

B-Engrossed
House Bill 2604

Ordered by the Senate June 9
Including House Amendments dated May 1 and Senate Amendments dated
June 9

Sponsored by Representatives GREENLICK, HOLVEY; Representatives GELSER, HARKER, READ, SHIELDS

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 covered entities to report annually on system safeguards for protecting confidentiality of individually identifiable health information.

Sunsets on January 2, 2014.

A BILL FOR AN ACT

1
2 Relating to individually identifiable health information; creating new provisions; and amending ORS
3 442.445 and 731.574.

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

5 **NOTE:** Section 1 was deleted by amendment. Subsequent sections were not renumbered.

6 **SECTION 2.** ORS 731.574 is amended to read:

7 731.574. (1) Except as provided in subsection [(4)] (5) of this section, every authorized insurer
8 shall file with the Director of the Department of Consumer and Business Services, on or before
9 March 1 of each year, a financial statement for the year ending December 31 immediately preceding.
10 This statement shall be on a form prescribed by the director. The statement shall contain such de-
11 tailed exhibit of the condition and transactions of the insurer, in such form and otherwise, as the
12 director prescribes. The director shall consider and may prescribe the annual statement blank or
13 other form established by the National Association of Insurance Commissioners, including in-
14 structions prepared by the National Association of Insurance Commissioners for completing the
15 blank or other form. If the director prescribes the blank or other form established by the National
16 Association of Insurance Commissioners, including the instructions, an insurer submitting the an-
17 nual statement blank or form established by the National Association of Insurance Commissioners
18 must complete the blank or form according to the instructions. The director may require the filing
19 of information in addition to the information required in the annual statement. The director may
20 also require additional filings as the director determines necessary.

21 **(2) A covered entity, as defined in ORS 192.519, that is required to file an annual financial**
22 **statement under subsection (1) of this section shall file with the statement a protection of**
23 **health information report. The report must:**

24 **(a) State the responsibility of management for establishing and maintaining adequate**
25 **safeguards and procedures for protecting the confidentiality of individually identifiable health**
26 **information that the covered entity retains in electronic and hard copy form;**

27 **(b) Contain an assessment, as of December 31 of the preceding year, of the effectiveness**

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 **of the safeguards and procedures in protecting the confidentiality of individually identifiable**
2 **health information;**

3 **(c) Contain assurances that the signing officers have disclosed to auditors and the gov-**
4 **erning board of the covered entity:**

5 **(A) All significant deficiencies in the design or operation of record-keeping systems or**
6 **controls that could adversely affect the covered entity's ability to protect the confidentiality**
7 **of individually identifiable health information;**

8 **(B) Any breaches of the security of individually identifiable health information, whether**
9 **material or not, that involve management or other employees who have a significant role in**
10 **the covered entity's record-keeping systems or controls; and**

11 **(C) All necessary steps that have been taken to address deficiencies in the design or op-**
12 **eration of record-keeping systems or controls and to resolve any material weaknesses iden-**
13 **tified to or by the covered entity's auditors; and**

14 **(d) Contain assurances that the signing officers have identified for auditors any material**
15 **weaknesses in the record-keeping systems or controls.**

16 [(2)] (3) The financial statement filed by an insurer under subsection (1) of this section **and the**
17 **report filed under subsection (2) of this section** shall be verified by the oaths of the president
18 and secretary of the insurer or, in their absence, by two other principal officers. The statement of
19 an alien company shall embrace only its condition and transactions in the United States, unless the
20 director requires otherwise, and shall be verified by the oath of its resident manager or principal
21 representatives in the United States. Facsimile signatures are acceptable and shall have the same
22 force as original signatures.

23 [(3)] (4) The director may grant an extension of time for filing the annual statement.

24 [(4)] (5) A home protection insurer may adopt a fiscal year other than the calendar year for its
25 financial statements filed with the director under subsection (1) of this section by declaring the fis-
26 cal year in its application for a certificate of authority. An adopted fiscal year may not be changed
27 without the consent of the insurance supervisory official of the insurer's domicile. The financial
28 statement of a home protection insurer on other than the calendar year basis shall be filed with the
29 director on or before the first day of the third month which follows the end of the fiscal year.

30 [(5)] (6) An insurer, subject to requirements set forth in rules made by the director, may publish
31 financial statements, or information based on financial statements, prepared on a basis that is in
32 accordance with requirements of a competent authority and differs from the basis of the statements
33 required to be filed with the director.

34 [(6)] (7) It is the intention of the Legislative Assembly that the director consider and follow the
35 accounting, reporting and other standards, practices and procedures established by the National
36 Association of Insurance Commissioners in order to:

37 (a) Strengthen and improve regulation of insurer solvency by the Department of Consumer and
38 Business Services;

39 (b) Promote uniform and consistent regulation of insurance by this state and the other states;

40 (c) Reduce regulatory costs owing to unnecessary differences in the laws of the various states;
41 and

42 (d) Obtain and maintain accreditation of this state's insurance regulatory program by the Na-
43 tional Association of Insurance Commissioners.

44 **(8) As used in this section, "individually identifiable health information" has the meaning**
45 **given that term in ORS 192.519.**

1 **(9) A covered entity is in compliance with subsection (2) of this section if the covered**
2 **entity is in compliance with the reporting and record-keeping requirements, adopted by the**
3 **United States Secretary of Health and Human Services pursuant to 42 U.S.C. 1320d-2, that**
4 **are in effect on the effective date of this 2009 Act.**

5 **SECTION 3.** Section 4 of this 2009 Act is added to and made a part of ORS chapter 441.

6 **SECTION 4.** (1) A health care facility shall file with the Administrator of the Office for
7 **Oregon Health Policy and Research a protection of health information report no later than**
8 **120 days following the close of the fiscal year. The report shall be on a form prescribed by**
9 **the administrator, shall be signed by the chief executive officer of the facility and must:**

10 **(a) State the responsibility of the health care facility's management for establishing and**
11 **maintaining adequate safeguards and procedures for protecting the confidentiality of indi-**
12 **vidually identifiable health information that the facility retains in electronic and hard copy**
13 **form;**

14 **(b) Contain assurances that the signing officer has disclosed to the board of directors of**
15 **the facility:**

16 **(A) All significant deficiencies in the design or operation of record-keeping systems or**
17 **controls that could adversely affect the facility's ability to protect the confidentiality of in-**
18 **dividually identifiable health information;**

19 **(B) Any breaches of the security of individually identifiable health information, whether**
20 **material or not, that involve management, staff or employees of the facility who have a sig-**
21 **nificant role in the facility's record-keeping systems or controls; and**

22 **(C) All necessary steps that have been taken to address deficiencies in the design or op-**
23 **eration of record-keeping systems or controls and to resolve any material weaknesses iden-**
24 **tified by the facility; and**

25 **(c) Contain assurances that the signing officer has identified for the board any material**
26 **weaknesses in the record-keeping systems or controls.**

27 **(2) The administrator may adopt all rules necessary to carry out the provisions of this**
28 **section.**

29 **(3) As used in this section, "individually identifiable health information" has the meaning**
30 **given that term in ORS 192.519.**

31 **(4) A health care facility is in compliance with subsection (1) of this section if the facility**
32 **is in compliance with the reporting and record-keeping requirements, adopted by the United**
33 **States Secretary of Health and Human Services pursuant to 42 U.S.C. 1320d-2, that are in**
34 **effect on the effective date of this 2009 Act.**

35 **SECTION 5.** ORS 442.445 is amended to read:

36 442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400
37 to 442.463 or section 3, chapter 838, Oregon Laws 2007, **or section 4 of this 2009 Act** and rules of
38 the Office for Oregon Health Policy and Research may be subject to a civil penalty.

39 (2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a
40 schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the vi-
41 olation.

42 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

43 (4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and
44 conditions as the administrator considers proper and consistent with the public health and safety.

45 (5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose

1 of rate determination or for reimbursement by a third-party payer.

2 **SECTION 6.** ORS 731.574, as amended by section 2 of this 2009 Act, is amended to read:

3 731.574. (1) Except as provided in subsection [(5)] (4) of this section, every authorized insurer
4 shall file with the Director of the Department of Consumer and Business Services, on or before
5 March 1 of each year, a financial statement for the year ending December 31 immediately preceding.
6 This statement shall be on a form prescribed by the director. The statement shall contain such de-
7 tailed exhibit of the condition and transactions of the insurer, in such form and otherwise, as the
8 director prescribes. The director shall consider and may prescribe the annual statement blank or
9 other form established by the National Association of Insurance Commissioners, including in-
10 structions prepared by the National Association of Insurance Commissioners for completing the
11 blank or other form. If the director prescribes the blank or other form established by the National
12 Association of Insurance Commissioners, including the instructions, an insurer submitting the an-
13 nual statement blank or form established by the National Association of Insurance Commissioners
14 must complete the blank or form according to the instructions. The director may require the filing
15 of information in addition to the information required in the annual statement. The director may
16 also require additional filings as the director determines necessary.

17 [(2) A covered entity, as defined in ORS 192.519, that is required to file an annual financial
18 statement under subsection (1) of this section shall file with the statement a protection of health infor-
19 mation report. The report must:]

20 [(a) State the responsibility of management for establishing and maintaining adequate safeguards
21 and procedures for protecting the confidentiality of individually identifiable health information that the
22 covered entity retains in electronic and hard copy form;]

23 [(b) Contain an assessment, as of December 31 of the preceding year, of the effectiveness of the
24 safeguards and procedures in protecting the confidentiality of individually identifiable health informa-
25 tion;]

26 [(c) Contain assurances that the signing officers have disclosed to auditors and the governing board
27 of the covered entity;]

28 [(A) All significant deficiencies in the design or operation of record-keeping systems or controls that
29 could adversely affect the covered entity's ability to protect the confidentiality of individually identifi-
30 able health information;]

31 [(B) Any breaches of the security of individually identifiable health information, whether material
32 or not, that involve management or other employees who have a significant role in the covered entity's
33 record-keeping systems or controls; and]

34 [(C) All necessary steps that have been taken to address deficiencies in the design or operation of
35 record-keeping systems or controls and to resolve any material weaknesses identified to or by the cov-
36 ered entity's auditors; and]

37 [(d) Contain assurances that the signing officers have identified for auditors any material weak-
38 nesses in the record-keeping systems or controls.]

39 [(3)] (2) The financial statement filed by an insurer under subsection (1) of this section [and the
40 report filed under subsection (2) of this section] shall be verified by the oaths of the president and
41 secretary of the insurer or, in their absence, by two other principal officers. The statement of an
42 alien company shall embrace only its condition and transactions in the United States, unless the
43 director requires otherwise, and shall be verified by the oath of its resident manager or principal
44 representatives in the United States. Facsimile signatures are acceptable and shall have the same
45 force as original signatures.

1 [(4)] (3) The director may grant an extension of time for filing the annual statement.

2 [(5)] (4) A home protection insurer may adopt a fiscal year other than the calendar year for its
3 financial statements filed with the director under subsection (1) of this section by declaring the fis-
4 cal year in its application for a certificate of authority. An adopted fiscal year may not be changed
5 without the consent of the insurance supervisory official of the insurer's domicile. The financial
6 statement of a home protection insurer on other than the calendar year basis shall be filed with the
7 director on or before the first day of the third month which follows the end of the fiscal year.

8 [(6)] (5) An insurer, subject to requirements set forth in rules made by the director, may publish
9 financial statements, or information based on financial statements, prepared on a basis that is in
10 accordance with requirements of a competent authority and differs from the basis of the statements
11 required to be filed with the director.

12 [(7)] (6) It is the intention of the Legislative Assembly that the director consider and follow the
13 accounting, reporting and other standards, practices and procedures established by the National
14 Association of Insurance Commissioners in order to:

15 (a) Strengthen and improve regulation of insurer solvency by the Department of Consumer and
16 Business Services;

17 (b) Promote uniform and consistent regulation of insurance by this state and the other states;

18 (c) Reduce regulatory costs owing to unnecessary differences in the laws of the various states;
19 and

20 (d) Obtain and maintain accreditation of this state's insurance regulatory program by the Na-
21 tional Association of Insurance Commissioners.

22 [(8) *As used in this section, "individually identifiable health information" has the meaning given*
23 *that term in ORS 192.519.*]

24 [(9) *A covered entity is in compliance with subsection (2) of this section if the covered entity is in*
25 *compliance with the reporting and record-keeping requirements, adopted by the United States Secretary*
26 *of Health and Human Services pursuant to 42 U.S.C. 1320d-2, that are in effect on the effective date*
27 *of this 2009 Act.*]

28 **SECTION 7.** ORS 442.445, as amended by section 5 of this 2009 Act, is amended to read:

29 442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400
30 to 442.463 or section 3, chapter 838, Oregon Laws 2007, [*or section 4 of this 2009 Act*] and rules of
31 the Office for Oregon Health Policy and Research may be subject to a civil penalty.

32 (2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a
33 schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the vi-
34 olation.

35 (3) Civil penalties under this section shall be imposed as provided in ORS 183.745.

36 (4) Civil penalties imposed under this section may be remitted or mitigated upon such terms and
37 conditions as the administrator considers proper and consistent with the public health and safety.

38 (5) Civil penalties incurred under any law of this state are not allowable as costs for the purpose
39 of rate determination or for reimbursement by a third-party payer.

40 **SECTION 8.** Section 4 of this 2009 Act is repealed on January 2, 2014.

41 **SECTION 9.** The amendments to ORS 442.445 and 731.574 by sections 6 and 7 of this 2009
42 Act become operative on January 2, 2014.