

Senate Bill 708

Sponsored by COMMITTEE ON HUMAN SERVICES

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**.

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.

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

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

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

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

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

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

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 **agencies.**

2 **(h) Protection from involuntary transfers or moves from the facility without prior writ-**
3 **ten notification and due process.**

4 **(2) The Director of Human Services may adopt rules clarifying or expanding upon resi-**
5 **dent rights, safety and protection.**

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 ORS 441.612 and 443.739 are repealed.**

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

8 441.413. (1) The appointments of designees shall be made in consultation with a local screening
9 committee that may consist of but not be limited to persons representing:

- 10 (a) The area agency on aging.
- 11 (b) The local office of the Department of Human Services.
- 12 (c) The local health department.
- 13 (d) Senior citizens groups in the area.
- 14 (e) Residential facilities in the area.
- 15 (f) Local elected officials.
- 16 (g) The community mental health program director or local mental health authority.
- 17 (h) The community developmental disabilities program director.
- 18 (i) Representatives from the Oregon Health Authority.

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

24 (3) Designees must sign a contract with the state that outlines the scope of their duties. In
25 districts where a designee is an employee or agent of a local entity, a three-party contract shall be
26 executed. Violation of the contract is cause for the termination of the appointment. A directory of
27 all designees shall be maintained in the office of the Long Term Care Ombudsman.

28 (4) The qualifications of designees shall include experience with residential facilities or residents
29 or potential residents of residential facilities, and the ability to communicate well, to understand
30 laws, rules and regulations, and to be assertive, yet objective.

31 (5) Applicants who have experience in either social service, mental health, developmental disa-
32 bility services, gerontology, nursing or paralegal work shall be given preference in the appointment
33 of designees.

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

36 (a) Promote rapport and trust between the residents and staff of the residential facilities and
37 Long Term Care Ombudsman;

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

40 (c) Serve as an educational resource;

41 (d) Receive, resolve or relay concerns to the Long Term Care Ombudsman or the appropriate
42 agency; and

43 (e) Ensure equitable resolution of problems.

44 (7) The duties of the designees are to:

45 (a) Visit each assigned residential facility on a regular basis:

- 1 (A) Upon arrival and departure, inform a specified staff member.
- 2 (B) Review, with a specified staff member, any problems or concerns that need to be considered.
- 3 (C) Visit individual residents and resident councils.
- 4 (b) Maintain liaison with appropriate agencies and the Long Term Care Ombudsman.
- 5 (c) Report, in writing, monthly to the Long Term Care Ombudsman.
- 6 (d) Keep residents and staff informed of the Long Term Care Ombudsman Program.
- 7 (e) Periodically review the patients' bill of rights prescribed in ORS 441.605[,] **and** 441.610 and
- 8 **[441.612] the Facility Residents' Bill of Rights prescribed in section 1 of this 2017 Act** with
- 9 residents, families, guardians, administrators and staff of residential facilities.
- 10 (f) Perform other related duties as specified.

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

12 659A.004. The amendments to ORS 10.030, 20.107, 30.860, 93.270, 109.035, 166.155, 166.165,
 13 174.100, 179.750, 192.630, 240.306, 338.125, 353.100, 418.648, 418.925, 421.352, 430.550, [443.739,]
 14 458.505, 659.850, 659A.003, 659A.006, 659A.030, 659A.403, 659A.406, 659A.409, 659A.421, 659A.805,
 15 659A.815, 659A.885, 660.139 and 744.353 by sections 1 to 31, 33 and 34, chapter 100, Oregon Laws
 16 2007, and the repeal of ORS 236.380 by section 32, chapter 100, Oregon Laws 2007, may be cited as
 17 the Oregon Equality Act.

18
 19 **STAFFING RATIOS FOR RESIDENTIAL CARE FACILITIES**

20
 21 **SECTION 5.** ORS 443.450 is amended to read:

22 443.450. (1)(a) **For a residential care facility, the Director of Human Services shall adopt**
 23 **rules governing:**

- 24 **(A) The physical properties of the facility;**
- 25 **(B) Storage, preparation, serving and delivery of food;**
- 26 **(C) Care to be provided;**
- 27 **(D) The experience and training of staff; and**
- 28 **(E) Any other factors affecting the care provided, including but not limited to the num-**
- 29 **ber of staff required to meet residents' scheduled and unscheduled needs.**

30 **(b) Staffing requirements for a facility must be posted in a prominent, public place in the**
 31 **facility.**

32 [(1)] **(2)** For a [residential care facility,] residential training facility or residential training home,
 33 the Director of Human Services shall adopt rules governing:

- 34 (a) The physical properties of the facility or home;
- 35 (b) Storage, preparation and serving of food;
- 36 (c) Care or training to be provided;
- 37 (d) The number, experience and training of the staff; and
- 38 (e) Any other factors affecting the care or training provided.

39 [(2)] **(3)** For a residential treatment facility or residential treatment home, the Director of the
 40 Oregon Health Authority shall adopt rules governing:

- 41 (a) The physical properties of the facility or home;
- 42 (b) Storage, preparation and serving of food;
- 43 (c) Treatment to be provided;
- 44 (d) The number, experience and training of the staff; and
- 45 (e) Any other factors affecting the treatment provided.

1 [(3)] (4) Distinct rules shall be adopted for homes of five or fewer residents, for facilities of six
2 or more but fewer than 16 residents, and for facilities for 16 or more residents. The rules shall dif-
3 ferentiate among categories of residents.

4 [(4)] (5) For purposes of this section, “categories” refers to different populations of residents,
5 differentiated by, but not limited to, age and need, as defined by the Department of Human Services
6 or the Oregon Health Authority by rule.

7
8 **SUSPENSION OF RESIDENTIAL FACILITY LICENSE**

9
10 **SECTION 6.** ORS 443.440 is amended to read:

11 443.440. (1) **Except as provided in subsection (2) of this section for residential care facili-**
12 **ties,** the Department of Human Services or the Oregon Health Authority may revoke or suspend the
13 license of any residential facility that is not operated in accordance with ORS 443.002 or 443.400 to
14 443.455 or the rules of the licensing agency. Such revocation or suspension shall be taken in ac-
15 cordance with rules of the licensing agency and ORS chapter 183. However, in cases where an im-
16 mminent danger to the health or safety of the residents exists, a license may be suspended
17 immediately pending 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 Department of Hu-**
19 **man Services, the department may revoke or suspend the license of a residential care facility**
20 **licensed by the department that is not operated in accordance with ORS 443.002 or 443.400**
21 **to 443.455 or the rules of the department.**

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

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

26 (d) **When the department issues an immediate suspension under this subsection, the de-**
27 **partment may:**

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

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

31
32 **RESIDENTIAL CARE FACILITY ADMINISTRATOR LICENSING**

33
34 **SECTION 7.** ORS 443.420 is amended to read:

35 443.420. (1) A person applying for a license under ORS 443.415 must, in the judgment of the di-
36 rector of the licensing agency, be a person:

37 (a) Who demonstrates an understanding and acceptance of the rules governing residential facil-
38 ities;

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

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

42 (2) A residential facility shall not be operated or maintained in combination with a nursing home
43 or hospital unless licensed, maintained and operated as a separate and distinct part.

44 (3) All physical residential facilities used for residents shall meet applicable requirements of the
45 State Fire Marshal.

1 (4) Prior to licensure, a residential facility must be in substantial compliance with applicable
 2 state and local laws, rules, codes, ordinances and permit requirements.

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

5 (a) Comply with ORS 336.575; and

6 (b) Ensure that the children who reside at the residential facility receive appropriate educa-
 7 tional services that are:

8 (A) Comprehensive and age-appropriate;

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

10 (C) If applicable, in compliance with the individual education program of the child.

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

12 (a) The license applicant's history of regulatory compliance and operational experience;

13 (b) The willingness of the license applicant to serve underserved populations; and

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

16 **(7) A residential care facility must be administered by a residential care facility admin-
 17 istrator licensed under section 12 of this 2017 Act.**

18 [(7)] (8) The licensing agency may not issue an initial license to a residential care facility if the
 19 facility has not conducted a market study that assesses the need for the services offered by the fa-
 20 cility in the geographic area served by the facility.

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

22 678.710. As used in ORS 678.710 to 678.820, unless the context requires otherwise:

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

25 (2) "Nursing home" means any institution or facility defined as a long term care facility for li-
 26 censing purposes under state statute or the rules of the Department of Human Services, including
 27 a long term care facility operated as part of a dual facility.

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

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

32 (b) In the case of a dual facility, the nursing home administrator may be subject to the authority
 33 of the administrator of the dual facility or the dual facility administrator may administer the nursing
 34 home if the **dual facility** administrator is licensed or otherwise qualified by statute to administer
 35 a nursing home.

36 (4) "Provisional license" means a temporary license issued to a provisional nursing home ad-
 37 ministrator under the rules of the Health Licensing Office.

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

39 **(6) "Residential care facility administrator" means an individual responsible for planning,
 40 organizing and managing the operation of a residential care facility, whether or not the in-
 41 dividual has an ownership interest in the facility and whether or not the planning, organizing
 42 and managing of the operation of the facility are shared by one or more other individuals,
 43 if:**

44 **(a) Final responsibility and authority are retained in the residential care facility admin-
 45 istrator; and**

1 **(b) In the case of a dual facility, the residential care facility administrator may be subject**
2 **to the authority of the dual facility administrator or the dual facility administrator may ad-**
3 **minister the residential care facility if the dual facility administrator is licensed or otherwise**
4 **qualified by statute to administer a residential care facility.**

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

6 678.720. (1) Unless an individual holds an active license issued under the provisions of ORS
7 678.710 to 678.820, an individual may not:

8 (a) Practice or offer to practice as a nursing home administrator **or residential care facility**
9 **administrator;** or

10 (b) Use in connection with the name of the individual the words or letters “nursing home ad-
11 ministrator,” “NHA,” **“residential care facility administrator,” “RCFA”** or any other words, let-
12 ters or abbreviations or insignia tending to indicate that the individual is a licensed nursing home
13 administrator **or residential care facility administrator.**

14 (2)(a) A nursing home shall be conducted or operated under the supervision of a nursing home
15 administrator who holds an active license issued under the provisions of ORS 678.710 to 678.820.

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

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

20 678.725. (1)(a) Unless state or federal laws relating to confidentiality or the protection of health
21 information prohibit disclosure, any health care facility licensed under ORS 441.015, any licensee
22 licensed by the Health Licensing Office, any physician licensed by the Oregon Medical Board, any
23 licensed professional nurse and any licensed pharmacist shall report to the office suspected vio-
24 lations of ORS 678.710 to 678.820 and unsanitary or other unsatisfactory conditions in a nursing
25 home **or a residential care facility.**

26 (b) Unless state or federal laws relating to confidentiality or the protection of health information
27 prohibit disclosure, a licensee licensed under ORS 678.710 to 678.820 who has reasonable cause to
28 believe that a licensee of any board as defined in ORS 676.150 has engaged in prohibited conduct
29 as defined in ORS 676.150 shall report the prohibited conduct in the manner provided in ORS
30 676.150.

31 (c) Any person may report to the office suspected violations of ORS 678.710 to 678.820 or un-
32 sanitary conditions in a nursing home **or residential care facility.**

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

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

38 **SECTION 11. Sections 12 and 13 of this 2017 Act are added to and made a part of ORS**
39 **678.710 to 678.820.**

40 **SECTION 12. (1) An individual qualifies for licensure as a residential care facility ad-**
41 **ministrator if the individual:**

42 **(a) Has a baccalaureate degree from an accredited school of higher education;**

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

44 **(c) Has completed training requirements established by the Nursing Home Administra-**
45 **tors Board by rule.**

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

- 4 (a) Has a baccalaureate degree from an accredited school of higher education; and
- 5 (b) Has passed an examination as provided in section 13 of this 2017 Act.

6 (3) Notwithstanding subsection (1) of this section, upon the request of the governing body
 7 of a hospital, as defined in ORS 442.015, the Nursing Home Administrators Board shall pro-
 8 vide by rule that a health care administrator has met the requirements for licensure as a
 9 residential care facility administrator if the health care administrator possesses an advanced
 10 degree in management and has at least 10 years of experience in health care management.

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

14 (2) At the time of taking an examination for licensure as a residential care facility ad-
 15 ministrator, an applicant shall pay an examination or reexamination fee established by the
 16 Health Licensing Office under ORS 676.592.

17 (3) The board shall, consistent with the purposes for which the examination is given,
 18 determine the subjects, scope, content and the minimum passing grade for examinations.

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

20 678.770. (1) The Nursing Home Administrators Board may establish by rule standards for the
 21 issuance of a license by endorsement to an applicant who:

- 22 (a) Meets the requirements as established by the board; and
- 23 (b) On the date of making application, is a nursing home administrator **or residential care fa-**
 24 **ility administrator** licensed under the laws of any other state or territory of the United States if
 25 the requirements for licensing of nursing home administrators **or residential care facility admin-**
 26 **istrators** in the state or territory in which the applicant is licensed are not less than those required
 27 by ORS 678.710 to 678.820.

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

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

31 678.780. (1) In the manner prescribed in ORS chapter 183 for contested cases, the Health Li-
 32 censing Office may impose a form of discipline as specified in ORS 676.612 against any person
 33 practicing as a nursing home administrator **or residential care facility administrator** for any of
 34 the grounds listed in ORS 676.612 and for any violation of the provisions of ORS 678.710 to 678.820,
 35 or the rules adopted under ORS 678.710 to 678.820.

36 (2) In addition to any discipline that may be imposed as provided by subsection (1) of this sec-
 37 tion, the office may impose disciplinary sanctions against a person practicing as a nursing home
 38 administrator **or residential care facility administrator** for any of the following causes:

- 39 (a) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.820 or
 40 of any rule or order of the office;
- 41 (b) Any continuous or substantial violation of the rules adopted under ORS 441.025; or
- 42 (c) Discipline imposed by any other licensing body in this or any other state based on conduct
 43 that would be grounds for discipline under this section or rules adopted by the office.

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

45 678.820. (1) The Nursing Home Administrators Board is responsible for advising the Health Li-

1 censing Office in all matters relating to the administration of ORS 678.710 to 678.820, including:

2 (a) Developing standards for education and training;

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

4 (c) Establishing standards related to the issuance, denial, revocation, suspension or renewal of
5 licenses to practice as a nursing home administrator **or residential care facility administrator**;

6 (d) Preparing or approving the examinations required under ORS 678.710 to 678.820, in accord-
7 ance with standards provided by the office; and

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

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

10 (a) Determining the qualifications and fitness of applicants for licenses, renewed licenses, re-
11 ciprocal licenses and provisional licenses under ORS 678.710 to 678.820.

12 (b) Examining, approving, issuing, denying, revoking, suspending and renewing licenses to prac-
13 tice as a nursing home administrator **or residential care facility administrator**.

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

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

17 (e) Pursuant to ORS 676.608, receiving and investigating complaints filed regarding nursing
18 home administrators **and residential care facility administrators**.

19 (f) Establishing and collecting fees and charges to carry out the office's duties under ORS
20 678.710 to 678.820.

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

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

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

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

28 192.556. As used in ORS 192.553 to 192.581:

29 (1) "Authorization" means a document written in plain language that contains at least the fol-
30 lowing:

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

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

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

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

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

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

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

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

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

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

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

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

5 (2) "Covered entity" means:

6 (a) A state health plan;

7 (b) A health insurer;

8 (c) A health care provider that transmits any health information in electronic form to carry out
9 financial or administrative activities in connection with a transaction covered by ORS 192.553 to
10 192.581; or

11 (d) A health care clearinghouse.

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

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

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

15 (b) Case management and care coordination;

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

18 (d) Underwriting activities;

19 (e) Arranging for legal services;

20 (f) Business planning;

21 (g) Customer services;

22 (h) Resolving internal grievances;

23 (i) Creating deidentified information; and

24 (j) Fundraising.

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

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

30 (b) A physician or physician assistant licensed under ORS chapter 677, an acupuncturist licensed
31 under ORS 677.759 or an employee of the physician, physician assistant or acupuncturist;

32 (c) A nurse [*or*], nursing home administrator **or residential care facility administrator** li-
33 censed under ORS chapter 678 or an employee of the nurse or [*nursing home*] administrator;

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

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

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

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

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

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

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

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

- 1 therapist;
- 2 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
- 3 entry midwife;
- 4 (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical
- 5 therapist;
- 6 (n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical
- 7 imaging licensee;
- 8 (o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory
- 9 care practitioner;
- 10 (p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the poly-
- 11 somnographic technologist;
- 12 (q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 13 (r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;
- 14 (s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
- 15 service practitioner;
- 16 (t) A health care facility as defined in ORS 442.015;
- 17 (u) A home health agency as defined in ORS 443.014;
- 18 (v) A hospice program as defined in ORS 443.850;
- 19 (w) A clinical laboratory as defined in ORS 438.010;
- 20 (x) A pharmacy as defined in ORS 689.005;
- 21 (y) A diabetes self-management program as defined in ORS 743A.184; and
- 22 (z) Any other person or entity that furnishes, bills for or is paid for health care in the normal
- 23 course of business.
- 24 (6) "Health information" means any oral or written information in any form or medium that:
- 25 (a) Is created or received by a covered entity, a public health authority, an employer, a life
- 26 insurer, a school, a university or a health care provider that is not a covered entity; and
- 27 (b) Relates to:
- 28 (A) The past, present or future physical or mental health or condition of an individual;
- 29 (B) The provision of health care to an individual; or
- 30 (C) The past, present or future payment for the provision of health care to an individual.
- 31 (7) "Health insurer" means:
- 32 (a) An insurer as defined in ORS 731.106 who offers:
- 33 (A) A health benefit plan as defined in ORS 743B.005;
- 34 (B) A short term health insurance policy, the duration of which does not exceed six months in-
- 35 cluding renewals;
- 36 (C) A student health insurance policy;
- 37 (D) A Medicare supplemental policy; or
- 38 (E) A dental only policy.
- 39 (b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board
- 40 under ORS 735.600 to 735.650.
- 41 (8) "Individually identifiable health information" means any oral or written health information
- 42 in any form or medium that is:
- 43 (a) Created or received by a covered entity, an employer or a health care provider that is not
- 44 a covered entity; and
- 45 (b) Identifiable to an individual, including demographic information that identifies the individual,

1 or for which there is a reasonable basis to believe the information can be used to identify an indi-
 2 vidual, and that relates to:

- 3 (A) The past, present or future physical or mental health or condition of an individual;
- 4 (B) The provision of health care to an individual; or
- 5 (C) The past, present or future payment for the provision of health care to an individual.

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

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

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

- 15 (a) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with
 16 authority to make medical and health care decisions;
- 17 (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-
 18 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment
 19 decisions;
- 20 (c) A person appointed as a personal representative under ORS chapter 113; and
- 21 (d) A person described in ORS 192.573.

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

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

- 25 (A) Education records covered by the federal Family Educational Rights and Privacy Act (20
 26 U.S.C. 1232g);
- 27 (B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or
- 28 (C) Employment records held by a covered entity in its role as employer.

29 (12) "State health plan" means:

- 30 (a) Medical assistance as defined in ORS 414.025;
- 31 (b) The Health Care for All Oregon Children program; or
- 32 (c) Any medical assistance or premium assistance program operated by the Oregon Health Au-
 33 thority.

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

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

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

39 192.556. As used in ORS 192.553 to 192.581:

40 (1) "Authorization" means a document written in plain language that contains at least the fol-
 41 lowing:

- 42 (a) A description of the information to be used or disclosed that identifies the information in a
 43 specific and meaningful way;
- 44 (b) The name or other specific identification of the person or persons authorized to make the
 45 requested use or disclosure;

- 1 (c) The name or other specific identification of the person or persons to whom the covered entity
 2 may make the requested use or disclosure;
- 3 (d) A description of each purpose of the requested use or disclosure, including but not limited
 4 to a statement that the use or disclosure is at the request of the individual;
- 5 (e) An expiration date or an expiration event that relates to the individual or the purpose of the
 6 use or disclosure;
- 7 (f) The signature of the individual or personal representative of the individual and the date;
- 8 (g) A description of the authority of the personal representative, if applicable; and
- 9 (h) Statements adequate to place the individual on notice of the following:
- 10 (A) The individual’s right to revoke the authorization in writing;
- 11 (B) The exceptions to the right to revoke the authorization;
- 12 (C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits
 13 on whether the individual signs the authorization; and
- 14 (D) The potential for information disclosed pursuant to the authorization to be subject to
 15 redisclosure by the recipient and no longer protected.
- 16 (2) “Covered entity” means:
- 17 (a) A state health plan;
- 18 (b) A health insurer;
- 19 (c) A health care provider that transmits any health information in electronic form to carry out
 20 financial or administrative activities in connection with a transaction covered by ORS 192.553 to
 21 192.581; or
- 22 (d) A health care clearinghouse.
- 23 (3) “Health care” means care, services or supplies related to the health of an individual.
- 24 (4) “Health care operations” includes but is not limited to:
- 25 (a) Quality assessment, accreditation, auditing and improvement activities;
- 26 (b) Case management and care coordination;
- 27 (c) Reviewing the competence, qualifications or performance of health care providers or health
 28 insurers;
- 29 (d) Underwriting activities;
- 30 (e) Arranging for legal services;
- 31 (f) Business planning;
- 32 (g) Customer services;
- 33 (h) Resolving internal grievances;
- 34 (i) Creating deidentified information; and
- 35 (j) Fundraising.
- 36 (5) “Health care provider” includes but is not limited to:
- 37 (a) A psychologist, occupational therapist, regulated social worker, professional counselor or
 38 marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675
 39 or an employee of the psychologist, occupational therapist, regulated social worker, professional
 40 counselor or marriage and family therapist;
- 41 (b) A physician or physician assistant licensed under ORS chapter 677, an acupuncturist licensed
 42 under ORS 677.759 or an employee of the physician, physician assistant or acupuncturist;
- 43 (c) A nurse [*or*], nursing home administrator **or residential care facility administrator** li-
 44 censed under ORS chapter 678 or an employee of the nurse or [*nursing home*] administrator;
- 45 (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;

- 1 (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental
 2 hygienist or denturist;
- 3 (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee
 4 of the speech-language pathologist or audiologist;
- 5 (g) An emergency medical services provider licensed under ORS chapter 682;
- 6 (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- 7 (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
 8 physician;
- 9 (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
 10 physician;
- 11 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
 12 therapist;
- 13 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
 14 entry midwife;
- 15 (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical
 16 therapist;
- 17 (n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical
 18 imaging licensee;
- 19 (o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory
 20 care practitioner;
- 21 (p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the poly-
 22 somnographic technologist;
- 23 (q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 24 (r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;
- 25 (s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
 26 service practitioner;
- 27 (t) A health care facility as defined in ORS 442.015;
- 28 (u) A home health agency as defined in ORS 443.014;
- 29 (v) A hospice program as defined in ORS 443.850;
- 30 (w) A clinical laboratory as defined in ORS 438.010;
- 31 (x) A pharmacy as defined in ORS 689.005;
- 32 (y) A diabetes self-management program as defined in ORS 743A.184; and
- 33 (z) Any other person or entity that furnishes, bills for or is paid for health care in the normal
 34 course of business.
- 35 (6) "Health information" means any oral or written information in any form or medium that:
- 36 (a) Is created or received by a covered entity, a public health authority, an employer, a life
 37 insurer, a school, a university or a health care provider that is not a covered entity; and
- 38 (b) Relates to:
- 39 (A) The past, present or future physical or mental health or condition of an individual;
- 40 (B) The provision of health care to an individual; or
- 41 (C) The past, present or future payment for the provision of health care to an individual.
- 42 (7) "Health insurer" means an insurer as defined in ORS 731.106 who offers:
- 43 (a) A health benefit plan as defined in ORS 743B.005;
- 44 (b) A short term health insurance policy, the duration of which does not exceed six months in-
 45 cluding renewals;

- 1 (c) A student health insurance policy;
- 2 (d) A Medicare supplemental policy; or
- 3 (e) A dental only policy.
- 4 (8) “Individually identifiable health information” means any oral or written health information
- 5 in any form or medium that is:
- 6 (a) Created or received by a covered entity, an employer or a health care provider that is not
- 7 a covered entity; and
- 8 (b) Identifiable to an individual, including demographic information that identifies the individual,
- 9 or for which there is a reasonable basis to believe the information can be used to identify an indi-
- 10 vidual, and that relates to:
- 11 (A) The past, present or future physical or mental health or condition of an individual;
- 12 (B) The provision of health care to an individual; or
- 13 (C) The past, present or future payment for the provision of health care to an individual.
- 14 (9) “Payment” includes but is not limited to:
- 15 (a) Efforts to obtain premiums or reimbursement;
- 16 (b) Determining eligibility or coverage;
- 17 (c) Billing activities;
- 18 (d) Claims management;
- 19 (e) Reviewing health care to determine medical necessity;
- 20 (f) Utilization review; and
- 21 (g) Disclosures to consumer reporting agencies.
- 22 (10) “Personal representative” includes but is not limited to:
- 23 (a) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with
- 24 authority to make medical and health care decisions;
- 25 (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-
- 26 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment
- 27 decisions;
- 28 (c) A person appointed as a personal representative under ORS chapter 113; and
- 29 (d) A person described in ORS 192.573.
- 30 (11)(a) “Protected health information” means individually identifiable health information that is
- 31 maintained or transmitted in any form of electronic or other medium by a covered entity.
- 32 (b) “Protected health information” does not mean individually identifiable health information in:
- 33 (A) Education records covered by the federal Family Educational Rights and Privacy Act (20
- 34 U.S.C. 1232g);
- 35 (B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or
- 36 (C) Employment records held by a covered entity in its role as employer.
- 37 (12) “State health plan” means:
- 38 (a) Medical assistance as defined in ORS 414.025;
- 39 (b) The Health Care for All Oregon Children program; or
- 40 (c) Any medical assistance or premium assistance program operated by the Oregon Health Au-
- 41 thority.
- 42 (13) “Treatment” includes but is not limited to:
- 43 (a) The provision, coordination or management of health care; and
- 44 (b) Consultations and referrals between health care providers.
- 45 **SECTION 19.** ORS 433.443 is amended to read:

- 1 433.443. (1) As used in this section:
- 2 (a) "Covered entity" means:
- 3 (A) The Children's Health Insurance Program;
- 4 (B) A health insurer that is an insurer as defined in ORS 731.106 and that issues health insur-
- 5 ance as defined in ORS 731.162;
- 6 (C) The state medical assistance program; and
- 7 (D) A health care provider.
- 8 (b) "Health care provider" includes but is not limited to:
- 9 (A) A psychologist, occupational therapist, regulated social worker, professional counselor or
- 10 marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675
- 11 or an employee of the psychologist, occupational therapist, regulated social worker, professional
- 12 counselor or marriage and family therapist;
- 13 (B) A physician or physician assistant licensed under ORS chapter 677, an acupuncturist li-
- 14 censed under ORS 677.759 or an employee of the physician, physician assistant or acupuncturist;
- 15 (C) A nurse [or], nursing home administrator **or residential care facility administrator** li-
- 16 censed under ORS chapter 678 or an employee of the nurse or [nursing home] administrator;
- 17 (D) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- 18 (E) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental
- 19 hygienist or denturist;
- 20 (F) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee
- 21 of the speech-language pathologist or audiologist;
- 22 (G) An emergency medical services provider licensed under ORS chapter 682;
- 23 (H) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- 24 (I) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
- 25 physician;
- 26 (J) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
- 27 physician;
- 28 (K) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
- 29 therapist;
- 30 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
- 31 entry midwife;
- 32 (M) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical
- 33 therapist;
- 34 (N) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical
- 35 imaging licensee;
- 36 (O) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respir-
- 37 atory care practitioner;
- 38 (P) A polysomnographic technologist licensed under ORS 688.819 or an employee of the poly-
- 39 somnographic technologist;
- 40 (Q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 41 (R) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;
- 42 (S) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
- 43 service practitioner;
- 44 (T) A health care facility as defined in ORS 442.015;
- 45 (U) A home health agency as defined in ORS 443.014;

- 1 (V) A hospice program as defined in ORS 443.850;
 2 (W) A clinical laboratory as defined in ORS 438.010;
 3 (X) A pharmacy as defined in ORS 689.005;
 4 (Y) A diabetes self-management program as defined in ORS 743A.184; and
 5 (Z) Any other person or entity that furnishes, bills for or is paid for health care in the normal
 6 course of business.
- 7 (c) "Individual" means a natural person.
- 8 (d) "Individually identifiable health information" means any oral or written health information
 9 in any form or medium that is:
- 10 (A) Created or received by a covered entity, an employer or a health care provider that is not
 11 a covered entity; and
- 12 (B) Identifiable to an individual, including demographic information that identifies the individual,
 13 or for which there is a reasonable basis to believe the information can be used to identify an indi-
 14 vidual, and that relates to:
- 15 (i) The past, present or future physical or mental health or condition of an individual;
 16 (ii) The provision of health care to an individual; or
 17 (iii) The past, present or future payment for the provision of health care to an individual.
- 18 (e) "Legal representative" means attorney at law, person holding a general power of attorney,
 19 guardian, conservator or any person appointed by a court to manage the personal or financial affairs
 20 of a person, or agency legally responsible for the welfare or support of a person.
- 21 (2)(a) During a public health emergency declared under ORS 433.441, the Public Health Director
 22 may, as necessary to appropriately respond to the public health emergency:
- 23 (A) Adopt reporting requirements for and provide notice of those requirements to health care
 24 providers, institutions and facilities for the purpose of obtaining information directly related to the
 25 public health emergency;
- 26 (B) After consultation with appropriate medical experts, create and require the use of diagnostic
 27 and treatment protocols to respond to the public health emergency and provide notice of those
 28 protocols to health care providers, institutions and facilities;
- 29 (C) Order, or authorize local public health administrators to order, public health measures ap-
 30 propriate to the public health threat presented;
- 31 (D) Authorize pharmacists licensed under ORS chapter 689 to administer vaccines to persons
 32 who are three years of age or older;
- 33 (E) Upon approval of the Governor, take other actions necessary to address the public health
 34 emergency and provide notice of those actions to health care providers, institutions and facilities,
 35 including public health actions authorized by ORS 431A.015;
- 36 (F) Take any enforcement action authorized by ORS 431A.010, including the imposition of civil
 37 penalties of up to \$500 per day against individuals, institutions or facilities that knowingly fail to
 38 comply with requirements resulting from actions taken in accordance with the powers granted to
 39 the Public Health Director under subparagraphs (A), (B) and (E) of this paragraph; and
- 40 (G) The authority granted to the Public Health Director under this section:
- 41 (i) Supersedes any authority granted to a local public health authority if the local public health
 42 authority acts in a manner inconsistent with guidelines established or rules adopted by the director
 43 under this section; and
- 44 (ii) Does not supersede the general authority granted to a local public health authority or a
 45 local public health administrator except as authorized by law or necessary to respond to a public

1 health emergency.

2 (b) The authority of the Public Health Director to take administrative action, and the effec-
3 tiveness of any action taken, under paragraph (a)(A), (B) and (D) to (G) of this subsection terminates
4 upon the expiration of the declared state of public health emergency, unless the actions are con-
5 tinued under other applicable law.

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

12 (4)(a) During a declared state of public health emergency, the Public Health Director and local
13 public health administrators shall be given immediate access to individually identifiable health in-
14 formation necessary to:

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

16 (B) Identify persons at risk;

17 (C) Identify patterns of transmission;

18 (D) Provide treatment; and

19 (E) Take steps to control the disease.

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

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

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

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

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

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

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

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

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

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

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

6 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
7 penalty or remedy provided by law, the Health Licensing Office may impose a civil penalty not to
8 exceed \$5,000 for each violation of the following statutes and any rule adopted under the following
9 statutes:

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

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

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

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

14 (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal im-
15 planting and scarification);

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

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

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

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

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

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

22 (L) ORS 676.612 (prohibited acts);

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

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

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

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

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

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

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

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

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

37 (d) Any other aggravating or mitigating factors.

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

39 (6) The moneys received by the office from civil penalties under this section shall be deposited
40 in the Health Licensing Office Account and are continuously appropriated to the office for the ad-
41 ministration and enforcement of the laws the office is charged with administering and enforcing that
42 govern the person against whom the penalty was imposed.

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

44 746.600. As used in ORS 746.600 to 746.690:

45 (1)(a) "Adverse underwriting decision" means any of the following actions with respect to in-

1 surance transactions involving insurance coverage that is individually underwritten:

2 (A) A declination of insurance coverage.

3 (B) A termination of insurance coverage.

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

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

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

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

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

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

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

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

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

22 (C) The rescission of a policy.

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

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

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

32 (5) "Consumer report" means any written, oral or other communication of information bearing
33 on a natural person's creditworthiness, credit standing, credit capacity, character, general reputa-
34 tion, personal characteristics or mode of living that is used or expected to be used in connection
35 with an insurance transaction.

36 (6) "Consumer reporting agency" means a person that, for monetary fees or dues, or on a co-
37 operative or nonprofit basis:

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

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

40 (c) Furnishes consumer reports to other persons.

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

- 1 trolled person.
- 2 (8) “Covered entity” means:
- 3 (a) A health insurer;
- 4 (b) A health care provider that transmits any health information in electronic form to carry out
5 financial or administrative activities in connection with a transaction covered by ORS 746.607 or
6 by rules adopted under ORS 746.608; or
- 7 (c) A health care clearinghouse.
- 8 (9) “Credit history” means any written or other communication of any information by a con-
9 sumer reporting agency that:
- 10 (a) Bears on a consumer’s creditworthiness, credit standing or credit capacity; and
- 11 (b) Is used or expected to be used, or collected in whole or in part, as a factor in determining
12 eligibility, premiums or rates for personal insurance.
- 13 (10) “Customer” means a consumer who has a continuing relationship with a licensee under
14 which the licensee provides one or more insurance products or services to the consumer that are
15 to be used primarily for personal, family or household purposes.
- 16 (11) “Declination of insurance coverage” or “decline coverage” means a denial, in whole or in
17 part, by an insurer or insurance producer of an application for requested insurance coverage.
- 18 (12) “Health care” means care, services or supplies related to the health of an individual.
- 19 (13) “Health care operations” includes but is not limited to:
- 20 (a) Quality assessment, accreditation, auditing and improvement activities;
- 21 (b) Case management and care coordination;
- 22 (c) Reviewing the competence, qualifications or performance of health care providers or health
23 insurers;
- 24 (d) Underwriting activities;
- 25 (e) Arranging for legal services;
- 26 (f) Business planning;
- 27 (g) Customer services;
- 28 (h) Resolving internal grievances;
- 29 (i) Creating deidentified information; and
- 30 (j) Fundraising.
- 31 (14) “Health care provider” includes but is not limited to:
- 32 (a) A psychologist, occupational therapist, regulated social worker, professional counselor or
33 marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675
34 or an employee of the psychologist, occupational therapist, regulated social worker, professional
35 counselor or marriage and family therapist;
- 36 (b) A physician or physician assistant licensed under ORS chapter 677, an acupuncturist licensed
37 under ORS 677.759 or an employee of the physician, physician assistant or acupuncturist;
- 38 (c) A nurse [*or*], nursing home administrator **or residential care facility administrator** li-
39 censed under ORS chapter 678 or an employee of the nurse or [*nursing home*] administrator;
- 40 (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- 41 (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental
42 hygienist or denturist;
- 43 (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee
44 of the speech-language pathologist or audiologist;
- 45 (g) An emergency medical services provider licensed under ORS chapter 682;

- 1 (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- 2 (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
3 physician;
- 4 (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
5 physician;
- 6 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
7 therapist;
- 8 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
9 entry midwife;
- 10 (m) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical
11 therapist;
- 12 (n) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical
13 imaging licensee;
- 14 (o) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respiratory
15 care practitioner;
- 16 (p) A polysomnographic technologist licensed under ORS 688.819 or an employee of the poly-
17 somnographic technologist;
- 18 (q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 19 (r) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;
- 20 (s) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
21 service practitioner;
- 22 (t) A health care facility as defined in ORS 442.015;
- 23 (u) A home health agency as defined in ORS 443.014;
- 24 (v) A hospice program as defined in ORS 443.850;
- 25 (w) A clinical laboratory as defined in ORS 438.010;
- 26 (x) A pharmacy as defined in ORS 689.005;
- 27 (y) A diabetes self-management program as defined in ORS 743.694; and
- 28 (z) Any other person or entity that furnishes, bills for or is paid for health care in the normal
29 course of business.
- 30 (15) "Health information" means any oral or written information in any form or medium that:
- 31 (a) Is created or received by a covered entity, a public health authority, a life insurer, a school,
32 a university or a health care provider that is not a covered entity; and
- 33 (b) Relates to:
- 34 (A) The past, present or future physical or mental health or condition of an individual;
- 35 (B) The provision of health care to an individual; or
- 36 (C) The past, present or future payment for the provision of health care to an individual.
- 37 (16) "Health insurer" means an insurer who offers:
- 38 (a) A health benefit plan as defined in ORS 743B.005;
- 39 (b) A short term health insurance policy, the duration of which does not exceed six months in-
40 cluding renewals;
- 41 (c) A student health insurance policy;
- 42 (d) A Medicare supplemental policy; or
- 43 (e) A dental only policy.
- 44 (17) "Homeowner insurance" means insurance for residential property consisting of a combina-
45 tion of property insurance and casualty insurance that provides coverage for the risks of owning

1 or occupying a dwelling and that is not intended to cover an owner's interest in rental property or
2 commercial exposures.

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

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

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

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

9 (d) Is a past or present applicant;

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

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

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

15 (a) Created or received by a covered entity or a health care provider that is not a covered en-
16 tity; and

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

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

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

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

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

25 (a) An insurance producer;

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

27 (c) A natural person acting in a personal capacity rather than in a business or professional ca-
28 pacity.

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

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

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

36 (A) The furnishing of consumer reports to an insurer or insurance producer for use in con-
37 nection with insurance transactions; and

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

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

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

- 1 (a) The determination of an individual’s eligibility for an insurance coverage, benefit or payment;
 2 or
 3 (b) The servicing of an insurance application, policy or certificate.
- 4 (25) “Insurer” has the meaning given that term in ORS 731.106.
- 5 (26) “Investigative consumer report” means a consumer report, or portion of a consumer report,
 6 for which information about a natural person’s character, general reputation, personal character-
 7 istics or mode of living is obtained through personal interviews with the person’s neighbors, friends,
 8 associates, acquaintances or others who may have knowledge concerning such items of information.
- 9 (27) “Licensee” means an insurer, insurance producer or other person authorized or required to
 10 be authorized, or licensed or required to be licensed, pursuant to the Insurance Code.
- 11 (28) “Loss history report” means a report provided by, or a database maintained by, an
 12 insurance-support organization or consumer reporting agency that contains information regarding
 13 the claims history of the individual property that is the subject of the application for a homeowner
 14 insurance policy or the consumer applying for a homeowner insurance policy.
- 15 (29) “Nonaffiliated third party” means any person except:
 16 (a) An affiliate of a licensee;
 17 (b) A person that is employed jointly by a licensee and by a person that is not an affiliate of the
 18 licensee; and
 19 (c) As designated by the director by rule.
- 20 (30) “Payment” includes but is not limited to:
 21 (a) Efforts to obtain premiums or reimbursement;
 22 (b) Determining eligibility or coverage;
 23 (c) Billing activities;
 24 (d) Claims management;
 25 (e) Reviewing health care to determine medical necessity;
 26 (f) Utilization review; and
 27 (g) Disclosures to consumer reporting agencies.
- 28 (31)(a) “Personal financial information” means:
 29 (A) Information that is identifiable with an individual, gathered in connection with an insurance
 30 transaction from which judgments can be made about the individual’s character, habits, avocations,
 31 finances, occupations, general reputation, credit or any other personal characteristics; or
 32 (B) An individual’s name, address and policy number or similar form of access code for the
 33 individual’s policy.
 34 (b) “Personal financial information” does not mean information that a licensee has a reasonable
 35 basis to believe is lawfully made available to the general public from federal, state or local gov-
 36 ernment records, widely distributed media or disclosures to the public that are required by federal,
 37 state or local law.
- 38 (32) “Personal information” means:
 39 (a) Personal financial information;
 40 (b) Individually identifiable health information; or
 41 (c) Protected health information.
- 42 (33) “Personal insurance” means the following types of insurance products or services that are
 43 to be used primarily for personal, family or household purposes:
 44 (a) Private passenger automobile coverage;
 45 (b) Homeowner, mobile homeowners, manufactured homeowners, condominium owners and

- 1 renters coverage;
- 2 (c) Personal dwelling property coverage;
- 3 (d) Personal liability and theft coverage, including excess personal liability and theft coverage;
- 4 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, 419C.481 or 419C.555 with
- 8 authority to make medical and health care decisions;
- 9 (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or 127.700
- 10 to 127.737 to make health care decisions or mental health treatment decisions;
- 11 (c) A person appointed as a personal representative under ORS chapter 113; and
- 12 (d) A person described in ORS 746.611.
- 13 (35) “Policyholder” means a person who:
- 14 (a) In the case of individual policies of life or health insurance, is a current policyowner;
- 15 (b) In the case of individual policies of other kinds of insurance, is currently a named insured;
- 16 or
- 17 (c) In the case of group policies of insurance under which coverage is individually underwritten,
- 18 is a current certificate holder.
- 19 (36) “Pretext interview” means an interview wherein the interviewer, in an attempt to obtain
- 20 personal information about a natural person, does one or more of the following:
- 21 (a) Pretends to be someone the interviewer is not.
- 22 (b) Pretends to represent a person the interviewer is not in fact representing.
- 23 (c) Misrepresents the true purpose of the interview.
- 24 (d) Refuses upon request to identify the interviewer.
- 25 (37) “Privileged information” means information that is identifiable with an individual and that:
- 26 (a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the in-
- 27 dividual; and
- 28 (b) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits
- 29 or a civil or criminal proceeding involving the individual.
- 30 (38)(a) “Protected health information” means individually identifiable health information that is
- 31 transmitted or maintained in any form of electronic or other medium by a covered entity.
- 32 (b) “Protected health information” does not mean individually identifiable health information in:
- 33 (A) Education records covered by the federal Family Educational Rights and Privacy Act (20
- 34 U.S.C. 1232g);
- 35 (B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or
- 36 (C) Employment records held by a covered entity in its role as employer.
- 37 (39) “Residual market mechanism” means an association, organization or other entity involved
- 38 in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the Insurance
- 39 Code relating to insurance applicants who are unable to procure insurance through normal insur-
- 40 ance markets.
- 41 (40) “Termination of insurance coverage” or “termination of an insurance policy” means either
- 42 a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason other than
- 43 the failure of a premium to be paid as required by the policy.
- 44 (41) “Treatment” includes but is not limited to:
- 45 (a) The provision, coordination or management of health care; and

(b) Consultations and referrals between health care providers.

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

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

SECTION 23. The amendments to ORS 443.420 by section 7 of this 2017 Act apply only to residential care facility licenses issued or renewed on or after the operative date specified in section 22 of this 2017 Act.

BINDING ARBITRATION

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

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

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

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

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

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

(c) The agreement is explained to the resident in a form and manner that the resident understands.

(d) The resident enters into the agreement voluntarily.

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

(f) The agreement does not prohibit or discourage the resident or any other person from communicating with federal, state or local officials, including but not limited to federal and state surveyors and the Office of the Long Term Care Ombudsman.

ENDORSED MEMORY CARE COMMUNITIES

SECTION 25. ORS 443.885 is repealed.

SECTION 26. ORS 443.886 is amended to read:

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

(2) The Department of Human Services, with the input from representatives of advocate groups and the long term care industry, shall adopt by rule standards that ensure that the special needs of any [*Alzheimer’s patient or*] resident **with dementia** who is cared for in [*a special unit*] **an en-**

1 **dorsed memory care community** are met and that quality care is provided. The standards must
 2 include but are not limited to provisions for:

3 (a) Care planning, including physical design, staffing, staff training, safety, egress control, indi-
 4 vidual care planning, admission policy, family involvement, therapeutic activities and social services;

5 (b) Continuity of basic care requirements;

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

7 [(c)] (d) Marketing and advertising of the availability of and services from [*Alzheimer’s care*
 8 *units*] **endorsed memory care communities**.

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

11 (4) The department shall enforce rules adopted under subsection (2) of this section and shall
 12 allow a licensee or registrant to retain the [*special indorsement*] **memory care endorsement** re-
 13 quired to care for [*patients and*] residents with Alzheimer’s disease or other **forms of** dementia only
 14 so long as the licensee or registrant complies with the rules.

15 (5) The [*special indorsement*] **memory care endorsement** may be suspended or revoked in the
 16 same manner as the license or registration is suspended or revoked.

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

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

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

22 (7) As used in this section:

23 (a) [*“Alzheimer’s care unit”*] **“Endorsed memory care community”** means a special care unit
 24 in a designated, separated area for [*patients and*] residents with Alzheimer’s disease or other **forms**
 25 **of** dementia that is locked[, *segregated*] or secured to prevent or limit access by a [*patient or*] resi-
 26 dent outside the designated or separated area.

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

29 (c) “Registry” means a facility will provide the department with information relating to the
 30 [*Alzheimer’s care unit*] **endorsed memory care community** including the number of residents in
 31 the unit, stage of dementia for each resident, description of how services are provided, and length
 32 of time the [*unit*] **community** has been operating.

33
 34 **CAPTIONS**
 35

36 **SECTION 27. The unit captions used in this 2017 Act are provided only for the conven-**
 37 **ience of the reader and do not become part of the statutory law of this state or express any**
 38 **legislative intent in the enactment of this 2017 Act.**

39
 40 **EMERGENCY CLAUSE**
 41

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