

DRAFT

SUMMARY

Requires person to obtain license to practice direct entry midwifery.

Grants State Board of Direct Entry Midwifery certain powers related to rulemaking, investigations and discipline, including power to impose civil penalties.

Establishes Direct Entry Midwifery Account and continuously appropriates moneys in account to board.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1

2 Relating to direct entry midwifery; creating new provisions; amending ORS
3 676.607, 676.608, 676.612, 676.992, 687.405, 687.415, 687.420, 687.425, 687.445,
4 687.480, 687.482, 687.485, 687.490 and 687.493; appropriating money; and
5 declaring an emergency.

6 Whereas the State of Oregon recognizes that the practice of direct entry
7 midwifery has a long history of serving women and families within this state;
8 and

9 Whereas it is in the public interest to support the practice of direct entry
10 midwifery; and

11 Whereas the state supports the right of women to give birth in a setting
12 other than a hospital; and

13 Whereas a person should have access to health care in such a setting; and

14 Whereas mandatory licensure programs aim to improve the public safety;
15 and

16 Whereas the state recognizes that pregnancy and childbirth are not ill-
17 nesses; and

18 Whereas the provision of health care by a direct entry midwife is a rea-

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 sonable choice for a healthy pregnant woman; and

2 Whereas the purpose of this Act is to regulate the profession of direct
3 entry midwifery; and

4 Whereas nothing in this Act abridges, limits or changes the right of a
5 pregnant woman to deliver a newborn where, how and with whom the preg-
6 nant woman, her husband or her partner chooses, regardless of whether a
7 direct entry midwife is required to be licensed; now, therefore,

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

9

10

LICENSING

11

12 **SECTION 1.** ORS 687.415 is amended to read:

13 687.415. *[(1) A license authorized by ORS 687.405 to 687.495 is required only*
14 *for purposes of reimbursement under medical assistance programs and is not*
15 *required for the practice of direct entry midwifery in this state.]*

16 *[(2) Nothing in ORS 687.405 to 687.495 is intended to require a direct entry*
17 *midwife to become licensed as described in ORS 687.420 (2).]*

18 **(1) Except as provided in subsection (2) of this section, a person**
19 **may not practice direct entry midwifery in this state unless the person**
20 **holds a license to practice direct entry midwifery under ORS 687.405**
21 **to 687.495.**

22 **(2) A person may practice direct entry midwifery in this state**
23 **without a license to practice direct entry midwifery if:**

24 **(a) The person is a licensed health care practitioner and the ser-**
25 **vices described in ORS 687.405 are within the scope of the person's li-**
26 **cense; or**

27 **(b)(A) The person is acting as a traditional midwife within a reli-**
28 **gious or cultural group that holds a religious, spiritual or philosoph-**
29 **ical belief related to the practice of direct entry midwifery, as**
30 **determined by the State Board of Direct Entry Midwifery by rule;**

31 **(B) The person does not use legend drugs or other devices, the use**

1 of which requires a license under the laws of this state; and

2 (C) If the person has received notice from the board about the re-
3 quirement to disclose the following information, the person discloses
4 to each client on a form adopted by the board by rule:

5 (i) That the person does not possess a professional license issued
6 by the state;

7 (ii) That the person is not authorized to carry and administer po-
8 tentially life saving medications;

9 (iii) That the risk of harm or death to a mother or newborn may
10 increase as a result of the information described in sub-subparagraphs
11 (i) and (ii) of this subparagraph;

12 (iv) The types of midwives who are licensed by the state; and

13 (v) That the client will not have recourse through a complaint
14 process.

15 (3) A license to practice direct entry midwifery under ORS 687.405
16 to 687.495 is required for purposes of reimbursement under medical
17 assistance programs.

18 **SECTION 2.** ORS 687.420 is amended to read:

19 687.420. (1) The State Board of Direct Entry Midwifery shall establish
20 standards for qualifications for the licensure of direct entry midwives. Such
21 standards shall *[include]*:

22 *[(a) Sufficient knowledge in the following areas:]*

23 *[(A) Techniques in taking patient histories;]*

24 *[(B) Anatomy and physiology of the female reproductive system;]*

25 *[(C) Appropriate use of diagnostic testing;]*

26 *[(D) Necessity for referral;]*

27 *[(E) Pathology in childbirth;]*

28 *[(F) Mechanisms of labor;]*

29 *[(G) Aseptic techniques;]*

30 *[(H) Postpartum care;]*

31 *[(I) Examinations of newborn infants; and]*

1 [(J) *Family planning*;

2 [(b) *Successful passage of written and oral examinations*;

3 [(c) *Participation in*;

4 [(A) *25 assisted deliveries*;

5 [(B) *25 deliveries for which the midwife was the primary care provider*;

6 [(C) *100 prenatal care visits*;

7 [(D) *25 newborn examinations*; and]

8 [(E) *40 postnatal examinations*;

9 [(d) *Current certification in cardiopulmonary resuscitation for infants and*
10 *adults*; and]

11 [(e) *A written plan for emergency transport*.]

12 **(a) Be consistent with the requirements for becoming a certified**
13 **professional midwife as established by the North American Registry**
14 **of Midwives;**

15 **(b) Require the applicant to hold a Certified Professional Midwife**
16 **credential established by the North American Registry of Midwives;**

17 **(c) Require the applicant to successfully complete written and oral**
18 **examinations approved by the board;**

19 **(d) Require the applicant to be certified in cardiopulmonary resus-**
20 **citation for infants and adults;**

21 **(e) Require the applicant to submit a written plan for emergency**
22 **transport of prospective patients; and**

23 **(f) Require the applicant to hold a high school diploma or to suc-**
24 **cessfully pass a high school equivalency course.**

25 **(g) Require that the applicant participate in at a minimum:**

26 **(A) 25 assisted deliveries;**

27 **(B) 25 deliveries for which the applicant was the primary care pro-**
28 **vider;**

29 **(C) 100 prenatal care visits;**

30 **(D) 25 newborn examinations; and**

31 **(E) 40 postnatal examinations.**

1 (2) Any person who desires to become licensed as a direct entry midwife
2 shall submit an application to the Oregon Health Licensing Agency stating
3 the applicant's qualifications for licensure. If the applicant meets the stan-
4 dards established under subsection (1) of this section and the applicant is
5 not disqualified from licensure under ORS 676.612, the agency shall issue an
6 annual license to the direct entry midwife. The agency shall impose a fee for
7 **application**, licensure and examination in the amount established pursuant
8 to ORS 687.435.

9 (3) *[Any]* **A** direct entry midwife licensed under this section is entitled to
10 payment under the rules of the medical assistance program for services pro-
11 vided to *[any]* **an** eligible recipient of medical assistance.

12
13 **RULEMAKING AUTHORITY**

14
15 **SECTION 3.** ORS 687.480 is amended to read:

16 687.480. (1) **The State Board of Direct Entry Midwifery shall adopt**
17 **rules for the administration of ORS 687.405 to 687.495.**

18 (2) The *[State Board of Direct Entry Midwifery shall develop]* **board shall**
19 **adopt** practice standards that *[shall]* include *[but not be limited to]*:

20 [(1)] (a) Maintenance of records of care, including *[client]* **patient** charts;

21 [(2)] (b) Participation in peer review;

22 [(3)] (c) Development of a written plan for emergency transport **of pa-**
23 **tients;**

24 [(4)] (d) Guidelines for equipment; and

25 [(5)] (e) Maintenance of patient disclosure forms, which *[includes]* **must**
26 **include** information regarding whether the midwife has malpractice insur-
27 ance.

28 **SECTION 4.** ORS 687.485 is amended to read:

29 687.485. In addition to the powers otherwise granted by ORS 687.405 to
30 687.495, the Oregon Health Licensing Agency, in consultation with the State
31 Board of Direct Entry Midwifery, may:

1 (1) Determine whether applicants meet the qualifications under ORS
2 687.405 to 687.495[, *conduct examinations*] and grant licenses to qualified ap-
3 plicants upon compliance with the rules of the board [*and the agency*];

4 (2) Do any act necessary or proper to effect and carry out the duties re-
5 quired of the agency by ORS 687.405 to 687.495; **and**

6 [(3) *Adopt rules for the administration of ORS 687.405 to 687.495; and*]

7 [(4)] **(3)** Accept and expend donations, contributions and grant funds for
8 the purposes of ORS 687.405 to 687.495.

9
10 **INVESTIGATORY POWERS**

11
12 **SECTION 5. Section 6 of this 2013 Act is added to and made a part**
13 **of ORS 687.405 to 687.495.**

14 **SECTION 6. (1) Upon the complaint of a person, or upon its own**
15 **motion, the State Board of Direct Entry Midwifery may investigate**
16 **an alleged violation of a provision of ORS 687.405 to 687.495 or a rule**
17 **adopted under ORS 687.405 to 687.495.**

18 **(2) In conducting an investigation, the board may:**

19 **(a) Take evidence;**

20 **(b) Take the depositions of witnesses in the manner provided by law**
21 **in civil actions;**

22 **(c) Compel the appearance of witnesses before the board in the**
23 **manner provided by law in civil actions;**

24 **(d) Require answers to interrogations; and**

25 **(e) Compel the production of books, papers, accounts, documents**
26 **and testimony pertaining to the matter under investigation.**

27 **(3) In exercising its authority under subsection (2) of this section,**
28 **the board may issue subpoenas over the signature of a member of the**
29 **board, or the designee of a member of the board, in the name of the**
30 **State of Oregon.**

31 **(4) If a person fails to comply with a subpoena issued under this**

1 **section, a judge of a circuit court shall compel obedience by pro-**
2 **ceedings for contempt as in the case of disobedience of the require-**
3 **ments of a subpoena issued from the court.**

4 **SECTION 7.** ORS 676.607 is amended to read:

5 676.607. (1) The Oregon Health Licensing Agency is responsible for the
6 administration and regulatory oversight of the boards, councils and programs
7 listed in ORS 676.606. The responsibilities of the agency include, but are not
8 limited to:

9 (a) Budgeting;

10 (b) Record keeping;

11 (c) Staffing;

12 (d) Contracting;

13 (e) **Except as provided in subsection (3) of this section,** consumer
14 protection and investigating complaints;

15 (f) Approving and collecting fees;

16 (g) Establishing and administering uniform application processes for the
17 issuance of certificates, licenses, permits and registrations;

18 (h) Issuing and renewing certificates, licenses, permits and registrations;

19 (i) **Except as provided in subsection (3) of this section,** conditioning,
20 limiting, suspending[, *revoking or refusing to issue or renew*] **or revoking** a
21 certificate, license, permit or registration or otherwise disciplining appli-
22 cants, certificate holders, licensees, permit holders and registration holders;

23 (j) Sanctioning any examination service provider, interpreter or proctor
24 who is under contract or agreement with the agency and who compromises
25 the security, confidentiality or integrity of examinations developed or con-
26 ducted pursuant to the statutory authority of the boards and councils listed
27 in ORS 676.606;

28 (k) Enforcing all administrative rules adopted under any statute the
29 agency is charged with enforcing, including board, council and program ad-
30 ministrative rules establishing professional code of conduct and practice
31 standards, continuing education requirements, the scope of professional

1 practice and requirements for obtaining informed consent before providing
2 certain services or performing any procedure on clients;

3 (L) Preparing, tracking and reporting agency performance measures;

4 (m) Implementing regulatory streamlining initiatives to reduce regulatory
5 burdens without compromising regulatory standards;

6 (n) Preparing and circulating printed and electronic materials for edu-
7 cating or otherwise assisting applicants, certificate holders, licensees, permit
8 holders and registration holders and the public;

9 (o) Adopting rules for the issuance of waivers or provisional authori-
10 zations to practice, and establishing special conditions of practice, during a
11 state of emergency declared by the Governor under ORS 401.165;

12 (p) Referring impaired practitioners to a diversion program approved or
13 recognized by the agency and establishing criteria by rule for monitoring the
14 impaired practitioner's progress and successful completion of the program;
15 and

16 (q) Establishing requirements for additional education, training or super-
17 vised experience to achieve compliance with the laws and rules governing
18 professional practice.

19 (2) The enumeration of duties, functions and powers in subsection (1) of
20 this section is not intended to be exclusive or to limit the duties, functions
21 and powers imposed on or vested in the agency by other statutes.

22 **(3) The agency is not responsible for the administration and regu-**
23 **latory oversight of the responsibilities described in subsection (1)(e)**
24 **and (i) of this section with respect to the State Board of Direct Entry**
25 **Midwifery.**

26 **SECTION 8.** ORS 676.608 is amended to read:

27 676.608. (1) As used in this section:

28 (a)(A) "Holder" means a person who holds a certificate, license, permit
29 or registration to practice issued by the Oregon Health Licensing Agency.

30 **(B) "Holder" does not include a direct entry midwife licensed under**
31 **ORS 687.420.**

1 (b) "Public entity" has the meaning given that term in ORS 676.177.

2 (2)(a) The agency shall carry out *[all]* **the** investigatory duties **necessary**
3 **to enforce the provisions of ORS 676.605 to 676.625 and 676.992.**

4 (b) *[Upon its own motion,]* **Except as provided in subsection (12) of this**
5 **section,** the agency, **upon its own motion,** may initiate and conduct in-
6 vestigations of matters relating to the practice of occupations or professions
7 subject to the authority of the boards, councils and programs listed in ORS
8 676.606.

9 (c) When the agency receives a complaint by any person against a holder,
10 the agency shall investigate the complaint as provided in ORS 676.165.

11 (3) While conducting an investigation authorized under subsection (2) of
12 this section or a hearing related to an investigation, the agency may:

13 (a) Take evidence;

14 (b) Administer oaths;

15 (c) Take the depositions of witnesses, including the person charged;

16 (d) Compel the appearance of witnesses, including the person charged;

17 (e) Require answers to interrogatories;

18 (f) Compel the production of books, papers, accounts, documents and tes-
19 timony pertaining to the matter under investigation; and

20 (g) Conduct criminal and civil background checks to determine conviction
21 of a crime that bears a demonstrable relationship to the field of practice.

22 (4) In exercising its authority under this section, the agency may issue
23 subpoenas over the signature of the Director of the Oregon Health Licensing
24 Agency or designated employee thereof and in the name of the State of
25 Oregon.

26 (5) If a person fails to comply with a subpoena issued under this section,
27 the judge of the Circuit Court for Marion County may compel obedience by
28 initiating proceedings for contempt as in the case of disobedience of the re-
29 quirements of a subpoena issued from the court.

30 (6) If necessary, the director, or an employee designated by the director,
31 may appear before a magistrate empowered to issue warrants in criminal

1 cases to request that the magistrate issue a warrant. The magistrate shall
2 issue a warrant, directing it to any sheriff or deputy or police officer, to
3 enter the described property, to remove any person or obstacle, to defend any
4 threatened violence to the director or a designee of the director or an officer,
5 upon entering private property, or to assist the director in enforcing the
6 agency's authority in any way.

7 (7) In all investigations and hearings, the agency and any person affected
8 thereby may have the benefit of counsel.

9 (8) If a holder who is the subject of a complaint or an investigation is to
10 appear before the agency, the agency shall provide the holder with a current
11 summary of the complaint or the matter being investigated not less than 10
12 days before the date that the holder is to appear. At the time the summary
13 of the complaint or the matter being investigated is provided, the agency
14 shall provide the holder with a current summary of documents or alleged
15 facts that the agency has acquired as a result of the investigation. The name
16 of the complainant may be withheld from the holder.

17 (9) A holder who is the subject of an investigation, and any person acting
18 on behalf of the holder, may not contact the complainant until the holder
19 has requested a contested case hearing and the agency has authorized the
20 taking of the complainant's deposition pursuant to ORS 183.425.

21 (10) Except in an investigation or proceeding conducted by the agency or
22 another public entity, or in an action, suit or proceeding in which a public
23 entity is a party, a holder may not be questioned or examined regarding any
24 communication with the agency made in an appearance before the agency
25 as part of an investigation.

26 (11) This section does not prohibit examination or questioning of a holder
27 regarding records about the holder's care and treatment of a patient or affect
28 the admissibility of those records.

29 **(12) The agency may not initiate and conduct investigations of**
30 **matters relating to direct entry midwifery as defined in ORS 687.405.**

31

DISCIPLINARY POWERS

SECTION 9. Section 10 of this 2013 Act is added to and made a part of ORS 687.405 to 687.495.

SECTION 10. (1) In the manner prescribed in ORS chapter 183 for contested cases, the State Board of Direct Entry Midwifery may suspend, revoke, condition or limit a license to practice direct entry midwifery, and may discipline or place on probation a person licensed to practice direct entry midwifery, for commission of a prohibited act listed in subsection (2) of this section or for violating a provision of ORS 687.405 to 687.495 or a rule adopted under ORS 687.405 to 687.495.

(2) A person licensed to practice direct entry midwifery or a person applying for a license to practice direct entry midwifery commits a prohibited act if the person:

(a) Engages in fraud, misrepresentation, concealment of material facts or deception in applying for or obtaining the license, or in a written or oral communication to the board concerning the issuance or retention of the license.

(b) Uses, causes or promotes the use of an advertisement, testimonial, guarantee, warranty, label, insignia or other representation that is false, misleading or deceptive.

(c) Makes a representation that the person knew or should have known is false or misleading with respect to the person's skill or the efficacy or value of direct entry midwifery.

(d) Practices under a false, misleading or deceptive name.

(e) Permits another person to use the person's license.

(f) Practices direct entry midwifery with a physical or mental condition that presents an unreasonable risk of harm to others in the course of performing direct entry midwifery.

(g) Practices direct entry midwifery while under the influence of alcohol, controlled substances or other skill-impairing substances.

1 **(h) Engages in the use of controlled substances or other skill-**
2 **impairing substances in a manner that creates a risk of harm to oth-**
3 **ers in the course of performing direct entry midwifery.**

4 **(i) Fails to properly and reasonably accept responsibility for the**
5 **actions of employees.**

6 **(j) Engages in unprofessional conduct, negligence, incompetence,**
7 **repeated violations or any departure from or failure to conform to the**
8 **standards of practice adopted by the board in the course of performing**
9 **direct entry midwifery.**

10 **(k) Is convicted of a criminal offense, subject to ORS 670.280. A copy**
11 **of the record of conviction, certified by the clerk of the court entering**
12 **the conviction, is conclusive evidence of a conviction. A plea of no**
13 **contest or an admission of guilt is a conviction for purposes of this**
14 **paragraph.**

15 **(L) Fails to report, in the manner prescribed by the board by rule,**
16 **an adverse action taken against the licensee by another regulatory**
17 **jurisdiction or a peer review body, health care institution, professional**
18 **association, governmental agency, law enforcement agency or court**
19 **for acts or conduct similar to acts or conduct that constitute grounds**
20 **for disciplinary action under this section.**

21 **(m) Fails to cooperate with the board in an investigation or fails**
22 **to respond to a request for information related to an investigation.**

23 **(n) Fails to pay an outstanding civil penalty or fee that is due or**
24 **fails to meet the terms of an order issued by the board that has be-**
25 **come final.**

26 **(3) For the purpose of requesting a state or nationwide criminal**
27 **records check under ORS 181.534, the board may require the finger-**
28 **prints of a person who is under investigation by the board.**

29 **(4)(a) If the board suspends, revokes, conditions or limits a license**
30 **to practice direct entry midwifery under this section, the board shall**
31 **notify the Oregon Health Licensing Agency of the suspension, revoca-**

1 **tion, condition or limit.**

2 **(b) The agency shall treat a suspension imposed under this section**
3 **as a suspension imposed under ORS 676.612 (5).**

4 **(c) The agency shall treat a suspension, revocation, condition or**
5 **limit imposed under this section as a violation of ORS 676.612.**

6 **SECTION 11.** ORS 687.445 is amended to read:

7 687.445. In the manner prescribed in ORS chapter 183 for contested cases
8 and in consultation with the State Board of Direct Entry Midwifery, the
9 Oregon Health Licensing Agency may [*impose a form of discipline specified*
10 *in ORS 676.612 against any person practicing direct entry midwifery*] **refuse**
11 **to issue or renew a license to practice direct entry midwifery** for any
12 of the grounds listed in ORS 676.612 and for any violation of the provisions
13 of ORS 687.405 to 687.495[,] or the rules adopted [*thereunder*] **under ORS**
14 **687.405 to 687.495.**

15 **SECTION 12.** ORS 676.612 is amended to read:

16 676.612. (1) **Except as provided in subsection (6) of this section, the**
17 **Oregon Health Licensing Agency**, in the manner prescribed in ORS chap-
18 ter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535,
19 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111, [*the*
20 *Oregon Health Licensing Agency*] may refuse to issue or renew, may suspend
21 or revoke or may otherwise condition or limit a certificate, license, permit
22 or registration to practice issued by the agency or may discipline or place
23 on probation a holder of a certificate, license, permit or registration for
24 commission of the prohibited acts listed in subsection (2) of this section.

25 **(2) For purposes of disciplinary action by the agency under this**
26 **section**, a person [*subject to the authority of a board, council or program*
27 *listed in ORS 676.606*] commits a prohibited act if the person engages in:

28 (a) Fraud, misrepresentation, concealment of material facts or deception
29 in applying for or obtaining an authorization to practice in this state, or in
30 any written or oral communication to the agency concerning the issuance
31 or retention of the authorization.

1 (b) Using, causing or promoting the use of any advertising matter, pro-
2 motional literature, testimonial, guarantee, warranty, label, insignia or any
3 other representation, however disseminated or published, that is false, mis-
4 leading or deceptive.

5 (c) Making a representation that the certificate, license, permit or regis-
6 tration holder knew or should have known is false or misleading regarding
7 skill or the efficacy or value of treatment or remedy administered by the
8 holder.

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

11 (e) Permitting a person other than the certificate, license, permit or reg-
12 istration holder to use the certificate, license, permit or registration.

13 (f) Practicing with a physical or mental condition that presents an un-
14 reasonable risk of harm to the holder of a certificate, license, permit or
15 registration or to the person or property of others in the course of perform-
16 ing the holder's duties.

17 (g) Practicing while under the influence of alcohol, controlled substances
18 or other skill-impairing substances, or engaging in the illegal use of con-
19 trolled substances or other skill-impairing substances so as to create a risk
20 of harm to the person or property of others in the course of performing the
21 duties of a holder of a certificate, license, permit or registration.

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

24 (i) Employing, directly or indirectly, any suspended, uncertified, unli-
25 censed or unregistered person to practice a regulated occupation or profes-
26 sion subject to the authority of the boards, councils and programs listed in
27 ORS 676.606.

28 (j) Unprofessional conduct, negligence, incompetence, repeated violations
29 or any departure from or failure to conform to standards of practice in per-
30 forming services or practicing in a regulated occupation or profession subject
31 to the authority of the boards, councils and programs listed under ORS

1 676.606.

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

7 (L) Failing to report any adverse action, as required by statute or rule,
8 taken against the certificate, license, permit or registration holder by an-
9 other regulatory jurisdiction or any peer review body, health care institu-
10 tion, professional association, governmental agency, law enforcement agency
11 or court for acts or conduct similar to acts or conduct that would constitute
12 grounds for disciplinary action as described in this section.

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

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

17 (o) Failing to cooperate with the agency in any investigation, inspection
18 or request for information.

19 (p) Selling or fraudulently obtaining or furnishing any certificate, license,
20 permit or registration to practice in a regulated occupation or profession
21 subject to the authority of the boards, councils and programs listed in ORS
22 676.606, or aiding or abetting such an act.

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

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

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

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

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

5 (c) Under investigation by the agency.

6 (4) If the agency places a holder of a certificate, license, permit or regis-
7 tration on probation under subsection (1) of this section, the agency, in
8 consultation with the appropriate board, council or program, may determine
9 and at any time modify the conditions of the probation.

10 (5) If a certificate, license, permit or registration is suspended **under**
11 **subsection (1) of this section**, the holder may not practice during the term
12 of suspension. Upon the expiration of the term of suspension, the certificate,
13 license, permit or registration may be reinstated by the agency if the condi-
14 tions of suspension no longer exist and the holder has satisfied all require-
15 ments in the relevant statutes or administrative rules for issuance, renewal
16 or reinstatement.

17 **(6) For purposes of disciplining a person licensed to practice direct**
18 **entry midwifery under ORS 687.405 to 687.495:**

19 **(a) The agency has the exclusive authority to refuse to issue or re-**
20 **new a license to practice direct entry midwifery; and**

21 **(b) The State Board of Direct Entry Midwifery, under section 10 of**
22 **this 2013 Act, has the exclusive authority to suspend, revoke, condition**
23 **or limit a license to practice direct entry midwifery and to discipline**
24 **or place on probation a holder of a license to practice direct entry**
25 **midwifery.**

26 **SECTION 13.** ORS 676.992 is amended to read:

27 676.992. (1) Except as provided in subsection (3) of this section, and in
28 addition to any other penalty or remedy provided by law, the Oregon Health
29 Licensing Agency may impose a civil penalty not to exceed \$5,000 for each
30 violation of the following statutes and any rule adopted thereunder:

31 (a) ORS 688.701 to 688.734 (athletic training);

- 1 (b) ORS 690.005 to 690.235 (cosmetology);
- 2 (c) ORS 680.500 to 680.565 (denture technology);
- 3 [(d) ORS 687.405 to 687.495 (direct entry midwifery);]
- 4 [(e)] (d) ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing,
- 5 dermal implanting and scarification);
- 6 [(f)] (e) ORS 694.015 to 694.185 (dealing in hearing aids);
- 7 [(g)] (f) ORS 688.800 to 688.840 (respiratory therapy and polysomnogra-
- 8 phy);
- 9 [(h)] (g) ORS chapter 700 (environmental sanitation);
- 10 [(i)] (h) ORS 676.617 (single facility licensure);
- 11 [(j)] (i) ORS 675.360 to 675.410 (sex offender treatment);
- 12 [(k)] (j) ORS 678.710 to 678.820 (nursing home administrators);
- 13 [(L)] (k) ORS 691.405 to 691.485 (dietitians); and
- 14 [(m)] (L) ORS 676.612 (prohibited acts).

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

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

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

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

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

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

29 (d) Any other aggravating or mitigating factors.

30 (5) Civil penalties under this section shall be imposed as provided in ORS
31 183.745.

1 (6) The moneys received by the agency from civil penalties under this
2 section shall be paid into the General Fund of the State Treasury and cred-
3 ited to the Oregon Health Licensing Agency Account established under ORS
4 676.625. Such moneys are continuously appropriated to the agency for the
5 administration and enforcement of the laws the agency is charged with ad-
6 ministering and enforcing that govern the person against whom the penalty
7 was imposed.

8
9 **DIRECT ENTRY MIDWIFERY ACCOUNT**

10
11 **SECTION 14. Section 15 of this 2013 Act is added to and made a part**
12 **of ORS 687.405 to 687.495.**

13 **SECTION 15. (1) The Direct Entry Midwifery Account is established**
14 **in the State Treasury, separate and distinct from the General Fund.**
15 **All moneys received by the State Board of Direct Entry Midwifery**
16 **shall be deposited in the account and are continuously appropriated**
17 **to the board to carry out the duties, functions and powers of the**
18 **board. Any interest or other income from moneys in the account shall**
19 **be credited to the account.**

20 **(2) The Oregon Health Licensing Agency shall reimburse the State**
21 **Board of Direct Entry Midwifery for expenses related to the adminis-**
22 **tration of ORS 687.405 to 687.495. All moneys received by the board**
23 **under this subsection shall be deposited in the Direct Entry Midwifery**
24 **Account for the purposes described in subsection (1) of this section.**

25
26 **CIVIL PENALTIES**

27
28 **SECTION 16. (1) In addition to any other penalty or remedy pro-**
29 **vided by law, the State Board of Direct Entry Midwifery may impose**
30 **a civil penalty not to exceed \$5,000 against a person for each violation**
31 **of a provision of ORS 687.405 to 687.495 or a rule adopted under ORS**

1 **687.405 to 687.495.**

2 (2) **The moneys received by the board from civil penalties under this**
3 **section shall be deposited in the Direct Entry Midwifery Account es-**
4 **tablished under section 15 of this 2013 Act.**

5
6 **OTHER CHANGES TO STATE BOARD OF DIRECT ENTRY**
7 **MIDWIFERY**

8
9 **SECTION 17.** ORS 687.405 is amended to read:

10 687.405. As used in ORS 687.405 to 687.495, “direct entry midwifery” means
11 **the act of claiming to be a direct entry midwife while providing any**
12 **of the following services for compensation:**

- 13 (1) Supervision of the conduct of labor and childbirth;
14 (2) Providing advice to a parent as to the progress of childbirth; [or]
15 (3) Rendering prenatal, intrapartum and postpartum care; **or**
16 (4) **Making newborn assessments.**

17 **SECTION 18.** ORS 687.493 is amended to read:

18 687.493. (1) A **direct entry** midwife licensed under ORS 687.405 to 687.495
19 may purchase and administer authorized scheduled legend drugs and devices
20 that are used in pregnancy, birth, postpartum care, newborn care or resus-
21 citation and that are deemed integral to providing safe care to the public
22 by the State Board of Direct Entry Midwifery by rule.

23 (2) Legend drugs authorized under subsection (1) of this section are lim-
24 ited:

25 (a) For neonatal use to prophylactic ophthalmic medications, vitamin K
26 and oxygen; and

27 (b) For maternal use to **Group B Streptococcal antibiotic prophylaxis,**
28 **tocolytics,** postpartum antihemorrhagics, Rh₀(D) immune globulin,
29 epinephrine, intravenous fluids, local anesthetic and oxygen.

30 (3) Legend devices authorized under subsection (1) of this section are
31 limited to devices for injection of medications, for the administration of

1 intravenous fluids, for adult and infant resuscitation and for rupturing the
2 amniotic membranes.

3 (4) A pharmacist who dispenses drugs and devices to a licensed midwife
4 as authorized by this section and in conformity with the provisions of ORS
5 chapter 689 is not liable for any adverse reactions caused by administration
6 of the legend drugs and devices by the midwife.

7

8

CONFORMING AMENDMENTS

9

10 **SECTION 19.** ORS 687.425 is amended to read:

11 687.425. (1) Except as provided in subsection (2) of this section, a license
12 issued by the Oregon Health Licensing Agency for a direct entry midwife
13 expires after one year. The agency shall renew a license upon receipt of the
14 renewal application and fee and proof of current cardiopulmonary resusci-
15 tation certification for infants and adults. The applicant must be in compli-
16 ance with the rules adopted by the State Board of Direct Entry Midwifery
17 and the agency.

18 (2) The agency shall establish **by rule** a procedure for the renewal of li-
19 censes. The agency may vary the renewal date of a license by giving the
20 applicant written notice of the renewal date being assigned and by making
21 prorated adjustments to the renewal fee.

22 (3) The board shall prescribe requirements for license renewal including,
23 but not limited to, continuing education that must include training in use
24 of legend drugs and devices. In addition to continuing education require-
25 ments, a midwife who has attended fewer than five births in the previous
26 year shall be required to take an additional 10 hours of continuing education
27 as prescribed by the board. All licensing requirements shall be approved by
28 the board by rule.

29 (4) The agency shall adopt by rule requirements for late renewal of a li-
30 cense, reactivation of an expired license or reinstatement of a license that
31 has been expired for more than three consecutive years.

1 (5) If the license of a direct entry midwife has been denied, suspended or
2 revoked for commission of a prohibited act under ORS 676.612 **or section**
3 **10 of this 2013 Act**, the agency may refuse to issue or renew the license for
4 up to one year from the date of denial, suspension or revocation.

5 (6) The agency may mail a notice of renewal to the last-known address
6 of the license holder.

7 **SECTION 20.** ORS 687.482 is amended to read:

8 687.482. (1) Peer review of a licensed direct entry midwife conducted under
9 ORS 687.480 is subject to the provisions of ORS 41.675. Charts and records
10 created during or for the purpose of the practice of direct entry midwifery
11 are not data under ORS 41.675.

12 (2) Peer review [*that is conducted outside of the Oregon Health Licensing*
13 *Agency*] may not be used to replace [*agency regulatory*] investigations of
14 complaints against licensed direct entry midwives.

15 **SECTION 21.** ORS 687.490 is amended to read:

16 687.490. (1) Any information provided to the State Board of Direct Entry
17 Midwifery or the Oregon Health Licensing Agency under ORS 687.445 **or**
18 **section 10 of this 2013 Act** is confidential and is not subject to public dis-
19 closure or admissible as evidence in any judicial proceeding.

20 (2) Any person who in good faith provides information to the board or the
21 agency is not subject to an action for civil damages as a result thereof.

22

23

APPLICABILITY

24

25 **SECTION 22.** (1) **Section 6 of this 2013 Act and the amendments to**
26 **ORS 676.607 and 676.608 by sections 7 and 8 of this 2013 Act apply to**
27 **investigations of conduct that occurs on or after the operative date**
28 **specified in section 23 of this 2013 Act.**

29 (2) **Section 10 of this 2013 Act and the amendments to ORS 676.612,**
30 **676.992 and 687.445 by sections 11 to 13 of this 2013 Act apply to con-**
31 **tested case hearings held to determine whether to suspend, revoke,**

1 condition or limit a license to practice direct entry midwifery, or to
2 discipline or place on probation a person licensed to practice direct
3 entry midwifery, for a prohibited act under section 10 of this 2013 Act
4 committed on or after the operative date specified in section 23 of this
5 2013 Act.

6
7 **OPERATIVE DATE**
8

9 **SECTION 23.** (1) Sections 5, 6, 9, 10, 14, 15 and 16 of this 2013 Act
10 and the amendments to statutes by sections 1 to 4, 7, 8, 11 to 13 and
11 17 to 21 of this 2013 Act become operative on January 1, 2014.

12 (2) The State Board of Direct Entry Midwifery may take any action
13 before the operative date specified in subsection (1) of this section to
14 enable the board to exercise, on and after the operative date specified
15 in subsection (1) of this section, all of the duties, functions and powers
16 conferred on the board by sections 5, 6, 9, 10, 14, 15 and 16 of this 2013
17 Act and the amendments to statutes by sections 1 to 4, 7, 8, 11 to 13
18 and 17 to 21 of this 2013 Act.

19
20 **UNIT CAPTIONS**
21

22 **SECTION 24.** The unit captions used in this 2013 Act are provided
23 only for the convenience of the reader and do not become part of the
24 statutory law of this state or express any legislative intent in the
25 enactment of this 2013 Act.

26
27 **EMERGENCY CLAUSE**
28

29 **SECTION 25.** This 2013 Act being necessary for the immediate
30 preservation of the public peace, health and safety, an emergency is
31 declared to exist, and this 2013 Act takes effect on its passage.

