abuse, a maximum of \$1,000.

15 (11)(a) **If the licensing agency determines that there is reasonable cause to believe that**  
16 **abuse occurred in an adult foster home licensed by the licensing agency and if the abuse**  
17 **resulted in the death, serious injury, rape, sexual abuse or sexual exploitation of a resident,**  
18 **the licensing agency shall impose a civil penalty on the adult foster home of not less than**  
19 **\$2,500 for each violation.**

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

22 (c) **The licensing agency shall by rule define “serious injury,” “rape,” “sexual abuse” and**  
23 **“sexual exploitation” for purposes of this subsection.**

24 (12) **All penalties recovered pursuant to this section shall be deposited in the Quality Care**  
25 **Fund established in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442).**

26 **SECTION 91.** If both House Bill 2009 and House Bill 2442 become law, section 36, chapter \_\_,  
27 Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

28 **Sec. 36.** The Director of Human Services **and the Director of the Oregon Health Authority**  
29 may take any action before the operative dates specified in sections 37 to 40, **chapter \_\_, Oregon**  
30 **Laws 2009 (Enrolled House Bill 2442)**, [of this 2009 Act] that is necessary to enable the Department  
31 of Human Services **and the Oregon Health Authority** to carry out, on and after the operative  
32 dates specified in sections 37 to 40, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**  
33 [of this 2009 Act], the provisions of [this 2009 Act] **chapter \_\_, Oregon Laws 2009 (Enrolled House**  
34 **Bill 2442).**

35 **SECTION 92.** If both House Bill 2009 and House Bill 2442 become law, section 37, chapter \_\_,  
36 Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

37 **Sec. 37.** Except as provided in section 36, **chapter \_\_, Oregon Laws 2009 (Enrolled House**  
38 **Bill 2442)** [of this 2009 Act], sections 1, 4, 5, 7 and 8, **chapter \_\_, Oregon Laws 2009 (Enrolled**  
39 **House Bill 2442)**, [of this 2009 Act] and the amendments to ORS 124.050, 124.065, 124.070, 430.735,  
40 430.743, 430.745, 441.020, 441.715, 441.745, 441.995, 443.415, 443.425, 443.430, 443.455, 443.735, 443.775,  
41 443.790 and 443.825 by sections 9, 10, 12, 15, 16, 17, [20, 21,] 22, 23, 26, 27, [28, 29, 31, 33,] 34 and  
42 35, **chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2442)**, and sections 84, 85 and 88 to  
43 **90 of this 2009 Act** [of this 2009 Act] become operative on January 1, 2010.

44 **SECTION 93.** If both House Bill 2009 and House Bill 2442 become law, section 40, chapter \_\_,  
45 Oregon Laws 2009 (Enrolled House Bill 2442), is amended to read:

