

## CHAPTER 45

AN ACT

SB 1548

Relating to mid-level health care practitioners; amending ORS 3.450, 30.302, 30.800, 30.802, 87.555, 87.560, 87.565, 87.575, 87.581, 87.623, 109.640, 109.650, 109.675, 109.680, 109.685, 127.700, 127.710, 127.722, 127.727, 127.730, 135.139, 136.220, 137.076, 137.473, 146.181, 146.750, 147.287, 147.403, 169.076, 169.077, 169.750, 192.310, 192.547, 408.310, 408.315, 408.340, 410.530, 414.550, 414.618, 416.550, 419B.020, 419B.023, 419B.035, 419B.352, 421.467, 421.590, 430.401, 430.735, 431.180, 432.005, 432.088, 433.010, 433.017, 433.110, 433.260, 435.205, 435.305, 436.225, 436.235, 436.295, 443.065, 443.075, 443.850, 453.307, 475.744, 475.950, 475.975, 475.976, 475.978, 616.750, 628.270, 659A.150, 680.545, 694.042, 742.420, 742.504, 744.364, 744.367, 746.230 and 750.055 and sections 9 and 14, chapter 290, Oregon Laws 1987; and prescribing an effective date.

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

**SECTION 1.** ORS 3.450 is amended to read: 3.450. (1) As used in this section[,]:

(a) "Drug court program" means a program in which:

(a) Individuals who are before the court obtain treatment for substance abuse issues and report regularly to the court on the progress of their treatment; and

(b) A local drug court team, consisting of the court, agency personnel and treatment and service providers, monitors the individuals' participation in treatment.

**(b) "Individual-provider relationship" includes a relationship between an individual and a physician, a physician assistant or nurse practitioner.**

(2)(a) The governing body of a county or a treatment provider may establish fees that individuals participating in a drug court program may be required to pay for treatment and other services provided as part of the drug court program.

(b) A court may order an individual participating in a drug court program to pay fees to participate in the program. Fees imposed under this subsection may not be paid to the court.

(3) Records that are maintained by the circuit court specifically for the purpose of a drug court program must be maintained separately from other court records. Records maintained by a circuit court specifically for the purpose of a drug court program are confidential and may not be disclosed except in accordance with regulations adopted under 42 U.S.C. 290dd-2, including under the circumstances described in subsections (4) to (7) of this section.

(4) If the individual who is the subject of the record gives written consent, a record described in subsection (3) of this section may be disclosed to members of the local drug court team in order to

develop treatment plans, monitor progress in treatment and determine outcomes of participation in the drug court program.

(5) A record described in subsection (3) of this section may not be introduced into evidence in any legal proceeding other than the drug court program unless:

(a) The individual who is the subject of the record gives written consent for introduction of the record; or

(b) The court finds good cause for introduction. In determining whether good cause exists for purposes of this paragraph, the court shall weigh the public interest and the need for disclosure against the potential injury caused by the disclosure to:

(A) The individual who is the subject of the record;

(B) The [individual-physician] **individual-provider** relationship; and

(C) The treatment services being provided to the individual who is the subject of the record.

(6) A court, the State Court Administrator, the Alcohol and Drug Policy Commission or the Oregon Criminal Justice Commission:

(a) May use records described in subsection (3) of this section and other drug court program information to track and develop statistics about the effectiveness, costs and other areas of public interest concerning drug court programs.

(b) May release statistics developed under paragraph (a) of this subsection and analyses based on the statistics to the public.

(7) Statistics and analyses released under subsection (6) of this section may not contain any information that identifies an individual participant in a drug court program.

**SECTION 2.** ORS 30.302 is amended to read:

30.302. (1) As used in this section, ["retired physician"] "**retired provider**" means any person:

(a) Who holds a degree of Doctor of Medicine, Doctor of Osteopathy or Doctor of Podiatric Medicine, or who has met the minimum educational requirements for licensure to practice naturopathic medicine **or as a physician assistant under ORS 677.505 to 677.525 or a nurse practitioner under ORS 678.375 to 678.390;**

(b) Who has been licensed and is currently retired in accordance with the provisions of ORS chapter 677, **678** or 685;

(c) Who is registered with the Oregon Medical Board as a retired emeritus physician or who complies with the requirements of **the Oregon Medical Board as a retired physician assistant, the Oregon State Board of Nursing as a retired nurse practitioner or the Oregon Board of Naturopathic Medicine as a retired naturopath;**

(d) Who registers with the county health officer in the county in which the physician, **physician assistant, nurse practitioner** or naturopath practices; and

(e) Who provides medical care as a volunteer without compensation solely through referrals from

the county health officer specified in paragraph (d) of this subsection.

(2) Any retired [*physician*] **provider** who treats patients pursuant to this section shall be considered to be an agent of a public body for the purposes of ORS 30.260 to 30.300.

**SECTION 3.** ORS 30.800 is amended to read:

30.800. (1) As used in this section and ORS 30.805, “emergency medical assistance” means:

(a) Medical or dental care not provided in a place where emergency medical or dental care is regularly available, including but not limited to a hospital, industrial first-aid station or [*a physician’s or dentist’s office*] **the office of a physician, physician assistant or dentist**, given voluntarily and without the expectation of compensation to an injured person who is in need of immediate medical or dental care and under emergency circumstances that suggest that the giving of assistance is the only alternative to death or serious physical aftereffects; or

(b) Medical care provided voluntarily in good faith and without expectation of compensation by a physician licensed [*by the Oregon Medical Board in the physician’s*] **under ORS chapter 677, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390 and in the person’s** professional capacity as a [*team physician*] **provider of health care for an athletic team** at a public or private school or college athletic event or as a volunteer [*physician*] **provider of health care** at other athletic events.

(2) No person may maintain an action for damages for injury, death or loss that results from acts or omissions of a person while rendering emergency medical assistance unless it is alleged and proved by the complaining party that the person was grossly negligent in rendering the emergency medical assistance.

(3) The giving of emergency medical assistance by a person does not, of itself, establish [*the relationship of physician and patient, dentist and patient or nurse and patient*] **a professional relationship** between the person giving the assistance and the person receiving the assistance insofar as the relationship carries with it any duty to provide or arrange for further medical care for the injured person after the giving of emergency medical assistance.

**SECTION 4.** ORS 30.802 is amended to read:

30.802. (1) As used in this section:

(a) “Automated external defibrillator” means an automated external defibrillator approved for sale by the federal Food and Drug Administration.

(b) “Public setting” means a location that is:

(A) Accessible to members of the general public, employees, visitors and guests, but that is not a private residence;

(B) A public school facility as defined in ORS 327.365;

(C) A health club as defined in ORS 431.680; or

(D) A place of public assembly as defined in ORS 431.690.

(2) A person may not bring a cause of action against another person for damages for injury, death or loss that result from acts or omissions involving the use, attempted use or nonuse of an automated external defibrillator when the other person:

(a) Used or attempted to use an automated external defibrillator;

(b) Was present when an automated external defibrillator was used or should have been used;

(c) Provided training in the use of an automated external defibrillator;

(d) Is a physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** and provided services related to the placement or use of an automated external defibrillator; or

(e) Possesses or controls one or more automated external defibrillators placed in a public setting.

(3) The immunity provided by this section does not apply if:

(a) The person against whom the action is brought acted with gross negligence or with reckless, wanton or intentional misconduct; or

(b) The use, attempted use or nonuse of an automated external defibrillator occurred at a location where emergency medical care is regularly available.

(4) Nothing in this section affects the liability of a manufacturer, designer, developer, distributor or supplier of an automated external defibrillator, or an accessory for an automated external defibrillator, under the provisions of ORS 30.900 to 30.920 or any other applicable state or federal law.

**SECTION 5.** ORS 87.555 is amended to read:

87.555. (1) Except as otherwise provided by law, whenever any person receives hospitalization or medical treatment on account of any injury, and the person, or the personal representative of the person after the death of the person, claims damages from the person causing the injury, then the hospital or any physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** who treats the injured person in the hospital or who provides medical services shall have a lien upon any sum awarded the injured person or the personal representative of the person by judgment or award or obtained by a settlement or compromise to the extent of the amount due the hospital and the physician, **physician assistant or nurse practitioner** for the reasonable value of such medical treatment rendered prior to the date of judgment, award, settlement or compromise. However, no such lien shall be valid against anyone coming under the Workers’ Compensation Act.

(2) When the injured person receiving hospitalization or medical care from a physician, **physician assistant or nurse practitioner** is the beneficiary of an insurance policy, including a policy that provides personal injury protection coverage or similar no-fault medical insurance but excluding a health

insurance policy, that provides for payment of such hospitalization and medical care, both the hospital and physician, **physician assistant or nurse practitioner** shall have liens upon the amount payable under the insurance policy. If a hospital or physician, **physician assistant or nurse practitioner** has properly perfected a lien pursuant to ORS 87.565 (2), the insurer obligated to make payment shall pay the sum due under the insurance policy directly to the hospital and physician, **physician assistant or nurse practitioner** in the amount due each for services rendered, and such payment shall constitute a release of the insurer making the payment to the extent of the payment.

(3) When there are insufficient funds to satisfy in full the liens of all hospitals [and], physicians, **physician assistants and nurse practitioners** claiming a lien created by this section, the insurer making the payment shall prorate the available funds without regard to the sequence of the filing of the notice of lien by the hospitals [or], physicians, **physician assistants or nurse practitioners** and pay the hospitals [or], physicians, **physician assistants or nurse practitioners** in proportion to the amount due each for services rendered.

**SECTION 6.** ORS 87.560 is amended to read:

87.560. (1) No lien under ORS 87.555 (1) shall be allowed:

(a) For hospitalization and treatment from a physician, **physician assistant or nurse practitioner** rendered after a settlement has been effected by or on behalf of the party causing the injury;

(b) Against any sum for necessary attorney fees, costs and expenses incurred by the injured party in securing a settlement, compromise, award or judgment; or

(c) For an amount payable for medical services under a policy that provides personal injury protection coverage provided to an injured person prior to a hospital [or], physician, **physician assistant or nurse practitioner** perfecting a lien under ORS 87.565 (2).

(2) This section does not preclude a hospital [or], a physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** from perfecting a lien under ORS 87.555.

**SECTION 7.** ORS 87.565 is amended to read:

87.565. (1) In order to perfect a lien under ORS 87.555 (1), a hospital, an owner or operator of a hospital [or], a physician, **a physician assistant or a nurse practitioner** shall:

(a) Not later than 30 days after the discharge of the patient from the hospital, file a notice of lien substantially in the form prescribed in ORS 87.570, containing a statement of the amount claimed, with the recording officer of the county wherein such hospital is located; and

(b) Prior to the date of judgment, award, settlement or compromise, serve a certified copy of the notice of lien by registered or certified mail upon:

(A) The person alleged to be responsible for causing the injury and from whom damages are or may be claimed or to the last-known address of the person; or

(B) The insurance carrier that has insured the person alleged to be responsible, if such insurance carrier is known.

(2) In order to perfect a lien under ORS 87.555 (2), a hospital, an owner or operator of a hospital [or], a physician, **a physician assistant or a nurse practitioner** shall:

(a) Not later than 30 days after the discharge of the patient from the hospital, file a notice of lien substantially in the form prescribed in ORS 87.570, containing a statement of the amount claimed, with the recording officer of the county wherein such hospital is located; and

(b) Serve a certified copy of the notice of lien by certified mail upon the insurance company that is obligated to make payment for hospitalization and medical services.

**SECTION 8.** ORS 87.575 is amended to read:

87.575. Each recording officer shall maintain a [hospital and physician] lien docket in which, upon the filing of a notice of lien, the recording officer shall enter the name of the injured person, the approximate date of the hospitalization services or medical treatment, the name and address of the hospital filing the notice and the amount claimed and the name and address of the physician, **physician assistant or nurse practitioner** filing the notice and the amount claimed. The recording officer shall make an index thereto in the names of the injured persons.

**SECTION 9.** ORS 87.581 is amended to read:

87.581. (1) A person or insurer shall be liable to a hospital and physician, **physician assistant or nurse practitioner** for the reasonable value of hospitalization services and medical treatment rendered out of the moneys due under any payment, award, judgment, settlement or compromise, after paying the attorney fees, costs and expenses incurred in connection therewith, or the proportion of that amount as determined under ORS 87.555 (3), if the person or insurer:

(a) Has received a notice of lien that complies with ORS 87.565;

(b) Has not paid the hospital and physician, **physician assistant or nurse practitioner** the reasonable value of hospitalization services and medical treatment that the hospital and physician, **physician assistant or nurse practitioner** rendered; and

(c) Pays moneys to the injured person, the heirs or personal representative of the injured person, the attorney for the injured person or for the heirs or personal representative of the injured person, or a person not claiming a valid lien under ORS 87.555,

as compensation for the injury suffered or as payment for the costs of hospitalization services or medical treatment incurred by the injured person.

(2) An action arising under subsection (1) of this section shall be commenced within 180 days after the date of payment under subsection (1)(c) of this section.

**SECTION 10.** ORS 87.623 is amended to read:

87.623. The recording officer of the county shall record the notices filed under ORS 87.613 in the [hospital] lien docket maintained under ORS 87.575.

**SECTION 11.** ORS 109.640 is amended to read:

109.640. (1) Any physician, **physician assistant licensed under ORS 677.505 to 677.525** or nurse practitioner **licensed under ORS 678.375 to 678.390** may provide birth control information and services to any person without regard to the age of the person.

(2) A minor 15 years of age or older may give consent, without the consent of a parent or guardian of the minor, to:

(a) Hospital care, medical or surgical diagnosis or treatment by a physician licensed by the Oregon Medical Board, and dental or surgical diagnosis or treatment by a dentist licensed by the Oregon Board of Dentistry, except as provided by ORS 109.660.

**(b) Diagnosis or treatment by a physician assistant who is licensed under ORS 677.505 to 677.525 and who is acting pursuant to a practice agreement as defined in ORS 677.495.**

[b] (c) Diagnosis and treatment by a nurse practitioner who is licensed by the Oregon State Board of Nursing under ORS 678.375 and who is acting within the scope of practice for a nurse practitioner.

[c] (d) Except when the minor is obtaining contact lenses for the first time, diagnosis and treatment by an optometrist who is licensed by the Oregon Board of Optometry under ORS 683.010 to 683.340 and who is acting within the scope of practice for an optometrist.

**SECTION 12.** ORS 109.650 is amended to read:

109.650. A hospital or any physician, **physician assistant**, nurse practitioner, dentist or optometrist described in ORS 109.640 may advise a parent or legal guardian of a minor of the care, diagnosis or treatment of the minor or the need for any treatment of the minor, without the consent of the minor, and is not liable for advising the parent or legal guardian without the consent of the minor.

**SECTION 13.** ORS 109.675 is amended to read:

109.675. (1) A minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency, excluding methadone maintenance, by a physician **or physician assistant** licensed by the Oregon Medical Board, a psychologist licensed by the State Board of Psychologist Examiners, a nurse practitioner regis-

tered by the Oregon State Board of Nursing, a clinical social worker licensed by the State Board of Licensed Social Workers, a professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists or a community mental health program established and operated pursuant to ORS 430.620 when approved to do so by the Oregon Health Authority pursuant to rule.

(2) However, the person providing treatment shall have the parents of the minor involved before the end of treatment unless the parents refuse or unless there are clear clinical indications to the contrary, which shall be documented in the treatment record. The provisions of this subsection do not apply to:

(a) A minor who has been sexually abused by a parent; or

(b) An emancipated minor, whether emancipated under the provisions of ORS 109.510 and 109.520 or 419B.550 to 419B.558 or, for the purpose of this section only, emancipated by virtue of having lived apart from the parents or legal guardian while being self-sustaining for a period of 90 days prior to obtaining treatment as provided by this section.

**SECTION 14.** ORS 109.680 is amended to read:

109.680. A physician, **physician assistant**, psychologist, nurse practitioner, clinical social worker licensed under ORS 675.530, professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists or community mental health program described in ORS 109.675 may advise the parent or parents or legal guardian of any minor described in ORS 109.675 of the diagnosis or treatment whenever the disclosure is clinically appropriate and will serve the best interests of the minor's treatment because the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or the minor's condition requires detoxification in a residential or acute care facility. If such disclosure is made, the physician, **physician assistant**, psychologist, nurse practitioner, clinical social worker licensed under ORS 675.530, professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists or community mental health program shall not be subject to any civil liability for advising the parent, parents or legal guardian without the consent of the minor.

**SECTION 15.** ORS 109.685 is amended to read:

109.685. A physician, **physician assistant**, psychologist, nurse practitioner, clinical social worker licensed under ORS 675.530, professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed Professional Counselors and Therapists or community mental health program described in ORS 109.675 who in good faith provides diagnosis or treatment to a minor as authorized by ORS 109.675 shall not be subject to any civil liability

for providing such diagnosis or treatment without consent of the parent or legal guardian of the minor.

**SECTION 16.** ORS 127.700 is amended to read: 127.700. As used in ORS 127.700 to 127.737:

(1) "Attending physician" shall have the same meaning as provided in ORS 127.505.

(2) "Attorney-in-fact" means an adult validly appointed under ORS 127.540, 127.700 to 127.737 and 426.385 to make mental health treatment decisions for a principal under a declaration for mental health treatment and also means an alternative attorney-in-fact.

(3) "Declaration" means a document making a declaration of preferences or instructions regarding mental health treatment.

(4) "Health care facility" shall have the same meaning as provided in ORS 127.505.

(5) "Incapable" means that, in the opinion of the court in a protective proceeding under ORS chapter 125, or the opinion of two physicians, a person's ability to receive and evaluate information effectively or communicate decisions is impaired to such an extent that the person currently lacks the capacity to make mental health treatment decisions.

(6) "Mental health treatment" means convulsive treatment, treatment of mental illness with psychoactive medication, admission to and retention in a health care facility for a period not to exceed 17 days for care or treatment of mental illness, and outpatient services.

(7) "Outpatient services" means treatment for a mental or emotional disorder that is obtained by appointment and is provided by an outpatient service as defined in ORS 430.010.

(8) "Provider" means a mental health treatment provider, **a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.**

(9) "Representative" means "attorney-in-fact" as defined in this section.

**SECTION 17.** ORS 127.710 is amended to read:

127.710. A declaration becomes operative when it is delivered to the principal's physician or other [*mental health treatment*] provider and remains valid until revoked or expired. The physician or provider shall act in accordance with an operative declaration when the principal has been found to be incapable. The physician or provider shall continue to obtain the principal's informed consent to all mental health treatment decisions if the principal is capable of providing informed consent or refusal.

**SECTION 18.** ORS 127.722 is amended to read:

127.722. A declaration may be revoked in whole or in part at any time by the principal if the principal is not incapable. A revocation is effective when a capable principal communicates the revocation to the attending physician or other provider. The attending physician or other provider shall note the revocation as part of the principal's medical record.

**SECTION 19.** ORS 127.727 is amended to read:

127.727. (1) None of the following may serve as attorney-in-fact:

(a) The attending physician or [*mental health service*] provider or an employee of the physician or provider, if the physician, provider or employee is unrelated to the principal by blood, marriage or adoption.

(b) An owner, operator or employee of a health care facility in which the principal is a patient or resident, if the owner, operator or employee is unrelated to the principal by blood, marriage or adoption.

(c) A person who is the principal's parent, guardian or former guardian if:

(A) At any time while the principal was under the care, custody or control of the person, a court entered an order:

(i) Taking the principal into protective custody under ORS 419B.150; or

(ii) Committing the principal to the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337; and

(B) The court entered a subsequent order that:

(i) The principal should be permanently removed from the person's home, or continued in substitute care, because it was not safe for the principal to be returned to the person's home, and no subsequent order of the court was entered that permitted the principal to return to the person's home before the principal's wardship was terminated under ORS 419B.328; or

(ii) Terminated the person's parental rights under ORS 419B.500 and 419B.502 to 419B.524.

(4) A principal, while not incapable, may petition the court to remove a prohibition contained in subsection (1)(c) of this section.

**SECTION 20.** ORS 127.730 is amended to read:

127.730. None of the following may serve as a witness to the signing of a declaration:

(1) The attending physician or [*mental health service*] provider or a relative of the physician or provider;

(2) An owner, operator or relative of an owner or operator of a health care facility in which the principal is a patient or resident; or

(3) A person related to the principal by blood, marriage or adoption.

**SECTION 21.** ORS 135.139 is amended to read:

135.139. (1) When a person has been charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the district attorney, upon the request of the victim or the parent or guardian of a minor or incapacitated victim, shall seek the consent of the person charged to submit to a test for HIV and any other communicable disease. In the absence of such consent or failure to submit to the test, the district attorney may petition the court for an order requiring the person charged to submit to a test for HIV and any other communicable disease.

(2)(a) At the time of an appearance before a circuit court judge on a criminal charge, the judge shall inform every person arrested and charged with a crime, in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, of the availability of testing for HIV and other communicable diseases and shall cause the alleged victim of such a crime, if any, or a parent or guardian of the victim, if any, to be notified that testing for HIV and other communicable diseases is available. The judge shall inform the person arrested and charged and the victim, or parent or guardian of the victim, of the availability of counseling under the circumstances described in subsection (7) of this section.

(b) Notwithstanding the provisions of ORS 433.045, if the district attorney files a petition under subsection (1) of this section, the court shall order the person charged to submit to testing if the court determines there is probable cause to believe that:

(A) The person charged committed the crime; and

(B) The victim has received a substantial exposure, as defined by rule of the Oregon Health Authority.

(3) Notwithstanding the provisions of ORS 433.045, upon conviction of a person for any crime in which the court determines from the facts that the transmission of body fluids from one person to another was involved and if the person has not been tested pursuant to subsection (2) of this section, the court shall seek the consent of the convicted person to submit to a test for HIV and other communicable diseases. In the absence of such consent or failure to submit to the test, the court shall order the convicted person to submit to the test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such order.

(4) When a test is ordered under subsection (2) or (3) of this section, the victim of the crime or a parent or guardian of the victim, shall designate an attending physician, **a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390** to receive such information on behalf of the victim.

(5) If an HIV test results in a negative reaction, the court may order the person to submit to another HIV test six months after the first test was administered.

(6) The result of any test ordered under this section is not a public record and shall be available only to:

(a) The victim.

(b) The parent or guardian of a minor or incapacitated victim.

(c) The attending physician [*who is licensed to practice medicine*], **physician assistant or nurse practitioner**.

(d) The Oregon Health Authority.

(e) The person tested.

(7) If an HIV test ordered under this section results in a positive reaction, the individual subject to the test shall receive post-test counseling as re-

quired by the Oregon Health Authority by rule. The results of HIV tests ordered under this section shall be reported to the authority. Counseling and referral for appropriate health care, testing and support services as directed by the Director of the Oregon Health Authority shall be provided to the victim or victims at the request of the victim or victims, or the parent or guardian of a minor or incapacitated victim.

(8) The costs of testing and counseling provided under subsections (2), (3) and (7) of this section shall be paid through the compensation for crime victims program authorized by ORS 147.005 to 147.367 from amounts appropriated for such purposes. Restitution to the state for payment of the costs of any counseling provided under this section and for payment of the costs of any test ordered under this section shall be included by the court in any order requiring the convicted person to pay restitution.

(9) When a court orders a convicted person to submit to a test under this section, the withdrawal of blood may be performed only by [*a physician licensed to practice medicine or by a*] **physician licensed under ORS chapter 677, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390, or by another** licensed health care provider acting within the provider's licensed scope of practice or acting under the supervision of [*a physician licensed to practice medicine*] **a physician licensed under ORS chapter 677, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.**

(10) No person authorized by subsection (9) of this section to withdraw blood, no person assisting in the performance of the test nor any medical care facility where blood is withdrawn or tested that has been ordered by the court to withdraw or test blood shall be liable in any civil or criminal action when the act is performed in a reasonable manner according to generally accepted medical practices.

(11) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the information. Any violation of this subsection is a Class C misdemeanor.

(12) As used in this section:

(a) "HIV test" means a test as defined in ORS 433.045.

(b) "Parent or guardian of the victim" means a custodial parent or legal guardian of a victim who is a minor or incapacitated person.

(c) "Positive reaction" means a positive HIV test with a positive confirmatory test result as specified by the Oregon Health Authority.

(d) "Transmission of body fluids" means the transfer of blood, semen, vaginal secretions or other body fluids identified by rule of the authority, from the perpetrator of a crime to the mucous membranes or potentially broken skin of the victim.

(e) "Victim" means the person or persons to whom transmission of body fluids from the perpetrator of the crime occurred or was likely to have occurred in the course of the crime.

**SECTION 22.** ORS 136.220 is amended to read:

136.220. A challenge for implied bias shall be allowed for any of the following causes and for no other:

(1) Consanguinity or affinity within the fourth degree to the person alleged to be injured by the offense charged in the accusatory instrument, to the complainant or to the defendant.

(2) Standing in the relation of guardian and ward, attorney and client, physician and patient, **physician assistant and patient, nurse practitioner and patient**, master and servant, debtor and creditor, principal and agent or landlord and tenant with the:

(a) Defendant;

(b) Person alleged to be injured by the offense charged in the accusatory instrument; or

(c) Complainant.

(3) Being a member of the family, a partner in business with or in the employment of any person referred to in subsection (2)(a), (b) or (c) of this section or a surety in the action or otherwise for the defendant.

(4) Having served on the grand jury which found the indictment or on a jury of inquest which inquired into the death of a person whose death is the subject of the indictment or information.

(5) Having been one of a jury formerly sworn in the same action, and whose verdict was set aside or which was discharged without a verdict after the cause was submitted to it.

(6) Having served as a juror in a civil action, suit or proceeding brought against the defendant for substantially the same act charged as an offense.

(7) Having served as a juror in a criminal action upon substantially the same facts, transaction or criminal episode.

**SECTION 23.** ORS 137.076 is amended to read:

137.076. (1) This section applies to any person convicted of:

(a) A felony;

(b) Sexual abuse in the third degree or public indecency;

(c) Conspiracy or attempt to commit rape in the third degree, sodomy in the third degree, sexual abuse in the second degree, burglary in the second degree or promoting prostitution; or

(d) Murder or aggravated murder.

(2) When a person is convicted of an offense listed in subsection (1) of this section:

(a) The person shall, whether or not ordered to do so by the court under paragraph (b) of this subsection, provide a blood or buccal sample at the request of the appropriate agency designated in paragraph (c) of this subsection.

(b) The court shall include in the judgment of conviction an order stating that a blood or buccal

sample is required to be obtained at the request of the appropriate agency and, unless the convicted person lacks the ability to pay, that the person shall reimburse the appropriate agency for the cost of obtaining and transmitting the blood or buccal sample. If the judgment sentences the convicted person to probation, the court shall order the convicted person to submit to the obtaining of a blood or buccal sample as a condition of the probation.

(c) The appropriate agency shall cause a blood or buccal sample to be obtained and transmitted to the Department of State Police. The agency shall cause the sample to be obtained as soon as practicable after conviction. The agency shall obtain the convicted person's thumbprint at the same time the agency obtains the blood or buccal sample. The agency shall include the thumbprint with the identifying information that accompanies the sample. Whenever an agency is notified by the Department of State Police that a sample is not adequate for analysis, the agency shall obtain and transmit a blood sample. The appropriate agency shall be:

(A) The Department of Corrections, whenever the convicted person is committed to the legal and physical custody of the department.

(B) In all other cases, the law enforcement agency attending upon the court.

(3)(a) A blood sample may only be drawn in a medically acceptable manner by [a licensed professional nurse, a licensed practical nurse, a qualified medical technician,] a licensed physician [or], a person acting under the direction or control of a licensed physician, **a physician assistant licensed under ORS 677.505 to 677.525, a nurse licensed under ORS chapter 678 or a qualified medical technician.**

(b) A buccal sample may be obtained by anyone authorized to do so by the appropriate agency. The person obtaining the buccal sample shall follow the collection procedures established by the Department of State Police.

(c) A person authorized by this subsection to obtain a blood or buccal sample shall not be held civilly liable for obtaining a sample in accordance with this subsection and subsection (2) of this section, ORS 161.325 and 419C.473. The sample shall also be obtained and transmitted in accordance with any procedures that may be established by the Department of State Police. However, no test result or opinion based upon a test result shall be rendered inadmissible as evidence solely because of deviations from procedures adopted by the Department of State Police that do not affect the reliability of the opinion or test result.

(4) No sample is required to be obtained if:

(a) The Department of State Police notifies the court or the appropriate agency that it has previously received an adequate blood or buccal sample obtained from the convicted person in accordance with this section or ORS 161.325 or 419C.473; or

(b) The court determines that obtaining a sample would create a substantial and unreasonable risk to the health of the convicted person.

(5) The provisions of subsections (1) to (4) of this section apply to any person who, on or after September 29, 1991, is serving a term of incarceration as a sentence or as a condition of probation imposed for conviction of an offense listed in subsection (1) of this section, and any such person shall submit to the obtaining of a blood or buccal sample. Before releasing any such person from incarceration, the supervisory authority shall cause a blood or buccal sample and the person's thumbprint to be obtained and transmitted in accordance with subsections (1) to (4) of this section.

**SECTION 24.** ORS 137.473 is amended to read:

137.473. (1) The punishment of death shall be inflicted by the intravenous administration of a lethal quantity of an ultra-short-acting barbiturate in combination with a chemical paralytic agent and potassium chloride or other equally effective substances sufficient to cause death. The judgment shall be executed by the superintendent of the Department of Corrections institution in which the execution takes place, or by the designee of that superintendent. All executions shall take place within the enclosure of a Department of Corrections institution designated by the Director of the Department of Corrections. The superintendent of the institution shall be present at the execution and shall invite the presence of one or more physicians, **physician assistants** or nurse practitioners, the Attorney General, the sheriff of the county in which the judgment was rendered and representatives from the media. At the request of the defendant, the superintendent shall allow no more than two members of the clergy designated by the defendant to be present at the execution. At the discretion of the superintendent, no more than five friends and relatives designated by the defendant may be present at the execution. The superintendent shall allow the presence of any peace officers as the superintendent thinks expedient.

(2) The person who administers the lethal injection under subsection (1) of this section shall not thereby be considered to be engaged in the practice of medicine.

(3)(a) Any wholesale drug outlet, as defined in ORS 689.005, registered with the State Board of Pharmacy under ORS 689.305 may provide the lethal substance or substances described in subsection (1) of this section upon written order of the Director of the Department of Corrections, accompanied by a certified copy of the judgment of the court imposing the punishment.

(b) For purposes of ORS 689.527 (7) the director shall be considered authorized to purchase the lethal substance or substances described in subsection (1) of this section.

(c) The lethal substance or substances described in subsection (1) of this section are not controlled substances when purchased, possessed or used for purposes of this section.

(4) The superintendent may require that persons who are present at the execution under subsection (1) of this section view the initial execution proce-

dures, prior to the point of the administration of the lethal injection, by means of a simultaneous closed-circuit television transmission under the direction and control of the superintendent.

**SECTION 25.** ORS 146.181 is amended to read:

146.181. (1) When a person is reported as missing to any city, county or state police agency, the agency, within 12 hours thereafter, shall enter into state and federal records maintained for that purpose, a report of the missing person in a format and according to procedures established by the authorities responsible respectively for the state and federal records.

(2) The law enforcement agency to which the report is made:

(a) May request from the person making the report information or material likely to be useful in identifying the missing person or the human remains of the missing person, including, but not limited to:

(A) The name of the missing person and any alternative names the person uses;

(B) The date of birth of the missing person;

(C) A physical description of the missing person, including the height, weight, gender, race, eye color, current hair color and natural hair color of the missing person, any identifying marks on the missing person, any prosthetics used by, or surgical implants in, the missing person and any physical anomalies of the missing person;

(D) The blood type of the missing person;

(E) The driver license number of the missing person;

(F) The Social Security number of the missing person;

(G) A recent photograph of the missing person;

(H) A description of the clothing the missing person is believed to have been wearing at the time the person disappeared;

(I) A description of items that the missing person is believed to have had with the person at the time the person disappeared;

(J) Telephone numbers and electronic mail addresses of the missing person;

(K) The name and address of any school the missing person attends;

(L) The name and address of any employer of the missing person;

(M) The name and address of [*the primary care physician and dentist of*] **the physician, physician assistant, nurse practitioner or dentist who provides health care services to** the missing person;

(N) A description of any vehicle that the missing person might have been driving or riding in when the person disappeared;

(O) The reasons why the person making the missing person report believes the person is missing;

(P) Any circumstances that indicate that the missing person may be at risk of injury or death;

(Q) Any circumstances that may indicate that the disappearance is not voluntary;

(R) Information about a known or possible abductor or a person who was last seen with the missing person; and

(S) The date of the last contact with the missing person.

(b) May request in writing from any dentist, denturist, physician, **physician assistant, nurse practitioner**, optometrist or other medical practitioner possessing it such medical, dental or other physically descriptive information as is likely to be useful in identifying the missing person or the human remains of the missing person.

(3) The law enforcement agency, upon obtaining information pursuant to subsection (2) of this section, shall make a supplementary entry of that information into the state and federal records described in subsection (1) of this section. The supplementary report shall be in a format and according to procedures established by the authorities responsible respectively for the state and federal records.

**SECTION 26.** ORS 146.750 is amended to read:

146.750. (1) Except as required in subsection (3) of this section, a physician, including an intern and resident, **a physician assistant licensed under ORS 677.505 to 677.525** or a registered nurse licensed under ORS [678.010 to 678.410] **chapter 678**, who has reasonable cause to suspect that a person brought to the physician, **physician assistant** or registered nurse or coming before the physician, **physician assistant** or registered nurse for examination, care or treatment has had injury, as defined in ORS 146.710, inflicted upon the person other than by accidental means, shall report or cause reports to be made in accordance with the provisions of subsection (2) of this section.

(2) An oral report must be made immediately by telephone or otherwise, and followed as soon thereafter as possible by a report in writing, to an appropriate law enforcement agency.

(3) When an injury as defined in ORS 146.710 or abuse as defined in ORS 419B.005 occurs to an unmarried person who is under 18 years of age, the provisions of ORS 419B.005 to 419B.050 apply.

**SECTION 27.** ORS 147.287 is amended to read:

147.287. (1) In order to perfect a lien under ORS 147.285, the Department of Justice shall do all of the following:

(a) Upon receiving notice under ORS 147.283, record a notice of lien in the County Clerk Lien Record of the county in which the person against whom the claim is made or action is brought resides. If the claim or action is against a corporation, the department shall record the notice of lien in the County Clerk Lien Record of the county in which the corporation has its principal place of business. If the claim or action is against a public body, as defined in ORS 174.109, the department shall record the notice of lien in the County Clerk Lien Record of the county in which the public body has its main office.

(b) Prior to the date of the satisfaction of the judgment or final payment under a settlement or compromise, deliver a copy of the notice of lien by certified mail or personal service to all parties bound by the judgment, settlement or compromise or to an attorney or insurer that represents a party bound by the judgment, settlement or compromise. The department may send the notice by first class mail to any party, attorney or insurer that does not accept the certified mail containing the notice.

(2) Upon the recording of a notice of lien under subsection (1)(a) of this section, the recording officer shall enter the name of the injured person, the approximate date of the injury and the name of the department as a lienor in the [hospital and physician] lien docket under ORS 87.575 and shall make an index to the [hospital and physician] lien docket in the names of the injured person and the department.

**SECTION 28.** ORS 147.403 is amended to read:

147.403. (1) Each hospital, emergency medical service provider, intermediate care facility, skilled nursing facility, long term care facility and residential care facility in this state shall adopt policies for the treatment or referral of acute sexual assault patients, if such policies are not otherwise provided for by statute or administrative rule.

(2)(a) Each hospital, emergency medical service provider, intermediate care facility, skilled nursing facility, long term care facility and residential care facility in this state that performs forensic medical examinations of sexual assault patients shall:

(A) Adopt, in addition to the facility's own guidelines, if any, the State of Oregon Medical Guideline for Sexual Assault Evaluation of Adolescent and Adult Patients developed and published by the Attorney General's Sexual Assault Task Force.

(B) Except as provided in paragraph (b) of this subsection, employ or contract with at least one sexual assault forensic examiner who has completed didactic training sufficient to satisfy the training requirement for certification by the Oregon SAE/SANE Certification Commission established by the Attorney General.

(b) Paragraph (a)(B) of this subsection does not apply to a hospital that performs forensic medical examinations only of sexual assault patients who are minors. Such a hospital may use physicians, **physician assistants licensed under ORS 677.505 to 677.525** and nurses to conduct the examinations in consultation with a social worker trained in assisting sexual assault victims who are minors.

**SECTION 29.** ORS 169.076 is amended to read:

169.076. Each local correctional facility shall:

(1) Provide sufficient staff to perform all audio and visual functions involving security, control, custody and supervision of all confined detainees and prisoners, with personal inspection at least once each hour. The supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing

body of the jurisdiction in which the facility is located.

(2) Have a comprehensive written policy with respect to:

- (a) Legal confinement authority.
- (b) Denial of admission.
- (c) Telephone calls.
- (d) Admission and release medical procedures.
- (e) Medication and prescriptions.
- (f) Personal property accountability which complies with ORS 133.455.

(g) Vermin and communicable disease control.

(h) Release process to include authority, identification and return of personal property.

(i) Rules of the facility governing correspondence and visitations.

(3) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of emergencies; and regulations for the operation of the facility.

(4) Not administer any physical punishment to any prisoner at any time.

(5) Provide for emergency medical and dental health, having written policies providing for:

(a) *[Licensed physician or nurse practitioner]* Review of the facility's medical and dental plans **by a licensed physician, physician assistant or nurse practitioner.**

(b) The security of medication and medical supplies.

(c) A medical and dental record system to include request for medical and dental attention, treatment prescribed, prescriptions, special diets and other services provided.

(d) First aid supplies and staff first aid training.

(6) Prohibit firearms from the security area of the facility except in times of emergency as determined by the administrator of the facility.

(7) Ensure that confined detainees and prisoners:

(a) Will be fed daily at least three meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other purposes.

(b) Will be fed nutritionally adequate meals in accordance with a plan reviewed by a registered dietitian or the Oregon Health Authority.

(c) Be provided special diets as prescribed by the *[designated facility physician]* **facility's designated physician, physician assistant or nurse practitioner.**

(d) Shall have food procured, stored, prepared, distributed and served under sanitary conditions, as defined by the authority under ORS 624.041.

(8) Ensure that the facility be clean, and provide each confined detainee or prisoner:

(a) Materials to maintain personal hygiene.

(b) Clean clothing twice weekly.

(c) Mattresses and blankets that are clean and fire-retardant.

(9) Require each prisoner to shower at least twice weekly.

(10) Forward, without examination or censorship, each prisoner's outgoing written communications to

the Governor, jail administrator, Attorney General, judge, Department of Corrections or the attorney of the prisoner.

(11) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.

(12) Have and provide each prisoner with written rules for inmate conduct and disciplinary procedures. If a prisoner cannot read or is unable to understand the written rules, the information shall be conveyed to the prisoner orally.

(13) Not restrict the free exercise of religion unless failure to impose the restriction will cause a threat to facility or order.

(14) Safeguard and ensure that the prisoner's legal rights to access to legal materials are protected.

**SECTION 30.** ORS 169.077 is amended to read: 169.077. Each lockup facility shall:

(1) Maintain 24-hour supervision when persons are confined. The supervision may include the use of electronic monitoring equipment when approved by the Department of Corrections and the governing body of the jurisdiction in which the facility is located.

(2) Make a personal inspection of each person confined at least once each hour.

(3) Prohibit firearms from the security area of the facility except in times of emergency as determined by the administrator of the facility.

(4) Ensure that confined detainees and prisoners will be fed daily at least three nutritionally adequate meals served at regular times, with no more than 14 hours between meals except when routinely absent from the facility for work or other such purposes.

(5) Forward, without examination or censorship, each prisoner's outgoing written communications to the Governor, jail administrator, Attorney General, judge, Department of Corrections or the attorney of the prisoner.

(6) Provide rules of the facility governing correspondence and visitations.

(7) Keep the facility safe and secure in accordance with the State of Oregon Structural Specialty Code and Fire and Life Safety Code.

(8) Formulate and publish plans to meet emergencies involving escape, riots, assaults, fires, rebellions and other types of emergencies; and policies and regulations for the operation of the facility.

(9) Ensure that the facility be clean, provide mattresses and blankets that are clean and fire-retardant, and furnish materials to maintain personal hygiene.

(10) Provide for emergency medical and dental health, having written policies providing for *[licensed physician]* review of the facility's medical and dental plans **by a licensed physician, physician assistant or nurse practitioner.**

**SECTION 31.** ORS 169.750 is amended to read: 169.750. A juvenile detention facility may not:

(1) Impose upon a detained juvenile for purposes of discipline or punishment any infliction of or

threat of physical injury or pain, deliberate humiliation, physical restraint, withholding of meals, or isolation, or detention under conditions that violate the provisions of subsections (2) to (8) of this section or ORS 169.076 (7) to (11), (13) or (14) or 169.740;

(2) Use any physical force, other means of physical control or isolation upon a detained juvenile except as reasonably necessary and justified to prevent escape from the facility, physical injury to another person, to protect a detained juvenile from physical self-injury or to prevent destruction of property, or to effectuate the confinement of the juvenile in roomlock or isolation as provided for in ORS 169.090, 169.730 to 169.800, 419A.050 and 419A.052, and for only so long as it appears that the danger exists. A use of force or other physical means of control may not employ:

(a) The use of restraining devices for a purpose other than to prevent physical injury or escape, or, in any case, for a period in excess of six hours. However, the time during which a detained juvenile is being transported to another facility pursuant to court order shall not be counted within the six hours; or

(b) Isolation for a period in excess of six hours;

(3) Use roomlock except for the discipline and punishment of a detained juvenile for violation of a rule of conduct or behavior of the facility as provided for in ORS 169.076 (12) or for conduct that constitutes a crime under the laws of this state or that would justify physical force, control or isolation under subsection (2) of this section;

(4) Cause to be made an internal examination of a detained juvenile's anus or vagina, except upon probable cause that contraband, as defined in ORS 162.135 (1), will be found upon such examination and then only by a *[licensed physician or a nurse]* **physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505 to 677.525 or nurse licensed under ORS chapter 678;**

(5)(a) Administer to any detained juvenile medication, except upon the informed consent of the juvenile or in the case of an imminent threat to the life of the juvenile or where the juvenile has a contagious or communicable disease that poses an imminent threat to the health of other persons in the facility. However, prescription medication may not be administered except upon a written prescription or written order by *[a licensed physician or licensed dentist and administered by a licensed physician, licensed dentist or other medical personnel authorized by the State of Oregon under ORS chapter 677, 678 or 679]* **a physician licensed under ORS chapter 677, physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390 or dentist licensed under ORS chapter 679, and administered by a person authorized under ORS chapter 677, 678 or 679** to administer medication. Facility staff not otherwise authorized by law to administer medications may administer noninjectable medications in accordance with rules adopted by the

Oregon State Board of Nursing pursuant to ORS 678.150 (8);

(b) Nonmedical personnel shall receive training for administering medications, including recognition of and response to drug reactions and unanticipated side effects, from the responsible physician, **physician assistant** or nurse and the official responsible for the facility. All personnel shall be responsible for administering the dosage medications according to orders and for recording the administrations of the dosage in a manner and on a form approved by the responsible physician, **physician assistant or nurse practitioner;** and

(c) Notwithstanding any other provision of law, medication may not be administered unless a *[registered nurse or]* physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse licensed under ORS chapter 678** is either physically on the premises or readily available by telephone and within 30 minutes travel time of the patient;

(6) Administer to any detained juvenile any medication or medical procedure for purposes of experimentation;

(7) Discipline or punish any juvenile for conduct or behavior by roomlock, for a period in excess of 12 hours, or by denial of any privilege, regularly awarded other detained adults or juveniles, for more than one day, except after:

(a) Advising the juvenile in writing of the alleged offensive conduct or behavior;

(b) Providing the juvenile the opportunity to a hearing before a staff member who was not a witness to the alleged offensive conduct or behavior;

(c) Providing the juvenile the opportunity to produce witnesses and evidence and to cross-examine witnesses;

(d) Providing the detained juvenile the opportunity to testify, at the sole option of the juvenile; and

(e) A finding that the alleged conduct or behavior was proven by a preponderance of the evidence and that it violated a rule of conduct or behavior of the facility as provided for in ORS 169.076 (12) or constituted a crime under the laws of this state; and

(8) Detain juveniles with emotional disturbances, mental retardation or physical disabilities on the same charges and circumstances for which other juveniles would have been released or provided with another alternative.

**SECTION 32.** ORS 192.310 is amended to read:

192.310. (1) With the exception of *[physicians]* prescriptions, all records, reports and proceedings required to be kept by law shall be in the English language or in a machine language capable of being converted to the English language by a data processing device or computer.

(2) Violation of this section is a Class C misdemeanor.

**SECTION 33.** ORS 192.547 is amended to read:

192.547. (1)(a) The Oregon Health Authority shall adopt rules for conducting research using DNA

samples, genetic testing and genetic information. Rules establishing minimum research standards shall conform to the Federal Policy for the Protection of Human Subjects, 45 C.F.R. 46, that is current at the time the rules are adopted. The rules may be changed from time to time as may be necessary.

(b) The rules adopted by the Oregon Health Authority shall address the operation and appointment of institutional review boards. The rules shall conform to the compositional and operational standards for such boards contained in the Federal Policy for the Protection of Human Subjects that is current at the time the rules are adopted. The rules must require that research conducted under paragraph (a) of this subsection be conducted with the approval of the institutional review board.

(c) Persons proposing to conduct anonymous research, coded research or genetic research that is otherwise thought to be exempt from review must obtain from an institutional review board prior to conducting such research a determination that the proposed research is exempt from review.

(2) A person proposing to conduct research under subsection (1) of this section, including anonymous research or coded research, must disclose to the institutional review board the proposed use of DNA samples, genetic testing or genetic information.

(3) The Oregon Health Authority shall adopt rules requiring that all institutional review boards operating under subsection (1)(b) of this section register with the department. The Advisory Committee on Genetic Privacy and Research shall use the registry to educate institutional review boards about the purposes and requirements of the genetic privacy statutes and administrative rules relating to genetic research.

(4) The Oregon Health Authority shall consult with the Advisory Committee on Genetic Privacy and Research before adopting the rules required under subsections (1) and (3) of this section, including rules identifying those parts of the Federal Policy for the Protection of Human Subjects that are applicable to this section.

(5) Genetic research in which the DNA sample or genetic information is coded shall satisfy the following requirements:

(a)(A) The subject has granted informed consent for the specific research project;

(B) The subject has consented to genetic research generally; or

(C) The DNA sample or genetic information is derived from a biological specimen or from clinical individually identifiable health information that was obtained or retained in compliance with ORS 192.537 (2).

(b) The research has been approved by an institutional review board after disclosure by the investigator to the board of risks associated with the coding.

(c) The code is:

(A) Not derived from individual identifiers;

(B) Kept securely and separately from the DNA samples and genetic information; and

(C) Not accessible to the investigator unless specifically approved by the institutional review board.

(d) Data is stored securely in password protected electronic files or by other means with access limited to necessary personnel.

(e) The data is limited to elements required for analysis and meets the criteria in 45 C.F.R. 164.514(e) for a limited data set.

(f) The investigator is a party to the data use agreement as provided by 45 C.F.R. 164.514(e) for limited data set recipients.

(6) Research conducted in accordance with this section is rebuttably presumed to comply with ORS 192.535 and 192.539.

(7)(a) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained, with blanket informed consent, before June 25, 2001, for genetic research.

(b) Notwithstanding ORS 192.535, a person may use a DNA sample or genetic information obtained without specific informed consent and derived from a biological specimen or clinical individually identifiable health information for anonymous research or coded research if an institutional review board operating under subsection (1)(b) of this section:

(A) Waives or alters the consent requirements pursuant to the Federal Policy for the Protection of Human Subjects; and

(B) Waives authorization pursuant to the federal Health Insurance Portability and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164.

(c) Except as provided in subsection (5)(a) of this section or paragraph (b) of this subsection, a person must have specific informed consent from an individual to use a DNA sample or genetic information of the individual obtained on or after June 25, 2001, for genetic research.

(8) Except as otherwise allowed by rule of the Oregon Health Authority, if DNA samples or genetic information obtained for either clinical or research purposes is used in research, a person may not re-contact the individual or the *[individual's]* physician, **physician assistant or nurse practitioner of the individual** by using research information that is identifiable or coded. The Oregon Health Authority shall adopt by rule criteria for re-contacting an individual or *[an individual's physician]* **the physician, physician assistant or nurse practitioner of an individual**. In adopting the criteria, the department shall consider the recommendations of national organizations such as those created by executive order by the President of the United States and the recommendations of the Advisory Committee on Genetic Privacy and Research.

(9) The requirements for consent to, or notification of, obtaining a DNA sample or genetic information for genetic research are governed by the provisions of ORS 192.531 to 192.549 and the administrative rules that were in effect on the effective

date of the institutional review board's most recent approval of the study.

**SECTION 34.** ORS 408.310 is amended to read:  
408.310. (1) A physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** who has primary responsibility for the treatment of a veteran who may have been exposed to causative agents while serving in the Armed Forces of the United States or for the treatment of a veteran's spouse, surviving spouse or minor child who may be exhibiting symptoms or conditions that may be attributable to the veteran's exposure to causative agents shall, at the request and direction of the veteran, veteran's spouse or surviving spouse or the parent or guardian of such minor child, submit a report to the Oregon Health Authority. The report shall be made on a form adopted by the authority and made available to physicians, **physician assistants, nurse practitioners** and hospitals in this state.

(2) If there is no physician, **physician assistant or nurse practitioner** having primary responsibility for the treatment of a veteran, veteran's spouse, surviving spouse or minor child, then the senior medical supervisor of the hospital or clinic treating the veteran, veteran's spouse, surviving spouse or minor child shall submit the report described in this section to the authority at the request and direction of the veteran, veteran's spouse or surviving spouse or the parent or legal guardian of a veteran's minor child.

(3) The form adopted by the authority under this section shall list the symptoms commonly attributed to exposure to causative agents, and shall require the following information:

- (a) Symptoms of the patient which may be related to exposure to causative agents.
- (b) A diagnosis of the patient's condition.
- (c) Methods of treatment prescribed.
- (d) Any other information required by the authority.

(4) The authority, after receiving a report from a physician, **physician assistant, nurse practitioner**, hospital or clinic under this section, may require the veteran, veteran's spouse, surviving spouse or minor child to provide such other information as may be required by the authority.

**SECTION 35.** ORS 408.315 is amended to read:  
408.315. (1) ORS 408.310 applies to all veterans, spouses, surviving spouses and minor children of veterans treated by a physician, **physician assistant, nurse practitioner**, hospital or clinic after January 1, 1982. Physicians, **physician assistants, nurse practitioners**, hospitals or clinics shall submit the reports and study required under ORS 408.310 for veterans, spouses, surviving spouses and minor children of veterans treated prior to that date when requested and directed to do so by such individuals.

(2) ORS 408.300 to 408.340 apply to all physicians, **physician assistants, nurse practitioners**, hospitals and clinics, whether public or private, within the State of Oregon.

**SECTION 36.** ORS 408.340 is amended to read:  
408.340. (1) A physician, **physician assistant, nurse practitioner**, hospital or clinic subject to ORS 408.300 to 408.340 shall not be subject to any criminal or civil liability for providing information required under ORS 408.300 to 408.340.

(2) Nothing in this section shall prevent, however, any action for negligence by a physician, **physician assistant, nurse practitioner**, hospital or clinic in choosing or providing medical treatment.

**SECTION 37.** ORS 410.530 is amended to read:  
410.530. (1) The Department of Human Services has the following authority which it may delegate to any program certified by the department to provide assessment services:

(a) To provide information and education to the general public, hospitals, nursing facilities [and], physicians, **physician assistants and nurses** regarding availability of the assessment program.

(b) To accept referrals from individuals, families, physicians, human service professionals, nursing home professionals, social service agencies or other organizations.

(c) To assess the long term care needs of referred persons.

(d) To identify available noninstitutional services to meet the needs of referred persons, including public and private case management services.

(e) To prepare, explain and document recommendations for persons receiving assessment program services as to the need for skilled nursing care, for intermediate care as provided in a facility or for other care which is available in the community.

(f) To inform referred persons of the extent to which home and community-based services are available, and of their right to choose among the appropriate alternatives that may be available, in consultation with an attending physician and a family member.

(g) To provide public education targeted at older persons, care givers and families regarding alternative long term care services.

(h) To determine and publish minimum qualifications for members of the admission assessment team.

(2)(a) After consultation with the committee appointed under subsection (3) of this section, the Department of Human Services shall adopt by rule criteria and procedures for certifying and decertifying public or private admission assessment programs and contracting with certified programs. The department shall establish a maximum fee that a certified program may charge for assessment services. The rules shall specify that a certified program may not charge the person receiving assessment services for any portion of the fee associated with the ser-

vices necessary to meet the minimum federal criteria.

(b) In certifying a program, the department shall determine that the program includes:

(A) Adequately trained personnel;

(B) Information regarding appropriate service and placement alternatives, including nursing facilities and community-based options;

(C) Provisions to the applicant of information about appropriate options; and

(D) Prohibition of an assessment being provided by any certified program which has any financial interest in the facility to which placement is recommended.

(c) The program shall not require the recommendation of the admission team be binding and the applicant has the right to choose from any options that are available.

(3) The Director of Human Services shall appoint an advisory committee to advise the department in certifying and decertifying programs that provide or fail to provide the service described in this section. The director shall appoint representatives from the Oregon Association of Hospitals, the Oregon Health Care Association, the Oregon Association of Homes for the Aging and representatives of organizations of seniors.

**SECTION 38.** ORS 414.550 is amended to read: 414.550. As used in ORS 414.550 to 414.565:

(1) "Cystic fibrosis services" means a program for medical care, including the cost of prescribed medications and equipment, respiratory therapy, physical therapy, counseling services that pertain directly to cystic fibrosis related health needs and outpatient services including [*physicians'*] **physician, physician assistant or nurse practitioner** fees, X-rays and necessary clinical tests to insure proper ongoing monitoring and maintenance of the patient's health.

(2) "Eligible individual" means a resident of the State of Oregon over 18 years of age.

**SECTION 39.** ORS 414.618 is amended to read:

414.618. (1) In areas that are not served by a coordinated care organization, the Oregon Health Authority may execute prepaid capitated health service contracts for at least hospital [*or*], physician, **physician assistant or nurse practitioner** medical care, [*or both*], **or any combination of such medical care**, with hospital and medical organizations, health maintenance organizations and any other appropriate public or private persons.

(2) For purposes of ORS 279A.025, 279A.140, 414.145 and 414.610 to 414.620, instrumentalities and political subdivisions of the state are authorized to enter into prepaid capitated health service contracts with the authority and shall not thereby be considered to be transacting insurance.

(3) In the event that there is an insufficient number of qualified bids for coordinated care organizations or prepaid capitated health services contracts for hospital [*or*], physician, **physician**

**assistant or nurse practitioner** medical care[, *or both*,] in some areas of the state, the authority may continue a fee for service payment system.

(4) Payments to providers may be subject to contract provisions requiring the retention of a specified percentage in an incentive fund or to other contract provisions by which adjustments to the payments are made based on utilization efficiency.

(5) Contracts described in this section are not subject to ORS chapters 279A and 279B, except that the contracts are subject to ORS 279A.235 and 279A.250 to 279A.290.

**SECTION 40.** ORS 416.550 is amended to read:

416.550. (1) Upon receiving notice under ORS 416.530, to perfect its lien the Department of Human Services or the Oregon Health Authority shall:

(a) File a notice of lien, substantially in the form prescribed in ORS 416.560, with the recording officer of the county in which the person against whom claim is made or action is brought resides. If the claim or action is against a corporation, the notice of lien shall be filed with the recording officer of the county within the state in which such corporation has its principal place of business. If the claim or action is against a public body, agency or commission, the notice of lien shall be filed with the recording officer of the county in which the public body, agency or commission has its main offices; and

(b) Prior to the date of satisfaction of the judgment or payment under the settlement or compromise, send a certified copy of the notice of lien by registered mail or by certified mail with return receipt to each person or public body, agency or commission against whom claim is made or action is brought by the recipient.

(2) Upon the filing of a notice of lien by the department or the authority, the recording officer shall enter the name of the injured person, the approximate date of the injury and the name of the department or the authority as lienor in the [*hospital*] lien docket provided for in ORS 87.575 and shall make an index thereto in the names of the injured persons and the department or the authority.

**SECTION 41.** ORS 419B.020 is amended to read:

419B.020. (1) If the Department of Human Services or a law enforcement agency receives a report of child abuse, the department or the agency shall immediately:

(a) Cause an investigation to be made to determine the nature and cause of the abuse of the child; and

(b) Notify the Office of Child Care if the alleged child abuse occurred in a child care facility as defined in ORS 329A.250.

(2) If the abuse reported in subsection (1) of this section is alleged to have occurred at a child care facility:

(a) The department and the law enforcement agency shall jointly determine the roles and responsibilities of the department and the agency in their respective investigations; and

(b) The department and the agency shall each report the outcomes of their investigations to the Office of Child Care.

(3) If the law enforcement agency conducting the investigation finds reasonable cause to believe that abuse has occurred, the law enforcement agency shall notify by oral report followed by written report the local office of the department. The department shall provide protective social services of its own or of other available social agencies if necessary to prevent further abuses to the child or to safeguard the child's welfare.

(4) If a child is taken into protective custody by the department, the department shall promptly make reasonable efforts to ascertain the name and address of the child's parents or guardian.

(5)(a) If a child is taken into protective custody by the department or a law enforcement official, the department or law enforcement official shall, if possible, make reasonable efforts to advise the parents or guardian immediately, regardless of the time of day, that the child has been taken into custody, the reasons the child has been taken into custody and general information about the child's placement, and the telephone number of the local office of the department and any after-hours telephone numbers.

(b) Notice may be given by any means reasonably certain of notifying the parents or guardian, including but not limited to written, telephonic or in-person oral notification. If the initial notification is not in writing, the information required by paragraph (a) of this subsection also shall be provided to the parents or guardian in writing as soon as possible.

(c) The department also shall make a reasonable effort to notify the noncustodial parent of the information required by paragraph (a) of this subsection in a timely manner.

(d) If a child is taken into custody while under the care and supervision of a person or organization other than the parent, the department, if possible, shall immediately notify the person or organization that the child has been taken into protective custody.

(6) If a law enforcement officer or the department, when taking a child into protective custody, has reasonable cause to believe that the child has been affected by sexual abuse and rape of a child as defined in ORS 419B.005 (1)(a)(C) and that physical evidence of the abuse exists and is likely to disappear, the court may authorize a physical examination for the purposes of preserving evidence if the court finds that it is in the best interest of the child to have such an examination. Nothing in this section affects the authority of the department to consent to physical examinations of the child at other times.

(7) A minor child of 12 years of age or older may refuse to consent to the examination described in subsection (6) of this section. The examination shall be conducted by or under the supervision of a physician licensed under ORS chapter 677, a **physician assistant licensed under ORS 677.505 to 677.525**

or a nurse practitioner licensed under ORS chapter 678 and, whenever practicable, trained in conducting such examinations.

(8) When the department completes an investigation under this section, if the person who made the report of child abuse provided contact information to the department, the department shall notify the person about whether contact with the child was made, whether the department determined that child abuse occurred and whether services will be provided. The department is not required to disclose information under this subsection if the department determines that disclosure is not permitted under ORS 419B.035.

**SECTION 42.** ORS 419B.023 is amended to read: 419B.023. (1) As used in this section:

(a) "Designated medical professional" means the person described in ORS 418.747 (9) or the person's designee.

(b) "Suspicious physical injury" includes, but is not limited to:

(A) Burns or scalds;

(B) Extensive bruising or abrasions on any part of the body;

(C) Bruising, swelling or abrasions on the head, neck or face;

(D) Fractures of any bone in a child under the age of three;

(E) Multiple fractures in a child of any age;

(F) Dislocations, soft tissue swelling or moderate to severe cuts;

(G) Loss of the ability to walk or move normally according to the child's developmental ability;

(H) Unconsciousness or difficulty maintaining consciousness;

(I) Multiple injuries of different types;

(J) Injuries causing serious or protracted disfigurement or loss or impairment of the function of any bodily organ; or

(K) Any other injury that threatens the physical well-being of the child.

(2) If a person conducting an investigation under ORS 419B.020 observes a child who has suffered suspicious physical injury and the person is certain or has a reasonable suspicion that the injury is or may be the result of abuse, the person shall, in accordance with the protocols and procedures of the county multidisciplinary child abuse team described in ORS 418.747:

(a) Immediately photograph or cause to have photographed the suspicious physical injuries in accordance with ORS 419B.028; and

(b) Ensure that a designated medical professional conducts a medical assessment within 48 hours, or sooner if dictated by the child's medical needs.

(3) The requirement of subsection (2) of this section shall apply:

(a) Each time suspicious physical injury is observed by Department of Human Services or law enforcement personnel:

(A) During the investigation of a new allegation of abuse; or

(B) If the injury was not previously observed by a person conducting an investigation under ORS 419B.020; and

(b) Regardless of whether the child has previously been photographed or assessed during an investigation of an allegation of abuse.

(4)(a) Department or law enforcement personnel shall make a reasonable effort to locate a designated medical professional. If after reasonable efforts a designated medical professional is not available to conduct a medical assessment within 48 hours, the child shall be evaluated by an available physician, **a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.**

(b) If the child is evaluated by a health care provider as defined in ORS 127.505 other than a designated medical professional, the health care provider shall make photographs, clinical notes, diagnostic and testing results and any other relevant materials available to the designated medical professional for consultation within 72 hours following evaluation of the child.

(c) The person conducting the medical assessment may consult with and obtain records from the child's [*regular pediatrician or family physician*] **health care provider** under ORS 419B.050.

(5) Nothing in this section prevents a person conducting a child abuse investigation from seeking immediate medical treatment from a hospital emergency room or other medical provider for a child who is physically injured or otherwise in need of immediate medical care.

(6) If the child described in subsection (2) of this section is less than five years of age, the designated medical professional may, within 14 days, refer the child for a screening for early intervention services or early childhood special education, as those terms are defined in ORS 343.035. The referral may not indicate the child is subject to a child abuse investigation unless written consent is obtained from the child's parent authorizing such disclosure. If the child is already receiving those services, or is enrolled in the Head Start program, a person involved in the delivery of those services to the child shall be invited to participate in the county multidisciplinary child abuse team's review of the case and shall be provided with paid time to do so by the person's employer.

(7) Nothing in this section limits the rights provided to minors in ORS chapter 109 or the ability of a minor to refuse to consent to the medical assessment described in this section.

**SECTION 43.** ORS 419B.035 is amended to read: 419B.035. (1) Notwithstanding the provisions of ORS 192.001 to 192.170, 192.210 to 192.505 and 192.610 to 192.990 relating to confidentiality and accessibility for public inspection of public records and public documents, reports and records compiled under the provisions of ORS 419B.010 to 419B.050 are confidential and may not be disclosed except as pro-

vided in this section. The Department of Human Services shall make the records available to:

(a) Any law enforcement agency or a child abuse registry in any other state for the purpose of subsequent investigation of child abuse;

(b) Any physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390**, at the request of the physician, **physician assistant or nurse practitioner**, regarding any child brought to the physician, **physician assistant or nurse practitioner** or coming before the physician, **physician assistant or nurse practitioner** for examination, care or treatment;

(c) Attorneys of record for the child or child's parent or guardian in any juvenile court proceeding;

(d) Citizen review boards established by the Judicial Department for the purpose of periodically reviewing the status of children, youths and youth offenders under the jurisdiction of the juvenile court under ORS 419B.100 and 419C.005. Citizen review boards may make such records available to participants in case reviews;

(e) A court appointed special advocate in any juvenile court proceeding in which it is alleged that a child has been subjected to child abuse or neglect;

(f) The Office of Child Care for certifying, registering or otherwise regulating child care facilities;

(g) The Office of Children's Advocate;

(h) The Teacher Standards and Practices Commission for investigations conducted under ORS 342.176 involving any child or any student in grade 12 or below;

(i) Any person, upon request to the Department of Human Services, if the reports or records requested regard an incident in which a child, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015. Reports or records disclosed under this paragraph must be disclosed in accordance with ORS 192.410 to 192.505; and

(j) The Office of Child Care for purposes of ORS 329A.030 (8)(g).

(2)(a) When disclosing reports and records pursuant to subsection (1)(i) of this section, the Department of Human Services may exempt from disclosure the names, addresses and other identifying information about other children, witnesses, victims or other persons named in the report or record if the department determines, in written findings, that the safety or well-being of a person named in the report or record may be jeopardized by disclosure of the names, addresses or other identifying information, and if that concern outweighs the public's interest in the disclosure of that information.

(b) If the Department of Human Services does not have a report or record of abuse regarding a child who, as the result of abuse, died or suffered serious physical injury as defined in ORS 161.015, the department may disclose that information.

(3) The Department of Human Services may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to any person, administrative hearings officer, court,

agency, organization or other entity when the department determines that such disclosure is necessary to administer its child welfare services and is in the best interests of the affected child, or that such disclosure is necessary to investigate, prevent or treat child abuse and neglect, to protect children from abuse and neglect or for research when the Director of Human Services gives prior written approval. The Department of Human Services shall adopt rules setting forth the procedures by which it will make the disclosures authorized under this subsection or subsection (1) or (2) of this section. The name, address and other identifying information about the person who made the report may not be disclosed pursuant to this subsection and subsection (1) of this section.

(4) A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to other law enforcement agencies, district attorneys, city attorneys with criminal prosecutorial functions and the Attorney General when the law enforcement agency determines that disclosure is necessary for the investigation or enforcement of laws relating to child abuse and neglect.

(5) A law enforcement agency, upon completing an investigation and closing the file in a specific case relating to child abuse or neglect, shall make reports and records in the case available upon request to any law enforcement agency or community corrections agency in this state, to the Department of Corrections or to the State Board of Parole and Post-Prison Supervision for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release. A law enforcement agency may make reports and records compiled under the provisions of ORS 419B.010 to 419B.050 available to law enforcement, community corrections, corrections or parole agencies in an open case when the law enforcement agency determines that the disclosure will not interfere with an ongoing investigation in the case. The name, address and other identifying information about the person who made the report may not be disclosed under this subsection or subsection (6)(b) of this section.

(6)(a) Any record made available to a law enforcement agency or community corrections agency in this state, to the Department of Corrections or the State Board of Parole and Post-Prison Supervision or to a physician, **physician assistant or nurse practitioner** in this state, as authorized by subsections (1) to (5) of this section, shall be kept confidential by the agency, department, board [or], physician, **physician or nurse practitioner**. Any record or report disclosed by the Department of Human Services to other persons or entities pursuant to subsections (1) and (3) of this section shall be kept confidential.

(b) Notwithstanding paragraph (a) of this subsection:

(A) A law enforcement agency, a community corrections agency, the Department of Corrections

and the State Board of Parole and Post-Prison Supervision may disclose records made available to them under subsection (5) of this section to each other, to law enforcement, community corrections, corrections and parole agencies of other states and to authorized treatment providers for the purpose of managing and supervising offenders in custody or on probation, parole, post-prison supervision or other form of conditional or supervised release.

(B) A person may disclose records made available to the person under subsection (1)(i) of this section if the records are disclosed for the purpose of advancing the public interest.

(7) An officer or employee of the Department of Human Services or of a law enforcement agency or any person or entity to whom disclosure is made pursuant to subsections (1) to (6) of this section may not release any information not authorized by subsections (1) to (6) of this section.

(8) As used in this section, "law enforcement agency" has the meaning given that term in ORS 181.010.

(9) A person who violates subsection (6)(a) or (7) of this section commits a Class A violation.

**SECTION 44.** ORS 419B.352 is amended to read: 419B.352. The court may direct that the child or ward be examined or treated by a physician, psychiatrist [or], psychologist, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390**, or receive other special care or treatment in a hospital or other suitable facility. If the court determines that mental health examination and treatment should be provided by services delivered through the Department of Human Services, the department shall determine the appropriate placement or services in consultation with the court and other affected agencies. If an affected agency objects to the type of placement or services, the court shall determine the appropriate type of placement or service. During the examination or treatment of the child or ward, the department may, if appropriate, be appointed guardian of the child or ward.

**SECTION 45.** ORS 421.467 is amended to read: 421.467. (1) Subject to ORS 421.468, the governing body of a county or city in this state may transfer a local inmate to the temporary custody of the Department of Corrections solely for employment at a forest work camp established under ORS 421.455 to 421.480. The county or city transferring the local inmate shall pay the cost of transportation and other expenses incidental to the local inmate's conveyance to the forest work camp and the return of the local inmate to the county or city, including the expenses of law enforcement officers accompanying the local inmate, and is responsible for costs of any medical treatment of the local inmate while the local inmate is employed at the forest work camp not compensated under ORS 655.505 to 655.555.

(2) Before a local inmate is sent to a forest work camp, the governing body of the county or city shall

cause the local inmate to be given such inoculations as are necessary in the public interest, and must submit to the Department of Corrections a certificate, signed by a physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** that the local inmate is physically and mentally able to perform the work described in ORS 421.470, and is free from communicable disease.

**SECTION 46.** ORS 421.590 is amended to read: 421.590. (1) For the purposes of this section:

(a) "Medical treatment program" means a treatment program based on a successful medical model that has been proven to reduce recidivism[, and that may include] **and that is within the range of treatments generally recognized as acceptable within the medical community, including:**

(A) Treatment by prescribed medication when recommended by a qualified psychiatrist [or], physician, **physician assistant or nurse practitioner; or**

(B) Psychological treatment[, or both]. [*Any treatment administered under a medical treatment program must be within the range of treatments generally recognized as acceptable within the medical community.*]

(b) "Program participant" means a person sentenced for a term of imprisonment based on conviction of a sex crime or a felony attempt to commit a sex crime, or a person who is eligible for parole or post-prison supervision after a term of imprisonment based on conviction of a sex crime or a felony attempt to commit a sex crime, who agrees to participate in a medical treatment program after having been evaluated to be a suitable candidate and who has been provided with adequate information to give informed consent to participation.

(c) "Sex crime" means rape in any degree, sodomy in any degree, unlawful sexual penetration in any degree and sexual abuse in the first or second degree.

(2) The Department of Corrections shall establish a medical treatment program for persons convicted of a sex crime or a felony attempt to commit a sex crime. Any person sentenced for a sex crime or a felony attempt to commit a sex crime may be evaluated to determine if available medical or psychological treatment would be likely to reduce the biological, emotional or psychological impulses that were the probable cause of the person's criminal conduct. If the evaluation determines that the person is a suitable candidate, the department shall offer to allow the person to participate in the medical treatment program. The person must agree to become a program participant.

(3) The State Board of Parole and Post-Prison Supervision shall offer as a condition of parole or post-prison supervision to persons convicted of a sex crime or a felony attempt to commit a sex crime the opportunity to participate in a medical treatment program established by the Department of Correc-

tions under this section. Any person eligible for release for a sex crime or felony attempt to commit a sex crime may be evaluated to determine if available medical or psychological treatment would be likely to reduce the biological, emotional or psychological impulses that were the probable cause of the person's criminal conduct. If the evaluation determines that the person is a suitable candidate, the board shall offer to allow the person to participate in the medical treatment program. The person must agree to become a program participant.

(4) The Department of Corrections shall adopt rules prescribing the procedures and guidelines for implementing the medical treatment programs required under the provisions of this section.

**SECTION 47.** ORS 430.401 is amended to read:

430.401. No peace officer, treatment facility and staff, physician, **physician assistant, nurse practitioner** or judge shall be held criminally or civilly liable for actions pursuant to ORS 430.315, 430.335, 430.397 to 430.401 and 430.402 provided the actions are in good faith, on probable cause and without malice.

**SECTION 48.** ORS 430.735 is amended to read: 430.735. As used in ORS 430.735 to 430.765:

(1) "Abuse" means one or more of the following:  
(a) Abandonment, including desertion or willful forsaking of a person with a developmental disability or the withdrawal or neglect of duties and obligations owed a person with a developmental disability by a caregiver or other person.

(b) Any physical injury to an adult caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(c) Willful infliction of physical pain or injury upon an adult.

(d) Sexual abuse of an adult.

(e) Neglect.

(f) Verbal abuse of a person with a developmental disability.

(g) Financial exploitation of a person with a developmental disability.

(h) Involuntary seclusion of a person with a developmental disability for the convenience of the caregiver or to discipline the person.

(i) A wrongful use of a physical or chemical restraint upon a person with a developmental disability, excluding an act of restraint prescribed by a physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.373 to 678.390** and any treatment activities that are consistent with an approved treatment plan or in connection with a court order.

(j) An act that constitutes a crime under ORS 163.375, 163.405, 163.411, 163.415, 163.425, 163.427, 163.465 or 163.467.

(k) Any death of an adult caused by other than accidental or natural means.

(2) "Adult" means a person 18 years of age or older with:

(a) A developmental disability who is currently receiving services from a community program or facility or was previously determined eligible for services as an adult by a community program or facility; or

(b) A mental illness who is receiving services from a community program or facility.

(3) "Adult protective services" means the necessary actions taken to prevent abuse or exploitation of an adult, to prevent self-destructive acts and to safeguard an adult's person, property and funds, including petitioning for a protective order as defined in ORS 125.005. Any actions taken to protect an adult shall be undertaken in a manner that is least intrusive to the adult and provides for the greatest degree of independence.

(4) "Caregiver" means an individual, whether paid or unpaid, or a facility that has assumed responsibility for all or a portion of the care of an adult as a result of a contract or agreement.

(5) "Community program" means a community mental health program or a community developmental disabilities program as established in ORS 430.610 to 430.695.

(6) "Facility" means a residential treatment home or facility, residential care facility, adult foster home, residential training home or facility or crisis respite facility.

(7) "Financial exploitation" means:

(a) Wrongfully taking the assets, funds or property belonging to or intended for the use of a person with a developmental disability.

(b) Alarming a person with a developmental disability by conveying a threat to wrongfully take or appropriate money or property of the person if the person would reasonably believe that the threat conveyed would be carried out.

(c) Misappropriating, misusing or transferring without authorization any money from any account held jointly or singly by a person with a developmental disability.

(d) Failing to use the income or assets of a person with a developmental disability effectively for the support and maintenance of the person.

(8) "Intimidation" means compelling or deterring conduct by threat.

(9) "Law enforcement agency" means:

(a) Any city or municipal police department;

(b) A police department established by a university under ORS 352.383 or 353.125;

(c) Any county sheriff's office;

(d) The Oregon State Police; or

(e) Any district attorney.

(10) "Neglect" means:

(a) Failure to provide the care, supervision or services necessary to maintain the physical and mental health of a person with a developmental disability that may result in physical harm or significant emotional harm to the person;

(b) The failure of a caregiver to make a reasonable effort to protect a person with a developmental disability from abuse; or

(c) Withholding of services necessary to maintain the health and well-being of an adult which leads to physical harm of an adult.

(11) "Person with a developmental disability" means a person described in subsection (2)(a) of this section.

(12) "Public or private official" means:

(a) Physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525**, naturopathic physician, psychologist or chiropractor, including any intern or resident;

(b) Licensed practical nurse, registered nurse, nurse's aide, home health aide or employee of an in-home health service;

(c) Employee of the Department of Human Services or Oregon Health Authority, county health department, community mental health program or community developmental disabilities program or private agency contracting with a public body to provide any community mental health service;

(d) Peace officer;

(e) Member of the clergy;

(f) Regulated social worker;

(g) Physical, speech or occupational therapist;

(h) Information and referral, outreach or crisis worker;

(i) Attorney;

(j) Licensed professional counselor or licensed marriage and family therapist;

(k) Any public official who comes in contact with adults in the performance of the official's duties; or

(L) Firefighter or emergency medical services provider.

(13) "Services" includes but is not limited to the provision of food, clothing, medicine, housing, medical services, assistance with bathing or personal hygiene or any other service essential to the well-being of an adult.

(14)(a) "Sexual abuse" means:

(A) Sexual contact with a nonconsenting adult or with an adult considered incapable of consenting to a sexual act under ORS 163.315;

(B) Sexual harassment, sexual exploitation or inappropriate exposure to sexually explicit material or language;

(C) Any sexual contact between an employee of a facility or paid caregiver and an adult served by the facility or caregiver;

(D) Any sexual contact between a person with a developmental disability and a relative of the person with a developmental disability other than a spouse; or

(E) Any sexual contact that is achieved through force, trickery, threat or coercion.

(b) "Sexual abuse" does not mean consensual sexual contact between an adult and a paid caregiver who is the spouse of the adult.

(15) "Sexual contact" has the meaning given that term in ORS 163.305.

(16) "Verbal abuse" means to threaten significant physical or emotional harm to a person with a developmental disability through the use of:

(a) Derogatory or inappropriate names, insults, verbal assaults, profanity or ridicule; or

(b) Harassment, coercion, threats, intimidation, humiliation, mental cruelty or inappropriate sexual comments.

**SECTION 49.** ORS 431.180 is amended to read:

431.180. Nothing in the public health laws shall be construed to empower or authorize the Oregon Health Authority or its representatives, or any county or district board of health or its representatives to interfere in any manner with the individual's right to select the physician, **physician assistant or nurse practitioner of the choice of the individual** or mode of treatment of the choice of the individual, nor interfere with the practice of any person whose religion treats or administers to people who are sick or suffering by purely spiritual means. However, sanitary laws and rules must be complied with.

**SECTION 50.** ORS 432.005 is amended to read:

432.005. As used in this chapter, unless the context requires otherwise:

(1) "Amendment" means a change to an item that appears on a certified copy of a vital record after a certified copy has been issued.

(2) "Authorized representative" means an agent designated in a written statement signed by the registrant or other qualified applicant, the signing of which was witnessed.

(3) "Certified copy" means the document, in either paper or electronic format, issued by the State Registrar of the Center for Health Statistics and containing all or a part of the information contained on the original vital record, and which, when issued by the state registrar, has the full force and effect of the original vital record.

(4) "Certified copy item" means any item of information that appears on a certified copy.

(5) "Certifier" means a person required to attest to the accuracy of information submitted on a report.

(6) "Correction" means a change to an item that is not included in a certified copy of a vital record, or a change to an item that is included in a certified copy provided that no certified copy has been issued.

(7) "Court of competent jurisdiction" means a court within the United States with jurisdiction over a person subject to regulation under this chapter.

(8) "Date of registration" means the month, day and year a vital record is incorporated into the official records of the Center for Health Statistics.

(9) "Dead body" means a human body or such parts of such human body from the condition of which it reasonably may be concluded that death occurred.

(10) "Electronic signature" means an electronic sound, symbol or process attached to or logically associated with a contract or other record that is executed or adopted by a person with the intent to attest to the accuracy of the facts in the record.

(11) "Government agency" means a unit of federal, state, local or tribal government.

(12) "Health research" means a systematic study to gain information and understanding about health, with the goal of finding ways to improve human health, that conforms to or is conducted in accordance with generally accepted scientific standards or principles and that is designed to develop or contribute to general scientific knowledge.

(13) "Facts of live birth" means the name of the child, date of birth, place of birth, sex and parent's name or parents' names appearing on the record of live birth.

(14) "Fetal death" means death prior to the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, that is not an induced termination of pregnancy. The death is indicated by the fact that after such expulsion or extraction the fetus does not breathe or show any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of the voluntary muscles.

(15) "Final disposition" means the burial, interment, cremation, removal from the state or other authorized disposition of a dead body or fetus, except that when removal from the state is conducted by the holder of a certificate of removal registration issued under ORS 692.270, the final disposition may not be considered complete until the report of death is filed.

(16)(a) "Human remains" means a dead body.

(b) "Human remains" does not include human ashes recovered after cremation.

(17)(a) "Induced termination of pregnancy" means the purposeful interruption of an intrauterine pregnancy with the intention other than to produce a live-born infant and that does not result in a live birth.

(b) "Induced termination of pregnancy" does not include management of prolonged retention of products of conception following fetal death.

(18) "Institution" means any establishment, public or private, that provides inpatient or outpatient medical, surgical or diagnostic care or treatment or nursing, custodial or domiciliary care, or to which persons are committed by law.

(19) "Interment" means the disposition of human remains by entombment or burial.

(20) "Legal representative" means a licensed attorney representing the registrant or other qualified applicant.

(21) "Live birth" means the complete expulsion or extraction from its mother of a product of human conception, irrespective of the duration of pregnancy, that, after such expulsion or extraction, breathes or shows any other evidence of life such as beating of the heart, pulsation of the umbilical cord or definite movement of voluntary muscles, whether or not the umbilical cord has been cut or the placenta is attached.

(22) "Medical certifier" means a physician, physician assistant or nurse practitioner licensed under

the laws of this state or under the laws of Washington, Idaho or California who has treated a decedent within the 12 months preceding death.

(23) "Person acting as a funeral service practitioner" means:

(a) A person other than a funeral service practitioner licensed under ORS 692.045, including but not limited to a relative, friend or other interested party, who performs the duties of a funeral service practitioner without payment; or

(b) A funeral service practitioner who submits reports of death in another state if the funeral service practitioner is employed by a funeral establishment licensed in another state and registered with the State Mortuary and Cemetery Board under ORS 692.270.

(24) "Person in charge of an institution" means the officer or employee who is responsible for administration of an institution.

(25) "Personally identifiable information" means information that can be used to distinguish or trace an individual's identity or, when combined with other personal or identifying information, is linked or linkable to a specific individual.

(26) "Physician" means a person authorized to practice medicine, osteopathy, chiropractic or naturopathic medicine under the laws of this state or under the laws of Washington, Idaho or California, **a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390.**

(27) "Record" means a report that has been registered by the state registrar.

(28) "Record of foreign live birth" means a document registered by the state registrar for a person born in a foreign country who may or may not be a citizen of the United States and who was adopted under the laws of this state.

(29) "Registration" means the process by which vital records and reports are accepted and incorporated into the official records of the Center for Health Statistics.

(30) "Report" means a document, whether in paper or electronic format, containing information related to a vital event submitted by a person required to submit the information to the state registrar for the purpose of registering a vital event.

(31) "State" includes a state or territory of the United States, the District of Columbia and New York City.

(32) "System of vital statistics" means:

(a) The collection, registration, preservation, amendment, certification and verification of, and the maintenance of the security and integrity of, vital records;

(b) The collection of reports required by this chapter; and

(c) Activities related to the activities described in paragraphs (a) and (b) of this subsection, including the tabulation, analysis, dissemination and publication of vital statistics and training in the use of health data.

(33) "Verification" means confirmation of the information on a vital record based on the facts contained in a report.

(34) "Vital record" means a report of a live birth, death, fetal death, marriage, declaration of domestic partnership, dissolution of marriage or domestic partnership and related data that have been accepted for registration and incorporated into the official records of the Center for Health Statistics.

(35) "Vital statistics" means the aggregated data derived from records and reports of live birth, death, fetal death, induced termination of pregnancy, marriage, declaration of domestic partnership, dissolution of marriage, dissolution of domestic partnership and supporting documentation and related reports.

**SECTION 51.** ORS 432.088 is amended to read:

432.088. (1) A report of live birth for each live birth that occurs in this state shall be submitted to the Center for Health Statistics, or as otherwise directed by the State Registrar of the Center for Health Statistics, within five calendar days after the live birth and shall be registered if the report has been completed and filed in accordance with this section.

(2) The physician, institution or other person providing prenatal care related to a live birth shall provide prenatal care information as required by the state registrar by rule to the institution where the delivery is expected to occur not less than 30 calendar days prior to the expected delivery date.

(3) When a live birth occurs in an institution or en route to an institution, the person in charge of the institution or an authorized designee shall obtain all data required by the state registrar, prepare the report of live birth, certify either by signature or electronic signature that the child was born alive at the place and time and on the date stated and submit the report as described in subsection (1) of this section.

(4) In obtaining the information required for the report of live birth, an institution shall use information gathering procedures provided or approved by the state registrar. Institutions may establish procedures to transfer, electronically or otherwise, information required for the report from other sources, provided that the procedures are reviewed and approved by the state registrar prior to the implementation of the procedures to ensure that the information being transferred is the same as the information being requested.

(5)(a) When a live birth occurs outside an institution, the information for the report of live birth shall be submitted within five calendar days of the live birth in a format adopted by the state registrar by rule in the following order of priority:

(A) By an institution where the mother and child are examined, if examination occurs within 24 hours of the live birth;

(B) By a physician in attendance at the live birth;

(C) By a [nurse practitioner, as defined in ORS 678.010, or] direct entry midwife licensed under ORS 687.405 to 687.495 in attendance at the live birth;

(D) By a person not described in subparagraphs (A) to (C) of this paragraph and not required by law to be licensed to practice midwifery who is registered with the Center for Health Statistics to submit reports of live birth and who was in attendance at the live birth; or

(E) By the father, the mother or, in the absence of the father and the inability of the mother, the person in charge of the premises where the live birth occurred.

(b) The state registrar may establish by rule the manner of submitting the information for the report of live birth by a person described in paragraph (a)(D) of this subsection or a physician[, nurse practitioner] or licensed direct entry midwife who attends the birth of his or her own child, grandchild, niece or nephew.

(6) When a report of live birth is submitted that does not include the minimum acceptable documentation required by this section or any rules adopted under this section, or when the state registrar has cause to question the validity or adequacy of the documentation, the state registrar, in the state registrar's discretion, may refuse to register the live birth and shall enter an order to that effect stating the reasons for the action. The state registrar shall advise the applicant of the right to appeal under ORS 183.484.

(7) When a live birth occurs on a moving conveyance:

(a) Within the United States and the child is first removed from the conveyance in this state, the live birth shall be registered in this state and the place where it is first removed shall be considered the place of live birth.

(b) While in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state but the report of live birth shall show the actual place of birth insofar as can be determined.

(8) For purposes of making a report of live birth and live birth registration, the woman who gives live birth is the live birth mother. If a court of competent jurisdiction determines that a woman other than the live birth mother is the biological or genetic mother, the court may order the state registrar to amend the record of live birth. The record of live birth shall then be placed under seal.

(9)(a) If the mother is married at the time of either conception or live birth, or within 300 days before the live birth, the name of the husband shall be entered on the report of live birth as the father of child unless parentage has been determined otherwise by a court of competent jurisdiction.

(b) If the mother is not married at the time of either conception or live birth, or within 300 days before the live birth, the name of the father shall not be entered on the report of live birth unless a

voluntary acknowledgment of paternity form or other form prescribed under ORS 432.098 is:

(A) Signed by the mother and the person to be named as the father; and

(B) Filed with the state registrar.

(c) If the mother is a partner in a domestic partnership registered by the state at the time of either conception or live birth, or between conception and live birth, the name of the mother's partner shall be entered on the report of live birth as a parent of the child, unless parentage has been determined otherwise by a court of competent jurisdiction.

(d) In any case in which paternity of a child is determined by a court of competent jurisdiction, or by an administrative determination of paternity, the Center for Health Statistics shall enter the name of the father on the new record of live birth. The Center for Health Statistics shall change the surname of the child if so ordered by the court or, in a proceeding under ORS 416.430, by the administrator as defined in ORS 25.010.

(e) If a biological parent is not named on the report of live birth, information other than the identity of the biological parent may be entered on the report.

(10) A parent of the child, or other informant as determined by the state registrar by rule, shall verify the accuracy of the personal data to be entered on a report of live birth in time to permit submission of the report within the five calendar days of the live birth.

(11) A report of live birth submitted after five calendar days, but within one year after the date of live birth, shall be registered in the manner prescribed in this section. The record shall not be marked "Delayed."

(12) The state registrar may require additional evidence in support of the facts of live birth.

**SECTION 52.** ORS 433.010 is amended to read:

433.010. (1) No person shall willfully cause the spread of any communicable disease within this state.

(2) Whenever [Oregon Revised Statutes] **the laws of this state** require a person to secure a health certificate, such certificate shall be acquired from a physician licensed by the Oregon Medical Board or the Oregon Board of Naturopathic Medicine, **a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390** in accordance with [the] rules [of] **adopted by** the Oregon Health Authority.

**SECTION 53.** ORS 433.017 is amended to read:

433.017. (1) [Every] **A licensed physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** attending a pregnant woman in this state for conditions relating to her pregnancy during the period of gestation or at the time of delivery shall, as required by rule of the Oregon Health Authority, take or cause to be taken a sam-

ple of blood of every woman so attended at the time of the first professional visit or within 10 days thereafter. The blood specimen thus obtained shall be submitted to a licensed laboratory for such tests related to any infectious condition which may affect a pregnant woman or fetus, as the authority shall by rule require, including but not limited to an HIV test as defined in ORS 433.045.

(2) Every other person permitted by law to attend a pregnant woman in this state, but not permitted by law to take blood samples, shall, as required by rule of the authority, cause a sample of blood of such pregnant woman to be taken by a licensed physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** and have such sample submitted to a licensed laboratory for the tests described under subsection (1) of this section.

(3) In all cases under subsections (1) and (2) of this section the physician, **physician assistant or nurse practitioner** shall request consent of the patient to take a blood sample. No sample shall be taken without such consent.

**SECTION 54.** ORS 433.110 is amended to read:

433.110. Every physician, **physician assistant** or nurse attending a person affected with any communicable disease shall use all precautionary measures to prevent the spread of the disease as the Oregon Health Authority may prescribe by rule.

**SECTION 55.** ORS 433.260 is amended to read:

433.260. (1) Whenever any administrator has reason to suspect that any child or employee has or has been exposed to any restrictable disease and is required by the rules of the Oregon Health Authority to be excluded from a school or children's facility, the administrator shall send such person home and, if the disease is one that must be reported to the authority, report the occurrence to the local health department by the most direct means available.

(2) Any person excluded under subsection (1) of this section may not be permitted to be in the school or facility until the person presents a certificate from a physician, **physician assistant licensed under ORS 677.505 to 677.525**, nurse practitioner **licensed under ORS 678.375 to 678.390**, local health department nurse or school nurse stating that the person does not have or is not a carrier of any restrictable disease.

**SECTION 56.** ORS 435.205 is amended to read:

435.205. (1) The Oregon Health Authority and every county health department shall offer family planning and birth control services within the limits of available funds. Both agencies jointly may offer such services. The Director of the Oregon Health Authority or a designee shall initiate and conduct discussions of family planning with each person who might have an interest in and benefit from such

service. The authority shall furnish consultation and assistance to county health departments.

(2) Family planning and birth control services may include interviews with trained personnel; distribution of literature; referral to a licensed physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** for consultation, examination, medical treatment and prescription; and, to the extent so prescribed, the distribution of rhythm charts, the initial supply of a drug or other medical preparation, contraceptive devices and similar products.

(3) Any literature, charts or other family planning and birth control information offered under this section in counties in which a significant segment of the population does not speak English shall be made available in the appropriate foreign language for that segment of the population.

(4) In carrying out its duties under this section, and with the consent of the county governing body, any county health department may adopt a fee schedule for services provided by the county health department. The fees shall be reasonably calculated not to exceed costs of services provided and may be adjusted on a sliding scale reflecting ability to pay.

(5) The county health department shall collect fees according to the schedule adopted under subsection (4) of this section. Such fees may be used to meet the expenses of providing the services authorized by this section.

**SECTION 57.** ORS 435.305 is amended to read:

435.305. (1) A person may be sterilized by appropriate means upon request and upon the advice of a [*physician licensed by the Oregon Medical Board*] **physician licensed under ORS chapter 677 or physician assistant licensed under ORS 677.505 to 677.525**.

(2) [*No physician or hospital may*] **A health care provider described in subsection (1) of this section or a hospital may not be held liable for performing a sterilization without obtaining the consent of the spouse of the person sterilized.**

(3) Free clinics to sterilize males under subsection (1) of this section may be conducted as a part of the program provided for in ORS 435.205.

(4)(a) A nurse practitioner licensed by the Oregon State Board of Nursing under ORS 678.375 and acting within the scope of practice authorized by the board may provide medical advice to any person about a sterilization procedure.

(b) A nurse practitioner may acknowledge and sign a consent to sterilization procedure form if, no fewer than 30 days before the procedure, the form is provided to and signed by the person on whom the procedure will be performed.

(c) A nurse practitioner may not acknowledge or sign a consent to sterilization procedure form if the form is provided to or signed by the person on whom the procedure will be performed fewer than 30 days before the procedure.

(d) A nurse practitioner may not perform a sterilization procedure on any person.

**SECTION 58.** ORS 436.225 is amended to read:

436.225. (1) In obtaining informed consent for sterilization a physician, **physician assistant or nurse practitioner** must offer to answer any questions the individual to be sterilized may have concerning the proposed procedure, and must provide orally all of the following information or advice to the individual to be sterilized:

(a) Advice that the individual is free to withhold or withdraw consent to the procedure at any time before the sterilization without affecting the right to future care or treatment;

(b) A description of available alternative methods of family planning and birth control;

(c) Advice that the sterilization procedure is considered to be irreversible;

(d) A thorough explanation of the specific sterilization procedure to be performed;

(e) A full description of the discomforts and risks that may accompany or follow the performing of the procedure, including an explanation of the type and possible effects of any anesthetic to be used; and

(f) A full description of the benefits or advantages that may be expected as a result of the sterilization.

(2) A natural parent, or a legal guardian or conservator of a minor child or protected person appointed under ORS chapter 125, may not give substitute consent for sterilization.

(3) Whenever any physician, **physician assistant or nurse practitioner** has reason to believe an individual 15 years of age or older is unable to give informed consent, no sterilization shall be performed until it is determined by a circuit court that the individual involved is able to and has given informed consent. Whenever the court determines, under the provisions of this chapter, that a person lacks the ability to give informed consent, the court shall permit sterilization only if the person is 18 years of age or older and only upon showing that such operation, treatment or procedure is in the best interest of the individual.

(4) Informed consent may not be obtained while the individual to be sterilized is:

(a) In labor or childbirth;

(b) Seeking to obtain or obtaining an abortion; or

(c) Under the influence of alcohol or other substances that affect the individual's state of awareness.

**SECTION 59.** ORS 436.235 is amended to read:

436.235. A petition for a determination of a person's ability to give informed consent to a sterilization procedure may be filed by the person seeking sterilization, the attending physician, **physician assistant or nurse practitioner** of the person seeking sterilization, or by an interested person concerned with the respondent's health and well-being. Such a petition shall be filed in the circuit

court in the county in which the respondent resides or has domicile.

**SECTION 60.** ORS 436.295 is amended to read:

436.295. (1) If the court does not determine by clear and convincing evidence that the respondent lacks the ability to give informed consent for sterilization:

(a) If the court determines that the respondent has the ability to give informed consent to sterilization, the court shall issue an order so stating and permitting the sterilization to be performed. Prior to the performance of the sterilization, the physician, **physician assistant or nurse practitioner** and hospital involved shall obtain the written informed consent of the person for sterilization.

(b) If the respondent refuses to consent to sterilization, the court shall issue an order so stating and forbidding sterilization of the respondent, unless the respondent later makes a different choice and only after a rehearing under this section.

(2) If the court determines by clear and convincing evidence that the respondent lacks the ability to give informed consent for sterilization, the court shall retain its jurisdiction and continue the hearing to determine whether sterilization is in the best interests of the respondent.

**SECTION 61.** ORS 443.065 is amended to read:

443.065. The home health agency shall:

(1) Be primarily engaged in providing skilled nursing services and at least one other service delineated in ORS 443.075 (1)(b) and (c);

(2) Have policies established by professional personnel associated with the agency or organization, including one or more physicians and one or more registered nurses, at least two of whom are neither owners nor employees of the agency, and two consumers, to govern the services that it provides;

(3) Require supervision of services that it provides under subsection (1) of this section by a physician, **physician assistant**, nurse practitioner or registered nurse, preferably a public health nurse;

(4) Maintain clinical and financial records on all patients; and

(5) Have an overall plan and budget in effect.

**SECTION 62.** ORS 443.075 is amended to read:

443.075. (1) A home health agency must have an order for treatment, plan of treatment or plan of care from a physician, **physician assistant licensed under ORS 677.505 to 677.525** or nurse practitioner **licensed under ORS 678.375 to 678.390** for the following services and supplies:

(a) Home nursing care provided by or under the supervision of a registered nurse;

(b) Physical, occupational or speech therapy, medical social services or other therapeutic services;

(c) Home health aide services; and

(d) Medical supplies, other than drugs and biologicals, and the use of medical appliances.

(2) A home health agency shall have each plan of treatment or plan of care reviewed by the physi-

cian, **physician assistant** or nurse practitioner periodically, in accordance with rules adopted by the Oregon Health Authority.

**SECTION 63.** ORS 443.850 is amended to read: 443.850. As used in ORS 443.850 to 443.869:

(1) "Hospice program" means a coordinated program of home and inpatient care, available 24 hours a day, that utilizes an interdisciplinary team of personnel trained to provide palliative and supportive services to a patient-family unit experiencing a life threatening disease with a limited prognosis. A hospice program is an institution for purposes of ORS 146.100.

(2) "Hospice services" means items and services provided to a patient-family unit by a hospice program or by other individuals or community agencies under a consulting or contractual arrangement with a hospice program. Hospice services include acute, respite, home care and bereavement services provided to meet the physical, psychosocial, spiritual and other special needs of a patient-family unit during the final stages of illness, dying and the bereavement period.

(3) "Interdisciplinary team" means a group of individuals working together in a coordinated manner to provide hospice care. An interdisciplinary team includes, but is not limited to, the patient-family unit, the patient's attending physician or clinician and one or more of the following hospice program personnel:

(a) Physician.

**(b) Physician assistant.**

*[(b)]* **(c) Nurse practitioner.**

*[(c)]* **(d) Nurse.**

*[(d)]* **(e) Nurse's aide.**

*[(e)]* **(f) Occupational therapist.**

*[(f)]* **(g) Physical therapist.**

*[(g)]* **(h) Trained lay volunteer.**

*[(h)]* **(i) Clergy or spiritual counselor.**

*[(i)]* **(j) Credentialed mental health professional** such as psychiatrist, psychologist, psychiatric nurse or social worker.

(4) "Patient-family unit" includes an individual who has a life threatening disease with a limited prognosis and all others sharing housing, common ancestry or a common personal commitment with the individual.

(5) "Person" includes individuals, organizations and groups of organizations.

**SECTION 64.** ORS 453.307 is amended to read: 453.307. As used in ORS 453.307 to 453.414:

(1) "Community right to know regulatory program" or "local program" means any law, rule, ordinance, regulation or charter amendment established, enforced or enacted by a local government that requires an employer to collect or report information relating to the use, storage, release, possession or composition of hazardous substances and toxic substances if a primary intent of the law, rule, ordinance, regulation or charter amendment is the public distribution of the information.

(2) "Emergency service personnel" includes those entities providing emergency services as defined in ORS 401.025.

(3) "Employer" means:

(a) Any person operating a facility that is included in one or more of the 21 standard industrial classification categories in Appendix B of the Natural Resources Defense Council v. Train Consent Decree of June 8, 1976 (8 E.R.C. 2120); or

(b) Any person operating a facility designated by the State Fire Marshal.

(4) "Fire district" means any agency having responsibility for providing fire protection services.

(5) "Hazardous substance" means:

(a) Any substance designated as hazardous by the Director of the Department of Consumer and Business Services or by the State Fire Marshal;

(b) Any substance for which a material safety data sheet is required by the Director of the Department of Consumer and Business Services under ORS 654.035 and which appears on the list of Threshold Limit Values for Chemical Substances and Physical Agents in the Work Environment by the American Conference of Governmental Industrial Hygienists; or

(c) Radioactive waste and material as defined in ORS 469.300 and radioactive substance as defined in ORS 453.005.

(6) "Health professional" means a physician *[as defined in ORS 677.010,]* **licensed under ORS chapter 677, physician assistant licensed under ORS 677.505 to 677.525**, registered nurse, industrial hygienist, toxicologist, epidemiologist or emergency medical services provider.

(7) "Law enforcement agency" has the meaning given that term in ORS 181.010.

(8) "Local government" means a city, town, county, regional authority or other political subdivision of this state.

(9) "Person" includes individuals, corporations, associations, firms, partnerships, joint stock companies, public and municipal corporations, political subdivisions, the state and any agency thereof, and the federal government and any agency thereof.

(10) "Trade secret" has the meaning given that term in ORS 192.501 (2).

**SECTION 65.** ORS 475.744 is amended to read:

475.744. (1) No person shall sell or give a hypodermic device to a minor unless the minor demonstrates a lawful need therefor by authorization of a physician, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390**, parent or legal guardian or by other means acceptable to the seller or donor.

(2) As used in this section, "hypodermic device" means a hypodermic needle or syringe or medication packaged in a hypodermic syringe or any instrument adapted for the subcutaneous injection of a controlled substance as defined in ORS 475.005.

**SECTION 66.** ORS 475.950 is amended to read:

475.950. (1) A person commits the offense of failure to report a precursor substances transaction if the person does any of the following:

(a) Sells, transfers or otherwise furnishes any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does not, at least three days before delivery of the substance, submit to the Department of State Police a report that meets the reporting requirements established by rule under ORS 475.945.

(b) Receives any precursor substance described in ORS 475.940 (3)(a) to (hh) and (oo) and does not, within 10 days after receipt of the substance, submit to the Department of State Police a report that meets the reporting requirements established by rule under ORS 475.945.

(2) This section does not apply to any of the following:

(a) Any pharmacist or other authorized person who sells or furnishes a precursor substance upon the prescription of a physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390**, dentist or veterinarian.

(b) Any practitioner, as defined in ORS 475.005, who administers or furnishes a precursor substance to patients upon prescription.

(c) Any person licensed by the State Board of Pharmacy who sells, transfers or otherwise furnishes a precursor substance to a licensed pharmacy, physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390**, dentist or veterinarian for distribution to patients upon prescription.

(d) Any person who is authorized by rule under ORS 475.945 to report in an alternate manner if the person complies with the alternate reporting requirements.

(e) Any patient of a practitioner, as defined in ORS 475.005, who obtains a precursor substance from a licensed pharmacist, physician licensed under ORS chapter 677, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390**, dentist or veterinarian pursuant to a prescription.

(f) Any person who sells or transfers ephedrine, pseudoephedrine or phenylpropanolamine in compliance with ORS 475.973.

(g) Any practitioner, as defined in ORS 475.005, who dispenses a precursor substance to a person with whom the practitioner has a [*doctor-patient or doctor-client*] **professional** relationship.

(h) Any person who obtains a precursor substance from a practitioner, as defined in ORS 475.005, with whom the person has a [*doctor-patient or doctor-client*] **professional** relationship.

(i) Any person who sells or transfers an isomer of a precursor substance, unless it is an optical isomer.

(3) Penalties related to providing false information on a report required under this section are provided under ORS 475.965.

(4) The Department of State Police and any law enforcement agency may inspect and remove copies of the sales records of any retail or wholesale distributor of methyl sulfonyl methane or a precursor substance during the normal business hours of the retail or wholesale distributor or may require the retail or wholesale distributor to provide copies of the records.

(5) Failure to report a precursor substances transaction is a Class A misdemeanor.

**SECTION 67.** ORS 475.975 is amended to read:

475.975. (1) Except as otherwise provided in subsection (2) of this section, a person commits the crime of unlawful possession of iodine in its elemental form if the person knowingly possesses iodine in its elemental form.

(2) Subsection (1) of this section does not apply to:

(a) A physician, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390**, pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons who possesses iodine in its elemental form in the regular course of lawful business activities;

(b) A person who possesses iodine in its elemental form in conjunction with experiments conducted in a chemistry or chemistry related laboratory maintained by a:

(A) Regularly established public or private secondary school;

(B) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or

(C) Manufacturing, government agency or research facility in the course of lawful business activities;

(c) A licensed veterinarian;

(d) A person working in a general hospital who possesses iodine in its elemental form in the regular course of employment at the hospital; or

(e) A person who possesses iodine in its elemental form as a prescription drug pursuant to a prescription issued by a licensed veterinarian [*or*], physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390**.

(3) Except as otherwise provided in subsection (4) of this section, a person who sells or otherwise transfers iodine in its elemental form to another person shall make a record of each sale or transfer. The record must be made on a form provided by the Department of State Police, completed pursuant to instructions provided by the department and retained by the person for at least three years or sent to the department if directed to do so by the department. Failure to make and retain or send a record

required under this subsection is a Class A misdemeanor.

(4) A licensed veterinarian is not required to make a record of a sale or transfer of iodine in its elemental form under subsection (3) of this section if the veterinarian makes a record of the sale or transfer under other applicable laws or rules regarding the prescribing and dispensing of regulated or controlled substances by veterinarians.

(5) A person commits the crime of unlawful distribution of iodine in its elemental form if the person knowingly sells or otherwise transfers iodine in its elemental form to a person not listed in subsection (2) of this section.

(6) Unlawful possession of iodine in its elemental form is a Class A misdemeanor.

(7) Unlawful distribution of iodine in its elemental form is a Class A misdemeanor.

**SECTION 68.** ORS 475.976 is amended to read:

475.976. (1) Except as otherwise provided in subsection (2) of this section, a person commits the crime of unlawful possession of an iodine matrix if the person knowingly possesses an iodine matrix.

(2) Subsection (1) of this section does not apply to:

(a) A person who possesses an iodine matrix as a prescription drug, pursuant to a prescription issued by a licensed veterinarian [or *physician*], **physician, physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390;**

(b) A person who is actively engaged in the practice of animal husbandry of livestock as defined in ORS 609.125;

(c) A person who possesses an iodine matrix in conjunction with experiments conducted in a chemistry or chemistry related laboratory maintained by a:

(A) Regularly established public or private secondary school;

(B) Public or private institution of higher education that is accredited by a regional or national accrediting agency recognized by the United States Department of Education; or

(C) Manufacturing, government agency or research facility in the course of lawful business activities;

(d) A veterinarian, physician, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390,** pharmacist, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons who possesses an iodine matrix in the regular course of lawful business activities; or

(e) A person working in a general hospital who possesses an iodine matrix in the regular course of employment at the hospital.

(3) Except as otherwise provided in subsection (4) of this section, a person who sells or otherwise transfers an iodine matrix to another person shall make a record of each sale or transfer. The record

must be made on a form provided by the Department of State Police, completed pursuant to instructions provided by the department and retained by the person for at least three years or sent to the department if directed to do so by the department. Failure to make and retain or send a record required under this subsection is a Class A misdemeanor.

(4) A licensed veterinarian is not required to make a record of a sale or transfer of an iodine matrix under subsection (3) of this section if the veterinarian makes a record of the sale or transfer under other applicable laws or rules regarding the prescribing and dispensing of regulated or controlled substances by veterinarians.

(5) A person commits the crime of unlawful distribution of an iodine matrix if the person knowingly sells or otherwise transfers an iodine matrix to a person not listed in subsection (2) of this section.

(6) Unlawful possession of an iodine matrix is a Class A misdemeanor.

(7) Unlawful distribution of an iodine matrix is a Class A misdemeanor.

**SECTION 69.** ORS 475.978 is amended to read:

475.978. (1) A person who sells or otherwise transfers more than the amount permitted by administrative rule adopted by the Department of State Police of methyl sulfonyl methane to a person other than a physician, **physician assistant licensed under ORS 677.505 to 677.525, nurse practitioner licensed under ORS 678.375 to 678.390,** pharmacist, veterinarian, retail distributor, wholesaler, manufacturer, warehouseman or common carrier or an agent of any of these persons shall make a record of each such sale or transfer. The record must be made on a form provided by the department, completed pursuant to instructions provided by the department and retained by the person for at least three years. Failure to make and retain a record required under this subsection is a Class A violation.

(2) The department shall adopt a rule establishing the minimum amount of methyl sulfonyl methane the sale or transfer of which requires a report under subsection (1) of this section. In establishing the minimum amount, the department shall determine an amount that is reasonably designed not to infringe upon legitimate uses of methyl sulfonyl methane but that discourages the use of methyl sulfonyl methane in the illicit production and distribution of methamphetamine.

(3) This section applies to the sale or transfer of bulk methyl sulfonyl methane in its powder form only, and does not apply to the sale or transfer of products containing methyl sulfonyl methane in other forms including, but not limited to, liquids, tablets, capsules not containing methyl sulfonyl methane in pure powder form, ointments, creams, cosmetics, foods and beverages.

**SECTION 70.** ORS 616.750 is amended to read:

616.750. If the State Department of Agriculture for reasonable cause believes that any person working in any food establishment is affected with any

infectious or contagious disease, the department may require the person to be examined by a competent physician, **physician assistant or nurse practitioner** and that the physician, **physician assistant or nurse practitioner** furnish the department with a certificate stating whether [upon examination the physician has found the person to be] **the person is** affected with any infectious or contagious disease. If within five days after so required the person has not furnished the department with such a certificate by a competent physician, **physician assistant or nurse practitioner**, the person is guilty of a violation of ORS 616.745 and the department may apply to the circuit court to enjoin the person from continuing to work in the food establishment until the certificate is furnished. The circuit court hereby is authorized to issue the injunction.

**SECTION 71.** ORS 628.270 is amended to read:

628.270. (1) The Oregon Health Authority may, by rule, define certain communicable diseases which may be spread to the public through the handling of food in refrigerated locker plants.

(2) No person who has a communicable or infectious disease described in subsection (1) of this section shall be permitted to work in or about any refrigerated locker plant or to handle any food in connection with the operation of such plant.

(3) In the discretion of the State Department of Agriculture, an employee of a locker plant may be required to furnish a certificate of health from a physician, **physician assistant or nurse practitioner** duly accredited by the authority for the purpose of issuing such certificates. If such certificate is required under municipal ordinance upon examination deemed adequate by the authority, a certificate issued in compliance with such ordinance is sufficient under this section.

(4) Any health certificate required by this section shall be revoked by the authority at any time that the holder thereof is found, upon physical examination of such holder, to have any communicable or infectious disease. Refusal of any person employed in such locker plant to submit to proper and reasonable physical examination, upon written demand by the authority or the department, is cause for revocation of the employee's health certificate and also is sufficient reason for revocation of the locker plant's license unless the employee immediately is removed from any work or operation in or about such locker plant involving the handling of food.

**SECTION 72.** ORS 659A.150 is amended to read: 659A.150. As used in ORS 659A.150 to 659A.186:

(1) "Covered employer" means an employer described in ORS 659A.153.

(2) "Eligible employee" means any employee of a covered employer other than those employees exempted under the provisions of ORS 659A.156.

(3) "Family leave" means a leave of absence described in ORS 659A.159, except that "family leave" does not include leave taken by an eligible employee who is unable to work because of a disabling com-

pensable injury, as defined in ORS 656.005, under ORS chapter 656.

(4) "Family member" means the spouse of an employee, the biological, adoptive or foster parent or child of the employee, the grandparent or grandchild of the employee, a parent-in-law of the employee or a person with whom the employee was or is in a relationship of in loco parentis.

(5) "Health care provider" means:

(a) A person who is primarily responsible for providing health care to an eligible employee or a family member of an eligible employee, who is performing within the scope of the person's professional license or certificate and who is:

(A) A physician licensed under ORS chapter 677;

**(B) A physician assistant licensed under ORS 677.505 to 677.525;**

~~[(B)]~~ (C) A dentist licensed under ORS 679.090;

~~[(C)]~~ (D) A psychologist licensed under ORS 675.030;

~~[(D)]~~ (E) An optometrist licensed under ORS 683.070;

~~[(E)]~~ (F) A naturopath licensed under ORS 685.080;

~~[(F)]~~ (G) A registered nurse licensed under ORS 678.050;

~~[(G)]~~ (H) A nurse practitioner certified under ORS 678.375;

~~[(H)]~~ (I) A direct entry midwife licensed under ORS 687.420;

~~[(I)]~~ (J) A licensed registered nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner;

~~[(J)]~~ (K) A regulated social worker authorized to practice regulated social work under ORS 675.510 to 675.600; or

~~[(K)]~~ (L) A chiropractic physician licensed under ORS 684.054, but only to the extent the chiropractic physician provides treatment consisting of manual manipulation of the spine to correct a subluxation demonstrated to exist by X-rays.

(b) A person who is primarily responsible for the treatment of an eligible employee or a family member of an eligible employee solely through spiritual means, including but not limited to a Christian Science practitioner.

(6) "Serious health condition" means:

(a) An illness, injury, impairment or physical or mental condition that requires inpatient care in a hospital, hospice or residential medical care facility;

(b) An illness, disease or condition that in the medical judgment of the treating health care provider poses an imminent danger of death, is terminal in prognosis with a reasonable possibility of death in the near future, or requires constant care; or

(c) Any period of disability due to pregnancy, or period of absence for prenatal care.

**SECTION 73.** ORS 680.545 is amended to read:

680.545. Denturists licensed prior to January 1, 2004, who have not received an oral pathology endorsement from the State Board of Denture Technology may not treat any person without having first

received a statement, dated within 30 days of the date of treatment and signed by a dentist, physician, **physician assistant licensed under ORS 677.505 to 677.525** or nurse practitioner **licensed under ORS 678.375 to 678.390**, that the person's oral cavity is substantially free from disease and mechanically sufficient to receive a denture.

**SECTION 74.** ORS 694.042 is amended to read:

694.042. (1) In addition to any other rights and remedies the purchaser may have, including rights under ORS 646A.460 to 646A.476, the purchaser of a hearing aid shall have the right to rescind the transaction if:

(a) The purchaser for whatever reason consults with a *[licensed medical physician specializing]* **physician licensed under ORS chapter 677 to practice medicine who specializes in diseases of the ear or with a physician assistant licensed under ORS 677.505 to 677.525 who specializes** in diseases of the ear, or **consults with** an audiologist not licensed under this chapter and not affiliated with anyone licensed under this chapter and *[licensed medical physician]* **with a physician licensed under ORS chapter 677 to practice medicine or with a physician assistant licensed under ORS 677.505 to 677.525**, subsequent to purchasing the hearing aid, and the *[licensed]* physician or **physician assistant** advises such purchaser against purchasing or using a hearing aid and in writing specifies the medical reason for the advice;

(b) The seller, in dealings with the purchaser, failed to adhere to the practice standards listed in ORS 694.142, or failed to provide the statement required by ORS 694.036;

(c) The fitting of the hearing instrument failed to meet current industry standards; or

(d) The licensee fails to meet any standard of conduct prescribed in the law or rules regulating fitting and dispensing of hearing aids and this failure affects in any way the transaction which the purchaser seeks to rescind.

(2) The purchaser of a hearing aid shall have the right to rescind the transaction, for other than the seller's breach, as provided in subsection (1)(a), (b), (c) or (d) of this section only if the purchaser returns the product and it is in good condition less normal wear and tear and gives written notice of the intent to rescind the transaction by either:

(a) Returning the product with a written notice of the intent to rescind sent by certified mail, return receipt requested, to the licensee's regular place of business; or

(b) Returning the product with a written notice of the intent to rescind to an authorized representative of the company from which it was purchased.

(3) The notice described in subsection (2) of this section shall state that the transaction is canceled pursuant to this section. The notice of intent to rescind must be postmarked:

(a) Within 30 days from the date of the original delivery; or

(b) Within specified time periods if the 30-day period has been extended in writing by both parties. The consumer's rescission rights can only be extended through a written agreement by both parties.

(4) If the conditions of subsection (1)(a), (b), (c) or (d) of this section and subsection (2)(a) or (b) of this section have been met, the seller, without further request and within 10 days after the cancellation, shall issue a refund to the purchaser. However, the hearing aid specialist may retain a portion of the purchase price as specified by rule by the Health Licensing Office when the purchaser rescinds the sale during the 30-day rescission period. At the same time, the seller shall return all goods traded in to the seller on account of or in contemplation of the sale. The purchaser shall incur no additional liability for the cancellation.

**SECTION 75.** ORS 742.420 is amended to read: 742.420. As used in ORS 742.420 to 742.440:

(1) "Discount medical plan" means a contract, agreement or other business arrangement between a discount medical plan organization and a plan member in which the organization, in exchange for fees, service or subscription charges, dues or other consideration, offers or purports to offer the plan member access to providers and the right to receive medical and ancillary services at a discount from providers.

(2) "Discount medical plan organization" means a person that contracts on behalf of plan members with a provider, a provider network or another discount medical plan organization for access to medical and ancillary services at a discounted rate and determines what plan members will pay as a fee, service or subscription charge, dues or other consideration for a discount medical plan.

(3) "Licensee" means a discount medical plan organization that has obtained a license from the Director of the Department of Consumer and Business Services in accordance with ORS 742.426.

(4) "Medical and ancillary services" means, except when administered by or under contract with the State of Oregon, any care, service, treatment or product provided for any dysfunction, injury or illness of the human body including, but not limited to, *[physician care]* **care provided by a physician, physician assistant or nurse practitioner**, inpatient care, hospital and surgical services, emergency and ambulance services, audiology services, dental care services, vision care services, mental health services, substance abuse counseling or treatment, chiropractic services, podiatric care services, laboratory services, home health care services, medical equipment and supplies or prescription drugs.

(5) "Plan member" means an individual who pays fees, service or subscription charges, dues or other consideration in exchange for the right to participate in a discount medical plan.

(6)(a) "Provider" means a person that has contracted or otherwise agreed with a discount medical plan organization to provide medical and ancillary

services to plan members at a discount from the person's ordinary or customary fees or charges.

(b) "Provider" does not include:

(A) A person that, apart from any agreement or contract with a discount medical plan organization, provides medical and ancillary services at a discount or at fixed or scheduled prices to patients or customers the person serves regularly; or

(B) A person that does not charge fees, service or subscription charges, dues or other consideration in exchange for providing medical and ancillary services at a discount or at fixed or scheduled prices.

(7) "Provider network" means a person that negotiates directly or indirectly with a discount medical plan organization on behalf of more than one provider that provides medical or ancillary services to plan members.

**SECTION 76.** ORS 742.504 is amended to read:

742.504. Every policy required to provide the coverage specified in ORS 742.502 shall provide uninsured motorist coverage that in each instance is no less favorable in any respect to the insured or the beneficiary than if the following provisions were set forth in the policy. However, nothing contained in this section requires the insurer to reproduce in the policy the particular language of any of the following provisions:

(1)(a) Notwithstanding ORS 30.260 to 30.300, the insurer will pay all sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle because of bodily injury sustained by the insured caused by accident and arising out of the ownership, maintenance or use of the uninsured vehicle. Determination as to whether the insured, the insured's heirs or the insured's legal representative is legally entitled to recover such damages, and if so, the amount thereof, shall be made by agreement between the insured and the insurer, or, in the event of disagreement, may be determined by arbitration as provided in subsection (10) of this section.

(b) No judgment against any person or organization alleged to be legally responsible for bodily injury, except for proceedings instituted against the insurer as provided in this policy, shall be conclusive, as between the insured and the insurer, on the issues of liability of the person or organization or of the amount of damages to which the insured is legally entitled.

(2) As used in this policy:

(a) "Bodily injury" means bodily injury, sickness or disease, including death resulting therefrom.

(b) "Hit-and-run vehicle" means a vehicle that causes bodily injury to an insured arising out of physical contact of the vehicle with the insured or with a vehicle the insured is occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the hit-and-run vehicle cannot be ascertained;

(B) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof; and

(C) At the insurer's request, the insured or the legal representative of the insured makes available for inspection the vehicle the insured was occupying at the time of the accident.

(c) "Insured," when unqualified and when applied to uninsured motorist coverage, means:

(A) The named insured as stated in the policy and any person designated as named insured in the schedule and, while residents of the same household, the spouse of any named insured and relatives of either, provided that neither the relative nor the spouse is the owner of a vehicle not described in the policy and that, if the named insured as stated in the policy is other than an individual or husband and wife who are residents of the same household, the named insured shall be only a person so designated in the schedule;

(B) Any child residing in the household of the named insured if the insured has performed the duties of a parent to the child by rearing the child as the insured's own although the child is not related to the insured by blood, marriage or adoption; and

(C) Any other person while occupying an insured vehicle, provided the actual use thereof is with the permission of the named insured.

(d) "Insured vehicle," except as provided in paragraph (e) of this provision, means:

(A) The vehicle described in the policy or a newly acquired or substitute vehicle, as each of those terms is defined in the public liability coverage of the policy, insured under the public liability provisions of the policy; or

(B) A nonowned vehicle operated by the named insured or spouse if a resident of the same household, provided that the actual use thereof is with the permission of the owner of the vehicle and the vehicle is not owned by nor furnished for the regular or frequent use of the insured or any member of the same household.

(e) "Insured vehicle" does not include a trailer of any type unless the trailer is a described vehicle in the policy.

(f) "Occupying" means in or upon or entering into or alighting from.

(g) "Phantom vehicle" means a vehicle that causes bodily injury to an insured arising out of a motor vehicle accident that is caused by a vehicle that has no physical contact with the insured or the vehicle the insured is occupying at the time of the accident, provided:

(A) The identity of either the operator or the owner of the phantom vehicle cannot be ascertained;

(B) The facts of the accident can be corroborated by competent evidence other than the testimony of the insured or any person having an uninsured motorist claim resulting from the accident; and

(C) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer, to the Department of Transportation or to the equivalent department in the state where the accident occurred, and filed with the insurer within 30 days thereafter a statement under oath that the insured or the legal representative of the insured has a cause or causes of action arising out of the accident for damages against a person or persons whose identities are unascertainable, and setting forth the facts in support thereof.

(h) "State" includes the District of Columbia, a territory or possession of the United States and a province of Canada.

(i) "Stolen vehicle" means an insured vehicle that causes bodily injury to the insured arising out of a motor vehicle accident if:

(A) The vehicle is operated without the consent of the insured;

(B) The operator of the vehicle does not have collectible motor vehicle bodily injury liability insurance;

(C) The insured or someone on behalf of the insured reported the accident within 72 hours to a police, peace or judicial officer or to the equivalent department in the state where the accident occurred; and

(D) The insured or someone on behalf of the insured cooperates with the appropriate law enforcement agency in the prosecution of the theft of the vehicle.

(j) "Sums that the insured, the heirs or the legal representative of the insured is legally entitled to recover as general and special damages from the owner or operator of an uninsured vehicle" means the amount of damages that:

(A) A claimant could have recovered in a civil action from the owner or operator at the time of the injury after determination of fault or comparative fault and resolution of any applicable defenses;

(B) Are calculated without regard to the tort claims limitations of ORS 30.260 to 30.300; and

(C) Are no larger than benefits payable under the terms of the policy as provided in subsection (7) of this section.

(k) "Uninsured vehicle," except as provided in paragraph (L) of this provision, means:

(A) A vehicle with respect to the ownership, maintenance or use of which there is no collectible motor vehicle bodily injury liability insurance, in at least the amounts or limits prescribed for bodily injury or death under ORS 806.070 applicable at the time of the accident with respect to any person or organization legally responsible for the use of the vehicle, or with respect to which there is collectible bodily injury liability insurance applicable at the

time of the accident but the insurance company writing the insurance denies coverage or the company writing the insurance becomes voluntarily or involuntarily declared bankrupt or for which a receiver is appointed or becomes insolvent. It shall be a disputable presumption that a vehicle is uninsured in the event the insured and the insurer, after reasonable efforts, fail to discover within 90 days from the date of the accident, the existence of a valid and collectible motor vehicle bodily injury liability insurance applicable at the time of the accident.

(B) A hit-and-run vehicle.

(C) A phantom vehicle.

(D) A stolen vehicle.

(E) A vehicle that is owned or operated by a self-insurer:

(i) That is not in compliance with ORS 806.130 (1)(c); or

(ii) That provides recovery to an insured in an amount that is less than the limits for uninsured motorist coverage of the insured.

(L) "Uninsured vehicle" does not include:

(A) An insured vehicle, unless the vehicle is a stolen vehicle;

(B) Except as provided in paragraph (k)(E) of this subsection, a vehicle that is owned or operated by a self-insurer within the meaning of any motor vehicle financial responsibility law, motor carrier law or any similar law;

(C) A vehicle that is owned by the United States of America, Canada, a state, a political subdivision of any such government or an agency of any such government;

(D) A land motor vehicle or trailer, if operated on rails or crawler-treads or while located for use as a residence or premises and not as a vehicle;

(E) A farm-type tractor or equipment designed for use principally off public roads, except while actually upon public roads; or

(F) A vehicle owned by or furnished for the regular or frequent use of the insured or any member of the household of the insured.

(m) "Vehicle" means every device in, upon or by which any person or property is or may be transported or drawn upon a public highway, but does not include devices moved by human power or used exclusively upon stationary rails or tracks.

(3) This coverage applies only to accidents that occur on and after the effective date of the policy, during the policy period and within the United States of America, its territories or possessions, or Canada.

(4)(a) This coverage does not apply to bodily injury of an insured with respect to which the insured or the legal representative of the insured shall, without the written consent of the insurer, make any settlement with or prosecute to judgment any action against any person or organization who may be legally liable therefor.

(b) This coverage does not apply to bodily injury to an insured while occupying a vehicle, other than an insured vehicle, owned by, or furnished for the regular use of, the named insured or any relative

resident in the same household, or through being struck by the vehicle.

(c) This coverage does not apply so as to inure directly or indirectly to the benefit of any workers' compensation carrier, any person or organization qualifying as a self-insurer under any workers' compensation or disability benefits law or any similar law or the State Accident Insurance Fund Corporation.

(d) This coverage does not apply with respect to underinsured motorist benefits unless:

(A) The limits of liability under any bodily injury liability insurance applicable at the time of the accident regarding the injured person have been exhausted by payment of judgments or settlements to the injured person or other injured persons;

(B) The described limits have been offered in settlement, the insurer has refused consent under paragraph (a) of this subsection and the insured protects the insurer's right of subrogation to the claim against the tortfeasor;

(C) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement, and the insurer has consented under paragraph (a) of this subsection; or

(D) The insured gives credit to the insurer for the unrealized portion of the described liability limits as if the full limits had been received if less than the described limits have been offered in settlement and, if the insurer has refused consent under paragraph (a) of this subsection, the insured protects the insurer's right of subrogation to the claim against the tortfeasor.

(e) When seeking consent under paragraph (a) or (d) of this subsection, the insured shall allow the insurer a reasonable time in which to collect and evaluate information related to consent to the proposed offer of settlement. The insured shall provide promptly to the insurer any information that is reasonably requested by the insurer and that is within the custody and control of the insured. Consent will be presumed to be given if the insurer does not respond within a reasonable time. For purposes of this paragraph, a "reasonable time" is no more than 30 days from the insurer's receipt of a written request for consent, unless the insured and the insurer agree otherwise.

(5)(a) As soon as practicable, the insured or other person making claim shall give to the insurer written proof of claim, under oath if required, including full particulars of the nature and extent of the injuries, treatment and other details entering into the determination of the amount payable hereunder. The insured and every other person making claim hereunder shall submit to examinations under oath by any person named by the insurer and subscribe the same, as often as may reasonably be required. Proof of claim shall be made upon forms furnished by the insurer unless the insurer fails to furnish the forms within 15 days after receiving notice of claim.

(b) Upon reasonable request of and at the expense of the insurer, the injured person shall submit to physical examinations by physicians, **physician assistants or nurse practitioners** selected by the insurer and shall, upon each request from the insurer, execute authorization to enable the insurer to obtain medical reports and copies of records.

(6) If, before the insurer makes payment of loss hereunder, the insured or the legal representative of the insured institutes any legal action for bodily injury against any person or organization legally responsible for the use of a vehicle involved in the accident, a copy of the summons and complaint or other process served in connection with the legal action shall be forwarded immediately to the insurer by the insured or the legal representative of the insured.

(7)(a) The limit of liability stated in the declarations as applicable to "each person" is the limit of the insurer's liability for all damages because of bodily injury sustained by one person as the result of any one accident and, subject to the above provision respecting each person, the limit of liability stated in the declarations as applicable to "each accident" is the total limit of the company's liability for all damages because of bodily injury sustained by two or more persons as the result of any one accident.

(b) Any payment made under this coverage to or for an insured shall be applied in reduction of any amount that the insured may be entitled to recover from any person who is an insured under the bodily injury liability coverage of this policy.

(c) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by:

(A) All sums paid on account of the bodily injury by or on behalf of the owner or operator of the uninsured vehicle and by or on behalf of any other person or organization jointly or severally liable together with the owner or operator for the bodily injury, including all sums paid under the bodily injury liability coverage of the policy; and

(B) The amount paid and the present value of all amounts payable on account of the bodily injury under any workers' compensation law, disability benefits law or any similar law.

(d) Any amount payable under the terms of this coverage because of bodily injury sustained in an accident by a person who is an insured under this coverage shall be reduced by the credit given to the insurer pursuant to subsection (4)(d)(C) or (D) of this section.

(e) The amount payable under the terms of this coverage may not be reduced by the amount of liability proceeds offered, described in subsection (4)(d)(B) or (D) of this section, that has not been paid to the injured person. If liability proceeds have been offered and not paid, the amount payable under the terms of the coverage shall include the amount of liability limits offered but not accepted due to the insurer's refusal to consent. The insured shall coop-

erate so as to permit the insurer to proceed by subrogation or assignment to prosecute the claim against the uninsured motorist.

(8) No action shall lie against the insurer unless, as a condition precedent thereto, the insured or the legal representative of the insured has fully complied with all the terms of this policy.

(9)(a) With respect to bodily injury to an insured:

(A) While occupying a vehicle owned by a named insured under this coverage, the insurance under this coverage is primary.

(B) While occupying a vehicle not owned by a named insured under this coverage, the insurance under this coverage shall apply only as excess insurance over any primary insurance available to the occupant that is similar to this coverage, and this excess insurance shall then apply only in the amount by which the applicable limit of liability of this excess coverage exceeds the sum of the applicable limits of liability of all primary insurance available to the occupant.

(b) If an insured is an insured under other primary or excess insurance available to the insured that is similar to this coverage, then the insured's damages are deemed not to exceed the higher of the applicable limits of liability of this insurance or the additional primary or excess insurance available to the insured, and the insurer is not liable under this coverage for a greater proportion of the insured's damages than the applicable limit of liability of this coverage bears to the sum of the applicable limits of liability of this insurance and other primary or excess insurance available to the insured.

(c) With respect to bodily injury to an insured while occupying any motor vehicle used as a public or livery conveyance, the insurance under this coverage shall apply only as excess insurance over any other insurance available to the insured that is similar to this coverage, and this insurance shall then apply only in the amount by which the applicable limit of liability of this coverage exceeds the sum of the applicable limits of liability of all other insurance.

(10) If any person making claim hereunder and the insurer do not agree that the person is legally entitled to recover damages from the owner or operator of an uninsured vehicle because of bodily injury to the insured, or do not agree as to the amount of payment that may be owing under this coverage, then, in the event the insured and the insurer elect by mutual agreement at the time of the dispute to settle the matter by arbitration, the arbitration shall take place as described in ORS 742.505. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof, provided, however, that the costs to the insured of the arbitration proceeding do not exceed \$100 and that all other costs of arbitration are borne by the insurer. "Costs" as used in this provision does not include attorney fees or expenses incurred in the production of evidence or witnesses or the making of transcripts of the arbitration proceedings. The person and the insurer each agree to consider them-

selves bound and to be bound by any award made by the arbitrators pursuant to this coverage in the event of such election. At the election of the insured, the arbitration shall be held:

(a) In the county and state of residence of the insured;

(b) In the county and state where the insured's cause of action against the uninsured motorist arose; or

(c) At any other place mutually agreed upon by the insured and the insurer.

(11) In the event of payment to any person under this coverage:

(a) The insurer shall be entitled to the extent of the payment to the proceeds of any settlement or judgment that may result from the exercise of any rights of recovery of the person against any uninsured motorist legally responsible for the bodily injury because of which payment is made;

(b) The person shall hold in trust for the benefit of the insurer all rights of recovery that the person shall have against such other uninsured person or organization because of the damages that are the subject of claim made under this coverage, but only to the extent that the claim is made or paid herein;

(c) If the insured is injured by the joint or concurrent act or acts of two or more persons, one or more of whom is uninsured, the insured shall have the election to receive from the insurer any payment to which the insured would be entitled under this coverage by reason of the act or acts of the uninsured motorist, or the insured may, with the written consent of the insurer, proceed with legal action against any or all persons claimed to be liable to the insured for the injuries. If the insured elects to receive payment from the insurer under this coverage, then the insured shall hold in trust for the benefit of the insurer all rights of recovery the insured shall have against any other person, firm or organization because of the damages that are the subject of claim made under this coverage, but only to the extent of the actual payment made by the insurer;

(d) The person shall do whatever is proper to secure and shall do nothing after loss to prejudice such rights;

(e) If requested in writing by the insurer, the person shall take, through any representative not in conflict in interest with the person, designated by the insurer, such action as may be necessary or appropriate to recover payment as damages from such other uninsured person or organization, such action to be taken in the name of the person, but only to the extent of the payment made hereunder. In the event of a recovery, the insurer shall be reimbursed out of the recovery for expenses, costs and attorney fees incurred by the insurer in connection therewith; and

(f) The person shall execute and deliver to the insurer any instruments and papers as may be appropriate to secure the rights and obligations of the person and the insurer established by this provision.

(12)(a) The parties to this coverage agree that no cause of action shall accrue to the insured under this coverage unless within two years from the date of the accident:

(A) Agreement as to the amount due under the policy has been concluded;

(B) The insured or the insurer has formally instituted arbitration proceedings;

(C) The insured has filed an action against the insurer; or

(D) Suit for bodily injury has been filed against the uninsured motorist and, within two years from the date of settlement or final judgment against the uninsured motorist, the insured has formally instituted arbitration proceedings or filed an action against the insurer.

(b) For purposes of this subsection:

(A) "Date of settlement" means the date on which a written settlement agreement or release is signed by an insured or, in the absence of these documents, the date on which the insured or the attorney for the insured receives payment of any sum required by the settlement agreement. An advance payment as defined in ORS 31.550 shall not be deemed a payment of a settlement for purposes of the time limitation in this subsection.

(B) "Final judgment" means a judgment that has become final by lapse of time for appeal or by entry in an appellate court of an appellate judgment.

**SECTION 77.** ORS 744.364 is amended to read:

744.364. (1)(a) A life settlement provider entering into a life settlement contract shall first obtain:

(A) If the owner is the insured, a written statement from *[a licensed attending physician]* **a licensed physician, a physician assistant licensed under ORS 677.505 to 677.525 or a nurse practitioner licensed under ORS 678.375 to 678.390** that the owner is of sound mind and under no constraint or undue influence to enter into a life settlement contract; and

(B) A document in which the insured consents to the release of the insured's medical records to a licensed life settlement provider, life settlement broker and the insurance company that issued the life insurance policy covering the life of the insured.

(b) Within 20 days after an owner executes documents necessary to transfer any rights under an insurance policy or, if the insured is terminally ill, within 20 days after an owner entering any agreement, option, promise or any other form of understanding, expressed or implied, to transfer the policy for value, the life settlement provider shall give written notice to the insurer that issued the insurance policy that the policy has or will become a settled policy. The notice must be accompanied by the documents required by paragraph (c) of this subsection.

(c) The life settlement provider shall deliver a copy of the medical release required under paragraph (a)(B) of this subsection, a copy of the owner's application for the life settlement contract, the notice required under paragraph (b) of this subsection

and a request for verification of coverage to the insurer that issued the life policy that is the subject of the life transaction. The Director of the Department of Consumer and Business Services shall develop and approve a form for the request for verification.

(d) The insurer shall respond to a request for verification of coverage submitted on an approved form by a life settlement provider or life settlement broker within 30 calendar days of the date the request is received and shall indicate whether, based on the medical evidence and documents provided, the insurer intends to pursue an investigation at this time regarding the validity of the insurance contract or possible fraud. The insurer shall accept a request for verification of coverage made on a form approved by the director. The insurer shall accept an original or facsimile or electronic copy of such request and any accompanying authorization signed by the owner. Failure by the insurer to meet its obligations under this subsection is a violation of the Insurance Code.

(e) Prior to or at the time of execution of the life settlement contract, the life settlement provider shall obtain a witnessed document in which the owner consents to the life settlement contract, represents that the owner has a full and complete understanding of the life settlement contract, that the owner has a full and complete understanding of the benefits of the life insurance policy, acknowledges that the owner is entering into the life settlement contract freely and voluntarily and, for persons with a terminal illness or chronic illness or condition, acknowledges that the insured has a terminal illness or chronic illness and that the terminal illness or chronic illness or condition was diagnosed after the life insurance policy was issued.

(f) If a life settlement broker performs any of the activities required of the life settlement provider, the provider is deemed to have fulfilled the requirements of this section that were performed by the broker.

(2) All medical information solicited or obtained by any licensee is privileged and confidential under ORS 705.137.

(3)(a) All life settlement contracts entered into in this state must provide the owner with an absolute right to rescind the contract before the earlier of 60 calendar days after the date upon which the life settlement contract is executed by all parties or 30 calendar days after the life settlement proceeds have been sent to the owner under subsection (5) of this section.

(b) The life settlement provider may condition rescission upon the owner both giving notice and repaying to the life settlement provider within the rescission period all proceeds of the settlement and any premiums, loans and loan interest paid by or on behalf of the life settlement provider in connection with or as a consequence of the life settlement.

(c) If the insured dies during the rescission period, the life settlement contract is deemed to have been rescinded, subject to repayment within 60 cal-

endar days of the death of the insured to the life settlement provider or purchaser of all life settlement proceeds and any premiums, loans and loan interest that have been paid by the life settlement provider or purchaser.

(d) In the event of any rescission, if the life settlement provider has paid commissions or other compensation to a life settlement broker in connection with the rescinded transaction, the life settlement broker shall refund all such commissions and compensation to the life settlement provider within five business days following receipt of written demand from the life settlement provider. The demand must be accompanied by either the owner's notice of rescission if rescinded at the election of the owner, or the notice of the death of the insured if rescinded by reason of the death of the insured within the applicable rescission period.

(4) The life settlement purchaser shall have the right to rescind a life settlement contract within three days after the disclosures mandated by ORS 744.354 (7) are received by the purchaser.

(5)(a) The life settlement provider shall instruct the owner to send the executed documents required to effect the change in ownership, assignment or change in beneficiary directly to an independent escrow agent selected by the provider.

(b) Within three business days after the date the escrow agent receives the document, or from the date the life settlement provider receives the documents, if the owner erroneously provides the documents directly to the provider, the provider shall pay or transfer the proceeds of the life settlement into an escrow or trust account maintained in a state or federally chartered financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

(c) Upon payment of the settlement proceeds into the escrow account, the escrow agent shall deliver the original change in ownership, assignment or change in beneficiary forms to the life settlement provider or related provider trust or other designated representative of the life settlement provider. Upon the escrow agent's receipt of the acknowledgment of the properly completed transfer of ownership, assignment or designation of beneficiary from the insurance company, the escrow agent shall pay the settlement proceeds to the owner.

(6) Failure to pay the owner the full contract amount for the life settlement contract within the time set forth under subsection (5) of this section renders the life settlement contract voidable by the owner until the time full payment is tendered to and accepted by the owner. Funds are deemed sent by a life settlement provider to an owner as of the date that the escrow agent either releases funds for wire transfer to the owner or places a check for delivery to the owner via the United States Postal Service or another nationally recognized delivery service.

(7)(a) Contacts with the insured for the purpose of determining the health status of the insured by the life settlement provider or life settlement broker after the life settlement has occurred may be made

only by the life settlement provider or broker licensed in this state or its authorized representatives and are limited to once every three months for insureds with a life expectancy of more than one year, and to no more than once per month for insureds with a life expectancy of one year or less.

(b) The limitations set forth in this subsection do not apply to any contacts with an insured for reasons other than determining the insured's health status.

**SECTION 78.** ORS 744.367 is amended to read:

744.367. (1) A person may not enter into a life settlement contract at any time prior to the application or issuance of a policy that is the subject of a life settlement contract or within a five-year period commencing with the date of issuance of the insurance policy or certificate. However, this five-year restriction does not apply if the owner certifies to the life settlement provider that any one or more of the following conditions has been met within the five-year period:

(a) The policy was issued upon the owner's exercise of conversion rights arising out of a group or individual policy if the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 60 months. The time covered under a group policy is calculated without regard to any change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship;

(b) The owner submits independent evidence to the life settlement provider that one or more of the following conditions have been met within the five-year period:

(A) The owner or insured is terminally ill or chronically ill;

(B) The owner's spouse dies;

(C) The owner divorces the owner's spouse;

(D) The owner retires from full-time employment;

(E) The owner becomes physically or mentally disabled and a physician, **physician assistant licensed under ORS 677.505 to 677.525 or nurse practitioner licensed under ORS 678.375 to 678.390** determines that the disability prevents the owner from maintaining full-time employment; or

(F) A final order, judgment or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee or liquidator to all or a substantial part of the owner's assets; or

(c) The owner enters into a life settlement contract more than two years after the date of issuance of a policy and, with respect to the policy, at all times prior to the date that is two years after policy issuance, the following conditions are met:

(A) Policy premiums have been funded exclusively with unencumbered assets, including an interest in the life insurance policy being financed only to the extent of its net cash surrender value, provided by, or full recourse liability incurred by,

the insured or a person closely related to the insured by blood or law or a party having a lawful substantial economic interest in the continued life, health and bodily safety of the person insured, or a trust established primarily for the benefit of such parties;

(B) There is no agreement or understanding with any other person to guarantee any such liability or to purchase or stand ready to purchase the policy, including through an assumption or forgiveness of the loan; and

(C) Neither the insured nor the policy has been evaluated for settlement.

(2) Copies of the independent evidence described in subsection (1)(b) of this section and documents required by ORS 744.364 (1) must be submitted to the insurer when the life settlement provider or other party entering into a life settlement contract with an owner submits a request to the insurer for verification of coverage. The copies must be accompanied by a letter of attestation from the life settlement provider that the copies are true and correct copies of the documents received by the life settlement provider.

(3) If the life settlement provider submits to the insurer a copy of the owner's or insured's certification described in and the documents required by ORS 744.364 (1) when the provider submits a request to the insurer to effect the transfer of the policy or certificate to the life settlement provider, the copy conclusively establishes that the life settlement contract satisfies the requirements of this section and the insurer shall respond in a timely manner to the request.

(4) An insurer may not, as a condition of responding to a request for verification of coverage or effecting the transfer of a policy pursuant to a life settlement contract, require that the owner, insured, life settlement provider or life settlement broker sign any forms, disclosures, consent or waiver form that has not been expressly approved by the Director of the Department of Consumer and Business Services for use in connection with life settlement contracts in this state.

(5) Upon receipt of a properly completed request for a change of ownership or beneficiary of a policy, the insurer shall respond in writing within 30 calendar days with written acknowledgement confirming that the change has been effected or specifying the reasons why the requested change cannot be processed. The insurer may not unreasonably delay effecting change of ownership or beneficiary and may not otherwise seek to interfere with any life settlement contract lawfully entered into in this state.

**SECTION 79.** ORS 746.230 is amended to read:

746.230. (1) No insurer or other person shall commit or perform any of the following unfair claim settlement practices:

(a) Misrepresenting facts or policy provisions in settling claims;

(b) Failing to acknowledge and act promptly upon communications relating to claims;

(c) Failing to adopt and implement reasonable standards for the prompt investigation of claims;

(d) Refusing to pay claims without conducting a reasonable investigation based on all available information;

(e) Failing to affirm or deny coverage of claims within a reasonable time after completed proof of loss statements have been submitted;

(f) Not attempting, in good faith, to promptly and equitably settle claims in which liability has become reasonably clear;

(g) Compelling claimants to initiate litigation to recover amounts due by offering substantially less than amounts ultimately recovered in actions brought by such claimants;

(h) Attempting to settle claims for less than the amount to which a reasonable person would believe a reasonable person was entitled after referring to written or printed advertising material accompanying or made part of an application;

(i) Attempting to settle claims on the basis of an application altered without notice to or consent of the applicant;

(j) Failing, after payment of a claim, to inform insureds or beneficiaries, upon request by them, of the coverage under which payment has been made;

(k) Delaying investigation or payment of claims by requiring a claimant or *[the physician of the claimant]* **the claimant's physician, physician assistant or nurse practitioner** to submit a preliminary claim report and then requiring subsequent submission of loss forms when both require essentially the same information;

(L) Failing to promptly settle claims under one coverage of a policy where liability has become reasonably clear in order to influence settlements under other coverages of the policy; or

(m) Failing to promptly provide the proper explanation of the basis relied on in the insurance policy in relation to the facts or applicable law for the denial of a claim.

(2) No insurer shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies with such frequency as to indicate a general business practice in this state, which general business practice is evidenced by:

(a) A substantial increase in the number of complaints against the insurer received by the Department of Consumer and Business Services;

(b) A substantial increase in the number of lawsuits filed against the insurer or its insureds by claimants; or

(c) Other relevant evidence.

(3)(a) No health maintenance organization, as defined in ORS 750.005, shall unreasonably withhold the granting of participating provider status from a class of statutorily authorized health care providers for services rendered within the lawful scope of practice if the health care providers are licensed as such and reimbursement is for services mandated by statute.

(b) Any health maintenance organization that fails to comply with paragraph (a) of this subsection shall be subject to discipline under ORS 746.015.

(c) This subsection does not apply to group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Health Maintenance Organization Act.

**SECTION 80.** ORS 750.055 is amended to read:

750.055. (1) The following provisions of the Insurance Code apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.550 to 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192 and 743A.250 and section 2, chapter 771, Oregon Laws 2013.

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743A.024, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician, **physician assistant or nurse practitioner** associated with a group practice health maintenance organization.

(i) ORS 735.600 to 735.650.

(j) ORS 743.680 to 743.689.

(k) ORS 744.700 to 744.740.

(L) ORS 743.730 to 743.773.

(m) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

**SECTION 81.** ORS 750.055, as amended by section 33, chapter 698, Oregon Laws 2013, is amended to read:

750.055. (1) The following provisions of the Insurance Code apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.550, 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192 and 743A.250 and section 2, chapter 771, Oregon Laws 2013.

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743A.024, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician, **physician assistant or nurse practitioner** associated with a group practice health maintenance organization.

(i) ORS 743.680 to 743.689.

(j) ORS 744.700 to 744.740.

(k) ORS 743.730 to 743.773.

(L) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

**SECTION 82.** ORS 750.055, as amended by section 33, chapter 698, Oregon Laws 2013, and section 21, chapter 771, Oregon Laws 2013, is amended to read:

750.055. (1) The following provisions of the Insurance Code apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

(b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not including ORS 732.582.

(c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(d) ORS chapter 734.

(e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526,

743.527, 743.528, 743.529, 743.550, 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192 and 743A.250.

(f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

(g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(h) ORS 743A.024, except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is referred by a physician, **physician assistant or nurse practitioner** associated with a group practice health maintenance organization.

(i) ORS 743.680 to 743.689.

(j) ORS 744.700 to 744.740.

(k) ORS 743.730 to 743.773.

(L) ORS 731.485, except in the case of a group practice health maintenance organization that is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns and operates an in-house drug outlet.

(2) For the purposes of this section, health care service contractors shall be deemed insurers.

(3) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(4) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are deemed necessary for the proper administration of these provisions.

**SECTION 83.** Section 9, chapter 290, Oregon Laws 1987, as amended by section 2, chapter 872, Oregon Laws 1991, section 32, chapter 280, Oregon Laws 1995, section 2, chapter 451, Oregon Laws 1995, section 1, chapter 384, Oregon Laws 1999, section 1, chapter 28, Oregon Laws 2007, section 353, chapter 70, Oregon Laws 2007, section 2, chapter 78, Oregon Laws 2011, and section 1, chapter 264, Oregon Laws 2011, is amended to read:

**Sec. 9.** As used in sections 9 to 14, chapter 290, Oregon Laws 1987, unless the context requires otherwise:

(1) "Adaptive equipment" means equipment that permits a person with a disability, other than a per-

son who is hard of hearing or speech impaired, to communicate effectively on the telephone.

(2) "Applicant" means a person who applies for an assistive telecommunication device, adaptive equipment or a signal device.

(3) "Assistive telecommunication device" means a device that utilizes a keyboard, acoustic coupler, display screen, Braille display, speakerphone or amplifier to enable people who are deaf, deaf-blind, hard of hearing or speech impaired to communicate effectively on the telephone.

(4) "Audiologist" means a person who has a master's or doctoral degree in audiology and a Certificate of Clinical Competence in audiology from the American Speech-Language-Hearing Association.

(5) "Deaf" means a profound hearing loss, as determined by an audiologist, licensed physician, **physician assistant**, nurse practitioner, hearing aid specialist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(6) "Deaf-blind" means a hearing loss and a visual impairment that require use of an assistive telecommunication device to communicate effectively on the telephone. For purposes of this subsection:

(a) A hearing loss must be determined by an audiologist, licensed physician, **physician assistant**, nurse practitioner, hearing aid specialist or vocational rehabilitation counselor of the Department of Human Services.

(b) A visual impairment must be determined by a licensed physician, **physician assistant**, nurse practitioner, vocational rehabilitation counselor of the Department of Human Services or rehabilitation instructor for persons who are blind.

(7) "Disability" means a physical condition, as determined by a licensed physician, **physician assistant**, nurse practitioner or vocational rehabilitation counselor of the Department of Human Services, other than hearing or speech impairment that requires use of adaptive equipment to utilize the telephone.

(8) "Hard of hearing" means a hearing loss, as determined by an audiologist, licensed physician, **physician assistant**, nurse practitioner, hearing aid specialist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

(9) "Hearing aid specialist" means a person licensed to deal in hearing aids under ORS chapter 694.

(10) "Nurse practitioner" has the meaning given that term in ORS 678.010.

(11) "Physician" means an applicant's primary care physician or a medical specialist who is able to determine an applicant's disability and to whom the applicant was referred by the primary care physician.

(12) "**Physician assistant**" has the meaning given that term in ORS 677.495.

[(12)] (13) "Recipient" means a person who receives adaptive equipment, an assistive telecommunication device or a signal device.

[(13)] (14) "Rehabilitation instructor for persons who are blind" means an employee of the Commission for the Blind who:

(a) Meets the minimum qualifications set by the commission to assess adult clients referred for services;

(b) Develops individualized training programs; and

(c) Instructs and counsels clients of the commission on adapting to sight loss.

[(14)] (15) "Signal device" means a mechanical device that alerts a person who is deaf, deaf-blind or hard of hearing of an incoming telephone call.

[(15)] (16) "Speech impaired" means a speech disability, as determined by a licensed physician, **physician assistant**, nurse practitioner, speech-language pathologist or vocational rehabilitation counselor of the Department of Human Services, that requires use of an assistive telecommunication device to communicate effectively on the telephone.

[(16)] (17) "Speech-language pathologist" means a person who has a master's degree or equivalency in speech-language pathology and a Certificate of Clinical Competence issued by the American Speech-Language-Hearing Association.

[(17)] (18) "Telecommunications relay center" means a facility authorized by the Public Utility Commission to provide telecommunications relay service.

[(18)] (19) "Telecommunications relay service" means a telephone transmission service that provides the ability for an individual who has a hearing or speech disability to engage in communication by wire or radio with a hearing individual in a manner that is functionally equivalent to the ability of an individual who does not have a hearing or speech disability to communicate using voice communication services by wire or radio. "Telecommunications relay service" includes, but is not limited to:

(a) Services that enable two-way communication between an individual using a text telephone or other nonvoice terminal device and an individual not using such a device;

(b) Speech-to-speech services; and

(c) Non-English relay services.

**SECTION 84.** Section 14, chapter 290, Oregon Laws 1987, as amended by section 1, chapter 115, Oregon Laws 1989, section 7, chapter 872, Oregon Laws 1991, section 33, chapter 280, Oregon Laws 1995, section 5, chapter 384, Oregon Laws 1999, section 2, chapter 28, Oregon Laws 2007, section 357, chapter 70, Oregon Laws 2007, and section 4, chapter 264, Oregon Laws 2011, is amended to read:

**Sec. 14.** (1)(a) In order to be eligible to receive assistive telecommunication devices or adaptive equipment, individuals must be certified as deaf, hard of hearing, speech impaired or deaf-blind by a licensed physician, **physician assistant**, nurse practitioner, audiologist, hearing aid specialist,

speech-language pathologist, rehabilitation instructor for persons who are blind or vocational rehabilitation counselor of the Department of Human Services. Certification implies that the individual cannot use the telephone for expressive or receptive communication.

(b) No more than one assistive telecommunication device or adaptive equipment device may be provided to a household. However, two assistive telecommunication devices or adaptive equipment devices may be provided to a household if more than one eligible person permanently resides in the household. Households without any assistive telecommunication devices or adaptive equipment shall be given priority over households with one assistive telecommunication device or adaptive equipment device when such devices are distributed.

(c) Sections 9 to 14, chapter 290, Oregon Laws 1987, do not require a telecommunications utility to

provide an assistive telecommunication device to any person in violation of ORS 646.730.

(2)(a) In order to be eligible to receive adaptive equipment, individuals must be certified to have the required disability by a person or agency designated by the Public Utility Commission to make such certifications. Certification implies that the individual is unable to use the telephone.

(b) Sections 9 to 14, chapter 290, Oregon Laws 1987, do not require a telecommunications utility to provide adaptive equipment to any person in violation of ORS 646.730.

**SECTION 85. This 2014 Act takes effect on July 1, 2014.**

Approved by the Governor March 6, 2014

Filed in the office of Secretary of State March 6, 2014

Effective date July 1, 2014  
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