

# Enrolled House Bill 2243

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Health Licensing Agency)

CHAPTER .....

AN ACT

Relating to regulation of licensed nursing home administrators; creating new provisions; amending ORS 441.109, 676.160, 676.606, 676.610, 676.612, 676.613, 676.992, 678.710, 678.720, 678.725, 678.730, 678.740, 678.750, 678.760, 678.770, 678.775, 678.780, 678.790, 678.800, 678.810 and 678.820 and section 37, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2059); repealing ORS 678.825, 678.830 and 678.840 and section 15, chapter \_\_\_, Oregon Laws 2009 (Enrolled House Bill 2059); appropriating money; and declaring an emergency.

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

**SECTION 1.** ORS 678.800 is amended to read:

678.800. [(1) *There is hereby created a Board of Examiners of Nursing Home Administrators in the Department of Human Services.*]

[(2) *The board shall be composed of nine individuals concerned with the care and treatment of the chronically ill or infirm elderly patients and shall be appointed by the Governor after consultation with the associations and societies appropriate to the professions and institutions.*]

**(1) The Nursing Home Administrators Board is established within the Oregon Health Licensing Agency.**

**(2)(a) The board consists of nine members who are appointed by the Governor, after consultation with any appropriate licensing boards, as follows:**

[(a)] **(A)** Three members [*shall be*] **are** nursing home administrators **who are** licensed under [ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)] **ORS 678.710 to 678.840;**

[(b)] **(B)** One **member is** a medical doctor **who is** licensed by the Oregon Medical Board **and is** actively engaged in private practice and conversant with the care and treatment of the long-term patient;

[(c)] **(C)** One **member is a** licensed professional nurse **who is** actively engaged in caring for chronically ill and infirm patients and licensed by the Oregon State Board of Nursing;

[(d)] **(D)** Three members **are** representative of the public at large, [*at least one of whom shall*] **and at least one is** [*be at least*] 62 years of age **or older; and**

[(e)] **(E)** One **member is** a pharmacist **who is** licensed by the State Board of Pharmacy[; *and*].

[(f) *Except for those persons described in paragraph (a) of this subsection, no member of the board shall have a direct financial interest in a nursing home.*]

[(3) *All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state. No more than two of the members of the board may be officials or full-time employees of state or local governments.*]

(b) The members of the board appointed as described in paragraph (a) of this subsection must also meet the following qualifications:

(A) Be citizens of the United States and residents of this state;

(B) Have a demonstrated concern with the care and treatment of the chronically ill or infirm elderly patients;

(C) Except for members described in paragraph (a)(A) of this subsection, not have a direct financial interest in a nursing home; and

(D) For members described in paragraph (a)(D) of this subsection, not have a financial interest in, or have an employment contract with, a long term care facility.

[4] (3) The term of office of each member of the board is *[three]* four years, but a member serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor shall appoint a successor. *[whose term begins on July 1 next following. A member is eligible for re-appointment but no member shall serve more than two consecutive terms.]* If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term. **A member holds office until the appointment and confirmation of a successor. A member is eligible for reappointment, but may not serve more than two consecutive full terms unless at least four years have passed since the member last held office.**

[5] (4) All appointments of members of the board by the Governor are subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565.

[6] (5) The members of the board are entitled to compensation and expenses as provided in ORS 292.495.

[7] *No public members of the board shall hold any pecuniary interest in, or have any employment contract with, a long term care facility.*

**SECTION 2.** The amendments to ORS 678.800 by section 1 of this 2009 Act that change the number of years of a term of office of a member of the Nursing Home Administrators Board apply to members whose terms of office begin on or after the effective date of this 2009 Act.

**SECTION 3.** (1) The amendments to ORS 678.800 by section 1 of this 2009 Act are intended to change the name of the “Board of Examiners of Nursing Home Administrators” to the “Nursing Home Administrators Board.”

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

**SECTION 3a.** If House Bill 2058 becomes law, section 1 of this 2009 Act (amending ORS 678.800) is repealed and ORS 678.800, as amended by section 13, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2058), is amended to read:

678.800. (1) *[There is hereby created a Board of Examiners of Nursing Home Administrators.]* **The Nursing Home Administrators Board is established within the Oregon Health Licensing Agency.**

(2) The board consists of nine members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be concerned with the care and treatment of the chronically ill or infirm elderly patients and must be residents of this state. Of the members of the board:

(a) Three must be nursing home administrators licensed under *[ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)]* **ORS 678.710 to 678.840;**

(b) One must be a medical doctor licensed by the Oregon Medical Board actively engaged in private practice and conversant with the care and treatment of the long-term patient;

(c) One must be a licensed professional nurse actively engaged in caring for chronically ill and infirm patients and licensed by the Oregon State Board of Nursing;

(d) One must be a pharmacist licensed by the State Board of Pharmacy; and

(e) Three must be members of the public who are not:

- (A) Otherwise eligible for appointment to the board; or
  - (B) A spouse, domestic partner, child, parent or sibling of a nursing home administrator.
- (2)(a) Board members required to be nursing home administrators may be selected by the Governor from a list of three to five nominees submitted by any professional organization representing nursing home administrators.
- (b) Except for those persons described in paragraph (a) of this subsection, no member of the board may have a direct financial interest in a nursing home.
  - (c) No more than two of the members of the board may be officials or full-time employees of state or local governments.
  - (d) At least one public member must be at least 62 years of age.
  - (e) No public members of the board may hold any pecuniary interest in, or have any employment contract with, a long term care facility.
  - (f) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:
    - (A) Geographic areas of this state; and
    - (B) Ethnic group.
- (3)(a) The term of office of each member is three years but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than three terms end each year. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause the Governor shall make an appointment to become immediately effective for the unexpired term.
- (b) A board member shall be removed immediately from the board if, during the member's term, the member:
    - (A) Is not a resident of this state;
    - (B) Has been absent from three consecutive board meetings, unless at least one absence is excused; or
    - (C) Is not a licensed nursing home administrator or a retired nursing home administrator whose license as a nursing home administrator was in good standing at the time of retirement, if the member was appointed to serve on the board as a nursing home administrator.
- (4) The members of the board are entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

**SECTION 3b. If House Bill 2058 becomes law, section 2 of this 2009 Act is repealed.**

**SECTION 3c.** If House Bill 2058 becomes law, section 3 of this 2009 Act is amended to read:

**Sec. 3.** (1) The amendments to ORS 678.800 by section [I] 3a of this 2009 Act are intended to change the name of the "Board of Examiners of Nursing Home Administrators" to the "Nursing Home Administrators Board."

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

**SECTION 4. The duties, functions and powers of the Nursing Home Administrators Board relating to the administrative and regulatory oversight of nursing home administrator licenses issued under ORS 678.710 to 678.840 are imposed upon, transferred to and vested in the Oregon Health Licensing Agency.**

**SECTION 5. (1) The chairperson of the Nursing Home Administrators Board shall deliver to the Oregon Health Licensing Agency all records within the jurisdiction of the chairperson that relate to the duties, functions and powers transferred by section 4 of this 2009 Act.**

**(2) The Director of the Oregon Health Licensing Agency shall take possession of the records delivered under subsection (1) of this section.**

(3) The Governor shall resolve any dispute between the Nursing Home Administrators Board and the Oregon Health Licensing Agency relating to transfers of records under this section, and the Governor's decision is final.

**SECTION 6.** The unexpended balance of the Board of Examiners of Nursing Home Administrators Account established in ORS 678.830 is transferred to the Oregon Health Licensing Agency Account established in ORS 676.625 for expenditure by the agency for the biennium beginning July 1, 2009, for the purpose of administering and enforcing the duties, functions and powers transferred by section 4 of this 2009 Act.

**SECTION 7.** The transfer of duties, functions and powers to the Oregon Health Licensing Agency by section 4 of this 2009 Act does not affect any action, proceeding or prosecution involving or with respect to such duties, functions and powers begun before and pending at the time of the transfer, except that the Oregon Health Licensing Agency is substituted for the Nursing Home Administrators Board in the action, proceeding or prosecution.

**SECTION 8.** (1) Nothing in sections 4 to 11 of this 2009 Act relieves a person of a liability, duty or obligation accruing under or with respect to the duties, functions and powers transferred by section 4 of this 2009 Act. The Oregon Health Licensing Agency may undertake the collection or enforcement of any such liability, duty or obligation.

(2) The rights and obligations of the Nursing Home Administrators Board legally incurred under contracts, leases and business transactions executed, entered into or begun before the effective date of section 4 of this 2009 Act and accruing under or with respect to the duties, functions and powers transferred by section 4 of this 2009 Act are transferred to the Oregon Health Licensing Agency. For the purpose of succession to these rights and obligations, the Oregon Health Licensing Agency is a continuation of the Nursing Home Administrators Board and not a new authority.

**SECTION 9.** Notwithstanding the transfer of duties, functions and powers by section 4 of this 2009 Act, the rules of the Nursing Home Administrators Board with respect to such duties, functions or powers that are in effect on the effective date of section 4 of this 2009 Act continue in effect until superseded or repealed by rules of the Oregon Health Licensing Agency. References in such rules of the Nursing Home Administrators Board to the Nursing Home Administrators Board or an officer or employee of the Nursing Home Administrators Board are considered to be references to the Oregon Health Licensing Agency or an officer or employee of the Oregon Health Licensing Agency.

**SECTION 10.** Whenever, in any uncodified law or resolution of the Legislative Assembly or in any rule, document, record or proceeding authorized by the Legislative Assembly, in the context of the duties, functions and powers transferred by section 4 of this 2009 Act, reference is made to the Nursing Home Administrators Board, or an officer or employee of the Nursing Home Administrators Board, whose duties, functions or powers are transferred by section 4 of this 2009 Act, the reference is considered to be a reference to the Oregon Health Licensing Agency or an officer or employee of the Oregon Health Licensing Agency who by section 4 of this 2009 Act is charged with carrying out such duties, functions and powers.

**SECTION 11.** For the purpose of harmonizing and clarifying statute sections published in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the "Nursing Home Administrators Board" or its officers, wherever they occur in ORS 678.810 to 678.840 and are used in relation to the administrative and regulatory oversight of nursing home administrator licenses issued under ORS 678.810 to 678.840, other words designating the "Oregon Health Licensing Agency" or its officers.

**SECTION 12.** ORS 678.810 is amended to read:

678.810. (1) The [*Board of Examiners of Nursing Home Administrators*] **Nursing Home Administrators Board** shall hold at least [*two meetings*] **one meeting** each year. [*At any meeting*] A majority of the members of the board [*shall constitute*] **constitutes** a quorum for the transaction of business.

(2) The board shall *[elect annually from its membership a]* **select one of its members as chairperson and [a] another as vice chairperson, for a one-year term and with such duties and powers necessary for the performance of the functions of the offices as the board determines.**

**SECTION 13.** ORS 678.820 is amended to read:

678.820. *[It shall be the function of the Board of Examiners of Nursing Home Administrators to:]*

*[(1) Develop, impose and enforce standards which shall be met by individuals in order to receive and retain a license as a nursing home administrator, which standards shall be designed to insure that nursing home administrators will be individuals who are qualified by training or experience in the field of long-term health care administration to serve as nursing home administrators.]*

*[(2) Develop and apply appropriate techniques, including examinations and investigations for determining whether an individual meets such standards, if examinations are reviewed periodically to insure validity.]*

*[(3) Issue licenses to individuals determined after application of such techniques, to meet such standards, and subject to ORS chapter 183 impose any of the sanctions set out in ORS 678.780 where the individual holding any such license is determined substantially to have failed to conform to the requirements of such standards.]*

*[(4) Establish and carry out procedures designed to insure that individuals licensed as nursing home administrators will, during any period that they serve as such, comply with the requirements of such standards.]*

*[(5) Receive, investigate and take appropriate action with respect to any charge or complaint filed with the board in writing, charging that any individual licensed as a nursing home administrator has failed to comply with the requirements of such standards.]*

*[(6) Conduct a continuing study and investigation of nursing homes and administrators of nursing homes within the state with a view to the improvement of standards imposed for the licensing of such administrators and the procedures and methods for the enforcement of such standards with respect to administrators of nursing homes who have been licensed as such.]*

*[(7) Encourage qualified educational institutions and other qualified organizations to establish, provide, conduct and continue such training and instruction courses and programs as will enable all otherwise qualified individuals to meet requirements established under ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2).]*

*[(8) Approve courses and programs conducted within or without the state as sufficient to meet education and training requirements established pursuant to ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2) and advise the appropriate state agencies regarding receipt and administration of such federal funds as are made available for such purposes.]*

*[(9) In accordance with ORS 183.330, adopt, amend and repeal rules which are necessary to carry out the provisions of ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2).]*

*[(10) Maintain a register of all licensed nursing home administrators.]*

**(1) The Nursing Home Administrators Board is responsible for advising the Oregon Health Licensing Agency in all matters relating to the administration of ORS 678.710 to 678.840, including:**

- (a) Developing standards for education and training;**
- (b) Developing standards of practice and professional conduct;**
- (c) Establishing standards related to the issuance, denial, revocation, suspension or renewal of licenses to practice as a nursing home administrator;**
- (d) Preparing or approving the examinations required under ORS 678.710 to 678.840, in accordance with standards provided by the agency; and**
- (e) Assisting the agency in administering the provisions of ORS 678.710 to 678.840.**

**(2) The Oregon Health Licensing Agency shall administer ORS 678.710 to 678.840 by:**

- (a) Determining the qualifications and fitness of applicants for licenses, renewed licenses, reciprocal licenses and provisional licenses under ORS 678.710 to 678.840.**

(b) Examining, approving, issuing, denying, revoking, suspending and renewing licenses to practice as a nursing home administrator.

(c) Providing for waivers of examinations or provisional licenses.

(d) Establishing and carrying out procedures to ensure compliance with professional standards adopted by the board.

(e) Pursuant to ORS 676.608, receiving and investigating complaints filed regarding nursing home administrators.

(f) Establishing and collecting fees and charges to carry out the agency's duties under ORS 678.710 to 678.840.

(g) In accordance with ORS 183.330 and 676.615, adopting, amending and repealing rules that are necessary to carry out the administration of ORS 678.710 to 678.840.

(h) Maintaining a register of all licensed nursing home administrators.

(3) The agency shall consider and be guided by the recommendations of the board in all matters relating to the administration of ORS 678.710 to 678.840.

**SECTION 14.** ORS 678.710 is amended to read:

678.710. As used in ORS 678.710 to 678.840, unless the context requires otherwise:

[1] "Board" means the Board of Examiners of Nursing Home Administrators of the State of Oregon.]

[2] "Department" means the Department of Human Services.]

[3] (1) "Dual facility" means a facility that operates both a hospital and a long term care facility on the same campus.

(2) "Nursing home" means any institution or facility defined as a long term care facility for licensing purposes under state statute or the rules of the Department of Human Services, including a long term care facility operated as part of a dual facility.

[4] (3) "Nursing home administrator" means an individual responsible for planning, organizing and managing the operation of a nursing home, whether or not such individual has an ownership interest in such home and whether or not such functions are shared by one or more other individuals, if:

(a) Final responsibility and authority are retained in the nursing home administrator; and

(b) In the case of a dual facility, the nursing home administrator may be subject to the authority of the administrator of the dual facility or the dual facility administrator may administer the nursing home if the administrator is licensed or otherwise qualified by statute to administer a nursing home.

[5] "Nursing home" means any institution or facility defined as a long term care facility for licensing purposes under state statute or the rules of the department, including a long term care facility operated as part of a dual facility.]

[6] (4) "Provisional license" means a temporary license issued to a provisional nursing home administrator under the rules of the [board] **Oregon Health Licensing Agency**.

**SECTION 15.** ORS 678.720 is amended to read:

678.720. (1) [On and after July 1, 1971,] Unless an individual holds a valid license issued under the provisions of [ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)] **ORS 678.710 to 678.840**, an individual [shall] **may** not:

(a) Practice or offer to practice as a nursing home administrator; or

(b) Use in connection with the name of the individual the words or letters "nursing home administrator," "NHA" or any other words, letters or abbreviations or insignia tending to indicate that [such] **the** individual is a licensed nursing home administrator.

(2) [On and after July 1, 1971, no] **A** nursing home shall be conducted or operated [unless it is] under the supervision of a nursing home administrator who holds a valid license issued under the provisions of [ORS 678.710 to 678.780, 678.800 to 678.840 and ORS 678.990 (2)] **ORS 678.710 to 678.840**.

**SECTION 16.** ORS 678.725 is amended to read:

678.725. (1) Any health care facility licensed under ORS 441.015, any licensee licensed by the [Board of Examiners of Nursing Home Administrators of the State of Oregon] **Oregon Health Li-**

**censing Agency**, any physician licensed by the Oregon Medical Board, any licensed professional nurse and any licensed pharmacist shall, and any other person may, report to the [board] **agency** suspected violations of ORS 678.710 to 678.840 and [insanitary] **unsanitary** or other unsatisfactory conditions in a nursing home.

(2) Information acquired by the [board] **agency** pursuant to subsection (1) of this section is confidential and [shall not be] **is not** subject to public disclosure.

(3) Any person who reports or provides information to the [board] **agency** under subsection (1) of this section and who provides information in good faith [shall] **may** not be subject to an action for civil damages as a result [thereof] **of making the report or providing the information**.

**SECTION 16a. If House Bill 2059 becomes law, section 15, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059) (amending ORS 678.725), is repealed and ORS 678.725, as amended by section 16 of this 2009 Act, is amended to read:**

678.725. (1)(a) **Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure**, any health care facility licensed under ORS 441.015, any licensee licensed by the Oregon Health Licensing Agency, any physician licensed by the Oregon Medical Board, any licensed professional nurse and any licensed pharmacist shall[, and any other person may,] report to the agency suspected violations of ORS 678.710 to 678.840 and unsanitary or other unsatisfactory conditions in a nursing home.

(b) **Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee licensed under ORS 678.710 to 678.840 who has reasonable cause to believe that a licensee of any board as defined in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), has engaged in prohibited conduct as defined in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), shall report the prohibited conduct in the manner provided in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059).**

(c) **Any person may report to the agency suspected violations of ORS 678.710 to 678.840 or unsanitary conditions in a nursing home.**

(2) Information acquired by the agency pursuant to subsection (1) of this section is confidential and is not subject to public disclosure.

(3) Any person who reports or provides information to the agency under subsection (1) of this section and who provides information in good faith may not be subject to an action for civil damages as a result of making the report or providing the information.

**SECTION 16b. The amendments to ORS 678.725 by section 16a of this 2009 Act become operative January 1, 2010.**

**SECTION 16c. If House Bill 2059 becomes law, section 37, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), is amended to read:**

**Sec. 37. Sections 1, 6, 9, 11, 13, 17, 20, 23, 26, 28, 30, 33 and 35, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), [of this 2009 Act] and the amendments to ORS 675.583, 678.135, 678.725, 679.310, 681.505, 682.220, 684.200, 687.051, 688.135, 688.605 and 689.455 by sections 2, 3, 4, 7, 14, [15,] 18, 21, 24, 31 and 36, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), [of this 2009 Act] and section 16a of this 2009 Act apply to prohibited conduct as defined in section 1, chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059), [of this 2009 Act] that occurs on or after the effective date of chapter \_\_, Oregon Laws 2009 (Enrolled House Bill 2059) [this 2009 Act].**

**SECTION 17. ORS 678.730 is amended to read:**

678.730. (1) [Any] **An individual [is qualified] qualifies** for licensure as a nursing home administrator [who] **if the individual:**

(a) Meets the **education**, training [or experience] and other standards established by rules of the [Board of Examiners of Nursing Home Administrators] **Nursing Home Administrators Board**. The board shall **establish standards that** accept one year of experience as an administrator serving a dual facility in lieu of any residency or intern requirement [established pursuant to this paragraph] **that may be established by the board;** and

(b) Has passed an examination as provided in ORS 678.740.

(2) *[Each license as a nursing home administrator may be renewed by the board upon compliance by the licensee with the requirements of ORS 678.760 and by presenting evidence of the completion of the continuing education work required by the board.]* **A license holder may renew a license as provided by ORS 678.760.** The board may require up to 50 hours of continuing education in any one-year period for a renewed license.

(3) In establishing educational standards pursuant to subsection (1)(a) of this section, the board shall require a baccalaureate degree from an accredited school of higher education. However, the educational requirement does not apply to any person who:

(a) Was a licensed administrator in any jurisdiction of the United States prior to January 1, 1983; or

(b) Was an administrator of a dual facility meeting the experience requirements pursuant to subsection (1)(a) of this section.

(4) Notwithstanding the requirements established under subsection (1) of this section, upon the request of the governing body of a hospital, as defined in ORS 442.015 (19), the board shall **adopt standards by rule that** deem a health care administrator to have met the requirements for licensure as a nursing home administrator if the health care administrator possesses an advanced degree in management and has at least 10 years of experience in health care management.

**SECTION 18.** ORS 678.740 is amended to read:

678.740. (1) Examinations for licensure as a nursing home administrator shall be conducted at such times and places as the *[Board of Examiners of Nursing Home Administrators of the State of Oregon shall designate]* **Nursing Home Administrators Board designates**, but not less than once a year. The fee for examination or reexamination shall be determined by the *[board]* **Oregon Health Licensing Agency** under ORS 678.775.

(2) The board shall, consistent with the purposes for which the examination is given, determine the subjects, scope, content and the minimum passing grade for examinations.

**SECTION 19.** ORS 678.750 is amended to read:

678.750. (1) Nothing in *[ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)]* **ORS 678.710 to 678.840** or the rules adopted *[thereunder shall]* **under ORS 678.710 to 678.840 may** be construed to require an individual, who is employed to administer an institution exempted under ORS 441.065 as an institution that is operated by and for persons who rely on spiritual means alone for the care and treatment of the sick, to demonstrate proficiency in any medical techniques or to meet any medical educational qualifications or medical standards not in accord with the remedial care and treatment provided in *[such institutions]* **the institution**. Any license issued under *[ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)]* **ORS 678.710 to 678.840** to *[such]* an individual **described in this subsection** shall indicate the limited extent of the authority of the individual to act as an administrator.

(2) Subsection (1) of this section does not limit or prohibit the operator of an institution from enforcing any religious affiliation *[requirement]* **requirements** imposed as a bona fide occupational qualification or business necessity or as otherwise permitted by section 703(e) of Title VII of the Civil Rights Act of 1964 or other provision of federal law.

**SECTION 20.** ORS 678.760 is amended to read:

678.760. *[(1) Upon compliance with the requirements of ORS 678.730 and the payment of a fee as determined by the Board of Examiners of Nursing Home Administrators of the State of Oregon under ORS 678.775, an individual shall upon application be granted a nursing home administrator's original license. All original licenses shall expire on June 30 of the next odd-numbered year or on such date as may be specified by board rule.]*

*[(2) Upon application within one year following expiration of an original or a renewal license, and the payment of a fee as determined by the board under ORS 678.775, the board shall issue a renewal license, provided the continuing education requirements and all other requirements set by the board have been met. All renewal licenses shall expire on June 30 of the next odd-numbered year or on such date as may be specified by board rule.]*

*[(3) The fee for a provisional license shall be determined by the board under ORS 678.775.]*



(1) Subject to ORS 676.612 and subsection (2) of this section, the Oregon Health Licensing Agency shall:

(a) Issue a license as a nursing home administrator to a qualified applicant upon satisfactory evidence of meeting the requirements of ORS 678.730 and other qualifications adopted by the Nursing Home Administrators Board by rule.

(b) Renew a license as a nursing home administrator if, by a date specified by the agency by rule, the license holder submits to the agency a completed renewal application, required renewal fees and satisfactory evidence of completion of any required continuing education credits.

(2) For up to one year from the date of a denial, suspension, revocation or expiration of a nursing home administrator license, the agency may refuse to grant or renew the license of a nursing home administrator whose license has expired or been denied, suspended or revoked.

(3)(a) Except as provided by paragraph (b) of this subsection, a nursing home administrator license expires on the last day of the month, one year from the date of issuance.

(b) The agency may adopt by rule an expiration date that is different than the date provided by paragraph (a) of this subsection if the license holder is provided written notice of the different renewal date and the renewal fee is prorated.

(4) The agency may adopt rules for the reactivation of an expired license, including additional requirements for a license that has been expired for three years or more.

(5) The agency may establish requirements for the issuance of a temporary provisional license. The fee for a provisional license is established by rules of the agency under ORS 678.775.

**SECTION 21.** The amendments to ORS 678.760 by section 20 of this 2009 Act apply to license holders whose license is issued or renewed on or after the effective date of this 2009 Act or whose license has expired or been denied, suspended or revoked on or after the effective date of this 2009 Act.

**SECTION 22.** ORS 678.770 is amended to read:

678.770. (1) *[The Board of Examiners of Nursing Home Administrators of the State of Oregon may license by indorsement, without examination, any individual who applies therefor,]* **The Nursing Home Administrators Board may establish by rule standards for the issuance of a license by endorsement, without examination, to an applicant who:**

(a) Meets the requirements as established by the board; and

(b) On the date of making application, is a nursing home administrator licensed under the laws of any other state or territory of the United States if the requirements for licensing of nursing home administrators in the state or territory in which the applicant is licensed are not less than those required *[in ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)]* **by ORS 678.710 to 678.840.**

(2) Each applicant under this section shall pay to the *[board]* **Oregon Health Licensing Agency** at the time of filing the application a fee determined by the *[board]* **agency** under ORS 678.775.

**SECTION 23.** ORS 678.775 is amended to read:

678.775. (1) *[The fees and charges determined by the Board of Examiners of Nursing Home Administrators of the State of Oregon under ORS 678.740, 678.760 and 678.770 are subject to the prior approval of the Oregon Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees and charges shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget, as that budget may be modified by the Emergency Board.]* **The Oregon Health Licensing Agency shall establish by rule and collect fees and charges for the following under ORS 678.710 to 678.840:**

(a) **Application;**

(b) **Examination or reexamination;**

(c) **Original license;**

- (d) License renewal;
- (e) Provisional or temporary license;
- (f) Licensure by reciprocity or endorsement;
- (g) License reactivation;
- (h) Issuance of a replacement license;
- (i) Delinquency fee;
- (j) License verification; and
- (k) Costs of providing copies of official documents or records and for recovering administrative costs associated with compiling, copying or preparing and delivering the records.

(2) All moneys received by the agency under subsection (1) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account, and are appropriated continuously to and shall be used by the agency as authorized by ORS 676.625.

**SECTION 24.** ORS 678.780 is amended to read:

678.780. [(1) *The sanctions authorized by subsection (2) of this section may be imposed upon the following grounds:*]

[(a) *The employment of fraud or deception in applying for or obtaining a nursing home administrator's license.*]

[(b) *Engaging in conduct in the course of acting as a nursing home administrator involving fraud, dishonesty, malfeasance, cheating or other conduct as the Board of Examiners of Nursing Home Administrators of the State of Oregon may prohibit by rule.*]

[(c) *Conviction of a crime involving circumstances that relate to the licensee's fitness to continue practicing as a nursing home administrator.*]

[(d) *Mistake or inadvertence in the issuance of the license by the board.*]

[(e) *Physical or mental incapacity that presents an unreasonable risk of harm to the licensee or to the person or property of others in the course of performing the duties of a nursing home administrator.*]

[(f) *Use of any controlled substance or intoxicating liquor in a manner that impairs the licensee's ability to conduct safely the practice for which the licensee is licensed.*]

[(g) *The licensee has engaged in conduct that would justify denying a license to an applicant.*]

[(h) *Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2) or of any lawful rule or order of the board or continuous or substantial violations of the rules adopted under ORS 441.055.*]

[(i) *Discipline imposed by any other licensing body in this or any other state based on conduct that would be grounds for discipline under this section or rules adopted by the board.*]

[(j) *Incompetence in performing the duties of a nursing home administrator as demonstrated by evidence that the licensee either lacks or did not use the knowledge or skill necessary to perform the administrator's duties in a minimally adequate manner.*]

[(k) *Employing or otherwise assisting another person to act as a nursing home administrator with knowledge that the person does not hold a valid license to practice as a nursing home administrator.*]

[(L) *Failure to pay a civil penalty imposed against the licensee in a timely manner.*]

[(m) *Unprofessional conduct as defined in rules adopted by the board.*]

[(2) *Subject to ORS chapter 183, the board may impose any or all of the following sanctions:*]

[(a) *Suspend, revoke or refuse to renew any license required by ORS 678.720.*]

[(b) *A civil penalty not to exceed \$1,000.*]

[(c) *Probation, with authority to limit or restrict a license.*]

[(d) *Participation in a treatment program for intoxicating liquor or controlled substances.*]

[(3) *Hearings under this section must be conducted by an administrative law judge assigned from the Office of Administrative Hearings established by ORS 183.605.*]

[(4) *Information that the board obtains as part of an investigation into licensee or applicant conduct or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or applicant conduct is confidential as provided under ORS 676.175.*]

(1) In the manner prescribed in ORS chapter 183 for contested cases, the Oregon Health Licensing Agency may impose a form of discipline as specified in ORS 676.612 against any person practicing as a nursing home administrator for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 678.710 to 678.840, or the rules adopted under ORS 678.710 to 678.840.

(2) In addition to any discipline that may be imposed as provided by subsection (1) of this section, the agency may impose disciplinary sanctions against a person practicing as a nursing home administrator for any of the following causes:

(a) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.840 or of any rule or order of the agency;

(b) Any continuous or substantial violation of the rules adopted under ORS 441.055; or

(c) Discipline imposed by any other licensing body in this or any other state based on conduct that would be grounds for discipline under this section or rules adopted by the agency.

**SECTION 25.** The amendments to ORS 678.780 by section 24 of this 2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.

**SECTION 26.** ORS 678.790 is amended to read:

678.790. (1) [Where the Board of Examiners of Nursing Home Administrators] **When the Oregon Health Licensing Agency** proposes to refuse to issue or renew a license, or proposes to revoke or suspend a license **under ORS 678.710 to 678.840**, opportunity for hearing shall be accorded as provided in ORS chapter 183.

(2) Judicial review of orders under subsection (1) of this section shall be in accordance with ORS chapter 183.

(3) If the final order of the court on review reverses the [board's] **agency's** order of suspension, revocation or refusal to renew, the [board] **agency** shall issue the license and reinstate the appellant not later than the 30th day after the decision of the court.

**SECTION 27.** ORS 676.606 is amended to read:

676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide administrative and regulatory oversight and centralized service for the following boards, advisory councils and program:

(1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

(2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;

(3) State Board of Denture Technology, as provided in ORS 680.500 to 680.570;

(4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

(5) Respiratory Therapist Licensing Board, as provided in ORS 688.800 to 688.840;

(6) Environmental Health Registration Board, as provided in ORS chapter 700;

(7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as provided in ORS 690.350 to 690.430;

(8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185;

(9) Body piercing licensing program, as provided in ORS 690.500 to 690.570; [and]

(10) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410; **and**

**(11) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.840.**

**SECTION 28.** ORS 676.610 is amended to read:

676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a director, who is responsible for the performance of the duties, functions and powers and for the organization of the agency.

(b) The Director of the Oregon Department of Administrative Services shall establish the qualifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at the pleasure of the Director of the Oregon Department of Administrative Services.

(c) The Director of the Oregon Health Licensing Agency shall receive a salary as provided by law or, if not so provided, as prescribed by the Director of the Oregon Department of Administrative Services.

(d) The Director of the Oregon Health Licensing Agency shall be in the unclassified service.

(2) The Director of the Oregon Health Licensing Agency shall be responsible for the performance of duties and functions of the boards, councils and programs administered by the agency. The Director of the Oregon Health Licensing Agency shall provide the boards, councils and programs with such services and employees as the agency requires to carry out its duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of the Oregon Health Licensing Agency shall appoint all subordinate officers and employees of the agency, prescribe their duties and fix their compensation.

(3) [Except as provided in section 18, chapter 885, Oregon Laws 1999,] The Director of the Oregon Health Licensing Agency shall be responsible for carrying out the duties, functions and powers under ORS 675.360 to 675.410, **678.710 to 678.840**, 680.500 to 680.570, 680.990 (2), 687.405 to 687.495, 688.800 to 688.840, 688.995, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570, 690.992 and 694.015 to 694.185 and ORS chapter 700.

(4) The enumeration of duties, functions and powers in subsection (3) of this section is not intended to be exclusive nor to limit the duties, functions and powers imposed on or vested in the Oregon Health Licensing Agency by other statutes.

**SECTION 29.** ORS 676.612 is amended to read:

676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, **678.780**, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 690.515, 694.147 and 700.111, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may place on probation or otherwise discipline a holder of a certificate, permit, license or registration to practice issued by the agency for any of the following reasons:

(a) Fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining an authorization to practice in this state, or in any written or oral communication to the agency concerning the issuance or retention of the authorization.

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the certificate, permit, license or registration holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the holder.

(d) Practicing under a false, misleading or deceptive name, or impersonating another certificate, permit, license or registration holder.

(e) Permitting a person other than the certificate, permit, license or registration holder to use the certificate, permit, license or registration.

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the practitioner or to the person or property of others in the course of performing the practitioner's duties.

(g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing substances, or engaging in the illegal use of controlled substances or other skill-impairing substances so as to create a risk of harm to the person or property of others in the course of performing the practitioner's duties.

(h) Failing to properly and reasonably accept responsibility for the actions of employees.

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of conviction, certified by the clerk of the court entering the conviction, is conclusive evidence of the

conviction. A plea of no contest or an admission of guilt shall be considered a conviction for purposes of this paragraph.

(L) Failing to report any adverse action, as required by statute or rule, taken against the certificate, permit, license, or registration holder by another regulatory jurisdiction or any peer review body, health care institution, professional association, governmental agency, law enforcement agency or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary action as described in this section.

(m) Violation of a statute regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(n) Violation of any rule regulating an occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(o) Failing to cooperate with the agency in any investigation, inspection or request for information.

(2) The agency may refuse to issue or renew, may suspend or revoke or may place on probation or otherwise sanction a holder of a certificate, permit, license or registration to practice issued by the agency for failure to pay an outstanding civil penalty or fee that is due or for failure to meet the terms of any order issued by the agency that has become final.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the agency may require the fingerprints of a person who is:

(a) Applying for a certificate, permit, license or registration that is issued by the agency;

(b) Applying for renewal of a certificate, permit, license or registration that is issued by the agency; or

(c) Under investigation by the agency.

(4) If the agency places a holder of a certificate, permit, license or registration on probation under subsection (1) of this section, the agency, in consultation with the appropriate board, council or program, may determine and at any time modify the conditions of the probation.

(5) If a certificate, permit, license or registration is suspended, the holder may not practice during the term of suspension. Upon the expiration of the term of suspension, the certificate, permit, license or registration may be reinstated by the agency if the conditions of suspension no longer exist and the holder has satisfied all requirements in the relevant statutes or administrative rules for issuance, renewal or reinstatement.

**SECTION 30.** ORS 676.613 is amended to read:

676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that violates any provision of ORS 675.360 to 675.410, 676.617, **678.710 to 678.840**, 680.500 to 680.570, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 or 694.015 to 694.185 or ORS chapter 700, the agency may, through the Attorney General or the district attorney of the county in which the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining the person from the act, practice or transaction.

(2) A court may issue an injunction under this section without proof of actual damages. An injunction issued under this section does not relieve a person from any other prosecution or enforcement action taken for violation of statutes listed in subsection (1) of this section.

**SECTION 31.** ORS 676.992 is amended to read:

676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

(a) ORS 688.701 to 688.734 (athletic training);

(b) ORS 690.500 to 690.570 (body piercing);

(c) ORS 690.005 to 690.235 (cosmetology);

(d) ORS 680.500 to 680.570 (denture technology);

(e) ORS 687.405 to 687.495 (direct entry midwifery);

- (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- (h) ORS 688.800 to 688.840 (respiratory therapy);
- (i) ORS chapter 700 (environmental sanitation);
- (j) ORS 676.617 (single facility licensure); [and]
- (k) ORS 675.360 to 675.410 (sex offender treatment); **and**
- (L) ORS 678.710 to 678.840 (nursing home administrators).**

(2) The agency may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any statute or rule adopted under any statute listed in subsection (1) of this section.

(3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a violation of ORS 694.042.

(4) In imposing a civil penalty pursuant to this section, the agency shall consider the following factors:

- (a) The immediacy and extent to which the violation threatens the public health or safety;
- (b) Any prior violations of statutes, rules or orders;
- (c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and

(d) Any other aggravating or mitigating factors.

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

(6) The moneys received by the agency from civil penalties under this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account established under ORS 676.625. Such moneys are continuously appropriated to the agency for the administration and enforcement of the laws the agency is charged with administering and enforcing that govern the person against whom the penalty was imposed.

**SECTION 32.** ORS 441.109 is amended to read:

441.109. The office of the Long Term Care Ombudsman shall carry out the following duties:

(1) Investigate and resolve complaints made by or for residents of long term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights, including subpoenaing any person to appear, give sworn testimony or to produce documentary or other evidence that is reasonably material to any matter under investigation.

(2) Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as may lead to improvements in the functioning of long term care facilities.

(3) Monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long term care facilities in this state.

(4) Provide information to public agencies about the problems of residents of long term care facilities.

(5) Work closely with cooperative associations and citizen groups in this state.

(6) Widely publicize the Long Term Care Ombudsman's service, purpose and mode of operation.

(7) Collaborate with the Department of Human Services and the [*Board of Examiners of Nursing Home Administrators*] **Nursing Home Administrators Board** to establish a statewide system to collect and analyze information on complaints and conditions in long term care facilities for the purpose of publicizing improvements and resolving significant problems.

(8) Appoint designees to serve as local representatives of the office in various districts of the state and regularly monitor their functions.

(9) Specify qualifications and duties of designees.

(10) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with the committee.

(11) Provide periodically, or at least twice annually, a report to the Governor, department and the Legislative Assembly.

(12) Prepare necessary reports with the assistance of the department.

**SECTION 33.** ORS 676.160 is amended to read:

676.160. As used in ORS 676.165 to 676.180, "health professional regulatory board" means the:

- (1) State Board of Examiners for Speech-Language Pathology and Audiology;
- (2) State Board of Chiropractic Examiners;
- (3) State Board of Clinical Social Workers;
- (4) Oregon Board of Licensed Professional Counselors and Therapists;
- (5) Oregon Board of Dentistry;
- (6) Board of Examiners of Licensed Dietitians;
- (7) State Board of Massage Therapists;
- (8) State Mortuary and Cemetery Board;
- (9) Board of Naturopathic Examiners;
- (10) Oregon State Board of Nursing;
- [(11) Board of Examiners of Nursing Home Administrators;]
- (11) Nursing Home Administrators Board;**
- (12) Oregon Board of Optometry;
- (13) State Board of Pharmacy;
- (14) Oregon Medical Board;
- (15) Occupational Therapy Licensing Board;
- (16) Physical Therapist Licensing Board;
- (17) State Board of Psychologist Examiners;
- (18) Board of Radiologic Technology;
- (19) Oregon State Veterinary Medical Examining Board; and
- (20) Department of Human Services to the extent that the department certifies emergency medical technicians.

**SECTION 34.** ORS 678.825, 678.830 and 678.840 are repealed.

**SECTION 35.** This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect July 1, 2009.

Passed by House May 29, 2009

Received by Governor:

Repassed by House June 23, 2009

.....M.,....., 2009

Approved:

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Chief Clerk of House

.....M.,....., 2009

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Speaker of House

.....  
Governor

Passed by Senate June 22, 2009

Filed in Office of Secretary of State:

.....M.,....., 2009

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President of Senate

.....  
Secretary of State