

# Senate Bill 222

Sponsored by Senator MONNES ANDERSON, Representative GREENLICK; Senators BATES, BONAMICI, BURDICK, HASS, ROSENBAUM, Representatives BARNHART, KOTEK, MATTHEWS (Pre-session filed.)

## 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**.

Establishes Durable Medical Equipment Supplier Licensing Board in Oregon Health Licensing Agency. Requires person that bills insurer, Centers for Medicare and Medicaid Services or state health plan for durable medical equipment on or after January 1, 2012, to obtain durable medical equipment supplier license from agency.

Continuously appropriates licensing fees to agency for purposes of carrying out duties of agency. Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to durable medical equipment suppliers; creating new provisions; amending ORS 676.150,  
3 676.160, 676.606, 676.610, 676.612, 676.613 and 676.992; appropriating money; and declaring an  
4 emergency.

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

6 **SECTION 1. As used in sections 1 to 9 of this 2011 Act:**

7 **(1)(a) "Durable medical equipment" means equipment that:**

8 **(A) Can withstand repeated use;**

9 **(B) Is primarily and customarily used to serve a medical purpose;**

10 **(C) Is generally not useful to an individual in the absence of an illness or injury; and**

11 **(D) Is appropriate for use in the home.**

12 **(b) "Durable medical equipment" includes, but is not limited to, respiratory equipment,**  
13 **hospital beds, walkers, wheelchairs and blood glucose monitors used in a patient's home.**

14 **(2) "Insurer" has the meaning given that term in ORS 731.106.**

15 **(3) "State health plan" has the meaning given that term in ORS 192.519.**

16 **SECTION 2. (1) There is established in the Oregon Health Licensing Agency the Durable**  
17 **Medical Equipment Supplier Licensing Board, consisting of seven members appointed by the**  
18 **Governor as follows:**

19 **(a) Three members who are representatives of durable medical equipment suppliers li-**  
20 **censed by the agency;**

21 **(b) Two members, each of whom is:**

22 **(A) A physician licensed under ORS chapter 677;**

23 **(B) A physical therapist licensed under ORS 688.010 to 688.201;**

24 **(C) An occupational therapist licensed under ORS 675.210 to 675.340; or**

25 **(D) A respiratory care practitioner licensed under ORS 688.815; and**

26 **(c) Two public members.**

27 **(2) All members of the board must be residents of this state.**

28 **(3) In appointing the members of the board who are representatives of durable medical**

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 equipment suppliers, the Governor may take into account the recommendations of a regional  
2 association of durable medical equipment suppliers.

3 (4) The term of office of each member of the board is four years, but a member serves  
4 at the pleasure of the Governor. The terms must be staggered so that no more than three  
5 terms end each year. A member is eligible for reappointment, but a member may serve no  
6 more than two full terms. If there is a vacancy for any cause, the Governor shall make an  
7 appointment to become immediately effective for the remainder of the expired term.

8 (5) A board member shall be removed immediately from the board if, during the  
9 member's term, the member:

10 (a) Is not a resident of this state; or

11 (b) Is not a licensed physician, physical therapist, occupational therapist or respiratory  
12 care practitioner, or is not a retired physician, physical therapist, occupational therapist or  
13 respiratory care practitioner whose license was in good standing at the time of retirement,  
14 if the board member was appointed to serve as a physician, physical therapist, occupational  
15 therapist or respiratory care practitioner.

16 (6) The board shall select one of its members as chairperson and another as vice chair-  
17 person, for those terms and with such duties and powers necessary for the performance of  
18 the functions of the offices as the board determines.

19 (7) A majority of the members of the board constitutes a quorum for the transaction of  
20 business.

21 (8) The board shall meet at times and places specified by the call of the chairperson or  
22 of a majority of the members of the board.

23 (9) Members of the board are entitled to compensation and expenses as provided in ORS  
24 292.495.

25 **SECTION 3.** Notwithstanding the term of office established in section 2 of this 2011 Act,  
26 of the members first appointed to the Durable Medical Equipment Supplier Licensing Board:

27 (1) Two shall serve for a term ending on the first day of the month of appointment in the  
28 year next following appointment.

29 (2) Two shall serve for a term ending on the first day of the month of appointment in the  
30 second year following appointment.

31 (3) Three shall serve for a term ending on the first day of the month of appointment in  
32 the third year following appointment.

33 **SECTION 4.** (1) The Oregon Health Licensing Agency shall:

34 (a) Determine the qualifications and fitness of applicants for licensure, renewal of license  
35 and reciprocal licenses under sections 1 to 9 of this 2011 Act.

36 (b) Adopt rules that are necessary to administer sections 1 to 9 of this 2011 Act.

37 (c) Maintain a public record of persons licensed by the agency as durable medical equip-  
38 ment suppliers.

39 (2) The agency may issue, deny, revoke, suspend and renew durable medical equipment  
40 supplier licenses, assess costs of proceedings and fines and place licensees on probation.

41 (3) The Durable Medical Equipment Supplier Licensing Board shall establish standards  
42 of professional responsibility and practice for durable medical equipment suppliers. The  
43 standards must be at least as stringent as the standards for durable medical equipment  
44 suppliers set forth by the United States Department of Health and Human Services and the  
45 Centers for Medicare and Medicaid Services.

1       **SECTION 5. (1) The Oregon Health Licensing Agency shall establish by rule and collect**  
 2 **fees for the following related to durable medical equipment suppliers:**

- 3       **(a) Application;**
- 4       **(b) Inspection;**
- 5       **(c) Original license;**
- 6       **(d) License renewal;**
- 7       **(e) License reactivation;**
- 8       **(f) Replacement or duplicate license;**
- 9       **(g) Delinquent renewal;**
- 10      **(h) Reciprocity; and**
- 11      **(i) Providing copies of official documents or records and recovering administrative costs**  
 12 **associated with compiling, photocopying or preparing and delivering the records.**

13       **(2) The fees established under subsection (1) of this section may not exceed the cost of**  
 14 **administering the regulatory program pertaining to the purpose for which the fee is estab-**  
 15 **lished.**

16       **(3) Fees collected by the agency shall be paid into the General Fund and credited to the**  
 17 **Oregon Health Licensing Agency Account established under ORS 676.625, and are contin-**  
 18 **uously appropriated to the agency as authorized by ORS 676.625.**

19       **SECTION 6. (1) A person may not bill an insurer, the Centers for Medicare and Medicaid**  
 20 **Services or a state health plan for durable medical equipment if the person does not have a**  
 21 **durable medical equipment supplier license issued by the Oregon Health Licensing Agency.**

22       **(2) This section does not apply to a person that bills an insurer, the Centers for Medicaid**  
 23 **and Medicare Services or a state health plan for durable medical equipment if the person is**  
 24 **acting within the scope of practice of the person and the person:**

- 25      **(a) Is licensed under a health care licensing law of this state; and**
- 26      **(b) Does not represent or imply that the person is a durable medical equipment supplier**  
 27 **licensed under section 7 of this 2011 Act.**

28       **SECTION 7. (1) An applicant for a durable medical equipment supplier license shall sub-**  
 29 **mit an application to the Oregon Health Licensing Agency as provided by rule of the agency.**

- 30       **(2) The application must:**
- 31      **(a) Include a certification that the applicant meets the standards established under sec-**  
 32 **tion 4 of this 2011 Act;**
  - 33      **(b) Include documentation that the applicant is accredited by an organization approved**  
 34 **by the Durable Medical Equipment Supplier Licensing Board;**
  - 35      **(c) Designate an individual as the contact person for the applicant; and**
  - 36      **(d) Include any other information required by the agency by rule.**

37       **(3) Before issuing a license, the agency shall inspect the applicant's place of business to**  
 38 **confirm that the applicant meets the requirements for licensure under sections 1 to 9 of this**  
 39 **2011 Act and rules adopted under sections 1 to 9 of this 2011 Act.**

40       **SECTION 8. (1) In the manner prescribed in ORS chapter 183 for contested cases, the**  
 41 **Oregon Health Licensing Agency may impose a form of discipline as specified in ORS 676.612**  
 42 **against any person practicing as a durable medical equipment supplier for any of the grounds**  
 43 **listed in ORS 676.612 and for any violation of the provisions of sections 1 to 9 of this 2011**  
 44 **Act or the rules adopted under sections 1 to 9 of this 2011 Act.**

- 45      **(2) If a durable medical equipment supplier's license is suspended under ORS 676.612, the**

1 durable medical equipment supplier may not bill an insurer, the Centers for Medicare and  
 2 Medicaid Services or a state health plan for durable medical equipment during the term of  
 3 suspension.

4 **SECTION 9.** Unless state or federal laws relating to confidentiality or the protection of  
 5 health information prohibit disclosure, a durable medical equipment supplier that has rea-  
 6 sonable cause to believe that a licensee of another board has engaged in prohibited conduct  
 7 as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS  
 8 676.150.

9 **SECTION 10.** ORS 676.150 is amended to read:

10 676.150. (1) As used in this section:

11 (a) "Board" means the:

12 (A) State Board of Examiners for Speech-Language Pathology and Audiology;

13 (B) State Board of Chiropractic Examiners;

14 (C) State Board of Licensed Social Workers;

15 (D) Oregon Board of Licensed Professional Counselors and Therapists;

16 (E) Oregon Board of Dentistry;

17 (F) Board of Examiners of Licensed Dietitians;

18 (G) State Board of Massage Therapists;

19 (H) Oregon Board of Naturopathic Medicine;

20 (I) Oregon State Board of Nursing;

21 (J) Nursing Home Administrators Board;

22 (K) Oregon Board of Optometry;

23 (L) State Board of Pharmacy;

24 (M) Oregon Medical Board;

25 (N) Occupational Therapy Licensing Board;

26 (O) Physical Therapist Licensing Board;

27 (P) State Board of Psychologist Examiners;

28 (Q) Board of Radiologic Technology;

29 (R) State Board of Direct Entry Midwifery;

30 (S) State Board of Denture Technology;

31 (T) Respiratory Therapist Licensing Board;

32 (U) Department of Human Services, to the extent that the department certifies emergency med-  
 33 ical technicians;

34 (V) Oregon State Veterinary Medical Examining Board; [*or*]

35 (W) State Mortuary and Cemetery Board[.]; **or**

36 **(X) Durable Medical Equipment Supplier Licensing Board.**

37 (b) "Licensee" means a health professional licensed or certified by or registered with a board.

38 (c) "Prohibited conduct" means conduct by a licensee that:

39 (A) Constitutes a criminal act against a patient or client; or

40 (B) Constitutes a criminal act that creates a risk of harm to a patient or client.

41 (d) "Unprofessional conduct" means conduct unbecoming a licensee or detrimental to the best  
 42 interests of the public, including conduct contrary to recognized standards of ethics of the licensee's  
 43 profession or conduct that endangers the health, safety or welfare of a patient or client.

44 (2) Unless state or federal laws relating to confidentiality or the protection of health information  
 45 prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has en-

1 gaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for  
2 the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the  
3 conduct without undue delay, but in no event later than 10 working days after the reporting licensee  
4 learns of the conduct.

5 (3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime  
6 shall report the conviction or arrest to the licensee's board within 10 days after the conviction or  
7 arrest.

8 (4) The board responsible for a licensee who is reported to have engaged in prohibited or un-  
9 professional conduct shall investigate in accordance with the board's rules. If the board has rea-  
10 sonable cause to believe that the licensee has engaged in prohibited conduct, the board shall present  
11 the facts to an appropriate law enforcement agency without undue delay, but in no event later than  
12 10 working days after the board finds reasonable cause to believe that the licensee engaged in pro-  
13 hibited conduct.

14 (5) A licensee who fails to report prohibited or unprofessional conduct as required by subsection  
15 (2) of this section or the licensee's conviction or arrest as required by subsection (3) of this section  
16 is subject to discipline by the board responsible for the licensee.

17 (6) A licensee who fails to report prohibited conduct as required by subsection (2) of this section  
18 commits a Class A violation.

19 (7) Notwithstanding any other provision of law, a report under subsection (2) or (3) of this sec-  
20 tion is confidential under ORS 676.175. A board may disclose a report as provided in ORS 676.177.

21 (8) Except as part of an application for a license or for renewal of a license and except as pro-  
22 vided in subsection (3) of this section, a board may not require a licensee to report the licensee's  
23 criminal conduct.

24 (9) The obligations imposed by this section are in addition to and not in lieu of other obligations  
25 to report unprofessional conduct as provided by statute.

26 (10) A licensee who reports to a board in good faith as required by subsection (2) of this section  
27 is immune from civil liability for making the report.

28 (11) A board and the members, employees and contractors of the board are immune from civil  
29 liability for actions taken in good faith as a result of a report received under subsection (2) or (3)  
30 of this section.

31 **SECTION 11.** ORS 676.160 is amended to read:

32 676.160. As used in ORS 676.165 to 676.180, "health professional regulatory board" means the:

33 (1) State Board of Examiners for Speech-Language Pathology and Audiology;

34 (2) State Board of Chiropractic Examiners;

35 (3) State Board of Licensed Social Workers;

36 (4) Oregon Board of Licensed Professional Counselors and Therapists;

37 (5) Oregon Board of Dentistry;

38 (6) Board of Examiners of Licensed Dietitians;

39 (7) State Board of Massage Therapists;

40 (8) State Mortuary and Cemetery Board;

41 (9) Oregon Board of Naturopathic Medicine;

42 (10) Oregon State Board of Nursing;

43 (11) Nursing Home Administrators Board;

44 (12) Oregon Board of Optometry;

45 (13) State Board of Pharmacy;

1 (14) Oregon Medical Board;

2 (15) Occupational Therapy Licensing Board;

3 (16) Physical Therapist Licensing Board;

4 (17) State Board of Psychologist Examiners;

5 (18) Board of Medical Imaging;

6 (19) Oregon State Veterinary Medical Examining Board; *[and]*

7 (20) Oregon Health Authority to the extent that the authority certifies emergency medical  
8 technicians[.]; **and**

9 **(21) Durable Medical Equipment Supplier Licensing Board.**

10 **SECTION 12.** ORS 676.606 is amended to read:

11 676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide adminis-  
12 trative and regulatory oversight and centralized service for the following boards, advisory councils  
13 and programs:

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

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

16 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

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

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

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

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

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

23 (9) Body piercing technician registration program and body piercing facility licensing program,  
24 as provided in ORS 690.500 to 690.570;

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

26 (11) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820[.]; **and**

27 **(12) Durable Medical Equipment Supplier Licensing Board, as provided in sections 1 to 9**  
28 **of this 2011 Act.**

29 **SECTION 13.** ORS 676.610 is amended to read:

30 676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a  
31 director, who is responsible for the performance of the duties, functions and powers and for the or-  
32 ganization of the agency.

33 (b) The Director of the Oregon Department of Administrative Services shall establish the qual-  
34 ifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at  
35 the pleasure of the Director of the Oregon Department of Administrative Services.

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

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

40 (2) The Director of the Oregon Health Licensing Agency shall provide the boards, councils and  
41 programs administered by the agency with such services and employees as the agency requires to  
42 carry out the agency's duties. Subject to any applicable provisions of the State Personnel Relations  
43 Law, the Director of the Oregon Health Licensing Agency shall appoint all subordinate officers and  
44 employees of the agency, prescribe their duties and fix their compensation.

45 (3) The Director of the Oregon Health Licensing Agency shall be responsible for carrying out

1 the duties, functions and powers under ORS 675.360 to 675.410, 676.605 to 676.625, 676.992, 678.710  
2 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840,  
3 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570 and 694.015 to 694.185 and ORS chapter 700  
4 **and sections 1 to 9 of this 2011 Act.**

5 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-  
6 tended to be exclusive or to limit the duties, functions and powers imposed on or vested in the  
7 Oregon Health Licensing Agency by other statutes.

8 **SECTION 14.** ORS 676.612 is amended to read:

9 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified  
10 in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 690.515, 694.147 and  
11 700.111 **and section 8 of this 2011 Act**, the Oregon Health Licensing Agency may refuse to issue  
12 or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit  
13 or registration to practice issued by the agency or may discipline or place on probation a holder  
14 of a certificate, license, permit or registration for commission of the prohibited acts listed in sub-  
15 section (2) of this section.

16 (2) A person subject to the authority of a board, council or program listed in ORS 676.606  
17 commits a prohibited act if the person engages in:

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

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

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

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

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

31 (f) Practicing with a physical or mental condition that presents an unreasonable risk of harm  
32 to the holder of a certificate, license, permit or registration or to the person or property of others  
33 in the course of performing the holder's duties.

34 (g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing  
35 substances, or engaging in the illegal use of controlled substances or other skill-impairing sub-  
36 stances so as to create a risk of harm to the person or property of others in the course of per-  
37 forming the duties of a holder of a certificate, license, permit or registration.

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

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

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

1 (k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of con-  
2 viction, certified by the clerk of the court entering the conviction, is conclusive evidence of the  
3 conviction. A plea of no contest or an admission of guilt shall be considered a conviction for pur-  
4 poses of this paragraph.

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

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

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

14 (o) Failing to cooperate with the agency in any investigation, inspection or request for infor-  
15 mation.

16 (p) Selling or fraudulently obtaining or furnishing any certificate, license, permit or registration  
17 to practice in a regulated occupation or profession subject to the authority of the boards, councils  
18 and programs listed in ORS 676.606, or aiding or abetting such an act.

19 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated  
20 occupation or profession subject to the authority of the boards, councils and programs listed in ORS  
21 676.606, or aiding or abetting such an act.

22 (r) Failing to pay an outstanding civil penalty or fee that is due or failing to meet the terms of  
23 any order issued by the agency that has become final.

24 (3) For the purpose of requesting a state or nationwide criminal records check under ORS  
25 181.534, the agency may require the fingerprints of a person who is:

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

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

29 (c) Under investigation by the agency.

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

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

38 **SECTION 15.** ORS 676.613 is amended to read:

39 676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing  
40 Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or  
41 transaction that violates any provision of ORS 675.360 to 675.410, 676.617, 678.710 to 678.820, 680.500  
42 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235, 690.350 to  
43 690.430, 690.500 to 690.570 or 694.015 to 694.185 or ORS chapter 700 **or sections 1 to 9 of this 2011**  
44 **Act**, the agency may, through the Attorney General or the district attorney of the county in which  
45 the act, practice or transaction occurs or will occur, apply to the court for an injunction restraining



1 the person from the act, practice or transaction.

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

5 **SECTION 16.** ORS 676.992 is amended to read:

6 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other  
7 penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty  
8 not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- 9 (a) ORS 688.701 to 688.734 (athletic training);
- 10 (b) ORS 690.500 to 690.570 (body piercing);
- 11 (c) ORS 690.005 to 690.235 (cosmetology);
- 12 (d) ORS 680.500 to 680.565 (denture technology);
- 13 (e) ORS 687.405 to 687.495 (direct entry midwifery);
- 14 (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- 15 (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- 16 (h) ORS 688.800 to 688.840 (respiratory therapy);
- 17 (i) ORS chapter 700 (environmental sanitation);
- 18 (j) ORS 676.617 (single facility licensure);
- 19 (k) ORS 675.360 to 675.410 (sex offender treatment);
- 20 (L) ORS 678.710 to 678.820 (nursing home administrators); [and]

21 **(m) Sections 1 to 9 of this 2011 Act (durable medical equipment suppliers); and**

22 [(m)] **(n) ORS 676.612 (prohibited acts).**

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

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

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

- 31 (a) The immediacy and extent to which the violation threatens the public health or safety;
- 32 (b) Any prior violations of statutes, rules or orders;
- 33 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-  
34 lation; and
- 35 (d) Any other aggravating or mitigating factors.
- 36 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

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

42 **SECTION 17.** (1) **Sections 4, 5, 6, 7, 8 and 9 of this 2011 Act and the amendments to ORS**  
43 **676.150, 676.160, 676.612, 676.613 and 676.992 by sections 10, 11, 14, 15 and 16 of this 2011 Act**  
44 **become operative on January 1, 2012.**

45 **(2) The Oregon Health Licensing Agency and the Durable Medical Equipment Supplier**

1 **Licensing Board may take any action necessary before the operative date specified in sub-**  
2 **section (1) of this section to enable the agency and the board to exercise, on and after the**  
3 **operative date specified in subsection (1) of this section, all the duties, functions and powers**  
4 **conferred on the agency and the board by this 2011 Act.**

5 **SECTION 18. This 2011 Act being necessary for the immediate preservation of the public**  
6 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**  
7 **on its passage.**

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