

Enrolled
Senate Bill 86

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CHAPTER

AN ACT

Relating to retainer medical practices; creating new provisions; amending ORS 731.036; and declaring an emergency.

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

SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of the Insurance Code.

SECTION 2. (1) As used in this section and section 3 of this 2011 Act:

(a) "Control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract or otherwise. A person who is the owner of 10 percent or more ownership interest in a retainer medical practice or applicant for a certificate to operate a retainer medical practice is presumed to have control.

(b) "Primary care" means outpatient, nonspecialty medical services or the coordination of health care for the purpose of:

(A) Promoting or maintaining mental and physical health and wellness; and

(B) Diagnosis, treatment or management of acute or chronic conditions caused by disease, injury or illness.

(c) "Provider" means a health care professional licensed or certified under ORS chapter 677, 678, 684 or 685 who provides primary care in the ordinary course of business or practice of a profession.

(d) "Retainer medical agreement" means a written agreement between a retainer medical practice and a patient or a legal representative or guardian of a patient specifying a defined and predetermined set of primary care services to be provided in consideration for a retainer medical fee.

(e) "Retainer medical fee" means any fee paid to a retainer medical practice pursuant to a medical retainer agreement.

(f) "Retainer medical practice" means a provider, a group of providers or a person that employs or contracts with a provider or a group of providers to provide services under the terms of a retainer medical agreement.

(2) A retainer medical practice must be certified by the Department of Consumer and Business Services. To qualify to become a certified retainer medical practice or to renew a certificate, the practice:

(a) May not have or have ever had a certificate of authority to transact insurance in this state.

(b) May not be or have ever been licensed, certified or otherwise authorized in this state or any other state to act as an insurer, managed care organization, health care service contractor or similar entity.

(c) May not be controlled by an entity described in paragraph (a) or (b) of this subsection.

(3) A certified retainer medical practice:

(a) Must provide only primary care and must limit the scope of services provided or the number of patients served to an amount that is within the capacity of the practice to provide in a timely manner;

(b) May not bill an insurer, a self-insured plan or the state medical assistance program for a service provided by the practice to a patient pursuant to a retainer medical agreement;

(c) Must be financially responsible and have the necessary business experience or expertise to operate the practice;

(d) Must give the written disclosures described in subsection (4) of this section;

(e) May not use or disseminate misleading, deceptive or false statements in marketing, advertising, promotional, sales or informational materials regarding the practice or in communications with patients or prospective patients;

(f) May not engage in dishonest, fraudulent or illegal conduct in any business or profession; and

(g) May not discriminate based on race, religion, gender, sexual identity, sexual preference or health status.

(4) A certified retainer medical practice must make the following written information available to prospective patients by prominently disclosing, in the manner prescribed by the department by rule, in marketing materials and retainer medical agreements:

(a) That the practice is not insurance;

(b) That the practice provides only the limited scope of primary care services specified in the retainer medical agreement;

(c) That a patient must pay for all services not specified in the retainer medical agreement; and

(d) Any other disclosures required by the department by rule.

(5) The department may by written order deny, suspend or revoke a retainer medical practice certificate or may refuse to renew a retainer medical practice certificate if the department finds that:

(a) The retainer medical practice does not meet the criteria in subsections (2) to (4) of this section;

(b) The retainer medical practice has provided false, misleading, incomplete or inaccurate information in the application for a certificate or renewal of a certificate;

(c) The retainer medical practice provides medical services through a provider whose license to provide the medical services offered on behalf of the retainer medical practice is revoked;

(d) The authority of the retainer medical practice to operate a retainer medical practice or similar practice in another jurisdiction is denied, suspended, revoked or not renewed;

(e) The retainer medical practice, a person who has control over the retainer medical practice or a health care provider providing services on behalf of the retainer medical practice is charged with a felony or misdemeanor involving dishonesty; or

(f) The retainer medical practice fails to comply with subsection (7) of this section.

(6) With respect to a certified retainer medical practice or a retainer medical practice operating without a certificate, the department is authorized to:

(a) Investigate;

(b) Subpoena documents and records related to the business of the practice; and

(c) Take any actions authorized by the Insurance Code that are necessary to administer and enforce this section.

(7) A retainer medical practice subject to an investigation under subsection (5) of this section must:

(a) Within five business days, respond to inquiries in the form and manner specified by the department; and

(b) Reimburse the expenses incurred by the department in conducting the investigation.

(8) A retainer medical practice may contest any order made under subsection (5) of this section in accordance with ORS chapter 183.

(9) A certificate issued under subsection (2) of this section is effective for one year or for a longer period as prescribed by the department by rule.

(10) The department may adopt rules necessary or appropriate to implement the provisions of this section.

SECTION 3. A certified retainer medical practice shall:

(1) Notify the Department of Consumer and Business Services immediately whenever:

(a) The license of a provider who has provided services on behalf of the practice is denied, suspended, revoked or not renewed in this state or in any other jurisdiction; or

(b) The authority of the practice to operate in another jurisdiction is denied, suspended, revoked or not renewed.

(2) Notify the department no later than 30 days after any change to the name, address or contact information that is provided in the application for certification under section 2 of this 2011 Act.

SECTION 4. ORS 731.036 is amended to read:

731.036. The Insurance Code does not apply to any of the following to the extent of the subject matter of the exemption:

(1) A bail bondsman, other than a corporate surety and its agents.

(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years prior to January 1, 1961, and for which a certificate of authority was not required on that date.

(3) A religious organization providing insurance benefits only to its employees, [which] if the organization is in existence and exempt from taxation under section 501(c)(3) of the federal Internal Revenue Code on September 13, 1975.

(4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for tort liability in accordance with ORS 30.282.

(5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for property damage in accordance with ORS 30.282.

(6) Cities, counties, school districts, community college districts, community college service districts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure for health insurance coverage, excluding disability insurance, their employees or retired employees, or their dependents, or students engaged in school activities, or combination of employees and dependents, with or without employee or student contributions, if all of the following conditions are met:

(a) The individual or jointly self-insured program meets the following minimum requirements:

(A) In the case of a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals;

(B) In the case of an individual public body program other than a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals; and

(C) In the case of a joint program of two or more public bodies, the number of covered employees and dependents and retired employees and dependents aggregates at least 1,000 individuals;

(b) The individual or jointly self-insured health insurance program includes all coverages and benefits required of group health insurance policies under ORS chapters 743 and 743A;

(c) The individual or jointly self-insured program must have program documents that define program benefits and administration;

(d) Enrollees must be provided copies of summary plan descriptions including:

(A) Written general information about services provided, access to services, charges and scheduling applicable to each enrollee's coverage;

(B) The program's grievance and appeal process; and

(C) Other group health plan enrollee rights, disclosure or written procedure requirements established under ORS chapters 743 and 743A;

(e) The financial administration of an individual or jointly self-insured program must include the following requirements:

(A) Program contributions and reserves must be held in separate accounts and used for the exclusive benefit of the program;

(B) The program must maintain adequate reserves. Reserves may be invested in accordance with the provisions of ORS chapter 293. Reserve adequacy must be calculated annually with proper actuarial calculations including the following:

(i) Known claims, paid and outstanding;

(ii) A history of incurred but not reported claims;

(iii) Claims handling expenses;

(iv) Unearned contributions; and

(v) A claims trend factor; and

(C) The program must maintain adequate reinsurance against the risk of economic loss in accordance with the provisions of ORS 742.065 unless the program has received written approval for an alternative arrangement for protection against economic loss from the Director of the Department of Consumer and Business Services;

(f) The individual or jointly self-insured program must have sufficient personnel to service the employee benefit program or must contract with a third party administrator licensed under ORS chapter 744 as a third party administrator to provide such services;

(g) The individual or jointly self-insured program shall be subject to assessment in accordance with ORS 735.614 [and 743.951] and former enrollees shall be eligible for portability coverage in accordance with ORS 735.616;

(h) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the Department of Consumer and Business Services copies of all documents creating and governing the program, all forms used to communicate the coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of the program for the preceding year. A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing requirement; and

(i) Each public body in a joint insurance program is liable only to its own employees and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool.

(7) All ambulance services.

(8) A person providing any of the services described in this subsection. The exemption under this subsection does not apply to an authorized insurer providing such services under an insurance policy. This subsection applies to the following services:

(a) Towing service.

(b) Emergency road service, which means adjustment, repair or replacement of the equipment, tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated under its own power.

(c) Transportation and arrangements for the transportation of human remains, including all necessary and appropriate preparations for and actual transportation provided to return a

decedent's remains from the decedent's place of death to a location designated by a person with valid legal authority under ORS 97.130.

(9)(a) A person described in this subsection who, in an agreement to lease or to finance the purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in paragraph (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft or other occurrence, as specified in the agreement. The exemption established in this subsection applies to the following persons:

(A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail installment contract.

(B) The lessor of the motor vehicle.

(C) The lender who finances the purchase of the motor vehicle.

(D) The assignee of a person described in this paragraph.

(b) The amount waived pursuant to the agreement shall be the difference, or portion thereof, between the amount received by the seller, lessor, lender or assignee, as applicable, [which] **that** represents the actual cash value of the motor vehicle at the date of loss, and the amount owed under the agreement.

(10) A self-insurance program for tort liability or property damage that is established by two or more affordable housing entities and that complies with the same requirements that public bodies must meet under ORS 30.282 (6). As used in this subsection:

(a) "Affordable housing" means housing projects in which some of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to individuals of low income.

(b) "Affordable housing entity" means any of the following:

(A) A housing authority created under the laws of this state or another jurisdiction and any agency or instrumentality of a housing authority, including but not limited to a legal entity created to conduct a self-insurance program for housing authorities that complies with ORS 30.282 (6).

(B) A nonprofit corporation that is engaged in providing affordable housing.

(C) A partnership or limited liability company that is engaged in providing affordable housing and that is affiliated with a housing authority described in subparagraph (A) of this paragraph or a nonprofit corporation described in subparagraph (B) of this paragraph if the housing authority or nonprofit corporation:

(i) Has, or has the right to acquire, a financial or ownership interest in the partnership or limited liability company;

(ii) Has the power to direct the management or policies of the partnership or limited liability company;

(iii) Has entered into a contract to lease, manage or operate the affordable housing owned by the partnership or limited liability company; or

(iv) Has any other material relationship with the partnership or limited liability company.

(11) A community-based health care initiative approved by the Administrator of the Office for Oregon Health Policy and Research under ORS 735.723 operating a community-based health care improvement program approved by the administrator.

(12) Except as provided in sections 2 and 3 of this 2011 Act, a person certified by the Department of Consumer and Business Services to operate a retainer medical practice.

SECTION 5. Notwithstanding section 2 (2) and (4) of this 2011 Act, a retainer medical practice certified by the Department of Consumer and Business Services under section 2 of this 2011 Act or a retainer medical practice applying for a certificate or the renewal of a certificate is permitted to exhaust the practice's supply of marketing materials created prior to the effective date of this 2011 Act.

SECTION 6. This 2011 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect on its passage.

Passed by Senate May 3, 2011

Repassed by Senate June 13, 2011

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Robert Taylor, Secretary of Senate

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Peter Courtney, President of Senate

Passed by House June 7, 2011

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Bruce Hanna, Speaker of House

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Arnie Roblan, Speaker of House

Received by Governor:

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Approved:

.....M,....., 2011

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2011

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Kate Brown, Secretary of State