



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

April 11, 2023

Representative Maxine Dexter
900 Court Street NE H283
Salem OR 97301

Re: Services provided to minors under A-engrossed House Bill 2395 (2023)

Dear Representative Dexter:

You asked two questions regarding the treatment that a minor would be able to receive under the provisions of A-engrossed House Bill 2395. Specifically, you asked:

1. What treatment would a minor under 15 years of age be able to receive without parental permission?
2. Would a minor under 15 years of age seeking treatment for substance use and another mental health condition have confidentiality extended beyond the substance use treatment?

Following a summary of existing laws governing a minor's access to substance use disorder treatment and parental access to related records and the changes HB 2395-A, if passed, would make to that access, we answer each of your questions in turn.

Current law regarding minors and substance use treatment.

As discussed in detail below, under existing law, Oregon permits minors who are at least 14 years of age to consent to certain treatments provided by specified health care providers without parental consent. In addition, Oregon law protects the confidentiality of records associated with such treatment but creates exceptions for disclosures to the minor's parents and other third parties under specified circumstances. Nevertheless, and regardless of Oregon law to the contrary, certain federal laws may prohibit health care providers from disclosing certain information about treatment provided to a minor patient unless the minor consents to the disclosure.

Since 1985, Oregon has permitted minors who are at least 14 years of age to consent, without parental consent, to outpatient treatment provided by specified health care providers for mental or emotional health disorders or for certain chemical dependencies, excluding methadone maintenance.¹

Oregon law generally attempts to balance the interests of the minor in maintaining the confidentiality of treatment described above and of the parental rights of the minor's parents. To that end, although a minor is permitted under Oregon law to initiate treatment for mental or emotional health disorders or chemical dependencies without parental consent, the minor's health care provider, with limited exceptions, must involve the minor's parents before the end of the

¹ ORS 109.675 (1).

minor's treatment.² In addition, the health care provider may, without the minor's consent, disclose information regarding the minor's treatment in certain circumstances.³ For example, a minor's health care provider may disclose information regarding the minor's treatment to the minor's parent if the minor's condition or risk of a suicide attempt is such that the minor requires inpatient treatment⁴ or, if the minor does not object to the disclosure, to individuals and organizations to the extent that the information disclosed directly relates to the individual's or organization's involvement in the minor's treatment.⁵ If the minor is at serious and imminent risk of a suicide attempt but inpatient treatment is not necessary or practicable, the health care provider is required to engage in safety planning with the minor's parents and any other individuals the provider reasonably believes may be able to reduce the likelihood of the minor's suicide attempt.⁶ However, the provider is not required to disclose information regarding the minor's treatment if the provider reasonably believes the person to whom the information would be disclosed has abused the minor in the past or may abuse the minor in the future, reasonably believes that the disclosure could endanger the minor or determines that the disclosure is not in the minor's best interests.⁷ Finally, nothing in ORS 109.680 prevents a health care provider from disclosing information regarding a minor's treatment when the minor consents to the disclosure.⁸

Regardless of Oregon law permitting the disclosures described above, federal law may provide additional privacy protections for the protected health information of any individual, including a minor, who receives substance use disorder treatment in a federally funded program (part 2 program).⁹ The part 2 program disclosure restrictions apply to patient identifying information¹⁰ if the information originates from a part 2 program and identifies the patient as having (or having had) a substance use disorder.¹¹ These confidentiality provisions governing part 2 programs apply even if the patient is a minor and regardless of whether the minor is old enough to consent to treatment without parental consent and provide that, unless an exception applies, a part 2 program may not disclose, even to the minor's parent, information regarding a minor patient's treatment without the minor's written consent.¹²

In summary, under current Oregon and federal law:

- A minor who is at least 14 years of age may consent, without parental consent, to chemical dependency treatment provided by specified providers;
- Unless an exception applies, the provider must involve the minor's parents in the minor's treatment before the treatment is complete;

² ORS 109.675 (2). The health care provider is not required to involve the minor's parents in the minor's treatment if the parent declines to participate, the minor has been sexually abused by a parent or the provider determines that the participation of the parent is clinically contraindicated.

³ See ORS 109.680.

⁴ ORS 109.680 (2)(a) and (b).

⁵ ORS 109.680 (2)(d).

⁶ ORS 109.680 (2)(c)(A).

⁷ ORS 109.680 (3).

⁸ ORS 109.680 (4).

⁹ 42 U.S.C. 290dd-2; 42 C.F.R. part 2.

¹⁰ "Patient identifying information" means "the name, address, [S]ocial [S]ecurity number, fingerprints, photograph, or similar information by which the identity of a patient, as defined in this section, can be determined with reasonable accuracy either directly or by reference to other information." "Patient" means "any individual who has applied for or been given diagnosis, treatment, or referral for treatment for a substance use disorder at a part 2 program." 42 C.F.R. 2.11.

¹¹ 42 C.F.R. 2.12.

¹² 42 C.F.R. 2.14(b). However, if necessary to reduce a substantial threat to the life or physical well-being of the patient or another person, the program director may disclose to the minor's parent facts that are relevant to reducing the threat if the director determines that the minor lacks capacity to rationally consent to the disclosure. 42 C.F.R. 2.14(c).

- The provider is generally prohibited from disclosing information regarding the minor's treatment without the minor's consent; and
- If the chemical dependency program is federally funded, the provider is likely prohibited from disclosing information regarding the minor's treatment unless the minor consents to the disclosure.

A-engrossed House Bill 2395

House Bill 2395-A, "relating to substance use," seeks to address "the opioid crisis in which [the residents of the State of Oregon] see ourselves"¹³ with "a multipronged approach focused on substance use prevention, harm reduction and treatment."¹⁴ More specifically, the bill does the following:

- Increases access to short-acting opioid antagonists¹⁵ by allowing the distribution and administration of short-acting opioid antagonists by more individuals and to more individuals and entities than current law allows;¹⁶
- Allows the Public Health Officer or physician employed by the Oregon Health Authority (OHA) to issue a standing order to prescribe short-acting opioid antagonists to specified individuals and entities;¹⁷
- Allows the owner of a building or facility to which the public has legal access to store one or more short-acting opioid antagonist kits in a location easily accessible to the public for use by members of the public;¹⁸
- Allows a school administrator, teacher or other school employee to administer a short-acting opioid antagonist to a student who experienced or is experiencing an opioid overdose without written permission and instructions from the student's parents or guardian;¹⁹
- Exempts certain items from the definition of "drug paraphernalia;"²⁰
- Removes the lower age limit for an individual who is a minor to obtain outpatient diagnosis or treatment of a substance use disorder by a mental health care provider without parental knowledge or consent;²¹
- Directs OHA to establish guidance for communication among local mental health authorities regarding the death of an individual who is 24 years of age or younger when the presumed manner of death is suspected to be the result of an opioid overdose or other overdose;²² and
- Provides protection from civil, and in some cases criminal, liability, for the administration or failure to administer a short-acting opioid antagonist, or the provision of substance use disorder treatment.²³

¹³ House Bill 2395-A preamble.

¹⁴ *Id.*

¹⁵ House Bill 2395-A, section 1, amending ORS 689.681 (1), provides, "[s]hort-acting opioid antagonist' means any short-acting drug approved by the United States Food and Drug Administration for the complete or partial reversal of an opioid overdose." This definition replaces the term "naloxone" throughout the Oregon Revised Statutes.

¹⁶ See HB 2395-A section 1, amending ORS 689.681; section 2, amending ORS 689.682; section 3, amending ORS 689.684; and section 4, amending ORS 689.686.

¹⁷ HB 2395-A section 7.

¹⁸ HB 2395-A section 8.

¹⁹ HB 2395-A section 12, amending ORS 339.870.

²⁰ HB 2395-A section 21, amending ORS 475.525.

²¹ HB 2395-A section 17, amending ORS 109.675.

²² HB 2395-A section 26.

²³ See, for example, HB 2395-A section 1, amending ORS 689.681; section 13, amending ORS 339.871; and section 19, amending ORS 109.685.

The only changes that HB 2395-A makes to a minor's ability to consent to treatment and to the disclosure of treatment information to the minor's parents are as follows:

- The amendments to ORS 109.675 by section 17 of HB 2395-A remove the lower age limit at which a minor may consent, without parental consent to substance use disorder treatment.
- Section 16 of HB 2395-A moves the definition of "mental health care provider" from ORS 109.680 into its own section and expands the list of providers from which a minor may obtain outpatient treatment for mental or emotional disorders and for substance use disorders to include chiropractic physicians licensed under ORS chapter 684 and organizational providers, as defined in ORS 430.637, that hold a certificate of approval.
- Section 16 of HB 2395-A defines "minor."
- The amendments to ORS 109.680 by section 18 of HB 2395-A clarify that the exceptions to disclosure of the minor's treatment and diagnosis information under the new subsection (2) also apply to the requirement that the provider involve the minor's parents in the minor's treatment before the treatment is concluded.

1. What treatment would a minor under 15 years of age be able to receive without parental permission?

The short answer is that, if enacted, HB 2395-A would remove the lower age limit for consenting to substance use disorder treatment under ORS 109.675 and allow a minor of any age to consent, without parental consent, to substance use disorder treatment that does not require the minor to be hospitalized and that is within the scope of practice of the mental health care provider providing the treatment. The age at which a minor could consent to outpatient diagnosis and treatment of mental or emotional disorders under ORS 109.675 would remain unchanged and a minor who is at least 14 years of age would still be able to consent, without parental consent, to outpatient diagnosis and treatment of mental or emotional disorders.

House Bill 2395-A sections 15 to 20 address "Services Provided to Minors." Section 17 amends current law to provide, "[a] minor may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a substance use disorder, excluding methadone treatment, by a mental health care provider."²⁴ Determining the specific meaning of this language requires statutory interpretation. In interpreting the meaning of statutes, courts first look to the text and context of the statutes, and then to any relevant legislative history.²⁵ If a word or term is not defined, we look to the plain meaning. Here, we must determine the meaning of "minor," "outpatient diagnosis or treatment of a substance use disorder," and "mental health care provider."

The terms "minor" and "mental health care provider" are defined for purposes of this section. A "minor" is "a person who has not arrived at the age of majority, as described in ORS 109.510."²⁶ ORS 109.510 provides, "[e]xcept as provided in ORS 109.520, in this state any person shall be deemed to have arrived at majority at the age of 18 years." ORS 109.520, provides that "all persons shall be deemed to have arrived at the age of majority upon their being married according to law." Thus, a minor is an unmarried person who is under 18 years of age. A "mental health care provider" means a:

- (a) Physician licensed under ORS chapter 677;
- (b) Physician assistant licensed under ORS 677.505 to 677.525;

²⁴ HB 2395-A section 17 (1)(a), amending ORS 109.675.

²⁵ *State v. Gaines*, 346 Or. 160, 171-172 (2009).

²⁶ HB 2395-A section 16 (2).

- (c) Psychologist licensed under ORS 675.010 to 675.150;
- (d) Nurse practitioner licensed under ORS 678.375 to 678.390;
- (e) Clinical social worker licensed under ORS 675.530;
- (f) Licensed professional counselor licensed under ORS 675.715;
- (g) Licensed marriage and family therapist licensed under ORS 675.715;
- (h) Naturopathic physician licensed under ORS chapter 685;
- (i) Chiropractic physician licensed under ORS chapter 684;
- (j) Community mental health program established and operated pursuant to ORS 430.620 when approved to do so by the Oregon Health Authority pursuant to rule; or
- (k) Organizational provider, as defined in ORS 430.637, that holds a certificate of approval.²⁷

Relying on these statutory definitions, we know an unmarried person who is under 18 years of age may obtain “outpatient diagnosis or treatment of a substance use disorder” from an individual or entity included the definition of “mental health care provider” that is within the scope of practice or authority of the individual or entity. For example, a person who is 16 years of age may obtain substance use disorder diagnosis or treatment from a clinical social worker licensed under ORS 675.530. The licensed clinical social worker may provide only those services encompassed within “clinical social work.”²⁸ If the same minor sought “outpatient diagnosis or treatment of a substance use disorder” from a mental health care provider who is a nurse practitioner,²⁹ the nurse practitioner would be able to provide only those services that are within the scope of practice of the nurse practitioner.

The phrase “outpatient diagnosis or treatment of a substance use disorder” is not defined in HB 2395-A, so we look to the plain meaning of the phrase. Here, it is helpful to break the phrase into components. The phrase as it appears in both existing law and as amended by HB 2395-A includes “outpatient.” The plain meaning of “outpatient” is “a patient who is not an inmate of a hospital but receives diagnosis or treatment in a clinic or dispensary connected with the hospital.”³⁰ The plain meaning of “treatment” is “the action or manner of treating a patient medically or surgically.”³¹ The term “substance use disorder” is not found in the dictionary, but the plain meaning of the similar term “substance abuse” is the “excessive use of a drug (such as alcohol, narcotics, or cocaine).”³² The phrase “outpatient diagnosis or treatment of a substance use disorder,” then, can be interpreted to mean the medical treatment of a patient in a clinic or dispensary rather than as an inmate of a hospital for the patient’s excessive use of a drug.

²⁷ HB 2395-A section 16 (1).

²⁸ ORS 675.510 (2) provides “‘Clinical social work’ means:

(a) A specialty within the practice of master’s social work that requires the application of specialized clinical knowledge and advanced clinical skills to the assessment, diagnosis or treatment of mental, emotional or behavioral disorders or conditions, or as further defined by the [State Board of Licensed Social Workers] by rule;

(b) The application of services described in paragraph (a) of this subsection to the provision of individual, marital, couples, family or group counseling or psychotherapy; or

(c) The clinical supervision, as defined by the board by rule, of services described in paragraphs (a) and (b) of this subsection.”

²⁹ ORS 678.010 (5) provides “‘Nurse practitioner’ means a registered nurse who has been licensed by the [Oregon State Board of Nursing] as qualified to practice in an expanded specialty role within the practice of nursing.”

³⁰ *Merriam-Webster Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/outpatient> (last visited April 6, 2023).

³¹ *Merriam-Webster Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/treatment> (last visited April 6, 2023).

³² *Merriam-Webster Unabridged Dictionary*, <https://unabridged.merriam-webster.com/unabridged/substance%20abuse> (last visited April 6, 2023).

Next, we look to the context in which the phrase “outpatient diagnosis or treatment of a substance use disorder” is used. The broad context is HB 2395-A, which creates a “multipronged approach focused on substance use prevention, harm reduction and treatment.” The narrower context is HB 2395-A sections 15 to 20, and specifically section 17, amending ORS 109.675. The current law provides, “[a] minor 14 years of age or older may obtain, without parental knowledge or consent, *outpatient diagnosis or treatment of a mental or emotional disorder or a chemical dependency*, excluding methadone maintenance, by” certain health care providers.³³ It is helpful to also consider section 18 of HB 2395-A, amending ORS 109.680, which provides,

If the minor’s condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or if the minor’s condition requires detoxification in a residential or acute care facility, the minor’s mental health care provider may disclose the relevant information regarding the minor’s diagnosis and treatment to the minor’s parent or legal guardian to the extent the mental health care provider determines the disclosure is clinically appropriate and will serve the best interests of the minor’s treatment.³⁴

ORS 109.675 and 109.680 were enacted by House Bill 2651 (1985), which included in its preamble that “the Legislative Assembly finds that there exists evidence of an unacceptable . . . rate of *alcohol and drug abuse* among minors”³⁵ and which sought to address “the needs of minors at risk of suicide or chemical dependence.”³⁶ The current version of ORS 109.675 uses the term, “chemical dependency,” which the HB 2651 (1985) preamble helps to clarify as being akin to “alcohol and drug abuse.” House Bill 2395-A replaces the term “chemical dependency” with “substance use disorder.” From this and the plain meaning of the similar term “substance abuse,” we can discern that the phrase “substance use disorder” is similar to “chemical dependency” and “alcohol and drug abuse.” This context provides further evidence for our interpretation of “outpatient diagnosis or treatment of a substance use disorder.”

With this background, we know that the amendments to ORS 109.675 by HB 2395-A section 17 (1)(a) allow a minor to obtain, without parental knowledge or consent, medical treatment in a clinic or dispensary, rather than as an inmate of a hospital, for the minor’s excessive use of a drug. The particular methods of “treatment” are limited by the scope of practice and authority of the mental health care provider that is providing the treatment. Further, the treatment must be of the minor’s excessive use of a drug. The clinical social worker discussed above could provide any type of service encompassed in “clinical social work” that fits within the meaning of “outpatient diagnosis or treatment of a substance use disorder,” but could not prescribe a drug as part of the treatment because a clinical social worker does not have prescriptive authority. The nurse practitioner could prescribe a drug as part of the substance use disorder treatment if the nurse practitioner is authorized to write prescriptions under ORS 678.390. However, none of the individuals or entities included in the definition of “mental health care provider” may provide to the minor, without parental knowledge or consent, substance use disorder treatment that requires the minor to be admitted to a hospital. Finally, “methadone treatment” is excluded from the permissible types of substance use disorder treatment.³⁷

³³ ORS 109.675 (1), emphasis added. The health care providers described in the current version of ORS 109.675 are those listed in HB 2395-A section 16 (1), with the addition of a chiropractic physician licensed under ORS chapter 684.

³⁴ ORS 109.680.

³⁵ House Bill 2651 (1985), chapter 525, Oregon Laws 1985, emphasis added.

³⁶ *Id.*

³⁷ When the Legislative Assembly enacted ORS 109.675 in 1985, it made a policy decision to exclude methadone maintenance from the chemical dependency treatments to which a minor could consent without parental consent. See

2. Would a minor under 15 years of age seeking treatment for substance use and another mental health condition have confidentiality extended beyond the substance use treatment?

The short answer is likely no, with certain exceptions. The confidentiality afforded under ORS 109.675 to a minor who obtains substance use disorder treatment or mental or emotional disorder treatment without parental knowledge or consent is limited to obtaining that treatment. Except in particular circumstances, the parents of a minor who obtains both substance use disorder treatment and treatment for a mental health condition under ORS 109.675 will be notified of the treatment.

House Bill 2395-A amends ORS 109.675 to provide,

(1)(a) A minor may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a substance use disorder, excluding methadone treatment, by a mental health care provider.

(b) A minor 14 years of age or older may obtain, without parental knowledge or consent, outpatient diagnosis or treatment of a mental or emotional disorder [*or a chemical dependency, excluding methadone maintenance,*] by a **mental health care provider**. . . .

(2) [*However,*] The person providing treatment **under this section** shall have the parents of the minor involved before the end of treatment³⁸

A mental health care provider who provides “outpatient diagnosis or treatment of a substance use disorder” or “outpatient diagnosis or treatment of a mental or emotional disorder to a minor” without knowledge or consent of the minor’s parents under HB 2395-A, “shall have the parents of the minor involved before the end of treatment.”³⁹ In other words, the obtaining of the substance use disorder treatment or mental or emotional disorder treatment may occur without parental knowledge or consent, but both the current and amended versions of ORS 109.675 require that the mental health care provider involve the parents “before the end of treatment.” Involving the minor’s parents in the treatment necessitates informing the minor’s parents of the treatment.

The requirement to involve the minor’s parents in treatment applies “unless the parents refuse or unless there are clear clinical indications to the contrary.”⁴⁰ In order for the parents to refuse involvement in the substance use disorder or mental or emotional disorder treatment, the parents must first know about the treatment. The requirement to involve the minor’s parents does not apply if the minor “has been sexually abused by a parent”⁴¹ or the minor is emancipated.⁴²

The current and amended versions of ORS 109.680 provide both an allowance and a requirement for a mental health care provider to disclose information, without the minor’s consent,

House Bill 2651 (1985), chapter 525, Oregon Laws 1985. That policy decision is carried forward in HB 2395-A, which simply removes the lower age limit for consent to chemical dependency treatments but does not expand or limit the scope of treatments to which a minor may consent.

³⁸ HB 2395-A section 17, amending ORS 109.675.

³⁹ HB 2395-A section 17 (2), amending ORS 109.675.

⁴⁰ *Id.*

⁴¹ HB 2395-A section 17 (2)(a), amending ORS 109.675.

⁴² HB 2395-A section 17 (2)(b), amending ORS 109.675.

about substance use disorder treatment or mental or emotional disorder treatment to the minor's parent or legal guardian, depending on the circumstances. The mental health care provider may disclose information, "[i]f the minor's condition has deteriorated or the risk of a suicide attempt has become such that inpatient treatment is necessary, or if the minor's condition requires detoxification in a residential or acute care facility."⁴³ The mental health care provider is required to disclose information, "[i]f the mental health care provider assesses the minor to be at serious and imminent risk of a suicide attempt but inpatient treatment is not necessary or practicable."⁴⁴

Nevertheless, the current version of ORS 109.680 provides that the mental health care provider is not required to make the above-described disclosures if the provider reasonably believes that the minor's parent or legal guardian has abused or will abuse the minor, reasonably believes disclosure of the information would endanger the minor or determines that it is not in the minor's best interest to disclose the information.⁴⁵ The amendments to ORS 109.680 by section 18 of HB 2395-A clarify that these exceptions also apply to the requirement under ORS 109.675 (2) that the mental health care provider involve the minor's parents in the minor's treatment before the treatment is completed.

In sum, under HB 2395-A, a minor of any age can obtain substance use disorder treatment without parental consent, but a minor under 14 years of age must still have parental consent to obtain treatment for a mental or emotional disorder. Further, except for in certain circumstances, the minor's parents must be at least informed of the minor's substance use disorder treatment or treatment for a mental or emotional disorder.

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Very truly yours,

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Legislative Counsel



By
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⁴³ HB 2395-A section 18 (1)(b), amending ORS 109.680.

⁴⁴ HB 2395-A section 18 (1)(c), amending ORS 109.680.

⁴⁵ ORS 109.680 (3).