

Senate Bill 163

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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 **as introduced**.

Imposes restrictions on fail-first protocols for coverage of prescription drugs by health benefit plans.

Declares emergency, effective on passage.

A BILL FOR AN ACT

Relating to prescription drug coverage under health benefit plans; creating new provisions; amending ORS 750.055 and 750.333; and declaring an emergency.

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

SECTION 1. Section 2 of this 2013 Act is added to and made a part of the Insurance Code.

SECTION 2. (1) As used in this section:

(a) **“Fail-first protocol” means a method of managing the utilization of prescription drugs in which an insured must first try an alternative drug for a specific condition and find the alternative to be ineffective before the insurer will cover the drug prescribed by the insured’s health care provider or a drug that is generically equivalent to the drug prescribed by the insured’s health care provider.**

(b) **“Generically equivalent” means:**

(A) **Having the same active chemical ingredients of the same strength, quantity and dosage form as the prescribed drug;**

(B) **Having the generic drug name as determined by the United States Adopted Names Council; and**

(C) **Accepted by the United States Food and Drug Administration as having the same chemical ingredients as the prescribed drug.**

(c) **“Health benefit plan” has the meaning given that term in ORS 743.730.**

(d) **“Step therapy” is a type of fail-first protocol in which an insurer will not cover a drug prescribed by an insured’s health care provider or a drug that is generically equivalent to the drug prescribed by the health care provider unless an insured has first tried a series of less costly or more safe drugs and those drugs have not been effective or have caused an adverse reaction or other physical harm to the insured.**

(2) **A fail-first protocol required in a health benefit plan for coverage of prescription drugs for the treatment of pain:**

(a) **Must allow the prescribing health care provider to establish the duration of each step in a step therapy protocol or the total duration of any fail-first protocol;**

(b) **May not require a patient to first fail on more than two alternative drugs;**

(c) **May not require prior authorization after the insured has followed the fail-first pro-**

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 **tocol if the health care provider notes in the patient's chart that the patient has followed the**
 2 **fail-first protocol; and**

3 **(d) May not require a pharmacist to contact the insurer before filling a prescription**
 4 **subject to the fail-first protocol if the health care provider notes on the prescription that the**
 5 **fail-first protocol has been followed.**

6 **(3) This section does not prohibit an insurer from imposing a copayment or deductible**
 7 **or a maximum coverage limitation for prescription drugs if the copayment, deductible or**
 8 **limitation are set forth in the summary of benefits and explanation of coverage and the**
 9 **health insurance policy or certificate and have been approved by the Department of Con-**
 10 **sumer and Business Services under ORS 742.003 or 743.010.**

11 **(4) This section does not require an insurer to cover prescription drugs that are not in**
 12 **the insurer's formulary or prohibit an insurer from substituting generically equivalent drugs.**

13 **SECTION 3.** ORS 750.055, as amended by section 3, chapter 21, Oregon Laws 2012, is amended
 14 to read:

15 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
 16 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

17 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
 18 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
 19 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
 20 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

21 (b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.592, not
 22 including ORS 732.582.

23 (c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695
 24 to 733.780.

25 (d) ORS chapter 734.

26 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
 27 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492,
 28 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.549 to
 29 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to
 30 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863,
 31 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036,
 32 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.084,
 33 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148,
 34 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190 and
 35 743A.192 and section 2, chapter 21, Oregon Laws 2012, **and section 2 of this 2013 Act.**

36 (f) The provisions of ORS chapter 744 relating to the regulation of insurance producers.

37 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
 38 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

39 (h) ORS 743A.024, except in the case of group practice health maintenance organizations that
 40 are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is
 41 referred by a physician associated with a group practice health maintenance organization.

42 (i) ORS 735.600 to 735.650.

43 (j) ORS 743.680 to 743.689.

44 (k) ORS 744.700 to 744.740.

45 (L) ORS 743.730 to 743.773.

1 (m) ORS 731.485, except in the case of a group practice health maintenance organization that
 2 is federally qualified pursuant to Title XIII of the Public Health Service Act and that wholly owns
 3 and operates an in-house drug outlet.

4 (2) For the purposes of this section, health care service contractors shall be deemed insurers.

5 (3) Any for-profit health care service contractor organized under the laws of any other state that
 6 is not governed by the insurance laws of the other state is subject to all requirements of ORS
 7 chapter 732.

8 (4) The Director of the Department of Consumer and Business Services may, after notice and
 9 hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025
 10 and 750.045 that are deemed necessary for the proper administration of these provisions.

11 **SECTION 4.** ORS 750.333, as amended by section 4, chapter 21, Oregon Laws 2012, is amended
 12 to read:

13 750.333. (1) The following provisions of the Insurance Code apply to trusts carrying out a mul-
 14 tiple employer welfare arrangement:

15 (a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316, 731.324, 731.328,
 16 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414, 731.418 to 731.434, 731.454, 731.484,
 17 731.486, 731.488, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.804 to 731.992 and 743.061.

18 (b) ORS 733.010 to 733.050, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

19 (c) ORS chapter 734.

20 (d) ORS 742.001 to 742.009, 742.013, 742.061 and 742.400.

21 (e) ORS 743.028, 743.053, 743.499, 743.524, 743.526, 743.527, 743.528, 743.529, 743.530, 743.560,
 22 743.562, 743.600, 743.601, 743.602, 743.610, 743.730 to 743.773 (except 743.760 to 743.773), 743.801,
 23 743.804, 743.807, 743.808, 743.814 to 743.839, 743.842, 743.845, 743.847, 743.854, 743.856, 743.857,
 24 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.912, 743.917, 743A.012, 743A.020,
 25 743A.034, 743A.052, 743A.064, 743A.065, 743A.080, 743A.100, 743A.104, 743A.110, 743A.144, 743A.170,
 26 743A.175, 743A.184 and 743A.192 and section 2, chapter 21, Oregon Laws 2012, **and section 2 of this**
 27 **2013 Act.**

28 (f) ORS 743A.010, 743A.014, 743A.024, 743A.028, 743A.032, 743A.036, 743A.040, 743A.048,
 29 743A.058, 743A.066, 743A.068, 743A.070, 743A.084, 743A.088, 743A.090, 743A.105, 743A.140, 743A.141,
 30 743A.148, 743A.168, 743A.180, 743A.185, 743A.188 and 743A.190. Multiple employer welfare arrange-
 31 ments to which ORS 743.730 to 743.773 apply are subject to the sections referred to in this para-
 32 graph only as provided in ORS 743.730 to 743.773.

33 (g) Provisions of ORS chapter 744 relating to the regulation of insurance producers and insur-
 34 ance consultants, and ORS 744.700 to 744.740.

35 (h) ORS 746.005 to 746.140, 746.160 and 746.220 to 746.370.

36 (i) ORS 731.592 and 731.594.

37 (j) ORS 731.870.

38 (2) For the purposes of this section:

39 (a) A trust carrying out a multiple employer welfare arrangement shall be considered an insurer.

40 (b) References to certificates of authority shall be considered references to certificates of mul-
 41 tiple employer welfare arrangement.

42 (c) Contributions shall be considered premiums.

43 (3) The provision of health benefits under ORS 750.301 to 750.341 shall be considered to be the
 44 transaction of health insurance.

45 **SECTION 5. Section 2 of this 2013 Act and the amendments to ORS 750.055 and 750.333**

1 by sections 3 and 4 of this 2013 Act apply to policies or certificates issued or renewed on or
2 after the effective date of this 2013 Act.

3 **SECTION 6.** This 2013 Act being necessary for the immediate preservation of the public
4 peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect
5 on its passage.
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