

HOUSE AMENDMENTS TO HOUSE BILL 2257

By COMMITTEE ON HEALTH CARE

February 18

1 On page 1 of the printed bill, line 2, after “drugs;” insert “creating new provisions; amending
2 ORS 431A.850, 431A.855, 431A.860, 431A.865, 431A.867 and 431A.898;”.

3 In line 11, after the period insert “The department may collaborate with counties that operate
4 local correctional facilities, as defined in ORS 169.005, to collect data regarding persons in the
5 custody of local correctional facilities in the counties, in particular persons experiencing substance
6 use disorders, including opioid and opiate addiction.”.

7 Delete lines 12 through 21.

8 In line 22, delete “(3)(a)” and insert “(2)(a)” and delete “based”.

9 On page 2, delete line 1.

10 In line 2, delete “section (2) of this section”.

11 In line 11, delete “estab-”.

12 In line 12, delete “lish” and insert “advise the authority on the authority’s establishment of”.

13 After line 15, insert:

14 “(2) When considering requirements under this section, the advisory group shall:

15 “(a) Solicit input from stakeholders, including state agencies, unions representing substance use
16 disorder treatment providers and others; and

17 “(b) Consider relevant factors, including but not limited to the geographic accessibility of
18 treatment, culturally appropriate treatment options, the language needs of potential treatment pa-
19 tients and the needs of substance use disorder treatment providers.

20 “(3) The advisory group shall research and determine how to maximize all sources of federal
21 funding that are available for treatment programs described in this section.

22 “(4) The advisory group may adopt rules to carry out this section.”.

23 In line 16, delete “(2)” and insert “(5)”.

24 Delete lines 22 through 28 and insert:

25 **“SECTION 7. (1) The Oregon Health Authority shall prohibit coordinated care organiza-
26 tions and public payers of health insurance, when reimbursing the cost of medication-
27 assisted treatment for treating substance use disorders, including opioid and opiate
28 addiction, from requiring prior authorization of payment during the first 30 days of
29 medication-assisted treatment.**

30 **“(2) The authority may adopt rules to carry out this section.**

31 **“SECTION 8. Section 7 of this 2019 Act applies to the provision of treatment services that
32 begins on or after the operative date specified in section 21 (1) of this 2019 Act.”.**

33 On page 3, after line 17, insert:

34 “(3) Sterile needles and syringes and other items provided by a syringe service program may not
35 be considered ‘drug paraphernalia,’ as that term is defined in ORS 475.525.”.

1 Delete lines 20 through 26 and insert:

2 **“SECTION 15.** ORS 431A.850, as amended by section 14, chapter 61, Oregon Laws 2018, is
3 amended to read:

4 “ORS 431A.850. As used in ORS 431A.855 to 431A.900:

5 **“(1) ‘Dental director’ means a dentist, as defined in ORS 679.010, employed by a coordi-**
6 **ated care organization, dental clinic or office, or a system of dental clinics or offices, for**
7 **the purpose of overseeing the operations of the dental clinic or office, or the system of dental**
8 **clinics or offices, and ensuring the delivery of quality dental care within the clinic, office or**
9 **system.**

10 “[1] (2) ‘Dispense’ and ‘dispensing’ have the meanings given those terms in ORS 689.005.

11 “[2] (3) ‘Drug outlet’ has the meaning given that term in ORS 689.005.

12 “[3] (4) ‘Health professional regulatory board’ means a health professional regulatory board,
13 as defined in ORS 676.160, the Long Term Care Administrators Board, the Board of Licensed
14 Dietitians and the Behavior Analysis Regulatory Board.

15 “[4] (5) ‘Medical director’ means a physician employed by a **coordinated care organization,**
16 hospital, health care clinic or system of hospitals or health care clinics for the purposes of over-
17 seeing the operations of the **coordinated care organization,** hospital, clinic or system and ensuring
18 the delivery of quality health care within the **coordinated care organization,** hospital, clinic or
19 system.

20 “[5] (6) ‘Pharmacist’ means:

21 “(a) A pharmacist as defined in ORS 689.005; or

22 “(b) An individual licensed to practice pharmacy in another state, if the requirements for
23 licensure are similar, as determined by the Oregon Health Authority, to the requirements for being
24 licensed as a pharmacist as defined in ORS 689.005.

25 “[6] (7) ‘Pharmacy director’ means a pharmacist employed by a **coordinated care organiza-**
26 **tion,** pharmacy or system of pharmacies for the purposes of overseeing the operations of the **coor-**
27 **ordinated care organization,** pharmacy or system and ensuring the delivery of quality
28 pharmaceutical care within the **coordinated care organization,** pharmacy or system.

29 “[7] (8) ‘Practitioner’ means:

30 “(a) A practitioner as defined in ORS 689.005; or

31 “(b) An individual licensed to practice a profession in another state, if the requirements for
32 licensure are similar, as determined by the authority, to the requirements for being licensed as a
33 practitioner as defined in ORS 689.005.

34 “[8] (9) ‘Prescription’ has the meaning given that term in ORS 475.005.

35 “[9] (10) ‘Prescription drug’ has the meaning given that term in ORS 689.005.

36 **“SECTION 16.** ORS 431A.855, as amended by section 8, chapter 45, Oregon Laws 2018, is
37 amended to read:

38 “431A.855. (1)(a) The Oregon Health Authority, in consultation with the Prescription Monitoring
39 Program Advisory Commission, shall establish and maintain a prescription monitoring program for
40 monitoring and reporting:

41 “(A) Prescription drugs dispensed by pharmacies licensed by the State Board of Pharmacy that
42 are classified in schedules II through IV under the federal Controlled Substances Act, 21 U.S.C. 811
43 and 812, as modified by the board by rule under ORS 475.035; and

44 “(B) Prescribed **gabapentin and** naloxone dispensed by pharmacies.

45 “(b)(A) To fulfill the requirements of this subsection, the authority shall establish, maintain and

1 operate an electronic system to monitor and report drugs described in paragraph (a) of this sub-
2 section that are dispensed by prescription.

3 “(B) The electronic system must:

4 “(i) Operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a
5 week; and

6 “(ii) Allow practitioners to register as required under section 7, chapter 45, Oregon Laws 2018,
7 and to apply for access to the electronic system in accordance with rules adopted by the authority
8 under subsection (2) of this section.

9 “(C) The authority may contract with a state agency or private entity to ensure the effective
10 operation of the electronic system.

11 “(2) In consultation with the commission, the authority shall adopt rules for the operation of the
12 electronic prescription monitoring program established under subsection (1) of this section, including
13 standards for:

14 “(a) Reporting data;

15 “(b) Providing maintenance, security and disclosure of data;

16 “(c) Ensuring accuracy and completeness of data;

17 “(d) Complying with the federal Health Insurance Portability and Accountability Act of 1996
18 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164, federal
19 alcohol and drug treatment confidentiality laws and regulations adopted under those laws, including
20 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505,
21 192.517 and 192.553 to 192.581;

22 “(e) Ensuring accurate identification of persons or entities requesting information from the da-
23 tabase;

24 “(f) Accepting printed or nonelectronic reports from pharmacies that do not have the capability
25 to provide electronic reports;

26 “(g) Notifying a patient, before or when a drug classified in schedules II through IV is dispensed
27 to the patient, about the prescription monitoring program and the entry of the prescription in the
28 electronic system; and

29 “(h) Registering practitioners with the electronic system.

30 “(3) The authority shall submit an annual report to the commission regarding the prescription
31 monitoring program established under this section.

32 “**SECTION 17.** ORS 431A.860 is amended to read:

33 “431A.860. (1) Not later than 72 hours after dispensing a prescription drug that is subject to the
34 prescription monitoring program established under ORS 431A.855, a pharmacy shall electronically
35 report to the Oregon Health Authority:

36 “(a) If the prescription drug is classified in schedules II through IV under the federal Controlled
37 Substances Act, 21 U.S.C. 811 and 812, as modified by the State Board of Pharmacy by rule under
38 ORS 475.035, the name, address, phone number, date of birth and sex of the patient for whom the
39 prescription drug was prescribed;

40 “(b) The identity of the pharmacy that dispensed the prescription drug and the date on which
41 the prescription drug was dispensed;

42 “(c) The identity of the practitioner who prescribed the prescription drug and the date on which
43 the prescription drug was prescribed;

44 “(d) The national drug code number for the prescription drug;

45 “(e) The prescription number assigned to the prescription drug;

1 “(f) The quantity of the prescription drug dispensed;
2 “(g) The number of days for which the prescription drug was dispensed; [and]
3 “(h) The number of refills of the prescription authorized by the practitioner and the number of
4 the refill that the pharmacy dispensed; **and**
5 **“(i) The diagnosis code used by the practitioner and the reason for the prescription.**
6 “(2)(a) Notwithstanding subsection (1) of this section, the authority may not:
7 “(A) Require the reporting of prescription drugs administered directly to a patient or dispensed
8 pursuant to ORS 127.800 to 127.897;
9 “(B) Collect or use Social Security numbers in the prescription monitoring program; or
10 “(C) Disclose under ORS 431A.865 (2)(a) the sex of the patient for whom a drug was prescribed.
11 “(b) The sex of the patient for whom a drug was prescribed may be disclosed only for the pur-
12 pose of research or epidemiological study under ORS 431A.865 (2)(b).
13 “(3) Upon receipt of the data reported pursuant to subsection (1) of this section, the authority
14 shall record the data in the electronic system established under ORS 431A.855.
15 “(4)(a) The authority may, for good cause as determined by the authority, grant a pharmacy a
16 waiver of the requirement that the information to be reported under subsection (1) of this section
17 be submitted electronically. The waiver must state the format, method and frequency of the alter-
18 nate nonelectronic submissions from the pharmacy and the duration of the waiver.
19 “(b) As used in this subsection, ‘good cause’ includes financial hardship.
20 “(5) This section does not apply to pharmacies in institutions as defined in ORS 179.010.
21 **“SECTION 18.** ORS 431A.865 is amended to read:
22 “431A.865. (1)(a) Except as provided under subsection (2) of this section, prescription monitoring
23 information submitted under ORS 431A.860 to the prescription monitoring program established in
24 ORS 431A.855:
25 “(A) Is protected health information under ORS 192.553 to 192.581.
26 “(B) Is confidential and not subject to disclosure under ORS 192.311 to 192.478.
27 “(b) Except as provided under subsection (2)(a)(H) of this section, prescription monitoring infor-
28 mation submitted under ORS 431A.860 to the prescription monitoring program may not be used to
29 evaluate a practitioner’s professional practice.
30 “(2)(a) To the extent that the law or regulation is applicable to the prescription monitoring
31 program, if a disclosure of prescription monitoring information, other than the sex of a patient for
32 whom a drug was prescribed, complies with the federal Health Insurance Portability and Account-
33 ability Act of 1996 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts
34 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations, including 42
35 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517
36 and 192.553 to 192.581, the Oregon Health Authority shall disclose the information:
37 “(A) To a practitioner or pharmacist, or, if a practitioner or pharmacist authorizes the authority
38 to disclose the information to a member of the practitioner’s or pharmacist’s staff, to a member of
39 the practitioner’s or pharmacist’s staff. If a practitioner or pharmacist authorizes disclosing the in-
40 formation to a member of the practitioner’s or pharmacist’s staff under this subparagraph, the
41 practitioner or pharmacist remains responsible for the use or misuse of the information by the staff
42 member. To receive information under this subparagraph, or to authorize the receipt of information
43 by a staff member under this subparagraph, a practitioner or pharmacist must certify that the re-
44 quested information is for the purpose of evaluating the need for or providing medical or pharma-
45 ceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is

1 providing or has provided care.

2 “(B) To a **dental director**, medical director or pharmacy director, or, if a **dental director**,
3 medical director or pharmacy director authorizes the authority to disclose the information to a
4 member of the **dental director’s**, medical director’s or pharmacy director’s staff, to a member of the
5 **dental director’s**, medical director’s or pharmacy director’s staff. If a **dental director**, medical di-
6 rector or pharmacy director authorizes disclosing the information to a member of the **dental**
7 **director’s**, medical director’s or pharmacy director’s staff under this subparagraph, the **dental di-**
8 **rector**, medical director or pharmacy director remains responsible for the use or misuse of the in-
9 formation by the staff member. To receive information under this subparagraph, or to authorize the
10 receipt of information by a staff member under this subparagraph[,]:

11 “(i) **A dental director must certify that the requested information is for the purposes of**
12 **overseeing the operations of a coordinated care organization, dental clinic or office, or a**
13 **system of dental clinics or offices, and ensuring the delivery of quality dental care within the**
14 **coordinated care organization, clinic, office or system.**

15 “(ii) A medical director must certify that the requested information is for the purposes of
16 overseeing the operations of a **coordinated care organization**, hospital, health care clinic or sys-
17 tem of hospitals or health care clinics and ensuring the delivery of quality health care within the
18 **coordinated care organization**, hospital, clinic or system. [*To receive information under this sub-*
19 *paragraph, or to authorize the receipt of information by a staff member under this subparagraph,*]

20 “(iii) A pharmacy director must certify that the requested information is for the purposes of
21 overseeing the operations of a **coordinated care organization**, pharmacy or system of pharmacies
22 and ensuring the delivery of quality pharmaceutical care within the **coordinated care organiza-**
23 **tion**, pharmacy or system.

24 “(C) In accordance with subparagraphs (A) and (B) of this paragraph, to an individual described
25 in subparagraphs (A) and (B) of this paragraph through a health information technology system that
26 is used by the individual to access information about patients if:

27 “(i) The individual is authorized to access the information in the health information technology
28 system;

29 “(ii) The information is not permanently retained in the health information technology system,
30 except for purposes of conducting audits and maintaining patient records; and

31 “(iii) The health information technology system meets any privacy and security requirements
32 and other criteria, including criteria required by the federal Health Insurance Portability and Ac-
33 countability Act, established by the authority by rule.

34 “(D) To a practitioner in a form that catalogs all prescription drugs prescribed by the practi-
35 tioner according to the number assigned to the practitioner by the Drug Enforcement Adminis-
36 tration of the United States Department of Justice.

37 “(E) To the Chief Medical Examiner or designee of the Chief Medical Examiner, for the purpose
38 of conducting a medicolegal investigation or autopsy.

39 “(F) To designated representatives of the authority or any vendor or contractor with whom the
40 authority has contracted to establish or maintain the electronic system established under ORS
41 431A.855.

42 “(G) Pursuant to a valid court order based on probable cause and issued at the request of a
43 federal, state or local law enforcement agency engaged in an authorized drug-related investigation
44 involving a person to whom the requested information pertains.

45 “(H) To a health professional regulatory board that certifies in writing that the requested in-

1 formation is necessary for an investigation related to licensure, license renewal or disciplinary
2 action involving the applicant, licensee or registrant to whom the requested information pertains.

3 “(I) Pursuant to an agreement entered into under ORS 431A.869.

4 “(b) The authority may disclose information from the prescription monitoring program that does
5 not identify a patient, practitioner or drug outlet:

6 “(A) For educational, research or public health purposes;

7 “(B) For the purpose of educating practitioners about the prescribing of opioids and other con-
8 trolled substances;

9 “(C) To a health professional regulatory board;

10 “(D) To a local public health authority, as defined in ORS 431.003; or

11 “(E) To officials of the authority who are conducting special epidemiologic morbidity and mor-
12 tality studies in accordance with ORS 413.196 and rules adopted under ORS 431.001 to 431.550 and
13 431.990.

14 “(c) The authority shall disclose information relating to a patient maintained in the electronic
15 system established under ORS 431A.855 to that patient at no cost to the patient within 10 business
16 days after the authority receives a request from the patient for the information.

17 “(d)(A) A patient may request the authority to correct any information related to the patient
18 that is maintained in the electronic system established under ORS 431A.855 that is erroneous. The
19 authority shall grant or deny a request to correct information within 10 business days after the
20 authority receives the request. If a request to correct information cannot be granted because the
21 error occurred at the pharmacy where the information was inputted, the authority shall inform the
22 patient that the information cannot be corrected because the error occurred at the pharmacy.

23 “(B) If the authority denies a patient’s request to correct information under this paragraph, or
24 fails to grant a patient’s request to correct information under this paragraph within 10 business days
25 after the authority receives the request, the patient may appeal the denial or failure to grant the
26 request. Upon receiving notice of an appeal under this subparagraph, the authority shall conduct
27 a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, the au-
28 thority has the burden in the contested case hearing of establishing that the information is correct.

29 “(e) The information in the prescription monitoring program may not be used for any commercial
30 purpose.

31 “(f) In accordance with ORS 192.553 to 192.581 and federal laws and regulations related to pri-
32 vacy, any person authorized to prescribe or dispense a prescription drug who is entitled to access
33 a patient’s prescription monitoring information may discuss the information with or release the in-
34 formation to other health care providers involved with the patient’s care for the purpose of provid-
35 ing safe and appropriate care coordination.

36 “(3)(a) The authority shall maintain records of the information disclosed through the pre-
37 scription monitoring program including:

38 “(A) The identity of each person who requests or receives information from the program and any
39 organization the person represents;

40 “(B) The information released to each person or organization; and

41 “(C) The date and time the information was requested and the date and time the information
42 was provided.

43 “(b) Records maintained as required by this subsection may be reviewed by the Prescription
44 Monitoring Program Advisory Commission.

45 “(4) Information in the prescription monitoring program that identifies an individual patient

1 must be removed no later than three years from the date the information is entered into the pro-
2 gram.

3 “(5) The authority shall notify the Attorney General and each individual affected by an improper
4 disclosure of information from the prescription monitoring program of the disclosure.

5 “(6)(a) If the authority or a person or entity required to report or authorized to receive or re-
6 lease prescription information under this section violates this section or ORS 431A.860 or 431A.870,
7 a person injured by the violation may bring a civil action against the authority, person or entity
8 and may recover damages in the amount of \$1,000 or actual damages, whichever is greater.

9 “(b) Notwithstanding paragraph (a) of this subsection, the authority and a person or entity re-
10 quired to report or authorized to receive or release prescription information under this section are
11 immune from civil liability for violations of this section or ORS 431A.860 or 431A.870 unless the
12 authority, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful
13 intent.

14 “(7) Nothing in ORS 431A.855 to 431A.900 requires a practitioner or pharmacist who prescribes
15 or dispenses a prescription drug to obtain information about a patient from the prescription moni-
16 toring program. A practitioner or pharmacist who prescribes or dispenses a prescription drug may
17 not be held liable for damages in any civil action on the basis that the practitioner or pharmacist
18 did or did not request or obtain information from the prescription monitoring program.

19 “(8) The authority shall, at regular intervals, ensure compliance of a health information tech-
20 nology system described in subsection (2) of this section with the privacy and security requirements
21 and other criteria established by the authority under subsection (2) of this section.

22 “**SECTION 19.** ORS 431A.867 is amended to read:

23 “431A.867. (1) The Oregon Health Authority may require a person requesting prescription moni-
24 toring program information under ORS 431A.865 (2)(b) to enter into a data use agreement under
25 which the person:

26 “(a) Describes the proposed use for the information;

27 “(b) Agrees to any terms and conditions imposed on transferring the information;

28 “(c) Agrees to any limitations imposed on using the information;

29 “(d) Agrees to any terms and conditions imposed on keeping the information; and

30 “(e) Agrees to destroy the information after completing the proposed use for the information.

31 “(2) In determining whether to enter into an agreement under this section, the authority shall:

32 “(a) [*Evaluate the merits of the request for information*] **Ensure that the agreement will benefit**
33 **the health and safety of Oregonians;**

34 “(b) Determine whether the person making the request has the technical competence needed to
35 meet any terms, conditions or limitations imposed under subsection (1) of this section and the ability
36 to complete the proposed use for the information;

37 “(c) If the proposed use for the information involves research, ensure that the proposed use has
38 been approved by any involved institutional review board; and

39 “(d) Consider any other factor that the authority determines is relevant.

40 “(3) Using the factors described in subsection (2) of this section, the authority shall evaluate any
41 agreement entered into under this section at least once per year for the purpose of determining
42 whether to renew the agreement.

43 “**SECTION 20.** ORS 431A.898 is amended to read:

44 “431A.898. (1) Not less than once per year, the Oregon Health Authority, in consultation with
45 the Prescription Monitoring Program Advisory Commission created under ORS 431A.890 and the

1 Prescription Monitoring Program Prescribing Practices Review Subcommittee established under ORS
2 431A.896, shall develop, through the use of prescription monitoring information, criteria by which
3 a practitioner may be required to receive education or training on the prescribing of opioids or
4 opiates.

5 “(2) Criteria developed under subsection (1) of this section must include:

6 “(a) Prescribing a high volume of opioids or opiates classified in schedules II and III;

7 “(b) Prescribing an above-average amount of doses of opioids or opiates classified in schedules
8 II and III to a high number of patients; and

9 “(c) Simultaneously prescribing opioids or opiates classified in schedules II and III with other
10 drugs classified in schedules II and III.

11 “(3) In developing the criteria developed under subsection (1) of this section, the authority must
12 take into consideration the total quantity and volume of opioids and opiates classified in schedules
13 II and III prescribed by each practitioner.

14 “(4) The subcommittee may review, through the use of prescription monitoring information that
15 does not identify a patient, a practitioner’s prescribing history for the three years immediately pre-
16 ceding the date of the review to determine whether a practitioner meets the criteria developed un-
17 der subsection (1) of this section.

18 “(5) After performing the review described in subsection (4) of this section, the subcommittee
19 may direct the authority to provide to a practitioner who meets the criteria developed under sub-
20 section (1) of this section educational information about prescribing opioids and opiates, as deter-
21 mined appropriate by the authority.

22 “(6)(a) **For the purposes of evaluating prescriptions made by practitioners of opioids and**
23 **opiates and other controlled substances, the subcommittee may direct the authority to**
24 **compare the prescriptions described in this paragraph between similarly situated practition-**
25 **ers and to provide the comparative information to practitioners who meet criteria estab-**
26 **lished by the subcommittee.**

27 “(b) **The subcommittee may adopt rules to carry out this subsection, including rules to**
28 **establish criteria to determine to which practitioners to provide the information described**
29 **in this subsection.**

30 “[6] (7) Prescription monitoring information used for purposes of this section and the data
31 created through the use of prescription monitoring information pursuant to this section:

32 “(a) Are confidential and not subject to public disclosure under ORS 192.311 to 192.478; and

33 “(b) Are not admissible as evidence in a civil or criminal proceeding.

34 “**SECTION 21. (1) Sections 1 to 14 of this 2019 Act and the amendments to ORS 431A.850,**
35 **431A.855, 431A.860, 431A.865, 431A.867 and 431A.898 by sections 15 to 20 of this 2019 Act be-**
36 **come operative on January 1, 2020.**

37 “(2) **The Department of Corrections and the Oregon Health Authority may take any**
38 **action before the operative date specified in subsection (1) of this section that is necessary**
39 **to enable the department and the authority to exercise, on and after the operative date**
40 **specified in subsection (1) of this section, all of the duties, functions and powers conferred**
41 **on the department and the authority by sections 1 to 14 of this 2019 Act and the amendments**
42 **to ORS 431A.850, 431A.855, 431A.860, 431A.865, 431A.867 and 431A.898 by sections 15 to 20 of**
43 **this 2019 Act.”.**

44 In line 27, delete “16” and insert “22”.