

House Bill 3574

Sponsored by Representative BOWMAN

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**.

Prohibits professional corporation organized for purpose of practicing medicine from removing director or officer by means other than majority vote of directors or officers, as appropriate, who are licensed to practice medicine in this state.

Provides that limited liability company that is organized for purpose of practicing medicine or for purpose of holding or owning majority of shares of professional corporation that is organized for purpose of practicing medicine must, in limited liability company's ownership, control and management and qualifications of limited liability company's members, directors and officers, meet requirements that apply to professional corporation that is organized for purpose of practicing medicine.

Prohibits noncompetition agreements for physicians licensed to practice medicine in this state unless physician executes agreement as part of sale of 25 percent or more of medical practice.

Prohibits hospital or management service organization from taking disciplinary action against physician licensed to practice medicine in this state for physician's violation of noncompetitive agreement, nondisclosure agreement or nondisparagement agreement or for disclosing or reporting information that physician in good faith believes is violation of federal or state law, rules or regulations.

Requires hospital and professional corporation organized for purpose of practicing medicine to report certain information concerning ownership of hospital or professional corporation to Oregon Health Authority and requires authority to make information publicly available.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to the practice of health care; creating new provisions; amending ORS 58.375, 63.074 and
3 441.025; and prescribing an effective date.

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

5 **SECTION 1.** ORS 58.375 is amended to read:

6 58.375. (1) In a professional corporation organized for the purpose of practicing medicine:

7 (a) Physicians who are licensed in this state to practice medicine must hold the majority of each
8 class of shares that are entitled to vote.

9 (b) Physicians who are licensed in this state to practice medicine must be a majority of the di-
10 rectors.

11 (c) All officers except the secretary and treasurer, if any, must be physicians who are licensed
12 in this state to practice medicine. The same person may hold any two or more offices.

13 (d) Except as otherwise provided by law, the Oregon Medical Board may expressly require that
14 physicians who are licensed in this state to practice medicine hold more than a majority of each
15 class of shares that is entitled to vote.

16 (e) Except as otherwise provided by law, the Oregon Medical Board may expressly require that
17 physicians who are licensed in this state to practice medicine be more than a majority of the di-
18 rectors.

19 **(2)(a) Except as provided in paragraph (b) of this subsection, a professional corporation**
20 **organized for the purpose of practicing medicine may not provide in the professional**
21 **corporation's articles of incorporation or bylaws, or by means of a contract or other ar-**

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 **rangement, for removing a director described in subsection (1)(b) of this section from the**
 2 **professional corporation's board of directors, or an officer described in subsection (1)(c) of**
 3 **this section from an office of the professional corporation, except by a majority vote of the**
 4 **shareholders described in subsection (1)(a) of this section or, as appropriate, a majority vote**
 5 **of the directors described in subsection (1)(b) of this section.**

6 **(b) A professional corporation organized for the purpose of practicing medicine may re-**
 7 **move a director or officer by means other than a majority vote of the shareholders described**
 8 **in subsection (1)(a) of this section or a majority vote of the directors described in subsection**
 9 **(1)(b) of this section if the director or officer that is subject to removal:**

10 **(A) Violated a duty of care, a duty of loyalty or another fiduciary duty to the professional**
 11 **corporation;**

12 **(B) Was the subject of a disciplinary proceeding by the Oregon Medical Board that re-**
 13 **sulted in a suspension or revocation of the director's or officer's license to practice medicine**
 14 **in this state; or**

15 **(C) Engaged in fraud, misfeasance or malfeasance with respect to the director's or**
 16 **officer's performance of duties for or on behalf of the professional corporation.**

17 [(2)] **(3)** A professional corporation may be a shareholder of a professional corporation organized
 18 for the purpose of practicing medicine solely for the purpose of effecting a reorganization as defined
 19 in the Internal Revenue Code.

20 [(3)(a)] **(4)(a)** The provisions of subsections (1) [and (2)] to **(3)** of this section do not apply to:

21 **(A) A nonprofit corporation that is organized under Oregon law to provide medical services to**
 22 **migrant, rural, homeless or other medically underserved populations under 42 U.S.C. 254b or 254c,**
 23 **as in effect on January 1, 2018;**

24 **(B) A health center that is qualified under 42 U.S.C. 1396d(1)(2)(B), as in effect on January 1,**
 25 **2018, that operates in compliance with other applicable state or federal law; or**

26 **(C) Except as provided in paragraph (b) of this subsection, a for-profit or nonprofit business en-**
 27 **tity that is incorporated or organized under the laws of this state, that provides the entirety of the**
 28 **business entity's medical services through one or more rural health clinics, as defined in 42 U.S.C.**
 29 **1395x, as in effect on January 1, 2018, and that operates in compliance with state and federal laws**
 30 **that apply to rural health clinics.**

31 **(b) A business entity is exempt under this subsection for a period of up to one year after the**
 32 **business entity establishes a rural health clinic, even though the rural health clinic that the busi-**
 33 **ness entity establishes does not meet all of the elements of the definition set forth in 42 U.S.C.**
 34 **1395x, as in effect on January 1, 2018, if during the one-year period an applicable certification for**
 35 **the rural health clinic is pending.**

36 **SECTION 2. ORS 63.074 is amended to read:**

37 **63.074. (1) Except as otherwise provided by the laws of the state and in this section, a limited**
 38 **liability company formed under this chapter may conduct or promote any lawful business or purpose**
 39 **that a partnership, corporation or professional corporation as defined in ORS 58.015 may conduct**
 40 **or promote, unless the articles of organization set forth a more limited purpose. A person may not**
 41 **organize a limited liability company under this chapter for any illegal purpose or with an intent to**
 42 **fraudulently conceal any business activity from another person or a governmental agency.**

43 **(2)(a) Subject to the laws of the state, the rules and regulations of a regulatory board of a**
 44 **profession, if any, and the standards of professional conduct of the profession, if any, a limited li-**
 45 **ability company or members of the limited liability company may render professional service in this**

1 state.

2 (b) Notwithstanding any other law, members of a limited liability company, including members
 3 who are managers, and who are also professionals, as defined in ORS 58.015, are personally liable
 4 as members of the limited liability company to the same extent and in the same manner as provided
 5 for shareholders of a professional corporation in ORS 58.185 and 58.187 and as otherwise provided
 6 in this chapter.

7 (c) **A limited liability company that is organized for the purpose of practicing medicine,
 8 or for the purpose of holding or owning a majority of the shares of a professional corporation
 9 that is organized for the purpose of practicing medicine, must comply with the requirements
 10 of ORS 58.375 with respect to the limited liability’s company’s ownership, control and man-
 11 agement and the qualifications of the limited liability company’s members, directors and of-
 12 ficers. For the purposes of this paragraph, a member of a limited liability company organized
 13 for the purpose of practicing medicine or for the purpose of holding or owning a majority of
 14 the shares of a professional corporation that is organized for the purpose of practicing
 15 medicine is equivalent to a shareholder in a professional corporation described in ORS 58.375
 16 and the member’s rights and obligations in the limited liability company are equivalent to a
 17 shareholder’s rights and obligations in a professional corporation described in ORS 58.375.**

18 (3) A business that is subject to regulation under another statute of the state may not be or-
 19 ganized under this chapter if the business is required to be organized only under the other statute.

20 **SECTION 3. Sections 4 and 5 of this 2023 Act are added to and made a part of ORS**
 21 **chapter 677.**

22 **SECTION 4. (1) As used in this section and in section 5 of this 2023 Act:**

23 (a) **“Disciplinary action” means discrimination, dismissal, demotion, transfer, reassign-
 24 ment, supervisory reprimand, warning of possible dismissal or withholding of work, whether
 25 the action affects or will affect a licensee’s compensation.**

26 (b) **“Hospital” has the meaning given that term in ORS 442.015.**

27 (c) **“Management service organization” means an entity that under a written agreement
 28 and in return for compensation provides to or on behalf of a licensee business management
 29 services including, but not limited to, payroll, human resources, employment screening, em-
 30 ployee relations and other similar or related services that do not constitute the practice of
 31 medicine.**

32 (d) **“Noncompetition agreement” means a written agreement between a licensee and an-
 33 other person under which the licensee agrees that the licensee, either alone or as an em-
 34 ployee, associate or affiliate of a third person, will not compete with the other person in
 35 providing products, processes or services that are similar to the other person’s products,
 36 processes or services for a period of time or within a specified geographic area after termi-
 37 nation of employment or termination of a contract under which the licensee supplied goods
 38 to or performed services for the other person.**

39 (e) **“Nondisclosure agreement” means a written agreement under the terms of which a
 40 licensee must refrain from disclosing partially, fully, directly or indirectly to any person,
 41 other than another party to the written agreement or to a person specified in the agreement
 42 as a third-party beneficiary of the agreement:**

43 (A) **A policy, practice, process or technique the licensee used, or that a party to the
 44 agreement required the licensee to use, in patient care, other than individually identifiable
 45 health information that the licensee may not disclose under the Health Insurance Portability**

1 and Accountability Act of 1996, P.L. 104-191, as in effect on the effective date of this 2023
2 Act;

3 (B) A policy, practice or other information about or associated with the licensee’s em-
4 ployment, conditions of employment or rate or amount of pay or other compensation; or

5 (C) Any other information the licensee possesses or to which the licensee has access by
6 reason of the licensee’s employment by, or provision of services for or on behalf of, a party
7 to the agreement, other than information that is subject to protection under applicable law
8 as a trade secret of, or as otherwise proprietary to, another party to the agreement or to a
9 person specified in the agreement as a third-party beneficiary of the agreement.

10 (f) “Nondisparagement agreement” means a written agreement under which a licensee
11 must refrain from making to a third party a statement about another party to the agree-
12 ment or about another person specified in the agreement as a third-party beneficiary of the
13 agreement, the effect of which causes or threatens to cause harm to the other party’s or
14 person’s reputation, business relations or other economic interests.

15 (2)(a) Notwithstanding ORS 653.295 (1) and (2), and except as provided in paragraph (b)
16 of this subsection, a noncompetition agreement between a licensee and another person is
17 void and unenforceable.

18 (b) A noncompetition agreement that a licensee executes in connection with the
19 licensee’s sale, as owner, of at least 25 percent of a medical practice, or a sale of all or
20 substantially all of the operating assets of the medical practice, is enforceable to the extent
21 provided in ORS 653.295.

22 (3)(a) A nondisclosure agreement or nondisparagement agreement between a licensee and
23 a hospital or a licensee and a management service organization is void and unenforceable.

24 (b) Paragraph (a) of this subsection does not limit or otherwise affect any cause of action
25 that:

26 (A) A party to, or third-party beneficiary of, the agreement may have with respect to a
27 statement of a licensee that constitutes libel, slander, a tortious interference with contrac-
28 tual relations or another tort for which the party has a cause of action against the licensee;
29 and

30 (B) Does not depend upon or derive from a breach or violation of an agreement described
31 in paragraph (a) of this subsection.

32 SECTION 5. (1) A hospital, a management service organization or a professional corpo-
33 ration organized for the purpose of practicing medicine may not take disciplinary action
34 against a licensee as retaliation for, or as a consequence of, the licensee’s violation of a
35 nondisclosure agreement or nondisparagement agreement or because the licensee in good
36 faith disclosed or reported information that the licensee believes is evidence of a violation
37 of a federal or state law, rule or regulation.

38 (2) A hospital, management service organization or professional corporation that takes
39 disciplinary action against a licensee in the circumstances described in subsection (1) of this
40 section engages in an unlawful employment practice, as defined in ORS 659A.001, that is
41 subject to enforcement under ORS chapter 659A.

42 SECTION 6. Section 7 of this 2023 Act is added to and made a part of ORS chapter 58.

43 SECTION 7. (1) As used in this section:

44 (a) “Management service organization” means an entity that under a written agreement
45 and in return for compensation provides to or on behalf of a licensee business management

1 services including, but not limited to, payroll, human resources, employment screening, em-
 2 ployee relations and other similar or related services that do not constitute the practice of
 3 medicine.

4 (b) “Professional corporation organized for the purpose of practicing medicine” means a
 5 professional corporation that meets the requirements set forth in ORS 58.375.

6 (2) A professional corporation organized for the purpose of practicing medicine shall
 7 disclose to the Oregon Health Authority the identity of, and a summary of each written
 8 contract, agreement or other arrangement the professional corporation has with, each of the
 9 following persons:

10 (a) A management service organization that provides business services to the profes-
 11 sional corporation;

12 (b) A person that owns 10 percent or more of the outstanding shares of the professional
 13 corporation or that under the articles of incorporation or bylaws of the professional corpo-
 14 ration or under a contract, agreement or other arrangement has the power to manage or
 15 exercise significant control over the operations and policies of the professional corporation;

16 (c) An insurer, as defined in ORS 731.106; or

17 (d) Any other person that sells products or services to the professional corporation that
 18 the professional corporation uses, recommends or sells to patients to whom the professional
 19 corporation provides health care services.

20 (3) The authority by rule shall prescribe the form, format, contents and manner of the
 21 disclosure required under this section. The rules may not require a professional corporation
 22 organized for the purpose of practicing medicine to summarize provisions of an agreement
 23 that are trade secrets or the disclosure of which would jeopardize the professional
 24 corporation’s contractual relationships or competitive position in the market.

25 (4) The authority shall make the information that a professional corporation discloses
 26 under this section publicly available on the authority’s website.

27 **SECTION 8.** ORS 441.025 is amended to read:

28 441.025. (1)(a) Upon receipt of a license fee and an application to operate a health care facility
 29 other than a long term care facility, the Oregon Health Authority shall review the application and
 30 conduct an in-person site inspection of the health care facility. The authority shall issue a license
 31 if it finds that the applicant and health care facility comply with ORS 441.015 to 441.087 and the
 32 rules of the authority provided that the authority does not receive within the time specified a cer-
 33 tificate of noncompliance issued by the State Fire Marshal, deputy, or approved authority pursuant
 34 to ORS 479.215.

35 (b) The authority shall, following payment of the fee, annually renew each license issued under
 36 this subsection unless:

37 (A) The health care facility’s license has been suspended or revoked; or

38 (B) The State Fire Marshal, a deputy or an approved authority has issued a certificate of non-
 39 compliance pursuant to ORS 479.215.

40 (2)(a) Upon receipt of a license fee and an application to operate a long term care facility, the
 41 Department of Human Services shall review the application and conduct an in-person site inspection
 42 of the long term care facility, including an inspection of the kitchen and other areas where food is
 43 prepared for residents. The department shall issue a license if the department finds that the appli-
 44 cant and long term care facility comply with ORS 441.015 to 441.087 and the rules of the department
 45 provided that it does not receive within the time specified a certificate of noncompliance issued by

1 the State Fire Marshal, deputy, or approved authority pursuant to ORS 479.215.

2 (b) The department shall, following an in-person site inspection and payment of the fee, annually
3 renew each license issued under this subsection unless:

4 (A) The long term care facility's license has been suspended or revoked;

5 (B) The long term care facility is found not to be in substantial compliance, following the in-
6 person site inspection, with ORS 441.015 to 441.087 and 443.012 and the rules of the department;

7 (C) The long term care facility has failed an inspection of the kitchen or other areas where food
8 is prepared for residents that was conducted by the department in accordance with ORS 443.417,
9 except as provided in ORS 443.417 (2); or

10 (D) The State Fire Marshal, a deputy or an approved authority has issued a certificate of non-
11 compliance pursuant to ORS 479.215.

12 (3) Each license shall be issued only for the premises and persons or governmental units named
13 in the application and shall not be transferable or assignable.

14 (4) Licenses shall be posted in a conspicuous place on the licensed premises as prescribed by
15 rule of the authority or the department.

16 (5) No license shall be issued or renewed for any health care facility or health maintenance
17 organization that is required to obtain a certificate of need under ORS 442.315 until a certificate
18 of need has been granted. An ambulatory surgical center is not subject to the certificate of need
19 requirements in ORS 442.315.

20 (6) No license shall be issued or renewed for any **hospital, as defined in ORS 442.015**, skilled
21 nursing facility or intermediate care facility, unless the applicant has included in the application the
22 name and such other information as may be necessary to establish the identity and financial inter-
23 ests of any person who has incidents of ownership in the **hospital or** facility representing an in-
24 terest of 10 percent or more thereof. If the person having such interest is a corporation, the name
25 of any stockholder holding stock representing an interest in the facility of 10 percent or more shall
26 also be included in the application. If the person having such interest is any other entity, the name
27 of any member thereof having incidents of ownership representing an interest of 10 percent or more
28 in the facility shall also be included in the application.

29 (7) A license may be denied to any applicant for a license or renewal thereof or any stockholder
30 of any such applicant who has incidents of ownership in the health care facility representing an
31 interest of 10 percent or more thereof, or an interest of 10 percent or more of a lease agreement for
32 the facility, if during the five years prior to the application the applicant or any stockholder of the
33 applicant had an interest of 10 percent or more in the facility or of a lease for the facility and has
34 divested that interest after receiving from the authority or the department written notice that the
35 authority or the department intends to suspend or revoke the license or to decertify the facility from
36 eligibility to receive payments for services provided under this section.

37 (8) The Department of Human Services may not issue or renew a license for a long term care
38 facility, unless the applicant has included in the application the identity of any person who has in-
39 cident of ownership in the long term care facility who also has a financial interest in any pharmacy,
40 as defined in ORS 689.005.

41 (9) The authority shall adopt rules for each type of health care facility, except long term care
42 facilities, to carry out the purposes of ORS 441.015 to 441.087 including, but not limited to:

43 (a) Establishing classifications and descriptions for the different types of health care facilities
44 that are licensed under ORS 441.015 to 441.087; and

45 (b) Standards for patient care and safety, adequate professional staff organizations, training of

1 staff for whom no other state regulation exists, suitable delineation of professional privileges and
 2 adequate staff analyses of clinical records.

3 (10) The department shall adopt rules for each type of long term care facility to carry out the
 4 purposes of ORS 441.015 to 441.087 including, but not limited to:

5 (a) Establishing classifications and descriptions for the different types of long term care facili-
 6 ties that are licensed under ORS 441.015 to 441.087;

7 (b) Standards for patient care and safety, adequate professional staff organizations, training of
 8 staff for whom no other state regulation exists, suitable delineation of professional privileges and
 9 adequate staff analyses of clinical records; and

10 (c) Rules to ensure that a long term care facility complies with ORS 443.012.

11 (11) The authority or department may not adopt a rule requiring a health care facility to serve
 12 a specific food as long as the necessary nutritional food elements are present in the food that is
 13 served.

14 (12) A health care facility licensed by the authority or department may not:

15 (a) Offer or provide services beyond the scope of the license classification assigned by the au-
 16 thority or department; or

17 (b) Assume a descriptive title or represent itself under a descriptive title other than the classi-
 18 fication assigned by the authority or department.

19 (13) A health care facility must reapply for licensure to change the classification assigned or the
 20 type of license issued by the authority or department.

21 **(14) The authority shall make available to the public on the authority’s website the in-**
 22 **formation that an applicant must submit under subsection (6) of this section as part of an**
 23 **application to obtain or renew a license.**

24 **SECTION 9. (1) Except as provided in subsection (2) of this section, sections 4, 5 and 7**
 25 **of this 2023 Act and the amendments to ORS 58.375, 63.074 and 441.025 by sections 1, 2 and**
 26 **8 of this 2023 Act apply to contracts that a person enters into or renews on and after the**
 27 **operative date specified in section 10 of this 2023 Act.**

28 **(2) A noncompetition agreement, nondisclosure agreement or nondisparagement agree-**
 29 **ment into which a licensee enters before, on or after the operative date specified in section**
 30 **10 of this 2023 Act may not be enforced.**

31 **SECTION 10. (1) Sections 4, 5 and 7 of this 2023 Act and the amendments to ORS 58.375,**
 32 **63.074 and 441.025 by sections 1, 2 and 8 of this 2023 Act become operative on January 1, 2024.**

33 **(2) The Oregon Health Authority may adopt rules and take any other action before the**
 34 **operative date specified in subsection (1) of this section that is necessary to enable the au-**
 35 **thority, on and after the operative date specified in subsection (1) of this section, to under-**
 36 **take and exercise all of the duties, functions and powers conferred on the authority by**
 37 **sections 4, 5 and 7 of this 2023 Act and the amendments to ORS 58.375, 63.074 and 441.025 by**
 38 **sections 1, 2 and 8 of this 2023 Act.**

39 **SECTION 11. This 2023 Act takes effect on the 91st day after the date on which the 2023**
 40 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**