

LC 428
2023 Regular Session
44300-028
8/10/22 (LHF/ps)

D R A F T

SUMMARY

Allows Oregon Health Authority to conduct off-site investigation after receiving certain complaints against hospitals. Allows initial licensure inspections to be conducted off-site for specified providers of home- and community-based care and hospice care.

Permits authority to disclose information obtained during investigation of complaint or reported violation against home health agency, in-home care agency or caregiver registry to specified public entities to carry out regulatory or enforcement activities of such public entities.

Allows authority to issue temporary or provisional certification to practice as hemodialysis technician during local, state or federal declaration of state of emergency or public health emergency. Permits certification by reciprocity of hemodialysis technicians. Authorizes authority to require fingerprints for purpose of conducting criminal records check of persons applying for or renewing certification as hemodialysis technicians. Updates defined term from “dialysis facility or center” to “outpatient renal dialysis facility” for purposes of hemodialysis technician statutes.

Removes requirement that outlines of instruction for courses for psilocybin service facilitators be submitted to Department of Education.

A BILL FOR AN ACT

Relating to health care providers; creating new provisions; and amending ORS 441.171, 443.019, 443.315, 443.355, 443.860, 475A.380, 688.625, 688.630, 688.650 and 688.655.

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

HEALTH CARE REGULATION AND QUALITY IMPROVEMENT PROGRAM (Inspections and Investigations)

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 **SECTION 1.** ORS 441.171 is amended to read:

2 441.171. (1) For purposes of ensuring compliance with ORS 441.152 to
3 441.177, the Oregon Health Authority shall:

4 (a) Within 60 days after receiving a complaint against a hospital for vio-
5 lating a provision of ORS 441.152 to 441.177, conduct an on-site **or off-site**
6 investigation of the hospital; and

7 (b) Within 60 days after issuing an order requiring a hospital to imple-
8 ment a plan to correct a violation of ORS 441.152 to 441.177, conduct an in-
9 vestigation of the hospital to ensure compliance with the plan.

10 (2) When conducting an investigation of a hospital to ensure compliance
11 with ORS 441.152 to 441.177, the authority shall, if the authority provides
12 notice of the investigation to the hospital, provide notice of the investigation
13 to the cochairs of the hospital nurse staffing committee established pursuant
14 to ORS 441.154.

15 (3) Following an investigation conducted pursuant to this section, the
16 authority shall provide in writing a report of the authority's findings to the
17 hospital and the cochairs of the hospital nurse staffing committee.

18 (4) When conducting an investigation of a hospital to ensure compliance
19 with ORS 441.152 to 441.177, the authority may:

20 (a) Take evidence;

21 (b) Take the depositions of witnesses in the manner provided by law in
22 civil cases;

23 (c) Compel the appearance of witnesses in the manner provided by law in
24 civil cases;

25 (d) Require answers to interrogatories; and

26 (e) Compel the production of books, papers, accounts, documents and tes-
27 timony pertaining to the matter under investigation.

28 **SECTION 2.** ORS 443.019 is amended to read:

29 443.019. (1) The Oregon Health Authority shall conduct an in-person site
30 inspection **or an off-site inspection** of a home health agency and a
31 caregiver registry prior to licensure and **an in-person site inspection** at

1 least once every three years thereafter.

2 (2) In lieu of an in-person site inspection **or an off-site inspection**, the
3 authority may accept a certification or accreditation from a federal agency
4 or an accrediting body approved by the authority that the state licensing
5 standards have been met, if:

6 (a) The certification or accreditation is recognized by the authority as
7 addressing the standards and conditions of participation requirements of the
8 Centers for Medicare and Medicaid Services and any additional standards
9 set by the authority;

10 (b) The agency or registry notifies the authority to participate in any exit
11 interview conducted by the federal agency or accrediting body; and

12 (c) The agency or registry provides copies of all documentation concern-
13 ing the certification or accreditation requested by the authority.

14 **SECTION 3.** ORS 443.315 is amended to read:

15 443.315. (1) A person may not establish, manage or operate an in-home
16 care agency or purport to manage or operate an in-home care agency without
17 obtaining a license from the Oregon Health Authority.

18 (2) The authority shall establish classification requirements and quali-
19 fications for licensure under this section by rule. The authority shall issue
20 a license to an applicant that has the necessary qualifications and meets all
21 requirements established by rule, including the payment of required fees. An
22 in-home care agency shall be required to maintain administrative and pro-
23 fessional oversight to ensure the quality of services provided and that the
24 training requirements established by the authority under ORS 443.011, if ap-
25 plicable, have been met by any individual employed by or contracting with
26 the in-home care agency to provide in-home care services.

27 (3) Application for a license required under subsection (1) of this section
28 shall be made in the form and manner required by the authority by rule and
29 shall be accompanied by any required fees.

30 (4) A license may be granted, or may be renewed annually, upon payment
31 of a fee as follows:

1 (a) For the initial licensure of an in-home care agency that is classified
2 as:

3 (A) Limited, the fee is \$2,000.

4 (B) Basic, the fee is \$2,250.

5 (C) Intermediate, the fee is \$2,500.

6 (D) Comprehensive, the fee is \$3,000.

7 (b) There is an additional fee of \$1,250 for the initial licensure of each
8 subunit in any classification of in-home care agency.

9 (c) For the renewal of a license classified as:

10 (A) Limited or basic, the fee is \$1,000.

11 (B) Intermediate, the fee is \$1,250.

12 (C) Comprehensive, the fee is \$1,500.

13 (d) There is an additional fee of \$1,000 for the renewal of licensure for
14 each subunit in any classification of in-home care agency.

15 (e) For a change of ownership at a time other than the annual renewal
16 date:

17 (A) The fee is \$350; and

18 (B) There is an additional fee of \$350 for each subunit.

19 (5) A license issued under this section is valid for one year. A license
20 may be renewed by payment of the required renewal fee and by demon-
21 stration of compliance with requirements for renewal established by rule.

22 (6) A license issued under this section is not transferable.

23 (7) The authority shall conduct an [*on-site*] **in-person site inspection or**
24 **an off-site** inspection of each in-home care agency prior to services being
25 rendered and **an in-person site inspection** once every two years thereafter
26 as a requirement for licensing.

27 (8) In lieu of the [*on-site*] **in-person site inspection or an off-site in-**
28 **spection** required by subsection (7) of this section, the authority may accept
29 a certification or accreditation from a federal agency or an accrediting body
30 approved by the authority that the state licensing standards have been met,
31 if the in-home care agency:

1 (a) Notifies the authority to participate in any exit interview conducted
2 by the federal agency or accrediting body; and

3 (b) Provides copies of all documentation concerning the certification or
4 accreditation requested by the authority.

5 **SECTION 4.** ORS 443.355 is amended to read:

6 **443.355. (1) As used in this section:**

7 (a) **“Caregiver registry” has the meaning given that term in ORS**
8 **443.014.**

9 (b) **“Home health agency” has the meaning given that term in ORS**
10 **443.014.**

11 (c) **“In-home care agency” has the meaning given that term in ORS**
12 **443.305.**

13 (d) **“Public entity” means:**

14 (A) **A health professional regulatory board or licensing agency or**
15 **a board or agency of this state or another state with regulatory or**
16 **enforcement functions similar to the functions of a health professional**
17 **regulatory board in this state;**

18 (B) **A district attorney;**

19 (C) **The Department of Justice;**

20 (D) **A state or local public body of this state that licenses, fran-**
21 **chises or provides emergency medical services;**

22 (E) **A state or federal agency that disburses public funds;**

23 (F) **A law enforcement agency of this state or another state; or**

24 (G) **A law enforcement agency of the federal government.**

25 [(1)] (2) Rules adopted by the Oregon Health Authority pursuant to ORS
26 443.085 and 443.340 shall include procedures for the filing of complaints as
27 to the care or services provided by home health agencies, in-home care
28 agencies or caregiver registries that ensure the confidentiality of the identity
29 of the complainant.

30 [(2)] (3) An employee or contract provider with knowledge of a violation
31 of law or rules of the authority shall use the reporting procedures estab-

1 lished by the home health agency, in-home care agency or caregiver registry
2 before notifying the authority or other state agency of the inappropriate care
3 or violation, unless the employee or contract provider:

4 (a) Believes a client's health or safety is in immediate jeopardy; or

5 (b) Files a complaint in accordance with rules adopted under subsection
6 [(1)] **(2)** of this section.

7 [(3)] **(4) Except as provided in subsection (5) of this section**, infor-
8 mation obtained by the authority during an investigation of a complaint or
9 reported violation under this section is confidential and not subject to public
10 disclosure under ORS 192.311 to 192.478. Upon the conclusion of the investi-
11 gation, the authority may publicly release a report of its findings but may
12 not include information in the report that could be used to identify the
13 complainant or any client of the home health agency, in-home care agency
14 or caregiver registry. The authority may use any information obtained during
15 an investigation in an administrative or judicial proceeding concerning the
16 licensing of a home health agency, in-home care agency or caregiver registry.

17 [(4) *As used in this section:*]

18 [(a) *"Caregiver registry" has the meaning given that term in ORS*
19 *443.014.*]

20 [(b) *"Home health agency" has the meaning given that term in ORS*
21 *443.014.*]

22 [(c) *"In-home care agency" has the meaning given that term in ORS*
23 *443.305.*]

24 **(5)(a) Information obtained by the authority during an investigation**
25 **of a complaint or reported violation under this section that reasonably**
26 **relates to the regulatory or enforcement function of another public**
27 **entity may be disclosed by the authority to the other public entity.**

28 **(b) Any public entity that receives information pursuant to para-**
29 **graph (a) of this subsection shall take all reasonable steps to maintain**
30 **the confidentiality of the information, except that the public entity**
31 **may use or disclose the information to the extent necessary to carry**

1 **out the public entity's regulatory or enforcement functions.**

2 **SECTION 5.** ORS 443.860 is amended to read:

3 443.860. (1) A person may not establish, conduct or maintain a hospice
4 program providing hospice services, or hold itself out to the public as a
5 hospice program, without obtaining a license from the Oregon Health Au-
6 thority.

7 (2) The authority:

8 (a) Shall adopt rules to carry out the provisions of ORS 443.850 to 443.869,
9 including but not limited to rules for licensure that require an in-person site
10 inspection **or an off-site inspection** of each [*licensed*] hospice program
11 **prior to licensure and an in-person site inspection of each licensed**
12 **hospice program** at least once every three years **thereafter**.

13 (b) May accept certification by a federal agency or accreditation by an
14 accrediting organization approved by the authority as evidence of compliance
15 with the requirements for licensure adopted under paragraph (a) of this
16 subsection if:

17 (A) The certification or accreditation meets standards and conditions es-
18 tablished for hospice programs by the Centers for Medicare and Medicaid
19 Services;

20 (B) The hospice program invites the authority to participate in any exit
21 interview conducted by the agency or organization; and

22 (C) The hospice program provides the authority with copies of all doc-
23 umentation requested by the authority concerning the certification or ac-
24 creditation.

25 (3) The fee to obtain or renew a hospice program license is \$1,140.

26 (4) The authority shall prescribe by rule the form and manner for appli-
27 cation for or renewal of a license. The authority shall issue a license to an
28 applicant that has the necessary qualifications, meets all requirements es-
29 tablished by the authority by rule and has paid the fee.

30 (5) A license issued under this section is valid for one year and is not
31 transferable. A license may be renewed by payment of the fee and demon-

1 stration of compliance with requirements for renewal established by the au-
2 thority by rule.

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(Hemodialysis Technicians)

5

6 **SECTION 6.** Section 7 of this 2023 Act is added to and made a part
7 of ORS 688.625 to 688.665.

8 **SECTION 7.** For the purpose of requesting a state or nationwide
9 criminal records check under ORS 181A.195, the Oregon Health Au-
10 thority may require the fingerprints of a person who is:

11 (1) Applying for a certificate, or a renewal of a certificate, under
12 ORS 688.640 or 688.650; or

13 (2) Under investigation by the authority under ORS 688.655.

14 **SECTION 8.** ORS 688.625 is amended to read:

15 688.625. As used in ORS 688.625 to 688.665:

16 [(1) “Dialysis facility or center” means a place awarded conditional or un-
17 conditional status by the federal Centers for Medicare and Medicaid
18 Services.]

19 [(2) “End stage renal disease” means a condition that requires either the
20 replacement of kidney functions through renal transplantation or the perma-
21 nent assistance of those functions through dialysis.]

22 [(3)] (1) “Hemodialysis technician” means a person certified by the Oregon
23 Health Authority under ORS 688.650.

24 (2) “Outpatient renal dialysis facility” has the meaning given that
25 term in ORS 442.015.

26 **SECTION 9.** ORS 688.630 is amended to read:

27 688.630. (1) It is unlawful for any person to act as a hemodialysis techni-
28 cian without being certified by the Oregon Health Authority.

29 (2) It is unlawful for any **outpatient renal** dialysis facility [or center] to
30 authorize a person to act for it as a hemodialysis technician without being
31 certified by the authority.

1 **SECTION 10.** ORS 688.650 is amended to read:

2 688.650. (1)(a) When application has been made as required under ORS
3 688.640, the Oregon Health Authority shall certify an applicant as a
4 hemodialysis technician if the authority finds that the applicant:

5 (A) Has successfully completed the training requirement adopted by the
6 authority.

7 (B) Has paid a fee to the authority pursuant to ORS 688.645.

8 (C) Has successfully completed an examination administered by the au-
9 thority or administered by another public or private entity and approved by
10 the authority.

11 (D) Meets any other requirements prescribed by rule of the authority.

12 (b) An applicant meets the requirements of paragraph (a)(A) of this sub-
13 section if the applicant provides the authority with documentation of mili-
14 tary training or experience that the authority determines is substantially
15 equivalent to the training requirement adopted by the authority.

16 (2) The authority may provide for the issuance of a temporary or provi-
17 sional certification for a person to practice as a hemodialysis technician:

18 (a) Until the person has taken and passed the next held certification ex-
19 amination available to the person and has received a certificate[.]; **or**

20 **(b)(A) During a state of emergency declared under ORS 401.165 or**
21 **a state of emergency declared at the local or federal level; or**

22 **(B) During a public health emergency declared under ORS 433.441**
23 **or declared at the federal level.**

24 **(3) Prior to the issuance of a temporary or provisional certification**
25 **under subsection (2) of this section,** the authority may impose **on the**
26 **certification** any conditions, [or] limitations **or additional requirements**
27 [*on a temporary or provisional certificate*] that the authority considers rea-
28 sonable and necessary to protect the public.

29 (4) A temporary or provisional certificate **issued under subsection (2)**
30 **of this section** may be held only by a person who:

31 (a) Has not received a failing grade on a certification examination ap-

1 proved or administered by the authority; and

2 (b)(A) Has successfully completed the initial training required by au-
3 thority rule; or

4 (B) Is currently working in this [*or another*] state as a hemodialysis
5 technician and is enrolled in a program offering the initial training required
6 by authority rule.

7 **(5) The authority may issue a certificate by reciprocity for a person**
8 **to practice as a hemodialysis technician if the person is currently li-**
9 **censed, certified or otherwise authorized to practice as a hemodialysis**
10 **technician under the laws of another state, territory or country and**
11 **the authority determines that the qualifications imposed by the other**
12 **state, territory or country are substantially equivalent to the quali-**
13 **fications required by this state.**

14 [(3)] **(6)** Each person holding a certificate under this section shall submit,
15 at the time of application for renewal of the certificate to the authority,
16 evidence of the applicant's satisfactory completion of any continuing educa-
17 tion requirements prescribed by rule by the authority.

18 [(4)] **(7)** The authority shall prescribe criteria and approve programs of
19 continuing education.

20 [(5)] **(8)** Each certification issued under this section, [*unless sooner sus-*
21 *pending or revoked,*] **other than a temporary or provisional certification**
22 **issued under subsection (2) of this section,** shall expire and be renewable
23 after a period of two years, **unless sooner suspended or revoked.** Each
24 **such** certificate must be renewed on or before June 30 of every second year
25 or on or before [*such*] a date [*as may be*] specified by authority rule. The
26 authority by rule shall establish a schedule of certificate renewals under this
27 subsection and shall prorate the fees to reflect any shorter certificate period.

28 **SECTION 11.** ORS 688.655 is amended to read:

29 688.655. (1) The certification of a hemodialysis technician may be denied,
30 suspended or revoked in accordance with the provisions of ORS chapter 183
31 for any of the following:

- 1 (a) Failure to complete continuing education requirements.
- 2 (b) The use of fraud or deception in receiving a certificate.
- 3 (c) Habitual or excessive use of intoxicants or drugs.
- 4 (d) The presence of a mental disorder that demonstrably affects a
5 technician's performance, as certified by two psychiatrists retained by the
6 Oregon Health Authority.
- 7 (e) Conviction of a criminal offense that the authority considers reason-
8 ably related to the fitness of the person to practice hemodialysis.
- 9 (f) Suspension or revocation of a hemodialysis technician certificate is-
10 sued by another state.
- 11 (g) Gross negligence or repeated negligence in rendering hemodialysis
12 care.
- 13 (h) Any reason identified by authority rule as rendering the applicant
14 unfit to perform the duties of a hemodialysis technician.
- 15 (2) The authority may investigate any evidence that appears to show that
16 a hemodialysis technician certified by the authority is or may be medically
17 incompetent or is or may be guilty of unprofessional or dishonorable conduct
18 or is or may be mentally or physically unable to safely function as a
19 hemodialysis technician.
- 20 (3) Any **outpatient renal** dialysis facility [*or center*], any hemodialysis
21 technician certified under ORS 688.650, any physician licensed under ORS
22 chapter 677 or any registered nurse licensed under ORS 678.010 to 678.410
23 shall report to the authority any information the person may have that ap-
24 pears to show that a hemodialysis technician is or may be medically incom-
25 petent or is or may be guilty of unprofessional or dishonorable conduct or
26 is or may be mentally or physically unable to safely function as a
27 hemodialysis technician.
- 28 (4) Information provided to the authority pursuant to this section is con-
29 fidential and shall not be subject to public disclosure, nor shall it be ad-
30 missible as evidence in any judicial proceeding.
- 31 (5) Any person who reports or provides information to the authority under

1 this section and who provides information in good faith shall not be subject
2 to an action for civil damage as a result thereof.

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4

PSILOCYBIN REGULATION

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6 **SECTION 12.** ORS 475A.380 is amended to read:

7 475A.380. [*Minimum standards of education and training for psilocybin*
8 *service facilitators; rules.*] (1) The Oregon Health Authority shall adopt by
9 rule minimum standards of education and training requirements for
10 psilocybin service facilitators.

11 (2) The authority shall approve courses for psilocybin service facilitators.
12 To obtain approval of a course, the provider of a course must submit an
13 outline of instruction to the authority [*and the Department of Education*].
14 The outline must include the approved courses, total hours of instruction,
15 hours of lectures in theory and the hours of instruction in application of
16 practical skills.

17

18

CAPTIONS

19

20 **SECTION 13.** The unit captions used in this 2023 Act are provided
21 only for the convenience of the reader and do not become part of the
22 statutory law of this state or express any legislative intent in the
23 enactment of this 2023 Act.

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