

SB 917-3
(LC 3271)
4/1/19 (LHF/ps)

Requested by Senator GELSER

**PROPOSED AMENDMENTS TO
SENATE BILL 917**

1 On page 1 of the printed bill, line 2, delete the second “and” and insert
2 a comma.

3 In line 3, after “441.710” insert “and 443.790”.

4 Delete lines 6 through 8 and insert:

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

11 Delete lines 14 through 28.

12 On page 2, delete lines 1 through 41 and insert:

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

18 “(a) Asks or requires the employee or volunteer to sign a nondisclosure
19 or similar agreement prohibiting the employee or volunteer from disclosing
20 the information;

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

1 “(c) Takes actions or communicates to the employee or volunteer that the
2 employee or volunteer may not disclose the information.

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

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

10 **“SECTION 3.** ORS 441.710 is amended to read:

11 “441.710. (1)(a) In addition to any other liability or penalty provided by
12 law, the Director of Human Services may impose a civil penalty on a person
13 pursuant to ORS 441.731 for any of the following:

14 “(A) Violation of any of the terms or conditions of a license issued under
15 ORS 441.015 to 441.087, 441.525 to 441.595, 441.815, 441.820, 441.990, 442.342,
16 442.344 and 442.400 to 442.463 for a long term care facility, as defined in ORS
17 442.015.

18 “(B) Violation of ORS 441.630 to 441.680.

19 “(C) Violation of any rule or general order of the Department of Human
20 Services that pertains to a long term care facility.

21 “(D) Violation of any final order of the director that pertains specifically
22 to the long term care facility owned or operated by the person incurring the
23 penalty.

24 “(E) Violation of ORS 441.605 or of rules required to be adopted under
25 ORS 441.610.

26 “(F) Violation of ORS 443.880 or 443.881 if the facility is a residential care
27 facility.

28 “(b) In addition to any other liability or penalty provided by law, the di-
29 rector may impose a civil penalty on a residential training facility or resi-
30 dential training home for violation of ORS 443.880 or 443.881. The director

1 shall prescribe a reasonable time for elimination of a violation by a resi-
2 dential training facility or residential training home:

3 “(A) Not to exceed 30 days after first notice of a violation; or

4 “(B) In cases where the violation requires more than 30 days to correct,
5 such time as is specified in a plan of correction found acceptable by the di-
6 rector.

7 “(2) In addition to any other liability or penalty provided by law, the
8 Director of the Oregon Health Authority may impose a civil penalty on a
9 person for a violation of ORS 443.880 or 443.881 if the facility is a residential
10 treatment facility or a residential treatment home.

11 **“(3) In addition to any other liability or penalty provided by law, the**
12 **Director of Human Services may impose a civil penalty on a long term**
13 **care facility or a residential facility for a violation of section 2 or 5**
14 **of this 2019 Act.**

15 “[~~3~~] (4) The Director of Human Services may not impose a penalty under
16 subsection (1) of this section for violations other than those involving direct
17 patient care or feeding, an adequate staff to patient ratio, sanitation in-
18 volving direct patient care or a violation of ORS 441.605 or 443.880 or 443.881
19 or of the rules required to be adopted by ORS 441.610 unless a violation is
20 found on two consecutive surveys of a long term care facility.

21 “[~~4~~] (5) The Director of the Oregon Health Authority may not impose
22 a penalty under subsection (2) of this section for violations other than those
23 involving direct patient care or feeding, an adequate staff to patient ratio,
24 sanitation involving direct patient care or a violation of ORS 443.880 or
25 443.881. The director in every case shall prescribe a reasonable time for
26 elimination of a violation:

27 “(a) Not to exceed 30 days after first notice of a violation; or

28 “(b) In cases where the violation requires more than 30 days to correct,
29 such time as is specified in a plan of correction found acceptable by the di-
30 rector.”.

1 Delete lines 44 and 45.

2 On page 3, delete line 1 and insert:

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

9 In line 7, after “of” delete the rest of the line and lines 8 through 17 and
10 insert “the information described in subsection (1) of this section by:

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

14 “(b) Training an employee or volunteer not to disclose the information;
15 or

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

18 In line 18, delete “shall” and insert “may”.

19 Delete lines 20 through 23 and insert:

20 “(4) This section does not authorize the disclosure of protected health
21 information, as defined in ORS 192.556, other than as is permitted by the
22 federal Health Insurance Portability and Accountability Act privacy regu-
23 lations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state
24 or federal laws limiting the disclosure of health information.

25 **“SECTION 6.** ORS 443.790 is amended to read:

26 “443.790. (1) In addition to any other liability or penalty provided by law,
27 the director of the licensing agency may impose a civil penalty on a person
28 for any of the following:

29 “(a) Violation of any of the terms or conditions of a license issued under
30 ORS 443.735.

1 “(b) Violation of any rule or general order of the licensing agency that
2 pertains to a facility.

3 “(c) Violation of any final order of the director that pertains specifically
4 to the facility owned or operated by the person incurring the penalty.

5 “(d) Violation of ORS 443.745 or of rules required to be adopted under
6 ORS 443.775.

7 “(e) Violation of the requirement to have a license under ORS 443.725 (1).

8 **“(f) Violation of section 8 of this 2019 Act or rules adopted for car-
9 rying out section 8 of this 2019 Act.**

10 “(2) The director shall impose a civil penalty not to exceed \$500, unless
11 otherwise required by law, on any adult foster home for falsifying resident
12 or facility records or causing another to do so.

13 “(3) The director shall impose a civil penalty of \$250 on a provider who
14 violates ORS 443.725 (3).

15 “(4) The director shall impose a civil penalty of not less than \$250 nor
16 more than \$500, unless otherwise required by law, on a provider who admits
17 a resident knowing that the resident’s care needs exceed the license classi-
18 fication of the provider if the admission places the resident or other resi-
19 dents at grave risk of harm.

20 “(5)(a) In every case other than those involving the health, safety or
21 welfare of a resident, the director shall prescribe a reasonable time for
22 elimination of a violation but except as provided in paragraph (b) of this
23 subsection shall not prescribe a period to exceed 30 days after notice of the
24 violation.

25 “(b) The director may approve a reasonable amount of time in excess of
26 30 days if correction of the violation within 30 days is determined to be im-
27 possible.

28 “(6) In imposing a civil penalty, the director shall consider the following
29 factors:

30 “(a) The past history of the person incurring a penalty in taking all fea-

1 sible steps or procedures necessary or appropriate to correct any violation.

2 “(b) Any prior violations of statutes, rules or orders pertaining to facili-
3 ties.

4 “(c) The economic and financial conditions of the person incurring the
5 penalty.

6 “(d) The immediacy and extent to which the violation threatens or
7 threatened the health, safety or welfare of one or more residents.

8 “(7) The licensing agency shall adopt rules establishing objective criteria
9 for the imposition and amount of civil penalties under this section.”.

10 Delete lines 26 through 28 and insert:

11 **“SECTION 8.** (1) An adult foster home may not interfere with the good
12 faith disclosure of information by an employee or volunteer concerning the
13 abuse or mistreatment of a resident in the adult foster home, violations of
14 licensing or certification requirements, criminal activity at the adult foster
15 home, violations of state or federal laws or any practice that threatens the
16 health and safety of a resident of the adult foster home to:”.

17 In line 34, after “of” delete the rest of the line and lines 35 through 44
18 and insert “the information described in subsection (1) of this section by:

19 “(a) Asking or requiring the employee or volunteer to sign a
20 nondisclosure or similar agreement prohibiting the employee or volunteer
21 from disclosing the information;

22 “(b) Training an employee or volunteer not to disclose the information;
23 or

24 “(c) Taking actions or communicating to the employee or volunteer that
25 the prospective employee, employee or volunteer may not disclose the infor-
26 mation.”.

27 In line 45, delete “shall” and insert “may”.

28 On page 4, after line 1, insert:

29 “(4) This section does not authorize the disclosure of protected health
30 information, as defined in ORS 192.556, other than as is permitted by the

1 federal Health Insurance Portability and Accountability Act privacy regu-
2 lations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state
3 or federal laws limiting the disclosure of health information.”.

4 Delete lines 4 through 6 and insert:

5 **“SECTION 10.** (1) A child care facility may not interfere with the good
6 faith disclosure of information by an employee or volunteer concerning the
7 abuse or mistreatment of a child in the child care facility, violations of li-
8 censing or certification requirements, criminal activity at the facility, vio-
9 lations of state or federal laws or any practice that threatens the health and
10 safety of a child in the child care facility to:”.

11 Delete lines 9 through 20 and insert:

12 “(b) The child’s parent, legal guardian or personal representative as de-
13 fined in ORS 192.556.

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

16 “(a) Asking or requiring the employee or volunteer to sign a
17 nondisclosure or similar agreement prohibiting the employee or volunteer
18 from disclosing the information;

19 “(b) Training an employee or volunteer not to disclose the information;
20 or

21 “(c) Taking actions or communicating to the employee or volunteer that
22 the employee or volunteer may not disclose the information.”.

23 In line 21, delete “shall” and insert “may”.

24 After line 22, insert:

25 “(4) The disclosure of information to a child’s parent, legal guardian or
26 personal representative under subsection (1) of this section does not relieve
27 the employee or volunteer of any obligation to report the abuse of a child.

28 “(5) This section does not authorize the disclosure of protected health
29 information, as defined in ORS 192.556, other than as is permitted by the
30 federal Health Insurance Portability and Accountability Act privacy regu-

1 lations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state
2 or federal laws limiting the disclosure of health information.”.

3 Delete lines 28 through 30 and insert:

4 **“SECTION 13.** (1) A child-caring agency may not interfere with the good
5 faith disclosure of information by an employee or volunteer concerning the
6 abuse or mistreatment of a child in the care of the child-caring agency, vio-
7 lations of licensing or certification requirements, criminal activity at the
8 child-caring agency, violations of state or federal laws or any practice that
9 threatens the health and safety of a child in the care of the child-caring
10 agency to:”.

11 In line 34, after “of” delete the rest of the line and lines 35 through 44
12 and insert “the information described in subsection (1) of this section by:

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

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

18 “(c) Taking actions or communicating to the employee or volunteer that
19 the prospective employee, employee or volunteer may not disclose the infor-
20 mation.”.

21 In line 45, delete “shall” and insert “may”.

22 On page 5, after line 1, insert:

23 “(4) This section does not authorize the disclosure of protected health
24 information, as defined in ORS 192.556, other than as is permitted by the
25 federal Health Insurance Portability and Accountability Act privacy regu-
26 lations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state
27 or federal laws limiting the disclosure of health information.”.

28 Delete lines 34 through 36 and insert:

29 **“SECTION 16.** (1) A foster home may not interfere with the good faith
30 disclosure of information by an employee or volunteer concerning the abuse

1 or mistreatment of a child in the care of the foster home, violations of li-
2 censing or certification requirements, criminal activity at the foster home,
3 violations of state or federal laws or any practice that threatens the health
4 and safety of a child in the care of the foster home to:”.

5 In line 40, after “of” delete the rest of the line and lines 41 through 45.

6 On page 6, delete lines 1 through 5 and insert “the information described
7 in subsection (1) of this section by:

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

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

13 “(c) Taking actions or communicating to the employee or volunteer that
14 the prospective employee, employee or volunteer may not disclose the infor-
15 mation.”.

16 In line 6, delete “shall” and insert “may”.

17 Delete lines 8 through 11 and insert:

18 “(4) This section does not authorize the disclosure of protected health
19 information, as defined in ORS 192.556, other than as is permitted by the
20 federal Health Insurance Portability and Accountability Act privacy regu-
21 lations, 45 C.F.R. parts 160 and 164, ORS 192.553 to 192.581 or by other state
22 or federal laws limiting the disclosure of health information.”.

23 In line 12, delete “18” and insert “17” and delete “19” and insert “18”.

24 Delete lines 14 through 16 and insert:

25 **“SECTION 18.** (1) A youth care center may not interfere with the good
26 faith disclosure of information by an employee or a volunteer concerning the
27 abuse or mistreatment of a youth in the care of the center, violations of li-
28 censing or certification requirements, criminal activity at the youth care
29 center, violations of state or federal laws or any practice that threatens the
30 health and safety of a youth in the care of the center to:”.

1 In line 20, after the first “of” delete the rest of the line and lines 21
2 through 30 and insert “the information described in subsection (1) of this
3 section by:

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

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

9 “(c) Taking actions or communicating to the employee or volunteer that
10 the prospective employee, employee or volunteer may not disclose the infor-
11 mation.”.

12 In line 31, delete “shall” and insert “may”.

13 After line 32, insert:

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

19 In line 33, delete “20” and insert “19”.

20 In line 37, delete “21” and insert “20” and delete “22” and insert “21”.

21 Delete lines 39 through 41 and insert:

22 “**SECTION 21.** (1) A youth offender foster home may not interfere with
23 the good faith disclosure of information concerning the abuse or mistreat-
24 ment of a youth in the care of the youth offender foster home, violations of
25 licensing or certification requirements, criminal activity at the youth
26 offender foster home, violations of state or federal laws or any practice that
27 threatens the health and safety of a youth offender in the care of the youth
28 offender foster home to:”.

29 In line 45, after “of” delete the rest of the line.

30 On page 7, delete lines 1 through 10 and insert “the information described

1 in subsection (1) of this section by:

2 “(a) Asking or requiring the, employee or volunteer to sign a
3 nondisclosure or similar agreement prohibiting the employee or volunteer
4 from disclosing the information;

5 “(b) Training an employee or volunteer not to disclose the information;
6 or

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

9 In line 11, delete “shall” and insert “may”.

10 After line 12, insert:

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

16 In line 13, delete “23” and insert “22”.

17 In line 18, delete “24” and insert “23”.

18 In line 33, after “16,” delete the rest of the line and line 34 and insert
19 “18 or 21 of this 2019 Act or to interfere with an employee’s good faith dis-
20 closure of information concerning the abuse or mistreatment of an individual
21 cared for by the employer, violations of licensing or certification require-
22 ments, criminal activity occurring at the workplace, violations of state or
23 federal laws or any practice that threatens the health and safety of the in-
24 dividual cared for by the employer to”.

25 Delete lines 37 through 41 and insert:

26 “(3) An employee or a volunteer may file a civil action under ORS
27 659A.885, alleging violation of this section.

28 **“SECTION 24.** Sections 2, 5, 7 to 13 and 15 to 23 of this 2019 Act and the
29 amendments to ORS 418.992, 441.710 and 443.790 by sections 3, 6 and 14 of
30 this 2019 Act apply to statements or conduct oc-”.

