

# House Bill 2609

Sponsored by Representatives HAYDEN, KENY-GUYER; Representatives BOLES, GREENLICK, NOSSE, SALINAS, SCHOUTEN, Senator MONNES ANDERSON (Presession 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 **as introduced**.

Requires prescription monitoring system established by Oregon Health Authority to be accessible to dental director appointed by authority. Directs authority to disclose certain patient information to dental directors for specified purposes. Defines "dental director."

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to dental directors; creating new provisions; amending ORS 431A.850, 431A.855 and  
3 431A.865; and declaring an emergency.

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

5 **SECTION 1.** ORS 431A.850, as amended by section 14, chapter 61, Oregon Laws 2018, is  
6 amended to read:

7 431A.850. As used in ORS 431A.855 to 431A.900:

8 (1) **"Dental director" means a dentist, as defined in ORS 679.010, employed by a dental**  
9 **clinic or office or a system of dental clinics or offices for the purpose of overseeing the op-**  
10 **erations of the dental clinic or office or the system of dental clinics or offices and ensuring**  
11 **the delivery of quality dental care within the clinic, office or system.**

12 [(1)] (2) "Dispense" and "dispensing" have the meanings given those terms in ORS 689.005.

13 [(2)] (3) "Drug outlet" has the meaning given that term in ORS 689.005.

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

17 [(4)] (5) "Medical director" means a physician employed by a hospital, health care clinic or  
18 system of hospitals or health care clinics for the purposes of overseeing the operations of the hos-  
19 pital, clinic or system and ensuring the delivery of quality health care within the hospital, clinic or  
20 system.

21 [(5)] (6) "Pharmacist" means:

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

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

26 [(6)] (7) "Pharmacy director" means a pharmacist employed by a pharmacy or system of phar-  
27 macies for the purposes of overseeing the operations of the pharmacy or system and ensuring the  
28 delivery of quality pharmaceutical care within the pharmacy or system.

29 [(7)] (8) "Practitioner" means:

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

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

4 [(8)] (9) "Prescription" has the meaning given that term in ORS 475.005.

5 [(9)] (10) "Prescription drug" has the meaning given that term in ORS 689.005.

6 **SECTION 2.** ORS 431A.855, as amended by section 8, chapter 45, Oregon Laws 2018, is amended  
 7 to read:

8 431A.855. (1)(a) The Oregon Health Authority, in consultation with the Prescription Monitoring  
 9 Program Advisory Commission, shall establish and maintain a prescription monitoring program for  
 10 monitoring and reporting:

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

14 (B) Prescribed naloxone dispensed by pharmacies.

15 (b)(A) To fulfill the requirements of this subsection, the authority shall establish, maintain and  
 16 operate an electronic system to monitor and report drugs described in paragraph (a) of this sub-  
 17 section that are dispensed by prescription.

18 (B) The electronic system must:

19 (i) Operate and be accessible [*by practitioners and pharmacies*] 24 hours a day, seven days a  
 20 week, **to practitioners, pharmacies and the dental director appointed by the Oregon Health**  
 21 **Authority under ORS 413.083;** and

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

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

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

30 (a) Reporting data;

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

32 (c) Ensuring accuracy and completeness of data;

33 (d) Complying with the federal Health Insurance Portability and Accountability Act of 1996 (P.L.  
 34 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164, federal al-  
 35 cohol and drug treatment confidentiality laws and regulations adopted under those laws, including  
 36 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505,  
 37 192.517 and 192.553 to 192.581;

38 (e) Ensuring accurate identification of persons or entities requesting information from the da-  
 39 tabase;

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

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

45 (h) Registering practitioners with the electronic system.

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

3 **SECTION 3.** ORS 431A.865 is amended to read:

4 431A.865. (1)(a) Except as provided under subsection (2) of this section, prescription monitoring  
 5 information submitted under ORS 431A.860 to the prescription monitoring program established in  
 6 ORS 431A.855:

7 (A) Is protected health information under ORS 192.553 to 192.581.

8 (B) Is confidential and not subject to disclosure under ORS 192.311 to 192.478.

9 (b) Except as provided under subsection (2)(a)(H) of this section, prescription monitoring infor-  
 10 mation submitted under ORS 431A.860 to the prescription monitoring program may not be used to  
 11 evaluate a practitioner’s professional practice.

12 (2)(a) To the extent that the law or regulation is applicable to the prescription monitoring pro-  
 13 gram, if a disclosure of prescription monitoring information, other than the sex of a patient for  
 14 whom a drug was prescribed, complies with the federal Health Insurance Portability and Account-  
 15 ability Act of 1996 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts  
 16 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations, including 42  
 17 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517  
 18 and 192.553 to 192.581, the Oregon Health Authority shall disclose the information:

19 (A) To a practitioner or pharmacist, or, if a practitioner or pharmacist authorizes the authority  
 20 to disclose the information to a member of the practitioner’s or pharmacist’s staff, to a member of  
 21 the practitioner’s or pharmacist’s staff. If a practitioner or pharmacist authorizes disclosing the in-  
 22 formation to a member of the practitioner’s or pharmacist’s staff under this subparagraph, the  
 23 practitioner or pharmacist remains responsible for the use or misuse of the information by the staff  
 24 member. To receive information under this subparagraph, or to authorize the receipt of information  
 25 by a staff member under this subparagraph, a practitioner or pharmacist must certify that the re-  
 26 quested information is for the purpose of evaluating the need for or providing medical or pharma-  
 27 ceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is  
 28 providing or has provided care.

29 (B) To a **dental director**, medical director or pharmacy director, or, if a **dental director**,  
 30 medical director or pharmacy director authorizes the authority to disclose the information to a  
 31 member of the **dental director’s**, medical director’s or pharmacy director’s staff, to a member of the  
 32 **dental director’s**, medical director’s or pharmacy director’s staff. If a **dental director**, medical di-  
 33 rector or pharmacy director authorizes disclosing the information to a member of the **dental**  
 34 **director’s**, medical director’s or pharmacy director’s staff under this subparagraph, the **dental di-**  
 35 **rector**, medical director or pharmacy director remains responsible for the use or misuse of the in-  
 36 formation by the staff member. To receive information under this subparagraph, or to authorize the  
 37 receipt of information by a staff member under this subparagraph[.]:

38 (i) **A dental director must certify that the requested information is for the purposes of**  
 39 **overseeing the operations of a dental clinic or office or a system of dental clinics or offices**  
 40 **and ensuring the delivery of quality dental care within the clinic, office or system.**

41 (ii) A medical director must certify that the requested information is for the purposes of over-  
 42 seeing the operations of a hospital, health care clinic or system of hospitals or health care clinics  
 43 and ensuring the delivery of quality health care within the hospital, clinic or system. *[To receive*  
 44 *information under this subparagraph, or to authorize the receipt of information by a staff member un-*  
 45 *der this subparagraph,]*

1 (iii) A pharmacy director must certify that the requested information is for the purposes of  
 2 overseeing the operations of a pharmacy or system of pharmacies and ensuring the delivery of  
 3 quality pharmaceutical care within the pharmacy or system.

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

7 (i) The individual is authorized to access the information in the health information technology  
 8 system;

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

11 (iii) The health information technology system meets any privacy and security requirements and  
 12 other criteria, including criteria required by the federal Health Insurance Portability and Account-  
 13 ability Act, established by the authority by rule.

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

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

19 (F) To designated representatives of the authority or any vendor or contractor with whom the  
 20 authority has contracted to establish or maintain the electronic system established under ORS  
 21 431A.855.

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

25 (H) To a health professional regulatory board that certifies in writing that the requested infor-  
 26 mation is necessary for an investigation related to licensure, license renewal or disciplinary action  
 27 involving the applicant, licensee or registrant to whom the requested information pertains.

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

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

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

32 (B) For the purpose of educating practitioners about the prescribing of opioids and other con-  
 33 trolled substances;

34 (C) To a health professional regulatory board;

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

36 (E) To officials of the authority who are conducting special epidemiologic morbidity and mor-  
 37 tality studies in accordance with ORS 413.196 and rules adopted under ORS 431.001 to 431.550 and  
 38 431.990.

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

42 (d)(A) A patient may request the authority to correct any information related to the patient that  
 43 is maintained in the electronic system established under ORS 431A.855 that is erroneous. The au-  
 44 thority shall grant or deny a request to correct information within 10 business days after the au-  
 45 thority receives the request. If a request to correct information cannot be granted because the error

1 occurred at the pharmacy where the information was inputted, the authority shall inform the patient  
2 that the information cannot be corrected because the error occurred at the pharmacy.

3 (B) If the authority denies a patient's request to correct information under this paragraph, or  
4 fails to grant a patient's request to correct information under this paragraph within 10 business days  
5 after the authority receives the request, the patient may appeal the denial or failure to grant the  
6 request. Upon receiving notice of an appeal under this subparagraph, the authority shall conduct  
7 a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, the au-  
8 thority has the burden in the contested case hearing of establishing that the information is correct.

9 (e) The information in the prescription monitoring program may not be used for any commercial  
10 purpose.

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

16 (3)(a) The authority shall maintain records of the information disclosed through the prescription  
17 monitoring program including:

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

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

21 (C) The date and time the information was requested and the date and time the information was  
22 provided.

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

25 (4) Information in the prescription monitoring program that identifies an individual patient must  
26 be removed no later than three years from the date the information is entered into the program.

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

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

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

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

43 (8) The authority shall, at regular intervals, ensure compliance of a health information technol-  
44 ogy system described in subsection (2) of this section with the privacy and security requirements  
45 and other criteria established by the authority under subsection (2) of this section.

