

Enrolled
Senate Bill 723

Sponsored by COMMITTEE ON HEALTH CARE, HUMAN SERVICES AND RURAL HEALTH POLICY

CHAPTER

AN ACT

Relating to the regulation of polysomnography; creating new provisions; amending ORS 192.519, 433.443, 676.150, 676.606, 676.992, 688.800, 688.805, 688.810, 688.815, 688.820, 688.825, 688.830, 688.834, 688.836, 688.838, 688.840 and 746.600; and declaring an emergency.

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

SECTION 1. ORS 688.800 is amended to read:

688.800. As used in ORS 688.800 to 688.840:

[(1) "Board" means the Respiratory Therapist Licensing Board, established within the Oregon Health Licensing Agency.]

(1) "Polysomnographic technologist" means a person licensed under section 8 of this 2011 Act.

(2) "Polysomnography" means the treatment, management, diagnostic testing, education and care of patients with disorders related to sleep. "Polysomnography" includes, but is not limited to:

(a) The use of the following during treatment, management, diagnostic testing, education and care of patients with disorders related to sleep:

(A) Supplemental low-flow oxygen therapy, using up to six liters per minute of oxygen;

(B) Continuous or bilevel positive airway pressure titration on spontaneously breathing patients using a mask or oral appliance, if the mask or oral appliance does not extend into the trachea or attach to an artificial airway;

(C) Capnography;

(D) Cardiopulmonary resuscitation;

(E) Pulse oximetry;

(F) Sleep staging, including surface electroencephalography, surface electrooculography and submental surface electromyography;

(G) Electrocardiography;

(H) Respiratory effort monitoring, including thoracic and abdominal movement monitoring;

(I) Plethysmography blood flow monitoring;

(J) Snore monitoring;

(K) Audio or video monitoring of movement or behavior;

(L) Body movement monitoring;

(M) Nocturnal penile tumescence monitoring, when performed in a facility approved by the Respiratory Therapist and Polysomnographic Technologist Licensing Board;

- (N) Nasal and oral airflow monitoring;
- (O) Body temperature monitoring; or
- (P) Portable monitoring devices and other medical equipment used to treat sleep disorders;
- (b) Analyzing data for the purpose of assisting a physician who diagnoses and treats disorders related to sleep;
- (c) Implementation and monitoring of durable medical equipment used in the treatment of sleep disorders; and
- (d) Educating patients and immediate family members of patients regarding testing and treatment of sleep disorders.

(3) “Qualified medical director for polysomnography” means the medical director of an inpatient or outpatient polysomnography facility who is a physician licensed under ORS chapter 677, has special interest and knowledge in the diagnosis and treatment of sleep disorders and is actively practicing in the field of sleep disorders.

[2] (4) “Qualified medical director for respiratory care” means the medical director of any inpatient or outpatient respiratory care service, department or home care agency who is a physician licensed *[by the State of Oregon]* under ORS chapter 677 and who has special interest and knowledge in the diagnosis and treatment of respiratory problems.

[3] (5) “Respiratory care” means the treatment, management, diagnostic testing, control and care of patients with deficiencies and abnormalities associated with the cardiopulmonary system *[in accordance with the prescription of a licensed physician and under a qualified medical director]*. “Respiratory care” includes, but is not limited to:

- (a) Direct and indirect respiratory care services, including but not limited to the administration of pharmacological, diagnostic and therapeutic agents related to respiratory care procedures necessary to implement a treatment, disease prevention, pulmonary rehabilitative or diagnostic regimen prescribed by a physician;
- (b) Transcription and implementation of the written or verbal orders of a physician pertaining to the practice of respiratory care;
- (c) Observing and monitoring signs and symptoms, reactions, general behaviors, general physical responses to respiratory care treatment and diagnostic testing, including determination of whether such signs, symptoms, reactions, general behaviors or general physical responses exhibit abnormal characteristics;
- (d) Implementation based on observed abnormalities, or appropriate reporting, referral, respiratory care protocols or changes in treatment, pursuant to a prescription by a person authorized to practice medicine under the laws of this state; and
- (e) The initiation of emergency procedures under the rules of the board or as otherwise permitted under ORS 688.800 to 688.840.

[4] (6) “Respiratory care practitioner” means a person licensed under ORS *[688.800 to 688.840]* **688.815**.

[5] (7) “Respiratory care services” means cardiopulmonary care services *[rendered in accordance with the prescription of a licensed physician and includes]* **including**, but *[is]* not limited to, the diagnostic and therapeutic use of the following:

- (a) Except for the purpose of anesthesia, administration of medical gases, aerosols and humidification;
- (b) Environmental control mechanisms and hyperbaric therapy;
- (c) Pharmacologic agents related to respiratory care procedures;
- (d) Mechanical or physiological ventilatory support;
- (e) Bronchopulmonary hygiene;
- (f) Cardiopulmonary resuscitation;
- (g) Maintenance of the natural airway;
- (h) Maintenance of artificial airways;

(i) Specific diagnostic and testing techniques employed in the medical management of patients to assist in diagnosis, monitoring, treatment and research of pulmonary abnormalities, including measurements of ventilatory volumes, pressures and flows, collection of specimens of blood and blood gases, expired and inspired gas samples, respiratory secretions and pulmonary function testing; and

(j) Hemodynamic and other related physiologic measurements of the cardiopulmonary system.

SECTION 2. ORS 688.805 is amended to read:

688.805. [(1) *No person shall practice respiratory care or claim to be a respiratory care practitioner unless the person is licensed under ORS 688.800 to 688.840.*]

[(2)] (1) Nothing in ORS 688.800 to 688.840 is intended to limit, preclude or otherwise interfere with the practices of other persons and health providers licensed by appropriate agencies of this state.

[(3)] (2) Nothing in ORS 688.800 to 688.840 prohibits:

(a) The practice of respiratory care by [*students*] **a student** enrolled in a respiratory care education program approved by the American Medical Association in collaboration with the Joint Review Committee for Respiratory Therapy Education or their successors or equivalent organizations, as approved by the **Respiratory Therapist and Polysomnographic Technologist Licensing Board**.

(b) The practice of polysomnography by a student who is:

(A) Enrolled in an educational program for polysomnography approved by the board; and

(B) In the physical presence of a supervisor approved by the board.

[(b)] (c) Self-care by a patient, or gratuitous care by a friend or family member who does not claim to be a respiratory care practitioner.

[(c)] (d) Respiratory care services rendered in the course of an emergency.

[(4)] (3) Persons in the military services or working in federal facilities are exempt from the provisions of ORS 688.800 to 688.840 when functioning in the course of assigned duties.

[(5)] (4) Nothing in ORS 688.800 to 688.840 is intended to permit the practice of medicine by a person licensed to practice respiratory care **or polysomnography** unless the person is also licensed to practice medicine.

[(6)] (5) The practice of respiratory care:

(a) May be performed in any clinic, hospital, skilled nursing facility, private dwelling or other [*place considered appropriate or necessary*] **setting approved** by the [*Respiratory Therapist Licensing*] board.

(b) **Must be performed** in accordance with the prescription or verbal order of a physician and shall be performed under a qualified medical director **for respiratory care**.

(6) The practice of polysomnography:

(a) **May be performed in a clinic, hospital, skilled nursing facility, sleep center, sleep laboratory, physician's office, private dwelling or other setting approved by the board.**

(b) **Must be performed in accordance with the prescription or verbal order of a physician or physician assistant licensed under ORS chapter 677 or a nurse practitioner licensed under ORS 678.375 to 678.390 and under the direction of a qualified medical director for polysomnography.**

SECTION 3. ORS 688.810 is amended to read:

688.810. (1) A [*person holding a license to practice respiratory care in this state*] **respiratory care practitioner** may use the title "Licensed Respiratory Care Practitioner" and the abbreviation "LRCP."

(2) **A polysomnographic technologist may use the title "Licensed Polysomnographic Technologist" and the abbreviation "LPSGT."**

SECTION 4. ORS 688.815 is amended to read:

688.815. (1) An applicant for a license to practice respiratory care shall:

(a) Submit to the Oregon Health Licensing Agency written evidence that the applicant:

[(a)] (A) Is at least 18 years of age;

[(b)] **(B)** Has completed an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency; and

[(c)] **(C)** Has completed a respiratory care education program approved by the American Medical Association in collaboration with the Joint Review Committee for Respiratory Therapy Education or their successors or equivalent organizations, as approved by the Respiratory Therapist **and Polysomnographic Technologist Licensing Board**.; and

(b) Pass an examination approved by the board.

[(2)] *The applicant shall be required to pass an examination, approved by the board, whereupon the agency may issue to the applicant a license to practice respiratory care.*

[(3)] **(2)** The agency may [*choose to*] issue a license to practice respiratory care by endorsement or reciprocity to:

(a) An applicant who is currently licensed to practice respiratory care under the laws of another state, territory or country if the qualifications of the applicant are considered by the agency to be equivalent to those required in this state; or

(b) An applicant holding [*a*] **an active** credential conferred by the National Board for Respiratory Care as a Certified Respiratory Therapist (CRT) or as a Registered Respiratory Therapist (RRT), or both[, *providing the credential has not been suspended or revoked*].

[(4)] **(3)** Except as provided in subsection [(8)] **(7)** of this section, all licenses expire on the last day of the month, one year from the date of issuance.

[(5)(a)] *The licensee is responsible for filing a license renewal application form.*

[(b)] **(4)** [*The*] **To renew a license to practice respiratory care, a licensee** must submit to the agency a completed renewal application, required renewal fee and satisfactory evidence of [*having completed*] **completion of** any required continuing education credits on or before the expiration date of the license as specified by agency rule.

[(6)] **(5)** The agency shall adopt by rule requirements for late renewal of a license, reactivation of an expired license or reinstatement of a license that has been expired for more than three consecutive years.

[(7)] **(6)** If the license of a respiratory care practitioner has been denied, suspended or revoked for commission of a prohibited act under ORS 676.612, the agency may refuse to issue or renew the license for up to one year from the date of denial, suspension or revocation.

[(8)] **(7)** The agency may vary the date of license renewal by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

SECTION 5. Sections 6 to 9 of this 2011 Act are added to and made a part of ORS 688.800 to 688.840.

SECTION 6. A person may not practice respiratory care or claim to be a respiratory care practitioner unless the person is licensed under ORS 688.815.

SECTION 7. A person may not practice polysomnography or claim to be a polysomnographic technologist unless the person is licensed under section 8 of this 2011 Act.

SECTION 8. (1) An applicant for a polysomnographic technologist license shall:

(a) Submit to the Oregon Health Licensing Agency written evidence that the applicant:

(A) Is at least 18 years of age;

(B) Has completed an approved four-year high school course of study or the equivalent as determined by the appropriate educational agency; and

(C) Has completed a polysomnography education program approved by the Respiratory Therapist and Polysomnographic Technologist Licensing Board; and

(b) Pass an examination approved by the board.

(2) The agency may issue a polysomnographic technologist license by endorsement or reciprocity to:

(a) An applicant who is currently licensed to practice polysomnography under the laws of another state, territory or country if the qualifications of the applicant are considered by the agency to be equivalent to those required in this state; or

(b) An applicant holding an active credential approved by the board.

(3) Except as provided in subsection (7) of this section, all licenses expire on the last day of the month, one year from the date of issuance.

(4) To renew a polysomnographic technologist license, a licensee must submit to the agency a completed renewal application, required renewal fee and satisfactory evidence of completion of any required continuing education credits on or before the expiration date of the license as specified by agency rule.

(5) The agency shall adopt by rule requirements for late renewal of a license, reactivation of an expired license or reinstatement of a license that has been expired for more than three consecutive years.

(6) If a polysomnographic technologist license has been denied, suspended or revoked for commission of a prohibited act under ORS 676.612, the agency may refuse to issue or renew the license for up to one year from the date of denial, suspension or revocation.

(7) The agency may vary the date of license renewal by giving the applicant written notice of the renewal date being assigned and by making prorated adjustments to the renewal fee.

(8) The agency may issue a temporary permit to practice polysomnography in accordance with rules adopted by the agency.

SECTION 9. Notwithstanding ORS 688.805:

(1) ORS 688.800 to 688.840 do not prohibit a respiratory care practitioner from practicing polysomnography in accordance with the prescription or verbal order of a physician and under the direction of a qualified medical director for respiratory care or for polysomnography.

(2) A polysomnographic technologist may not practice respiratory care without a license issued under ORS 688.815, unless the act is within the scope of practice of a polysomnographic technologist.

SECTION 10. ORS 688.820 is amended to read:

688.820. (1) There is established within the Oregon Health Licensing Agency the Respiratory Therapist **and Polysomnographic Technologist** Licensing Board. The board consists of *[five]* **seven** members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state.

(2) Of the members of the board:

(a) *[Four]* **Three** must be respiratory care practitioners; *[and]*

(b) **Two must be individuals who practice polysomnography;**

(c) **One must be a qualified medical director for polysomnography or for respiratory care; and**

[(b)] (d) One must be a member of the general public.

(3) Board members required to be respiratory care practitioners **or individuals who practice polysomnography** must have engaged in the practice of respiratory care **or polysomnography** for a period of five or more years immediately preceding appointment to the board.

(4)(a) Board members may be selected by the Governor from a list of three to five nominees for each vacancy, submitted by the Oregon Society for Respiratory Care or another professional organization representing respiratory care practitioners **or polysomnographic technologists.**

(b) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state; and

(B) Ethnic group.

(5)(a) The term of office of each member of the board is four years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than two terms end each year. Vacancies shall be filled by the Governor by appointment for the unexpired term. A member shall hold the member's office until the appointment and qualification of a successor. A member is eligible for reappointment. If a person serves two consecutive full terms, a period of at least four years must elapse before the person is again eligible for appointment to serve on the board.

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

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused; [or]

(C) Is not a respiratory care practitioner or a retired respiratory care practitioner whose license was in good standing at the time of retirement, **if the member was appointed to serve as a respiratory care practitioner; or**

(D) Is not an individual who practices polysomnography, if the member was appointed to serve as an individual who practices polysomnography.

(6) A member of the board is entitled to compensation and expenses as provided in ORS 292.495. The agency may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

SECTION 11. ORS 688.825 is amended to read:

688.825. (1) The Respiratory Therapist **and Polysomnographic Technologist** Licensing Board shall select one of its members as chairperson and another as vice chairperson, for those terms and with duties and powers necessary for the performance of the functions of those offices as the board determines.

(2) A majority of the members of the board constitutes a quorum for the transaction of business.

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

SECTION 12. ORS 688.830 is amended to read:

688.830. (1) The Oregon Health Licensing Agency shall:

(a) Determine the qualifications and fitness of applicants for licensure, renewal of license and reciprocal licenses under ORS 688.800 to 688.840.

(b) Adopt rules that are necessary to conduct its business related to, carry out its duties under and administer ORS 688.800 to 688.840.

(c) Examine, approve, issue, deny, revoke, suspend and renew licenses to practice respiratory care **and polysomnography** under ORS 688.800 to 688.840.

(d) Maintain a public record of persons licensed by the agency to practice respiratory care **and polysomnography**.

(2) The Respiratory Therapist **and Polysomnographic Technologist** Licensing Board shall:

(a) Establish standards of practice and professional responsibility for persons licensed by the agency.

[(b) Select a licensing examination that meets the standards of the National Commission for Certifying Agencies or an equivalent that is nationally recognized in testing respiratory care competencies.]

[(c)] (b) Establish continuing education requirements for renewal of a license.

[(d)] (c) Provide for waivers of examinations, grandfathering requirements and temporary licenses as considered appropriate.

SECTION 13. ORS 688.834 is amended to read:

688.834. (1) The Oregon Health Licensing Agency shall establish by rule and collect fees and charges for the following related to respiratory care practitioners **and polysomnographic technologists**:

(a) Application;

(b) Examinations;

(c) Original license;

(d) License renewal;

(e) License reactivation;

(f) Replacement or duplicate license;

(g) Delinquent renewal;

(h) Reciprocity; and

(i) Providing copies of official documents or records and for recovering administrative costs associated with compiling, photocopying or preparing and delivering the records.

(2) All moneys received by the agency under subsection (1) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account, and are appropriated continuously to and shall be used by the agency as authorized by ORS 676.625.

SECTION 14. ORS 688.836 is amended to read:

688.836. In the manner prescribed in ORS chapter 183 for contested cases, the Oregon Health Licensing Agency may impose a form of discipline specified in ORS 676.612 against any person practicing respiratory care **or polysomnography** for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 688.800 to 688.840, or the rules adopted thereunder.

SECTION 15. ORS 688.838 is amended to read:

688.838. Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a respiratory care practitioner **or polysomnographic technologist** who has reasonable cause to believe that a licensee of another board has engaged in prohibited conduct as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS 676.150.

SECTION 16. ORS 688.840 is amended to read:

688.840. The Respiratory Therapist **and Polysomnographic Technologist** Licensing Board and its members and the Oregon Health Licensing Agency and its employees and contractors are immune from any civil liability arising from good faith actions taken pursuant to ORS 688.800 to 688.840.

SECTION 17. ORS 192.519 is amended to read:

192.519. As used in ORS 192.518 to 192.529:

(1) "Authorization" means a document written in plain language that contains at least the following:

(a) A description of the information to be used or disclosed that identifies the information in a specific and meaningful way;

(b) The name or other specific identification of the person or persons authorized to make the requested use or disclosure;

(c) The name or other specific identification of the person or persons to whom the covered entity may make the requested use or disclosure;

(d) A description of each purpose of the requested use or disclosure, including but not limited to a statement that the use or disclosure is at the request of the individual;

(e) An expiration date or an expiration event that relates to the individual or the purpose of the use or disclosure;

(f) The signature of the individual or personal representative of the individual and the date;

(g) A description of the authority of the personal representative, if applicable; and

(h) Statements adequate to place the individual on notice of the following:

(A) The individual's right to revoke the authorization in writing;

(B) The exceptions to the right to revoke the authorization;

(C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits on whether the individual signs the authorization; and

(D) The potential for information disclosed pursuant to the authorization to be subject to redisclosure by the recipient and no longer protected.

(2) "Covered entity" means:

(a) A state health plan;

(b) A health insurer;

(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.518 to 192.529; or

(d) A health care clearinghouse.

(3) "Health care" means care, services or supplies related to the health of an individual.

- (4) "Health care operations" includes but is not limited to:
- (a) Quality assessment, accreditation, auditing and improvement activities;
 - (b) Case management and care coordination;
 - (c) Reviewing the competence, qualifications or performance of health care providers or health insurers;
 - (d) Underwriting activities;
 - (e) Arranging for legal services;
 - (f) Business planning;
 - (g) Customer services;
 - (h) Resolving internal grievances;
 - (i) Creating de-identified information; and
 - (j) Fundraising.
- (5) "Health care provider" includes but is not limited to:
- (a) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;
 - (b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;
 - (c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;
 - (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
 - (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;
 - (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;
 - (g) An emergency medical technician certified under ORS chapter 682;
 - (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
 - (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;
 - (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;
 - (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;
 - (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;
 - (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;
 - (n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical imaging licensee;
 - (o) A respiratory care practitioner licensed under ORS [688.800 to 688.840] **688.815** or an employee of the respiratory care practitioner;
 - (p) A polysomnographic technologist licensed under section 8 of this 2011 Act or an employee of the polysomnographic technologist;**
 - [(p)] **(q)** A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
 - [(q)] **(r)** A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
 - [(r)] **(s)** A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;
 - [(s)] **(t)** A health care facility as defined in ORS 442.015;
 - [(t)] **(u)** A home health agency as defined in ORS 443.005;
 - [(u)] **(v)** A hospice program as defined in ORS 443.850;

[(v)] (w) A clinical laboratory as defined in ORS 438.010;
[(w)] (x) A pharmacy as defined in ORS 689.005;
[(x)] (y) A diabetes self-management program as defined in ORS 743A.184; and
[(y)] (z) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(6) "Health information" means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(7) "Health insurer" means:

(a) An insurer as defined in ORS 731.106 who offers:

(A) A health benefit plan as defined in ORS 743.730;

(B) A short term health insurance policy, the duration of which does not exceed six months including renewals;

(C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.

(8) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(9) "Payment" includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(10) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

(c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.526.

(11)(a) "Protected health information" means individually identifiable health information that is maintained or transmitted in any form of electronic or other medium by a covered entity.

(b) "Protected health information" does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(12) "State health plan" means:

(a) Medical assistance as defined in ORS 414.025;

(b) The Health Care for All Oregon Children program;

(c) The Family Health Insurance Assistance Program established in ORS 414.841 to 414.864; or

(d) Any medical assistance or premium assistance program operated by the Oregon Health Authority.

(13) "Treatment" includes but is not limited to:

(a) The provision, coordination or management of health care; and

(b) Consultations and referrals between health care providers.

SECTION 18. ORS 433.443 is amended to read:

433.443. (1) As used in this section:

(a) "Covered entity" means:

(A) The Children's Health Insurance Program;

(B) The Family Health Insurance Assistance Program established under ORS 414.842;

(C) A health insurer that is an insurer as defined in ORS 731.106 and that issues health insurance as defined in ORS 731.162;

(D) The state medical assistance program; and

(E) A health care provider.

(b) "Health care provider" includes but is not limited to:

(A) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;

(B) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;

(C) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(D) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(E) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(F) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(G) An emergency medical technician certified under ORS chapter 682;

(H) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

(I) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(J) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

(K) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(M) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(N) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical imaging licensee;

(O) A respiratory care practitioner licensed under ORS [688.800 to 688.840] **688.815** or an employee of the respiratory care practitioner;

(P) A polysomnographic technologist licensed under section 8 of this 2011 Act or an employee of the polysomnographic technologist;

[(P)] **(Q)** A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

[(Q)] **(R)** A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

[(R)] **(S)** A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

[(S)] **(T)** A health care facility as defined in ORS 442.015;

[(T)] **(U)** A home health agency as defined in ORS 443.005;

[(U)] **(V)** A hospice program as defined in ORS 443.850;

[(V)] **(W)** A clinical laboratory as defined in ORS 438.010;

[(W)] **(X)** A pharmacy as defined in ORS 689.005;

[(X)] **(Y)** A diabetes self-management program as defined in ORS 743A.184; and

[(Y)] **(Z)** Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(c) "Individual" means a natural person.

(d) "Individually identifiable health information" means any oral or written health information in any form or medium that is:

(A) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and

(B) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(i) The past, present or future physical or mental health or condition of an individual;

(ii) The provision of health care to an individual; or

(iii) The past, present or future payment for the provision of health care to an individual.

(e) "Legal representative" means attorney at law, person holding a general power of attorney, guardian, conservator or any person appointed by a court to manage the personal or financial affairs of a person, or agency legally responsible for the welfare or support of a person.

(2)(a) During a public health emergency declared under ORS 433.441, the Public Health Director may, as necessary to appropriately respond to the public health emergency:

(A) Adopt reporting requirements for and provide notice of those requirements to health care providers, institutions and facilities for the purpose of obtaining information directly related to the public health emergency;

(B) After consultation with appropriate medical experts, create and require the use of diagnostic and treatment protocols to respond to the public health emergency and provide notice of those protocols to health care providers, institutions and facilities;

(C) Order, or authorize local public health administrators to order, public health measures appropriate to the public health threat presented;

(D) Upon approval of the Governor, take other actions necessary to address the public health emergency and provide notice of those actions to health care providers, institutions and facilities, including public health actions authorized by ORS 431.264;

(E) Take any enforcement action authorized by ORS 431.262, including the imposition of civil penalties of up to \$500 per day against individuals, institutions or facilities that knowingly fail to comply with requirements resulting from actions taken in accordance with the powers granted to the Public Health Director under subparagraphs (A), (B) and (D) of this paragraph; and

(F) The authority granted to the Public Health Director under this section:

(i) Supersedes any authority granted to a local public health authority if the local public health authority acts in a manner inconsistent with guidelines established or rules adopted by the director under this section; and

(ii) Does not supersede the general authority granted to a local public health authority or a local public health administrator except as authorized by law or necessary to respond to a public health emergency.

(b) The authority of the Public Health Director to take administrative action, and the effectiveness of any action taken, under paragraph (a)(A), (B), (D), (E) and (F) of this subsection terminates upon the expiration of the proclaimed state of public health emergency, unless the actions are continued under other applicable law.

(3) Civil penalties under subsection (2) of this section shall be imposed in the manner provided in ORS 183.745. The Public Health Director must establish that the individual, institution or facility subject to the civil penalty had actual notice of the action taken that is the basis for the penalty. The maximum aggregate total for penalties that may be imposed against an individual, institution or facility under subsection (2) of this section is \$500 for each day of violation, regardless of the number of violations of subsection (2) of this section that occurred on each day of violation.

(4)(a) During a proclaimed state of public health emergency, the Public Health Director and local public health administrators shall be given immediate access to individually identifiable health information necessary to:

- (A) Determine the causes of an illness related to the public health emergency;
- (B) Identify persons at risk;
- (C) Identify patterns of transmission;
- (D) Provide treatment; and
- (E) Take steps to control the disease.

(b) Individually identifiable health information accessed as provided by paragraph (a) of this subsection may not be used for conducting nonemergency epidemiologic research or to identify persons at risk for post-traumatic mental health problems, or for any other purpose except the purposes listed in paragraph (a) of this subsection.

(c) Individually identifiable health information obtained by the Public Health Director or local public health administrators under this subsection may not be disclosed without written authorization of the identified individual except:

- (A) Directly to the individual who is the subject of the information or to the legal representative of that individual;
- (B) To state, local or federal agencies authorized to receive such information by state or federal law;
- (C) To identify or to determine the cause or manner of death of a deceased individual; or
- (D) Directly to a health care provider for the evaluation or treatment of a condition that is the subject of a proclamation of a state of public health emergency issued under ORS 433.441.

(d) Upon expiration of the state of public health emergency, the Public Health Director or local public health administrators may not use or disclose any individually identifiable health information that has been obtained under this section. If a state of emergency that is related to the state of public health emergency has been declared under ORS 401.165, the Public Health Director and local public health administrators may continue to use any individually identifiable information obtained as provided under this section until termination of the state of emergency.

(5) All civil penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund and are available for general governmental expenses.

(6) The Public Health Director may request assistance in enforcing orders issued pursuant to this section from state or local law enforcement authorities. If so requested by the Public Health Director, state and local law enforcement authorities, to the extent resources are available, shall assist in enforcing orders issued pursuant to this section.

(7) If the Oregon Health Authority adopts temporary rules to implement the provisions of this section, the rules adopted are not subject to the provisions of ORS 183.335 (6)(a). The authority may amend temporary rules adopted pursuant to this subsection as often as necessary to respond to the public health emergency.

SECTION 19. ORS 676.150 is amended to read:

676.150. (1) As used in this section:

(a) "Board" means the:

- (A) State Board of Examiners for Speech-Language Pathology and Audiology;
- (B) State Board of Chiropractic Examiners;
- (C) State Board of Licensed Social Workers;
- (D) Oregon Board of Licensed Professional Counselors and Therapists;
- (E) Oregon Board of Dentistry;
- (F) Board of Examiners of Licensed Dietitians;
- (G) State Board of Massage Therapists;
- (H) Oregon Board of Naturopathic Medicine;
- (I) Oregon State Board of Nursing;
- (J) Nursing Home Administrators Board;
- (K) Oregon Board of Optometry;
- (L) State Board of Pharmacy;
- (M) Oregon Medical Board;
- (N) Occupational Therapy Licensing Board;
- (O) Physical Therapist Licensing Board;
- (P) State Board of Psychologist Examiners;
- (Q) Board of Radiologic Technology;
- (R) State Board of Direct Entry Midwifery;
- (S) State Board of Denture Technology;
- (T) Respiratory Therapist **and Polysomnographic Technologist** Licensing Board;
- (U) Department of Human Services, to the extent that the department certifies emergency medical technicians;
- (V) Oregon State Veterinary Medical Examining Board; or
- (W) State Mortuary and Cemetery Board.

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

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

- (A) Constitutes a criminal act against a patient or client; or
- (B) Constitutes a criminal act that creates a risk of harm to a patient or client.

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

(2) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct.

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

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

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

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

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

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

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

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

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

SECTION 20. ORS 676.606 is amended to read:

676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide administrative and regulatory oversight and centralized service for the following boards, advisory councils and programs:

- (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
- (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;
- (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;
- (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- (5) Respiratory Therapist **and Polysomnographic Technologist** Licensing Board, as provided in ORS 688.800 to 688.840;
- (6) Environmental Health Registration Board, as provided in ORS chapter 700;
- (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as provided in ORS 690.350 to 690.430;
- (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185;
- (9) Body piercing technician registration program and body piercing facility licensing program, as provided in ORS 690.500 to 690.570;
- (10) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410; and
- (11) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820.

SECTION 21. ORS 676.992 is amended to read:

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

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.500 to 690.570 (body piercing);
- (c) ORS 690.005 to 690.235 (cosmetology);
- (d) ORS 680.500 to 680.565 (denture technology);
- (e) ORS 687.405 to 687.495 (direct entry midwifery);
- (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);
- (g) ORS 694.015 to 694.185 (dealing in hearing aids);
- (h) ORS 688.800 to 688.840 (respiratory therapy **and polysomnography**);
- (i) ORS chapter 700 (environmental sanitation);
- (j) ORS 676.617 (single facility licensure);
- (k) ORS 675.360 to 675.410 (sex offender treatment);
- (L) ORS 678.710 to 678.820 (nursing home administrators); and
- (m) ORS 676.612 (prohibited acts).

(2) The agency may take any other disciplinary action that it finds proper, including but not limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any

statute listed in subsection (1) of this section or any rule adopted under any statute listed in subsection (1) of this section.

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

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

(a) The immediacy and extent to which the violation threatens the public health or safety;

(b) Any prior violations of statutes, rules or orders;

(c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and

(d) Any other aggravating or mitigating factors.

(5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

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

SECTION 22. ORS 746.600 is amended to read:

746.600. As used in ORS 746.600 to 746.690:

(1)(a) "Adverse underwriting decision" means any of the following actions with respect to insurance transactions involving insurance coverage that is individually underwritten:

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

(C) Failure of an insurance producer to apply for insurance coverage with a specific insurer that the insurance producer represents and that is requested by an applicant.

(D) In the case of life or health insurance coverage, an offer to insure at higher than standard rates.

(E) In the case of insurance coverage other than life or health insurance coverage:

(i) Placement by an insurer or insurance producer of a risk with a residual market mechanism, an unauthorized insurer or an insurer that specializes in substandard risks.

(ii) The charging of a higher rate on the basis of information that differs from that which the applicant or policyholder furnished.

(iii) An increase in any charge imposed by the insurer for any personal insurance in connection with the underwriting of insurance. For purposes of this sub-subparagraph, the imposition of a service fee is not a charge.

(b) "Adverse underwriting decision" does not mean any of the following actions, but the insurer or insurance producer responsible for the occurrence of the action must nevertheless provide the applicant or policyholder with the specific reason or reasons for the occurrence:

(A) The termination of an individual policy form on a class or statewide basis.

(B) A declination of insurance coverage solely because the coverage is not available on a class or statewide basis.

(C) The rescission of a policy.

(2) "Affiliate of" a specified person or "person affiliated with" a specified person means a person who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, the person specified.

(3) "Applicant" means a person who seeks to contract for insurance coverage, other than a person seeking group insurance coverage that is not individually underwritten.

(4) "Consumer" means an individual, or the personal representative of the individual, who seeks to obtain, obtains or has obtained one or more insurance products or services from a licensee that are to be used primarily for personal, family or household purposes, and about whom the licensee has personal information.

(5) "Consumer report" means any written, oral or other communication of information bearing on a natural person's creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living that is used or expected to be used in connection with an insurance transaction.

(6) "Consumer reporting agency" means a person that, for monetary fees or dues, or on a cooperative or nonprofit basis:

- (a) Regularly engages, in whole or in part, in assembling or preparing consumer reports;
- (b) Obtains information primarily from sources other than insurers; and
- (c) Furnishes consumer reports to other persons.

(7) "Control" means, and the terms "controlled by" or "under common control with" refer to, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power of the person is the result of a corporate office held in, or an official position held with, the controlled person.

(8) "Covered entity" means:

- (a) A health insurer;
- (b) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 746.607 or by rules adopted under ORS 746.608; or
- (c) A health care clearinghouse.

(9) "Credit history" means any written or other communication of any information by a consumer reporting agency that:

- (a) Bears on a consumer's creditworthiness, credit standing or credit capacity; and
- (b) Is used or expected to be used, or collected in whole or in part, as a factor in determining eligibility, premiums or rates for personal insurance.

(10) "Customer" means a consumer who has a continuing relationship with a licensee under which the licensee provides one or more insurance products or services to the consumer that are to be used primarily for personal, family or household purposes.

(11) "Declination of insurance coverage" or "decline coverage" means a denial, in whole or in part, by an insurer or insurance producer of an application for requested insurance coverage.

(12) "Health care" means care, services or supplies related to the health of an individual.

(13) "Health care operations" includes but is not limited to:

- (a) Quality assessment, accreditation, auditing and improvement activities;
- (b) Case management and care coordination;
- (c) Reviewing the competence, qualifications or performance of health care providers or health insurers;
- (d) Underwriting activities;
- (e) Arranging for legal services;
- (f) Business planning;
- (g) Customer services;
- (h) Resolving internal grievances;
- (i) Creating de-identified information; and
- (j) Fundraising.

(14) "Health care provider" includes but is not limited to:

(a) A psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675 or an employee of the psychologist, occupational therapist, regulated social worker, professional counselor or marriage and family therapist;

(b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician assistant or acupuncturist;

(c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of the nurse or nursing home administrator;

(d) A dentist licensed under ORS chapter 679 or an employee of the dentist;

(e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental hygienist or denturist;

(f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee of the speech-language pathologist or audiologist;

(g) An emergency medical technician certified under ORS chapter 682;

(h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

(i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;

(j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;

(k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;

(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;

(m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;

(n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical imaging licensee;

(o) A respiratory care practitioner licensed under ORS [688.800 to 688.840] **688.815** or an employee of the respiratory care practitioner;

(p) A polysomnographic technologist licensed under section 8 of this 2011 Act or an employee of the polysomnographic technologist;

[(p)] **(q)** A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

[(q)] **(r)** A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;

[(r)] **(s)** A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;

[(s)] **(t)** A health care facility as defined in ORS 442.015;

[(t)] **(u)** A home health agency as defined in ORS 443.005;

[(u)] **(v)** A hospice program as defined in ORS 443.850;

[(v)] **(w)** A clinical laboratory as defined in ORS 438.010;

[(w)] **(x)** A pharmacy as defined in ORS 689.005;

[(x)] **(y)** A diabetes self-management program as defined in ORS 743.694; and

[(y)] **(z)** Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

(15) "Health information" means any oral or written information in any form or medium that:

(a) Is created or received by a covered entity, a public health authority, a life insurer, a school, a university or a health care provider that is not a covered entity; and

(b) Relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(16) "Health insurer" means:

(a) An insurer who offers:

(A) A health benefit plan as defined in ORS 743.730;

(B) A short term health insurance policy, the duration of which does not exceed six months including renewals;

(C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

(b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.

(17) "Homeowner insurance" means insurance for residential property consisting of a combination of property insurance and casualty insurance that provides coverage for the risks of owning or occupying a dwelling and that is not intended to cover an owner's interest in rental property or commercial exposures.

(18) "Individual" means a natural person who:

(a) In the case of life or health insurance, is a past, present or proposed principal insured or certificate holder;

(b) In the case of other kinds of insurance, is a past, present or proposed named insured or certificate holder;

(c) Is a past, present or proposed policyowner;

(d) Is a past or present applicant;

(e) Is a past or present claimant; or

(f) Derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate that is subject to ORS 746.600 to 746.690.

(19) "Individually identifiable health information" means any oral or written health information that is:

(a) Created or received by a covered entity or a health care provider that is not a covered entity; and

(b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:

(A) The past, present or future physical or mental health or condition of an individual;

(B) The provision of health care to an individual; or

(C) The past, present or future payment for the provision of health care to an individual.

(20) "Institutional source" means a person or governmental entity that provides information about an individual to an insurer, insurance producer or insurance-support organization, other than:

(a) An insurance producer;

(b) The individual who is the subject of the information; or

(c) A natural person acting in a personal capacity rather than in a business or professional capacity.

(21) "Insurance producer" or "producer" means a person licensed by the Director of the Department of Consumer and Business Services as a resident or nonresident insurance producer.

(22) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model or other process that is based in whole or in part on credit history.

(23)(a) "Insurance-support organization" means a person who regularly engages, in whole or in part, in assembling or collecting information about natural persons for the primary purpose of providing the information to an insurer or insurance producer for insurance transactions, including:

(A) The furnishing of consumer reports to an insurer or insurance producer for use in connection with insurance transactions; and

(B) The collection of personal information from insurers, insurance producers or other insurance-support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

(b) "Insurance-support organization" does not mean insurers, insurance producers, governmental institutions or health care providers.

(24) "Insurance transaction" means any transaction that involves insurance primarily for personal, family or household needs rather than business or professional needs and that entails:

(a) The determination of an individual's eligibility for an insurance coverage, benefit or payment; or

(b) The servicing of an insurance application, policy or certificate.

(25) "Insurer" has the meaning given that term in ORS 731.106.

(26) "Investigative consumer report" means a consumer report, or portion of a consumer report, for which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.

(27) "Licensee" means an insurer, insurance producer or other person authorized or required to be authorized, or licensed or required to be licensed, pursuant to the Insurance Code.

(28) "Loss history report" means a report provided by, or a database maintained by, an insurance-support organization or consumer reporting agency that contains information regarding the claims history of the individual property that is the subject of the application for a homeowner insurance policy or the consumer applying for a homeowner insurance policy.

(29) "Nonaffiliated third party" means any person except:

(a) An affiliate of a licensee;

(b) A person that is employed jointly by a licensee and by a person that is not an affiliate of the licensee; and

(c) As designated by the director by rule.

(30) "Payment" includes but is not limited to:

(a) Efforts to obtain premiums or reimbursement;

(b) Determining eligibility or coverage;

(c) Billing activities;

(d) Claims management;

(e) Reviewing health care to determine medical necessity;

(f) Utilization review; and

(g) Disclosures to consumer reporting agencies.

(31)(a) "Personal financial information" means:

(A) Information that is identifiable with an individual, gathered in connection with an insurance transaction from which judgments can be made about the individual's character, habits, avocations, finances, occupations, general reputation, credit or any other personal characteristics; or

(B) An individual's name, address and policy number or similar form of access code for the individual's policy.

(b) "Personal financial information" does not mean information that a licensee has a reasonable basis to believe is lawfully made available to the general public from federal, state or local government records, widely distributed media or disclosures to the public that are required by federal, state or local law.

(32) "Personal information" means:

(a) Personal financial information;

(b) Individually identifiable health information; or

(c) Protected health information.

(33) "Personal insurance" means the following types of insurance products or services that are to be used primarily for personal, family or household purposes:

(a) Private passenger automobile coverage;

(b) Homeowner, mobile homeowners, manufactured homeowners, condominium owners and renters coverage;

(c) Personal dwelling property coverage;

(d) Personal liability and theft coverage, including excess personal liability and theft coverage; and

(e) Personal inland marine coverage.

(34) "Personal representative" includes but is not limited to:

(a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;

(b) A person appointed as a health care representative under ORS 127.505 to 127.660 or 127.700 to 127.737 to make health care decisions or mental health treatment decisions;

- (c) A person appointed as a personal representative under ORS chapter 113; and
- (d) A person described in ORS 746.611.

(35) "Policyholder" means a person who:

- (a) In the case of individual policies of life or health insurance, is a current policyowner;
- (b) In the case of individual policies of other kinds of insurance, is currently a named insured;

or

(c) In the case of group policies of insurance under which coverage is individually underwritten, is a current certificate holder.

(36) "Pretext interview" means an interview wherein the interviewer, in an attempt to obtain personal information about a natural person, does one or more of the following:

- (a) Pretends to be someone the interviewer is not.
- (b) Pretends to represent a person the interviewer is not in fact representing.
- (c) Misrepresents the true purpose of the interview.
- (d) Refuses upon request to identify the interviewer.

(37) "Privileged information" means information that is identifiable with an individual and that:

- (a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the individual; and
- (b) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or a civil or criminal proceeding involving the individual.

(38)(a) "Protected health information" means individually identifiable health information that is transmitted or maintained in any form of electronic or other medium by a covered entity.

(b) "Protected health information" does not mean individually identifiable health information in:

(A) Education records covered by the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g);

(B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

(C) Employment records held by a covered entity in its role as employer.

(39) "Residual market mechanism" means an association, organization or other entity involved in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the Insurance Code relating to insurance applicants who are unable to procure insurance through normal insurance markets.

(40) "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure of a premium to be paid as required by the policy.

(41) "Treatment" includes but is not limited to:

- (a) The provision, coordination or management of health care; and
- (b) Consultations and referrals between health care providers.

SECTION 23. (1) Sections 5, 6 and 8 of this 2011 Act and the amendments to ORS 192.519, 433.443, 676.150, 676.606, 676.992, 688.800, 688.805, 688.810, 688.815, 688.820, 688.825, 688.830, 688.834, 688.836, 688.838, 688.840 and 746.600 by sections 1 to 4 and 10 to 22 of this 2011 Act become operative January 1, 2012.

(2) Sections 7 and 9 of this 2011 Act become operative January 1, 2013.

SECTION 24. (1) The amendments to ORS 688.820 by section 10 of this 2011 Act apply to appointments to the Respiratory Therapist and Polysomnographic Technologist Licensing Board made on or after January 1, 2012.

(2) A member serving on the Respiratory Therapist Licensing Board on December 31, 2011, continues to serve until the term of office for which the member was appointed terminates by expiration of time, resignation from the board by the member or removal of the member from office.

SECTION 25. The Oregon Health Licensing Agency and the Respiratory Therapist Licensing Board may take any action before the operative dates specified in section 23 of this 2011 Act that is necessary to enable the agency and the board to exercise, on and after the operative dates specified in section 23 of this 2011 Act, all of the duties, functions and powers

conferred on the agency and the board by sections 5 to 9 of this 2011 Act and the amendments to ORS 192.519, 433.443, 676.150, 676.606, 676.992, 688.800, 688.805, 688.810, 688.815, 688.820, 688.825, 688.830, 688.834, 688.836, 688.838, 688.840 and 746.600 by sections 1 to 4 and 10 to 22 of this 2011 Act.

SECTION 26. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate June 16, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 22, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M,....., 2011

Approved:

.....M,....., 2011

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

.....
Kate Brown, Secretary of State