

D R A F T

SUMMARY

Modifies provisions relating to care facilities regulated by Department of Human Services.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to care facilities; creating new provisions; amending ORS 192.556, 433.443, 441.413, 443.420, 443.440, 443.450, 443.886, 659A.004, 676.992, 678.710, 678.720, 678.725, 678.770, 678.780, 678.820 and 746.600; repealing ORS 441.612, 443.739 and 443.885; and declaring an emergency.

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

FACILITY RESIDENTS' BILL OF RIGHTS

SECTION 1. (1) This section and the rules adopted under subsection (2) of this section shall be known and may be cited as the Facility Residents' Bill of Rights. Providers shall guarantee the rights listed in this subsection and help residents exercise them. The provider shall post a copy of the Facility Residents' Bill of Rights in the entry or other equally prominent place in the facility. Each resident of a long term care facility as defined in ORS 442.015, residential care facility as defined in ORS 443.400 or adult foster home as defined in ORS 443.705 has the right to:

(a) Be treated as an adult with dignity, respect and the freedom to exercise all personal and civil rights.

1 (b) Be fully informed of available services and resident rights.

2 (c) Have privacy and confidentiality in medical and personal care,
3 in personal communications and in financial affairs.

4 (d) Exercise control over medical and personal care, including the
5 rights to refuse treatment and care, to choose a health care provider,
6 to participate in community activities, to organize and participate in
7 a resident council and to request and receive reasonable accommo-
8 dations of the resident's needs and preferences.

9 (e) Receive clear, advance notice in writing of all facility rules and
10 policies that may affect a resident's personal or financial affairs while
11 living in the facility.

12 (f) Be free from abuse, neglect, restraint and involuntary seclusion
13 in a safe and homelike setting with the ability to control a personal
14 schedule, to have visitors and to participate freely in the broader
15 community.

16 (g) Present grievances, seek assistance through local agencies and
17 be informed of assistance available from the Office of the Long Term
18 Care Ombudsman and other state agencies.

19 (h) Protection from involuntary transfers or moves from the facility
20 without prior written notification and due process.

21 (2) The Director of Human Services may adopt rules clarifying or
22 expanding upon resident rights, safety and protection.

23 **SECTION 2.** ORS 441.612 and 443.739 are repealed.

24 **SECTION 3.** ORS 441.413 is amended to read:

25 441.413. (1) The appointments of designees shall be made in consultation
26 with a local screening committee that may consist of but not be limited to
27 persons representing:

28 (a) The area agency on aging.

29 (b) The local office of the Department of Human Services.

30 (c) The local health department.

31 (d) Senior citizens groups in the area.

1 (e) Residential facilities in the area.

2 (f) Local elected officials.

3 (g) The community mental health program director or local mental health
4 authority.

5 (h) The community developmental disabilities program director.

6 (i) Representatives from the Oregon Health Authority.

7 (2) To be appointed as a designee, a person must complete six days of
8 initial training and attend quarterly training sessions that are approved by
9 the Long Term Care Ombudsman and that shall be coordinated and funded
10 by the Department of Human Services and the Oregon Health Authority,
11 subject to the availability of funds. Local screening committees shall be
12 appointed by and serve at the pleasure of the ombudsman.

13 (3) Designees must sign a contract with the state that outlines the scope
14 of their duties. In districts where a designee is an employee or agent of a
15 local entity, a three-party contract shall be executed. Violation of the con-
16 tract is cause for the termination of the appointment. A directory of all
17 designees shall be maintained in the office of the Long Term Care Ombuds-
18 man.

19 (4) The qualifications of designees shall include experience with residen-
20 tial facilities or residents or potential residents of residential facilities, and
21 the ability to communicate well, to understand laws, rules and regulations,
22 and to be assertive, yet objective.

23 (5) Applicants who have experience in either social service, mental health,
24 developmental disability services, gerontology, nursing or paralegal work
25 shall be given preference in the appointment of designees.

26 (6) The contract shall include statements that the purpose of the Long
27 Term Care Ombudsman Program is to:

28 (a) Promote rapport and trust between the residents and staff of the res-
29 idential facilities and Long Term Care Ombudsman;

30 (b) Assist residents with participating more actively in determining the
31 delivery of services at the facilities;

- 1 (c) Serve as an educational resource;
- 2 (d) Receive, resolve or relay concerns to the Long Term Care Ombudsman
3 or the appropriate agency; and
- 4 (e) Ensure equitable resolution of problems.
- 5 (7) The duties of the designees are to:
- 6 (a) Visit each assigned residential facility on a regular basis:
- 7 (A) Upon arrival and departure, inform a specified staff member.
- 8 (B) Review, with a specified staff member, any problems or concerns that
9 need to be considered.
- 10 (C) Visit individual residents and resident councils.
- 11 (b) Maintain liaison with appropriate agencies and the Long Term Care
12 Ombudsman.
- 13 (c) Report, in writing, monthly to the Long Term Care Ombudsman.
- 14 (d) Keep residents and staff informed of the Long Term Care Ombudsman
15 Program.
- 16 (e) Periodically review the patients' bill of rights prescribed in ORS
17 441.605[,] and 441.610 and [441.612] **the Facility Residents' Bill of Rights**
18 **prescribed in section 1 of this 2017 Act** with residents, families, guardians,
19 administrators and staff of residential facilities.
- 20 (f) Perform other related duties as specified.

21 **SECTION 4.** ORS 659A.004 is amended to read:

22 659A.004. The amendments to ORS 10.030, 20.107, 30.860, 93.270, 109.035,
23 166.155, 166.165, 174.100, 179.750, 192.630, 240.306, 338.125, 353.100, 418.648,
24 418.925, 421.352, 430.550, [443.739,] 458.505, 659.850, 659A.003, 659A.006,
25 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, 659A.805, 659A.815,
26 659A.885, 660.139 and 744.353 by sections 1 to 31, 33 and 34, chapter 100,
27 Oregon Laws 2007, and the repeal of ORS 236.380 by section 32, chapter 100,
28 Oregon Laws 2007, may be cited as the Oregon Equality Act.

29

30 **STAFFING RATIOS FOR RESIDENTIAL CARE FACILITIES**

31

1 **SECTION 5.** ORS 443.450 is amended to read:

2 443.450. (1)(a) **For a residential care facility, the Director of Human**
3 **Services shall adopt rules governing:**

- 4 **(A) The physical properties of the facility;**
- 5 **(B) Storage, preparation, serving and delivery of food;**
- 6 **(C) Care to be provided;**
- 7 **(D) The experience and training of staff; and**
- 8 **(E) Any other factors affecting the care provided, including but not**
9 **limited to the number of staff required to meet residents' scheduled**
10 **and unscheduled needs.**

11 **(b) Staffing requirements for a facility must be posted in a promi-**
12 **nent, public place in the facility.**

13 [(1)] **(2)** For a [*residential care facility,*] residential training facility or
14 residential training home, the Director of Human Services shall adopt rules
15 governing:

- 16 (a) The physical properties of the facility or home;
- 17 (b) Storage, preparation and serving of food;
- 18 (c) Care or training to be provided;
- 19 (d) The number, experience and training of the staff; and
- 20 (e) Any other factors affecting the care or training provided.

21 [(2)] **(3)** For a residential treatment facility or residential treatment home,
22 the Director of the Oregon Health Authority shall adopt rules governing:

- 23 (a) The physical properties of the facility or home;
- 24 (b) Storage, preparation and serving of food;
- 25 (c) Treatment to be provided;
- 26 (d) The number, experience and training of the staff; and
- 27 (e) Any other factors affecting the treatment provided.

28 [(3)] **(4)** Distinct rules shall be adopted for homes of five or fewer resi-
29 dents, for facilities of six or more but fewer than 16 residents, and for fa-
30 cilities for 16 or more residents. The rules shall differentiate among
31 categories of residents.

1 ~~[(4)]~~ **(5)** For purposes of this section, “categories” refers to different pop-
2 ulations of residents, differentiated by, but not limited to, age and need, as
3 defined by the Department of Human Services or the Oregon Health Au-
4 thority by rule.

5
6 **SUSPENSION OF RESIDENTIAL FACILITY LICENSE**

7
8 **SECTION 6.** ORS 443.440 is amended to read:

9 **443.440. (1) Except as provided in subsection (2) of this section for**
10 **residential care facilities,** the Department of Human Services or the
11 Oregon Health Authority may revoke or suspend the license of any residen-
12 tial facility that is not operated in accordance with ORS 443.002 or 443.400
13 to 443.455 or the rules of the licensing agency. Such revocation or suspension
14 shall be taken in accordance with rules of the licensing agency and ORS
15 chapter 183. However, in cases where an imminent danger to the health or
16 safety of the residents exists, a license may be suspended immediately pend-
17 ing a fair hearing not later than the 10th day after such suspension.

18 **(2)(a) In accordance with ORS chapter 183 and rules adopted by the**
19 **Department of Human Services, the department may revoke or sus-**
20 **pend the license of a residential care facility licensed by the depart-**
21 **ment that is not operated in accordance with ORS 443.002 or 443.400 to**
22 **443.455 or the rules of the department.**

23 **(b) In a case where an imminent danger to the health or safety of**
24 **the residents exists, a residential care facility license may be sus-**
25 **pending immediately.**

26 **(c) The facility is entitled to a fair hearing not later than the 10th**
27 **day after an immediate suspension.**

28 **(d) When the department issues an immediate suspension under**
29 **this subsection, the department may:**

30 **(A) Transition all residents of the residential care facility to other**
31 **residences; or**

1 **(B) Appoint a management company with demonstrated skill and**
2 **experience in operating residential facilities to care for the residents**
3 **of the facility.**

4
5 **RESIDENTIAL CARE FACILITY ADMINISTRATOR LICENSING**

6
7 **SECTION 7.** ORS 443.420 is amended to read:

8 443.420. (1) A person applying for a license under ORS 443.415 must, in
9 the judgment of the director of the licensing agency, be a person:

10 (a) Who demonstrates an understanding and acceptance of the rules gov-
11 erning residential facilities;

12 (b) Mentally and physically capable of caring for such residents; and

13 (c) Who employs or utilizes only individuals whose presence does not
14 jeopardize the health, safety or welfare of residents.

15 (2) A residential facility shall not be operated or maintained in combina-
16 tion with a nursing home or hospital unless licensed, maintained and oper-
17 ated as a separate and distinct part.

18 (3) All physical residential facilities used for residents shall meet appli-
19 cable requirements of the State Fire Marshal.

20 (4) Prior to licensure, a residential facility must be in substantial com-
21 pliance with applicable state and local laws, rules, codes, ordinances and
22 permit requirements.

23 (5) Prior to licensure, a residential facility that proposes to house persons
24 under the age of 21 years shall submit written proof to the licensing agency
25 demonstrating that the facility will:

26 (a) Comply with ORS 336.575; and

27 (b) Ensure that the children who reside at the residential facility receive
28 appropriate educational services that are:

29 (A) Comprehensive and age-appropriate;

30 (B) In compliance with requirements of state and federal law; and

31 (C) If applicable, in compliance with the individual education program of

1 the child.

2 (6) Prior to an initial licensure of a residential care facility, the licensing
3 agency shall consider:

4 (a) The license applicant's history of regulatory compliance and opera-
5 tional experience;

6 (b) The willingness of the license applicant to serve underserved popu-
7 lations; and

8 (c) The willingness of the license applicant to contract with the licensing
9 agency to provide services through the state medical assistance program.

10 **(7) A residential care facility must be administered by a residential**
11 **care facility administrator licensed under section 12 of this 2017 Act.**

12 [(7)] (8) The licensing agency may not issue an initial license to a resi-
13 dential care facility if the facility has not conducted a market study that
14 assesses the need for the services offered by the facility in the geographic
15 area served by the facility.

16 **SECTION 8.** ORS 678.710 is amended to read:

17 678.710. As used in ORS 678.710 to 678.820, unless the context requires
18 otherwise:

19 (1) "Dual facility" means a facility that operates both a hospital and a
20 long term care facility on the same campus.

21 (2) "Nursing home" means any institution or facility defined as a long
22 term care facility for licensing purposes under state statute or the rules of
23 the Department of Human Services, including a long term care facility op-
24 erated as part of a dual facility.

25 (3) "Nursing home administrator" means an individual responsible for
26 planning, organizing and managing the operation of a nursing home, whether
27 or not such individual has an ownership interest in such home and whether
28 or not such functions are shared by one or more other individuals, if:

29 (a) Final responsibility and authority are retained in the nursing home
30 administrator; and

31 (b) In the case of a dual facility, the nursing home administrator may be

1 subject to the authority of the administrator of the dual facility or the dual
2 facility administrator may administer the nursing home if the **dual facility**
3 administrator is licensed or otherwise qualified by statute to administer a
4 nursing home.

5 (4) "Provisional license" means a temporary license issued to a provi-
6 sional nursing home administrator under the rules of the Health Licensing
7 Office.

8 (5) "**Residential care facility**" has the meaning given that term in
9 **ORS 443.400**.

10 (6) "**Residential care facility administrator**" means an individual
11 responsible for planning, organizing and managing the operation of a
12 residential care facility, whether or not the individual has an owner-
13 ship interest in the facility and whether or not the planning, organiz-
14 ing and managing of the operation of the facility are shared by one
15 or more other individuals, if:

16 (a) Final responsibility and authority are retained in the residential
17 care facility administrator; and

18 (b) In the case of a dual facility, the residential care facility ad-
19 ministrator may be subject to the authority of the dual facility ad-
20 ministrator or the dual facility administrator may administer the
21 residential care facility if the dual facility administrator is licensed
22 or otherwise qualified by statute to administer a residential care fa-
23 cility.

24 **SECTION 9.** ORS 678.720 is amended to read:

25 678.720. (1) Unless an individual holds an active license issued under the
26 provisions of ORS 678.710 to 678.820, an individual may not:

27 (a) Practice or offer to practice as a nursing home administrator **or res-**
28 **idential care facility administrator**; or

29 (b) Use in connection with the name of the individual the words or letters
30 "nursing home administrator," "NHA," "**residential care facility adminis-**
31 **trator**," "**RCFA**" or any other words, letters or abbreviations or insignia

1 tending to indicate that the individual is a licensed nursing home adminis-
2 trator **or residential care facility administrator.**

3 (2)(a) A nursing home shall be conducted or operated under the super-
4 vision of a nursing home administrator who holds an active license issued
5 under the provisions of ORS 678.710 to 678.820.

6 **(b) A residential care facility shall be conducted or operated under**
7 **the supervision of a residential care facility administrator who holds**
8 **an active license issued under section 12 of this 2017 Act.**

9 **SECTION 10.** ORS 678.725 is amended to read:

10 678.725. (1)(a) Unless state or federal laws relating to confidentiality or
11 the protection of health information prohibit disclosure, any health care fa-
12 cility licensed under ORS 441.015, any licensee licensed by the Health Li-
13 censing Office, any physician licensed by the Oregon Medical Board, any
14 licensed professional nurse and any licensed pharmacist shall report to the
15 office suspected violations of ORS 678.710 to 678.820 and unsanitary or other
16 unsatisfactory conditions in a nursing home **or a residential care facility.**

17 (b) Unless state or federal laws relating to confidentiality or the pro-
18 tection of health information prohibit disclosure, a licensee licensed under
19 ORS 678.710 to 678.820 who has reasonable cause to believe that a licensee
20 of any board as defined in ORS 676.150 has engaged in prohibited conduct
21 as defined in ORS 676.150 shall report the prohibited conduct in the manner
22 provided in ORS 676.150.

23 (c) Any person may report to the office suspected violations of ORS
24 678.710 to 678.820 or unsanitary conditions in a nursing home **or residential**
25 **care facility.**

26 (2) Information acquired by the office pursuant to subsection (1) of this
27 section is confidential and is not subject to public disclosure.

28 (3) Any person who reports or provides information to the office under
29 subsection (1) of this section and who provides information in good faith may
30 not be subject to an action for civil damages as a result of making the report
31 or providing the information.

1 **SECTION 11.** Sections 12 and 13 of this 2017 Act are added to and
2 made a part of ORS 678.710 to 678.820.

3 **SECTION 12.** (1) An individual qualifies for licensure as a residen-
4 tial care facility administrator if the individual:

5 (a) Has a baccalaureate degree from an accredited school of higher
6 education;

7 (b) Has passed an examination as provided in section 13 of this 2017
8 Act; and

9 (c) Has completed training requirements established by the Nursing
10 Home Administrators Board by rule.

11 (2) Notwithstanding subsection (1) of this section, an individual who
12 has at least one year of experience as an administrator of a dual fa-
13 cility qualifies for licensure as a residential care facility administrator
14 if the individual:

15 (a) Has a baccalaureate degree from an accredited school of higher
16 education; and

17 (b) Has passed an examination as provided in section 13 of this 2017
18 Act.

19 (3) Notwithstanding subsection (1) of this section, upon the request
20 of the governing body of a hospital, as defined in ORS 442.015, the
21 Nursing Home Administrators Board shall provide by rule that a
22 health care administrator has met the requirements for licensure as
23 a residential care facility administrator if the health care administra-
24 tor possesses an advanced degree in management and has at least 10
25 years of experience in health care management.

26 **SECTION 13.** (1) Examinations for licensure as a residential care
27 facility administrator shall be conducted at such times and places as
28 the Nursing Home Administrators Board designates, but not less than
29 once a year.

30 (2) At the time of taking an examination for licensure as a resi-
31 dential care facility administrator, an applicant shall pay an exam-

1 **ination or reexamination fee established by the Health Licensing**
2 **Office under ORS 676.592.**

3 **(3) The board shall, consistent with the purposes for which the ex-**
4 **amination is given, determine the subjects, scope, content and the**
5 **minimum passing grade for examinations.**

6 **SECTION 14.** ORS 678.770 is amended to read:

7 678.770. (1) The Nursing Home Administrators Board may establish by
8 rule standards for the issuance of a license by endorsement to an applicant
9 who:

10 (a) Meets the requirements as established by the board; and

11 (b) On the date of making application, is a nursing home administrator
12 **or residential care facility administrator** licensed under the laws of any
13 other state or territory of the United States if the requirements for licensing
14 of nursing home administrators **or residential care facility administrators**
15 in the state or territory in which the applicant is licensed are not less than
16 those required by ORS 678.710 to 678.820.

17 (2) Each applicant under this section shall pay to the Health Licensing
18 Office at the time of filing the application the applicable fees established
19 under ORS 676.592.

20 **SECTION 15.** ORS 678.780 is amended to read:

21 678.780. (1) In the manner prescribed in ORS chapter 183 for contested
22 cases, the Health Licensing Office may impose a form of discipline as speci-
23 fied in ORS 676.612 against any person practicing as a nursing home admin-
24 istrator **or residential care facility administrator** for any of the grounds
25 listed in ORS 676.612 and for any violation of the provisions of ORS 678.710
26 to 678.820, or the rules adopted under ORS 678.710 to 678.820.

27 (2) In addition to any discipline that may be imposed as provided by
28 subsection (1) of this section, the office may impose disciplinary sanctions
29 against a person practicing as a nursing home administrator **or residential**
30 **care facility administrator** for any of the following causes:

31 (a) Violation of or noncompliance with any applicable provisions of ORS

1 678.710 to 678.820 or of any rule or order of the office;

2 (b) Any continuous or substantial violation of the rules adopted under
3 ORS 441.025; or

4 (c) Discipline imposed by any other licensing body in this or any other
5 state based on conduct that would be grounds for discipline under this sec-
6 tion or rules adopted by the office.

7 **SECTION 16.** ORS 678.820 is amended to read:

8 678.820. (1) The Nursing Home Administrators Board is responsible for
9 advising the Health Licensing Office in all matters relating to the adminis-
10 tration of ORS 678.710 to 678.820, including:

11 (a) Developing standards for education and training;

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

13 (c) Establishing standards related to the issuance, denial, revocation,
14 suspension or renewal of licenses to practice as a nursing home administra-
15 tor **or residential care facility administrator**;

16 (d) Preparing or approving the examinations required under ORS 678.710
17 to 678.820, in accordance with standards provided by the office; and

18 (e) Assisting the office in administering the provisions of ORS 678.710 to
19 678.820.

20 (2) The office shall administer ORS 678.710 to 678.820 by:

21 (a) Determining the qualifications and fitness of applicants for licenses,
22 renewed licenses, reciprocal licenses and provisional licenses under ORS
23 678.710 to 678.820.

24 (b) Examining, approving, issuing, denying, revoking, suspending and re-
25 newing licenses to practice as a nursing home administrator **or residential**
26 **care facility administrator**.

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

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

30 (e) Pursuant to ORS 676.608, receiving and investigating complaints filed
31 regarding nursing home administrators **and residential care facility ad-**

1 **ministrators.**

2 (f) Establishing and collecting fees and charges to carry out the office's
3 duties under ORS 678.710 to 678.820.

4 (g) In accordance with ORS 183.330 and 676.615, adopting, amending and
5 repealing rules that are necessary to carry out the administration of ORS
6 678.710 to 678.820.

7 (h) Maintaining a register of all licensed nursing home administrators
8 **and residential care facility administrators.**

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

11 **SECTION 17.** ORS 192.556 is amended to read:

12 192.556. As used in ORS 192.553 to 192.581:

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

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

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

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

21 (d) A description of each purpose of the requested use or disclosure, in-
22 cluding but not limited to a statement that the use or disclosure is at the
23 request of the individual;

24 (e) An expiration date or an expiration event that relates to the individ-
25 ual or the purpose of the use or disclosure;

26 (f) The signature of the individual or personal representative of the indi-
27 vidual and the date;

28 (g) A description of the authority of the personal representative, if ap-
29 plicable; and

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

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

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

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

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

7 (2) "Covered entity" means:

8 (a) A state health plan;

9 (b) A health insurer;

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

13 (d) A health care clearinghouse.

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

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

17 (a) Quality assessment, accreditation, auditing and improvement activ-
18 ities;

19 (b) Case management and care coordination;

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

22 (d) Underwriting activities;

23 (e) Arranging for legal services;

24 (f) Business planning;

25 (g) Customer services;

26 (h) Resolving internal grievances;

27 (i) Creating deidentified information; and

28 (j) Fundraising.

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

30 (a) A psychologist, occupational therapist, regulated social worker, pro-
31 fessional counselor or marriage and family therapist licensed or otherwise

1 authorized to practice under ORS chapter 675 or an employee of the psy-
2 chologist, occupational therapist, regulated social worker, professional
3 counselor or marriage and family therapist;

4 (b) A physician or physician assistant licensed under ORS chapter 677,
5 an acupuncturist licensed under ORS 677.759 or an employee of the physi-
6 cian, physician assistant or acupuncturist;

7 (c) A nurse [*or*], nursing home administrator **or residential care facility**
8 **administrator** licensed under ORS chapter 678 or an employee of the nurse
9 or [*nursing home*] administrator;

10 (d) A dentist licensed under ORS chapter 679 or an employee of the den-
11 tist;

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

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

16 (g) An emergency medical services provider licensed under ORS chapter
17 682;

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

20 (i) A chiropractic physician licensed under ORS chapter 684 or an em-
21 ployee of the chiropractic physician;

22 (j) A naturopathic physician licensed under ORS chapter 685 or an em-
23 ployee of the naturopathic physician;

24 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an em-
25 ployee of the massage therapist;

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

28 (m) A physical therapist licensed under ORS 688.010 to 688.201 or an em-
29 ployee of the physical therapist;

30 (n) A medical imaging licensee under ORS 688.405 to 688.605 or an em-
31 ployee of the medical imaging licensee;

1 (o) A respiratory care practitioner licensed under ORS 688.815 or an em-
2 ployee of the respiratory care practitioner;

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

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

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

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

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

12 (u) A home health agency as defined in ORS 443.014;

13 (v) A hospice program as defined in ORS 443.850;

14 (w) A clinical laboratory as defined in ORS 438.010;

15 (x) A pharmacy as defined in ORS 689.005;

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

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

19 (6) "Health information" means any oral or written information in any
20 form or medium that:

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

24 (b) Relates to:

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

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

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

30 (7) "Health insurer" means:

31 (a) An insurer as defined in ORS 731.106 who offers:

1 (A) A health benefit plan as defined in ORS 743B.005;

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

4 (C) A student health insurance policy;

5 (D) A Medicare supplemental policy; or

6 (E) A dental only policy.

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

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

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

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

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

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

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

21 (9) "Payment" includes but is not limited to:

22 (a) Efforts to obtain premiums or reimbursement;

23 (b) Determining eligibility or coverage;

24 (c) Billing activities;

25 (d) Claims management;

26 (e) Reviewing health care to determine medical necessity;

27 (f) Utilization review; and

28 (g) Disclosures to consumer reporting agencies.

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

30 (a) A person appointed as a guardian under ORS 125.305, 419B.372,
31 419C.481 or 419C.555 with authority to make medical and health care deci-

1 sions;

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

5 (c) A person appointed as a personal representative under ORS chapter
6 113; and

7 (d) A person described in ORS 192.573.

8 (11)(a) "Protected health information" means individually identifiable
9 health information that is maintained or transmitted in any form of elec-
10 tronic or other medium by a covered entity.

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

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

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

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

17 (12) "State health plan" means:

18 (a) Medical assistance as defined in ORS 414.025;

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

20 (c) Any medical assistance or premium assistance program operated by
21 the Oregon Health Authority.

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

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

24 (b) Consultations and referrals between health care providers.

25 **SECTION 18.** ORS 192.556, as amended by section 30, chapter 698, Oregon
26 Laws 2013, is amended to read:

27 192.556. As used in ORS 192.553 to 192.581:

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

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

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

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

5 (d) A description of each purpose of the requested use or disclosure, in-
6 cluding but not limited to a statement that the use or disclosure is at the
7 request of the individual;

8 (e) An expiration date or an expiration event that relates to the individ-
9 ual or the purpose of the use or disclosure;

10 (f) The signature of the individual or personal representative of the indi-
11 vidual and the date;

12 (g) A description of the authority of the personal representative, if ap-
13 plicable; and

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

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

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

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

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

22 (2) "Covered entity" means:

23 (a) A state health plan;

24 (b) A health insurer;

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

28 (d) A health care clearinghouse.

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

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

- 1 (a) Quality assessment, accreditation, auditing and improvement activ-
2 ities;
- 3 (b) Case management and care coordination;
- 4 (c) Reviewing the competence, qualifications or performance of health
5 care providers or health insurers;
- 6 (d) Underwriting activities;
- 7 (e) Arranging for legal services;
- 8 (f) Business planning;
- 9 (g) Customer services;
- 10 (h) Resolving internal grievances;
- 11 (i) Creating deidentified information; and
- 12 (j) Fundraising.
- 13 (5) "Health care provider" includes but is not limited to:
- 14 (a) A psychologist, occupational therapist, regulated social worker, pro-
15 fessional counselor or marriage and family therapist licensed or otherwise
16 authorized to practice under ORS chapter 675 or an employee of the psy-
17 chologist, occupational therapist, regulated social worker, professional
18 counselor or marriage and family therapist;
- 19 (b) A physician or physician assistant licensed under ORS chapter 677,
20 an acupuncturist licensed under ORS 677.759 or an employee of the physi-
21 cian, physician assistant or acupuncturist;
- 22 (c) A nurse [*or*], nursing home administrator **or residential care facility**
23 **administrator** licensed under ORS chapter 678 or an employee of the nurse
24 or [*nursing home*] administrator;
- 25 (d) A dentist licensed under ORS chapter 679 or an employee of the den-
26 tist;
- 27 (e) A dental hygienist or denturist licensed under ORS chapter 680 or an
28 employee of the dental hygienist or denturist;
- 29 (f) A speech-language pathologist or audiologist licensed under ORS
30 chapter 681 or an employee of the speech-language pathologist or audiologist;
- 31 (g) An emergency medical services provider licensed under ORS chapter

1 682;

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

4 (i) A chiropractic physician licensed under ORS chapter 684 or an em-
5 ployee of the chiropractic physician;

6 (j) A naturopathic physician licensed under ORS chapter 685 or an em-
7 ployee of the naturopathic physician;

8 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an em-
9 ployee of the massage therapist;

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

12 (m) A physical therapist licensed under ORS 688.010 to 688.201 or an em-
13 ployee of the physical therapist;

14 (n) A medical imaging licensee under ORS 688.405 to 688.605 or an em-
15 ployee of the medical imaging licensee;

16 (o) A respiratory care practitioner licensed under ORS 688.815 or an em-
17 ployee of the respiratory care practitioner;

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

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

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

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

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

27 (u) A home health agency as defined in ORS 443.014;

28 (v) A hospice program as defined in ORS 443.850;

29 (w) A clinical laboratory as defined in ORS 438.010;

30 (x) A pharmacy as defined in ORS 689.005;

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

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

3 (6) "Health information" means any oral or written information in any
4 form or medium that:

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

8 (b) Relates to:

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

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

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

14 (7) "Health insurer" means an insurer as defined in ORS 731.106 who of-
15 fers:

16 (a) A health benefit plan as defined in ORS 743B.005;

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

19 (c) A student health insurance policy;

20 (d) A Medicare supplemental policy; or

21 (e) A dental only policy.

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

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

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

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

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

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

3 (9) "Payment" includes but is not limited to:

4 (a) Efforts to obtain premiums or reimbursement;

5 (b) Determining eligibility or coverage;

6 (c) Billing activities;

7 (d) Claims management;

8 (e) Reviewing health care to determine medical necessity;

9 (f) Utilization review; and

10 (g) Disclosures to consumer reporting agencies.

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

12 (a) A person appointed as a guardian under ORS 125.305, 419B.372,
13 419C.481 or 419C.555 with authority to make medical and health care deci-
14 sions;

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

18 (c) A person appointed as a personal representative under ORS chapter
19 113; and

20 (d) A person described in ORS 192.573.

21 (11)(a) "Protected health information" means individually identifiable
22 health information that is maintained or transmitted in any form of elec-
23 tronic or other medium by a covered entity.

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

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

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

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

30 (12) "State health plan" means:

31 (a) Medical assistance as defined in ORS 414.025;

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

2 (c) Any medical assistance or premium assistance program operated by
3 the Oregon Health Authority.

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

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

6 (b) Consultations and referrals between health care providers.

7 **SECTION 19.** ORS 433.443 is amended to read:

8 433.443. (1) As used in this section:

9 (a) "Covered entity" means:

10 (A) The Children's Health Insurance Program;

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

13 (C) The state medical assistance program; and

14 (D) A health care provider.

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

16 (A) A psychologist, occupational therapist, regulated social worker, pro-
17 fessional counselor or marriage and family therapist licensed or otherwise
18 authorized to practice under ORS chapter 675 or an employee of the psy-
19 chologist, occupational therapist, regulated social worker, professional
20 counselor or marriage and family therapist;

21 (B) A physician or physician assistant licensed under ORS chapter 677,
22 an acupuncturist licensed under ORS 677.759 or an employee of the physi-
23 cian, physician assistant or acupuncturist;

24 (C) A nurse [*or*], nursing home administrator **or residential care facility**
25 **administrator** licensed under ORS chapter 678 or an employee of the nurse
26 or [*nursing home*] administrator;

27 (D) A dentist licensed under ORS chapter 679 or an employee of the den-
28 tist;

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

31 (F) A speech-language pathologist or audiologist licensed under ORS

1 chapter 681 or an employee of the speech-language pathologist or audiologist;

2 (G) An emergency medical services provider licensed under ORS chapter
3 682;

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

6 (I) A chiropractic physician licensed under ORS chapter 684 or an em-
7 ployee of the chiropractic physician;

8 (J) A naturopathic physician licensed under ORS chapter 685 or an em-
9 ployee of the naturopathic physician;

10 (K) A massage therapist licensed under ORS 687.011 to 687.250 or an em-
11 ployee of the massage therapist;

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

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

16 (N) A medical imaging licensee under ORS 688.405 to 688.605 or an em-
17 ployee of the medical imaging licensee;

18 (O) A respiratory care practitioner licensed under ORS 688.815 or an em-
19 ployee of the respiratory care practitioner;

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

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

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

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

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

29 (U) A home health agency as defined in ORS 443.014;

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

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

1 (X) A pharmacy as defined in ORS 689.005;

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

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

5 (c) "Individual" means a natural person.

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

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

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

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

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

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

18 (e) "Legal representative" means attorney at law, person holding a gen-
19 eral power of attorney, guardian, conservator or any person appointed by a
20 court to manage the personal or financial affairs of a person, or agency le-
21 gally responsible for the welfare or support of a person.

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

25 (A) Adopt reporting requirements for and provide notice of those re-
26 quirements to health care providers, institutions and facilities for the pur-
27 pose of obtaining information directly related to the public health
28 emergency;

29 (B) After consultation with appropriate medical experts, create and re-
30 quire the use of diagnostic and treatment protocols to respond to the public
31 health emergency and provide notice of those protocols to health care pro-

1 viders, institutions and facilities;

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

4 (D) Authorize pharmacists licensed under ORS chapter 689 to administer
5 vaccines to persons who are three years of age or older;

6 (E) Upon approval of the Governor, take other actions necessary to ad-
7 dress the public health emergency and provide notice of those actions to
8 health care providers, institutions and facilities, including public health
9 actions authorized by ORS 431A.015;

10 (F) Take any enforcement action authorized by ORS 431A.010, including
11 the imposition of civil penalties of up to \$500 per day against individuals,
12 institutions or facilities that knowingly fail to comply with requirements
13 resulting from actions taken in accordance with the powers granted to the
14 Public Health Director under subparagraphs (A), (B) and (E) of this para-
15 graph; and

16 (G) The authority granted to the Public Health Director under this sec-
17 tion:

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

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

24 (b) The authority of the Public Health Director to take administrative
25 action, and the effectiveness of any action taken, under paragraph (a)(A), (B)
26 and (D) to (G) of this subsection terminates upon the expiration of the de-
27 clared state of public health emergency, unless the actions are continued
28 under other applicable law.

29 (3) Civil penalties under subsection (2) of this section shall be imposed
30 in the manner provided in ORS 183.745. The Public Health Director must
31 establish that the individual, institution or facility subject to the civil pen-

1 alty had actual notice of the action taken that is the basis for the penalty.
2 The maximum aggregate total for penalties that may be imposed against an
3 individual, institution or facility under subsection (2) of this section is \$500
4 for each day of violation, regardless of the number of violations of subsection
5 (2) of this section that occurred on each day of violation.

6 (4)(a) During a declared state of public health emergency, the Public
7 Health Director and local public health administrators shall be given imme-
8 diate access to individually identifiable health information necessary to:

9 (A) Determine the causes of an illness related to the public health emer-
10 gency;

11 (B) Identify persons at risk;

12 (C) Identify patterns of transmission;

13 (D) Provide treatment; and

14 (E) Take steps to control the disease.

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

20 (c) Individually identifiable health information obtained by the Public
21 Health Director or local public health administrators under this subsection
22 may not be disclosed without written authorization of the identified indi-
23 vidual except:

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

26 (B) To state, local or federal agencies authorized to receive such infor-
27 mation by state or federal law;

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

30 (D) Directly to a health care provider for the evaluation or treatment of
31 a condition that is the subject of a proclamation of a state of public health

1 emergency issued under ORS 433.441.

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

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

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

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

23 **SECTION 20.** ORS 676.992 is amended to read:

24 676.992. (1) Except as provided in subsection (3) of this section, and in
25 addition to any other penalty or remedy provided by law, the Health Li-
26 censing Office may impose a civil penalty not to exceed \$5,000 for each vio-
27 lation of the following statutes and any rule adopted under the following
28 statutes:

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

30 (b) ORS 690.005 to 690.225 (cosmetology);

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

1 (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct
2 entry midwifery);

3 (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe
4 piercing, dermal implanting and scarification);

5 (f) ORS 694.015 to 694.170 (dealing in hearing aids);

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

7 (h) ORS chapter 700 (environmental sanitation);

8 (i) ORS 675.360 to 675.410 (sex offender treatment);

9 (j) ORS 678.710 to 678.820 (nursing home **and residential care facility**
10 administrators);

11 (k) ORS 691.405 to 691.485 (dietitians);

12 (L) ORS 676.612 (prohibited acts);

13 (m) ORS 676.810 and 676.815 (applied behavior analysis);

14 (n) ORS 681.700 to 681.730 (music therapy); and

15 (o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure).

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

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

23 (4) In imposing a civil penalty under this section, the office shall consider
24 the following factors:

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

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

28 (c) The history of the person incurring a penalty in taking all feasible
29 steps to correct any violation; and

30 (d) Any other aggravating or mitigating factors.

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

1 183.745.

2 (6) The moneys received by the office from civil penalties under this sec-
3 tion shall be deposited in the Health Licensing Office Account and are con-
4 tinuously appropriated to the office for the administration and enforcement
5 of the laws the office is charged with administering and enforcing that gov-
6 ern the person against whom the penalty was imposed.

7 **SECTION 21.** ORS 746.600 is amended to read:

8 746.600. As used in ORS 746.600 to 746.690:

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

12 (A) A declination of insurance coverage.

13 (B) A termination of insurance coverage.

14 (C) Failure of an insurance producer to apply for insurance coverage with
15 a specific insurer that the insurance producer represents and that is re-
16 quested by an applicant.

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

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

21 (i) Placement by an insurer or insurance producer of a risk with a resi-
22 dual market mechanism, an unauthorized insurer or an insurer that special-
23 izes in substandard risks.

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

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

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

1 the specific reason or reasons for the occurrence:

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

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

6 (C) The rescission of a policy.

7 (2) "Affiliate of" a specified person or "person affiliated with" a specified
8 person means a person who directly, or indirectly, through one or more in-
9 termediaries, controls, or is controlled by, or is under common control with,
10 the person specified.

11 (3) "Applicant" means a person who seeks to contract for insurance cov-
12 erage, other than a person seeking group insurance coverage that is not in-
13 dividually underwritten.

14 (4) "Consumer" means an individual, or the personal representative of the
15 individual, who seeks to obtain, obtains or has obtained one or more insur-
16 ance products or services from a licensee that are to be used primarily for
17 personal, family or household purposes, and about whom the licensee has
18 personal information.

19 (5) "Consumer report" means any written, oral or other communication
20 of information bearing on a natural person's creditworthiness, credit stand-
21 ing, credit capacity, character, general reputation, personal characteristics
22 or mode of living that is used or expected to be used in connection with an
23 insurance transaction.

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

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

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

29 (c) Furnishes consumer reports to other persons.

30 (7) "Control" means, and the terms "controlled by" or "under common
31 control with" refer to, the possession, directly or indirectly, of the power to

1 direct or cause the direction of the management and policies of a person,
2 whether through the ownership of voting securities, by contract other than
3 a commercial contract for goods or nonmanagement services, or otherwise,
4 unless the power of the person is the result of a corporate office held in, or
5 an official position held with, the controlled person.

6 (8) "Covered entity" means:

7 (a) A health insurer;

8 (b) A health care provider that transmits any health information in elec-
9 tronic form to carry out financial or administrative activities in connection
10 with a transaction covered by ORS 746.607 or by rules adopted under ORS
11 746.608; or

12 (c) A health care clearinghouse.

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

15 (a) Bears on a consumer's creditworthiness, credit standing or credit ca-
16 pacity; and

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

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

23 (11) "Declination of insurance coverage" or "decline coverage" means a
24 denial, in whole or in part, by an insurer or insurance producer of an ap-
25 plication for requested insurance coverage.

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

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

29 (a) Quality assessment, accreditation, auditing and improvement activ-
30 ities;

31 (b) Case management and care coordination;

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

3 (d) Underwriting activities;

4 (e) Arranging for legal services;

5 (f) Business planning;

6 (g) Customer services;

7 (h) Resolving internal grievances;

8 (i) Creating deidentified information; and

9 (j) Fundraising.

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

11 (a) A psychologist, occupational therapist, regulated social worker, pro-
12 fessional counselor or marriage and family therapist licensed or otherwise
13 authorized to practice under ORS chapter 675 or an employee of the psy-
14 chologist, occupational therapist, regulated social worker, professional
15 counselor or marriage and family therapist;

16 (b) A physician or physician assistant licensed under ORS chapter 677,
17 an acupuncturist licensed under ORS 677.759 or an employee of the physi-
18 cian, physician assistant or acupuncturist;

19 (c) A nurse [or], nursing home administrator **or residential care facility**
20 **administrator** licensed under ORS chapter 678 or an employee of the nurse
21 or [nursing home] administrator;

22 (d) A dentist licensed under ORS chapter 679 or an employee of the den-
23 tist;

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

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

28 (g) An emergency medical services provider licensed under ORS chapter
29 682;

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

- 1 (i) A chiropractic physician licensed under ORS chapter 684 or an em-
2 ployee of the chiropractic physician;
- 3 (j) A naturopathic physician licensed under ORS chapter 685 or an em-
4 ployee of the naturopathic physician;
- 5 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an em-
6 ployee of the massage therapist;
- 7 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an
8 employee of the direct entry midwife;
- 9 (m) A physical therapist licensed under ORS 688.010 to 688.201 or an em-
10 ployee of the physical therapist;
- 11 (n) A medical imaging licensee under ORS 688.405 to 688.605 or an em-
12 ployee of the medical imaging licensee;
- 13 (o) A respiratory care practitioner licensed under ORS 688.815 or an em-
14 ployee of the respiratory care practitioner;
- 15 (p) A polysomnographic technologist licensed under ORS 688.819 or an
16 employee of the polysomnographic technologist;
- 17 (q) A pharmacist licensed under ORS chapter 689 or an employee of the
18 pharmacist;
- 19 (r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of
20 the dietitian;
- 21 (s) A funeral service practitioner licensed under ORS chapter 692 or an
22 employee of the funeral service practitioner;
- 23 (t) A health care facility as defined in ORS 442.015;
- 24 (u) A home health agency as defined in ORS 443.014;
- 25 (v) A hospice program as defined in ORS 443.850;
- 26 (w) A clinical laboratory as defined in ORS 438.010;
- 27 (x) A pharmacy as defined in ORS 689.005;
- 28 (y) A diabetes self-management program as defined in ORS 743.694; and
- 29 (z) Any other person or entity that furnishes, bills for or is paid for health
30 care in the normal course of business.
- 31 (15) "Health information" means any oral or written information in any

1 form or medium that:

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

5 (b) Relates to:

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

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

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

11 (16) "Health insurer" means an insurer who offers:

12 (a) A health benefit plan as defined in ORS 743B.005;

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

15 (c) A student health insurance policy;

16 (d) A Medicare supplemental policy; or

17 (e) A dental only policy.

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

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

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

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

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

29 (d) Is a past or present applicant;

30 (e) Is a past or present claimant; or

31 (f) Derived, derives or is proposed to derive insurance coverage under an

1 insurance policy or certificate that is subject to ORS 746.600 to 746.690.

2 (19) “Individually identifiable health information” means any oral or
3 written health information that is:

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

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

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

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

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

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

17 (a) An insurance producer;

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

19 (c) A natural person acting in a personal capacity rather than in a busi-
20 ness or professional capacity.

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

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

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

31 (A) The furnishing of consumer reports to an insurer or insurance pro-

1 ducer for use in connection with insurance transactions; and

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

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

8 (24) “Insurance transaction” means any transaction that involves insur-
9 ance primarily for personal, family or household needs rather than business
10 or professional needs and that entails:

11 (a) The determination of an individual’s eligibility for an insurance cov-
12 erage, benefit or payment; or

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

14 (25) “Insurer” has the meaning given that term in ORS 731.106.

15 (26) “Investigative consumer report” means a consumer report, or portion
16 of a consumer report, for which information about a natural person’s char-
17 acter, general reputation, personal characteristics or mode of living is ob-
18 tained through personal interviews with the person’s neighbors, friends,
19 associates, acquaintances or others who may have knowledge concerning
20 such items of information.

21 (27) “Licensee” means an insurer, insurance producer or other person
22 authorized or required to be authorized, or licensed or required to be li-
23 censed, pursuant to the Insurance Code.

24 (28) “Loss history report” means a report provided by, or a database
25 maintained by, an insurance-support organization or consumer reporting
26 agency that contains information regarding the claims history of the indi-
27 vidual property that is the subject of the application for a homeowner in-
28 surance policy or the consumer applying for a homeowner insurance policy.

29 (29) “Nonaffiliated third party” means any person except:

30 (a) An affiliate of a licensee;

31 (b) A person that is employed jointly by a licensee and by a person that

1 is not an affiliate of the licensee; and

2 (c) As designated by the director by rule.

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

4 (a) Efforts to obtain premiums or reimbursement;

5 (b) Determining eligibility or coverage;

6 (c) Billing activities;

7 (d) Claims management;

8 (e) Reviewing health care to determine medical necessity;

9 (f) Utilization review; and

10 (g) Disclosures to consumer reporting agencies.

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

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

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

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

23 (32) "Personal information" means:

24 (a) Personal financial information;

25 (b) Individually identifiable health information; or

26 (c) Protected health information.

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

30 (a) Private passenger automobile coverage;

31 (b) Homeowner, mobile homeowners, manufactured homeowners, condo-

1 minium owners and renters coverage;

2 (c) Personal dwelling property coverage;

3 (d) Personal liability and theft coverage, including excess personal li-
4 ability and theft coverage; and

5 (e) Personal inland marine coverage.

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

7 (a) A person appointed as a guardian under ORS 125.305, 419B.372,
8 419C.481 or 419C.555 with authority to make medical and health care deci-
9 sions;

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

13 (c) A person appointed as a personal representative under ORS chapter
14 113; and

15 (d) A person described in ORS 746.611.

16 (35) "Policyholder" means a person who:

17 (a) In the case of individual policies of life or health insurance, is a cur-
18 rent policyowner;

19 (b) In the case of individual policies of other kinds of insurance, is cur-
20 rently a named insured; or

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

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

26 (a) Pretends to be someone the interviewer is not.

27 (b) Pretends to represent a person the interviewer is not in fact repre-
28 senting.

29 (c) Misrepresents the true purpose of the interview.

30 (d) Refuses upon request to identify the interviewer.

31 (37) "Privileged information" means information that is identifiable with

1 an individual and that:

2 (a) Relates to a claim for insurance benefits or a civil or criminal pro-
3 ceeding involving the individual; and

4 (b) Is collected in connection with or in reasonable anticipation of a claim
5 for insurance benefits or a civil or criminal proceeding involving the indi-
6 vidual.

7 (38)(a) "Protected health information" means individually identifiable
8 health information that is transmitted or maintained in any form of elec-
9 tronic or other medium by a covered entity.

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

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

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

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

16 (39) "Residual market mechanism" means an association, organization or
17 other entity involved in the insuring of risks under ORS 735.005 to 735.145,
18 737.312 or other provisions of the Insurance Code relating to insurance ap-
19 plicants who are unable to procure insurance through normal insurance
20 markets.

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

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

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

27 (b) Consultations and referrals between health care providers.

28 **SECTION 22. (1) The amendments to ORS 192.556, 433.443, 443.420,**
29 **676.992, 678.720, 678.725, 678.780 and 746.600 by sections 7, 9, 10, 15 and**
30 **17 to 21 of this 2017 Act become operative on January 1, 2018.**

31 **(2) The Department of Human Services and the Nursing Home Ad-**

1 **ministrators Board may take any action before the operative date**
2 **specified in subsection (1) of this section to enable the department and**
3 **the board to exercise, on and after the operative date specified in**
4 **subsection (1) of this section, all the duties, functions and powers**
5 **conferred on the department and the board by the amendments to ORS**
6 **192.556, 433.443, 443.420, 676.992, 678.720, 678.725, 678.780 and 746.600 by**
7 **sections 7, 9, 10, 15 and 17 to 21 of this 2017 Act.**

8 **SECTION 23. The amendments to ORS 443.420 by section 7 of this**
9 **2017 Act apply only to residential care facility licenses issued or re-**
10 **newed on or after the operative date specified in section 22 of this 2017**
11 **Act.**

12
13 **BINDING ARBITRATION**
14

15 **SECTION 24. (1) As used in this section, “facility” means:**

16 **(a) A long term care facility as defined in ORS 442.015.**

17 **(b) A residential care facility as defined in ORS 443.400, including**
18 **but not limited to an assisted living facility or endorsed memory care**
19 **community.**

20 **(2) A facility may enter into an agreement for binding arbitration**
21 **with a resident of the facility only if:**

22 **(a) The agreement is entered into after the dispute to be arbitrated**
23 **arises.**

24 **(b) Readmission or return to the facility is not contingent upon the**
25 **resident entering into the agreement.**

26 **(c) The agreement is explained to the resident in a form and man-**
27 **ner that the resident understands.**

28 **(d) The resident enters into the agreement voluntarily.**

29 **(e) The agreement provides for the selection of a neutral arbitrator**
30 **and selection of a venue convenient to both parties.**

31 **(f) The agreement does not prohibit or discourage the resident or**

1 **any other person from communicating with federal, state or local of-**
2 **icials, including but not limited to federal and state surveyors and the**
3 **Office of the Long Term Care Ombudsman.**

4
5 **ENDORSED MEMORY CARE COMMUNITIES**

6
7 **SECTION 25. ORS 443.885 is repealed.**

8 **SECTION 26. ORS 443.886 is amended to read:**

9 443.886. (1) If a facility intends to provide care for [*patients or*] residents
10 with Alzheimer's disease or other **forms of** dementia by means of an
11 [*Alzheimer's care unit*] **endorsed memory care community**, the facility
12 must obtain a [*special indorsement*] **memory care endorsement** on its li-
13 cense or registration.

14 (2) The Department of Human Services, with the input from represen-
15 tatives of advocate groups and the long term care industry, shall adopt by
16 rule standards that ensure that the special needs of any [*Alzheimer's patient*
17 *or*] resident **with dementia** who is cared for in [*a special unit*] **an endorsed**
18 **memory care community** are met and that quality care is provided. The
19 standards must include but are not limited to provisions for:

20 (a) Care planning, including physical design, staffing, staff training,
21 safety, egress control, individual care planning, admission policy, family in-
22 volvement, therapeutic activities and social services;

23 (b) Continuity of basic care requirements;

24 (c) **Initial and ongoing training requirements for direct care staff;**

25 and

26 [(c)] (d) Marketing and advertising of the availability of and services from
27 [*Alzheimer's care units*] **endorsed memory care communities.**

28 (3) The department shall adopt a fee schedule for [*indorsement*] **memory**
29 **care endorsement**, taking into account the type of facility and the number
30 of [*patients and*] residents.

31 (4) The department shall enforce rules adopted under subsection (2) of this

1 section and shall allow a licensee or registrant to retain the [*special*
2 *indorsement*] **memory care endorsement** required to care for [*patients*
3 *and*] residents with Alzheimer’s disease or other **forms of** dementia only so
4 long as the licensee or registrant complies with the rules.

5 (5) The [*special indorsement*] **memory care endorsement** may be sus-
6 pended or revoked in the same manner as the license or registration is sus-
7 pended or revoked.

8 (6) Unless a facility has obtained the [*indorsement*] **memory care**
9 **endorsement** required by subsection (1) of this section, the facility shall
10 not:

11 (a) Advertise the facility as providing an Alzheimer’s care unit **or**
12 **memory care community**; or

13 (b) Market the facility as providing an Alzheimer’s care unit **or memory**
14 **care community**.

15 (7) As used in this section:

16 (a) [*“Alzheimer’s care unit”*] **“Endorsed memory care community”**
17 means a special care unit in a designated, separated area for [*patients and*]
18 residents with Alzheimer’s disease or other **forms of** dementia that is
19 locked[, *segregated*] or secured to prevent or limit access by a [*patient or*]
20 resident outside the designated or separated area.

21 (b) “Facility” means a nursing home, **long term care facility**, residential
22 care facility, assisted living facility or any other like facility required to be
23 licensed by the department.

24 (c) “Registry” means a facility will provide the department with infor-
25 mation relating to the [*Alzheimer’s care unit*] **endorsed memory care**
26 **community** including the number of residents in the unit, stage of dementia
27 for each resident, description of how services are provided, and length of
28 time the [*unit*] **community** has been operating.

29

30

CAPTIONS

31

1 **SECTION 27.** The unit captions used in this 2017 Act are provided
2 only for the convenience of the reader and do not become part of the
3 statutory law of this state or express any legislative intent in the
4 enactment of this 2017 Act.

5

6

EMERGENCY CLAUSE

7

8 **SECTION 28.** This 2017 Act being necessary for the immediate
9 preservation of the public peace, health and safety, an emergency is
10 declared to exist, and this 2017 Act takes effect on its passage.

11
