

Senate Bill 251

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Repeals evidentiary privilege for data generated by health care peer review bodies. Repeals limitation on liability for person serving on or communicating information to health care peer review body.

A BILL FOR AN ACT

1
2 Relating to health care peer review; creating new provisions; amending ORS 192.517, 431.627, 441.055
3 and 682.056; and repealing ORS 41.675.

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

5 **SECTION 1. ORS 41.675 is repealed.**

6 **SECTION 2.** ORS 192.517 is amended to read:

7 192.517. (1) The system designated to protect and advocate for the rights of individuals shall
8 have access to all records of:

9 (a) Any individual who is a client of the system if the individual or the legal guardian or other
10 legal representative of the individual has authorized the system to have such access;

11 (b) Any individual, including an individual who has died or whose whereabouts are unknown:

12 (A) If the individual by reason of the individual's mental or physical condition or age is unable
13 to authorize such access;

14 (B) If the individual does not have a legal guardian or other legal representative, or the state
15 or a political subdivision of this state is the legal guardian of the individual; and

16 (C) If a complaint regarding the rights or safety of the individual has been received by the sys-
17 tem or if, as a result of monitoring or other activities which result from a complaint or other evi-
18 dence, there is probable cause to believe that the individual has been subject to abuse or neglect;
19 and

20 (c) Any individual who has a legal guardian or other legal representative, who is the subject
21 of a complaint of abuse or neglect received by the system, or whose health and safety is believed
22 with probable cause to be in serious and immediate jeopardy if the legal guardian or other legal
23 representative:

24 (A) Has been contacted by the system upon receipt of the name and address of the legal
25 guardian or other legal representative;

26 (B) Has been offered assistance by the system to resolve the situation; and

27 (C) Has failed or refused to act on behalf of the individual.

28 (2) The system shall have access to the name, address and telephone number of any legal
29 guardian or other legal representative of an individual.

30 (3) The system that obtains access to records under this section shall maintain the

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 confidentiality of the records to the same extent as is required of the provider of the services, except
2 as provided under the Protection and Advocacy for Mentally Ill Individuals Act (42 U.S.C. 10806)
3 as in effect on January 1, 2003.

4 (4) The system shall have reasonable access to facilities, including the residents and staff of the
5 facilities.

6 (5) This section is not intended to limit or overrule the provisions of ORS [41.675 or] 441.055 (9).

7 **SECTION 3.** ORS 431.627 is amended to read:

8 431.627. (1) In addition to and not in lieu of ORS 431.607 to 431.617, the Department of Human
9 Services shall designate trauma centers in areas that are within the jurisdiction of trauma advisory
10 boards other than in the area within the jurisdiction of area trauma advisory board 1.

11 (2) The department shall enter into contracts with designated trauma centers and monitor and
12 assure quality of care and appropriate costs for trauma patients meeting trauma system entry cri-
13 teria.

14 (3) All findings and conclusions, interviews, reports, studies, communications and statements
15 procured by or furnished to the department, the State Trauma Advisory Board or an area trauma
16 advisory board in connection with obtaining the data necessary to perform patient care quality as-
17 surance functions shall be confidential pursuant to ORS 192.501 to 192.505.

18 (4)(a) All data received or compiled by the State Trauma Advisory Board or any area trauma
19 advisory board in conjunction with department monitoring and assuring quality of trauma patient
20 care shall be confidential and privileged, nondiscoverable and inadmissible in any proceeding. No
21 person serving on or communicating information to the State Trauma Advisory Board or an area
22 trauma advisory board shall be examined as to any such communications or to the findings or rec-
23 ommendations of such board. A person serving on or communicating information to the State
24 Trauma Advisory Board or an area trauma advisory board shall not be subject to an action for civil
25 damages for actions taken or statements made in good faith. Nothing in this section affects the
26 admissibility in evidence of a party's medical records not otherwise confidential or privileged deal-
27 ing with the party's medical care. The confidentiality provisions of ORS [41.675 and] 41.685 [shall
28 also] apply to the monitoring and quality assurance activities of the State Trauma Advisory Board,
29 area trauma advisory boards and the department.

30 (b) As used in this section, "data" includes but is not limited to written reports, notes, records
31 and recommendations.

32 (5) Final reports by the department, the State Trauma Advisory Board and area trauma advisory
33 boards shall be available to the public.

34 (6) The department shall publish a biennial report of the Emergency Medical Services and
35 Trauma Systems Program and trauma systems activities.

36 **SECTION 4.** ORS 441.055 is amended to read:

37 441.055. (1) The Department of Human Services shall adopt such rules with respect to the dif-
38 ferent types of health care facilities as may be designed to further the accomplishment of the pur-
39 poses of ORS 441.015 to 441.087. No rules shall require any specific food so long as the necessary
40 nutritional food elements are present.

41 (2) Rules describing care given in health care facilities shall include, but not be limited to,
42 standards of patient care or patient safety, adequate professional staff organizations, training of staff
43 for whom no other state regulation exists, suitable delineation of professional privileges and ade-
44 quate staff analyses of clinical records. The department may in its discretion accept certificates by
45 the Joint Commission on Accreditation of Hospitals or the Committee on Hospitals of the American

1 Osteopathic Association as evidence of compliance with acceptable standards.

2 (3) The governing body of each health care facility shall be responsible for the operation of the
3 facility, the selection of the medical staff and the quality of care rendered in the facility. The gov-
4 erning body shall:

5 (a) Ensure that all health care personnel for whom state licenses, registrations or certificates
6 are required are currently licensed, registered or certified;

7 (b) Ensure that physicians admitted to practice in the facility are granted privileges consistent
8 with their individual training, experience and other qualifications;

9 (c) Ensure that procedures for granting, restricting and terminating privileges exist and that
10 such procedures are regularly reviewed to assure their conformity to applicable law;

11 (d) Ensure that physicians admitted to practice in the facility are organized into a medical staff
12 in such a manner as to effectively review the professional practices of the facility for the purposes
13 of reducing morbidity and mortality and for the improvement of patient care; and

14 (e) Ensure that a physician is not denied medical staff membership or privileges at the facility
15 solely on the basis that the physician holds medical staff membership or privileges at another health
16 care facility.

17 (4) The physicians organized into a medical staff pursuant to subsection (3) of this section shall
18 propose medical staff bylaws to govern the medical staff. The bylaws shall include, but not be limited
19 to the following:

20 (a) Procedures for physicians admitted to practice in the facility to organize into a medical staff
21 pursuant to subsection (3) of this section;

22 (b) Procedures for ensuring that physicians admitted to practice in the facility are granted
23 privileges consistent with their individual training, experience and other qualifications;

24 (c) Provisions establishing a framework for the medical staff to nominate, elect, appoint or re-
25 move officers and other persons to carry out medical staff activities with accountability to the
26 governing body;

27 (d) Procedures for ensuring that physicians admitted to practice in the facility are currently li-
28 censed by the Board of Medical Examiners for the State of Oregon;

29 (e) Procedures for ensuring that the facility's procedures for granting, restricting and terminat-
30 ing privileges are followed and that such procedures are regularly reviewed to assure their con-
31 formity to applicable law; and

32 (f) Procedures for ensuring that physicians provide services within the scope of the privileges
33 granted by the governing body.

34 (5) Amendments to medical staff bylaws shall be accomplished through a cooperative process
35 involving both the medical staff and the governing body. Medical staff bylaws shall be adopted, re-
36 pealed or amended when approved by the medical staff and the governing body. Approval shall not
37 be unreasonably withheld by either. Neither the medical staff nor the governing body shall withhold
38 approval if such repeal, amendment or adoption is mandated by law, statute or regulation or is
39 necessary to obtain or maintain accreditation or to comply with fiduciary responsibilities or if the
40 failure to approve would subvert the stated moral or ethical purposes of the institution.

41 (6) The Board of Medical Examiners for the State of Oregon may appoint one or more physicians
42 to conduct peer review for a health care facility upon request of such review by all of the following:

43 (a) The physician whose practice is being reviewed.

44 (b) The executive committee of the health care facility's medical staff.

45 (c) The governing body of the health care facility.

1 (7) The physicians appointed pursuant to subsection (6) of this section shall be deemed agents
 2 of the Board of Medical Examiners for the State of Oregon, subject to the provisions of ORS 30.310
 3 to 30.400 and shall conduct peer review. Peer review shall be conducted pursuant to the bylaws of
 4 the requesting health care facility.

5 (8) Any person serving on or communicating information to a peer review committee shall not
 6 be subject to an action for damages for action or communications or statements made in good faith.

7 (9) All findings and conclusions, interviews, reports, studies, communications and statements
 8 procured by or furnished to the peer review committee in connection with a peer review are confi-
 9 dential pursuant to ORS 192.501 to 192.505 and 192.690 [*and all data is privileged pursuant to ORS*
 10 *41.675*].

11 (10) Notwithstanding subsection (9) of this section, a written report of the findings and conclu-
 12 sions of the peer review shall be provided to the governing body of the health care facility who shall
 13 abide by the privileged and confidential provisions set forth in subsection (9) of this section.

14 (11) Procedures for peer review established by subsections (6) to (10) of this section are exempt
 15 from ORS chapter 183.

16 (12) The department shall adopt by rule standards for rural hospitals, as defined in ORS 442.470,
 17 that specifically address the provision of care to postpartum and newborn patients so long as patient
 18 care is not adversely affected.

19 (13) For purposes of this section, "physician" has the meaning given the term in ORS 677.010.

20 **SECTION 5.** ORS 682.056 is amended to read:

21 682.056. (1) Upon the request of the designated official of an ambulance service as defined in
 22 ORS 682.051, a first responder as defined in ORS 682.025, the emergency medical services system
 23 authority in the county in which a prehospital care event occurred or the Department of Human
 24 Services, a hospital licensed under ORS chapter 441 may provide to the requester the following in-
 25 formation:

26 (a) The disposition of the person who was the subject of the prehospital care event from the
 27 emergency department or other intake facility of the hospital, including but not limited to:

28 (A) Whether the person was admitted to the hospital; and

29 (B) If the person was admitted, to what unit the person was assigned;

30 (b) The diagnosis given the person in the emergency department or other intake facility; and

31 (c) Whether within the first hour after the person arrived at the hospital, the person received
 32 one or more medical procedures on a list that the Department of Human Services shall establish by
 33 rule.

34 (2) Information provided pursuant to subsection (1) of this section shall be:

35 (a) Treated as a confidential medical record and not disclosed;

36 (b) Considered privileged data under ORS [*41.675 and*] 41.685; and

37 (c) Used only for legitimate medical quality assurance and quality improvement activities.

38 (3) A hospital may charge a fee reasonably related to the actual cost of providing the informa-
 39 tion requested pursuant to this section.

40 (4) For purposes of this section, "emergency medical services system" has the meaning given in
 41 ORS 41.685.

42 **SECTION 6.** (1) **Except as provided in subsection (2) of this section, the repeal of ORS**
 43 **41.675 by section 1 of this 2007 Act and the amendments to ORS 192.517, 431.627, 441.055 and**
 44 **682.056 by sections 2 to 5 of this 2007 Act apply to all causes of action, whether arising before,**
 45 **on or after the effective date of this 2007 Act.**

1 **(2) The repeal of ORS 41.675 by section 1 of this 2007 Act and the amendments to ORS**
2 **192.517, 431.627, 441.055 and 682.056 by sections 2 to 5 of this 2007 Act do not apply to a cause**
3 **of action that arose before the effective date of this 2007 Act in which a judgment was en-**
4 **tered in a circuit court before the effective date of this 2007 Act.**

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