

HEALTH EVIDENCE REVIEW COMMISSION
Bylaws

ARTICLE I
The Commission and its Members

(A) The Health Evidence Review Commission (hereinafter “HERC” or “Commission”) is established pursuant to ORS 414.688 within the Oregon Health Authority. The Commission’s function as prescribed by ORS 414.688 to 414.704 is to:

- (1) Develop and maintain a list of health services ranked by priority, from the most important to the least important, representing the comparative benefits of each service to the population to be served
- (2) Develop or identify and shall disseminate evidence-based health care guidelines for use by providers, consumers and purchasers of health care in Oregon
- (3) Conduct comparative effectiveness research of health technologies

(B) In addition, the Commission’s responsibilities include reviewing the women’s services in ORS 414.694 and reporting to the Legislature on recommended changes in November of each even-numbered year.

(C) The Oregon Health Authority’s Health Policy and Analytics Division and other state agencies will support the work of the Commission in a manner mutually agreed upon by the Director and the respective entity(ies).

(D) The members of the Commission shall be appointed by the Governor and confirmed by the Oregon State Senate in accordance with ORS 414.688. Commission members shall serve four-year terms (initially staggered). A member whose term has expired, but whose successor has not been appointed and confirmed, may continue to serve until replaced. A member may serve a second four-year term assuming reappointment by the Governor and Senate confirmation.

(E) Members of the Commission are not entitled to compensation for services as a member but are entitled to expenses as provided in ORS 292.495.

ARTICLE II
Commission Officers and Duties

(A) The Commission shall select a Chairperson and a Vice Chairperson from among its members. An officer’s term shall continue for the duration of their appointment to the Commission. The Commission may change the Chairperson by an affirmative vote of at least nine (9) members. If an officer resigns as an officer or as a member of the Commission, a replacement will be selected at the next meeting.

- (1) Duties of the Chairperson:
 - (a) Preside at all meetings of the Commission.
 - (b) Coordinate meeting agendas after consultation with the Director.
 - (c) Review all draft Commission meeting minutes prior to the meeting at which they are to be approved.
 - (d) Be advised of all presentations or appearances of the Director or staff before the

Legislature, Oregon Health Policy Board, or Executive committees or subcommittees within the Oregon Health Authority or other agencies that relate to the work of the Commission.

- (e) The Chairperson may designate, in the absence of the Vice Chairperson or when expedient to Commission business, other Commission members to perform duties related to Commission business such as, but not limited to, presiding over meetings, attending other agency or public meetings, representing the Commission at Legislative hearings or before the media, and approval and review of documents that require action of the Chairperson. In such cases, the Commission member assigned the responsibility will be entitled to expenses as provided in ORS 292.495.

(2) Duties of the Vice Chairperson are:

- (a) Perform all of the Chairperson’s duties in his/her absence or inability to perform; and
- (b) Perform any other duties assigned by the Chairperson after consultation with the Commission.

ARTICLE III **Subcommittees**

(A) The Commission may establish subcommittees to undertake work chartered by the Commission. The subcommittees may include Commission members and other persons with relevant expertise and interest in the work of the subcommittee. Specifically, a subcommittee member must have expertise in one or more of the following:

- (1) Clinical expertise or training
- (2) Evaluation of clinical evidence regarding medical conditions and health services
- (3) Health benefit policy and administration
- (4) Health care consumer issues

(B) A subcommittee shall cease to exist upon a majority vote of the Commission to disband the subcommittee. Subcommittee membership and the designation of a Chairperson shall be made by majority of members of the Commission. Prior to appointment of a member to a subcommittee, the Chairperson shall review the candidate’s HERC Annual Disclosure form described in Article VI and summarize this information for members prior an appointment vote. Prior to May 1 of each calendar year, the Chairperson shall review all HERC Annual Disclosure forms completed by subcommittee members and summarize any important findings at the following Commission meeting.

(C) Advisory panels, including the Behavioral Health Advisory Panel, are not subcommittees. Advisory panel meetings shall be open to the public.

(D) Appointments to subcommittee are limited to three four-year terms, not to exceed 12 years total service on any combination of HERC subcommittees. Members are eligible for reappointment by a vote of the Commission. If a subcommittee member is also a member of the Commission at the end of their third four-year term, that person is eligible to be reappointed for an abbreviated fourth term which shall end with the person’s last term on the Commission. Members’ terms are deemed to begin on the first meeting they attend, and term limits for members appointed before 1/19/2023 will be calculated as if they had been appointed to consecutive 4-year terms.

ARTICLE IV **Commission and Subcommittee Meetings**

(A) The Commission shall meet at the call of the Chairperson in consultation with the Commission members and staff or at the call of the majority of the members. The Commission shall meet at least quarterly. A subcommittee shall meet at the call of the Chairperson of the subcommittee in consultation with subcommittee members and staff or at the call of the majority of members.

(B) The Commission and subcommittees established by the Commission shall conduct all business meetings in public and in conformity with Oregon Public Meetings Laws.

(C) The preliminary agenda for Commission and subcommittee meetings will be available from the Commission staff and posted on the Commission website [<http://www.oregon.gov/oha/hpa/dsi-herc/pages/index.aspx>] at least two business days prior to the meeting. The final agenda will be established at the beginning of each meeting.

(D) All actions of the Commission and subcommittees shall be expressed by motion or resolution. Official action by the Commission or a subcommittee requires a quorum consisting of a majority of members of the Commission or subcommittee, and the approval of a majority of the quorum¹.

(E) On motions, resolutions, or other matters, a voice vote may be used at Commission and subcommittee meetings. At the discretion of the Chairperson, or upon the request of a member, a roll call vote may be conducted. Proxy votes are not permitted.

(F) If a Commission or subcommittee member is unable to attend a meeting in person, the member may participate by telephone or Internet conferencing provided that the absent member can be identified when speaking, all participants can hear each other and members of the public attending the meeting can hear any member who speaks during the meeting. A member participating by such electronic means shall be considered in constituting a quorum.

(G) Commission members and subcommittee members shall inform the Director with as much notice as possible if unable to attend a scheduled meeting. Commission staff preparing the minutes shall record the attendance of members at the meeting for the minutes.

(H) The Commission and subcommittees will conduct their business through discussion, consensus building and informal meeting procedures. The Chairperson may, from time to time, establish procedural processes to ensure the orderly, timely and fair conduct of business.

ARTICLE V

Amendments to the Bylaws and Rules of Construction

(A) These Bylaws may be amended upon the affirmative vote of nine (9) members of the Commission.

(B) All rules and procedures in these Bylaws shall be liberally construed so that the public's health, safety and welfare shall be secured in accordance with the intents and purposes of applicable State laws and regulations.

¹ See [Oregon Public Meetings Manual](#), Appendix K, Table II.

ARTICLE VI
Disclosure of Interests

(A) At the beginning of each meeting, or prior to a vote of the Commission or a subcommittee, the presiding officer (HERC Chairperson, committee chair or designee), shall ask if any members have a potential conflict of interest, actual conflict of interest or personal interest to declare related to the matter at hand. A Commission or subcommittee member shall:

(1) When met with a potential conflict of interest or a personal interest, announce at the meeting or before the vote the nature of the interest prior to taking any action thereon as a Commission or subcommittee member.

(a) After announcing a potential conflict of interest or personal interest, a member may actively participate in the discussion and vote on the matter. The potential conflict of interest or personal interest will be recorded in the minutes of the meeting.

(b) After a subcommittee member discloses a personal interest or potential conflict of interest, the member may elect not to participate in discussions or votes related to the specified interest. If the member does not so elect, the presiding officer may choose to excuse the member from participation in discussion or votes related to the specified interest.

(2) When met with an actual conflict of interest, announce at a Commission or subcommittee meeting the nature of the actual conflict and:

(a) Except as provided in subparagraph (b), refrain from participation as a Commission or subcommittee member in any discussion, debate or vote on the issue out of which the actual conflict arises.

(b) If a Commission or subcommittee member's vote is necessary to meet a requirement of a minimum number of votes to take official action, the member must refrain from discussion or deliberation of the issue but may vote.

(B) Nothing in subsection (A) requires any Commission or subcommittee member to announce a conflict of interest more than once on the occasion which the matter out of which the conflict arises is discussed or debated.

(C) The Commission's or subcommittee's minutes shall reflect any disclosure of actual conflicts of interest, potential conflicts of interests and personal interests and how the conflicts or interests were managed.

(D) Within 30 days of appointment and once per calendar year, each member of the Commission and any subcommittee shall fill out the HERC Annual Disclosure Form which appears on the HERC website. This form will be reviewed by OHA staff and Commission leadership in making decisions and recommendations about membership and shall be available to members of the public as required by Oregon Public Records law. Materials released by public records request shall be redacted only as required by law. A member who fails to update the annual disclosure form by March 1 of each year shall be ineligible to vote until the form is completed.

(E) The Commission and its subcommittees may allow public verbal testimony at meetings at the discretion of the Chairperson. When public testimony is allowed, the presiding officer shall request that those testifying to state their name, any organization or business they are representing or affiliated with which has interests or position on the matter.

(F) If a member of the Commission or a subcommittee fails to make a required disclosure, either in the HERC Annual Disclosure Form or prior to a vote, the presiding officer may choose to excuse the member from participation in discussion or votes related to the specified interest. If the Chairperson becomes aware of a failure to make a required disclosure after a vote, the Chairperson shall report the discovered conflict to the Commission, and in the case of a Commission member, the Chairperson or shall report the discovered conflict to the Commission and to the Governor's office.

(G) Definitions for this Article VI:

(1) "Personal interest" means any interest of the member that could interfere with the individual's ability to consider evidence with an open mind and to make unbiased recommendations (e.g., employment, provision of the health service in question, stock held, public advocacy, publications, financial interest of a relative or relative's employer). "Personal interest" does not include any interest arising from the member's employment or professional activities which are disclosed as a part of a member's current conflict of interest form on file with OHA and which are specifically described on the HERC website.

(2) "Actual conflict interest" has the meaning defined in ORS 244.020.

(3) "Potential conflict of interest" has the meaning defined in ORS 244.020.

(H) Nothing in this Article eliminates any requirements of ORS chapter 244 or any guidance of the Oregon Government Ethics Commission.

Note: Appendices A and B are attached to provide additional information but are not part of the bylaws.

Appendix A: Relevant definitions from ORS 244.020

(1) “Actual conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which would be to the private pecuniary benefit or detriment of the person or the person’s relative or any business with which the person or a relative of the person is associated unless the pecuniary benefit or detriment arises out of circumstances described in subsection (13) of this section.

(2) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual and any other legal entity operated for economic gain but excluding any income-producing not-for-profit corporation that is tax exempt under section 501(c) of the Internal Revenue Code with which a public official or a relative of the public official is associated only as a member or board director or in a nonremunerative capacity.

(3) “Business with which the person is associated” means:

(a) Any private business or closely held corporation of which the person or the person’s relative is a director, officer, owner or employee, or agent or any private business or closely held corporation in which the person or the person’s relative owns or has owned stock, another form of equity interest, stock options or debt instruments worth \$1,000 or more at any point in the preceding calendar year;

(b) Any publicly held corporation in which the person or the person’s relative owns or has owned \$100,000 or more in stock or another form of equity interest, stock options or debt instruments at any point in the preceding calendar year; or

(c) Any publicly held corporation of which the person or the person’s relative is a director or officer.

(13) “Potential conflict of interest” means any action or any decision or recommendation by a person acting in a capacity as a public official, the effect of which could be to the private pecuniary benefit or detriment of the person or the person’s relative, or a business with which the person or the person’s relative is associated, unless the pecuniary benefit or detriment arises out of the following:

(a) An interest or membership in a particular business, industry, occupation or other class required by law as a prerequisite to the holding by the person of the office or position.

(b) Any action in the person’s official capacity which would affect to the same degree a class consisting of all inhabitants of the state, or a smaller class consisting of an industry, occupation or other group including one of which or in which the person, or the person’s relative or business with which the person or the person’s relative is associated, is a member or is engaged.

(c) Membership in or membership on the board of directors of a nonprofit corporation that is tax-exempt under section 501(c) of the Internal Revenue Code.

(15) “Public official” means any person who is serving as a member of HERC or a subcommittee.

(16) “Relative” means:

(a) The spouse, parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the public official;

(b) The parent, stepparent, child, sibling, stepsibling, son-in-law or daughter-in-law of the spouse of the public official;

(c) Any individual for whom the public official has a legal support obligation; or

(d) Any individual for whom the public official provides benefits arising from the public official’s public employment or from whom the public official receives benefits arising from that individual’s employment.

NOTE: Definitions omit provisions not relevant to HERC.

Appendix B: Considerations for HERC members regarding personal interests and conflicts of interest

The following is not legal advice, but is provided by OHA staff to assist members in complying with HERC bylaws and Oregon's conflict of interest law (ORS 244.120). For additional information, consult the Oregon Ethics Commission's [Guide for Public Officials](#).

1. Use common sense: If someone might think your employment, financial interests or reputation might be affected by a vote, disclose it prior to the vote, or at the beginning where the matter is discussed. Do you provide the service you are voting on? Did you write a scientific or opinion paper related to the matter? Have you advocated before the legislature? Say so. For example: "I perform about 20 of these procedures per year." Or "I own stock in the manufacturer." Or "I am an author on an academic paper related to this service." Whether you vote after making a disclosure is your decision; make it considering the nature of the impact the decision would have on your employment, finances and reputation. Occasionally, the presiding officer may excuse you from voting or participating in discussion based on a disclosure.
2. Fill out the HERC annual disclosure. Take your time and do it carefully. It is a membership responsibility.
3. On the annual disclosure, make sure to disclose your employment and how it relates to HERC work in the biographical information posted on the HERC web site. With this disclosure, you effectively disclose to other members and the public how your employment relates to HERC work. Disclosing general things (e.g. I am an internist who works for XYZ clinic.) means you don't need to disclose things which may appear to meet the technical definition of a personal interest but are unlikely to influence your vote. (For example, 'My employer, XYZ health system provides this highly specialized service, which is completely unrelated to my professional responsibilities.'))
4. Your appointment is based on requirements for membership. If you are a HERC member, the requirements appear in ORS 414.688; if you are a subcommittee member, the qualifications are a part of the bylaws. If a potential conflict would appear to arise based solely on a HERC member's qualification for membership, it is NOT a potential or actual conflict of interest in terms of ORS 244. However, HERC bylaws DO require that you disclose certain matters prior to voting if it meets a broader definition of "interest of the member that could interfere with the individual's ability to consider evidence with an open mind and to make unbiased recommendations."

5. Take cues from staff. Occasionally HERC staff will prompt members for disclosures that may not seem intuitive. This will happen when a vote might affect only a small number of providers in Oregon. This is the time to take a mental run through of your employer's business and your family tree.
6. Take special care to think about what you know about your relatives and their employers. Even if the relative isn't a health professional and especially if the employer is a large health system or health plan, this is worth thinking about. As you do:
 - a. Consider the focus of a vote. If the vote is on a service provided by one of a handful of providers in the state (e.g. transplants, specialized radiology), you might want to disclose it even if it seems a stretch that it could be a conflict. If the service is provided by a large number of providers across the state (e.g. common surgeries or devices), or the conflict relates to health plans (of which there are more than a few), ORS 244.120(13)(b) contains an exception for conflicts which affect members of a class to the same degree.
 - b. If it's a small class of impacted person or organizations, consider the following with respect to ORS 244, which requires disclosures of some things you wouldn't otherwise need to disclose according to HERC bylaws:
 - i. ORS 244 and the HERC bylaws define relative broadly, including in-laws, parents and children and their employers. If you know you have relatives who work in the health care industry, and especially if they work in a narrow field where only a few businesses or persons would be impacted by a decision, consider disclosing this prior to voting on the matter. You don't need to name the relative but you do need to disclose. For example, you might say "I have a relative who works for XYZ health system, which is one of three providers of this service in Oregon."
 - ii. Employment matters—even if the person's job function appears unrelated to health care.