

**A-Engrossed**  
**House Bill 2836**

Ordered by the House April 20  
Including House Amendments dated April 20

Sponsored by COMMITTEE ON HEALTH CARE

**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.

*[Requires Oregon Health Authority to conduct study of effectiveness of Oregon Integrated and Coordinated Health Care Delivery System in improving health outcomes for medical assistance recipients.]*

**Exempts from disclosure under public records law health information protected from disclosure by federal law, including records and reports submitted to Psychiatric Security Review Board. Provides that testimony by treatment providers before board or other agencies does not waive confidentiality or protection from disclosure of health records.**

**A BILL FOR AN ACT**

1  
2 Relating to health; amending ORS 161.336, 161.390, 179.505 and 192.502; and declaring an emergency.

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

4 **SECTION 1.** ORS 161.336 is amended to read:

5 161.336. (1)(a) When a person is conditionally released under ORS 161.315 to 161.351, the person  
6 is subject to those supervisory orders of the Psychiatric Security Review Board as are in the best  
7 interests of justice, the protection of society and the welfare of the person.

8 (b) An order of conditional release entered by the board or the Oregon Health Authority may  
9 designate any person or state, county or local agency capable of supervising the person upon re-  
10 lease, subject to the conditions described in the order of conditional release.

11 (c) Prior to the designation, the agency conducting the hearing shall notify the person or state,  
12 county or local agency to whom conditional release is contemplated and provide the person or state,  
13 county or local agency an opportunity to be heard.

14 (d) After receiving an order entered under this section, the person or state, county or local  
15 agency designated in the order shall assume supervision of the person in accordance with the con-  
16 ditions described in the order and any modifications of the conditions ordered by the board.

17 (2) Conditions of release contained in orders entered under this section may be modified from  
18 time to time and conditional releases may be terminated as provided in ORS 161.351.

19 (3)(a) As a condition of release, the person may be required to report to any state or local  
20 mental health facility for evaluation. Whenever medical, psychiatric or psychological treatment is  
21 recommended, the order may require the person, as a condition of release, to cooperate with and  
22 accept the treatment from the facility.

23 (b) The facility to which the person has been referred for evaluation shall perform the evalu-  
24 ation and submit a written report of its findings to the board. If the facility finds that treatment of  
25 the person is appropriate, it shall include its recommendations for treatment in the report to the

**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 board.

2 (c) Whenever treatment is provided by the facility, it shall furnish reports to the board on a  
3 regular basis concerning the progress of the person.

4 (d) Copies of all reports submitted to the board pursuant to this section shall be furnished to the  
5 person and the person's counsel. The confidentiality of **health information contained in these**  
6 **reports is subject to ORS 179.505 and 192.553 to 192.581, the federal Health Insurance Porta-**  
7 **bility and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under it, including**  
8 **45 C.F.R. parts 160 and 164, and federal alcohol and drug treatment confidentiality laws and**  
9 **regulations, including 42 C.F.R. part 2. The confidentiality of information, other than health**  
10 **information, contained in these reports is determined pursuant to ORS 192.501 to 192.505.**

11 (e) The facility shall comply with the conditional release order and any modifications of the  
12 conditions ordered by the board.

13 (4)(a) If at any time while the person is under the jurisdiction of the board it appears to the  
14 board or its chairperson that the person has violated the terms of the conditional release or that  
15 the mental health of the individual has changed, the board or its chairperson may order the person  
16 returned for evaluation or treatment to a state hospital or, if the person is under 18 years of age,  
17 to a secure intensive community inpatient facility. A written order of the board, or its chairperson  
18 on behalf of the board, is sufficient warrant for any law enforcement officer to take into custody  
19 such person and transport the person accordingly. A sheriff, municipal police officer, constable,  
20 parole and probation officer, prison official or other peace officer shall execute the order, and the  
21 person shall be returned as soon as practicable to the state hospital or secure intensive community  
22 inpatient facility designated in the order.

23 (b) The community mental health program director, the director of the facility providing treat-  
24 ment to a person on conditional release, any peace officer or any person responsible for the super-  
25 vision of a person on conditional release may take a person on conditional release into custody or  
26 request that the person be taken into custody if there is reasonable cause to believe the person is  
27 a substantial danger to others because of mental disease or defect and that the person is in need  
28 of immediate care, custody or treatment. Any person taken into custody pursuant to this subsection  
29 shall be transported as soon as practicable to a state hospital or, if the person is under 18 years  
30 of age, to a secure intensive community inpatient facility.

31 (c) Within 20 days following the return of the person to a state hospital or secure intensive  
32 community inpatient facility under this subsection, the agency having jurisdiction over the person  
33 shall conduct a hearing. The agency shall provide notice of the hearing to the person, the attorney  
34 representing the person and the Attorney General. The state must prove by a preponderance of the  
35 evidence the person's unfitness for conditional release. The hearing shall be conducted in accord-  
36 ance with ORS 161.346.

37 (5)(a) Any person conditionally released under this section may apply to the board for discharge  
38 from or modification of an order of conditional release on the ground that the person is no longer  
39 affected by mental disease or defect or, if still so affected, no longer presents a substantial danger  
40 to others and no longer requires supervision, medication, care or treatment. Notice of the hearing  
41 on an application for discharge or modification of an order of conditional release shall be made to  
42 the Attorney General. The applicant, at the hearing pursuant to this subsection, must prove by a  
43 preponderance of the evidence the applicant's fitness for discharge or modification of the order of  
44 conditional release. Applications by the person for discharge or modification of conditional release  
45 may not be filed more often than once every six months.

1 (b) Upon application by any person or agency responsible for supervision or treatment pursuant  
2 to an order of conditional release, the board shall conduct a hearing to determine if the conditions  
3 of release shall be continued, modified or terminated. The application shall be accompanied by a  
4 report setting forth the facts supporting the application.

5 (6) A person who has spent five years on conditional release shall be brought before the board  
6 for hearing within 30 days before the expiration of the five-year period. The board shall review the  
7 person's status and determine whether the person should be discharged from the jurisdiction of the  
8 board.

9 **SECTION 2.** ORS 161.390 is amended to read:

10 161.390. (1) The Oregon Health Authority shall adopt rules for the assignment of persons to state  
11 mental hospitals or secure intensive community inpatient facilities under ORS 161.315 to 161.351,  
12 161.365 and 161.370 and for establishing standards for evaluation and treatment of persons commit-  
13 ted to a state hospital or a secure intensive community inpatient facility or ordered to a community  
14 mental health program under ORS 161.315 to 161.351.

15 (2) When the Psychiatric Security Review Board or the authority requires the preparation of a  
16 predischarge or preconditional release plan before a hearing or as a condition of granting discharge  
17 or conditional release for a person committed under ORS 161.315 to 161.351 to a state hospital or  
18 a secure intensive community inpatient facility for custody, care and treatment, the authority is  
19 responsible for and shall prepare the plan.

20 (3) In carrying out a conditional release plan prepared under subsection (2) of this section, the  
21 authority may contract with a community mental health program, other public agency or private  
22 corporation or an individual to provide supervision and treatment for the conditionally released  
23 person.

24 (4) Before the authority conducts a hearing under ORS 161.315 to 161.351, the authority shall  
25 notify the board. The board may provide the authority with conditions of release that the board  
26 determines are advisable. If the authority orders the person conditionally released, the authority  
27 shall include the conditions of release in the order.

28 (5)(a) The board and the authority shall maintain and keep current the medical, social and  
29 criminal history of all persons committed to their respective jurisdiction. The confidentiality of  
30 **medical** records maintained by the board shall be determined pursuant to **ORS 179.505 and 192.553**  
31 **to 192.581, the federal Health Insurance Portability and Accountability Act of 1996 (P.L.**  
32 **104-191) and regulations adopted under it, including 45 C.F.R. parts 160 and 164, and federal**  
33 **alcohol and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2.**  
34 **The confidentiality of records, other than medical records, shall be determined pursuant to**  
35 **ORS 192.501 to 192.505.**

36 **(b) The testimony of treatment providers at agency hearings does not waive the**  
37 **confidentiality of or protection from disclosure of records under law.**

38 (6) The evidentiary phase of a hearing conducted by the board or the authority under ORS  
39 161.315 to 161.351 is not a deliberation for purposes of ORS 192.690.

40 **SECTION 3.** ORS 179.505 is amended to read:

41 179.505. (1) As used in this section:

42 (a) "Disclosure" means the release of, transfer of, provision of access to or divulgence in any  
43 other manner of information outside the health care services provider holding the information.

44 (b) "Health care services provider" means:

45 (A) Medical personnel or other staff employed by or under contract with a public provider to

1 provide health care or maintain written accounts of health care provided to individuals; or

2 (B) Units, programs or services designated, operated or maintained by a public provider to pro-  
3 vide health care or maintain written accounts of health care provided to individuals.

4 (c) "Individually identifiable health information" means any health information that is:

5 (A) Created or received by a health care services provider; and

6 (B) Identifiable to an individual, including demographic information that identifies the individual,  
7 or for which there is a reasonable basis to believe the information can be used to identify an indi-  
8 vidual, and that relates to:

9 (i) The past, present or future physical or mental health or condition of an individual;

10 (ii) The provision of health care to an individual; or

11 (iii) The past, present or future payment for the provision of health care to an individual.

12 (d) "Personal representative" includes but is not limited to:

13 (A) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with  
14 authority to make medical and health care decisions;

15 (B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-  
16 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment  
17 decisions; and

18 (C) A person appointed as a personal representative under ORS chapter 113.

19 (e) "Psychotherapy notes" means notes recorded in any medium:

20 (A) By a mental health professional, in the performance of the official duties of the mental  
21 health professional;

22 (B) Documenting or analyzing the contents of conversation during a counseling session; and

23 (C) That are maintained separately from the rest of the individual's record.

24 (f) "Psychotherapy notes" does not mean notes documenting:

25 (A) Medication prescription and monitoring;

26 (B) Counseling session start and stop times;

27 (C) Modalities and frequencies of treatment furnished;

28 (D) Results of clinical tests; or

29 (E) Any summary of the following items:

30 (i) Diagnosis;

31 (ii) Functional status;

32 (iii) Treatment plan;

33 (iv) Symptoms;

34 (v) Prognosis; or

35 (vi) Progress to date.

36 (g) "Public provider" means:

37 (A) The Oregon State Hospital campuses;

38 (B) Department of Corrections institutions as defined in ORS 421.005;

39 (C) A contractor of the Department of Corrections or the Oregon Health Authority that provides  
40 health care to individuals residing in a state institution operated by the agencies;

41 (D) A community mental health program or community developmental disabilities program as  
42 described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to  
43 provide mental health or developmental disabilities programs or services;

44 (E) A program or service provided under ORS 431.001 to 431.550 and 431.990;

45 (F) A program or service established or maintained under ORS 430.630 or 430.664;

1 (G) A program or facility providing an organized full-day or part-day program of treatment that  
2 is licensed, approved, established, maintained or operated by or contracted with the Oregon Health  
3 Authority for alcoholism, drug addiction or mental or emotional disturbance;

4 (H) A program or service providing treatment by appointment that is licensed, approved, estab-  
5 lished, maintained or operated by or contracted with the authority for alcoholism, drug addiction  
6 or mental or emotional disturbance; or

7 (I) The impaired health professional program established under ORS 676.190.

8 (h) "Written account" means records containing only individually identifiable health information.

9 (2) Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16), (17) and (18)  
10 of this section or unless otherwise permitted or required by state or federal law or by order of the  
11 court, written accounts of the individuals served by any health care services provider maintained  
12 in or by the health care services provider by the officers or employees thereof who are authorized  
13 to maintain written accounts within the official scope of their duties are not subject to access and  
14 may not be disclosed. This subsection applies to written accounts maintained in or by facilities of  
15 the Department of Corrections only to the extent that the written accounts concern the medical,  
16 dental or psychiatric treatment as patients of those under the jurisdiction of the Department of  
17 Corrections.

18 (3) If the individual or a personal representative of the individual provides an authorization, the  
19 content of any written account referred to in subsection (2) of this section must be disclosed ac-  
20 cordingly, if the authorization is in writing and is signed and dated by the individual or the personal  
21 representative of the individual and sets forth with specificity the following:

22 (a) Name of the health care services provider authorized to make the disclosure, except when  
23 the authorization is provided by recipients of or applicants for public assistance or medical assist-  
24 ance, as defined in ORS 414.025, to a governmental entity for purposes of determining eligibility for  
25 benefits or investigating for fraud;

26 (b) Name or title of the persons or organizations to which the information is to be disclosed or  
27 that information may be disclosed to the public;

28 (c) Name of the individual;

29 (d) Extent or nature of the information to be disclosed; and

30 (e) Statement that the authorization is subject to revocation at any time except to the extent  
31 that action has been taken in reliance thereon, and a specification of the date, event or condition  
32 upon which it expires without express revocation. However, a revocation of an authorization is not  
33 valid with respect to inspection or records necessary to validate expenditures by or on behalf of  
34 governmental entities.

35 (4) The content of any written account referred to in subsection (2) of this section may be dis-  
36 closed without an authorization:

37 (a) To any person to the extent necessary to meet a medical emergency.

38 (b) At the discretion of the responsible officer of the health care services provider, which in the  
39 case of any Oregon Health Authority facility or community mental health program is the Director  
40 of the Oregon Health Authority, to persons engaged in scientific research, program evaluation, peer  
41 review and fiscal audits. However, individual identities may not be disclosed to such persons, except  
42 when the disclosure is essential to the research, evaluation, review or audit and is consistent with  
43 state and federal law.

44 (c) To governmental agencies when necessary to secure compensation for services rendered in  
45 the treatment of the individual.

1 (5) When an individual's identity is disclosed under subsection (4) of this section, a health care  
2 services provider shall prepare, and include in the permanent records of the health care services  
3 provider, a written statement indicating the reasons for the disclosure, the written accounts dis-  
4 closed and the recipients of the disclosure.

5 (6) The content of any written account referred to in subsection (2) of this section and held by  
6 a health care services provider currently engaged in the treatment of an individual may be disclosed  
7 to officers or employees of that provider, its agents or cooperating health care services providers  
8 who are currently acting within the official scope of their duties to evaluate treatment programs,  
9 to diagnose or treat or to assist in diagnosing or treating an individual when the written account  
10 is to be used in the course of diagnosing or treating the individual. Nothing in this subsection  
11 prevents the transfer of written accounts referred to in subsection (2) of this section among health  
12 care services providers, the Department of Corrections, the Oregon Health Authority or a local  
13 correctional facility when the transfer is necessary or beneficial to the treatment of an individual.

14 (7) When an action, suit, claim, arbitration or proceeding is brought under ORS 34.105 to 34.240  
15 or 34.310 to 34.730 and involves a claim of constitutionally inadequate medical care, diagnosis or  
16 treatment, or is brought under ORS 30.260 to 30.300 and involves the Department of Corrections or  
17 an institution operated by the department, nothing in this section prohibits the disclosure of any  
18 written account referred to in subsection (2) of this section to the Department of Justice, Oregon  
19 Department of Administrative Services, or their agents, upon request, or the subsequent disclosure  
20 to a court, administrative hearings officer, arbitrator or other administrative decision maker.

21 (8)(a) When an action, suit, claim, arbitration or proceeding involves the Oregon Health Au-  
22 thority or an institution operated by the authority, nothing in this section prohibits the disclosure  
23 of any written account referred to in subsection (2) of this section to the Department of Justice,  
24 Oregon Department of Administrative Services, or their agents.

25 (b) Disclosure of information in an action, suit, claim, nonlabor arbitration or proceeding is  
26 limited by the relevancy restrictions of ORS 40.010 to 40.585, 183.710 to 183.725, 183.745 and 183.750  
27 and ORS chapter 183. Only written accounts of a plaintiff, claimant or petitioner shall be disclosed  
28 under this paragraph.

29 (c) Disclosure of information as part of a labor arbitration or proceeding to support a personnel  
30 action taken against staff is limited to written accounts directly relating to alleged action or in-  
31 action by staff for which the personnel action was imposed.

32 (9)(a) The copy of any written account referred to in subsection (2) of this section, upon written  
33 request of the individual or a personal representative of the individual, shall be disclosed to the  
34 individual or the personal representative of the individual within a reasonable time not to exceed  
35 five working days. The individual or the personal representative of the individual shall have the  
36 right to timely access to any written accounts.

37 (b) If the disclosure of psychiatric or psychological information contained in the written account  
38 would constitute an immediate and grave detriment to the treatment of the individual, disclosure  
39 may be denied, if medically contraindicated by the treating physician or a licensed health care  
40 professional in the written account of the individual.

41 (c) The Department of Corrections may withhold psychiatric or psychological information if:

42 (A) The information relates to an individual other than the individual seeking it.

43 (B) Disclosure of the information would constitute a danger to another individual.

44 (C) Disclosure of the information would compromise the privacy of a confidential source.

45 (d) However, a written statement of the denial under paragraph (c) of this subsection and the

1 reasons therefor must be entered in the written account.

2 (10) A health care services provider may require a person requesting disclosure of the contents  
3 of a written account under this section to reimburse the provider for the reasonable costs incurred  
4 in searching files, abstracting if requested and copying if requested. However, an individual or a  
5 personal representative of the individual may not be denied access to written accounts concerning  
6 the individual because of inability to pay.

7 (11) A written account referred to in subsection (2) of this section may not be used to initiate  
8 or substantiate any criminal, civil, administrative, legislative or other proceedings conducted by  
9 federal, state or local authorities against the individual or to conduct any investigations of the in-  
10 dividual. If the individual, as a party to an action, suit or other judicial proceeding, voluntarily  
11 produces evidence regarding an issue to which a written account referred to in subsection (2) of this  
12 section would be relevant, the contents of that written account may be disclosed for use in the  
13 proceeding.

14 (12) Information obtained in the course of diagnosis, evaluation or treatment of an individual  
15 that, in the professional judgment of the health care services provider, indicates a clear and imme-  
16 diate danger to others or to society may be reported to the appropriate authority. A decision not  
17 to disclose information under this subsection does not subject the provider to any civil liability.  
18 Nothing in this subsection may be construed to alter the provisions of ORS 146.750, 146.760,  
19 419B.010, 419B.015, 419B.020, 419B.025, 419B.030, 419B.035, 419B.040 and 419B.045.

20 (13) The prohibitions of this section apply to written accounts concerning any individual who  
21 has been treated by any health care services provider irrespective of whether or when the individual  
22 ceases to receive treatment.

23 (14) Persons other than the individual or the personal representative of the individual who are  
24 granted access under this section **or any other law** to the contents of a written account referred  
25 to in subsection (2) of this section may not disclose the contents of the written account to any other  
26 person except in accordance with the provisions of this section.

27 (15) Nothing in this section prevents the Department of Human Services or the Oregon Health  
28 Authority from disclosing the contents of written accounts in its possession to individuals or agen-  
29 cies with whom children in its custody are placed.

30 (16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS  
31 192.515, as provided in ORS 192.517.

32 (17)(a) Except as provided in paragraph (b) of this subsection, a health care services provider  
33 must obtain an authorization from an individual or a personal representative of the individual to  
34 disclose psychotherapy notes.

35 (b) A health care services provider may use or disclose psychotherapy notes without obtaining  
36 an authorization from the individual or a personal representative of the individual to carry out the  
37 following treatment, payment and health care operations:

38 (A) Use by the originator of the psychotherapy notes for treatment;

39 (B) Disclosure by the health care services provider for its own training program in which stu-  
40 dents, trainees or practitioners in mental health learn under supervision to practice or improve their  
41 skills in group, joint, family or individual counseling; or

42 (C) Disclosure by the health care services provider to defend itself in a legal action or other  
43 proceeding brought by the individual or a personal representative of the individual.

44 (c) An authorization for the disclosure of psychotherapy notes may not be combined with an  
45 authorization for a disclosure of any other individually identifiable health information, but may be

1 combined with another authorization for a disclosure of psychotherapy notes.

2 (18) A health care services provider may disclose information contained in a written account if  
3 the conditions of ORS 192.567 (1) to (5) are met.

4 **SECTION 4.** ORS 192.502 is amended to read:

5 192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

6 (1) Communications within a public body or between public bodies of an advisory nature to the  
7 extent that they cover other than purely factual materials and are preliminary to any final agency  
8 determination of policy or action. This exemption shall not apply unless the public body shows that  
9 in the particular instance the public interest in encouraging frank communication between officials  
10 and employees of public bodies clearly outweighs the public interest in disclosure.

11 (2) Information of a personal nature such as but not limited to that kept in a personal, medical  
12 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the  
13 public interest by clear and convincing evidence requires disclosure in the particular instance. The  
14 party seeking disclosure shall have the burden of showing that public disclosure would not consti-  
15 tute an unreasonable invasion of privacy.

16 (3) Upon compliance with ORS 192.437, public body employee or volunteer residential addresses,  
17 residential telephone numbers, personal cellular telephone numbers, personal electronic mail ad-  
18 dresses, driver license numbers, employer-issued identification card numbers, emergency contact in-  
19 formation, Social Security numbers, dates of birth and other telephone numbers contained in  
20 personnel records maintained by the public body that is the employer or the recipient of volunteer  
21 services. This exemption:

22 (a) Does not apply to the addresses, dates of birth and telephone numbers of employees or vol-  
23 unteers who are elected officials, except that a judge or district attorney subject to election may  
24 seek to exempt the judge's or district attorney's address or telephone number, or both, under the  
25 terms of ORS 192.445;

26 (b) Does not apply to employees or volunteers to the extent that the party seeking disclosure  
27 shows by clear and convincing evidence that the public interest requires disclosure in a particular  
28 instance pursuant to ORS 192.437;

29 (c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a pro-  
30 fessional education association of which the substitute teacher may be a member; and

31 (d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

32 (4) Information submitted to a public body in confidence and not otherwise required by law to  
33 be submitted, where such information should reasonably be considered confidential, the public body  
34 has obliged itself in good faith not to disclose the information, and when the public interest would  
35 suffer by the disclosure.

36 (5) Information or records of the Department of Corrections, including the State Board of Parole  
37 and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabilitation of  
38 a person in custody of the department or substantially prejudice or prevent the carrying out of the  
39 functions of the department, if the public interest in confidentiality clearly outweighs the public in-  
40 terest in disclosure.

41 (6) Records, reports and other information received or compiled by the Director of the Depart-  
42 ment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not  
43 otherwise required by law to be made public, to the extent that the interests of lending institutions,  
44 their officers, employees and customers in preserving the confidentiality of such information out-  
45 weighs the public interest in disclosure.



1 (7) Reports made to or filed with the court under ORS 137.077 or 137.530.

2 (8) Any public records or information the disclosure of which is prohibited by federal law or  
3 regulations.

4 (9)(a) Public records or information the disclosure of which is prohibited or restricted or other-  
5 wise made confidential or privileged under Oregon law.

6 (b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual information  
7 compiled in a public record when:

8 (A) The basis for the claim of exemption is ORS 40.225;

9 (B) The factual information is not prohibited from disclosure under any applicable state or fed-  
10 eral law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410  
11 to 192.505;

12 (C) The factual information was compiled by or at the direction of an attorney as part of an  
13 investigation on behalf of the public body in response to information of possible wrongdoing by the  
14 public body;

15 (D) The factual information was not compiled in preparation for litigation, arbitration or an  
16 administrative proceeding that was reasonably likely to be initiated or that has been initiated by  
17 or against the public body; and

18 (E) The holder of the privilege under ORS 40.225 has made or authorized a public statement  
19 characterizing or partially disclosing the factual information compiled by or at the attorney's di-  
20 rection.

21 (10) Public records or information described in this section, furnished by the public body ori-  
22 ginally compiling, preparing or receiving them to any other public officer or public body in con-  
23 nection with performance of the duties of the recipient, if the considerations originally giving rise  
24 to the confidential or exempt nature of the public records or information remain applicable.

25 (11) Records of the Energy Facility Siting Council concerning the review or approval of security  
26 programs pursuant to ORS 469.530.

27 (12) Employee and retiree address, telephone number and other nonfinancial membership records  
28 and employee financial records maintained by the Public Employees Retirement System pursuant to  
29 ORS chapters 238 and 238A.

30 (13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the  
31 agents of the treasurer or the council relating to active or proposed publicly traded investments  
32 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or  
33 liquidation of the investments. For the purposes of this subsection:

34 (a) The exemption does not apply to:

35 (A) Information in investment records solely related to the amount paid directly into an invest-  
36 ment by, or returned from the investment directly to, the treasurer or council; or

37 (B) The identity of the entity to which the amount was paid directly or from which the amount  
38 was received directly.

39 (b) An investment in a publicly traded investment is no longer active when acquisition, exchange  
40 or liquidation of the investment has been concluded.

41 (14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the  
42 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed  
43 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset  
44 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or  
45 liquidation of the investments including but not limited to:

1 (A) Due diligence materials that are proprietary to an investment fund, to an asset ownership  
2 or to their respective investment vehicles.

3 (B) Financial statements of an investment fund, an asset ownership or their respective invest-  
4 ment vehicles.

5 (C) Meeting materials of an investment fund, an asset ownership or their respective investment  
6 vehicles.

7 (D) Records containing information regarding the portfolio positions in which an investment  
8 fund, an asset ownership or their respective investment vehicles invest.

9 (E) Capital call and distribution notices of an investment fund, an asset ownership or their re-  
10 spective investment vehicles.

11 (F) Investment agreements and related documents.

12 (b) The exemption under this subsection does not apply to:

13 (A) The name, address and vintage year of each privately placed investment fund.

14 (B) The dollar amount of the commitment made to each privately placed investment fund since  
15 inception of the fund.

16 (C) The dollar amount of cash contributions made to each privately placed investment fund since  
17 inception of the fund.

18 (D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State  
19 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,  
20 council or board from each privately placed investment fund.

21 (E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately  
22 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment  
23 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

24 (F) The net internal rate of return of each privately placed investment fund since inception of  
25 the fund.

26 (G) The investment multiple of each privately placed investment fund since inception of the fund.

27 (H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end  
28 basis to each privately placed investment fund.

29 (I) The dollar amount of cash profit received from each privately placed investment fund on a  
30 fiscal year-end basis.

31 (15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning the  
32 Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated as  
33 exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

34 (16) Reports of unclaimed property filed by the holders of such property to the extent permitted  
35 by ORS 98.352.

36 (17)(a) The following records, communications and information submitted to the Oregon Business  
37 Development Commission, the Oregon Business Development Department, the State Department of  
38 Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS  
39 777.005, or a county or city governing body and any board, department, commission, council or  
40 agency thereof, by applicants for investment funds, grants, loans, services or economic development  
41 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

42 (A) Personal financial statements.

43 (B) Financial statements of applicants.

44 (C) Customer lists.

45 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the

1 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
2 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
3 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
4 ery or deposition statutes to a party to litigation or potential litigation.

5 (E) Production, sales and cost data.

6 (F) Marketing strategy information that relates to applicant's plan to address specific markets  
7 and applicant's strategy regarding specific competitors.

8 (b) The following records, communications and information submitted to the State Department  
9 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

10 (A) Personal financial statements.

11 (B) Financial statements of applicants.

12 (C) Customer lists.

13 (D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
14 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
15 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
16 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
17 ery or deposition statutes to a party to litigation or potential litigation.

18 (E) Production, sales and cost data.

19 (F) Marketing strategy information that relates to applicant's plan to address specific markets  
20 and applicant's strategy regarding specific competitors.

21 (18) Records, reports or returns submitted by private concerns or enterprises required by law  
22 to be submitted to or inspected by a governmental body to allow it to determine the amount of any  
23 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such  
24 information is in a form which would permit identification of the individual concern or enterprise.  
25 Nothing in this subsection shall limit the use which can be made of such information for regulatory  
26 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-  
27 payer of the delinquency immediately by certified mail. However, in the event that the payment or  
28 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the  
29 public body shall disclose, upon the request of any person, the following information:

30 (a) The identity of the individual concern or enterprise that is delinquent over 60 days in the  
31 payment or delivery of the taxes.

32 (b) The period for which the taxes are delinquent.

33 (c) The actual, or estimated, amount of the delinquency.

34 (19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-  
35 pointed counsel, and all information supplied to the court from whatever source for the purpose of  
36 verifying the financial eligibility of a person pursuant to ORS 151.485.

37 (20) Workers' compensation claim records of the Department of Consumer and Business Services,  
38 except in accordance with rules adopted by the Director of the Department of Consumer and Busi-  
39 ness Services, in any of the following circumstances:

40 (a) When necessary for insurers, self-insured employers and third party claim administrators to  
41 process workers' compensation claims.

42 (b) When necessary for the director, other governmental agencies of this state or the United  
43 States to carry out their duties, functions or powers.

44 (c) When the disclosure is made in such a manner that the disclosed information cannot be used  
45 to identify any worker who is the subject of a claim.

- 1 (d) When a worker or the worker's representative requests review of the worker's claim record.  
2 (21) Sensitive business records or financial or commercial information of the Oregon Health and  
3 Science University that is not customarily provided to business competitors.  
4 (22) Records of Oregon Health and Science University regarding candidates for the position of  
5 president of the university.  
6 (23) The records of a library, including:  
7 (a) Circulation records, showing use of specific library material by a named person;  
8 (b) The name of a library patron together with the address or telephone number of the patron;  
9 and  
10 (c) The electronic mail address of a patron.  
11 (24) The following records, communications and information obtained by the Housing and Com-  
12 munity Services Department in connection with the department's monitoring or administration of  
13 financial assistance or of housing or other developments:  
14 (a) Personal and corporate financial statements and information, including tax returns.  
15 (b) Credit reports.  
16 (c) Project appraisals, excluding appraisals obtained in the course of transactions involving an  
17 interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed  
18 of as part of the project, but only after the transactions have closed and are concluded.  
19 (d) Market studies and analyses.  
20 (e) Articles of incorporation, partnership agreements and operating agreements.  
21 (f) Commitment letters.  
22 (g) Project pro forma statements.  
23 (h) Project cost certifications and cost data.  
24 (i) Audits.  
25 (j) Project tenant correspondence.  
26 (k) Personal information about a tenant.  
27 (L) Housing assistance payments.  
28 (25) Raster geographic information system (GIS) digital databases, provided by private forestland  
29 owners or their representatives, voluntarily and in confidence to the State Forestry Department,  
30 that is not otherwise required by law to be submitted.  
31 (26) Sensitive business, commercial or financial information furnished to or developed by a  
32 public body engaged in the business of providing electricity or electricity services, if the information  
33 is directly related to a transaction described in ORS 261.348, or if the information is directly related  
34 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and  
35 disclosure of the information would cause a competitive disadvantage for the public body or its re-  
36 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-  
37 velopment or review of generally applicable rate schedules.  
38 (27) Sensitive business, commercial or financial information furnished to or developed by the  
39 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath  
40 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085  
41 and disclosure of the information would cause a competitive disadvantage for the Klamath  
42 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-  
43 ment or review of generally applicable rate schedules.  
44 (28) Personally identifiable information about customers of a municipal electric utility or a  
45 people's utility district or the names, dates of birth, driver license numbers, telephone numbers,

1 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
2 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
3 lease personally identifiable information about a customer, and a public body providing water, sewer  
4 or storm drain services may release the name, date of birth, driver license number, telephone num-  
5 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
6 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
7 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
8 disclosure is otherwise required by federal or state law. The utility, district or other public body  
9 may charge as appropriate for the costs of providing such information. The utility, district or other  
10 public body may make customer records available to third party credit agencies on a regular basis  
11 in connection with the establishment and management of customer accounts or in the event such  
12 accounts are delinquent.

13 (29) A record of the street and number of an employee's address submitted to a special district  
14 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

15 (30) Sensitive business records, capital development plans or financial or commercial information  
16 of Oregon Corrections Enterprises that is not customarily provided to business competitors.

17 (31) Documents, materials or other information submitted to the Director of the Department of  
18 Consumer and Business Services in confidence by a state, federal, foreign or international regulatory  
19 or law enforcement agency or by the National Association of Insurance Commissioners, its affiliates  
20 or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842, 705.137, 717.200  
21 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the Insurance Code  
22 when:

23 (a) The document, material or other information is received upon notice or with an under-  
24 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of  
25 the document, material or other information; and

26 (b) The director has obligated the Department of Consumer and Business Services not to dis-  
27 close the document, material or other information.

28 (32) A county elections security plan developed and filed under ORS 254.074.

29 (33) Information about review or approval of programs relating to the security of:

30 (a) Generation, storage or conveyance of:

31 (A) Electricity;

32 (B) Gas in liquefied or gaseous form;

33 (C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

34 (D) Petroleum products;

35 (E) Sewage; or

36 (F) Water.

37 (b) Telecommunication systems, including cellular, wireless or radio systems.

38 (c) Data transmissions by whatever means provided.

39 (34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court des-  
40 ignates the information as confidential by rule under ORS 1.002.

41 (35)(a) Employer account records of the State Accident Insurance Fund Corporation.

42 (b) As used in this subsection, "employer account records" means all records maintained in any  
43 form that are specifically related to the account of any employer insured, previously insured or un-  
44 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-  
45 mation obtained or developed by the corporation in connection with providing, offering to provide

1 or declining to provide insurance to a specific employer. "Employer account records" includes, but  
2 is not limited to, an employer's payroll records, premium payment history, payroll classifications,  
3 employee names and identification information, experience modification factors, loss experience and  
4 dividend payment history.

5 (c) The exemption provided by this subsection may not serve as the basis for opposition to the  
6 discovery documents in litigation pursuant to applicable rules of civil procedure.

7 (36)(a) Claimant files of the State Accident Insurance Fund Corporation.

8 (b) As used in this subsection, "claimant files" includes, but is not limited to, all records held  
9 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all  
10 records pertaining to such a claim.

11 (c) The exemption provided by this subsection may not serve as the basis for opposition to the  
12 discovery documents in litigation pursuant to applicable rules of civil procedure.

13 (37) Except as authorized by ORS 408.425, records that certify or verify an individual's discharge  
14 or other separation from military service.

15 (38) Records of or submitted to a domestic violence service or resource center that relate to the  
16 name or personal information of an individual who visits a center for service, including the date of  
17 service, the type of service received, referrals or contact information or personal information of a  
18 family member of the individual. As used in this subsection, "domestic violence service or resource  
19 center" means an entity, the primary purpose of which is to assist persons affected by domestic or  
20 sexual violence by providing referrals, resource information or other assistance specifically of ben-  
21 efit to domestic or sexual violence victims.

22 (39) Information reported to the Oregon Health Authority under ORS 431A.860, except as pro-  
23 vided in ORS 431A.860 (2)(b) information disclosed by the authority under ORS 431A.865 and any  
24 information related to disclosures made by the authority under ORS 431A.865, including information  
25 identifying the recipient of the information.

26 (40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of the  
27 executive department, as defined in ORS 174.112, a local government or local service district, as  
28 defined in ORS 174.116, or a special government body, as defined in ORS 174.117.

29 (b) This subsection does not apply to electronic mail addresses assigned by a public body to  
30 public employees for use by the employees in the ordinary course of their employment.

31 (41) Residential addresses, residential telephone numbers, personal cellular telephone numbers,  
32 personal electronic mail addresses, driver license numbers, emergency contact information, Social  
33 Security numbers, dates of birth and other telephone numbers of individuals currently or previously  
34 certified or licensed by the Department of Public Safety Standards and Training contained in the  
35 records maintained by the department.

36 (42) Personally identifiable information and contact information of veterans as defined in ORS  
37 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the  
38 United States, National Guard or other reserve component that was obtained by the Department of  
39 Veterans' Affairs in the course of performing its duties and functions, including but not limited to  
40 names, residential and employment addresses, dates of birth, driver license numbers, telephone  
41 numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the char-  
42 acter of discharge from military service, military rating or rank, that the person is a veteran or has  
43 provided military service, information relating to an application for or receipt of federal or state  
44 benefits, information relating to the basis for receipt or denial of federal or state benefits and in-  
45 formation relating to a home loan or grant application, including but not limited to financial infor-

1 mation provided in connection with the application.

2       **(43) Health information protected from disclosure under ORS 179.505 and 192.553 to**  
3 **192.581, the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191)**  
4 **and regulations adopted under it, including 45 C.F.R. parts 160 and 164, and federal alcohol**  
5 **and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2.**

6       **SECTION 5.** **This 2017 Act being necessary for the immediate preservation of the public**  
7 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**  
8 **on its passage.**

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