

Senate Bill 158

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

SUMMARY

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

Imposes requirements on ambulatory surgical centers and providers. Changes license fees for specified health care facilities and home health agencies. Authorizes alternative procedure for on-site inspections for health care facilities and home health agencies. Requires Department of Human Services to establish procedures for filing complaints against home health agencies and in-home care agencies that ensure confidentiality of complainant. Creates cause of action for retaliation against employee for notifying authorities of inappropriate care or other violations. Requires home health agency to follow plan of treatment established by and periodically reviewed by physician or nurse practitioner.

Authorizes imposition of civil penalty by department on individuals, health care facilities, home health agencies and in-home care agencies of lesser of \$1,000 per day of noncompliance or \$10,000 for each 30-day period of noncompliance.

A BILL FOR AN ACT

1
2 Relating to health care; creating new provisions; amending ORS 65.800, 127.646, 192.517, 192.660,
3 409.720, 432.500, 435.254, 441.015, 441.020, 441.022, 441.025, 441.030, 441.055, 441.057, 441.060,
4 441.062, 441.065, 441.624, 441.990, 442.015, 442.425, 442.430, 442.700, 443.005, 443.015, 443.035,
5 443.045, 443.065, 443.075, 443.085, 443.090, 443.315, 443.325, 659A.233, 677.290, 677.805, 677.812,
6 678.730 and 678.780 and section 1, chapter 736, Oregon Laws 2003; and repealing ORS 441.017
7 and 441.085.

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

9 **SECTION 1. Sections 2 and 3 of this 2009 Act are added to and made a part of ORS**
10 **chapter 441.**

11 **SECTION 2. (1) An ambulatory surgical center may not perform surgical procedures for**
12 **which the patient typically would be expected to remain at the facility after midnight on the**
13 **date of the procedure and may not perform procedures that:**

14 (a) **Generally result in extensive blood loss;**

15 (b) **Require major or prolonged invasion of body cavities;**

16 (c) **Directly involve major blood vessels; or**

17 (d) **Are emergent or life threatening in nature, unless no hospital is available for the**
18 **procedure and the need for surgery could not have been anticipated.**

19 (2) **An ambulatory surgical center must evaluate all of a patient's risk factors before**
20 **permitting a surgical procedure to be performed on the patient in the facility.**

21 (3) **An ambulatory surgical center shall post a notice in the facility, in a prominent place**
22 **and in prominent font size, advising patients of the manner in which patients may express**
23 **concerns regarding the ambulatory surgical center and services provided at the ambulatory**
24 **surgical center. The posting shall include but need not be limited to the address and tele-**
25 **phone number for contacting the Department of Human Services to express the concerns.**

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.

SECTION 3. (1) As used in this section:

(a) “Facility” means a hospital, ambulatory surgical center or freestanding birthing center.

(b) “Financial interest” means a direct ownership or investment interest.

(c) “Health practitioner” means a physician, podiatric physician and surgeon, dentist, direct entry midwife or licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner.

(d) “Physician” has the meaning given that term in ORS 677.010.

(2) If a health practitioner refers a patient for treatment at a facility in which the health practitioner or an immediate family member has a financial interest, the health practitioner shall inform the patient orally and in writing of that interest at the time of the referral.

(3) In addition to the requirements in ORS 677.097, in obtaining informed consent for treatment that will take place at a facility, a health practitioner shall disclose the manner in which care will be provided in the event that complications occur that require health services beyond what the facility will provide.

SECTION 4. ORS 441.020 is amended to read:

441.020. [(1) Licenses for health care facilities including long term care facilities, as defined in ORS 442.015, shall be obtained from the Department of Human Services.]

(1) A health care facility must obtain a license from the Department of Human Services.

(2) Applications shall be upon such forms and shall contain such information as the department may reasonably require, which may include affirmative evidence of ability to comply with such reasonable standards and rules as may lawfully be prescribed under ORS [441.055] **441.025**.

(3) Each application shall be accompanied by the license fee. If the license is denied, the fee shall be refunded to the applicant. If the license is issued, the fee shall be paid into the State Treasury to the credit of the Department of Human Services Account for carrying out the functions under ORS 441.015 to 441.063 and 431.607 to 431.619.

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

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

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

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

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

[(e) Two hundred or more beds, the annual license fee shall be \$3,400.]

(4) For hospitals, the annual license fee shall be \$55 per licensed bed or a minimum of \$1,000, and \$1,000 for each satellite facility indorsed under its license.

(5) For long term care facilities with:

(a) Fewer than 16 beds, the annual license fee shall be up to \$120.

(b) Sixteen beds or more but fewer than 50 beds, the annual license fee shall be up to \$175.

(c) Fifty beds or more but fewer than 100 beds, the annual license fee shall be up to \$350.

(d) One hundred beds or more but fewer than 200 beds, the annual license fee shall be up to \$450.

(e) Two hundred beds or more, the annual license fee shall be up to \$580.

[(6) For special inpatient care facilities with:]

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

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

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

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

2 [(e) Two hundred beds or more, the annual license fee shall be \$3,400.]

3 [(7)] (6) For ambulatory surgical centers, the annual license fee shall be [\$1,000] **\$1,600**.

4 [(8)] (7) For birthing centers, the annual license fee shall be [\$250] **\$750**.

5 [(9)] (8) For outpatient renal dialysis facilities, the annual license fee shall be [\$1,500] **\$2,000**.

6 [(10)] (9) During the time the licenses remain in force holders thereof are not required to pay
7 inspection fees to any county, city or other municipality.

8 [(11)] (10) [Any health care facility] **A hospital** license may be indorsed to permit operation at
9 [more than one location] **one or more satellite facility locations**. [In such case the applicable license
10 fee shall be the sum of the license fees which would be applicable if each location were separately li-
11 censed.]

12 [(12)] (11) Licenses for health maintenance organizations shall be obtained from the Director of
13 the Department of Consumer and Business Services pursuant to ORS 731.072.

14 (12) **As used in this section, "satellite facility" has the meaning prescribed by the De-**
15 **partment of Human Services by rule.**

16 **SECTION 5.** ORS 441.022 is amended to read:

17 441.022. In determining whether to license a health care facility pursuant to ORS 441.025, the
18 Department of Human Services shall consider only factors relating to the health and safety of indi-
19 viduals to be cared for therein and **the ability of the operator of the health care facility to**
20 **safely operate the facility, and** shall not consider whether the health care facility is or will be a
21 governmental, charitable or other nonprofit institution or whether it is or will be an institution for
22 profit.

23 **SECTION 6.** ORS 441.025 is amended to read:

24 441.025. (1) Upon receipt of an application and the license fee, the Department of Human Ser-
25 vices shall **review the application and conduct an on-site inspection of the health care facility.**
26 **The department shall** issue a license if it finds that the applicant and health care facility comply
27 with ORS 441.015 to 441.063[, 441.085] and 441.087 and the rules of the department provided that it
28 does not receive within the time specified a certificate of noncompliance issued by the State Fire
29 Marshal, deputy, or approved authority pursuant to ORS 479.215.

30 (2) Each license, unless sooner suspended or revoked, shall be renewable annually for the cal-
31 endar year upon payment of the fee, provided that a certificate of noncompliance has not been is-
32 sued by the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

33 (3) Each license shall be issued only for the premises and persons or governmental units named
34 in the application and shall not be transferable or assignable.

35 (4) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by
36 rule of the department.

37 (5) No license shall be issued or renewed for any health care facility or health maintenance
38 organization that offers or proposes to develop a new health service unless a certificate of need has
39 first been issued [therefor pursuant to ORS 442.340 (1987 Replacement Part) or approval has been
40 granted] under ORS 442.315 [or section 9, chapter 1034, Oregon Laws 1989].

41 (6) No license shall be issued or renewed for any skilled nursing facility or intermediate care
42 facility, [as defined in ORS 442.015,] unless the applicant has included in the application the name
43 and such other information as may be necessary to establish the identity and financial interests of
44 any person who has incidents of ownership in the facility representing an interest of 10 percent or
45 more thereof. If the person having such interest is a corporation, the name of any stockholder

1 holding stock representing an interest in the facility of 10 percent or more shall also be included
 2 in the application. If the person having such interest is any other entity, the name of any member
 3 thereof having incidents of ownership representing an interest of 10 percent or more in the facility
 4 shall also be included in the application.

5 (7) A license may be denied to any applicant for a license or renewal thereof or any stockholder
 6 of any such applicant who has incidents of ownership in the facility representing an interest of 10
 7 percent or more thereof, or an interest of 10 percent or more of a lease agreement for the facility,
 8 if during the five years prior to the application the applicant or any stockholder of the applicant
 9 had an interest of 10 percent or more in the facility or of a lease for the facility and has divested
 10 that interest after receiving written notice from the department of intention to suspend or revoke
 11 the license or to decertify the home from eligibility to receive payments for services provided under
 12 this section.

13 (8) No license shall be issued or renewed for any long term care facility, [*as defined in ORS*
 14 *442.015,*] unless the applicant has included in the application the identity of any person who has
 15 incident of ownership in the facility who also has a financial interest in any pharmacy, as defined
 16 in ORS 689.005.

17 **(9) The department shall adopt rules for each type of health care facility to carry out the**
 18 **purposes of ORS 441.015 to 441.087 including, but not limited to:**

19 **(a) Establishing classifications and descriptions for the different types of health care fa-**
 20 **cilities that are licensed under ORS 441.015 to 441.087; and**

21 **(b) Standards for patient care and safety, adequate professional staff organizations,**
 22 **training of staff for whom no other state regulation exists, suitable delineation of profes-**
 23 **sional privileges and adequate staff analyses of clinical records.**

24 **(10) The department may not adopt a rule requiring a health care facility to serve a**
 25 **specific food as long as the necessary nutritional food elements are present in the food that**
 26 **is served.**

27 **(11) A health care facility licensed by the department may not:**

28 **(a) Offer or provide services beyond the scope of the license classification assigned by the**
 29 **department; or**

30 **(b) Assume a descriptive title or represent itself under a descriptive title other than the**
 31 **classification assigned by the department.**

32 **(12) A health care facility must reapply for licensure to change the classification assigned**
 33 **or the type of license issued by the department.**

34 **SECTION 7.** ORS 441.030 is amended to read:

35 441.030. (1) The Department of Human Services **may assess a civil penalty and**, pursuant to
 36 ORS 479.215, shall deny, suspend or revoke a license, in any case where the State Fire Marshal, or
 37 the representative of the State Fire Marshal, certifies that there is a failure to comply with all ap-
 38 plicable laws, lawful ordinances and rules relating to safety from fire.

39 (2) The department may **assess a civil penalty or** deny, suspend or revoke a license in any case
 40 where it finds that there has been a substantial failure to comply with ORS 441.015 to 441.063[,
 41 *441.085*] or 441.087 or the rules or minimum standards adopted under ORS 441.015 to 441.063[,
 42 *441.085*] or 441.087.

43 (3) The department may **assess a civil penalty or** suspend or revoke a license issued under ORS
 44 441.025 for failure to comply with a department order arising from a health care facility's substantial
 45 lack of compliance with the provisions of ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or

1 441.166 or the rules adopted under ORS 441.015 to 441.063, 441.084 to 441.087, 441.162 or 441.166[,
 2 *or*]. **The department may suspend or revoke a license issued under ORS 441.025** for failure to
 3 pay a civil penalty imposed under ORS 441.170 or 441.710.

4 (4) The department may order a long term care facility licensed under ORS 441.025 to restrict
 5 the admission of patients when the department finds an immediate threat to patient health and
 6 safety arising from failure of the long term care facility to be in compliance with ORS 441.015 to
 7 441.063 or 441.084 to 441.087 and the rules adopted under ORS 441.015 to 441.063 or 441.084 to
 8 441.087.

9 (5) Any long term care facility that has been ordered to restrict the admission of patients pur-
 10 suant to subsection (4) of this section shall post a notice of the restriction, provided by the depart-
 11 ment, on all doors providing ingress to and egress from the facility, for the duration of the
 12 restriction.

13 **SECTION 8.** ORS 441.055 is amended to read:

14 441.055. *[(1) The Department of Human Services shall adopt such rules with respect to the different*
 15 *types of health care facilities as may be designed to further the accomplishment of the purposes of ORS*
 16 *441.015 to 441.087. No rules shall require any specific food so long as the necessary nutritional food*
 17 *elements are present.]*

18 *[(2) Rules describing care given in health care facilities shall include, but not be limited to, stan-*
 19 *dards of patient care or patient safety, adequate professional staff organizations, training of staff for*
 20 *whom no other state regulation exists, suitable delineation of professional privileges and adequate staff*
 21 *analyses of clinical records. The department may in its discretion accept certificates by the Joint Com-*
 22 *mission on Accreditation of Hospitals or the Committee on Hospitals of the American Osteopathic As-*
 23 *sociation as evidence of compliance with acceptable standards.]*

24 *[(3)] (1)* The governing body of each health care facility shall be responsible for the operation
 25 of the facility, the selection of the medical staff and the quality of care rendered in the facility. The
 26 governing body shall:

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

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

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

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

36 (e) Ensure that a physician is not denied medical staff membership or privileges at the facility
 37 solely on the basis that the physician holds medical staff membership or privileges at another health
 38 care facility.

39 *[(4)] (2)* The physicians organized into a medical staff pursuant to subsection *[(3)] (1)* of this
 40 section shall propose medical staff bylaws to govern the medical staff. The bylaws shall include, but
 41 not be limited to the following:

42 (a) Procedures for physicians admitted to practice in the facility to organize into a medical staff
 43 pursuant to subsection *[(3)] (1)* of this section;

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

1 (c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or re-
2 move officers and other persons to carry out medical staff activities with accountability to the
3 governing body;

4 (d) Procedures for ensuring that physicians admitted to practice in the facility are currently li-
5 censed by the Oregon Medical Board;

6 (e) Procedures for ensuring that the facility's procedures for granting, restricting and terminat-
7 ing privileges are followed and that such procedures are regularly reviewed to assure their con-
8 formity to applicable law; and

9 (f) Procedures for ensuring that physicians provide services within the scope of the privileges
10 granted by the governing body.

11 [(5)] (3) Amendments to medical staff bylaws shall be accomplished through a cooperative pro-
12 cess involving both the medical staff and the governing body. Medical staff bylaws shall be adopted,
13 repealed or amended when approved by the medical staff and the governing body. Approval shall
14 not be unreasonably withheld by either. Neither the medical staff nor the governing body shall
15 withhold approval if such repeal, amendment or adoption is mandated by law, statute or regulation
16 or is necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or
17 if the failure to approve would subvert the stated moral or ethical purposes of the institution.

18 [(6)] (4) The Oregon Medical Board may appoint one or more physicians to conduct peer review
19 for a health care facility upon request of such review by all of the following:

20 (a) The physician whose practice is being reviewed.

21 (b) The executive committee of the health care facility's medical staff.

22 (c) The governing body of the health care facility.

23 [(7)] (5) The physicians appointed pursuant to subsection [(6)] (4) of this section shall be deemed
24 agents of the Oregon Medical Board, subject to the provisions of ORS 30.310 to 30.400 and shall
25 conduct peer review. Peer review shall be conducted pursuant to the bylaws of the requesting health
26 care facility.

27 [(8)] (6) Any person serving on or communicating information to a peer review committee shall
28 not be subject to an action for damages for action or communications or statements made in good
29 faith.

30 [(9)] (7) All findings and conclusions, interviews, reports, studies, communications and state-
31 ments procured by or furnished to the peer review committee in connection with a peer review are
32 confidential pursuant to ORS 192.501 to 192.505 and 192.690 and all data is privileged pursuant to
33 ORS 41.675.

34 [(10)] (8) Notwithstanding subsection [(9)] (7) of this section, a written report of the findings and
35 conclusions of the peer review shall be provided to the governing body of the health care facility
36 who shall abide by the privileged and confidential provisions set forth in subsection [(9)] (7) of this
37 section.

38 [(11)] (9) Procedures for peer review established by subsections [(6) to (10)] (4) to (8) of this
39 section are exempt from ORS chapter 183.

40 [(12)] (10) The department shall adopt by rule standards for rural hospitals, as defined in ORS
41 442.470, that specifically address the provision of care to postpartum and newborn patients so long
42 as patient care is not adversely affected.

43 [(13)] (11) For purposes of this section, "physician" has the meaning given the term in ORS
44 677.010.

45 **SECTION 9.** ORS 441.057 is amended to read:

1 441.057. (1) Rules adopted by the Department of Human Services pursuant to ORS [441.055]
 2 **441.025** shall include procedures for the filing of complaints as to the standard of care in any health
 3 care facility and provide for the confidentiality of the identity of any complainant.

4 (2) No health care facility, or person acting in the interest of the facility, shall take any disci-
 5 plinary or other adverse action against any employee who in good faith brings evidence of inap-
 6 propriate care or any other violation of law or rules to the attention of the proper authority solely
 7 because of the employee's action as described in this subsection.

8 (3) Any employee who has knowledge of inappropriate care or any other violation of law or
 9 rules shall utilize established reporting procedures of the health care facility administration before
 10 notifying the department or other state agency of the alleged violation, unless the employee believes
 11 that patient health or safety is in immediate jeopardy or the employee makes the report to the de-
 12 partment under the confidentiality provisions of subsection (1) of this section.

13 (4) The protection of health care facility employees under subsection (2) of this section shall
 14 commence with the reporting of the alleged violation by the employee to the administration of the
 15 health care facility or to the department or other state agency pursuant to subsection (3) of this
 16 section.

17 (5) Any person suffering loss or damage due to any violation of subsection (2) of this section has
 18 a right of action for damages in addition to other appropriate remedy.

19 (6) The provisions of this section do not apply to a nursing staff, as defined in ORS 441.172, who
 20 claims to be aggrieved by a violation of ORS 441.174 committed by a hospital.

21 **(7) Information obtained by the department during an investigation of a complaint or**
 22 **reported violation under this section is confidential and not subject to public disclosure under**
 23 **ORS 192.410 to 192.505. Upon the conclusion of the investigation, the department shall pub-**
 24 **licly release a report of its findings but may not include information in the report that could**
 25 **be used to identify the complainant or any patient at the health care facility. The department**
 26 **may use any information obtained during an investigation in an administrative or judicial**
 27 **proceeding concerning the licensing of a health care facility.**

28 **SECTION 10.** ORS 441.060 is amended to read:

29 441.060. (1) The Department of Human Services shall make or cause to be made [*such inspections*
 30 *as it may deem necessary*] **on-site inspections of licensed health care facilities at least once**
 31 **every three years.**

32 (2) The Department of Human Services may prescribe by rule that any licensee or prospective
 33 applicant desiring to make specified types of alteration or addition to its facilities **or satellite fa-**
 34 **ilities** or to construct new facilities shall, before commencing such alteration, addition or new
 35 construction, either prior to or after receiving a certificate of need pursuant to ORS [442.340 (1987
 36 *Replacement Part*)] **442.315**, if required, submit plans and specifications therefor to the department
 37 for preliminary inspection and approval or recommendations with respect to compliance with the
 38 rules authorized by ORS [441.055] **441.025** and 443.420 and for compliance with National Fire Pro-
 39 tection Association standards when the facility is also to be Medicare or Medicaid certified. The
 40 department may require by rule payment of a fee for project review services at a variable rate, de-
 41 pendent on total project cost. For health care facilities, the department shall develop a review fee
 42 schedule as minimally necessary to support the staffing level and expenses required to administer
 43 the program. The fee for project review of residential care facilities shall equal two-thirds that re-
 44 quired of health care facilities. The department may also conduct an on-site review of projects as
 45 a prerequisite to licensure of new facilities, major renovations and expansions. The department shall,

1 at least annually, with the advice of facilities covered by this review, present proposed rule changes
 2 regarding facility design and construction to such agencies for their consideration. The department
 3 shall also publish a state submissions guide for health and residential care facility projects and ad-
 4 vise project sponsors of applicable requirements of federal, state and local regulatory agencies.

5 **(3) As used in this section, “satellite facility” has the meaning prescribed by the depart-**
 6 **ment by rule under ORS 441.020.**

7 **SECTION 11.** ORS 441.062 is amended to read:

8 441.062. (1) In conducting inspections for the purpose of licensing health care facilities under
 9 ORS 441.020, the Department of Human Services shall avoid unnecessary facility disruption by co-
 10 ordinating inspections performed by the department with inspections performed by other federal,
 11 state and local agencies that have responsibility for health care facility licensure.

12 (2) Whenever possible, the department shall avoid duplication of inspections by accepting in-
 13 spection reports or surveys prepared by other state agencies that have responsibility for health care
 14 facility licensure for purposes of the inspection required for licensure.

15 **(3) In lieu of an on-site inspection as required by ORS 441.025 and 441.060, the department**
 16 **may accept a certification from a federal agency or a national accrediting organization ap-**
 17 **proved by the department that the standards have been met, if the health care facility:**

18 **(a) Invites the department to participate in any exit interview conducted by the federal**
 19 **agency or national accrediting organization; and**

20 **(b) Provides copies of all documentation concerning the certification.**

21 [(3)] (4) The department shall adopt all rules necessary to implement this section.

22 **SECTION 12.** ORS 441.990, as amended by section 9, chapter 602, Oregon Laws 2007, is
 23 amended to read:

24 441.990. (1) Violation of ORS 441.015 (1) is a violation punishable, upon conviction, by a fine of
 25 not more than \$100 for the first violation and not more than \$500 for each subsequent violation.
 26 Each day of continuing violation after a first conviction shall be considered a subsequent violation.

27 (2) Any person who willfully prevents, interferes with, or attempts to impede in any way the
 28 work of any duly authorized representative of the Department of Human Services in the lawful
 29 carrying out of the provisions of ORS 441.087 (1) is guilty of a Class C misdemeanor.

30 (3) The removal of the notice required by ORS 441.030 (5) by any person other than an official
 31 of the department is a Class C misdemeanor.

32 **(4) In addition to the penalties under this section, the Department of Human Services**
 33 **may assess civil penalties against any health care facility or health maintenance organization**
 34 **under ORS 441.030 or for a violation of ORS 441.015 (1). A civil penalty may not exceed the**
 35 **lesser of \$1,000 per day of noncompliance or \$10,000 for each 30-day period of noncompliance.**

36 **(5) Civil penalties under this section shall be imposed in the manner provided by ORS**
 37 **183.745.**

38 **SECTION 13.** ORS 442.015 is amended to read:

39 442.015. As used in ORS chapter 441 and this chapter, unless the context requires otherwise:

40 (1) “Acquire” or “acquisition” means obtaining equipment, supplies, components or facilities by
 41 any means, including purchase, capital or operating lease, rental or donation, with intention of using
 42 such equipment, supplies, components or facilities to provide health services in Oregon. When
 43 equipment or other materials are obtained outside of this state, acquisition is considered to occur
 44 when the equipment or other materials begin to be used in Oregon for the provision of health ser-
 45 vices or when such services are offered for use in Oregon.

1 [(2) *“Adjusted admission” means the sum of all inpatient admissions divided by the ratio of inpa-*
2 *tient revenues to total patient revenues.*]

3 [(3)] (2) *“Affected persons” has the same meaning as given to “party” in ORS 183.310.*

4 [(4)] (3) *“Ambulatory surgical center” means a facility [that performs outpatient surgery not*
5 *routinely or customarily performed in a physician’s or dentist’s office, and is able to meet health facility*
6 *licensure requirements] or portion of a facility that provides specialty or multispecialty outpa-*
7 ***tient surgical treatment, maxillofacial trauma services or orthognathic surgery.***
8 ***“Ambulatory surgical center” does not mean individual or group practice offices of private***
9 ***physicians or dentists that do not contain a distinct area used for outpatient surgical treat-***
10 ***ment on a regular and organized basis.***

11 [(5) *“Audited actual experience” means data contained within financial statements examined by an*
12 *independent, certified public accountant in accordance with generally accepted auditing standards.*]

13 [(6)] (4) *“Budget” means the projections by the hospital for a specified future time period of*
14 *expenditures and revenues with supporting statistical indicators.*

15 [(7) *“Case mix” means a calculated index for each hospital, based on financial accounting and case*
16 *mix data collection as set forth in ORS 442.425, reflecting the relative costliness of that hospital’s mix*
17 *of cases compared to a state or national mix of cases.*]

18 [(8)] (5) *“Commission” means the Oregon Health Policy Commission.*

19 [(9) *“Department” means the Department of Human Services of the State of Oregon.*]

20 [(10)] (6) *“Develop” means to undertake those activities that on their completion will result in*
21 *the offer of a new institutional health service or the incurring of a financial obligation, as defined*
22 *under applicable state law, in relation to the offering of such a health service.*

23 [(11) *“Director” means the Director of Human Services.*]

24 [(12)] (7) *“Expenditure” or “capital expenditure” means the actual expenditure, an obligation to*
25 *an expenditure, lease or similar arrangement in lieu of an expenditure, and the reasonable value of*
26 *a donation or grant in lieu of an expenditure but not including any interest thereon.*

27 [(13)] (8) *“Freestanding birthing center” means a facility licensed for the primary purpose of*
28 *performing low risk deliveries.*

29 [(14)] (9) *“Governmental unit” means the state, or any county, municipality or other political*
30 *subdivision, or any related department, division, board or other agency.*

31 [(15)] (10) *“Gross revenue” means the sum of daily hospital service charges, ambulatory service*
32 *charges, ancillary service charges and other operating revenue. “Gross revenue” does not include*
33 *contributions, donations, legacies or bequests made to a hospital without restriction by the donors.*

34 [(16)(a)] (11)(a) *“Health care facility” means [a hospital, a long term care facility, an ambulatory*
35 *surgical center, a freestanding birthing center or an outpatient renal dialysis facility.]:*

36 **(A) A hospital;**

37 **(B) A long term care facility;**

38 **(C) An ambulatory surgical center;**

39 **(D) A freestanding birthing center; or**

40 **(E) An outpatient renal dialysis center.**

41 (b) *“Health care facility” does not mean:*

42 [(A) *An establishment furnishing residential care or treatment not meeting federal intermediate care*
43 *standards, not following a primarily medical model of treatment, prohibited from admitting persons*
44 *requiring 24-hour nursing care and licensed or approved under the rules of the Department of Human*
45 *Services or the Department of Corrections; or]*

1 **(A) A residential facility licensed by the Department of Human Services under ORS**
 2 **443.415;**

3 **(B) An establishment furnishing primarily domiciliary care[.] as described in ORS 443.205;**

4 **(C) A residential facility licensed or approved under the rules of the Department of Cor-**
 5 **rections;**

6 **(D) Facilities established by ORS 430.335 for treatment of substance abuse disorders; or**

7 **(E) Community mental health and developmental disabilities programs established under**
 8 **ORS 430.620.**

9 [(17)] **(12)** “Health maintenance organization” or “HMO” means a public organization or a pri-
 10 vate organization organized under the laws of any state that:

11 (a) Is a qualified HMO under section 1310 (d) of the U.S. Public Health Services Act; or

12 (b)(A) Provides or otherwise makes available to enrolled participants health care services, in-
 13 cluding at least the following basic health care services:

14 (i) Usual physician services;

15 (ii) Hospitalization;

16 (iii) Laboratory;

17 (iv) X-ray;

18 (v) Emergency and preventive services; and

19 (vi) Out-of-area coverage;

20 (B) Is compensated, except for copayments, for the provision of the basic health care services
 21 listed in subparagraph (A) of this paragraph to enrolled participants on a predetermined periodic
 22 rate basis; and

23 (C) Provides physicians’ services primarily directly through physicians who are either employees
 24 or partners of such organization, or through arrangements with individual physicians or one or more
 25 groups of physicians organized on a group practice or individual practice basis.

26 [(18)] **(13)** “Health services” means clinically related diagnostic, treatment or rehabilitative
 27 services, and includes alcohol, drug or controlled substance abuse and mental health services that
 28 may be provided either directly or indirectly on an inpatient or ambulatory patient basis.

29 [(19)] **(14)** “Hospital” means:

30 **(a)** A facility with an organized medical staff, *with* **and a permanent** *[facilities]* **building** that
 31 *[include inpatient beds and with medical services, including physician services and continuous nursing*
 32 *services under the supervision of registered nurses, to provide diagnosis and medical or surgical*
 33 *treatment primarily for but not limited to acutely ill patients and accident victims, to provide treatment*
 34 *for patients with mental illness or to provide treatment in special inpatient care facilities.]* **provides**
 35 **24-hour inpatient care to two or more individuals who have an illness or injury and that**
 36 **provides at least the following health services:**

37 **(A) Medical;**

38 **(B) Nursing;**

39 **(C) Laboratory;**

40 **(D) Pharmacy; and**

41 **(E) Dietary; or**

42 **(b) A special inpatient care facility as that term is defined by the Department of Human**
 43 **Services by rule.**

44 [(20)] **(15)** “Institutional health services” means health services provided in or through health
 45 care facilities and includes the entities in or through which such services are provided.

1 [(21)] (16) “Intermediate care facility” means a facility that provides, on a regular basis,
2 health-related care and services to individuals who do not require the degree of care and treatment
3 that a hospital or skilled nursing facility is designed to provide, but who because of their mental
4 or physical condition require care and services above the level of room and board that can be made
5 available to them only through institutional facilities.

6 [(22)] (17) “Long term care facility” means a facility with permanent facilities that include in-
7 patient beds, providing medical services, including nursing services but excluding surgical proce-
8 dures except as may be permitted by the rules of the director, to provide treatment for two or more
9 unrelated patients. “Long term care facility” includes skilled nursing facilities and intermediate
10 care facilities but may not be construed to include facilities licensed and operated pursuant to ORS
11 443.400 to 443.455.

12 [(23)] *“Major medical equipment” means medical equipment that is used to provide medical and*
13 *other health services and that costs more than \$1 million. “Major medical equipment” does not include*
14 *medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory ser-*
15 *vices, if the clinical laboratory is independent of a physician’s office and a hospital and has been de-*
16 *termined under Title XVIII of the Social Security Act to meet the requirements of paragraphs (10) and*
17 *(11) of section 1861(s) of that Act.]*

18 [(24)] *“Net revenue” means gross revenue minus deductions from revenue.]*

19 [(25)] (18) “New hospital” means a facility that did not offer hospital services on a regular basis
20 within its service area within the prior 12-month period and is initiating or proposing to initiate
21 such services. “New hospital” also includes any replacement of an existing hospital that involves a
22 substantial increase or change in the services offered.

23 [(26)] (19) “New skilled nursing or intermediate care service or facility” means a service or fa-
24 cility that did not offer long term care services on a regular basis by or through the facility within
25 the prior 12-month period and is initiating or proposing to initiate such services. “New skilled
26 nursing or intermediate care service or facility” also includes the rebuilding of a long term care
27 facility, the relocation of buildings that are a part of a long term care facility, the relocation of long
28 term care beds from one facility to another or an increase in the number of beds of more than 10
29 or 10 percent of the bed capacity, whichever is the lesser, within a two-year period.

30 [(27)] (20) “Offer” means that the health care facility holds itself out as capable of providing,
31 or as having the means for the provision of, specified health services.

32 [(28)] *“Operating expenses” means the sum of daily hospital service expenses, ambulatory service*
33 *expenses, ancillary expenses and other operating expenses, excluding income taxes.]*

34 [(29)] (21) “Outpatient renal dialysis facility” means a facility that provides renal dialysis ser-
35 vices directly to outpatients.

36 **(22) “Outpatient surgical treatment” means treatment of patients who typically do not**
37 **require hospitalization, but who require continuous medical supervision for less than four**
38 **hours following the surgical procedure performed.**

39 [(30)] (23) “Person” means an individual, a trust or estate, a partnership, a corporation (includ-
40 ing associations, joint stock companies and insurance companies), a state, or a political subdivision
41 or instrumentality, including a municipal corporation, of a state.

42 [(31)] (24) “Skilled nursing facility” means a facility or a distinct part of a facility, that is pri-
43 marily engaged in providing to inpatients skilled nursing care and related services for patients who
44 require medical or nursing care, or an institution that provides rehabilitation services for the re-
45 habilitation of individuals who are injured or sick or who have disabilities.

1 [(32) “Special inpatient care facility” means a facility with permanent inpatient beds and other fa-
 2 cilities designed and utilized for special health care purposes, including but not limited to a rehabili-
 3 tation center, a college infirmary, a chiropractic facility, a facility for the treatment of alcoholism or
 4 drug abuse, an inpatient care facility meeting the requirements of ORS 441.065, and any other estab-
 5 lishment falling within a classification established by the Department of Human Services, after deter-
 6 mination of the need for such classification and the level and kind of health care appropriate for such
 7 classification.]

8 [(33) “Total deductions from gross revenue” or “deductions from revenue” means reductions from
 9 gross revenue resulting from inability to collect payment of charges. Such reductions include bad debts,
 10 contractual adjustments, uncompensated care, administrative, courtesy and policy discounts and ad-
 11 justments and other such revenue deductions. The deduction shall be net of the offset of restricted do-
 12 nations and grants for indigent care.]

13 **SECTION 14.** ORS 443.005 is amended to read:

14 443.005. As used in ORS 443.005 to 443.095:

15 (1) “Department” means the Department of Human Services.

16 (2) “Home health agency” means a **medical staffing agency, an infusion provider or any**
 17 public or private agency providing coordinated home health services on a home visiting basis.
 18 “Home health agency” does not include:

19 (a) Any visiting nurse service or home health service conducted by and for those who rely upon
 20 spiritual means through prayer alone for healing in accordance with the tenets and practices of a
 21 recognized church or religious denomination.

22 (b) Those home health services offered by county health departments outside, and in addition to,
 23 programs formally designated and funded as home health agencies.

24 (3) “Home health services” means **infusion services, fragile children’s skilled care or any**
 25 items and services furnished to an individual by a home health agency, or by others under ar-
 26 rangements with such agency, on a visiting basis, in a place of temporary or permanent residence
 27 used as the individual’s home for the purpose of maintaining that individual at home.

28 (4) **“Infusion provider” means a person that enters a patient’s residence to provide in-**
 29 **fusion services.**

30 (5) **“Medical staffing agency” means a person that hires, prequalifies or arranges for**
 31 **medical staff.**

32 (6) **“Medical staff” includes, but is not limited to, registered nurses, licensed practical**
 33 **nurses, certified nursing assistants, nurse’s aides, physical therapists, occupational thera-**
 34 **pists, speech therapists, medical social workers or any other medical personnel that enter a**
 35 **patient’s residence to provide medical services.**

36 **SECTION 15.** ORS 443.015 is amended to read:

37 443.015. [No public or private agency or person shall] **A person may not** establish[, conduct or
 38 maintain] a home health agency or organization providing home health services for compensation,
 39 or [hold itself out to the public as] **purport to manage or operate** a home health agency or organ-
 40 ization, without first obtaining a license [therefor] from the Department of Human Services. The li-
 41 cense shall be renewable annually and is not transferable.

42 **SECTION 16.** ORS 443.035 is amended to read:

43 443.035. (1) The Department of Human Services may grant a license to a home health agency for
 44 a calendar year, may annually renew a license and may allow for a change of ownership, upon
 45 payment of a fee as follows:

- 1 (a) For a new home health agency:
- 2 (A) [~~\$1,000~~] **\$2,200**; and
- 3 (B) An additional [~~\$1,000~~] **\$2,200** for each subunit of a parent home health agency.
- 4 (b) For renewal of a license:
- 5 (A) [~~\$600~~] **\$1,400**; and
- 6 (B) An additional [~~\$600~~] **\$1,400** for each subunit of a parent home health agency.
- 7 (c) For a change of ownership at a time other than the annual renewal date:
- 8 (A) \$500; and
- 9 (B) An additional \$500 for each subunit of a parent home health agency.
- 10 (2) Notwithstanding subsection (1)(c) of this section, the fee for a change in ownership shall be
- 11 \$100 if a change in ownership does not involve:
- 12 (a) The majority owner or partner; or
- 13 (b) The administrator operating the agency.
- 14 (3) All fees received pursuant to subsection (1) of this section shall be paid over to the State
- 15 Treasurer and credited to the Public Health Account. Such moneys are appropriated continuously
- 16 to the Department of Human Services for the administration of ORS 443.005 to 443.095.

17 **SECTION 17. Section 18 of this 2009 Act is added to and made a part of ORS 443.005 to**
 18 **443.095.**

19 **SECTION 18. (1) The Department of Human Services shall conduct an on-site inspection**
 20 **of a home health agency prior to licensure and at least once every three years thereafter.**

21 **(2) In lieu of an on-site inspection, the department may accept a certification from a**
 22 **federal agency or a national accrediting organization approved by the department that the**
 23 **standards have been met, if the home health agency:**

- 24 **(a) Invites the department to participate in any exit interview conducted by the federal**
 25 **agency or national accrediting organization; and**
- 26 **(b) Provides copies of all documentation concerning the certification.**

27 **SECTION 19. (1) Rules adopted by the Department of Human Services pursuant to ORS**
 28 **443.085 and 443.340 shall include procedures for the filing of complaints as to the care or**
 29 **services provided by home health agencies and in-home care agencies that ensure the**
 30 **confidentiality of the identity of the complainant.**

31 **(2)(a) A home health agency, in-home care agency or person acting on behalf of an**
 32 **agency may not retaliate, through disciplinary action or other means, against any employee**
 33 **who in good faith brings evidence of inappropriate care or any other violation of law or rules**
 34 **to the attention of the home health agency, the in-home care agency, the department or any**
 35 **other state agency.**

36 **(b) In addition to ORS 659A.233 and any other remedy provided by law, an employee**
 37 **against whom a home health agency or in-home care agency has retaliated in violation of**
 38 **this subsection has a cause of action against the agency for damages.**

39 **(3) An employee with knowledge of inappropriate care or other violation of law or rules**
 40 **of the department shall utilize the reporting procedures established by the home health**
 41 **agency or in-home care agency before notifying the department or other state agency of the**
 42 **inappropriate care or violation, unless the employee:**

- 43 **(a) Believes a patient's health or safety is in immediate jeopardy; or**
- 44 **(b) Files a complaint in accordance with subsection (1) of this section.**
- 45 **(4) Information obtained by the department during an investigation of a complaint or**

1 **reported violation under this section is confidential and not subject to public disclosure under**
 2 **ORS 192.410 to 192.505. Upon the conclusion of the investigation, the department shall pub-**
 3 **licly release a report of its findings but may not include information in the report that could**
 4 **be used to identify the complainant or any client of the home health agency or in-home care**
 5 **agency. The department may use any information obtained during an investigation in an**
 6 **administrative or judicial proceeding concerning the licensing of a home health agency or**
 7 **in-home care agency.**

8 (5) **As used in this section:**

9 (a) **“Home health agency” has the meaning given that term in ORS 443.005.**

10 (b) **“In-home care agency” has the meaning given that term in ORS 443.305.**

11 **SECTION 20.** ORS 443.045 is amended to read:

12 443.045. (1) The Department of Human Services may deny, suspend or revoke the license of, **or**
 13 **assess a civil penalty against,** any **individual or** home health agency for failure to comply with
 14 ORS 443.005 to 443.095 or with the rules of the department as authorized by ORS 443.085.

15 (2) License denials, suspensions and revocations, **assessment of civil penalties,** adoption of
 16 rules and judicial review thereof shall be in accordance with ORS chapter 183.

17 **SECTION 21.** ORS 443.065 is amended to read:

18 443.065. The home health agency shall:

19 (1) Be primarily engaged in providing skilled nursing services [*and at least one other service de-*
 20 *linedated in ORS 443.075 (2) and (3)*];

21 (2) Have policies established by professional personnel associated with the agency or organiza-
 22 tion, including one or more physicians and one or more registered nurses, at least two of whom are
 23 neither owners nor employees of the agency, and two consumers, to govern the services that it
 24 provides;

25 (3) Require supervision of services that it provides under subsection (1) of this section by a
 26 physician, nurse practitioner or registered nurse, preferably a public health nurse;

27 (4) Maintain clinical, financial and professional records on all patients; and

28 (5) Have an overall plan and budget in effect.

29 **SECTION 22.** ORS 443.075 is amended to read:

30 443.075. [*The following services and supplies may be prescribed by a physician or a nurse practi-*
 31 *tioner in accordance with a plan of treatment which must be established and periodically reviewed by*
 32 *the physician or nurse practitioner*] (1) **A home health agency must have a prescription and plan**
 33 **of treatment from a physician or nurse practitioner for the following services and supplies:**

34 [(1)] (a) Home nursing care provided by or under the supervision of a registered nurse;

35 [(2)] (b) Physical, occupational or speech therapy, medical social services or other therapeutic
 36 services;

37 [(3)] (c) Home health aide services; and

38 [(4)] (d) Medical supplies, other than drugs and biologicals, and the use of medical appliances.

39 (2) **A home health agency shall have each plan of treatment reviewed by the physician**
 40 **or nurse practitioner periodically, in accordance with rules adopted by the Department of**
 41 **Human Services.**

42 **SECTION 23.** ORS 443.085 is amended to read:

43 443.085. The Department of Human Services shall adopt rules [*relating to the home health agen-*
 44 *cies licensed under*] **to implement** ORS 443.005 to 443.095[*, governing*] **including, but not limited**
 45 **to:**

1 (1) The qualifications of professional and ancillary personnel in order to adequately furnish
 2 home health services;

3 (2) Standards for the organization and quality of patient care;

4 (3) Procedures for maintaining records; [and]

5 (4) Provision for contractual arrangements for professional and ancillary health services[.]; and

6 **(5) Complaint and inspection procedures.**

7 **SECTION 24.** ORS 443.090 is amended to read:

8 443.090. (1) Notwithstanding ORS 443.305 to 443.350, a home health agency licensed under ORS
 9 443.015 that provides personal care services that are necessary to assist an individual in meeting
 10 the individual's daily needs, but do not include curative or rehabilitative services, is not required
 11 to be licensed as an in-home care agency under ORS 443.315.

12 **(2) An in-home care agency described in subsection (1) of this section must comply with**
 13 **all laws and rules concerning in-home care services except for the licensing requirements.**

14 **SECTION 25.** ORS 443.315 is amended to read:

15 443.315. (1) A person may not **establish, manage or** operate [*or maintain*] an in-home care
 16 agency or purport to **manage or** operate [*or maintain*] an in-home care agency without obtaining a
 17 license from the Department of Human Services.

18 (2) The department shall establish requirements and qualifications for licensure under this sec-
 19 tion by rule. The department shall issue a license to an applicant that has the necessary qualifica-
 20 tions and meets all requirements established by rule, including the payment of required fees. An
 21 in-home care agency shall be required to maintain administrative and professional oversight to en-
 22 sure the quality of services provided.

23 (3) Application for a license required under subsection (1) of this section shall be made in the
 24 form and manner required by the department by rule and shall be accompanied by any required fees.

25 (4) A license may be granted, or may be renewed annually, upon payment of a fee as follows:

26 (a) For the initial licensure of an in-home care agency:

27 (A) \$1,500; and

28 (B) An additional \$750 for each subunit.

29 (b) For renewal of a license:

30 (A) \$750; and

31 (B) An additional \$750 for each subunit.

32 (c) For a change of ownership at a time other than the annual renewal date:

33 (A) \$350; and

34 (B) An additional \$350 for each subunit.

35 (5) A license issued under this section is valid for one year. A license may be renewed by pay-
 36 ment of the required renewal fee and by demonstration of compliance with requirements for renewal
 37 established by rule.

38 (6) A license issued under this section is not transferable.

39 (7) The department shall conduct an on-site inspection of each in-home care agency prior to
 40 services being rendered and once every three years thereafter as a requirement for licensing.

41 **(8) In lieu of the on-site inspection required by subsection (7) of this section, the de-**
 42 **partment may accept a certification from a federal agency or a national accrediting organ-**
 43 **ization approved by the department that the standards have been met, if the in-home care**
 44 **agency:**

45 (a) Invites the department to participate in any exit interview conducted by the federal

1 **agency or national accrediting organization; and**

2 **(b) Provides copies of all documentation concerning the certification.**

3 **SECTION 26.** ORS 443.325 is amended to read:

4 443.325. The Department of Human Services may impose a civil penalty [*in the manner provided*
5 *in ORS 183.745 and*] **as provided in section 27 of this 2009 Act, and may deny, suspend or revoke**
6 **the license of any in-home care agency licensed under ORS 443.315 for failure to comply with ORS**
7 **443.305 to 443.350 or with rules adopted thereunder. A failure to comply with ORS 443.305 to 443.350**
8 **includes, but is not limited to:**

9 (1) Failure to provide a written disclosure statement to the client or the client’s representative
10 prior to in-home care services being rendered;

11 (2) Failure to provide the contracted in-home care services; or

12 (3) Failure to correct deficiencies identified during a department inspection.

13 **SECTION 27. (1) The Department of Human Services may impose a civil penalty upon an**
14 **individual, home health agency or an in-home care agency under ORS 441.045 or for violation**
15 **of ORS 443.015 or 443.305 to 443.350.**

16 **(2) A civil penalty imposed under this section may not exceed the lesser of \$1,000 per day**
17 **of noncompliance or \$10,000 for each 30-day period of noncompliance.**

18 **(3) Civil penalties shall be imposed in the manner provided by ORS 183.745.**

19 **SECTION 28. All civil penalties recovered under ORS 441.990 and section 27 of this 2009**
20 **Act shall be paid into the State Treasury and credited to the General Fund and are available**
21 **for general governmental expenses.**

22 **SECTION 29.** ORS 65.800 is amended to read:

23 65.800. For purposes of ORS 65.803 to 65.815:

24 (1) “Hospital” means a hospital as defined in ORS 442.015 [(19)].

25 (2) “Noncharitable entity” means any person or entity that is not a public benefit or religious
26 corporation and is not wholly owned or controlled by one or more public benefit or religious cor-
27 porations.

28 **SECTION 30.** ORS 127.646 is amended to read:

29 127.646. As used in ORS 127.646 to 127.654:

30 (1) “Health care organization” means a home health agency, hospice program, hospital, long
31 term care facility or health maintenance organization.

32 (2) “Health maintenance organization” has the meaning given that term in ORS 750.005, except
33 that “health maintenance organization” includes only those organizations that participate in the
34 federal Medicare or Medicaid programs.

35 (3) “Home health agency” has the meaning given that term in ORS 443.005.

36 (4) “Hospice program” has the meaning given that term in ORS 443.850.

37 (5) “Hospital” has the meaning given that term in ORS 442.015. [(19), *except that*] “Hospital” does
38 not include a special inpatient care facility.

39 (6) “Long term care facility” has the meaning given that term in ORS 442.015, except that “long
40 term care facility” does not include an intermediate care facility for individuals with mental retar-
41 dation.

42 **SECTION 31.** ORS 192.517 is amended to read:

43 192.517. (1) The system designated to protect and advocate for the rights of individuals shall
44 have access to all records of:

45 (a) Any individual who is a client of the system if the individual or the legal guardian or other

1 legal representative of the individual has authorized the system to have such access;

2 (b) Any individual, including an individual who has died or whose whereabouts are unknown:

3 (A) If the individual by reason of the individual's mental or physical condition or age is unable
4 to authorize such access;

5 (B) If the individual does not have a legal guardian or other legal representative, or the state
6 or a political subdivision of this state is the legal guardian of the individual; and

7 (C) If a complaint regarding the rights or safety of the individual has been received by the sys-
8 tem or if, as a result of monitoring or other activities which result from a complaint or other evi-
9 dence, there is probable cause to believe that the individual has been subject to abuse or neglect;
10 and

11 (c) Any individual who has a legal guardian or other legal representative, who is the subject
12 of a complaint of abuse or neglect received by the system, or whose health and safety is believed
13 with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal
14 representative:

15 (A) Has been contacted by the system upon receipt of the name and address of the legal
16 guardian or other legal representative;

17 (B) Has been offered assistance by the system to resolve the situation; and

18 (C) Has failed or refused to act on behalf of the individual.

19 (2) The system shall have access to the name, address and telephone number of any legal
20 guardian or other legal representative of an individual.

21 (3) The system that obtains access to records under this section shall maintain the
22 confidentiality of the records to the same extent as is required of the provider of the services, except
23 as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806)
24 as in effect on January 1, 2003.

25 (4) The system shall have reasonable access to facilities, including the residents and staff of the
26 facilities.

27 (5) This section is not intended to limit or overrule the provisions of ORS 41.675 or 441.055
28 [(9)] (7).

29 **SECTION 32.** ORS 192.660, as amended by section 1, chapter 602, Oregon Laws 2007, is
30 amended to read:

31 192.660. (1) ORS 192.610 to 192.690 do not prevent the governing body of a public body from
32 holding executive session during a regular, special or emergency meeting, after the presiding officer
33 has identified the authorization under ORS 192.610 to 192.690 for holding the executive session.

34 (2) The governing body of a public body may hold an executive session:

35 (a) To consider the employment of a public officer, employee, staff member or individual agent.

36 (b) To consider the dismissal or disciplining of, or to hear complaints or charges brought
37 against, a public officer, employee, staff member or individual agent who does not request an open
38 hearing.

39 (c) To consider matters pertaining to the function of the medical staff of a public hospital li-
40 censed pursuant to ORS 441.015 to 441.063[*441.085, 441.087 and 441.990 (2)*] including, but not lim-
41 ited to, all clinical committees, executive, credentials, utilization review, peer review committees
42 and all other matters relating to medical competency in the hospital.

43 (d) To conduct deliberations with persons designated by the governing body to carry on labor
44 negotiations.

45 (e) To conduct deliberations with persons designated by the governing body to negotiate real

- 1 property transactions.
- 2 (f) To consider information or records that are exempt by law from public inspection.
- 3 (g) To consider preliminary negotiations involving matters of trade or commerce in which the
4 governing body is in competition with governing bodies in other states or nations.
- 5 (h) To consult with counsel concerning the legal rights and duties of a public body with regard
6 to current litigation or litigation likely to be filed.
- 7 (i) To review and evaluate the employment-related performance of the chief executive officer of
8 any public body, a public officer, employee or staff member who does not request an open hearing.
- 9 (j) To carry on negotiations under ORS chapter 293 with private persons or businesses regarding
10 proposed acquisition, exchange or liquidation of public investments.
- 11 (k) If the governing body is a health professional regulatory board, to consider information ob-
12 tained as part of an investigation of licensee or applicant conduct.
- 13 (L) If the governing body is the State Landscape Architect Board, or an advisory committee to
14 the board, to consider information obtained as part of an investigation of registrant or applicant
15 conduct.
- 16 (m) To discuss information about review or approval of programs relating to the security of any
17 of the following:
- 18 (A) A nuclear-powered thermal power plant or nuclear installation.
- 19 (B) Transportation of radioactive material derived from or destined for a nuclear-fueled thermal
20 power plant or nuclear installation.
- 21 (C) Generation, storage or conveyance of:
- 22 (i) Electricity;
- 23 (ii) Gas in liquefied or gaseous form;
- 24 (iii) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);
- 25 (iv) Petroleum products;
- 26 (v) Sewage; or
- 27 (vi) Water.
- 28 (D) Telecommunication systems, including cellular, wireless or radio systems.
- 29 (E) Data transmissions by whatever means provided.
- 30 (3) Labor negotiations shall be conducted in open meetings unless negotiators for both sides
31 request that negotiations be conducted in executive session. Labor negotiations conducted in exec-
32 utive session are not subject to the notification requirements of ORS 192.640.
- 33 (4) Representatives of the news media shall be allowed to attend executive sessions other than
34 those held under subsection (2)(d) of this section relating to labor negotiations or executive session
35 held pursuant to ORS 332.061 (2) but the governing body may require that specified information be
36 undisclosed.
- 37 (5) When a governing body convenes an executive session under subsection (2)(h) of this section
38 relating to conferring with counsel on current litigation or litigation likely to be filed, the governing
39 body shall bar any member of the news media from attending the executive session if the member
40 of the news media is a party to the litigation or is an employee, agent or contractor of a news media
41 organization that is a party to the litigation.
- 42 (6) No executive session may be held for the purpose of taking any final action or making any
43 final decision.
- 44 (7) The exception granted by subsection (2)(a) of this section does not apply to:
- 45 (a) The filling of a vacancy in an elective office.

1 (b) The filling of a vacancy on any public committee, commission or other advisory group.

2 (c) The consideration of general employment policies.

3 (d) The employment of the chief executive officer, other public officers, employees and staff
4 members of a public body unless:

5 (A) The public body has advertised the vacancy;

6 (B) The public body has adopted regular hiring procedures;

7 (C) In the case of an officer, the public has had the opportunity to comment on the employment
8 of the officer; and

9 (D) In the case of a chief executive officer, the governing body has adopted hiring standards,
10 criteria and policy directives in meetings open to the public in which the public has had the op-
11 portunity to comment on the standards, criteria and policy directives.

12 (8) A governing body may not use an executive session for purposes of evaluating a chief execu-
13 tive officer or other officer, employee or staff member to conduct a general evaluation of an agency
14 goal, objective or operation or any directive to personnel concerning agency goals, objectives, op-
15 erations or programs.

16 (9) Notwithstanding subsections (2) and (6) of this section and ORS 192.650:

17 (a) ORS 676.175 governs the public disclosure of minutes, transcripts or recordings relating to
18 the substance and disposition of licensee or applicant conduct investigated by a health professional
19 regulatory board.

20 (b) ORS 671.338 governs the public disclosure of minutes, transcripts or recordings relating to
21 the substance and disposition of registrant or applicant conduct investigated by the State Landscape
22 Architect Board or an advisory committee to the board.

23 **SECTION 33.** ORS 409.720 is amended to read:

24 409.720. (1) As used in this section:

25 (a) "Adult foster home" has the meaning given that term in ORS 443.705 (1).

26 (b) "Health care facility" has the meaning given that term in ORS 442.015 [(16)].

27 (c) "Residential facility" has the meaning given that term in ORS 443.400 (6).

28 (2) Every adult foster home, health care facility and residential facility licensed or registered
29 by the Department of Human Services shall:

30 (a) Adopt a plan to provide for the safety of persons who are receiving care at or are residents
31 of the home or facility in the event of an emergency that requires immediate action by the staff of
32 the home or facility due to conditions of imminent danger that pose a threat to the life, health or
33 safety of persons who are receiving care at or are residents of the home or facility; and

34 (b) Provide training to all employees of the home or facility about the responsibilities of the
35 employees to implement the plan required by this section.

36 (3) The department shall adopt by rule the requirements for the plan and training required by
37 this section. The rules adopted shall include, but are not limited to, procedures for the evacuation
38 of the persons who are receiving care at or are residents of the adult foster home, health care fa-
39 cility or residential facility to a place of safety when the conditions of imminent danger require re-
40 location of those persons.

41 **SECTION 34.** Section 1, chapter 736, Oregon Laws 2003, is amended to read:

42 **Sec. 1.** As used in sections 1 to 9, **chapter 736, Oregon Laws 2003** [of this 2003 Act]:

43 (1) "Charity care" means costs for providing inpatient or outpatient care services free of charge
44 or at a reduced charge because of the indigence or lack of health insurance of the patient receiving
45 the care services.

1 (2) "Contractual adjustments" means the difference between the amounts charged based on the
2 hospital's full established charges and the amount received or due from the payor.

3 (3) "Hospital" has the meaning given that term in ORS 442.015. [but] "**Hospital**" does not in-
4 clude special inpatient care facilities.

5 (4) "Net revenue":

6 (a) Means the total amount of charges for inpatient or outpatient care provided by the hospital
7 to patients, less charity care, bad debts and contractual adjustments;

8 (b) Does not include revenue derived from sources other than inpatient or outpatient operations,
9 including but not limited to interest and guest meals; and

10 (c) Does not include any revenue that is taken into account in computing a long term care fa-
11 cility assessment under sections 15 to 22, **chapter 736, Oregon Laws 2003** [of this 2003 Act].

12 (5) "Waivered hospital" means a type A or type B hospital, as described in ORS 442.470, a hos-
13 pital that provides only psychiatric care or a hospital identified by the Department of Human Ser-
14 vices as appropriate for inclusion in the application described in section 4, **chapter 736, Oregon**
15 **Laws 2003** [of this 2003 Act].

16 **SECTION 35.** ORS 432.500 is amended to read:

17 432.500. As used in ORS 432.510 to 432.550 and 432.900:

18 (1) "Clinical laboratory" means a facility where microbiological, serological, chemical,
19 hematological, immunohematological, immunological, toxicological, cytogenetical, exfoliative
20 cytological, histological, pathological or other examinations are performed on material derived from
21 the human body, for the purpose of diagnosis, prevention of disease or treatment of patients by
22 physicians, dentists and other persons who are authorized by license to diagnose or treat humans.

23 (2) "Department" means the Department of Human Services or its authorized representative.

24 (3) "Health care facility" means a hospital, as defined in ORS 442.015 [(19)], or an ambulatory
25 surgical center, as defined in ORS 442.015.

26 (4) "Practitioner" means any person whose professional license allows the person to diagnose
27 or treat cancer in patients.

28 **SECTION 36.** ORS 435.254 is amended to read:

29 435.254. (1) A hospital providing care to a female victim of sexual assault shall:

30 (a) Promptly provide the victim with unbiased, medically and factually accurate written and oral
31 information about emergency contraception;

32 (b) Promptly orally inform the victim of her option to be provided emergency contraception at
33 the hospital; and

34 (c) If requested by the victim and if not medically contraindicated, provide the victim with
35 emergency contraception immediately at the hospital, notwithstanding section 2, chapter 789,
36 Oregon Laws 2003.

37 (2)(a) In collaboration with victim advocates, other interested parties and nonprofit organiza-
38 tions that provide intervention and support services to victims of sexual assault and their families,
39 the Department of Human Services shall develop, prepare and produce informational materials re-
40 lating to emergency contraception for the prevention of pregnancy in victims of sexual assault for
41 distribution to and use in all hospital emergency departments in the state, in quantities sufficient
42 to comply with the requirements of this section.

43 (b) The Director of Human Services, in collaboration with community sexual assault programs
44 and other relevant stakeholders, may approve informational materials developed, prepared and
45 produced by other entities for the purposes of paragraph (a) of this subsection.

(c) All informational materials must:

(A) Be clearly written and easily understood in a culturally competent manner; and

(B) Contain an explanation of emergency contraception, including its use, safety and effectiveness in preventing pregnancy, including but not limited to the following facts:

(i) Emergency contraception has been approved by the United States Food and Drug Administration as an over-the-counter medication for women 18 years of age or older and is a safe and effective way to prevent pregnancy after unprotected sexual intercourse or after contraceptive failure, if taken in a timely manner.

(ii) Emergency contraception is more effective the sooner it is taken.

(iii) Emergency contraception will not disrupt an established pregnancy.

(3) The department shall respond to complaints of violations of ORS 435.256 in accordance with ORS 441.057.

(4) The department shall incorporate the requirements of this section in rules adopted pursuant to ORS [441.055] **441.025** that prescribe the care to be given to patients at hospitals.

(5) The director shall adopt rules necessary to carry out the provisions of this section.

(6) Information required to be provided under subsection (1) of this section is medically and factually accurate if the information is verified or supported by the weight of research conducted in compliance with accepted scientific methods and based upon:

(a) Reports in peer-reviewed journals; or

(b) Information that leading professional organizations, such as the American College of Obstetricians and Gynecologists, and agencies with expertise in the field recognize as accurate and objective.

SECTION 37. ORS 441.015 is amended to read:

441.015. (1) No person or governmental unit, acting severally or jointly with any other person or governmental unit, shall establish, conduct, maintain, manage or operate a health care facility or health maintenance organization, as defined in ORS 442.015, in this state without a license.

(2) Any health care facility or health maintenance organization which is in operation at the time of promulgation of any applicable rules or minimum standards under ORS [441.055] **441.025** or 731.072 shall be given a reasonable length of time within which to comply with such rules or minimum standards.

SECTION 38. ORS 441.065 is amended to read:

441.065. (1) ORS 441.015 to 441.063[, 441.085, 441.087] or the rules adopted pursuant thereto do not authorize the supervision, regulation or control of the remedial care or treatment of residents or patients in any home or institution that is described under subsection (2) of this section and is conducted for those who rely upon treatment solely by prayer or spiritual means, except as to the sanitary and safe conditions of the premises, cleanliness of operation and its physical equipment. This section does not exempt such a home or institution from the licensing requirements of ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463.

(2) To qualify under subsection (1) of this section, a home or institution must:

(a) Be owned by an entity that is registered with the Secretary of State as a nonprofit corporation and that does not own, hold a financial interest in, control or operate any facility, wherever located, of a type providing medical health care and services; and

(b) Provide 24 hour a day availability of nonmedical care and services.

(3) As used in this section:

1 (a) "Medical health care and services" means medical screening, examination, diagnosis,
 2 prognosis, treatment and drug administration. "Medical health care and services" does not include
 3 counseling or the provision of social services or dietary services.

4 (b) "Nonmedical care and services" means assistance or services, other than medical health care
 5 and services, provided by attendants for the physical, mental, emotional or spiritual comfort and
 6 well being of residents or patients.

7 **SECTION 39.** ORS 441.624 is amended to read:

8 441.624. (1) ORS 124.050, 124.080, 410.190, 441.020 to 441.057, 441.060, 441.061, 441.067, 441.073,
 9 [441.085,] 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.367, 441.600, 441.610, 441.630,
 10 441.650 to 441.665, 441.685, 441.690, 441.703 and 441.705 to 441.720 address the consolidation of the
 11 regulatory functions of licensing, certification, inspection of care, utilization review, abuse reporting
 12 and abuse investigation.

13 (2) It is legislative intent that:

14 (a) The Department of Human Services focus administrative effort on the integration and con-
 15 sistent application and interpretation of the regulatory functions at the nursing facility level;

16 (b) Surveys and other reports, especially with respect to client assessment, be consistently and
 17 reliably performed throughout the state;

18 (c) Positive and negative findings and sanctions be proportional to the strengths and problems
 19 identified, within the limits of federal statute and regulations; and

20 (d) The interpretation of regulatory criteria be independent of influence from budgetary limita-
 21 tions.

22 **SECTION 40.** ORS 442.425 is amended to read:

23 442.425. (1) The Administrator of the Office for Oregon Health Policy and Research by rule may
 24 specify one or more uniform systems of financial reporting necessary to meet the requirements of
 25 ORS 442.400 to 442.463. Such systems shall include such cost allocation methods as may be pre-
 26 scribed and such records and reports of revenues, expenses, other income and other outlays, assets
 27 and liabilities, and units of service as may be prescribed. Each facility under the administrator's
 28 jurisdiction shall adopt such systems for its fiscal period starting on or after the effective date of
 29 such system and shall make the required reports on such forms as may be required by the adminis-
 30 trator. The administrator may extend the period by which compliance is required upon timely ap-
 31 plication and for good cause. Filings of such records and reports shall be made at such times as may
 32 be reasonably required by the administrator.

33 (2) Existing systems of reporting used by health care facilities shall be given due consideration
 34 by the administrator in carrying out the duty of specifying the systems of reporting required by ORS
 35 442.400 to 442.463. The administrator insofar as reasonably possible shall adopt reporting systems
 36 and requirements that will not unreasonably increase the administrative costs of the facility.

37 (3) The administrator may allow and provide for modifications in the reporting systems in order
 38 to correctly reflect differences in the scope or type of services and financial structure between the
 39 various categories, sizes or types of health care facilities and in a manner consistent with the pur-
 40 poses of ORS 442.400 to 442.463.

41 (4) The administrator may establish specific annual reporting provisions for facilities that re-
 42 ceive a preponderance of their revenue from associated comprehensive group-practice prepayment
 43 health care service plans. Notwithstanding any other provisions of ORS [441.055 and] 442.400 to
 44 442.463, such facilities shall be authorized to utilize established accounting systems and to report
 45 costs and revenues in a manner consistent with the operating principles of such plans and with

1 generally accepted accounting principles. When such facilities are operated as units of a coordinated
 2 group of health facilities under common ownership, the facilities shall be authorized to report as a
 3 group rather than as individual institutions, and as a group shall submit a consolidated balance
 4 sheet, income and expense statement and statement of source and application of funds for such
 5 group of health facilities.

6 **SECTION 41.** ORS 442.430 is amended to read:

7 442.430. (1) Whenever a further investigation is considered necessary or desirable by the Office
 8 for Oregon Health Policy and Research to verify the accuracy of the information in the reports made
 9 by health care facilities, the office may make any necessary further examination of the facility's
 10 records and accounts. Such further examinations include, but are not limited to, requiring a full or
 11 partial audit of all such records and accounts.

12 (2) In carrying out the duties prescribed by ORS [441.055 and] 442.400 to 442.463, the office may
 13 utilize its own staff or may contract with any appropriate, independent, qualified third party. No
 14 such contractor shall release or publish or otherwise use any information made available to it under
 15 its contractual responsibility unless such permission is specifically granted by the office.

16 **SECTION 42.** ORS 442.700 is amended to read:

17 442.700. As used in ORS 442.700 to 442.760:

18 (1) "Board of governors" means the governors of a cooperative program as described in ORS
 19 442.720.

20 (2) "Cooperative program" means a program among two or more health care providers for the
 21 purpose of providing heart and kidney transplant services including, but not limited to, the sharing,
 22 allocation and referral of physicians, patients, personnel, instructional programs, support services,
 23 facilities, medical, diagnostic, laboratory or therapeutic services, equipment, devices or supplies, and
 24 other services traditionally offered by health care providers.

25 (3) "Director" means the Director of Human Services.

26 (4) "Health care provider" means a hospital, physician or entity, a significant part of whose
 27 activities consist of providing hospital or physician services in this state. For purposes of the im-
 28 munities provided by ORS 442.700 to 442.760 and 646.740, "health care provider" includes any offi-
 29 cer, director, trustee, employee, or agent of, or any entity under common ownership and control
 30 with, a health care provider.

31 (5) "Hospital" means a hospital, [as defined in ORS 442.015 (19), or] a long term care facility or
 32 an ambulatory surgical center, as those terms are defined in ORS 442.015, that is licensed under
 33 ORS 441.015 to 441.089. "Hospital" includes community health programs established under ORS
 34 430.610 to 430.695.

35 (6) "Order" means a decision issued by the director under ORS 442.710 either approving or de-
 36 nying an application for a cooperative program and includes modifications of an original order under
 37 ORS 442.730 (3)(b) and ORS 442.740 (1) and (4).

38 (7) "Party to a cooperative program agreement" or "party" means an entity that enters into the
 39 principal agreement to establish a cooperative program and applies for approval under ORS 442.700
 40 to 442.760 and 646.740 and any other entity that, with the approval of the director, becomes a
 41 member of a cooperative program.

42 (8) "Physician" means a physician defined in ORS 677.010 (13) and licensed under ORS chapter
 43 677.

44 **SECTION 43.** ORS 659A.233 is amended to read:

45 659A.233. It is an unlawful employment practice for an employer to discharge, demote, suspend

1 or in any manner discriminate or retaliate against an employee with regard to promotion, compen-
 2 sation or other terms, conditions or privileges of employment for the reason that the employee has
 3 in good faith reported possible violations of ORS chapter 441, **ORS 443.005 to 443.095, 443.305 to**
 4 **443.350** or [of ORS] 443.400 to 443.455 or has testified in good faith at an unemployment compen-
 5 sation hearing or other hearing conducted pursuant to ORS chapter 657.

6 **SECTION 44.** ORS 677.290 is amended to read:

7 677.290. (1) All moneys received by the Oregon Medical Board under this chapter shall be paid
 8 into the General Fund in the State Treasury and placed to the credit of the Oregon Medical Board
 9 Account which is established. Such moneys are appropriated continuously and shall be used only for
 10 the administration and enforcement of this chapter.

11 (2) Notwithstanding subsection (1) of this section, the board may maintain a revolving account
 12 in a sum not to exceed \$50,000 for the purpose of receiving and paying pass-through moneys relating
 13 to peer review pursuant to its duties under ORS 441.055 [(6) and (7)] **(4) and (5)** and in administering
 14 programs pursuant to its duties under this chapter relating to the education and rehabilitation of
 15 licensees in the areas of chemical substance abuse, inappropriate prescribing and medical compe-
 16 tence. The creation of and disbursement of moneys from the revolving account shall not require an
 17 allotment or allocation of moneys pursuant to ORS 291.234 to 291.260. All moneys in the account
 18 are continuously appropriated for purposes set forth in this subsection.

19 (3) Each year \$10 shall be paid to the Oregon Health and Science University for each
 20 [actively] in-state [registered] physician [under ORS 677.265] **licensed under ORS chapter 677,**
 21 which amount is continuously appropriated to the Oregon Health and Science University to be used
 22 in maintaining a circulating library of medical and surgical books and publications for the use of
 23 practitioners of medicine in this state, and when not so in use to be kept at the library of the School
 24 of Medicine and accessible to its students. The balance of the money received by the board is ap-
 25 propriated continuously and shall be used only for the administration and enforcement of this
 26 chapter, but any part of the balance may, upon the order of the board, be paid into the circulating
 27 library fund.

28 **SECTION 45.** ORS 677.805 is amended to read:

29 677.805. As used in ORS 677.805 to 677.840:

30 (1) "Ankle" means the tibial plafond and its posterolateral border or posterior malleolus, the
 31 medial malleolus, the distal fibula or lateral malleolus, and the talus.

32 (2) "Board" means the Oregon Medical Board.

33 (3) "Podiatric physician and surgeon" means a podiatric physician and surgeon whose practice
 34 is limited to treating ailments of the human foot, ankle and tendons directly attached to and gov-
 35 erning the function of the foot and ankle.

36 (4) "Podiatry" means the diagnosis or the medical, physical or surgical treatment of ailments
 37 of the human foot, ankle and tendons directly attached to and governing the function of the foot and
 38 ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is
 39 performed in a hospital [certified in the manner described in ORS 441.055 (2)] **licensed under ORS**
 40 **441.025** or in an ambulatory surgical center licensed by the Department of Human Services and is
 41 under the supervision of or in collaboration with a physician licensed to practice medicine by the
 42 Oregon Medical Board. "Podiatry" does not include the administration of general or spinal anes-
 43 thetics or the amputation of the entire foot.

44 **SECTION 46.** ORS 677.812 is amended to read:

45 677.812. Surgery of the ankle as defined in ORS 677.805 must be conducted:

1 (1) In a hospital [*certified in the manner described in ORS 441.055 (2)*] or in an ambulatory sur-
 2 gical center licensed by the Department of Human Services **under ORS 441.025**; and

3 (2) By a podiatric physician and surgeon who meets the qualifications for ankle surgery estab-
 4 lished by rule of the Oregon Medical Board.

5 **SECTION 47.** ORS 678.730 is amended to read:

6 678.730. (1) Any individual is qualified for licensure as a nursing home administrator who:

7 (a) Meets the training or experience and other standards established by rules of the Board of
 8 Examiners of Nursing Home Administrators. The board shall accept one year of experience as an
 9 administrator serving a dual facility in lieu of any residency or intern requirement established pur-
 10 suant to this paragraph; and

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

12 (2) Each license as a nursing home administrator may be renewed by the board upon compliance
 13 by the licensee with the requirements of ORS 678.760 and by presenting evidence of the completion
 14 of the continuing education work required by the board. The board may require up to 50 hours of
 15 continuing education in any one-year period.

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

19 (a) Was a licensed administrator in any jurisdiction of the United States prior to January 1,
 20 1983; or

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

23 (4) Notwithstanding the requirements established under subsection (1) of this section, upon the
 24 request of the governing body of a hospital, as defined in ORS 442.015 [(19)], the board shall deem
 25 a health care administrator to have met the requirements for licensure as a nursing home adminis-
 26 trator if the health care administrator possesses an advanced degree in management and has at least
 27 10 years of experience in health care management.

28 **SECTION 48.** ORS 678.780 is amended to read:

29 678.780. (1) The sanctions authorized by subsection (2) of this section may be imposed upon the
 30 following grounds:

31 (a) The employment of fraud or deception in applying for or obtaining a nursing home adminis-
 32 trator's license.

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

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

38 (d) Mistake or inadvertence in the issuance of the license by the board.

39 (e) Physical or mental incapacity that presents an unreasonable risk of harm to the licensee or
 40 to the person or property of others in the course of performing the duties of a nursing home ad-
 41 ministrator.

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

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

45 (h) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.780,

1 678.800 to 678.840 and 678.990 (2) or of any lawful rule or order of the board or continuous or sub-
2 stantial violations of the rules adopted under ORS [441.055] **441.025**.

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

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

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

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

11 (m) Unprofessional conduct as defined in rules adopted by the board.

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

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

14 (b) A civil penalty not to exceed \$1,000.

15 (c) Probation, with authority to limit or restrict a license.

16 (d) Participation in a treatment program for intoxicating liquor or controlled substances.

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

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

22 **SECTION 49. ORS 441.017 and 441.085 are repealed.**

23