

House Bill 3087

Sponsored by Representative GREENLICK, Senator SHIELDS

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**.

Removes requirement for Oregon Health Authority to prescribe rules regarding health practitioner referrals. Requires notification of specified information at time of each referral unless patient opts out of subsequent notifications.

Requires Oregon Health Authority to investigate complaints against health practitioner for violation and authorizes civil penalty of up to \$2,500 against facility in which health care practitioner has financial interest.

Repeals provisions subjecting health practitioner to disciplinary action and civil penalty for failure to comply with notification requirement.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health practitioner referrals; creating new provisions; amending ORS 441.098; repealing
3 ORS 441.099 and 441.991; and declaring an emergency.

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

5 **SECTION 1.** ORS 441.098 is amended to read:

6 441.098. (1) As used in this section and [*ORS 441.099 and 441.991*] **section 2 of this 2015 Act:**

7 (a) "Facility" means a hospital, outpatient clinic owned by a hospital, ambulatory surgical cen-
8 ter, freestanding birthing center or facility that receives Medicare reimbursement as an independent
9 diagnostic testing facility.

10 (b) "Financial interest" means a five percent or greater direct or indirect ownership interest.

11 (c)(A) "Health practitioner" means a physician, dentist, direct entry midwife, licensed registered
12 nurse who is certified by the Oregon State Board of Nursing as a nurse midwife nurse practitioner,
13 certified nurse practitioner, licensed physician assistant or medical imaging licensee under ORS
14 688.405 to 688.605.

15 (B) "Health practitioner" does not include a provider in a health maintenance organization as
16 defined in ORS 750.005.

17 (d) "Physician" has the meaning given that term in ORS 677.010.

18 (2) A health practitioner's decision to refer a patient to a facility for a diagnostic test or health
19 care treatment or service shall be based on the patient's clinical needs and personal health choices.

20 (3) If a health practitioner refers a patient for a diagnostic test or health care treatment or
21 service at a facility in which the health practitioner or an immediate family member of the health
22 practitioner has a financial interest, the health practitioner or the practitioner's designee shall in-
23 form the patient orally and in writing of that interest at the time of the referral.

24 (4)(a) If a health practitioner refers a patient to a facility for a diagnostic test or health care
25 treatment or service, the health practitioner or the practitioner's designee shall **orally** inform the
26 patient[, *in the form and manner prescribed by the Oregon Health Authority by rule,*] **at the time**
27 **of the initial referral** that:

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 (A) The patient may receive the test, treatment or service at a different facility of the patient's
 2 choice; and

3 (B) If the patient chooses a different facility, the patient should contact the patient's insurer
 4 regarding the extent of coverage or the limitations on coverage for the test, treatment or service
 5 at the facility chosen by the patient.

6 *[(b) Rules concerning the form and manner for informing a patient as required by this subsection
 7 shall:]*

8 *[(A) Be designed to ensure that the information is conveyed in a timely and meaningful manner;]*

9 *[(B) Be administratively simple; and]*

10 *[(C) Accommodate a provider's adoption and use of electronic health record systems.]*

11 **(b) At the time of all subsequent referrals, a health practitioner shall provide to the pa-**
 12 **tient the information that is required by this subsection unless the patient expressly opts**
 13 **out of receiving the information for future referrals.**

14 (5) A health practitioner may not deny, limit or withdraw a referral to a facility solely for the
 15 reason that the patient chooses to obtain the test, treatment or service from a different facility.

16 *[(6) The authority may not impose additional restrictions or limitations on any referral described
 17 in this section that are in addition to the requirements specified in subsections (3) and (4) of this sec-
 18 tion.]*

19 *[(7)]* **(6)** In obtaining informed consent for a diagnostic test or health care treatment or service
 20 that will take place at a facility, a health practitioner shall disclose the manner in which care will
 21 be provided in the event that complications occur that require health services beyond what the fa-
 22 cility has the capability to provide.

23 *[(8)]* **(7)** Subsections (3) to (5) of this section do not apply to a referral for a diagnostic test or
 24 health care treatment or service:

25 (a) For a patient who is receiving inpatient hospital services or services in an emergency de-
 26 partment if the referral is for a diagnostic test or health care treatment or service to be performed
 27 while the patient is in the hospital or emergency department;

28 (b) Made to a particular facility after the initial referral of the patient to that facility; or

29 (c) Made by the facility or provider to whom a patient was referred.

30 **SECTION 2. (1) The Oregon Health Authority shall investigate any complaint made**
 31 **against a health practitioner for a violation of ORS 441.098.**

32 **(2) The Director of the Oregon Health Authority, in accordance with ORS 183.745, may**
 33 **impose a civil penalty against a facility in which a health practitioner has a financial interest**
 34 **in an amount not to exceed \$2,500 for each separate instance of a health practitioner's vio-**
 35 **lation of or failure to comply with the provisions of ORS 441.098 or a rule or order the di-**
 36 **rector adopted or issued under ORS 441.098.**

37 **(3) Moneys received by the authority under this section shall be paid into the Oregon**
 38 **Health Authority Fund and are continuously appropriated to the authority for the purpose**
 39 **of enforcing the provisions of ORS 441.098.**

40 **SECTION 3. ORS 441.099 and 441.991 are repealed.**

41 **SECTION 4. This 2015 Act being necessary for the immediate preservation of the public**
 42 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
 43 **on its passage.**