

Enrolled
House Bill 2622

Sponsored by Representative CLEM (at the request of Oregon Podiatric Association) (Pre-session filed.)

CHAPTER

AN ACT

Relating to podiatry; creating new provisions; and amending ORS 30.302, 31.740, 40.235, 58.015, 67.005, 124.050, 192.556, 315.616, 419B.005, 430.735, 433.443, 441.063, 441.098, 442.562, 442.700, 475.950, 659A.150, 676.110, 677.010, 677.087, 677.089, 677.092, 677.095, 677.097, 677.120, 677.188, 677.235, 677.265, 677.450, 677.805, 677.814, 677.815, 688.132, 688.230, 742.400, 743.803 and 746.600.

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

DEFINITIONS

SECTION 1. ORS 677.010 is amended to read:

677.010. As used in this chapter, subject to the exemptions in ORS 677.060 and unless the context requires otherwise:

(1) "Approved internship" means the first year of post-graduate training served in a hospital that is approved by the board or by the Accreditation Council of Graduate Medical Education, the American Osteopathic Association or the Royal College of Physicians and Surgeons of Canada.

(2) "Approved school of medicine" means a school offering a full-time resident program of study in medicine or osteopathy leading to a degree of Doctor of Medicine or Doctor of Osteopathy, such program having been fully accredited or conditionally approved by the Liaison Committee on Medical Education, or its successor agency, or the American Osteopathic Association, or its successor agency, or having been otherwise determined by the board to meet the association standards as specifically incorporated into board rules.

(3) "Board" means the Oregon Medical Board.

(4) "Diagnose" means to examine another person in any manner to determine the source or nature of a disease or other physical or mental condition, or to hold oneself out or represent that a person is so examining another person. It is not necessary that the examination be made in the presence of such other person; it may be made on information supplied either directly or indirectly by such other person.

(5) "Dispense" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.

(6) "Dispensing physician" means a physician or podiatric physician and surgeon who purchases prescription drugs for the purpose of dispensing them to patients or other individuals entitled to receive the prescription drug and who dispenses them accordingly.

(7) “Drug” means all medicines and preparations for internal or external use of humans, intended to be used for the cure, mitigation or prevention of diseases or abnormalities of humans, which are recognized in any published United States Pharmacopoeia or National Formulary, or otherwise established as a drug.

(8) “Fellow” means an individual who has not qualified under ORS 677.100 (1) and (2) and who is pursuing some special line of study as part of a supervised program of a school of medicine, a hospital approved for internship or residency training, or an institution for medical research or education that provides for a period of study under the supervision of a responsible member of that hospital or institution, such school, hospital or institution having been approved by the board.

(9) “Intern” means an individual who has entered into a hospital or hospitals for the first year of post-graduate training.

(10) “License” means permission to practice, whether by license, registration or certification.

(11) “Licensee” means an individual holding a valid license issued by the board.

(12) “Physical incapacity” means a condition that renders an individual licensed under this chapter unable to practice under that license with professional skill and safety by reason of physical illness or physical deterioration that adversely affects cognition, motor or perceptive skill.

(13) “Physician” means *[any]* a person who holds a degree of Doctor of Medicine or Doctor of Osteopathy[.], **or a person who holds a degree of Doctor of Podiatric Medicine if the context in which the term “physician” is used does not authorize or require the person to practice outside the scope of a license issued under ORS 677.805 to 677.840.**

(14) “Podiatric physician and surgeon” means a *[podiatric physician and surgeon]* **physician** licensed under ORS 677.805 to 677.840 to treat ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.

(15)(a) “Podiatry” means:

(A) The diagnosis or the medical, physical or surgical treatment of ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital licensed under ORS 441.025 or in an ambulatory surgical center licensed by the Oregon Health Authority and is under the supervision of or in collaboration with a podiatric physician and surgeon; and

(B) Assisting in the performance of surgery, as provided in ORS 677.814.

(b) “Podiatry” does not include administering general or spinal anesthetics or the amputation of the entire foot.

[(15)] (16) “Prescribe” means to direct, order or designate the use of or manner of using by spoken or written words or other means.

[(16)] (17) “Resident” means an individual who, after the first year of post-graduate training, in order to qualify for some particular specialty in the field of medicine, pursues a special line of study as part of a supervised program of a hospital approved by the board.

SECTION 2. ORS 30.302 is amended to read:

30.302. (1) As used in this section, “retired physician” means any person:

(a) Who holds a degree of Doctor of Medicine, *[or]* Doctor of Osteopathy **or Doctor of Podiatric Medicine**, or **who** has met the minimum educational requirements for licensure to practice naturopathic medicine;

(b) Who has been licensed and is currently retired in accordance with the provisions of ORS chapter 677 or 685;

(c) Who is registered with the Oregon Medical Board as a retired emeritus physician or who complies with the requirements of the Oregon Board of Naturopathic Medicine as a retired naturopath;

(d) Who registers with the county health officer in the county in which the physician or naturopath practices; and

(e) Who provides medical care as a volunteer without compensation solely through referrals from the county health officer specified in paragraph (d) of this subsection.

(2) Any retired physician who treats patients pursuant to this section shall be considered to be an agent of a public body for the purposes of ORS 30.260 to 30.300.

SECTION 3. ORS 40.235 is amended to read:

40.235. (1) As used in this section, unless the context requires otherwise:

(a) "Confidential communication" means a communication not intended to be disclosed to third persons except:

(A) Persons present to further the interest of the patient in the consultation, examination or interview;

(B) Persons reasonably necessary for the transmission of the communication; or

(C) Persons who are participating in the diagnosis and treatment under the direction of the physician, including members of the patient's family.

(b) "Patient" means a person who consults or is examined or interviewed by a physician.

(c)(A) "Physician" means a person authorized and licensed or certified to practice medicine, **podiatry** or dentistry in any state or nation, or reasonably believed by the patient so to be, while engaged in the diagnosis or treatment of a physical condition.

(B) "Physician" includes licensed or certified naturopathic and chiropractic physicians and dentists.

(2) A patient has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications in a civil action, suit or proceeding, made for the purposes of diagnosis or treatment of the patient's physical condition, among the patient, the patient's physician or persons who are participating in the diagnosis or treatment under the direction of the physician, including members of the patient's family.

(3) The privilege created by this section may be claimed by:

(a) The patient;

(b) A guardian or conservator of the patient;

(c) The personal representative of a deceased patient; or

(d) The person who was the physician, but only on behalf of the patient. Such person's authority so to do is presumed in the absence of evidence to the contrary.

(4) The following is a nonexclusive list of limits on the privilege granted by this section:

(a) If the judge orders an examination of the physical condition of the patient, communications made in the course thereof are not privileged under this section with respect to the particular purpose for which the examination is ordered unless the judge orders otherwise.

(b) Except as provided in ORCP 44, there is no privilege under this section for communications made in the course of a physical examination performed under ORCP 44.

(c) There is no privilege under this section with regard to any confidential communication or record of such confidential communication that would otherwise be privileged under this section when the use of the communication or record is specifically allowed under ORS 426.070, 426.074, 426.075, 426.095, 426.120 or 426.307. This paragraph only applies to the use of the communication or record to the extent and for the purposes set forth in the described statute sections.

STATUTES REGULATING PHYSICIANS

SECTION 4. ORS 677.095 and 677.097 are added to and made a part of ORS chapter 677.

SECTION 5. ORS 677.087 is amended to read:

677.087. (1) Any physician [*or podiatric physician and surgeon*] having agreed with a patient to perform any surgical operation or procedure, shall perform the surgery personally or, prior to surgery, shall inform the patient that the physician [*or podiatric physician and surgeon*] will not be performing the surgery.

(2) This section shall not apply when the physician [*or podiatric physician and surgeon*], because of an emergency, cannot personally notify the patient that the physician [*or podiatric physician and surgeon*] will not be performing the surgery.

SECTION 6. ORS 677.089 is amended to read:

677.089. (1) Prescription drugs dispensed by a physician [*or podiatric physician and surgeon*] shall be personally dispensed by the physician [*or podiatric physician and surgeon*]. Nonjudgmental dispensing functions may be delegated to staff assistants when the accuracy and completeness of the prescription is verified by the physician [*or podiatric physician and surgeon*].

(2) The dispensing physician shall maintain records of receipt and distribution of prescription drugs. These records shall be readily accessible and subject to inspection by the Oregon Medical Board.

(3) The dispensing physician shall label prescription drugs with the following information:

(a) Name of patient;

(b) The name and address of the dispensing physician;

(c) Date of dispensing;

(d) The name of the drug but if the dispensed drug does not have a brand name, the prescription label shall indicate the generic name of the drug dispensed along with the name of the drug distributor or manufacturer, its quantity per unit and the directions for its use stated in the prescription. However, if the drug is a compound, the quantity per unit need not be stated;

(e) Cautionary statements, if any, as required by law; and

(f) When applicable and as determined by the State Board of Pharmacy, an expiration date after which the patient should not use the drug.

(4) Prescription drugs shall be dispensed in containers complying with the federal Poison Prevention Packaging Act unless the patient requests a noncomplying container.

SECTION 7. ORS 677.092 is amended to read:

677.092. Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a physician [*or a podiatric physician and surgeon*] who has reasonable cause to believe that a licensee of another board has engaged in prohibited conduct as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS 676.150.

SECTION 8. ORS 677.095 is amended to read:

677.095. (1) A physician [*or podiatric physician and surgeon*] licensed to practice medicine or podiatry by the Oregon Medical Board has the duty to use that degree of care, skill and diligence that is used by ordinarily careful physicians [*or podiatric physicians and surgeons*] in the same or similar circumstances in the community of the physician [*or podiatric physician and surgeon*] or a similar community.

(2) In any suit, action or arbitration seeking damages for professional liability from a health care provider, no issue shall be precluded on the basis of a default, stipulation, agreement or any other outcome at any stage of an investigation or an administrative proceeding, including but not limited to a final order.

SECTION 9. ORS 677.097 is amended to read:

677.097. (1) In order to obtain the informed consent of a patient, a physician[, *podiatric physician and surgeon*] or physician assistant shall explain the following:

(a) In general terms the procedure or treatment to be undertaken;

(b) That there may be alternative procedures or methods of treatment, if any; and

(c) That there are risks, if any, to the procedure or treatment.

(2) After giving the explanation specified in subsection (1) of this section, the physician[, *podiatric physician and surgeon*] or physician assistant shall ask the patient if the patient wants a more detailed explanation. If the patient requests further explanation, the physician[, *podiatric physician and surgeon*] or physician assistant shall disclose in substantial detail the procedure, the viable alternatives and the material risks unless to do so would be materially detrimental to the patient. In determining that further explanation would be materially detrimental the physician[, *podiatric physician and surgeon*] or physician assistant shall give due consideration to the standards of practice of reasonable medical or podiatric practitioners in the same or a similar community under the same or similar circumstances.

SECTION 10. ORS 677.120 is amended to read:

677.120. (1) As used in this section, "health clinic" means a public health clinic or a health clinic operated by a charitable corporation that mainly provides primary physical health, dental or mental health services to low-income patients without charge or using a sliding fee scale based on the income of the patient.

(2) A physician [*and surgeon*], **other than a podiatric physician and surgeon**, who lawfully has been issued a license to practice in another state or territory of the United States or the District of Columbia, the qualifications and licensing examinations of which are substantially similar to those of the State of Oregon, may be licensed by the Oregon Medical Board to practice medicine in this state without taking an examination, except when an examination is required under subsection (3) or (4) of this section.

(3) A person described in subsection (2) of this section, whose application is based on a license issued in another state or territory or the District of Columbia, certification of the National Board of Medical Examiners of the United States, the National Board of Examiners for Osteopathic Physicians and Surgeons or the Medical Council of Canada or successful completion of the United States Medical Licensing Examination, 10 years or more prior to the filing of an application with the Oregon Medical Board or who has ceased the practice of medicine for 12 or more consecutive months, may be required by the board to take an examination.

(4) A person described in subsection (2) of this section who volunteers at a health clinic and whose application is based on a license issued in another state or territory or the District of Columbia, certification of the National Board of Medical Examiners of the United States, the National Board of Examiners for Osteopathic Physicians and Surgeons or the Medical Council of Canada or successful completion of the United States Medical Licensing Examination or the Federation Licensing Examination may be required by the Oregon Medical Board to take a national licensing examination if the person has ceased the practice of medicine for 24 or more consecutive months immediately prior to filing the application.

(5) The Oregon Medical Board shall make the application under subsection (4) of this section available online. A physician [*and surgeon*] applying for a license under subsection (4) of this section shall pay to the board an application fee as determined by the board pursuant to ORS 677.265.

SECTION 11. ORS 677.188 is amended to read:

677.188. As used in ORS 677.190, unless the context requires otherwise:

(1) "Fraud or misrepresentation" means the intentional misrepresentation or misstatement of a material fact, concealment of or failure to make known any material fact, or any other means by which misinformation or a false impression knowingly is given.

(2) "Fraudulent claim" means a claim submitted to any patient, insurance or indemnity association, company or individual for the purpose of gaining compensation, which the person making the claim knows to be false.

(3) "Manifestly incurable condition, sickness, disease or injury" means one that is declared to be incurable by competent physicians [*and surgeons*] or by other recognized authority.

(4) "Unprofessional or dishonorable conduct" means conduct unbecoming a person licensed to practice medicine or podiatry, or detrimental to the best interests of the public, and includes:

(a) Any conduct or practice contrary to recognized standards of ethics of the medical or podiatric profession or any conduct or practice which does or might constitute a danger to the health or safety of a patient or the public or any conduct, practice or condition which does or might adversely affect a physician's [*or podiatric physician and surgeon's*] ability safely and skillfully to practice medicine or podiatry;

(b) Willful performance of any surgical or medical treatment which is contrary to acceptable medical standards; and

(c) Willful and repeated ordering or performance of unnecessary laboratory tests or radiologic studies; administration of unnecessary treatment; employment of outmoded, unproved or unscientific treatments; failure to obtain consultations when failing to do so is not consistent with the standard of care; or otherwise utilizing medical service for diagnosis or treatment which is or may be considered inappropriate or unnecessary.

SECTION 12. ORS 677.235 is amended to read:

677.235. (1) The Oregon Medical Board consists of 12 members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be residents of this state. Of the members of the board:

- (a) Seven must have the degree of Doctor of Medicine;
- (b) Two must have the degree of Doctor of Osteopathy;
- (c) One must have the degree of Doctor of Podiatric Medicine; and
- (d) Two must be members of the public representing health consumers and who are not:
 - (A) Otherwise eligible for appointment to the board; or

(B) A spouse, domestic partner, child, parent or sibling of an individual having the degree of Doctor of Medicine, Doctor of Osteopathy or Doctor of Podiatric Medicine.

(2)(a)(A) Board members required to possess the degree of Doctor of Medicine may be selected by the Governor from a list of three to five [*physicians*] **candidates** for each [*physician*] member of the board **described in subsection (1)(a) of this section** whose term expires in that year, submitted by the Oregon Medical Association not later than February 1.

(B) Board members required to possess the degree of Doctor of Osteopathy may be selected by the Governor from a list of three to five [*qualified physicians*] **candidates** for each vacancy, submitted by the Osteopathic Physicians and Surgeons of Oregon, Inc., not later than February 1 of each odd-numbered year.

(C) The board member required to possess the degree of Doctor of Podiatric Medicine may be selected by the Governor from a list of three to five [*qualified physicians*] **candidates** submitted by the Oregon Podiatric Medical Association not later than February 1 of each fourth year.

(b) The physician members [*and the member who is a podiatric physician and surgeon*] must have been in the active practice of their profession for at least five years immediately preceding their appointment.

(c) Neither the public members nor any person who is a spouse, domestic partner, child, parent or sibling of a public member may be employed as a health professional.

(d)(A) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to geographic areas of this state and ethnic group.

(B) Of the seven members who hold the degree of Doctor of Medicine, there shall be at least one member appointed from each federal congressional district.

(3)(a) The term of office of each board member is three years, but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than four terms end each year. A term begins on March 1 of the year the member is appointed and ends on the last day of February of the third year thereafter. A member may not serve more than two consecutive terms.

(b) If a vacancy occurs on the board, another qualifying member possessing the same professional degree or fulfilling the same public capacity as the person whose position has been vacated shall be appointed as provided in this section to fill the unexpired term.

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

(A) Is not a resident of this state;

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

(C) Is not a current licensee or a retired licensee whose license was in good standing at the time of retirement, if the board member was appointed to serve on the board as a licensee.

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

SECTION 13. ORS 677.265 is amended to read:

677.265. In addition to any other powers granted by this chapter, the Oregon Medical Board may:

(1) Adopt necessary and proper rules for administration of this chapter including but not limited to:

(a) Establishing fees and charges to carry out its legal responsibilities, subject to prior approval by the Oregon Department of Administrative Services and a report to the Emergency Board prior to adopting the fees and charges. The fees and charges shall be within the budget authorized by the Legislative Assembly as that budget may be modified by the Emergency Board. The fees and charges established under this section may not exceed the cost of administering the program or the purpose for which the fee or charge is established, as authorized by the Legislative Assembly for the Oregon Medical Board's budget, or as modified by the Emergency Board or future sessions of the Legislative Assembly.

(b) Establishing standards and tests to determine the moral, intellectual, educational, scientific, technical and professional qualifications required of applicants for licenses under this chapter.

(c) Enforcing the provisions of this chapter and exercising general supervision over the practice of medicine and podiatry within this state. In determining whether to discipline a licensee for a standard of care violation, the Oregon Medical Board shall determine whether the licensee used that degree of care, skill and diligence that is used by ordinarily careful physicians [*or podiatric physicians and surgeons*] in the same or similar circumstances in the community of the physician [*or podiatric physician and surgeon*] or a similar community.

(2) Issue, deny, suspend and revoke licenses and limited licenses, assess costs of proceedings and fines and place licensees on probation as provided in this chapter.

(3) Use the gratuitous services and facilities of private organizations to receive the assistance and recommendations of the organizations in administering this chapter.

(4) Make its personnel and facilities available to other regulatory agencies of this state, or other bodies interested in the development and improvement of the practice of medicine or podiatry in this state, upon terms and conditions for reimbursement as are agreed to by the Oregon Medical Board and the other agency or body.

(5) Appoint examiners, who need not be members of the Oregon Medical Board, and employ or contract with the American Public Health Association or the National Board of Medical Examiners or other organizations, agencies and persons to prepare examination questions and score examination papers.

(6) Determine the schools, colleges, universities, institutions and training acceptable in connection with licensing under this chapter. All residency, internship and other training programs carried on in this state by any hospital, institution or medical facility shall be subject to approval by the Oregon Medical Board. The board shall accept the approval by the American Osteopathic Association or the American Medical Association in lieu of approval by the board.

(7) Prescribe the time, place, method, manner, scope and subjects of examinations under this chapter.

(8) Prescribe all forms that it considers appropriate for the purposes of this chapter, and require the submission of photographs and relevant personal history data by applicants for licensure under this chapter.

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

- (a) Applying for a license that is issued by the board;
- (b) Applying for renewal of a license that is issued by the board; or
- (c) Under investigation by the board.

(10) Administer oaths, issue notices and subpoenas in the name of the board, enforce subpoenas in the manner authorized by ORS 183.440, hold hearings and perform such other acts as are reasonably necessary to carry out its duties under this chapter.

SECTION 14. ORS 677.450 is amended to read:

677.450. The Oregon Medical Board may release information received under ORS 441.820 concerning the revocation or restriction of a physician's [*or podiatric physician and surgeon's*] activities at a health care facility to any other health care facility licensed under ORS 441.015 to 441.087,

441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 at which that physician [or *podiatric physician and surgeon*] holds or has applied for staff privileges or other right to practice medicine or podiatry at the facility.

STATUTES REGULATING PODIATRY

SECTION 15. (1) **ORS 677.805 to 677.840 are added to and made a part of ORS chapter 677.**

(2) ORS 677.837 is added to and made a part of ORS 677.805 to 677.840.

SECTION 16. ORS 677.805 is amended to read:

677.805. As used in ORS 677.805 to 677.840[:],

[(1)] “ankle” means the tibial plafond and its posterolateral border or posterior malleolus, the medial malleolus, the distal fibula or lateral malleolus, and the talus.

[(2)] “Board” means the Oregon Medical Board.]

[(3)] “Podiatric physician and surgeon” means a podiatric physician and surgeon who treats ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle.]

[(4)(a)] “Podiatry” means:]

[(A)] *The diagnosis or the medical, physical or surgical treatment of ailments of the human foot, ankle and tendons directly attached to and governing the function of the foot and ankle, except treatment involving the use of a general or spinal anesthetic unless the treatment is performed in a hospital licensed under ORS 441.025 or in an ambulatory surgical center licensed by the Oregon Health Authority and is under the supervision of or in collaboration with a physician; and]*

[(B)] *Assisting a physician in surgery under ORS 677.814.]*

[(b)] “Podiatry” does not include the administration of general or spinal anesthetics or the amputation of the entire foot.]

SECTION 17. ORS 677.814 is amended to read:

677.814. A podiatric physician and surgeon may assist [*a physician*] in **performing** surgery on any part of the body.

SECTION 18. ORS 677.815 is amended to read:

677.815. (1) ORS 677.805 to 677.840 do not prevent:

(a) Any person, firm or corporation from manufacturing, selling, fitting or adjusting any shoe or appliance designed and intended to equalize pressure on different parts of the foot.

(b) The sale by licensed druggists of plasters, salves and lotions for the relief and cure of corns, warts, callosities and bunions.

(2) ORS 677.805 to 677.840 shall not be construed to apply to or interfere with:

(a) The practice of any person whose religion treats or administers to the sick or suffering by purely spiritual means, nor with any individual’s selection of any such person.

(b) Physicians licensed by the Oregon Medical Board, **other than physicians licensed under ORS 677.805 to 677.840**, nor to surgeons of the United States Army, Navy and United States Public Health Service, when in actual performance of their official duties.

MEDICAL SERVICES CONTRACTS

SECTION 19. ORS 743.803 is amended to read:

743.803. (1) A medical services contract may not require the provider, as an element of the contract or as a condition of compensation for services, to agree:

(a) In the event of alleged improper medical treatment of a patient, to indemnify the other party to the medical services contract for any damages, awards or liabilities including but not limited to judgments, settlements, attorney fees, court costs and any associated charges incurred for any reason other than the negligence or intentional act of the provider or the provider’s employees;

(b) To charge the other party to the medical services contract a rate for services rendered pursuant to the medical services contract that is no greater than the lowest rate that the provider charges for the same service to any other person;

(c) To deny care to a patient because of a determination made pursuant to the medical services contract that the care is not covered or is experimental, or to deny referral of a patient to another provider for the provision of such care, if the patient is informed that the patient will be responsible for the payment of such noncovered, experimental or referral care and the patient nonetheless desires to obtain such care or referral; or

(d) Upon the provider's withdrawal from or termination or nonrenewal of the medical services contract, not to treat or solicit a patient even at that patient's request and expense.

(2) A medical services contract shall:

(a) Grant to the provider adequate notice and hearing procedures, or such other procedures as are fair to the provider under the circumstances, prior to termination or nonrenewal of the medical services contract when such termination or nonrenewal is based upon issues relating to the quality of patient care rendered by the provider.

(b) Set forth generally the criteria used by the other party to the medical services contract for the termination or nonrenewal of the medical services contract.

(c) Entitle the provider to an annual accounting accurately summarizing the financial transactions between the parties to the medical services contract for that year.

(d) Allow the provider to withdraw from the care of a patient when, in the professional judgment of the provider, it is in the best interest of the patient to do so.

(e) Provide that a doctor of medicine or **doctor of osteopathy** licensed under ORS chapter 677 shall be retained by the other party to the medical services contract and shall be responsible for all final medical and mental health decisions relating to coverage or payment made pursuant to the medical services contract.

(f) Provide that a physician, **as defined in ORS 677.010**, who is practicing in conformity with ORS 677.095 may advocate a decision, policy or practice without being subject to termination or penalty for the sole reason of such advocacy.

(g)(A) Entitle the party to the medical services contract who is being reimbursed for the provision of health care services on a basis that includes financial risk withholds, or the party's representative, to a full accounting of health benefits claims data and related financial information on no less than a quarterly basis by the party to a medical service contract who has made reimbursement, as follows:

(i) The data shall include all pertinent information relating to the health care services provided, including related provider and patient information, reimbursements made and amounts withheld under the financial risk withhold provisions of the medical services contract for the period of time under reconciliation and settlement between the parties.

(ii) Any reconciliation and settlement undertaken pursuant to a medical services contract shall be based directly and exclusively upon data provided to the party who is being reimbursed for the provision of health care services.

(iii) All data, including supplemental information or documentation, necessary to finalize the reconciliation and settlement provisions of a medical services contract relating to financial risk withholds shall be provided to the party who is being reimbursed for the provision of health care services no later than 30 days prior to finalizing the reconciliation and settlement.

(B) Nothing in this paragraph shall be construed to prevent parties to a medical services contract from mutually agreeing to alternative reconciliation and settlement policies and procedures.

(h) Provide that when continuity of care is required to be provided under a health benefit plan by ORS 743.854, the insurer and the individual provider shall provide continuity of care to enrollees as provided in ORS 743.854.

(3) The other party to a medical services contract shall not:

(a) Refer to other documents or instruments in a contract unless the nonprovider party agrees to make available to the provider for review a copy of the documents or instruments within 72 hours of request; or

(b) Provide as an element of a contract with a third party relating to the provision of medical services to a patient of the provider that the provider's patient may not sue or otherwise recover from the nonprovider party, or must hold the nonprovider party harmless for, any and all expenses, damages, awards or liabilities that arise from the management decisions, utilization review provisions or other policies or determinations of the nonprovider party that have an impact on the provider's treatment decisions and actions with regard to the patient.

(4) An insurer, independent practice association, medical or mental health clinic or other party to a medical services contract shall provide the criteria for selection of parties to future medical services contracts upon the request of current or prospective parties.

CONFORMING AMENDMENTS

SECTION 20. ORS 31.740 is amended to read:

31.740. Punitive damages may not be awarded against a health practitioner if:

(1) The health practitioner is licensed, registered or certified as:

(a) A psychologist under ORS 675.030 to 675.070, 675.085 and 675.090;

(b) An occupational therapist under ORS 675.230 to 675.300;

(c) A regulated social worker under ORS 675.510 to 675.600;

(d) A physician under ORS 677.100 to 677.228 **or 677.805 to 677.840**;

(e) An emergency medical services provider under ORS chapter 682;

[(f) A podiatric physician and surgeon under ORS 677.820 to 677.840;]

[(g)] (f) A nurse under ORS 678.040 to 678.101;

[(h)] (g) A nurse practitioner under ORS 678.375 to 678.390;

[(i)] (h) A dentist under ORS 679.060 to 679.180;

[(j)] (i) A dental hygienist under ORS 680.040 to 680.100;

[(k)] (j) A denturist under ORS 680.515 to 680.535;

[(L)] (k) An audiologist or speech-language pathologist under ORS 681.250 to 681.350;

[(m)] (L) An optometrist under ORS 683.040 to 683.155 and 683.170 to 683.220;

[(n)] (m) A chiropractor under ORS 684.040 to 684.105;

[(o)] (n) A naturopath under ORS 685.060 to 685.110, 685.125 and 685.135;

[(p)] (o) A massage therapist under ORS 687.011 to 687.250;

[(q)] (p) A physical therapist under ORS 688.040 to 688.145;

[(r)] (q) A medical imaging licensee under ORS 688.445 to 688.525;

[(s)] (r) A pharmacist under ORS 689.151 and 689.225 to 689.285;

[(t)] (s) A physician assistant as provided by ORS 677.505 to 677.525; or

[(u)] (t) A professional counselor or marriage and family therapist under ORS 675.715 to 675.835;

and

(2) The health practitioner was engaged in conduct regulated by the license, registration or certificate issued by the appropriate governing body and was acting within the scope of practice for which the license, registration or certificate was issued and without malice.

SECTION 21. ORS 58.015 is amended to read:

58.015. As used in this chapter, unless the context requires otherwise:

(1) "Foreign professional corporation" means a professional corporation organized under laws other than the laws of this state.

(2) "License" includes a license, certificate of registration, permit or other legal authorization required by law as a condition precedent to the rendering of professional service or services within this state.

(3) "Oregon Business Corporation Act" has the same meaning given that term in ORS 60.951.

(4) "Practicing medicine" has the meaning given that term in ORS 677.085.

- (5) “Professional” means:
- (a) Accountants licensed under ORS 673.010 to 673.457 or the laws of another state;
 - (b) Architects licensed under ORS 671.010 to 671.220 or the laws of another state;
 - (c) Attorneys licensed under ORS 9.005 to 9.755 or the laws of another state;
 - (d) Chiropractors licensed under ORS chapter 684 or the laws of another state;
 - (e) Dentists licensed under ORS chapter 679 or the laws of another state;
 - (f) Landscape architects licensed under ORS 671.310 to 671.459 or the laws of another state;
 - (g) Naturopaths licensed under ORS chapter 685 or the laws of another state;
 - (h) Nurse practitioners licensed under ORS 678.010 to 678.410 or the laws of another state;
 - (i) Psychologists licensed under ORS 675.010 to 675.150 or the laws of another state;
 - (j) Physicians licensed under ORS chapter 677 or the laws of another state;
 - [*k*] *Podiatrists licensed under ORS chapter 677 or the laws of another state;*
 - [*L*] (**k**) Medical imaging licensees under ORS 688.405 to 688.605 or the laws of another state;
 - [*m*] (**L**) Real estate appraisers licensed or certified under ORS chapter 674 or the laws of another state; and
 - [*n*] (**m**) Other persons providing to the public types of personal service or services substantially similar to those listed in paragraphs (a) to [*m*] (**L**) of this subsection that may be lawfully rendered only pursuant to a license.

(6) “Professional corporation” or “domestic professional corporation” means a corporation organized under this chapter for the specific purpose of rendering professional service or services and for such other purposes provided under this chapter.

(7) “Professional service” means personal service or services rendered in this state to the public which may be lawfully rendered only pursuant to a license by a professional.

(8) “Regulatory board” means the governmental agency of the State of Oregon required or authorized by law to license and regulate the rendering of a professional service or services for which a professional corporation is organized.

SECTION 22. ORS 67.005 is amended to read:

67.005. As used in this chapter:

- (1) “Business” includes every trade, occupation, profession and commercial activity.
- (2) “Debtor in bankruptcy” means a person who is the subject of:
 - (a) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or
 - (b) A comparable order under federal, state or foreign law governing insolvency.
- (3) “Dissociated partner” means a partner with respect to whom an event specified in ORS 67.220 has occurred.
- (4) “Distribution” means a transfer of money or other property from a partnership to a partner in the partner’s capacity as a partner or to the partner’s transferee.
- (5) “Foreign limited liability partnership” means a partnership that:
 - (a) Is formed under laws other than the law of this state; and
 - (b) Has the status of a limited liability partnership under those laws.
- (6) “Limited liability partnership” means a partnership that has registered under ORS 67.590, and has not registered or qualified in any other jurisdiction other than as a foreign limited liability partnership.
- (7) “Partnership” means an association of two or more persons to carry on as co-owners a business for profit created under ORS 67.055, predecessor law, or comparable law of another jurisdiction. A partnership includes a limited liability partnership.
- (8) “Partnership agreement” means the agreement, whether written, oral or implied, among the partners concerning the partnership, including amendments to the partnership agreement.
- (9) “Partnership at will” means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(10) “Partnership interest” or “partner’s interest in the partnership” means all of a partner’s interests in the partnership, including the partner’s transferable interest and all management and other rights.

(11) “Person” means an individual, corporation, business trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, instrumentality or any other legal or commercial entity.

(12) “Professional” means:

- (a) Accountants licensed under ORS 673.010 to 673.457 or the laws of another state;
- (b) Architects licensed under ORS 671.010 to 671.220 or the laws of another state;
- (c) Attorneys licensed under ORS 9.005 to 9.755 or the laws of another state;
- (d) Chiropractors licensed under ORS chapter 684 or the laws of another state;
- (e) Dentists licensed under ORS chapter 679 or the laws of another state;
- (f) Landscape architects licensed under ORS 671.310 to 671.459 or the laws of another state;
- (g) Naturopaths licensed under ORS chapter 685 or the laws of another state;
- (h) Nurse practitioners licensed under ORS 678.010 to 678.410 or the laws of another state;
- (i) Psychologists licensed under ORS 675.010 to 675.150 or the laws of another state;
- (j) Physicians licensed under ORS chapter 677 or the laws of another state;
- [(k) Podiatrists licensed under ORS chapter 677 or the laws of another state;]*
- [(L)] (k)* Medical imaging licensees under ORS 688.405 to 688.605 or the laws of another state;
- [(m)] (L)* Real estate appraisers licensed under ORS chapter 674 or the laws of another state;

and

[(n)] (m) Other persons providing to the public types of personal service or services substantially similar to those listed in paragraphs (a) to *[(m)] (L)* of this subsection that may be lawfully rendered only pursuant to a license.

(13) “Professional service” means the service rendered by a professional.

(14) “Property” means all property, real, personal or mixed, tangible or intangible, or any interest therein.

(15) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any territory or insular possession subject to the jurisdiction of the United States.

(16) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, encumbrance, creation of a security interest and any other disposition.

(17) “Transferable interest of a partner in the partnership” means the partner’s share of the profits and losses of the partnership and the partner’s right to receive distributions.

SECTION 23. ORS 124.050 is amended to read:

124.050. As used in ORS 124.050 to 124.095:

(1) “Abuse” means one or more of the following:

(a) Any physical injury to an elderly person caused by other than accidental means, or which appears to be at variance with the explanation given of the injury.

(b) Neglect.

(c) Abandonment, including desertion or willful forsaking of an elderly person or the withdrawal or neglect of duties and obligations owed an elderly person by a caretaker or other person.

(d) Willful infliction of physical pain or injury upon an elderly person.

(e) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(f) Verbal abuse.

(g) Financial exploitation.

(h) Sexual abuse.

(i) Involuntary seclusion of an elderly person for the convenience of a caregiver or to discipline the person.

(j) A wrongful use of a physical or chemical restraint of an elderly person, excluding an act of restraint prescribed by a *[licensed]* physician **licensed under ORS chapter 677** and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(2) "Elderly person" means any person 65 years of age or older who is not subject to the provisions of ORS 441.640 to 441.665.

(3) "Facility" means:

(a) A long term care facility as that term is defined in ORS 442.015.

(b) A residential facility as that term is defined in ORS 443.400, including but not limited to an assisted living facility.

(c) An adult foster home as that term is defined in ORS 443.705.

(4) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of an elderly person or a person with a disability.

(b) Alarming an elderly person or a person with a disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by an elderly person or a person with a disability.

(d) Failing to use the income or assets of an elderly person or a person with a disability effectively for the support and maintenance of the person.

(5) "Intimidation" means compelling or deterring conduct by threat.

(6) "Law enforcement agency" means:

(a) Any city or municipal police department.

(b) Any county sheriff's office.

(c) The Oregon State Police.

(d) Any district attorney.

(e) A police department established by a university under ORS 352.383.

(7) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of an elderly person that may result in physical harm or significant emotional harm to the elderly person; or

(b) The failure of a caregiver to make a reasonable effort to protect an elderly person from abuse.

(8) "Person with a disability" means a person described in:

(a) ORS 410.040 (7); or

(b) ORS 410.715.

(9) "Public or private official" means:

(a) Physician or **physician assistant licensed under ORS chapter 677**, naturopathic physician, [*osteopathic physician,*] or chiropractor[, *physician assistant or podiatric physician and surgeon*], including any intern or resident.

(b) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(c) Employee of the Department of Human Services or community developmental disabilities program.

(d) Employee of the Oregon Health Authority, county health department or community mental health program.

(e) Peace officer.

(f) Member of the clergy.

(g) Regulated social worker.

(h) Physical, speech or occupational therapist.

(i) Senior center employee.

(j) Information and referral or outreach worker.

(k) Licensed professional counselor or licensed marriage and family therapist.

(L) Any public official who comes in contact with elderly persons in the performance of the official's official duties.

- (m) Firefighter or emergency medical services provider.
- (n) Psychologist.
- (o) Provider of adult foster care or an employee of the provider.
- (p) Audiologist.
- (q) Speech-language pathologist.

(10) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an elderly person.

(11)(a) "Sexual abuse" means:

(A) Sexual contact with an elderly person who does not consent or is considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an elderly person served by the facility or caregiver;

(D) Any sexual contact between an elderly person and a relative of the elderly person other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an elderly person and a paid caregiver who is the spouse of the elderly person.

(12) "Sexual contact" has the meaning given that term in ORS 163.305.

(13) "Verbal abuse" means to threaten significant physical or emotional harm to an elderly person or a person with a disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 24. ORS 192.556 is amended to read:

192.556. As used in ORS 192.553 to 192.581:

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) "Covered entity" means:

(a) A state health plan;

(b) A health insurer;

(c) A health care provider that transmits any health information in electronic form to carry out financial or administrative activities in connection with a transaction covered by ORS 192.553 to 192.581; or

(d) A health care clearinghouse.

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

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

(a) Quality assessment, accreditation, auditing and improvement activities;

(b) Case management and care coordination;

(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;

(d) Underwriting activities;

(e) Arranging for legal services;

(f) Business planning;

(g) Customer services;

(h) Resolving internal grievances;

(i) Creating deidentified information; and

(j) Fundraising.

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

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

(b) A physician, [*podiatric physician and surgeon*,] **or** physician assistant [*or acupuncturist*] licensed under ORS chapter 677, **an acupuncturist licensed under ORS 677.759** or an employee of the physician, [*podiatric physician and surgeon*,] physician assistant or acupuncturist;

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

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

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

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

(g) An emergency medical services provider licensed under ORS chapter 682;

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

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

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

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

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

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

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

(o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory care practitioner;

(p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the polysomnographic technologist;

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

(r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;

- (s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;
 - (t) A health care facility as defined in ORS 442.015;
 - (u) A home health agency as defined in ORS 443.005;
 - (v) A hospice program as defined in ORS 443.850;
 - (w) A clinical laboratory as defined in ORS 438.010;
 - (x) A pharmacy as defined in ORS 689.005;
 - (y) A diabetes self-management program as defined in ORS 743A.184; and
 - (z) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.
- (6) "Health information" means any oral or written information in any form or medium that:
- (a) Is created or received by a covered entity, a public health authority, an employer, a life insurer, a school, a university or a health care provider that is not a covered entity; and
 - (b) Relates to:
 - (A) The past, present or future physical or mental health or condition of an individual;
 - (B) The provision of health care to an individual; or
 - (C) The past, present or future payment for the provision of health care to an individual.
- (7) "Health insurer" means:
- (a) An insurer as defined in ORS 731.106 who offers:
 - (A) A health benefit plan as defined in ORS 743.730;
 - (B) A short term health insurance policy, the duration of which does not exceed six months including renewals;
 - (C) A student health insurance policy;
 - (D) A Medicare supplemental policy; or
 - (E) A dental only policy.
 - (b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board under ORS 735.600 to 735.650.
- (8) "Individually identifiable health information" means any oral or written health information in any form or medium that is:
- (a) Created or received by a covered entity, an employer or a health care provider that is not a covered entity; and
 - (b) Identifiable to an individual, including demographic information that identifies the individual, or for which there is a reasonable basis to believe the information can be used to identify an individual, and that relates to:
 - (A) The past, present or future physical or mental health or condition of an individual;
 - (B) The provision of health care to an individual; or
 - (C) The past, present or future payment for the provision of health care to an individual.
- (9) "Payment" includes but is not limited to:
- (a) Efforts to obtain premiums or reimbursement;
 - (b) Determining eligibility or coverage;
 - (c) Billing activities;
 - (d) Claims management;
 - (e) Reviewing health care to determine medical necessity;
 - (f) Utilization review; and
 - (g) Disclosures to consumer reporting agencies.
- (10) "Personal representative" includes but is not limited to:
- (a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with authority to make medical and health care decisions;
 - (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a representative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment decisions;
 - (c) A person appointed as a personal representative under ORS chapter 113; and

(d) A person described in ORS 192.573.

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

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

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

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

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

(12) "State health plan" means:

(a) Medical assistance as defined in ORS 414.025;

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

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

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

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

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

(b) Consultations and referrals between health care providers.

SECTION 25. ORS 315.616 is amended to read:

315.616. A resident or nonresident individual who is certified as eligible under ORS 442.561, 442.562, 442.563 or 442.564, and is licensed as a physician [*or podiatric physician and surgeon*] under ORS chapter 677, licensed as a physician assistant under ORS chapter 677, licensed as a nurse practitioner under ORS chapter 678, licensed as a certified registered nurse anesthetist under ORS chapter 678, licensed as a dentist under ORS chapter 679 or licensed as an optometrist under ORS 683.010 to 683.340 is entitled to the tax credit described in ORS 315.613 even if not a member of the hospital medical staff if the Office of Rural Health certifies that the individual:

(1) Has a rural practice that amounts to 60 percent of the individual's practice; and

(2)(a) If a physician or a physician assistant, can cause a patient to be admitted to the hospital;

(b) If a certified registered nurse anesthetist, is employed by or has a contractual relationship with one of the hospitals described in ORS 315.613 (1); or

(c) If an optometrist, has consulting privileges with a hospital listed in ORS 315.613 (1). This paragraph does not apply to an optometrist who qualifies as a "frontier rural practitioner," as defined by the Office of Rural Health.

SECTION 26. ORS 419B.005, as amended by section 60, chapter 37, Oregon Laws 2012, and section 1, chapter 92, Oregon Laws 2012, is amended to read:

419B.005. As used in ORS 419B.005 to 419B.050, unless the context requires otherwise:

(1)(a) "Abuse" means:

(A) Any assault, as defined in ORS chapter 163, of a child and any physical injury to a child which has been caused by other than accidental means, including any injury which appears to be at variance with the explanation given of the injury.

(B) Any mental injury to a child, which shall include only observable and substantial impairment of the child's mental or psychological ability to function caused by cruelty to the child, with due regard to the culture of the child.

(C) Rape of a child, which includes but is not limited to rape, sodomy, unlawful sexual penetration and incest, as those acts are described in ORS chapter 163.

(D) Sexual abuse, as described in ORS chapter 163.

(E) Sexual exploitation, including but not limited to:

(i) Contributing to the sexual delinquency of a minor, as defined in ORS chapter 163, and any other conduct which allows, employs, authorizes, permits, induces or encourages a child to engage in the performing for people to observe or the photographing, filming, tape recording or other exhibition which, in whole or in part, depicts sexual conduct or contact, as defined in ORS 167.002 or described in ORS 163.665 and 163.670, sexual abuse involving a child or rape of a child, but not in-

cluding any conduct which is part of any investigation conducted pursuant to ORS 419B.020 or which is designed to serve educational or other legitimate purposes; and

(ii) Allowing, permitting, encouraging or hiring a child to engage in prostitution or to patronize a prostitute, as defined in ORS chapter 167.

(F) Negligent treatment or maltreatment of a child, including but not limited to the failure to provide adequate food, clothing, shelter or medical care that is likely to endanger the health or welfare of the child.

(G) Threatened harm to a child, which means subjecting a child to a substantial risk of harm to the child's health or welfare.

(H) Buying or selling a person under 18 years of age as described in ORS 163.537.

(I) Permitting a person under 18 years of age to enter or remain in or upon premises where methamphetamines are being manufactured.

(J) Unlawful exposure to a controlled substance, as defined in ORS 475.005, that subjects a child to a substantial risk of harm to the child's health or safety.

(b) "Abuse" does not include reasonable discipline unless the discipline results in one of the conditions described in paragraph (a) of this subsection.

(2) "Child" means an unmarried person who is under 18 years of age.

(3) "Higher education institution" means:

(a) A community college as defined in ORS 341.005;

(b) A public university listed in ORS 352.002;

(c) The Oregon Health and Science University; and

(d) A private institution of higher education located in Oregon.

(4) "Law enforcement agency" means:

(a) A city or municipal police department.

(b) A county sheriff's office.

(c) The Oregon State Police.

(d) A police department established by a university under ORS 352.383.

(e) A county juvenile department.

(5) "Public or private official" means:

(a) Physician[, *osteopathic physician*,] **or** physician assistant[,] **licensed under ORS chapter 677 or** naturopathic physician[, *podiatric physician and surgeon*], including any intern or resident.

(b) Dentist.

(c) School employee, including an employee of a higher education institution.

(d) Licensed practical nurse, registered nurse, nurse practitioner, nurse's aide, home health aide or employee of an in-home health service.

(e) Employee of the Department of Human Services, Oregon Health Authority, Early Learning Council, Youth Development Council, Child Care Division of the Employment Department, the Oregon Youth Authority, a county health department, a community mental health program, a community developmental disabilities program, a county juvenile department, a licensed child-caring agency or an alcohol and drug treatment program.

(f) Peace officer.

(g) Psychologist.

(h) Member of the clergy.

(i) Regulated social worker.

(j) Optometrist.

(k) Chiropractor.

(L) Certified provider of foster care, or an employee thereof.

(m) Attorney.

(n) Licensed professional counselor.

(o) Licensed marriage and family therapist.

(p) Firefighter or emergency medical services provider.

(q) A court appointed special advocate, as defined in ORS 419A.004.

- (r) A child care provider registered or certified under ORS 657A.030 and 657A.250 to 657A.450.
- (s) Member of the Legislative Assembly.
- (t) Physical, speech or occupational therapist.
- (u) Audiologist.
- (v) Speech-language pathologist.
- (w) Employee of the Teacher Standards and Practices Commission directly involved in investigations or discipline by the commission.
- (x) Pharmacist.
- (y) An operator of a preschool recorded program under ORS 657A.255.
- (z) An operator of a school-age recorded program under ORS 657A.257.
- (aa) Employee of a private agency or organization facilitating the provision of respite services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney under ORS 109.056.
- (bb) Employee of a public or private organization providing child-related services or activities:
 - (A) Including but not limited to youth groups or centers, scout groups or camps, summer or day camps, survival camps or groups, centers or camps that are operated under the guidance, supervision or auspices of religious, public or private educational systems or community service organizations; and
 - (B) Excluding community-based, nonprofit organizations whose primary purpose is to provide confidential, direct services to victims of domestic violence, sexual assault, stalking or human trafficking.
- (cc) A coach, assistant coach or trainer of an amateur, semiprofessional or professional athlete, if compensated and if the athlete is a child.

SECTION 27. ORS 430.735 is amended to read:
430.735. As used in ORS 430.735 to 430.765:

- (1) "Abuse" means one or more of the following:
 - (a) Abandonment, including desertion or willful forsaking of a person with a developmental disability or the withdrawal or neglect of duties and obligations owed a person with a developmental disability by a caregiver or other person.
 - (b) Any physical injury to an adult caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.
 - (c) Willful infliction of physical pain or injury upon an adult.
 - (d) Sexual abuse of an adult.
 - (e) Neglect.
 - (f) Verbal abuse of a person with a developmental disability.
 - (g) Financial exploitation of a person with a developmental disability.
 - (h) Involuntary seclusion of a person with a developmental disability for the convenience of the caregiver or to discipline the person.
 - (i) A wrongful use of a physical or chemical restraint upon a person with a developmental disability, excluding an act of restraint prescribed by a [*licensed*] physician **licensed under ORS chapter 677** and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.
 - (j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.
 - (k) Any death of an adult caused by other than accidental or natural means.
- (2) "Adult" means a person 18 years of age or older with:
 - (a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or
 - (b) A mental illness who is receiving services from a community program or facility.
- (3) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and

funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.

(4) "Caregiver" means an individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(5) "Community program" means a community mental health program or a community developmental disabilities program as established in ORS 430.610 to 430.695.

(6) "Facility" means a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.

(7) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a person with a developmental disability.

(b) Alarming a person with a developmental disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by a person with a developmental disability.

(d) Failing to use the income or assets of a person with a developmental disability effectively for the support and maintenance of the person.

(8) "Intimidation" means compelling or deterring conduct by threat.

(9) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) A police department established by a university under ORS 352.383;

(c) Any county sheriff's office;

(d) The Oregon State Police; or

(e) Any district attorney.

(10) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a person with a developmental disability that may result in physical harm or significant emotional harm to the person;

(b) The failure of a caregiver to make a reasonable effort to protect a person with a developmental disability from abuse; or

(c) Withholding of services necessary to maintain the health and well-being of an adult which leads to physical harm of an adult.

(11) "Person with a developmental disability" means a person described in subsection (2)(a) of this section.

(12) "Public or private official" means:

(a) Physician **licensed under ORS chapter 677**, naturopathic physician, [*osteopathic physician*,] psychologist[,] or chiropractor [*or podiatric physician and surgeon*], including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(c) Employee of the Department of Human Services or Oregon Health Authority, county health department, community mental health program or community developmental disabilities program or private agency contracting with a public body to provide any community mental health service;

(d) Peace officer;

(e) Member of the clergy;

(f) Regulated social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist;

(k) Any public official who comes in contact with adults in the performance of the official's duties; or

(L) Firefighter or emergency medical services provider.

(13) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an adult.

(14)(a) "Sexual abuse" means:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver;

(D) Any sexual contact between a person with a developmental disability and a relative of the person with a developmental disability other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse of the adult.

(15) "Sexual contact" has the meaning given that term in ORS 163.305.

(16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with a developmental disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

SECTION 28. ORS 433.443 is amended to read:

433.443. (1) As used in this section:

(a) "Covered entity" means:

(A) The Children's Health Insurance Program;

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

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

(D) The state medical assistance program; and

(E) A health care provider.

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

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

(B) A physician[, *podiatric physician and surgeon,*] or physician assistant [*or acupuncturist*] licensed under ORS chapter 677, **an acupuncturist licensed under ORS 677.759** or an employee of the physician, [*podiatric physician and surgeon,*] physician assistant or acupuncturist;

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

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

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

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

(G) An emergency medical services provider licensed under ORS chapter 682;

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

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

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

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

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

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

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

(O) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory care practitioner;

(P) A polysomnographic technologist licensed under ORS 688.819 or an employee of the polysomnographic technologist;

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

(R) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;

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

(T) A health care facility as defined in ORS 442.015;

(U) A home health agency as defined in ORS 443.005;

(V) A hospice program as defined in ORS 443.850;

(W) A clinical laboratory as defined in ORS 438.010;

(X) A pharmacy as defined in ORS 689.005;

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

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

(c) "Individual" means a natural person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) Determine the causes of an illness related to the public health emergency;

(B) Identify persons at risk;

(C) Identify patterns of transmission;

(D) Provide treatment; and

(E) Take steps to control the disease.

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

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

(A) Directly to the individual who is the subject of the information or to the legal representative of that individual;

(B) To state, local or federal agencies authorized to receive such information by state or federal law;

(C) To identify or to determine the cause or manner of death of a deceased individual; or

(D) Directly to a health care provider for the evaluation or treatment of a condition that is the subject of a proclamation of a state of public health emergency issued under ORS 433.441.

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

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

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

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

SECTION 29. ORS 441.063 is amended to read:

441.063. The rules of the hospital shall include provisions for the use of the hospital facilities by [*duly licensed*] podiatric physicians and surgeons **licensed under ORS 677.805 to 677.840**, subject to rules and regulations governing the use established by the medical staff and the podiatric staff of the hospital. The staff [*comprised of physicians and podiatric physicians and surgeons*] shall regulate the admission and the conduct of the podiatric physicians and surgeons while using the facilities of the hospital and shall prescribe procedures whereby a podiatric physician and surgeon's use of the facilities may be suspended or terminated.

SECTION 30. ORS 441.098 is amended to read:

441.098. (1) As used in this section:

(a) "Facility" means a hospital, ambulatory surgical center or freestanding birthing center.

(b) "Financial interest" means a five percent or greater direct or indirect ownership interest.

(c) "Health practitioner" means a physician, [*podiatric physician and surgeon,*] dentist, direct entry midwife or licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner.

(d) "Physician" has the meaning given that term in ORS 677.010.

(2) If a health practitioner refers a patient for treatment at a facility in which the health practitioner or an immediate family member has a financial interest, the health practitioner shall inform the patient orally and in writing of that interest at the time of the referral.

(3) In obtaining informed consent for treatment that will take place at a facility, a health practitioner shall disclose the manner in which care will be provided in the event that complications occur that require health services beyond what the facility has the capability to provide.

SECTION 31. ORS 442.562 is amended to read:

442.562. The Office of Rural Health shall establish criteria for certifying individuals who are licensed [*as podiatric physicians and surgeons*] **to practice podiatry** under ORS chapter 677 as eligible for the tax credit authorized by ORS 315.616. Upon application therefor and upon a finding that the applicant is or will be providing podiatric services to one or more rural communities and otherwise meets the eligibility criteria established by the office, the office shall certify individuals eligible for the tax credit authorized by ORS 315.616.

SECTION 32. ORS 442.700 is amended to read:

442.700. As used in ORS 442.700 to 442.760:

(1) "Board of governors" means the governors of a cooperative program as described in ORS 442.720.

(2) "Cooperative program" means a program among two or more health care providers for the purpose of providing heart and kidney transplant services including, but not limited to, the sharing, allocation and referral of physicians, patients, personnel, instructional programs, support services, facilities, medical, diagnostic, laboratory or therapeutic services, equipment, devices or supplies, and other services traditionally offered by health care providers.

(3) "Health care provider" means a hospital, physician or entity, a significant part of whose activities consist of providing hospital or physician services in this state. For purposes of the immunities provided by ORS 442.700 to 442.760 and 646.740, "health care provider" includes any offi-

cer, director, trustee, employee, or agent of, or any entity under common ownership and control with, a health care provider.

(4) "Hospital" means a hospital, a long term care facility or an ambulatory surgical center, as those terms are defined in ORS 442.015, that is licensed under ORS 441.015 to 441.089. "Hospital" includes community health programs established under ORS 430.610 to 430.695.

(5) "Order" means a decision issued by the Director of the Oregon Health Authority under ORS 442.710 either approving or denying an application for a cooperative program and includes modifications of an original order under ORS 442.730 (3)(b) and ORS 442.740 (1) and (4).

(6) "Party to a cooperative program agreement" or "party" means an entity that enters into the principal agreement to establish a cooperative program and applies for approval under ORS 442.700 to 442.760 and 646.740 and any other entity that, with the approval of the director, becomes a member of a cooperative program.

(7) "Physician" means a physician [*defined in ORS 677.010 (13) and*] licensed under ORS chapter 677.

SECTION 33. ORS 475.950 is amended to read:

475.950. (1) A person commits the offense of failure to report a precursor substances transaction if the person does any of the following:

(a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does not, at least three days before delivery of the substance, submit to the Department of State Police a report that meets the reporting requirements established by rule under ORS 475.945.

(b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does not, within 10 days after receipt of the substance, submit to the Department of State Police a report that meets the reporting requirements established by rule under ORS 475.945.

(2) This section does not apply to any of the following:

(a) Any pharmacist or other authorized person who sells or furnishes a precursor substance upon the prescription of a physician **licensed under ORS chapter 677**, dentist[, *podiatric physician and surgeon*] or veterinarian.

(b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor substance to patients upon prescription.

(c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise furnishes a precursor substance to a licensed pharmacy, physician **licensed under ORS chapter 677**, dentist[, *podiatric physician and surgeon*] or veterinarian for distribution to patients upon prescription.

(d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner if the person complies with the alternate reporting requirements.

(e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance from a licensed pharmacist, physician **licensed under ORS chapter 677**, dentist[, *podiatric physician and surgeon*] or veterinarian pursuant to a prescription.

(f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in compliance with ORS 475.973.

(g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person with whom the practitioner has a doctor-patient or doctor-client relationship.

(h) Any person who obtains a precursor substance from a practitioner, as defined in ORS 475.005, with whom the person has a doctor-patient or doctor-client relationship.

(i) Any person who sells or transfers an isomer of a precursor substance, unless it is an optical isomer.

(3) Penalties related to providing false information on a report required under this section are provided under ORS 475.965.

(4) The Department of State Police and any law enforcement agency may inspect and remove copies of the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a

precursor substance during the normal business hours of the retail or wholesale distributor or may require the retail or wholesale distributor to provide copies of the records.

(5) Failure to report a precursor substances transaction is a Class A misdemeanor.

SECTION 34. ORS 659A.150 is amended to read:

659A.150. As used in ORS 659A.150 to 659A.186:

(1) "Covered employer" means an employer described in ORS 659A.153.

(2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.

(3) "Family leave" means a leave of absence described in ORS 659A.159, except that "family leave" does not include leave taken by an eligible employee who is unable to work because of a disabling compensable injury, as defined in ORS 656.005, under ORS chapter 656.

(4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

(5) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:

(A) A physician licensed [*to practice medicine under ORS 677.110, including a doctor of osteopathy*] **under ORS chapter 677;**

[(B) A podiatrist licensed under ORS 677.825;]

[(C)] (B) A dentist licensed under ORS 679.090;

[(D)] (C) A psychologist licensed under ORS 675.030;

[(E)] (D) An optometrist licensed under ORS 683.070;

[(F)] (E) A naturopath licensed under ORS 685.080;

[(G)] (F) A registered nurse licensed under ORS 678.050;

[(H)] (G) A nurse practitioner certified under ORS 678.375;

[(I)] (H) A direct entry midwife licensed under ORS 687.420;

[(J)] (I) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

[(K)] (J) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600; or

[(L)] (K) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care.

SECTION 35. ORS 676.110 is amended to read:

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

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

(b)(A) Is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual's doctoral degree was earned; or

(B) Is working under a board-approved residency contract and is practicing under the license of a supervisor who is licensed by a health professional regulatory board as defined in ORS 676.160 to practice the particular health care profession in which the individual's doctoral degree was earned.

(2) If an individual uses the title "doctor" in connection with a health care profession at any time, the individual must designate the health care profession in which the individual's doctoral degree was earned on all written or printed matter, advertising, billboards, signs or professional notices used in connection with the health care profession, regardless of whether the individual's name or the title "doctor" appears on the written or printed matter, advertising, billboard, sign or professional notice. The designation must be in letters or print at least one-fourth the size of the largest letters used on the written or printed matter, advertising, billboard, sign or professional notice, and in material, color, type or illumination to give display and legibility of at least one-fourth that of the largest letters used on the written or printed matter, advertising, billboard, sign or professional notice.

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

(a) A chiropractic physician licensed under ORS chapter 684 from using the title "chiropractic physician";

(b) A naturopathic physician licensed under ORS chapter 685 from using the title "naturopathic physician";

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

(d) A [*podiatric*] physician licensed under ORS 677.805 to 677.840 from using the title "podiatric physician."

SECTION 36. ORS 688.132 is amended to read:

688.132. (1) A licensed physical therapist shall immediately refer a person to a [*medical doctor, osteopathic physician,*] **physician licensed under ORS chapter 677**, chiropractic physician, [*podiatric physician and surgeon,*] naturopathic physician, dentist, physician assistant or nurse practitioner if:

(a) Signs or symptoms are present that require treatment or diagnosis by such providers or for which physical therapy is contraindicated or for which treatment is outside the knowledge of the physical therapist or scope of practice of physical therapy; or

(b) The physical therapist continues therapy and 60 days have passed since the initial physical therapy treatment has been administered, unless:

(A) The individual is a child or a student eligible for special education, as defined by state or federal law, and is being seen pursuant to the child's or the student's individual education plan or individual family service plan;

(B) The individual is a student athlete at a public or private school, college or university and is seeking treatment in that role as athlete; or

(C) The individual is a resident of a long term care facility as defined in ORS 442.015, a residential facility as defined in ORS 443.400, an adult foster home as defined in ORS 443.705 or an intermediate care facility for mental retardation pursuant to federal regulations.

(2) Notwithstanding any provision of ORS 742.518 to 742.542, personal injury protection benefits are not required to be paid for physical therapy treatment of a person covered by the applicable insurance policy unless the person is referred to the physical therapist by a [*licensed physician, podiatric physician and surgeon,*] **physician licensed under ORS chapter 677**, naturopathic physician, dentist, [*physician's*] **physician** assistant or nurse practitioner.

SECTION 36a. If House Bill 2684 becomes law, section 36 of this 2013 Act (amending ORS 688.132) is repealed.

SECTION 37. ORS 688.230 is amended to read:

688.230. (1) Any licensed health facility, licensed physical therapist, licensed physical therapist assistant, the Oregon Physical Therapy Association, [*or*] physician licensed under ORS chapter 677[, *podiatric physician and surgeon*] or dentist shall, and any other person may, report suspected

violations of ORS 688.010 to 688.201 to the Physical Therapist Licensing Board. The reports are confidential as provided under ORS 676.175.

(2) Any person who reports or provides information to the board under subsection (1) of this section and who provides information in good faith shall not be subject to an action for civil damages as a result thereof.

SECTION 38. ORS 742.400 is amended to read:

742.400. (1) As used in this section:

(a) "Claim" means a written demand for payment from or on behalf of a covered practitioner for an injury alleged to have been caused by professional negligence that is made in a complaint filed with a court of appropriate jurisdiction.

(b) "Covered practitioner" means a chiropractic physician, physician[, *podiatric physician and surgeon,*] or physician assistant **licensed under ORS chapter 677**, nurse practitioner, optometrist, dentist, dental hygienist or naturopath.

(c) "Disposition of a claim" means:

(A) A judgment or award against the covered practitioner by a court, a jury or an arbitrator;

(B) A withdrawal or dismissal of the claim; or

(C) A settlement of the claim.

(d) "Reporter" means:

(A) A primary insurer;

(B) A public body required to defend, save harmless and indemnify an officer, employee or agent of the public body under ORS 30.260 to 30.300;

(C) An entity that self-insures or indemnifies for claims alleging professional negligence on the part of a covered practitioner; or

(D) A health maintenance organization as defined in ORS 750.005.

(2) Within 30 days after receiving notice of a claim, a reporter shall report the claim to the appropriate board, as follows:

(a) The Oregon Medical Board if the covered practitioner is a physician[, *podiatric physician and surgeon*] or physician assistant **licensed under ORS chapter 677**;

(b) The Oregon State Board of Nursing if the covered practitioner is a nurse practitioner;

(c) The Oregon Board of Optometry if the covered practitioner is an optometrist;

(d) The Oregon Board of Dentistry if the covered practitioner is a dentist or dental hygienist;

(e) The Oregon Board of Naturopathic Medicine if the covered practitioner is a naturopath; or

(f) The State Board of Chiropractic Examiners if the covered practitioner is a chiropractic physician.

(3) The report required under subsection (2) of this section shall include:

(a) The name of the covered practitioner;

(b) The name of the person that filed the claim;

(c) The date on which the claim was filed; and

(d) The reason or reasons for the claim, except that the report may not disclose any data that is privileged under ORS 41.675.

(4) Within 30 days after the date of an action taken in disposition of a claim, a reporter shall notify the appropriate board identified in subsection (2) of this section of the disposition.

(5)(a) A board that receives a report of a claim under this section shall publicly post the report on the board's website if the claim results in a judicial finding or admission of liability or a money judgment, award or settlement that involves a payment to the claimant. The board may not publicly post information about claims that did not result in a judicial finding or admission of liability or a money judgment, award or settlement that involves a payment to the claimant but shall make the information available to the public upon request.

(b) If a board discloses information about a claim that is the subject of a report received under this section, the board shall indicate in the disclosure whether the claim resulted in a judicial finding or an admission of liability or a money judgment, an award or a settlement that involves a payment to the claimant. A board may not publicly disclose or publish any allegations or factual

assertions included in the claim unless the complaint resulted in a judicial finding or an admission of liability or a money judgment, an award or a settlement that involves a payment to the claimant.

(c) For purposes of this subsection, “judicial finding” means a finding of liability by a court, a jury or an arbitrator.

(6) A board that receives a report under this section shall provide copies of the report to each health care facility licensed under ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342, 442.344 and 442.400 to 442.463 that employs or grants staff privileges to the covered practitioner.

(7) A person that reports in good faith concerning any matter required to be reported under this section is immune from civil liability by reason of making the report.

SECTION 39. ORS 746.600 is amended to read:

746.600. As used in ORS 746.600 to 746.690:

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

(A) A declination of insurance coverage.

(B) A termination of insurance coverage.

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

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

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

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

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

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

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

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

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

(C) The rescission of a policy.

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

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

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

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

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

(a) Regularly engages, in whole or in part, in assembling or preparing consumer reports;

(b) Obtains information primarily from sources other than insurers; and

(c) Furnishes consumer reports to other persons.

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

(8) "Covered entity" means:

(a) A health insurer;

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

(c) A health care clearinghouse.

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

(a) Bears on a consumer's creditworthiness, credit standing or credit capacity; and

(b) Is used or expected to be used, or collected in whole or in part, as a factor in determining eligibility, premiums or rates for personal insurance.

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

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

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

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

(a) Quality assessment, accreditation, auditing and improvement activities;

(b) Case management and care coordination;

(c) Reviewing the competence, qualifications or performance of health care providers or health insurers;

(d) Underwriting activities;

(e) Arranging for legal services;

(f) Business planning;

(g) Customer services;

(h) Resolving internal grievances;

(i) Creating deidentified information; and

(j) Fundraising.

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

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

(b) A physician[, *podiatric physician and surgeon*,] **or** physician assistant [*or acupuncturist*] licensed under ORS chapter 677, **an acupuncturist licensed under ORS 677.759** or an employee of the physician, [*podiatric physician and surgeon*,] physician assistant or acupuncturist;

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

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

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

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

(g) An emergency medical services provider licensed under ORS chapter 682;

- (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic physician;
- (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic physician;
- (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage therapist;
- (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct entry midwife;
- (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical therapist;
- (n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical imaging licensee;
- (o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory care practitioner;
- (p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the polysomnographic technologist;
- (q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- (r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;
- (s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral service practitioner;
- (t) A health care facility as defined in ORS 442.015;
- (u) A home health agency as defined in ORS 443.005;
- (v) A hospice program as defined in ORS 443.850;
- (w) A clinical laboratory as defined in ORS 438.010;
- (x) A pharmacy as defined in ORS 689.005;
- (y) A diabetes self-management program as defined in ORS 743.694; and
- (z) Any other person or entity that furnishes, bills for or is paid for health care in the normal course of business.

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

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

(b) Relates to:

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

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

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

(16) "Health insurer" means:

(a) An insurer who offers:

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

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

(C) A student health insurance policy;

(D) A Medicare supplemental policy; or

(E) A dental only policy.

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

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

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

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

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

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

(d) Is a past or present applicant;

(e) Is a past or present claimant; or

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

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

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

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

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

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

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

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

(a) An insurance producer;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) As designated by the director by rule.

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

- (a) Efforts to obtain premiums or reimbursement;
- (b) Determining eligibility or coverage;
- (c) Billing activities;
- (d) Claims management;
- (e) Reviewing health care to determine medical necessity;
- (f) Utilization review; and
- (g) Disclosures to consumer reporting agencies.

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

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

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

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

(32) "Personal information" means:

- (a) Personal financial information;
- (b) Individually identifiable health information; or
- (c) Protected health information.

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

- (a) Private passenger automobile coverage;
- (b) Homeowner, mobile homeowners, manufactured homeowners, condominium owners and renters coverage;
- (c) Personal dwelling property coverage;
- (d) Personal liability and theft coverage, including excess personal liability and theft coverage; and
- (e) Personal inland marine coverage.

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

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

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

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

(d) A person described in ORS 746.611.

(35) "Policyholder" means a person who:

(a) In the case of individual policies of life or health insurance, is a current policyowner;

(b) In the case of individual policies of other kinds of insurance, is currently a named insured;

or

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

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

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

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

(a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the individual; and

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

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

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

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

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

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

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

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

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

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

CAPTIONS

SECTION 40. The unit captions used in this 2013 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2013 Act.

Passed by House March 4, 2013

Repassed by House May 9, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate May 7, 2013

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2013

Approved:

.....M,....., 2013

.....
John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

.....
Kate Brown, Secretary of State