

House Bill 2243

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Oregon Health Licensing Agency)

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**.

Changes name of Board of Examiners of Nursing Home Administrators to Nursing Home Administrators Board.

Establishes Oregon Health Licensing Agency as provider of administrative and regulatory oversight and centralized service for board.

A BILL FOR AN ACT

Relating to regulation of licensed nursing home administrators; creating new provisions; amending ORS 441.109, 676.160, 676.606, 676.610, 676.612, 676.613, 676.992, 678.710, 678.720, 678.725, 678.730, 678.740, 678.750, 678.760, 678.770, 678.775, 678.780, 678.790, 678.800, 678.810 and 678.820; repealing ORS 678.825, 678.830 and 678.840; and appropriating money.

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

SECTION 1. ORS 678.800 is amended to read:

678.800. *[(1) There is hereby created a Board of Examiners of Nursing Home Administrators in the Department of Human Services.]*

[(2) The board shall be composed of nine individuals concerned with the care and treatment of the chronically ill or infirm elderly patients and shall be appointed by the Governor after consultation with the associations and societies appropriate to the professions and institutions:]

(1) The Nursing Home Administrators Board is established within the Oregon Health Licensing Agency.

(2)(a) The board consists of nine members who are appointed by the Governor, after consultation with any appropriate licensing boards, as follows:

[(a)] **(A) Three members [shall be] are nursing home administrators who are licensed under [ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)] ORS 678.710 to 678.840;**

[(b)] **(B) One member is a medical doctor who is licensed by the Oregon Medical Board and is actively engaged in private practice and conversant with the care and treatment of the long-term patient;**

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

[(d)] **(D) Three members are representative of the public at large, [at least one of whom shall] and at least one is [be at least] 62 years of age or older; and**

[(e)] **(E) One member is a pharmacist who is licensed by the State Board of Pharmacy[; and].**

[(f) Except for those persons described in paragraph (a) of this subsection, no member of the board shall have a direct financial interest in a nursing home.]

[(3) All members of the board shall be citizens of the United States or shall have declared their intent to become citizens of the United States and shall be residents of this state. No more than two

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 of the members of the board may be officials or full-time employees of state or local governments.]

2 (b) The members of the board appointed as described in paragraph (a) of this subsection
3 must also meet the following qualifications:

4 (A) Be citizens of the United States and residents of this state;

5 (B) Have a demonstrated concern with the care and treatment of the chronically ill or
6 infirm elderly patients;

7 (C) Except for members described in paragraph (a)(A) of this subsection, not have a di-
8 rect financial interest in a nursing home; and

9 (D) For members described in paragraph (a)(D) of this subsection, not have a financial
10 interest in, or have an employment contract with, a long term care facility.

11 [(4)] (3) The term of office of each member of the board is *[three]* four years, but a member
12 serves at the pleasure of the Governor. Before the expiration of the term of a member, the Governor
13 shall appoint a successor. *[whose term begins on July 1 next following. A member is eligible for re-*
14 *appointment but no member shall serve more than two consecutive terms.]* If there is a vacancy for any
15 cause, the Governor shall make an appointment to become immediately effective for the unexpired
16 term. **A member holds office until the appointment and confirmation of a successor. A**
17 **member is eligible for reappointment, but may not serve more than two consecutive full**
18 **terms unless at least four years have passed since the member last held office.**

19 (4) A member of the board may be removed by the Governor for neglect of duty, incom-
20 petence or unethical conduct.

21 (5) All appointments of members of the board by the Governor are subject to confirmation by
22 the Senate in the manner provided in ORS 171.562 and 171.565.

23 (6) The members of the board are entitled to compensation and expenses as provided in ORS
24 292.495.

25 *[(7) No public members of the board shall hold any pecuniary interest in, or have any employment*
26 *contract with, a long term care facility.]*

27 **SECTION 2.** The amendments to ORS 678.800 by section 1 of this 2009 Act that change
28 the number of years of a term of office of a member of the Nursing Home Administrators
29 Board apply to members whose terms of office begin on or after the effective date of this
30 2009 Act.

31 **SECTION 3.** (1) The amendments to ORS 678.800 by section 1 of this 2009 Act are intended
32 to change the name of the “Board of Examiners of Nursing Home Administrators” to the
33 “Nursing Home Administrators Board.”

34 (2) For the purpose of harmonizing and clarifying statute sections published in Oregon
35 Revised Statutes, the Legislative Counsel may substitute for words designating the “Board
36 of Examiners of Nursing Home Administrators,” wherever they occur in Oregon Revised
37 Statutes, other words designating the “Nursing Home Administrators Board.”

38 **SECTION 4.** The duties, functions and powers of the Nursing Home Administrators Board
39 relating to the administrative and regulatory oversight of nursing home administrator li-
40 censes issued under ORS 678.710 to 678.840 are imposed upon, transferred to and vested in
41 the Oregon Health Licensing Agency.

42 **SECTION 5.** (1) The chairperson of the Nursing Home Administrators Board shall deliver
43 to the Oregon Health Licensing Agency all records within the jurisdiction of the chairperson
44 that relate to the duties, functions and powers transferred by section 4 of this 2009 Act.

45 (2) The Director of the Oregon Health Licensing Agency shall take possession of the re-

1 cords delivered under subsection (1) of this section.

2 (3) The Governor shall resolve any dispute between the Nursing Home Administrators
3 Board and the Oregon Health Licensing Agency relating to transfers of records under this
4 section, and the Governor's decision is final.

5 **SECTION 6.** (1) The unexpended balances of amounts authorized to be expended by the
6 Nursing Home Administrators Board for the biennium beginning July 1, 2009, from revenues
7 dedicated, continuously appropriated, appropriated or otherwise made available for the pur-
8 pose of administering and enforcing the duties, functions and powers transferred by section
9 4 of this 2009 Act are transferred to and are available for expenditure by the Oregon Health
10 Licensing Agency for the biennium beginning July 1, 2009, for the purpose of administering
11 and enforcing the duties, functions and powers transferred by section 4 of this 2009 Act.

12 (2) The expenditure classifications, if any, established by Acts authorizing or limiting
13 expenditures by the Nursing Home Administrators Board remain applicable to expenditures
14 by the Oregon Health Licensing Agency under this section.

15 **SECTION 7.** The transfer of duties, functions and powers to the Oregon Health Licensing
16 Agency by section 4 of this 2009 Act does not affect any action, proceeding or prosecution
17 involving or with respect to such duties, functions and powers begun before and pending at
18 the time of the transfer, except that the Oregon Health Licensing Agency is substituted for
19 the Nursing Home Administrators Board in the action, proceeding or prosecution.

20 **SECTION 8.** (1) Nothing in sections 4 to 11 of this 2009 Act relieves a person of a liability,
21 duty or obligation accruing under or with respect to the duties, functions and powers
22 transferred by section 4 of this 2009 Act. The Oregon Health Licensing Agency may under-
23 take the collection or enforcement of any such liability, duty or obligation.

24 (2) The rights and obligations of the Nursing Home Administrators Board legally incurred
25 under contracts, leases and business transactions executed, entered into or begun before the
26 operative date of section 4 of this 2009 Act and accruing under or with respect to the duties,
27 functions and powers transferred by section 4 of this 2009 Act are transferred to the Oregon
28 Health Licensing Agency. For the purpose of succession to these rights and obligations, the
29 Oregon Health Licensing Agency is a continuation of the Nursing Home Administrators
30 Board and not a new authority.

31 **SECTION 9.** Notwithstanding the transfer of duties, functions and powers by section 4
32 of this 2009 Act, the rules of the Nursing Home Administrators Board with respect to such
33 duties, functions or powers that are in effect on the operative date of section 4 of this 2009
34 Act continue in effect until superseded or repealed by rules of the Oregon Health Licensing
35 Agency. References in such rules of the Nursing Home Administrators Board to the Nursing
36 Home Administrators Board or an officer or employee of the Nursing Home Administrators
37 Board are considered to be references to the Oregon Health Licensing Agency or an officer
38 or employee of the Oregon Health Licensing Agency.

39 **SECTION 10.** Whenever, in any uncodified law or resolution of the Legislative Assembly
40 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
41 the context of the duties, functions and powers transferred by section 4 of this 2009 Act,
42 reference is made to the Nursing Home Administrators Board, or an officer or employee of
43 the Nursing Home Administrators Board, whose duties, functions or powers are transferred
44 by section 4 of this 2009 Act, the reference is considered to be a reference to the Oregon
45 Health Licensing Agency or an officer or employee of the Oregon Health Licensing Agency

1 who by section 4 of this 2009 Act is charged with carrying out such duties, functions and
 2 powers.

3 **SECTION 11.** For the purpose of harmonizing and clarifying statute sections published
 4 in Oregon Revised Statutes, the Legislative Counsel may substitute for words designating the
 5 “Nursing Home Administrators Board” or its officers, wherever they occur in ORS 678.810
 6 to 678.840 and are used in relation to the administrative and regulatory oversight of nursing
 7 home administrator licenses issued under ORS 678.810 to 678.840, other words designating the
 8 “Oregon Health Licensing Agency” or its officers.

9 **SECTION 12.** ORS 678.810 is amended to read:

10 678.810. (1) The [*Board of Examiners of Nursing Home Administrators*] **Nursing Home Admin-**
 11 **istrators Board** shall hold at least [*two meetings*] **one meeting** each year. [*At any meeting*] A ma-
 12 jority of the members of the board [*shall constitute*] **constitutes** a quorum for the transaction of
 13 business.

14 (2) The board shall [*elect annually from its membership a*] **select one of its members as chair-**
 15 **person and [a] another as vice chairperson, for a one-year term and with such duties and**
 16 **powers necessary for the performance of the functions of the offices as the board**
 17 **determines.**

18 **SECTION 13.** ORS 678.820 is amended to read:

19 678.820. [*It shall be the function of the Board of Examiners of Nursing Home Administrators to:*]

20 [(1) *Develop, impose and enforce standards which shall be met by individuals in order to receive*
 21 *and retain a license as a nursing home administrator, which standards shall be designed to insure that*
 22 *nursing home administrators will be individuals who are qualified by training or experience in the field*
 23 *of long-term health care administration to serve as nursing home administrators.*]

24 [(2) *Develop and apply appropriate techniques, including examinations and investigations for de-*
 25 *termining whether an individual meets such standards, if examinations are reviewed periodically to*
 26 *insure validity.*]

27 [(3) *Issue licenses to individuals determined after application of such techniques, to meet such*
 28 *standards, and subject to ORS chapter 183 impose any of the sanctions set out in ORS 678.780 where*
 29 *the individual holding any such license is determined substantially to have failed to conform to the*
 30 *requirements of such standards.*]

31 [(4) *Establish and carry out procedures designed to insure that individuals licensed as nursing*
 32 *home administrators will, during any period that they serve as such, comply with the requirements of*
 33 *such standards.*]

34 [(5) *Receive, investigate and take appropriate action with respect to any charge or complaint filed*
 35 *with the board in writing, charging that any individual licensed as a nursing home administrator has*
 36 *failed to comply with the requirements of such standards.*]

37 [(6) *Conduct a continuing study and investigation of nursing homes and administrators of nursing*
 38 *homes within the state with a view to the improvement of standards imposed for the licensing of such*
 39 *administrators and the procedures and methods for the enforcement of such standards with respect to*
 40 *administrators of nursing homes who have been licensed as such.*]

41 [(7) *Encourage qualified educational institutions and other qualified organizations to establish,*
 42 *provide, conduct and continue such training and instruction courses and programs as will enable all*
 43 *otherwise qualified individuals to meet requirements established under ORS 678.710 to 678.780, 678.800*
 44 *to 678.840 and 678.990 (2).*]

45 [(8) *Approve courses and programs conducted within or without the state as sufficient to meet ed-*

1 *ucation and training requirements established pursuant to ORS 678.710 to 678.780, 678.800 to 678.840*
 2 *and 678.990 (2) and advise the appropriate state agencies regarding receipt and administration of such*
 3 *federal funds as are made available for such purposes.]*

4 *[(9) In accordance with ORS 183.330, adopt, amend and repeal rules which are necessary to carry*
 5 *out the provisions of ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2).]*

6 *[(10) Maintain a register of all licensed nursing home administrators.]*

7 **(1) The Nursing Home Administrators Board is responsible for advising the Oregon**
 8 **Health Licensing Agency in all matters relating to the administration of ORS 678.710 to**
 9 **678.840, including:**

10 **(a) Developing standards for education and training;**

11 **(b) Developing standards of practice and professional conduct;**

12 **(c) Establishing standards related to the issuance, denial, revocation, suspension or re-**
 13 **newal of licenses to practice as a nursing home administrator;**

14 **(d) Preparing or approving the examinations required under ORS 678.710 to 678.840, in**
 15 **accordance with standards provided by the agency; and**

16 **(e) Assisting the agency in administering the provisions of ORS 678.710 to 678.840.**

17 **(2) The Oregon Health Licensing Agency shall administer ORS 678.710 to 678.840 by:**

18 **(a) Determining the qualifications and fitness of applicants for licenses, renewed licenses,**
 19 **reciprocal licenses and provisional licenses under ORS 678.710 to 678.840.**

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

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

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

25 **(e) Pursuant to ORS 676.608, receiving and investigating complaints filed regarding**
 26 **nursing home administrators.**

27 **(f) Establishing and collecting fees and charges to carry out the agency's duties under**
 28 **ORS 678.710 to 678.840.**

29 **(g) In accordance with ORS 183.330 and 676.615, adopting, amending and repealing rules**
 30 **that are necessary to carry out the administration of ORS 678.710 to 678.840.**

31 **(h) Maintaining a register of all licensed nursing home administrators.**

32 **(3) The agency shall consider and be guided by the recommendations of the board in all**
 33 **matters relating to the administration of ORS 678.710 to 678.840.**

34 **SECTION 14.** ORS 678.710 is amended to read:

35 678.710. As used in ORS 678.710 to 678.840, unless the context requires otherwise:

36 *[(1) "Board" means the Board of Examiners of Nursing Home Administrators of the State of*
 37 *Oregon.]*

38 *[(2) "Department" means the Department of Human Services.]*

39 *[(3)]* **(1) "Dual facility" means a facility that operates both a hospital and a long term care fa-**
 40 **ility on the same campus.**

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

44 *[(4)]* **(3) "Nursing home administrator" means an individual responsible for planning, organizing**
 45 **and managing the operation of a nursing home, whether or not such individual has an ownership**

1 interest in such home and whether or not such functions are shared by one or more other individ-
2 uals, if:

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

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

7 [(5) "Nursing home" means any institution or facility defined as a long term care facility for li-
8 censing purposes under state statute or the rules of the department, including a long term care facility
9 operated as part of a dual facility.]

10 [(6)] (4) "Provisional license" means a temporary license issued to a provisional nursing home
11 administrator under the rules of the [board] **Oregon Health Licensing Agency**.

12 **SECTION 15.** ORS 678.720 is amended to read:

13 678.720. (1) [On and after July 1, 1971,] Unless an individual holds a valid license issued under
14 the provisions of [ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)] **ORS 678.710 to**
15 **678.840**, an individual [shall] **may** not:

16 (a) Practice or offer to practice as a nursing home administrator; or

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

20 (2) [On and after July 1, 1971, no] **A** nursing home shall be conducted or operated [unless it is]
21 under the supervision of a nursing home administrator who holds a valid license issued under the
22 provisions of [ORS 678.710 to 678.780, 678.800 to 678.840 and ORS 678.990 (2)] **ORS 678.710 to**
23 **678.840**.

24 **SECTION 16.** ORS 678.725 is amended to read:

25 678.725. (1) Any health care facility licensed under ORS 441.015, any licensee licensed by the
26 [Board of Examiners of Nursing Home Administrators of the State of Oregon] **Oregon Health Li-**
27 **icensing Agency**, any physician licensed by the Oregon Medical Board, any licensed professional
28 nurse and any licensed pharmacist shall, and any other person may, report to the [board] **agency**
29 suspected violations of ORS 678.710 to 678.840 and [insanitary] **unsanitary** or other unsatisfactory
30 conditions in a nursing home.

31 (2) Information acquired by the [board] **agency** pursuant to subsection (1) of this section is
32 confidential and [shall not be] **is not** subject to public disclosure.

33 (3) Any person who reports or provides information to the [board] **agency** under subsection (1)
34 of this section and who provides information in good faith [shall] **may** not be subject to an action
35 for civil damages as a result [thereof] **of making the report or providing the information**.

36 **SECTION 17.** ORS 678.730 is amended to read:

37 678.730. (1) [Any] **An** individual [is qualified] **qualifies** for licensure as a nursing home admin-
38 istrator [who] **if the individual**:

39 (a) Meets the **education**, training [or experience] and other standards established by rules of the
40 [Board of Examiners of Nursing Home Administrators] **Nursing Home Administrators Board**. The
41 board shall **establish standards that** accept one year of experience as an administrator serving a
42 dual facility in lieu of any residency or intern requirement [established pursuant to this paragraph]
43 **that may be established by the board**; and

44 (b) Has passed an examination as provided in ORS 678.740.

45 (2) [Each license as a nursing home administrator may be renewed by the board upon compliance

1 by the licensee with the requirements of ORS 678.760 and by presenting evidence of the completion of
 2 the continuing education work required by the board.] **A license holder may renew a license as**
 3 **provided by ORS 678.760.** The board may require up to 50 hours of continuing education in any
 4 one-year period **for a renewed license.**

5 (3) In establishing educational standards pursuant to subsection (1)(a) of this section, the board
 6 shall require a baccalaureate degree from an accredited school of higher education. However, the
 7 educational requirement does not apply to any person who:

8 (a) Was a licensed administrator in any jurisdiction of the United States prior to January 1,
 9 1983; or

10 (b) Was an administrator of a dual facility meeting the experience requirements pursuant to
 11 subsection (1)(a) of this section.

12 (4) Notwithstanding the requirements established under subsection (1) of this section, upon the
 13 request of the governing body of a hospital, as defined in ORS 442.015 (19), the board shall **adopt**
 14 **standards by rule that** deem a health care administrator to have met the requirements for
 15 licensure as a nursing home administrator if the health care administrator possesses an advanced
 16 degree in management and has at least 10 years of experience in health care management.

17 **SECTION 18.** ORS 678.740 is amended to read:

18 678.740. (1) Examinations for licensure as a nursing home administrator shall be conducted at
 19 such times and places as the [*Board of Examiners of Nursing Home Administrators of the State of*
 20 *Oregon shall designate*] **Nursing Home Administrators Board designates**, but not less than once
 21 a year. The fee for examination or reexamination shall be determined by the [*board*] **Oregon Health**
 22 **Licensing Agency** under ORS 678.775.

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

25 **SECTION 19.** ORS 678.750 is amended to read:

26 678.750. (1) Nothing in [*ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)*] **ORS 678.710**
 27 **to 678.840** or the rules adopted [*thereunder shall*] **under ORS 678.710 to 678.840 may** be construed
 28 to require an individual, who is employed to administer an institution exempted under ORS 441.065
 29 as an institution that is operated by and for persons who rely on spiritual means alone for the care
 30 and treatment of the sick, to demonstrate proficiency in any medical techniques or to meet any
 31 medical educational qualifications or medical standards not in accord with the remedial care and
 32 treatment provided in [*such institutions*] **the institution.** Any license issued under [*ORS 678.710 to*
 33 *678.780, 678.800 to 678.840 and 678.990 (2)*] **ORS 678.710 to 678.840** to [*such*] an individual **described**
 34 **in this subsection** shall indicate the limited extent of the authority of the individual to act as an
 35 administrator.

36 (2) Subsection (1) of this section does not limit or prohibit the operator of an institution from
 37 enforcing any religious affiliation [*requirement*] **requirements** imposed as a bona fide occupational
 38 qualification or business necessity or as otherwise permitted by section 703(e) of Title VII of the
 39 Civil Rights Act of 1964 or other provision of federal law.

40 **SECTION 20.** ORS 678.760 is amended to read:

41 678.760. [(1) *Upon compliance with the requirements of ORS 678.730 and the payment of a fee as*
 42 *determined by the Board of Examiners of Nursing Home Administrators of the State of Oregon under*
 43 *ORS 678.775, an individual shall upon application be granted a nursing home administrator's original*
 44 *license. All original licenses shall expire on June 30 of the next odd-numbered year or on such date*
 45 *as may be specified by board rule.*]

1 [(2) Upon application within one year following expiration of an original or a renewal license, and
2 the payment of a fee as determined by the board under ORS 678.775, the board shall issue a renewal
3 license, provided the continuing education requirements and all other requirements set by the board
4 have been met. All renewal licenses shall expire on June 30 of the next odd-numbered year or on such
5 date as may be specified by board rule.]

6 [(3) The fee for a provisional license shall be determined by the board under ORS 678.775.]

7 **(1) Subject to ORS 676.612 and subsection (2) of this section, the Oregon Health Licensing
8 Agency shall:**

9 **(a) Issue a license as a nursing home administrator to a qualified applicant upon satis-
10 factory evidence of meeting the requirements of ORS 678.730 and other qualifications adopted
11 by the Nursing Home Administrators Board by rule.**

12 **(b) Renew a license as a nursing home administrator if, by a date specified by the agency
13 by rule, the license holder submits to the agency a completed renewal application, required
14 renewal fees and satisfactory evidence of completion of any required continuing education
15 credits.**

16 **(2) For up to one year from the date of a denial, suspension, revocation or expiration of
17 a nursing home administrator license, the agency may refuse to grant or renew the license
18 of a nursing home administrator whose license has expired or been denied, suspended or re-
19 voked.**

20 **(3)(a) Except as provided by paragraph (b) of this subsection, a nursing home adminis-
21 trator license expires on the last day of the month, one year from the date of issuance.**

22 **(b) The agency may adopt by rule an expiration date that is different than the date pro-
23 vided by paragraph (a) of this subsection if the license holder is provided written notice of
24 the different renewal date and the renewal fee is prorated.**

25 **(4) The agency may adopt rules for the reactivation of an expired license, including ad-
26 ditional requirements for a license that has been expired for three years or more.**

27 **(5) The agency may establish requirements for the issuance of a temporary provisional
28 license. The fee for a provisional license is established by rules of the agency under ORS
29 678.775.**

30 **SECTION 21.** The amendments to ORS 678.760 by section 20 of this 2009 Act apply to li-
31 **cence holders whose license is issued or renewed on or after the effective date of this 2009**
32 **Act or whose license has expired or been denied, suspended or revoked on or after the ef-**
33 **fective date of this 2009 Act.**

34 **SECTION 22.** ORS 678.770 is amended to read:

35 678.770. (1) [*The Board of Examiners of Nursing Home Administrators of the State of Oregon may*
36 *license by indorsement, without examination, any individual who applies therefor,]* **The Nursing Home**
37 **Administrators Board may establish by rule standards for the issuance of a license by**
38 **endorsement, without examination, to an applicant who:**

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

40 **(b) On the date of making application, is a nursing home administrator licensed under the laws**
41 **of any other state or territory of the United States if the requirements for licensing of nursing home**
42 **administrators in the state or territory in which the applicant is licensed are not less than those**
43 **required [*in ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2)*] by ORS 678.710 to 678.840.**

44 **(2) Each applicant under this section shall pay to the [board] Oregon Health Licensing Agency**
45 **at the time of filing the application a fee determined by the [board] agency under ORS 678.775.**

SECTION 23. ORS 678.775 is amended to read:

678.775. (1) *[The fees and charges determined by the Board of Examiners of Nursing Home Administrators of the State of Oregon under ORS 678.740, 678.760 and 678.770 are subject to the prior approval of the Oregon Department of Administrative Services and, if their adoption occurs between regular sessions of the Legislative Assembly, a report to the Emergency Board. The fees and charges shall not exceed the cost of administering the regulatory program of the board pertaining to the purpose for which the fee or charge is established, as authorized by the Legislative Assembly within the board's budget, as that budget may be modified by the Emergency Board.]* **The Oregon Health Licensing Agency shall establish by rule and collect fees and charges for the following under ORS 678.710 to 678.840:**

- (a) **Application;**
- (b) **Examination or reexamination;**
- (c) **Original license;**
- (d) **License renewal;**
- (e) **Provisional or temporary license;**
- (f) **Licensure by reciprocity or endorsement;**
- (g) **License reactivation;**
- (h) **Issuance of a replacement license;**
- (i) **Delinquency fee;**
- (j) **License verification; and**
- (k) **Costs of providing copies of official documents or records and for recovering administrative costs associated with compiling, copying or preparing and delivering the records.**

(2) All moneys received by the agency under subsection (1) of this section shall be paid into the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Account, and are appropriated continuously to and shall be used by the agency as authorized by ORS 676.625.

SECTION 24. ORS 678.780 is amended to read:

678.780. *[(1) The sanctions authorized by subsection (2) of this section may be imposed upon the following grounds:]*

[(a) The employment of fraud or deception in applying for or obtaining a nursing home administrator's license.]

[(b) Engaging in conduct in the course of acting as a nursing home administrator involving fraud, dishonesty, malfeasance, cheating or other conduct as the Board of Examiners of Nursing Home Administrators of the State of Oregon may prohibit by rule.]

[(c) Conviction of a crime involving circumstances that relate to the licensee's fitness to continue practicing as a nursing home administrator.]

[(d) Mistake or inadvertence in the issuance of the license by the board.]

[(e) Physical or mental incapacity that presents an unreasonable risk of harm to the licensee or to the person or property of others in the course of performing the duties of a nursing home administrator.]

[(f) Use of any controlled substance or intoxicating liquor in a manner that impairs the licensee's ability to conduct safely the practice for which the licensee is licensed.]

[(g) The licensee has engaged in conduct that would justify denying a license to an applicant.]

[(h) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.780, 678.800 to 678.840 and 678.990 (2) or of any lawful rule or order of the board or continuous or sub-

1 *stantial violations of the rules adopted under ORS 441.055.]*

2 *[(i) Discipline imposed by any other licensing body in this or any other state based on conduct that*
 3 *would be grounds for discipline under this section or rules adopted by the board.]*

4 *[(j) Incompetence in performing the duties of a nursing home administrator as demonstrated by*
 5 *evidence that the licensee either lacks or did not use the knowledge or skill necessary to perform the*
 6 *administrator's duties in a minimally adequate manner.]*

7 *[(k) Employing or otherwise assisting another person to act as a nursing home administrator with*
 8 *knowledge that the person does not hold a valid license to practice as a nursing home administrator.]*

9 *[(L) Failure to pay a civil penalty imposed against the licensee in a timely manner.]*

10 *[(m) Unprofessional conduct as defined in rules adopted by the board.]*

11 *[(2) Subject to ORS chapter 183, the board may impose any or all of the following sanctions:]*

12 *[(a) Suspend, revoke or refuse to renew any license required by ORS 678.720.]*

13 *[(b) A civil penalty not to exceed \$1,000.]*

14 *[(c) Probation, with authority to limit or restrict a license.]*

15 *[(d) Participation in a treatment program for intoxicating liquor or controlled substances.]*

16 *[(3) Hearings under this section must be conducted by an administrative law judge assigned from*
 17 *the Office of Administrative Hearings established by ORS 183.605.]*

18 *[(4) Information that the board obtains as part of an investigation into licensee or applicant conduct*
 19 *or as part of a contested case proceeding, consent order or stipulated agreement involving licensee or*
 20 *applicant conduct is confidential as provided under ORS 676.175.]*

21 **(1) In the manner prescribed in ORS chapter 183 for contested cases, the Oregon Health**
 22 **Licensing Agency may impose a form of discipline as specified in ORS 676.612 against any**
 23 **person practicing as a nursing home administrator for any of the grounds listed in ORS**
 24 **676.612 and for any violation of the provisions of ORS 678.710 to 678.840, or the rules adopted**
 25 **under ORS 678.710 to 678.840.**

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

29 **(a) Violation of or noncompliance with any applicable provisions of ORS 678.710 to 678.840**
 30 **or of any rule or order of the agency;**

31 **(b) Any continuous or substantial violation of the rules adopted under ORS 441.055; or**

32 **(c) Discipline imposed by any other licensing body in this or any other state based on**
 33 **conduct that would be grounds for discipline under this section or rules adopted by the**
 34 **agency.**

35 **SECTION 25. The amendments to ORS 678.780 by section 24 of this 2009 Act apply to**
 36 **conduct occurring on or after the effective date of this 2009 Act.**

37 **SECTION 26. ORS 678.790 is amended to read:**

38 **678.790. (1) [Where the Board of Examiners of Nursing Home Administrators] When the Oregon**
 39 **Health Licensing Agency proposes to refuse to issue or renew a license, or proposes to revoke or**
 40 **suspend a license under ORS 678.710 to 678.840, opportunity for hearing shall be accorded as pro-**
 41 **vided in ORS chapter 183.**

42 **(2) Judicial review of orders under subsection (1) of this section shall be in accordance with ORS**
 43 **chapter 183.**

44 **(3) If the final order of the court on review reverses the [board's] agency's order of suspension,**
 45 **revocation or refusal to renew, the [board] agency shall issue the license and reinstate the appellant**

1 not later than the 30th day after the decision of the court.

2 **SECTION 27.** ORS 676.606 is amended to read:

3 676.606. Pursuant to ORS 676.607, the Oregon Health Licensing Agency shall provide adminis-
4 trative and regulatory oversight and centralized service for the following boards, advisory councils
5 and program:

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

7 (2) Board of Cosmetology, as provided in ORS 690.005 to 690.235;

8 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.570;

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

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

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

12 (7) Advisory Council for Electrologists and Permanent Color Technicians and Tattoo Artists, as
13 provided in ORS 690.350 to 690.430;

14 (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.185;

15 (9) Body piercing licensing program, as provided in ORS 690.500 to 690.570; *[and]*

16 (10) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410; **and**

17 **(11) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.840.**

18 **SECTION 28.** ORS 676.610 is amended to read:

19 676.610. (1)(a) The Oregon Health Licensing Agency is under the supervision and control of a
20 director, who is responsible for the performance of the duties, functions and powers and for the or-
21 ganization of the agency.

22 (b) The Director of the Oregon Department of Administrative Services shall establish the qual-
23 ifications for and appoint the Director of the Oregon Health Licensing Agency, who holds office at
24 the pleasure of the Director of the Oregon Department of Administrative Services.

25 (c) The Director of the Oregon Health Licensing Agency shall receive a salary as provided by
26 law or, if not so provided, as prescribed by the Director of the Oregon Department of Administrative
27 Services.

28 (d) The Director of the Oregon Health Licensing Agency shall be in the unclassified service.

29 (2) The Director of the Oregon Health Licensing Agency shall be responsible for the perform-
30 ance of duties and functions of the boards, councils and programs administered by the agency. The
31 Director of the Oregon Health Licensing Agency shall provide the boards, councils and programs
32 with such services and employees as the agency requires to carry out its duties. Subject to any ap-
33 plicable provisions of the State Personnel Relations Law, the Director of the Oregon Health Li-
34 censing Agency shall appoint all subordinate officers and employees of the agency, prescribe their
35 duties and fix their compensation.

36 (3) *[Except as provided in section 18, chapter 885, Oregon Laws 1999,]* The Director of the Oregon
37 Health Licensing Agency shall be responsible for carrying out the duties, functions and powers un-
38 der ORS 675.360 to 675.410, **678.710 to 678.840**, 680.500 to 680.570, 680.990 (2), 687.405 to 687.495,
39 688.800 to 688.840, 688.995, 690.005 to 690.235, 690.350 to 690.430, 690.500 to 690.570, 690.992 and
40 694.015 to 694.185 and ORS chapter 700.

41 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-
42 tended to be exclusive nor to limit the duties, functions and powers imposed on or vested in the
43 Oregon Health Licensing Agency by other statutes.

44 **SECTION 29.** ORS 676.612 is amended to read:

45 676.612. (1) In the manner prescribed in ORS chapter 183 for contested cases and as specified

1 in ORS 675.385, **678.780**, 680.535, 687.445, 688.734, 688.836, 690.167, 690.407, 690.515, 694.147 and
 2 700.111, the Oregon Health Licensing Agency may refuse to issue or renew, may suspend or revoke
 3 or may place on probation or otherwise discipline a holder of a certificate, permit, license or regis-
 4 tration to practice issued by the agency for any of the following reasons:

5 (a) Fraud, misrepresentation, concealment of material facts or deception in applying for or ob-
 6 taining an authorization to practice in this state, or in any written or oral communication to the
 7 agency concerning the issuance or retention of the authorization.

8 (b) Using, causing or promoting the use of any advertising matter, promotional literature, testi-
 9 monial, guarantee, warranty, label, insignia or any other representation, however disseminated or
 10 published, that is false, misleading or deceptive.

11 (c) Making a representation that the certificate, permit, license or registration holder knew or
 12 should have known is false or misleading regarding skill or the efficacy or value of treatment or
 13 remedy administered by the holder.

14 (d) Practicing under a false, misleading or deceptive name, or impersonating another certificate,
 15 permit, license or registration holder.

16 (e) Permitting a person other than the certificate, permit, license or registration holder to use
 17 the certificate, permit, license or registration.

18 (f) Practicing with a physical or mental condition that presents an unreasonable risk of harm
 19 to the practitioner or to the person or property of others in the course of performing the practi-
 20 tioner's duties.

21 (g) Practicing while under the influence of alcohol, controlled substances or other skill-impairing
 22 substances, or engaging in the illegal use of controlled substances or other skill-impairing sub-
 23 stances so as to create a risk of harm to the person or property of others in the course of per-
 24 forming the practitioner's duties.

25 (h) Failing to properly and reasonably accept responsibility for the actions of employees.

26 (i) Employing, directly or indirectly, any suspended, uncertified, unlicensed or unregistered per-
 27 son to practice a regulated occupation or profession subject to the authority of the boards, councils
 28 and programs listed in ORS 676.606.

29 (j) Unprofessional conduct, negligence, incompetence, repeated violations or any departure from
 30 or failure to conform to standards of practice in performing services or practicing in a regulated
 31 occupation or profession subject to the authority of the boards, councils and programs listed under
 32 ORS 676.606.

33 (k) Conviction of any criminal offense, subject to ORS 670.280. A copy of the record of con-
 34 viction, certified by the clerk of the court entering the conviction, is conclusive evidence of the
 35 conviction. A plea of no contest or an admission of guilt shall be considered a conviction for pur-
 36 poses of this paragraph.

37 (L) Failing to report any adverse action, as required by statute or rule, taken against the cer-
 38 tificate, permit, license, or registration holder by another regulatory jurisdiction or any peer review
 39 body, health care institution, professional association, governmental agency, law enforcement agency
 40 or court for acts or conduct similar to acts or conduct that would constitute grounds for disciplinary
 41 action as described in this section.

42 (m) Violation of a statute regulating an occupation or profession subject to the authority of the
 43 boards, councils and programs listed in ORS 676.606.

44 (n) Violation of any rule regulating an occupation or profession subject to the authority of the
 45 boards, councils and programs listed in ORS 676.606.

1 (o) Failing to cooperate with the agency in any investigation, inspection or request for infor-
 2 mation.

3 (2) The agency may refuse to issue or renew, may suspend or revoke or may place on probation
 4 or otherwise sanction a holder of a certificate, permit, license or registration to practice issued by
 5 the agency for failure to pay an outstanding civil penalty or fee that is due or for failure to meet
 6 the terms of any order issued by the agency that has become final.

7 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
 8 181.534, the agency may require the fingerprints of a person who is:

9 (a) Applying for a certificate, permit, license or registration that is issued by the agency;

10 (b) Applying for renewal of a certificate, permit, license or registration that is issued by the
 11 agency; or

12 (c) Under investigation by the agency.

13 (4) If the agency places a holder of a certificate, permit, license or registration on probation
 14 under subsection (1) of this section, the agency, in consultation with the appropriate board, council
 15 or program, may determine and at any time modify the conditions of the probation.

16 (5) If a certificate, permit, license or registration is suspended, the holder may not practice
 17 during the term of suspension. Upon the expiration of the term of suspension, the certificate, permit,
 18 license or registration may be reinstated by the agency if the conditions of suspension no longer
 19 exist and the holder has satisfied all requirements in the relevant statutes or administrative rules
 20 for issuance, renewal or reinstatement.

21 **SECTION 30.** ORS 676.613 is amended to read:

22 676.613. (1) In addition to all other remedies, when it appears to the Oregon Health Licensing
 23 Agency that a person is engaged in, has engaged in or is about to engage in any act, practice or
 24 transaction that violates any provision of ORS 675.360 to 675.410, 676.617, **678.710 to 678.840**,
 25 680.500 to 680.570, 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.235,
 26 690.350 to 690.430, 690.500 to 690.570 or 694.015 to 694.185 or ORS chapter 700, the agency may,
 27 through the Attorney General or the district attorney of the county in which the act, practice or
 28 transaction occurs or will occur, apply to the court for an injunction restraining the person from
 29 the act, practice or transaction.

30 (2) A court may issue an injunction under this section without proof of actual damages. An in-
 31 junction issued under this section does not relieve a person from any other prosecution or enforce-
 32 ment action taken for violation of statutes listed in subsection (1) of this section.

33 **SECTION 31.** ORS 676.992 is amended to read:

34 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
 35 penalty or remedy provided by law, the Oregon Health Licensing Agency may impose a civil penalty
 36 not to exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

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

38 (b) ORS 690.500 to 690.570 (body piercing);

39 (c) ORS 690.005 to 690.235 (cosmetology);

40 (d) ORS 680.500 to 680.570 (denture technology);

41 (e) ORS 687.405 to 687.495 (direct entry midwifery);

42 (f) ORS 690.350 to 690.430 (electrology and permanent coloring or tattooing);

43 (g) ORS 694.015 to 694.185 (dealing in hearing aids);

44 (h) ORS 688.800 to 688.840 (respiratory therapy);

45 (i) ORS chapter 700 (environmental sanitation);

- 1 (j) ORS 676.617 (single facility licensure); *[and]*
- 2 (k) ORS 675.360 to 675.410 (sex offender treatment); **and**
- 3 **(L) ORS 678.710 to 678.840 (nursing home administrators).**

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

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

9 (4) In imposing a civil penalty pursuant to this section, the agency shall consider the following
 10 factors:

- 11 (a) The immediacy and extent to which the violation threatens the public health or safety;
- 12 (b) Any prior violations of statutes, rules or orders;
- 13 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
 14 lation; and
- 15 (d) Any other aggravating or mitigating factors.
- 16 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

17 (6) The moneys received by the agency from civil penalties under this section shall be paid into
 18 the General Fund of the State Treasury and credited to the Oregon Health Licensing Agency Ac-
 19 count established under ORS 676.625. Such moneys are continuously appropriated to the agency for
 20 the administration and enforcement of the laws the agency is charged with administering and en-
 21 forcing that govern the person against whom the penalty was imposed.

22 **SECTION 32.** ORS 441.109 is amended to read:

23 441.109. The office of the Long Term Care Ombudsman shall carry out the following duties:

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

28 (2) Undertake, participate in or cooperate with persons and agencies in such conferences, in-
 29 quiries, meetings or studies as may lead to improvements in the functioning of long term care fa-
 30 cilities.

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

33 (4) Provide information to public agencies about the problems of residents of long term care fa-
 34 cilities.

35 (5) Work closely with cooperative associations and citizen groups in this state.

36 (6) Widely publicize the Long Term Care Ombudsman’s service, purpose and mode of operation.

37 (7) Collaborate with the Department of Human Services and the *[Board of Examiners of Nursing*
 38 *Home Administrators]* **Nursing Home Administrators Board** to establish a statewide system to
 39 collect and analyze information on complaints and conditions in long term care facilities for the
 40 purpose of publicizing improvements and resolving significant problems.

41 (8) Appoint designees to serve as local representatives of the office in various districts of the
 42 state and regularly monitor their functions.

43 (9) Specify qualifications and duties of designees.

44 (10) Adopt rules necessary for carrying out ORS 441.100 to 441.133, after consultation with the
 45 committee.

1 (11) Provide periodically, or at least twice annually, a report to the Governor, department and
2 the Legislative Assembly.

3 (12) Prepare necessary reports with the assistance of the department.

4 **SECTION 33.** ORS 676.160 is amended to read:

5 676.160. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:

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

7 (2) State Board of Chiropractic Examiners;

8 (3) State Board of Clinical Social Workers;

9 (4) Oregon Board of Licensed Professional Counselors and Therapists;

10 (5) Oregon Board of Dentistry;

11 (6) Board of Examiners of Licensed Dietitians;

12 (7) State Board of Massage Therapists;

13 (8) State Mortuary and Cemetery Board;

14 (9) Board of Naturopathic Examiners;

15 (10) Oregon State Board of Nursing;

16 *[(11) Board of Examiners of Nursing Home Administrators;]*

17 **(11) Nursing Home Administrators Board;**

18 (12) Oregon Board of Optometry;

19 (13) State Board of Pharmacy;

20 (14) Oregon Medical Board;

21 (15) Occupational Therapy Licensing Board;

22 (16) Physical Therapist Licensing Board;

23 (17) State Board of Psychologist Examiners;

24 (18) Board of Radiologic Technology;

25 (19) Oregon State Veterinary Medical Examining Board; and

26 (20) Department of Human Services to the extent that the department certifies emergency med-
27 ical technicians.

28 **SECTION 34. ORS 678.825, 678.830 and 678.840 are repealed.**

29