

House Bill 2724

Sponsored by Representative HOYLE

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**.

Exempts retainer dental practice from application of Insurance Code if certified by Department of Consumer and Business Services.

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

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to health care offered through a retainer practice; amending ORS 731.036, 735.500 and
3 735.510; and declaring an emergency.

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

5 **SECTION 1.** ORS 735.500 is amended to read:

6 735.500. (1) As used in this section and ORS 735.510:

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

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

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

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

17 (c) "Provider" means a health care professional licensed or certified under:

18 (A) ORS chapter 677, 678, 684 or 685 who provides primary care in the ordinary course of
19 business or practice of a profession; **or**

20 **(B) ORS chapter 679 who provides dental care in the ordinary course of business or**
21 **practice of a profession.**

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

26 (e) **"Retainer dental practice" means a provider, a group of providers or a person that**
27 **employs or contracts with a provider or a group of providers to provide dental care under**
28 **the terms of a retainer agreement.**

29 [(e)] (f) "Retainer [*medical*] fee" means any fee paid to a retainer [*medical*] practice pursuant to
30 a [*medical*] retainer agreement.

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 [(f)] (g) “Retainer medical practice” means a provider, a group of providers or a person that
 2 employs or contracts with a provider or a group of providers to provide **primary care** services un-
 3 der the terms of a retainer [*medical*] agreement.

4 (h) “Retainer practice” means a:

5 (A) Retainer dental practice; or

6 (B) Retainer medical practice.

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

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

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

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

15 (3) A certified retainer [*medical*] practice:

16 [(a) *Must provide only primary care and must limit the scope of services provided or the number*
 17 *of patients served to an amount that is within the capacity of the practice to provide in a timely man-*
 18 *ner;*]

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

21 [(c)] (b) Must be financially responsible and have the necessary business experience or expertise
 22 to operate the practice;

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

24 [(e)] (d) May not use or disseminate misleading, deceptive or false statements in marketing, ad-
 25 vertising, promotional, sales or informational materials regarding the practice or in communications
 26 with patients or prospective patients;

27 [(f)] (e) May not engage in dishonest, fraudulent or illegal conduct in any business or profession;
 28 and

29 [(g)] (f) May not discriminate based on race, religion, gender, sexual identity, sexual preference
 30 or health status.

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

34 (a) That the practice is not insurance;

35 (b) That the practice provides only the limited scope of primary care **or dental care** services
 36 specified in the retainer [*medical*] agreement;

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

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

40 (5)(a) **A certified retainer medical practice must provide only primary care and must**
 41 **limit the scope of services provided or the number of patients served to an amount that is**
 42 **within the capacity of the practice to provide in a timely manner.**

43 (b) **A certified retainer dental practice must provide only dental care and must limit the**
 44 **scope of services provided or the number of patients served to an amount that is within the**
 45 **capacity of the practice to provide in a timely manner.**

1 [(5)] (6) The department may by written order deny, suspend or revoke a retainer [medical]
 2 practice certificate or may refuse to renew a retainer [medical] practice certificate if the department
 3 finds that:

4 (a) The retainer [medical] practice does not meet the criteria in subsections (2) to [(4)] (5) of this
 5 section;

6 (b) The retainer [medical] practice has provided false, misleading, incomplete or inaccurate in-
 7 formation in the application for a certificate or renewal of a certificate;

8 (c) The retainer [medical] practice provides medical **or dental** services through a provider whose
 9 license to provide the [medical] services offered on behalf of the retainer [medical] practice is re-
 10 voked;

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

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

16 (f) The retainer [medical] practice fails to comply with subsection [(7)] (8) of this section.

17 [(6)] (7) With respect to a certified retainer [medical] practice or a retainer [medical] practice
 18 operating without a certificate, the department is authorized to:

19 (a) Investigate;

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

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

23 [(7)] (8) A retainer [medical] practice subject to an investigation under subsection [(5)] (7) of this
 24 section must:

25 (a) Within five business days, respond to inquiries in the form and manner specified by the de-
 26 partment; and

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

28 [(8)] (9) A retainer [medical] practice may contest any order made under subsection [(5)] (6) of
 29 this section in accordance with ORS chapter 183.

30 [(9)] (10) A certificate issued under subsection (2) of this section is effective for one year or for
 31 a longer period as prescribed by the department by rule.

32 [(10)] (11) The department may adopt rules necessary or appropriate to implement the provisions
 33 of this section.

34 **SECTION 2.** ORS 735.510 is amended to read:

35 735.510. A certified retainer [medical] practice shall:

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

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

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

41 (2) Notify the department no later than 30 days after any change to the name, address or contact
 42 information that is provided in the application for certification under ORS 735.500.

43 **SECTION 3.** ORS 731.036 is amended to read:

44 731.036. Except as provided in ORS 743.061 or as specifically provided by law, the Insurance
 45 Code does not apply to any of the following to the extent of the subject matter of the exemption:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (i) Known claims, paid and outstanding;

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

- 1 (iii) Claims handling expenses;
- 2 (iv) Unearned contributions; and
- 3 (v) A claims trend factor; and

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

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

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

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

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

24 (7) All ambulance services.

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

28 (a) Towing service.

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

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

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

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

43 (B) The lessor of the motor vehicle.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (12) Except as provided in ORS 735.500 and 735.510, a person certified by the Department of
31 Consumer and Business Services to operate a retainer [*medical*] practice **as defined in ORS**
32 **735.500.**

33 **SECTION 4. This 2013 Act being necessary for the immediate preservation of the public**
34 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
35 **on its passage.**

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