Enrolled
Senate Bill 95

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CHAPTER .....

AN ACT

Relating to patient safety; creating new provisions; amending ORS 442.831, 442.837 and 677.082; and declaring an emergency.

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

SECTION 1. Section 2 of this 2011 Act is added to and made a part of the Insurance Code.

SECTION 2. (1) As used in this section:

(a) "Adverse event" means a negative consequence of patient care that is unanticipated, is usually preventable and results in or presents a significant risk of patient injury.

(b) "Claim" means a written demand for restitution for an injury alleged to have been caused by the medical negligence of a health practitioner or licensed health care facility.

(c) "Health practitioner" means a person described in ORS 31.740 (1).

(d) "Patient's family" includes:

(A) A parent, sibling or child by marriage, blood, adoption or domestic partnership.

(B) A foster parent or foster child.

(2) An insurer may not decline or refuse to defend or indemnify a health practitioner or a health care facility with respect to a claim, for any reason that is based on the disclosure to the patient or the patient's family by the health practitioner or facility of an adverse event or information relating to the cause of an adverse event.

(3) A policy or contract of insurance or indemnity may not include a provision or term excluding or limiting coverage based on the disclosure to a patient or the patient's family by a health practitioner or facility of an adverse event or information relating to the cause of an adverse event.

SECTION 3. ORS 442.831 is amended to read:

442.831. (1) Except as otherwise provided in ORS 442.819 to 442.851, the Oregon Patient Safety Commission Board of Directors, or officials of the Oregon Patient Safety Commission acting under the authority of the board, shall exercise all the powers of the commission and shall govern the commission. The board shall adopt rules necessary for the implementation of the Oregon Patient Safety Reporting Program, including but not limited to:

(a) Developing a list of objective and definable serious adverse events to be reported by participants. In developing this list, the board shall consider similar lists developed in other states and nationally. The board may change the list from time to time. [*The first list developed by the board shall focus on serious adverse events that caused death or serious physical injury. Later lists may in-*

clude, in the discretion of the board, serious adverse events that did not cause death or serious physical injury but posed a significant risk of death or a risk of significant physical injury.]

(b) Developing a budget.

(c) Establishing a process to seek grants and other funding from federal and other sources.

(d) Establishing a method to determine participant fees, if necessary.

(e) Establishing auditing and oversight procedures, including a process to:

(A) Assess completeness of reports from participants;

(B) Assess credibility and thoroughness of root cause analyses submitted to the program;

(C) Assess the acceptability of action plans and participant follow-up on the action plan; and

(D) Obtain certification by the Public Health Officer on the completeness, credibility, thoroughness and acceptability of participant reports, root cause analyses and action plans.

(f) Establishing criteria for terminating a participant from the program. Incomplete reporting, failure to comply with ORS 442.837 (4) or failure to adequately implement an action plan are grounds for termination from the program.

(2) The board may not use or disclose patient safety data reported, collected or developed pursuant to ORS 442.819 to 442.851 for purposes of any enforcement or regulatory action in relation to a participant.

(3) The board shall maintain the confidentiality of all patient safety data that identifies or could be reasonably used to identify a participant or an individual who is receiving or has received health care from the participant.

SECTION 4. ORS 442.837 is amended to read:

442.837. (1) The Oregon Patient Safety Reporting Program is created in the Oregon Patient Safety Commission to develop a serious adverse event reporting system. The program shall include but is not limited to:

(a) Reporting by participants, in a timely manner and in the form determined by the Oregon Patient Safety Commission Board of Directors established in ORS 442.830, of the following:

(A) Serious adverse events;

(B) Root cause analyses of serious adverse events;

(C) Action plans established to prevent similar serious adverse events; and

(D) Patient safety plans establishing procedures and protocols.

(b) Analyzing reported serious adverse events, root cause analyses and action plans to develop and disseminate information to improve the quality of care with respect to patient safety. This information shall be made available to participants and shall include but is not limited to:

(A) Statistical analyses;

(B) Recommendations regarding quality improvement techniques;

(C) Recommendations regarding standard protocols; and

(D) Recommendations regarding best patient safety practices.

(c) Providing technical assistance to participants, including but not limited to recommendations and advice regarding methodology, communication, dissemination of information, data collection, security and confidentiality.

(d) Auditing participant reporting to assess the level of reporting of serious adverse events, root cause analyses and action plans.

(e) Overseeing action plans to assess whether participants are taking sufficient steps to prevent the occurrence of serious adverse events.

(f) Creating incentives to improve and reward participation, including but not limited to providing:

(A) Feedback to participants; and

(B) Rewards and recognition to participants.

(g) Distributing written reports using aggregate, de-identified data from the program to describe statewide serious adverse event patterns and maintaining a website to facilitate public access to reports, as well as a list of names of participants. The reports shall include but are not limited to:

(A) The types and frequencies of serious adverse events;

(B) Yearly serious adverse event totals and trends;

(C) Clusters of serious adverse events;

(D) Demographics of patients involved in serious adverse events, including the frequency and types of serious adverse events associated with language barriers or ethnicity;

(E) Systems' factors associated with particular serious adverse events;

(F) Interventions to prevent frequent or high severity serious adverse events;

(G) Analyses of statewide patient safety data in Oregon and comparisons of that data to national patient safety data; and

(H) Appropriate consumer information regarding prevention of serious adverse events.

(2) Participation in the program is voluntary. The following entities are eligible to participate:

(a) Hospitals as defined in ORS 442.015;

(b) Long term care facilities as defined in ORS 442.015;

(c) Pharmacies licensed under ORS chapter 689;

(d) Ambulatory surgical centers as defined in ORS 442.015;

(e) Outpatient renal dialysis facilities as defined in ORS 442.015;

(f) Freestanding birthing centers as defined in ORS 442.015; and

(g) Independent professional health care societies or associations.

(3) Reports or other information developed and disseminated by the program may not contain or reveal the name of or other identifiable information with respect to a particular participant providing information to the commission for the purposes of ORS 442.819 to 442.851, or to any individual identified in the report or information, and upon whose patient safety data, patient safety activities and reports the commission has relied in developing and disseminating information pursuant to this section.

(4) After a serious adverse event occurs, a participant must provide written notification in a timely manner to each patient served by the participant who is affected by the event. Notice provided under this subsection may not be construed as an admission of liability in a civil action.

(5) The commission shall collaborate with providers of ambulatory health care to develop initiatives to promote patient safety in ambulatory health care.

SECTION 5. ORS 677.082 is amended to read:

677.082. (1) For the purposes of any civil action against a person licensed by the Oregon Medical Board **or a health care institution, health care facility or other entity that employs the person or grants the person privileges**, any expression of regret or apology made by or on behalf of the person, **the institution, the facility or other entity,** including an expression of regret or apology that is made in writing, orally or by conduct, does not constitute an admission of liability [*for any purpose*].

(2) A person who is licensed by the Oregon Medical Board, or any other person who makes an expression of regret or apology on behalf of a person who is licensed by the Oregon Medical Board, may not be examined by deposition or otherwise in any civil or administrative proceeding, including any arbitration or mediation proceeding, with respect to an expression of regret or apology made by or on behalf of the person, including expressions of regret or apology that are made in writing, orally or by conduct.

SECTION 6. Section 2 of this 2011 Act applies to insurance policies issued or renewed on or after the effective date of this 2011 Act.

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

Passed by Senate March 23, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House May 5, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

.....M.,....., 2011

Approved:

.....M.,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M.,....., 2011

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Kate Brown, Secretary of State