

House Bill 3397

Sponsored by Representative OLSON; Representatives BARKER, BERGER, CAMERON, GREENLICK, HANNA, JENSON, KRIEGER, MAURER, STIEGLER, THATCHER, WEIDNER, Senators BATES, KRUSE, MORRISETTE, MORSE

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 commencement of civil action against health care provider until after submission of health care claim to medical legal panel. Establishes membership and procedures for medical legal panels.

Requires disclosure of identity of expert witness and summary of expert's opinion in health care claims.

Provides that findings of medical legal panels are not admissible in subsequent proceedings.

Provides that costs of medical legal panels be paid by surcharges on health care providers.

Establishes Medical Legal Panel Fund. Continuously appropriates moneys in fund to Chief Justice of Supreme Court for payment of costs of medical legal panels.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to civil actions; appropriating money; and declaring an emergency.

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

MEDICAL LEGAL PANELS

SECTION 1. Definitions. As used in sections 1 to 19 of this 2009 Act:

(1) **"Claimant"** means a person who files a notice of health care claim under section 4 of this 2009 Act.

(2) **"Health care claim"** means a civil claim alleging personal injury or death arising out of the provision of health care services by a health care provider.

(3) **"Health care facility"** has the meaning given that term in ORS 442.015.

(4) **"Health care practitioner"** means emergency medical technicians certified by the Department of Human Services and any person who is licensed or certified by the:

(a) **State Board of Examiners for Speech-Language Pathology and Audiology;**

(b) **State Board of Chiropractic Examiners;**

(c) **State Board of Clinical Social Workers;**

(d) **Oregon Board of Licensed Professional Counselors and Therapists;**

(e) **Oregon Board of Dentistry;**

(f) **Board of Examiners of Licensed Dietitians;**

(g) **State Board of Massage Therapists;**

(h) **Board of Naturopathic Examiners;**

(i) **Oregon State Board of Nursing;**

(j) **Board of Examiners of Nursing Home Administrators;**

(k) **Oregon Board of Optometry;**

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 (L) State Board of Pharmacy;
- 2 (m) Oregon Medical Board;
- 3 (n) Occupational Therapy Licensing Board;
- 4 (o) Physical Therapist Licensing Board;
- 5 (p) State Board of Psychologist Examiners;
- 6 (q) Board of Radiologic Technology; or
- 7 (r) Oregon Health Licensing Agency.

8 (5) "Health care provider" means:

9 (a) A health care practitioner;

10 (b) A business entity engaged in the provision of health care services with majority
11 ownership held by health care practitioners; or

12 (c) A health care facility.

13 (6) "Health care services" means any services rendered by a health care provider acting
14 within the scope of the license or certificate issued to the health care provider.

15 **SECTION 2. Mandatory submission of health care claims.** (1) A person may commence a
16 civil action against a health care provider based on a health care claim only if the person
17 has complied with sections 1 to 19 of this 2009 Act. A complaint in an action that is subject
18 to this section must allege compliance with sections 1 to 19 of this 2009 Act.

19 (2) A civil action against a health care provider based on a health care claim may not
20 be filed until a medical legal panel files its findings statement with the circuit court under
21 section 12 of this 2009 Act.

22 **SECTION 3. Applicability.** Section 2 of this 2009 Act applies only to civil actions that are
23 based on a health care claim and commenced as described in ORS 12.020 on or after July 1,
24 2010.

25 **SECTION 4. Notice of health care claim.** (1) Before commencing a civil action against a
26 health care provider based on a health care claim, the person asserting the claim must file
27 a written notice of health care claim in the circuit court for a county in which the civil
28 action could be commenced. A notice of health care claim must be clearly titled as a "Notice
29 of Health Care Claim" and must set forth the health care claim, including all facts and cir-
30 cumstances relating to the injuries or death giving rise to the health care claim and the
31 amount of damages sought from the health care provider. A single notice of health care
32 claim may be filed for health care claims against two or more health care providers. The
33 notice of health care claim is subject to ORCP 17.

34 (2) A person filing a notice of health care claim must serve a copy of the notice on all
35 health care providers against which a claim is made in the manner provided in ORCP 7D not
36 more than 10 days after the claim is filed.

37 (3) A notice of health care claim must contain the following:

38 (a) The names and addresses of all health care providers that are claimed to be at fault;

39 (b) A detailed statement of facts relating to each health care provider's conduct that is
40 alleged to support the health care claim;

41 (c) The date or dates on which the acts or omissions causing the damages allegedly oc-
42 curred;

43 (d) The names and addresses of all health care providers that provided care to the
44 claimant after the date when the acts or omissions causing the damages allegedly occurred;

45 (e) The identity of all expert witnesses on whom the claimant relies, and a summary of

1 the opinions of the expert witnesses;

2 (f) All other facts on which a claimant relies to establish the health care claim; and

3 (g) An authorization that allows a medical legal panel to obtain access to all health care
4 provider records and information relating to the health care claim and that waives any
5 confidentiality or privilege solely for the purpose of consideration of the records by the panel.

6 (4) The authorization required by subsection (3)(g) of this section does not constitute a
7 waiver of confidentiality or privilege for any purpose other than consideration of the health
8 care claim by a medical legal panel.

9 (5) A notice of health care claim and all other documents filed with a circuit court in a
10 proceeding before a medical legal panel are confidential and not subject to disclosure under
11 ORS 192.410 to 192.505 or any other provision of Oregon law during the pendency of pro-
12 ceedings before the panel.

13 (6) A person shall pay to the clerk of the circuit court a filing fee of \$_____ at the time
14 of the filing of a notice of health care claim under this section.

15 **SECTION 5. Response.** Within 20 days after a notice of health care claim is served on a
16 health care provider under section 4 of this 2009 Act, the health care provider must file an
17 appearance in the circuit court for the county in which the notice of health care claim is
18 filed. The health care provider must serve a copy of the appearance on the claimant and the
19 chair of the medical legal panel in the manner provided by ORCP 9. At the time of filing an
20 appearance under this section, a health care provider shall pay a filing fee of \$_____.

21 **SECTION 6. Source list; master list.** (1) The State Court Administrator shall establish
22 and maintain a source list of retired Oregon judges, health care practitioners, health care
23 provider representatives and attorneys who are willing and qualified to serve on medical legal
24 panels. The source list shall include persons recommended by professional organizations and
25 other interested parties and persons who have applied to the State Court Administrator for
26 inclusion on the source list. An application for inclusion on the source list must set forth
27 the status of the applicant's professional license or certificate and the person's qualifications
28 for serving on a medical legal panel.

29 (2) The State Court Administrator shall update the source list established under sub-
30 section (1) of this section at least once each year.

31 (3) On or before December 15 of each year, the Chief Justice of the Supreme Court shall
32 prepare a master list of persons who are willing and qualified to serve on medical legal pan-
33 els. The Chief Justice shall prepare the master list by selecting persons from the source list
34 established under subsection (1) of this section. The Chief Justice shall make copies of the
35 master list available to the presiding judges and clerks of the circuit courts.

36 **SECTION 7. Appointment of chair of medical legal panel.** (1) Not more than five days
37 after a notice of health care claim is filed under section 4 of this 2009 Act, the presiding judge
38 of the circuit court for the county in which the notice of health care claim is filed shall ap-
39 point a person to serve as the chair of the medical legal panel that will hear the claim. The
40 appointment must be made in writing. The person appointed must be a retired Oregon judge,
41 a person with judicial experience or a person with appropriate civil trial experience. The ap-
42 pointment must be made from the master list prepared by the Chief Justice of the Supreme
43 Court under section 6 of this 2009 Act.

44 (2) A person appointed to serve as the chair under this section must accept or decline
45 the appointment within five days after the appointment is made by giving written notice to

1 the presiding judge who made the appointment.

2 (3) If a person appointed as a chair fails to accept or declines the appointment, the pre-
 3 siding judge shall make a new appointment not later than five days after the date on which
 4 a notice was due under subsection (2) of this section.

5 (4) Not more than five days after receipt of a chair's acceptance of the appointment un-
 6 der this section, the presiding judge shall confirm the appointment in writing by providing
 7 the chair with a copy of the notice of health care claim and the master list prepared by the
 8 Chief Justice under section 6 of this 2009 Act. The court shall notify the parties of the ap-
 9 pointment of the chair.

10 (5) A person is not eligible to serve as chair for a period of 12 months if the person
 11 without good cause:

12 (a) Fails to accept or declines an appointment within the time specified in subsection (2)
 13 of this section; or

14 (b) Declines an appointment to serve as a chair more than once in a calendar year.

15 (6) The clerk of the circuit court for the county in which the notice of health care claim
 16 is filed shall, upon request by the chair and with the consent of the presiding judge of that
 17 circuit court, provide administrative and clerical support to the chair.

18 **SECTION 8. Appointment of members of medical legal panel.** (1) Within 10 days after
 19 receipt of confirmation of appointment as the chair of a medical legal panel, the chair shall
 20 appoint the members of the panel. The chair shall try to ensure that the medical legal panel
 21 is impartial. The appointments must be made from the master list prepared by the Chief
 22 Justice of the Supreme Court under section 6 of this 2009 Act. Except as provided in sub-
 23 section (2) of this section, the medical legal panel must consist of the chair, an attorney and
 24 a health care practitioner or a representative of a health care provider. If possible, the chair
 25 shall appoint a health care practitioner who practices in the same specialty or the profession
 26 of a health care practitioner named in the claim. If a health care claim is made against a
 27 health care facility, the chair may appoint an administrator from the same type of health
 28 care facility named in the claim.

29 (2) If a notice of health care claim contains allegations against more than one health care
 30 provider, the chair may choose two additional panel members who are either health care
 31 practitioners or administrators of a health care facility. Additional panel members selected
 32 under this subsection must be health care practitioners or administrators of health care fa-
 33 cilities whose practices or professions are the same as that of one of the health care pro-
 34 viders named in the claim.

35 (3) With the agreement of all parties to a proceeding before a medical legal panel, the
 36 chair may appoint a person who is not on the master list prepared by the Chief Justice under
 37 section 6 of this 2009 Act.

38 (4) As soon as possible after a medical legal panel is appointed under this section, the
 39 chair shall give notice of the appointments to the parties and to the presiding judge of the
 40 circuit court for the county in which the notice of health care claim is filed.

41 (5) A party to a proceeding before a medical legal panel may challenge the appointment
 42 of any person to the panel on the basis of actual bias. Upon a showing of actual bias by the
 43 challenging party or an acknowledgment of bias by the panel member, the chair shall select
 44 a replacement panel member from the master list prepared by the Chief Justice under sec-
 45 tion 6 of this 2009 Act. If possible, the chair shall select a replacement panel member whose

1 professional qualifications match those of the removed panel member.

2 (6) If the chair is challenged on the basis of actual bias, the party making the challenge
 3 shall notify the presiding judge of the circuit court for the county in which the notice of
 4 health care claim is filed. The presiding judge shall rule on the challenge within 20 days after
 5 being notified of the challenge. If the presiding judge finds cause for the challenge, the pre-
 6 siding judge shall order the removal of the chair and shall appoint a qualified replacement
 7 chair from the master list within five days after the order is entered.

8 (7) A person appointed under this section who believes that service on the medical legal
 9 panel would be inappropriate under the circumstances, or who believes that service would
 10 conflict with duties of professional responsibility as established by law or by a professional
 11 organization, shall decline to serve on the panel and notify the chair in writing as soon as
 12 practicable that the person will not serve. The chair shall select a replacement for the dis-
 13 qualified panel member from the master list within five days after the chair receives the
 14 notice.

15 (8) Any person appointed to a medical legal panel may not participate in, or be present
 16 at, any subsequent civil, criminal or administrative proceeding arising out of the conduct
 17 that is the basis of the health care claim to be decided by the panel.

18 (9) Panel members are immune from civil liability for all communications, findings,
 19 opinions and conclusions rendered in the course and scope of the duties prescribed by
 20 sections 1 to 19 of this 2009 Act.

21 **SECTION 9. Prehearing procedures.** (1) Within five days after filing an appearance under
 22 section 5 of this 2009 Act, a health care provider or the health care provider's counsel shall
 23 contact the claimant or, if the claimant is represented by counsel, shall contact the claim-
 24 ant's counsel. The health care provider and claimant by agreement shall establish a timeta-
 25 ble for completing discovery and filing all relevant medical and health care provider records
 26 necessary to a determination by the medical legal panel. The claimant shall notify the chair
 27 of the medical legal panel of the timetable.

28 (2) If the parties to a proceeding before a medical legal panel are unable to agree on a
 29 timetable within five days after the filing of an appearance, the claimant shall notify the
 30 chair. The chair shall:

- 31 (a) Establish a timetable for the filing of all relevant records and reasonable discovery;
- 32 (b) Provide a copy of the timetable to the parties; and
- 33 (c) File a copy of the timetable with the clerk of the circuit court for the county in which
 34 the notice of health care claim is filed.

35 (3) The chair shall establish a date for the hearing before the medical legal panel. If the
 36 chair has established a timetable under subsection (2) of this section, the hearing may not
 37 be scheduled sooner than 30 days after the copy of the timetable is provided to the parties.
 38 Except as provided in subsection (4) of this section, all hearings on a notice of health care
 39 claim must be held within 120 days after the notice of health care claim is filed. If a hearing
 40 is not held within 120 days after the notice of health care claim is filed, either party may
 41 move for dismissal of the claim under section 11 (2) of this 2009 Act.

42 (4) A party to a proceeding before a medical legal panel may request an extension for any
 43 date specified in the timetable established under this section or for the hearing date estab-
 44 lished for the hearing. The request must be made in writing to the chair. The chair may
 45 grant an extension, but may not extend any time period that would result in the hearing

1 being held more than 365 days after the notice of health care claim is filed. If a hearing is
2 not held within 365 days after the notice of health care claim is filed, the court shall dismiss
3 the claim under section 11 (2) of this 2009 Act.

4 (5) The chair shall permit reasonable discovery, including discovery of the identity of an
5 expert witness. Parties may not depose expert witnesses, but parties may require the pro-
6 duction of a summary of the opinion of the expert witness. The summary must set forth the
7 bases upon which the opinion is rendered and must be signed by the expert witness. Any
8 party may depose an opposing party. Except for discovery of the identity of expert witnesses,
9 production of a summary of the opinion of an expert witness and depositions of opposing
10 parties, all discovery must be approved by the chair before the discovery is requested.

11 (6) The chair has the same power to subpoena as a circuit court judge and may exercise
12 that power without the agreement of panel members.

13 **SECTION 10. Hearing procedure.** (1) Except as otherwise provided in this section, a
14 medical legal panel shall conduct a combined hearing or hearings for all notices of health
15 care claim that relate to a common set of facts. The chair of a medical legal panel may order
16 separate hearings on a notice of health care claim that alleges health care claims against
17 more than one health care provider that relate to a common set of facts if the parties re-
18 quest separate hearings and the chair finds good cause for separate hearings.

19 (2) A claimant or a representative of the claimant shall present the case before the
20 medical legal panel. The health care provider or a representative of the health care provider
21 shall make a responding presentation.

22 (3) The chair shall make all procedural rulings. Rulings by the chair on procedural mat-
23 ters are final. The chair shall afford the parties wide latitude in presenting the case, includ-
24 ing allowing the use of sworn statements in lieu of testimony. Cross-examination of
25 witnesses is permitted, but the chair shall limit cross-examination to the minimum neces-
26 sary to the allow the medical legal panel to make informed findings.

27 (4) The medical legal panel may seek the opinion of expert witnesses selected by the
28 panel. Funds to compensate expert witnesses for opinions under this subsection shall be
29 drawn from the Medical Legal Panel Fund established under section 17 of this 2009 Act.

30 (5) ORS 40.010 to 40.585 do not apply to hearings conducted by a medical legal panel. The
31 chair shall admit evidence if it is the kind of evidence upon which reasonable persons rely
32 in the conduct of their serious affairs. A party may admit a deposition regardless of whether
33 the deponent is available at the hearing. The medical legal panel shall make findings upon
34 the evidence that is presented at the hearing, including records and any expert opinion pro-
35 vided by or sought by the panel or the parties.

36 (6) After presentations by the parties, the medical legal panel may request from either
37 party additional facts, records or other information to be submitted in writing or at a con-
38 tinued hearing to be held as soon as practicable. Panel members who attended the initial
39 hearing must attend any continued hearing unless the parties agree otherwise.

40 (7) The medical legal panel shall make and keep an audio record of a hearing before the
41 panel. The record shall remain confidential and is not subject to disclosure under ORS 192.410
42 to 192.505 or any other provision of Oregon law without the consent of all parties. Hearings
43 conducted by the medical legal panel are not subject to ORS 192.610 to 192.690 and may not
44 be opened to the public without the consent of all parties.

45 (8) The parties to a proceeding before a medical legal panel may agree to submit the

1 health care claim to the panel for a determination of damages. Any determination by the
 2 medical legal panel regarding damages is not binding on the parties.

3 (9) The chair of a medical legal panel or a panel member may not be examined or deposed
 4 as to:

- 5 (a) Any communication to or from a party or the party's legal representative;
- 6 (b) Communications between panel members; or
- 7 (c) The findings of a medical legal panel on which the panel member served.

8 **SECTION 11. Dismissal of claims.** (1) A claimant may dismiss a health care claim pending
 9 before a medical legal panel at any time. The parties may agree to dismiss a claim by a
 10 stipulation of dismissal signed by all parties who have appeared before the medical legal
 11 panel. If the chair of a medical legal panel has been appointed, a notice of dismissal may be
 12 filed with the chair. If the chair has not been appointed, the notice of dismissal may be filed
 13 with the circuit court for the county in which the notice of health care claim is filed.

14 (2) The chair may order dismissal of a health care claim or order that a health care
 15 provider is in default if a party fails to comply with rulings of the chair or prehearing and
 16 hearing procedures required under sections 1 to 19 of this 2009 Act. The chair may dismiss
 17 a health care claim or order that a health care provider is in default under this subsection
 18 only upon a motion by the chair or any party, and after providing notice and opportunity to
 19 be heard to all parties.

20 (3) If a claim is dismissed under this section pursuant to a motion of the claimant, or
 21 because the claimant fails to comply with rulings of the chair or prehearing and hearing
 22 procedures required under sections 1 to 19 of this 2009 Act, the dismissal is without prejudice
 23 for purposes of all proceedings before the medical legal panel arising out of the notice of
 24 health care claim. A dismissal under this subsection does not affect the requirements of
 25 section 2 of this 2009 Act, and the claimant may not thereafter file a civil action against a
 26 health care provider based on the same claim unless a written notice of health care claim
 27 is filed as required by section 4 of this 2009 Act.

28 (4) If a claim is dismissed under this section pursuant to a motion of the health care
 29 provider, or because the health care provider fails to comply with rulings of the chair or
 30 prehearing and hearing procedures required under sections 1 to 19 of this 2009 Act, the dis-
 31 missal is with prejudice for purposes of proceedings before the medical legal panel arising
 32 out of the notice of health care claim, and the chair of the panel shall prepare a panel
 33 findings statement as required by section 12 of this 2009 Act showing the claimant as the
 34 prevailing party.

35 **SECTION 12. Medical legal panel findings.** (1) Within 10 days after the conclusion of the
 36 parties' presentations at a hearing, a medical legal panel shall make findings in writing and
 37 file the panel findings statement with the circuit court for the county in which the notice
 38 of health care claim is filed. A majority of the panel members must agree on each finding.
 39 The panel findings statement shall be signed by the chair of the medical legal panel and in-
 40 dicate the vote of each panel member.

41 (2)(a) For each health care provider, the chair of the medical legal panel shall complete
 42 a panel findings statement certifying the findings of the panel and shall file the completed
 43 statement in the circuit court for the county in which the notice of health care claim is filed.

44 (b) A panel findings statement must be in the following form:
 45 _____

Pursuant to sections 1 to 19 of this 2009 Act, I certify the accuracy of the following. A notice of health care claim(s) was filed in the Circuit Court for _____ County on _____ (date). A medical legal panel was appointed under sections 1 to 19 of this 2009 Act to review claimant’s health care claim of [insert specific type of claim] _____ asserted by [insert name of claimant] _____ against [insert name of health care provider] _____.

At least a majority of the medical legal panel finds:

- (A) ____ In favor of the health care provider.
(B) ____ In favor of the claimant.

If both the health care provider and the claimant were found to be at fault:

- (A) The health care provider was ____ percent at fault.
(B) The claimant was ____ percent at fault.

/s/_____

Medical Legal panel Chair Date

- Panel Member _____ agrees ____ disagrees ____ with this finding.
Panel Member _____ agrees ____ disagrees ____ with this finding.
Panel Member _____ agrees ____ disagrees ____ with this finding.
Panel Member _____ agrees ____ disagrees ____ with this finding.
Panel Member _____ agrees ____ disagrees ____ with this finding.
Panel Member _____ agrees ____ disagrees ____ with this finding.

(3) The medical legal panel’s findings for each health care claim asserted shall determine:

- (a) Whether the claimant proved by a preponderance of the evidence that any health care provider was at fault in at least one of the ways alleged in the health care claim and that the health care provider’s fault was a cause of damages claimed by the claimant; and
(b) Whether any health care provider proved by a preponderance of the evidence that the claimant was at fault and that the claimant’s fault was a cause of the damages claimed by the claimant.

(4) If the medical legal panel finds that both the claimant and one or more health care providers were at fault and that the fault of each contributed to the damages claimed by the claimant, the panel shall compare the fault of the parties. The medical legal panel shall assign a percentage of fault to the claimant and to each health care provider found to have been at fault. Unless the parties otherwise agree in writing, the medical legal panel may not determine the percentage of damages attributable to each of the parties.

(5) The percentages of fault assigned under subsection (4) of this section must total 100 percent.

(6) If the claimant’s fault is more than 50 percent of the combined percentage of fault

1 of all parties, the medical legal panel shall make a finding in favor of the health care pro-
 2 viders in the proceeding.

3 (7) If the claimant's fault is 50 percent or less of the combined percentage of fault of all
 4 parties, the medical legal panel shall make a finding in favor of the claimant.

5 (8) The chair shall serve a copy of the panel findings statement upon the parties by reg-
 6 istered or certified mail within 10 days after the date the panel findings statement is filed
 7 with the circuit court. The presiding judge of the circuit court for the county in which the
 8 notice of health care claim is filed shall retain a record of the hearing, including the panel
 9 findings statement and the notice of health care claim. The records shall be sealed by the
 10 presiding judge, stored and destroyed in accordance with the circuit court's practices and
 11 procedures. The chair shall return all medical and health care provider records to the parties
 12 that furnished the records upon filing of the panel findings statement.

13 (9) A finding of a medical legal panel is not a disposition of a claim for the purposes of
 14 ORS 742.400.

15 SECTION 13. Admissibility of medical legal panel findings in subsequent proceedings. The
 16 findings of a medical legal panel under section 12 of this 2009 Act are not admissible in any
 17 subsequent proceeding.

18 SECTION 14. Panel member compensation. (1) Members of medical legal panels shall be
 19 compensated at a rate determined by the Chief Justice of the Supreme Court. The Chief
 20 Justice shall review the hourly rate once every two years and shall adjust the amount by rule
 21 when the Chief Justice deems that an adjustment in the amount is necessary to ensure an
 22 adequate number of persons willing and qualified to serve on medical legal panels.

23 (2) The Chief Justice shall adopt rules establishing:

24 (a) The method by which panel members track and record time spent on panel service;

25 (b) A form for panel members to use when requesting compensation;

26 (c) Guidelines for the retention of expert witnesses by medical legal panels, including the
 27 amount of fees payable to expert witnesses;

28 (d) A form for requests for payment of expert witness fees; and

29 (e) Fees that may be charged by circuit courts for clerical support of medical legal pan-
 30 els.

31 (3) Upon completion of service on a medical legal panel, each panel member shall submit
 32 the compensation form established under subsection (2)(b) of this section to the clerk of the
 33 circuit court for the county in which the notice of health care claim is filed. The clerk of the
 34 circuit court shall transmit the compensation form to the Chief Justice, who shall direct
 35 payment to the panel members within 30 days after receiving the compensation form.

36 (4) Panel members are entitled to reimbursement of actual and necessary travel expenses
 37 incurred as provided in ORS 292.495 (2). Claims for reimbursement of travel expenses must
 38 be submitted to the Chief Justice.

39 (5) The Chief Justice shall issue an annual report listing the number of notices of health
 40 care claim heard by medical legal panels, the county in which each notice of health care
 41 claim was heard by a panel, the findings by each panel as described in the panel findings
 42 statements required under section 12 of this 2009 Act, and the type of health care provider
 43 named in the notices of health care claim that were heard by the panels.

44 SECTION 15. Health care provider surcharges. (1) Once each year, the Chief Justice of
 45 the Supreme Court shall:

1 (a) Estimate the number of notices of health care claim likely to be heard by medical
2 legal panels for the following year;

3 (b) Calculate the funds necessary to compensate panel members and expert witnesses
4 retained by medical legal panels and to cover other panel costs during the year; and

5 (c) Determine the surcharges to be assessed upon health care providers for the purpose
6 of paying those costs.

7 (2) The Chief Justice shall establish surcharges under this section as follows:

8 (a) Hospitals and long term care facilities, both as defined in ORS 442.015, that have a
9 specified number of licensed beds shall be assessed proportionately based on the total number
10 of licensed beds, as listed in the most recent compilations of the Department of Human
11 Services.

12 (b) All health care facilities that do not have a specified number of licensed beds shall
13 be assessed the same surcharge.

14 (c) All health care providers other than a health care facility shall be assessed the same
15 surcharge. The amount of the surcharge may be different than the surcharge assessed on a
16 health care facility under paragraph (b) of this subsection.

17 (3) The Chief Justice may not assess a surcharge against any health care practitioner
18 who is employed on a full-time basis by a state agency or the federal government.

19 (4) By October 15 of each calendar year, the Chief Justice shall inform all state agencies
20 listed in section 16 (2) and (3) of this 2009 Act of the surcharges to be assessed for the fol-
21 lowing calendar year. The surcharges must be paid to the Chief Justice on or before De-
22 cember 31 of each calendar year.

23 (5) Before establishing surcharges under this section, the Chief Justice shall consult with
24 health care industry associations and government agency representatives, including but not
25 limited to the Oregon Medical Board, Oregon Medical Association, Oregon Dental Associ-
26 ation, Oregon Association of Hospitals and Health Systems, Oregon State Bar and Judicial
27 Department.

28 (6) The Chief Justice shall deposit all surcharges paid to the Chief Justice under this
29 section in the Medical Legal Panel Fund established under section 17 of this 2009 Act. If the
30 amounts in the fund at the end of any calendar year exceed the amounts required for the
31 compensation of panel members and other costs of administering medical legal panels in the
32 next calendar year, the Chief Justice shall reduce the amount of the annual surcharges by
33 appropriate amounts. The annual amount of the surcharge assessed against any health care
34 provider may not be less than \$15.

35 **SECTION 16. Collection of health care provider surcharges.** (1) Each of the state agen-
36 cies listed in subsections (2) and (3) of this section shall adopt rules that establish a deadline
37 for collection of surcharges in order to pay the surcharges to the Chief Justice of the Su-
38 preme Court within the time allowed by section 15 (4) of this 2009 Act. Each state agency
39 may establish its own deadline for receipt of surcharges in order to coordinate collection of
40 the surcharges with the collection of other license and certification assessments. The dead-
41 line may not be later than December 15 of the calendar year in which the surcharge is to
42 be paid. The rules shall specify that failure to remit the surcharge by the deadline shall re-
43 sult in a suspension of license or certification until the surcharge is received.

44 (2) The Department of Human Services shall assess and collect surcharges from emer-
45 gency medical technicians certified by the department, from all health care facilities and

1 from all business entities engaged in the provision of health care services with majority
 2 ownership held by health care practitioners.

3 (3) The following state agencies shall collect surcharges from health care practitioners
 4 licensed or certified by the agency:

- 5 (a) State Board of Examiners for Speech-Language Pathology and Audiology;
- 6 (b) State Board of Chiropractic Examiners;
- 7 (c) State Board of Clinical Social Workers;
- 8 (d) Oregon Board of Licensed Professional Counselors and Therapists;
- 9 (e) Oregon Board of Dentistry;
- 10 (f) Board of Examiners of Licensed Dietitians;
- 11 (g) State Board of Massage Therapists;
- 12 (h) Board of Naturopathic Examiners;
- 13 (i) Oregon State Board of Nursing;
- 14 (j) Board of Examiners of Nursing Home Administrators;
- 15 (k) Oregon Board of Optometry;
- 16 (L) State Board of Pharmacy;
- 17 (m) Oregon Medical Board;
- 18 (n) Occupational Therapy Licensing Board;
- 19 (o) Physical Therapist Licensing Board;
- 20 (p) State Board of Psychologist Examiners;
- 21 (q) Board of Radiologic Technology; and
- 22 (r) Oregon Health Licensing Agency.

23 **SECTION 17. Medical Legal Panel Fund.** The Medical Legal Panel Fund is established
 24 separate and distinct from the General Fund. Interest earned by the Medical Legal Panel
 25 Fund shall be credited to the fund. The Chief Justice of the Supreme Court shall administer
 26 the Medical Legal Panel Fund and hold the fund in trust for the benefit of claimants and
 27 health care providers. All amounts in the Medical Legal Panel Fund are continuously appro-
 28 priated to the Chief Justice of the Supreme Court and may be used only to fund the com-
 29 pensation of panel members and pay other costs associated with medical legal panels.

30 **SECTION 18. Tolling of statute of limitations.** The applicable statute of limitations for
 31 any civil action based on a health care claim is tolled from the date that a notice of health
 32 care claim is filed with a circuit court under section 4 of this 2009 Act until:

- 33 (1) Thirty calendar days after the date upon which the medical legal panel's findings
 34 statement for the health care claim is filed with the circuit court under section 12 of this
 35 2009 Act; or
- 36 (2) The date on which the health care claim is dismissed under section 11 (3) of this 2009
 37 Act.

38 **SECTION 19. Rules.** The Chief Justice of the Supreme Court shall adopt rules to imple-
 39 ment the provisions of sections 1 to 19 of this 2009 Act, including rules for proceedings before
 40 medical legal panels.

41 **SECTION 20. Operative date.** (1) Except as provided in subsection (2) of this section,
 42 sections 1 to 19 of this 2009 Act become operative on January 1, 2010.

43 (2) Sections 1 to 19 of this 2009 Act become operative on the effective date of this 2009
 44 Act for the purpose of:

- 45 (a) The establishment and maintenance of a source list, and preparation of a master list,

1 of persons who are willing and qualified to serve on medical legal panels under section 6 of
2 this 2009 Act;

3 (b) The adoption of rules under section 14 (2) of this 2009 Act;

4 (c) The establishment and collection of surcharges under sections 15 and 16 of this 2009
5 Act for the purpose of funding medical legal panels in calendar year 2010;

6 (d) The creation of the Medical Legal Panel Fund under section 17 of this 2009 Act; and

7 (e) The adoption of rules under section 19 of this 2009 Act.

8
9 **EXPERT WITNESSES**

10
11 **SECTION 21.** Section 22 of this 2009 Act is added to and made a part of the Oregon Rules
12 of Civil Procedure.

13 **SECTION 22.**

14
15 **DISCLOSURE OF EXPERT WITNESSES**

16 **RULE 42**

17
18 **A Disclosure required.** Unless otherwise directed by the court or agreed to by stipulation,
19 a party must serve all other parties with a notice that makes the disclosures required by
20 section B of this rule for any person who will testify at trial as an expert witness under ORS
21 40.410.

22 **B Contents of disclosure.**

23 **B(1) Disclosure generally.** The disclosure required under this rule must contain:

24 (a) The name and address of the person who will testify as an expert witness;

25 (b) A summary of the expert witness's opinion, signed by the witness, that includes the
26 bases upon which the opinion is rendered;

27 (c) The qualifications of the expert witness, including a list of all publications authored
28 by the witness within the immediately preceding five years;

29 (d) The compensation paid or to be paid to the expert witness for preparation for trial,
30 including compensation for studies conducted by the witness, and for the witness's appear-
31 ance at trial; and

32 (e) A list of any other cases in which the witness has testified as an expert at trial or
33 by deposition within the immediately preceding five years.

34 **B(2) Modification by court.** Upon motion of any party, or upon the court's own motion,
35 the court may modify the contents of a disclosure under subsection (1) of this section for
36 good cause shown or may enter such protective orders as the court deems appropriate. If a
37 party seeks to disclose an additional expert witness after expiration of the time allowed un-
38 der section C of this rule, in addition to any other showing the court may require, the party
39 must establish that at the time disclosure was required under section C of this rule the party
40 could not have reasonably anticipated the need for the expert witness.

41 **C Time of disclosure.**

42 **C(1) Initial disclosure.** Subject to subsection (2) of this section, unless otherwise directed
43 by the court or agreed to by stipulation, the notice required by this rule must be served at
44 least 90 days before trial.

45 **C(2) Rebuttal disclosure.** Within 45 days after service of notice under subsection (1) of

1 this section, any party may serve a notice on all other parties that makes the disclosures
 2 required by section B of this rule for any person who will testify at trial for the party as an
 3 expert witness in rebuttal to the testimony of an expert witness disclosed in a notice served
 4 under subsection (1) of this section.

5 **D Supplemental notice.** A party who has served notice under this rule, including any
 6 party who has served notice under subsection C(2) of this rule, must file a supplemental
 7 notice that includes information about a previously disclosed expert witness that was ac-
 8 quired after the notice was served if the party discovers that the notice is incomplete or
 9 incorrect in some material respect. Supplemental notice under this section may not be used
 10 to disclose additional expert witnesses after expiration of the time allowed under section C
 11 of this rule. Supplemental notices under this section must be served no later than 30 days
 12 before trial unless the discovery is made within the 30-day period preceding trial. If the dis-
 13 covery is made within the 30-day period preceding trial, the supplemental notice must be
 14 served within 24 hours after the party makes the discovery.

15 **E Depositions.** An expert witness may not be deposed or otherwise contacted by the
 16 parties to whom notice is given under this rule except with specific authorization from the
 17 court and only for the purpose of showing that the party offering the testimony of the expert
 18 witness failed to comply with the requirements of this rule.

19 **F Sanction.** The court may not allow an expert witness to testify at trial unless the party
 20 offering the testimony has given notice of the name and address of the expert witness in the
 21 manner required by this rule. The court may impose such other sanctions as may be appro-
 22 priate for failure to fully comply with any other disclosure requirement of this rule.

23 **SECTION 23.** Section 22 of this 2009 Act applies only to civil actions filed on or after the
 24 effective date of this 2009 Act.

25
 26 **CAPTIONS**
 27

28 **SECTION 24.** The unit and section captions used in this 2009 Act are provided only for
 29 the convenience of the reader and do not become part of the statutory law of this state or
 30 express any legislative intent in the enactment of this 2009 Act.

31
 32 **EMERGENCY CLAUSE**
 33

34 **SECTION 25.** This 2009 Act being necessary for the immediate preservation of the public
 35 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
 36 on its passage.
 37
