

A-Engrossed
Senate Bill 917

Ordered by the Senate April 22
Including Senate Amendments dated April 22

Sponsored by Senator GELSER, Representative LIVELY; Senator MONNES ANDERSON

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.

Prohibits long term care facilities, residential facilities, adult foster homes, child care facilities, child-caring agencies, foster homes, youth care centers, youth offender foster homes or other entities that are licensed, certified or registered to provide care to children, youth, individuals with disabilities or older adults from interfering with **good faith** disclosure of information by [*prospective employees,*] employees or volunteers about [*treatment*] **abuse or mistreatment** of individuals cared for by entity, **violations of state or federal laws or other practice that threatens health and safety of individuals cared for by entity**, to regulatory agencies, law enforcement authorities, [*or*] persons acting on behalf of individual **and other specified individuals**.

Makes interfering with disclosure of information [*about treatment of individual cared for by entity*] **specified in Act** unlawful employment practice.

A BILL FOR AN ACT

1
2 Relating to employers of care providers.

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

4 **SECTION 1. Section 2 of this 2019 Act is added to and made a part of ORS chapter 441.**

5 **SECTION 2. (1) A long term care facility may not interfere with the good faith disclosure**
6 **of information by an employee or a volunteer concerning the abuse or mistreatment of a**
7 **resident in the long term care facility, violations of licensing or certification requirements,**
8 **criminal activity at the facility, violations of state or federal laws or any practice that**
9 **threatens the health and safety of a resident of the facility to:**

10 (a) **The Long Term Care Ombudsman, the Department of Human Services, a law**
11 **enforcement agency or other entity with legal or regulatory authority over the long term**
12 **care facility; or**

13 (b) **A family member, guardian, friend or other person who is acting on behalf of the**
14 **resident.**

15 (2) **Unless performed with the intent to comply with state or federal law, including but**
16 **not limited to protecting residents' rights or carrying out a facility's policies and procedures**
17 **that are consistent with state and federal law, it is interference with the disclosure of in-**
18 **formation as described in subsection (1) of this section if a long term care facility:**

19 (a) **Asks or requires the employee or volunteer to sign a nondisclosure or similar agree-**
20 **ment prohibiting the employee or volunteer from disclosing the information; or**

21 (b) **Trains an employee or volunteer not to disclose the information; or**

22 (c) **Takes actions or communicates to the employee or volunteer that the employee or**
23 **volunteer may not disclose the information.**

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 (3) The department may revoke or suspend the license of a long term care facility that
2 is found to have violated subsection (1) of this section.

3 (4) The department shall adopt rules to carry out the provisions of this section.

4 (5) This section does not authorize the disclosure of protected health information, as
5 defined in ORS 192.556, other than as is permitted by the federal Health Insurance Portability
6 and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to
7 192.581 or by other state or federal laws limiting the disclosure of health information.

8 **SECTION 3.** Section 4 of this 2019 Act is added to and made a part of ORS 443.400 to
9 443.455.

10 **SECTION 4.** (1) A residential facility may not interfere with the good faith disclosure of
11 information by an employee or volunteer concerning the abuse or mistreatment of a resident
12 in the residential facility, violations of licensing or certification requirements, criminal ac-
13 tivity at the facility, violations of state or federal laws or any practice that threatens the
14 health and safety of a resident of the facility to:

15 (a) The Long Term Care Ombudsman, the Residential Facilities Ombudsman, the De-
16 partment of Human Services, a law enforcement agency or other entity with legal or regu-
17 latory authority over the residential facility; or

18 (b) A family member, guardian, friend or other person who is acting on behalf of the
19 resident.

20 (2) A residential facility interferes with the disclosure of the information described in
21 subsection (1) of this section by:

22 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
23 agreement prohibiting the employee or volunteer from disclosing the information;

24 (b) Training an employee or volunteer not to disclose the information; or

25 (c) Taking actions or communicating to the employee or volunteer that the employee or
26 volunteer may not disclose the information.

27 (3) The licensing agency may revoke or suspend the license of a residential facility that
28 is found to have violated subsection (1) of this section.

29 (4) The department shall adopt rules to carry out the provisions of this section.

30 (5) This section does not authorize the disclosure of:

31 (a) Protected health information, as defined in ORS 192.556, other than as is permitted
32 by the federal Health Insurance Portability and Accountability Act privacy regulations, 45
33 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state or federal laws limiting
34 the disclosure of health information; or

35 (b) Information protected under ORS 419A.255 and 419A.257.

36 **SECTION 5.** Section 6 of this 2019 Act is added to and made a part of ORS 443.705 to
37 443.825.

38 **SECTION 6.** (1) An adult foster home may not interfere with the good faith disclosure
39 of information by an employee or volunteer concerning the abuse or mistreatment of a res-
40 ident in the adult foster home, violations of licensing or certification requirements, criminal
41 activity at the adult foster home, violations of state or federal laws or any practice that
42 threatens the health and safety of a resident in the adult foster home to:

43 (a) The Long Term Care Ombudsman, the Residential Facilities Ombudsman, the De-
44 partment of Human Services, a law enforcement agency or other entity with legal or regu-
45 latory authority over the adult foster home; or

1 (b) A family member, guardian, friend or other person who is acting on behalf of the
2 resident.

3 (2) An adult foster home interferes with the disclosure of the information described in
4 subsection (1) of this section by:

5 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
6 agreement prohibiting the employee or volunteer from disclosing the information;

7 (b) Training an employee or volunteer not to disclose the information; or

8 (c) Taking actions or communicating to the employee or volunteer that the employee or
9 volunteer may not disclose the information.

10 (3) The licensing agency may revoke or suspend the license of an adult foster home that
11 is found to have violated subsection (1) of this section.

12 (4) The licensing agency shall adopt rules to carry out the provisions of this section.

13 (5) This section does not authorize the disclosure of protected health information, as
14 defined in ORS 192.556, other than as is permitted by the federal Health Insurance Portability
15 and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to
16 192.581 or by other state or federal laws limiting the disclosure of health information.

17 SECTION 7. Section 8 of this 2019 Act is added to and made a part of ORS 329A.250 to
18 329A.450.

19 SECTION 8. (1) A child care facility may not interfere with the good faith disclosure of
20 information by an employee or volunteer concerning the abuse or mistreatment of a child in
21 the child care facility, violations of licensing or certification requirements, criminal activity
22 at the facility, violations of state or federal laws or any practice that threatens the health
23 and safety of a child in the child care facility to:

24 (a) The Office of Child Care, a law enforcement agency or other entity with legal or
25 regulatory authority over the child care facility; or

26 (b) The child's parent, legal guardian or personal representative as defined in ORS
27 192.556.

28 (2) A child care facility interferes with the disclosure of the information described in
29 subsection (1) of this section by:

30 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
31 agreement prohibiting the employee or volunteer from disclosing the information;

32 (b) Training an employee or volunteer not to disclose the information; or

33 (c) Taking actions or communicating to the employee or volunteer that the employee or
34 volunteer may not disclose the information.

35 (3) The office may revoke or suspend the certification of a child care facility that is found
36 to have violated subsection (1) of this section.

37 (4) The disclosure of information to a child's parent, legal guardian or personal repre-
38 sentative under subsection (1) of this section does not relieve the employee or volunteer of
39 any obligation to report the abuse of a child.

40 (5) This section does not authorize the disclosure of protected health information, as
41 defined in ORS 192.556, other than as is permitted by the federal Health Insurance Portability
42 and Accountability Act privacy regulations, 45 C.F.R. parts 160 and 164, ORS 192.553 to
43 192.581 or by other state or federal laws limiting the disclosure of health information.

44 SECTION 9. Notwithstanding ORS 329A.992, the Office of Child Care shall impose a civil
45 penalty, as provided in ORS 183.745, for the violation of section 8 of this 2019 Act. The civil

1 penalty is \$500 for each violation.

2 **SECTION 10.** Section 11 of this 2019 Act is added to and made a part of ORS 418.205 to
3 418.327.

4 **SECTION 11.** (1) A child-caring agency may not interfere with the good faith disclosure
5 of information by an employee or volunteer concerning the abuse or mistreatment of a child
6 in the care of the child-caring agency, violations of licensing or certification requirements,
7 criminal activity at the child-caring agency, violations of state or federal laws or any practice
8 that threatens the health and safety of a child in the care of the child-caring agency to:

9 (a) The Department of Human Services, a law enforcement agency or other entity with
10 legal or regulatory authority over the child-caring agency; or

11 (b) A family member, guardian or other person who is acting on behalf of the child.

12 (2) A child-caring agency interferes with the disclosure of the information described in
13 subsection (1) of this section by:

14 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
15 agreement prohibiting the employee or volunteer from disclosing the information;

16 (b) Training an employee or volunteer not to disclose the information; or

17 (c) Taking actions or communicating to the employee or volunteer that the employee or
18 volunteer may not disclose the information.

19 (3) The department may revoke or suspend the license, certification or authorization of
20 a child-caring agency that is found to have violated subsection (1) of this section.

21 (4) The department shall adopt rules to carry out the provisions of this section.

22 (5) This section does not authorize the disclosure of:

23 (a) Protected health information, as defined in ORS 192.556, other than as is permitted
24 by the federal Health Insurance Portability and Accountability Act privacy regulations, 45
25 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state or federal laws limiting
26 the disclosure of health information; or

27 (b) Information protected under ORS 419A.255 and 419A.257.

28 **SECTION 12.** Section 13 of this 2019 Act is added to and made a part of ORS 418.625 to
29 418.645.

30 **SECTION 13.** (1) A foster home may not interfere with the good faith disclosure of in-
31 formation by an employee or volunteer concerning the abuse or mistreatment of a child in
32 the care of the foster home, violations of licensing or certification requirements, criminal
33 activity at the foster home, violations of state or federal laws or any practice that threatens
34 the health and safety of a child in the care of the foster home to:

35 (a) The Department of Human Services, a law enforcement agency or other entity with
36 legal or regulatory authority over the foster home; or

37 (b) A family member, guardian or other person who is acting on behalf of the child.

38 (2) A foster home interferes with the disclosure of the information described in sub-
39 section (1) of this section by:

40 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
41 agreement prohibiting the employee or volunteer from disclosing the information;

42 (b) Training an employee or volunteer not to disclose the information; or

43 (c) Taking actions or communicating to the employee or volunteer that the employee or
44 volunteer may not disclose the information.

45 (3) The department may revoke or suspend the certificate of approval of a foster home

1 that is found to have violated subsection (1) of this section.

2 (4) The department shall adopt rules to carry out the provisions of this section.

3 (5) This section does not authorize the disclosure of:

4 (a) Protected health information, as defined in ORS 192.556, other than as is permitted
5 by the federal Health Insurance Portability and Accountability Act privacy regulations, 45
6 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state or federal laws limiting
7 the disclosure of health information; or

8 (b) Information protected under ORS 419A.255 and 419A.257.

9 **SECTION 14.** In addition to any other liability or penalty provided by law, the Director
10 of Human Services shall impose a civil penalty on a foster home, as defined in ORS 418.625,
11 that violates section 13 of this 2019 Act. A civil penalty under this section is \$500 for each
12 violation and shall be imposed as provided in ORS 183.745.

13 **SECTION 15.** Section 16 of this 2019 Act is added to and made a part of ORS 420.855 to
14 420.885.

15 **SECTION 16.** (1) A youth care center may not interfere with the good faith disclosure
16 of information by an employee or a volunteer concerning the abuse or mistreatment of a
17 youth in the care of the center, violations of licensing or certification requirements, criminal
18 activity at the youth care center, violations of state or federal laws or any practice that
19 threatens the health and safety of a youth in the care of the center to:

20 (a) The Oregon Youth Authority, a law enforcement agency or other entity with legal or
21 regulatory authority over the care center; or

22 (b) A family member, guardian or other person who is acting on behalf of the youth.

23 (2) A care center interferes with the disclosure of the information described in subsection
24 (1) of this section by:

25 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
26 agreement prohibiting the employee or volunteer from disclosing the information;

27 (b) Training an employee or volunteer not to disclose the information; or

28 (c) Taking actions or communicating to the employee or volunteer that the employee or
29 volunteer may not disclose the information.

30 (3) The authority may revoke or suspend the approval of a care center that is found to
31 have violated subsection (1) of this section.

32 (4) This section does not authorize the disclosure of:

33 (a) Protected health information, as defined in ORS 192.556, other than as is permitted
34 by the federal Health Insurance Portability and Accountability Act privacy regulations, 45
35 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state or federal laws limiting
36 the disclosure of health information; or

37 (b) Information protected under ORS 419A.255 and 419A.257.

38 **SECTION 17.** (1) In addition to any other liability or penalty provided by law, the Director
39 of the Oregon Youth Authority shall impose a civil penalty, as provided in ORS 183.745, on
40 a youth care center, as defined in ORS 420.855, that violates section 16 of this 2019 Act.

41 (2) A civil penalty under subsection (1) of this section is \$500 for each violation.

42 **SECTION 18.** Section 19 of this 2019 Act is added to and made a part of ORS 420.888 to
43 420.892.

44 **SECTION 19.** (1) A youth offender foster home may not interfere with the good faith
45 disclosure of information concerning the abuse or mistreatment of a youth in the care of the

1 youth offender foster home, violations of licensing or certification requirements, criminal
2 activity at the youth offender foster home, violations of state or federal laws or any practice
3 that threatens the health and safety of a youth offender in the care of the youth offender
4 foster home to:

5 (a) The Oregon Youth Authority, a law enforcement agency or other entity with legal or
6 regulatory authority over the youth offender foster home; or

7 (b) A family member, guardian or other person who is acting on behalf of the youth.

8 (2) A youth offender foster home interferes with the disclosure of the information de-
9 scribed in subsection (1) of this section by:

10 (a) Asking or requiring the employee or volunteer to sign a nondisclosure or similar
11 agreement prohibiting the employee or volunteer from disclosing the information;

12 (b) Training an employee or volunteer not to disclose the information; or

13 (c) Taking actions or communicating to the employee or volunteer that the employee or
14 volunteer may not disclose the information.

15 (3) The authority may revoke or suspend the certificate of approval of a youth offender
16 foster home that is found to have violated subsection (1) of this section.

17 (4) This section does not authorize the disclosure of:

18 (a) Protected health information, as defined in ORS 192.556, other than as is permitted
19 by the federal Health Insurance Portability and Accountability Act privacy regulations, 45
20 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state or federal laws limiting
21 the disclosure of health information; or

22 (b) Information protected under ORS 419A.255 and 419A.257.

23 **SECTION 20.** (1) In addition to any other liability or penalty provided by law, the Director
24 of the Oregon Youth Authority shall impose a civil penalty, as provided in ORS 183.745, on
25 a youth offender foster home, as defined in ORS 420.888, that violates section 19 of this 2019
26 Act.

27 (2) A civil penalty under subsection (1) of this section is \$500 for each violation.

28 **SECTION 21.** (1) As used in this section, “employer” means:

29 (a) An adult foster home as defined in ORS 443.705;

30 (b) A child care provider as defined in ORS 329A.700;

31 (c) A child-caring agency as defined in ORS 418.205;

32 (d) A child-caring facility as defined in ORS 418.950;

33 (e) Community-based structured housing as defined in ORS 443.480;

34 (f) A facility as defined in ORS 430.735;

35 (g) A foster home as defined in ORS 418.625;

36 (h) A long term care facility as defined in ORS 442.015;

37 (i) A residential facility as defined in ORS 443.400;

38 (j) A youth care center as defined in ORS 420.855;

39 (k) A youth offender foster home as defined in ORS 420.888; or

40 (L) Any other entity that is licensed, certified or registered by a public body, as defined
41 in ORS 174.109, to provide care to children, youth, individuals with disabilities or older adults.

42 (2) It is an unlawful employment practice under ORS chapter 659A for an employer to
43 violate section 2, 4, 6, 8, 11, 13, 16 or 19 of this 2019 Act or to interfere with an employee’s
44 good faith disclosure of information concerning the abuse or mistreatment of an individual
45 cared for by the employer, violations of licensing or certification requirements, criminal ac-

1 **tivity occurring at the workplace, violations of state or federal laws or any practice that**
2 **threatens the health and safety of the individual cared for by the employer to regulatory**
3 **agencies, law enforcement authorities or persons who are acting on behalf of the individual.**

4 **(3) An employee or a volunteer may file a civil action under ORS 659A.885, alleging vio-**
5 **lation of this section.**

6 **SECTION 22. Sections 2, 4, 6, 8, 11, 13, 16 and 19 of this 2019 Act apply to statements or**
7 **conduct occurring on or after the effective date of this 2019 Act.**

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