

D R A F T

SUMMARY

Provides that insurer may not offer or issue policy, contract or certificate of insurance that provides that insurer has sole right or right that is superior to right of insured to interpret terms and conditions of policy, contract or certificate or that specifies standard of interpretation or review that is inconsistent with laws of this state.

Requires policy, contract or certificate of insurance to state that policy, contract or certificate conforms to Insurance Code, that Insurance Code is incorporated into policy, contract or certificate and that Insurance Code controls over conflicting provision of policy, contract or certificate. Requires policy, contract or certificate of insurance to state that insurer does not have sole right or right that is superior to right of insured to interpret policy, contract or certificate and may not specify standard for interpretation or review that conflicts with laws of this state. Applies required provisions to health care service contractors and trusts that carry out multiple-employer welfare arrangement.

Directs court, arbitrator or other adjudicatory authority to give full effect to required provisions and to construe provisions liberally to effect purposes of Insurance Code.

Becomes operative 91 days after effective date of Act.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to provisions required in insurance policies; creating new pro-
3 visions; amending ORS 746.230, 750.055 and 750.333; and declaring an
4 emergency.

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

6 **SECTION 1. Section 2 of this 2015 Act is added to and made a part**
7 **of ORS chapter 742.**

8 **SECTION 2. (1)(a) An insurer may not offer or issue a policy, con-**

1 **tract or certificate of insurance that:**

2 **(A) Provides that the insurer has the sole right, or a right that is**
3 **superior to the right of an insured, to interpret the terms and condi-**
4 **tions of the policy, contract or certificate of insurance; or**

5 **(B) Specifies a standard for interpreting or reviewing the policy,**
6 **contract or certificate of insurance that is inconsistent with the laws**
7 **of this state.**

8 **(b) Each policy, contract or certificate of insurance that an insured**
9 **issues must have provisions that read:**

10 **(A) “This (policy, contract or certificate) conforms with all appli-**
11 **cable provisions of the Insurance Code of the State of Oregon, which**
12 **is incorporated into this (policy, contract or certificate) by this refer-**
13 **ence. If a term, condition or other provision of this (policy, contract**
14 **or certificate) conflicts with a provision of the Insurance Code, the**
15 **Insurance Code controls over the conflicting provision of this (policy,**
16 **contract or certificate).”**

17 **(B) “This (policy, contract or certificate) does not give the insurer**
18 **the sole right, or a right that is superior to the right of the insured,**
19 **to interpret the terms and conditions of this (policy, contract or cer-**
20 **tificate) and may not specify a standard for interpreting or reviewing**
21 **this (policy, contract or certificate) that is inconsistent with Oregon**
22 **law. To the extent that a provision of this (policy, contract or certif-**
23 **icate) does purport to give the insurer the sole right or a superior right**
24 **to interpret the terms and conditions of this (policy, contract or cer-**
25 **tificate) or to specify a standard for interpretation or review that is**
26 **inconsistent with Oregon law, the provision is void and of no effect.”**

27 **(2) In an action or proceeding to adjudicate a claim under a policy,**
28 **contract or certificate of insurance issued in this state, a court,**
29 **arbitrator or other adjudicating authority shall give full effect to the**
30 **provisions set forth in subsection (1)(b) of this section and shall con-**
31 **strue the provisions liberally in favor of effecting the purposes of the**

1 **Insurance Code.**

2 **SECTION 3.** ORS 746.230, as amended by section 79, chapter 45, Oregon
3 Laws 2014, is amended to read:

4 746.230. (1) [No] **An** insurer or other person [*shall*] **may not** commit or
5 perform any of the following unfair claim settlement practices:

6 (a) Misrepresenting facts or policy provisions in settling claims;

7 (b) Failing to acknowledge and act promptly upon communications relat-
8 ing to claims;

9 (c) Failing to adopt and implement reasonable standards for the prompt
10 investigation of claims;

11 (d) Refusing to pay claims without conducting a reasonable investigation
12 based on all available information;

13 (e) Failing to affirm or deny coverage of claims within a reasonable time
14 after completed proof of loss statements have been submitted;

15 (f) Not attempting, in good faith, to promptly and equitably settle claims
16 in which liability has become reasonably clear;

17 (g) Compelling claimants to initiate litigation to recover amounts due by
18 offering substantially less than amounts **the claimants** ultimately
19 [*recovered*] **recover** in actions [*brought by such*] **the claimants bring**;

20 (h) Attempting to settle claims for less than the amount to which a rea-
21 sonable person would believe a reasonable person was entitled after [*refer-*
22 *ring*] **the reasonable person referred** to written or printed advertising
23 material [*accompanying or made*] **that accompanied or was** part of an ap-
24 plication;

25 (i) Attempting to settle claims on the basis of an application altered
26 without notice to or consent of the applicant;

27 (j) Failing, after [*payment of*] **paying** a claim, to inform insureds or ben-
28 efiiciaries, [*upon request by them*] **at the insureds' or beneficiaries'**
29 **request**, of the coverage under which [*payment has been made*] **the insurer**
30 **paid the claim**;

31 (k) Delaying investigation or payment of claims by requiring a claimant

1 or the claimant's physician, physician assistant or nurse practitioner to
2 submit a preliminary claim report and then requiring subsequent submission
3 of loss forms when both require essentially the same information;

4 (L) Failing to promptly settle claims under one coverage of a policy where
5 liability has become reasonably clear in order to influence settlements under
6 other coverages of the policy; *[or]*

7 (m) Failing to promptly provide the proper explanation of the basis **the**
8 **insurer** relied on in the insurance policy in relation to the facts or appli-
9 cable law *[for the denial of]* **to deny** a claim[.];

10 (n) **Violating section 2 of this 2015 Act; or**

11 (o) **Failing to provide a reimbursement required under ORS chapter**
12 **743A or otherwise violating a provision of ORS chapter 743A.**

13 (2) *[No]* **An** insurer *[shall]* **may not** refuse, without just cause, to pay or
14 settle claims *[arising]* **that arise** under coverages *[provided by its]* **the**
15 **insurer provides under the insurer's** policies with such frequency as to
16 indicate a general business practice in this state, which general business
17 practice is evidenced by:

18 (a) A substantial increase in the number of complaints *[against the*
19 *insurer received by]* **that** the Department of Consumer and Business Services
20 **receives against the insurer;**

21 (b) A substantial increase in the number of lawsuits **that claimants file**
22 *[filed]* against the insurer or *[its]* **the insurer's** insureds *[by claimants];* or

23 (c) Other relevant evidence.

24 (3)(a) *[No]* **A** health maintenance organization, as defined in ORS 750.005,
25 *[shall]* **may not** unreasonably withhold *[the granting of]* participating pro-
26 vider status from a class of statutorily authorized health care providers for
27 services **the health care providers** rendered within the lawful scope of
28 practice if the health care providers are licensed as *[such]* **health care**
29 **providers** and reimbursement is for services mandated by statute.

30 (b) Any health maintenance organization that fails to comply with para-
31 graph (a) of this subsection *[shall be]* **is** subject to discipline under ORS

1 746.015.

2 (c) This subsection does not apply to group practice health maintenance
3 organizations that are federally qualified [*pursuant to*] **under** Title XIII of
4 the Health Maintenance Organization Act.

5 **SECTION 4.** ORS 750.055, as amended by section 5, chapter 25, Oregon
6 Laws 2014, and section 80, chapter 45, Oregon Laws 2014, is amended to read:

7 750.055. (1) The following provisions of the Insurance Code apply to
8 health care service contractors to the extent not inconsistent with the ex-
9 press provisions of ORS 750.005 to 750.095:

10 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362,
11 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454,
12 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620,
13 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750,
14 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

15 (b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and
16 732.517 to 732.592, not including ORS 732.582.

17 (c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to
18 733.680 and 733.695 to 733.780.

19 (d) ORS chapter 734.

20 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162,
21 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100
22 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523,
23 743.524, 743.526, 743.527, 743.528, 743.529, 743.550 to 743.552, 743.560, 743.600
24 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to
25 743.839, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861,
26 743.862, 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010,
27 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062,
28 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082,
29 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110,
30 743A.140, 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164,
31 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192

1 and 743A.250 and section 2, chapter 771, Oregon Laws 2013, and section 2,
2 chapter 25, Oregon Laws 2014, **and section 2 of this 2015 Act.**

3 (f) The provisions of ORS chapter 744 relating to the regulation of in-
4 surance producers.

5 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605,
6 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660,
7 746.668, 746.670, 746.675, 746.680 and 746.690.

8 (h) ORS 743A.024, except in the case of group practice health maintenance
9 organizations that are federally qualified pursuant to Title XIII of the Public
10 Health Service Act unless the patient is referred by a physician, physician
11 assistant or nurse practitioner associated with a group practice health
12 maintenance organization.

13 (i) ORS 735.600 to 735.650.

14 (j) ORS 743.680 to 743.689.

15 (k) ORS 744.700 to 744.740.

16 (L) ORS 743.730 to 743.773.

17 (m) ORS 731.485, except in the case of a group practice health mainte-
18 nance organization that is federally qualified pursuant to Title XIII of the
19 Public Health Service Act and that wholly owns and operates an in-house
20 drug outlet.

21 (2) For the purposes of this section, health care service contractors [*shall*
22 *be deemed*] **are** insurers.

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

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

30 **SECTION 5.** ORS 750.055, as amended by section 33, chapter 698, Oregon
31 Laws 2013, section 6, chapter 25, Oregon Laws 2014, and section 81, chapter

1 45, Oregon Laws 2014, is amended to read:

2 750.055. (1) The following provisions of the Insurance Code apply to
3 health care service contractors to the extent not inconsistent with the ex-
4 press provisions of ORS 750.005 to 750.095:

5 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362,
6 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454,
7 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620,
8 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750,
9 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

10 (b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and
11 732.517 to 732.592, not including ORS 732.582.

12 (c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to
13 733.680 and 733.695 to 733.780.

14 (d) ORS chapter 734.

15 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162,
16 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100
17 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523,
18 743.524, 743.526, 743.527, 743.528, 743.529, 743.550, 743.552, 743.560, 743.600 to
19 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839,
20 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862,
21 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012,
22 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064,
23 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084,
24 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140,
25 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164, 743A.168,
26 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192 and
27 743A.250 and section 2, chapter 771, Oregon Laws 2013, and section 2, chapter
28 25, Oregon Laws 2014, **and section 2 of this 2015 Act.**

29 (f) The provisions of ORS chapter 744 relating to the regulation of in-
30 surance producers.

31 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605,

1 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660,
2 746.668, 746.670, 746.675, 746.680 and 746.690.

3 (h) ORS 743A.024, except in the case of group practice health maintenance
4 organizations that are federally qualified pursuant to Title XIII of the Public
5 Health Service Act unless the patient is referred by a physician, physician
6 assistant or nurse practitioner associated with a group practice health
7 maintenance organization.

8 (i) ORS 743.680 to 743.689.

9 (j) ORS 744.700 to 744.740.

10 (k) ORS 743.730 to 743.773.

11 (L) ORS 731.485, except in the case of a group practice health mainte-
12 nance organization that is federally qualified pursuant to Title XIII of the
13 Public Health Service Act and that wholly owns and operates an in-house
14 drug outlet.

15 (2) For the purposes of this section, health care service contractors [*shall*
16 *be deemed*] **are** insurers.

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

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

24 **SECTION 6.** ORS 750.055, as amended by section 33, chapter 698, Oregon
25 Laws 2013, section 21, chapter 771, Oregon Laws 2013, section 7, chapter 25,
26 Oregon Laws 2014, and section 82, chapter 45, Oregon Laws 2014, is amended
27 to read:

28 750.055. (1) The following provisions of the Insurance Code apply to
29 health care service contractors to the extent not inconsistent with the ex-
30 press provisions of ORS 750.005 to 750.095:

31 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362,

1 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454,
2 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620,
3 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750,
4 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

5 (b) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and
6 732.517 to 732.592, not including ORS 732.582.

7 (c) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to
8 733.680 and 733.695 to 733.780.

9 (d) ORS chapter 734.

10 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162,
11 742.400, 742.520 to 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100
12 to 743.109, 743.402, 743.472, 743.492, 743.495, 743.498, 743.499, 743.522, 743.523,
13 743.524, 743.526, 743.527, 743.528, 743.529, 743.550, 743.552, 743.560, 743.600 to
14 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839,
15 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862,
16 743.863, 743.864, 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012,
17 743A.020, 743A.034, 743A.036, 743A.048, 743A.058, 743A.062, 743A.064,
18 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084,
19 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140,
20 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164, 743A.168,
21 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192 and
22 743A.250 and section 2, chapter 25, Oregon Laws 2014, **and section 2 of this**
23 **2015 Act.**

24 (f) The provisions of ORS chapter 744 relating to the regulation of in-
25 surance producers.

26 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605,
27 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660,
28 746.668, 746.670, 746.675, 746.680 and 746.690.

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

1 assistant or nurse practitioner associated with a group practice health
2 maintenance organization.

3 (i) ORS 743.680 to 743.689.

4 (j) ORS 744.700 to 744.740.

5 (k) ORS 743.730 to 743.773.

6 (L) ORS 731.485, except in the case of a group practice health mainte-
7 nance organization that is federally qualified pursuant to Title XIII of the
8 Public Health Service Act and that wholly owns and operates an in-house
9 drug outlet.

10 (2) For the purposes of this section, health care service contractors [*shall*
11 *be deemed*] **are** insurers.

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

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

19 **SECTION 7.** ORS 750.333, as amended by section 8, chapter 25, Oregon
20 Laws 2014, is amended to read:

21 750.333. (1) The following provisions of the Insurance Code apply to trusts
22 carrying out a multiple employer welfare arrangement:

23 (a) ORS 731.004 to 731.150, 731.162, 731.216 to 731.268, 731.296 to 731.316,
24 731.324, 731.328, 731.378, 731.386, 731.390, 731.398, 731.406, 731.410, 731.414,
25 731.418 to 731.434, 731.454, 731.484, 731.486, 731.488, 731.512, 731.574 to 731.620,
26 731.640 to 731.652, 731.804 to 731.992 and 743.061.

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

29 (c) ORS chapter 734.

30 (d) ORS 742.001 to 742.009, 742.013, 742.061 and 742.400 **and section 2 of**
31 **this 2015 Act.**

1 (e) ORS 743.028, 743.053, 743.499, 743.524, 743.526, 743.527, 743.528, 743.529,
2 743.530, 743.560, 743.562, 743.600, 743.601, 743.602, 743.610, 743.730 to 743.773
3 (except 743.766 to 743.773), 743.801, 743.804, 743.807, 743.808, 743.814 to 743.839,
4 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862,
5 743.863, 743.864, 743.894, 743.912, 743.917, 743A.012, 743A.020, 743A.034,
6 743A.052, 743A.064, 743A.065, 743A.080, 743A.082, 743A.100, 743A.104,
7 743A.110, 743A.144, 743A.150, 743A.170, 743A.175, 743A.184, 743A.192 and
8 743A.250 and section 2, chapter 25, Oregon Laws 2014.

9 (f) ORS 743A.010, 743A.014, 743A.024, 743A.028, 743A.032, 743A.036,
10 743A.040, 743A.048, 743A.058, 743A.066, 743A.068, 743A.070, 743A.084,
11 743A.088, 743A.090, 743A.105, 743A.140, 743A.141, 743A.148, 743A.168,
12 743A.180, 743A.185, 743A.188 and 743A.190. Multiple employer welfare ar-
13 rangements to which ORS 743.730 to 743.773 apply are subject to the sections
14 referred to in this paragraph only as provided in ORS 743.730 to 743.773.

15 (g) Provisions of ORS chapter 744 relating to the regulation of insurance
16 producers and insurance consultants, and ORS 744.700 to 744.740.

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

18 (i) ORS 731.592 and 731.594.

19 (j) ORS 731.870.

20 (2) For the purposes of this section:

21 (a) A trust carrying out a multiple employer welfare arrangement [*shall*
22 *be considered*] **is** an insurer.

23 (b) References to certificates of authority [*shall be considered*] **are** refer-
24 ences to certificates of multiple employer welfare arrangement.

25 (c) Contributions [*shall be*] **are** considered premiums.

26 (3) The provision of health benefits under ORS 750.301 to 750.341 [*shall*
27 *be considered to be*] **is** the transaction of health insurance.

28 **SECTION 8. Section 2 of this 2015 Act and the amendments to ORS**
29 **746.230, 750.055 and 750.333 by sections 3 to 7 of this 2015 Act apply to**
30 **policies, contracts or certificates of insurance that an insurer issues**
31 **on or after the operative date specified in section 9 of this 2015 Act.**

1 **SECTION 9.** (1) Section 2 of this 2015 Act and the amendments to
2 **ORS 746.230, 750.055 and 750.333** by sections 3 to 7 of this 2015 Act be-
3 **come operative 91 days after the effective date of this 2015 Act.**

4 (2) The Director of the Department of Consumer and Business Ser-
5 vices, before the operative date specified in subsection (1) of this sec-
6 tion, may adopt rules and take any other action that is necessary to
7 enable the director, on and after the operative date specified in sub-
8 section (1) of this section, to exercise all of the duties, functions and
9 powers conferred on the director by section 2 of this 2015 Act and the
10 amendments to **ORS 746.230, 750.055 and 750.333** by sections 3 to 7 of
11 **this 2015 Act.**

12 **SECTION 10.** This 2015 Act being necessary for the immediate
13 **preservation of the public peace, health and safety, an emergency is**
14 **declared to exist, and this 2015 Act takes effect on its passage.**

15
