

# Senate Bill 565

Sponsored by Senators GELSER BLOUIN, KNOPP (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**.

Requires insurer, pharmacy benefit manager, Public Employees' Benefit Board, Oregon Educators Benefit Board and health care service contractor to count payments made by or on behalf of enrollee for costs of certain prescription drugs when calculating enrollee's contribution to out-of-pocket maximum, deductible, copayment, coinsurance or other cost-sharing for drugs.

## A BILL FOR AN ACT

1  
2 Relating to the cost of health care; creating new provisions; and amending ORS 243.144, 243.877,  
3 743B.001 and 750.055.

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

5 **SECTION 1. Section 2 of this 2023 Act is added to and made a part of the Insurance Code.**

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

7 (a)(A) "Generic equivalent" means a drug that meets applicable standards of strength,  
8 quality and purity according to the United States Pharmacopoeia or other nationally recog-  
9 nized compendium and that, compared to a brand name drug:

10 (i) Has an identical amount of the same active chemical ingredients and the same dosage  
11 form; and

12 (ii) If administered in the same amounts, will provide comparable therapeutic effects.

13 (B) "Generic equivalent" does not include a drug that is listed by the United States Food  
14 and Drug Administration as having unresolved bioequivalence concerns according to the  
15 administration's most recent publication of approved drug products with therapeutic equiv-  
16 alence evaluations.

17 (b)(A) "Health plan" means:

18 (i) An individual or group health benefit plan, as defined in ORS 743B.005;

19 (ii) A plan providing coverage for a specific disease or condition only;

20 (iii) A medical services contract;

21 (iv) A health benefit plan offered by the Public Employees' Benefit Board or the Oregon  
22 Educators Benefit Board; or

23 (v) Other similar certificate, policy, contract or arrangement or any endorsement or  
24 rider that covers all or a portion of the cost of an individual's health care and that is subject  
25 to regulation by the Department of Consumer and Business Services.

26 (B) "Health plan" does not include coverages provided by:

27 (i) Medicare;

28 (ii) The state medical assistance program;

29 (iii) The federal government to federal employees;

30 (iv) TRICARE;

**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 (v) **Workers’ compensation;**  
 2 (vi) **Limited benefit coverage; or**  
 3 (vii) **Accident only, credit, disability or long term care insurance.**  
 4 (c) **“High deductible health plan” means a health plan described in 26 U.S.C. 223.**  
 5 (d) **“Person” includes:**  
 6 (A) **An individual;**  
 7 (B) **A trust;**  
 8 (C) **An estate;**  
 9 (D) **A partnership;**  
 10 (E) **A corporation;**  
 11 (F) **An association;**  
 12 (G) **A joint stock company;**  
 13 (H) **An insurance company;**  
 14 (I) **A state;**  
 15 (J) **A political subdivision, instrumentality or municipal corporation of a state; or**  
 16 (K) **A nonprofit organization.**  
 17 (e) **“Pharmacy benefit manager” means a pharmacy benefit manager, as defined in ORS**  
 18 **735.530, that manages pharmacy benefits for a health plan.**  
 19 (f) **“Preventive services” has the meaning given that term in 42 U.S.C. 1395x.**  
 20 (2) **To the extent permitted by federal law, an insurer offering a health plan that provides**  
 21 **pharmacy benefits and a pharmacy benefit manager shall include all amounts paid by an**  
 22 **enrollee or paid by another person on behalf of an enrollee toward the cost of a covered**  
 23 **prescription drug when calculating the enrollee’s contribution to an out-of-pocket maximum,**  
 24 **deductible, copayment, coinsurance or other cost-sharing requirement applied to the drug if:**  
 25 (a) **The drug does not have a generic equivalent; or**  
 26 (b) **The drug has a generic equivalent and the enrollee has:**  
 27 (A) **Obtained prior authorization from the insurer or pharmacy benefit manager;**  
 28 (B) **Complied with a step therapy protocol; or**  
 29 (C) **Received approval from the insurer or pharmacy benefit manager through the**  
 30 **insurer’s or the pharmacy benefit manager’s exceptions, appeal or review process.**  
 31 (3) **For high deductible health plans the provisions of subsection (2) of this section apply**  
 32 **only to preventive services until the enrollee has satisfied the minimum deductible under 26**  
 33 **U.S.C. 223(c)(2).**  
 34 **SECTION 3.** ORS 243.144, as amended by section 2, chapter 72, Oregon Laws 2022, is amended  
 35 to read:  
 36 243.144. Benefit plans offered by the Public Employees’ Benefit Board that reimburse the cost  
 37 of medical and other health services and supplies must comply with the requirements for health  
 38 benefit plan coverage described in:  
 39 (1) ORS 743A.058;  
 40 (2) ORS 743B.256;  
 41 (3) ORS 743B.420;  
 42 (4) ORS 743B.423;  
 43 (5) ORS 743B.601;  
 44 (6) ORS 743B.810; *[and]*  
 45 (7) ORS 743B.287 (4); **and**

**(8) Section 2 of this 2023 Act.**

**SECTION 4.** ORS 243.877, as amended by section 3, chapter 72, Oregon Laws 2022, is amended to read:

243.877. Benefit plans offered by the Oregon Educators Benefit Board that reimburse the cost of medical and other health services and supplies must comply with the requirements for health benefit plan coverage described in:

- (1) ORS 743A.058;
- (2) ORS 743B.256;
- (3) ORS 743B.420;
- (4) ORS 743B.423;
- (5) ORS 743B.601;
- (6) ORS 743B.810; [and]
- (7) ORS 743B.287 (4); **and**

**(8) Section 2 of this 2023 Act.**

**SECTION 5.** ORS 743B.001 is amended to read:

743B.001. As used in this section and ORS 743.008, 743.029, 743.035, 743A.190, 743B.195, 743B.197, 743B.200, 743B.202, 743B.204, 743B.220, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.310, 743B.400, 743B.403, 743B.405, 743B.420, 743B.422, 743B.423, 743B.424, 743B.450, 743B.451, 743B.452, 743B.453, 743B.454, 743B.505, 743B.550, 743B.555 and 743B.602 **and section 2 of this 2023 Act:**

(1) “Adverse benefit determination” means an insurer’s denial, reduction or termination of a health care item or service, or an insurer’s failure or refusal to provide or to make a payment in whole or in part for a health care item or service, that is based on the insurer’s:

- (a) Denial of eligibility for or termination of enrollment in a health benefit plan;
- (b) Rescission or cancellation of a policy or certificate;
- (c) Imposition of a preexisting condition exclusion as defined in ORS 743B.005, source-of-injury exclusion, network exclusion, annual benefit limit or other limitation on otherwise covered items or services;
- (d) Determination that a health care item or service is experimental, investigational or not medically necessary, effective or appropriate;
- (e) Determination that a course or plan of treatment that an enrollee is undergoing is an active course of treatment for purposes of continuity of care under ORS 743B.225; or
- (f) Denial, in whole or in part, of a request for prior authorization, a request for an exception to step therapy or a request for coverage of a treatment, drug, device or diagnostic or laboratory test that is subject to other utilization review requirements.

(2) “Authorized representative” means an individual who by law or by the consent of a person may act on behalf of the person.

(3) “Clinical review criteria” means screening procedures, decision rules, medical protocols and clinical guidance used by an insurer or other entity in conducting utilization review and evaluating:

- (a) Medical necessity;
- (b) Appropriateness of an item or health service for which prior authorization is requested or for which an exception to step therapy has been requested as described in ORS 743B.602; or
- (c) Any other coverage that is subject to utilization review.

(4) “Credit card” has the meaning given that term in 15 U.S.C. 1602.

(5) “Electronic funds transfer” has the meaning given that term in ORS 293.525.

- 1 (6) “Enrollee” has the meaning given that term in ORS 743B.005.
- 2 (7) “Essential community provider” has the meaning given that term in rules adopted by the  
3 Department of Consumer and Business Services consistent with the description of the term in 42  
4 U.S.C. 18031 and the rules adopted by the United States Department of Health and Human Services,  
5 the United States Department of the Treasury or the United States Department of Labor to carry  
6 out 42 U.S.C. 18031.
- 7 (8) “Grievance” means:
- 8 (a) A communication from an enrollee or an authorized representative of an enrollee expressing  
9 dissatisfaction with an adverse benefit determination, without specifically declining any right to  
10 appeal or review, that is:
- 11 (A) In writing, for an internal appeal or an external review; or  
12 (B) In writing or orally, for an expedited response described in ORS 743B.250 (2)(d) or an expedited  
13 external review; or
- 14 (b) A written complaint submitted by an enrollee or an authorized representative of an enrollee  
15 regarding the:
- 16 (A) Availability, delivery or quality of a health care service;  
17 (B) Claims payment, handling or reimbursement for health care services and, unless the enrollee  
18 has not submitted a request for an internal appeal, the complaint is not disputing an adverse benefit  
19 determination; or
- 20 (C) Matters pertaining to the contractual relationship between an enrollee and an insurer.
- 21 (9) “Health benefit plan” has the meaning given that term in ORS 743B.005.
- 22 (10) “Independent practice association” means a corporation wholly owned by providers, or  
23 whose membership consists entirely of providers, formed for the sole purpose of contracting with  
24 insurers for the provision of health care services to enrollees, or with employers for the provision  
25 of health care services to employees, or with a group, as described in ORS 731.098, to provide health  
26 care services to group members.
- 27 (11) “Insurer” includes a health care service contractor as defined in ORS 750.005.
- 28 (12) “Internal appeal” means a review by an insurer of an adverse benefit determination made  
29 by the insurer.
- 30 (13) “Managed health insurance” means any health benefit plan that:
- 31 (a) Requires an enrollee to use a specified network or networks of providers managed, owned,  
32 under contract with or employed by the insurer in order to receive benefits under the plan, except  
33 for emergency or other specified limited service; or
- 34 (b) In addition to the requirements of paragraph (a) of this subsection, offers a point-of-service  
35 provision that allows an enrollee to use providers outside of the specified network or networks at  
36 the option of the enrollee and receive a reduced level of benefits.
- 37 (14) “Medical services contract” means a contract between an insurer and an independent  
38 practice association, between an insurer and a provider, between an independent practice associ-  
39 ation and a provider or organization of providers, between medical or mental health clinics, and  
40 between a medical or mental health clinic and a provider to provide medical or mental health ser-  
41 vices. “Medical services contract” does not include a contract of employment or a contract creating  
42 legal entities and ownership thereof that are authorized under ORS chapter 58, 60 or 70, or other  
43 similar professional organizations permitted by statute.
- 44 (15)(a) “Preferred provider organization insurance” means any health benefit plan that:
- 45 (A) Specifies a preferred network of providers managed, owned or under contract with or em-

1 ployed by an insurer;

2 (B) Does not require an enrollee to use the preferred network of providers in order to receive  
3 benefits under the plan; and

4 (C) Creates financial incentives for an enrollee to use the preferred network of providers by  
5 providing an increased level of benefits.

6 (b) “Preferred provider organization insurance” does not mean a health benefit plan that has  
7 as its sole financial incentive a hold harmless provision under which providers in the preferred  
8 network agree to accept as payment in full the maximum allowable amounts that are specified in  
9 the medical services contracts.

10 (16) “Prior authorization” means a form of utilization review that requires a provider or an  
11 enrollee to request a determination by an insurer, prior to the provision of health care that is sub-  
12 ject to utilization review, that the insurer will provide reimbursement for the health care requested.  
13 “Prior authorization” does not include referral approval for evaluation and management services  
14 between providers.

15 (17)(a) “Provider” means a person licensed, certified or otherwise authorized or permitted by  
16 laws of this state to administer medical or mental health services in the ordinary course of business  
17 or practice of a profession.

18 (b) With respect to the statutes governing the billing for or payment of claims, “provider” also  
19 includes an employee or other designee of the provider who has the responsibility for billing claims  
20 for reimbursement or receiving payments on claims.

21 (18) “Step therapy” means a utilization review protocol, policy or program in which an insurer  
22 requires certain preferred drugs for treatment of a specific medical condition be proven ineffective  
23 or contraindicated before a prescribed drug may be reimbursed.

24 (19) “Utilization review” means a set of formal techniques used by an insurer or delegated by  
25 the insurer designed to monitor the use of or evaluate the medical necessity, appropriateness, effi-  
26 cacy or efficiency of health care items, services, procedures or settings.

27 **SECTION 6.** ORS 750.055, as amended by section 11, chapter 37, Oregon Laws 2022, is amended  
28 to read:

29 750.055. (1) The following provisions apply to health care service contractors to the extent not  
30 inconsistent with the express provisions of ORS 750.005 to 750.095:

31 (a) ORS 705.137, 705.138 and 705.139.

32 (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398  
33 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS  
34 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652,  
35 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.

36 (c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not  
37 including ORS 732.582.

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

40 (e) ORS 734.014 to 734.440.

41 (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to  
42 742.542.

43 (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.020, 743.022, 743.023, **743.025,**  
44 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406,  
45 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650

1 to 743.656, 743.680 to 743.689, 743.788 and 743.790 and section 8, chapter 37, Oregon Laws 2022.

2 (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044,  
3 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066,  
4 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105,  
5 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170,  
6 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260 and section 2,  
7 chapter 771, Oregon Laws 2013, and sections 6 and 7, chapter 37, Oregon Laws 2022.

8 (i) ORS [743.025,] 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195, 743B.197,  
9 743B.200, 743B.202, 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253,  
10 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310,  
11 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403,  
12 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505,  
13 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 **and section 2 of this 2023 Act.**

14 (j) The following provisions of ORS chapter 744:

15 (A) ORS 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance produc-  
16 ers;

17 (B) ORS 744.602 to 744.665, relating to the regulation of insurance consultants; and

18 (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

19 (k) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610,  
20 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

21 (2) The following provisions of the Insurance Code apply to health care service contractors ex-  
22 cept in the case of group practice health maintenance organizations that are federally qualified  
23 pursuant to Title XIII of the Public Health Service Act:

24 (a) ORS 731.485, if the group practice health maintenance organization wholly owns and oper-  
25 ates an in-house drug outlet.

26 (b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse  
27 practitioner associated with a group practice health maintenance organization.

28 (3) For the purposes of this section, health care service contractors are insurers.

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

32 (5)(a) A health care service contractor is a domestic insurance company for the purpose of de-  
33 termining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

34 (b) A health care service contractor's classification as a domestic insurance company under  
35 paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510  
36 to 734.710.

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

40 **SECTION 7.** ORS 750.055, as amended by section 21, chapter 771, Oregon Laws 2013, section  
41 7, chapter 25, Oregon Laws 2014, section 82, chapter 45, Oregon Laws 2014, section 9, chapter 59,  
42 Oregon Laws 2015, section 7, chapter 100, Oregon Laws 2015, section 7, chapter 224, Oregon Laws  
43 2015, section 11, chapter 362, Oregon Laws 2015, section 10, chapter 470, Oregon Laws 2015, section  
44 30, chapter 515, Oregon Laws 2015, section 10, chapter 206, Oregon Laws 2017, section 6, chapter  
45 417, Oregon Laws 2017, section 22, chapter 479, Oregon Laws 2017, section 10, chapter 7, Oregon

1 Laws 2018, section 69, chapter 13, Oregon Laws 2019, section 38, chapter 151, Oregon Laws 2019,  
 2 section 5, chapter 441, Oregon Laws 2019, section 85, chapter 97, Oregon Laws 2021, and section  
 3 12, chapter 37, Oregon Laws 2022, is amended to read:

4 750.055. (1) The following provisions apply to health care service contractors to the extent not  
 5 inconsistent with the express provisions of ORS 750.005 to 750.095:

6 (a) ORS 705.137, 705.138 and 705.139.

7 (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398  
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 9 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652,  
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11 (c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not  
 12 including ORS 732.582.

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

15 (e) ORS 734.014 to 734.440.

16 (f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to  
 17 742.542.

18 (g) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, 743.020, 743.022, 743.023, **743.025**,  
 19 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406,  
 20 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650  
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22 (h) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044,  
 23 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066,  
 24 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105,  
 25 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170,  
 26 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260 and sections 6  
 27 and 7, chapter 37, Oregon Laws 2022.

28 (i) ORS [743.025,] 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195, 743B.197,  
 29 743B.200, 743B.202, 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253,  
 30 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310,  
 31 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403,  
 32 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505,  
 33 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 **and section 2 of this 2023 Act.**

34 (j) The following provisions of ORS chapter 744:

35 (A) ORS 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance produc-  
 36 ers;

37 (B) ORS 744.602 to 744.665, relating to the regulation of insurance consultants; and

38 (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

39 (k) 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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 43 pursuant to Title XIII of the Public Health Service Act:

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 45 ates an in-house drug outlet.

1 (b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse  
2 practitioner associated with a group practice health maintenance organization.

3 (3) For the purposes of this section, health care service contractors are insurers.

4 (4) 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 (5)(a) A health care service contractor is a domestic insurance company for the purpose of de-  
8 termining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

9 (b) A health care service contractor's classification as a domestic insurance company under  
10 paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510  
11 to 734.710.

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

15 **SECTION 8. Section 2 of this 2023 Act and the amendments to ORS 243.144, 243.877,**  
16 **743B.001 and 750.055 by sections 3 to 7 of this 2023 Act apply to health plans, as defined in**  
17 **section 2 of this 2023 Act, and to health care service contracts offered by health care service**  
18 **contractors, as defined in ORS 750.005, issued, renewed or extended on or after the effective**  
19 **date of this 2023 Act.**

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