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ARCHIVES DIVISION

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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 855
BOARD OF PHARMACY

FILED

10/25/2021 5:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Proactive procedural rule review. Incorporates directives of 2021 HB 2992 modifying compensation of board members

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/23/2021 4:30 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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971-673-0001
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800 NE Oregon St., Suite 150
Portland, OR 97232

Filed By:
Rachel Melvin
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 11/23/2021

TIME: 9:30 AM

OFFICER: Rachel Melvin

ADDRESS: Oregon Board of Pharmacy

800 NE Oregon St.

Suite #150

Portland, OR 97232

SPECIAL INSTRUCTIONS:

This hearing meeting will be held virtually via Microsoft Teams.

If you wish to present oral testimony during this hearing, sign up on our website at www.oregon.gov/pharmacy/pages/rulemaking-information or email your contact information to pharmacy.rulemaking@bop.oregon.gov to receive the link to join the virtual meeting.

Alternatively, you may dial (503) 446-4951 Phone Conference ID: 472 815 435# for audio only.

You may file written comments before 4:30PM on November 23, 2021 by emailing your comments to pharmacy.rulemaking@bop.oregon.gov.

NEED FOR THE RULE(S)

2021 HB 2992 modifies amount of compensation paid to members of state boards and requires state boards to pay compensation and expenses to certain members with adjusted gross income below certain threshold.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

2021 HB 2992 modifies amount of compensation paid to members of state boards and commissions

ORS 292.495 Compensation and expenses of members of state boards and commissions.

ORS 171.072 Salary of members and presiding officers; per diem allowance; expenses; tax status

FISCAL AND ECONOMIC IMPACT:

2021-2023 Biennium: Increase of \$55 per member per meeting resulting in a total of a \$23,555 increase in Board member and Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) member compensation.

2023-2025 Biennium: Estimated increase to GSA rate in 2023 of 2.65% results in a total of a \$25,745 for Board member and Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) member compensation.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The agency expects the following for the 2021-2023 Biennium: Increase of \$55 per member per meeting resulting in a total of a \$23,555 increase in Board member and Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) member compensation.

And for the 2023-2025 Biennium: Estimated increase to GSA rate in 2023 of 2.65% results in a total of a \$25,745 for Board member and Public Health and Pharmacy Formulary Advisory Committee (PHPFAC) member compensation.

Small businesses will not be impacted by these proposed amendments.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not consulted during the development of these draft rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Legislative mandate of 2021 HB 2992.

RULES PROPOSED:

855-010-0001, 855-010-0005, 855-010-0015, 855-010-0016, 855-010-0021, 855-010-0035, 855-010-0100, 855-010-0110, 855-010-0120, 855-010-0130

REPEAL: 855-010-0001

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

~~855-010-0001~~

~~Definitions~~

~~(1) "Accredited": In these rules, accredited shall mean a school or college that is currently accredited by the Accreditation Council for Pharmacy Education (ACPE) or that is in a pre-candidate or candidate status with ACPE.¶~~

~~(2) "Board" means Oregon State Board of Pharmacy.~~

~~Statutory/Other Authority: ORS 475.005, 689.205~~

~~Statutes/Other Implemented: ORS 689.115~~

AMEND: 855-010-0005

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0005

Meetings ¶

(1) The ~~B~~board meetings ~~shall~~must be held not less than once every three months as designated by the ~~B~~board.¶

(2) The President of the ~~B~~board ~~shall~~must have power to call special meetings, subject to ORS 689.185, when it may be deemed necessary or upon request of a majority of members.¶

(3) The ~~B~~board ~~shall~~must hold an annual meeting each year for the election of officers, the reorganization of the ~~B~~board and the transaction of other business, which may include but is not limited to:¶

(a) Approval of ~~ACPE programs~~;¶

~~(b) Approval of preceptor sites~~providers of continuing pharmacy education accredited by the Accreditation Council for Pharmacy Education (ACPE);¶

~~(e)~~ Approval of ~~accredited~~ schools and colleges of pharmacy;¶

~~(d) Review and adopt by reference the Federal list accredited, accredited with probation, pre-candidate of controlled substances~~candidate status by ACPE;¶

~~(c) Review and adopt standards by references.~~

Statutory/Other Authority: ORS 689.205

Statutes/Other Implemented: ORS 689.135, ORS 689.151, ORS 689.185, ORS 689.255

AMEND: 855-010-0015

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0015

Individual Commitments ¶

(1) Board members ~~shall~~must be governed by ~~B~~board action and ~~shall~~must make no individual commitments or promises on matters of ~~B~~board policies. ¶

(2) No declaration ~~shall~~must be made nor vote taken on any question, except at ~~B~~board meetings. ~~However, after due notification to each Board member, emergency votes may be taken by telephone conference or mail ballot of a majority of Board members, such vote to be confirmed at the next Board meeting.~~

Statutory/Other Authority: ORS 689, ORS 183

Statutes/Other Implemented: ORS 183

AMEND: 855-010-0016

RULE SUMMARY: Modifies amount of compensation paid to board members and Public Health and Formulary Advisory Committee members of the Oregon Board of Pharmacy. Requires board to pay compensation and expenses to certain members with adjusted gross income below threshold outlined in ORS 292.495. Provides that members may decline to accept compensation or reimbursement. Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0016

Board Administration and Policies: Pharmacy Board Member or ~~Formal~~ Public Health and Pharmacy Formulary Advisory Committee Member Compensation

(1) A board member or ~~member of an~~ and Public Health and Pharmacy Formulary Advisory eCommittee member of the Oregon Board of Pharmacy who is entitled to compensation under ORS 292.495 is eligible to receive ~~up to \$100 compensation when engaged in the performance of official duties for each day, calculated as whichever amount is the greater of:~~

(a) ~~\$50 after a minimum of three hours of service; or~~

(b) ~~\$100 after a minimum of six hours of service~~ an amount equal to the per diem amount paid to members of the Legislative Assembly under ORS 171.072 when engaged in the performance of official duties for each day or portion thereof.

(2) For the purpose of compensation, a board member or member of ~~an~~ the Public Health and Pharmacy Formulary Advisory eCommittee is considered engaged in the performance of official duties when:

(a) The activity furthers the ~~B~~board's mission, such as attending a board meeting;

(b) Engaged in an activity at the request of the board chair or authorized by a vote of the board in advance of the activity; or

(c) ~~Attending an official advisory committee, such as the Public Health & Pharmacy Formulary Advisory Committee~~ authorized meeting.

(3) Except as otherwise provided by law, all members, including those employed in full-time public service, may receive actual and necessary travel or other expenses actually incurred in the performance of their official duties within the limits provided by law or by the Oregon Department of Administrative services under ORS 292.210-, ORS 292.220, ORS 292.230, and ORS 292.250.

(4) ~~No~~ A board or e ~~member or~~ Public Health and Pharmacy Formulary Advisory Committee member shall be ~~is not~~ required to accept compensation or reimbursement of travel expenses while performing their official duties as a board or appointed committee member.

Statutory/Other Authority: ORS 689.115, ORS 689.205

Statutes/Other Implemented: ORS 689.115, ORS 2942.495, ORS 689.175, ORS 689.645, ~~2017-OL Ch. 106~~ ORS 689.649, ORS 171.072

AMEND: 855-010-0021

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0021

Adoption by Reference ¶

(1) The board adopts standards and other publications by reference, as necessary, through administrative rule. When a matter is included in a referenced publication that is in conflict with Oregon Revised Statutes or Oregon Administrative Rules, the statute or rule applies and the standard provision does not. All remaining parts or application of the standard remain in effect.¶

(2) All outside standards, statutes, rules and publications referred to in any rules adopted by the Board are by those references made a part of those rules as though fully set forth. Copies are available for inspection in the office of the Board of Pharmacy.

Statutory/Other Authority: ORS 689.205

Statutes/Other Implemented: ORS 689.205

AMEND: 855-010-0035

RULE SUMMARY: Provides that members may decline to accept compensation or reimbursement. Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0035

Board Compliance Program ¶

The ~~B~~oard's Compliance Director and ~~Pharmacy Inspectors shall~~Compliance Officers must be pharmacists licensed in the State of Oregon.

Statutory/Other Authority: ORS 689.205

Statutes/Other Implemented: ORS 689.195

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0100

State and Nationwide Criminal Background Checks for Licensure

- (1) The purpose of this rule is to provide for the reasonable screening of: applicants for licensure; directors, officers and designated representatives of drug outlets applying for registration; and individuals subject to investigation by the Board, in order to determine if they have a history of criminal behavior such that they are not fit to be granted or retain a license or registration issued by the Board.
- (2) "Subject individual" means a person from whom the Board may require legible fingerprints for the purpose of a state or nationwide criminal records check and fitness determination. In this rule, subject individual means: applicants for licensure or renewal of a license; directors, officers and designated representatives of drug outlets applying for registration or renewal of a registration; and individuals subject to an investigation by the Board.
- (3) Criminal records checks and fitness determinations are conducted according to ORS 181A.170, ORS 181A.175, ORS 181A.180, ORS 181A.185, ORS 181A.190, ORS 181A.195, ORS 181A.200, ORS 181A.205, ORS 181A.210, ORS 181A.215, ORS 670.280, ORS 676.303, and OAR 125-007-0200 to 125-007-0310, OAR 125-007-0200, OAR 125-007-0210, OAR 125-007-0220, OAR 125-007-0250, OAR 125-007-0260, OAR 125-007-0270, OAR 125-007-0300, OAR 125-007-0310, and OAR 125-007-0330.
- (a) The Board will request that the Oregon Department of State Police conduct a state and nationwide criminal records check, using fingerprint identification of subject individuals. The Board may conduct state criminal records checks on subject individuals and any licensee through the Law Enforcement Data System maintained by the Oregon Department of State Police in accordance with rules adopted, and procedures established, by the Oregon Department of State Police. Criminal history information obtained from the Law Enforcement Data System must be handled in accordance with ORS Chapter 181A, OAR 257-010 and OAR 257-015 and applicable Oregon Department of State Police procedures.
- (b) The applicant or licensee must disclose all arrests, charges, and convictions regardless of the outcome or date of occurrence. Disclosure includes any military or criminal records.
- (c) The Board may require additional information from the applicant or licensee, such as, but not limited to, proof of identity, previous names, residential history or additional criminal, judicial or other background information.
- (4) In making licensing fitness determinations subject to the requirements of ORS 670.280, the Board will consider the following:
- (a) The nature of any criminal record that reflects:
- (A) Drug or alcohol offense;
 - (B) Felony;
 - (C) Misdemeanor;
 - (D) U.S. military or international crime;
 - (E) Offense involving fraud, theft, identity theft or other instance of dishonesty;
 - (F) Offense involving violation of federal importation or customs laws or rules;
 - (G) Offense requiring registration as a sex offender;
 - (H) Condition of parole, probation, or diversion program, or
 - (I) Unresolved arrest, charge, pending indictment or outstanding warrant.
- (b) Intervening circumstances relevant to the responsibilities and circumstances of the license or registration. Intervening circumstances include but are not limited to:
- (A) The passage of time since the commission of the crime;
 - (B) The age of the subject individual at the time of the crime;
 - (C) The likelihood of a repetition of offenses or of the commission of another crime;
 - (D) The subsequent commission of another relevant crime;
 - (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
 - (F) A recommendation of an employer.
- (c) The facts that support the conviction or indictment, or that indicate the making of a false statement;
- (d) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's license or registration; and
- (e) Any false statement or omission made to the Board regarding the individual's criminal history.
- (f) Any refusal to submit or consent to a criminal record check including a refusal to provide fingerprint identification;
- (g) Any other pertinent information obtained as part of an investigation.
- (h) The Board shall must evaluate a crime or offense on the basis of the law of the jurisdiction in which the crime

or offense occurred.-¶

(i) The following are examples of crimes likely to result in denial unless there are significant mitigating circumstances:-¶

(A) Aggravated murder;-¶

(B) Murder;-¶

(C) Rape I;-¶

(D) Sodomy I;-¶

(E) Unlawful sexual penetration I;-¶

(F) Sexual abuse I-¶

(j) Under no circumstances ~~shall~~must an applicant be denied under these rules because of a juvenile record that has been expunged or set aside pursuant to ORS 419A.260 ~~to~~and ORS 419A.262.-¶

(k) Under no circumstances ~~shall~~must an applicant be denied under these rules due to the existence or contents of an adult record that has been set aside pursuant to ORS 137.225.-¶

(5) Criminal offender information is confidential. Dissemination of information received under this rule may only be made to people with a demonstrated and legitimate need to know the information. When the information is part of the investigation of an applicant or licensee, it is confidential pursuant to ORS 676.175. Any fingerprint cards used to conduct a check ~~shall~~must be destroyed by either the Federal Bureau of Investigation or the Oregon Department of State Police as specified in ORS 181A.195.-¶

(6) The Board will permit the subject individual for whom a fingerprint-based criminal records check was conducted to inspect the individual's own state and national criminal offender records and, if requested by the subject individual, provide the individual with a copy of the individual's own state and national criminal offender records.-¶

(7) If an applicant, licensee or registrant is denied a license, they are entitled to a contested case hearing pursuant to ~~ORS 183.413 to 470 and in accordance with OAR 855-001-0005 to~~, ORS 183.415, ORS 183.417, ORS 183.425, ORS 183.430, ORS 183.435, ORS 183.440, ORS 183.445, ORS 183.450, ORS 183.452, ORS 183.453, ORS 183.457, ORS 183.458, ORS 183.459, ORS 183.460, ORS 183.462, ORS 183.464, and ORS 183.470 and in accordance with OAR 855-001-0005, OAR 855-001-0012, OAR 855-001-0016, and OAR 855-001-0017.-¶

(8) A challenge to the accuracy or completeness of information provided by the Oregon Department of State Police, Federal Bureau of Investigation and agencies reporting information must be made through the Oregon Department of State Police, Federal Bureau of Investigation or reporting agency and not through the contested case process.-¶

(9) Request for re-evaluation following correction. If the subject individual successfully contests the accuracy or completeness of information provided by the Oregon Department of State Police, the Federal Bureau of Investigation or other agency reporting information to the Board, the Board will conduct a new criminal history check and re-evaluate the criminal history upon submission of a new criminal history request form.-¶

(10) The applicant or licensee must pay a criminal records check fee for the actual cost of acquiring and furnishing the criminal offender information.

Statutory/Other Authority: ORS 676.303, ORS 689.205, ORS 181A.195

Statutes/Other Implemented: ORS 676.303, ORS 181A.195, ORS 181A.170, ORS 181A.215, ORS 676.175

AMEND: 855-010-0110

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0110

State and Nationwide Criminal Background Checks for Employees, Volunteers and Employment Applicants

(1) The Bboard requires a criminal records check and fitness determination for Bboard employees, volunteers or applicants for employment with the Bboard.¶

(2) Criminal records checks and fitness determinations are conducted pursuant to ~~ORS 181A.170 to 181A.215 and OAR 125-007-0200 to~~ ORS 181A.175, ORS 181A.180, ORS 181A.185, ORS 181A.190, ORS 181A.195, ORS 181A.200, ORS 181A.205, ORS 181A.210, ORS 181A.215 and OAR 125-007-0200, OAR 125-007-0210, OAR 125-007-0220, OAR 125-007-0250, OAR 125-007-0260, OAR 125-007-0270, OAR 125-007-0300, and OAR 125-007-0310.¶

(a) To complete the criminal records check and fitness determination, the Bboard may require additional information from the employee, volunteer or applicant, such as, but not limited to, proof of identity or additional criminal, judicial or other background information. ¶

(b) If the employee, volunteer or applicant has potentially disqualifying criminal offender information, the Bboard will consider factors listed in ORS 181A.195 before making a fitness determination.¶

(c) An approved fitness determination does not guarantee employment.¶

(d) An incomplete fitness determination does not entitle the employee, volunteer or applicant the right to appeal under OAR 125-007-0300.¶

(3) Pursuant to ORS 181A.195, and OAR 125-007-0310, information obtained in the criminal records check is confidential and will not be disseminated by the Bboard except to persons with a demonstrated and legitimate need to know the information.

Statutory/Other Authority: ORS 676.303, ORS 689.205, ORS 181A.195

Statutes/Other Implemented: ORS 181A.195, ORS 181A.170, ORS 181A.215, ORS 676.303

AMEND: 855-010-0120

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0120

Criminal Background Checks - ~~Fees~~Costs

The applicant or licensee must pay a ~~criminal records check fee for the actual~~the board the cost of acquiring and furnishing the criminal offender information. The ~~fee amount~~will not exceed the cost to the Bboard to obtain such information on behalf of the applicant or licensee, including fees charged to the ~~B~~board by the ~~OSP and the FBI~~regon Department of State Police and the Federal Bureau of Investigation.

Statutory/Other Authority: ORS 676.303, ORS 689.205

Statutes/Other Implemented: ORS 676.303, ORS 181A.195, ORS 689.207

AMEND: 855-010-0130

RULE SUMMARY: Procedural rules revisions to ensure clarity, transparency and promote patient safety.

CHANGES TO RULE:

855-010-0130

Military Spouse or Domestic Partner

- (1) "Military spouse or domestic partner" means a spouse or domestic partner of an active member of the Armed Forces of the United States who is the subject of a military transfer to Oregon. ¶
- (2) To qualify for licensure under this rule, the military spouse or domestic partner must meet the following requirements: ¶
 - (a) Meet the qualifications for licensure as stated in OAR Division 855-019 or OAR 855-025. ¶
 - (b) Be married to, or in a domestic partnership with, a member of the Armed Forces of the United States who is assigned to a duty station located in Oregon by official active duty military order; ¶
 - (c) Applicant must complete an application for licensure, provide the Board with a valid email address, and complete and pass a national fingerprint-based criminal background check; ¶
 - (d) Provide evidence of current licensure as a pharmacist or pharmacy technician issued by another state; ¶
 - (e) Provide to the Board, in a manner determined by the Board, sufficient proof that the person is in good standing with the issuing out-of-state professional licensing board; and ¶
 - (f) Demonstrate competency as a pharmacist or pharmacy technician by having at least one year of active practice during the three years immediately preceding the application. ¶
- (3) A temporary authorization under this section is valid until the earliest of the following: ¶
 - (a) Two years after the date of issuance; ¶
 - (b) The date the spouse or domestic partner of the person to whom the authorization was issued completes the spouse's term of service in this state; or ¶
 - (c) The date the person's authorization issued by the other state expires. ¶
- (4) A temporary authorization issued under this section is not renewable.

Statutory/Other Authority: ORS 689.205

Statutes/Other Implemented: ORS 689.151, ORS 689.265, ~~2019 OL Ch. 142, 2019 OL Ch. 626~~ ORS 670.400, ORS 670.403