

# Enrolled House Bill 2094

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Oregon Health Authority)

CHAPTER .....

AN ACT

Relating to public health; amending ORS 431.045, 431.110, 431.120, 442.445, 443.065, 443.075 and 443.305 and sections 3, 4 and 6, chapter 838, Oregon Laws 2007; and declaring an emergency.

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

**SECTION 1.** ORS 431.045 is amended to read:

431.045. (1) The Director of the Oregon Health Authority shall appoint a physician licensed by the Oregon Medical Board and certified by the American Board of Preventive Medicine who shall serve as the Public Health Officer and be responsible for the medical and paramedical aspects of the health programs within the Oregon Health Authority.

(2) **The Public Health Officer is responsible for the duties imposed by 42 U.S.C. 300ff-133(g) and 300ff-136. The officer may adopt rules to carry out the officer's responsibilities under this subsection.**

**SECTION 2.** ORS 431.110 is amended to read:

431.110. Subject to ORS 417.300 and 417.305, the Oregon Health Authority shall:

- (1) Have direct supervision of all matters relating to the preservation of life and health of the people of the state.
- (2) Keep the vital statistics and other health related statistics of the state.
- (3) Make sanitary surveys and investigations and inquiries respecting the causes and prevention of diseases, especially of epidemics.
- (4) Investigate, conduct hearings and issue findings in connection with annexations proposed by cities as provided in ORS 222.840 to 222.915.
- (5) Have full power in the control of all communicable diseases.
- (6) Have authority to send a representative of the authority to any part of the state when deemed necessary.
- (7) From time to time, publish and distribute to the public in such form as the authority determines, such information as in its judgment may be useful in carrying on the work or purposes for which the authority was established.

*[(8) Carry out the duties imposed on the authority under ORS chapter 690.]*

**SECTION 2a.** ORS 431.120 is amended to read:

431.120. The Oregon Health Authority shall:

- (1) Enforce state health policies and rules.
- (2) *Have the custody of all books, papers, documents and other property belonging to the State Health Commission, which may be deposited in the authority's office.]*

[(3)] (2) Give any instructions that may be necessary, and forward them to the various local public health administrators throughout the state.

[(4)] (3) Routinely conduct epidemiological investigations for each case of sudden infant death syndrome including, but not limited to, the identification of risk factors such as birth weight, maternal age, prenatal care, history of apnea and socioeconomic characteristics. The authority may conduct the investigations through local health departments only upon adoption by rule of a uniform epidemiological data collection method.

[(5)] (4) Adopt rules related to loans and grants awarded under ORS 285B.560 to 285B.599 or 541.700 to 541.855 for the improvement of drinking water systems for the purpose of maintaining compliance with applicable state and federal drinking water quality standards. In adopting rules under this subsection, the authority shall coordinate the authority's rulemaking process with the Water Resources Department and the Oregon Business Development Department in order to ensure that rules adopted under this subsection are consistent with rules adopted under ORS 285B.563 and 541.845.

[(6)] (5) Control health care capital expenditures by administering the state certificate of need program pursuant to ORS 442.325 to 442.344.

**SECTION 2b.** ORS 442.445 is amended to read:

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

(2) The [Administrator of the Office for Oregon Health Policy and Research] **Oregon Health Authority** shall adopt a schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the violation.

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

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

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

**SECTION 2c.** ORS 442.445, as amended by section 8, chapter 838, Oregon Laws 2007, is amended to read:

442.445. (1) Any health care facility that fails to perform as required in ORS 442.205 and 442.400 to 442.463 and rules of the [Office for Oregon Health Policy and Research] **Oregon Health Authority** may be subject to a civil penalty.

(2) The [Administrator of the Office for Oregon Health Policy and Research] **Oregon Health Authority** shall adopt a schedule of penalties not to exceed \$500 per day of violation, determined by the severity of the violation.

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

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

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

**SECTION 3.** ORS 443.065 is amended to read:

443.065. The home health agency shall:

(1) Be primarily engaged in providing skilled nursing services and at least one other service delineated in ORS 443.075 [(2) and (3)] **(1)(b) and (c)**;

(2) Have policies established by professional personnel associated with the agency or organization, including one or more physicians and one or more registered nurses, at least two of whom are neither owners nor employees of the agency, and two consumers, to govern the services that it provides;

- (3) Require supervision of services that it provides under subsection (1) of this section by a physician, nurse practitioner or registered nurse, preferably a public health nurse;
- (4) Maintain clinical[,] **and** financial [*and professional*] records on all patients; and
- (5) Have an overall plan and budget in effect.

**SECTION 4.** ORS 443.075 is amended to read:

443.075. (1) A home health agency must have an order for treatment, [*and*] plan of treatment **or plan of care** from a physician or nurse practitioner for the following services and supplies:

- (a) Home nursing care provided by or under the supervision of a registered nurse;
- (b) Physical, occupational or speech therapy, medical social services or other therapeutic services;
- (c) Home health aide services; and
- (d) Medical supplies, other than drugs and biologicals, and the use of medical appliances.

(2) A home health agency shall have each plan of treatment **or plan of care** reviewed by the physician or nurse practitioner periodically, in accordance with rules adopted by the Oregon Health Authority.

**SECTION 5.** ORS 443.305 is amended to read:

443.305. As used in ORS 443.305 to 443.350:

(1) "In-home care agency" means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency as defined in ORS 443.005.

(2) "In-home care services" means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but does not include curative or rehabilitative services.

(3) "Subunit" means an in-home care agency that provides services for a parent agency in a geographic area different from that of the parent agency and [*generally exceeding one hour of travel time*] **more than 60 miles** from the location of the parent agency.

**SECTION 6.** Section 3, chapter 838, Oregon Laws 2007, as amended by section 1157, chapter 595, Oregon Laws 2009, is amended to read:

**Sec. 3.** (1) There is established in the [*Office for Oregon Health Policy and Research*] **Oregon Health Authority** the Oregon Health Care Acquired Infection Reporting Program. The program shall:

- (a) Provide useful and credible infection measures, specific to each health care facility, to consumers;
- (b) Promote quality improvement in health care facilities; and
- (c) Utilize existing quality improvement efforts to the extent practicable.

(2) The [*office*] **authority** shall adopt rules to:

- (a) Require health care facilities to report to the [*office*] **authority** health care acquired infection measures, including but not limited to health care acquired infection rates;
- (b) Specify the health care acquired infection measures that health care facilities must report; and

(c) Prescribe the form, manner and frequency of reports of health care acquired infection measures by health care facilities.

(3) In prescribing the form, manner and frequency of reports of health care acquired infection measures by health care facilities, to the extent practicable and appropriate to avoid unnecessary duplication of reporting by facilities, the [*office*] **authority** shall align the requirements with the requirements for health care facilities to report similar data to the [*Oregon Health Authority*] **Department of Human Services** and to the Centers for Medicare and Medicaid Services.

(4) The [*office*] **authority** shall utilize, to the extent practicable and appropriate, a credible and reliable risk-adjusted methodology in analyzing the health care acquired infection measures reported by health care facilities.

(5) The [office] **authority** shall provide health care acquired infection measures and related information to health care facilities in a manner that promotes quality improvement in the health care facilities.

(6) The [office] **authority** shall adopt rules prescribing the form, manner and frequency for public disclosure of reported health care acquired infection measures. The [office] **authority** shall disclose updated information to the public no less frequently than every [six months beginning January 1, 2010, and no less frequently than every] calendar quarter [beginning January 1, 2011].

(7) Individually identifiable health information submitted to the [office] **authority** by health care facilities pursuant to this section may not be disclosed to, made subject to subpoena by or used by any state agency for purposes of any enforcement or regulatory action in relation to a participating health care facility.

**SECTION 7.** Section 4, chapter 838, Oregon Laws 2007, as amended by section 1158, chapter 955, Oregon Laws 2009, is amended to read:

**Sec. 4.** (1) There is established the Health Care Acquired Infection Advisory Committee to advise the [Administrator of the Office for Oregon Health Policy and Research] **Director of the Oregon Health Authority** regarding the Oregon Health Care Acquired Infection Reporting Program. The advisory committee shall consist of 16 members appointed by the [administrator] **director** as follows:

(a) Seven of the members shall be health care providers or their designees, including:

(A) A hospital administrator who has expertise in infection control and who represents a hospital that contains fewer than 100 beds;

(B) A hospital administrator who has expertise in infection control and who represents a hospital that contains 100 or more beds;

(C) A long term care administrator;

(D) A hospital quality director;

(E) A physician with expertise in infectious disease;

(F) A registered nurse with interest and involvement in infection control; and

(G) A physician who practices in an ambulatory surgical center and who has interest and involvement in infection control.

(b) Nine of the members shall be individuals who do not represent health care providers, including:

(A) A consumer representative;

(B) A labor representative;

(C) An academic researcher;

(D) A health care purchasing representative;

(E) A representative of the [Oregon Health Authority] **Department of Human Services**;

(F) A representative of the business community;

(G) A representative of the Oregon Patient Safety Commission who does not represent a health care provider on the commission;

(H) The state epidemiologist; and

(I) A health insurer representative.

(2) The [Administrator of the Office for Oregon Health Policy and Research] **Director of the Oregon Health Authority** and the advisory committee shall evaluate on a regular basis the quality and accuracy of the data collected and reported by health care facilities under section 3, chapter 838, Oregon Laws 2007, and the methodologies of the [Office for Oregon Health Policy and Research] **Oregon Health Authority** for data collection, analysis and public disclosure.

(3) Members of the advisory committee are not entitled to compensation and shall serve as volunteers on the advisory committee.

(4) Each member of the advisory committee shall serve a term of two years.

(5) The advisory committee shall make recommendations to the [administrator] **director** regarding:

(a) The health care acquired infection measures that health care facilities must report, which may include but are not limited to:

- (A) Surgical site infections;
- (B) Central line related bloodstream infections;
- (C) Urinary tract infections; and
- (D) Health care facility process measures designed to ensure quality and to reduce health care acquired infections;
- (b) Methods for evaluating and quantifying health care acquired infection measures that align with other data collection and reporting methodologies of health care facilities and that support participation in other quality interventions;
- (c) Requiring different reportable health care acquired infection measures for differently situated health care facilities as appropriate;
- (d) A method to ensure that infections present upon admission to the health care facility are excluded from the rates of health care acquired infection disclosed to the public for the health care facility under sections 3 and 6, chapter 838, Oregon Laws 2007;
- (e) Establishing a process for evaluating the health care acquired infection measures reported under section 3, chapter 838, Oregon Laws 2007, and for modifying the reporting requirements over time as appropriate;
- (f) Establishing a timetable to phase in the reporting and public disclosure of health care acquired infection measures; and
- (g) Procedures to protect the confidentiality of patients, health care professionals and health care facility employees.

**SECTION 8.** Section 6, chapter 838, Oregon Laws 2007, is amended to read:

**Sec. 6.** (1) In addition to any report required pursuant to section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**, on or before April 30 of each year, the [Administrator of the Office for Oregon Health Policy and Research] **Oregon Health Authority** shall prepare an annual report summarizing the health care facility reports submitted pursuant to section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**. The [Office for Oregon Health Policy and Research] **authority** shall make the reports available to the public in the manner provided in ORS 192.243 and to the Legislative Assembly in the manner provided in ORS 192.245. [The first report shall be made available no later than January 1, 2010.]

(2) The annual report shall, for each health care facility in the state, compare the health care acquired infection measures reported under section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**. The [office] **authority**, in consultation with the Health Care Acquired Infection Advisory Committee, shall provide the information in the report in a format that is as easily comprehensible as possible.

(3) The annual report may include findings, conclusions and trends concerning the health care acquired infection measures reported under section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**, a comparison to the health care acquired infection measures reported in prior years and any policy recommendations.

(4) The [office] **authority** shall publicize the annual report and its availability to interested persons, including providers, media organizations, health insurers, health maintenance organizations, purchasers of health insurance, organized labor, consumer and patient advocacy groups and individual consumers.

(5) The annual report and quarterly reports under this section and section 3 [of this 2007 Act], **chapter 838, Oregon Laws 2007**, may not contain information that identifies a patient, a licensed health care professional or an employee of a health care facility in connection with a specific infection incident.

**SECTION 9.** This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

**Passed by House March 20, 2013**

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

**Passed by Senate April 30, 2013**

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Peter Courtney, President of Senate

**Received by Governor:**

.....M,....., 2013

**Approved:**

.....M,....., 2013

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John Kitzhaber, Governor

**Filed in Office of Secretary of State:**

.....M,....., 2013

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Kate Brown, Secretary of State