

House Bill 2687

Sponsored by Representatives BUCKLEY, ESQUIVEL; Representative BOONE, Senator BATES

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 **as introduced**.

Requires health benefit plan to provide coverage for services rendered by professional counselors or marriage and family therapists acting within their scope of practice if plan covers services by other professionals providing same or similar services.

Adds services offered by professional counselors or marriage and family therapists to definition of "outpatient service" for purposes of statutes governing certain treatment programs and facilities.

A BILL FOR AN ACT

1
2 Relating to persons subject to regulation by Oregon Board of Licensed Professional Counselors and
3 Therapists; creating new provisions; and amending ORS 430.010, 743.556 and 750.333.

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

5 **SECTION 1. Section 2 of this 2007 Act is added to and made a part of ORS chapter 743.**

6 **SECTION 2. (1) Whenever any health benefit plan, as defined in ORS 743.730, provides for**
7 **coverage for services performed by a physician, psychologist, clinical social worker or nurse**
8 **practitioner, the plan also shall cover services provided by a professional counselor or mar-**
9 **riage and family therapist licensed under ORS 675.715 to 675.835 when the counselor or**
10 **therapist is acting within the counselor's or therapist's lawful scope of practice.**

11 **(2) The payment to a professional counselor or marriage and family therapist by a health**
12 **benefit plan under subsection (1) of this section shall be in accordance with the benefits**
13 **provided in the plan and shall be computed in the same manner whether performed by a**
14 **physician, psychologist, clinical social worker, nurse practitioner, professional counselor or**
15 **marriage and family therapist, according to the customary and usual fee of professional**
16 **counselors and marriage and family therapists in the area served.**

17 **(3) The provisions of ORS 743.700 do not apply to this section.**

18 **SECTION 3. ORS 430.010 is amended to read:**

19 430.010. As used in ORS 430.010 to 430.050, 430.140 to 430.170, 430.265, 430.270 and 430.610 to
20 430.695:

21 (1) "Department" means the Department of Human Services.

22 (2) "Health facility" means a facility licensed as required by ORS 441.015 or a facility accredited
23 by the Joint Commission on Accreditation of Hospitals, either of which provides full-day or part-day
24 acute treatment for alcoholism, drug addiction or mental or emotional disturbance, and is licensed
25 to admit persons requiring 24-hour nursing care.

26 (3) "Residential facility" or "day or partial hospitalization program" means a program or facility
27 providing an organized full-day or part-day program of treatment. Such a program or facility shall
28 be licensed, approved, established, maintained, contracted with or operated by the department under:

29 (a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

30 (b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

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 (c) ORS 430.610 to 430.880 for mental or emotional disturbance.

2 (4) "Outpatient service" means:

3 (a) A program or service providing treatment by appointment and by medical or osteopathic
4 physicians licensed by the Board of Medical Examiners for the State of Oregon under ORS 677.010
5 to 677.450; psychologists licensed by the State Board of Psychologist Examiners under ORS 675.010
6 to 675.150; nurse practitioners registered by the Oregon State Board of Nursing under ORS 678.010
7 to 678.410; [or] clinical social workers licensed by the State Board of Clinical Social Workers under
8 ORS 675.510 to 675.600; **or professional counselors or marriage and family therapists licensed**
9 **by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715**
10 **to 675.835;** or

11 (b) A program or service providing treatment by appointment that is licensed, approved, estab-
12 lished, maintained, contracted with or operated by the department under:

13 (A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

14 (B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

15 (C) ORS 430.610 to 430.880 for mental or emotional disturbance.

16 **SECTION 4.** ORS 743.556, as amended by section 1, chapter 705, Oregon Laws 2005, is amended
17 to read:

18 743.556. A group health insurance policy providing coverage for hospital or medical expenses
19 shall provide coverage for expenses arising from treatment for chemical dependency, including
20 alcoholism, and for mental or nervous conditions at the same level as, and subject to limitations no
21 more restrictive than, those imposed on coverage or reimbursement of expenses arising from treat-
22 ment for other medical conditions. The following apply to coverage for chemical dependency and for
23 mental or nervous conditions:

24 (1) As used in this section:

25 (a) "Chemical dependency" means the addictive relationship with any drug or alcohol charac-
26 terized by a physical or psychological relationship, or both, that interferes on a recurring basis with
27 the individual's social, psychological or physical adjustment to common problems. For purposes of
28 this section, "chemical dependency" does not include addiction to, or dependency on, tobacco, to-
29 bacco products or foods.

30 (b) "Facility" means a corporate or governmental entity or other provider of services for the
31 treatment of chemical dependency or for the treatment of mental or nervous conditions.

32 (c) "Group health insurer" means an insurer, a health maintenance organization or a health care
33 service contractor.

34 (d) "Program" means a particular type or level of service that is organizationally distinct within
35 a facility.

36 (e) "Provider" means a person that has met the credentialing requirement of a group health
37 insurer, is otherwise eligible to receive reimbursement for coverage under the policy and is:

38 (A) A health care facility;

39 (B) A residential program or facility;

40 (C) A day or partial hospitalization program;

41 (D) An outpatient service; or

42 (E) An individual behavioral health or medical professional authorized for reimbursement under
43 Oregon law.

44 (2) The coverage may be made subject to provisions of the policy that apply to other benefits
45 under the policy, including but not limited to provisions relating to deductibles and coinsurance.

1 Deductibles and coinsurance for treatment in health care facilities or residential programs or facil-
2 ities may not be greater than those under the policy for expenses of hospitalization in the treatment
3 of other medical conditions. Deductibles and coinsurance for outpatient treatment may not be
4 greater than those under the policy for expenses of outpatient treatment of other medical conditions.

5 (3) The coverage may not be made subject to treatment limitations, limits on total payments for
6 treatment, limits on duration of treatment or financial requirements unless similar limitations or
7 requirements are imposed on coverage of other medical conditions. The coverage of eligible expenses
8 may be limited to treatment that is medically necessary as determined under the policy for other
9 medical conditions.

10 (4)(a) Nothing in this section requires coverage for:

11 (A) Educational or correctional services or sheltered living provided by a school or halfway
12 house;

13 (B) A long-term residential mental health program that lasts longer than 45 days;

14 (C) Psychoanalysis or psychotherapy received as part of an educational or training program,
15 regardless of diagnosis or symptoms that may be present;

16 (D) A court-ordered sex offender treatment program; or

17 (E) A screening interview or treatment program under ORS 813.021.

18 (b) Notwithstanding paragraph (a)(A) of this subsection, an insured may receive covered outpa-
19 tient services under the terms of the insured's policy while the insured is living temporarily in a
20 sheltered living situation.

21 (5) A provider is eligible for reimbursement under this section if:

22 (a) The provider is approved by the Department of Human Services;

23 (b) The provider is accredited for the particular level of care for which reimbursement is being
24 requested by the Joint Commission on Accreditation of Hospitals or the Commission on Accredi-
25 tation of Rehabilitation Facilities;

26 (c) The patient is staying overnight at the facility and is involved in a structured program at
27 least eight hours per day, five days per week; or

28 (d) The provider is providing a covered benefit under the policy.

29 (6) Payments may not be made under this section for support groups.

30 (7) If specified in the policy, outpatient coverage may include follow-up in-home service or out-
31 patient services. The policy may limit coverage for in-home service to persons who are homebound
32 under the care of a physician.

33 (8) Nothing in this section prohibits a group health insurer from managing the provision of
34 benefits through common methods, including but not limited to selectively contracted panels, health
35 plan benefit differential designs, preadmission screening, prior authorization of services, utilization
36 review or other mechanisms designed to limit eligible expenses to those described in subsection (3)
37 of this section.

38 (9) The Legislative Assembly has found that health care cost containment is necessary and in-
39 tends to encourage insurance policies designed to achieve cost containment by ensuring that re-
40 imbursement is limited to appropriate utilization under criteria incorporated into such policies,
41 either directly or by reference.

42 (10)(a) Subject to the patient or client confidentiality provisions of ORS 40.235 relating to phy-
43 sicians, ORS 40.240 relating to nurse practitioners, ORS 40.230 relating to psychologists, [and] ORS
44 40.250 and 675.580 relating to licensed clinical social workers[,] **and ORS 40.262 relating to li-**
45 **icensed professional counselors and licensed marriage and family therapists**, a group health

1 insurer may provide for review for level of treatment of admissions and continued stays for treat-
2 ment in health care facilities, residential programs or facilities, day or partial hospitalization pro-
3 grams and outpatient services by either group health insurer staff or personnel under contract to
4 the group health insurer, or by a utilization review contractor, who shall have the authority to
5 certify for or deny level of payment.

6 (b) Review shall be made according to criteria made available to providers in advance upon re-
7 quest.

8 (c) Review shall be performed by or under the direction of a medical or osteopathic physician
9 licensed by the Board of Medical Examiners for the State of Oregon, a psychologist licensed by the
10 State Board of Psychologist Examiners, [or] a clinical social worker licensed by the State Board of
11 Clinical Social Workers[,] **or a professional counselor or marriage and family therapist licensed**
12 **by the Oregon Board of Licensed Professional Counselors and Therapists**, in accordance with
13 standards of the National Committee for Quality Assurance or Medicare review standards of the
14 Centers for Medicare and Medicaid Services.

15 (d) Review may involve prior approval, concurrent review of the continuation of treatment,
16 post-treatment review or any combination of these. However, if prior approval is required, provision
17 shall be made to allow for payment of urgent or emergency admissions, subject to subsequent re-
18 view. If prior approval is not required, group health insurers shall permit providers, policyholders
19 or persons acting on their behalf to make advance inquiries regarding the appropriateness of a
20 particular admission to a treatment program. Group health insurers shall provide a timely response
21 to such inquiries. Noncontracting providers must cooperate with these procedures to the same ex-
22 tent as contracting providers to be eligible for reimbursement.

23 (11) Health maintenance organizations may limit the receipt of covered services by enrollees to
24 services provided by or upon referral by providers contracting with the health maintenance organ-
25 ization. Health maintenance organizations and health care service contractors may create substan-
26 tive plan benefit and reimbursement differentials at the same level as, and subject to limitations no
27 more restrictive than, those imposed on coverage or reimbursement of expenses arising out of other
28 medical conditions and apply them to contracting and noncontracting providers.

29 (12) Nothing in this section prevents a group health insurer from contracting with providers of
30 health care services to furnish services to policyholders or certificate holders according to ORS
31 743.531 or 750.005, subject to the following conditions:

32 (a) A group health insurer is not required to contract with all eligible providers.

33 (b) An insurer or health care services contractor shall, subject to subsections (2) and (3) of this
34 section, pay benefits toward the covered charges of noncontracting providers of services for the
35 treatment of chemical dependency or mental or nervous conditions. The insured shall, subject to
36 subsections (2) and (3) of this section, have the right to use the services of a noncontracting provider
37 of services for the treatment of chemical dependency or mental or nervous conditions, whether or
38 not the services for chemical dependency or mental or nervous conditions are provided by con-
39 tracting or noncontracting providers.

40 (13) The intent of the Legislative Assembly in adopting this section is to reserve benefits for
41 different types of care to encourage cost effective care and to ensure continuing access to levels
42 of care most appropriate for the insured's condition and progress.

43 (14) The Director of the Department of Consumer and Business Services, after notice and hear-
44 ing, may adopt reasonable rules not inconsistent with this section that are considered necessary for
45 the proper administration of these provisions.

SECTION 5. ORS 750.333 is amended to read:

750.333. (1) The following provisions of the Insurance Code apply to trusts carrying out a multiple employer welfare arrangement:

(a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316, 731.324, 731.328, 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414, 731.418 to 731.434, 731.454, 731.484, 731.486, 731.488, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 to 731.992.

(b) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(c) ORS chapter 734.

(d) ORS 742.001 to 742.009, 742.013, 742.061 and 742.400.

(e) ORS 743.028, 743.053, 743.524, 743.526, 743.527, 743.528, 743.529, 743.530, 743.560, 743.562, 743.600, 743.601, 743.602, 743.610, 743.691, 743.693, 743.694, 743.699, 743.727, 743.728, 743.730 to 743.773 (except 743.760 to 743.773), 743.793, 743.801, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863 and 743.864.

(f) ORS 743.556, 743.701, 743.703, 743.706, 743.707, 743.709, 743.710, 743.712, 743.713, 743.714, 743.717, 743.718, 743.719, 743.721, 743.722, 743.725 and 743.726 **and section 2 of this 2007 Act.** Multiple employer welfare arrangements to which ORS 743.730 to 743.773 apply are subject to the sections referred to in this paragraph only as provided in ORS 743.730 to 743.773.

(g) Provisions of ORS chapter 744 relating to the regulation of insurance producers and insurance consultants, and ORS 744.700 to 744.740.

(h) ORS 746.005 to 746.140, 746.160 and 746.220 to 746.370.

(i) ORS 731.592 and 731.594.

(2) For the purposes of this section:

(a) A trust carrying out a multiple employer welfare arrangement shall be considered an insurer.

(b) References to certificates of authority shall be considered references to certificates of multiple employer welfare arrangement.

(c) Contributions shall be considered premiums.

(3) The provision of health benefits under ORS 750.301 to 750.341 shall be considered to be the transaction of health insurance.

SECTION 6. ORS 750.333, as amended by section 4, chapter 263, Oregon Laws 2003, is amended to read:

750.333. (1) The following provisions of the Insurance Code apply to trusts carrying out a multiple employer welfare arrangement:

(a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316, 731.324, 731.328, 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414, 731.418 to 731.434, 731.454, 731.484, 731.486, 731.488, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 to 731.992.

(b) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(c) ORS chapter 734.

(d) ORS 742.001 to 742.009, 742.013, 742.061 and 742.400.

(e) ORS 743.028, 743.053, 743.524, 743.526, 743.527, 743.528, 743.529, 743.530, 743.560, 743.562, 743.600, 743.601, 743.602, 743.610, 743.691, 743.693, 743.694, 743.699, 743.727, 743.728, 743.730 to 743.773 (except 743.760 to 743.773), 743.793, 743.801, 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863 and 743.864.

(f) ORS 743.556, 743.701, 743.703, 743.706, 743.707, 743.709, 743.710, 743.712, 743.713, 743.714,

1 743.717, 743.718, 743.719, 743.721, 743.722 and 743.725 **and section 2 of this 2007 Act.** Multiple
 2 employer welfare arrangements to which ORS 743.730 to 743.773 apply are subject to the sections
 3 referred to in this paragraph only as provided in ORS 743.730 to 743.773.

4 (g) Provisions of ORS chapter 744 relating to the regulation of insurance producers and insur-
 5 ance consultants, and ORS 744.700 to 744.740.

6 (h) ORS 746.005 to 746.140, 746.160 and 746.220 to 746.370.

7 (i) ORS 731.592 and 731.594.

8 (2) For the purposes of this section:

9 (a) A trust carrying out a multiple employer welfare arrangement shall be considered an insurer.

10 (b) References to certificates of authority shall be considered references to certificates of mul-
 11 tiple employer welfare arrangement.

12 (c) Contributions shall be considered premiums.

13 (3) The provision of health benefits under ORS 750.301 to 750.341 shall be considered to be the
 14 transaction of health insurance.

15 **SECTION 7.** ORS 750.333, as amended by section 8, chapter 137, Oregon Laws 2003, section 3,
 16 chapter 446, Oregon Laws 2003, and section 6, chapter 418, Oregon Laws 2005, is amended to read:

17 750.333. (1) The following provisions of the Insurance Code apply to trusts carrying out a mul-
 18 tiple employer welfare arrangement:

19 (a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316, 731.324, 731.328,
 20 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414, 731.418 to 731.434, 731.454, 731.484,
 21 731.486, 731.488, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 to 731.992.

22 (b) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

23 (c) ORS chapter 734.

24 (d) ORS 742.001 to 742.009, 742.013, 742.061 and 742.400.

25 (e) ORS 743.028, 743.053, 743.524, 743.526, 743.527, 743.528, 743.529, 743.530, 743.560, 743.562,
 26 743.600, 743.601, 743.602, 743.610, 743.691, 743.693, 743.694, 743.699, 743.727, 743.728, 743.730 to
 27 743.773 (except 743.760 to 743.773), 743.793, 743.801, 743.804, 743.807, 743.808, 743.814 to 743.839,
 28 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863 and
 29 743.864.

30 (f) ORS 743.556, 743.701, 743.703, 743.706, 743.707, 743.709, 743.710, 743.712, 743.713, 743.714,
 31 743.717, 743.718, 743.719, 743.721 and 743.722 **and section 2 of this 2007 Act.** Multiple employer
 32 welfare arrangements to which ORS 743.730 to 743.773 apply are subject to the sections referred to
 33 in this paragraph only as provided in ORS 743.730 to 743.773.

34 (g) Provisions of ORS chapter 744 relating to the regulation of insurance producers and insur-
 35 ance consultants, and ORS 744.700 to 744.740.

36 (h) ORS 746.005 to 746.140, 746.160 and 746.220 to 746.370.

37 (i) ORS 731.592 and 731.594.

38 (2) For the purposes of this section:

39 (a) A trust carrying out a multiple employer welfare arrangement shall be considered an insurer.

40 (b) References to certificates of authority shall be considered references to certificates of mul-
 41 tiple employer welfare arrangement.

42 (c) Contributions shall be considered premiums.

43 (3) The provision of health benefits under ORS 750.301 to 750.341 shall be considered to be the
 44 transaction of health insurance.

45 **SECTION 8. Section 2 of this 2007 Act and the amendments to ORS 430.010, 743.556 and**

1 **750.333 by sections 3 to 7 of this 2007 Act apply to health benefit plan policies issued or re-**
2 **newed on or after the effective date of this 2007 Act.**
3 _____