

House Bill 2857

Sponsored by Representative WILLIAMSON

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**.

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 provisions; amending ORS
3 746.230, 750.055 and 750.333; and declaring an emergency.

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

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

6 **SECTION 2. (1)(a) An insurer may not offer or issue a policy, contract or certificate of
7 insurance that:**

8 (A) Provides that the insurer has the sole right, or a right that is superior to the right
9 of an insured, to interpret the terms and conditions of the policy, contract or certificate of
10 insurance; or

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

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

15 (A) "This (policy, contract or certificate) conforms with all applicable provisions of the
16 Insurance Code of the State of Oregon, which is incorporated into this (policy, contract or
17 certificate) by this reference. If a term, condition or other provision of this (policy, contract
18 or certificate) conflicts with a provision of the Insurance Code, the Insurance Code controls
19 over the conflicting provision of this (policy, contract or certificate)."

20 (B) "This (policy, contract or certificate) does not give the insurer the sole right, or a
21 right that is superior to the right of the insured, to interpret the terms and conditions of
22 this (policy, contract or certificate) and may not specify a standard for interpreting or re-
23 viewing this (policy, contract or certificate) that is inconsistent with Oregon law. To the

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 **extent that a provision of this (policy, contract or certificate) does purport to give the**
 2 **insurer the sole right or a superior right to interpret the terms and conditions of this (policy,**
 3 **contract or certificate) or to specify a standard for interpretation or review that is incon-**
 4 **sistent with Oregon law, the provision is void and of no effect.”**

5 **(2) In an action or proceeding to adjudicate a claim under a policy, contract or certificate**
 6 **of insurance issued in this state, a court, arbitrator or other adjudicating authority shall give**
 7 **full effect to the provisions set forth in subsection (1)(b) of this section and shall construe**
 8 **the provisions liberally in favor of effecting the purposes of the Insurance Code.**

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

11 746.230. (1) [No] **An** insurer or other person [shall] **may not** commit or perform any of the fol-
 12 lowing unfair claim settlement practices:

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

14 (b) Failing to acknowledge and act promptly upon communications relating to claims;

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

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

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

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

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

25 (h) Attempting to settle claims for less than the amount to which a reasonable person would
 26 believe a reasonable person was entitled after [referring] **the reasonable person referred** to writ-
 27 ten or printed advertising material [accompanying or made] **that accompanied or was** part of an
 28 application;

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

31 (j) Failing, after [payment of] **paying** a claim, to inform insureds or beneficiaries, [upon request
 32 by them] **at the insureds’ or beneficiaries’ request,** of the coverage under which [payment has been
 33 made] **the insurer paid the claim;**

34 (k) Delaying investigation or payment of claims by requiring a claimant or the claimant’s phy-
 35 sician, physician assistant or nurse practitioner to submit a preliminary claim report and then re-
 36 quiring subsequent submission of loss forms when both require essentially the same information;

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

39 (m) Failing to promptly provide the proper explanation of the basis **the insurer** relied on in the
 40 insurance policy in relation to the facts or applicable law [for the denial of] **to deny** a claim[.];

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

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

44 (2) [No] **An** insurer [shall] **may not** refuse, without just cause, to pay or settle claims [arising]
 45 **that arise** under coverages [provided by its] **the insurer provides under the insurer’s** policies

1 with such frequency as to indicate a general business practice in this state, which general business
2 practice is evidenced by:

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

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

7 (c) Other relevant evidence.

8 (3)(a) [*No*] **A** health maintenance organization, as defined in ORS 750.005, [*shall*] **may not** un-
9 reasonably withhold [*the granting of*] participating provider status from a class of statutorily au-
10 thorized health care providers for services **the health care providers** rendered within the lawful
11 scope of practice if the health care providers are licensed as [*such*] **health care providers** and re-
12 imbursement is for services mandated by statute.

13 (b) Any health maintenance organization that fails to comply with paragraph (a) of this sub-
14 section [*shall be*] **is** subject to discipline under ORS 746.015.

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

17 **SECTION 4.** ORS 750.055, as amended by section 5, chapter 25, Oregon Laws 2014, and section
18 80, chapter 45, Oregon Laws 2014, is amended to read:

19 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
20 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

21 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
22 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
23 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
24 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

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

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

29 (d) ORS chapter 734.

30 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
31 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492,
32 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.550 to
33 743.552, 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to
34 743.839, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864,
35 743.894, 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036,
36 743A.048, 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082,
37 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144,
38 743A.148, 743A.150, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188,
39 743A.190, 743A.192 and 743A.250 and section 2, chapter 771, Oregon Laws 2013, and section 2,
40 chapter 25, Oregon Laws 2014, **and section 2 of this 2015 Act.**

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

42 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
43 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

44 (h) ORS 743A.024, except in the case of group practice health maintenance organizations that
45 are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is

1 referred by a physician, physician assistant or nurse practitioner associated with a group practice
2 health maintenance organization.

3 (i) ORS 735.600 to 735.650.

4 (j) ORS 743.680 to 743.689.

5 (k) ORS 744.700 to 744.740.

6 (L) ORS 743.730 to 743.773.

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

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

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

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

18 **SECTION 5.** ORS 750.055, as amended by section 33, chapter 698, Oregon Laws 2013, section
19 6, chapter 25, Oregon Laws 2014, and section 81, chapter 45, Oregon Laws 2014, is amended to read:

20 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
21 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

22 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
23 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
24 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
25 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

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

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

30 (d) ORS chapter 734.

31 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
32 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492,
33 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.550, 743.552,
34 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839,
35 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894,
36 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048,
37 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084,
38 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148,
39 743A.150, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190,
40 743A.192 and 743A.250 and section 2, chapter 771, Oregon Laws 2013, and section 2, chapter 25,
41 Oregon Laws 2014, **and section 2 of this 2015 Act.**

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

43 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
44 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

45 (h) ORS 743A.024, except in the case of group practice health maintenance organizations that

1 are federally qualified pursuant to Title XIII of the Public Health Service Act unless the patient is
 2 referred by a physician, physician assistant or nurse practitioner associated with a group practice
 3 health maintenance organization.

4 (i) ORS 743.680 to 743.689.

5 (j) ORS 744.700 to 744.740.

6 (k) ORS 743.730 to 743.773.

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

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

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

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

18 **SECTION 6.** ORS 750.055, as amended by section 33, chapter 698, Oregon Laws 2013, section
 19 21, chapter 771, Oregon Laws 2013, section 7, chapter 25, Oregon Laws 2014, and section 82, chapter
 20 45, Oregon Laws 2014, is amended to read:

21 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
 22 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

23 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
 24 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
 25 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
 26 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743.061.

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

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

31 (d) ORS chapter 734.

32 (e) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
 33 742.540, 743.010, 743.013, 743.018 to 743.030, 743.050, 743.100 to 743.109, 743.402, 743.472, 743.492,
 34 743.495, 743.498, 743.499, 743.522, 743.523, 743.524, 743.526, 743.527, 743.528, 743.529, 743.550, 743.552,
 35 743.560, 743.600 to 743.610, 743.650 to 743.656, 743.764, 743.804, 743.807, 743.808, 743.814 to 743.839,
 36 743.845, 743.847, 743.854, 743.856, 743.857, 743.858, 743.859, 743.861, 743.862, 743.863, 743.864, 743.894,
 37 743.911, 743.912, 743.913, 743.917, 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048,
 38 743A.058, 743A.062, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084,
 39 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148,
 40 743A.150, 743A.160, 743A.164, 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190,
 41 743A.192 and 743A.250 and section 2, chapter 25, Oregon Laws 2014, **and section 2 of this 2015**
 42 **Act.**

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

44 (g) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
 45 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

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

5 (i) ORS 743.680 to 743.689.

6 (j) ORS 744.700 to 744.740.

7 (k) ORS 743.730 to 743.773.

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

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

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

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

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

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

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

26 (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.

27 (c) ORS chapter 734.

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

29 (e) ORS 743.028, 743.053, 743.499, 743.524, 743.526, 743.527, 743.528, 743.529, 743.530, 743.560,
 30 743.562, 743.600, 743.601, 743.602, 743.610, 743.730 to 743.773 (except 743.766 to 743.773), 743.801,
 31 743.804, 743.807, 743.808, 743.814 to 743.839, 743.845, 743.847, 743.854, 743.856, 743.857, 743.858,
 32 743.859, 743.861, 743.862, 743.863, 743.864, 743.894, 743.912, 743.917, 743A.012, 743A.020, 743A.034,
 33 743A.052, 743A.064, 743A.065, 743A.080, 743A.082, 743A.100, 743A.104, 743A.110, 743A.144, 743A.150,
 34 743A.170, 743A.175, 743A.184, 743A.192 and 743A.250 and section 2, chapter 25, Oregon Laws 2014.

35 (f) ORS 743A.010, 743A.014, 743A.024, 743A.028, 743A.032, 743A.036, 743A.040, 743A.048,
 36 743A.058, 743A.066, 743A.068, 743A.070, 743A.084, 743A.088, 743A.090, 743A.105, 743A.140, 743A.141,
 37 743A.148, 743A.168, 743A.180, 743A.185, 743A.188 and 743A.190. Multiple employer welfare arrange-
 38 ments to which ORS 743.730 to 743.773 apply are subject to the sections referred to in this para-
 39 graph only as provided in ORS 743.730 to 743.773.

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

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

43 (i) ORS 731.592 and 731.594.

44 (j) ORS 731.870.

45 (2) For the purposes of this section:

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

3 (b) References to certificates of authority [*shall be considered*] **are** references to certificates of
4 multiple employer welfare arrangement.

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

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

8 **SECTION 8. Section 2 of this 2015 Act and the amendments to ORS 746.230, 750.055 and**
9 **750.333 by sections 3 to 7 of this 2015 Act apply to policies, contracts or certificates of in-**
10 **surance that an insurer issues on or after the operative date specified in section 9 of this**
11 **2015 Act.**

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

15 **(2) The Director of the Department of Consumer and Business Services, before the op-**
16 **erative date specified in subsection (1) of this section, may adopt rules and take any other**
17 **action that is necessary to enable the director, on and after the operative date specified in**
18 **subsection (1) of this section, to exercise all of the duties, functions and powers conferred**
19 **on the director by section 2 of this 2015 Act and the amendments to ORS 746.230, 750.055 and**
20 **750.333 by sections 3 to 7 of this 2015 Act.**

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

24