

SENATE AMENDMENTS TO SENATE BILL 167

By COMMITTEE ON HEALTH CARE AND HUMAN SERVICES

March 5

- 1 On page 1 of the printed bill, line 2, after “ORS” insert “433.441, 433.443 and”.
- 2 In line 6, after the comma insert “as defined in ORS 431.260,”.
- 3 In line 7, delete “10”.
- 4 In line 8, delete “years of age or younger” and insert “three years of age or older”.
- 5 After line 9, insert:
- 6 **“SECTION 3.** ORS 433.441 is amended to read:
- 7 “433.441. (1) Upon the occurrence of a public health emergency, the Governor may declare a
- 8 state of public health emergency as authorized by ORS 433.441 to 433.452 to protect the public
- 9 health.
- 10 “(2) A proclamation of a state of public health emergency must specify:
- 11 “(a) The nature of the public health emergency;
- 12 “(b) The political subdivision or geographic area subject to the proclamation;
- 13 “(c) The conditions that have brought about the public health emergency; and
- 14 “(d) The duration of the state of public health emergency, if the duration is less than 14 days.
- 15 “(3) During a public health emergency, the Governor may:
- 16 “(a) Close, order the evacuation of or the decontamination of any facility the Governor has
- 17 reasonable cause to believe may endanger the public health.
- 18 “(b) Regulate or restrict by any means necessary the use, sale or distribution of food, fuel,
- 19 medical supplies, medicines or other goods and services.
- 20 “(c) Prescribe modes of transportation, routes and destinations required for the evacuation of
- 21 individuals or the provision of emergency services.
- 22 “(d) Control or limit entry into, exit from, movement within and the occupancy of premises in
- 23 any public area subject to or threatened by a public health emergency if such actions are reasonable
- 24 and necessary to respond to the public health emergency.
- 25 **“(e) Authorize pharmacists licensed under ORS chapter 689 to administer vaccines to**
- 26 **persons who are three years of age or older.**
- 27 “[e)] (f) Take any other action that may be necessary for the management of resources, or to
- 28 protect the public during a public health emergency, including any actions authorized under ORS
- 29 401.168, 401.185, 401.188 and 401.192.
- 30 “(4) Nothing in ORS 433.441 to 433.452 limits the authority of the Governor to declare a state
- 31 of emergency under ORS 401.165. If a state of emergency is declared as authorized under ORS
- 32 401.165, the Governor may implement any action authorized by ORS 433.441 to 433.452.
- 33 “(5) A proclamation of a state of public health emergency expires when terminated by a decla-
- 34 ration of the Governor or no more than 14 days after the date the public health emergency is pro-
- 35 claimed unless the Governor expressly extends the proclamation for an additional 14-day period.

1 “(6) When real or personal property is taken under power granted by this section, the owner
2 of the property shall be entitled to reasonable compensation from the state.

3 “**SECTION 4.** ORS 433.443 is amended to read:

4 “433.443. (1) As used in this section:

5 “(a) ‘Covered entity’ means:

6 “(A) The Children’s Health Insurance Program;

7 “(B) The Family Health Insurance Assistance Program established under ORS 414.842;

8 “(C) A health insurer that is an insurer as defined in ORS 731.106 and that issues health in-
9 surance as defined in ORS 731.162;

10 “(D) The state medical assistance program; and

11 “(E) A health care provider.

12 “(b) ‘Health care provider’ includes but is not limited to:

13 “(A) A psychologist, occupational therapist, regulated social worker, professional counselor or
14 marriage and family therapist licensed or otherwise authorized to practice under ORS chapter 675
15 or an employee of the psychologist, occupational therapist, regulated social worker, professional
16 counselor or marriage and family therapist;

17 “(B) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed
18 under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician
19 assistant or acupuncturist;

20 “(C) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of
21 the nurse or nursing home administrator;

22 “(D) A dentist licensed under ORS chapter 679 or an employee of the dentist;

23 “(E) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the
24 dental hygienist or denturist;

25 “(F) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an em-
26 ployee of the speech-language pathologist or audiologist;

27 “(G) An emergency medical services provider licensed under ORS chapter 682;

28 “(H) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;

29 “(I) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
30 physician;

31 “(J) A naturopathic physician licensed under ORS chapter 685 or an employee of the
32 naturopathic physician;

33 “(K) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
34 therapist;

35 “(L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
36 entry midwife;

37 “(M) A physical therapist licensed under ORS 688.010 to 688.201 or an employee of the physical
38 therapist;

39 “(N) A medical imaging licensee under ORS 688.405 to 688.605 or an employee of the medical
40 imaging licensee;

41 “(O) A respiratory care practitioner licensed under ORS 688.815 or an employee of the respir-
42 atory care practitioner;

43 “(P) A polysomnographic technologist licensed under ORS 688.819 or an employee of the poly-
44 somnographic technologist;

45 “(Q) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;

1 “(R) A dietitian licensed under ORS 691.405 to 691.485 or an employee of the dietitian;
2 “(S) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
3 service practitioner;
4 “(T) A health care facility as defined in ORS 442.015;
5 “(U) A home health agency as defined in ORS 443.005;
6 “(V) A hospice program as defined in ORS 443.850;
7 “(W) A clinical laboratory as defined in ORS 438.010;
8 “(X) A pharmacy as defined in ORS 689.005;
9 “(Y) A diabetes self-management program as defined in ORS 743A.184; and
10 “(Z) Any other person or entity that furnishes, bills for or is paid for health care in the normal
11 course of business.
12 “(c) ‘Individual’ means a natural person.
13 “(d) ‘Individually identifiable health information’ means any oral or written health information
14 in any form or medium that is:
15 “(A) Created or received by a covered entity, an employer or a health care provider that is not
16 a covered entity; and
17 “(B) Identifiable to an individual, including demographic information that identifies the individ-
18 ual, or for which there is a reasonable basis to believe the information can be used to identify an
19 individual, and that relates to:
20 “(i) The past, present or future physical or mental health or condition of an individual;
21 “(ii) The provision of health care to an individual; or
22 “(iii) The past, present or future payment for the provision of health care to an individual.
23 “(e) ‘Legal representative’ means attorney at law, person holding a general power of attorney,
24 guardian, conservator or any person appointed by a court to manage the personal or financial affairs
25 of a person, or agency legally responsible for the welfare or support of a person.
26 “(2)(a) During a public health emergency declared under ORS 433.441, the Public Health Direc-
27 tor may, as necessary to appropriately respond to the public health emergency:
28 “(A) Adopt reporting requirements for and provide notice of those requirements to health care
29 providers, institutions and facilities for the purpose of obtaining information directly related to the
30 public health emergency;
31 “(B) After consultation with appropriate medical experts, create and require the use of diag-
32 nostic and treatment protocols to respond to the public health emergency and provide notice of
33 those protocols to health care providers, institutions and facilities;
34 “(C) Order, or authorize local public health administrators to order, public health measures ap-
35 propriate to the public health threat presented;
36 “(D) **Authorize pharmacists licensed under ORS chapter 689 to administer vaccines to**
37 **persons who are three years of age or older;**
38 “[D)] (E) Upon approval of the Governor, take other actions necessary to address the public
39 health emergency and provide notice of those actions to health care providers, institutions and fa-
40 cilities, including public health actions authorized by ORS 431.264;
41 “[E)] (F) Take any enforcement action authorized by ORS 431.262, including the imposition of
42 civil penalties of up to \$500 per day against individuals, institutions or facilities that knowingly fail
43 to comply with requirements resulting from actions taken in accordance with the powers granted
44 to the Public Health Director under subparagraphs (A), (B) and [D)] (E) of this paragraph; and
45 “[F)] (G) The authority granted to the Public Health Director under this section:

1 “(i) Supersedes any authority granted to a local public health authority if the local public health
2 authority acts in a manner inconsistent with guidelines established or rules adopted by the director
3 under this section; and

4 “(ii) Does not supersede the general authority granted to a local public health authority or a
5 local public health administrator except as authorized by law or necessary to respond to a public
6 health emergency.

7 “(b) The authority of the Public Health Director to take administrative action, and the effec-
8 tiveness of any action taken, under paragraph (a)(A), (B)[, (D), (E) and (F)] **and (D) to (G)** of this
9 subsection terminates upon the expiration of the proclaimed state of public health emergency, unless
10 the actions are continued under other applicable law.

11 “(3) Civil penalties under subsection (2) of this section shall be imposed in the manner provided
12 in ORS 183.745. The Public Health Director must establish that the individual, institution or facility
13 subject to the civil penalty had actual notice of the action taken that is the basis for the penalty.
14 The maximum aggregate total for penalties that may be imposed against an individual, institution
15 or facility under subsection (2) of this section is \$500 for each day of violation, regardless of the
16 number of violations of subsection (2) of this section that occurred on each day of violation.

17 “(4)(a) During a proclaimed state of public health emergency, the Public Health Director and
18 local public health administrators shall be given immediate access to individually identifiable health
19 information necessary to:

20 “(A) Determine the causes of an illness related to the public health emergency;

21 “(B) Identify persons at risk;

22 “(C) Identify patterns of transmission;

23 “(D) Provide treatment; and

24 “(E) Take steps to control the disease.

25 “(b) Individually identifiable health information accessed as provided by paragraph (a) of this
26 subsection may not be used for conducting nonemergency epidemiologic research or to identify
27 persons at risk for post-traumatic mental health problems, or for any other purpose except the pur-
28 poses listed in paragraph (a) of this subsection.

29 “(c) Individually identifiable health information obtained by the Public Health Director or local
30 public health administrators under this subsection may not be disclosed without written authori-
31 zation of the identified individual except:

32 “(A) Directly to the individual who is the subject of the information or to the legal represen-
33 tative of that individual;

34 “(B) To state, local or federal agencies authorized to receive such information by state or fed-
35 eral law;

36 “(C) To identify or to determine the cause or manner of death of a deceased individual; or

37 “(D) Directly to a health care provider for the evaluation or treatment of a condition that is the
38 subject of a proclamation of a state of public health emergency issued under ORS 433.441.

39 “(d) Upon expiration of the state of public health emergency, the Public Health Director or local
40 public health administrators may not use or disclose any individually identifiable health information
41 that has been obtained under this section. If a state of emergency that is related to the state of
42 public health emergency has been declared under ORS 401.165, the Public Health Director and local
43 public health administrators may continue to use any individually identifiable information obtained
44 as provided under this section until termination of the state of emergency.

45 “(5) All civil penalties recovered under this section shall be paid into the State Treasury and

1 credited to the General Fund and are available for general governmental expenses.

2 “(6) The Public Health Director may request assistance in enforcing orders issued pursuant to
3 this section from state or local law enforcement authorities. If so requested by the Public Health
4 Director, state and local law enforcement authorities, to the extent resources are available, shall
5 assist in enforcing orders issued pursuant to this section.

6 “(7) If the Oregon Health Authority adopts temporary rules to implement the provisions of this
7 section, the rules adopted are not subject to the provisions of ORS 183.335 (6)(a). The authority may
8 amend temporary rules adopted pursuant to this subsection as often as necessary to respond to the
9 public health emergency.”.

10 In line 10, delete “3” and insert “5”.

11 Delete lines 14 and 15 and insert:

12 “(b) If authorized by the Governor under ORS 433.441 or the Public Health Director under ORS
13 433.443 or section 2 of this 2013 Act, to a person three years of age or older.”.

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