HB 3258-4
(LC 4305)
4/3/23 (SCT/ps)

Requested by Representative SANCHEZ

PROPOSED AMENDMENTS TO
HOUSE BILL 3258

On page 1 of the printed bill, line 2, after "ORS" delete the rest of the line and line 3 and insert "431A.850, 431A.855, 431A.860, 431A.865, 431A.880, 431A.890 and 431A.896; and prescribing an effective date.".

Delete lines 5 through 31 and delete page 2 and insert:

"SECTION 1. Section 2 of this 2023 Act is added to and made a part of ORS 431A.855 to 431A.900.

"SECTION 2. A pharmacist who dispenses a prescription drug for which reporting is required under ORS 431A.860 may receive prescription monitoring information regarding:

"(1) A patient who is an individual to whom a prescription drug is dispensed on behalf of an animal; and

"(2) An animal for which a prescription drug is prescribed.

"SECTION 3. ORS 431A.850 is amended to read:

"431A.850. As used in ORS 431A.855 to 431A.900:

"(1) 'Dental director' means a dentist, as defined in ORS 679.010, employed by a coordinated care organization, dental clinic or office, or a system of dental clinics or offices, for the purpose of overseeing the operations of the dental clinic or office, or the system of dental clinics or offices, and ensuring the delivery of quality dental care within the clinic, office or system.

"(2) 'Dispense' and 'dispensing' have the meanings given those terms in ORS 689.005.

"(3) 'Drug outlet' has the meaning given that term in ORS 689.005.

"(4) 'Health professional regulatory board' means a health professional regulatory board, as defined in ORS 676.160, the Long Term Care Administrators Board, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board.

"(5) 'Medical director' means a physician employed by a coordinated care organization, hospital, health care clinic or system of hospitals or health care clinics for the purposes of overseeing the operations of the coordinated care organization, hospital, clinic or system and ensuring the delivery of quality health care within the coordinated care organization, hospital, clinic or system.

"**(6) 'Patient' means:**

"(a) The individual to whom the prescription drug is prescribed; or

"(b) If the prescription drug is prescribed by a veterinarian for an animal, the individual to whom the prescription drug is dispensed on behalf of the animal.

"[*(6)*] **(7)** 'Pharmacist' means:

"(a) A pharmacist as defined in ORS 689.005; or

"(b) An individual licensed to practice pharmacy in another state, if the requirements for licensure are similar, as determined by the Oregon Health Authority, to the requirements for being licensed as a pharmacist as defined in ORS 689.005.

"[*(7)*] **(8)** 'Pharmacy director' means a pharmacist employed by a coordinated care organization, pharmacy or system of pharmacies for the purposes of overseeing the operations of the coordinated care organization, pharmacy or system and ensuring the delivery of quality pharmaceutical care within the coordinated care organization, pharmacy or system.

"[*(8)*] **(9)** 'Practitioner' means:

"(a) A practitioner as defined in ORS 689.005; or

"(b) An individual licensed to practice a profession in another state, if the

requirements for licensure are similar, as determined by the authority, to the requirements for being licensed as a practitioner as defined in ORS 689.005.

"[*(9)*] **(10)** 'Prescription' has the meaning given that term in ORS 475.005.

"[*(10)*] **(11)** 'Prescription drug' has the meaning given that term in ORS 689.005.

"**(12) 'Veterinarian' means a person licensed to practice veterinary medicine under ORS chapter 686.**

"SECTION 4. ORS 431A.855 is amended to read:

"431A.855. (1)(a) The Oregon Health Authority, in consultation with the Prescription Monitoring Program Advisory Commission, shall establish and maintain a prescription monitoring program for monitoring and reporting:

"(A) **Except as provided in subsection (4) of this section,** prescription drugs dispensed by pharmacies licensed by the State Board of Pharmacy that are classified in schedules II through [*IV*] **V** under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the board by rule under ORS 475.035;

"(B) Prescribed gabapentin [*and naloxone*] dispensed by pharmacies; and

"(C) Other drugs identified by rules adopted by the authority.

"(b)(A) To fulfill the requirements of this subsection, the authority shall establish, maintain and operate an electronic system to monitor and report drugs described in paragraph (a) of this subsection that are dispensed by prescription.

"(B) The electronic system must:

"(i) Operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a week; and

"(ii) Allow practitioners to register as required under ORS 431A.877 and to apply for access to the electronic system in accordance with rules adopted by the authority under subsection (2) of this section.

"(C) [*The authority may contract with a state agency or private entity to ensure the effective operation of the electronic system.*] **To ensure the inter-**

operability of data contained in the electronic system, the authority shall contract with an information technology services vendor to provide secure connections between the electronic system and prescribers and between the electronic system and pharmacies. The approved entity, as described by the authority by rule, is responsible for ensuring that only practitioners registered under ORS 431A.877 and pharmacies may access the electronic system.

"(D) The authority shall contract with a state agency or private entity to ensure the effective operation of the electronic system, including the operation of any technology integrations between the electronic system and a health information technology system used by a practitioner.

"(2) In consultation with the commission, the authority shall adopt rules for the operation of the electronic prescription monitoring program established under subsection (1) of this section, including standards for:

"(a) Reporting data;

"(b) Providing maintenance, security and disclosure of data;

"(c) Ensuring accuracy and completeness of data;

"(d) Complying with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations adopted under those laws, including 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.553 to 192.581;

"(e) Ensuring accurate identification of persons or entities requesting information from the database;

"(f) Accepting printed or nonelectronic reports from pharmacies that do not have the capability to provide electronic reports;

"(g) Notifying a patient, before or when a drug classified in schedules II through [*IV*] **V** is dispensed to the patient, about the prescription monitoring

program and the entry of the prescription in the electronic system; and

"(h) Registering practitioners with the electronic system.

"(3) The authority shall submit an annual report to the commission regarding the prescription monitoring program established under this section.

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

"SECTION 5. ORS 431A.860 is amended to read:

"431A.860. (1) Not later than 72 hours after dispensing a prescription drug that is subject to the prescription monitoring program established under ORS 431A.855, a pharmacy shall electronically report to the Oregon Health Authority:

"(a) For prescription drugs described in ORS 431A.855 (1)(a)(A) and other drugs identified by the authority by rule[,]**:**

"(A) The name, address, phone number, date of birth and sex of the patient for whom the prescription drug was prescribed; **and**

"(B) If applicable, the species, name and sex of the animal for which the prescription drug was prescribed;

"(b) The identity of the pharmacy that dispensed the prescription drug and the date on which the prescription drug was dispensed;

"(c) The identity of the practitioner who prescribed the prescription drug and the date on which the prescription drug was prescribed;

"(d) The national drug code number for the prescription drug;

"(e) The prescription number assigned to the prescription drug;

"(f) The quantity of the prescription drug dispensed;

"(g) The number of days for which the prescription drug was dispensed;

"(h) The number of refills of the prescription authorized by the practitioner and the number of the refill that the pharmacy dispensed; and

"(i) The diagnosis code used by the practitioner and the reason for the

prescription.

"(2) Notwithstanding subsection (1) of this section, the authority may not:

"(a) Require the reporting of prescription drugs administered directly to a patient or dispensed pursuant to ORS 127.800 to 127.897; or

"(b) Collect or use Social Security numbers in the prescription monitoring program.

"(3) Upon receipt of the data reported pursuant to subsection (1) of this section, the authority shall record the data in the electronic system established under ORS 431A.855.

"(4)(a) The authority may, for good cause as determined by the authority, grant a pharmacy a waiver of the requirement that the information to be reported under subsection (1) of this section be submitted electronically. The waiver must state the format, method and frequency of the alternate non-electronic submissions from the pharmacy and the duration of the waiver.

"(b) As used in this subsection, 'good cause' includes financial hardship.

"(5) This section does not apply to pharmacies in institutions as defined in ORS 179.010.

"SECTION 6. ORS 431A.865 is amended to read:

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

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

"(B) Is confidential and not subject to disclosure under ORS 192.311 to 192.478.

"(b) Except as provided under subsection (3)(a)(H) of this section, prescription monitoring information submitted under ORS 431A.860 to the prescription monitoring program may not be used to evaluate a practitioner's professional practice.

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

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

"(A)**(i) Subject to sub-subparagraph (ii) of this subparagraph,** to a practitioner or pharmacist, or, if a practitioner or pharmacist authorizes the authority to disclose the information to a member of the practitioner's or pharmacist's staff, to a member of the practitioner's or pharmacist's staff. If a practitioner or pharmacist authorizes disclosing the information to a member of the practitioner's or pharmacist's staff under this subparagraph, the practitioner or pharmacist remains responsible for the use or misuse of the information by the staff member. To receive information under this subparagraph, or to authorize the receipt of information by a staff member under this subparagraph, a practitioner or pharmacist must certify that the requested information is for the purpose of evaluating the need for or providing medical or pharmaceutical treatment for a patient**, or if applicable, a patient's animal,** to whom the practitioner or pharmacist anticipates providing, is providing or has provided care.

"**(ii) The authority may not disclose the information described in this subsection to a practitioner who is a veterinarian.**

"(B) To a dental director, medical director or pharmacy director, or, if a dental director, medical director or pharmacy director authorizes the authority to disclose the information to a member of the dental director's, medical director's or pharmacy director's staff, to a member of the dental director's, medical director's or pharmacy director's staff. If a dental director, medical director or pharmacy director authorizes disclosing the information to a member of the dental director's, medical director's or pharmacy director's staff under this subparagraph, the dental director, medical director or pharmacy director remains responsible for the use or misuse of the information by the staff member. To receive information under this subparagraph, or to authorize the receipt of information by a staff member under this sub-

paragraph:

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

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

"(iii) A pharmacy director must certify that the requested information is for the purposes of overseeing the operations of a coordinated care organization, pharmacy or system of pharmacies and ensuring the delivery of quality pharmaceutical care within the coordinated care organization, pharmacy or system.

"(C) In accordance with subparagraphs (A) and (B) of this paragraph, to an individual described in subparagraphs (A) and (B) of this paragraph through a health information technology system that is used by the individual to access information about patients if:

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

"(ii) The information is not permanently retained in the health information technology system, except for purposes of conducting audits and maintaining patient records; and

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

"(D) To a practitioner in a form that catalogs all prescription drugs pre-

scribed by the practitioner according to the number assigned to the practitioner by the Drug Enforcement Administration of the United States Department of Justice.

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

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

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

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

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

"**(J) To the director of the division of the authority that administers the state medical assistance program and the director of the division of the authority that administers the prescription drug program within the state medical assistance program, and authorized staff, after certification that the requested information is for purposes of overseeing the state medical assistance program, and to the Centers for Medicare and Medicaid Services for the purpose of ensuring the prescription monitoring program meets systems certification requirements. A disclosure under this subparagraph may be of only the minimum information necessary to fulfill the intended purposes. If a director described in this subparagraph authorizes disclosure to the director's staff, the authorizing director remains responsible for the use or mis-**

use of the information by the staff member.

"(b) The authority may disclose information from the prescription monitoring program that does not identify a patient, practitioner or drug outlet:

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

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

"(C) To a health professional regulatory board;

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

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

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

"(A) Prescription drug monitoring information to the extent that the disclosure fails to comply with applicable provisions of the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104-191) and regulations adopted under that law, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations, including 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.553 to 192.581.

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

"[*(C) The identity of a patient for whom naloxone was prescribed.*]

"**(C) Prescription drug monitoring information to a practitioner who is a veterinarian.**

"(d) The authority shall disclose information relating to a patient**, and if applicable, the patient's animal,** maintained in the electronic system established under ORS 431A.855 to that patient at no cost to the patient within 10 business days after the authority receives a request from the patient for the information.

"(e)(A) A patient may request the authority to correct any information

related to the patient**, or if applicable, the patient's animal,** that is maintained in the electronic system established under ORS 431A.855 that is erroneous. The authority shall grant or deny a request to correct information within 10 business days after the authority receives the request. If a request to correct information cannot be granted because the error occurred at the pharmacy where the information was inputted, the authority shall inform the patient that the information cannot be corrected because the error occurred at the pharmacy.

"(B) If the authority denies a patient's request to correct information under this paragraph, or fails to grant a patient's request to correct information under this paragraph within 10 business days after the authority receives the request, the patient may appeal the denial or failure to grant the request. Upon receiving notice of an appeal under this subparagraph, the authority shall conduct a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, the authority has the burden in the contested case hearing of establishing that the information is correct.

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

"(g) In accordance with ORS 192.553 to 192.581 and federal laws and regulations related to privacy, any person authorized to prescribe or dispense a prescription drug who is entitled to access a patient's prescription monitoring information may discuss the information with or release the information to other health care providers involved with the patient's care for the purpose of providing safe and appropriate care coordination.

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

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

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

"(C) The date and time the information was requested and the date and

time the information was provided.

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

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

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

"(7)(a) If the authority or a person or entity required to report or authorized to receive or release prescription information under this section violates this section or ORS 431A.860 or 431A.870, a person injured by the violation may bring a civil action against the authority, person or entity and may recover damages in the amount of $1,000 or actual damages, whichever is greater.

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

"(8) Nothing in ORS 431A.855 to 431A.900 requires a practitioner or pharmacist who prescribes or dispenses a prescription drug to obtain information about a patient from the prescription monitoring program. A practitioner or pharmacist who prescribes or dispenses a prescription drug may not be held liable for damages in any civil action on the basis that the practitioner or pharmacist did or did not request or obtain information from the prescription monitoring program.

"(9) The authority shall, at regular intervals, ensure compliance of a health information technology system described in subsection (3) of this

section with the privacy and security requirements and other criteria established by the authority under subsection (3) of this section.

"SECTION 7. ORS 431A.880 is amended to read:

"431A.880. (1) As used in this section, 'board' means **the**:

"(a) [*The*] Oregon Medical Board;

"(b) [*The*] Oregon Board of Dentistry;

"(c) [*The*] Oregon Board of Naturopathic Medicine;

"(d) [*The*] Oregon State Board of Nursing;

"(e) [*The*] Oregon Board of Optometry; [*and*]

"(f) [*The*] State Board of Pharmacy[.]**; and**

"(g) Oregon State Veterinary Medical Examining Board.

"(2)(a) At the time of issuing or renewing a license, a board shall provide the Oregon Health Authority with the licensing information of each person licensed by the board who is authorized to prescribe or dispense controlled substances. The authority shall use the licensing information to qualify the licensee to report information to, or**, unless the licensee is a veterinarian,** receive information from, the prescription monitoring program established under ORS 431A.855.

"(b) A board by rule may adopt exceptions to the requirement described in paragraph (a) of this subsection.

"(3)(a) In addition to other licensing fees imposed by a board on licensees, a board shall adopt rules imposing a fee of $35 per year on each person licensed by the board who is authorized to prescribe or dispense controlled substances. A board shall collect the fee at the same time the board collects other licensing fees imposed on licensees.

"(b) A board shall retain 10 percent of the fees collected under paragraph (a) of this subsection to cover the costs of administering this section.

"(c) On the first day of each calendar quarter, a board shall transmit 90 percent of the fees collected under paragraph (a) of this subsection during the preceding calendar quarter to the Oregon Health Authority Fund estab-

lished in ORS 413.101. Moneys deposited in the fund under this paragraph may be used only for the purpose of carrying out ORS 431A.855 to 431A.900.

"(4) A board may adopt rules necessary for the administration of this section.

"SECTION 8. ORS 431A.890 is amended to read:

"431A.890. (1) The Prescription Monitoring Program Advisory Commission is created for the purposes of:

"(a) Studying issues related to the prescription monitoring program established under ORS 431A.855;

"(b) Reviewing the program's annual report and making recommendations to the Oregon Health Authority regarding the operation of the program; and

"(c) Developing criteria used to evaluate program data.

"(2) The commission shall consist of [*11*] **13** members appointed by the authority as follows:

"(a) A person nominated by the Pain Management Commission;

"(b) A person who dispenses controlled substances nominated by an association representing pharmacists;

"(c) A practicing dentist nominated by an association representing dentists;

"(d) A practicing doctor of medicine nominated by an association representing doctors of medicine;

"(e) A practicing doctor of osteopathic medicine nominated by an association representing osteopathic physicians and surgeons;

"(f) A nurse authorized to prescribe controlled substances nominated by an association representing nurses;

"(g) A practicing naturopathic physician nominated by an association representing naturopathic physicians;

"(h) A practicing optometrist, nominated by an association representing optometrists;

"(i) A representative of the authority with expertise in administering ad-

diction services; [*and*]

"**(j) A practicing veterinarian nominated by an association representing veterinarians; and**

"[*(j)*] **(k)** [*Two*] **Three** members of the public, one of whom must be an expert in information technology.

"SECTION 9. ORS 431A.896 is amended to read:

"431A.896. (1) The Prescription Monitoring Program Prescribing Practices Review Subcommittee is established as a subcommittee of the Prescription Monitoring Program Advisory Commission created under ORS 431A.890, for the purpose of advising the Oregon Health Authority and the commission on interpreting prescription information, understanding the clinical aspects of prescribing practices and evaluating prescribing practices.

"(2)(a) The authority shall appoint the number of members to the subcommittee that the authority determines is necessary to fulfill the functions of the subcommittee.

"(b) Members of the subcommittee must be practitioners who:

"(A) Hold a valid license issued in this state or a valid emeritus license issued in this state;

"(B) Are registered with the federal Drug Enforcement Administration to prescribe drugs classified in schedules II through [*IV*] **V**; and

"(C) Have at least five years of experience prescribing drugs classified in schedules II through [*IV*] **V**.

"(c) To the extent feasible, the authority shall appoint one member to the subcommittee for each type of practitioner in this state that prescribes drugs classified in schedules II through [*IV*] **V**.

"SECTION 10. Section 11 of this 2023 Act is added to and made a part of ORS chapter 686.

"SECTION 11. The Oregon State Veterinary Medical Examining Board may, in consultation with the Oregon Health Authority, adopt rules regarding the use of the prescription monitoring program estab-

lished under ORS 431A.855 to 431A.900 by individuals licensed to practice veterinary medicine under this chapter.

"SECTION 12. (1) Sections 2 and 11 of this 2023 Act and the amendments to ORS 431A.850, 431A.855, 431A.860 and 431A.865 by sections 3 to 8 of this 2023 Act apply to prescription drugs dispensed on or after the operative date specified in section 13 of this 2023 Act.

"(2) The amendments to ORS 431A.896 by section 9 of this 2023 Act apply to members of the Prescription Monitoring Program Prescribing Practices Review Subcommittee appointed on or after the operative date specified in section 13 of this 2023 Act.

"SECTION 13. (1) Sections 2 and 11 of this 2023 Act and the amendments to ORS 431A.850, 431A.855, 431A.860, 431A.865, 431A.880, 431A.890 and 431A.896 by sections 3 to 9 of this 2023 Act become operative on January 1, 2025.

"(2) The Oregon Health Authority and the Oregon State Veterinary Medical Examining Board may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority and the board to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority and the board by sections 2 and 11 of this 2023 Act and the amendments to ORS 431A.850, 431A.855, 431A.860, 431A.865, 431A.880, 431A.890 and 431A.896 by sections 3 to 9 of this 2023 Act.

"SECTION 14. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.".
