

House Bill 2741

Sponsored by Representatives GOODWIN, BOWMAN, Senator MEEK (Pre-session filed.)

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**.

Modifies requirements for coordinated care organization contracts.
Declares emergency, effective on passage.

A BILL FOR AN ACT

1 Relating to coordinated care organizations; creating new provisions; amending ORS 414.590, 414.609
2 and 414.611; and declaring an emergency.

3 Whereas Oregonians will benefit from clarity, fairness and transparency in the contract pro-
4 curement process for coordinated care organizations; and

5 Whereas stakeholders participating in the coordinated care organization model place a premium
6 on prior contractual performance by existing coordinated care organizations and value existing local
7 relationships; now, therefore,

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

9 **SECTION 1.** ORS 414.590 is amended to read:

10 414.590. (1) As used in this section:

11 (a) **“Amend” means an agreement by a coordinated care organization to amend the terms**
12 **or conditions of an existing contract for the next benefit period.**

13 [(a)] (b) **“Benefit period” means a period of time, shorter than the [five-year] 10-year contract**
14 **term, for which specific terms and conditions in a contract between a coordinated care organization**
15 **and the Oregon Health Authority are in effect.**

16 [(b)] (c) **“Renew” means an agreement by a coordinated care organization to [amend the terms**
17 **or conditions of an existing contract for the next benefit period] enter into a contract for a new**
18 **10-year term.**

19 (2) A contract entered into between the authority and a coordinated care organization under
20 ORS 414.572 (1):

21 (a) Shall be for a term of [five] 10 years;

22 (b) Except as provided in subsection (4) of this section, may not be amended more than once in
23 each 12-month period; and

24 (c) May be terminated **or not renewed** by the authority if **the authority determines that the**
25 **health or welfare of members of the coordinated care organization is in jeopardy or a coor-**
26 **ordinated care organization, [fails to] within the current term of the contract and for reasons**
27 **within the control of the coordinated care organization:**

28 (A) **Fails to** meet outcome and quality measures specified in the contract [or is otherwise];

29 (B) **Fails to maintain risk-based capital at or above the levels prescribed by the authority**
30 **by rule; or**
31

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 (C) Is in material breach of the contract.

2 [(3) This section does not prohibit the authority from allowing a coordinated care organization a
3 reasonable amount of time in which to cure any failure to meet outcome and quality measures specified
4 in the contract prior to the termination of the contract.]

5 (3)(a) No later than 15 months prior to the expiration of a 10-year contract, the authority
6 and a coordinated care organization shall provide notification, in the form and manner pre-
7 scribed by the authority, of the intent of the authority or the coordinated care organization
8 to renew or not to renew a contract.

9 (b) If the authority provides notice of its intent not to renew a contract under paragraph
10 (a) of this subsection or if, after providing the notification of its intent to renew, the au-
11 thority makes a decision not to renew the contract, the authority shall, at least six months
12 prior to the termination of the contract term:

13 (A) Provide a notice in accordance with ORS 183.413 stating the reasons for the decision,
14 which must be based on performance only within the current contract term;

15 (B) Give the coordinated care organization a reasonable amount of time to cure any
16 failure to meet outcome and quality measures specified in the contract; and

17 (C) Give the coordinated care organization a meaningful opportunity, through a contested
18 case hearing in accordance with ORS 183.417, to:

19 (i) Dispute the basis for the decision;

20 (ii) Challenge any underlying assumptions of the decision; and

21 (iii) Provide additional information or materials.

22 (4) A contract entered into between the authority and a coordinated care organization may be
23 amended:

24 (a) More than once in each 12-month period if:

25 (A) The authority and the coordinated care organization mutually agree to amend the contract;

26 or

27 (B) Amendments are necessitated by changes in federal or state law.

28 (b) Once within the first eight months of the effective date of the contract if needed to adjust
29 the global budget of a coordinated care organization, retroactive to the beginning of the calendar
30 year, to take into account changes in the membership of the coordinated care organization or the
31 health status of the coordinated care organization's members.

32 (5) Except as provided in subsection (8) of this section, the authority must give a coordinated
33 care organization at least 60 days' advance notice of any amendments the authority proposes to
34 existing contracts between the authority and the coordinated care organization.

35 (6) Except as provided in subsection (4)(b) of this section, an amendment to a contract may apply
36 retroactively only if:

37 (a) The amendment does not result in a claim by the authority for the recovery of amounts paid
38 by the authority to the coordinated care organization prior to the date of the amendment; or

39 (b) The Centers for Medicare and Medicaid Services notifies the authority, in writing, that the
40 amendment is a condition for approval of the contract by the Centers for Medicare and Medicaid
41 Services.

42 (7) If an amendment to a contract under subsection (6)(b) of this section or other circumstances
43 arise that result in a claim by the authority for the recovery of amounts previously paid to a coor-
44 dinated care organization by the authority, the authority shall ensure that the recovery does not
45 have a material adverse effect on the coordinated care organization's ability to maintain the re-

1 quired minimum amounts of risk-based capital.

2 (8) No later than 134 days prior to the end of a benefit period, the authority shall provide to
3 each coordinated care organization notice of the proposed changes to the terms and conditions of
4 a contract, as will be submitted to the Centers for Medicare and Medicaid Services for approval, for
5 the next benefit period.

6 (9) A coordinated care organization must notify the authority of the coordinated care
7 organization's refusal to [*renew*] **amend** a contract with the authority no later than 14 days after
8 the authority provides the notice described in subsection (8) of this section. Except as provided in
9 subsections (10) and (11) of this section, a refusal to [*renew*] **amend** terminates the contract at the
10 end of the benefit period.

11 (10) The authority may require a contract to remain in force into the next benefit period and
12 be amended as proposed by the authority until 90 days after the coordinated care organization has,
13 in accordance with criteria prescribed by the authority:

14 (a) Notified each of its members and contracted providers of the termination of the contract;

15 (b) Provided to the authority a plan to transition its members to another coordinated care or-
16 ganization; and

17 (c) Provided to the authority a plan for closing out its coordinated care organization business.

18 (11) The authority may waive compliance with the deadlines in subsections (9) and (10) of this
19 section if the Director of the Oregon Health Authority finds that the waiver of the deadlines is
20 consistent with the effective and efficient administration of the medical assistance program and the
21 protection of medical assistance recipients.

22 **SECTION 2.** ORS 414.609 is amended to read:

23 414.609. (1) A coordinated care organization that contracts with the Oregon Health Authority
24 must maintain a network of providers sufficient in numbers and areas of practice and geographically
25 distributed in a manner to ensure that the health services provided under the contract are reason-
26 ably accessible to members.

27 [(2) *A member may transfer from one organization to another organization no more than once*
28 *during each enrollment period.*]

29 **(2) A coordinated care organization may request to add one or more new service areas**
30 **to the service areas assigned to the coordinated care organization beginning in the sixth year**
31 **of the coordinated care organization's contract term. The authority shall approve the re-**
32 **quest if the authority determines that:**

33 **(a) The coordinated care organization or coordinated care organizations already serving**
34 **the new service area have failed to meet network requirements under subsection (1) of this**
35 **section; or**

36 **(b) Allowing the requesting coordinated care organization to join the coordinated care**
37 **organization or coordinated care organizations already serving the new service area is in the**
38 **best interests of the members residing in the area.**

39 **SECTION 3.** ORS 414.611 is amended to read:

40 414.611. (1) The Oregon Health Authority may approve the transfer of 500 or more members from
41 one coordinated care organization to another coordinated care organization if:

42 (a) The members' provider has contracted with the receiving organization and has stopped ac-
43 cepting patients from or has terminated providing services to members of the transferring organ-
44 ization; and

45 (b) Members are offered the choice of remaining members of the transferring organization.

1 (2) Members may not be transferred under this section until the authority has evaluated the
2 receiving organization and determined that the organization meets criteria established by the au-
3 thority by rule, including but not limited to criteria that ensure that the organization meets the
4 requirements of ORS 414.609 (1).

5 (3) The authority shall provide notice of a transfer under this section to members that will be
6 affected by the transfer at least 90 days before the scheduled date of the transfer.

7 (4)(a) The authority may not approve the transfer of members under this section if:

8 (A) The transfer results from the termination of a provider’s contract with a coordinated care
9 organization for just cause; and

10 (B) The coordinated care organization has notified the authority that the provider’s contract
11 was terminated for just cause.

12 (b) A provider is entitled to a contested case hearing in accordance with ORS chapter 183, on
13 an expedited basis, to dispute the denial of a transfer of members under this subsection.

14 (c) As used in this subsection, “just cause” means that the contract was terminated for reasons
15 related to quality of care, competency, fraud or other similar reasons prescribed by the authority
16 by rule.

17 (5) The provider and the organization shall be the parties to any contested case proceeding to
18 determine whether the provider’s contract was terminated for just cause. The authority may award
19 attorney fees and costs to the party prevailing in the proceeding, applying the factors in ORS 20.075.

20 **(6) This section does not prohibit a member from voluntarily transferring from one co-
21 ordinated care organization to another coordinated care organization one time during each
22 enrollment period.**

23 **SECTION 4. (1) The Oregon Health Authority shall renew for a new 10-year term the
24 contracts of all coordinated care organizations that have a contract with the authority in
25 force on the effective date of this 2023 Act.**

26 **(2) Notwithstanding ORS 414.590 (2)(b) and (4), coordinated care organization contracts
27 that are in force on the operative date of the amendments to ORS 414.590 by section 1 of this
28 2023 Act may be amended to comply with the amendments to ORS 414.590 by section 1 of this
29 2023 Act.**

30 **SECTION 5. (1) The amendments to ORS 414.590, 414.609 and 414.611 by sections 1 to 3
31 of this 2023 Act become operative on December 1, 2023.**

32 **(2) Prior to the operative date specified in subsection (1) of this section, the Oregon
33 Health Authority shall conduct rulemaking as necessary to enable the authority to carry out,
34 on and after the operative date specified in subsection (1) of this section, the amendments
35 to ORS 414.590 by section 1 of this 2023 Act.**

36 **SECTION 6. This 2023 Act being necessary for the immediate preservation of the public
37 peace, health and safety, an emergency is declared to exist, and this 2023 Act takes effect
38 on its passage.**

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