

A-Engrossed
Senate Bill 278

Ordered by the Senate March 14
Including Senate Amendments dated March 14

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SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Identifies persons to act as personal representative for purposes relating to use and disclosure of personal information.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to personal representatives; creating new provisions; amending ORS 192.519 and 746.600;
3 and declaring an emergency.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1.** ORS 192.519 is amended to read:

6 192.519. As used in ORS 192.518 to 192.524:

7 (1) "Authorization" means a document written in plain language that contains at least the fol-
8 lowing:

9 (a) A description of the information to be used or disclosed that identifies the information in a
10 specific and meaningful way;

11 (b) The name or other specific identification of the person or persons authorized to make the
12 requested use or disclosure;

13 (c) The name or other specific identification of the person or persons to whom the covered entity
14 may make the requested use or disclosure;

15 (d) A description of each purpose of the requested use or disclosure, including but not limited
16 to a statement that the use or disclosure is at the request of the individual;

17 (e) An expiration date or an expiration event that relates to the individual or the purpose of the
18 use or disclosure;

19 (f) The signature of the individual or personal representative of the individual and the date;

20 (g) A description of the authority of the personal representative, if applicable; and

21 (h) Statements adequate to place the individual on notice of the following:

22 (A) The individual's right to revoke the authorization in writing;

23 (B) The exceptions to the right to revoke the authorization;

24 (C) The ability or inability to condition treatment, payment, enrollment or eligibility for benefits
25 on whether the individual signs the authorization; and

26 (D) The potential for information disclosed pursuant to the authorization to be subject to

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 redisclosure by the recipient and no longer protected.
- 2 (2) “Covered entity” means:
- 3 (a) A state health plan;
- 4 (b) A health insurer;
- 5 (c) A health care provider that transmits any health information in electronic form to carry out
- 6 financial or administrative activities in connection with a transaction covered by ORS 192.518 to
- 7 192.524; or
- 8 (d) A health care clearinghouse.
- 9 (3) “Health care” means care, services or supplies related to the health of an individual.
- 10 (4) “Health care operations” includes but is not limited to:
- 11 (a) Quality assessment, accreditation, auditing and improvement activities;
- 12 (b) Case management and care coordination;
- 13 (c) Reviewing the competence, qualifications or performance of health care providers or health
- 14 insurers;
- 15 (d) Underwriting activities;
- 16 (e) Arranging for legal services;
- 17 (f) Business planning;
- 18 (g) Customer services;
- 19 (h) Resolving internal grievances;
- 20 (i) Creating de-identified information; and
- 21 (j) Fundraising.
- 22 (5) “Health care provider” includes but is not limited to:
- 23 (a) A psychologist, occupational therapist, clinical social worker, professional counselor or
- 24 marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist,
- 25 occupational therapist, clinical social worker, professional counselor or marriage and family thera-
- 26 pist;
- 27 (b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed
- 28 under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician
- 29 assistant or acupuncturist;
- 30 (c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of
- 31 the nurse or nursing home administrator;
- 32 (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- 33 (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental
- 34 hygienist or denturist;
- 35 (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee
- 36 of the speech-language pathologist or audiologist;
- 37 (g) An emergency medical technician certified under ORS chapter 682;
- 38 (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- 39 (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
- 40 physician;
- 41 (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
- 42 physician;
- 43 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
- 44 therapist;
- 45 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct

- 1 entry midwife;
- 2 (m) A physical therapist licensed under ORS 688.010 to 688.220 or an employee of the physical
3 therapist;
- 4 (n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the
5 radiologic technologist;
- 6 (o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the
7 respiratory care practitioner;
- 8 (p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 9 (q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
- 10 (r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
11 service practitioner;
- 12 (s) A health care facility as defined in ORS 442.015;
- 13 (t) A home health agency as defined in ORS 443.005;
- 14 (u) A hospice program as defined in ORS 443.850;
- 15 (v) A clinical laboratory as defined in ORS 438.010;
- 16 (w) A pharmacy as defined in ORS 689.005;
- 17 (x) A diabetes self-management program as defined in ORS 743.694; and
- 18 (y) Any other person or entity that furnishes, bills for or is paid for health care in the normal
19 course of business.
- 20 (6) "Health information" means any oral or written information in any form or medium that:
- 21 (a) Is created or received by a covered entity, a public health authority, an employer, a life
22 insurer, a school, a university or a health care provider that is not a covered entity; and
- 23 (b) Relates to:
- 24 (A) The past, present or future physical or mental health or condition of an individual;
- 25 (B) The provision of health care to an individual; or
- 26 (C) The past, present or future payment for the provision of health care to an individual.
- 27 (7) "Health insurer" means:
- 28 (a) An insurer as defined in ORS 731.106 who offers:
- 29 (A) A health benefit plan as defined in ORS 743.730;
- 30 (B) A short term health insurance policy, the duration of which does not exceed six months in-
31 cluding renewals;
- 32 (C) A student health insurance policy;
- 33 (D) A Medicare supplemental policy; or
- 34 (E) A dental only policy.
- 35 (b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board
36 under ORS 735.600 to 735.650.
- 37 (8) "Individually identifiable health information" means any oral or written health information
38 in any form or medium that is:
- 39 (a) Created or received by a covered entity, an employer or a health care provider that is not
40 a covered entity; and
- 41 (b) Identifiable to an individual, including demographic information that identifies the individual,
42 or for which there is a reasonable basis to believe the information can be used to identify an indi-
43 vidual, and that relates to:
- 44 (A) The past, present or future physical or mental health or condition of an individual;
- 45 (B) The provision of health care to an individual; or

1 (C) The past, present or future payment for the provision of health care to an individual.

2 (9) "Payment" includes but is not limited to:

3 (a) Efforts to obtain premiums or reimbursement;

4 (b) Determining eligibility or coverage;

5 (c) Billing activities;

6 (d) Claims management;

7 (e) Reviewing health care to determine medical necessity;

8 (f) Utilization review; and

9 (g) Disclosures to consumer reporting agencies.

10 (10) "Personal representative" includes but is not limited to:

11 (a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with
12 authority to make medical and health care decisions;

13 (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or a rep-
14 resentative under ORS 127.700 to 127.737 to make health care decisions or mental health treatment
15 decisions; *[and]*

16 (c) A person appointed as a personal representative under ORS chapter 113[.]; **and**

17 **(d) A person described in section 3 of this 2005 Act.**

18 (11)(a) "Protected health information" means individually identifiable health information that is
19 maintained or transmitted in any form of electronic or other medium by a covered entity.

20 (b) "Protected health information" does not mean individually identifiable health information in:

21 (A) Education records covered by the federal Family Educational Rights and Privacy Act (20
22 U.S.C. 1232g);

23 (B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

24 (C) Employment records held by a covered entity in its role as employer.

25 (12) "State health plan" means:

26 (a) The state Medicaid program;

27 (b) The Oregon State Children's Health Insurance Program; or

28 (c) The Family Health Insurance Assistance Program established in ORS 735.720 to 735.740.

29 (13) "Treatment" includes but is not limited to:

30 (a) The provision, coordination or management of health care; and

31 (b) Consultations and referrals between health care providers.

32 **SECTION 2. Section 3 of this 2005 Act is added to and made a part of ORS 192.518 to**
33 **192.524.**

34 **SECTION 3. If no person has been appointed as a personal representative under ORS**
35 **chapter 113 or a person appointed as a personal representative under ORS chapter 113 has**
36 **been discharged, the personal representative of a deceased individual shall be the first of the**
37 **following persons, in the following order, who can be located upon reasonable effort by the**
38 **covered entity and who is willing to serve as the personal representative:**

39 **(1) A person appointed as guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with**
40 **authority to make medical and health care decisions at the time of the individual's death.**

41 **(2) The individual's spouse.**

42 **(3) An adult designated in writing by the persons listed in this section, if no person listed**
43 **in this section objects to the designation.**

44 **(4) A majority of the adult children of the individual who can be located.**

45 **(5) Either parent of the individual or an individual acting in loco parentis to the individ-**

1 ual.

2 (6) A majority of the adult siblings of the individual who can be located.

3 (7) Any adult relative or adult friend.

4 **SECTION 4.** Section 5 of this 2005 Act is added to and made a part of ORS 746.600 to
5 746.690.

6 **SECTION 5.** If no person has been appointed as a personal representative under ORS
7 chapter 113 or a person appointed as a personal representative under ORS chapter 113 has
8 been discharged, the personal representative of a deceased individual shall be the first of the
9 following persons, in the following order, who may be located upon reasonable effort by the
10 covered entity and who is willing to serve as the personal representative:

11 (1) A person appointed as guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with
12 authority to make medical and health care decisions at the time of the individual's death.

13 (2) The individual's spouse.

14 (3) An adult designated in writing by the persons listed in this section, if no person listed
15 in this section objects to the designation.

16 (4) A majority of the adult children of the individual who can be located.

17 (5) Either parent of the individual or an individual acting in loco parentis to the individ-
18 ual.

19 (6) A majority of the adult siblings of the individual who can be located.

20 (7) Any adult relative or adult friend.

21 **SECTION 6.** ORS 746.600 is amended to read:

22 746.600. As used in ORS 746.600 to 746.690:

23 (1)(a) "Adverse underwriting decision" means any of the following actions with respect to in-
24 surance transactions involving insurance coverage that is individually underwritten:

25 (A) A declination of insurance coverage.

26 (B) A termination of insurance coverage.

27 (C) Failure of an insurance producer to apply for insurance coverage with a specific insurer that
28 the insurance producer represents and that is requested by an applicant.

29 (D) In the case of life or health insurance coverage, an offer to insure at higher than standard
30 rates.

31 (E) In the case of individual health insurance coverage, an offer to insure the applicant under
32 a health benefit plan other than the health benefit plan initially elected by the applicant.

33 (F) In the case of individual health insurance coverage, an offer to insure the applicant under
34 a health benefit plan that imposes a waiver of coverage for one or more preexisting conditions for
35 a period of time that is greater than six months and less than 24 months following the applicant's
36 effective date of coverage.

37 (G) In the case of [*other kinds of*] insurance coverage **other than life or health insurance**
38 **coverage:**

39 (i) Placement by an insurer or insurance producer of a risk with a residual market mechanism,
40 an unauthorized insurer or an insurer that specializes in substandard risks.

41 (ii) The charging of a higher rate on the basis of information that differs from that which the
42 applicant or policyholder furnished.

43 (iii) An increase in any charge imposed by the insurer for any personal insurance in connection
44 with the underwriting of insurance. For purposes of this sub-subparagraph, the imposition of a ser-
45 vice fee is not a charge.

1 (b) "Adverse underwriting decision" does not mean any of the following actions, but the insurer
2 or insurance producer responsible for the occurrence of the action must nevertheless provide the
3 applicant or policyholder with the specific reason or reasons for the occurrence:

4 (A) The termination of an individual policy form on a class or statewide basis.

5 (B) A declination of insurance coverage solely because the coverage is not available on a class
6 or statewide basis.

7 (C) The rescission of a policy.

8 (2) "Affiliate of" a specified person or "person affiliated with" a specified person means a person
9 who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is
10 under common control with, the person specified.

11 (3) "Applicant" means a person who seeks to contract for insurance coverage, other than a
12 person seeking group insurance coverage that is not individually underwritten.

13 (4) "Consumer" means an individual, or the personal representative of the individual, who seeks
14 to obtain, obtains or has obtained one or more insurance products or services from a licensee that
15 are to be used primarily for personal, family or household purposes, and about whom the licensee
16 has personal information.

17 (5) "Consumer report" means any written, oral or other communication of information bearing
18 on a natural person's creditworthiness, credit standing, credit capacity, character, general reputa-
19 tion, personal characteristics or mode of living that is used or expected to be used in connection
20 with an insurance transaction.

21 (6) "Consumer reporting agency" means a person that, for monetary fees or dues, or on a co-
22 operative or nonprofit basis:

23 (a) Regularly engages, in whole or in part, in assembling or preparing consumer reports;

24 (b) Obtains information primarily from sources other than insurers; and

25 (c) Furnishes consumer reports to other persons.

26 (7) "Control" means, and the terms "controlled by" or "under common control with" refer to,
27 the possession, directly or indirectly, of the power to direct or cause the direction of the manage-
28 ment and policies of a person, whether through the ownership of voting securities, by contract other
29 than a commercial contract for goods or nonmanagement services, or otherwise, unless the power
30 of the person is the result of a corporate office held in, or an official position held with, the con-
31 trolled person.

32 (8) "Covered entity" means:

33 (a) A health insurer;

34 (b) A health care provider that transmits any health information in electronic form to carry out
35 financial or administrative activities in connection with a transaction covered by ORS 746.607 or
36 by rules adopted under ORS 746.608; or

37 (c) A health care clearinghouse.

38 (9) "Credit history" means any written or other communication of any information by a con-
39 sumer reporting agency that:

40 (a) Bears on a consumer's creditworthiness, credit standing or credit capacity; and

41 (b) Is used or expected to be used, or collected in whole or in part, as a factor in determining
42 eligibility, premiums or rates for personal insurance.

43 (10) "Customer" means a consumer who has a continuing relationship with a licensee under
44 which the licensee provides one or more insurance products or services to the consumer that are
45 to be used primarily for personal, family or household purposes.

- 1 (11) “Declination of insurance coverage” or “decline coverage” means a denial, in whole or in
2 part, by an insurer or insurance producer of an application for requested insurance coverage.
- 3 (12) “Health care” means care, services or supplies related to the health of an individual.
- 4 (13) “Health care operations” includes but is not limited to:
- 5 (a) Quality assessment, accreditation, auditing and improvement activities;
- 6 (b) Case management and care coordination;
- 7 (c) Reviewing the competence, qualifications or performance of health care providers or health
8 insurers;
- 9 (d) Underwriting activities;
- 10 (e) Arranging for legal services;
- 11 (f) Business planning;
- 12 (g) Customer services;
- 13 (h) Resolving internal grievances;
- 14 (i) Creating de-identified information; and
- 15 (j) Fundraising.
- 16 (14) “Health care provider” includes but is not limited to:
- 17 (a) A psychologist, occupational therapist, clinical social worker, professional counselor or
18 marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist,
19 occupational therapist, clinical social worker, professional counselor or marriage and family thera-
20 pist;
- 21 (b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed
22 under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician
23 assistant or acupuncturist;
- 24 (c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of
25 the nurse or nursing home administrator;
- 26 (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- 27 (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental
28 hygienist or denturist;
- 29 (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee
30 of the speech-language pathologist or audiologist;
- 31 (g) An emergency medical technician certified under ORS chapter 682;
- 32 (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- 33 (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
34 physician;
- 35 (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
36 physician;
- 37 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
38 therapist;
- 39 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
40 entry midwife;
- 41 (m) A physical therapist licensed under ORS 688.010 to 688.220 or an employee of the physical
42 therapist;
- 43 (n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the
44 radiologic technologist;
- 45 (o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the

- 1 respiratory care practitioner;
- 2 (p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 3 (q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
- 4 (r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
5 service practitioner;
- 6 (s) A health care facility as defined in ORS 442.015;
- 7 (t) A home health agency as defined in ORS 443.005;
- 8 (u) A hospice program as defined in ORS 443.850;
- 9 (v) A clinical laboratory as defined in ORS 438.010;
- 10 (w) A pharmacy as defined in ORS 689.005;
- 11 (x) A diabetes self-management program as defined in ORS 743.694; and
- 12 (y) Any other person or entity that furnishes, bills for or is paid for health care in the normal
13 course of business.
- 14 (15) "Health information" means any oral or written information in any form or medium that:
- 15 (a) Is created or received by a covered entity, a public health authority, a life insurer, a school,
16 a university or a health care provider that is not a covered entity; and
- 17 (b) Relates to:
- 18 (A) The past, present or future physical or mental health or condition of an individual;
- 19 (B) The provision of health care to an individual; or
- 20 (C) The past, present or future payment for the provision of health care to an individual.
- 21 (16) "Health insurer" means:
- 22 (a) An insurer who offers:
- 23 (A) A health benefit plan as defined in ORS 743.730;
- 24 (B) A short term health insurance policy, the duration of which does not exceed six months in-
25 cluding renewals;
- 26 (C) A student health insurance policy;
- 27 (D) A medicare supplemental policy; or
- 28 (E) A dental only policy.
- 29 (b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board
30 under ORS 735.600 to 735.650.
- 31 (17) "Individual" means a natural person who:
- 32 (a) In the case of life or health insurance, is a past, present or proposed principal insured or
33 certificate holder;
- 34 (b) In the case of other kinds of insurance, is a past, present or proposed named insured or
35 certificate holder;
- 36 (c) Is a past, present or proposed policyowner;
- 37 (d) Is a past or present applicant;
- 38 (e) Is a past or present claimant; or
- 39 (f) Derived, derives or is proposed to derive insurance coverage under an insurance policy or
40 certificate that is subject to ORS 746.600 to 746.690.
- 41 (18) "Individually identifiable health information" means any oral or written health information
42 that is:
- 43 (a) Created or received by a covered entity or a health care provider that is not a covered en-
44 tity; and
- 45 (b) Identifiable to an individual, including demographic information that identifies the individual,

1 or for which there is a reasonable basis to believe the information can be used to identify an indi-
2 vidual, and that relates to:

3 (A) The past, present or future physical or mental health or condition of an individual;

4 (B) The provision of health care to an individual; or

5 (C) The past, present or future payment for the provision of health care to an individual.

6 (19) "Institutional source" means a person or governmental entity that provides information
7 about an individual to an insurer, insurance producer or insurance-support organization, other than:

8 (a) An insurance producer;

9 (b) The individual who is the subject of the information; or

10 (c) A natural person acting in a personal capacity rather than in a business or professional ca-
11 pacity.

12 (20) "Insurance producer" or "producer" means a person licensed by the Director of the De-
13 partment of Consumer and Business Services as a resident or nonresident insurance producer.

14 (21) "Insurance score" means a number or rating that is derived from an algorithm, computer
15 application, model or other process that is based in whole or in part on credit history.

16 (22)(a) "Insurance-support organization" means a person who regularly engages, in whole or in
17 part, in assembling or collecting information about natural persons for the primary purpose of pro-
18 viding the information to an insurer or insurance producer for insurance transactions, including:

19 (A) The furnishing of consumer reports to an insurer or insurance producer for use in con-
20 nection with insurance transactions; and

21 (B) The collection of personal information from insurers, insurance producers or other
22 insurance-support organizations for the purpose of detecting or preventing fraud, material misrep-
23 resentation or material nondisclosure in connection with insurance underwriting or insurance claim
24 activity.

25 (b) "Insurance-support organization" does not mean insurers, insurance producers, governmental
26 institutions or health care providers.

27 (23) "Insurance transaction" means any transaction that involves insurance primarily for per-
28 sonal, family or household needs rather than business or professional needs and that entails:

29 (a) The determination of an individual's eligibility for an insurance coverage, benefit or payment;

30 or

31 (b) The servicing of an insurance application, policy or certificate.

32 (24) "Insurer" has the meaning given that term in ORS 731.106.

33 (25) "Investigative consumer report" means a consumer report, or portion of a consumer report,
34 for which information about a natural person's character, general reputation, personal character-
35 istics or mode of living is obtained through personal interviews with the person's neighbors, friends,
36 associates, acquaintances or others who may have knowledge concerning such items of information.

37 (26) "Licensee" means an insurer, insurance producer or other person authorized or required to
38 be authorized, or licensed or required to be licensed, pursuant to the Insurance Code.

39 (27) "Nonaffiliated third party" means any person except:

40 (a) An affiliate of a licensee;

41 (b) A person that is employed jointly by a licensee and by a person that is not an affiliate of the
42 licensee; and

43 (c) As designated by the director by rule.

44 (28) "Payment" includes but is not limited to:

45 (a) Efforts to obtain premiums or reimbursement;

- 1 (b) Determining eligibility or coverage;
- 2 (c) Billing activities;
- 3 (d) Claims management;
- 4 (e) Reviewing health care to determine medical necessity;
- 5 (f) Utilization review; and
- 6 (g) Disclosures to consumer reporting agencies.

7 (29)(a) "Personal financial information" means:

8 (A) Information that is identifiable with an individual, gathered in connection with an insurance
9 transaction from which judgments can be made about the individual's character, habits, avocations,
10 finances, occupations, general reputation, credit or any other personal characteristics; or

11 (B) An individual's name, address and policy number or similar form of access code for the in-
12 dividual's policy.

13 (b) "Personal financial information" does not mean information that a licensee has a reasonable
14 basis to believe is lawfully made available to the general public from federal, state or local gov-
15 ernment records, widely distributed media or disclosures to the public that are required by federal,
16 state or local law.

17 (30) "Personal information" means:

- 18 (a) Personal financial information;
- 19 (b) Individually identifiable health information; or
- 20 (c) Protected health information.

21 (31) "Personal insurance" means the following types of insurance products or services that are
22 to be used primarily for personal, family or household purposes:

- 23 (a) Private passenger automobile coverage;
- 24 (b) Homeowners, mobile homeowners, manufactured homeowners, condominium owners and
25 renters coverage;
- 26 (c) Personal dwelling property coverage;
- 27 (d) Personal liability and theft coverage, including excess personal liability and theft coverage;
- 28 and
- 29 (e) Personal inland marine coverage.

30 (32) "Personal representative" includes but is not limited to:

- 31 (a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with
32 authority to make medical and health care decisions;
- 33 (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or 127.700
34 to 127.737 to make health care decisions or mental health treatment decisions; *[and]*
- 35 (c) A person appointed as a personal representative under ORS chapter 113[.]; **and**
- 36 **(d) A person described in section 5 of this 2005 Act.**

37 (33) "Policyholder" means a person who:

- 38 (a) In the case of individual policies of life or health insurance, is a current policyowner;
- 39 (b) In the case of individual policies of other kinds of insurance, is currently a named insured;
- 40 or
- 41 (c) In the case of group policies of insurance under which coverage is individually underwritten,
42 is a current certificate holder.

43 (34) "Pretext interview" means an interview wherein the interviewer, in an attempt to obtain
44 personal information about a natural person, does one or more of the following:

- 45 (a) Pretends to be someone the interviewer is not.

1 (b) Pretends to represent a person the interviewer is not in fact representing.

2 (c) Misrepresents the true purpose of the interview.

3 (d) Refuses upon request to identify the interviewer.

4 (35) "Privileged information" means information that is identifiable with an individual and that:

5 (a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the in-
6 dividual; and

7 (b) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits
8 or a civil or criminal proceeding involving the individual.

9 (36)(a) "Protected health information" means individually identifiable health information that is
10 transmitted or maintained in any form of electronic or other medium by a covered entity.

11 (b) "Protected health information" does not mean individually identifiable health information in:

12 (A) Education records covered by the federal Family Educational Rights and Privacy Act (20
13 U.S.C. 1232g);

14 (B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

15 (C) Employment records held by a covered entity in its role as employer.

16 (37) "Residual market mechanism" means an association, organization or other entity involved
17 in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the Insurance
18 Code relating to insurance applicants who are unable to procure insurance through normal insur-
19 ance markets.

20 (38) "Termination of insurance coverage" or "termination of an insurance policy" means either
21 a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason other than
22 the failure of a premium to be paid as required by the policy.

23 (39) "Treatment" includes but is not limited to:

24 (a) The provision, coordination or management of health care; and

25 (b) Consultations and referrals between health care providers.

26 **SECTION 7.** ORS 746.600, as amended by section 4, chapter 590, Oregon Laws 2003, and section
27 7, chapter 599, Oregon Laws 2003, is amended to read:

28 746.600. As used in ORS 746.600 to 746.690:

29 (1)(a) "Adverse underwriting decision" means any of the following actions with respect to in-
30 surance transactions involving insurance coverage that is individually underwritten:

31 (A) A declination of insurance coverage.

32 (B) A termination of insurance coverage.

33 (C) Failure of an insurance producer to apply for insurance coverage with a specific insurer that
34 the insurance producer represents and that is requested by an applicant.

35 (D) In the case of life or health insurance coverage, an offer to insure at higher than standard
36 rates.

37 (E) In the case of [*other kinds of*] insurance coverage **other than life or health insurance**
38 **coverage:**

39 (i) Placement by an insurer or insurance producer of a risk with a residual market mechanism,
40 an unauthorized insurer or an insurer that specializes in substandard risks.

41 (ii) The charging of a higher rate on the basis of information that differs from that which the
42 applicant or policyholder furnished.

43 (iii) An increase in any charge imposed by the insurer for any personal insurance in connection
44 with the underwriting of insurance. For purposes of this sub-subparagraph, the imposition of a ser-
45 vice fee is not a charge.

1 (b) “Adverse underwriting decision” does not mean any of the following actions, but the insurer
2 or insurance producer responsible for the occurrence of the action must nevertheless provide the
3 applicant or policyholder with the specific reason or reasons for the occurrence:

4 (A) The termination of an individual policy form on a class or statewide basis.

5 (B) A declination of insurance coverage solely because the coverage is not available on a class
6 or statewide basis.

7 (C) The rescission of a policy.

8 (2) “Affiliate of” a specified person or “person affiliated with” a specified person means a person
9 who directly, or indirectly, through one or more intermediaries, controls, or is controlled by, or is
10 under common control with, the person specified.

11 (3) “Applicant” means a person who seeks to contract for insurance coverage, other than a
12 person seeking group insurance coverage that is not individually underwritten.

13 (4) “Consumer” means an individual, or the personal representative of the individual, who seeks
14 to obtain, obtains or has obtained one or more insurance products or services from a licensee that
15 are to be used primarily for personal, family or household purposes, and about whom the licensee
16 has personal information.

17 (5) “Consumer report” means any written, oral or other communication of information bearing
18 on a natural person’s creditworthiness, credit standing, credit capacity, character, general reputa-
19 tion, personal characteristics or mode of living that is used or expected to be used in connection
20 with an insurance transaction.

21 (6) “Consumer reporting agency” means a person that, for monetary fees or dues, or on a co-
22 operative or nonprofit basis:

23 (a) Regularly engages, in whole or in part, in assembling or preparing consumer reports;

24 (b) Obtains information primarily from sources other than insurers; and

25 (c) Furnishes consumer reports to other persons.

26 (7) “Control” means, and the terms “controlled by” or “under common control with” refer to,
27 the possession, directly or indirectly, of the power to direct or cause the direction of the manage-
28 ment and policies of a person, whether through the ownership of voting securities, by contract other
29 than a commercial contract for goods or nonmanagement services, or otherwise, unless the power
30 of the person is the result of a corporate office held in, or an official position held with, the con-
31 trolled person.

32 (8) “Covered entity” means:

33 (a) A health insurer;

34 (b) A health care provider that transmits any health information in electronic form to carry out
35 financial or administrative activities in connection with a transaction covered by ORS 746.607 or
36 by rules adopted under ORS 746.608; or

37 (c) A health care clearinghouse.

38 (9) “Credit history” means any written or other communication of any information by a con-
39 sumer reporting agency that:

40 (a) Bears on a consumer’s creditworthiness, credit standing or credit capacity; and

41 (b) Is used or expected to be used, or collected in whole or in part, as a factor in determining
42 eligibility, premiums or rates for personal insurance.

43 (10) “Customer” means a consumer who has a continuing relationship with a licensee under
44 which the licensee provides one or more insurance products or services to the consumer that are
45 to be used primarily for personal, family or household purposes.

- 1 (11) “Declination of insurance coverage” or “decline coverage” means a denial, in whole or in
2 part, by an insurer or insurance producer of an application for requested insurance coverage.
- 3 (12) “Health care” means care, services or supplies related to the health of an individual.
- 4 (13) “Health care operations” includes but is not limited to:
- 5 (a) Quality assessment, accreditation, auditing and improvement activities;
- 6 (b) Case management and care coordination;
- 7 (c) Reviewing the competence, qualifications or performance of health care providers or health
8 insurers;
- 9 (d) Underwriting activities;
- 10 (e) Arranging for legal services;
- 11 (f) Business planning;
- 12 (g) Customer services;
- 13 (h) Resolving internal grievances;
- 14 (i) Creating de-identified information; and
- 15 (j) Fundraising.
- 16 (14) “Health care provider” includes but is not limited to:
- 17 (a) A psychologist, occupational therapist, clinical social worker, professional counselor or
18 marriage and family therapist licensed under ORS chapter 675 or an employee of the psychologist,
19 occupational therapist, clinical social worker, professional counselor or marriage and family thera-
20 pist;
- 21 (b) A physician, podiatric physician and surgeon, physician assistant or acupuncturist licensed
22 under ORS chapter 677 or an employee of the physician, podiatric physician and surgeon, physician
23 assistant or acupuncturist;
- 24 (c) A nurse or nursing home administrator licensed under ORS chapter 678 or an employee of
25 the nurse or nursing home administrator;
- 26 (d) A dentist licensed under ORS chapter 679 or an employee of the dentist;
- 27 (e) A dental hygienist or denturist licensed under ORS chapter 680 or an employee of the dental
28 hygienist or denturist;
- 29 (f) A speech-language pathologist or audiologist licensed under ORS chapter 681 or an employee
30 of the speech-language pathologist or audiologist;
- 31 (g) An emergency medical technician certified under ORS chapter 682;
- 32 (h) An optometrist licensed under ORS chapter 683 or an employee of the optometrist;
- 33 (i) A chiropractic physician licensed under ORS chapter 684 or an employee of the chiropractic
34 physician;
- 35 (j) A naturopathic physician licensed under ORS chapter 685 or an employee of the naturopathic
36 physician;
- 37 (k) A massage therapist licensed under ORS 687.011 to 687.250 or an employee of the massage
38 therapist;
- 39 (L) A direct entry midwife licensed under ORS 687.405 to 687.495 or an employee of the direct
40 entry midwife;
- 41 (m) A physical therapist licensed under ORS 688.010 to 688.220 or an employee of the physical
42 therapist;
- 43 (n) A radiologic technologist licensed under ORS 688.405 to 688.605 or an employee of the
44 radiologic technologist;
- 45 (o) A respiratory care practitioner licensed under ORS 688.800 to 688.840 or an employee of the

- 1 respiratory care practitioner;
- 2 (p) A pharmacist licensed under ORS chapter 689 or an employee of the pharmacist;
- 3 (q) A dietitian licensed under ORS 691.405 to 691.585 or an employee of the dietitian;
- 4 (r) A funeral service practitioner licensed under ORS chapter 692 or an employee of the funeral
5 service practitioner;
- 6 (s) A health care facility as defined in ORS 442.015;
- 7 (t) A home health agency as defined in ORS 443.005;
- 8 (u) A hospice program as defined in ORS 443.850;
- 9 (v) A clinical laboratory as defined in ORS 438.010;
- 10 (w) A pharmacy as defined in ORS 689.005;
- 11 (x) A diabetes self-management program as defined in ORS 743.694; and
- 12 (y) Any other person or entity that furnishes, bills for or is paid for health care in the normal
13 course of business.
- 14 (15) "Health information" means any oral or written information in any form or medium that:
- 15 (a) Is created or received by a covered entity, a public health authority, a life insurer, a school,
16 a university or a health care provider that is not a covered entity; and
- 17 (b) Relates to:
- 18 (A) The past, present or future physical or mental health or condition of an individual;
- 19 (B) The provision of health care to an individual; or
- 20 (C) The past, present or future payment for the provision of health care to an individual.
- 21 (16) "Health insurer" means:
- 22 (a) An insurer who offers:
- 23 (A) A health benefit plan as defined in ORS 743.730;
- 24 (B) A short term health insurance policy, the duration of which does not exceed six months in-
25 cluding renewals;
- 26 (C) A student health insurance policy;
- 27 (D) A medicare supplemental policy; or
- 28 (E) A dental only policy.
- 29 (b) The Oregon Medical Insurance Pool operated by the Oregon Medical Insurance Pool Board
30 under ORS 735.600 to 735.650.
- 31 (17) "Individual" means a natural person who:
- 32 (a) In the case of life or health insurance, is a past, present or proposed principal insured or
33 certificate holder;
- 34 (b) In the case of other kinds of insurance, is a past, present or proposed named insured or
35 certificate holder;
- 36 (c) Is a past, present or proposed policyowner;
- 37 (d) Is a past or present applicant;
- 38 (e) Is a past or present claimant; or
- 39 (f) Derived, derives or is proposed to derive insurance coverage under an insurance policy or
40 certificate that is subject to ORS 746.600 to 746.690.
- 41 (18) "Individually identifiable health information" means any oral or written health information
42 that is:
- 43 (a) Created or received by a covered entity or a health care provider that is not a covered en-
44 tity; and
- 45 (b) Identifiable to an individual, including demographic information that identifies the individual,

1 or for which there is a reasonable basis to believe the information can be used to identify an indi-
2 vidual, and that relates to:

3 (A) The past, present or future physical or mental health or condition of an individual;

4 (B) The provision of health care to an individual; or

5 (C) The past, present or future payment for the provision of health care to an individual.

6 (19) "Institutional source" means a person or governmental entity that provides information
7 about an individual to an insurer, insurance producer or insurance-support organization, other than:

8 (a) An insurance producer;

9 (b) The individual who is the subject of the information; or

10 (c) A natural person acting in a personal capacity rather than in a business or professional ca-
11 pacity.

12 (20) "Insurance producer" or "producer" means a person licensed by the Director of the De-
13 partment of Consumer and Business Services as a resident or nonresident insurance producer.

14 (21) "Insurance score" means a number or rating that is derived from an algorithm, computer
15 application, model or other process that is based in whole or in part on credit history.

16 (22)(a) "Insurance-support organization" means a person who regularly engages, in whole or in
17 part, in assembling or collecting information about natural persons for the primary purpose of pro-
18 viding the information to an insurer or insurance producer for insurance transactions, including:

19 (A) The furnishing of consumer reports to an insurer or insurance producer for use in con-
20 nection with insurance transactions; and

21 (B) The collection of personal information from insurers, insurance producers or other
22 insurance-support organizations for the purpose of detecting or preventing fraud, material misrep-
23 resentation or material nondisclosure in connection with insurance underwriting or insurance claim
24 activity.

25 (b) "Insurance-support organization" does not mean insurers, insurance producers, governmental
26 institutions or health care providers.

27 (23) "Insurance transaction" means any transaction that involves insurance primarily for per-
28 sonal, family or household needs rather than business or professional needs and that entails:

29 (a) The determination of an individual's eligibility for an insurance coverage, benefit or payment;

30 or

31 (b) The servicing of an insurance application, policy or certificate.

32 (24) "Insurer" has the meaning given that term in ORS 731.106.

33 (25) "Investigative consumer report" means a consumer report, or portion of a consumer report,
34 for which information about a natural person's character, general reputation, personal character-
35 istics or mode of living is obtained through personal interviews with the person's neighbors, friends,
36 associates, acquaintances or others who may have knowledge concerning such items of information.

37 (26) "Licensee" means an insurer, insurance producer or other person authorized or required to
38 be authorized, or licensed or required to be licensed, pursuant to the Insurance Code.

39 (27) "Nonaffiliated third party" means any person except:

40 (a) An affiliate of a licensee;

41 (b) A person that is employed jointly by a licensee and by a person that is not an affiliate of the
42 licensee; and

43 (c) As designated by the director by rule.

44 (28) "Payment" includes but is not limited to:

45 (a) Efforts to obtain premiums or reimbursement;

- 1 (b) Determining eligibility or coverage;
- 2 (c) Billing activities;
- 3 (d) Claims management;
- 4 (e) Reviewing health care to determine medical necessity;
- 5 (f) Utilization review; and
- 6 (g) Disclosures to consumer reporting agencies.

7 (29)(a) "Personal financial information" means:

8 (A) Information that is identifiable with an individual, gathered in connection with an insurance
9 transaction from which judgments can be made about the individual's character, habits, avocations,
10 finances, occupations, general reputation, credit or any other personal characteristics; or

11 (B) An individual's name, address and policy number or similar form of access code for the in-
12 dividual's policy.

13 (b) "Personal financial information" does not mean information that a licensee has a reasonable
14 basis to believe is lawfully made available to the general public from federal, state or local gov-
15 ernment records, widely distributed media or disclosures to the public that are required by federal,
16 state or local law.

17 (30) "Personal information" means:

- 18 (a) Personal financial information;
- 19 (b) Individually identifiable health information; or
- 20 (c) Protected health information.

21 (31) "Personal insurance" means the following types of insurance products or services that are
22 to be used primarily for personal, family or household purposes:

- 23 (a) Private passenger automobile coverage;
- 24 (b) Homeowners, mobile homeowners, manufactured homeowners, condominium owners and
25 renters coverage;
- 26 (c) Personal dwelling property coverage;
- 27 (d) Personal liability and theft coverage, including excess personal liability and theft coverage;
- 28 and
- 29 (e) Personal inland marine coverage.

30 (32) "Personal representative" includes but is not limited to:

- 31 (a) A person appointed as a guardian under ORS 125.305, 419B.370, 419C.481 or 419C.555 with
32 authority to make medical and health care decisions;
- 33 (b) A person appointed as a health care representative under ORS 127.505 to 127.660 or 127.700
34 to 127.737 to make health care decisions or mental health treatment decisions; *[and]*
- 35 (c) A person appointed as a personal representative under ORS chapter 113[.]; **and**
- 36 **(d) A person described in section 5 of this 2005 Act.**

37 (33) "Policyholder" means a person who:

- 38 (a) In the case of individual policies of life or health insurance, is a current policyowner;
- 39 (b) In the case of individual policies of other kinds of insurance, is currently a named insured;
- 40 or
- 41 (c) In the case of group policies of insurance under which coverage is individually underwritten,
42 is a current certificate holder.

43 (34) "Pretext interview" means an interview wherein the interviewer, in an attempt to obtain
44 personal information about a natural person, does one or more of the following:

- 45 (a) Pretends to be someone the interviewer is not.

1 (b) Pretends to represent a person the interviewer is not in fact representing.

2 (c) Misrepresents the true purpose of the interview.

3 (d) Refuses upon request to identify the interviewer.

4 (35) "Privileged information" means information that is identifiable with an individual and that:

5 (a) Relates to a claim for insurance benefits or a civil or criminal proceeding involving the in-
6 dividual; and

7 (b) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits
8 or a civil or criminal proceeding involving the individual.

9 (36)(a) "Protected health information" means individually identifiable health information that is
10 transmitted or maintained in any form of electronic or other medium by a covered entity.

11 (b) "Protected health information" does not mean individually identifiable health information in:

12 (A) Education records covered by the federal Family Educational Rights and Privacy Act (20
13 U.S.C. 1232g);

14 (B) Records described at 20 U.S.C. 1232g(a)(4)(B)(iv); or

15 (C) Employment records held by a covered entity in its role as employer.

16 (37) "Residual market mechanism" means an association, organization or other entity involved
17 in the insuring of risks under ORS 735.005 to 735.145, 737.312 or other provisions of the Insurance
18 Code relating to insurance applicants who are unable to procure insurance through normal insur-
19 ance markets.

20 (38) "Termination of insurance coverage" or "termination of an insurance policy" means either
21 a cancellation or a nonrenewal of an insurance policy, in whole or in part, for any reason other than
22 the failure of a premium to be paid as required by the policy.

23 (39) "Treatment" includes but is not limited to:

24 (a) The provision, coordination or management of health care; and

25 (b) Consultations and referrals between health care providers.

26 **SECTION 8. This 2005 Act being necessary for the immediate preservation of the public**
27 **peace, health and safety, an emergency is declared to exist, and this 2005 Act takes effect**
28 **on its passage.**

29