

House Bill 2325

Sponsored by Representative BARKER; Representatives DEMBROW, J SMITH, TOMEI (at the request of former Representative Chuck Riley) (Presession 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**.

Modifies elder abuse investigation procedures where suspicious physical injury exists.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to elder abuse investigations; creating new provisions; amending ORS 124.080 and 441.624;
3 and declaring an emergency.

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

5 **SECTION 1. Sections 3, 4 and 5 of this 2011 Act shall be known and may be cited as the**
6 **“Elder Abuse Investigation Act of 2011.”**

7 **SECTION 2. Sections 3, 4 and 5 of this 2011 Act are added to and made a part of ORS**
8 **124.050 to 124.095.**

9 **SECTION 3. (1) As used in this section and sections 4 and 5 of this 2011 Act:**

10 (a) **“Designated medical professional” means a person described in section 4 of this 2011**
11 **Act or the person’s designee.**

12 (b) **“Elder abuse” means abuse of an elderly person.**

13 (c) **“Elder abuse medical assessment” means an assessment by or under the direction of**
14 **a designated medical professional trained in the evaluation, diagnosis and treatment of elder**
15 **abuse. An assessment under this paragraph includes the taking of a thorough medical his-**
16 **tory, a complete physical examination and an interview for the purpose of making a medical**
17 **diagnosis, determining whether or not the elderly person has been abused and identifying the**
18 **appropriate treatment or referral for follow-up for the elderly person.**

19 (d) **“Elderly person” means a person 65 years of age or older.**

20 (e) **“Suspicious physical injury” includes, but is not limited to, the following injuries that**
21 **are manifested upon or in the body of an elderly person and that are the likely result of elder**
22 **abuse as opposed to an existing medical condition for which the elderly person is currently**
23 **receiving medical treatment:**

24 (A) **Burns or scalds;**

25 (B) **Extensive bruising or abrasions on any part of the body;**

26 (C) **Bruising, swelling or abrasions on the head, neck or face;**

27 (D) **Fractures of any bone;**

28 (E) **Dislocations, soft tissue swelling or moderate to severe cuts;**

29 (F) **Loss of the ability to walk or move normally according to the elderly person’s medical**
30 **condition;**

31 (G) **Unconsciousness or difficulty maintaining consciousness;**

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 (H) Multiple injuries of different types;

2 (I) Injuries causing serious or protracted disfigurement or loss of impairment of the
3 function of any bodily organ; or

4 (J) Any other injury that threatens the physical well-being of the elderly person.

5 (2) If a person conducting an investigation under ORS 124.070 observes an elderly person
6 who has suffered a suspicious physical injury and the person is certain or has a reasonable
7 suspicion that the injury is or may be the result of elder abuse, the person shall:

8 (a) Immediately photograph or cause to have photographed the suspicious physical injury
9 in accordance with ORS 124.080; and

10 (b) Ensure that a designated medical professional conducts an elder abuse medical as-
11 sessment within 48 hours, or sooner if dictated by the elderly person's medical needs.

12 (3) The requirements of subsection (2) of this section apply:

13 (a) Each time a suspicious physical injury is observed by Department of Human Services
14 or law enforcement agency personnel:

15 (A) During the investigation of a new allegation of elder abuse; or

16 (B) If the injury was not previously observed by a person conducting an investigation
17 under ORS 124.070; and

18 (b) Regardless of whether the elderly person has previously been photographed or as-
19 sessed during an investigation of an allegation of elder abuse.

20 (4)(a) Department or law enforcement agency personnel shall make a reasonable effort
21 to locate a designated medical professional to perform an elder abuse medical assessment
22 as required under subsection (2) of this section. If after reasonable efforts a designated
23 medical professional is not available to conduct an elder abuse medical assessment within
24 48 hours, the elderly person shall be evaluated by an available health care provider as defined
25 in ORS 127.505.

26 (b) If the elderly person is evaluated by a health care provider other than a designated
27 medical professional pursuant to paragraph (a) of this subsection, the health care provider
28 shall make photographs, clinical notes, diagnostic and testing results and any other relevant
29 materials available to a designated medical professional within 72 hours of being notified that
30 a designated medical professional has been obtained to consult on the elder abuse medical
31 assessment.

32 (5)(a) The person conducting the elder abuse medical assessment may consult with and
33 obtain records from the elderly person's regular health care provider under section 5 of this
34 2011 Act.

35 (b) For purposes of this subsection, "health care provider" has the meaning given that
36 term in ORS 192.519.

37 (6) Nothing in this section prevents a person conducting an investigation under ORS
38 124.070 from seeking immediate medical treatment from a hospital emergency room or other
39 medical provider for an elderly person who is physically injured or otherwise in need of im-
40 mediate medical care.

41 (7) The department shall adopt rules necessary to carry out the provisions of this sec-
42 tion.

43 **SECTION 4.** (1) The Department of Human Services shall designate in each county of this
44 state at least one physician, physician assistant or nurse practitioner who has been trained
45 to conduct elder abuse medical assessments and who is, or who may designate another phy-

1 sician, physician assistant or nurse practitioner who is, regularly available to conduct elder
2 abuse medical assessments.

3 (2) The department shall make available, upon request, to a person conducting an inves-
4 tigation under ORS 124.070 a list of designated medical professionals to enable the person to
5 comply with section 3 of this 2011 Act.

6 (3) The department shall regularly update and maintain contact information for desig-
7 nated medical professionals who appear on the list provided under subsection (2) of this
8 section.

9 **SECTION 5.** (1) Upon notice by a law enforcement agency or the Department of Human
10 Services that an elder abuse investigation is being conducted under section 3 of this 2011 Act,
11 a health care provider for the elderly person who is the subject of the investigation must
12 permit the law enforcement agency or the department to inspect and copy medical records
13 of the elderly person, with or without the consent of the elderly person or the elderly
14 person’s conservator or guardian as those terms are defined in ORS 125.005.

15 (2) A health care provider who in good faith discloses medical records under this section
16 is not civilly or criminally liable for the disclosure.

17 (3) For purposes of this section, “health care provider” has the meaning given that term
18 in ORS 192.519.

19 **SECTION 6.** ORS 124.080 is amended to read:

20 124.080. (1) In carrying out its duties under ORS 124.070 and section 3 of this 2011 Act, a law
21 enforcement agency or the Department of Human Services may photograph or cause to have pho-
22 tographed [*any victim*] **the elderly person** who is the subject of the investigation for purposes of
23 preserving evidence of the condition of the [*victim*] **elderly person** at the time of the investigation.

24 (2) When an elderly person is photographed pursuant to section 3 of this 2011 Act, the
25 person taking the photographs or causing to have the photographs taken shall, within 48
26 hours or by the end of the next regular business day, whichever occurs later:

27 (a) Provide hard copies of the photographs and, if available, copies of the photographs in
28 an electronic format to the designated medical professional conducting the elder abuse
29 medical assessment under section 3 of this 2011 Act; and

30 (b) Place hard copies of the photographs and, if available, copies of the photographs in
31 an electronic format in any relevant files pertaining to the elderly person maintained by a
32 law enforcement agency or the department.

33 [(2)] (3) For purposes of ORS 124.090, photographs taken under authority of [*subsection (1) of*]
34 this section shall be considered records.

35 **SECTION 7.** ORS 441.624 is amended to read:

36 441.624. (1) ORS 124.050, 124.080, 410.190, 441.020 to 441.057, 441.060, 441.061, 441.067, 441.073,
37 441.087, 441.277 to 441.289, 441.303, 441.316, 441.318, 441.331 to 441.341, 441.367, 441.600, 441.610,
38 441.630, 441.650 to 441.665, 441.685, 441.690, 441.703 and 441.705 to 441.720 and sections 3, 4 and 5
39 of this 2011 Act address the consolidation of the regulatory functions of licensing, certification,
40 inspection of care, utilization review, abuse reporting and abuse investigation.

41 (2) It is legislative intent that:

42 (a) The Department of Human Services focus administrative effort on the integration and con-
43 sistent application and interpretation of the regulatory functions at the nursing facility level;

44 (b) Surveys and other reports, especially with respect to client assessment, be consistently and
45 reliably performed throughout the state;

1 (c) Positive and negative findings and sanctions be proportional to the strengths and problems
2 identified, within the limits of federal statute and regulations; and

3 (d) The interpretation of regulatory criteria be independent of influence from budgetary limita-
4 tions.

5 **SECTION 8. This 2011 Act being necessary for the immediate preservation of the public**
6 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
7 **on its passage.**

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