

A-Engrossed
Senate Bill 367

Ordered by the Senate March 27
Including Senate Amendments dated March 27

Sponsored by Senator HANSELL, Representative BARRETO, Senators KNOPP, STEINER HAYWARD (Pre-session filed.)

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.

Permits health care provider to disclose protected health information of inmate of correctional facility to **physician** of employee of correctional facility who is exposed to bodily fluids of inmate if exposure is substantial and inmate has tested positive for HIV, hepatitis B or C or other communicable disease.

A BILL FOR AN ACT

1
2 Relating to disclosure of protected health information regarding inmate of Department of Cor-
3 rections facility; creating new provisions; and amending ORS 179.505 and 192.558.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of ORS 192.553 to**
6 **192.581.**

7 **SECTION 2. (1) A health care provider may disclose protected health information con-**
8 **cerning an inmate of a Department of Corrections facility to the physician of an employee**
9 **of the department, without an authorization from the inmate or a personal representative**
10 **of the inmate, if:**

11 (a) **The employee, in the performance of the employee's official duties, was exposed to**
12 **the bodily fluids of the inmate;**

13 (b) **The exposure was substantial; and**

14 (c) **The inmate has tested positive for HIV or hepatitis B or C or other communicable**
15 **disease that may be transmitted through an individual's bodily fluids.**

16 (2) **A disclosure under subsection (1) of this section must be limited to the minimum**
17 **necessary to inform the physician of possible exposure to HIV, hepatitis B or C or other**
18 **communicable disease.**

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

20 179.505. (1) As used in this section:

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

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

24 (A) Medical personnel or other staff employed by or under contract with a public provider to
25 provide health care or maintain written accounts of health care provided to individuals; or

26 (B) Units, programs or services designated, operated or maintained by a public provider to pro-

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 vide health care or maintain written accounts of health care provided to individuals.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 (A) Medication prescription and monitoring;

24 (B) Counseling session start and stop times;

25 (C) Modalities and frequencies of treatment furnished;

26 (D) Results of clinical tests; or

27 (E) Any summary of the following items:

28 (i) Diagnosis;

29 (ii) Functional status;

30 (iii) Treatment plan;

31 (iv) Symptoms;

32 (v) Prognosis; or

33 (vi) Progress to date.

34 (g) "Public provider" means:

35 (A) The Oregon State Hospital campuses;

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

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

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

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

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

44 (G) A program or facility providing an organized full-day or part-day program of treatment that
45 is licensed, approved, established, maintained or operated by or contracted with the Oregon Health

1 Authority for alcoholism, drug addiction or mental or emotional disturbance;

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

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

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

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

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

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

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

26 (c) Name of the individual;

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

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

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

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

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

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

44 (5) When an individual's identity is disclosed under subsection (4) of this section, a health care
45 services provider shall prepare, and include in the permanent records of the health care services

1 provider, a written statement indicating the reasons for the disclosure, the written accounts dis-
2 closed and the recipients of the disclosure.

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

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

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

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

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

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

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

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

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

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

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

43 (d) However, a written statement of the denial under paragraph (c) of this subsection and the
44 reasons therefor must be entered in the written account.

45 (10) A health care services provider may require a person requesting disclosure of the contents

1 of a written account under this section to reimburse the provider for the reasonable costs incurred
2 in searching files, abstracting if requested and copying if requested. However, an individual or a
3 personal representative of the individual may not be denied access to written accounts concerning
4 the individual because of inability to pay.

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

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

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

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

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

28 (16) The system described in ORS 192.517 (1) shall have access to records, as defined in ORS
29 192.515, as provided in ORS 192.517.

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

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

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

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

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

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

45 (18) A health care services provider may disclose information contained in a written account if

1 the conditions of ORS 192.567 (1) to (5) **or section 2 of this 2017 Act** are met.

2 **SECTION 4.** ORS 192.558 is amended to read:

3 192.558. A health care provider or state health plan:

4 (1) May use or disclose protected health information of an individual in a manner that is con-
5 sistent with an authorization provided by the individual or a personal representative of the individ-
6 ual.

7 (2) May use or disclose protected health information of an individual without obtaining an au-
8 thorization from the individual or a personal representative of the individual:

9 (a) For the provider's or plan's own treatment, payment or health care operations; or

10 (b) As otherwise permitted or required by state or federal law or by order of the court.

11 (3) May disclose protected health information of an individual without obtaining an authori-
12 zation from the individual or a personal representative of the individual:

13 (a) To another covered entity for health care operations activities of the entity that receives the
14 information if:

15 (A) Each entity has or had a relationship with the individual who is the subject of the protected
16 health information; and

17 (B) The protected health information pertains to the relationship and the disclosure is for the
18 purpose of:

19 (i) Health care operations as listed in ORS 192.556 (4)(a) or (b); or

20 (ii) Health care fraud and abuse detection or compliance;

21 (b) To another covered entity or any other health care provider for treatment activities of a
22 health care provider;

23 (c) To another covered entity or any other health care provider for the payment activities of the
24 entity that receives that information; or

25 (d) In accordance with ORS 192.567 **or section 2 of this 2017 Act.**

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