Chapter 431A

2017 EDITION

Public Health Programs and Activities

EMERGENCY PLAN AND INCIDENT MANAGEMENT SYSTEM

431A.005 Definitions. As used in ORS 431A.005 to 431A.020:

(1) "Children's facility" has the meaning given that term in ORS 433.235.

(2) "Communicable disease" means a disease or condition, the infectious agent of which may be transmitted by any means from one person or from an animal to another person, that may result in illness, death or severe disability.

(3) "Condition of public health importance" means a disease, syndrome, symptom, injury or other threat to public health that is identifiable on an individual or community level.

(4) "Disease outbreak" means a significant or notable increase in the number of cases of a disease or other condition of public health importance.

(5) "Epidemic" means the occurrence in a community or region of a group of similar conditions of public health importance that are in excess of normal expectancy and derived from a common or propagated source.

(6) "Local public health administrator" means a local public health administrator as defined in ORS 431.003 or the authorized representative of a local public health administrator.

(7) "Local public health authority" has the meaning given that term in ORS 431.003.

(8) "Public health law" means any statute, rule or local ordinance that has the purpose of promoting or protecting the public health and that establishes the authority of the Oregon Health Authority, the Public Health Director, the Public Health Officer, a local public health authority or local public health administrator to enforce the statute, rule or local ordinance.

(9) "Public health measure" means a test, medical examination, treatment, isolation, quarantine or other measure imposed on an individual or group of individuals in order to prevent the spread of or exposure to a communicable disease, toxic substance or transmissible agent.

(10) "Reportable disease" means a disease or condition, the reporting of which enables a public health authority to take action to protect or to benefit the public health.

(11) "School" has the meaning given that term in ORS 433.235.

(12) "Specimen" means blood, sputum, urine, stool or other bodily fluids and wastes, tissues, and cultures necessary to perform required tests.

(13) "Test" means any diagnostic or investigative analyses or medical procedures that determine the presence or absence of, or exposure to, a condition of potential public health importance, or its precursor in an individual.

(14) "Toxic substance" means a substance that may cause illness, disability or death to persons who are exposed to it. [Formerly 431.260]

431A.010 Power of Oregon Health Authority and local public health administrators to enforce public health laws; authorized actions; rules; penalties. (1) The Oregon Health Authority and local public health administrators shall have the power to enforce public health laws. The enforcement powers authorized by this section include, but are not limited to, the authority to:

(a) Investigate possible violations of public health laws;

(b) Issue subpoenas requiring testimony or the production of physical or other evidence;

(c) Issue administrative orders to enforce compliance with public health laws;

(d) Issue a notice of violation of a public health law and impose a civil penalty as established by rule not to exceed $500 a day per violation;

(e) Enter private property at any reasonable time with consent of the owner or custodian of the property to inspect, investigate, evaluate or conduct tests, or take specimens or samples for testing, as may be reasonably necessary to determine compliance with any public health law;

(f) Enter a public place to inspect, investigate, evaluate, conduct tests, or take specimens or samples for testing as may be reasonably necessary to determine compliance with the provisions of any public health law;

(g) Seek an administrative warrant from an appropriate court authorizing the inspection, investigation, evaluation or testing, or taking of specimens or samples for testing, if denied entry to property;

(h) Restrict access to contaminated property;

(i) Require removal or abatement of a toxic substance on any property and prescribe the proper measures for the removal or abatement;

(j) Maintain a civil action to enforce compliance with public health laws, including a petition to a court for an order imposing a public health measure appropriate to the public health threat presented;

(k) Refer any possible criminal violations of public health laws to a district attorney or other appropriate law enforcement official; and

(L) Request the Attorney General to assist in the enforcement of the public health laws.

(2) Any administrative actions undertaken by the state under this section shall comply with the provisions of ORS chapter 183.

(3) State and local law enforcement officials, to the extent resources are available, must assist the Oregon Health Authority and local public health administrators in ensuring compliance with administrative or judicial orders issued pursuant to this section.

(4) Nothing in this section shall be construed to limit any other enforcement authority granted by law to a local public health authority or to the state. [Formerly 431.262]

431A.015 Authority of Public Health Director to take public health actions; authorized actions; rules. (1) Unless the Governor has declared a public health emergency under ORS 433.441, the Public Health Director may, upon approval of the Governor or the designee of the Governor, take the public health actions described in subsection (2) of this section if the Public Health Director determines that:

(a)(A) A communicable disease, reportable disease, disease outbreak, epidemic or other condition of public health importance has affected more than one county;

(B) There is an immediate need for a consistent response from the state in order to adequately protect the public health;

(C) The resources of the local public health authority or authorities are likely to be quickly overwhelmed or unable to effectively manage the required response; and

(D) There is a significant risk to the public health; or

(b) A communicable disease, reportable disease, disease outbreak, epidemic or other condition of public health importance is reported in Oregon and is an issue of significant regional or national concern or is an issue for which there is significant involvement from federal authorities requiring state-federal coordination.

(2) The Public Health Director, after making the determinations required under subsection (1) of this section, may take the following public health actions:

(a) Coordinate the public health response across jurisdictions.

(b) Prescribe measures for the:

(A) Identification, assessment and control of the communicable disease or reportable disease, disease outbreak, epidemic or other condition of public health importance; and

(B) Allocation and distribution of antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes and other pharmaceutical agents, medical supplies or personal protective equipment.

(c) After consultation with appropriate medical experts, create and require the use of diagnostic and treatment guidelines and provide notice of those guidelines to health care providers, institutions and facilities.

(d) Require a person to obtain treatment and use appropriate prophylactic measures to prevent the introduction or spread of a communicable disease or reportable disease, unless:

(A) The person has a medical diagnosis for which a vaccination is contraindicated; or

(B) The person has a religious or conscientious objection to the required treatments or prophylactic measures.

(e) Notwithstanding ORS 332.075, direct a district school board to close a children's facility or school under the jurisdiction of the board. The authority granted to the Public Health Director under this paragraph supersedes the authority granted to the district school board under ORS 332.075 to the extent the authority granted to the board is inconsistent with the authority granted to the director.

(f) Issue guidelines for private businesses regarding appropriate work restrictions.

(g) Organize public information activities regarding the public health response to circumstances described in subsection (1) of this section.

(h) Adopt reporting requirements for, and provide notice of those reporting requirements to, health care providers, institutions and facilities for the purpose of obtaining information directly related to the public health threat presented.

(i) Take control of antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes and other pharmaceutical agents, medical supplies or personal protective equipment.

(3) The authority granted to the Public Health Director under this section is not intended to override the general authority provided to a local public health authority except as already permitted by law, or under the circumstances described in subsection (1) of this section.

(4) If the Oregon Health Authority adopts temporary rules to implement subsection (2)

of this section, the rules adopted are not subject to the provisions of ORS 183.335 (6)(a). The authority may amend the temporary rules adopted under this subsection as often as is necessary to respond to the public health threat.

(5) If it is necessary for the authority to purchase antitoxins, serums, vaccines, immunizing agents, antibiotics, antidotes or other pharmaceutical agents, medical supplies or personal protective equipment, the purchases are not subject to the provisions of ORS chapter 279A, 279B or 279C.

(6) If property is taken under the authority granted to the Public Health Director under subsection (2) of this section, the owner of the property is entitled to reasonable compensation from the state. [Formerly 431.264]

431A.020 Rules. The Public Health Director, after consultation with local public health authorities and local public health administrators, shall adopt rules governing the development of emergency plans and an incident management system. [Formerly 431.266]

EMERGENCY MEDICAL SERVICES AND TRAUMA SYSTEMS

431A.050 Oregon Health Authority to develop comprehensive emergency medical services and trauma system. In cooperation with representatives of the emergency medical services professions, the Oregon Health Authority shall develop a comprehensive emergency medical services and trauma system. The authority shall report progress on the system to the Legislative Assembly. [Formerly 431.575]

431A.055 State Trauma Advisory Board. (1) The State Trauma Advisory Board is established within the Oregon Health Authority. The board must have at least 18 members. The Director of the Oregon Health Authority shall appoint at least 17 voting members as described in subsection (2) of this section. The chairperson of the State Emergency Medical Service Committee established under ORS 682.039, or the chairperson's designee, shall be a nonvoting member.

(2) The director shall, subject to subsection (3) of this section, appoint members to serve on the State Trauma Advisory Board, including:

(a) At least one member from each area trauma advisory board described in ORS 431A.070.

(b) At least two physicians who are trauma surgeons from each trauma center designated by the authority as a Level I trauma center.

(c) From trauma centers designated by the authority as Level I or Level II trauma centers:

(A) At least one physician who is a neurosurgeon; and

(B) At least one physician who is an orthopedic surgeon.

(d) From trauma centers designated by the authority as Level I trauma centers:

(A) At least one physician who practices emergency medicine; and

(B) At least one nurse who is a trauma program manager.

(e) From trauma centers designated by the authority as Level II trauma centers:

(A) At least one physician who is a trauma surgeon; and

(B) At least one nurse who is a trauma coordinator.

(f) From trauma centers designated by the authority as Level III trauma centers:

(A) At least one physician who is a trauma surgeon or who practices emergency medicine; and

(B) At least one nurse who is a trauma coordinator.

(g) At least one nurse who is a trauma coordinator from a trauma center designated by the authority as a Level IV trauma center.

(h) From a predominately urban area:

(A) At least one trauma hospital administration representative; and

(B) At least one emergency medical services provider.

(i) From a predominately rural area:

(A) At least one trauma hospital administration representative; and

(B) At least one emergency medical services provider.

(j) At least two public members.

(3) In appointing members under subsection (2)(j) of this section, the director may not appoint a member who has an economic interest in the provision of emergency medical services or trauma care.

(4)(a) The State Trauma Advisory Board shall:

(A) Advise the authority with respect to the authority's duties and responsibilities under ORS 431A.050 to 431A.080, 431A.085, 431A.090, 431A.095, 431A.100 and 431A.105;

(B) Advise the authority with respect to the adoption of rules under ORS 431A.050 to 431A.080, 431A.085, 431A.095 and 431A.105;

(C) Analyze data related to the emergency medical services and trauma system developed pursuant to ORS 431A.050; and

(D) Suggest improvements to the emergency medical services and trauma system developed pursuant to ORS 431A.050.

(b) In fulfilling the duties, functions and powers described in this subsection, the board shall:

(A) Make evidence-based decisions that emphasize the standard of care attainable throughout this state and by individual communities located in this state; and

(B) Seek the advice and input of coordinated care organizations.

(5)(a) The State Trauma Advisory Board may establish a Quality Assurance Subcommittee for the purposes of providing peer review support to and discussing evidence-based guidelines and protocols with the members of area trauma advisory boards and trauma care providers located in this state.

(b) Notwithstanding ORS 414.227, meetings of the subcommittee are not subject to ORS 192.610 to 192.690.

(c) Personally identifiable information provided by the State Trauma Advisory Board to individuals described in paragraph (a) of this subsection is not subject to ORS 192.311 to 192.478.

(6) A majority of the voting members of the board constitutes a quorum for the transaction of business.

(7) Official action taken by the board requires the approval of a majority of the voting members of the board.

(8) The board shall nominate and elect a chairperson from among its voting members.

(9) The board shall meet at the call of the chairperson or of a majority of the voting members of the board.

(10) The board may adopt rules necessary for the operation of the board.

(11) The term of office of each voting member of the board is four years, but a voting member serves at the pleasure of the director. Before the expiration of the term of a voting member, the director shall appoint a successor whose term begins January 1 next following. A voting member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(12) Members of the board are not entitled to compensation, but may be reimbursed from funds available to the Oregon Health Authority, for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. [Formerly 431.580; 2017 c.101 §28]

Note: 431A.055 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 431A or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

431A.060 Designation of trauma areas; rules; trauma system hospitals. (1) With the advice of the State Trauma Advisory Board, the Oregon Health Authority shall:

(a) Develop and monitor a statewide trauma system; and

(b) Designate within the state, trauma areas consistent with local resources, geography and current patient referral patterns.

(2) Each trauma area shall have:

(a) Central medical control for all field care and transportation consistent with geographic and current communications capability.

(b) The development of triage protocols.

(c) One or more hospitals categorized according to trauma care capabilities using standards adopted by the authority by rule. Such rules shall be modeled after the American College of Surgeons Committee on Trauma standards.

(d) The establishment of area trauma advisory boards to develop trauma system plans for each trauma area.

(3) On and after July 1, 1986, the authority may designate trauma system hospitals in accordance with area trauma advisory board plans which meet state objectives and standards.

(4) Trauma system plans shall be implemented by June 30, 1987, in Health Systems Area I, and June 30, 1988, in Health Systems Areas II and III. [Formerly 431.609]

431A.065 Oregon Health Authority to adopt rules for trauma system hospitals. (1) Prior to approval and implementation of area trauma plans submitted to the Oregon Health Authority by area trauma advisory boards, the authority shall adopt rules pursuant to ORS chapter 183 which specify state trauma objectives and standards, hospital categorization criteria and criteria and procedures to be utilized in designating trauma system hospitals.

(2) For approved area trauma plans recommending designation of trauma system hospitals, the authority rules shall provide for:

(a) The transport of a member of a health maintenance organization, or other managed health care system, as defined by rule, to a hospital that contracts with the health

maintenance organization when central medical control determines that the condition of the member permits such transport; and

(b) The development and utilization of protocols between designated trauma hospitals and health maintenance organizations, or other managed health care systems, as defined by rule, including notification of admission of a member to a designated trauma hospital within 48 hours of admission, and coordinated discharge planning between a designated trauma hospital and a hospital that contracts with a health maintenance organization to facilitate transfer of the member when the medical condition of the member permits. [Formerly 431.611]

431A.070 Area trauma advisory boards; duties; members. (1)(a) Area trauma advisory boards shall meet as often as necessary to:

(A) Identify specific trauma area needs and problems; and

(B) Propose to the Oregon Health Authority area trauma system plans and changes that meet state standards and objectives.

(b) The authority, acting with the advice of the State Trauma Advisory Board established under ORS 431A.055, has the authority to implement plans and changes proposed under paragraph (a) of this subsection.

(2) In concurrence with the Governor, the authority shall select members for each trauma area from lists submitted by local associations of emergency medical services providers, emergency nurses, emergency physicians, surgeons, hospital administrators, emergency medical services agencies and citizens at large. The members of an area trauma advisory board must be broadly representative of the trauma area as a whole. An area trauma advisory board must consist of at least 15 members and must include:

(a) Three surgeons;

(b) Two physicians serving as emergency physicians;

(c) Two hospital administrators from different hospitals;

(d) Two nurses serving as emergency nurses;

(e) Two emergency medical services providers serving different emergency medical services;

(f) One emergency medical services medical director;

(g) Two representatives of the public at large selected from among those submitting letters of application in response to public notice by the authority;

(h) One representative of any bordering state that is included within the patient referral area; and

(i) One ambulance service owner or operator or both.

(3) Members of an area trauma advisory board described in subsection (2)(g) of this section may not have an economic interest in health care services provided in the trauma area for which the area trauma advisory board makes proposals under subsection (1)(a)(B) of this section. [Formerly 431.613; 2017 c.101 §29]

431A.075 Liability of provider. (1) A provider may not be held liable for acting in accordance with approved trauma system plans.

(2) A person who in good faith provides data or other information to the Oregon Trauma Registry in accordance with ORS 431A.085 to 431A.105 is immune from any civil or criminal liability that might otherwise be incurred or imposed with respect to provision of the data. [Formerly 431.617]

431A.080 Duties of Oregon Health Authority related to trauma. The Oregon Health Authority shall continuously identify the causes of trauma in Oregon, and propose programs of prevention thereof for consideration by the Legislative Assembly or others. [Formerly 431.619]

431A.085 Emergency Medical Services and Trauma Systems Program created in Oregon Health Authority; Oregon Trauma Registry; rules. (1) The Emergency Medical Services and Trauma Systems Program is created within the Oregon Health Authority for the following purposes:

(a) Administering and regulating ambulances;

(b) Training and licensing emergency medical services providers;

(c) Establishing and maintaining emergency medical systems, including trauma systems; and

(d) Maintaining the Oregon Trauma Registry for purposes related to trauma reimbursement, system quality assurance and cost efficiency.

(2) The duties vested in the authority under ORS 431A.050 to 431A.080 and ORS chapter 682 shall be performed by the program.

(3) The program shall be administered by a director.

(4) The director of the program shall apply moneys transferred to the program under ORS 442.625 to:

(a) Developing state and regional standards of care;

(b) Developing a statewide educational curriculum to teach standards of care;

(c) Implementing quality improvement programs;

(d) Creating a statewide data system for prehospital care; and

(e) Providing ancillary services to enhance this state's emergency medical service system.

(5) The director of the program shall adopt rules for the Oregon Trauma Registry. Rules adopted under this subsection must establish:

(a) The information that must be reported by trauma centers to the program for inclusion in the Oregon Trauma Registry;

(b) The form and frequency of reporting information under paragraph (a) of this subsection; and

(c) Procedures and standards for the administration of the Oregon Trauma Registry.

(6) The director of the program may adopt rules establishing, from information maintained in the Oregon Trauma Registry, a registry of information related to brain injury trauma. [Formerly 431.623]

431A.090 Designation of other trauma centers. (1) In addition to and not in lieu of ORS 431A.050 to 431A.075, the Oregon Health Authority shall designate trauma centers in areas that are within the jurisdiction of trauma advisory boards other than in the area within the jurisdiction of area trauma advisory board 1.

(2) The authority shall enter into contracts with designated trauma centers and monitor and assure quality of care and appropriate costs for trauma patients meeting trauma system entry criteria.

(3) All findings and conclusions, interviews, reports, studies, communications and statements procured by or furnished to the authority, the State Trauma Advisory Board or an area trauma advisory board in connection with obtaining the data necessary to perform patient care quality assurance functions shall be confidential pursuant to ORS 192.338, 192.345 and 192.355.

(4)(a) All data received or compiled by the State Trauma Advisory Board or any area trauma advisory board in conjunction with authority monitoring and assuring quality of trauma patient care shall be confidential and privileged, nondiscoverable and inadmissible in any proceeding. No person serving on or communicating information to the State Trauma Advisory Board or an area trauma advisory board shall be examined as to any such communications or to the findings or recommendations of such board. A person serving on or communicating information to the State Trauma Advisory Board or an area trauma advisory board shall not be subject to an action for civil damages for actions taken or statements made in good faith. Nothing in this section affects the admissibility in evidence of a party's medical records not otherwise confidential or privileged dealing with the party's medical care. The confidentiality provisions of ORS 41.675 and 41.685 shall also apply to the monitoring and quality assurance activities of the State Trauma Advisory Board, area trauma advisory boards and the authority.

(b) As used in this section, "data" includes but is not limited to written reports, notes, records and recommendations.

(5) Final reports by the authority, the State Trauma Advisory Board and area trauma advisory boards shall be available to the public.

(6) The authority shall publish a biennial report of the Emergency Medical Services and Trauma Systems Program and trauma systems activities. [Formerly 431.627]

431A.095 Reporting of certain patients; reimbursement for certain services. (1) Designated trauma centers and providers, physical rehabilitation centers, alcohol and drug rehabilitation centers and ambulances shall develop a monthly log of all unsponsored, inadequately insured trauma system patients determined by the hospital to have an injury severity score greater than or equal to 13, and submit monthly to the Emergency Medical Services and Trauma Systems Program the true costs and unpaid balance for the care of these patients.

(2) No reimbursement for these patients shall occur until:

(a) All information required by the Emergency Medical Services and Trauma Systems Program rules is submitted to the Oregon Trauma Registry; and

(b) The Emergency Medical Services and Trauma Systems Program confirms that the injury severity score, as defined by the Oregon Health Authority by rule, is greater than or equal to 13.

(3) The Emergency Medical Services and Trauma Systems Program shall cause providers to be reimbursed in the following decreasing order of priority:

(a) Designated trauma centers and providers;

(b) Physical rehabilitation centers;

(c) Alcohol and drug rehabilitation centers; and

(d) Ambulances.

(4) Subject to the availability of funds, the Emergency Medical Services and Trauma

Systems Program shall cause the designated trauma centers and providers to be paid first in full. Subsequent providers shall be paid from the balance remaining according to priority.

(5) Any matching funds, available pursuant to the Trauma Care Systems Planning and Development Act of 1990 (P.L. 101-590), that are available for purposes of the Emergency Medical Services and Trauma Systems Program may be used for related studies and projects and reimbursement for uncompensated care. [Formerly 431.633]

431A.100 Release of information from Oregon Trauma Registry. (1) As used in this section, "individually identifiable information" means:

(a) Individually identifiable health information as that term is defined in ORS 179.505; and

(b) Information that could be used to identify a health care provider, nontransporting prehospital care provider, ambulance service medical transportation agency or health care facility.

(2) Notwithstanding ORS 431A.090, individually identifiable information may be released from the Oregon Trauma Registry:

(a) For use in executive session to conduct specific case reviews by:

(A) The State Trauma Advisory Board or any area trauma advisory board;

(B) The State Emergency Medical Service Committee; or

(C) The Emergency Medical Services for Children Advisory Committee.

(b) To the Oregon Health Authority for purposes related to the administration of public health programs, including:

(A) The establishment of a registry of information related to brain injury trauma as described in ORS 431A.085 (6); and

(B) The performance of epidemiological investigations of the causes of and risk factors associated with trauma injuries.

(c) To an emergency medical services provider or a designated trauma center for purposes related to quality of service assurance and improvement, if the information is related to the treatment of an individual by the provider or center.

(d) To the Department of Human Services for purposes related to enabling the department to plan for and provide services to individuals adversely affected by trauma injuries, if the department agrees to use the information only for the purposes described in this paragraph and to maintain the confidentiality of the information.

(e) To a person conducting research if:

(A) An institutional review board has approved the research in accordance with 45 C.F.R. part 46; and

(B) The person agrees to maintain the confidentiality of the information.

(f) To the designated official of an ambulance service or to a nontransporting prehospital care provider pursuant to ORS 682.056.

(3) The Oregon Health Authority may release only the minimum amount of individually identifiable information necessary to carry out the purposes for which the information is released under this section. [Formerly 431.635; 2017 c.229 §4]

431A.105 Emergency Medical Services for Children Program; duties of Oregon Health Authority. (1) Subject to available funding from gifts, grants or donations, the Emergency Medical Services for Children Program is established in the Oregon Health Authority. The Emergency Medical Services for Children Program shall operate in cooperation with the Emergency Medical Services and Trauma Systems Program to promote the delivery of emergency medical and trauma services to the children of Oregon.

(2) The Oregon Health Authority shall:

(a) Employ or contract with professional, technical, research and clerical staff as required to implement this section.

(b) Provide technical assistance to the State Trauma Advisory Board on the integration of an emergency medical services for children program into the statewide emergency medical services and trauma system.

(c) Provide advice and technical assistance to area trauma advisory boards on the integration of an emergency medical services for children program into area trauma system plans.

(d) Establish an Emergency Medical Services for Children Advisory Committee.

(e) Establish guidelines for:

(A) The approval of emergency and critical care medical service facilities for pediatric care, and for the designation of specialized regional pediatric critical care centers and pediatric trauma care centers.

(B) Referring children to appropriate emergency or critical care medical facilities.

(C) Necessary prehospital and other pediatric emergency and critical care medical service equipment.

(D) Developing a coordinated system that will allow children to receive appropriate initial stabilization and treatment with timely provision of, or referral to, the appropriate

level of care, including critical care, trauma care or pediatric subspecialty care.

(E) Protocols for prehospital and hospital facilities encompassing all levels of pediatric emergency services, pediatric critical care and pediatric trauma care.

(F) Rehabilitation services for critically ill or injured children.

(G) An interfacility transfer system for critically ill or injured children.

(H) Initial and continuing professional education programs for emergency medical services personnel, including training in the emergency care of infants and children.

(I) A public education program concerning the Emergency Medical Services for Children Program including information on emergency access telephone numbers.

(J) The collection and analysis of statewide pediatric emergency and critical care medical services data from emergency and critical care medical service facilities for the purpose of quality improvement by such facilities, subject to relevant confidentiality requirements.

(K) The establishment of cooperative interstate relationships to facilitate the provision of appropriate care for pediatric patients who must cross state borders to receive emergency and critical care services.

(L) Coordination and cooperation between the Emergency Medical Services for Children Program and other public and private organizations interested or involved in emergency and critical care for children. [Formerly 431.671]

STATEWIDE INJURY AND VIOLENCE PREVENTION PROGRAM

431A.125 Oregon Health Authority powers; rules. (1) Subject to available funding, including gifts, grants or donations, the Oregon Health Authority shall establish and administer a statewide injury and violence prevention program. In administering the program, the authority may:

(a) Collect and analyze data on injury and violence, including but not limited to data from death certificates, emergency department records, hospitalization records, medical examiner and coroner records and police reports and surveys;

(b) Develop and revise, as necessary, a comprehensive state plan for injury and violence prevention;

(c) Provide technical support and training to communities, local health departments, state and local agencies, organizations and individuals;

(d) Prepare an annual report on injury and violence in Oregon;

(e) Conduct special studies of, collect data on and monitor and evaluate activities related to the risk factors, protective factors, causes and prevention of morbidity and mortality resulting from injury that occurs as a result of unintentional or undetermined causes, nonfatal self-harming behavior, suicide, assault or homicide;

(f) Work with researchers to enhance knowledge about reducing injury and violence in Oregon;

(g) Develop collaborative relationships with other state agencies and private and community organizations for the purpose of establishing programs that promote injury and violence prevention;

(h) Provide information to assist in the development of institutional and public policies that will reduce injury and violence;

(i) Collaborate with local public health authorities, persons providing emergency medical services, hospitals, law enforcement agencies, research institutions and other organizations to conduct studies of, collect data on and monitor and evaluate activities related to the causes and prevention of injury and violence;

(j) Publish compilations of data and reports about injury and violence, provided that the data and reports do not identify individual cases or sources of information; and

(k) Adopt rules as necessary to carry out this section.

(2) Notwithstanding subsection (1) of this section, the authority may not require a hospital, as defined in ORS 442.015, to report data to the authority under this section unless the authority is otherwise authorized to require the hospital to report the data to the authority under other state or federal law.

(3)(a) Except as provided in paragraph (c) of this subsection, all data collected pursuant to this section is:

(A) Confidential and not subject to public disclosure law under ORS 192.311 to 192.478; and

(B) Privileged.

(b) Except as required by the administration or enforcement of the public health laws of this state or rules adopted under the public health laws of this state, a public health official, employee or agent may not be examined in an administrative or judicial proceeding as to the existence or content of data collected pursuant this section.

(c) The authority shall adopt rules under which confidential data collected pursuant to this section may be requested by a third

party for the purpose of conducting research and studies for the public good. Research and studies conducted using confidential data collected pursuant to this section must be reviewed and approved by a committee established for the protection of human research subjects pursuant to 45 C.F.R. 46.

(4) A person who furnishes information to the authority for a purpose described in this section is not civilly or criminally liable for any loss, damage or injury arising out of the furnishing of that information to the authority.

(5) The authority may accept gifts, grants or donations from any public or private source for the purpose of carrying out this section. Funds received under this subsection shall be deposited in the Oregon Health Authority Fund established under ORS 413.101 and are continuously appropriated to the authority for the purposes of carrying out this section. [Formerly 431.678]

SMOKING CESSATION AND TOBACCO USE REDUCTION

431A.150 Smoking cessation program reimbursement; rules. (1) The Oregon Health Authority shall develop a program to reimburse smoking cessation program providers for services provided to residents of this state who are not insured for smoking cessation costs.

(2) The authority shall adopt rules for the program established under subsection (1) of this section that include but are not limited to criteria for provider and participant eligibility and other program specifications. The rules shall establish a maximum reimbursement limit for each participant.

(3) Costs for smoking cessation programs funded under subsection (1) of this section are eligible for reimbursement from funds received by the State of Oregon from tobacco products manufacturers under the Master Settlement Agreement of 1998. [Formerly 431.831]

431A.153 Tobacco Use Reduction Account. (1) There is established in the General Fund the Tobacco Use Reduction Account.

(2) Amounts credited to the Tobacco Use Reduction Account are continuously appropriated to the Oregon Health Authority for the funding of prevention and education programs designed to reduce cigarette and tobacco use. [Formerly 431.832]

431A.155 Oregon Health Authority to adopt rules for awarding grants. The Oregon Health Authority shall develop and adopt rules for awarding grants to programs for educating the public on the risk of tobacco use, including but not limited to:

(1) Educating children on the health hazards and consequences of tobacco use; and

(2) Promoting enrollment in smoking cessation programs and programs that prevent smoking-related diseases including cancer and other diseases of the heart, lungs and mouth. [Formerly 431.834]

431A.158 Oregon Health Authority to prepare report. During each biennium, the Oregon Health Authority shall prepare a report regarding the awarding of grants from the Tobacco Use Reduction Account and the formation of public-private partnerships in connection with the receipt of funds from the account. The authority shall present the report to the Governor and to those committees of the Legislative Assembly to which matters of public health are assigned. [Formerly 431.836]

REGULATION OF TOBACCO AND INHALANT DELIVERY SYSTEM SALES

431A.175 Definitions; unlawful activities; notice; rules. (1) As used in this section and ORS 431A.183:

(a)(A) "Inhalant delivery system" means:

(i) A device that can be used to deliver nicotine or cannabinoids in the form of a vapor or aerosol to a person inhaling from the device; or

(ii) A component of a device described in this subparagraph or a substance in any form sold for the purpose of being vaporized or aerosolized by a device described in this subparagraph, whether the component or substance is sold separately or is not sold separately.

(B) "Inhalant delivery system" does not include:

(i) Any product that has been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose; and

(ii) Tobacco products.

(b) "Tobacco products" means:

(A) Bidis, cigars, cheroots, stogies, periques, granulated, plug cut, crimp cut, ready rubbed and other smoking tobacco, snuff, snuff flour, cavendish, plug and twist tobacco, fine-cut and other chewing tobaccos, shorts, refuse scraps, clippings, cuttings and sweepings of tobacco and other forms of tobacco, prepared in a manner that makes the tobacco suitable for chewing or smoking in a pipe or otherwise, or for both chewing and smoking;

(B) Cigarettes as defined in ORS 323.010 (1); or

(C) A device that:

(i) Can be used to deliver tobacco products to a person using the device; and

(ii) Has not been approved by the United States Food and Drug Administration for sale as a tobacco cessation product or for any other therapeutic purpose, if the product is marketed and sold solely for the approved purpose.

(2) It is unlawful:

(a) To violate ORS 167.750.

(b) To fail as a retailer of tobacco products to post a notice substantially similar to the notice described in subsection (3) of this section in a location that is clearly visible to the seller and the purchaser of the tobacco products.

(c) To fail as a retailer of inhalant delivery systems to post a notice in a location that is clearly visible to the seller and the purchaser of the inhalant delivery systems that it is unlawful to sell inhalant delivery systems to persons under 21 years of age. The Oregon Health Authority shall adopt by rule the content of the notice required under this paragraph.

(d) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not labeled in accordance with rules adopted by the authority.

(e) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is not packaged in child-resistant safety packaging, as required by the authority by rule.

(f) To distribute, sell or allow to be sold an inhalant delivery system if the inhalant delivery system is packaged in a manner that is attractive to minors, as determined by the authority by rule.

(g) To distribute, sell or allow to be sold cigarettes in any form other than a sealed package.

(3) The notice required by subsection (2)(b) of this section must be substantially as follows:

NOTICE

The sale of tobacco in any form to persons under 21 years of age is prohibited by law. Any person who sells, or allows to be sold, tobacco to a person under 21 years of age is in violation of Oregon law.

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(4) Rules adopted under subsection (2)(d), (e) and (f) of this section must be consistent with any regulation adopted by the United States Food and Drug Administration related to labeling or packaging requirements for inhalant delivery systems. [Formerly 431.840; 2017 c.701 §10]

Note: Sections 29 and 31, chapter 158, Oregon Laws 2015, provide:

Sec. 29. (1) After July 1, 2018, the Oregon Health Authority shall make a report on the laws and rules of this state related to the regulation of inhalant delivery systems, as defined in ORS 431.840 [renumbered 431A.175], and inhalants, as defined in ORS 433.835, that are used with inhalant delivery systems. The authority shall include in the report:

(a) A review of medical research conducted on inhalant delivery systems and of health impacts associated with the use of inhalant delivery systems; and

(b) A review of any federal law or regulation related to regulating inhalant delivery systems, including any applicable regulations related to the labeling and packaging of inhalant delivery systems adopted by the United States Food and Drug Administration.

(2) The authority shall review the consistency of the laws and rules of this state with respect to those federal laws and regulations and determine where the laws and rules of this state are inconsistent or duplicative.

(3) For the purpose of facilitating review by the Legislative Assembly of the laws and rules of this state related to the regulation of inhalant delivery systems and inhalants that are used with inhalant delivery systems, the authority shall report the authority's findings:

(a) To the Legislative Assembly in the manner required by ORS 192.245 on or before February 1, 2019; and

(b) To the committees of the Legislative Assembly related to health during the 2019 regular session of the Legislative Assembly. [2015 c.158 §29]

Sec. 31. Section 29 of this 2015 Act is repealed on January 2, 2020. [2015 c.158 §31]

431A.178 Civil penalty for violation of ORS 431A.175. (1) The Oregon Health Authority may impose a civil penalty for each violation of ORS 431A.175. A civil penalty imposed under this section may not be less than $250 or more than $1,000.

(2)(a) Amounts collected under subsection (1) of this section shall be deposited in the Oregon Health Authority Fund established under ORS 413.101. Except as provided in paragraph (b) of this subsection, moneys deposited in the fund under this subsection are continuously appropriated to the authority for carrying out the duties, functions and powers of the authority under ORS 431A.175 and 431A.183.

(b) At the end of each biennium, the authority shall transfer the unobligated moneys collected under subsection (1) of this section remaining in the fund to the Tobacco Use Reduction Account established under ORS 431A.153. [Formerly 431.845]

431A.180 Procedure applicable to imposition of civil penalty. Any civil penalty under ORS 431A.178 shall be imposed as provided by ORS 183.745. [Formerly 431.850]

431A.183 Random inspections of sellers of tobacco and inhalant delivery systems; rules. (1) The Oregon Health Authority shall:

(a) Coordinate with law enforcement agencies to conduct random, unannounced inspections of wholesalers and retailers of tobacco products or inhalant delivery systems to ensure compliance with the laws of this state designed to discourage the use of tobacco products and inhalant delivery systems by persons under 21 years of age, including ORS 167.750, 167.755, 167.760, 167.765, 167.775, 167.780 and 431A.175; and

(b) Submit a report describing:

(A) The activities carried out to enforce the laws listed in paragraph (a) of this subsection during the previous fiscal year;

(B) The extent of success achieved in reducing the availability of tobacco products and inhalant delivery systems to persons under 21 years of age; and

(C) The strategies to be utilized for enforcing the laws listed in paragraph (a) of this subsection during the year following the report.

(2) The authority shall adopt rules for conducting random inspections of establishments that distribute or sell tobacco products or inhalant delivery systems. The rules shall provide that inspections may take place:

(a) Only in areas open to the public;

(b) Only during the hours that tobacco products or inhalant delivery systems are distributed or sold; and

(c) No more frequently than once a month in any single establishment unless a compliance problem exists or is suspected.

(3) The Oregon Liquor Control Commission, pursuant to an agreement or otherwise, may assist the authority with the authority's duties under subsection (1)(a) of this section and the enforcement of ORS 431A.175. [Formerly 431.853; 2017 c.701 §11]

TOXIC-FREE KIDS ACT

431A.250 Short title. ORS 431A.253 to 431A.280 shall be known and may be cited as the Toxic-Free Kids Act. [2015 c.786 §1]

431A.253 Definitions. As used in ORS 431A.253 to 431A.280:

(1) "Chemical" means:

(a) A substance with a distinct molecular composition and the breakdown products of the substance that form through decomposition, degradation or metabolism.

(b) A group of structurally related substances and the breakdown products of the substances that form through decomposition, degradation or metabolism.

(2)(a) "Children's cosmetics" means products that are intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, moisturizing, beautifying, promoting attractiveness or altering the appearance.

(b) "Children's cosmetics" does not mean soap, dietary supplements or food and drugs approved by the United States Food and Drug Administration.

(3)(a) "Children's product" means:

(A) Any of the following products that are made for, marketed for use by or marketed to children under 12 years of age:

(i) A product designed or intended by the manufacturer to facilitate sucking, teething, sleep, relaxation, feeding or drinking.

(ii) Children's clothing and footwear.

(iii) Car seats.

(iv) Children's cosmetics.

(v) Children's jewelry.

(vi) Toys.

(B) Any component part of a product specified in subparagraph (A) of this paragraph.

(b) "Children's product" does not mean:

(A) Athletic shoes with cleats or spikes.

(B) Batteries.

(C) BB guns, pellet guns and air rifles.

(D) Bicycles and tricycles.

(E) Chemistry sets.

(F) Consumer electronic products, including personal computers, audio and video equipment, calculators, wireless telephones and game consoles, handheld devices that incorporate a video screen and are used to access interactive software, and the associated peripherals.

(G) Interactive software intended for leisure and entertainment, such as computer games, and their storage media, such as compact discs.

(H) Model rockets.

(I) Pocketknives and multitools.

(J) Roller skates.

(K) Scooters.

(L) Sets of darts with metallic points.

(M) Slings and catapults.

(N) Snow sporting equipment, including skis, poles, boots, snowboards, sleds and bindings.

(O) Sporting equipment and accessories, including but not limited to bats, balls, gloves, sticks, pucks, pads, helmets and other protective equipment, weight training and

exercise aids, protective eyewear, backpacks and tents, raingear, sport bags and luggage, and golf equipment.

(P) Video toys that can be connected to a video screen and are operated at a nominal voltage exceeding 24 volts.

(Q) Food and beverages and food and beverage packaging regulated by the United States Food and Drug Administration or the United States Department of Agriculture.

(4) "Contaminant" means trace amounts of chemicals that are incidental to manufacturing and that serve no intended function in the product component, including but not limited to:

(a) Unintended by-products of chemical reactions during the manufacture of the product component;

(b) Trace impurities in feedstock;

(c) Incompletely reacted chemical mixtures; and

(d) Degradation products.

(5) "De minimis level" means:

(a) For a chemical that is an intentionally added chemical, the practical quantification limit; or

(b) For a chemical that is a contaminant, a concentration of 100 parts per million.

(6) "Intentionally added chemical" means a chemical in a product that serves an intended function in the product component.

(7) "Manufacturer" means any person that produces a children's product or an importer or domestic distributor of a children's product. For the purposes of this subsection, "importer" means the owner of the children's product.

(8) "Mouthable" means, in describing a children's product or any part of a children's product, that an intended use of the product or any part of the product includes being placed in the mouth for any purpose.

(9) "Practical quantification limit" means the lowest concentration of a chemical that can be reliably measured within specified limits of precision, accuracy, representativeness, completeness and comparability during routine laboratory operating conditions.

(10) "Trade association" means a membership organization of persons engaging in the same or a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in regular business activities that ordinarily are carried on for profit. [2015 c.786 §2]

431A.255 List of high priority chemicals of concern in children's products. (1) The Oregon Health Authority shall establish and maintain a list of high priority chemicals of concern for children's health when used in children's products. The authority shall include on the list chemicals that are listed on the Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children on July 27, 2015.

(2) In establishing by rule the practical quantification limits for chemicals on the list, the authority shall consider guidance developed by the State of Washington and other federal, state and nongovernmental organizations with the applicable expertise.

(3) The authority shall post the list of high priority chemicals on its website. For each high priority chemical on the list, the authority shall post:

(a) Information regarding the known health impacts associated with exposure to the chemical; and

(b) Data collected under ORS 431A.258 in a format that is searchable and accessible to the public.

(4) The authority shall review and revise the list of high priority chemicals every three years. In completing the revisions under this subsection, the authority:

(a) May not add more than five chemicals to the list of high priority chemicals during each three-year revision period under this subsection;

(b) Shall consider adding or removing a chemical from the list of high priority chemicals if, after July 27, 2015, the chemical is added to or removed from the Washington State Department of Ecology's Reporting List of Chemicals of High Concern to Children or a list maintained by another state agency, another state or a federal agency that the authority has identified by rule as a list intended to identify high priority chemicals; and

(c) May remove a chemical from the list of high priority chemicals if the authority determines that the chemical is no longer being used in children's products.

(5) The authority shall update the list of high priority chemicals on its website within one year after the date on which a chemical is added to or removed from the list. [2015 c.786 §3]

431A.258 Disclosure by manufacturers; notice requirement; exemption. (1)(a) A manufacturer of a children's product sold or offered for sale in this state that contains a chemical included on the list established and maintained under ORS 431A.255 in an amount at or above a de minimis level shall

provide a biennial notice as described in subsection (2) of this section to the Oregon Health Authority by January 1 of each applicable notice year.

(b) The first biennial notice required under this section shall be submitted to the authority by January 1 of the year following the year that the chemical contained in the children's product sold or offered for sale in this state is added to the list.

(2) The notice required by subsection (1) of this section must contain:

(a) The name and Chemical Abstracts Service Registry Number of the chemical contained in the children's product;

(b) The product category of the children's product that contains the chemical;

(c) A description of the function of the chemical in the children's product;

(d) The amount of the chemical used in each unit of the children's product reported as a range rather than an exact amount;

(e) The name and address of the manufacturer, and the name, address and telephone number of a contact person for the manufacturer; and

(f) Any other information that the manufacturer deems relevant to the appropriate use of the children's product.

(3)(a) The authority may enter into reciprocal data sharing agreements with other states in which manufacturers of children's products are required to disclose information related to high priority chemicals of concern for children's health used in children's products. The authority must use the GS1 Global Product Classification system to identify and specify product categories subject to the data sharing agreements. If the authority has entered into a data sharing agreement with another state, and a manufacturer has reported the information required in the notice described in subsection (2) of this section to that state, the manufacturer may request that the other state provide the authority with the information in lieu of the manufacturer's direct reporting of the information to the authority.

(b) A manufacturer fulfills the notice requirement of subsection (1) of this section when the authority receives the information from the other state and the authority determines that the information received satisfies the requirements for the notice specified in subsection (2) of this section.

(4) In lieu of the manufacturer's providing notice to the authority under subsection (1) or (3) of this section, the authority may require that the notice described in subsection (2) of this section be submitted to the Interstate Chemicals Clearinghouse. The authority by rule shall specify procedures for the provision of such notice by manufacturers to the Interstate Chemicals Clearinghouse.

(5)(a) The authority shall grant an exemption to a manufacturer of children's products that applies for an exemption from the notice requirements of this section if the application demonstrates that:

(A) The high priority chemical of concern for children's health used in children's products is present in the children's product otherwise subject to the notice requirements of this section only as a contaminant;

(B) The manufacturer conducts a manufacturing control program for the contaminant; and

(C) The manufacturing control program meets minimum standards for a manufacturing control program as set forth by the authority by rule.

(b) The authority shall approve or disapprove an exemption application within 180 days after its submittal. If the authority fails to act within 180 days, the exemption application is deemed approved. If the authority disapproves an exemption application, the manufacturer may submit a revised exemption application for consideration within 180 days after the authority's disapproval.

(6) A trade association may provide required notices on behalf of its member manufacturers under the provisions of this section.

(7) When a manufacturer provides notice to the authority under the provisions of this section, the manufacturer may submit recommendations to the authority regarding technical, financial or logistical support deemed necessary for innovation and green chemistry solutions related to high priority chemicals of concern for children's health used in children's products. [2015 c.786 §4]

431A.260 Requirement to remove or substitute high priority chemicals of concern; waivers; exemptions. (1) On or before the date on which a manufacturer of a children's product submits the third biennial notice required under ORS 431A.258 for a chemical that is present in a children's product, the manufacturer must remove or make a substitution for the chemical pursuant to ORS 431A.263, or seek a waiver under ORS 431A.265, if the chemical is present in a children's product that is:

(a) Mouthable;

(b) A children's cosmetic; or

(c) Made for, marketed for use by or marketed to children under three years of age.

(2) A manufacturer with 25 or fewer employees may apply for a two-year extension of the date specified in subsection (1) of this section to meet the requirements of this section.

(3) Manufacturers are exempt from meeting the requirements of this section for children's products described in subsection (1) of this section that contain high priority chemicals of concern for children's health used in children's products at levels that are at or below allowable levels for children's products as established by the Consumer Product Safety Improvement Act of 2008, P.L. 110-314, 122 Stat. 3016, as in effect on July 27, 2015.

(4)(a) The Oregon Health Authority shall adopt rules providing for additional exemptions from the requirements of this section.

(b) For purposes of this subsection, any consumer product safety standard adopted under federal law that establishes allowable levels for children's products of a high priority chemical of concern for children's health used in children's products is presumed to establish the maximum allowable level of the chemical that may be used in children's products that are sold or offered for sale in this state. The authority may not require a manufacturer in compliance with the federal standard to also comply with the provisions of this section unless the authority establishes in the rulemaking process that a lower maximum allowable level for children's products of a high priority chemical of concern for children's health used in children's products than the allowable level set by the federal standard is necessary to protect human health and welfare. [2015 c.786 §5]

431A.263 Process for substituting chemicals; rules. (1)(a) When a manufacturer of children's products sold or offered for sale in this state removes a high priority chemical of concern for children's health used in children's products from a children's product sold or offered for sale in this state that is subject to ORS 431A.258 and substitutes another chemical, the manufacturer must submit a hazard assessment to the Oregon Health Authority that explains how the children's product, and any substitute chemical the children's product contains, is inherently less hazardous than before the substitution was made.

(b) When a manufacturer of children's products sold or offered for sale in this state removes a high priority chemical of concern for children's health used in children's products from a children's product as described in subsection (1) of this section and does not substitute another chemical, the manufacturer must submit notice to the authority that the manufacturer is no longer using the chemical or a substitute chemical.

(2) The authority shall establish by rule the methodology that a manufacturer must use and the standards that a children's product must meet in order to comply with the hazard assessment requirements described in subsection (1)(a) of this section.

(3) The authority shall approve or disapprove a hazard assessment within 180 days after its submittal. If the authority fails to act within 180 days, the hazard assessment is deemed approved, and the manufacturer may continue to sell or offer for sale in this state the children's product for which the manufacturer submitted a hazard assessment. If the authority disapproves a hazard assessment, the manufacturer may submit a revised hazard assessment for consideration within 180 days after the authority's disapproval. [2015 c.786 §6]

431A.265 Process for waiving requirement to remove or substitute chemicals. (1) The Oregon Health Authority shall grant a waiver to a manufacturer of children's products that applies for a waiver in order to comply with ORS 431A.260 if the application:

(a) Includes an alternatives assessment demonstrating that removal of the high priority chemical of concern for children's health used in children's products is not financially or technically feasible; or

(b) Includes a quantitative exposure assessment demonstrating that the high priority chemical of concern for children's health used in children's products is not reasonably anticipated to result in exposure based upon an analysis of leachability and bioavailability of the high priority chemical of concern for children's health used in children's products.

(2) An alternatives assessment or quantitative exposure assessment submitted under subsection (1) of this section must be conducted in a manner consistent with the guidance and frameworks for such assessments in effect on July 27, 2015, and as established by the United States Environmental Protection Agency, the Interstate Chemicals Clearinghouse, the State of California, as part of that state's program for reducing toxic chemicals in consumer products, or other states or nongovernmental organizations with the applicable expertise, or as developed by the authority by rule. The authority may recommend or require that a manufacturer follow particular guidance or frameworks in order to meet the requirements of this section.

(3) If the authority determines that an alternatives assessment or a quantitative exposure assessment as described in this sec-

tion is incomplete, the authority may obtain the assessment from another party. The manufacturer that submitted the assessment that was determined to be incomplete must pay for the assessment performed by the other party.

(4) The authority shall approve or disapprove a waiver application within 180 days after its submittal. If the authority fails to act within 180 days, the waiver application is deemed approved, and the manufacturer may continue to sell or offer for sale in this state the children's product for which the manufacturer submitted a waiver application. If the authority disapproves a waiver application, the manufacturer may submit a revised waiver application for consideration within 180 days after the authority's disapproval. [2015 c.786 §7]

431A.268 Exemption from requirement to remove or substitute chemicals. Manufacturers of children's products with annual worldwide gross sales of less than $5 million, as reported on the most recent tax return filed by the manufacturer before the notice required under ORS 431A.258, are exempt from the requirements of ORS 431A.258, 431A.260, 431A.263 and 431A.265. [2015 c.786 §8]

431A.270 Testing for compliance; fee schedule; rules. (1) The Oregon Health Authority may conduct testing of children's products sold or offered for sale in this state in order to determine compliance with ORS 431A.258, 431A.260 and 431A.263.

(2) The authority may establish by rule a schedule of fees for manufacturers of children's products that are based on the costs to the authority for administering ORS 431A.253 to 431A.280. Fees collected by the authority under this subsection shall be deposited in the High Priority Chemicals of Concern for Children's Health Fund established under ORS 431A.278. [2015 c.786 §9]

431A.273 Participation in Interstate Chemicals Clearinghouse. The Oregon Health Authority is authorized to participate in the Interstate Chemicals Clearinghouse in cooperation with other states and government entities to assist the authority in carrying out ORS 431A.253 to 431A.280. [2015 c.786 §10]

431A.275 Civil penalty for violation of ORS 431A.258, 431A.260 or 431A.263. (1) Except as provided in subsection (5) of this section, the Oregon Health Authority may impose a civil penalty on a manufacturer of children's products for a violation of any provision of ORS 431A.258, 431A.260 or 431A.263.

(2) For purposes of assessing civil penalties under this section, a violation consists of a single course of conduct with regard to an entire children's product line that is sold or offered for sale in this state.

(3) The authority shall adopt by rule a schedule of civil penalties for violations of ORS 431A.258, 431A.260 and 431A.263. A civil penalty may not exceed $5,000 for the first violation. A civil penalty may not exceed $10,000 for the second and each subsequent violation.

(4) In imposing a penalty under subsection (1) or (5) of this section, the authority shall consider the following factors:

(a) The past history of the manufacturer incurring a penalty in taking all feasible steps or following all feasible procedures necessary or appropriate to correct any violation.

(b) Any prior violations of statutes, rules, orders or permits pertaining to high priority chemicals of concern for children's health used in children's products.

(c) The gravity and magnitude of the violation.

(d) Whether the violation was a sole event, repeated or continuous.

(e) Whether the violation was a result of an unavoidable accident, negligence or an intentional act.

(f) The violator's cooperativeness and efforts to correct the violation.

(g) The economic and financial conditions of the manufacturer incurring a penalty.

(h) If a manufacturer asserts that a high priority chemical of concern for children's health used in children's products is present in a children's product only as a contaminant, evidence that the manufacturer conducted a manufacturing control program for the contaminant that meets or exceeds the minimum requirements for a manufacturing control program adopted by rule by the authority under ORS 431A.258 (5) and exercised due diligence.

(5)(a) If a manufacturer violates the notice requirement described in ORS 431A.258 or 431A.263, the authority shall provide the manufacturer with written notice informing the manufacturer of the violation and stating that the manufacturer may avoid a civil penalty for the violation by providing the proper notice required under ORS 431A.258 or 431A.263 within 90 days.

(b) If the manufacturer fails to cure the violation within 90 days, the authority may impose a civil penalty not to exceed $2,500. For a continuing violation, each 90-day period that the violation continues after the preceding imposition of a civil penalty is a separate offense subject to a separate civil penalty not to exceed $5,000. The authority

is not required to provide the manufacturer with an opportunity to cure the continuing violation before imposing a civil penalty for the continuing violation.

(6) If the authority has reason to believe that a children's product that contains a high priority chemical of concern for children's health used in children's products is being sold or offered for sale in this state in violation of ORS 431A.258, 431A.260 or 431A.263, the authority may request that the manufacturer provide a statement of compliance on a form provided by the authority. The manufacturer must submit the statement of compliance within 10 days after receipt of a request. To prove compliance with ORS 431A.258, 431A.260 and 431A.263, the manufacturer must:

(a) Show that the children's product does not contain the high priority chemical of concern for children's health used in children's products;

(b) Show that the manufacturer has previously provided the authority with notice as required by ORS 431A.258;

(c) Provide the authority with notice as required by ORS 431A.258; or

(d) Provide the authority with documentation that the manufacturer has previously complied with ORS 431A.263.

(7) Civil penalties described in this section shall be imposed in the manner provided in ORS 183.745.

(8) All civil penalties recovered under this section shall be paid into the High Priority Chemicals of Concern for Children's Health Fund established under ORS 431A.278. [2015 c.786 §11]

431A.278 High Priority Chemicals of Concern for Children's Health Fund. (1) The High Priority Chemicals of Concern for Children's Health Fund is established in the State Treasury, separate and distinct from the General Fund. Interest earned by the High Priority Chemicals of Concern for Children's Health Fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Authority to administer ORS 431A.253 to 431A.280.

(2) The authority may accept gifts, grants or contributions from any public or private source for the purpose of carrying out ORS 431A.253 to 431A.280.

(3) The High Priority Chemicals of Concern for Children's Health Fund shall consist of:

(a) Moneys accepted by the authority pursuant to subsection (2) of this section.

(b) Payments and fees collected under ORS 431A.265 and 431A.270.

(c) Civil penalties imposed under ORS 431A.275. [2015 c.786 §12]

431A.280 Biennial report to Legislative Assembly. The Oregon Health Authority shall report to the interim committees of the Legislative Assembly related to environment and natural resources and public health no later than September 15 of each odd-numbered year. The report shall include the following information:

(1) Any revisions made under ORS 431A.255 to the list of high priority chemicals of concern for children's health used in children's products.

(2) The number of manufacturers of children's products in compliance with ORS 431A.258 and an analysis of the information collected pursuant to ORS 431A.258 specifying:

(a) The number and types of children's products sold or offered for sale in this state that contain high priority chemicals of concern for children's health used in children's products.

(b) The range of amounts of high priority chemicals of concern for children's health used in children's products, by product category, and the total number of and most frequently disclosed high priority chemicals of concern for children's health used in children's products.

(c) The potential for exposure to high priority chemicals of concern for children's health used in children's products based on the number of children's products sold or offered for sale in this state that contain chemicals on the list established under ORS 431A.255, likely exposure routes and the typical use patterns for the children's products that contain chemicals on the list established under ORS 431A.255.

(d) Recommendations to limit, reduce or prevent exposure to high priority chemicals of concern for children's health used in children's products based on an analysis of the information collected.

(3)(a) Details about the implementation of ORS 431A.263 and 431A.265 regarding hazard assessments and waivers. In cases where the authority grants waivers for the continued use of high priority chemicals of concern for children's health used in children's products and the waiver application includes an alternatives assessment, the authority may develop recommendations on opportunities to provide technical assistance, provide grants and promote public-private partnerships and other actions to encourage manufacturers to produce children's products through green chemistry and that do not contain high priority chemicals of concern

for children's health used in children's products.

(b) In developing the recommendations described in paragraph (a) of this subsection, the authority may consult with the Department of Environmental Quality, the Oregon Business Development Department and other state agencies.

(4) A summary of compliance testing results obtained under ORS 431A.270.

(5) Any recommendations submitted to the authority by manufacturers under ORS 431A.258 (7). [2015 c.786 §13]

TOXIC HOUSEHOLD PRODUCTS

431A.300 Definitions. As used in ORS 431A.300 to 431A.325:

(1) "Household product" means any product intended for use under any of the following circumstances:

(a) In, on or around any structure, vehicle, article, surface or area associated with the household, including but not limited to nonagricultural outbuildings, noncommercial greenhouses, pleasure boats and recreational vehicles.

(b) In or around any preschool or child care facility.

(2) "Task force" means the Poison Prevention Task Force.

(3) "Toxic household product" means any product listed in ORS 431A.308 that is customarily produced or distributed for sale for use in or about the household or is customarily stored by individuals in or about the household. [Formerly 431.870]

431A.303 Legislative findings. The Legislative Assembly finds that:

(1) Most poisonings involve children under six years of age.

(2) The federal Poison Prevention Packaging Act of 1970 requires child-resistant safety packaging for various toxic household products in order to inhibit a child's ability to access poisonous substances. This effort, in conjunction with the formation of poison control centers, education efforts, availability of ipecac syrup for home treatment and labeling requirements, has significantly reduced the number of poisonings. However, most poisonings occur while the product is in use, rather than when stored, and many toxic household products are exempt from the child-resistant safety packaging laws.

(3) The National Safety Council, the American Medical Association and the American Association of Poison Control Centers have noted that the addition of nontoxic aversive agents to toxic household products may make these products so unpalatable that many children reject the products upon, or shortly after, tasting them. These organizations have urged manufacturers of toxic household products to add nontoxic aversive agents to their products in addition to child resistant closures in order that ingestion of these products may be reduced, thus providing another means to prevent or mitigate severe poisonings.

(4) Aversive agents are currently being used in various household products to mitigate child poisonings. [Formerly 431.875]

431A.305 Aversive agent required. Any toxic household product that is listed in ORS 431A.308 and is manufactured on or after July 1, 1993, and sold in this state, shall include an aversive agent approved by the Poison Prevention Task Force within the product in a concentration so as to render the product unpalatable. [Formerly 431.880]

431A.308 Toxic household products required to comply with aversive agent requirement; exemptions. (1) The following toxic household products must comply with ORS 431A.305:

(a) Antifreeze containing 10 percent or more ethylene glycol by weight.

(b) Windshield washer fluid containing four percent or more methyl alcohol (methanol) by weight.

(2) The following toxic household products are exempted from the requirements of ORS 431A.305:

(a) Pesticide products subject to registration under ORS chapter 634 or under the Federal Insecticide, Fungicide, Rodenticide Act.

(b) Any drug as defined in the Federal Food, Drug and Cosmetic Act (21 U.S.C. 301 et seq.) or in ORS 689.005.

(c) Products exempted under the provisions of section 7, chapter 915, Oregon Laws 1991. [Formerly 431.885]

Note: Section 7, chapter 915, Oregon Laws 1991, provides:

Sec. 7. (1) A manufacturer shall apply to the Poison Prevention Task Force on or before April 1, 1993, for an exemption from the requirements of this Act [431A.300 to 431A.325] for a toxic household product that contains chemicals in which any aversive agent would be nonsoluble, nondispersible, unstable or would interfere with the safety or function of the product.

(2) The task force may grant an exemption if the manufacturer demonstrates to the task force, and the task force finds, that the toxic household product meets the exemption criteria described in subsection (1) of this section. [1991 c.915 §7]

431A.310 Limitation on liability; application. (1) A manufacturer, distributor or seller of a toxic household product that is required to contain an aversive agent under the provisions of ORS 431A.305 is not liable to any person for any personal injury, death

or property damage that results from the inclusion of the aversive agent in the toxic household product.

(2) The limitation on liability provided by this section is only applicable if the aversive agent is included in the toxic household product in concentrations approved by the Poison Prevention Task Force.

(3) The limitation on liability provided by this section does not apply if the personal injury, death or property damage results from willful and wanton misconduct by the manufacturer, distributor or seller of the toxic household product. [Formerly 431.887]

431A.313 Poison Prevention Task Force; members; meetings; duties. (1) The Poison Prevention Task Force is created in the Poison Center of the Oregon Health and Science University and consists of five members as follows:

(a) The Medical Director of the Oregon Poison Center or designee, who shall serve as chairperson.

(b) The Director of the Oregon Health Authority or a designee.

(c) A pediatrician licensed under ORS chapter 677, appointed by the Governor.

(d) A chemist from an academic institution, appointed by the Governor.

(e) A representative of a manufacturer of toxic household products, appointed by the Governor.

(2) Each member shall serve without compensation.

(3) The task force shall meet as considered necessary by the chairperson or on the call of three members of the task force.

(4) The task force shall meet for the purposes of reviewing, granting or denying requests for exemptions from and extensions of the requirements of ORS 431A.300 to 431A.325.

(5) The task force shall obtain and evaluate statewide poisoning incidence and severity data over a period of every two years for the purpose of making recommendations for the addition or deletion of products to ORS 431A.308. [Formerly 431.890]

431A.315 Efficacy and toxicity data to be made available to task force; use; confidentiality of data. (1) The Poison Prevention Task Force may request efficacy and toxicity data, or other pertinent data it considers necessary, from the manufacturer of any toxic household product. The information shall be made available by the manufacturer to the task force upon request and shall remain confidential, if so requested.

(2) The task force may request data from and utilize the technical expertise of other state agencies or health care providers, or both, to evaluate the incidence and severity of poisoning, drug overdose and toxic exposure. [Formerly 431.895]

431A.318 Reports to Legislative Assembly. The Poison Prevention Task Force shall report to the Legislative Assembly as necessary with recommendations for the addition or deletion of products from the list set forth in ORS 431A.308. The task force shall report to the Legislative Assembly any additional recommended measures which shall include reducing the incidence and severity of poisoning, poison prevention education activities and child resistant closure effectiveness. [Formerly 431.900]

431A.320 Enforcement by civil action; injunction; damages; attorney fees. (1) Any person may bring a civil action in a court of competent jurisdiction to enforce the requirements of ORS 431A.300 to 431A.325. The court may grant injunctive relief in any action brought pursuant to this section.

(2) Punitive damages may also be awarded in any action brought pursuant to this section.

(3) The court may award reasonable attorney fees to the prevailing party in an action under this section. [Formerly 431.905]

431A.323 Prohibited conduct. (1) It is unlawful for any person to distribute or sell a toxic household product or cause a toxic household product to be distributed or sold in this state if it does not meet the requirements of ORS 431A.300 to 431A.325.

(2) The prohibition contained in subsection (1) of this section does not apply to a person engaged in the business of wholesale or retail distribution of a toxic household product, unless the person is engaged in the manufacture of the product, or has knowledge that a toxic household product which the person is distributing or selling is in violation of ORS 431A.300 to 431A.325.

(3) A distributor of a house brand shall not be considered a manufacturer for purposes of filing an application for an extension pursuant to section 6, chapter 915, Oregon Laws 1991, or for an exemption pursuant to section 7, chapter 915, Oregon Laws 1991. Nothing in this subsection is intended to exempt a distributor of a house brand from any other provisions of ORS 431A.300 to 431A.325. [Formerly 431.910]

Note: See note under 431A.308.

431A.325 Civil penalty for violation of ORS 431A.300 to 431A.325. (1) Any person who violates any provision of ORS 431A.300 to 431A.325 shall be liable for a civil penalty not to exceed $5,000 for each day of vio-

lation, which shall be assessed and recovered in a civil action brought by the Oregon Health Authority.

(2) All civil penalties collected pursuant to subsection (1) of this section shall be deposited in the General Fund. [Formerly 431.915]

LEAD-BASED PAINT ACTIVITIES

431A.350 Lead poisoning. (1) Lead poisoning is a significant health concern because lead is a potent neurotoxin that affects every system of the human body. It is harmful to individuals of all ages and is especially harmful to children, fetuses and women of childbearing age. Lead poisoning is one of the most common and preventable pediatric health problems in Oregon.

(2) Common renovation activities such as sanding, cutting and demolition can create hazardous lead dust and chips by disturbing lead-based paint, which can be harmful to adults and children.

(3) The federal government assists states in preventing lead poisoning and reducing lead hazards through:

(a)(A) The Lead-Based Paint Poisoning Prevention Act;

(B) The Lead Contamination Control Act of 1988;

(C) The Safe Drinking Water Act; and

(D) The Resource Conservation and Recovery Act of 1976.

(b) Implementing regulations of:

(A) The Department of Housing and Urban Development;

(B) The Environmental Protection Agency;

(C) The Occupational Safety and Health Administration; and

(D) The Centers for Disease Control and Prevention.

(c) The Residential Lead-Based Paint Hazard Reduction Act of 1992, which:

(A) Requires that sellers and landlords of residential housing constructed before 1978 notify buyers and tenants of known lead-based paint hazards; and

(B) Allows states to receive authorization from the Environmental Protection Agency to provide for the accreditation of lead-based paint activities and renovation training programs, the certification of persons completing training programs and the certification of lead-based paint activities and renovation contractors pursuant to standards developed by the agency. [Formerly 431.917]

431A.353 Definitions. As used in ORS 431A.355 and 431A.358:

(1) "Certified" and "certification" means an action by the Oregon Health Authority verifying the successful completion of a training program accredited by the authority and any other requirements.

(2) "Firm" has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in ORS 431A.350.

(3) "Lead-based paint" has the meaning given that term in P.L. 102-550, section 1004, and as further defined pursuant to the authorities described in ORS 431A.350.

(4) "Lead-based paint activities" has the meaning given that term in 40 C.F.R. 745.223 and as further defined pursuant to the authorities described in ORS 431A.350.

(5) "Renovation" has the meaning given that term in 40 C.F.R. 745.83 and as further defined pursuant to the authorities described in ORS 431A.350. [Formerly 431.918]

431A.355 Power of Oregon Health Authority to regulate lead-based paint activities; fees. (1) The Oregon Health Authority shall:

(a) Certify firms and individuals to perform lead-based paint activities;

(b) Certify firms to perform renovation;

(c) Accredit training providers to provide lead-based paint activities and renovation training;

(d) Develop and approve training programs for lead-based paint activities and renovation;

(e) Establish standards based on best practices for the conduct of lead-based paint inspections, risk assessment and abatement services, renovation activities that disturb lead-based paint and the disposal of lead-based paint that are in addition to, not inconsistent with and not in lieu of any other workplace standards required by law;

(f) Develop and conduct programs to screen blood lead levels, identify hazards and educate the public, including but not limited to parents, residential dwelling owners, pediatric medical providers and child care facility operators, about the dangers of lead-based paint and about appropriate precautions that may reduce the probability of childhood lead poisoning;

(g) Adopt rules necessary to implement the provisions of this section and ORS 431A.358 and 431A.363; and

(h) Establish fees sufficient to recover the costs of implementing the provisions of this section and ORS 431A.358 and 431A.363, including but not limited to fees for:

(A) Certification and recertification to perform lead-based paint activities and renovation; and

(B) Accreditation and reaccreditation of lead-based paint training providers.

(2) The Oregon Health Authority may:

(a) Enter private or public property at any reasonable time with consent of the owner or custodian of the property to inspect, investigate, evaluate or conduct tests or take specimens or samples for testing, as necessary to determine compliance with ORS 431A.358;

(b) Issue subpoenas to determine compliance with ORS 431A.358;

(c) Suspend, revoke or modify a certification to perform lead-based paint activities or renovation if the holder of the certification fails to comply with state or federal statutes or regulations related to lead-based paint; and

(d) Suspend, revoke or modify a certified renovator's certification if the renovator fails to comply with state or federal statutes or regulations related to lead-based paint. [Formerly 431.920]

431A.358 Performance of lead-based paint activities without certification prohibited. (1) An individual may not perform or offer to perform, for compensation, lead-based paint activities unless the individual is certified as provided under ORS 431A.355 or is performing lead-based paint activities under the supervision of a person certified under ORS 431A.355.

(2) A firm may not perform, or offer to perform, lead-based paint activities or renovation unless the firm is certified as provided under ORS 431A.355 or is performing lead-based paint activities or renovation under the supervision of a person certified under ORS 431A.355. [Formerly 431.922]

431A.360 Lead poisoning prevention clearinghouse for schools. (1) The Oregon Health Authority shall develop and maintain a lead poisoning prevention clearinghouse on its website for public and private schools that provide instruction at levels kindergarten through grade 12 in order to provide these schools with information about:

(a) The dangers to students posed by the exposure to lead; and

(b) How to best protect students from the hazards posed by lead-based paint.

(2) In order to provide the information described in subsection (1) of this section, the clearinghouse must include:

(a) Information about the adverse health effects from exposure to lead;

(b) Information about the common sources of exposure to lead;

(c) Tips regarding how to recognize hazards posed by lead-based paint;

(d) Information about how to safely paint, or renovate, a school and thereby prevent exposure to lead;

(e) A list of this state's laws and rules relating to lead-based paint;

(f) Tips about how to comply with this state's laws and rules relating to lead-based paint;

(g) Information about how to maintain a school and keep it safe from the dangers posed by lead-based paint; and

(h) Resources and education materials concerning how to prevent students from being exposed to lead-based paint. [Formerly 431.926]

431A.363 Civil penalty for violation of ORS 431A.355 or 431A.358. (1) Any person who violates any provision of, or any rule adopted under, ORS 431A.355 or 431A.358 shall forfeit and pay to the Public Health Account established under ORS 431.210 a civil penalty of not more than $5,000 for each violation. Moneys paid to the Public Health Account under this section may be used only for the purposes of lead poisoning prevention, including consumer and industry outreach, public education, blood lead screening and other activities.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) A civil penalty imposed under this section is in addition to and not in lieu of any other penalty or sanction provided by law.

(4) The Oregon Health Authority shall report all civil penalties or sanctions imposed under this section or a rule adopted under ORS 431A.355 to each of the following state agencies:

(a) The Construction Contractors Board;

(b) The Occupational Safety and Health Division of the Department of Consumer and Business Services; and

(c) The Department of Environmental Quality. [Formerly 431.994]

AUTOMATED EXTERNAL DEFIBRILLATORS

431A.450 Automated external defibrillators required at health clubs; exception. (1) As used in this section, "health club" means an indoor facility:

(a) With the primary purpose of offering exercise or athletic activities that patrons or members may participate in for a fee; and

(b) That typically has at the facility on a regular business day 50 or more persons who are employees, patrons or members participating in the exercise or athletic activities offered at the facility.

(2) The owner of a health club shall have on the premises at all times at least one automated external defibrillator.

(3) Subsection (2) of this section does not apply to a facility owned by a hotel as defined in ORS 699.005. [Formerly 431.680]

431A.455 Automated external defibrillators required at places of public assembly; exceptions. (1) As used in this section, "place of public assembly" means a single building that has 50,000 square feet or more of indoor floor space and where:

(a)(A) The public congregates for purposes such as deliberation, shopping, entertainment, amusement or awaiting transportation; or

(B) Business activities are conducted; and

(b) At least 50 individuals congregate on a normal business day.

(2) Notwithstanding ORS 431A.450 (3), the owner of a place of public assembly shall have on the premises at least one automated external defibrillator.

(3) Notwithstanding subsection (2) of this section:

(a) A community college or a public university listed in ORS 352.002 shall have at least one automated external defibrillator on the campus of the community college or public university; and

(b) If the campus of the community college or public university contains more than one place of public assembly, the community college or public university shall ensure that at least one automated external defibrillator is readily available to each place of public assembly.

(4) Subsection (2) of this section does not apply to a building primarily used for worship or education associated with worship. [Formerly 431.690]

BONE MARROW DONOR PROGRAM

431A.475 Oregon Health Authority duties. (1) The Oregon Health Authority shall educate residents of this state about:

(a) The need for bone marrow donors;

(b) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type; and

(c) The medical procedures a donor must undergo to donate bone marrow or other sources of blood stem cells.

(2) The Oregon Health Authority shall make special efforts to educate and recruit citizens of Oregon with a special emphasis on minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio and television, and placement of educational materials in appropriate health care facilities, blood banks and state and local agencies. The Oregon Health Authority in conjunction with the Department of Transportation shall make educational materials available at all places where driver licenses are issued or renewed. [Formerly 431.270]

SPINAL CORD INJURY RESEARCH BOARD

431A.500 Spinal Cord Injury Research Board; members; terms; chairperson; meetings; rules. (1) There is established a Spinal Cord Injury Research Board consisting of 11 members appointed by the Governor.

(2) The term of office of each member is four years, but a member serves at the pleasure of the Governor. A member is eligible for reappointment. If there is a vacancy for any cause, the Governor shall make an appointment to become immediately effective for the unexpired term.

(3) The appointment of a member to the board is subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.

(4) The members of the Spinal Cord Injury Research Board shall be citizens of this state who are well informed on the issues relating to spinal cord injuries and related disabilities. Members may include, but are not limited to:

(a) A minimum of five health professionals with clinical practice experience in each of the practice fields of neuroscience, neurology, neurosurgery, neuropharmacology and spinal cord rehabilitative medicine;

(b) A representative of the Oregon Disabilities Commission;

(c) A representative of a disabilities advocacy organization or an individual who advocates on behalf of persons with spinal cord injuries;

(d) A representative of the Oregon Health Authority;

(e) Members of the Legislative Assembly; and

(f) A person with a spinal cord injury.

(5) The board shall elect one of its members as chairperson and another as vice chairperson, for such terms and with such duties and powers necessary for the perform-

ance of the functions of such offices as the board determines.

(6) The board shall meet at least once every three months at a place, day and hour determined by the chairperson. The board also shall meet at other times and places specified by the call of the chairperson or of a majority of the members of the board.

(7) In accordance with applicable provisions of ORS chapter 183, the board may adopt rules necessary for the administration of the grant program and fund described in ORS 431A.505 and 431A.510. [Formerly 431.290]

431A.505 Duties of board; grants. (1) The Spinal Cord Injury Research Board may solicit, receive and review applications from public and private agencies, organizations and research institutions for grants from the Spinal Cord Injury Research Fund created under ORS 431A.510, to conduct research programs that focus on the treatment and cure of spinal cord injury.

(2) After review of a grant application, the board shall grant approval of the application and disburse moneys from the Spinal Cord Injury Research Fund if the application meets the criteria established by the board and if money exists in the fund.

(3) The board may solicit contributions to the fund from public and private sources.

(4) The board shall provide the Governor and the Legislative Assembly with a biennial report no later than January 31 of each odd-numbered year that summarizes the status of funds appropriated for spinal cord injury research and the progress of the board in encouraging spinal cord injury research. [Formerly 431.292]

431A.510 Spinal Cord Injury Research Fund. (1) There is created within the State Treasury, separate and distinct from the General Fund, the Spinal Cord Injury Research Fund administered by the Spinal Cord Injury Research Board. Moneys in the fund are continuously appropriated for the purpose of carrying out ORS 431A.505.

(2) The Spinal Cord Injury Research Fund shall consist of:

(a) Moneys appropriated to the fund by the Legislative Assembly; and

(b) Moneys obtained from gifts or grants by any public or private source received by the board under ORS 431A.505 (3). [Formerly 431.294]

STROKE CARE

431A.525 Stroke Care Committee. (1) The Stroke Care Committee is established under the Oregon Health Authority.

(2) The Director of the Oregon Health Authority shall appoint at least 10 members to serve on the committee as follows:

(a) Two physicians who specialize in the care of stroke patients, one of whom is a neurologist;

(b) One physician who specializes in emergency medicine;

(c) At least three hospital administrators, or designees of hospital administrators, of whom:

(A) At least one must be from a certified Comprehensive Stroke Center;

(B) One must be from a certified Primary Stroke Center; and

(C) One must be from a rural hospital that uses Telestroke;

(d) One nurse who is a stroke coordinator or who works in an emergency department and has experience treating stroke;

(e) One emergency medical services provider who works for a licensed ambulance service;

(f) One health practitioner who specializes in rehabilitative medicine; and

(g) One individual who has experience advocating for the care of stroke patients and who is not a health care provider.

(3) In appointing members under subsection (2) of this section, the director must consider the geographic diversity of this state and appoint members who are from rural areas.

(4) For the purpose of achieving continuous improvement in the quality of stroke care, the committee shall:

(a) Analyze data related to the prevention and treatment of strokes;

(b) Identify potential interventions to improve stroke care; and

(c) Advise the authority on meeting the objectives of the authority, including but not limited to the objectives of the emergency medical services and trauma system developed pursuant to ORS 431A.050, that are related to stroke care.

(5) A majority of the members of the committee constitutes a quorum for the transaction of business.

(6) Official action taken by the committee requires the approval of a majority of the members of the committee.

(7) The committee shall elect a chairperson from among its members.

(8) The committee shall meet at the call of the chairperson or of a majority of the members of the committee.

(9) The committee may adopt rules necessary for the operation of the committee.

(10) The term of office of each member of the committee is four years, but a member serves at the pleasure of the director. Before the expiration of the term of a member, the director shall appoint a successor whose term begins January 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

(11) Members of the committee are not entitled to compensation, but may be reimbursed from funds available to the authority, for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. [Formerly 431.673]

431A.530 Oregon Health Authority duties; database; confidentiality. (1) The Oregon Health Authority shall, in accordance with recommendations made by the Stroke Care Committee established under ORS 431A.525, establish and implement a plan for achieving continuous improvement in the quality of stroke care. In implementing the plan, the authority shall:

(a) Require hospitals certified as Comprehensive Stroke Centers or Primary Stroke Centers through the Joint Commission or an equivalent organization, and encourage all other hospitals, to submit stroke care data to a database designated by the authority. A hospital that submits stroke care data under this paragraph must authorize the keeper of the database to permit the authority to access the submitted data.

(b) Designate a statewide or national stroke database to which hospitals described in paragraph (a) of this subsection are required to submit, or may submit, stroke care data for the purpose of obtaining information and statistics on stroke care. In designating the database, the authority shall ensure that the database:

(A) Has security protections in place to safely protect individually identifiable information to the extent that the database receives and maintains such information; and

(B) Aligns with the core consensus stroke metrics developed and approved by the American Heart Association, the American Stroke Association, the Joint Commission and the Centers for Disease Control and Prevention.

(c) Develop a data oversight process in accordance with recommendations made by the Stroke Care Committee.

(2) In addition to the duties described in subsection (1) of this section, the authority shall:

(a) Coordinate with national health organizations involved in improving the quality of stroke care to avoid duplicative information and redundant processes.

(b) Use information related to stroke care and reported pursuant to subsection (1)(a) of this section to support improvement in the quality of stroke care in accordance with guidelines that meet or exceed nationally recognized standards established by the American Stroke Association.

(c) Encourage the sharing of information among health care providers on practices that improve the quality of stroke care.

(d) Facilitate communication about data trends and treatment developments among health care providers and coordinated care organizations that provide services related to stroke care.

(e) Provide stroke care data and recommend improvements for stroke care to coordinated care organizations.

(f) Not later than the beginning of each odd-numbered year regular session of the Legislative Assembly, prepare and submit to the Legislative Assembly a report in the manner provided in ORS 192.245 summarizing the authority's activities under this section.

(3)(a) Information submitted to the designated database and accessed by the authority under this section:

(A) Is confidential and not subject to disclosure under ORS 192.311 to 192.478;

(B) May be disclosed only as permitted in paragraph (b) of this subsection and in accordance with rules adopted by the authority under this section;

(C) Is not subject to civil or administrative subpoena; and

(D) Is nondiscoverable and inadmissible in a judicial, administrative, arbitration or mediation proceeding.

(b) Individually identifiable information and information that identifies a hospital described in subsection (1)(a) of this section may not be disclosed by the authority without the approval of the hospital that submitted the information. Only deidentified information may be disclosed by the authority under this section. [Formerly 431.675]

DENSE BREAST TISSUE

431A.550 Facilities to provide notice; rules. (1) A facility, as defined in 42 U.S.C. 263b, must provide written notice, in the form prescribed by the Oregon Health Authority under subsection (2) of this section, to a patient on whom the facility has performed a mammogram if the mammogram shows the patient has dense breast tissue.

(2) The authority shall prescribe by rule the form and content of the notice provided under subsection (1) of this section. The notice must include but is not limited to all of the following:

(a) Information about breast density, based on the Breast Imaging Reporting and Data System established by the American College of Radiology;

(b) An explanation that dense breast tissue can make it harder to find cancer on a mammogram and that dense breast tissue may also be associated with an increased risk of breast cancer;

(c) That the patient may benefit from supplementary screening or diagnostic testing including a breast ultrasound; and

(d) That the patient should contact the patient's health care provider to find out whether the health care provider recommends additional testing.

(3) The authority shall adopt by rule a definition of "dense breast tissue" and shall amend the definition whenever necessary to ensure that the definition is consistent with current medical evidence. [Formerly 431.823]

BREAST RECONSTRUCTION EDUCATION

431A.560 Educational materials about breast reconstruction; requirements. (1) The Oregon Health Authority shall make written materials available on the authority's website to educate breast cancer patients about the availability of insurance coverage for breast reconstruction surgery and breast prostheses following a mastectomy. The authority shall update the materials at least annually.

(2) The authority shall place a link to the educational materials described in subsection (1) of this section next to a link on the website to information about breast cancer screenings and under a tab designated "Breast Reconstruction Education." The materials must include links to information about breast reconstruction surgery published by governmental entities with a nexus to this state or nonprofit organizations with expertise in breast reconstruction surgery, including but not limited to information about:

(a) The availability of the option to have breast reconstruction surgery following a mastectomy including that the breast reconstruction surgery may be performed at the time of a mastectomy or may be delayed until a later date.

(b) Prostheses or breast forms as alternatives to breast reconstruction surgery.

(c) The requirements of the Women's Health and Cancer Rights Act of 1998 (P.L. 105-277) including the right to breast reconstruction surgery following a mastectomy even if the surgery is delayed until a later date.

(3) The authority may include educational information about breast reconstruction surgery in newsletters or similar publications that the authority sends to clients or physicians on a weekly or monthly basis. [2017 c.163 §1]

EXPOSURE TO BODILY FLUIDS

431A.570 Significant exposure to bodily fluids; petition to compel testing; confidentiality of results. (1) As used in this section:

(a) "Communicable disease" has the meaning given that term in ORS 431A.005.

(b) "Good faith effort to obtain the voluntary consent of the source person" includes a good faith effort to locate or contact the source person.

(c) "Significant exposure" means direct contact with blood, bodily fluids or other potentially infectious materials of a person, and the contact is capable of transmitting a communicable disease.

(2) Notwithstanding any other provision of law, an employee of the Department of Corrections, a law enforcement officer as defined in ORS 414.805, a parole and probation officer as defined in ORS 181A.355, a corrections officer as defined in ORS 181A.355, an emergency medical services provider as defined in ORS 682.025, a licensed health care provider as defined in ORS 433.060 or a firefighter who, in the performance of the person's official duties, comes into contact with the blood, bodily fluid or other potentially infectious material of another person may petition the circuit court for an order compelling the testing of the source person for a communicable disease, provided that the person making the petition has first made a good faith effort to obtain the voluntary consent of the source person to be tested for a communicable disease.

(3) A petition submitted under this section must:

(a) Set forth the facts and circumstances of the contact with the source person and

the reasons the petitioner and a medically trained person representing the petitioner, if available, believe the contact with the source person constitutes significant exposure and that testing is appropriate;

(b) If a medically trained person is not available to represent the petitioner, include the reason for the unavailability;

(c) Include information sufficient to identify the source person and the location of the source person, if known; and

(d) Include a statement by the petitioner attesting to having made a good faith effort to obtain the voluntary consent of the source person to be tested for a communicable disease.

(4) The circuit court shall hold an ex parte hearing in person, by telephone or by other appropriate means no later than three judicial days after receiving a petition under this section. Upon a finding that the requirements of subsection (3) of this section have been met and a showing that the circumstances create probable cause to conclude that the petitioner's contact with the source person constitutes significant exposure, the court shall order the testing of the source person. The court shall issue the order no later than four judicial days after receiving a petition under this section.

(5) If the circuit court orders a test under subsection (4) of this section:

(a) The order shall direct the source person to allow a test to be performed by a licensed health care provider, without delay, for a communicable disease that may be transmitted by the type of contact that occurred and may specify the date by which the test must be completed. If the source person is in custody or otherwise subject to the legal control of another person, the order may be directed to the agency with custody of, or the other person with legal control over, the source person. The order may direct the agency or other person to provide the source person with a copy of the order. The order may contain any directions necessary to ensure that the test is performed.

(b) The petitioner shall designate a physician or nurse practitioner to receive the results of the test on behalf of the petitioner.

(c) The order must inform the source person, or the agency with custody of or other person with legal control over the source person, of:

(A) The physician or nurse practitioner who is to receive the results of the test on behalf of the petitioner; and

(B) How to obtain payment for costs under subsection (8) of this section.

(d) The order must be served on the source person, or the agency with custody of or other person with legal control over the source person, in the manner directed by the court. The court may provide for service of the order by any means appropriate to the circumstances of the source person, including directing the petitioner or the sheriff to serve the order. The costs associated with serving the order must be paid as provided under subsection (8) of this section.

(e) The order is enforceable through the contempt powers of the court.

(6) The results of a test ordered under this section:

(a) Are confidential and not subject to public disclosure under ORS 192.311 to 192.478; and

(b) May be made available only to the physician or nurse practitioner designated by the petitioner to receive the results of the test, the Oregon Health Authority and the source person.

(7) Blood, bodily fluids or other potentially infectious materials taken from a source person for the purpose of performing a test under this section:

(a) May not be used for a civil or criminal investigation or as evidence in civil or criminal proceeding; and

(b) May be retained only as long as necessary to confirm the results of a test performed under this section.

(8) A charge or filing fee may not be imposed for the filing of a petition under this section. The cost of any testing ordered under this section shall be the responsibility of the employer of the petitioner. [2017 c.696 §1]

FETAL ALCOHOL SYNDROME

431A.575 Oregon Health Authority to provide pamphlets. The Oregon Health Authority shall provide to the counties of this state pamphlets described in ORS 106.081. The authority may produce such pamphlets with moneys available for the purpose or may accept a gift of such pamphlets from any public or private source if the content is acceptable to the authority. [Formerly 431.825]

FEMALE GENITAL MUTILATION

431A.600 Oregon Health Authority to conduct prevention and education activities. The Oregon Health Authority shall establish and implement appropriate education, prevention and outreach activities in communities that traditionally practice female circumcision, excision or infibulation for the purpose of informing:

(1) Those communities of the health risks and emotional trauma inflicted by the practices;

(2) Those communities and the medical community as to the existence and ramifications of ORS 163.207; and

(3) Those communities that the practices constitute physical injuries to a child for purposes of ORS 419B.005. [Formerly 431.827]

ACQUIRED IMMUNE DEFICIENCY SYNDROME

431A.625 Oregon Health Authority to establish services and programs. (1) The Oregon Health Authority shall establish an acquired immune deficiency syndrome program:

(a) To provide education and prevention services to its clients; and

(b) To provide education and prevention services to the public.

(2) Programs authorized by this section may be operated by the authority directly or under contract with public and private agencies. [Formerly 431.830]

ALZHEIMER'S DISEASE

431A.650 Alzheimer's Disease Research Fund. (1) There is established as a separate and distinct fund in the State Treasury an Alzheimer's Disease Research Fund. The Alzheimer's Disease Research Fund shall consist of:

(a) An amount credited to the fund pursuant to ORS 305.690 to 305.753, which shall be transferred by the Department of Revenue to the fund.

(b) Gifts, grants and donations, in money or otherwise, for use as described in subsection (2) of this section, which the State Treasurer may solicit and accept from private and public sources and shall cause to be deposited and credited to the Alzheimer's Disease Research Fund.

(c) Interest or other earnings on the amounts described in paragraphs (a) and (b) of this subsection which shall inure to the benefit of the Alzheimer's Disease Research Fund.

(2) Moneys contained in the Alzheimer's Disease Research Fund are continuously appropriated for the purpose of grants to the Alzheimer's Disease Center of Oregon, a cooperative venture between Oregon Health and Science University, Good Samaritan Hospital and Medical Center, the United States Department of Veterans Affairs and the Alzheimer's Disease and Related Disorders Association to carry out research on Alzheimer's disease and related disorders. [Formerly 431.855]

431A.655 Control of fund. Oregon Health and Science University shall have access to and control of the moneys held in the Alzheimer's Disease Research Fund established under ORS 431A.650 but shall use such moneys only for the purposes specified in ORS 431A.650 (2). [Formerly 431.860]

MATERNAL MENTAL HEALTH

431A.675 Maternal Mental Health Patient and Provider Education Program; informational materials. (1) The Maternal Mental Health Patient and Provider Education Program is created in the Oregon Health Authority. The goal of the program is to identify and address maternal mental health disorders and to prevent the associated long-term negative outcomes from the disorders that result for women, children and families.

(2) The authority shall develop informational materials for health care providers who serve pregnant and postpartum patients, including patients who have experienced a post-pregnancy loss. The informational materials must be based on the recommendations made in the report of the work group on maternal mental health disorders pursuant to section 1, chapter 624, Oregon Laws 2009.

(3) The authority shall post the informational materials developed under subsection (2) of this section to the authority's website to educate the public about maternal mental health disorders. [Formerly 431.862]

431A.680 Dissemination of informational materials. (1) Physicians, nurse midwives, naturopathic physicians and other licensed health care professionals who provide prenatal and postnatal care to patients may provide to each patient, and family members of the patient, if appropriate, the informational materials published by the Oregon Health Authority under ORS 431A.675 or other maternal mental health education materials that are approved by the authority.

(2) Hospitals and other health care facilities that provide maternity care may give postnatal and post-pregnancy loss patients, and family members of the patients, if appropriate, prior to the discharge of the patient, the informational materials published by the authority under ORS 431A.675 or other maternal mental health education materials that are approved by the authority. [Formerly 431.864; 2017 c.356 §60]

431A.685 Funding. The Oregon Health Authority is authorized to apply for federal grants that are available under 42 U.S.C. 280g-11, 711 and 712 or any other appropriate federal funding source, and may solicit private gifts, grants or donations to carry out

the provisions of ORS 431A.675. [Formerly 431.866]

Note: Section 4, chapter 220, Oregon Laws 2011, provides:

Sec. 4. (1) ORS 431.862 [renumbered 431A.675] and 431.864 [renumbered 431A.680] become operative on the date that the Office of the Legislative Counsel receives written notice from the Oregon Health Authority indicating that the authority has received an amount of moneys under ORS 431.866 [renumbered 431A.685] that is sufficient to carry out the provisions of ORS 431.862.

(2) The authority may take the actions described in ORS 431.866 before the operative date specified in subsection (1) of this section to obtain the moneys necessary to carry out the provisions of ORS 431.862.

(3) Until the operative date specified in subsection (1) of this section, the authority shall report on the actions taken by the authority pursuant to ORS 431.866 to the Joint Committee on Ways and Means at least once during an odd-numbered year regular session of the Legislative Assembly. [2011 c.220 §4; 2012 c.107 §4]

ADRENAL INSUFFICIENCY

431A.700 Oregon Health Authority to disseminate information. (1) The Oregon Health Authority shall compile information on the following:

(a) The dangers associated with adrenal insufficiency;

(b) How to identify a person suffering an adrenal crisis; and

(c) The types of medications that treat adrenal insufficiency.

(2) The authority shall disseminate the information described in subsection (1) of this section to health care professionals and the public for the purpose of educating health care professionals and the public about adrenal insufficiency. The authority may disseminate the information through print or electronic publications, through video productions or by any other method determined to be cost-effective by the authority.

(3) In disseminating the information described in subsection (1) of this section, the authority shall consider the most effective means of providing the information to emergency medical services providers licensed under ORS chapter 682 and health care professionals who work in a hospital emergency department. [2015 c.501 §1]

DENTAL SEALANT PROGRAMS

431A.725 Qualifying schools; certification; rules. Using evidence-based data and best practices, the Oregon Health Authority shall promote oral health throughout this state by ensuring the availability of dental sealant programs to students attending school in this state. To fulfill its duties under this section, the authority shall:

(1) Screen, and ensure the provision of dental sealants to, appropriate student populations who attend an elementary school or a middle school in which at least 40 percent of all students attending the school are eligible to receive assistance under the United States Department of Agriculture's National School Lunch Program.

(2) Where appropriate, directly provide the services described in subsection (1) of this section.

(3) Where appropriate, oversee the provision of services described in subsection (1) of this section by local dental sealant programs.

(4) Adopt by rule procedures and qualifications for:

(a) The certification of local dental sealant programs;

(b) The recertification of local dental sealant programs;

(c) The training of personnel who provide services through local dental sealant programs; and

(d) Monitoring and collecting data from local dental sealant programs.

(5) Upon making a determination that a local dental sealant program is capable of providing the services described in subsection (1) of this section for one or more schools:

(a) Develop a plan for transitioning the school or schools from receiving the services directly from the authority to receiving the services from the local dental sealant program; and

(b) Assist the school or schools in making the transition.

(6) Ensure that all dental sealant data collected by the authority or a local dental sealant program is integrated with data sets included as part of the comprehensive health care information system described in ORS 442.466. [2015 c.791 §1]

STATE LABORATORY

431A.750 Examinations by state laboratory; rules; fees. (1) For the better protection of the public health, the laboratory of the Oregon Health Authority shall make examinations of water, milk, blood, secretions, excretions, tissues or environmental samples required by any state or local agency in Oregon.

(2) In accordance with the rules of the authority, the authority may make examinations of water, milk, blood, secretions, excretions, tissues or environmental samples for any:

(a) Country or territory;

(b) Federal agency;

(c) Agency of another state;

(d) Tribal agency; or

(e) Health care practitioner licensed in any country, territory or state.

(3) The authority may adopt rules to implement this section and collect fees for tests performed in the state public health laboratory, subject to approval by the Oregon Department of Administrative Services prior to adopting a new fee or changing an existing fee.

(4) All moneys collected under subsection (3) of this section shall be deposited in the Public Health Account to be used for expenses of the state public health laboratory. [Formerly 431.310]

RECOMBINANT DNA

431A.775 Definitions. As used in ORS 431A.775 and 431A.780:

(1) "Person" includes an individual, partnership, association, corporation, private institution or governmental entity.

(2) "Recombinant DNA research" means research on molecules that consist of segments of deoxyribonucleic acid from different organisms which are joined together in cell-free systems and which have the capacity to infect and replicate in some host cell, either autonomously or as an integrated part of the host genome. [Formerly 431.805]

431A.780 Recombinant DNA research to comply with federal guidelines. Persons carrying out recombinant DNA research must comply with the recombinant research guidelines adopted by the National Institutes of Health and any subsequent modifications thereof. [Formerly 431.810]

PRESCRIPTION MONITORING PROGRAM

(Definitions)

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

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

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

(3) "Health professional regulatory board" means a health professional regulatory board, as defined in ORS 676.160, the Nursing Home Administrators Board, the Board of Licensed Dietitians and the Behavior Analysis Regulatory Board.

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

(5) "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.

(6) "Pharmacy director" means a pharmacist employed by a pharmacy or system of pharmacies for the purposes of overseeing the operations of the pharmacy or system and ensuring the delivery of quality pharmaceutical care within the pharmacy or system.

(7) "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.

(8) "Prescription" has the meaning given that term in ORS 475.005.

(9) "Prescription drug" has the meaning given that term in ORS 689.005. [Formerly 431.960; 2017 c.101 §11; 2017 c.683 §11]

(Program)

431A.855 Establishment of program; rules; report to commission. (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) Prescription drugs dispensed by pharmacies licensed by the State Board of Pharmacy that are classified in schedules II through IV under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the board by rule under ORS 475.035; and

(B) Prescribed naloxone dispensed by pharmacies.

(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 operate and be accessible by practitioners and pharmacies 24 hours a day, seven days a week.

(C) The authority may contract with a state agency or private entity to ensure the effective operation of the electronic system.

(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; and

(g) Notifying a patient, before or when a drug classified in schedules II through IV is dispensed to the patient, about the prescription monitoring program and the entry of the prescription in the electronic system.

(3) The authority shall submit an annual report to the commission regarding the prescription monitoring program established under this section. [Formerly 431.962; 2017 c.683 §12]

431A.860 Duty of pharmacy to report to program; exceptions. (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) If the prescription drug is classified in schedules II through IV under the federal Controlled Substances Act, 21 U.S.C. 811 and 812, as modified by the State Board of Pharmacy by rule under ORS 475.035, the name, address, phone number, date of birth and sex of the patient for whom 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; and

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

(2)(a) 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;

(B) Collect or use Social Security numbers in the prescription monitoring program; or

(C) Disclose under ORS 431A.865 (2)(a) the sex of the patient for whom a drug was prescribed.

(b) The sex of the patient for whom a drug was prescribed may be disclosed only for the purpose of research or epidemiological study under ORS 431A.865 (2)(b).

(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 nonelectronic 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. [Formerly 431.964; 2017 c.683 §13]

Note: Section 26, chapter 683, Oregon Laws 2017, provides:

Sec. 26. Notwithstanding the operative date specified in section 27 of this 2017 Act [January 1, 2018], a pharmacy is not required to electronically report the phone number of the patient for whom a prescription drug was prescribed, as described in ORS 431A.860 (1), for prescription drugs dispensed before July 1, 2018. [2017 c.683 §26]

431A.865 Disclosure of information; corrections; records; immunity from liability. (1)(a) Except as provided under sub-

section (2) 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 (2)(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)(a) To the extent that the law or regulation is applicable to the prescription monitoring program, if a disclosure of prescription monitoring information, other than the sex of a patient for whom a drug was prescribed, complies 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, 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, the Oregon Health Authority shall disclose the information:

(A) 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 to whom the practitioner or pharmacist anticipates providing, is providing or has provided care.

(B) To a medical director or pharmacy director, or, if a medical director or pharmacy director authorizes the authority to disclose the information to a member of the medical director's or pharmacy director's staff, to a member of the medical director's or pharmacy director's staff. If a medical director or pharmacy director authorizes disclosing the information to a member of the medical director's or pharmacy director's staff under this subparagraph, the 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 subparagraph, a medical director must certify that the requested information is for the purposes of overseeing the operations of a hospital, health care clinic or system of hospitals or health care clinics and ensuring the delivery of quality health care within the hospital, clinic or system. To receive information under this subparagraph, or to authorize the receipt of information by a staff member under this subparagraph, a pharmacy director must certify that the requested information is for the purposes of overseeing the operations of a pharmacy or system of pharmacies and ensuring the delivery of quality pharmaceutical care within the 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 prescribed 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.

(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 shall disclose information relating to a patient 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.

(d)(A) A patient may request the authority to correct any information related to the patient 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.

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

(f) 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.

(3)(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.

(4) 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.

(5) 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.

(6)(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.

(7) 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.

(8) The authority shall, at regular intervals, ensure compliance of a health information technology system described in subsection (2) of this section with the privacy and security requirements and other criteria established by the authority under subsection (2) of this section. [Formerly 431.966; 2016 c.100 §1; 2017 c.151 §24; 2017 c.683 §14]

431A.866 Prescribing practices. The Oregon Health Authority shall coordinate with health professional regulatory boards to make resources available to practitioners regarding the best methods to change prescribing practices with respect to opioids and opiates and to incorporate alternative pain management options into prescribing practices. [2017 c.683 §21]

431A.867 Agreement for use of program information. (1) The Oregon Health Authority may require a person requesting prescription monitoring program information under ORS 431A.865 (2)(b) to enter into a data use agreement under which the person:

(a) Describes the proposed use for the information;

(b) Agrees to any terms and conditions imposed on transferring the information;

(c) Agrees to any limitations imposed on using the information;

(d) Agrees to any terms and conditions imposed on keeping the information; and

(e) Agrees to destroy the information after completing the proposed use for the information.

(2) In determining whether to enter into an agreement under this section, the authority shall:

(a) Evaluate the merits of the request for information;

(b) Determine whether the person making the request has the technical competence needed to meet any terms, conditions or limitations imposed under subsection (1) of this section and the ability to complete the proposed use for the information;

(c) If the proposed use for the information involves research, ensure that the proposed use has been approved by any involved institutional review board; and

(d) Consider any other factor that the authority determines is relevant.

(3) Using the factors described in subsection (2) of this section, the authority shall evaluate any agreement entered into under this section at least once per year for the purpose of determining whether to renew the agreement. [2017 c.683 §18]

431A.869 Sharing and use of program information with other states. The Oregon Health Authority may enter into agreements governing the sharing and use of information described in ORS 431A.860 (1) with the authorities of other states that administer prescription monitoring programs. An agreement entered into under this section must adhere to the disclosure limitations listed under ORS 431A.865 (2). An agreement entered into under this section may:

(1) Provide for the transmission of information between electronic systems, provided that any electronic system to which the Oregon Health Authority transmits information meets the confidentiality, security and privacy standards adopted by the authority under ORS 431A.855; or

(2) Provide for the transmission of information to practitioners or pharmacists licensed to practice in another state. [2017 c.683 §22]

431A.870 Duty of pharmacist to fill prescription. A pharmacist may not refuse to fill a valid prescription solely because the pharmacist cannot receive patient information from the prescription monitoring program established under ORS 431A.855 at the time the patient requests that the prescription be filled. [Formerly 431.968]

431A.875 Reports to health professional regulatory boards. If a practitioner or pharmacist authorized to obtain prescription information from the electronic system established under ORS 431A.855 discloses or uses information obtained from the electronic system in violation of ORS 431A.865, the Oregon Health Authority shall report the individual to the appropriate health professional regulatory board. [Formerly 431.970; 2017 c.683 §15]

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

(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.

(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 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 $25 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 Electronic Prescription Monitoring Fund established in ORS 431A.885.

(4) A board may adopt rules necessary for the administration of this section. [Formerly 431.972; 2017 c.683 §16]

431A.885 Electronic Prescription Monitoring Fund. (1) The Electronic Prescription Monitoring Fund is established in the State Treasury, separate and distinct from the General Fund. The Electronic Prescription Monitoring Fund consists of moneys transmitted to the fund under ORS 431A.880 and any other moneys deposited in accordance with law. Interest earned by the fund shall be credited to the fund. Moneys in the fund are continuously appropriated to the Oregon Health Authority for the purpose of carrying out the provisions of ORS 431A.855 to 431A.900.

(2) The authority may accept grants, donations, gifts or moneys from any source for deposit into the fund established by this section. [Formerly 431.974]

(Commission)

431A.890 Prescription Monitoring Program Advisory Commission; purposes; members. (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 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 addiction services; and

(j) Two members of the public, one of whom must be an expert in information technology. [Formerly 431.976; 2017 c.409 §13]

431A.895 Term; meetings; rules; quorum; expenses. (1) The term of office of each member of the Prescription Monitoring Program Advisory Commission is four years, but a member serves at the pleasure of the Oregon Health Authority. Before the expiration of the term of a member, the authority shall appoint a successor whose term begins on July 1 next following. A member is eligible for reappointment. If there is a vacancy for any cause, the authority shall make an appointment to become immediately effective.

(2) The commission shall elect one of its members to serve as chairperson.

(3) The commission shall meet at least once annually at a time and place specified by the chairperson of the commission. The commission may meet at other times and places specified by the call of the chairper-

son or of a majority of the members of the commission.

(4) The commission may adopt rules necessary for the operation of the commission.

(5) A majority of the members of the commission constitutes a quorum for the transaction of business.

(6) Official action by the commission requires the approval of a majority of the members of the commission.

(7) The authority shall provide staff support to the commission.

(8) Members of the commission are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495. Claims for expenses incurred in performing functions of the commission shall be paid out of funds appropriated to the authority for that purpose.

(9) All agencies of state government, as defined in ORS 174.111, are directed to assist the commission in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the commission consider necessary to perform their duties. [Formerly 431.978]

431A.896 Prescription Monitoring Program Prescribing Practices Review Subcommittee. (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; and

(C) Have at least five years of experience prescribing drugs classified in schedules II through IV.

(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. [2017 c.683 §20]

431A.898 Practitioner training. (1) Not less than once per year, the Oregon Health Authority, in consultation with the Prescription Monitoring Program Advisory Commission created under ORS 431A.890 and the Prescription Monitoring Program Prescribing Practices Review Subcommittee established under ORS 431A.896, shall develop, through the use of prescription monitoring information, criteria by which a practitioner may be required to receive education or training on the prescribing of opioids or opiates.

(2) Criteria developed under subsection (1) of this section must include:

(a) Prescribing a high volume of opioids or opiates classified in schedules II and III;

(b) Prescribing an above-average amount of doses of opioids or opiates classified in schedules II and III to a high number of patients; and

(c) Simultaneously prescribing opioids or opiates classified in schedules II and III with other drugs classified in schedules II and III.

(3) In developing the criteria developed under subsection (1) of this section, the authority must take into consideration the total quantity and volume of opioids and opiates classified in schedules II and III prescribed by each practitioner.

(4) The subcommittee may review, through the use of prescription monitoring information that does not identify a patient, a practitioner's prescribing history for the three years immediately preceding the date of the review to determine whether a practitioner meets the criteria developed under subsection (1) of this section.

(5) After performing the review described in subsection (4) of this section, the subcommittee may direct the authority to provide to a practitioner who meets the criteria developed under subsection (1) of this section educational information about prescribing opioids and opiates, as determined appropriate by the authority.

(6) Prescription monitoring information used for purposes of this section and the data created through the use of prescription monitoring information pursuant to this section:

(a) Are confidential and not subject to public disclosure under ORS 192.311 to 192.478; and

(b) Are not admissible as evidence in a civil or criminal proceeding. [2017 c.683 §19]

(Penalty)

431A.900 Civil penalty for violation of ORS 431A.855 to 431A.900. (1) In addition to any other penalty provided by law, the Attorney General may impose a civil penalty not to exceed $10,000 for each violation of ORS 431A.860, 431A.865 or 431A.870. Each improper release of information from the prescription monitoring program in violation of ORS 431A.865 is a separate violation.

(2) Civil penalties under this section shall be imposed as provided in ORS 183.745.

(3) The Department of Justice may adopt rules as required to carry out the provisions of this section.

(4) Penalties recovered under this section shall be paid into the State Treasury and credited to the General Fund. [Formerly 431.992]