Senate Bill 95

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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 insurer to defend claim of malpractice if claim is based on disclosure of adverse event by health practitioner to patient or patient's family. Applies to insurance policies issued or renewed on or after effective date of Act.

Authorizes Oregon Patient Safety Commission to include any serious adverse event on list of reportable events. Allows all providers of ambulatory health care to participate in Oregon Patient Safety Reporting Program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to patient safety; creating new provisions; amending ORS 442.831 and 442.837; 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).

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

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.

(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**; and**

(h) Licensed providers of ambulatory health care.

(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.

SECTION 5. Section 2 of this 2011 Act applies to insurance policies issued or renewed on or after the effective date of this 2011 Act.

SECTION 6. 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.
