

---

# MEMORANDUM

Legislative Fiscal Office  
900 Court St. NE, Room H-178  
Salem, Oregon 97301  
Phone 503-986-1828  
FAX 503-373-7807

---

**To:** Education Subcommittee

**From:** John Terpening, Legislative Fiscal Office  
(503) 986-1824

**Date:** June 17, 2013

**Subject:** HB 2997 Work Session Recommendations

---

HB 2997 relates to direct entry midwifery. The measure establishes the infrastructure for the Oregon Health Licensing Agency (OHLA) to require licensure to practice direct entry midwifery in Oregon. Currently, licensure is voluntary. The bill defines licensure requirements, directs the State Board of Direct Entry Midwifery to adopt rules, authorizes the board to investigate complaints and take disciplinary action, including suspension or revocation of license and assessment of civil penalties. The measure allows licensing exemptions for individuals who do not use legend drugs or devices, and that do not advertise. The measure has an emergency clause and is effective on passage.

The measure, the original staff measure summary, preliminary Joint Committee on Ways and Means staff measure summary, revenue impact statement [if available], and fiscal impact statement are available on the Oregon Legislative Information System (OLIS).

The measure previously had a public hearing in the Education Subcommittee on May 8<sup>th</sup>, 2013.

There are two amendments, neither of them will change the fiscal impact of the measure:

- -A17 inserts language relating to supervision of student midwives, birth assistants, or others by a licensed midwife.
- -A18 makes changes to the investigation and discipline process, and gives final order authority to the Board.

The measure has an estimated revenue impact to OHLA of \$30,000 for the 2013-2015 biennium. Currently, the application fee is \$150 and the original license and annual renewal fee is \$1,200. However, OHLA waives the initial license fee for all direct entry midwifery licensees.

The Legislative Fiscal Office notes that the current fee structure is not sufficient to support the costs of the Board and the potential increased costs of investigations and disciplinary actions from the establishment of mandatory licensing program could have a negative impact on OHLA's ending balance.

**Motion to Move Measure**

The measure is recommended to be amended and moved to the full Committee on Joint Ways and Means.

**Motion: Move the –A17 and –A18 amendments into HB 2997.**

**Motion: Move HB 2997 to the full committee with a “do pass as amended” recommendation.**

**Assignment of Carriers**

Full: \_\_\_\_\_  
2nd Chamber: \_\_\_\_\_

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: HB 2997 – A17**

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed  
Versions are Considered Official*

Prepared by: John Terpening  
Reviewed by: John Terpening  
Date: 6/17/2013

**Measure Description:**

Requires person to obtain license to practice direct entry midwifery.

**Government Unit(s) Affected:**

Oregon Health Licensing Agency (OHLA), Oregon Judicial Department (OJD)

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

House Bill 2997 establishes the infrastructure for the Oregon Health Licensing Agency (OHLA) to require licensure to practice direct entry midwifery in Oregon. The bill defines licensure requirements, directs the State Board of Direct Entry Midwifery (SBDEM) to adopt rules, authorizes SBDEM to investigate complaints and take disciplinary action, including suspension or revocation of license and assessment of civil penalties. The bill allows licensing exemption for individuals who do not use legend drugs or devices, and does not advertise. Certain sections of the bill become operative on January 1, 2014. The bill contains an emergency clause and takes effect on passage.

The –A17 amendment adds language relating to supervision of student midwives, birth assistants, or others by a licensed midwife.

Oregon Health Licensing Agency (OHLA)

Currently, the direct entry midwife licensure is voluntary, and unlicensed midwives may practice in Oregon. However, state law allows reimbursement under the Oregon Health Plan only if a licensed midwife provides birthing assistance. Should this legislation become law, the Oregon Health Licensing Agency anticipates receiving roughly 40 new midwifery applications and 20 renewals during the 2013-15 biennium; and 10 new applications and 40 renewals for the 2015-17 biennium. The current fee structure is as follows:

Application	\$ 150
Original License/Renewal	\$1,200

With the current fee structure, OHLA anticipates a revenue increase of \$30,000 for the 2013-15 biennium, and \$49,500 for the 2015-17 biennium.

The Legislative Fiscal Office notes that the current fee structure is not sufficient to support the cost of the SBDEM. The potential increased costs of investigations and disciplinary actions from the establishment of the mandatory licensing program could have a negative impact on OHLA's ending balance.

Oregon Judicial Department (OJD)

Passage of this bill is anticipated to have minimal impact on the Oregon Judicial Department. The bill authorizes any person who contests the imposition of a civil penalty, or imposition of a license sanction, to seek judicial review by the Court of Appeals. The department anticipates passage of this bill will increase the number of cases filed with the Court of Appeals.

**FISCAL IMPACT OF PROPOSED LEGISLATION**

**Measure: HB 2997 – A18**

Seventy-Seventh Oregon Legislative Assembly – 2013 Regular Session  
Legislative Fiscal Office

*Only Impacts on Original or Engrossed Versions are Considered Official*

Prepared by: John Terpening  
Reviewed by: John Terpening  
Date: 6/17/2013

**Measure Description:**

Requires person to obtain license to practice direct entry midwifery.

**Government Unit(s) Affected:**

Oregon Health Licensing Agency (OHLA), Oregon Judicial Department (OJD)

**Local Government Mandate:**

This bill does not affect local governments' service levels or shared revenues sufficient to trigger Section 15, Article XI of the Oregon Constitution.

**Analysis:**

House Bill 2997 establishes the infrastructure for the Oregon Health Licensing Agency (OHLA) to require licensure to practice direct entry midwifery in Oregon. The bill defines licensure requirements, directs the State Board of Direct Entry Midwifery (SBDEM) to adopt rules, authorizes SBDEM to investigate complaints and take disciplinary action, including suspension or revocation of license and assessment of civil penalties. The bill allows licensing exemption for individuals who do not use legend drugs or devices, and does not advertise. Certain sections of the bill become operative on January 1, 2014. The bill contains an emergency clause and takes effect on passage.

The –A18 amendment makes changes to the investigation and discipline process, and gives final order authority to the Board.

Oregon Health Licensing Agency (OHLA)

Currently, the direct entry midwife licensure is voluntary, and unlicensed midwives may practice in Oregon. However, state law allows reimbursement under the Oregon Health Plan only if a licensed midwife provides birthing assistance. Should this legislation become law, the Oregon Health Licensing Agency anticipates receiving roughly 40 new midwifery applications and 20 renewals during the 2013-15 biennium; and 10 new applications and 40 renewals for the 2015-17 biennium. The current fee structure is as follows:

Application	\$ 150
Original License/Renewal	\$1,200

With the current fee structure, OHLA anticipates a revenue increase of \$30,000 for the 2013-15 biennium, and \$49,500 for the 2015-17 biennium.

The Legislative Fiscal Office notes that the current fee structure is not sufficient to support the cost of the SBDEM. The potential increased costs of investigations and disciplinary actions from the establishment of the mandatory licensing program could have a negative impact on OHLA's ending balance.

Oregon Judicial Department (OJD)

Passage of this bill is anticipated to have minimal impact on the Oregon Judicial Department. The bill authorizes any person who contests the imposition of a civil penalty, or imposition of a license sanction, to seek judicial review by the Court of Appeals. The department anticipates passage of this bill will increase the number of cases filed with the Court of Appeals.

Joint Committee on Ways and Means

Carrier – House: Rep.  
Carrier – Senate: Sen.

Revenue:

Fiscal:

Action:

Vote:

House

Yeas:

Nays:

Exc:

Senate

Yeas:

Nays:

Exc:

Prepared By: John Terpening, Legislative Fiscal Office

Meeting Date: [Full Committee Meeting Date]

**WHAT THE MEASURE DOES:** Defines licensure requirements for direct entry midwifery (DEM). Requires State Board of Direct Entry Midwifery (SBDEM) adopt rules. Authorizes SBDEM investigate complaints and take disciplinary action including suspension or revocation of license and assessment of civil penalties. Removes “tocolytics” from list of drugs DEM may prescribe. Deletes references to Direct Entry Midwifery Account. Defines “direct entry midwifery” as participating in certain specified activities for compensation. Requires licensure by January 1, 2015. Allows licensing exemption for individual who does not use legend drugs or devices, does not advertise and discloses lack of licensure and other specified information to each client. Declares emergency, effective on passage.

**ISSUES DISCUSSED:**

- Fiscal impact of the measure
- Effect of proposed amendments

**EFFECT OF COMMITTEE AMENDMENT:**

- -A17 inserts language relating to supervision of student midwives, birth assistnats, or others by a licensed midwife.
- -A18 makes changes to the investigation and discipline process, and gives final order authority to the Board.

**BACKGROUND:** A licensed direct entry midwife (LDEM) supervises the conduct and labor of childbirth, advises the parent as to the progress of childbirth and renders prenatal, intrapartum and postpartum care. The Oregon Health Licensing Agency (OHLA) oversees regulation of direct entry midwifery. Currently, licensure for DEMs is voluntary, and unlicensed midwives may practice in Oregon.

House Bill 2997-A requires licensure to practice midwifery and creates an exemption for traditional midwives who do not administer legend drugs, do not advertise as a midwife, and disclose lack of licensure to each client. The bill also grants the State Board of Direct Entry Midwifery (SBDEM) authority to conduct investigations and take disciplinary action against licensees.



HB 2997-A17  
(LC 992)  
5/29/13 (MBM/ps)

**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2997**

- 1 On page 2 of the printed A-engrossed bill, after line 24, insert:  
2 “(3) If supervised by a person licensed to practice direct entry midwifery,  
3 a student midwife, birth assistant or other individual may assist the direct  
4 entry midwife in the provision of services described in ORS 687.405.”  
5 In line 25, delete “(3)” and insert “(4)”.

6

---





**PROPOSED AMENDMENTS TO  
A-ENGROSSED HOUSE BILL 2997**

1 On page 1 of the printed A-engrossed bill, delete line 3 and insert “676.992,  
2 687.405, 687.415, 687.420, 687.445, 687.480, 687.485 and 687.493;”.

3 On page 3, line 9, delete “written and oral examinations” and insert “an  
4 examination”.

5 On page 4, delete lines 12 through 45 and delete pages 5 through 13 and  
6 insert:

7  
8 **“INVESTIGATIONS AND DISCIPLINE**

9  
10 **“SECTION 5.** ORS 676.608 is amended to read:

11 **“676.608. (1) As used in this section:**

12 **“(a) ‘Holder’ means a person who holds a certificate, license, permit or**  
13 **registration to practice issued by the Oregon Health Licensing Agency.**

14 **“(b) ‘Public entity’ has the meaning given that term in ORS 676.177.**

15 **“(2)(a) The agency shall carry out [all] the investigatory duties neces-**  
16 **sary to enforce the provisions of ORS 676.605 to 676.625 and 676.992.**

17 **“(b) [Upon its own motion,] Subject to subsection (12) of this section,**  
18 **the agency, upon its own motion, may initiate and conduct investigations**  
19 **of matters relating to the practice of occupations or professions subject to**  
20 **the authority of the boards, councils and programs listed in ORS 676.606.**

21 **“(c) Subject to subsection (12) of this section, when the agency re-**  
22 **ceives a complaint by [any person] against a holder, the agency shall inves-**

1 tigate the complaint as provided in ORS 676.165.

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

4 “(a) Take evidence;

5 “(b) Administer oaths;

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

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

8 “(e) Require answers to interrogatories;

9 “(f) Compel the production of books, papers, accounts, documents and  
10 testimony pertaining to the matter under investigation; and

11 “(g) Conduct criminal and civil background checks to determine con-  
12 viction of a crime that bears a demonstrable relationship to the field of  
13 practice.

14 “(4) In exercising its authority under this section, the agency may issue  
15 subpoenas over the signature of the Director of the Oregon Health Licensing  
16 Agency or designated employee thereof and in the name of the State of  
17 Oregon.

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

22 “(6) If necessary, the director, or an employee designated by the director,  
23 may appear before a magistrate empowered to issue warrants in criminal  
24 cases to request that the magistrate issue a warrant. The magistrate shall  
25 issue a warrant, directing it to any sheriff or deputy or police officer, to  
26 enter the described property, to remove any person or obstacle, to defend any  
27 threatened violence to the director or a designee of the director or an officer,  
28 upon entering private property, or to assist the director in enforcing the  
29 agency’s authority in any way.

30 “(7) In all investigations and hearings, the agency and any person affected

1 thereby may have the benefit of counsel.

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

10 “(9) A holder who is the subject of an investigation, and any person act-  
11 ing on behalf of the holder, may not contact the complainant until the holder  
12 has requested a contested case hearing and the agency has authorized the  
13 taking of the complainant’s deposition pursuant to ORS 183.425.

14 “(10) Except in an investigation or proceeding conducted by the agency  
15 or another public entity, or in an action, suit or proceeding in which a public  
16 entity is a party, a holder may not be questioned or examined regarding any  
17 communication with the agency made in an appearance before the agency  
18 as part of an investigation.

19 “(11) This section does not prohibit examination or questioning of a  
20 holder regarding records about the holder’s care and treatment of a patient  
21 or affect the admissibility of those records.

22 “(12) **In conducting an investigation related to the practice of direct**  
23 **entry midwifery, as defined in ORS 687.405, the agency shall:**

24 “(a) **Allow the State Board of Direct Entry Midwifery to review the**  
25 **motion or complaint before beginning the investigation;**

26 “(b) **Allow the board to prioritize the investigation with respect to**  
27 **other investigations related to the practice of direct entry midwifery;**  
28 **and**

29 “(c) **Consult with the board during and after the investigation for**  
30 **the purpose of determining whether to pursue disciplinary action.**

1        **“SECTION 6. Section 7 of this 2013 Act is added to and made a part**  
2 **of ORS 676.605 to 676.625.**

3        **“SECTION 7. The Oregon Health Licensing Agency shall delegate**  
4 **the authority to enter a final order for all contested cases related to**  
5 **the practice of direct entry midwifery, as defined in ORS 687.405, to the**  
6 **State Board of Direct Entry Midwifery. Notwithstanding ORS 183.411,**  
7 **the delegation of authority does not need to be made in writing before**  
8 **the issuance of an order.**

9        **“SECTION 8. ORS 676.607 is amended to read:**

10       **“676.607. (1) The Oregon Health Licensing Agency is responsible for the**  
11 **administration and regulatory oversight of the boards, councils and programs**  
12 **listed in ORS 676.606. The responsibilities of the agency include, but are not**  
13 **limited to:**

14        “(a) Budgeting;

15        “(b) Record keeping;

16        “(c) Staffing;

17        “(d) Contracting;

18        “(e) Consumer protection and investigating complaints;

19        “(f) Approving and collecting fees;

20        “(g) Establishing and administering uniform application processes for the  
21 issuance of certificates, licenses, permits and registrations;

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

23        “(i) **Subject to ORS 687.445 and section 7 of this 2013 Act,** condition-  
24 ing, limiting, suspending, revoking or refusing to issue or renew a certificate,  
25 license, permit or registration or otherwise disciplining applicants, certif-  
26 icate holders, licensees, permit holders and registration holders;

27        “(j) Sanctioning any examination service provider, interpreter or proctor  
28 who is under contract or agreement with the agency and who compromises  
29 the security, confidentiality or integrity of examinations developed or con-  
30 ducted pursuant to the statutory authority of the boards and councils listed

1 in ORS 676.606;

2 “(k) Enforcing all administrative rules adopted under any statute the  
3 agency is charged with enforcing, including board, council and program ad-  
4 ministrative rules establishing professional code of conduct and practice  
5 standards, continuing education requirements, the scope of professional  
6 practice and requirements for obtaining informed consent before providing  
7 certain services or performing any procedure on clients;

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

9 “(m) Implementing regulatory streamlining initiatives to reduce regula-  
10 tory burdens without compromising regulatory standards;

11 “(n) Preparing and circulating printed and electronic materials for edu-  
12 cating or otherwise assisting applicants, certificate holders, licensees, permit  
13 holders and registration holders and the public;

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

17 “(p) Referring impaired practitioners to a diversion program approved or  
18 recognized by the agency and establishing criteria by rule for monitoring the  
19 impaired practitioner’s progress and successful completion of the program;  
20 and

21 “(q) Establishing requirements for additional education, training or  
22 supervised experience to achieve compliance with the laws and rules gov-  
23 erning professional practice.

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

27 **“SECTION 9.** ORS 676.612 is amended to read:

28 **“676.612. (1) Subject to ORS 687.445 and section 7 of this 2013 Act, and**  
29 **in the manner prescribed in ORS chapter 183 for contested cases and as**  
30 **specified in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167,**

1 690.407, 691.477, 694.147 and 700.111, the Oregon Health Licensing Agency  
2 may refuse to issue or renew, may suspend or revoke or may otherwise con-  
3 dition or limit a certificate, license, permit or registration to practice issued  
4 by the agency or may discipline or place on probation a holder of a certif-  
5 icate, license, permit or registration for commission of the prohibited acts  
6 listed in subsection (2) of this section.

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

9 “(a) Fraud, misrepresentation, concealment of material facts or deception  
10 in applying for or obtaining an authorization to practice in this state, or in  
11 any written or oral communication to the agency concerning the issuance  
12 or retention of the authorization.

13 “(b) Using, causing or promoting the use of any advertising matter, pro-  
14 motional literature, testimonial, guarantee, warranty, label, insignia or any  
15 other representation, however disseminated or published, that is false, mis-  
16 leading or deceptive.

17 “(c) Making a representation that the certificate, license, permit or reg-  
18 istration holder knew or should have known is false or misleading regarding  
19 skill or the efficacy or value of treatment or remedy administered by the  
20 holder.

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

23 “(e) Permitting a person other than the certificate, license, permit or  
24 registration holder to use the certificate, license, permit or registration.

25 “(f) Practicing with a physical or mental condition that presents an un-  
26 reasonable risk of harm to the holder of a certificate, license, permit or  
27 registration or to the person or property of others in the course of perform-  
28 ing the holder’s duties.

29 “(g) Practicing while under the influence of alcohol, controlled substances  
30 or other skill-impairing substances, or engaging in the illegal use of con-

1 trolled substances or other skill-impairing substances so as to create a risk  
2 of harm to the person or property of others in the course of performing the  
3 duties of a holder of a certificate, license, permit or registration.

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

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

10 “(j) Unprofessional conduct, negligence, incompetence, repeated violations  
11 or any departure from or failure to conform to standards of practice in per-  
12 forming services or practicing in a regulated occupation or profession subject  
13 to the authority of the boards, councils and programs listed under ORS  
14 676.606.

15 “(k) Conviction of any criminal offense, subject to ORS 670.280. A copy  
16 of the record of conviction, certified by the clerk of the court entering the  
17 conviction, is conclusive evidence of the conviction. A plea of no contest or  
18 an admission of guilt shall be considered a conviction for purposes of this  
19 paragraph.

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

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

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

30 “(o) Failing to cooperate with the agency in any investigation, inspection

1 or request for information.

2 “(p) Selling or fraudulently obtaining or furnishing any certificate, li-  
3 cense, permit or registration to practice in a regulated occupation or pro-  
4 fession subject to the authority of the boards, councils and programs listed  
5 in ORS 676.606, or aiding or abetting such an act.

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

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

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

16 “(a) Applying for a certificate, license, permit or registration that is is-  
17 sued by the agency;

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

20 “(c) Under investigation by the agency.

21 “(4) If the agency places a holder of a certificate, license, permit or reg-  
22 istration on probation under subsection (1) of this section, the agency, in  
23 consultation with the appropriate board, council or program, may determine  
24 and at any time modify the conditions of the probation.

25 “(5) If a certificate, license, permit or registration is suspended, the holder  
26 may not practice during the term of suspension. Upon the expiration of the  
27 term of suspension, the certificate, license, permit or registration may be  
28 reinstated by the agency if the conditions of suspension no longer exist and  
29 the holder has satisfied all requirements in the relevant statutes or admin-  
30 istrative rules for issuance, renewal or reinstatement.



1        **SECTION 10.** ORS 676.992 is amended to read:

2        676.992. (1) Except as provided in subsection (3) of this section, and in  
3 addition to any other penalty or remedy provided by law, the Oregon Health  
4 Licensing Agency may impose a civil penalty not to exceed \$5,000 for each  
5 violation of the following statutes and any rule adopted thereunder:

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

7        (b) ORS 690.005 to 690.235 (cosmetology);

8        (c) ORS 680.500 to 680.565 (denture technology);

9        (d) **Subject to ORS 687.445 and section 7 of this 2013 Act,** ORS 687.405  
10 to 687.495 (direct entry midwifery);

11        (e) ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing, dermal  
12 implanting and scarification);

13        (f) ORS 694.015 to 694.185 (dealing in hearing aids);

14        (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);

15        (h) ORS chapter 700 (environmental sanitation);

16        (i) ORS 676.617 (single facility licensure);

17        (j) ORS 675.360 to 675.410 (sex offender treatment);

18        (k) ORS 678.710 to 678.820 (nursing home administrators);

19        (L) ORS 691.405 to 691.485 (dietitians); and

20        (m) ORS 676.612 (prohibited acts).

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

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

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

30        (a) The immediacy and extent to which the violation threatens the public

1 health or safety;

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

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

5 (d) Any other aggravating or mitigating factors.

6 (5) Civil penalties under this section shall be imposed as provided in ORS  
7 183.745.

8 (6) The moneys received by the agency from civil penalties under this  
9 section shall be paid into the General Fund of the State Treasury and cred-  
10 ited to the Oregon Health Licensing Agency Account established under ORS  
11 676.625. Such moneys are continuously appropriated to the agency for the  
12 administration and enforcement of the laws the agency is charged with ad-  
13 ministering and enforcing that govern the person against whom the penalty  
14 was imposed.

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

16 "687.445. In the manner prescribed in ORS chapter 183 for contested cases  
17 and in consultation with [*the State Board of Direct Entry Midwifery,*] the  
18 Oregon Health Licensing Agency, **the State Board of Direct Entry**  
19 **Midwifery** may impose a form of discipline specified in ORS 676.612 and  
20 **676.992 (1) and (2)** against any person practicing direct entry midwifery for  
21 any of the grounds listed in ORS 676.612 and for any violation of the pro-  
22 visions of ORS 687.405 to 687.495[,] or the rules adopted [*thereunder*] **under**  
23 **ORS 687.405 to 687.495.**

24

25 **"OTHER CHANGES TO STATE BOARD OF DIRECT ENTRY**  
26 **MIDWIFERY**

27

28 **SECTION 12.** ORS 687.405 is amended to read:

29 "687.405. As used in ORS 687.405 to 687.495, 'direct entry midwifery' means  
30 **providing the following services for compensation:**

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

5 “**SECTION 13.** ORS 687.493 is amended to read:

6 “687.493. (1) A **direct entry** midwife licensed under ORS 687.405 to 687.495  
7 may purchase and administer authorized scheduled legend drugs and devices  
8 that are used in pregnancy, birth, postpartum care, newborn care or resus-  
9 citation and that are deemed integral to providing safe care to the public  
10 by the State Board of Direct Entry Midwifery by rule.

11 “(2) Legend drugs authorized under subsection (1) of this section are  
12 limited:

13 “(a) For neonatal use to prophylactic ophthalmic medications, vitamin K  
14 and oxygen; and

15 “(b) For maternal use to **antibiotics for Group B Streptococcal anti-**  
16 **biotic prophylaxis**, postpartum antihemorrhagics, Rh<sub>0</sub>(D) immune globulin,  
17 epinephrine, intravenous fluids, local anesthetic and oxygen.

18 “(3) Legend devices authorized under subsection (1) of this section are  
19 limited to devices for injection of medications, for the administration of  
20 intravenous fluids, for adult and infant resuscitation and for rupturing the  
21 amniotic membranes.

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

26

27

#### “APPLICABILITY

28

29 “**SECTION 14.** (1) **The amendments to ORS 687.420 by section 2 of**  
30 **this 2013 Act apply to persons who submit an application to the Oregon**

1 Health Licensing Agency to become licensed as a direct entry midwife  
2 on or after the operative date specified in section 15 of this 2013 Act.

3 “(2) Notwithstanding the amendments to ORS 687.415 by section 1  
4 of this 2013 Act, a person who is not licensed to practice direct entry  
5 midwifery under ORS 687.405 to 687.495 may continue to practice direct  
6 entry midwifery until January 1, 2015.

7  
8 “OPERATIVE DATE  
9

10 “SECTION 15. (1) Sections 6 and 7 of this 2013 Act and the amend-  
11 ments to statutes by sections 1 to 5 and 8 to 13 of this 2013 Act become  
12 operative on January 1, 2014.

13 “(2) The State Board of Direct Entry Midwifery and the Oregon  
14 Health Licensing Agency may take any action before the operative  
15 date specified in subsection (1) of this section to enable the board and  
16 agency to exercise, on and after the operative date specified in sub-  
17 section (1) of this section, all of the duties, functions and powers  
18 conferred on the board and agency by section 7 of this 2013 Act and  
19 the amendments to statutes by sections 1 to 5 and 8 to 13 of this 2013  
20 Act.

21  
22 “UNIT CAPTIONS  
23

24 “SECTION 16. The unit captions used in this 2013 Act are provided  
25 only for the convenience of the reader and do not become part of the  
26 statutory law of this state or express any legislative intent in the  
27 enactment of this 2013 Act.

28  
29 “EMERGENCY CLAUSE  
30

1        **SECTION 17.** This 2013 Act being necessary for the immediate  
2        preservation of the public peace, health and safety, an emergency is  
3        declared to exist, and this 2013 Act takes effect on its passage.”.

4

---

