

House Bill 2339

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown for Department of Consumer and Business Services)

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 health care provider or participating health care facility from balance billing patient covered by health benefit plan or health care service contract for services provided at participating health care facility. Requires insurer and health care service contractor to reimburse nonparticipating provider at rate that is reasonable and customary. Requires insurer and health care service contractor to have process to resolve dispute regarding reimbursement paid to nonparticipating provider.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to claims for reimbursement of the cost of health care services; creating new provisions;
3 amending ORS 743B.450 and 750.055; and declaring an emergency.

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

5 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of the Insurance Code.**

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

7 (a) **"Emergency services" has the meaning given that term in ORS 743A.012.**

8 (b) **"Enrollee" means:**

9 (A) **An individual who is enrolled in a health benefit plan or a covered dependent or**
10 **beneficiary of the individual; or**

11 (B) **A subscriber to a health care service contract or a covered dependent or beneficiary**
12 **of the subscriber.**

13 (c) **"Facility-based provider" means a person that provides medical, surgical, hospital,**
14 **clinical laboratory or radiological services in a participating health care facility.**

15 (d) **"Health benefit plan" has the meaning given that term in ORS 743B.005.**

16 (e) **"Health care facility" has the meaning given that term in ORS 442.015, excluding long**
17 **term care facilities.**

18 (f) **"Health care service contractor" has the meaning given that term in ORS 750.005.**

19 (g) **"Participating" means that a provider or health care facility has contracted with an**
20 **insurer or a health care service contractor to be reimbursed at a negotiated rate for services**
21 **provided to enrollees in a health benefit plan or health care service contract offered by the**
22 **insurer or health care service contractor.**

23 (2) **Except for applicable coinsurance, copayments or deductible amounts that apply to**
24 **services provided by a participating health care facility or a participating provider, a partic-**
25 **ipating health care facility or a facility-based provider who is not a participating provider**
26 **may not bill an enrollee for emergency services or other inpatient or outpatient services**
27 **provided to the enrollee at a participating health care facility.**

28 (3) **An insurer and a health care service contractor shall reimburse a facility-based 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 **vider who is not a participating provider at a rate that is reasonable and customary based**
 2 **on statistically credible information, updated annually, that accounts for:**

- 3 **(a) The provider's qualifications and licensure;**
- 4 **(b) The nature of the services provided;**
- 5 **(c) The full range of fees charged by the provider;**
- 6 **(d) The full range of fees that the provider accepts as payment;**
- 7 **(e) The prevailing fees charged by providers in the geographic area in which the services**
 8 **are provided;**
- 9 **(f) Other relevant aspects of the economics of the provider's practice; and**
- 10 **(g) Any unusual circumstances with respect to the services provided that affect the**
 11 **reasonableness of the reimbursement.**

12 **(4) An insurer or health care service contractor shall make available a timely, fair and**
 13 **cost-effective process to resolve disputes regarding the reimbursement paid to a facility-**
 14 **based provider who is not a participating provider.**

15 **SECTION 3.** ORS 743B.450 is amended to read:

16 743B.450. (1) Except as provided in this subsection, when a claim under a health benefit plan is
 17 submitted to an insurer by a provider on behalf of an enrollee, the insurer shall pay a clean claim
 18 or deny the claim not later than 30 days after the date on which the insurer receives the claim. If
 19 an insurer requires additional information before payment of a claim, not later than 30 days after
 20 the date on which the insurer receives the claim, the insurer shall notify the enrollee and the pro-
 21 vider in writing and give the enrollee and the provider an explanation of the additional information
 22 needed to process the claim. The insurer shall pay a clean claim or deny the claim not later than
 23 30 days after the date on which the insurer receives the additional information.

24 **(2)(a) An insurer shall make available to providers a timely, fair and cost-effective dis-**
 25 **pute resolution process for claims that are denied or not fully reimbursed.**

26 **(b) An enrollee must be held harmless for disputed claims.**

27 **(c) An insurer may not discriminate or retaliate against a provider because the provider**
 28 **has used the dispute resolution process described in this subsection.**

29 [(2)] **(3)** A contract between an insurer and a provider may not include a provision governing
 30 payment of claims that limits the rights and remedies available to a provider under this section and
 31 ORS 743B.452 or has the effect of relieving either party of its obligations under this section and
 32 ORS 743B.452.

33 [(3)] **(4)** An insurer may pay a claim using a credit card or electronic funds transfer payment
 34 method that imposes on the provider a fee or similar charge to process the payment if:

35 (a) The insurer notifies the provider, in advance, of the fee or other charges associated with the
 36 use of the credit card or electronic funds transfer payment method;

37 (b) The insurer offers the provider an alternative payment method that does not impose fees or
 38 similar charges on the provider; and

39 (c) The provider or a designee of the provider elects to accept a payment of the claim using the
 40 payment method.

41 [(4)] **(5)** An insurer shall establish a method of communicating to providers the procedures and
 42 information necessary to complete claim forms. The procedures and information must be reasonably
 43 accessible to providers.

44 [(5)] **(6)** This section does not create an assignment of payment to a provider.

45 [(6)] **(7)** Each insurer shall report to the Director of the Department of Consumer and Business

1 Services on its compliance under this section according to requirements established by the director.

2 [(7)] (8) The director shall adopt by rule a definition of “clean claim” and shall consider the
 3 definition of “clean claim” used by the federal Department of Health and Human Services for the
 4 payment of Medicare claims.

5 **SECTION 4.** ORS 750.055, as amended by section 7, chapter 59, Oregon Laws 2015, is amended
 6 to read:

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

9 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
 10 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
 11 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
 12 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743A.252.

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

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

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

20 (e) ORS chapter 734.

21 (f) ORS 735.600 to 735.650.

22 (g) ORS 742.001 to 742.009, 742.013, 742.061, 742.065, 742.150 to 742.162, 742.400, 742.520 to
 23 742.540, 743.004, 743.008, 743.010, 743.018, 743.022, 743.023, 743.028, 743.029, 743.038, 743.040, 743.044,
 24 743.050, 743.100 to 743.109, 743.402, 743.406, 743.417, 743.472, 743.492, 743.495, 743.498, 743.522,
 25 743.523, 743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.788, 743.790,
 26 743A.010, 743A.012, 743A.020, 743A.034, 743A.036, 743A.048, 743A.051, 743A.058, 743A.062, 743A.064,
 27 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100,
 28 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164,
 29 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743B.003
 30 to 743B.127, 743B.195 to 743B.206, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252,
 31 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.300, 743B.310, 743B.320, 743B.323,
 32 743B.330, 743B.340, 743B.341, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423,
 33 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.540, 743B.550, 743B.555,
 34 743B.601 and 743B.800 and section 2, chapter 771, Oregon Laws 2013, **and section 2 of this 2017**
 35 **Act.**

36 (h) The provisions of ORS chapter 744 relating to the regulation of insurance producers and
 37 third party administrators.

38 (i) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
 39 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

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

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

45 (3) Any for-profit health care service contractor organized under the laws of any other state that

1 is not governed by the insurance laws of the other state is subject to all requirements of ORS
2 chapter 732.

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

6 **SECTION 5.** ORS 750.055, as amended by section 33, chapter 698, Oregon Laws 2013, section
7 6, chapter 25, Oregon Laws 2014, section 81, chapter 45, Oregon Laws 2014, section 8, chapter 59,
8 Oregon Laws 2015, section 6, chapter 100, Oregon Laws 2015, section 6, chapter 224, Oregon Laws
9 2015, section 10, chapter 362, Oregon Laws 2015, section 9, chapter 470, Oregon Laws 2015, and
10 section 29, chapter 515, Oregon Laws 2015, is amended to read:

11 750.055. (1) The following provisions of the Insurance Code apply to health care service con-
12 tractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

13 (a) ORS 705.137, 705.139, 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386,
14 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.488, 731.504, 731.508, 731.509, 731.510,
15 731.511, 731.512, 731.574 to 731.620, 731.592, 731.594, 731.640 to 731.652, 731.730, 731.731, 731.735,
16 731.737, 731.750, 731.752, 731.804, 731.844 to 731.992, 731.870 and 743A.252.

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

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

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

24 (e) ORS chapter 734.

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38 743B.601 and 743B.800 and section 2, chapter 771, Oregon Laws 2013, **and section 2 of this 2017**

39 **Act.**

40 (h) The provisions of ORS chapter 744 relating to the regulation of insurance producers and
41 third party administrators.

42 (i) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,
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44 (j) 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 (2) For the purposes of this section, health care service contractors shall be deemed insurers.

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

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

10 **SECTION 6.** ORS 750.055, as amended by section 21, chapter 771, Oregon Laws 2013, section
11 7, chapter 25, Oregon Laws 2014, section 82, chapter 45, Oregon Laws 2014, section 9, chapter 59,
12 Oregon Laws 2015, section 7, chapter 100, Oregon Laws 2015, section 7, chapter 224, Oregon Laws
13 2015, section 11, chapter 362, Oregon Laws 2015, section 10, chapter 470, Oregon Laws 2015, and
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35 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100,
36 743A.104, 743A.105, 743A.110, 743A.140, 743A.141, 743A.144, 743A.148, 743A.150, 743A.160, 743A.164,
37 743A.168, 743A.170, 743A.175, 743A.184, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743B.003
38 to 743B.127, 743B.195 to 743B.206, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252,
39 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.300, 743B.310, 743B.320, 743B.323,
40 743B.330, 743B.340, 743B.341, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423,
41 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.540, 743B.550, 743B.555,
42 743B.601 and 743B.800 **and section 2 of this 2017 Act.**

43 (h) The provisions of ORS chapter 744 relating to the regulation of insurance producers and
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4 referred by a physician, physician assistant or nurse practitioner associated with a group practice
5 health maintenance organization.

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

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

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

13 **SECTION 7. Section 2 of this 2017 Act and the amendments to ORS 743B.450 and 750.055**
14 **by sections 3 to 6 of this 2017 Act become operative on January 1, 2019.**

15 **SECTION 8. The Department of Consumer and Business Services shall, before the oper-**
16 **ative date specified in section 7 of this 2017 Act, take any actions necessary to implement**
17 **section 2 of this 2017 Act and the amendments to ORS 743B.450 and 750.055 by sections 3 to**
18 **6 of this 2017 Act on the operative date specified in section 7 of this 2017 Act.**

19 **SECTION 9. This 2017 Act being necessary for the immediate preservation of the public**
20 **peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect**
21 **on its passage.**

22 _____