

HB 3258-3
(LC 4305)
3/24/23 (SCT/ps)

Requested by Representative SANCHEZ

**PROPOSED AMENDMENTS TO
HOUSE BILL 3258**

1 On page 1 of the printed bill, line 2, after “431A.855” insert “, 431A.865”.

2 In line 9, after “(A)” insert “Except as provided in subsection (4) of this
3 section,”.

4 In line 12, delete “and naloxone”.

5 Delete lines 23 and 24 and insert:

6 “(C) To ensure the interoperability of data contained in the electronic
7 system, the authority shall contract with an information technology services
8 vendor to provide secure connections between the electronic system and
9 prescribers and between the electronic system and pharmacies. The approved
10 entity, as described by the authority by rule, is responsible for ensuring that
11 only practitioners registered under ORS 431A.877 and pharmacies may access
12 the electronic system.

13 “(D) The authority shall contract with a state agency or private entity
14 to ensure the effective operation of the electronic system, including the op-
15 eration of any technology integrations between the electronic system and a
16 health information technology system used by a practitioner.”.

17 On page 2, after line 14, insert:

18 “(4) The prescription and dispensing of naloxone or a drug containing
19 pseudoephedrine or ephedrine or a salt, isomer or salt of an isomer of
20 pseudoephedrine or ephedrine is not subject to the prescription monitoring
21 program established under this section.

1 **“SECTION 2.** ORS 431A.865 is amended to read:

2 “431A.865. (1)(a) Except as provided under subsections (2) and (3) of this
3 section, prescription monitoring information submitted under ORS 431A.860
4 to the prescription monitoring program established in ORS 431A.855:

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

6 “(B) Is confidential and not subject to disclosure under ORS 192.311 to
7 192.478.

8 “(b) Except as provided under subsection (3)(a)(H) of this section, pre-
9 scription monitoring information submitted under ORS 431A.860 to the pre-
10 scription monitoring program may not be used to evaluate a practitioner’s
11 professional practice.

12 “(2) The Oregon Health Authority may review the prescription monitoring
13 information of an individual who dies from a drug overdose.

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

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

30 “(B) To a dental director, medical director or pharmacy director, or, if a

1 dental director, medical director or pharmacy director authorizes the au-
2 thority to disclose the information to a member of the dental director's,
3 medical director's or pharmacy director's staff, to a member of the dental
4 director's, medical director's or pharmacy director's staff. If a dental direc-
5 tor, medical director or pharmacy director authorizes disclosing the infor-
6 mation to a member of the dental director's, medical director's or pharmacy
7 director's staff under this subparagraph, the dental director, medical director
8 or pharmacy director remains responsible for the use or misuse of the infor-
9 mation by the staff member. To receive information under this subparagraph,
10 or to authorize the receipt of information by a staff member under this sub-
11 paragraph:

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

17 “(ii) A medical director must certify that the requested information is for
18 the purposes of overseeing the operations of a coordinated care organization,
19 hospital, health care clinic or system of hospitals or health care clinics and
20 ensuring the delivery of quality health care within the coordinated care or-
21 ganization, hospital, clinic or system.

22 “(iii) A pharmacy director must certify that the requested information is
23 for the purposes of overseeing the operations of a coordinated care organ-
24 ization, pharmacy or system of pharmacies and ensuring the delivery of
25 quality pharmaceutical care within the coordinated care organization, phar-
26 macy or system.

27 “(C) In accordance with subparagraphs (A) and (B) of this paragraph, to
28 an individual described in subparagraphs (A) and (B) of this paragraph
29 through a health information technology system that is used by the individ-
30 ual to access information about patients if:

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

3 “(ii) The information is not permanently retained in the health informa-
4 tion technology system, except for purposes of conducting audits and main-
5 taining patient records; and

6 “(iii) The health information technology system meets any privacy and
7 security requirements and other criteria, including criteria required by the
8 federal Health Insurance Portability and Accountability Act, established by
9 the authority by rule.

10 “(D) To a practitioner in a form that catalogs all prescription drugs pre-
11 scribed by the practitioner according to the number assigned to the practi-
12 tioner by the Drug Enforcement Administration of the United States
13 Department of Justice.

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

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

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

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

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

29 **“(J) To the director of the division of the authority that administers**
30 **the state medical assistance program and the director of the division**

1 **of the authority that administers the prescription drug program within**
2 **the state medical assistance program, and authorized staff, after cer-**
3 **tification that the requested information is for purposes of overseeing**
4 **the state medical assistance program, and to the Centers for Medicare**
5 **and Medicaid Services for the purpose of ensuring the prescription**
6 **monitoring program meets systems certification requirements. A dis-**
7 **closure under this subparagraph may be of only the minimum infor-**
8 **mation necessary to fulfill the intended purposes. If a director**
9 **described in this subparagraph authorizes disclosure to the director’s**
10 **staff, the authorizing director remains responsible for the use or mis-**
11 **use of the information by the staff member.**

12 “(b) The authority may disclose information from the prescription moni-
13 toring program that does not identify a patient, practitioner or drug outlet:

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

15 “(B) For the purpose of educating practitioners about the prescribing of
16 opioids and other controlled substances;

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

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

19 “(E) To officials of the authority who are conducting special
20 epidemiologic morbidity and mortality studies in accordance with ORS
21 413.196 and rules adopted under ORS 431.001 to 431.550 and 431.990.

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

24 “(A) Prescription drug monitoring information to the extent that the dis-
25 closure fails to comply with applicable provisions of the federal Health In-
26 surance Portability and Accountability Act of 1996 (P.L. 104-191) and
27 regulations adopted under that law, including 45 C.F.R. parts 160 and 164,
28 federal alcohol and drug treatment confidentiality laws and regulations, in-
29 cluding 42 C.F.R. part 2, and state health and mental health confidentiality
30 laws, including ORS 179.505, 192.517 and 192.553 to 192.581.

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

2 “(C) The identity of a patient for whom naloxone was prescribed.

3 “(d) The authority shall disclose information relating to a patient main-
4 tained in the electronic system established under ORS 431A.855 to that pa-
5 tient at no cost to the patient within 10 business days after the authority
6 receives a request from the patient for the information.

7 “(e)(A) A patient may request the authority to correct any information
8 related to the patient that is maintained in the electronic system established
9 under ORS 431A.855 that is erroneous. The authority shall grant or deny a
10 request to correct information within 10 business days after the authority
11 receives the request. If a request to correct information cannot be granted
12 because the error occurred at the pharmacy where the information was
13 inputted, the authority shall inform the patient that the information cannot
14 be corrected because the error occurred at the pharmacy.

15 “(B) If the authority denies a patient’s request to correct information
16 under this paragraph, or fails to grant a patient’s request to correct infor-
17 mation under this paragraph within 10 business days after the authority re-
18 ceives the request, the patient may appeal the denial or failure to grant the
19 request. Upon receiving notice of an appeal under this subparagraph, the
20 authority shall conduct a contested case hearing as provided in ORS chapter
21 183. Notwithstanding ORS 183.450, the authority has the burden in the con-
22 tested case hearing of establishing that the information is correct.

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

25 “(g) In accordance with ORS 192.553 to 192.581 and federal laws and reg-
26 ulations related to privacy, any person authorized to prescribe or dispense
27 a prescription drug who is entitled to access a patient’s prescription moni-
28 toring information may discuss the information with or release the informa-
29 tion to other health care providers involved with the patient’s care for the
30 purpose of providing safe and appropriate care coordination.

1 “(4)(a) The authority shall maintain records of the information disclosed
2 through the prescription monitoring program including:

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

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

6 “(C) The date and time the information was requested and the date and
7 time the information was provided.

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

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

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

16 “(7)(a) If the authority or a person or entity required to report or au-
17 thorized to receive or release prescription information under this section vi-
18 olates this section or ORS 431A.860 or 431A.870, a person injured by the
19 violation may bring a civil action against the authority, person or entity and
20 may recover damages in the amount of \$1,000 or actual damages, whichever
21 is greater.

22 “(b) Notwithstanding paragraph (a) of this subsection, the authority and
23 a person or entity required to report or authorized to receive or release
24 prescription information under this section are immune from civil liability
25 for violations of this section or ORS 431A.860 or 431A.870 unless the au-
26 thority, person or entity acts with malice, criminal intent, gross negligence,
27 recklessness or willful intent.

28 “(8) Nothing in ORS 431A.855 to 431A.900 requires a practitioner or
29 pharmacist who prescribes or dispenses a prescription drug to obtain infor-
30 mation about a patient from the prescription monitoring program. A practi-

1 tioner or pharmacist who prescribes or dispenses a prescription drug may
2 not be held liable for damages in any civil action on the basis that the
3 practitioner or pharmacist did or did not request or obtain information from
4 the prescription monitoring program.

5 “(9) The authority shall, at regular intervals, ensure compliance of a
6 health information technology system described in subsection (3) of this
7 section with the privacy and security requirements and other criteria estab-
8 lished by the authority under subsection (3) of this section.”.

9 In line 15, delete “2” and insert “3”.

10 Delete lines 31 through 45 and insert:

11 **“SECTION 4. (1) The amendments to ORS 431A.855 and 431A.865 by**
12 **sections 1 and 2 of this 2023 Act apply to prescription drugs dispensed**
13 **on or after the operative date specified in section 5 of this 2023 Act.**

14 **“(2) The amendments to ORS 431A.896 by section 3 of this 2023 Act**
15 **apply to members of the Prescription Monitoring Program Prescribing**
16 **Practices Review Subcommittee appointed on or after the operative**
17 **date specified in section 5 of this 2023 Act.**

18 **“SECTION 5. (1) The amendments to ORS 431A.855, 431A.865 and**
19 **431A.896 by sections 1 to 3 of this 2023 Act become operative on Janu-**
20 **ary 1, 2024.**

21 **“(2) The Oregon Health Authority may take any action before the**
22 **operative date specified in subsection (1) of this section that is neces-**
23 **sary to enable the authority to exercise, on and after the operative**
24 **date specified in subsection (1) of this section, all of the duties, func-**
25 **tions and powers conferred on the authority by the amendments to**
26 **ORS 431A.855, 431A.865 and 431A.896 by sections 1 to 3 of this 2023 Act.**

27 **“SECTION 6. This 2023 Act takes effect on the 91st day after the**
28 **date on which the 2023 regular session of the Eighty-second Legislative**
29 **Assembly adjourns sine die.”.**

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