

Senate Bill 509

Sponsored by Senators MONNES ANDERSON, KRUSE, Representatives SCHAUFLEER, THOMPSON (at the request of Oregon Medical Association)

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**.

Imposes requirements on covered entities that obtain use of physician's discounted rates. Imposes requirements on contracts between entities that contract for provision of health care services and physicians. Requires covered entities to comply with terms of contract between physician and contracting entity.

Requires contracting entities to give notice to physicians of changes to physician contracts.

Requires contracting entities to maintain website containing specified information regarding covered entities.

A BILL FOR AN ACT

1
2 Relating to physician contracts.

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

4 **SECTION 1. As used in sections 1 to 5 of this 2009 Act:**

5 (1) **"Contracting entity" means any person that contracts directly with a physician for**
6 **the delivery of health care services or for the purpose of selling or making available to a**
7 **covered entity a physician's services or the services of a physician panel.**

8 (2) **"Covered entity" means any person other than a contracting entity or an insurer**
9 **providing casualty insurance, as defined in ORS 731.158, that has obtained the right to a**
10 **physician's discounted rate as established under a physician contract with a contracting en-**
11 **tity.**

12 (3) **"Health care services" means the treatment of humans for bodily injury, disablement**
13 **or death by accident or accidental means or as a result of sickness or childbirth, or in pre-**
14 **vention of sickness, but does not include treatment for bodily injury, disablement or occu-**
15 **pational diseases incurred as a result of employment.**

16 (4) **"Independent practice association" has the meaning given that term in ORS 743.801.**

17 (5) **"Person" has the meaning given that term in ORS 731.116.**

18 (6)(a) **"Physician" means:**

19 (A) **A physician as defined in ORS 677.010.**

20 (B) **A physician group, independent practice association or physician-controlled organ-**
21 **ization.**

22 (b) **"Physician" does not include a contracting entity.**

23 (7) **"Physician contract" means a contract between a physician and a contracting entity**
24 **for the provision of health care services.**

25 **SECTION 2. (1) A contracting entity shall register with the Director of the Department**
26 **of Consumer and Business Services.**

27 (2) **A physician contract shall contain provisions that:**

28 (a) **Ensure that all covered entities to which the contracting entity has sold, rented 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 otherwise given access to a physician's discounted rate comply with the physician contract,
2 including but not limited to all requirements to encourage access to the physician and to pay
3 the physician pursuant to the rates of payment and methodology set forth in the contract
4 without further reduction;

5 (b) Prohibit the contracting entity from expanding or limiting the scope of covered ser-
6 vices or imposing new requirements or conditions regarding prior authorization, payment,
7 utilization control or new administrative procedures that increase the physician's costs of
8 doing business during the term of the contract;

9 (c) Require the contracting entity to obligate any covered entity, through contract, to
10 not further sell, rent or give its right to access to a physician's discounted rate to any other
11 entity;

12 (d) Require the physician to assign to the contracting entity a claim that is paid by the
13 contracting entity as required by subsection (7)(a)(C) of this section;

14 (e) Require upon termination of the physician contract that the contracting entity notify
15 each covered entity to cease using the discounted physician rate or other contractual right;
16 and

17 (f) Require full disclosure to the physician of any access fee or other remuneration the
18 contracting entity may receive and the specific benefits and services the contracting entity
19 will provide to or for the covered entities.

20 (3) A physician contract may not contain provisions that:

21 (a) Require the physician to provide services for more than a single product or line of
22 business without the physician's written consent; or

23 (b) Require a physician to give the payer the lowest rate the physician has given to any
24 other payer.

25 (4) Except as provided in this section, an entity other than a contracting entity may not
26 sell, rent or apply a contracting entity's rights to a physician's discounted rate or other
27 contractual rights or obligations.

28 (5) A contracting entity may not sell, rent or apply a contracting entity's rights to a
29 physician's discounted rate or other contractual rights or obligations to an insurer providing
30 casualty insurance, as defined in ORS 731.158 (3), or self-insured employer for the purpose
31 of providing medical services under ORS chapter 656.

32 (6) A contracting entity shall require covered entities that are by contract eligible to
33 claim the right to access a physician's discounted rate to cease claiming entitlement to the
34 rate or other contractual rights or obligations upon termination of the physician contract.

35 (7)(a) After receiving written notice from a physician who is a party to a physician con-
36 tract that a covered entity to whom a contracting entity has sold, rented or given its rights
37 to use the physician's discounted rate has taken any action described in paragraph (b) of this
38 subsection, the contracting entity shall, within 45 days after receiving the notice:

39 (A) Cause the covered entity to make correct payment to the physician;

40 (B) Ensure the covered entity otherwise complies with the terms of the underlying con-
41 tract or terminate the contracting entity's agreement with the covered entity; or

42 (C) If payment is not made by the covered entity within 10 days after the date the cov-
43 ered entity is notified in writing by the contracting entity of nonpayment, assume direct re-
44 sponsibility for the payment of the claim in question by paying the physician the amount
45 owed under the physician contract.

1 (b) A contracting entity must take one of the actions described in paragraph (a) of this
2 subsection if the contracting entity receives written notice from a physician that the covered
3 entity:

4 (A) Is not complying with the terms of the underlying contract;

5 (B) Has violated statutory requirements for timely and accurate payment of claims;

6 (C) Has further rented, sold or assigned its right to a physician's discounted rates to
7 other entities; or

8 (D) Has not ceased using the physician's discounted rate after the termination of the
9 physician contract.

10 (8) Nothing in the contract between the contracting entity and the physician or the
11 contracting entity and the covered entity supersedes sections 1 to 5 of this 2009 Act.

12 (9) A contracting entity or covered entity may not retaliate against a physician for ex-
13 exercising rights provided under sections 1 to 5 of this 2009 Act.

14 **SECTION 3.** (1) A contracting entity shall provide notice in writing to a physician at least
15 15 days prior to the effective date of the amendment, of an amendment to a physician con-
16 tract that is not a material amendment.

17 (2)(a) A contracting entity shall provide notice in writing to a physician at least 90 days
18 prior to the effective date of the amendment, of any material amendment to the physician
19 contract. The notice shall be conspicuously labeled "Notice of Material Amendment to Con-
20 tract" and include the name and address of a person to contact regarding the amendment.

21 (b) Within 15 days after receiving the notice described in paragraph (a) of this subsection,
22 if the physician objects in writing to the amendment at the address listed in the notice, and
23 there is no resolution for the objection, either party may terminate the physician contract
24 without penalty with at least 60 days' written notice to the other party. If the notice of
25 termination is given less than 60 days from the effective date of the amendment, the
26 amendment is effective prior to termination.

27 (c) A contracting entity may not terminate a physician contract solely because the phy-
28 sician objects to a notice of material amendment.

29 (d) If the physician does not object to the material amendment in the manner prescribed
30 by this subsection, the material amendment is effective as of the date specified in the notice.

31 (3) As used in this section, "material amendment" means any amendment to a physician
32 contract that decreases the physician's payment or compensation, changes the administra-
33 tive procedure in a way that may reasonably be expected to significantly increase the physi-
34 cian's administrative expenses or adds a new product.

35 **SECTION 4.** (1) A contracting entity shall:

36 (a) Maintain and update daily a website that is accessible to all physicians and patients
37 and that contains a list of all covered entities to which the contracting entity sells, rents or
38 gives the contracting entity's rights to use a physician's discounted rate; and

39 (b) Maintain a toll-free telephone number and website accessible to all contracted physi-
40 cians by which physicians may access the information described in paragraph (a) of this
41 subsection to determine patient eligibility for coverage or to obtain prior authorization for
42 the provision of health care services.

43 (2) If the contracting entity or covered entity issues member or subscriber identification
44 cards, the cards shall, in a clear and legible manner, identify the entity responsible for paying
45 claims and the contracting entity whose physician contracts control the reimbursement of

1 **claims.**

2 (3) **Prior authorization information provided to a physician regarding benefits coverage**
3 **or enrollee eligibility is binding on a contracting entity or covered entity if a physician pro-**
4 **vides services within 72 hours of receiving prior authorization.**

5 (4) **All explanations of benefits or remittance advice, whether written or electronic, shall**
6 **clearly identify the name of the covered entity issuing the payment to a physician.**

7 **SECTION 5. (1) The Director of the Department of Consumer and Business Services shall**
8 **adopt rules as necessary for the implementation and administration of sections 1 to 5 of this**
9 **2009 Act. Upon finding a contracting entity, third party payer or other person in violation**
10 **of sections 1 to 5 of this 2009 Act, the Department of Consumer and Business Services shall**
11 **require full restitution and interest, issue a cease and desist order to prevent the continua-**
12 **tion of the violation and impose a civil penalty of not less than \$1,000 per violation.**

13 (2) **A physician has a private right of action against any person or entity that violates**
14 **sections 1 to 5 of this 2009 Act. A physician who prevails in an action brought under this**
15 **section is entitled to the physician's actual damages or \$1,000 per violation, whichever is**
16 **more, plus reasonable attorney fees, costs and disbursements incurred in bringing the action.**

17 (3) **If any violation of sections 1 to 5 of this 2009 Act results in a payment to a physician**
18 **that is lower than the rates of payment established in the physician contract, each under-**
19 **payment is a separate violation for the purpose of subsection (2) of this section.**

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