

Enrolled
House Bill 2997

Sponsored by COMMITTEE ON HEALTH CARE

CHAPTER

AN ACT

Relating to direct entry midwifery; creating new provisions; amending ORS 676.607, 676.608, 676.612, 676.992, 687.405, 687.415, 687.420, 687.445, 687.480, 687.485 and 687.493; and declaring an emergency.

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

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

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

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

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

Whereas the state recognizes that pregnancy and childbirth are not illnesses; and

Whereas the provision of health care by a direct entry midwife is a reasonable choice for a healthy pregnant woman; and

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

Whereas nothing in this Act abridges, limits or changes the right of a pregnant woman to deliver a newborn where, how and with whom the pregnant woman chooses, regardless of whether a direct entry midwife is required to be licensed; now, therefore,

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

LICENSING

SECTION 1. ORS 687.415 is amended to read:

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

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

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

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

(a) The person is a licensed health care practitioner and the services described in ORS 687.405 are within the scope of the person's license; or

(b)(A) The person is acting as a traditional midwife and does not use legend drugs or devices, the use of which requires a license under the laws of this state;

(B) The person does not advertise that the person is a midwife; and

(C) The person discloses to each client on a form adopted by the State Board of Direct Entry Midwifery by rule:

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

(ii) That the person's education and qualification have not been reviewed by the state;

(iii) That the person is not authorized to carry and administer potentially life saving medications;

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

(v) A plan for transporting the client to the nearest hospital, as defined in ORS 442.015, if a problem arises during labor or childbirth;

(vi) That the client will not have recourse through a complaint process; and

(vii) The types of midwives who are licensed by the state.

(3) If supervised by a person licensed to practice direct entry midwifery, a student midwife, birth assistant or other individual may assist the direct entry midwife in the provision of services described in ORS 687.405.

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

SECTION 2. ORS 687.420 is amended to read:

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

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

[(A) Techniques in taking patient histories;]

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

[(C) Appropriate use of diagnostic testing;]

[(D) Necessity for referral;]

[(E) Pathology in childbirth;]

[(F) Mechanisms of labor;]

[(G) Aseptic techniques;]

[(H) Postpartum care;]

[(I) Examinations of newborn infants; and]

[(J) Family planning;]

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

[(c) Participation in:]

[(A) 25 assisted deliveries;]

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

[(C) 100 prenatal care visits;]

[(D) 25 newborn examinations; and]

[(E) 40 postnatal examinations;]

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

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

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

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

(c) Require the applicant to successfully complete an examination approved by the board;

(d) Require the applicant to be certified in cardiopulmonary resuscitation for infants and adults;

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

(f) Require the applicant to hold a high school diploma or to successfully pass a high school equivalency course; and

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

(A) 25 assisted deliveries;

(B) 25 deliveries for which the applicant was the primary care provider;

(C) 100 prenatal care visits;

(D) 25 newborn examinations; and

(E) 40 postnatal examinations.

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

(3) [Any] A direct entry midwife licensed under this section is entitled to payment under the rules of the medical assistance program for services provided to [any] an eligible recipient of medical assistance.

RULEMAKING AUTHORITY

SECTION 3. ORS 687.480 is amended to read:

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

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

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

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

[(3)] **(c)** Development of a written plan for emergency transport **of patients**;

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

[(5)] **(e)** Maintenance of patient disclosure forms, which [includes] **must include** information regarding whether the midwife has malpractice insurance.

SECTION 4. ORS 687.485 is amended to read:

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

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

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

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

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

INVESTIGATIONS AND DISCIPLINE

SECTION 5. ORS 676.608, as amended by section 10, chapter 314, Oregon Laws 2013 (Enrolled House Bill 2101), is amended to read:

676.608. (1) As used in this section, "public entity" has the meaning given that term in ORS 676.177.

(2)(a) The Oregon Health Licensing Agency shall carry out [all] **the** investigatory duties [relating to the boards and councils listed in ORS 676.606] **necessary to enforce the provisions of ORS 676.605 to 676.625 and 676.992.**

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

(c) **Subject to subsection (12) of this section,** when the agency receives a complaint [*by any person*] against an authorization holder, the agency shall investigate the complaint as provided in ORS 676.165.

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

- (a) Take evidence;
- (b) Administer oaths;
- (c) Take the depositions of witnesses, including the person charged;
- (d) Compel the appearance of witnesses, including the person charged;
- (e) Require answers to interrogatories;
- (f) Compel the production of books, papers, accounts, documents and testimony pertaining to the matter under investigation; and

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

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

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

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

(7) In all investigations and hearings, the agency and any person affected by the investigation or hearing may have the benefit of counsel.

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

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

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

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

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

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

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

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

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

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

SECTION 8. ORS 676.607 is amended to read:

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

(a) Budgeting;

(b) Record keeping;

(c) Staffing;

(d) Contracting;

(e) Consumer protection and investigating complaints;

(f) Approving and collecting fees;

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

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

(i) **Subject to ORS 687.445 and section 7 of this 2013 Act**, conditioning, limiting, suspending, revoking or refusing to issue or renew a certificate, license, permit or registration or otherwise disciplining applicants, certificate holders, licensees, permit holders and registration holders;

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

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

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

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

(n) Preparing and circulating printed and electronic materials for educating or otherwise assisting applicants, certificate holders, licensees, permit holders and registration holders and the public;

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

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

(q) Establishing requirements for additional education, training or supervised experience to achieve compliance with the laws and rules governing professional practice.

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

SECTION 9. ORS 676.612 is amended to read:

676.612. (1) **Subject to ORS 687.445 and section 7 of this 2013 Act, and** in the manner prescribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit a certificate, license, permit or registration to practice issued by the agency or may discipline or place on probation a holder of a certificate, license, permit or registration for commission of the prohibited acts listed in subsection (2) of this section.

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

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

(b) Using, causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, insignia or any other representation, however disseminated or published, that is false, misleading or deceptive.

(c) Making a representation that the certificate, license, permit or registration holder knew or should have known is false or misleading regarding skill or the efficacy or value of treatment or remedy administered by the holder.

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

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

(f) Practicing with a physical or mental condition that presents an unreasonable risk of harm to the holder of a certificate, license, permit or registration or to the person or property of others in the course of performing the holder's duties.

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

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

(i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered person to practice a regulated occupation or profession subject to the authority of the boards, councils and programs listed in ORS 676.606.

(j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from or failure to conform to standards of practice in performing services or practicing in a regulated occupation or profession subject to the authority of the boards, councils and programs listed under ORS 676.606.

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

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

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

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

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

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

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

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

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

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

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

(c) Under investigation by the agency.

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

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

SECTION 10. ORS 676.992 is amended to read:

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

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

(b) ORS 690.005 to 690.235 (cosmetology);

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

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

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

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

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

(h) ORS chapter 700 (environmental sanitation);

(i) ORS 676.617 (single facility licensure);

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

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

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

(m) ORS 676.612 (prohibited acts).

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

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

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

- (a) The immediacy and extent to which the violation threatens the public health or safety;
- (b) Any prior violations of statutes, rules or orders;
- (c) The history of the person incurring a penalty in taking all feasible steps to correct any violation; and
- (d) Any other aggravating or mitigating factors.

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

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

SECTION 11. ORS 687.445 is amended to read:

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

OTHER CHANGES TO STATE BOARD OF DIRECT ENTRY MIDWIFERY

SECTION 12. ORS 687.405 is amended to read:

687.405. As used in ORS 687.405 to 687.495, “direct entry midwifery” means **providing the following services for compensation:**

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

SECTION 13. ORS 687.493 is amended to read:

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

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

- (a) For neonatal use to prophylactic ophthalmic medications, vitamin K and oxygen; and
- (b) For maternal use to **antibiotics for Group B Streptococcal antibiotic prophylaxis,** postpartum antihemorrhagics, Rh_o(D) immune globulin, epinephrine, intravenous fluids, local anesthetic and oxygen.

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

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

APPLICABILITY

SECTION 14. (1) **The amendments to ORS 687.420 by section 2 of this 2013 Act apply to persons who submit an application to the Oregon Health Licensing Agency to become li-**

censed as a direct entry midwife on or after the operative date specified in section 15 of this 2013 Act.

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

OPERATIVE DATE

SECTION 15. (1) Sections 6 and 7 of this 2013 Act and the amendments to statutes by sections 1 to 5 and 8 to 13 of this 2013 Act become operative on January 1, 2014.

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

UNIT CAPTIONS

SECTION 16. 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.

EMERGENCY CLAUSE

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

Passed by House July 1, 2013

Received by Governor:

Repassed by House July 7, 2013

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

Approved:

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Ramona J. Line, Chief Clerk of House

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

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Tina Kotek, Speaker of House

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John Kitzhaber, Governor

Passed by Senate July 6, 2013

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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

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Kate Brown, Secretary of State