

House Bill 2997

Sponsored by COMMITTEE ON HEALTH CARE

SUMMARY

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

Requires person to obtain license to practice direct entry midwifery.

Grants State Board of Direct Entry Midwifery certain powers related to rulemaking, investigations and discipline, including power to impose civil penalties.

Establishes Direct Entry Midwifery Account and continuously appropriates moneys in account to board.

Declares emergency, effective on passage.

A BILL FOR 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, 687.425, 687.445, 687.480, 687.482, 687.485, 687.490 and 687.493; appropriating money; 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, her husband or her partner 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

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 entry midwifery in this state unless the person holds a license to practice direct entry
2 midwifery under ORS 687.405 to 687.495.

3 (2) A person may practice direct entry midwifery in this state without a license to prac-
4 tice direct entry midwifery if:

5 (a) The person is a licensed health care practitioner and the services described in ORS
6 687.405 are within the scope of the person's license; or

7 (b)(A) The person is acting as a traditional midwife within a religious or cultural group
8 that holds a religious, spiritual or philosophical belief related to the practice of direct entry
9 midwifery, as determined by the State Board of Direct Entry Midwifery by rule;

10 (B) The person does not use legend drugs or other devices, the use of which requires a
11 license under the laws of this state; and

12 (C) If the person has received notice from the board about the requirement to disclose
13 the following information, the person discloses to each client on a form adopted by the board
14 by rule:

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

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

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

20 (iv) The types of midwives who are licensed by the state; and

21 (v) That the client will not have recourse through a complaint process.

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

24 **SECTION 2.** ORS 687.420 is amended to read:

25 687.420. (1) The State Board of Direct Entry Midwifery shall establish standards for qualifica-
26 tions for the licensure of direct entry midwives. Such standards shall *[include]*:

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

28 *[(A) Techniques in taking patient histories;]*

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

30 *[(C) Appropriate use of diagnostic testing;]*

31 *[(D) Necessity for referral;]*

32 *[(E) Pathology in childbirth;]*

33 *[(F) Mechanisms of labor;]*

34 *[(G) Aseptic techniques;]*

35 *[(H) Postpartum care;]*

36 *[(I) Examinations of newborn infants; and]*

37 *[(J) Family planning;]*

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

39 *[(c) Participation in:]*

40 *[(A) 25 assisted deliveries;]*

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

42 *[(C) 100 prenatal care visits;]*

43 *[(D) 25 newborn examinations; and]*

44 *[(E) 40 postnatal examinations;]*

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

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

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

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

7 [(4)] (3) Accept and expend donations, contributions and grant funds for the purposes of ORS
 8 687.405 to 687.495.

9
 10 **INVESTIGATORY POWERS**

11
 12 **SECTION 5. Section 6 of this 2013 Act is added to and made a part of ORS 687.405 to**
 13 **687.495.**

14 **SECTION 6. (1) Upon the complaint of a person, or upon its own motion, the State Board**
 15 **of Direct Entry Midwifery may investigate an alleged violation of a provision of ORS 687.405**
 16 **to 687.495 or a rule adopted under ORS 687.405 to 687.495.**

17 (2) **In conducting an investigation, the board may:**

18 (a) **Take evidence;**

19 (b) **Take the depositions of witnesses in the manner provided by law in civil actions;**

20 (c) **Compel the appearance of witnesses before the board in the manner provided by law**
 21 **in civil actions;**

22 (d) **Require answers to interrogations; and**

23 (e) **Compel the production of books, papers, accounts, documents and testimony pertain-**
 24 **ing to the matter under investigation.**

25 (3) **In exercising its authority under subsection (2) of this section, the board may issue**
 26 **subpoenas over the signature of a member of the board, or the designee of a member of the**
 27 **board, in the name of the State of Oregon.**

28 (4) **If a person fails to comply with a subpoena issued under this section, a judge of a**
 29 **circuit court shall compel obedience by proceedings for contempt as in the case of disobedi-**
 30 **ence of the requirements of a subpoena issued from the court.**

31 **SECTION 7. ORS 676.607 is amended to read:**

32 676.607. (1) The Oregon Health Licensing Agency is responsible for the administration and reg-
 33 ulatory oversight of the boards, councils and programs listed in ORS 676.606. The responsibilities
 34 of the agency include, but are not limited to:

35 (a) Budgeting;

36 (b) Record keeping;

37 (c) Staffing;

38 (d) Contracting;

39 (e) **Except as provided in subsection (3) of this section,** consumer protection and investigat-
 40 ing complaints;

41 (f) Approving and collecting fees;

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

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

45 (i) **Except as provided in subsection (3) of this section,** conditioning, limiting, suspending[,

1 *revoking or refusing to issue or renew*] **or revoking** a certificate, license, permit or registration or
 2 otherwise disciplining applicants, certificate holders, licensees, permit holders and registration
 3 holders;

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

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

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

14 (m) Implementing regulatory streamlining initiatives to reduce regulatory burdens without com-
 15 promising regulatory standards;

16 (n) Preparing and circulating printed and electronic materials for educating or otherwise as-
 17 sisting applicants, certificate holders, licensees, permit holders and registration holders and the
 18 public;

19 (o) Adopting rules for the issuance of waivers or provisional authorizations to practice, and es-
 20 tablishing special conditions of practice, during a state of emergency declared by the Governor un-
 21 der ORS 401.165;

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

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

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

30 **(3) The agency is not responsible for the administration and regulatory oversight of the**
 31 **responsibilities described in subsection (1)(e) and (i) of this section with respect to the State**
 32 **Board of Direct Entry Midwifery.**

33 **SECTION 8.** ORS 676.608 is amended to read:

34 676.608. (1) As used in this section:

35 (a)(A) “Holder” means a person who holds a certificate, license, permit or registration to prac-
 36 tice issued by the Oregon Health Licensing Agency.

37 **(B) “Holder” does not include a direct entry midwife licensed under ORS 687.420.**

38 (b) “Public entity” has the meaning given that term in ORS 676.177.

39 (2)(a) The agency shall carry out *[all]* **the** investigatory duties **necessary to enforce the pro-**
 40 **visions of ORS 676.605 to 676.625 and 676.992.**

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

45 (c) When the agency receives a complaint by any person against a holder, the agency shall in-

1 investigate the complaint as provided in ORS 676.165.

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

4 (a) Take evidence;

5 (b) Administer oaths;

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

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

8 (e) Require answers to interrogatories;

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

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

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

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

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

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

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

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

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

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

42 **(12) The agency may not initiate and conduct investigations of matters relating to direct**
43 **entry midwifery as defined in ORS 687.405.**

44
45 **DISCIPLINARY POWERS**

1 **SECTION 9.** Section 10 of this 2013 Act is added to and made a part of ORS 687.405 to
2 687.495.

3 **SECTION 10.** (1) In the manner prescribed in ORS chapter 183 for contested cases, the
4 State Board of Direct Entry Midwifery may suspend, revoke, condition or limit a license to
5 practice direct entry midwifery, and may discipline or place on probation a person licensed
6 to practice direct entry midwifery, for commission of a prohibited act listed in subsection (2)
7 of this section or for violating a provision of ORS 687.405 to 687.495 or a rule adopted under
8 ORS 687.405 to 687.495.

9 (2) A person licensed to practice direct entry midwifery or a person applying for a license
10 to practice direct entry midwifery commits a prohibited act if the person:

11 (a) Engages in fraud, misrepresentation, concealment of material facts or deception in
12 applying for or obtaining the license, or in a written or oral communication to the board
13 concerning the issuance or retention of the license.

14 (b) Uses, causes or promotes the use of an advertisement, testimonial, guarantee, war-
15 ranty, label, insignia or other representation that is false, misleading or deceptive.

16 (c) Makes a representation that the person knew or should have known is false or mis-
17 leading with respect to the person's skill or the efficacy or value of direct entry midwifery.

18 (d) Practices under a false, misleading or deceptive name.

19 (e) Permits another person to use the person's license.

20 (f) Practices direct entry midwifery with a physical or mental condition that presents an
21 unreasonable risk of harm to others in the course of performing direct entry midwifery.

22 (g) Practices direct entry midwifery while under the influence of alcohol, controlled sub-
23 stances or other skill-impairing substances.

24 (h) Engages in the use of controlled substances or other skill-impairing substances in a
25 manner that creates a risk of harm to others in the course of performing direct entry
26 midwifery.

27 (i) Fails to properly and reasonably accept responsibility for the actions of employees.

28 (j) Engages in unprofessional conduct, negligence, incompetence, repeated violations or
29 any departure from or failure to conform to the standards of practice adopted by the board
30 in the course of performing direct entry midwifery.

31 (k) Is convicted of a criminal offense, subject to ORS 670.280. A copy of the record of
32 conviction, certified by the clerk of the court entering the conviction, is conclusive evidence
33 of a conviction. A plea of no contest or an admission of guilt is a conviction for purposes of
34 this paragraph.

35 (l) Fails to report, in the manner prescribed by the board by rule, an adverse action
36 taken against the licensee by another regulatory jurisdiction or a peer review body, health
37 care institution, professional association, governmental agency, law enforcement agency or
38 court for acts or conduct similar to acts or conduct that constitute grounds for disciplinary
39 action under this section.

40 (m) Fails to cooperate with the board in an investigation or fails to respond to a request
41 for information related to an investigation.

42 (n) Fails to pay an outstanding civil penalty or fee that is due or fails to meet the terms
43 of an order issued by the board that has become final.

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

1 **by the board.**

2 **(4)(a) If the board suspends, revokes, conditions or limits a license to practice direct**
 3 **entry midwifery under this section, the board shall notify the Oregon Health Licensing**
 4 **Agency of the suspension, revocation, condition or limit.**

5 **(b) The agency shall treat a suspension imposed under this section as a suspension im-**
 6 **posed under ORS 676.612 (5).**

7 **(c) The agency shall treat a suspension, revocation, condition or limit imposed under this**
 8 **section as a violation of ORS 676.612.**

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

10 687.445. In the manner prescribed in ORS chapter 183 for contested cases and in consultation
 11 with the State Board of Direct Entry Midwifery, the Oregon Health Licensing Agency may [*impose*
 12 *a form of discipline specified in ORS 676.612 against any person practicing direct entry midwifery*]
 13 **refuse to issue or renew a license to practice direct entry midwifery** for any of the grounds
 14 listed in ORS 676.612 and for any violation of the provisions of ORS 687.405 to 687.495[,] or the rules
 15 adopted [*thereunder*] **under ORS 687.405 to 687.495.**

16 **SECTION 12.** ORS 676.612 is amended to read:

17 676.612. (1) **Except as provided in subsection (6) of this section, the Oregon Health Li-**
 18 **ensing Agency,** in the manner prescribed in ORS chapter 183 for contested cases and as specified
 19 in ORS 675.385, 678.780, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 691.477, 694.147 and
 20 700.111, [*the Oregon Health Licensing Agency*] may refuse to issue or renew, may suspend or revoke
 21 or may otherwise condition or limit a certificate, license, permit or registration to practice issued
 22 by the agency or may discipline or place on probation a holder of a certificate, license, permit or
 23 registration for commission of the prohibited acts listed in subsection (2) of this section.

24 **(2) For purposes of disciplinary action by the agency under this section,** a person [*subject*
 25 *to the authority of a board, council or program listed in ORS 676.606*] commits a prohibited act if the
 26 person engages in:

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

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

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

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

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

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

43 (g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing
 44 substances, or engaging in the illegal use of controlled substances or other skill-impairing sub-
 45 stances so as to create a risk of harm to the person or property of others in the course of per-

1 forming the duties of a holder of a certificate, license, permit or registration.

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

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

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

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

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

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

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

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

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

28 (q) Selling or fraudulently obtaining or furnishing any record related to practice in a regulated
29 occupation or profession subject to the authority of the boards, councils and programs listed in ORS
30 676.606, or aiding or abetting such an act.

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

33 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
34 181.534, the agency may require the fingerprints of a person who is:

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

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

38 (c) Under investigation by the agency.

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

42 (5) If a certificate, license, permit or registration is suspended **under subsection (1) of this**
43 **section**, the holder may not practice during the term of suspension. Upon the expiration of the term
44 of suspension, the certificate, license, permit or registration may be reinstated by the agency if the
45 conditions of suspension no longer exist and the holder has satisfied all requirements in the relevant

1 statutes or administrative rules for issuance, renewal or reinstatement.

2 **(6) For purposes of disciplining a person licensed to practice direct entry midwifery under**
 3 **ORS 687.405 to 687.495:**

4 **(a) The agency has the exclusive authority to refuse to issue or renew a license to**
 5 **practice direct entry midwifery; and**

6 **(b) The State Board of Direct Entry Midwifery, under section 10 of this 2013 Act, has the**
 7 **exclusive authority to suspend, revoke, condition or limit a license to practice direct entry**
 8 **midwifery and to discipline or place on probation a holder of a license to practice direct entry**
 9 **midwifery.**

10 **SECTION 13.** ORS 676.992 is amended to read:

11 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
 12 penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty
 13 not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

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

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

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

17 [(d) ORS 687.405 to 687.495 (direct entry midwifery);]

18 [(e)] **(d)** ORS 690.350 to 690.415 (tattooing, electrolysis, body piercing, dermal implanting and
 19 scarification);

20 [(f)] **(e)** ORS 694.015 to 694.185 (dealing in hearing aids);

21 [(g)] **(f)** ORS 688.800 to 688.840 (respiratory therapy and polysomnography);

22 [(h)] **(g)** ORS chapter 700 (environmental sanitation);

23 [(i)] **(h)** ORS 676.617 (single facility licensure);

24 [(j)] **(i)** ORS 675.360 to 675.410 (sex offender treatment);

25 [(k)] **(j)** ORS 678.710 to 678.820 (nursing home administrators);

26 [(L)] **(k)** ORS 691.405 to 691.485 (dietitians); and

27 [(m)] **(L)** ORS 676.612 (prohibited acts).

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

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

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

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

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

38 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
 39 lation; and

40 (d) Any other aggravating or mitigating factors.

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

42 (6) The moneys received by the agency from civil penalties under this section shall be paid into
 43 the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Ac-
 44 count established under ORS 676.625. Such moneys are continuously appropriated to the agency for
 45 the administration and enforcement of the laws the agency is charged with administering and en-

1 forcing that govern the person against whom the penalty was imposed.

2
3 **DIRECT ENTRY MIDWIFERY ACCOUNT**

4
5 **SECTION 14.** Section 15 of this 2013 Act is added to and made a part of ORS 687.405 to
6 **687.495.**

7 **SECTION 15.** (1) The Direct Entry Midwifery Account is established in the State Treas-
8 ury, separate and distinct from the General Fund. All moneys received by the State Board
9 of Direct Entry Midwifery shall be deposited in the account and are continuously appropri-
10 ated to the board to carry out the duties, functions and powers of the board. Any interest
11 or other income from moneys in the account shall be credited to the account.

12 (2) The Oregon Health Licensing Agency shall reimburse the State Board of Direct Entry
13 Midwifery for expenses related to the administration of ORS 687.405 to 687.495. All moneys
14 received by the board under this subsection shall be deposited in the Direct Entry Midwifery
15 Account for the purposes described in subsection (1) of this section.

16
17 **CIVIL PENALTIES**

18
19 **SECTION 16.** (1) In addition to any other penalty or remedy provided by law, the State
20 Board of Direct Entry Midwifery may impose a civil penalty not to exceed \$5,000 against a
21 person for each violation of a provision of ORS 687.405 to 687.495 or a rule adopted under ORS
22 687.405 to 687.495.

23 (2) The moneys received by the board from civil penalties under this section shall be de-
24 posited in the Direct Entry Midwifery Account established under section 15 of this 2013 Act.

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

27
28 **SECTION 17.** ORS 687.405 is amended to read:

29 687.405. As used in ORS 687.405 to 687.495, "direct entry midwifery" means **the act of claiming**
30 **to be a direct entry midwife while providing any of the following services for compensation:**

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

35 **SECTION 18.** ORS 687.493 is amended to read:

36 687.493. (1) A **direct entry** midwife licensed under ORS 687.405 to 687.495 may purchase and
37 administer authorized scheduled legend drugs and devices that are used in pregnancy, birth,
38 postpartum care, newborn care or resuscitation and that are deemed integral to providing safe care
39 to the public by the State Board of Direct Entry Midwifery by rule.

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

- 41 (a) For neonatal use to prophylactic ophthalmic medications, vitamin K and oxygen; and
- 42 (b) For maternal use to **Group B Streptococcal antibiotic prophylaxis, tocolytics,** postpartum
43 antihemorrhagics, Rh₀(D) immune globulin, epinephrine, intravenous fluids, local anesthetic and ox-
44 ygen.

45 (3) Legend devices authorized under subsection (1) of this section are limited to devices for in-

1 jection of medications, for the administration of intravenous fluids, for adult and infant resuscitation
 2 and for rupturing the amniotic membranes.

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

6
 7 **CONFORMING AMENDMENTS**

8
 9 **SECTION 19.** ORS 687.425 is amended to read:

10 687.425. (1) Except as provided in subsection (2) of this section, a license issued by the Oregon
 11 Health Licensing Agency for a direct entry midwife expires after one year. The agency shall renew
 12 a license upon receipt of the renewal application and fee and proof of current cardiopulmonary re-
 13 suscitation certification for infants and adults. The applicant must be in compliance with the rules
 14 adopted by the State Board of Direct Entry Midwifery and the agency.

15 (2) The agency shall establish **by rule** a procedure for the renewal of licenses. The agency may
 16 vary the renewal date of a license by giving the applicant written notice of the renewal date being
 17 assigned and by making prorated adjustments to the renewal fee.

18 (3) The board shall prescribe requirements for license renewal including, but not limited to,
 19 continuing education that must include training in use of legend drugs and devices. In addition to
 20 continuing education requirements, a midwife who has attended fewer than five births in the previ-
 21 ous year shall be required to take an additional 10 hours of continuing education as prescribed by
 22 the board. All licensing requirements shall be approved by the board by rule.

23 (4) The agency shall adopt by rule requirements for late renewal of a license, reactivation of
 24 an expired license or reinstatement of a license that has been expired for more than three consec-
 25 utive years.

26 (5) If the license of a direct entry midwife has been denied, suspended or revoked for commission
 27 of a prohibited act under ORS 676.612 **or section 10 of this 2013 Act**, the agency may refuse to
 28 issue or renew the license for up to one year from the date of denial, suspension or revocation.

29 (6) The agency may mail a notice of renewal to the last-known address of the license holder.

30 **SECTION 20.** ORS 687.482 is amended to read:

31 687.482. (1) Peer review of a licensed direct entry midwife conducted under ORS 687.480 is sub-
 32 ject to the provisions of ORS 41.675. Charts and records created during or for the purpose of the
 33 practice of direct entry midwifery are not data under ORS 41.675.

34 (2) Peer review [*that is conducted outside of the Oregon Health Licensing Agency*] may not be
 35 used to replace [*agency regulatory*] investigations of complaints against licensed direct entry
 36 midwives.

37 **SECTION 21.** ORS 687.490 is amended to read:

38 687.490. (1) Any information provided to the State Board of Direct Entry Midwifery or the
 39 Oregon Health Licensing Agency under ORS 687.445 **or section 10 of this 2013 Act** is confidential
 40 and is not subject to public disclosure or admissible as evidence in any judicial proceeding.

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

43
 44 **APPLICABILITY**

