

B-Engrossed
Senate Bill 367

Ordered by the House May 31
Including Senate Amendments dated March 27 and House Amendments
dated May 31

Sponsored by Senator HANSELL, Representative BARRETO, Senators KNOPP, STEINER HAYWARD; Representatives KENY-GUYER, WHISNANT (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 **or Oregon Corrections Enterprises** 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 shall 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 or of Oregon Corrections Enterprises, without an authorization from the**
10 **inmate or a personal representative of the inmate, if:**

11 (a) **The employee, in the performance of the employee's official duties, was directly ex-**
12 **posed to the bodily fluids of the inmate; and**

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

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

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

19 179.505. (1) As used in this section:

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

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

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

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

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 (c) “Individually identifiable health information” means any health information that is:
2 (A) Created or received by a health care services provider; and
3 (B) Identifiable to an individual, including demographic information that identifies the individual,
4 or for which there is a reasonable basis to believe the information can be used to identify an indi-
5 vidual, and that relates to:
6 (i) The past, present or future physical or mental health or condition of an individual;
7 (ii) The provision of health care to an individual; or
8 (iii) The past, present or future payment for the provision of health care to an individual.
9 (d) “Personal representative” includes but is not limited to:
10 (A) A person appointed as a guardian under ORS 125.305, 419B.372, 419C.481 or 419C.555 with
11 authority to make medical and health care decisions;
12 (B) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-
13 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment
14 decisions; and
15 (C) A person appointed as a personal representative under ORS chapter 113.
16 (e) “Psychotherapy notes” means notes recorded in any medium:
17 (A) By a mental health professional, in the performance of the official duties of the mental
18 health professional;
19 (B) Documenting or analyzing the contents of conversation during a counseling session; and
20 (C) That are maintained separately from the rest of the individual’s record.
21 (f) “Psychotherapy notes” does not mean notes documenting:
22 (A) Medication prescription and monitoring;
23 (B) Counseling session start and stop times;
24 (C) Modalities and frequencies of treatment furnished;
25 (D) Results of clinical tests; or
26 (E) Any summary of the following items:
27 (i) Diagnosis;
28 (ii) Functional status;
29 (iii) Treatment plan;
30 (iv) Symptoms;
31 (v) Prognosis; or
32 (vi) Progress to date.
33 (g) “Public provider” means:
34 (A) The Oregon State Hospital campuses;
35 (B) Department of Corrections institutions as defined in ORS 421.005;
36 (C) A contractor of the Department of Corrections or the Oregon Health Authority that provides
37 health care to individuals residing in a state institution operated by the agencies;
38 (D) A community mental health program or community developmental disabilities program as
39 described in ORS 430.610 to 430.695 and the public and private entities with which it contracts to
40 provide mental health or developmental disabilities programs or services;
41 (E) A program or service provided under ORS 431.001 to 431.550 and 431.990;
42 (F) A program or service established or maintained under ORS 430.630 or 430.664;
43 (G) A program or facility providing an organized full-day or part-day program of treatment that
44 is licensed, approved, established, maintained or operated by or contracted with the Oregon Health
45 Authority for alcoholism, drug addiction or mental or emotional disturbance;

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

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

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

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

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

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

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

25 (c) Name of the individual;

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

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

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

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

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

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

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

1 closed and the recipients of the disclosure.

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

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

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

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

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

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

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

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

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

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

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

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

44 (10) A health care services provider may require a person requesting disclosure of the contents
45 of a written account under this section to reimburse the provider for the reasonable costs incurred

1 in searching files, abstracting if requested and copying if requested. However, an individual or a
2 personal representative of the individual may not be denied access to written accounts concerning
3 the individual because of inability to pay.

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

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

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

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

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

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

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

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

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

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

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

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

44 (18) A health care services provider may disclose information contained in a written account if
45 the conditions of ORS 192.567 (1) to (5) **or section 2 of this 2017 Act** are met.

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

2 192.558. A health care provider or state health plan:

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

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

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

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

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

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

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

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

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

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

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

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

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

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