

## **Public Records Exemption Summaries for January 2020 Sunshine Committee Meeting**

Attached are summaries for 14 statutory exemptions that generally relate to personal health information. They are organized as follows:

- [ORS 179.505](#) – Health info maintained by public health care services providers
- [ORS 179.495](#) – Health info maintained by Department of Corrections institutions
- [ORS 192.535](#) – Individual genetic info
- [ORS 192.537](#) – Individual genetic info
- [ORS 192.539](#) – Identity of individual upon whom genetic testing has been performed
- [ORS 475B.882](#) – Identity of medical marijuana card holders and caregivers
- [ORS 97.977](#) – Personally identifying info in an Organ Donor Registry
- [ORS 127.678](#) – Identifying info in POLST registries
- [ORS 433.045](#) – Identity of the subject or an HIV test, or test results that could reveal identity
- [ORS 135.139](#) – HIV test results of person charged with, or convicted of a crime
- [ORS 433.098](#) – Info contained in an immunization registry regarding a client's record
- [ORS 682.056](#) – Patient encounter and outcome data reported by ambulance services
- [ORS 659A.133](#) – Medical and health info obtained during a medical exam of a job applicant
- [ORS 659A.136](#) – Medical and health info obtained during a voluntary exam of an employee

**Exemption Statute and Title: [ORS 179.505](#) Disclosure of Written Accounts by Health Care Services Provider**

**Summary:** Except as authorized by enumerated exceptions, [ORS 179.505](#) generally prohibits the disclosure of personal health information (e.g., medical records) by public health care services providers and those authorized to maintain such information. Narrows the scope of the prohibition with respect to the personal health information of prison inmates. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

[ORS 179.505\(2\)](#). Except as provided in subsections (3), (4), (6), (7), (8), (9), (11), (12), (14), (15), (16), (17) and (18) of this section or unless otherwise permitted or required by state or federal law or by order of the court, written accounts of the individuals served by any health care services provider maintained in or by the health care services provider by the officers or employees thereof who are authorized to maintain written accounts within the official scope of their duties are not subject to access and may not be disclosed. This subsection applies to written accounts maintained in or by facilities of the Department of Corrections only to the extent that the written accounts concern the medical, dental or psychiatric treatment as patients of those under the jurisdiction of the Department of Corrections.

**Key Terms, Definitions and References:**

“Written account” means records containing only individually identifiable health information. [ORS 179.505\(1\)\(h\)](#).

“Individually identifiable health information” encompasses “any health information” that is “created or received by a health care services provider” and is “[i]dentifiable to an individual” to the extent that it relates to a person’s “past, present or future physical or mental health or condition” or “the provision of health care to an individual” or the “payment for the provision of health care.” [ORS 179.505\(1\)\(c\)](#).

“Health care services provider” means “medical personnel or other staff employed by or under contract with a public provider” or “units, programs or services designated, operated or maintained by a public provider to provide health care or maintain written accounts \*\*\*.” [ORS 179.505\(1\)\(b\)](#)

**Enumerated Exceptions or Public Interest Balancing Test?** Yes. 13 enumerated exceptions that permit disclosure, including, but not limited to: to the individual, upon consent by the individual, in medical emergencies, as necessary for ongoing evaluation and treatment, as part of certain legal proceedings and investigations, information indicates a clear and immediate danger to others, and to the state-appointed custodians of children and the disabled.

**Cited in Court Cases, AG Opinions and/or Public Records Orders (PRO)? Yes.**

PRO Woodworth (12/20/19) (available upon request): Notwithstanding the general prohibition on the disclosure of written accounts by the Department of Corrections contained in ORS 179.495, the written accounts of inmates maintained by Corrections health service providers are exempt only to the extent they relate to an inmate's "treatment as a patient."

PRO Zaitz & Britton (3/21/17): Psychiatric Security Review Board (PSRB) is not a "health care services provider" under ORS 179.505. The prohibition on redisclosure under ORS 179.505(14) does not apply to written accounts received by PSRB because that subsection only applies to persons granted access under the statute, and PSRB's access to such records is not granted by any part of that statute.

PRO Matteo-Boehm (9/2/05): Where DHS was appointed as guardian for a minor, DHS could consent to the disclosure of certain information that was otherwise exempt under ORS 179.505. However, DHS was prohibited from disclosing information contained in the written accounts of other individuals.

**Exemption Statute and Title: [ORS 179.495](#) Disclosure of Inmate Written Accounts**

**Summary:** Except as authorized by enumerated exceptions, [ORS 179.495](#) generally prohibits the disclosure of an inmate’s personal health information (e.g., medical records) maintained by Department of Corrections institutions. The statute substantially overlaps ORS 179.505, but it broadens the prohibition insofar as it is not limited to records maintained by Corrections health care services providers. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

[ORS 179.495\(1\)](#). Written accounts of the inmates of any Department of Corrections institution as defined in ORS 421.005, maintained in the institution by the officers or employees of the institution who are authorized to maintain written accounts within the official scope of their duties, are not subject to disclosure unless the disclosure is permitted or authorized by the Department of Corrections in compliance with ORS 179.505(3), (4), (6), (7), (9), (11), (12), (14), (15), (16) or (17) or 179.508 or upon order of a court of competent jurisdiction. The restriction contained in this section does not apply to disclosure of written accounts made under ORS 179.505(3) with the authorization of the individual or a personal representative of the individual.

**Key Terms, Definitions and References:**

“Written account” means records containing only individually identifiable health information. [ORS 179.505\(1\)\(h\)](#).

“Individually identifiable health information” encompasses “any health information” that is “created or received by a health care services provider” and is “[i]dentifiable to an individual” to the extent that it relates to a person’s “past, present or future physical or mental health or condition” or “the provision of health care to an individual” or the “payment for the provision of health care.” [ORS 179.505\(1\)\(c\)](#).

“Health care services provider” means “medical personnel or other staff employed by or under contract with a public provider” or “units, programs or services designated, operated or maintained by a public provider to provide health care or maintain written accounts \*\*\*.” [ORS 179.505\(1\)\(b\)](#)

“Department of Corrections institutions” means those Corrections facilities used for the incarceration of persons sentenced to the custody of the Department of Corrections, and includes the satellites, camps or branches of those facilities. [ORS 421.005](#)

**Enumerated Exceptions or Public Interest Balancing Test?** Yes. 13 enumerated exceptions in ORS 179.505 that permit disclosure, including, but not limited to: to the individual, upon consent by the individual, in medical emergencies, as necessary for ongoing evaluation and

treatment, as part of certain legal proceedings and investigations, information indicates a clear and immediate danger to others, and to the state-appointed custodians of children and disabled.

**Cited in Court Cases, AG Opinions and/or Public Records Orders (PRO)?** Yes.

PRO Woodworth (12/20/19) (available upon request): Notwithstanding the general prohibition on the disclosure of written accounts by the Department of Corrections contained in ORS 179.495, the written accounts of inmates maintained by Corrections health service providers are exempt only to the extent they relate to an inmate's "treatment as a patient."

PRO Lucey (10/16/1998): Absent consent from the inmate, portions of an inmate's medical records that related to alleged misconduct by an ODOC employee were exempt from disclosure under ORS 179.495.

**Exemption Statute and Title: [ORS 192.535](#) Informed Consent for Obtaining Genetic Information**

**Summary:** Prohibits any person from obtaining genetic information from an individual or a DNA sample without first obtaining informed consent. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall). Also see [ORS 192.537](#) and [192.539](#).

**Relevant Text:**

[ORS 192.535\(1\)](#) A person may not obtain genetic information from an individual, or from an individual's DNA sample, without first obtaining informed consent of the individual or the individual's representative, except \*\*\*

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Yes. Several enumerated exceptions for disclosures authorized by other rules or statutes, to include law enforcement, for anonymous research, to OHA for the identification of deceased individuals, to OHA for newborn screening procedures, for purposes of establishing parentage, and for the medical diagnosis of blood relatives of a decedent. These exceptions do not permit general disclosure to the public.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 192.537](#) Individual's Rights in Genetic Information**

**Summary:** Creates right to privacy in individual genetic information and requires any person authorized to obtain, retain or use such information to maintain the confidentiality of the information. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall). Also see ORS [192.535](#) and [192.539](#).

**Relevant Text:**

[ORS 192.537\(1\)](#) Subject to the provisions of ORS 192.531 to 192.549, 659A.303 and 746.135, an individual's genetic information and DNA sample are private and must be protected, and an individual has a right to the protection of that privacy. Any person authorized by law or by an individual or an individual's representative to obtain, retain or use an individual's genetic information or any DNA sample must maintain the confidentiality of the information or sample and protect the information or sample from unauthorized disclosure or misuse.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Exceptions enumerated in the statute, but they do not permit general disclosure to the public. *Also see* [ORS 192.535](#) and [192.539](#).

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 192.539](#) Disclosure of Genetic Information**

**Summary:** Prohibits the disclosure of the identity or genetic information about an individual, or a blood relative of the individual, upon whom a genetic test has been performed. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall). Also see ORS [192.535](#) and [192.537](#).

**Relevant Text:**

[ORS 192.539\(1\)](#) Regardless of the manner of receipt or the source of genetic information, including information received from an individual or a blood relative of the individual, a person may not disclose or be compelled, by subpoena or any other means, to disclose the identity of an individual upon whom a genetic test has been performed or the identity of a blood relative of the individual, or to disclose genetic information about the individual or a blood relative of the individual in a manner that permits identification of the individual, unless \*\*\*

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Exceptions enumerated in the statute, but they do not permit general disclosure to the public. Also see [ORS 192.535](#) and [192.537](#).

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.



**Exemption Statute and Title: [ORS 475B.882](#) Database of Information Related to Cardholders**

**Summary:** Makes confidential OHA's registry of names of medical marijuana card holders, the names of designated caregiver medical marijuana card holders, and the addresses of medical marijuana grow sites. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:** [ORS 475B.882\(1\)](#)

- (a) The Oregon Health Authority shall establish and maintain a list of:
  - (A) The names of persons to whom a registry identification card has been issued under ORS 475B.797;
  - (B) The names of persons designated as primary caregivers under ORS 475B.804; and
  - (C) The addresses of marijuana grow sites registered under ORS 475B.810.
- (b) Except as provided in subsection (2) of this section, the list is confidential and not subject to public disclosure under ORS 192.311 to 192.478.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Limited exceptions for official purposes, but none that permit public disclosure. *See* ORS 475B.797(2).

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 97.977](#) Donor Registry**

**Summary:** Absent consent, prohibits the disclosure of the personally identifiable information about a donor on the anatomical donor registry. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

[ORS 97.977\(4\)](#) Personally identifiable information on the donor registry about a donor or prospective donor may not be used or disclosed without the express consent of the donor, prospective donor or person who made the anatomical gift for any purpose other than to determine, at or near death of the donor or prospective donor, whether the donor or prospective donor has made, amended or revoked an anatomical gift.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** No.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 127.678](#) Confidentiality**

**Summary:** Makes confidential all information collected or developed by the Physician Order for Life-Sustaining Treatment (POLST) registry that identifies or could be used to identify a patient, health care provide or facility. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

Except as provided in ORS 127.666, all information collected or developed by the POLST registry that identifies or could be used to identify a patient, health care provider or facility is confidential and is not subject to civil or administrative subpoena or to discovery in a civil action, including but not limited to a judicial, administrative, arbitration or mediation proceeding.

**Key Terms, Definitions and References:**

“POLST” means a physician order for life-sustaining treatment signed by a physician, naturopathic physician, nurse practitioner or physician assistant. ORS 127.663(7)

“POLST registry” means the registry established in ORS 127.666. ORS 127.663(8)

ORS 127.666(1) provides that “The Oregon Health Authority shall establish and operate a statewide registry for the collection and dissemination of physician orders for life-sustaining treatment to help ensure that medical treatment preferences for an individual nearing the end of the individual’s life are honored.”

**Enumerated Exceptions or Public Interest Balancing Test?** Limited exceptions for official purposes, but none that permit public disclosure.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 433.045](#) Notice of HIV Test Required**

**Summary:** Prohibits the disclosure of the identity of anyone who undergoes an HIV test, or the results of such a test in a manner which permits identification of the subject of the test. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:** [ORS 433.045](#)

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(2) Except as provided in ORS 433.017, 433.055(2) and 433.080, a health care provider or the provider's designee shall, before subjecting an individual to an HIV test:

(a) Notify the individual being tested; and

(b) Allow the individual being tested the opportunity to decline the test.

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(4)(a) Regardless of the manner of receipt or the source of the information, including information received from the tested individual, no person shall disclose or be compelled to disclose the identity of any individual upon whom an HIV-related test is performed, or the results of such a test in a manner which permits identification of the subject of the test, except as required or permitted by federal law, the law of this state or any rule, including any authority rule considered necessary for public health or health care purposes, or as authorized by the individual whose blood is tested.

**Key Terms, Definitions and References:** N/A

**Enumerated Exceptions or Public Interest Balancing Test?** As required or permitted by federal law, state law or rule, or as authorized by the individual whose blood is tested.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 135.139](#) Notice of Availability of Testing for HIV and Other Communicable Diseases to Person Charged With Crime**

**Summary:** Generally prohibits the disclosure of the results of an HIV test performed upon a person charged with, or convicted of a crime. Makes unauthorized disclosure a Class C misdemeanor. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

(1) When a person has been charged with a crime in which it appears from the nature of the charge that the transmission of body fluids from one person to another may have been involved, the district attorney, upon the request of the victim or the parent or guardian of a minor or incapacitated victim, shall seek the consent of the person charged to submit to a test for HIV and any other communicable disease. In the absence of such consent or failure to submit to the test, the district attorney may petition the court for an order requiring the person charged to submit to a test for HIV and any other communicable disease.

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(3) Notwithstanding the provisions of ORS 433.045, upon conviction of a person for any crime in which the court determines from the facts that the transmission of body fluids from one person to another was involved and if the person has not been tested pursuant to subsection (2) of this section, the court shall seek the consent of the convicted person to submit to a test for HIV and other communicable diseases. In the absence of such consent or failure to submit to the test, the court shall order the convicted person to submit to the test if the victim of the crime, or a parent or guardian of the victim, requests the court to make such order.

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(6) The result of any test ordered under this section is not a public record and shall be available only to:

- (a) The victim.
- (b) The parent or guardian of a minor or incapacitated victim.
- (c) The attending physician who is licensed to practice medicine.
- (d) The Oregon Health Authority.
- (e) The person tested.

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(11) The results of tests or reports, or information therein, obtained under this section shall be confidential and shall not be divulged to any person not authorized by this section to receive the information. Any violation of this subsection is a Class C misdemeanor.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Limited exceptions permitting disclosure to persons enumerated in the statute, but no exceptions that otherwise permit public disclosure.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 433.098](#) Nonliability For Disclosing or Using Information**

**Summary:** Makes confidential a client’s immunization information contained in an immunization registry that is maintained by OHA or a local health department. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

**ORS 433.098(2)** Information in an immunization registry regarding a client’s immunization record or tracking and recall record, or derived from the registry or record, is confidential and may not be disclosed to any person who is not specifically authorized to receive information under ORS 433.090 to 433.102.

**Key Terms, Definitions and References:**

“Immunization registry” means a listing of clients and information relating to their immunization status, without regard to whether the registry is maintained in this state or elsewhere. ORS 433.090(5)

“Immunization record” includes but is not limited to records of the following (ORS 433.090(4)):

- (a) Any immunization received;
- (b) Date immunization was received;
- (c) Complication or side effect associated with immunization;
- (d) Date and place of birth of a client;
- (e) Hospital where a client was born;
- (f) Client’s name; and
- (g) Mother’s name.

**Enumerated Exceptions or Public Interest Balancing Test?** No

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 682.056](#) Patient Encounter Data Reporting**

**Summary:** Makes patient encounter data and patient outcome data collected and reported by ambulance services confidential and privileged. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

(1)(a) Ambulance services shall report patient encounter data to the electronic emergency medical services data system managed by the Oregon Health Authority for each patient care event in accordance with rules adopted by the authority under ORS 682.017.

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(3) Patient outcome data includes:

(a) The health outcomes of the patient who was the subject of the prehospital care event from the emergency department or other intake facility of the hospital, including but not limited to:

(A) Whether the patient was admitted to the hospital; and

(B) If the patient was admitted, to what unit the patient was assigned;

(b) The patient's chief complaint, the diagnosis the patient received in the emergency department or other intake facility and any procedures performed on the patient;

(c) The emergency department or hospital discharge disposition of the patient; and

(d) Demographic or standard health care information as required by the authority by rule.

(4) Data provided pursuant to this section shall be:

(a) Treated as a confidential medical record and not disclosed; and

(b) Considered privileged data under ORS 41.675 and 41.685.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Limited exceptions for official purposes, but none that permit public disclosure.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.

**Exemption Statute and Title: [ORS 659A.133](#) Medical Examinations and Inquiries of Job Applicants**

**Summary:** Makes confidential any information relating to the medical condition or history or a job applicant obtained as part of a pre-employment medical exam. Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

[ORS 659A.133\(3\)](#) An employer may require a medical examination after an offer of employment has been made to a job applicant and before the commencement of the employment duties of the applicant, and condition the employment on the results of the examination, if the following conditions are met:

(a) All individuals entering the employ of the employer must be subject to the examination regardless of disability.

(b) Information obtained regarding the medical condition or history of the applicant is collected and maintained on separate forms and in separate medical files and is treated as a confidential medical record, except as follows:

(A) Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

(B) First aid and safety personnel may be informed, when appropriate, if the disability might require emergency treatment.

(C) Officers and employees of the Bureau of Labor and Industries investigating compliance with ORS 659A.112 to 659A.139 shall be provided relevant information on request.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Limited exceptions for official purposes, but none that permit public disclosure.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.



**Exemption Statute and Title: [ORS 659A.136](#) Medical Examinations and Inquiries of Employees**

**Summary:** Makes confidential any information relating to the medical condition or history of an employee obtained as part of a voluntary medical exam conducted as part of an employee health program. Incorporates the confidentiality provisions of [ORS 659A.133](#). Incorporated into the Public Records Law by ORS 192.355(9)(a) (state law catchall).

**Relevant Text:**

(1) Except as provided in this section, an employer may not require that an employee submit to a medical examination, may not make inquiries of an employee as to whether the employee has a disability, and may not make inquiries of an employee as to the nature or severity of any disability of the employee, unless the examination or inquiry is shown to be job-related and consistent with business necessity.

(2) An employer may conduct voluntary medical examinations, including voluntary medical histories, that are part of an employee health program available to employees at that work site. An employer may make inquiries into the ability of an employee to perform job-related functions.

(3) Information obtained under subsection (2) of this section relating to the medical condition or history of any employee is subject to the same restrictions applicable to information acquired from medical examinations authorized under ORS 659A.133.

**Key Terms, Definitions and References:** N/A.

**Enumerated Exceptions or Public Interest Balancing Test?** Limited exceptions for official purposes, but none that permit public disclosure.

**Cited in Court Cases, AG Opinions and/or Public Records Orders?** No.