

SB317: Insurance Contract Enforceability

Key Elements of Legislation

- Reinforces existing Insurance Division policy prohibiting “discretionary clauses”
- Requires insurance contracts to declare compliance with the Oregon Insurance Code
- Provides Insurance Division with direct enforcement authority over coverage of health care benefits required by Chapter 743A (like mental health parity or pregnancy and childbirth expenses) through the unfair claim settlement practices act (*with -2 amendment*)

Background

Discretionary Clauses

- “Discretionary Clauses” give insurer a superior right to interpret their contract and to determine what benefits are due to the consumer
- Oregon’s Insurance Division, following NAIC guidance, has prohibited “Discretionary Clauses” for more than 10 years on grounds that they are “inequitable, deceptive, and misleading to consumers” – but some insurers include them anyway
- When they slip past the Insurance Division’s form review process, they are legally binding making it difficult for consumers to enforce their contractual rights to insurance coverage
- Insurers have challenged the Insurance Division’s authority to enforce this policy without more specific legislation

Contract Compliance with Oregon Insurance Code

- Litigation to enforce health insurance contracts is normally heard in federal courts under ERISA, based on the terms of the contract
- Insurers have argued that federal courts must consider only the language of the contract without considering whether that contractual language violates state law
 - U.S. District Court has disagreed with insurers, citing “general rule of insurance law”
- SB317 would make it abundantly clear that state law regulating insurance is a part of the terms of the plan – and thus clearly subject to consideration by federal courts

Enforcement of health care benefit mandates (-2 Amendment)

- Chapter 743A mandates health insurance plans to cover specific services and conditions, like mental health conditions or pregnancy and childbirth expenses
- Insurers must certify compliance when filing plans for approval by the Insurance Division – but there isn’t a clear enforcement clause if an insurer doesn’t provide coverage
- -2 amendment makes failure to provide mandated coverage a violation of the unfair claim settlement practices act, providing the Insurance Division with direct enforcement authority

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