

(Including Amendments to Resolve Conflicts)

B-Engrossed House Bill 3258

Ordered by the Senate May 23
Including House Amendments dated April 7 and Senate Amendments
dated May 23

Sponsored by Representatives SANCHEZ, SMITH G, LEVY B, NATHANSON; Representatives BOWMAN, DEXTER, GRAYBER

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.

Requires pharmacy to report dispensation of prescription drugs classified in schedules II through V under federal Controlled Substances Act to electronic system established for monitoring and reporting prescription drugs when drug is prescribed and dispensed to individual for use by individual or individual's animal. Prohibits Oregon Health Authority from disclosing prescription monitoring information to veterinarian. Requires authority to disclose prescription monitoring information to director of division of authority that administers state medical assistance program, director of division of authority that administers prescription drug program within state medical assistance program and Centers for Medicare and Medicaid Services for specified purposes. Exempts prescription and dispensation of naloxone or drug containing pseudoephedrine or ephedrine from reporting requirements.

Increases membership of Prescription Monitoring Program Advisory Commission to include [*practicing veterinarian and*] additional member of public.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to prescription drug monitoring; creating new provisions; amending ORS 431A.850,
3 431A.855, 431A.860, 431A.865, 431A.890 and 431A.896; and prescribing an effective date.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 431A.855 to**
6 **431A.900.**

7 **SECTION 2. A pharmacist who dispenses a prescription drug for which reporting is re-**
8 **quired under ORS 431A.860 may receive prescription monitoring information regarding:**

9 (1) **A patient who is an individual to whom a prescription drug is dispensed on behalf of**
10 **an animal; and**

11 (2) **An animal for which a prescription drug is prescribed.**

12 **SECTION 3. ORS 431A.850 is amended to read:**

13 431A.850. As used in ORS 431A.855 to 431A.900:

14 (1) "Dental director" means a dentist, as defined in ORS 679.010, employed by a coordinated care
15 organization, dental clinic or office, or a system of dental clinics or offices, for the purpose of
16 overseeing the operations of the dental clinic or office, or the system of dental clinics or offices, and
17 ensuring the delivery of quality dental care within the clinic, office or system.

18 (2) "Dispense" and "dispensing" have the meanings given those terms in ORS 689.005.

19 (3) "Drug outlet" has the meaning given that term in ORS 689.005.

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 (4) "Health professional regulatory board" means a health professional regulatory board, as de-
2 fined in ORS 676.160, the Long Term Care Administrators Board, the Board of Licensed Dietitians
3 and the Behavior Analysis Regulatory Board.

4 (5) "Medical director" means a physician employed by a coordinated care organization, hospital,
5 health care clinic or system of hospitals or health care clinics for the purposes of overseeing the
6 operations of the coordinated care organization, hospital, clinic or system and ensuring the delivery
7 of quality health care within the coordinated care organization, hospital, clinic or system.

8 **(6) "Patient" means:**

9 **(a) The individual to whom the prescription drug is prescribed; or**

10 **(b) If the prescription drug is prescribed by a veterinarian for an animal, the individual**
11 **to whom the prescription drug is dispensed on behalf of the animal.**

12 [(6)] (7) "Pharmacist" means:

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

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

17 [(7)] (8) "Pharmacy director" means a pharmacist employed by a coordinated care organization,
18 pharmacy or system of pharmacies for the purposes of overseeing the operations of the coordinated
19 care organization, pharmacy or system and ensuring the delivery of quality pharmaceutical care
20 within the coordinated care organization, pharmacy or system.

21 [(8)] (9) "Practitioner" means:

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

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

26 [(9)] (10) "Prescription" has the meaning given that term in ORS 475.005.

27 [(10)] (11) "Prescription drug" has the meaning given that term in ORS 689.005.

28 **(12) "Veterinarian" means a person licensed to practice veterinary medicine under ORS**
29 **chapter 686.**

30 **SECTION 4.** ORS 431A.855 is amended to read:

31 431A.855. (1)(a) The Oregon Health Authority, in consultation with the Prescription Monitoring
32 Program Advisory Commission, shall establish and maintain a prescription monitoring program for
33 monitoring and reporting:

34 (A) **Except as provided in subsection (4) of this section,** prescription drugs dispensed by
35 pharmacies licensed by the State Board of Pharmacy that are classified in schedules II through
36 [IV] V under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the board
37 by rule under ORS 475.035;

38 (B) Prescribed gabapentin [*and naloxone*] dispensed by pharmacies; and

39 (C) Other drugs identified by rules adopted by the authority.

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

43 (B) The electronic system must:

44 (i) Operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a
45 week; and

1 (ii) Allow practitioners to register as required under ORS 431A.877 and to apply for access to
2 the electronic system in accordance with rules adopted by the authority under subsection (2) of this
3 section.

4 (C) *[The authority may contract with a state agency or private entity to ensure the effective opera-*
5 *tion of the electronic system.]* **To ensure the interoperability of data contained in the electronic**
6 **system, the authority shall contract with an information technology services vendor to pro-**
7 **vide secure connections between the electronic system and prescribers and between the**
8 **electronic system and pharmacies. The approved entity, as described by the authority by**
9 **rule, is responsible for ensuring that only practitioners registered under ORS 431A.877 and**
10 **pharmacies may access the electronic system.**

11 **(D) The authority shall contract with a state agency or private entity to ensure the ef-**
12 **fective operation of the electronic system, including the operation of any technology inte-**
13 **grations between the electronic system and a health information technology system used by**
14 **a practitioner.**

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

18 (a) Reporting data;

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

20 (c) Ensuring accuracy and completeness of data;

21 (d) Complying with the federal Health Insurance Portability and Accountability Act of 1996 (P.L.
22 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164, federal al-
23cohol and drug treatment confidentiality laws and regulations adopted under those laws, including
24 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505,
25 192.517 and 192.553 to 192.581;

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

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

30 (g) Notifying a patient, before or when a drug classified in schedules II through [IV] V is dis-
31 pensed to the patient, about the prescription monitoring program and the entry of the prescription
32 in the electronic system; and

33 (h) Registering practitioners with the electronic system.

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

36 **(4) The prescription and dispensing of naloxone or a drug containing pseudoephedrine or**
37 **ephedrine or a salt, isomer or salt of an isomer of pseudoephedrine or ephedrine is not sub-**
38 **ject to the prescription monitoring program established under this section.**

39 **SECTION 4a. If House Bill 2395 becomes law, section 4 of this 2023 Act (amending ORS**
40 **431A.855) is repealed and ORS 431A.855, as amended by section 31, chapter __, Oregon Laws**
41 **2023 (Enrolled House Bill 2395), is amended to read:**

42 431A.855. (1)(a) The Oregon Health Authority, in consultation with the Prescription Monitoring
43 Program Advisory Commission, shall establish and maintain a prescription monitoring program for
44 monitoring and reporting:

45 (A) **Except as provided in subsection (4) of this section,** prescription drugs dispensed by

1 pharmacies licensed by the State Board of Pharmacy that are classified in schedules II through
2 [IV] V under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the board
3 by rule under ORS 475.035;

4 (B) Prescribed gabapentin [*and short-acting opioid antagonists, as defined in ORS 689.681,*] dis-
5 pensed by pharmacies; and

6 (C) Other drugs identified by rules adopted by the authority.

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

10 (B) The electronic system must:

11 (i) Operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a
12 week; and

13 (ii) Allow practitioners to register as required under ORS 431A.877 and to apply for access to
14 the electronic system in accordance with rules adopted by the authority under subsection (2) of this
15 section.

16 (C) [*The authority may contract with a state agency or private entity to ensure the effective opera-*
17 *tion of the electronic system.*] **To ensure the interoperability of data contained in the electronic**
18 **system, the authority shall contract with an information technology services vendor to pro-**
19 **vide secure connections between the electronic system and prescribers and between the**
20 **electronic system and pharmacies. The approved entity, as described by the authority by**
21 **rule, is responsible for ensuring that only practitioners registered under ORS 431A.877 and**
22 **pharmacies may access the electronic system.**

23 **(D) The authority shall contract with a state agency or private entity to ensure the ef-**
24 **fective operation of the electronic system, including the operation of any technology inte-**
25 **grations between the electronic system and a health information technology system used by**
26 **a practitioner.**

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-
35cohol 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] V is dis-
43 pensed to the patient, about the prescription monitoring program and the entry of the prescription
44 in the 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 (4) **The prescription and dispensing of a short-acting opioid antagonist, as defined in ORS**
4 **689.681, or a drug containing pseudoephedrine or ephedrine or a salt, isomer or salt of an**
5 **isomer of pseudoephedrine or ephedrine is not subject to the prescription monitoring pro-**
6 **gram established under this section.**

7 **SECTION 5.** ORS 431A.860 is amended to read:

8 431A.860. (1) Not later than 72 hours after dispensing a prescription drug that is subject to the
9 prescription monitoring program established under ORS 431A.855, a pharmacy shall electronically
10 report to the Oregon Health Authority:

11 (a) For prescription drugs described in ORS 431A.855 (1)(a)(A) and other drugs identified by the
12 authority by rule[,]:

13 (A) The name, address, phone number, date of birth and sex of the patient for whom the pre-
14 scription drug was prescribed; **and**

15 (B) **If applicable, the species, name and sex of the animal for which the prescription drug**
16 **was prescribed;**

17 (b) The identity of the pharmacy that dispensed the prescription drug and the date on which the
18 prescription drug was dispensed;

19 (c) The identity of the practitioner who prescribed the prescription drug and the date on which
20 the prescription drug was prescribed;

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

22 (e) The prescription number assigned to the prescription drug;

23 (f) The quantity of the prescription drug dispensed;

24 (g) The number of days for which the prescription drug was dispensed;

25 (h) The number of refills of the prescription authorized by the practitioner and the number of
26 the refill that the pharmacy dispensed; and

27 (i) The diagnosis code used by the practitioner and the reason for the prescription.

28 (2) Notwithstanding subsection (1) of this section, the authority may not:

29 (a) Require the reporting of prescription drugs administered directly to a patient or dispensed
30 pursuant to ORS 127.800 to 127.897; or

31 (b) Collect or use Social Security numbers in the prescription monitoring program.

32 (3) Upon receipt of the data reported pursuant to subsection (1) of this section, the authority
33 shall record the data in the electronic system established under ORS 431A.855.

34 (4)(a) The authority may, for good cause as determined by the authority, grant a pharmacy a
35 waiver of the requirement that the information to be reported under subsection (1) of this section
36 be submitted electronically. The waiver must state the format, method and frequency of the alter-
37 nate nonelectronic submissions from the pharmacy and the duration of the waiver.

38 (b) As used in this subsection, "good cause" includes financial hardship.

39 (5) This section does not apply to pharmacies in institutions as defined in ORS 179.010.

40 **SECTION 6.** ORS 431A.865 is amended to read:

41 431A.865. (1)(a) Except as provided under subsections (2) and (3) of this section, prescription
42 monitoring information submitted under ORS 431A.860 to the prescription monitoring program es-
43 tablished in ORS 431A.855:

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

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

1 (b) Except as provided under subsection (3)(a)(H) of this section, prescription monitoring infor-
2 mation submitted under ORS 431A.860 to the prescription monitoring program may not be used to
3 evaluate a practitioner's professional practice.

4 (2) The Oregon Health Authority may review the prescription monitoring information of an in-
5 dividual who dies from a drug overdose.

6 (3)(a) Except as provided in paragraph (c) of this subsection, the Oregon Health Authority shall
7 disclose prescription monitoring information reported to the authority under ORS 431A.860:

8 (A)(i) **Subject to sub-subparagraph (ii) of this subparagraph**, to a practitioner or pharmacist,
9 or, if a practitioner or pharmacist authorizes the authority to disclose the information to a member
10 of the practitioner's or pharmacist's staff, to a member of the practitioner's or pharmacist's staff. If
11 a practitioner or pharmacist authorizes disclosing the information to a member of the practitioner's
12 or pharmacist's staff under this subparagraph, the practitioner or pharmacist remains responsible for
13 the use or misuse of the information by the staff member. To receive information under this sub-
14 paragraph, or to authorize the receipt of information by a staff member under this subparagraph, a
15 practitioner or pharmacist must certify that the requested information is for the purpose of evalu-
16 ating the need for or providing medical or pharmaceutical treatment for a patient, **or if applicable,**
17 **a patient's animal**, to whom the practitioner or pharmacist anticipates providing, is providing or
18 has provided care.

19 **(ii) The authority may not disclose the information described in this subsection to a**
20 **practitioner who is a veterinarian.**

21 (B) To a dental director, medical director or pharmacy director, or, if a dental director, medical
22 director or pharmacy director authorizes the authority to disclose the information to a member of
23 the dental director's, medical director's or pharmacy director's staff, to a member of the dental
24 director's, medical director's or pharmacy director's staff. If a dental director, medical director or
25 pharmacy director authorizes disclosing the information to a member of the dental director's, med-
26 ical director's or pharmacy director's staff under this subparagraph, the dental director, medical
27 director or pharmacy director remains responsible for the use or misuse of the information by the
28 staff member. To receive information under this subparagraph, or to authorize the receipt of infor-
29 mation by a staff member under this subparagraph:

30 (i) A dental director must certify that the requested information is for the purposes of oversee-
31 ing the operations of a coordinated care organization, dental clinic or office, or a system of dental
32 clinics or offices, and ensuring the delivery of quality dental care within the coordinated care or-
33 ganization, clinic, office or system.

34 (ii) A medical director must certify that the requested information is for the purposes of over-
35 seeing the operations of a coordinated care organization, hospital, health care clinic or system of
36 hospitals or health care clinics and ensuring the delivery of quality health care within the coordi-
37 nated care organization, hospital, clinic or system.

38 (iii) A pharmacy director must certify that the requested information is for the purposes of
39 overseeing the operations of a coordinated care organization, pharmacy or system of pharmacies and
40 ensuring the delivery of quality pharmaceutical care within the coordinated care organization,
41 pharmacy or system.

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

45 (i) The individual is authorized to access the information in the health information technology

1 system;

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

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

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

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

12 (F) To designated representatives of the authority or any vendor or contractor with whom the
13 authority has contracted to establish or maintain the electronic system established under ORS
14 431A.855.

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

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

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

22 **(J) To the director of the division of the authority that administers the state medical**
23 **assistance program and the director of the division of the authority that administers the**
24 **prescription drug program within the state medical assistance program, and authorized staff,**
25 **after certification that the requested information is for purposes of overseeing the state**
26 **medical assistance program, and to the Centers for Medicare and Medicaid Services for the**
27 **purpose of ensuring the prescription monitoring program meets systems certification re-**
28 **quirements. A disclosure under this subparagraph may be of only the minimum information**
29 **necessary to fulfill the intended purposes. If a director described in this subparagraph au-**
30 **thorizes disclosure to the director's staff, the authorizing director remains responsible for**
31 **the use or misuse of the information by the staff member.**

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

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

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

37 (C) To a health professional regulatory board;

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

39 (E) To officials of the authority who are conducting special epidemiologic morbidity and mor-
40 tality studies in accordance with ORS 413.196 and rules adopted under ORS 431.001 to 431.550 and
41 431.990.

42 (c) The authority may not disclose, except as provided in paragraph (b) of this subsection:

43 (A) Prescription drug monitoring information to the extent that the disclosure fails to comply
44 with applicable provisions of the federal Health Insurance Portability and Accountability Act of
45 1996 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164,

1 federal alcohol and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2,
2 and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.553
3 to 192.581.

4 (B) The sex of a patient for whom a drug was prescribed.

5 [(C) *The identity of a patient for whom naloxone was prescribed.*]

6 **(C) Prescription drug monitoring information to a practitioner who is a veterinarian.**

7 (d) The authority shall disclose information relating to a patient, **and if applicable, the**
8 **patient's animal**, maintained in the electronic system established under ORS 431A.855 to that pa-
9 tient at no cost to the patient within 10 business days after the authority receives a request from
10 the patient for the information.

11 (e)(A) A patient may request the authority to correct any information related to the patient,
12 **or if applicable, the patient's animal**, that is maintained in the electronic system established un-
13 der ORS 431A.855 that is erroneous. The authority shall grant or deny a request to correct infor-
14 mation within 10 business days after the authority receives the request. If a request to correct
15 information cannot be granted because the error occurred at the pharmacy where the information
16 was inputted, the authority shall inform the patient that the information cannot be corrected be-
17 cause the error occurred at the pharmacy.

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

24 (f) The information in the prescription monitoring program may not be used for any commercial
25 purpose.

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

31 (4)(a) The authority shall maintain records of the information disclosed through the prescription
32 monitoring program including:

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

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

36 (C) The date and time the information was requested and the date and time the information was
37 provided.

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

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

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

44 (7)(a) If the authority or a person or entity required to report or authorized to receive or release
45 prescription information under this section violates this section or ORS 431A.860 or 431A.870, a

1 person injured by the violation may bring a civil action against the authority, person or entity and
2 may recover damages in the amount of \$1,000 or actual damages, whichever is greater.

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

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

13 (9) The authority shall, at regular intervals, ensure compliance of a health information technol-
14 ogy system described in subsection (3) of this section with the privacy and security requirements
15 and other criteria established by the authority under subsection (3) of this section.

16 **SECTION 6a. If House Bill 2395 becomes law, section 6 of this 2023 Act (amending ORS**
17 **431A.865) is repealed and ORS 431A.865, as amended by section 32, chapter __, Oregon Laws**
18 **2023 (Enrolled House Bill 2395), is amended to read:**

19 431A.865. (1)(a) Except as provided under subsections (2) and (3) of this section, prescription
20 monitoring information submitted under ORS 431A.860 to the prescription monitoring program es-
21 tablished in ORS 431A.855:

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

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

24 (b) Except as provided under subsection (3)(a)(H) of this section, prescription monitoring infor-
25 mation submitted under ORS 431A.860 to the prescription monitoring program may not be used to
26 evaluate a practitioner's professional practice.

27 (2) The Oregon Health Authority may review the prescription monitoring information of an in-
28 dividual who dies from a drug overdose.

29 (3)(a) Except as provided in paragraph (c) of this subsection, the Oregon Health Authority shall
30 disclose prescription monitoring information reported to the authority under ORS 431A.860:

31 (A)(i) **Subject to sub-subparagraph (ii) of this subparagraph**, to a practitioner or pharmacist,
32 or, if a practitioner or pharmacist authorizes the authority to disclose the information to a member
33 of the practitioner's or pharmacist's staff, to a member of the practitioner's or pharmacist's staff. If
34 a practitioner or pharmacist authorizes disclosing the information to a member of the practitioner's
35 or pharmacist's staff under this subparagraph, the practitioner or pharmacist remains responsible for
36 the use or misuse of the information by the staff member. To receive information under this sub-
37 paragraph, or to authorize the receipt of information by a staff member under this subparagraph, a
38 practitioner or pharmacist must certify that the requested information is for the purpose of evalu-
39 ating the need for or providing medical or pharmaceutical treatment for a patient, **or if applicable,**
40 **a patient's animal**, to whom the practitioner or pharmacist anticipates providing, is providing or
41 has provided care.

42 (ii) **The authority may not disclose the information described in this subsection to a**
43 **practitioner who is a veterinarian.**

44 (B) To a dental director, medical director or pharmacy director, or, if a dental director, medical
45 director or pharmacy director authorizes the authority to disclose the information to a member of

1 the dental director's, medical director's or pharmacy director's staff, to a member of the dental
2 director's, medical director's or pharmacy director's staff. If a dental director, medical director or
3 pharmacy director authorizes disclosing the information to a member of the dental director's, med-
4 ical director's or pharmacy director's staff under this subparagraph, the dental director, medical
5 director or pharmacy director remains responsible for the use or misuse of the information by the
6 staff member. To receive information under this subparagraph, or to authorize the receipt of infor-
7 mation by a staff member under this subparagraph:

8 (i) A dental director must certify that the requested information is for the purposes of oversee-
9 ing the operations of a coordinated care organization, dental clinic or office, or a system of dental
10 clinics or offices, and ensuring the delivery of quality dental care within the coordinated care or-
11 ganization, clinic, office or system.

12 (ii) A medical director must certify that the requested information is for the purposes of over-
13 seeing the operations of a coordinated care organization, hospital, health care clinic or system of
14 hospitals or health care clinics and ensuring the delivery of quality health care within the coordi-
15 nated care organization, hospital, clinic or system.

16 (iii) A pharmacy director must certify that the requested information is for the purposes of
17 overseeing the operations of a coordinated care organization, pharmacy or system of pharmacies and
18 ensuring the delivery of quality pharmaceutical care within the coordinated care organization,
19 pharmacy or system.

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

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

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

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

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

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

35 (F) To designated representatives of the authority or any vendor or contractor with whom the
36 authority has contracted to establish or maintain the electronic system established under ORS
37 431A.855.

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

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

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

45 **(J) To the director of the division of the authority that administers the state medical**

1 **assistance program and the director of the division of the authority that administers the**
2 **prescription drug program within the state medical assistance program, and authorized staff,**
3 **after certification that the requested information is for purposes of overseeing the state**
4 **medical assistance program, and to the Centers for Medicare and Medicaid Services for the**
5 **purpose of ensuring the prescription monitoring program meets systems certification re-**
6 **quirements. A disclosure under this subparagraph may be of only the minimum information**
7 **necessary to fulfill the intended purposes. If a director described in this subparagraph au-**
8 **thorizes disclosure to the director's staff, the authorizing director remains responsible for**
9 **the use or misuse of the information by the staff member.**

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

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

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

15 (C) To a health professional regulatory board;

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

17 (E) To officials of the authority who are conducting special epidemiologic morbidity and mor-
18 tality studies in accordance with ORS 413.196 and rules adopted under ORS 431.001 to 431.550 and
19 431.990.

20 (c) The authority may not disclose, except as provided in paragraph (b) of this subsection:

21 (A) Prescription drug monitoring information to the extent that the disclosure fails to comply
22 with applicable provisions of the federal Health Insurance Portability and Accountability Act of
23 1996 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164,
24 federal alcohol and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2,
25 and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.553
26 to 192.581.

27 (B) The sex of a patient for whom a drug was prescribed.

28 *[(C) The identity of a patient for whom a short-acting opioid antagonist, as defined in ORS 689.681,*
29 *was prescribed.]*

30 **(C) Prescription drug monitoring information to a practitioner who is a veterinarian.**

31 (d) The authority shall disclose information relating to a patient, **and if applicable, the**
32 **patient's animal**, maintained in the electronic system established under ORS 431A.855 to that pa-
33 tient at no cost to the patient within 10 business days after the authority receives a request from
34 the patient for the information.

35 (e)(A) A patient may request the authority to correct any information related to the patient,
36 **or if applicable, the patient's animal**, that is maintained in the electronic system established un-
37 der ORS 431A.855 that is erroneous. The authority shall grant or deny a request to correct infor-
38 mation within 10 business days after the authority receives the request. If a request to correct
39 information cannot be granted because the error occurred at the pharmacy where the information
40 was inputted, the authority shall inform the patient that the information cannot be corrected be-
41 cause the error occurred at the pharmacy.

42 (B) If the authority denies a patient's request to correct information under this paragraph, or
43 fails to grant a patient's request to correct information under this paragraph within 10 business days
44 after the authority receives the request, the patient may appeal the denial or failure to grant the
45 request. Upon receiving notice of an appeal under this subparagraph, the authority shall conduct

1 a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, the au-
2 thority has the burden in the contested case hearing of establishing that the information is correct.

3 (f) The information in the prescription monitoring program may not be used for any commercial
4 purpose.

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

10 (4)(a) The authority shall maintain records of the information disclosed through the prescription
11 monitoring program including:

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

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

15 (C) The date and time the information was requested and the date and time the information was
16 provided.

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

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

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

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

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

32 (8) Nothing in ORS 431A.855 to 431A.900 requires a practitioner or pharmacist who prescribes
33 or dispenses a prescription drug to obtain information about a patient from the prescription moni-
34 toring program. A practitioner or pharmacist who prescribes or dispenses a prescription drug may
35 not be held liable for damages in any civil action on the basis that the practitioner or pharmacist
36 did or did not request or obtain information from the prescription monitoring program.

37 (9) The authority shall, at regular intervals, ensure compliance of a health information technol-
38 ogy system described in subsection (3) of this section with the privacy and security requirements
39 and other criteria established by the authority under subsection (3) of this section.

40 **SECTION 7.** ORS 431A.890 is amended to read:

41 431A.890. (1) The Prescription Monitoring Program Advisory Commission is created for the
42 purposes of:

43 (a) Studying issues related to the prescription monitoring program established under ORS
44 431A.855;

45 (b) Reviewing the program's annual report and making recommendations to the Oregon Health

1 Authority regarding the operation of the program; and

2 (c) Developing criteria used to evaluate program data.

3 (2) The commission shall consist of [11] 12 members appointed by the authority as follows:

4 (a) A person nominated by the Pain Management Commission;

5 (b) A person who dispenses controlled substances nominated by an association representing
6 pharmacists;

7 (c) A practicing dentist nominated by an association representing dentists;

8 (d) A practicing doctor of medicine nominated by an association representing doctors of medi-
9 cine;

10 (e) A practicing doctor of osteopathic medicine nominated by an association representing
11 osteopathic physicians and surgeons;

12 (f) A nurse authorized to prescribe controlled substances nominated by an association repre-
13 senting nurses;

14 (g) A practicing naturopathic physician nominated by an association representing naturopathic
15 physicians;

16 (h) A practicing optometrist, nominated by an association representing optometrists;

17 (i) A representative of the authority with expertise in administering addiction services; and

18 (j) [Two] Three members of the public, one of whom must be an expert in information technol-
19 ogy.

20 **SECTION 8.** ORS 431A.896 is amended to read:

21 431A.896. (1) The Prescription Monitoring Program Prescribing Practices Review Subcommittee
22 is established as a subcommittee of the Prescription Monitoring Program Advisory Commission
23 created under ORS 431A.890, for the purpose of advising the Oregon Health Authority and the
24 commission on interpreting prescription information, understanding the clinical aspects of prescrib-
25 ing practices and evaluating prescribing practices.

26 (2)(a) The authority shall appoint the number of members to the subcommittee that the authority
27 determines is necessary to fulfill the functions of the subcommittee.

28 (b) Members of the subcommittee must be practitioners who:

29 (A) Hold a valid license issued in this state or a valid emeritus license issued in this state;

30 (B) Are registered with the federal Drug Enforcement Administration to prescribe drugs classi-
31 fied in schedules II through [IV] V; and

32 (C) Have at least five years of experience prescribing drugs classified in schedules II through
33 [IV] V.

34 (c) To the extent feasible, the authority shall appoint one member to the subcommittee for each
35 type of practitioner in this state that prescribes drugs classified in schedules II through [IV] V.

36 **SECTION 9.** (1) **Section 2 of this 2023 Act and the amendments to ORS 431A.850, 431A.855,**
37 **431A.860 and 431A.865 by sections 3 to 6 of this 2023 Act apply to prescription drugs dispensed**
38 **on or after the operative date specified in section 10 of this 2023 Act.**

39 (2) **The amendments to ORS 431A.896 by section 8 of this 2023 Act apply to members of**
40 **the Prescription Monitoring Program Prescribing Practices Review Subcommittee appointed**
41 **on or after the operative date specified in section 10 of this 2023 Act.**

42 **SECTION 9a.** If House Bill 2395 becomes law, section 9 of this 2023 Act is amended to read:

43 **Sec. 9.** (1) Section 2 of this 2023 Act and the amendments to ORS 431A.850, 431A.855, 431A.860
44 and 431A.865 by sections 3 to [6] 6a of this 2023 Act apply to prescription drugs dispensed on or
45 after the operative date specified in section 10 of this 2023 Act.

1 (2) The amendments to ORS 431A.896 by section 8 of this 2023 Act apply to members of the
2 Prescription Monitoring Program Prescribing Practices Review Subcommittee appointed on or after
3 the operative date specified in section 10 of this 2023 Act.

4 **SECTION 10.** (1) **Section 2 of this 2023 Act and the amendments to ORS 431A.850,**
5 **431A.855, 431A.860, 431A.865, 431A.890 and 431A.896 by sections 3 to 8 of this 2023 Act become**
6 **operative on January 1, 2025.**

7 (2) **The Oregon Health Authority may take any action before the operative date specified**
8 **in subsection (1) of this section that is necessary to enable the authority to exercise, on and**
9 **after the operative date specified in subsection (1) of this section, all of the duties, functions**
10 **and powers conferred on the authority by section 2 of this 2023 Act and the amendments to**
11 **ORS 431A.850, 431A.855, 431A.860, 431A.865, 431A.890 and 431A.896 by sections 3 to 8 of this**
12 **2023 Act.**

13 **SECTION 11.** **This 2023 Act takes effect on the 91st day after the date on which the 2023**
14 **regular session of the Eighty-second Legislative Assembly adjourns sine die.**

15