

Enrolled House Bill 4129

Sponsored by Representatives MCKEOWN, ESQUIVEL, Senator ROBLAN, Representative KENY-GUYER, Senator GELSER; Representatives ALONSO LEON, GOMBERG, GREENLICK, HAYDEN, LEWIS, MARSH, NOBLE, NOSSE, PILUSO, POWER, SANCHEZ, SMITH DB, SOLLMAN, VIAL, WITT, Senators BOQUIST, JOHNSON, KRUSE, TAYLOR (Pre-session filed.)

CHAPTER

AN ACT

Relating to residential care facilities; creating new provisions; amending ORS 401.651, 431A.850, 433.045, 441.057, 441.406, 676.108, 676.150, 676.350, 676.400, 676.565, 676.595, 676.850, 676.992, 678.710, 678.720, 678.740, 678.770, 678.800, 678.810, 678.820 and 743B.454; and declaring an emergency.

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

RESIDENTIAL CARE FACILITY ADMINISTRATOR LICENSE

SECTION 1. Sections 2 to 4 of this 2018 Act are added to and made a part of ORS 678.710 to 678.820.

SECTION 2. (1) The Health Licensing Office may issue a residential care facility administrator license to an applicant who:

- (a) Is at least 21 years of age;
- (b) Has earned at least a high school diploma or its equivalent;
- (c)(A) For at least two of the last five years has been employed in a professional or managerial capacity in a health or social service related field, or has a combination of experience and education deemed sufficient by the office; or
- (B) Has earned at least a bachelor's degree in a health or social service related field;
- (d) Has completed at least 40 hours of training approved by the office by rule;
- (e) Pays a licensure fee; and
- (f) Passes an examination described in section 3 of this 2018 Act.

(2) When issuing a license under this section, the office shall consider the qualifications for employment under ORS 443.004.

SECTION 3. (1) The Long Term Care Administrators Board shall:

- (a) Approve at least one examination for licensure as a residential care facility administrator; and
 - (b) Ensure that the examinations are easily and frequently accessible to applicants.
- (2) An applicant for licensure under section 2 of this 2018 Act shall pay an examination or reexamination fee established by the Health Licensing Office under ORS 676.576.
- (3) The board shall adopt rules to:
- (a) Determine the subjects, scope and content of the examinations;

- (b) Ensure the examinations are specific to Oregon law and administrative rules;
- (c) Determine a passing score for each examination approved by the board; and
- (d) Ensure the integrity of the examination process.

SECTION 4. The Health Licensing Office shall adopt rules to:

(1) Approve training and continuing education for residential care facility administrators; and

(2) Establish continuing education requirements for residential care facility administrators, including that a residential care facility administrator complete at least 20 hours each year of approved continuing education.

SECTION 5. ORS 678.710 is amended to read:

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

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

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

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

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

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

(4) "Provisional license" means a temporary license issued to a provisional nursing home administrator under the rules of the Health Licensing Office.

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

(6) "Residential care facility administrator" means an individual who is responsible for planning, organizing and managing the operation of a residential care facility.

SECTION 6. ORS 678.720 is amended to read:

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

[(a)] **(A)** Practice or offer to practice as a nursing home administrator; or

[(b)] **(B)** Use in connection with the name of the individual the words or letters "nursing home administrator," "NHA" or any other words, letters or abbreviations or insignia tending to indicate that the individual is a licensed nursing home administrator.

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

(2)(a) Unless an individual holds an active license issued under ORS 678.710 to 678.820, an individual may not:

(A) Practice or offer to practice as a residential care facility administrator; or

(B) Use in connection with the name of the individual the words or letters "residential care facility administrator," "RCFA" or any other words, letters or abbreviations or insignia tending to indicate that the individual is a licensed residential care facility administrator.

(b) Subject to rules adopted under paragraph (c) of this subsection, a residential care facility must be conducted or operated under the supervision of a residential care facility administrator who holds an active license issued under ORS 678.710 to 678.820.

(c) The Department of Human Services shall adopt rules to allow a residential care facility to be operated by an individual who is not a residential care facility administrator who

holds an active license under ORS 678.710 to 678.820 in transitional, emergency and similar situations.

SECTION 7. ORS 678.740 is amended to read:

678.740. (1) Examinations for licensure as a nursing home administrator shall be conducted at such times and places as the [Nursing Home] **Long Term Care** Administrators Board designates, but not less than once a year.

(2) At the time of taking an examination for licensure as a nursing home administrator, an applicant shall pay an examination or reexamination fee established by the Health Licensing Office under ORS 676.576.

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

SECTION 8. ORS 678.770 is amended to read:

678.770. (1) The [Nursing Home] **Long Term Care** Administrators Board may establish by rule standards for the issuance of a **nursing home administrator or residential care facility administrator** license by endorsement to an applicant who:

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

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

(2) [Each] **An** applicant under this section shall pay to the Health Licensing Office at the time of filing the application the applicable fees established under ORS 676.576.

SECTION 9. ORS 678.800 is amended to read:

678.800. (1) The [Nursing Home] **Long Term Care** Administrators Board is established within the Health Licensing Office.

(2) The board consists of nine members appointed by the Governor and subject to confirmation by the Senate in the manner provided in ORS 171.562 and 171.565. All members of the board must be concerned with the care and treatment of the chronically ill or infirm elderly patients and must be residents of this state. Of the members of the board:

(a) Three must be nursing home administrators licensed under ORS 678.710 to 678.820;

(b) Three must be residential care facility administrators licensed under ORS 678.710 to 678.820, at least one of whom serves in a memory care community;

[(b)] **(c) One must be a physician licensed under ORS 677.100 to 677.228 [actively engaged in private practice and conversant with the care and treatment of the long-term patient;] who has expertise in geriatric care or care for persons with disabilities; and**

[(c)] **One must be a licensed professional nurse actively engaged in caring for chronically ill and infirm patients and licensed by the Oregon State Board of Nursing;**

[(d)] **One must be a pharmacist licensed by the State Board of Pharmacy; and**

[(e)] **(d) [Three] Two** must be members of the public who are not:

(A) Otherwise eligible for appointment to the board; or

(B) A spouse, domestic partner, child, parent or sibling of a nursing home administrator or residential care facility administrator.

(3)(a) Board members required to be nursing home administrators **and residential care facility administrators** may be selected by the Governor from a list of three to five nominees submitted by any professional organization representing [nursing home administrators] **those professions.**

(b) Except for those persons described in paragraph (a) of this subsection, [no] **a** member of the board may **not** have a direct financial interest in a nursing home **or residential care facility.**

(c) No more than two of the members of the board may be officials or full-time employees of state or local governments.

(d) At least one public member must be at least 62 years of age.

(e) [No] Public members of the board may **not** hold any pecuniary interest in, or have any employment contract with, a [long term care facility] **nursing home or residential care facility**.

(f) In selecting the members of the board, the Governor shall strive to balance the representation on the board according to:

(A) Geographic areas of this state, **ensuring that at least one member is from a rural area**; and

(B) [Ethnic group] **Ethnicity**.

(4)(a) The term of office of each member is three years but a member serves at the pleasure of the Governor. The terms must be staggered so that no more than three terms end each year. Before the expiration of the term of a member, the Governor shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause the Governor shall make an appointment to become immediately effective for the unexpired term.

(b) A board member shall be removed immediately from the board if, during the member's term, the member:

(A) Is not a resident of this state;

(B) Has been absent from three consecutive board meetings, unless at least one absence is excused; [or]

(C) Is not a licensed nursing home administrator or a retired nursing home administrator whose license as a nursing home administrator was in good standing at the time of retirement, if the member was appointed to serve on the board as a nursing home administrator; **or**

(D) Is not a licensed residential care facility administrator or a retired residential care facility administrator whose license as a residential care facility administrator was in good standing at the time of retirement, if the member was appointed to serve on the board as a residential care facility administrator.

(5) The members of the board are entitled to compensation and expenses as provided in ORS 292.495. The board may provide by rule for compensation to board members for the performance of official duties at a rate that is greater than the rate provided in ORS 292.495.

SECTION 10. ORS 678.810 is amended to read:

678.810. (1) The [Nursing Home] **Long Term Care** Administrators Board shall [hold at least one meeting] **meet at least once** each year. A majority of the members of the board constitutes a quorum for the transaction of business.

(2) The board shall select one of its members as chairperson and another as vice chairperson, for a one-year term and with [such] **the** duties and powers necessary for the performance of the functions of the offices as the board determines.

SECTION 11. ORS 678.820 is amended to read:

678.820. (1) The [Nursing Home] **Long Term Care** Administrators Board is responsible for advising the Health Licensing Office in all matters relating to the administration of ORS 678.710 to 678.820, including:

(a) Developing standards for education and training;

(b) Developing standards of practice and professional conduct;

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

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

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

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

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

(b) Examining, approving, issuing, denying, revoking, suspending and renewing licenses to practice as a nursing home administrator **and residential care facility administrator**.

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

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

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

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

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

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

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

SECTION 12. The Long Term Care Administrators Board may not carry out a disciplinary action against an individual who holds a license under ORS 678.710 to 678.820 unless at least one board member who represents the type of license held by the individual attends all board meetings related to the disciplinary action.

CONFORMING AMENDMENTS

SECTION 13. ORS 401.651 is amended to read:

401.651. As used in ORS 401.651 to 401.670:

(1) "Health care facility" means a health care facility as defined in ORS 442.015 that has been licensed under ORS chapter 441.

(2) "Health care provider" means:

(a) An individual licensed, certified or otherwise authorized or permitted by the laws of this state or another state to administer health care services in the ordinary course of business or practice of a profession; and

(b) A person entered in the emergency health care provider registry under ORS 401.658.

(3) "Health professional regulatory board" means a health professional regulatory board, as defined in ORS 676.160, the [*Nursing Home*] **Long Term Care Administrators Board**, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board.

SECTION 14. ORS 431A.850 is amended to read:

431A.850. As used in ORS 431A.855 to 431A.900:

(1) "Dispense" and "dispensing" have the meanings given those terms in ORS 689.005.

(2) "Drug outlet" has the meaning given that term in ORS 689.005.

(3) "Health professional regulatory board" means a health professional regulatory board, as defined in ORS 676.160, the [*Nursing Home*] **Long Term Care Administrators Board**, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board.

(4) "Medical director" means a physician employed by a hospital, health care clinic or system of hospitals or health care clinics for the purposes of overseeing the operations of the hospital, clinic or system and ensuring the delivery of quality health care within the hospital, clinic or system.

(5) "Pharmacist" means:

(a) A pharmacist as defined in ORS 689.005; or

(b) An individual licensed to practice pharmacy in another state, if the requirements for licensure are similar, as determined by the Oregon Health Authority, to the requirements for being licensed as a pharmacist as defined in ORS 689.005.

(6) "Pharmacy director" means a pharmacist employed by a pharmacy or system of pharmacies for the purposes of overseeing the operations of the pharmacy or system and ensuring the delivery of quality pharmaceutical care within the pharmacy or system.

(7) "Practitioner" means:

(a) A practitioner as defined in ORS 689.005; or

(b) An individual licensed to practice a profession in another state, if the requirements for licensure are similar, as determined by the authority, to the requirements for being licensed as a practitioner as defined in ORS 689.005.

(8) "Prescription" has the meaning given that term in ORS 475.005.

(9) "Prescription drug" has the meaning given that term in ORS 689.005.

SECTION 15. ORS 433.045 is amended to read:

433.045. (1) As used in this section:

(a) "Health care provider" means an individual licensed by a health professional regulatory board, as defined in ORS 676.160, the [Nursing Home] **Long Term Care** Administrators Board, the Board of Licensed Dietitians or the Behavior Analysis Regulatory Board.

(b) "HIV test" means a test of an individual for the presence of HIV, or for antibodies or antigens that result from HIV infection, or for any other substance specifically indicating infection with HIV.

(c) "Insurance producer" has the meaning given that term in ORS 746.600.

(d) "Insurance-support organization" has the meaning given that term in ORS 746.600.

(e) "Insurer" has the meaning given that term in ORS 731.106.

(2) Except as provided in ORS 433.017, 433.055 (3) and 433.080, a health care provider or the provider's designee shall, before subjecting an individual to an HIV test:

(a) Notify the individual being tested; and

(b) Allow the individual being tested the opportunity to decline the test.

(3) The notification and opportunity to decline testing required under subsection (2) of this section may be verbal or in writing, and may be contained in a general medical consent form.

(4)(a) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, a person may not disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner that permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any authority rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

(b) This subsection does not apply to an individual acting in a private capacity and not in an employment, occupational or professional capacity.

(5) A person who complies with the requirements of this section is not subject to an action for civil damages.

(6) Whenever an insurer, insurance producer or insurance-support organization asks an applicant for insurance to take an HIV test in connection with an application for insurance, the insurer, insurance producer or insurance-support organization must reveal the use of the test to the applicant and obtain the written consent of the applicant. The consent form must disclose the purpose of the test and the persons to whom the results may be disclosed.

SECTION 16. ORS 441.057 is amended to read:

441.057. (1) Rules adopted pursuant to ORS 441.025 shall include procedures for the filing of complaints as to the standard of care in any health care facility and provide for the confidentiality of the identity of any complainant.

(2) A health care facility, or person acting in the interest of the facility, may not take any disciplinary or other adverse action against any employee who in good faith brings evidence of inappropriate care or any other violation of law or rules to the attention of the proper authority solely because of the employee's action as described in this subsection.

(3) Any employee who has knowledge of inappropriate care or any other violation of law or rules shall utilize established reporting procedures of the health care facility administration before notifying the Department of Human Services, Oregon Health Authority or other state agency of the alleged violation, unless the employee believes that patient health or safety is in immediate jeopardy or the employee makes the report to the department or the authority under the confidentiality provisions of subsection (1) of this section.

(4) The protection of health care facility employees under subsection (2) of this section shall commence with the reporting of the alleged violation by the employee to the administration of the health care facility or to the department, authority or other state agency pursuant to subsection (3) of this section.

(5) Any person suffering loss or damage due to any violation of subsection (2) of this section has a right of action for damages in addition to other appropriate remedy.

(6) The provisions of this section do not apply to a nursing staff, as defined in ORS 441.179, who claims to be aggrieved by a violation of ORS 441.181 committed by a hospital.

(7) Information obtained by the department or the authority during an investigation of a complaint or reported violation under this section is confidential and not subject to public disclosure under ORS 192.311 to 192.478. Upon the conclusion of the investigation, the department or the authority may publicly release a report of the department's or the authority's findings but may not include information in the report that could be used to identify the complainant or any patient at the health care facility. The department or the authority may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of a health care facility, and may report information obtained during an investigation to a health professional regulatory board as defined in ORS 676.160, the [Nursing Home] **Long Term Care** Administrators Board, the Board of Licensed Dietitians or the Behavior Analysis Regulatory Board as that information pertains to a licensee of the board.

SECTION 17. ORS 441.406 is amended to read:

441.406. (1) The Long Term Care Ombudsman shall carry out the following duties:

(a) Investigate and resolve complaints made by or for residents of long term care facilities about administrative actions that may adversely affect their health, safety, welfare or rights, including subpoenaing any person to appear, to give sworn testimony or to produce documentary or other evidence that is reasonably material to any matter under investigation.

(b) Undertake, participate in or cooperate with persons and agencies in such conferences, inquiries, meetings or studies as may lead to improvements in the functioning of long term care facilities.

(c) Monitor the development and implementation of federal, state and local laws, regulations and policies that relate to long term care facilities in this state.

(d) Provide information to public agencies about the problems of residents of long term care facilities.

(e) Work closely with cooperative associations and citizen groups in this state and the state protection and advocacy system under ORS 192.517.

(f) Widely publicize the Long Term Care Ombudsman's services, purpose and mode of operation.

(g) Collaborate with the Oregon Health Authority, the Department of Human Services, the [Nursing Home] **Long Term Care** Administrators Board and any other appropriate agencies and organizations to establish a statewide system to collect and analyze information on complaints and conditions in long term care facilities for the purpose of publicizing improvements and resolving significant problems.

(h) Contract with the state protection and advocacy system described in ORS 192.517 (1) to provide services and assistance to persons who are prospective or current residents of a mental health treatment facility or of a residential facility for individuals with developmental disabilities when the system has received a notice regarding the person pursuant to ORS 125.060 (7)(c) or (8)(c).

(i) Appoint designees to serve as local representatives of the office of the Long Term Care Ombudsman in various districts of the state and regularly monitor their functions.

(j) Specify qualifications and duties of designees.

(k) Adopt rules necessary for carrying out ORS 441.402 to 441.414, after consultation with the Residential Ombudsman and Public Guardianship Advisory Board.

(L) Provide periodically, or at least annually, a report to the Governor, authority, department and Legislative Assembly.

(m) Prepare necessary reports with the assistance of the authority and the department.

(n) Advise and support the Oregon Public Guardian and Conservator appointed under ORS 125.678.

(o) Supervise, monitor, advise and support the Residential Facilities Ombudsman appointed under ORS 443.382.

(2) At least quarterly, the Department of Human Services shall provide the Long Term Care Ombudsman with a list of the number of licensed or certified beds in each long term care facility for which the ombudsman has responsibilities under this section.

SECTION 18. ORS 676.108 is amended to read:

676.108. For purposes of ORS 676.110, 676.115, 676.120 and 676.130, “health professional regulatory board” means a health professional regulatory board, as defined in ORS 676.160, the [*Nursing Home*] **Long Term Care** Administrators Board, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board.

SECTION 19. ORS 676.150 is amended to read:

676.150. (1) As used in this section:

(a) “Board” means the:

(A) State Board of Examiners for Speech-Language Pathology and Audiology;

(B) State Board of Chiropractic Examiners;

(C) State Board of Licensed Social Workers;

(D) Oregon Board of Licensed Professional Counselors and Therapists;

(E) Oregon Board of Dentistry;

(F) Board of Licensed Dietitians;

(G) State Board of Massage Therapists;

(H) Oregon Board of Naturopathic Medicine;

(I) Oregon State Board of Nursing;

(J) [*Nursing Home*] **Long Term Care** Administrators Board;

(K) Oregon Board of Optometry;

(L) State Board of Pharmacy;

(M) Oregon Medical Board;

(N) Occupational Therapy Licensing Board;

(O) Physical Therapist Licensing Board;

(P) Oregon Board of Psychology;

(Q) Board of Medical Imaging;

(R) State Board of Direct Entry Midwifery;

(S) State Board of Denture Technology;

(T) Respiratory Therapist and Polysomnographic Technologist Licensing Board;

(U) Oregon Health Authority, to the extent that the authority licenses emergency medical services providers;

(V) Oregon State Veterinary Medical Examining Board; or

(W) State Mortuary and Cemetery Board.

(b) “Licensee” means a health professional licensed or certified by or registered with a board.

(c) “Prohibited conduct” means conduct by a licensee that:

(A) Constitutes a criminal act against a patient or client; or

(B) Constitutes a criminal act that creates a risk of harm to a patient or client.

(d) “Unprofessional conduct” means conduct unbecoming a licensee or detrimental to the best interests of the public, including conduct contrary to recognized standards of ethics of the licensee’s profession or conduct that endangers the health, safety or welfare of a patient or client.

(2) Unless state or federal laws relating to confidentiality or the protection of health information prohibit disclosure, a licensee who has reasonable cause to believe that another licensee has engaged in prohibited or unprofessional conduct shall report the conduct to the board responsible for the licensee who is believed to have engaged in the conduct. The reporting licensee shall report the conduct without undue delay, but in no event later than 10 working days after the reporting licensee learns of the conduct.

(3) A licensee who is convicted of a misdemeanor or felony or who is arrested for a felony crime shall report the conviction or arrest to the licensee's board within 10 days after the conviction or arrest.

(4) The board responsible for a licensee who is reported to have engaged in prohibited or unprofessional conduct shall investigate in accordance with the board's rules. If the board has reasonable cause to believe that the licensee has engaged in prohibited conduct, the board shall present the facts to an appropriate law enforcement agency without undue delay, but in no event later than 10 working days after the board finds reasonable cause to believe that the licensee engaged in prohibited conduct.

(5) A licensee who fails to report prohibited or unprofessional conduct as required by subsection (2) of this section or the licensee's conviction or arrest as required by subsection (3) of this section is subject to discipline by the board responsible for the licensee.

(6) A licensee who fails to report prohibited conduct as required by subsection (2) of this section commits a Class A violation.

(7) Notwithstanding any other provision of law, a report under subsection (2) or (3) of this section is confidential under ORS 676.175. A board may disclose a report as provided in ORS 676.177.

(8) Except as part of an application for a license or for renewal of a license and except as provided in subsection (3) of this section, a board may not require a licensee to report the licensee's criminal conduct.

(9) The obligations imposed by this section are in addition to and not in lieu of other obligations to report unprofessional conduct as provided by statute.

(10) A licensee who reports to a board in good faith as required by subsection (2) of this section is immune from civil liability for making the report.

(11) A board and the members, employees and contractors of the board are immune from civil liability for actions taken in good faith as a result of a report received under subsection (2) or (3) of this section.

SECTION 20. ORS 676.350 is amended to read:

676.350. (1) As used in this section:

(a) "Expedited partner therapy" means the practice of prescribing or dispensing antibiotic drugs for the treatment of a sexually transmitted disease to the partner of a patient without first examining the partner of the patient.

(b) "Partner of a patient" means a person whom a patient diagnosed with a sexually transmitted disease identifies as a sexual partner of the patient.

(c) "Practitioner" has the meaning given that term in ORS 475.005.

(2) A health professional regulatory board, as defined in ORS 676.160, the [*Nursing Home*] **Long Term Care** Administrators Board, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board may adopt rules permitting practitioners to practice expedited partner therapy. If a board adopts rules permitting practitioners to practice expedited partner therapy, the board shall consult with the Oregon Health Authority to determine which sexually transmitted diseases are appropriately addressed with expedited partner therapy.

(3) A prescription issued in the practice of expedited partner therapy authorized by the rules of a board is valid even if the name of the patient for whom the prescription is intended is not on the prescription.

(4) The authority shall make available informational material about expedited partner therapy that a practitioner may distribute to patients.

SECTION 21. ORS 676.400 is amended to read:

676.400. (1) It is the intention of the Legislative Assembly to achieve the goal of universal access to adequate levels of high quality health care at an affordable cost for all Oregonians, regardless of ethnic or cultural background.

(2) The Legislative Assembly finds that:

(a) Access to health care is of value when it leads to treatment that substantially improves health outcomes;

(b) Health care is most effective when it accounts for the contribution of culture to health status and health outcomes;

(c) Ethnic and racial minorities experience more than their statistically fair share of undesirable health outcomes;

(d) The lack of licensed health care professionals from ethnic and racial minorities or who are bilingual contributes to the inadequacy of health outcomes in communities of color in this state; and

(e) The development of a partnership between health professional regulatory boards and communities of color to increase the representation of people of color and bilingual people in health care professions has significant potential to improve the health outcomes of people of color and bilingual citizens of this state.

(3) Health professional regulatory boards shall establish programs to increase the representation of people of color and bilingual people on the boards and in the professions that they regulate. Such programs must include activities to promote the education, recruitment and professional practice of members of these targeted populations in Oregon.

(4) Each health professional regulatory board shall maintain records of the racial and ethnic makeup of applicants and professionals regulated by the board. Such information shall be requested from applicants and the professionals regulated who shall be informed in writing that the provision of such information is voluntary and not required.

(5) Each health professional regulatory board shall report biennially to the Legislative Assembly in the manner required by ORS 192.245. The report shall contain:

(a) Data detailing the efforts of the board to comply with the requirements of subsection (3) of this section; and

(b) Data collected under subsection (4) of this section documenting the ethnic and racial makeup of the applicants and of the professionals regulated by the board.

(6) For purposes of this section, “health professional regulatory board” means a health professional regulatory board, as defined in ORS 676.160, the [Nursing Home] **Long Term Care** Administrators Board, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board.

SECTION 22. ORS 676.565 is amended to read:

676.565. Pursuant to ORS 676.568, the Health Licensing Office shall provide administrative and regulatory oversight and centralized service for the following boards, councils and programs:

(1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;

(2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;

(3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;

(4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;

(5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in ORS 688.800 to 688.840;

(6) Environmental Health Registration Board, as provided in ORS chapter 700;

(7) Board of Electrologists and Body Art Practitioners, as provided in ORS 690.350 to 690.410;

(8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;

(9) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410;

(10) [Nursing Home] **Long Term Care** Administrators Board, as provided in ORS 678.710 to 678.820;

(11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485;

(12) Behavior Analysis Regulatory Board, as provided in ORS 676.806;

(13) Board of Certified Advanced Estheticians, as provided in ORS 676.630 to 676.660;

(14) Art therapy, as provided in ORS 681.740 to 681.758; and

(15) Lactation consultation, as provided in ORS 676.665 to 676.689.

SECTION 23. ORS 676.595 is amended to read:

676.595. (1) As used in this section, “board” means the:

(a) Sex Offender Treatment Board established under ORS 675.395.

(b) Behavior Analysis Regulatory Board created under ORS 676.806.

(c) [Nursing Home] **Long Term Care** Administrators Board established under ORS 678.800.

- (d) State Board of Denture Technology established under ORS 680.556.
- (e) State Board of Direct Entry Midwifery established under ORS 687.470.
- (f) Board of Athletic Trainers established under ORS 688.705.
- (g) Respiratory Therapist and Polysomnographic Technologist Licensing Board established under ORS 688.820.
 - (h) Board of Licensed Dietitians established under ORS 691.485.
 - (i) Environmental Health Registration Board established under ORS 700.210.
- (2) Except to the extent that disclosure is necessary to conduct a full and proper investigation, the Health Licensing Office may not disclose information, including complaints and information identifying complainants, obtained by the office as part of an investigation conducted under:
 - (a) ORS 675.360 to 675.410, 676.810 to 676.820, 678.710 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840 or 691.405 to 691.485 or ORS chapter 700.
 - (b) ORS 676.560 to 676.625 if the investigation is related to the regulation of:
 - (A) Sex offender therapy under ORS 675.360 to 675.410;
 - (B) Applied behavior analysis under ORS 676.810 to 676.820;
 - (C) Nursing home administration **and residential care facility administration** under ORS 678.710 to 678.820;
 - (D) The practice of denture technology under ORS 680.500 to 680.565;
 - (E) Direct entry midwifery under ORS 687.405 to 687.495;
 - (F) Athletic training under ORS 688.701 to 688.734;
 - (G) Respiratory care and polysomnography under ORS 688.800 to 688.840;
 - (H) Dietetics under ORS 691.405 to 691.485; or
 - (I) Environmental or waste water sanitation under ORS chapter 700.
- (3) Notwithstanding subsection (2) of this section, if the office decides not to impose a disciplinary sanction after conducting an investigation described in subsection (2) of this section:
 - (a) The office shall disclose information obtained as part of the investigation if the person requesting the information demonstrates by clear and convincing evidence that the public interest in disclosure outweighs other interests in nondisclosure, including the public interest in nondisclosure.
 - (b) The office may disclose to a complainant who made a complaint related to the investigation a written summary of information obtained as part of the investigation to the extent that disclosure is necessary to explain the office's decision. The person who is the subject of the investigation may review and obtain a copy of a written summary disclosed under this paragraph after the office has redacted any information identifying the complainant.
- (4) Notwithstanding subsection (2) of this section, if a decision is made to impose a disciplinary sanction and to issue a notice of intent to impose a disciplinary sanction after conducting an investigation described in subsection (2) of this section, upon written request by the person who is the subject of the investigation, the office shall disclose to the person all information obtained by the office during the investigation, except that the office may not disclose:
 - (a) Information that is otherwise privileged or confidential under state or federal law.
 - (b) Information identifying a person who provided information that led to the investigation, unless the person will provide testimony at a hearing arising out of the investigation.
 - (c) Information identifying a complainant.
 - (d) Reports of expert witnesses.
- (5) Information disclosed to a person under subsection (4) of this section may be further disclosed by the person only to the extent that disclosure is necessary to prepare for a hearing arising out of the investigation.
- (6) The office shall disclose:
 - (a) Any notice related to the imposition of a disciplinary sanction.
 - (b) A final order related to the imposition of a disciplinary sanction.
 - (c) An emergency suspension order.
 - (d) A consent order or stipulated agreement that involves the conduct of a person against whom discipline is sought.

(e) Information to further an investigation into board conduct under ORS 192.685.
(7) The office must summarize the factual basis for the office's disposition of:
(a) A final order related to the imposition of a disciplinary sanction;
(b) An emergency suspension order; or
(c) A consent order or stipulated agreement that involves the conduct of a person against whom discipline is sought.

(8)(a) An office record or order, or any part of an office record or order, that is obtained during an investigation described in subsection (2) of this section, during a contested case proceeding or as a result of entering into a consent order or stipulated agreement is not admissible as evidence and may not preclude an issue or claim in a civil proceeding.

(b) This subsection does not apply to a proceeding between the office and a person against whom discipline is sought as otherwise authorized by law.

(9)(a) Notwithstanding subsection (2) of this section, the office is not publicly disclosing information when the office permits other public officials and members of the press to attend executive sessions where information obtained as part of an investigation is discussed. Public officials and members of the press attending such executive sessions may not disclose information obtained as part of an investigation to any other member of the public.

(b) For purposes of this subsection, "public official" means a member, member-elect or employee of a public entity as defined in ORS 676.177.

(10) The office may establish fees reasonably calculated to reimburse the actual cost of disclosing information to a person against whom discipline is sought as required by subsection (4) of this section.

SECTION 24. ORS 676.850 is amended to read:

676.850. (1) As used in this section, "board" means the:

- (a) State Board of Examiners for Speech-Language Pathology and Audiology;
- (b) State Board of Chiropractic Examiners;
- (c) State Board of Licensed Social Workers;
- (d) Oregon Board of Licensed Professional Counselors and Therapists;
- (e) Oregon Board of Dentistry;
- (f) Board of Licensed Dietitians;
- (g) State Board of Massage Therapists;
- (h) Oregon Board of Naturopathic Medicine;
- (i) Oregon State Board of Nursing;
- (j) [*Nursing Home*] **Long Term Care** Administrators Board;
- (k) Oregon Board of Optometry;
- (L) State Board of Pharmacy;
- (m) Oregon Medical Board;
- (n) Occupational Therapy Licensing Board;
- (o) Physical Therapist Licensing Board;
- (p) Oregon Board of Psychology;
- (q) Board of Medical Imaging;
- (r) State Board of Direct Entry Midwifery;
- (s) State Board of Denture Technology;
- (t) Respiratory Therapist and Polysomnographic Technologist Licensing Board;
- (u) Home Care Commission;
- (v) Oregon Health Authority, to the extent that the authority licenses emergency medical service providers; and
- (w) Health Licensing Office, to the extent that the office licenses lactation consultants.

(2)(a) In collaboration with the Oregon Health Authority, a board may adopt rules under which the board may require a person authorized to practice the profession regulated by the board to receive cultural competency continuing education approved by the authority under ORS 413.450.

(b) Cultural competency continuing education courses may be taken in addition to or, if a board determines that the cultural competency continuing education fulfills existing continuing education requirements, instead of any other continuing education requirement imposed by the board.

(3)(a) A board, or the Health Licensing Office for those boards for which the office issues and renews authorizations to practice the profession regulated by the board, shall document participation in cultural competency continuing education by persons authorized to practice a profession regulated by the board.

(b) For purposes of documenting participation under this subsection, a board may adopt rules requiring persons authorized to practice the profession regulated by the board to submit documentation to the board, or to the office for those boards for which the office issues and renews authorizations to practice the profession regulated by the board, of participation in cultural competency continuing education.

(4) A board shall report biennially to the authority on the participation documented under subsection (3) of this section.

(5) The authority, on or before August 1 of each even-numbered year, shall report to the interim committees of the Legislative Assembly related to health care on the information submitted to the authority under subsection (4) of this section.

SECTION 25. ORS 676.992 is amended to read:

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

- (a) ORS 688.701 to 688.734 (athletic training);
- (b) ORS 690.005 to 690.225 (cosmetology);
- (c) ORS 680.500 to 680.565 (denture technology);
- (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);
- (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal implanting and scarification);
- (f) ORS 694.015 to 694.170 (dealing in hearing aids);
- (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);
- (h) ORS chapter 700 (environmental sanitation);
- (i) ORS 675.360 to 675.410 (sexual abuse specific treatment);
- (j) ORS 678.710 to 678.820 (nursing home administrators **and residential care facility administrators**);
- (k) ORS 691.405 to 691.485 (dietitians);
- (L) ORS 676.612 (prohibited acts);
- (m) ORS 676.810 and 676.815 (applied behavior analysis);
- (n) ORS 681.700 to 681.730 (music therapy);
- (o) ORS 676.630 to 676.660 (advanced nonablative esthetics procedure);
- (p) ORS 681.740 to 681.758 (art therapy); and
- (q) ORS 676.665 to 676.689 (lactation consultation).

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

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

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

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

- (d) Any other aggravating or mitigating factors.
- (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.
- (6) The moneys received by the office from civil penalties under this section shall be deposited in the Health Licensing Office Account and are continuously appropriated to the office for the administration and enforcement of the laws the office is charged with administering and enforcing that govern the person against whom the penalty was imposed.

SECTION 26. ORS 743B.454 is amended to read:

743B.454. (1) As used in this section:

(a) "Complete application" means a provider's application to a health insurer to become a credentialed provider that includes:

(A) Information required by the health insurer;

(B) Proof that the provider is licensed by a health professional regulatory board as defined in ORS 676.160, the [Nursing Home] **Long Term Care** Administrators Board, the Board of Licensed Dietitians or the Behavior Analysis Regulatory Board;

(C) Proof of current registration with the Drug Enforcement Administration of the United States Department of Justice, if applicable to the provider's practice; and

(D) Proof that the provider is covered by a professional liability insurance policy or certification meeting the health insurer's requirements.

(b) "Credentialing period" means the period beginning on the date a health insurer receives a complete application and ending on the date the health insurer approves or rejects the complete application or 90 days after the health insurer receives the complete application, whichever is earlier.

(c) "Health insurer" means an insurer that offers managed health insurance or preferred provider organization insurance, other than a health maintenance organization as defined in ORS 750.005.

(2) A health insurer shall approve or reject a complete application within 90 days of receiving the application.

(3)(a) A health insurer shall pay all claims for medical services covered by the health insurer that are provided by a provider during the credentialing period.

(b) A provider may submit claims for medical services provided during the credentialing period during or after the credentialing period.

(c) A health insurer may pay claims for medical services provided during the credentialing period:

(A) During or after the credentialing period.

(B) At the rate paid to nonparticipating providers.

(d) If a provider submits a claim for medical services provided during the credentialing period within six months after the end of the credentialing period, the health insurer may not deny payment of the claim on the basis of the health insurer's rules relating to timely claims submission.

(4) Subsection (3) of this section does not require a health insurer to pay claims for medical services provided during the credentialing period if:

(a) The provider was previously rejected or terminated as a participating provider in any health benefit plan underwritten or administered by the health insurer;

(b) The rejection or termination was due to the objectively verifiable failure of the provider to provide medical services within the recognized standards of the provider's profession; and

(c) The provider was given the opportunity to contest the rejection or termination before a panel of peers in a proceeding conducted in conformity with the Health Care Quality Improvement Act of 1986, 42 U.S.C. 11101 et seq.

TEMPORARY PROVISIONS

SECTION 27. (1) **Not later than January 1, 2019, the Health Licensing Office and the Long Term Care Administrators Board shall ensure that the members of the board meet the pro-**

professional representation membership requirements established in ORS 678.800, as amended by section 9 of this 2018 Act.

(2) Not later than December 31, 2021, each member of the board who is subject to the requirements of section 28 of this 2018 Act must hold a residential care facility administrator license.

(3) Not later than December 31, 2019, the board shall approve the examinations for licensure as a residential care facility administrator described in section 3 of this 2018 Act.

SECTION 28. (1) Not later than July 1, 2019, an individual who is employed in Oregon as a residential care facility administrator, as defined in ORS 678.710, or who is not employed as described in this subsection but who otherwise meets the requirements of paragraphs (a) to (g) of this subsection and who intends to seek employment as a residential care facility administrator before the operative date specified in section 32 (2) of this 2018 Act, shall apply to the Health Licensing Office on a form created by the office for a residential care facility administrator license. The office may issue a license under this section to an applicant who:

(a) Is at least 21 years of age;

(b) Has earned at least a high school diploma or its equivalent;

(c)(A) For at least two of the last five years has been employed in a professional or managerial capacity in a field related to health or social service, or has a combination of experience and education deemed sufficient by the office; or

(B) Has earned at least a bachelor's degree in a field related to health or social service;

(d) Has completed at least 40 hours of training approved by the Department of Human Services by rule;

(e) Has met any applicable continuing education requirements established by the department by rule for the lesser of the three years immediately preceding the date of application or the duration of employment or qualification in Oregon as a residential care facility administrator;

(f) Is in good standing with the office, and has not been responsible for any residential care facility that has been subject to conditions imposed by the department while the person was responsible for the residential care facility, for the lesser of the four years immediately preceding the date of application or the duration of employment or qualification in Oregon as a residential care facility administrator; and

(g) Pays the licensure fee established by the office by rule.

(2)(a) The office may issue a provisional residential care facility administrator license to an individual who applies for licensure under this section and who is employed in Oregon as a residential care facility administrator but who does not meet all the requirements of subsection (1)(e) and (f) of this section. An individual described in this subsection must earn a passing score on an examination described in section 3 of this 2018 Act on or before December 31, 2021.

(b) At its discretion and for good cause, the office may waive the requirements of subsection (1)(e) and (f) of this section.

(3) The office may issue a provisional residential care facility administrator license to an individual who is employed in a state other than Oregon as a residential care facility administrator, or similar role, but who meets the requirements of section 2 (1)(a) to (e) of this 2018 Act. An individual described in this subsection must earn a passing score on an examination described in section 3 of this 2018 Act on or before December 31, 2021.

(4) An individual who applies for a provisional license under subsection (2) or (3) of this section must pay the provisional licensure fee established by the office by rule.

(5) When issuing a license or a provisional license under this section, the office shall consider the qualifications for employment under ORS 443.004.

(6) An individual issued a license or a provisional license under this section shall meet any requirements for continuing education established by the office by rule.

(7) A provisional residential care facility administrator license issued under this section is not renewable and expires on the earlier of December 31, 2021, or the date upon which the holder is issued a license under section 2 of this 2018 Act.

(8) Not later than January 1, 2022, an individual who holds a provisional residential care facility administrator license and who is employed in Oregon as a residential care facility administrator must obtain a residential care facility license under section 2 of this 2018 Act.

(9) Licenses and provisional licenses issued under this section are subject to the provisions of ORS 678.790.

(10) Moneys collected under this section shall be paid into the General Fund and credited to the Health Licensing Office Account established under ORS 676.625.

(11) The office may adopt rules to carry out the requirements of this section, and may consult with the department in establishing any standards under this section.

SECTION 29. Section 27 of this 2018 Act is repealed on January 2, 2022.

SECTION 30. Section 28 of this 2018 Act is repealed on January 2, 2022.

CAPTIONS

SECTION 31. The unit captions used in this 2018 Act are provided only for the convenience of the reader and do not become part of the statutory law of this state or express any legislative intent in the enactment of this 2018 Act.

OPERATIVE DATE AND EMERGENCY CLAUSE

SECTION 32. (1) Sections 2 to 4 and 12 of this 2018 Act and the amendments to ORS 401.651, 431A.850, 433.045, 441.057, 441.406, 676.108, 676.150, 676.350, 676.400, 676.565, 676.595, 676.850, 676.992, 678.710, 678.740, 678.770, 678.800, 678.810, 678.820 and 743B.454 by sections 5, 7 to 11 and 13 to 26 of this 2018 Act become operative on January 1, 2019.

(2) The amendments to ORS 678.720 by section 6 of this 2018 Act become operative on January 1, 2022.

(3)(a) The Health Licensing Office and the Long Term Care Administrators Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the office and the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the office and the board by sections 2 to 4 and 12 of this 2018 Act and the amendments to ORS 401.651, 431A.850, 433.045, 441.057, 441.406, 676.108, 676.150, 676.350, 676.400, 676.565, 676.595, 676.850, 676.992, 678.710, 678.740, 678.770, 678.800, 678.810, 678.820 and 743B.454 by sections 5, 7 to 11 and 13 to 26 of this 2018 Act.

(b) The Department of Human Services may take any action before the operative date specified in subsection (2) of this section that is necessary to enable the department to exercise, on and after the operative date specified in subsection (2) of this section, all of the duties, functions and powers conferred on the department by the amendments to ORS 678.720 by section 6 of this 2018 Act.

SECTION 33. The amendments to ORS 743B.454 by section 26 of this 2018 Act apply to residential care facility administrators as defined in ORS 678.710 on and after January 1, 2022.

SECTION 34. This 2018 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2018 Act takes effect on its passage.

Passed by House March 1, 2018

.....
Timothy G. Sekerak, Chief Clerk of House

.....
Tina Kotek, Speaker of House

Passed by Senate March 2, 2018

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Peter Courtney, President of Senate

Received by Governor:

.....M,....., 2018

Approved:

.....M,....., 2018

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2018

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Dennis Richardson, Secretary of State