

House Bill 3243

Sponsored by Representative BARTON

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**.

Prohibits discrimination for medical services based on individual's eligibility for Medicare if individual has existing relationship with service provider.

Allows Oregon Medical Board to refuse to grant license to practice, or to suspend or revoke license to practice, if person terminates relationship with patient solely because of patient's eligibility for Medicare.

A BILL FOR AN ACT

1
2 Relating to unlawful discrimination for medical services; creating new provisions; and amending
3 ORS 659A.403, 659A.825 and 677.190.

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

5 **SECTION 1.** ORS 659A.403, as amended by section 5, chapter 100, Oregon Laws 2007, is
6 amended to read:

7 659A.403. (1) Except as provided in subsection (2) of this section, [*all persons within the juris-*
8 *diction of*] **an individual in** this state [*are*] **is** entitled to the full and equal accommodations, advan-
9 tages, facilities and privileges of [*any*] **a** place of public accommodation, **as defined in ORS**
10 **659A.400**, without [*any*] distinction, discrimination or restriction on account of **the individual's**
11 race, color, religion, sex, sexual orientation, national origin, marital status or age if the individual
12 is 18 years of age or older.

13 (2) [*Subsection (1) of*] This section does not prohibit:

14 (a) The enforcement of laws governing the consumption of alcoholic beverages by minors and
15 the frequenting by minors of places of public accommodation where alcoholic beverages are served;
16 or

17 (b) The offering of special rates or services to [*persons*] **individuals** 50 years of age or older.

18 (3) It is an unlawful practice for [*any person*] **a place of public accommodation or an em-**
19 **ployee or a person acting on behalf of the place of public accommodation** to deny **an individual**
20 **the** full and equal accommodations, advantages, facilities and privileges of [*any*] **the** place of public
21 accommodation [*in violation of this section.*] **by making distinction, discrimination or restriction**
22 **on account of the individual's race, color, religion, sex, sexual orientation, national origin,**
23 **marital status or age if the individual is 18 years of age or older.**

24 (4) **It is an unlawful practice for a place of public accommodation or an employee or a**
25 **person acting on behalf of the place of public accommodation to discriminate against an in-**
26 **dividual if:**

27 (a) **The discrimination is based on the individual being eligible for Medicare or becoming**
28 **eligible for Medicare within one year;**

29 (b) **The discrimination is related to the provision of services by a person licensed under**
30 **ORS chapter 677; and**

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 (c) **The individual previously received services from the person related to the license the**
 2 **person holds under ORS chapter 677.**

3 **SECTION 2.** ORS 659A.825, as amended by section 8, chapter 36, Oregon Laws 2008, is amended
 4 to read:

5 659A.825. (1)(a) If the Attorney General or the Commissioner of the Bureau of Labor and In-
 6 dustries has reason to believe that [*any*] a person has committed an unlawful practice, the Attorney
 7 General or the commissioner may file a complaint in the same manner as provided for a complaint
 8 filed by a person under ORS 659A.820.

9 (b) If the Attorney General or the commissioner has reason to believe that a violation of ORS
 10 659A.403, 659A.406 or 659A.409 has occurred, the Attorney General or the commissioner may file a
 11 complaint under this section against **the place of public accommodation**, any person acting on
 12 behalf of [*a*] **the** place of public accommodation and [*against*] any person who has aided or abetted
 13 in that violation.

14 (c) If the Attorney General or the commissioner has reason to believe that an unlawful practice
 15 under ORS 659A.145 or 659A.421 or discrimination under federal housing law has occurred or is
 16 about to occur, the Attorney General or the commissioner may file a complaint in the same manner
 17 as a person filing a complaint under ORS 659A.820.

18 (2) If the commissioner files a complaint under this section alleging an unlawful practice other
 19 than an unlawful employment practice, or if a person files a complaint under ORS 659A.820 alleging
 20 an unlawful practice under ORS 659A.145 or 659A.421 or discrimination under federal housing law,
 21 the commissioner may also issue a temporary cease and desist order requiring any respondent
 22 named in the complaint to refrain from the unlawful practice alleged. A temporary cease and desist
 23 order under this section may contain any provision that could be included in a cease and desist
 24 order issued after a hearing under ORS 659A.850.

25 **SECTION 3.** ORS 677.190 is amended to read:

26 677.190. The Oregon Medical Board may refuse to grant, or may suspend or revoke a license to
 27 practice for any of the following reasons:

28 (1)(a) Unprofessional or dishonorable conduct.

29 (b) For purposes of this subsection, the use of an alternative medical treatment shall not by it-
 30 self constitute unprofessional conduct. For purposes of this paragraph:

31 (A) "Alternative medical treatment" means:

32 (i) A treatment that the treating physician, based on the physician's professional experience, has
 33 an objective basis to believe has a reasonable probability for effectiveness in its intended use even
 34 if the treatment is outside recognized scientific guidelines, is unproven, is no longer used as a gen-
 35 erally recognized or standard treatment or lacks the approval of the United States Food and Drug
 36 Administration;

37 (ii) A treatment that is supported for specific usages or outcomes by at least one other physician
 38 licensed by the Oregon Medical Board; and

39 (iii) A treatment that poses no greater risk to a patient than the generally recognized or
 40 standard treatment.

41 (B) "Alternative medical treatment" does not include use by a physician of controlled substances
 42 in the treatment of a person for chemical dependency resulting from the use of controlled sub-
 43 stances.

44 (2) Employing any person to solicit patients for the licensee. However, a managed care organ-
 45 ization, independent practice association, preferred provider organization or other medical service

1 provider organization may contract for patients on behalf of physicians.

2 (3) Representing to a patient that a manifestly incurable condition of sickness, disease or injury
3 can be cured.

4 (4) Obtaining any fee by fraud or misrepresentation.

5 (5) Willfully or negligently divulging a professional secret without the written consent of the
6 patient.

7 (6) Conviction of any offense punishable by incarceration in a Department of Corrections insti-
8 tution or in a federal prison, subject to ORS 670.280. A copy of the record of conviction, certified
9 to by the clerk of the court entering the conviction, shall be conclusive evidence of the conviction.

10 (7) Habitual or excessive use of intoxicants, drugs or controlled substances.

11 (8) Fraud or misrepresentation in applying for or procuring a license to practice in this state,
12 or in connection with applying for or procuring registration.

13 (9) Making statements that the licensee knows, or with the exercise of reasonable care should
14 know, are false or misleading, regarding skill or the efficacy or value of the medicine, treatment or
15 remedy prescribed or administered by the licensee or at the direction of the licensee in the treat-
16 ment of any disease or other condition of the human body or mind.

17 (10) Impersonating another licensee licensed under this chapter or permitting or allowing any
18 person to use the license.

19 (11) Aiding or abetting the practice of medicine or podiatry by a person not licensed by the
20 board, when the licensee knows, or with the exercise of reasonable care should know, that the per-
21 son is not licensed.

22 (12) Using the name of the licensee under the designation "doctor," "Dr.," "D.O." or "M.D.,"
23 "D.P.M.," "Acupuncturist," "P.A." or any similar designation in any form of advertising that is
24 untruthful or is intended to deceive or mislead the public.

25 (13) Insanity or mental disease as evidenced by an adjudication or voluntary commitment to an
26 institution for the treatment of a mental disease that affects the ability of the licensee to safely
27 practice medicine, or as determined by an examination conducted by three impartial psychiatrists
28 retained by the board.

29 (14) Gross negligence or repeated negligence in the practice of medicine or podiatry.

30 (15) Incapacity to practice medicine or podiatry. If the board has evidence indicating incapacity,
31 the board may order a licensee to submit to a standardized competency examination. The licensee
32 shall have access to the result of the examination and to the criteria used for grading and evaluat-
33 ing the examination. If the examination is given orally, the licensee shall have the right to have the
34 examination recorded.

35 (16) Disciplinary action by another state of a license to practice, based upon acts by the licensee
36 similar to acts described in this section. A certified copy of the record of the disciplinary action of
37 the state is conclusive evidence thereof.

38 (17) Failing to designate the degree appearing on the license under circumstances described in
39 ORS 677.184 (3).

40 (18) Willfully violating any provision of this chapter or any rule adopted by the board, board
41 order, or failing to comply with a board request pursuant to ORS 677.320.

42 (19) Failing to report the change of the location of practice of the licensee as required by ORS
43 677.172.

44 (20) Adjudication of or admission to a hospital for mental illness or imprisonment as provided
45 in ORS 677.225.

1 (21) Making a fraudulent claim.

2 (22)(a) Performing psychosurgery.

3 (b) For purposes of this subsection and ORS 426.385, "psychosurgery" means any operation de-
4 signed to produce an irreversible lesion or destroy brain tissue for the primary purpose of altering
5 the thoughts, emotions or behavior of a human being. "Psychosurgery" does not include procedures
6 which may produce an irreversible lesion or destroy brain tissues when undertaken to cure well-
7 defined disease states such as brain tumor, epileptic foci and certain chronic pain syndromes.

8 (23) Refusing an invitation for an informal interview with the board requested under ORS
9 677.415.

10 (24) Violation of the federal Controlled Substances Act.

11 (25) Prescribing controlled substances without a legitimate medical purpose, or prescribing
12 controlled substances without following accepted procedures for examination of patients, or pre-
13 scribing controlled substances without following accepted procedures for record keeping.

14 (26) Failure by the licensee to report to the board any adverse action taken against the licensee
15 by another licensing jurisdiction or any peer review body, health care institution, professional or
16 medical society or association, governmental agency, law enforcement agency or court for acts or
17 conduct similar to acts or conduct that would constitute grounds for disciplinary action as described
18 in this section.

19 (27) Failure by the licensee to notify the board of the licensee's voluntary resignation from the
20 staff of a health care institution or voluntary limitation of a licensee's staff privileges at the insti-
21 tution if that action occurs while the licensee is under investigation by the institution or a com-
22 mittee thereof for any reason related to medical incompetence, unprofessional conduct or mental or
23 physical impairment.

24 **(28) Terminating a relationship with a patient solely because the patient is eligible for**
25 **Medicare or will become eligible for Medicare within one year.**

26 **SECTION 4. The amendments to ORS 659A.403, 659A.825 and 677.190 by sections 1 to 3**
27 **of this 2009 Act apply to conduct that occurs on or after the effective date of this 2009 Act.**

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