

A-Engrossed
Senate Bill 86

Ordered by the Senate April 29
Including Senate Amendments dated April 29

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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.

Exempts retainer medical practice from application of Insurance Code if health care provider maintaining practice is certified by Department of Consumer and Business Services *[to meet]* **and meets** specified criteria.

Authorizes department to investigate and take enforcement actions with respect to health care provider maintaining or purporting to maintain retainer medical practice.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to retainer medical practices; creating new provisions; amending ORS 731.036; and declar-
3 ing an emergency.

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

5 **SECTION 1. Sections 2 and 3 of this 2011 Act are added to and made a part of the In-**
6 **urance Code.**

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

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

13 (b) **“Primary care” means outpatient, nonspecialty medical services or the coordination**
14 **of health care for the purpose of:**

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

16 (B) **Diagnosis, treatment or management of acute or chronic conditions caused by dis-**
17 **ease, injury or illness.**

18 (c) **“Provider” means a health care professional licensed or certified under ORS chapter**
19 **677, 678, 684 or 685 who provides primary care in the ordinary course of business or practice**
20 **of a profession.**

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

25 (e) **“Retainer medical fee” means any fee paid to a retainer medical practice pursuant to**

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 a medical retainer agreement.

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

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

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

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

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

14 (3) A certified retainer medical practice:

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

18 (b) May not require payment of a retainer medical fee for a period covering more than
19 one month;

20 (c) Must reimburse any retainer medical fees for services agreed to be provided but that
21 are not provided during the term of the retainer medical agreement;

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

24 (e) Must be financially responsible and have the necessary business experience or exper-
25 tise to operate the practice;

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

27 (g) May not use or disseminate misleading, deceptive or false statements in marketing,
28 advertising, promotional, sales or informational materials regarding the practice or in com-
29 munications with patients or prospective patients;

30 (h) May not engage in dishonest, fraudulent or illegal conduct in any business or profes-
31 sion; and

32 (i) May not discriminate based on race, religion, gender, sexual identity, sexual prefer-
33 ence or health status.

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

37 (a) That the practice is not insurance;

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

40 (c) That a patient must pay for all services not specified in the retainer medical agree-
41 ment; and

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

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

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

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

5 (c) The retainer medical practice provides medical services through a provider whose li-
6 cense to provide the medical services offered on behalf of the retainer medical practice is
7 revoked;

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

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

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

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

16 (a) Investigate;

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

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

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

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

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

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

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

29 (10) The department may adopt rules necessary or appropriate to implement the pro-
30 visions of this section.

31 **SECTION 3.** A certified retainer medical practice shall:

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

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

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

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

40 **SECTION 4.** ORS 731.036 is amended to read:

41 731.036. The Insurance Code does not apply to any of the following to the extent of the subject
42 matter of the exemption:

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

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

1 date.

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

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

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

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

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

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

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

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

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

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

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

29 (A) Written general information about services provided, access to services, charges and sched-
30 uling applicable to each enrollee's coverage;

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

32 (C) Other group health plan enrollee rights, disclosure or written procedure requirements es-
33 tablished under ORS chapters 743 and 743A;

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

36 (A) Program contributions and reserves must be held in separate accounts and used for the ex-
37 clusive benefit of the program;

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

41 (i) Known claims, paid and outstanding;

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

43 (iii) Claims handling expenses;

44 (iv) Unearned contributions; and

45 (v) A claims trend factor; and

1 (C) The program must maintain adequate reinsurance against the risk of economic loss in ac-
2 cordance with the provisions of ORS 742.065 unless the program has received written approval for
3 an alternative arrangement for protection against economic loss from the Director of the Depart-
4 ment of Consumer and Business Services;

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

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

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

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

21 (7) All ambulance services.

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

25 (a) Towing service.

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

29 (c) Transportation and arrangements for the transportation of human remains, including all
30 necessary and appropriate preparations for and actual transportation provided to return a
31 decedent's remains from the decedent's place of death to a location designated by a person with
32 valid legal authority under ORS 97.130.

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

38 (A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail in-
39 stallment contract.

40 (B) The lessor of the motor vehicle.

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

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

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

1 the agreement.

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

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

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

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

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

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

17 (i) Has, or has the right to acquire, a financial or ownership interest in the partnership or lim-
18 ited liability company;

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

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

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

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

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

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

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

37