

# House Bill 2100

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Oregon Health Licensing Agency)

## SUMMARY

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

Specifies circumstances under which Oregon Health Licensing Agency is required or permitted to disclose information obtained during investigation for certain boards. Distinguishes those circumstances from circumstances pertaining to cosmetologists, body art practitioners and dealers of hearing aids.

Makes certain other changes related to investigations conducted by agency.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to the Oregon Health Licensing Agency; creating new provisions; amending ORS 192.450,  
3 401.651, 414.665, 431.960, 433.045, 441.057, 675.385, 676.110, 676.120, 676.130, 676.160, 676.350,  
4 676.400, 676.608, 676.609, 678.725, 678.820, 687.490, 688.125, 690.025, 690.167 and 743.918; and de-  
5 claring an emergency.

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

## DISCLOSURE OF INFORMATION

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10 **SECTION 1. Sections 2 and 3 of this 2013 Act are added to and made a part of ORS 676.605**  
11 **to 676.625.**

12 **SECTION 2. (1) Except to the extent that disclosure is necessary to conduct a full and**  
13 **proper investigation, the Oregon Health Licensing Agency may not disclose information, in-**  
14 **cluding complaints and information identifying complainants, obtained by the agency as part**  
15 **of an investigation conducted under:**

16 (a) **ORS 675.360 to 675.410, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 688.701**  
17 **to 688.734, 688.800 to 688.840 or 691.405 to 691.485 or ORS chapter 700.**

18 (b) **ORS 676.605 to 676.625 if the investigation is related to the regulation of:**

19 (A) **Sex offender therapy under ORS 675.360 to 675.410;**

20 (B) **Nursing home administration under ORS 678.710 to 678.820;**

21 (C) **The practice of denture technology under ORS 680.500 to 680.565;**

22 (D) **Direct entry midwifery under ORS 687.405 to 687.495;**

23 (E) **Athletic training under ORS 688.701 to 688.734;**

24 (F) **Respiratory care and polysomnography under ORS 688.800 to 688.840;**

25 (G) **Dietetics under ORS 691.405 to 691.485; or**

26 (H) **Environmental or waste water sanitation under ORS chapter 700.**

27 (2) **Notwithstanding subsection (1) of this section, if the agency decides not to impose a**  
28 **disciplinary sanction after conducting an investigation described in subsection (1) of this**

**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 **section:**

2 (a) The agency shall disclose information obtained as part of the investigation if the  
 3 person requesting the information demonstrates by clear and convincing evidence that the  
 4 public interest in disclosure outweighs other interests in nondisclosure, including the public  
 5 interest in nondisclosure.

6 (b) The agency may disclose to a complainant who made a complaint related to the in-  
 7 vestigation a written summary of information obtained as part of the investigation to the  
 8 extent that disclosure is necessary to explain the agency’s decision. The person who is the  
 9 subject of the investigation may review and obtain a copy of a written summary disclosed  
 10 under this paragraph after the agency has redacted any information identifying the  
 11 complainant.

12 (3) Notwithstanding subsection (1) of this section, if the agency decides to impose a dis-  
 13 ciplinary sanction after conducting an investigation described in subsection (1) of this sec-  
 14 tion, upon written request by the person who is the subject of the investigation, the agency  
 15 shall disclose to the person all information obtained by the agency during the investigation,  
 16 except that the agency may not disclose:

17 (a) Information that is otherwise privileged or confidential under state or federal law.

18 (b) Information identifying a person who provided information that led to the investi-  
 19 gation, unless the person will provide testimony at a hearing arising out of the investigation.

20 (c) Information identifying a complainant.

21 (d) Reports of expert witnesses.

22 (4) Information disclosed to a person under subsection (3) of this section may be further  
 23 disclosed by the person only to the extent that disclosure is necessary to prepare for a  
 24 hearing arising out of the investigation.

25 (5) The agency shall disclose:

26 (a) Any notice related to the imposition of a disciplinary sanction;

27 (b) A final order related to the imposition of a disciplinary sanction;

28 (c) An emergency suspension order;

29 (d) A consent order or stipulated agreement that involves the conduct of a person against  
 30 whom discipline is sought; and

31 (e) Information to further an investigation into board conduct under ORS 192.685.

32 (6) A final order related to the imposition of a disciplinary sanction, an emergency sus-  
 33 pension order or a consent order or stipulated agreement that involves the conduct of a  
 34 person against whom discipline is sought must summarize the factual basis for the agency’s  
 35 disposition of the matter.

36 (7) An agency record or order, or any part of an agency record or order, obtained during  
 37 an investigation described under subsection (1) of this section or during a contested case  
 38 proceeding, or as a result of entering into a consent order or stipulated agreement, is not  
 39 admissible as evidence and may not preclude an issue or claim in a civil proceeding except  
 40 in a proceeding between the agency and a person against whom discipline is sought as oth-  
 41 erwise allowed by law.

42 (8)(a) Notwithstanding subsection (1) of this section, the agency does not publicly disclose  
 43 information when the agency permits other public officials and members of the press to at-  
 44 tend executive sessions where information obtained as part of an investigation is discussed.  
 45 Public officials and members of the press attending such executive sessions shall not disclose

1 information obtained as part of an investigation to any other member of the public.

2 (b) For purposes of this subsection, “public official” means a member or member-elect,  
3 or any member of the staff or an employee, of a public entity as defined by ORS 676.177.

4 (9) The agency may establish fees reasonably calculated to reimburse the actual cost of  
5 disclosing information to a person against whom discipline is sought as required by sub-  
6 section (3) of this section.

7 **SECTION 3.** (1) Notwithstanding section 2 of this 2013 Act, the Oregon Health Licensing  
8 Agency, upon a determination by the agency that it possesses information that reasonably  
9 relates to the regulatory or enforcement function of another public entity, may disclose in-  
10 formation to the other public entity.

11 (2) A public entity that receives information pursuant to subsection (1) of this section  
12 must agree to take all reasonable steps to maintain the confidentiality of the information,  
13 except that the public entity may use or disclose the information to the extent necessary to  
14 carry out the regulatory or enforcement functions of the public entity.

15 (3) For purposes of this section, “public entity” has the meaning given that term in ORS  
16 676.177.

17 **SECTION 4.** ORS 676.609 is amended to read:

18 676.609. *[(1) If the Oregon Health Licensing Agency intends to disclose a record pursuant to ORS  
19 676.608, the agency shall:]*

20 *[(a) Send a notice of the intended disclosure to the person who is the subject of a complaint or an  
21 investigation by first class mail at least 14 days before the disclosure date; and]*

22 *[(b) Describe in the notice the type of record being disclosed in sufficient detail to allow the person  
23 who is the subject of a complaint or an investigation to understand the contents of the record that the  
24 agency intends to disclose.]*

25 *[(2) The agency shall disclose information obtained as part of an investigation of a person charged  
26 if another person requesting the information demonstrates by clear and convincing evidence that the  
27 public interest in disclosure outweighs other interests in nondisclosure, including but not limited to the  
28 public interest in nondisclosure.]*

29 (1) Upon request, the Oregon Health Licensing Agency shall disclose to a person against  
30 whom disciplinary action is sought information, including complaints and information iden-  
31 tifying complainants, but not including information that is otherwise privileged or confiden-  
32 tial under state or federal law, obtained by the agency as part of an investigation conducted  
33 under:

34 (a) ORS 690.005 to 690.235, 690.350 to 690.415 or 694.015 to 694.185.

35 (b) ORS 676.605 to 676.625 if the investigation is related to the regulation of:

36 (A) ORS 690.005 to 690.235;

37 (B) ORS 690.350 to 690.415; or

38 (C) ORS 694.015 to 694.185.

39 (2) The agency shall disclose information obtained as part of an investigation described  
40 in subsection (1) of this section to a person who demonstrates by clear and convincing evi-  
41 dence that the public interest in disclosure outweighs other interests in nondisclosure, in-  
42 cluding the public interest in nondisclosure.

43  
44 **INVESTIGATIONS**

1       **SECTION 5.** ORS 676.608 is amended to read:

2       676.608. [(1) *As used in this section.*]

3       [(a) *“Holder” means a person who holds a certificate, license, permit or registration to practice is-*  
4 *sued by the Oregon Health Licensing Agency.*]

5       [(b) *“Public entity” has the meaning given that term in ORS 676.177.*]

6       [(2)(a)] (1)(a) The **Oregon Health Licensing Agency** shall carry out all investigatory duties  
7 **relating to matters subject to the authority of the agency or the boards, councils and pro-**  
8 **grams listed in ORS 676.606.**

9       (b) Upon its own motion, the agency may initiate and conduct investigations of matters relating  
10 to the practice of occupations or professions subject to the authority of the boards, councils and  
11 programs listed in ORS 676.606.

12       (c) When the agency receives a complaint by [any] a person [against a holder], the agency shall  
13 investigate the complaint as provided in ORS 676.165.

14       [(3)] (2) While conducting an investigation authorized under subsection [(2)] (1) of this section  
15 or a hearing related to an investigation, the agency may:

16       (a) Take evidence;

17       (b) Administer oaths;

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

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

20       (e) Require answers to interrogatories;

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

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

25       [(4)] (3) In exercising its authority under this section, the agency may issue subpoenas over the  
26 signature of the Director of the Oregon Health Licensing Agency or designated employee [thereof]  
27 **of the director** and in the name of the State of Oregon.

28       [(5)] (4) If a person fails to comply with a subpoena issued under this section, the judge of the  
29 Circuit Court for Marion County may compel obedience by initiating proceedings for contempt as  
30 in the case of disobedience of the requirements of a subpoena issued from the court.

31       [(6)] (5) If necessary, the director, or an employee designated by the director, may appear before  
32 a magistrate empowered to issue warrants in criminal cases to request that the magistrate issue a  
33 warrant. The magistrate shall issue a warrant, directing it to any sheriff or deputy or police officer,  
34 to enter the described property, to remove any person or obstacle, to defend any threatened violence  
35 to the director or a designee of the director or an officer, upon entering private property, or to as-  
36 sist the director in enforcing the agency’s authority in any way.

37       [(7) *In all investigations and hearings, the agency and any person affected thereby may have the*  
38 *benefit of counsel.*]

39       [(8) *If a holder who is the subject of a complaint or an investigation is to appear before the agency,*  
40 *the agency shall provide the holder with a current summary of the complaint or the matter being in-*  
41 *vestigated not less than 10 days before the date that the holder is to appear. At the time the summary*  
42 *of the complaint or the matter being investigated is provided, the agency shall provide the holder with*  
43 *a current summary of documents or alleged facts that the agency has acquired as a result of the in-*  
44 *vestigation. The name of the complainant may be withheld from the holder.*]

45       [(9) *A holder who is the subject of an investigation, and any person acting on behalf of the holder,*

1 may not contact the complainant until the holder has requested a contested case hearing and the agency  
2 has authorized the taking of the complainant's deposition pursuant to ORS 183.425.]

3 [(10) Except in an investigation or proceeding conducted by the agency or another public entity, or  
4 in an action, suit or proceeding in which a public entity is a party, a holder may not be questioned or  
5 examined regarding any communication with the agency made in an appearance before the agency as  
6 part of an investigation.]

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

9 **(6) Except for purposes of complying with ORS 694.036 and 694.042, the person who is the**  
10 **subject of an investigation described under ORS 676.609 (1), or a person who is acting on**  
11 **behalf of the subject, may not contact a complainant whose complaint is related to the in-**  
12 **vestigation until the subject has requested a contested case hearing and the agency has au-**  
13 **thorized the taking of the complainant's deposition under ORS 183.425.**

14  
15 **SEX OFFENDER THERAPISTS**

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17 **SECTION 6.** ORS 675.385 is amended to read:

18 675.385. (1) In the manner prescribed in ORS chapter 183 for contested cases, and [*at the direc-*  
19 *tion of*] **in consultation with** the Sex Offender Treatment Board, the Oregon Health Licensing  
20 Agency may impose a form of discipline listed in ORS 676.612 against any certified sex offender  
21 therapist for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS  
22 675.360 to 675.410, or the rules adopted thereunder.

23 (2) The agency may impose disciplinary sanctions against a certified sex offender therapist for  
24 any of the following reasons:

25 (a) The person was convicted of violating ORS 675.390, or of a felony or misdemeanor that  
26 brings into question the person's competence or integrity as a certified sex offender therapist.

27 (b) The person's mental health professional license, or equivalent license, has been revoked,  
28 suspended or restricted by the issuing authority.

29 (c) The person has violated ORS 675.370 (3) to (5), or any rules adopted by the agency pertaining  
30 to certification.

31 (d) The person has failed to file or has filed a false, misleading or incomplete professional dis-  
32 closure statement with the agency.

33 (e) The person has practiced beyond the scope of the person's agency-issued certification.

34  
35 **NURSING HOME ADMINISTRATORS**

36  
37 **SECTION 7.** ORS 678.725 is amended to read:

38 678.725. (1)(a) Unless state or federal laws relating to confidentiality or the protection of health  
39 information prohibit disclosure, any health care facility licensed under ORS 441.015, any licensee  
40 licensed by the Oregon Health Licensing Agency, any physician licensed by the Oregon Medical  
41 Board, any licensed professional nurse and any licensed pharmacist shall report to the agency sus-  
42 pected violations of ORS 678.710 to 678.820 and unsanitary or other unsatisfactory conditions in a  
43 nursing home.

44 (b) Unless state or federal laws relating to confidentiality or the protection of health information  
45 prohibit disclosure, a licensee licensed under ORS 678.710 to 678.820 who has reasonable cause to

1 believe that a licensee of any board as defined in ORS 676.150 has engaged in prohibited conduct  
 2 as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS  
 3 676.150.

4 (c) Any person may report to the agency suspected violations of ORS 678.710 to 678.820 or un-  
 5 sanitary conditions in a nursing home.

6 [(2) *Information acquired by the agency pursuant to subsection (1) of this section is confidential*  
 7 *and is not subject to public disclosure.*]

8 [(3)] (2) Any person who reports or provides information to the agency under subsection (1) of  
 9 this section and who provides information in good faith may not be subject to an action for civil  
 10 damages as a result of making the report or providing the information.

11 **SECTION 8.** ORS 678.820 is amended to read:

12 678.820. (1) The Nursing Home Administrators Board is responsible for advising the Oregon  
 13 Health Licensing Agency in all matters relating to the administration of ORS 678.710 to 678.820,  
 14 including:

15 (a) Developing standards for education and training;

16 (b) Developing standards of practice and professional conduct;

17 (c) Establishing standards related to the issuance, denial, revocation, suspension or renewal of  
 18 licenses to practice as a nursing home administrator;

19 (d) Preparing or approving the examinations required under ORS 678.710 to 678.820, in accord-  
 20 ance with standards provided by the agency; and

21 (e) Assisting the agency in administering the provisions of ORS 678.710 to 678.820.

22 (2) The Oregon Health Licensing Agency shall administer ORS 678.710 to 678.820 by:

23 (a) Determining the qualifications and fitness of applicants for licenses, renewed licenses, re-  
 24 ciprocal licenses and provisional licenses under ORS 678.710 to 678.820.

25 (b) Examining, approving, issuing, denying, revoking, suspending and renewing licenses to prac-  
 26 tice as a nursing home administrator.

27 (c) Providing for waivers of examinations or provisional licenses.

28 (d) Establishing and carrying out procedures to ensure compliance with professional standards  
 29 adopted by the board.

30 (e) [*Pursuant to ORS 676.608, receiving and*] Investigating complaints [*filed*] regarding nursing  
 31 home administrators.

32 (f) Establishing and collecting fees and charges to carry out the agency's duties under ORS  
 33 678.710 to 678.820.

34 (g) In accordance with ORS 183.330 and 676.615, adopting, amending and repealing rules that  
 35 are necessary to carry out the administration of ORS 678.710 to 678.820.

36 (h) Maintaining a register of all licensed nursing home administrators.

37 (3) The agency shall consider and be guided by the recommendations of the board in all matters  
 38 relating to the administration of ORS 678.710 to 678.820.

39  
 40 **DIRECT ENTRY MIDWIVES**

41  
 42 **SECTION 9.** ORS 687.490 is amended to read:

43 687.490. [(1) *Any information provided to the State Board of Direct Entry Midwifery or the Oregon*  
 44 *Health Licensing Agency under ORS 687.445 is confidential and is not subject to public disclosure or*  
 45 *admissible as evidence in any judicial proceeding.*]

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

3 **A person who in good faith provides information to the State Board of Direct Entry  
4 Midwifery or the Oregon Health Licensing Agency for purposes related to an investigation  
5 conducted under ORS 676.605 to 676.625, if the investigation is related to the regulation of  
6 direct entry midwifery, or ORS 687.405 to 687.495 is not subject to an action for civil damages  
7 as a result of providing the information.**

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9 **COSMETOLOGISTS**

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11 **SECTION 10.** ORS 690.167 is amended to read:

12 690.167. In the manner prescribed in ORS chapter 183 for contested cases [*and at the direction*  
13 *of the Board of Cosmetology*], the Oregon Health Licensing Agency may impose a form of discipline  
14 listed in ORS 676.612 against any person practicing barbering, hair design, esthetics or nail tech-  
15 nology for any of the grounds listed in ORS 676.612 and for any violation of the provisions of ORS  
16 690.005 to 690.235, or the rules adopted thereunder.

17  
18 **CONFORMING AMENDMENTS**

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

21 676.160. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:

- 22 (1) State Board of Examiners for Speech-Language Pathology and Audiology;  
23 (2) State Board of Chiropractic Examiners;  
24 (3) State Board of Licensed Social Workers;  
25 (4) Oregon Board of Licensed Professional Counselors and Therapists;  
26 (5) Oregon Board of Dentistry;  
27 [(6) *Board of Licensed Dietitians*;]  
28 [(7)] (6) State Board of Massage Therapists;  
29 [(8)] (7) State Mortuary and Cemetery Board;  
30 [(9)] (8) Oregon Board of Naturopathic Medicine;  
31 [(10)] (9) Oregon State Board of Nursing;  
32 [(11) *Nursing Home Administrators Board*;]  
33 [(12)] (10) Oregon Board of Optometry;  
34 [(13)] (11) State Board of Pharmacy;  
35 [(14)] (12) Oregon Medical Board;  
36 [(15)] (13) Occupational Therapy Licensing Board;  
37 [(16)] (14) Physical Therapist Licensing Board;  
38 [(17)] (15) State Board of Psychologist Examiners;  
39 [(18)] (16) Board of Medical Imaging;  
40 [(19)] (17) Oregon State Veterinary Medical Examining Board; and  
41 [(20)] (18) Oregon Health Authority, to the extent that the authority licenses emergency medical  
42 services providers.

43 **SECTION 12.** ORS 192.450 is amended to read:

44 192.450. (1) Subject to ORS 192.480 and subsection (4) of this section, any person denied the right  
45 to inspect or to receive a copy of any public record of a state agency may petition the Attorney

1 General to review the public record to determine if it may be withheld from public inspection. Ex-  
2 cept as provided in subsection (5) of this section, the burden is on the agency to sustain its action.  
3 Except as provided in subsection (5) of this section, the Attorney General shall issue an order de-  
4 nying or granting the petition, or denying it in part and granting it in part, within seven days from  
5 the day the Attorney General receives the petition.

6 (2) If the Attorney General grants the petition and orders the state agency to disclose the re-  
7 cord, or if the Attorney General grants the petition in part and orders the state agency to disclose  
8 a portion of the record, the state agency shall comply with the order in full within seven days after  
9 issuance of the order, unless within the seven-day period it issues a notice of its intention to insti-  
10 tute proceedings for injunctive or declaratory relief in the Circuit Court for Marion County or, as  
11 provided in subsection (6) of this section, in the circuit court of the county where the record is held.  
12 Copies of the notice shall be sent to the Attorney General and by certified mail to the petitioner  
13 at the address shown on the petition. The state agency shall institute the proceedings within seven  
14 days after it issues its notice of intention to do so. If the Attorney General denies the petition in  
15 whole or in part, or if the state agency continues to withhold the record or a part of it  
16 notwithstanding an order to disclose by the Attorney General, the person seeking disclosure may  
17 institute such proceedings.

18 (3) The Attorney General shall serve as counsel for the state agency in a suit filed under sub-  
19 section (2) of this section if the suit arises out of a determination by the Attorney General that the  
20 public record should not be disclosed, or that a part of the public record should not be disclosed if  
21 the state agency has fully complied with the order of the Attorney General requiring disclosure of  
22 another part or parts of the public record, and in no other case. In any case in which the Attorney  
23 General is prohibited from serving as counsel for the state agency, the agency may retain special  
24 counsel.

25 (4) A person denied the right to inspect or to receive a copy of any public record of a health  
26 professional regulatory board, as defined in ORS 676.160, **the Nursing Home Administrators**  
27 **Board or the Board of Licensed Dietitians** that contains information concerning a licensee or  
28 applicant, and petitioning the Attorney General to review the public record shall, on or before the  
29 date of filing the petition with the Attorney General, send a copy of the petition by first class mail  
30 to the [*health professional regulatory*] board. Not more than 48 hours after the board receives a copy  
31 of the petition, the board shall send a copy of the petition by first class mail to the licensee or ap-  
32 plicant who is the subject of any record for which disclosure is sought. When sending a copy of the  
33 petition to the licensee or applicant, the board shall include a notice informing the licensee or ap-  
34 plicant that a written response by the licensee or applicant may be filed with the Attorney General  
35 not later than seven days after the date that the notice was sent by the board. Immediately upon  
36 receipt of any written response from the licensee or applicant, the Attorney General shall send a  
37 copy of the response to the petitioner by first class mail.

38 (5) The person seeking disclosure of a public record of a health professional regulatory board,  
39 as defined in ORS 676.160, **the Nursing Home Administrators Board or the Board of Licensed**  
40 **Dietitians** that is confidential or exempt from disclosure under ORS 676.165 or 676.175, shall have  
41 the burden of demonstrating to the Attorney General by clear and convincing evidence that the  
42 public interest in disclosure outweighs other interests in nondisclosure, including but not limited to  
43 the public interest in nondisclosure. The Attorney General shall issue an order denying or granting  
44 the petition, or denying or granting it in part, not later than the 15th day following the day that the  
45 Attorney General receives the petition. A copy of the Attorney General's order granting a petition



1 or part of a petition shall be served by first class mail on the [*health professional regulatory*] board,  
 2 the petitioner and the licensee or applicant who is the subject of any record ordered to be disclosed.  
 3 The [*health professional regulatory*] board shall not disclose any record prior to the seventh day  
 4 following the service of the Attorney General’s order on a licensee or applicant entitled to receive  
 5 notice under this subsection.

6 (6) If the Attorney General grants or denies the petition for a record of a health professional  
 7 regulatory board, as defined in ORS 676.160, **the Nursing Home Administrators Board or the**  
 8 **Board of Licensed Dietitians** that contains information concerning a licensee or applicant, the  
 9 board, a person denied the right to inspect or receive a copy of the record or the licensee or ap-  
 10 plicant who is the subject of the record may institute proceedings for injunctive or declaratory relief  
 11 in the circuit court for the county where the public record is held. The party seeking disclosure of  
 12 the record shall have the burden of demonstrating by clear and convincing evidence that the public  
 13 interest in disclosure outweighs other interests in nondisclosure, including but not limited to the  
 14 public interest in nondisclosure.

15 (7) The Attorney General may comply with a request of a health professional regulatory board,  
 16 **as defined in ORS 676.160, the Nursing Home Administrators Board or the Board of Licensed**  
 17 **Dietitians** to be represented by independent counsel in any proceeding under subsection (6) of this  
 18 section.

19 **SECTION 13.** ORS 401.651 is amended to read:

20 401.651. As used in ORS 401.651 to 401.670:

21 (1) “Health care facility” means a health care facility as defined in ORS 442.015 that has been  
 22 licensed under ORS chapter 441.

23 (2) “Health care provider” means:

24 (a) An individual licensed, certified or otherwise authorized or permitted by the laws of this  
 25 state or another state to administer health care services in the ordinary course of business or  
 26 practice of a profession; and

27 (b) A person entered in the emergency health care provider registry under ORS 401.658.

28 (3) “Health professional regulatory board” [*has the meaning given that term in ORS 676.160*]  
 29 **means a health professional regulatory board, as defined in ORS 676.160, the Nursing Home**  
 30 **Administrators Board and the Board of Licensed Dietitians.**

31 **SECTION 14.** ORS 414.665 is amended to read:

32 414.665. (1) The Oregon Health Authority, in consultation with the appropriate health profes-  
 33 sional regulatory boards as defined in ORS 676.160, **appropriate boards and councils listed under**  
 34 **ORS 676.606** and advocacy groups, shall develop and establish with respect to community health  
 35 workers, personal health navigators, peer wellness specialists and other health care workers who  
 36 are not regulated or certified by this state:

37 (a) The criteria and descriptions of such individuals that may be utilized by coordinated care  
 38 organizations; and

39 (b) Education and training requirements for such individuals.

40 (2) The criteria and requirements established under subsection (1) of this section:

41 (a) Must be broad enough to encompass the potential unique needs of any coordinated care or-  
 42 ganization;

43 (b) Must meet requirements of the Centers for Medicare and Medicaid Services to qualify for  
 44 federal financial participation; and

45 (c) May not require certification by the Home Care Commission.

1       **SECTION 15.** ORS 431.960 is amended to read:

2       431.960. As used in ORS 431.962 to 431.978 and 431.992:

3       (1) “Dispense” and “dispensing” have the meanings given those terms in ORS 689.005.

4       (2) “Drug outlet” has the meaning given that term in ORS 689.005.

5       (3) “Health professional regulatory board” *[has the meaning given that term in ORS 676.160]*  
6       **means a health professional regulatory board, as defined in ORS 676.160, the Nursing Home**  
7       **Administrators Board and the Board of Licensed Dietitians.**

8       (4) “Practitioner” has the meaning given that term in ORS 689.005.

9       (5) “Prescription” has the meaning given that term in ORS 475.005.

10      (6) “Prescription drug” has the meaning given that term in ORS 689.005.

11      **SECTION 16.** ORS 433.045, as amended by section 1, chapter 26, Oregon Laws 2012, is amended  
12 to read:

13      433.045. (1) As used in this section:

14      (a) “Health care provider” means an individual licensed by a health professional regulatory  
15 board, as *[that term is]* defined in ORS 676.160, **the Nursing Home Administrators Board or the**  
16 **Board of Licensed Dietitians.**

17      (b) “HIV test” means a test of an individual for the presence of HIV, or for antibodies or  
18 antigens that result from HIV infection, or for any other substance specifically indicating infection  
19 with HIV.

20      (c) “Insurance producer” has the meaning given that term in ORS 746.600.

21      (d) “Insurance-support organization” has the meaning given that term in ORS 746.600.

22      (e) “Insurer” has the meaning given that term in ORS 731.106.

23      (2) Except as provided in ORS 433.017, 433.055 (3) and 433.080, a health care provider or the  
24 provider’s designee shall, before subjecting an individual to an HIV test:

25      (a) Notify the individual being tested; and

26      (b) Allow the individual being tested the opportunity to decline the test.

27      (3) The notification and opportunity to decline testing required under subsection (2) of this sec-  
28 tion may be verbal or in writing, and may be contained in a general medical consent form.

29      (4)(a) Regardless of the manner of receipt or the source of the information, including information  
30 received from the tested individual, a person may not disclose or be compelled to disclose the iden-  
31 tity of any individual upon whom an HIV-related test is performed, or the results of such a test in  
32 a manner that permits identification of the subject of the test, except as required or permitted by  
33 federal law, the law of this state or any rule, including any authority rule considered necessary for  
34 public health or health care purposes, or as authorized by the individual whose blood is tested.

35      (b) This subsection does not apply to an individual acting in a private capacity and not in an  
36 employment, occupational or professional capacity.

37      (5) A person who complies with the requirements of this section is not subject to an action for  
38 civil damages.

39      (6) Whenever an insurer, insurance producer or insurance-support organization asks an appli-  
40 cant for insurance to take an HIV test in connection with an application for insurance, the insurer,  
41 insurance producer or insurance-support organization must reveal the use of the test to the appli-  
42 cant and obtain the written consent of the applicant. The consent form must disclose the purpose  
43 of the test and the persons to whom the results may be disclosed.

44      **SECTION 17.** ORS 441.057 is amended to read:

45      441.057. (1) Rules adopted pursuant to ORS 441.025 shall include procedures for the filing of

1 complaints as to the standard of care in any health care facility and provide for the confidentiality  
 2 of the identity of any complainant.

3 (2) A health care facility, or person acting in the interest of the facility, may not take any dis-  
 4 ciplinary or other adverse action against any employee who in good faith brings evidence of inap-  
 5 propriate care or any other violation of law or rules to the attention of the proper authority solely  
 6 because of the employee's action as described in this subsection.

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

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

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

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

21 (7) Information obtained by the department or the authority during an investigation of a com-  
 22 plaint or reported violation under this section is confidential and not subject to public disclosure  
 23 under ORS 192.410 to 192.505. Upon the conclusion of the investigation, the department or the au-  
 24 thority may publicly release a report of the department's or the authority's findings but may not  
 25 include information in the report that could be used to identify the complainant or any patient at  
 26 the health care facility. The department or the authority may use any information obtained during  
 27 an investigation in an administrative or judicial proceeding concerning the licensing of a health care  
 28 facility, and may report information obtained during an investigation to a health professional regu-  
 29 latory board, as defined in ORS 676.160, **the Nursing Home Administrators Board or the Board**  
 30 **of Licensed Dietitians** as that information pertains to a licensee of the board.

31 **SECTION 18.** ORS 676.110 is amended to read:

32 676.110. (1) An individual practicing a health care profession may not use the title "doctor" in  
 33 connection with the profession, unless the individual:

34 (a) Has earned a doctoral degree in the individual's field of practice; and

35 (b)(A) Is licensed by a health professional regulatory board, as defined in ORS 676.160, **the**  
 36 **Nursing Home Administrators Board or the Board of Licensed Dietitians** to practice the par-  
 37 ticular health care profession in which the individual's doctoral degree was earned; or

38 (B) Is working under a board-approved residency contract and is practicing under the license  
 39 of a supervisor who is licensed by a health professional regulatory board, as defined in ORS  
 40 676.160, **the Nursing Home Administrators Board or the Board of Licensed Dietitians** to  
 41 practice the particular health care profession in which the individual's doctoral degree was earned.

42 (2) If an individual uses the title "doctor" in connection with a health care profession at any  
 43 time, the individual must designate the health care profession in which the individual's doctoral  
 44 degree was earned on all written or printed matter, advertising, billboards, signs or professional  
 45 notices used in connection with the health care profession, regardless of whether the individual's

1 name or the title “doctor” appears on the written or printed matter, advertising, billboard, sign or  
 2 professional notice. The designation must be in letters or print at least one-fourth the size of the  
 3 largest letters used on the written or printed matter, advertising, billboard, sign or professional  
 4 notice, and in material, color, type or illumination to give display and legibility of at least one-fourth  
 5 that of the largest letters used on the written or printed matter, advertising, billboard, sign or pro-  
 6 fessional notice.

7 (3) Subsection (1) of this section does not prohibit:

8 (a) A chiropractic physician licensed under ORS chapter 684 from using the title “chiropractic  
 9 physician”;

10 (b) A naturopathic physician licensed under ORS chapter 685 from using the title “naturopathic  
 11 physician”;

12 (c) A person licensed to practice optometry under ORS chapter 683 from using the title “doctor  
 13 of optometry” or “optometric physician”; or

14 (d) A podiatric physician licensed under ORS 677.805 to 677.840 from using the title “podiatric  
 15 physician.”

16 **SECTION 19.** ORS 676.120 is amended to read:

17 676.120. Notwithstanding ORS 676.110, upon the death of any person duly licensed by a health  
 18 professional regulatory board, as defined in ORS 676.160, **the Nursing Home Administrators**  
 19 **Board or the Board of Licensed Dietitians**, the executors of the estate or the heirs, assigns, as-  
 20 sociates or partners may retain the use of the decedent’s name, where it appears other than as a  
 21 part of an assumed name, for no more than one year after the death of such person or until the  
 22 estate is settled, whichever is sooner.

23 **SECTION 20.** ORS 676.130 is amended to read:

24 676.130. Each health professional regulatory board, as defined in ORS 676.160, **the Nursing**  
 25 **Home Administrators Board and the Board of Licensed Dietitians** shall notify the appropriate  
 26 district attorney of any violation of ORS 676.110 and 676.120 which may be brought to the attention  
 27 of such board. The district attorney of the county in which any violation of those sections takes  
 28 place shall prosecute the violation upon being informed of the violation by any person or by one of  
 29 such boards.

30 **SECTION 21.** ORS 676.350 is amended to read:

31 676.350. (1) As used in this section:

32 (a) “Expedited partner therapy” means the practice of prescribing or dispensing antibiotic drugs  
 33 for the treatment of a sexually transmitted disease to the partner of a patient without first exam-  
 34 ining the partner of the patient.

35 (b) “Partner of a patient” means a person whom a patient diagnosed with a sexually transmitted  
 36 disease identifies as a sexual partner of the patient.

37 (c) “Practitioner” has the meaning given that term in ORS 475.005.

38 (2) A health professional regulatory board, as defined in ORS 676.160, **the Nursing Home Ad-**  
 39 **ministrators Board and the Board of Licensed Dietitians** may adopt rules permitting practi-  
 40 tioners to practice expedited partner therapy. If a board adopts rules permitting practitioners to  
 41 practice expedited partner therapy, the board shall consult with the Oregon Health Authority to  
 42 determine which sexually transmitted diseases are appropriately addressed with expedited partner  
 43 therapy.

44 (3) A prescription issued in the practice of expedited partner therapy authorized by the rules  
 45 of a board is valid even if the name of the patient for whom the prescription is intended is not on

1 the prescription.

2 (4) The authority shall make available informational material about expedited partner therapy  
3 that a practitioner may distribute to patients.

4 **SECTION 22.** ORS 676.400 is amended to read:

5 676.400. (1) It is the intention of the Legislative Assembly to achieve the goal of universal access  
6 to adequate levels of high quality health care at an affordable cost for all Oregonians, regardless  
7 of ethnic or cultural background.

8 (2) The Legislative Assembly finds that:

9 (a) Access to health care is of value when it leads to treatment that substantially improves  
10 health outcomes;

11 (b) Health care is most effective when it accounts for the contribution of culture to health status  
12 and health outcomes;

13 (c) Ethnic and racial minorities experience more than their statistically fair share of undesirable  
14 health outcomes;

15 (d) The lack of licensed health care professionals from ethnic and racial minorities or who are  
16 bilingual contributes to the inadequacy of health outcomes in communities of color in this state; and

17 (e) The development of a partnership between health professional regulatory boards and com-  
18 munities of color to increase the representation of people of color and bilingual people in health  
19 care professions has significant potential to improve the health outcomes of people of color and bi-  
20 lingual citizens of this state.

21 (3) Health professional regulatory boards shall establish programs to increase the representation  
22 of people of color and bilingual people on the boards and in the professions that they regulate. Such  
23 programs must include activities to promote the education, recruitment and professional practice  
24 of members of these targeted populations in Oregon.

25 (4) Each health professional regulatory board shall maintain records of the racial and ethnic  
26 makeup of applicants and professionals regulated by the board. Such information shall be requested  
27 from applicants and the professionals regulated who shall be informed in writing that the provision  
28 of such information is voluntary and not required.

29 (5) Each health professional regulatory board shall report biennially to the Legislative Assembly  
30 in the manner required by ORS 192.245. The report shall contain:

31 (a) Data detailing the efforts of the board to comply with the requirements of subsection (3) of  
32 this section; and

33 (b) Data collected under subsection (4) of this section documenting the ethnic and racial makeup  
34 of the applicants and of the professionals regulated by the board.

35 (6) For purposes of this section, "health professional regulatory board" [*has the meaning given*  
36 *that term in ORS 676.160*] **means a health professional regulatory board, as defined in ORS**  
37 **676.160, the Nursing Home Administrators Board and the Board of Licensed Dietitians.**

38 **SECTION 23.** ORS 688.125 is amended to read:

39 688.125. In order to ensure that physical therapy treatment of a patient is based solely on the  
40 needs of a patient, any health care practitioner licensed by a health professional regulatory board,  
41 as defined in ORS 676.160, **the Nursing Home Administrators Board or the Board of Licensed**  
42 **Dietitians** who owns, in part or in whole, a physical therapy practice, or who employs a physical  
43 therapist, shall communicate the facts of that ownership or employment relationship to patients for  
44 whom physical therapy is prescribed and inform the patient that alternative sources of physical  
45 therapy treatment are available.

1       **SECTION 24.** ORS 690.025 is amended to read:

2       690.025. ORS 690.005 to 690.235 do not apply to:

3       (1) Persons who perform service without compensation in case of emergency or in domestic ad-  
4       ministration.

5       (2) Persons licensed by a health professional regulatory board listed in ORS 676.160, **the**  
6       **Nursing Home Administrators Board or the Board of Licensed Dietitians** who are acting  
7       within the scope of their professional license.

8       (3) Persons identified by the Oregon Health Licensing Agency or Board of Cosmetology by rule  
9       who are acting under the authority of a hospital or long term care facility licensed under ORS  
10      441.025 or a residential facility licensed under ORS 443.415.

11      (4) Persons engaged in rendering emergency medical assistance as defined in ORS 30.800.

12      (5) Persons licensed by the State Board of Pharmacy, merchants or other individuals when  
13      demonstrating apparatus or supplies for purposes of sale.

14      (6) Commissioned medical and surgical officers and personnel of the United States Armed Ser-  
15      vices while operating on a military base and personnel of correctional institutions while operating  
16      on the premises of a correctional facility.

17      (7) Persons applying temporary makeup, combing hair or applying hair spray, without compen-  
18      sation specifically for the application or combing, for the sole purpose of preparing any individual  
19      for a professional photograph or theatrical performance.

20      (8) A student while engaged in training at the direction of and under the direct supervision of  
21      the faculty of a school licensed under ORS 345.010 to 345.450 to teach a field of practice.

22      (9) The agency may exempt practitioners providing services at charitable or fund raising events.  
23      In establishing an exemption, the agency shall consider and evaluate each written request on an  
24      individual basis.

25      **SECTION 25.** ORS 743.918 is amended to read:

26      743.918. (1) As used in this section:

27      (a) "Complete application" means a provider's application to a health insurer to become a cre-  
28      dentialled provider that includes:

29      (A) Information required by the health insurer;

30      (B) Proof that the provider is licensed by a health professional regulatory board, as defined in  
31      ORS 676.160, **the Nursing Home Administrators Board or the Board of Licensed Dietitians**;

32      (C) Proof of current registration with the Drug Enforcement Administration of the United States  
33      Department of Justice, if applicable to the provider's practice; and

34      (D) Proof that the provider is covered by a professional liability insurance policy or certification  
35      meeting the health insurer's requirements.

36      (b) "Credentialing period" means the period beginning on the date a health insurer receives a  
37      complete application and ending on the date the health insurer approves or rejects the complete  
38      application or 90 days after the health insurer receives the complete application, whichever is ear-  
39      lier.

40      (c) "Health insurer" means an insurer that offers managed health insurance or preferred pro-  
41      vider organization insurance, other than a health maintenance organization as defined in ORS  
42      750.005.

43      (2) A health insurer shall approve or reject a complete application within 90 days of receiving  
44      the application.

45      (3)(a) A health insurer shall pay all claims for medical services covered by the health insurer

1 that are provided by a provider during the credentialing period.

2 (b) A provider may submit claims for medical services provided during the credentialing period  
3 during or after the credentialing period.

4 (c) A health insurer may pay claims for medical services provided during the credentialing pe-  
5 riod:

6 (A) During or after the credentialing period.

7 (B) At the rate paid to nonparticipating providers.

8 (d) If a provider submits a claim for medical services provided during the credentialing period  
9 within six months after the end of the credentialing period, the health insurer may not deny payment  
10 of the claim on the basis of the health insurer's rules relating to timely claims submission.

11 (4) Subsection (3) of this section does not require a health insurer to pay claims for medical  
12 services provided during the credentialing period if:

13 (a) The provider was previously rejected or terminated as a participating provider in any health  
14 benefit plan underwritten or administered by the health insurer;

15 (b) The rejection or termination was due to the objectively verifiable failure of the provider to  
16 provide medical services within the recognized standards of the provider's profession; and

17 (c) The provider was given the opportunity to contest the rejection or termination before a panel  
18 of peers in a proceeding conducted in conformity with the Health Care Quality Improvement Act  
19 of 1986, 42 U.S.C. 11101 et seq.

20  
21 **OPERATIVE DATE**

22  
23 **SECTION 26.** (1) Sections 1 to 3 of this 2013 Act and the amendments to ORS 192.450,  
24 401.651, 414.665, 431.960, 433.045, 441.057, 675.385, 676.110, 676.120, 676.130, 676.160, 676.350,  
25 676.400, 676.608, 676.609, 678.725, 678.820, 687.490, 688.125, 690.025, 690.167 and 743.918 by  
26 sections 4 to 25 of this 2013 Act become operative on January 1, 2014.

27 (2) The Oregon Health Licensing Agency may take any action before the operative date  
28 specified in subsection (1) of this section that is necessary to enable the agency to exercise,  
29 on and after the operative date specified in subsection (1) of this section, all the duties,  
30 functions and powers conferred on the agency by sections 1 to 3 of this 2013 Act and the  
31 amendments to ORS 192.450, 401.651, 414.665, 431.960, 433.045, 441.057, 675.385, 676.110, 676.120,  
32 676.130, 676.160, 676.350, 676.400, 676.608, 676.609, 678.725, 678.820, 687.490, 688.125, 690.025,  
33 690.167 and 743.918 by sections 4 to 25 of this 2013 Act.

34  
35 **UNIT CAPTIONS**

36  
37 **SECTION 27.** The unit captions used in this 2013 Act are provided only for the conven-  
38 ience of the reader and do not become part of the statutory law of this state or express any  
39 legislative intent in the enactment of this 2013 Act.

40  
41 **EMERGENCY CLAUSE**

42  
43 **SECTION 28.** This 2013 Act being necessary for the immediate preservation of the public  
44 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect  
45 on its passage.

