

Senate Bill 1040

Sponsored by Senator DEVLIN (Pre-session filed.)

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**.

Directs Office for Oregon Health Policy and Research to establish and maintain universal provider registry and provide Department of Human Services, Oregon Health Authority and Home Care Commission with access to registry. Precludes use of public funds to support employment of care providers not enrolled in registry.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to a universal provider registry; creating new provisions; amending ORS 181.537 and
3 442.468; and declaring an emergency.

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

5 **SECTION 1.** ORS 442.468 is amended to read:

6 442.468. (1) The Office for Oregon Health Policy and Research shall create and maintain a
7 healthcare workforce database that will provide information upon request to state agencies and to
8 the Legislative Assembly about Oregon's healthcare workforce, including:

9 (a) Demographics, including race and ethnicity.

10 (b) Practice status.

11 (c) Education and training background.

12 (d) Population growth.

13 (e) Economic indicators.

14 (f) Incentives to attract qualified individuals, especially those from underrepresented minority
15 groups, to healthcare education.

16 **(2) The Office for Oregon Health Policy and Research shall create and maintain, within**
17 **the healthcare workforce database, a universal provider registry. The office shall provide the**
18 **Department of Human Services, the Oregon Health Authority and the Home Care Commis-**
19 **sion with the ability to input and remove data from the registry.**

20 [(2)] (3) The Administrator for the Office for Oregon Health Policy and Research may contract
21 with a private or public entity to establish and maintain the database and to analyze the data. The
22 office is not subject to the requirements of ORS chapters 279A, 279B and 279C with respect to the
23 contract.

24 **SECTION 2. (1) Public funds may not be used to support, in whole or in part, the em-**
25 **ployment of an individual as a care provider unless the individual is enrolled in the universal**
26 **provider registry described in ORS 442.468.**

27 **(2) Upon receiving a completed application for enrollment in the universal provider reg-**
28 **istry, the Department of Human Services, the Oregon Health Authority or the Home Care**
29 **Commission shall enroll the individual in the registry and assign the individual a universal**
30 **provider number if the individual:**

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 (a) Successfully completes any required records checks; and
2 (b) Complies with the rules of the department, the authority or the commission.
- 3 (3) An application for enrollment in the registry:
4 (a) Must include:
5 (A) The applicant's name, date of birth, home address and telephone number;
6 (B) The highest level of education the applicant has attained and any professional cer-
7 tifications or licenses held by the applicant;
8 (C) The name and address of each of the applicant's employers or prospective employers
9 or, if the name of an applicant's employer or prospective employer is otherwise privileged
10 by law, the name of the program under which the applicant is or will be funded;
11 (D) The position held or sought by the applicant; and
12 (E) Any other information required by the department, the authority or the commission.
- 13 (b) May include the applicant's gender and ethnicity.
- 14 (4) Enrollment in the universal provider registry may be renewed upon compliance with
15 subsection (2) of this section and expires upon the earlier of the following:
16 (a) Every two years from the date of enrollment;
17 (b) When state or federal law, or the terms of a contract entered into with the depart-
18 ment, the authority or the commission, requires an additional records check; or
19 (c) When a care provider changes employers. The department, the authority or the
20 commission is not required to conduct a records check when an individual renews enrollment
21 as a result of expiration under this paragraph.
- 22 (5)(a) The department, the authority or the commission shall deny enrollment in the
23 universal provider registry and shall remove an enrollee from the registry if an individual
24 fails a records check or otherwise fails to comply with rules adopted by the department, the
25 authority or the commission.
- 26 (b) An applicant who is denied enrollment in the universal provider registry or an
27 enrollee who is removed from the registry by the department, the authority or the commis-
28 sion may request a contested case hearing under ORS chapter 183.
- 29 (6) The department, the authority and the commission shall adopt rules to carry out the
30 provisions of this section. The rules must include a procedure:
31 (a) That allows individuals to renew their enrollment in the registry prior the expiration
32 of their enrollment; and
33 (b) For applicants and enrollees to request that the name of an individual's employer be
34 confidential and exempt from public disclosure under ORS 192.502.
- 35 (7) As used in this section:
36 (a) "Care" includes treatment, education, training, instruction, supervision, placement
37 services, recreation or support provided to the elderly or persons with disabilities.
38 (b) "Care provider" means an individual who is:
39 (A) Compensated for the provision of care and is required, under state or federal law, or
40 pursuant to a contract with the Department of Human Services or the Oregon Health Au-
41 thority, to complete a records check as a condition of providing care;
42 (B) Employed in a health care facility as defined in ORS 442.015 and is required by state
43 or federal law to complete a records check as a condition of employment;
44 (C) A home care worker as defined in ORS 410.600; or
45 (D) Compensated by a qualified entity for the provision of care.

1 (c) "Qualified entity" means a qualified entity as defined in ORS 181.537 that is:

2 (A) Regulated or otherwise subject to oversight by the Department of Human Services
3 or the Oregon Health Authority; or

4 (B) Provides care, or licenses, certifies or registers others to provide care, pursuant to
5 a program administered by, or a contract entered into with, the Department of Human Ser-
6 vices or the Oregon Health Authority.

7 (d) "Records check" includes a state or nationwide criminal records check conducted
8 under the provisions of ORS 181.534, 181.537 or 443.004.

9 **SECTION 3.** (1) The Department of Human Services, in consultation with the Oregon
10 Health Authority, shall study the feasibility and cost effectiveness of:

11 (a) Consolidating the process of performing records checks into a single unit of the de-
12 partment or authority;

13 (b) Utilizing technology to streamline the records check process;

14 (c) Allowing applicants to apply over the Internet for enrollment in the universal provider
15 registry;

16 (d) Allowing employers of care providers to verify over the Internet that an employee is
17 enrolled in the universal provider registry; and

18 (e) Creating a records check classification system that provides:

19 (A) Uniformity across programs administered or regulated by the department, the au-
20 thority or the Home Care Commission; and

21 (B) Portability of a care provider's universal provider number.

22 (2) The department shall submit a report that includes the results of the study described
23 in subsection (1) of this section to the Legislative Assembly in the manner provided in ORS
24 192.245 no later than January 1, 2012.

25 **SECTION 4.** ORS 181.537 is amended to read:

26 181.537. (1) As used in this section:

27 (a) "Care" means the provision of care, treatment, education, training, instruction, supervision,
28 placement services, recreation or support to children, the elderly or persons with disabilities.

29 (b) "Qualified entity" means a community mental health program, a community developmental
30 disabilities program, a local health department or an individual or business or organization, whether
31 public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organ-
32 ization that licenses, certifies or registers others to provide care.

33 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
34 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
35 partment may require the fingerprints of a person:

36 (a) Who is employed by or is applying for employment with either department or the authority;

37 (b) Who provides or seeks to provide services to either department or the authority as a con-
38 tractor, subcontractor, vendor or volunteer who:

39 (A) May have contact with recipients of care;

40 (B) Has access to personal information about employees of either department or the authority,
41 recipients of care from either department or the authority or members of the public, including Social
42 Security numbers, dates of birth, driver license numbers, medical information, personal financial in-
43 formation or criminal background information;

44 (C) Has access to information the disclosure of which is prohibited by state or federal laws,
45 rules or regulations, or information that is defined as confidential under state or federal laws, rules

- 1 or regulations;
- 2 (D) Has access to property held in trust or to private property in the temporary custody of the
3 state;
- 4 (E) Has payroll or fiscal functions or responsibility for:
- 5 (i) Receiving, receipting or depositing money or negotiable instruments;
- 6 (ii) Billing, collections, setting up financial accounts or other financial transactions; or
- 7 (iii) Purchasing or selling property;
- 8 (F) Provides security, design or construction services for government buildings, grounds or fa-
9 cilities;
- 10 (G) Has access to critical infrastructure or secure facilities information; or
- 11 (H) Is providing information technology services and has control over or access to information
12 technology systems;
- 13 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering
14 programs, persons or qualified entities that provide care;
- 15 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
16 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
17 thority and that provide care; or
- 18 (e) For the purposes of employment decisions made by a mass transit district or transportation
19 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
20 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
21 ents.
- 22 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal
23 records checks on a person through the Law Enforcement Data System maintained by the Depart-
24 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon
25 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable
26 persons.
- 27 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-
28 fied entities, in accordance with the rules of the Department of Human Services or the Oregon
29 Health Authority and the rules of the Department of State Police, information received from the
30 Law Enforcement Data System. However, any criminal offender records and information furnished
31 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
32 Investigation through the Department of State Police may not be disseminated to qualified entities.
- 33 (5) A qualified entity, using rules adopted by the Department of Human Services or the Oregon
34 Health Authority, shall determine under this section whether a person is fit to hold a position,
35 provide services, be employed or, if the qualified entity has authority to make such a determination,
36 be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS
37 181.534, any false statements made by the person regarding the criminal history of the person and
38 any refusal to submit or consent to a criminal records check including fingerprint identification. If
39 a person is determined to be unfit, then that person may not hold the position, provide services or
40 be employed, licensed, certified or registered.
- 41 (6) In making the fitness determination under subsection (5) of this section, the qualified entity
42 shall consider:
- 43 (a) The nature of the crime;
- 44 (b) The facts that support the conviction or pending indictment or indicate the making of the
45 false statement;

1 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
2 person's present or proposed position, services, employment, license, certification or registration;
3 and

4 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
5 services, employment, license, certification or registration. Intervening circumstances include but
6 are not limited to the passage of time since the commission of the crime, the age of the person at
7 the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of an-
8 other relevant crime and a recommendation of an employer.

9 (7) The Department of Human Services, the Oregon Health Authority and the Employment De-
10 partment may make fitness determinations based on criminal offender records and information fur-
11 nished by the Federal Bureau of Investigation through the Department of State Police only as
12 provided in ORS 181.534.

13 (8) A qualified entity and an employee of a qualified entity acting within the course and scope
14 of employment are immune from any civil liability that might otherwise be incurred or imposed for
15 determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,
16 provide services or be employed, licensed, certified or registered. A qualified entity, employee of a
17 qualified entity acting within the course and scope of employment and an employer or employer's
18 agent who in good faith comply with this section and the decision of the qualified entity or employee
19 of the qualified entity acting within the course and scope of employment are not liable for the fail-
20 ure to hire a prospective employee or the decision to discharge an employee on the basis of the
21 qualified entity's decision. An employee of the state acting within the course and scope of employ-
22 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination
23 of information lawfully obtained under this section.

24 (9) The Department of Human Services and the Oregon Health Authority shall develop systems
25 that maintain information regarding criminal records checks in order to minimize the administrative
26 burden imposed by this section and ORS 181.534. Records maintained under this subsection are
27 confidential and may not be disseminated except for the purposes of this section and in accordance
28 with the rules of the Department of Human Services, the Oregon Health Authority and the Depart-
29 ment of State Police. Nothing in this subsection:

30 (a) Permits the Department of Human Services **or the Oregon Health Authority** to retain
31 fingerprint cards obtained pursuant to this section.

32 (b) **Requires the Department of Human Services or the Oregon Health Authority to in-**
33 **clude, in the systems described in this subsection, information regarding criminal records**
34 **checks of individuals enrolled in the universal provider registry described in ORS 442.468.**

35 (10) In addition to the rules required by ORS 181.534, the Department of Human Services and
36 the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

37 (a) Specifying which qualified entities are subject to this section;

38 (b) Specifying which qualified entities may request criminal offender information;

39 (c) Specifying which qualified entities are responsible for deciding whether a subject individual
40 is not fit for a position, service, license, certification, registration or employment; and

41 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
42 check, may proceed to make a fitness determination under subsection (5) of this section using the
43 information maintained by the Department of Human Services and the Oregon Health Authority
44 pursuant to subsection (9) of this section.

45 (11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted,

1 the qualified entity shall deny or terminate the employment of the person, or revoke or deny any
2 applicable position, authority to provide services, employment, license, certification or registration.

3 (12) If the qualified entity requires a criminal records check of employees or other persons, the
4 application forms of the qualified entity must contain a notice that employment is subject to fin-
5 gerprinting and a criminal records check.

6 **SECTION 5. (1) Section 2 of this 2010 Act and the amendments to ORS 181.537 and 442.468**
7 **by sections 1 and 4 this 2010 Act become operative on January 1, 2011.**

8 **(2) The Department of Human Services, the Oregon Health Authority and the Home Care**
9 **Commission may adopt rules or take any other action before the operative date specified in**
10 **subsection (1) of this section that is necessary to enable the department, the authority or**
11 **the commission to exercise, on or after the operative date specified in subsection (1) of this**
12 **section, all the duties, functions and powers conferred on the department, the authority or**
13 **the commission by this 2010 Act.**

14 **SECTION 6. Section 3 of this 2010 Act is repealed on January 2, 2012.**

15 **SECTION 7. This 2010 Act being necessary for the immediate preservation of the public**
16 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
17 **on its passage.**

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