

Key ACDP Statutes and Rules; HIPAA and Public Health

ORS 431.110 General powers of Oregon Health Authority. The Oregon Health Authority shall:

- (1) Have direct supervision of all matters relating to the preservation of life and health of the people of this state.
- (5) Conduct sanitary surveys about and investigations on the causes and prevention of diseases.
- (7) Have full power in the control of all communicable diseases.

OAR 333-019-0002

Cooperation with Public Health Authorities

- (1) Health care providers, health care facilities, and licensed laboratories shall cooperate with local public health administrators and the Authority in the investigation and control of reportable diseases and conditions.
- (2) Every health care provider attending a person with a reportable disease, infection, or condition shall instruct the person in measures appropriate to controlling the spread of the disease.

Statutory/Other Authority: ORS 413.042, 431.110, 433.004, 437.010, 616.010 & 624.005
Statutes/Other Implemented: ORS 433.004 & 433.130

OAR 333-019-0005

Conduct of Special Studies by Oregon Health Authority

The Authority may conduct special studies concerning the causes and prevention of diseases and other significant health conditions. Special studies include any collection of information about the health status or potential health risk factors of individuals or groups of individuals, other than the routine collection of birth, death, and marriage information, and are not restricted to reportable diseases, infections, or conditions. The Authority may collaborate with local public health authorities, other institutions, or other individuals in the conduct of these studies.

Statutory/Other Authority: ORS 413.042, 431.110, 433.004, 437.010, 616.010 & 624.005
Statutes/Other Implemented: ORS 433.006 & 433.065

Consider potential authorization in ORS 431.135(1)(c) or (e), 431.137(1), ORS 431.149.

ORS 433.004 Reportable diseases; duty to report; investigation; effect of failure to report; rules.

- (1) The Oregon Health Authority shall by rule:
 - (a) Specify reportable diseases;
 - (b) Identify those categories of persons who must report reportable diseases and the circumstances under which the reports must be made;
 - (c) Prescribe the procedures and forms for making such reports and transmitting the reports to the authority; and
 - (d) Prescribe measures and methods for investigating the source and controlling reportable diseases.

(2) Persons required under the rules to report reportable diseases shall report to the authority or the local public health administrator as specified by the authority by rule. A local public health administrator that receives a report under this subsection shall transmit the report to the authority as specified by the authority by rule.

(3) The authority or local public health administrator may investigate a case of a reportable disease, disease outbreak or epidemic. The investigation may include, but is not limited to:

(a) Interviews of:

(A) The subject of a reportable disease report;

(B) Controls;

(C) Health care providers; or

(D) Employees of a health care facility.

(b) Requiring a health care provider, any public or private entity, or an individual who has information necessary for the investigation to:

(A) Permit inspection of the information by the authority or local public health administrator; and

(B) Release the information to the authority or local public health administrator.

(c) Inspection, sampling and testing of real or personal property with consent of the owner or custodian of the property or with an administrative warrant.

(4)(a) The authority shall establish by rule the manner in which information may be requested and obtained under subsection (3) of this section.

(b) Information requested may include, but is not limited to, individually identifiable health information related to:

(A) The case;

(B) An individual who may be the potential source of exposure or infection;

(C) An individual who has been or may have been exposed to or affected by the disease;

(D) Policies, practices, systems or structures that may have affected the likelihood of disease transmission; and

(E) Factors that may influence an individual's susceptibility to the disease or likelihood of being diagnosed with the disease.

(5) In addition to other grounds for which a state agency may exercise disciplinary action against its licensees or certificate holders, the substantial or repeated failure of a licensee or certificate holder to report when required to do so under subsection (2) or (3) of this section shall be cause for the exercise of any of the agency's disciplinary powers.

(6) Any person making a report or providing information under this section is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to the making of a report or providing information under this section. [1987 c.600 §3; 2007 c.445 §6a; 2009 c.268 §2; 2009 c.828 §17; 2019 c.456 §31]

ORS 433.008 Confidentiality of disclosure; exceptions; privilege.

(1) (a) Except as provided in subsection (2) of this section, information obtained by the Oregon Health Authority or a local public health administrator in the course of an investigation of a reportable disease or disease outbreak is confidential and is exempt from disclosure under ORS 192.311 to 192.478.

(b) Except as required for the administration or enforcement of public health laws or rules, a state or local public health official or employee may not be examined in an administrative or judicial proceeding about the existence or contents of a reportable disease report or other information received by the authority or local public health administrator in the course of an investigation of a reportable disease or disease outbreak.

(2) The authority or a local public health administrator may release information obtained during an investigation of a reportable disease or disease outbreak to:

(a) State, local or federal agencies authorized to receive the information under state or federal law;

(b) Health care providers if necessary for the evaluation or treatment of a reportable disease;

(c) Law enforcement officials to the extent necessary to carry out the authority granted to the Public Health Director and local public health administrators under ORS 433.121, 433.128, 433.131, 433.138 and 433.142;

(d) A person who may have been exposed to a communicable disease;

(e) A person with information necessary to assist the authority or local public health administrator in identifying an individual who may have been exposed to a communicable disease; and

(f) The individual who is the subject of the information or the legal representative of that individual.

(3) The authority or local public health administrator may release individually identifiable information under subsection (2)(d) or (e) of this section only if there is clear and convincing evidence that the release is necessary to avoid an immediate danger to other individuals or to the public.

(4) The authority or local public health administrator may release only the minimum amount of information necessary to carry out the purpose of the release pursuant to subsection (2) of this section.

(5) A decision not to disclose information under this subsection, if made in good faith, shall not subject the entity or person withholding the information to any liability.

(6) Nothing in this section:

(a) Prevents the authority or a local public health administrator from publishing statistical compilations and reports relating to reportable disease investigations if the compilations and reports do not identify individual cases or sources of information;

(b) Affects the confidentiality or admissibility into evidence of information not otherwise confidential or privileged that is obtained from sources other than the authority; or

(c) Prevents dispositions of information pursuant to ORS 192.105. [1987 c.600 §5; 2009 c.268 §3; 2009 c.828 §18]

ORS 433.990 Penalties.

(1) Violation of ORS 433.004 or 433.008, 433.255, 433.260 or 433.715 is a Class A misdemeanor.

OAR 333-026-0030

Civil Penalties for Violations of OAR Chapter 333, Divisions 18 and 19

(1) A civil penalty may be imposed against a person or entity for a violation of any provision in OAR chapter 333, division 18 or 19, including, but not limited to:

(a) Failing to report a reportable disease in accordance with OAR chapter 333, division 18

(b) Reporting to work in a communicable stage of any restrictable disease in violation of OAR 333-019-0010 or 333-019-0046;

(c) Permitting a child to attend school in violation of OAR 333-019-0010;

(d) Failing to immunize an animal against rabies in accordance with OAR 333-019-0017;

(e) Failing to license a dog in accordance with OAR 333-019-0019;

(f) Failing to euthanize an animal in accordance with OAR 333-19-0024 or 333-019-0027;

- (g) Euthanizing an animal or destroying the head of a mammal that has bitten a person without authorization under OAR 333-019-0024 from the local public health authority; and
- (h) Failing to confine an animal in accordance with OAR 333-019-0027

(2) Prior to issuing a notice of imposition of civil penalty, the Oregon Health Authority or the local public health authority shall send a written warning letter advising the person or entity that they are not in compliance with a rule in OAR chapter 333, division 18 or 19 and that continued noncompliance may result in the issuance of a notice of imposition of civil penalty. A person or entity's assertion that they did not receive the warning letter is not a defense to a notice of imposition of civil penalty.

(3) Civil penalties shall be imposed as follows:

- (a) First violation: \$100;
- (b) Second violation: \$200;
- (c) Third or subsequent violation: \$500.

(4) Each day a person or entity is out of compliance with a provision of OAR chapter 333, division 18 or 19 will be considered a new violation.

(5) A civil penalty may not exceed \$500 a day per violation.

(6) A notice of imposition of civil penalty shall comply with ORS 183.745.

Statutory/Other Authority: ORS 431A.005 [formerly 431.262]

Statutes/Other Implemented: ORS 431A.005 [formerly 431.262] & 433.040

ORS 413.196 Confidentiality and inadmissibility of information obtained in connection with epidemiologic morbidity and mortality studies; exceptions; nonliability of informants.

(1) (a) All information procured by or furnished to the Oregon Health Authority, any federal public health agency or any nonprofit health agency that is exempt from taxation under the laws of this state or procured by any agency, organization or person acting jointly with or at the request of the authority, in connection with special epidemiologic morbidity and mortality studies, is confidential, nondiscoverable and inadmissible in any proceeding and is exempt from disclosure under ORS 192.311 to 192.478. A person communicating information in connection with special epidemiologic morbidity and mortality studies pursuant to this subsection may not be examined about the communication or the information.

(b) Nothing in this subsection affects the confidentiality or admissibility into evidence of data not otherwise confidential or privileged that is obtained from sources other than the authority.

(c) As used in this subsection, "information" includes, but is not limited to, written reports, notes, records, statements and studies.

(2) The furnishing of morbidity and mortality information to the authority or health agency, to its authorized representatives or to any other agency, organization or person cooperating in a special epidemiologic study, does not subject any hospital, sanitarium, rest home, nursing home or other organization or person furnishing such information to an action for damages.

(3) Subsection (1) of this section does not prevent the authority or a health agency from publishing:

(a) Statistical compilations and reports relating to special epidemiologic morbidity and mortality studies, if such compilations and reports do not identify individual cases and sources of information.

(b) General morbidity and mortality studies customarily and continuously conducted by the authority or health agency that do not involve patient identification.

(4) Nothing in this section prevents disposition of records described in subsection (1) of this section pursuant to ORS 192.105. [Formerly 432.060]

ORS 192.105 State Archivist authorization for state officials to dispose of records; legislative records excepted; local government policy on disposing of public records; limitations; records officer; standards for State Records Center.

(1) Except as otherwise provided by law, the State Archivist may grant to public officials of the state or any political subdivision specific or continuing authorization for the retention or disposition of public records that are in their custody, after the records have been in existence for a specified period of time. In granting such authorization, the State Archivist shall consider the value of the public records for legal, administrative or research purposes and shall establish rules for procedure for the retention or disposition of the public records.

(2) (a) The State Archivist shall provide instructions and forms for obtaining authorization. Upon receipt of an authorization or upon the effective date of the applicable rule, a state official who has public records in custody shall destroy or otherwise dispose of those records that are older than the specified period of retention established by the authorization or rule. An official of a local government may destroy such records if such destruction is consistent with the policy of the local government. No record of accounts or financial affairs subject to audit shall be destroyed until released for destruction by the responsible auditor or representative of the auditor. If federal funds are involved, records retention requirements of the United States Government must be observed. Each state agency and political subdivision shall designate a records officer to coordinate its records management program and to serve as liaison with the State Archivist. The county records officers for the purposes of ORS 192.001, 192.050, 192.060, 192.105, 192.130, 357.825, 357.835 and 357.875 shall be those officers identified in ORS 205.110. The State Archivist shall require periodic reports from records officers about records management programs. The State Archivist may require state agency records designated as inactive by the State Archivist to be transferred to the State Records Center, pending the availability of space.

(b) The State Archivist shall determine which parts of a public record are acceptable for admission to the State Records Center and may require the state agency or governing body to cause the unacceptable part to be removed before the record is submitted to the State Records Center.

(3) Authorizations granted prior to January 1, 1978, by any state agency, the State Archivist, or any board of county commissioners, to state agencies, schools, school districts, soil and water conservation districts, or county officials and offices shall remain in effect until they are adopted or amended by the State Archivist.

(4) This section does not apply to legislative records, as defined in ORS 171.410. [1953 c.224 §1; 1961 c.160 §10; subsection (3) enacted as 1961 c.150 §5; 1971 c.508 §1; 1977 c.146 §1; 1991 c.671 §6; 1993 c.660 §1; 1999 c.59 §43; 2003 c.255 §1; 2003 c.803 §10]

Health Insurance Portability and Accountability Act of 1996 (HIPAA)

Sec. 1178. (a) GENERAL EFFECT.—

(1) GENERAL RULE.--Except as provided in paragraph (2), a provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1172 through 1174, shall supersede any contrary provision of State law, including a provision of State law that requires medical or health plan records (including billing information) to be maintained or transmitted in written rather than electronic form.

(2) EXCEPTIONS.--A provision or requirement under this part, or a standard or implementation specification adopted or established under sections 1172 through 1174, shall not supersede a contrary provision of State law, if the provision of State law--

(A) is a provision the Secretary determines--

(i) is necessary--

(I) to prevent fraud and abuse;

(II) to ensure appropriate State regulation of insurance and health plans;

(III) for State reporting on health care delivery or costs; or

(IV) for other purposes; or

(ii) addresses controlled substances; or

(B) subject to section 264(c)(2) of the Health Insurance Portability and Accountability Act of 1996, relates to the privacy of individually identifiable health information.

(b) PUBLIC HEALTH.--Nothing in this part shall be construed to invalidate or limit the authority, power, or procedures established under any law providing for the reporting of disease or injury, child abuse, birth, or death, public health surveillance, or public health investigation or intervention.

(c) STATE REGULATORY REPORTING.--Nothing in this part shall limit the ability of a State to require a health plan to report, or to provide access to, information for management audits, financial audits, program monitoring and evaluation, facility licensure or certification, or individual licensure or certification.

Privacy Rule:

45 CFR §164.512, Provisions relevant to public health practice

§ 164.512 Uses and disclosures for which an authorization or opportunity to agree or object is not required.

A covered entity may use or disclose protected health information without the written authorization of the individual, as described in §164.508, or the opportunity for the individual to agree or object as described in §164.510, in the situations covered by this section, subject to the applicable requirements of this section. When the covered entity is required by this section to inform the individual of, or when the individual may agree to, a use or disclosure permitted by this section, the covered entity's information and the individual's agreement may be given orally.

(a) *Standard: Uses and disclosures required by law.* (1) A covered entity may use or disclose protected health information to the extent that such use or disclosure is required by law and the

use or disclosure complies with and is limited to the relevant requirements of such law.

(2) A covered entity must meet the requirements described in paragraph (c), (e), or (f) of this section for uses or disclosures required by law.

(b) *Standard: uses and disclosures for public health activities*—(1) Permitted uses and disclosures. A covered entity may disclose protected health information for the public health activities and purposes described in this paragraph to:

(i) A public health authority that is authorized by law to collect or receive such information for the purpose of preventing or controlling disease, injury, or disability, including, but not limited to, the reporting of disease, injury, vital events such as birth or death, and the conduct of public health surveillance, public health investigations, and public health interventions; or, at the direction of a public health authority, to an official of a foreign government agency that is acting in collaboration with a public health authority;

(ii) A public health authority or other appropriate government authority authorized by law to receive reports of child abuse or neglect;

(The rest of § 164.512 does not concern public health.)