

House Bill 2128

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Governor Theodore R. Kulongoski for Department of Human Services)

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**.

Eliminates sunset of Oregon Health Fund Board. Authorizes Office for Oregon Health Policy and Research to require reporting of health-related information from health insurers, third party administrators and other specified entities.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health planning; creating new provisions; amending ORS 442.011 and 731.988 and
3 sections 1 and 27, chapter 697, Oregon Laws 2007; repealing section 28, chapter 697, Oregon
4 Laws 2007; and declaring an emergency.

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

6 **SECTION 1.** Section 1, chapter 697, Oregon Laws 2007, is amended to read:

7 **Sec. 1.** Sections 2 to [*13 of this 2007 Act*] **8, chapter 697, Oregon Laws 2007**, shall be known
8 and may be cited as the Healthy Oregon Act.

9 **SECTION 2.** Section 27, chapter 697, Oregon Laws 2007, is amended to read:

10 **Sec. 27.** Sections [*1 to 13 of this 2007 Act*] **9 to 12, chapter 697, Oregon Laws 2007**, are re-
11 pealed on January 2, 2010.

12 **SECTION 3.** Sections 4 and 5 of this 2009 Act are added to and made a part of sections
13 2 to 8, chapter 697, Oregon Laws 2007.

14 **SECTION 4.** (1) To aid and advise the Oregon Health Fund Board in the performance of
15 its functions, the board may establish such advisory and technical committees as the board
16 considers necessary for the development, implementation or refinement of the Oregon Health
17 Fund program comprehensive plan in the following areas:

18 (a) Health care payment systems.

19 (b) Evidence-based health care practice guidelines and comparative effectiveness of
20 health treatments.

21 (c) A health insurance exchange.

22 (d) Medical malpractice insurance.

23 (2) The committees may be continuing or temporary. The board shall determine the
24 membership, terms and organization of the committees and shall appoint their members.

25 (3) Members of the committees are not entitled to compensation, but in the discretion
26 of the board may be reimbursed from funds available to the board for actual and necessary
27 travel and other expenses incurred by them in the performance of their official duties in the
28 manner and amount provided in ORS 292.495.

29 **SECTION 5.** (1) Upon legislative approval of the Oregon Health Fund program compre-
30 hensive plan, the Oregon Health Fund Board is authorized to request federal waivers deemed

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 **necessary and appropriate to implement the comprehensive plan.**

2 **(2) Upon legislative approval of the comprehensive plan, the board is authorized imme-**
 3 **diately to implement any elements necessary to implement the plan that do not require leg-**
 4 **islative changes or federal approval.**

5 **SECTION 6.** ORS 442.011, as amended by section 15, chapter 697, Oregon Laws 2007, is
 6 amended to read:

7 442.011. (1) There is created in the Department of Human Services the Office for Oregon Health
 8 Policy and Research. The Administrator of the Office for Oregon Health Policy and Research shall
 9 be appointed by the Governor and the appointment shall be subject to Senate confirmation in the
 10 manner prescribed in ORS 171.562 and 171.565. The administrator shall be an individual with dem-
 11 onstrated proficiency in planning and managing programs with complex public policy and fiscal as-
 12 pects such as those involved in the Oregon Health Plan. Before making the appointment, the
 13 Governor must advise the President of the Senate and the Speaker of the House of Representatives
 14 of the names of at least three finalists and shall consider their recommendation in appointing the
 15 administrator.

16 (2) In carrying out the responsibilities and duties of the administrator, the administrator shall
 17 consult with and be advised by the Oregon Health Policy Commission **and the Oregon Health Fund**
 18 **Board.**

19 **SECTION 7.** As used in this section and section 8 of this 2009 Act, “reporting entity”
 20 means:

21 (1) **An insurer as defined in ORS 731.106 or fraternal benefit society as described in ORS**
 22 **748.106 required to have a certificate of authority to transact health insurance business in**
 23 **this state.**

24 (2) **A health care service contractor as defined in ORS 750.005 that issues medical insur-**
 25 **ance in this state.**

26 (3) **A third party administrator required to obtain a license under ORS 744.702.**

27 (4) **A pharmacy benefit manager or fiscal intermediary, or other person that is by stat-**
 28 **ute, contract or agreement legally responsible for payment of a claim for a health care item**
 29 **or service.**

30 (5) **A prepaid managed care health services organization as defined in ORS 414.736.**

31 (6) **An insurer providing coverage funded under Part A, Part B or Part D of Title XVIII**
 32 **of the Social Security Act, subject to approval by the United States Department of Health**
 33 **and Human Services.**

34 **SECTION 8.** (1) **The Administrator of the Office for Oregon Health Policy and Research**
 35 **shall establish and maintain a program that requires reporting entities to report health care**
 36 **data for the following purposes:**

37 (a) **Determining the maximum capacity and distribution of existing resources allocated**
 38 **to health care.**

39 (b) **Identifying the demands for health care.**

40 (c) **Allowing health care policymakers to make informed choices.**

41 (d) **Evaluating the effectiveness of intervention programs in improving health outcomes.**

42 (e) **Comparing the costs and effectiveness of various treatment settings and approaches.**

43 (f) **Providing information to consumers and purchasers of health care.**

44 (g) **Improving the quality and affordability of health care and health care coverage.**

45 (h) **Assisting the administrator in furthering the health policies expressed by the Legis-**

1 **lative Assembly in ORS 442.025.**

2 **(2) The administrator shall adopt rules establishing the time, place, form and manner of**
 3 **reporting information under this section, including but not limited to:**

4 **(a) Requiring the use of unique patient and provider identifiers; and**

5 **(b) Specifying a uniform coding system that reflects all health care utilization, costs and**
 6 **resources in this state, and health care utilization and costs for health care services provided**
 7 **to Oregon residents in other states.**

8 **(3) The administrator shall adopt rules establishing the types of information to be re-**
 9 **ported under this section, including but not limited to:**

10 **(a) Health care claims and enrollment information used by reporting entities and paid**
 11 **health care claims data; and**

12 **(b) Reports, data, schedules, statistics or other information relating to health care costs,**
 13 **prices, quality, utilization or resources determined by the administrator to be necessary to**
 14 **carry out the purposes of this section.**

15 **(4) The administrator shall use data collected under this section to provide information**
 16 **to consumers of health care to empower the consumers to make economically sound and**
 17 **medically appropriate decisions. The information must include, but not be limited to, the**
 18 **prices and quality of health care services.**

19 **(5) The administrator may contract with a third party to collect and process the health**
 20 **care data reported under this section. The contract must prohibit the collection of Social**
 21 **Security numbers and must prohibit the disclosure or use of the data for any purpose other**
 22 **than those specifically authorized by the contract. The contract must require the third party**
 23 **to transmit all data collected and processed under the contract to the Office for Oregon**
 24 **Health Policy and Research.**

25 **(6) The administrator shall facilitate a collaboration between the Department of Human**
 26 **Services, the Department of Consumer and Business Services and interested stakeholders to**
 27 **develop a comprehensive health care information system using the information reported**
 28 **under this section and collected by the office under ORS 442.120 and 442.400 to 442.463. The**
 29 **administrator, in consultation with interested stakeholders, shall:**

30 **(a) Formulate the data sets that will be included in the system;**

31 **(b) Establish the criteria and procedures for the development of limited use data sets;**

32 **(c) Establish the criteria and procedures to ensure that limited use data sets are acces-**
 33 **sible and compliant with federal and state privacy laws; and**

34 **(d) Establish a time frame for the creation of the comprehensive health care information**
 35 **system.**

36 **(7) Information disclosed through the comprehensive health care information system**
 37 **described in subsection (6) of this section:**

38 **(a) Shall be available as a resource to insurers, employers, providers, purchasers of**
 39 **health care and state agencies to allow for continuous review of health care utilization,**
 40 **expenditures and performance in this state;**

41 **(b) Shall be available to Oregon programs for quality in health care for use in improving**
 42 **health care in Oregon, subject to rules prescribed by the administrator conforming to state**
 43 **and federal privacy laws or limiting access to limited use data sets;**

44 **(c) Shall be presented to allow for comparisons of geographic, demographic and economic**
 45 **factors and institutional size;**

1 (d) May not disclose any data that contains direct personal identifiers such as names,
 2 addresses, electronic mail addresses, telephone numbers or Social Security numbers; and

3 (e) May not disclose trade secrets of reporting entities.

4 (8) The collection, storage and release of health care data and other information under
 5 this section is subject to the requirements of the federal Health Insurance Portability and
 6 Accountability Act.

7 **SECTION 9.** (1) Any reporting entity that fails to report as required in section 8 of this
 8 2009 Act or rules of the Office for Oregon Health Policy and Research adopted pursuant to
 9 section 8 of this 2009 Act may be subject to a civil penalty.

10 (2) The Administrator of the Office for Oregon Health Policy and Research shall adopt a
 11 schedule of penalties not to exceed \$500 per day of violation, determined by the severity of
 12 the violation.

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

14 (4) Civil penalties imposed under this section may be remitted or mitigated upon such
 15 terms and conditions as the administrator considers proper and consistent with the public
 16 health and safety.

17 (5) Civil penalties incurred under any law of this state are not allowable as costs for the
 18 purpose of rate determination or for reimbursement by a third-party payer.

19 **SECTION 10.** ORS 731.988 is amended to read:

20 731.988. (1) *[Any person who violates any provision of the Insurance Code, any lawful rule or final*
 21 *order of the Director of the Department of Consumer and Business Services or any judgment made by*
 22 *any court upon application of the director, shall forfeit and pay to the General Fund of the State*
 23 *Treasury a civil penalty in an amount determined by the director of not more than \$10,000 for each*
 24 *offense. In the case of individual insurance producers, adjusters or insurance consultants, the civil*
 25 *penalty shall be not more than \$1,000 for each offense. Each violation shall be deemed a separate of-*
 26 *fense.]* **A person shall forfeit and pay to the General Fund of the State Treasury a civil penalty**
 27 **in an amount determined by the Director of the Department of Consumer and Business**
 28 **Services of not more than \$10,000 for each violation of:**

29 (a) Any provision of the Insurance Code;

30 (b) Any lawful rule or final order of the director;

31 (c) Any judgment made by a court upon application made by the director; or

32 (d) Any rule adopted by the Administrator of the Office for Oregon Health Policy and
 33 Research for the reporting of information pursuant to section 8 of this 2009 Act.

34 (2) In addition to the civil penalty set forth in subsection (1) of this section, any person who
 35 violates any provision of the Insurance Code, any lawful rule or final order of the director or any
 36 judgment made by any court upon application of the director, may be required to forfeit and pay to
 37 the General Fund of the State Treasury a civil penalty in an amount determined by the director but
 38 not to exceed the amount by which such person profited in any transaction which violates any such
 39 provision, rule, order or judgment.

40 (3) In addition to the civil penalties set forth in subsections (1) and (2) of this section, any
 41 insurer that is required to make a report under ORS 742.400 and that fails to do so within the
 42 specified time may be required to pay to the General Fund of the State Treasury a civil penalty in
 43 an amount determined by the director but not to exceed \$10,000.

44 (4) A civil penalty imposed under this section may be recovered either as provided in subsection
 45 (5) of this section or in an action brought in the name of the State of Oregon in any court of ap-

1 appropriate jurisdiction.

2 (5) Civil penalties under this section shall be imposed and enforced in the manner provided by
3 ORS 183.745.

4 (6) The provisions of this section are in addition to and not in lieu of any other enforcement
5 provisions contained in the Insurance Code.

6 **SECTION 11. Section 28, chapter 697, Oregon Laws 2007, is repealed.**

7 **SECTION 12. This 2009 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect
9 on its passage.**

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