

House Bill 3229

Sponsored by Representative OLSON, Senator MONNES ANDERSON

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 certain health care employers to report annually, to Director of Department of Consumer and Business Services, data concerning assaults of health care staff members. Requires director to analyze data reported and to submit results to Legislative Assembly biennially. Instructs director to adopt rules.

Modifies certain definitions applicable to assaults of health care staff members. Clarifies descriptions of actions taken in response to assault that are to be included in record of assaults maintained by health care employer.

A BILL FOR AN ACT

1
2 Relating to health care employers; creating new provisions; and amending ORS 654.412, 654.414,
3 654.416, 654.418, 654.421 and 654.423.

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

5 **SECTION 1. Section 2 of this 2011 Act is added to and made a part of ORS 654.412 to**
6 **654.423.**

7 **SECTION 2. (1) No later than January 31 of each year, every health care employer shall**
8 **report, to the Director of the Department of Consumer and Business Services, data from the**
9 **record of assaults compiled under ORS 654.416 for assaults occurring in the previous year.**

10 **(2) The director shall adopt rules for reporting data under subsection (1) of this section.**

11 **The rules:**

12 **(a) May not require health care employers to report the names of health care staff**
13 **members who have been assaulted or the names of patients who have committed assaults;**
14 **and**

15 **(b) Shall conform with state and federal laws relating to confidentiality and the pro-**
16 **tection of health information.**

17 **(3) No later than April 30 of each odd-numbered year, the director shall analyze the data**
18 **received under subsection (1) of this section and report the findings to the Legislative As-**
19 **sembly.**

20 **(4) Nothing in this section restricts the director's access to, or use of, information or**
21 **records otherwise required or permitted under the Oregon Safe Employment Act.**

22 **SECTION 3. ORS 654.412 is amended to read:**

23 654.412. As used in ORS 654.412 to 654.423:

24 **(1) "Assault" means [*intentionally, knowingly or recklessly causing physical injury.*] behavior by**
25 **a patient, visitor, employee or other person who, regardless of intent, causes physical injury**
26 **to a health care staff member.**

27 **(2) "Health care employer" means:**

28 **(a) An ambulatory surgical center as defined in ORS 442.015[.];**

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 (b) A hospital as defined in ORS 442.015[.]; **or**

2 (c) **A home health agency as defined in ORS 443.005.**

3 (3) “Home health care services” means items or services furnished to a patient by [*an employee*
4 *of a health care employer*] **a health care staff member** in a place of temporary or permanent resi-
5 dence used as the patient’s home.

6 (4) **“Health care staff member” means an employee of or a volunteer for a health care**
7 **employer, or a student receiving academic credit for providing services to a health care**
8 **employer.**

9 **SECTION 4.** ORS 654.414 is amended to read:

10 654.414. (1) A health care employer shall:

11 (a) Conduct periodic security and safety assessments to identify existing or potential hazards for
12 assaults committed against [*employees*] **health care staff members**;

13 (b) Develop and implement an assault prevention and protection program for [*employees*] **health**
14 **care staff members** based on assessments conducted under paragraph (a) of this subsection; and

15 (c) Provide assault prevention and protection training on a regular and ongoing basis for [*em-*
16 *ployees*] **health care staff members.**

17 (2) An assessment conducted under subsection (1)(a) of this section shall include, but need not
18 be limited to:

19 (a) A measure of the frequency of assaults committed against [*employees*] **health care staff**
20 **members** that occur on the premises of a health care employer or in the home of a patient receiving
21 home health care services during the preceding five years or for the years that records are available
22 if fewer than five years of records are available; and

23 (b) An identification of the causes and consequences of assaults against [*employees*] **health care**
24 **staff members.**

25 (3) An assault prevention and protection program developed and implemented by a health care
26 employer under subsection (1)(b) of this section shall be based on an assessment conducted under
27 subsection (1)(a) of this section and shall address security considerations related to the following:

28 (a) Physical attributes of the health care setting;

29 (b) Staffing plans, including security staffing;

30 (c) Personnel policies;

31 (d) First aid and emergency procedures;

32 (e) Procedures for reporting assaults; and

33 (f) Education and training for [*employees*] **health care staff members.**

34 (4)(a) Assault prevention and protection training required under subsection (1)(c) of this section
35 shall address the following topics:

36 (A) General safety and personal safety procedures;

37 (B) Escalation cycles for assaultive behaviors;

38 (C) Factors that predict assaultive behaviors;

39 (D) Techniques for obtaining medical history from a patient with assaultive behavior;

40 (E) Verbal and physical techniques to de-escalate and minimize assaultive behaviors;

41 (F) Strategies for avoiding physical harm and minimizing use of restraints;

42 (G) Restraint techniques consistent with regulatory requirements;

43 (H) Self-defense, including:

44 (i) The amount of physical force that is reasonably necessary to protect the [*employee*] **health**
45 **care staff member** or a third person from assault; and

1 (ii) The use of least restrictive procedures necessary under the circumstances, in accordance
 2 with an approved behavior management plan, and any other methods of response approved by the
 3 health care employer;

4 (I) Procedures for documenting and reporting incidents involving assaultive behaviors;

5 (J) Programs for post-incident counseling and follow-up;

6 (K) Resources available to *[employees]* **health care staff members** for coping with assaults; and

7 (L) The health care employer's workplace assault prevention and protection program.

8 (b) A health care employer shall provide assault prevention and protection training to a new
 9 *[employee]* **health care staff member** within 90 days of the *[employee's initial hiring date]* **date the**
 10 **person first becomes a health care staff member.**

11 (c) A health care employer may use classes, video recordings, brochures, verbal or written
 12 training or other training that the employer determines to be appropriate, based on *[an employee's]*
 13 **a health care staff member's** job duties, under the assault prevention and protection program
 14 developed by the employer.

15 **SECTION 5.** ORS 654.416 is amended to read:

16 654.416. (1) A health care employer shall maintain a record of assaults committed against *[em-*
 17 *ployees]* **health care staff members** that occur on the premises of the health care employer or in
 18 the home of a patient receiving home health care services. The record shall include, but need not
 19 be limited to, the following:

20 (a) The name and address of the premises on which each assault occurred;

21 (b) The date, time and specific location where the assault occurred;

22 (c) The name, job title and department or ward assignment of the *[employee]* **health care staff**
 23 **member** who was assaulted;

24 (d) A description of the person who committed the assault as a patient, visitor, *[employee]* **health**
 25 **care staff member** or other category;

26 (e) A description of the assaultive behavior as:

27 (A) An assault with mild soreness, surface abrasions, scratches or small bruises;

28 (B) An assault with major soreness, cuts or large bruises;

29 (C) An assault with severe lacerations, a bone fracture or a head injury; or

30 (D) An assault with loss of limb or death;

31 (f) An identification of the physical injury;

32 (g) A description of any weapon used;

33 (h) The number of *[employees]* **health care staff members** in the immediate area of the assault
 34 when it occurred; *[and]*

35 (i) A description of **the immediate** actions taken by *[the employees and the health care*
 36 *employer]* **health care staff members** in response to the assault[.]; **and**

37 **(j) A description of the action taken by the health care employer in response to the as-**
 38 **sault.**

39 (2) A health care employer shall maintain the record of assaults described in subsection (1) of
 40 this section for no fewer than five years following a reported assault.

41 (3) The Director of the Department of Consumer and Business Services shall adopt by rule a
 42 common recording form for the purposes of this section.

43 **SECTION 6.** ORS 654.418 is amended to read:

44 654.418. If a health care employer directs *[an employee]* **a health care staff member** who has
 45 been assaulted by a patient on the premises of the health care employer to provide further treatment

1 to the patient, the [employee] **health care staff member** may request that a second [employee]
2 **health care staff member** accompany the [employee] **health care staff member** when treating the
3 patient. If the health care employer declines the [employee's] request, the health care employer may
4 not require the [employee] **health care staff member** to treat the patient.

5 **SECTION 7.** ORS 654.421 is amended to read:

6 654.421. (1) [An employee] **A health care staff member** who provides home health care services
7 may refuse to treat a patient unless accompanied by a second [employee] **health care staff member**
8 if, based on the patient's past behavior or physical or mental condition, the [employee] **health care**
9 **staff member** believes that the patient may assault the [employee] **health care staff member**.

10 (2) [An employee] **A health care staff member** who provides home health care services may
11 refuse to treat a patient unless the [employee] **health care staff member** is equipped with a com-
12 munication device that allows the [employee] **health care staff member** to transmit one-way or
13 two-way messages indicating that the [employee] **health care staff member** is being assaulted.

14 **SECTION 8.** ORS 654.423 is amended to read:

15 654.423. (1) A health care employer may not impose sanctions against [an employee] **a health**
16 **care staff member** who used physical force in self-defense against an assault if the health care
17 employer finds that the [employee] **health care staff member**:

18 (a) Was acting in self-defense in response to the use or imminent use of physical force;

19 (b) Used an amount of physical force that was reasonably necessary to protect the [employee]
20 **health care staff member** or a third person from assault; and

21 (c) Used the least restrictive procedures necessary under the circumstances, in accordance with
22 an approved behavior management plan, or other methods of response approved by the health care
23 employer.

24 (2) As used in this section, "self-defense" means the use of physical force upon another person
25 in self-defense or to defend a third person.

26