

A-Engrossed
House Bill 2094

Ordered by the House March 15
Including House Amendments dated March 15

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Oregon Health Authority)

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.

Authorizes Public Health Officer to carry out specified duties under federal Ryan White CARE Act. Updates terminology and corrects agency references.

[Aligns state law with federal law allowing clinical laboratories to provide test results directly to patients. Updates terminology and corrects references. Authorizes Oregon Health Authority to review individual patient records for purpose of evaluating health care facility's compliance with Oregon Health Care Acquired Infection Reporting Program. Specifies that evaluation reports are not subject to public disclosure, but aggregate data from reports must be provided to Health Care Acquired Infection Advisory Committee.]

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to public health; amending ORS 431.045, 431.110, 431.120, 442.445, 443.065, 443.075 and
3 443.305 and sections 3, 4 and 6, chapter 838, Oregon Laws 2007; and declaring an emergency.

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

5 **SECTION 1.** ORS 431.045 is amended to read:

6 431.045. (1) The Director of the Oregon Health Authority shall appoint a physician licensed by
7 the Oregon Medical Board and certified by the American Board of Preventive Medicine who shall
8 serve as the Public Health Officer and be responsible for the medical and paramedical aspects of the
9 health programs within the Oregon Health Authority.

10 **(2) The Public Health Officer is responsible for the duties imposed by 42 U.S.C.**
11 **300ff-133(g) and 300ff-136. The officer may adopt rules to carry out the officer's responsibil-**
12 **ities under this subsection.**

13 **SECTION 2.** ORS 431.110 is amended to read:

14 431.110. Subject to ORS 417.300 and 417.305, the Oregon Health Authority shall:

15 (1) Have direct supervision of all matters relating to the preservation of life and health of the
16 people of the state.

17 (2) Keep the vital statistics and other health related statistics of the state.

18 (3) Make sanitary surveys and investigations and inquiries respecting the causes and prevention
19 of diseases, especially of epidemics.

20 (4) Investigate, conduct hearings and issue findings in connection with annexations proposed by
21 cities as provided in ORS 222.840 to 222.915.

22 (5) Have full power in the control of all communicable diseases.

23 (6) Have authority to send a representative of the authority to any part of the state when

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 deemed necessary.

2 (7) From time to time, publish and distribute to the public in such form as the authority deter-
3 mines, such information as in its judgment may be useful in carrying on the work or purposes for
4 which the authority was established.

5 [(8) Carry out the duties imposed on the authority under ORS chapter 690.]

6 **SECTION 2a.** ORS 431.120 is amended to read:

7 431.120. The Oregon Health Authority shall:

8 (1) Enforce state health policies and rules.

9 [(2) Have the custody of all books, papers, documents and other property belonging to the State
10 Health Commission, which may be deposited in the authority's office.]

11 [(3)] (2) Give any instructions that may be necessary, and forward them to the various local
12 public health administrators throughout the state.

13 [(4)] (3) Routinely conduct epidemiological investigations for each case of sudden infant death
14 syndrome including, but not limited to, the identification of risk factors such as birth weight, ma-
15 ternal age, prenatal care, history of apnea and socioeconomic characteristics. The authority may
16 conduct the investigations through local health departments only upon adoption by rule of a uniform
17 epidemiological data collection method.

18 [(5)] (4) Adopt rules related to loans and grants awarded under ORS 285B.560 to 285B.599 or
19 541.700 to 541.855 for the improvement of drinking water systems for the purpose of maintaining
20 compliance with applicable state and federal drinking water quality standards. In adopting rules
21 under this subsection, the authority shall coordinate the authority's rulemaking process with the
22 Water Resources Department and the Oregon Business Development Department in order to ensure
23 that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and
24 541.845.

25 [(6)] (5) Control health care capital expenditures by administering the state certificate of need
26 program pursuant to ORS 442.325 to 442.344.

27 **SECTION 2b.** ORS 442.445 is amended to read:

28 442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400
29 to 442.463 or section 3, chapter 838, Oregon Laws 2007, and rules of the [*Office for Oregon Health*
30 *Policy and Research*] **Oregon Health Authority** may be subject to a civil penalty.

31 (2) The [*Administrator of the Office for Oregon Health Policy and Research*] **Oregon Health**
32 **Authority** shall adopt a schedule of penalties not to exceed \$500 per day of violation, determined
33 by the severity of the violation.

34 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

35 (4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and
36 conditions as the [*administrator*] **authority** considers proper and consistent with the public health
37 and safety.

38 (5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose
39 of rate determination or for reimbursement by a third-party payer.

40 **SECTION 2c.** ORS 442.445, as amended by section 8, chapter 838, Oregon Laws 2007, is
41 amended to read:

42 442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400
43 to 442.463 and rules of the [*Office for Oregon Health Policy and Research*] **Oregon Health Authority**
44 may be subject to a civil penalty.

45 (2) The [*Administrator of the Office for Oregon Health Policy and Research*] **Oregon Health**

1 **Authority** shall adopt a schedule of penalties not to exceed \$500 per day of violation, determined
2 by the severity of the violation.

3 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

4 (4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and
5 conditions as the *[administrator]* **authority** considers proper and consistent with the public health
6 and safety.

7 (5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose
8 of rate determination or for reimbursement by a third-party payer.

9 **SECTION 3.** ORS 443.065 is amended to read:

10 443.065. The home health agency shall:

11 (1) Be primarily engaged in providing skilled nursing services and at least one other service
12 delineated in ORS 443.075 *[(2) and (3)]* **(1)(b) and (c)**;

13 (2) Have policies established by professional personnel associated with the agency or organiza-
14 tion, including one or more physicians and one or more registered nurses, at least two of whom are
15 neither owners nor employees of the agency, and two consumers, to govern the services that it
16 provides;

17 (3) Require supervision of services that it provides under subsection (1) of this section by a
18 physician, nurse practitioner or registered nurse, preferably a public health nurse;

19 (4) Maintain clinical[,] **and** financial *[and professional]* records on all patients; and

20 (5) Have an overall plan and budget in effect.

21 **SECTION 4.** ORS 443.075 is amended to read:

22 443.075. (1) A home health agency must have an order for treatment, *[and]* plan of treatment
23 **or plan of care** from a physician or nurse practitioner for the following services and supplies:

24 (a) Home nursing care provided by or under the supervision of a registered nurse;

25 (b) Physical, occupational or speech therapy, medical social services or other therapeutic ser-
26 vices;

27 (c) Home health aide services; and

28 (d) Medical supplies, other than drugs and biologicals, and the use of medical appliances.

29 (2) A home health agency shall have each plan of treatment **or plan of care** reviewed by the
30 physician or nurse practitioner periodically, in accordance with rules adopted by the Oregon Health
31 Authority.

32 **SECTION 5.** ORS 443.305 is amended to read:

33 443.305. As used in ORS 443.305 to 443.350:

34 (1) "In-home care agency" means an agency primarily engaged in providing in-home care ser-
35 vices for compensation to an individual in that individual's place of residence. "In-home care
36 agency" does not include a home health agency as defined in ORS 443.005.

37 (2) "In-home care services" means personal care services furnished by an in-home care agency,
38 or an individual under an arrangement or contract with an in-home care agency, that are necessary
39 to assist an individual in meeting the individual's daily needs, but does not include curative or
40 rehabilitative services.

41 (3) "Subunit" means an in-home care agency that provides services for a parent agency in a
42 geographic area different from that of the parent agency and *[generally exceeding one hour of travel*
43 *time]* **more than 60 miles** from the location of the parent agency.

44 **SECTION 6.** Section 3, chapter 838, Oregon Laws 2007, as amended by section 1157, chapter
45 595, Oregon Laws 2009, is amended to read:

1 **Sec. 3.** (1) There is established in the [*Office for Oregon Health Policy and Research*] **Oregon**
2 **Health Authority** the Oregon Health Care Acquired Infection Reporting Program. The program
3 shall:

4 (a) Provide useful and credible infection measures, specific to each health care facility, to con-
5 sumers;

6 (b) Promote quality improvement in health care facilities; and

7 (c) Utilize existing quality improvement efforts to the extent practicable.

8 (2) The [*office*] **authority** shall adopt rules to:

9 (a) Require health care facilities to report to the [*office*] **authority** health care acquired in-
10 fection measures, including but not limited to health care acquired infection rates;

11 (b) Specify the health care acquired infection measures that health care facilities must report;
12 and

13 (c) Prescribe the form, manner and frequency of reports of health care acquired infection
14 measures by health care facilities.

15 (3) In prescribing the form, manner and frequency of reports of health care acquired infection
16 measures by health care facilities, to the extent practicable and appropriate to avoid unnecessary
17 duplication of reporting by facilities, the [*office*] **authority** shall align the requirements with the
18 requirements for health care facilities to report similar data to the [*Oregon Health Authority*] **De-**
19 **partment of Human Services** and to the Centers for Medicare and Medicaid Services.

20 (4) The [*office*] **authority** shall utilize, to the extent practicable and appropriate, a credible and
21 reliable risk-adjusted methodology in analyzing the health care acquired infection measures reported
22 by health care facilities.

23 (5) The [*office*] **authority** shall provide health care acquired infection measures and related in-
24 formation to health care facilities in a manner that promotes quality improvement in the health care
25 facilities.

26 (6) The [*office*] **authority** shall adopt rules prescribing the form, manner and frequency for
27 public disclosure of reported health care acquired infection measures. The [*office*] **authority** shall
28 disclose updated information to the public no less frequently than every [*six months beginning Jan-*
29 *uary 1, 2010, and no less frequently than every*] calendar quarter [*beginning January 1, 2011*].

30 (7) Individually identifiable health information submitted to the [*office*] **authority** by health care
31 facilities pursuant to this section may not be disclosed to, made subject to subpoena by or used by
32 any state agency for purposes of any enforcement or regulatory action in relation to a participating
33 health care facility.

34 **SECTION 7.** Section 4, chapter 838, Oregon Laws 2007, as amended by section 1158, chapter
35 595, Oregon Laws 2009, is amended to read:

36 **Sec. 4.** (1) There is established the Health Care Acquired Infection Advisory Committee to ad-
37 vise the [*Administrator of the Office for Oregon Health Policy and Research*] **Director of the Oregon**
38 **Health Authority** regarding the Oregon Health Care Acquired Infection Reporting Program. The
39 advisory committee shall consist of 16 members appointed by the [*administrator*] **director** as follows:

40 (a) Seven of the members shall be health care providers or their designees, including:

41 (A) A hospital administrator who has expertise in infection control and who represents a hos-
42 pital that contains fewer than 100 beds;

43 (B) A hospital administrator who has expertise in infection control and who represents a hos-
44 pital that contains 100 or more beds;

45 (C) A long term care administrator;

1 (D) A hospital quality director;

2 (E) A physician with expertise in infectious disease;

3 (F) A registered nurse with interest and involvement in infection control; and

4 (G) A physician who practices in an ambulatory surgical center and who has interest and in-
5 volvement in infection control.

6 (b) Nine of the members shall be individuals who do not represent health care providers, in-
7 cluding:

8 (A) A consumer representative;

9 (B) A labor representative;

10 (C) An academic researcher;

11 (D) A health care purchasing representative;

12 (E) A representative of the [*Oregon Health Authority*] **Department of Human Services**;

13 (F) A representative of the business community;

14 (G) A representative of the Oregon Patient Safety Commission who does not represent a health
15 care provider on the commission;

16 (H) The state epidemiologist; and

17 (I) A health insurer representative.

18 (2) The [*Administrator of the Office for Oregon Health Policy and Research*] **Director of the**
19 **Oregon Health Authority** and the advisory committee shall evaluate on a regular basis the quality
20 and accuracy of the data collected and reported by health care facilities under section 3, chapter
21 838, Oregon Laws 2007, and the methodologies of the [*Office for Oregon Health Policy and*
22 *Research*] **Oregon Health Authority** for data collection, analysis and public disclosure.

23 (3) Members of the advisory committee are not entitled to compensation and shall serve as vol-
24 unteers on the advisory committee.

25 (4) Each member of the advisory committee shall serve a term of two years.

26 (5) The advisory committee shall make recommendations to the [*administrator*] **director** regard-
27 ing:

28 (a) The health care acquired infection measures that health care facilities must report, which
29 may include but are not limited to:

30 (A) Surgical site infections;

31 (B) Central line related bloodstream infections;

32 (C) Urinary tract infections; and

33 (D) Health care facility process measures designed to ensure quality and to reduce health care
34 acquired infections;

35 (b) Methods for evaluating and quantifying health care acquired infection measures that align
36 with other data collection and reporting methodologies of health care facilities and that support
37 participation in other quality interventions;

38 (c) Requiring different reportable health care acquired infection measures for differently situated
39 health care facilities as appropriate;

40 (d) A method to ensure that infections present upon admission to the health care facility are
41 excluded from the rates of health care acquired infection disclosed to the public for the health care
42 facility under sections 3 and 6, chapter 838, Oregon Laws 2007;

43 (e) Establishing a process for evaluating the health care acquired infection measures reported
44 under section 3, chapter 838, Oregon Laws 2007, and for modifying the reporting requirements over
45 time as appropriate;

1 (f) Establishing a timetable to phase in the reporting and public disclosure of health care ac-
2 quired infection measures; and

3 (g) Procedures to protect the confidentiality of patients, health care professionals and health
4 care facility employees.

5 **SECTION 8.** Section 6, chapter 838, Oregon Laws 2007, is amended to read:

6 **Sec. 6.** (1) In addition to any report required pursuant to section 3 [*of this 2007 Act*], **chapter**
7 **838, Oregon Laws 2007**, on or before April 30 of each year, the [*Administrator of the Office for*
8 *Oregon Health Policy and Research*] **Oregon Health Authority** shall prepare an annual report
9 summarizing the health care facility reports submitted pursuant to section 3 [*of this 2007 Act*],
10 **chapter 838, Oregon Laws 2007**. The [*Office for Oregon Health Policy and Research*] **authority** shall
11 make the reports available to the public in the manner provided in ORS 192.243 and to the Legis-
12 lative Assembly in the manner provided in ORS 192.245. [*The first report shall be made available no*
13 *later than January 1, 2010.*]

14 (2) The annual report shall, for each health care facility in the state, compare the health care
15 acquired infection measures reported under section 3 [*of this 2007 Act*], **chapter 838, Oregon Laws**
16 **2007**. The [*office*] **authority**, in consultation with the Health Care Acquired Infection Advisory
17 Committee, shall provide the information in the report in a format that is as easily comprehensible
18 as possible.

19 (3) The annual report may include findings, conclusions and trends concerning the health care
20 acquired infection measures reported under section 3 [*of this 2007 Act*], **chapter 838, Oregon Laws**
21 **2007**, a comparison to the health care acquired infection measures reported in prior years and any
22 policy recommendations.

23 (4) The [*office*] **authority** shall publicize the annual report and its availability to interested
24 persons, including providers, media organizations, health insurers, health maintenance organizations,
25 purchasers of health insurance, organized labor, consumer and patient advocacy groups and indi-
26 vidual consumers.

27 (5) The annual report and quarterly reports under this section and section 3 [*of this 2007 Act*],
28 **chapter 838, Oregon Laws 2007**, may not contain information that identifies a patient, a licensed
29 health care professional or an employee of a health care facility in connection with a specific in-
30 fection incident.

31 **SECTION 9. This 2013 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
33 **on its passage.**

34