

House Bill 2604

Sponsored by Representatives GREENLICK, HOLVEY; Representatives GELSER, HARKER, READ, SHIELDS

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**.

Requires covered entities to report annually on system safeguards for protecting confidentiality of individually identifiable health information.

A BILL FOR AN ACT

1
2 Relating to individually identifiable health information; creating new provisions; and amending ORS
3 442.445, 731.488 and 731.574.

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

5 **SECTION 1.** ORS 731.488 is amended to read:

6 731.488. (1) Each insurer shall have an annual audit conducted by an independent certified
7 public accountant and shall file an audited financial report annually with the Director of the De-
8 partment of Consumer and Business Services. The annual audited financial report shall disclose:

9 (a) The financial position of the insurer as of the end of the most recent calendar year; and

10 (b) The results of the insurer's operations, cash flows and changes in capital and surplus for the
11 year then ended.

12 (2) The director shall adopt rules with respect to the following matters as needed for carrying
13 out the requirements of this section:

14 (a) Required contents and format of the audited financial report.

15 (b) Requirements for filing the report.

16 (c) Requirements applicable to qualifications and designation of certified public accountants for
17 purposes of audits under this section. The requirements may include limitations on length of service
18 for certified public accountants and may permit recognition of accountants comparably qualified
19 under the laws of another country.

20 (d) Requirements applicable to evaluation of the accounting procedures of an insurer and its
21 system of internal control by a certified public accountant.

22 (e) Standards governing the scope and preparation of the audit.

23 (f) Requirements and procedures relating to the reporting of the adverse financial condition of
24 an insurer by a certified public accountant.

25 (g) Requirements and procedures relating to the reporting of significant deficiencies for internal
26 controls of an insurer.

27 (h) Exemptions.

28 **(i) Requirements and procedures relating to the protection of health information reports**
29 **required by ORS 731.574.**

30 *[(i)]* **(j)** Any other matter that the director determines to be needed for preparation of or inclu-
31 sion in the financial report.

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 **SECTION 2.** ORS 731.574 is amended to read:

2 731.574. (1) Except as provided in subsection [(4)] (5) of this section, every authorized insurer
3 shall file with the Director of the Department of Consumer and Business Services, on or before
4 March 1 of each year, a financial statement for the year ending December 31 immediately preceding.
5 This statement shall be on a form prescribed by the director. The statement shall contain such de-
6 tailed exhibit of the condition and transactions of the insurer, in such form and otherwise, as the
7 director prescribes. The director shall consider and may prescribe the annual statement blank or
8 other form established by the National Association of Insurance Commissioners, including in-
9 structions prepared by the National Association of Insurance Commissioners for completing the
10 blank or other form. If the director prescribes the blank or other form established by the National
11 Association of Insurance Commissioners, including the instructions, an insurer submitting the an-
12 nual statement blank or form established by the National Association of Insurance Commissioners
13 must complete the blank or form according to the instructions. The director may require the filing
14 of information in addition to the information required in the annual statement. The director may
15 also require additional filings as the director determines necessary.

16 **(2) A covered entity, as defined in ORS 192.519, that is required to file an annual financial**
17 **statement under subsection (1) of this section shall file with the statement a protection of**
18 **health information report. The report must:**

19 **(a) State the responsibility of management for establishing and maintaining adequate**
20 **safeguards and procedures for protecting the confidentiality of individually identifiable health**
21 **information that the covered entity retains in electronic and hard copy form;**

22 **(b) Contain an assessment, as of December 31 of the preceding year, of the effectiveness**
23 **of the safeguards and procedures in protecting the confidentiality of individually identifiable**
24 **health information;**

25 **(c) Contain assurances that the signing officers have disclosed to auditors and the gov-**
26 **erning board of the covered entity:**

27 **(A) All significant deficiencies in the design or operation of record-keeping systems or**
28 **controls that could adversely affect the covered entity's ability to protect the confidentiality**
29 **of individually identifiable health information;**

30 **(B) Any breaches of the security of individually identifiable health information, whether**
31 **material or not, that involve management or other employees who have a significant role in**
32 **the covered entity's record-keeping systems or controls; and**

33 **(C) All necessary steps that have been taken to address deficiencies in the design or op-**
34 **eration of record-keeping systems or controls and to resolve any material weaknesses iden-**
35 **tified to or by the covered entity's auditors; and**

36 **(d) Contain assurances that the signing officers have identified for auditors any material**
37 **weaknesses in the record-keeping systems or controls.**

38 [(2)] (3) The financial statement filed by an insurer under subsection (1) of this section **and the**
39 **report filed under subsection (2) of this section** shall be verified by the oaths of the president
40 and secretary of the insurer or, in their absence, by two other principal officers. The statement of
41 an alien company shall embrace only its condition and transactions in the United States, unless the
42 director requires otherwise, and shall be verified by the oath of its resident manager or principal
43 representatives in the United States. Facsimile signatures are acceptable and shall have the same
44 force as original signatures.

45 [(3)] (4) The director may grant an extension of time for filing the annual statement.

1 [(4)] (5) A home protection insurer may adopt a fiscal year other than the calendar year for its
 2 financial statements filed with the director under subsection (1) of this section by declaring the fis-
 3 cal year in its application for a certificate of authority. An adopted fiscal year may not be changed
 4 without the consent of the insurance supervisory official of the insurer’s domicile. The financial
 5 statement of a home protection insurer on other than the calendar year basis shall be filed with the
 6 director on or before the first day of the third month which follows the end of the fiscal year.

7 [(5)] (6) An insurer, subject to requirements set forth in rules made by the director, may publish
 8 financial statements, or information based on financial statements, prepared on a basis that is in
 9 accordance with requirements of a competent authority and differs from the basis of the statements
 10 required to be filed with the director.

11 [(6)] (7) It is the intention of the Legislative Assembly that the director consider and follow the
 12 accounting, reporting and other standards, practices and procedures established by the National
 13 Association of Insurance Commissioners in order to:

14 (a) Strengthen and improve regulation of insurer solvency by the Department of Consumer and
 15 Business Services;

16 (b) Promote uniform and consistent regulation of insurance by this state and the other states;

17 (c) Reduce regulatory costs owing to unnecessary differences in the laws of the various states;
 18 and

19 (d) Obtain and maintain accreditation of this state’s insurance regulatory program by the Na-
 20 tional Association of Insurance Commissioners.

21 **(8) As used in this section, “individually identifiable health information” has the meaning**
 22 **given that term in ORS 192.519.**

23 **SECTION 3. Section 4 of this 2009 Act is added to and made a part of ORS chapter 441.**

24 **SECTION 4. (1) A health care facility shall file with the Administrator of the Office for**
 25 **Oregon Health Policy and Research a protection of health information report no later than**
 26 **120 days following the close of the fiscal year. The report shall be on a form prescribed by**
 27 **the administrator, shall be signed by the chief executive officer of the facility and must:**

28 **(a) State the responsibility of the health care facility’s management for establishing and**
 29 **maintaining adequate safeguards and procedures for protecting the confidentiality of indi-**
 30 **vidually identifiable health information that the facility retains in electronic and hard copy**
 31 **form;**

32 **(b) Contain assurances that the signing officer has disclosed to the board of directors of**
 33 **the facility:**

34 **(A) All significant deficiencies in the design or operation of record-keeping systems or**
 35 **controls that could adversely affect the facility’s ability to protect the confidentiality of in-**
 36 **dividually identifiable health information;**

37 **(B) Any breaches of the security of individually identifiable health information, whether**
 38 **material or not, that involve management, staff or employees of the facility who have a sig-**
 39 **nificant role in the facility’s record-keeping systems or controls; and**

40 **(C) All necessary steps that have been taken to address deficiencies in the design or op-**
 41 **eration of record-keeping systems or controls and to resolve any material weaknesses iden-**
 42 **tified by the facility; and**

43 **(c) Contain assurances that the signing officer has identified for the board any material**
 44 **weaknesses in the record-keeping systems or controls.**

45 **(2) The administrator may adopt all rules necessary to carry out the provisions of this**

1 **section.**

2 **(3) As used in this section, “individually identifiable health information” has the meaning**
3 **given that term in ORS 192.519.**

4 **SECTION 5.** ORS 442.445 is amended to read:

5 442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400
6 to 442.463 or section 3, chapter 838, Oregon Laws 2007, **or section 4 of this 2009 Act** and rules of
7 the Office for Oregon Health Policy and Research may be subject to a civil penalty.

8 (2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a
9 schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the vi-
10 olation.

11 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

12 (4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and
13 conditions as the administrator considers proper and consistent with the public health and safety.

14 (5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose
15 of rate determination or for reimbursement by a third-party payer.

16 **SECTION 6.** ORS 442.445, as amended by section 8, chapter 838, Oregon Laws 2007, is amended
17 to read:

18 442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400
19 to 442.463 **or section 4 of this 2009 Act** and rules of the Office for Oregon Health Policy and Re-
20 search may be subject to a civil penalty.

21 (2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a
22 schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the vi-
23 olation.

24 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

25 (4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and
26 conditions as the administrator considers proper and consistent with the public health and safety.

27 (5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose
28 of rate determination or for reimbursement by a third-party payer.

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