

## HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2997

By JOINT COMMITTEE ON WAYS AND MEANS

July 1

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

3 On page 2, after line 24, insert:

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

7 In line 25, delete “(3)” and insert “(4)”.

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

9 In line 14, delete “and”.

10 In line 16, delete the period and insert “; and”.

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

### “INVESTIGATIONS AND DISCIPLINE

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13  
14  
15 “**SECTION 5.** ORS 676.608 is amended to read:

16 “676.608. (1) As used in this section:

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

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

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

22 “(b) [*Upon its own motion,*] **Subject to subsection (12) of this section,** the agency, **upon its**  
23 **own motion,** may initiate and conduct investigations of matters relating to the practice of occupa-  
24 tions or professions subject to the authority of the boards, councils and programs listed in ORS  
25 676.606.

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

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

30 “(a) Take evidence;

31 “(b) Administer oaths;

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

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

34 “(e) Require answers to interrogatories;

35 “(f) Compel the production of books, papers, accounts, documents and testimony pertaining to

1 the matter under investigation; and

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

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

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

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

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

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

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

27 “(10) Except in an investigation or proceeding conducted by the agency or another public entity,  
28 or in an action, suit or proceeding in which a public entity is a party, a holder may not be ques-  
29 tioned or examined regarding any communication with the agency made in an appearance before the  
30 agency as part of an investigation.

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

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

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

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

39 “(c) **Consult with the board during and after the investigation for the purpose of deter-  
40 mining whether to pursue disciplinary action.**

41 “**SECTION 6. Section 7 of this 2013 Act is added to and made a part of ORS 676.605 to  
42 676.625.**

43 “**SECTION 7. The Oregon Health Licensing Agency shall delegate the authority to enter  
44 a final order for all contested cases related to the practice of direct entry midwifery, as de-  
45 fined in ORS 687.405, to the State Board of Direct Entry Midwifery. Notwithstanding ORS**

1 **183.411, the delegation of authority does not need to be made in writing before the issuance**  
2 **of an order.**

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

4 “676.607. (1) The Oregon Health Licensing Agency is responsible for the administration and  
5 regulatory oversight of the boards, councils and programs listed in ORS 676.606. The responsibilities  
6 of the agency include, but are not limited to:

7 “(a) Budgeting;

8 “(b) Record keeping;

9 “(c) Staffing;

10 “(d) Contracting;

11 “(e) Consumer protection and investigating complaints;

12 “(f) Approving and collecting fees;

13 “(g) Establishing and administering uniform application processes for the issuance of certif-  
14 icates, licenses, permits and registrations;

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

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

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

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

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

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

31 “(n) Preparing and circulating printed and electronic materials for educating or otherwise as-  
32 sisting applicants, certificate holders, licensees, permit holders and registration holders and the  
33 public;

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

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

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

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

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

1       “676.612. (1) **Subject to ORS 687.445 and section 7 of this 2013 Act, and** in the manner pre-  
2 scribed in ORS chapter 183 for contested cases and as specified in ORS 675.385, 678.780, 680.535,  
3 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and 700.111, the Oregon Health Licensing  
4 Agency may refuse to issue or renew, may suspend or revoke or may otherwise condition or limit  
5 a certificate, license, permit or registration to practice issued by the agency or may discipline or  
6 place on probation a holder of a certificate, license, permit or registration for commission of the  
7 prohibited acts listed in subsection (2) of this section.

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

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

13       “(b) Using, causing or promoting the use of any advertising matter, promotional literature, tes-  
14 timonial, guarantee, warranty, label, insignia or any other representation, however disseminated or  
15 published, that is false, misleading or deceptive.

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

19       “(d) Practicing under a false, misleading or deceptive name, or impersonating another certifi-  
20 cate, license, permit or registration holder.

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

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

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

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

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

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

38       “(k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of con-  
39 viction, certified by the clerk of the court entering the conviction, is conclusive evidence of the  
40 conviction. A plea of no contest or an admission of guilt shall be considered a conviction for pur-  
41 poses of this paragraph.

42       “(L) Failing to report any adverse action, as required by statute or rule, taken against the cer-  
43 tificate, license, permit or registration holder by another regulatory jurisdiction or any peer review  
44 body, health care institution, professional association, governmental agency, law enforcement agency  
45 or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary

1 action as described in this section.

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

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

6 “(o) Failing to cooperate with the agency in any investigation, inspection or request for infor-  
7 mation.

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

11 “(q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated  
12 occupation or profession subject to the authority of the boards, councils and programs listed in ORS  
13 676.606, or aiding or abetting such an act.

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

16 “(3) For the purpose of requesting a state or nationwide criminal records check under ORS  
17 181.534, the agency may require the fingerprints of a person who is:

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

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

21 “(c) Under investigation by the agency.

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

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

30 “**SECTION 10.** ORS 676.992 is amended to read:

31 “676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other  
32 penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty  
33 not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

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

35 “(b) ORS 690.005 to 690.235 (cosmetology);

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

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

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

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

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

43 “(h) ORS chapter 700 (environmental sanitation);

44 “(i) ORS 676.617 (single facility licensure);

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

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

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

3 “(m) ORS 676.612 (prohibited acts).

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

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

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

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

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

14 “(c) The history of the person incurring a penalty in taking all feasible steps to correct any vi-  
15 olation; and

16 “(d) Any other aggravating or mitigating factors.

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

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

23 “**SECTION 11.** ORS 687.445 is amended to read:

24 “687.445. In the manner prescribed in ORS chapter 183 for contested cases and in consultation  
25 with [*the State Board of Direct Entry Midwifery,*] the Oregon Health Licensing Agency, **the State**  
26 **Board of Direct Entry Midwifery** may impose a form of discipline specified in ORS 676.612 **and**  
27 **676.992 (1) and (2)** against any person practicing direct entry midwifery for any of the grounds  
28 listed in ORS 676.612 and for any violation of the provisions of ORS 687.405 to 687.495[,] or the rules  
29 adopted [*thereunder*] **under ORS 687.405 to 687.495.**

30  
31 **“OTHER CHANGES TO STATE BOARD OF DIRECT ENTRY MIDWIFERY**

32  
33 “**SECTION 12.** ORS 687.405 is amended to read:

34 “687.405. As used in ORS 687.405 to 687.495, ‘direct entry midwifery’ means **providing the fol-**  
35 **lowing services for compensation:**

36 “(1) Supervision of the conduct of labor and childbirth;

37 “(2) Providing advice to a parent as to the progress of childbirth; [*or*]

38 “(3) Rendering prenatal, intrapartum and postpartum care; **and**

39 “(4) **Making newborn assessments.**

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

41 “687.493. (1) A **direct entry** midwife licensed under ORS 687.405 to 687.495 may purchase and  
42 administer authorized scheduled legend drugs and devices that are used in pregnancy, birth,  
43 postpartum care, newborn care or resuscitation and that are deemed integral to providing safe care  
44 to the public by the State Board of Direct Entry Midwifery by rule.

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

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

2 “(b) For maternal use to **antibiotics for Group B Streptococcal antibiotic prophylaxis,**  
3 postpartum antihemorrhagics, Rh<sub>o</sub>(D) immune globulin, epinephrine, intravenous fluids, local anes-  
4 thetic and oxygen.

5 “(3) Legend devices authorized under subsection (1) of this section are limited to devices for  
6 injection of medications, for the administration of intravenous fluids, for adult and infant resusci-  
7 tation and for rupturing the amniotic membranes.

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

11  
12 **“APPLICABILITY**

13  
14 **“SECTION 14. (1) The amendments to ORS 687.420 by section 2 of this 2013 Act apply to**  
15 **persons who submit an application to the Oregon Health Licensing Agency to become li-**  
16 **censed as a direct entry midwife on or after the operative date specified in section 15 of this**  
17 **2013 Act.**

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

21  
22 **“OPERATIVE DATE**

23  
24 **“SECTION 15. (1) Sections 6 and 7 of this 2013 Act and the amendments to statutes by**  
25 **sections 1 to 5 and 8 to 13 of this 2013 Act become operative on January 1, 2014.**

26 **“(2) The State Board of Direct Entry Midwifery and the Oregon Health Licensing Agency**  
27 **may take any action before the operative date specified in subsection (1) of this section to**  
28 **enable the board and agency to exercise, on and after the operative date specified in sub-**  
29 **section (1) of this section, all of the duties, functions and powers conferred on the board and**  
30 **agency by section 7 of this 2013 Act and the amendments to statutes by sections 1 to 5 and**  
31 **8 to 13 of this 2013 Act.**

32  
33 **“UNIT CAPTIONS**

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35 **“SECTION 16. The unit captions used in this 2013 Act are provided only for the conven-**  
36 **ience of the reader and do not become part of the statutory law of this state or express any**  
37 **legislative intent in the enactment of this 2013 Act.**

38  
39 **“EMERGENCY CLAUSE**

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41 **“SECTION 17. This 2013 Act being necessary for the immediate preservation of the public**  
42 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**  
43 **on its passage.”.**  
44