

# House Bill 2602

Sponsored by Representative CLEM

## 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 **as introduced**.

Requires medical staff bylaws at health care facility to provide for fair hearing process to challenge denial, revocation, suspension or restriction of physician privileges. Specifies requirements for process.

## A BILL FOR AN ACT

1  
2 Relating to hospital credentialing; amending ORS 441.055.

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

4 **SECTION 1.** ORS 441.055 is amended to read:

5 441.055. (1) The Department of Human Services shall adopt such rules with respect to the dif-  
6 ferent types of health care facilities as may be designed to further the accomplishment of the pur-  
7 poses of ORS 441.015 to 441.087. No rules shall require any specific food so long as the necessary  
8 nutritional food elements are present.

9 (2) Rules describing care given in health care facilities shall include, but not be limited to,  
10 standards of patient care or patient safety, adequate professional staff organizations, training of staff  
11 for whom no other state regulation exists, suitable delineation of professional privileges and ade-  
12 quate staff analyses of clinical records. The department may in its discretion accept certificates by  
13 the Joint Commission on Accreditation of Hospitals or the Committee on Hospitals of the American  
14 Osteopathic Association as evidence of compliance with acceptable standards.

15 (3) The governing body of each health care facility shall be responsible for the operation of the  
16 facility, the selection of the medical staff and the quality of care rendered in the facility. The gov-  
17 erning body shall:

18 (a) Ensure that all health care personnel for whom state licenses, registrations or certificates  
19 are required are currently licensed, registered or certified;

20 (b) Ensure that physicians admitted to practice in the facility are granted privileges consistent  
21 with their individual training, experience and other qualifications;

22 (c) Ensure that procedures for granting, restricting and terminating privileges exist and that  
23 such procedures are regularly reviewed to assure their conformity to applicable law;

24 (d) Ensure that physicians admitted to practice in the facility are organized into a medical staff  
25 in such a manner as to effectively review the professional practices of the facility for the purposes  
26 of reducing morbidity and mortality and for the improvement of patient care; *[and]*

27 (e) Ensure that a physician is not denied medical staff membership or privileges at the facility  
28 solely on the basis that the physician holds medical staff membership or privileges at another health  
29 care facility[.]; **and**

30 **(f) Ensure that economic criteria, unrelated to quality of care or professional compe-**  
31 **tency, are not considered in determining a physician's qualification for initial or continuing**

**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 **medical staff membership or clinical privileges at the facility.**

2 (4) The physicians organized into a medical staff pursuant to subsection (3) of this section shall  
 3 propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited  
 4 to the following:

5 (a) Procedures for physicians admitted to practice in the facility to organize into a medical staff  
 6 pursuant to subsection (3) of this section[;].

7 (b) Procedures for ensuring that physicians admitted to practice in the facility are granted  
 8 privileges consistent with their individual training, experience and other qualifications[;].

9 (c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or re-  
 10 move officers and other persons to carry out medical staff activities with accountability to the  
 11 governing body[;].

12 (d) Procedures for ensuring that physicians admitted to practice in the facility are currently li-  
 13 censed by the Oregon Medical Board[;].

14 (e) Procedures for ensuring that the facility's procedures for granting, restricting and terminat-  
 15 ing privileges are followed and that such procedures are regularly reviewed to assure their con-  
 16 formity to applicable law[; and].

17 (f) Procedures for ensuring that [*physicians provide*] **a physician provides** services within the  
 18 scope of the privileges granted by the governing body[.] **and ensuring that a physician is not re-**  
 19 **quired to provide call coverage for clinical services for which the physician either is not**  
 20 **competent by training or experience to provide or has no professional liability insurance**  
 21 **coverage.**

22 (g) **Procedures ensuring a fair hearing process to challenge a proposed action to deny,**  
 23 **reduce, suspend or restrict a physician's medical staff or clinical privileges that shall include**  
 24 **but not be limited to all of the following:**

25 (A) **A written notice to the physician stating the proposed action and a detailed state-**  
 26 **ment of the facts and reasoning that form the basis of the action.**

27 (B) **The right of the physician to request a hearing before a committee composed of**  
 28 **noncompeting members of the facility's medical staff. If the physician and the facility agree**  
 29 **in writing, another adjudicative body or person may be substituted for the committee de-**  
 30 **scribed in this subparagraph.**

31 (C) **The right of the physician to receive from the facility, no less than 30 days prior to**  
 32 **the scheduled date of the hearing, notice of the date, time and place of the hearing, a sum-**  
 33 **mary of the physician's rights at the hearing and a list of witnesses the facility expects to**  
 34 **call and a summary of each witness's expected testimony.**

35 (D) **The right of the physician to:**

36 (i) **Call, examine and cross-examine witnesses;**

37 (ii) **Have a record of the hearing made at the expense of the physician;**

38 (iii) **Present evidence determined by the committee or presiding officer to be relevant**  
 39 **regardless of whether such evidence would be admissible in court;**

40 (iv) **Present a written statement at the close of the hearing;**

41 (v) **Receive a copy of the recommendation of the committee or presiding officer;**

42 (vi) **Receive a written copy of the facility's written decision that sets forth, in detail, the**  
 43 **basis for the decision; and**

44 (vii) **Be represented by an attorney throughout the hearing process.**

45 (E) **If the physician's initial application to become a member of the facility's medical staff**

1 is denied or the application is approved with limited or restricted privileges, a provision that  
2 the burden of proof is on the physician to prove by clear and convincing evidence that the  
3 physician's credentials meet or exceed the written criteria of the facility for granting the  
4 requested privileges. The facility has the burden of going forward with clear and convincing  
5 evidence that the physician should not be granted the privileges requested.

6 (F) If the facility proposes to revoke, suspend or restrict a physician's existing medical  
7 staff or clinical privileges, including requests for recredentialing, a provision that the burden  
8 of proof is on the facility to prove by clear and convincing evidence that the proposed action  
9 should be taken. The physician has the burden of going forward with clear and convincing  
10 evidence to prove that the proposed action should not be taken.

11 (G) A provision that the parties to the fair hearing process shall conduct discovery as  
12 provided in ORCP 36 to 46, and that if any party refuses to conform the party's conduct or  
13 responses to the requirements of the rules, the complaining party may petition the circuit  
14 court in the county where the hearing is to take place to impose such sanctions as the court  
15 deems proper.

16 (h) Provisions establishing that personal conduct, whether verbal or physical, that affects  
17 or has the potential to affect patient care negatively may constitute disruptive behavior and  
18 be the basis for refusing to grant, restricting or terminating privileges. A decision under this  
19 paragraph must be in writing, furnished to the physician within 10 days of the decision and  
20 state the specific basis for the decision, which must be supported by an objectively reason-  
21 able belief that the purported disruptive behavior has or will negatively impact patient care.  
22 As used in this paragraph, "disruptive behavior" does not include verbal or written criticism  
23 or expression offered in good faith to improve patient care.

24 (5) Amendments to medical staff bylaws shall be accomplished through a cooperative process  
25 involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, re-  
26 pealed or amended when approved by the medical staff and the governing body. Approval shall not  
27 be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold  
28 approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is  
29 necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the  
30 failure to approve would subvert the stated moral or ethical purposes of the institution.

31 (6) The Oregon Medical Board may appoint one or more physicians to conduct peer review for  
32 a health care facility upon request of such review by all of the following:

- 33 (a) The physician whose practice is being reviewed.
- 34 (b) The executive committee of the health care facility's medical staff.
- 35 (c) The governing body of the health care facility.

36 (7) The physicians appointed pursuant to subsection (6) of this section shall be deemed agents  
37 of the Oregon Medical Board, subject to the provisions of ORS 30.310 to 30.400 and shall conduct  
38 peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health care  
39 facility.

40 (8) Any person serving on or communicating information to a peer review committee shall not  
41 be subject to an action for damages for action or communications or statements made in good faith.

42 (9) All findings and conclusions, interviews, reports, studies, communications and statements  
43 procured by or furnished to the peer review committee in connection with a peer review are confi-  
44 dential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to ORS  
45 41.675.

1 (10) Notwithstanding subsection (9) of this section, a written report of the findings and conclu-  
2 sions of the peer review shall be provided to the governing body of the health care facility who shall  
3 abide by the privileged and confidential provisions set forth in subsection (9) of this section.

4 (11) Procedures for peer review established by subsections (6) to (10) of this section are exempt  
5 from ORS chapter 183.

6 (12) The department shall adopt by rule standards for rural hospitals, as defined in ORS 442.470,  
7 that specifically address the provision of care to postpartum and newborn patients so long as patient  
8 care is not adversely affected.

9 (13) For purposes of this section, "physician" has the meaning given the term in ORS 677.010.

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