

HB 2812 STAFF MEASURE SUMMARY

Senate Committee On Judiciary

Prepared By: Jules Dellinger, LPRO Analyst

Meeting Dates: 4/15, 4/22

WHAT THE MEASURE DOES:

The measure exempts individually identifiable health information of individuals under the Psychiatric Security Review Board's jurisdiction from disclosure under public records laws except in limited circumstances.

Detailed Summary

- Exempts a client's individually identifiable health information from public records disclosure under ORS 192.311 to 192.478. Defines "client" as a person who is or was previously under the jurisdiction of the Psychiatric Security Review Board ("the Board") pursuant to ORS 161.315 to 161.351.
- Defines "individually identifiable health information" by reference ORS 179.505, to mean health information created by a health care services provider, identifiable to an individual, and relating to their health or health care.
- Prohibits the disclosure and use of the information except as authorized or permitted by the Board. Authorizes the Board to use or disclose the information under various circumstances:
 - to meet statutory obligations,
 - for criminal background checks related to firearms,
 - to meet judicial or administrative proceeding requirements,
 - for law enforcement purposes,
 - in emergencies, or
 - for purposes relating to a deceased client.
- Requires the Board to adopt rules specifying the circumstances when the above exceptions apply.
- Provides that a client's "personal representative" (a person who may legally make decisions or communicate the client's decisions on their behalf) cannot be denied access to the information due to nonpayment.
- Clarifies that individuals other than the client or their personal representative who are given access to the information under the section cannot disclose the information to others except as described in the section.

HOUSE VOTE: Ayes, 54; Excused, 6

REVENUE: No revenue impact

FISCAL: Has minimal impact

ISSUES DISCUSSED:

- Limitations on protections for protected health information and application of "public interest" exception in ORS 179.495
- Level of protection of information for people under the Board's jurisdiction
- Interaction between the protections in the measure and provision of information for law enforcement investigations
- Balance of protection of personal information and public interest in disclosure and process for disclosure
- Comparison of the Board to other governmental agencies that retain sensitive information
- Information available to public relating to hearings before the Board

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

This summary has not been adopted or officially endorsed by action of the committee.

The Oregon Psychiatric Security Review Board is established by ORS 161.385 and is made up of two five-member panels whose duties include the oversight of people who have been found guilty except for insanity, responsible except for insanity (for juveniles), or who have been committed as extremely dangerous persons under ORS 426.701 and 426.702. The Board's members are appointed by the Governor and confirmed by the Oregon Senate and include psychiatrists, psychologists, lawyers, parole and probation employees, and members of the general public. ORS sections 192.311 to 192.478 provide for the rights to inspect the public records of public institutions in Oregon. Under those statutes, "every person has a right to inspect any public record of a public body" in Oregon. ORS 192.355 lists public records that are statutorily exempt from disclosure under ORS 192.311 to 192.478. These exemptions include, for example, records whose disclosure is prohibited under federal law or regulations, records regarding application and eligibility for court-appointed counsel, and workers' compensation claim records held by the Department of Consumer and Business Services. ORS 192.355(8), (19), (20).

Some exemptions include a balancing test. For example, ORS 192.355(5) exempts Department of Corrections records "to the extent that disclosure would interfere with the rehabilitation of a person in custody of the department or substantially prejudice or prevent the carrying out of the functions of the department, if the public interest in confidentiality clearly outweighs the public interest in disclosure." For certain sensitive records, there is a general exemption subject to a balancing test: "Information of a personal nature such as but not limited to that kept in a personal, medical or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in the particular instance. The party seeking disclosure shall have the burden of showing that public disclosure would not constitute an unreasonable invasion of privacy." ORS 192.355(2)(a).