

House Bill 3358

Sponsored by Representatives LIVELY, KENNEMER; Representative GALLEGOS

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**.

Prohibits discrimination in rates of insurance reimbursement paid to specified mental health treatment providers.

A BILL FOR AN ACT

1
2 Relating to discrimination against mental health treatment providers in rates of insurance re-
3 imbursement; creating new provisions; and amending ORS 743A.168.

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

5 **SECTION 1.** ORS 743A.168 is amended to read:

6 743A.168. A group health insurance policy providing coverage for hospital or medical expenses
7 shall provide coverage for expenses arising from treatment for chemical dependency, including
8 alcoholism, and for mental or nervous conditions at the same level as, and subject to limitations no
9 more restrictive than, those imposed on coverage or reimbursement of expenses arising from treat-
10 ment for other medical conditions. The following apply to coverage for chemical dependency and for
11 mental or nervous conditions:

12 (1) As used in this section:

13 (a) "Chemical dependency" means the addictive relationship with any drug or alcohol charac-
14 terized by a physical or psychological relationship, or both, that interferes on a recurring basis with
15 the individual's social, psychological or physical adjustment to common problems. For purposes of
16 this section, "chemical dependency" does not include addiction to, or dependency on, tobacco, to-
17 bacco products or foods.

18 (b) "Facility" means a corporate or governmental entity or other provider of services for the
19 treatment of chemical dependency or for the treatment of mental or nervous conditions.

20 (c) "Group health insurer" means an insurer, a health maintenance organization or a health care
21 service contractor.

22 (d) "Program" means a particular type or level of service that is organizationally distinct within
23 a facility.

24 (e) "Provider" means a person that:

25 (A) Has met the credentialing requirement of a group health insurer, is otherwise eligible to
26 receive reimbursement for coverage under the policy and is:

27 (i) A health facility as defined in ORS 430.010;

28 (ii) A residential facility as defined in ORS 430.010;

29 (iii) A day or partial hospitalization program as defined in ORS 430.010;

30 (iv) An outpatient service as defined in ORS 430.010; or

31 (v) An individual behavioral health or medical professional licensed or certified under Oregon

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 law; or

2 (B) Is a provider organization certified by the Oregon Health Authority under subsection (13)
3 of this section.

4 (2) The coverage may be made subject to provisions of the policy that apply to other benefits
5 under the policy, including but not limited to provisions relating to deductibles and coinsurance.
6 Deductibles and coinsurance for treatment in health facilities or residential facilities may not be
7 greater than those under the policy for expenses of hospitalization in the treatment of other medical
8 conditions. Deductibles and coinsurance for outpatient treatment may not be greater than those
9 under the policy for expenses of outpatient treatment of other medical conditions.

10 (3) The coverage may not be made subject to treatment limitations, limits on total payments for
11 treatment, limits on duration of treatment or financial requirements unless similar limitations or
12 requirements are imposed on coverage of other medical conditions. The coverage of eligible expenses
13 may be limited to treatment that is medically necessary as determined under the policy for other
14 medical conditions.

15 (4)(a) Nothing in this section requires coverage for:

16 (A) Educational or correctional services or sheltered living provided by a school or halfway
17 house;

18 (B) A long-term residential mental health program that lasts longer than 45 days;

19 (C) Psychoanalysis or psychotherapy received as part of an educational or training program,
20 regardless of diagnosis or symptoms that may be present; *[or]*

21 (D) A court-ordered sex offender treatment program $[\text{.}]$; **or**

22 **(E) A support group.**

23 (b) Notwithstanding paragraph (a)(A) of this subsection, an insured may receive covered outpa-
24 tient services under the terms of the insured's policy while the insured is living temporarily in a
25 sheltered living situation.

26 (5) A provider is eligible for reimbursement under this section if:

27 (a) The provider is approved or certified by the Oregon Health Authority;

28 (b) The provider is accredited for the particular level of care for which reimbursement is being
29 requested by the Joint Commission on Accreditation of Hospitals or the Commission on Accredi-
30 tation of Rehabilitation Facilities;

31 (c) The patient is staying overnight at the facility and is involved in a structured program at
32 least eight hours per day, five days per week; or

33 (d) The provider is providing a covered benefit under the policy.

34 *[(6) Payments may not be made under this section for support groups.]*

35 **(6) An insurer may not discriminate in the rate of reimbursement paid for any coverage**
36 **required by this section, whether the treatment is provided by a physician or by any other**
37 **provider who performs the service within the provider's lawful scope of practice, including**
38 **but not limited to a clinical social worker, nurse practitioner, psychologist, professional**
39 **counselor or marriage and family therapist.**

40 (7) If specified in the policy, outpatient coverage may include follow-up in-home service or out-
41 patient services. The policy may limit coverage for in-home service to persons who are homebound
42 under the care of a physician.

43 (8) Nothing in this section prohibits a group health insurer from managing the provision of
44 benefits through common methods, including but not limited to selectively contracted panels, health
45 plan benefit differential designs, preadmission screening, prior authorization of services, utilization

1 review or other mechanisms designed to limit eligible expenses to those described in subsection (3)
2 of this section.

3 (9) The Legislative Assembly has found that health care cost containment is necessary and in-
4 tends to encourage insurance policies designed to achieve cost containment by ensuring that re-
5 imbursement is limited to appropriate utilization under criteria incorporated into such policies,
6 either directly or by reference.

7 (10)(a) Subject to the patient or client confidentiality provisions of ORS 40.235 relating to phy-
8 sicians, ORS 40.240 relating to nurse practitioners, ORS 40.230 relating to psychologists, ORS 40.250
9 and 675.580 relating to licensed clinical social workers and ORS 40.262 relating to licensed profes-
10 sional counselors and licensed marriage and family therapists, a group health insurer may provide
11 for review for level of treatment of admissions and continued stays for treatment in health facilities,
12 residential facilities, day or partial hospitalization programs and outpatient services by either group
13 health insurer staff or personnel under contract to the group health insurer, or by a utilization re-
14 view contractor, who shall have the authority to certify for or deny level of payment.

15 (b) Review shall be made according to criteria made available to providers in advance upon re-
16 quest.

17 (c) Review shall be performed by or under the direction of a medical or osteopathic physician
18 licensed by the Oregon Medical Board, a psychologist licensed by the State Board of Psychologist
19 Examiners, a clinical social worker licensed by the State Board of Licensed Social Workers or a
20 professional counselor or marriage and family therapist licensed by the Oregon Board of Licensed
21 Professional Counselors and Therapists, in accordance with standards of the National Committee for
22 Quality Assurance or Medicare review standards of the Centers for Medicare and Medicaid Ser-
23 vices.

24 (d) Review may involve prior approval, concurrent review of the continuation of treatment,
25 post-treatment review or any combination of these. However, if prior approval is required, provision
26 shall be made to allow for payment of urgent or emergency admissions, subject to subsequent re-
27 view. If prior approval is not required, group health insurers shall permit providers, policyholders
28 or persons acting on their behalf to make advance inquiries regarding the appropriateness of a
29 particular admission to a treatment program. Group health insurers shall provide a timely response
30 to such inquiries. Noncontracting providers must cooperate with these procedures to the same ex-
31 tent as contracting providers to be eligible for reimbursement.

32 (11) Health maintenance organizations may limit the receipt of covered services by enrollees to
33 services provided by or upon referral by providers contracting with the health maintenance organ-
34 ization. Health maintenance organizations and health care service contractors may create substan-
35 tive plan benefit and reimbursement differentials at the same level as, and subject to limitations no
36 more restrictive than, those imposed on coverage or reimbursement of expenses arising out of other
37 medical conditions and apply them to contracting and noncontracting providers.

38 (12) Nothing in this section prevents a group health insurer from contracting with providers of
39 health care services to furnish services to policyholders or certificate holders according to ORS
40 743.531 or 750.005, subject to the following conditions:

41 (a) A group health insurer is not required to contract with all providers that are eligible for
42 reimbursement under this section.

43 (b) An insurer or health care service contractor shall, subject to subsections (2) and (3) of this
44 section, pay benefits toward the covered charges of noncontracting providers of services for the
45 treatment of chemical dependency or mental or nervous conditions. The insured shall, subject to

1 subsections (2) and (3) of this section, have the right to use the services of a noncontracting provider
 2 of services for the treatment of chemical dependency or mental or nervous conditions, whether or
 3 not the services for chemical dependency or mental or nervous conditions are provided by con-
 4 tracting or noncontracting providers.

5 (13) The Oregon Health Authority shall establish a process for the certification of an organiza-
 6 tion described in subsection (1)(e)(B) of this section that:

7 (a) Is not otherwise subject to licensing or certification by the authority; and

8 (b) Does not contract with the authority, a subcontractor of the authority or a community
 9 mental health program.

10 (14) The Oregon Health Authority shall adopt by rule standards for the certification provided
 11 under subsection (13) of this section to ensure that a certified provider organization offers a distinct
 12 and specialized program for the treatment of mental or nervous conditions.

13 (15) The Oregon Health Authority may adopt by rule an application fee or a certification fee,
 14 or both, to be imposed on any provider organization that applies for certification under subsection
 15 (13) of this section. Any fees collected shall be paid into the Oregon Health Authority Fund estab-
 16 lished in ORS 413.101 and shall be used only for carrying out the provisions of subsection (13) of this
 17 section.

18 (16) The intent of the Legislative Assembly in adopting this section is to reserve benefits for
 19 different types of care to encourage cost effective care and to ensure continuing access to levels
 20 of care most appropriate for the insured's condition and progress. This section does not prohibit an
 21 insurer from requiring a provider organization certified by the Oregon Health Authority under sub-
 22 section (13) of this section to meet the insurer's credentialing requirements as a condition of enter-
 23 ing into a contract.

24 (17) The Director of the Department of Consumer and Business Services and the Oregon Health
 25 Authority, after notice and hearing, may adopt reasonable rules not inconsistent with this section
 26 that are considered necessary for the proper administration of this section.

27 **SECTION 2. The amendments to ORS 743A.168 by section 1 of this 2015 Act apply to**
 28 **claims for reimbursement submitted to an insurer on or after the effective date of this 2015**
 29 **Act.**

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