House Bill 2277

Introduced and printed pursuant to House Rule 12.00. Presession 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.

Removes exemption from regulation by Department of Consumer and Business Services for self-insured plans of insurance operating solely in this state. Provides that insurer is responsible for acts of third party administrators with which insurer contracts for plan administration.

Becomes operative on January 2, 2024.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

Relating to regulating third-party insurance plan administrators; creating new provisions; amending ORS 744.700, 744.702, 744.704, 744.720, 744.724, 744.728, 744.730, 744.732, 744.734, 744.736, 744.738 and 744.740; repealing ORS 744.714; and prescribing an effective date.

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

SECTION 1. ORS 744.700 is amended to read:

744.700. As used in ORS 744.700 to 744.740:

(1) “Affiliate” of, or person “affiliated” with, a specific person means any person [who] that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, [a] the specified person.

(2) “Control” has the meaning given that term in ORS 732.548.

(3)(a) “Insurer” [includes] means a health care service contractor, a multiple employer welfare arrangement or any other person providing a plan of insurance subject to state insurance regulation.

(b) “Insurer” does not include a bona fide employee benefit plan established by an employer or an employee organization, or both, for which the insurance laws of this state are preempted [pursuant to] under the Employee Retirement Income Security Act of 1974.

(4) “Payor” means an insurer or an employer that administers the employer's employee benefit plan or the employee benefit plan of an affiliated employer that is under common management and control.

[(4)] (5) “Underwrite” or “underwriting” [includes the acceptance of] means accepting employer or individual applications for coverage of individuals in accordance with the written rules of the insurer, [the overall] planning and coordinating [of] an insurance program as a whole and having the ability to procure bonds and excess insurance.

SECTION 2. ORS 744.702 is amended to read:

744.702. (1) Subject to ORS 744.704, a person [shall] may not transact business or purport or offer to transact business as a third party administrator in this state unless the person holds a third party administrator license issued by the Director of the Department of Consumer and Business Services.

(2) For purposes of ORS 744.700 to 744.740, a person transacts or purports or offers to transact

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.

LC 433
business as a third party administrator \[\text{when}\] if the person directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, residents of this state or residents of another state from offices in this state, in connection with life insurance or health insurance coverage.

\[(3) \text{[Nothing in ORS 744.700 to 744.740] do not exempt a third party administrator from any other applicable licensing requirement \[\text{when}\] if the third party administrator performs the functions of an insurer, insurance producer, adjuster or insurance consultant.}\]

SECTION 3. ORS 744.704 is amended to read:

744.704. (1) The following persons are exempt from the licensing requirement for third party administrators in ORS 744.702 and from all other provisions of ORS 744.700 to 744.740 applicable to third party administrators:

(a) A person licensed under ORS 744.521 to engage in business as an adjuster, whose activities are limited to adjusting claims and whose activities do not include the activities of a third party administrator.

(b) A person licensed as an insurance producer as required by ORS 744.053 and authorized to transact life or health insurance in this state, whose activities are limited exclusively to the sale of insurance and whose activities do not include the activities of a third party administrator.

(c) An employer acting as a third party administrator on behalf of:

(A) The employer's employees;

(B) The employees of one or more subsidiary or affiliated corporations of the employer; or

(C) The employees of one or more persons with a dealership, franchise, distributorship or other similar arrangement with the employers.

(d) A union, or an affiliate thereof of a union, acting as a third party administrator on behalf of the union's or the affiliate's members.

(e) An insurer that is authorized to transact insurance in this state \[\text{with respect to a policy issued and delivered in and pursuant to the laws of this state or another state}\] and that does not act as a third party administrator on behalf of any other payor.

(f) A creditor acting on behalf of the creditor's debtors with respect to insurance covering a debt between the creditor and the creditor's debtors.

(g) A trust and the trustees, agents and employees of the trust, when acting pursuant to the trust, if the trust is established in conformity with 29 U.S.C. 186.

(h) A trust exempt from taxation under section 501(a) of the Internal Revenue Code, the trust's trustees and employees acting pursuant to the trust, or a voluntary employees beneficiary association described in section 501(c) of the Internal Revenue Code, the association's agents and employees and a custodian and the custodian's agents and employees acting pursuant to a custodian account meeting the requirements of section 401(f) of the Internal Revenue Code.

(i) A financial institution that is subject to supervision or examination by federal or state financial institution regulatory authorities, or a mortgage lender, to the extent the financial institution or mortgage lender collects and remits premiums to licensed insurance producers or authorized insurers in connection with loan payments.

(j) A company that issues credit cards and advances for and collects premiums or charges from the company's credit card holders who have authorized collection. The exemption under this paragraph applies only if the company does not adjust or settle claims.

(k) A person who adjusts or settles claims in the normal course of practice or employment as an attorney at law. The exemption under this subsection applies only if the person does not collect
charges or premiums in connection with life insurance or health insurance coverage.

[L] A person who acts solely as an administrator of one or more bona fide employee benefit plans established by an employer or an employee organization, or both, for which the Insurance Code is preempted pursuant to the Employee Retirement Income Security Act of 1974. A person to whom this paragraph applies must comply with the requirements of ORS 744.714.

[m] (L) An entity or association owned by or composed of like employers or employers who administer partially or fully self-insured plans for employees of the employers or association members.

[n] (m) A trust established by a cooperative body formed between cities, counties, districts or other political subdivisions of this state, or between any combination of such entities, and the trustees, agents and employees acting pursuant to the trust.

(o) (n) Any person designated by the Director of the Department of Consumer and Business Services by rule.

(2) A third party administrator is not required to be licensed as a third party administrator in this state if the following conditions are met:

(a) The third party administrator has [its] the third party administrator's principal place of business in another state;

(b) The third party administrator is not soliciting business as a third party administrator in this state; and

(c) In the case of any group policy or plan of insurance serviced by the third party administrator, the lesser of five percent or 100 certificate holders reside in this state.

SECTION 4. ORS 744.720 is amended to read:

744.720. (1) A third party administrator licensed under ORS 744.702 may transact business as a third party administrator only pursuant to a written agreement between the third party administrator and the [insurer] payor. The agreement [shall] must contain all provisions required by this section. However, any provision that does not apply to the functions to be performed by the third party administrator need not be included.

(2) [An insurer] A payor and a third party administrator transacting business under an agreement required [in] under subsection (1) of this section shall each retain the agreement [with its] as part of each respective person's records for the duration of the agreement and for five years following the date [of its termination] on which the agreement terminates.

(3) An agreement required by this section [shall] must include at least the following, in addition to any other requirements of ORS 744.700 to 744.740:

(a) A statement of duties that the third party administrator is expected to perform on behalf of the [insurer] payor and the lines, classes or types of insurance for which the third party administrator is to be authorized to administer;

(b) Provisions with respect to underwriting or other standards pertaining to the business underwritten by the [insurer] payor. The agreement [shall] must also state the responsibilities of the third party administrator for determining the benefits, premium rates, underwriting criteria and claims payment procedures, and for securing any reinsurance, subject to the responsibilities of the [insurer] payor established in ORS 744.740;

(c) Provisions for the third party administrator to periodically render an accounting to the [insurer detailing] payor that details all transactions performed by the third party administrator pertaining to the business underwritten by the [insurer] payor;

(d) Provisions governing withdrawals from the fiduciary account required under ORS 744.730, and provisions otherwise relating to the fiduciary account, addressing at least the following matters:
(A) Remittance to [an insurer] a payor entitled to the remittance;

(B) Deposit in an account maintained in the name of the [insurer] payor;

(C) Transfer to and deposit in a claims-paying account, with claims to be paid as provided in ORS 744.730;

(D) Payment to a group policyholder for remittance to the [insurer] payor entitled to the remittance;

(E) Payment to the third party administrator of [its] the third party administrator’s commission fees or charges; and

(F) Remittance of return premiums to the person entitled to the return premium; and

(e) Provisions establishing which disputes, if any, arising under the contract [shall] must be decided by arbitration, mediation or other means of dispute resolution.

(4) Upon written notice, the [insurer] payor or third party administrator may terminate the written agreement for cause as provided in the agreement. The [insurer] payor may suspend the underwriting authority of the third party administrator during any dispute regarding the cause for termination of the written agreement. The [insurer] payor must fulfill any lawful obligations with respect to policies affected by the agreement, regardless of any dispute between the [insurer] payor and the third party administrator.

(5) A third party administrator shall make available for inspection to the Director of the Department of Consumer and Business Services copies of all contracts, and amendments [thereto] to contracts, with [insurers] payors or other persons using [its] the third party administrator’s services.

SECTION 5. ORS 744.724 is amended to read:

744.724. (1) Except as provided in subsection (4) of this section, a third party administrator shall maintain and make available to the [insurer] payor complete books and records of each transaction performed on behalf of the [insurer] payor. The books and records [shall] must be maintained in accordance with prudent standards of insurance recordkeeping and must be maintained for a period of not less than five years from the date [of their creation] on which the third party administrator creates the books and records.

(2) The Director of the Department of Consumer and Business Services [shall] must have access to the books and records maintained under subsection (1) of this section for the purpose of examination, audit and inspection. Any document, material or other information in the possession or control of the director that is furnished by a third party administrator, [an insurer] a payor, an agent or an employee or an agent acting on behalf of the third party administrator, [insurer] payor or insurance producer, or that [is obtained by] the director obtains in an investigation, [shall be] is confidential as provided in ORS 705.137.

(3) [An insurer] A payor that has entered into an agreement with a third party administrator [shall own] owns the records [generated by] the third party administrator generated pertaining to the [insurer] payor. However, the third party administrator has the right to continuing access to the books and records to permit the third party administrator to fulfill all of [its] the third party administrator’s contractual obligations to insured parties, claimants and the [insurer] payor.

(4) If [an insurer] a payor and third party administrator cancel their agreement, the third party administrator may agree in writing with the [insurer] payor to transfer all records to a successor third party administrator. If the agreement includes provisions to transfer the records, the third party administrator is no longer responsible for retaining the records for the five-year period. The successor third party administrator shall acknowledge in writing as part of [its] the successor third
party administrator's agreement with the [insurer] payor that [it] the successor third party administrator is responsible for retaining the records of the prior third party administrator as required in subsection (1) of this section.

SECTION 6. ORS 744.728 is amended to read:

744.728. A third party administrator may use only such advertising pertaining to the business underwritten by [an insurer] a payor that the [insurer] payor has approved in advance of [its] the advertising's use.

SECTION 7. ORS 744.730 is amended to read:

744.730. (1) A third party administrator shall hold in a fiduciary capacity all insurance charges or premiums collected by the third party administrator on behalf of or for [an insurer] a payor, and all return premiums received from the [insurer] payor. The third party administrator shall immediately remit all charges, premiums or return premiums to the person entitled to [them] the charges, premiums or return premiums or shall deposit [them] the charges, premiums or return premiums promptly in a fiduciary account established and maintained by the third party administrator in a federally or state insured financial institution. The fiduciary account may be used only for deposits authorized under this subsection.

(2) If the charges or premiums deposited in a fiduciary account have been collected on behalf of or for one or more [insurers] payors, a third party administrator shall keep records clearly recording the deposits in and withdrawals from the account on behalf of each [insurer] payor. The third party administrator shall keep copies of all such records and, upon request of [an insurer] a payor, shall furnish the [insurer] payor with copies of the records pertaining to such deposits and withdrawals.

(3) A third party administrator [shall] may not pay any claim by withdrawals from a fiduciary account in which premiums or charges are deposited.

(4) All claims by a third party administrator from funds collected on behalf of the [insurer] shall be paid only on drafts of and as authorized by the [insurer] payor.

(5) A third party administrator that is an insurance producer licensed under this chapter need not comply with this section if the third party administrator is in compliance with ORS 744.083 or 744.084 with respect to the premiums, charges and return premiums referred to in this section.

SECTION 8. ORS 744.732 is amended to read:

744.732. (1) A third party administrator [shall] may not enter into any agreement or understanding with [an insurer] a payor the effect of which is to make the amount of the third party administrator's commissions, fees or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the obligations of the [insurer] payor.

(2) This section does not prohibit a third party administrator from receiving:

(a) [A third party administrator from receiving] Performance-based compensation for providing hospital or other auditing services; or

(b) [A third party administrator from receiving] Compensation based on premiums or charges collected or on the number of claims processed.

(3) The third party administrator shall disclose to the [insurer] payor all charges, fees and commissions the third party administrator received from all sources in connection with the provision of administrative services for the [insurer] payor, including any fees or commissions paid by [insurers] payors providing reinsurance.

SECTION 9. ORS 744.734 is amended to read:

744.734. (1) When [an insurer] a payor uses the services of a third party administrator, the third
party administrator shall provide to covered individuals a written notice approved by the [insurer] payor that advises [them] the covered individuals of the identity of and relationship among the third party administrator, the policyholder and the [insurer] payor.

(2) When a third party administrator collects funds, the reason for collection of each item must be identified to the insured party and each item must be shown separately from any premium. Additional charges may not be made for services to the extent the services have been paid for by the [insurer] payor.

SECTION 10. ORS 744.736 is amended to read:

744.736. When the third party administrator receives policies, certificates, booklets, termination notices or other written communications from the [insurer] payor for delivery to insured parties or covered individuals, the third party administrator shall promptly make the delivery after receiving instructions from the [insurer] payor.

SECTION 11. ORS 744.738 is amended to read:

744.738. (1) Each third party administrator shall file an annual report for the preceding calendar year with the Director of the Department of Consumer and Business Services on or before March 1 of each year, or within such extension of time [therefor] for filing as the director may grant. The report [shall] must be in the form and contain such information as the director prescribes and [shall] must be verified by at least two officers of the third party administrator if the third party administrator is a corporation, and by two partners if the third party administrator is a partnership.

(2) The annual report [shall] must include the complete names and addresses of all [insurers] payors with which the third party administrator had an agreement during the preceding fiscal year.

SECTION 12. ORS 744.740 is amended to read:

744.740. (1) An insurer who uses the services of a third party administrator is responsible for determining the benefits, premium rates, underwriting criteria and claims payment procedures applicable to the coverage and for securing any reinsurance. The rules pertaining to such matters must be provided in writing by the [insurer] payor to the third party administrator.

(2) An insurer is solely responsible for providing competent administration of its programs that uses the services of a third party administrator and must provide to the Director of the Department of Consumer and Business Services, at the director's request, those of the third party administrator's books and records that involve matters related to the insurer.

(3) A written agreement between the payor and a third party administrator must provide that the third party administrator shall avoid in communications with claimants deceptive statements with respect to the allocation of responsibilities for claims or premiums among the third party administrator, the payor and any insurer.

(4) If a dispute occurs between a payor and a third party administrator with respect to the allocation of responsibility for fulfilling a lawful obligation under a policy, certificate or claim that is subject to a written agreement between the payor and the third party administrator, the payor shall fulfill the obligation.

(5) A payor that enters into an agreement with a third party administrator for the third party administrator to administer a program that is subject to ORS 744.700 to 744.740 shall ensure that the third party administrator is competent and administers the program competently.

[(3)] (6) If a third party administrator administers benefits for more than 100 certificate holders on behalf of an insurer, the insurer shall conduct a review of the operations of the third
party administrator at least annually.

SECTION 13. ORS 744.714 is repealed.

SECTION 14. (1) The amendments to ORS 744.700, 744.702, 744.704, 744.720, 744.724, 744.728, 744.730, 744.732, 744.734, 744.736, 744.738 and 744.740 by sections 1 to 12 of this 2023 Act and the repeal of ORS 744.714 by section 13 of this 2023 Act become operative on January 2, 2024.

(2) The Director of the Department of Consumer and Business Services may adopt rules and take any other action before the operative date specified in subsection (1) of this section that is necessary to enable the director, on and after the operative date specified in subsection (1) of this section, to undertake and exercise all of the duties, functions and powers conferred on the director by the amendments to ORS 744.700, 744.702, 744.704, 744.720, 744.724, 744.728, 744.730, 744.732, 744.734, 744.736, 744.738 and 744.740 by sections 1 to 12 of this 2023 Act.

SECTION 15. This 2023 Act takes effect on the 91st day after the date on which the 2023 regular session of the Eighty-second Legislative Assembly adjourns sine die.