78th OREGON LEGISLATIVE ASSEMBLY--2015 Regular Session

HOUSE MINORITY REPORT AMENDMENTS TO HOUSE BILL 2758

By Nonconcurring Members of COMMITTEE ON HEALTH CARE

April 28

1	On page 1 of the printed bill, line 2, delete "and" and after "ORS" insert "419B.050,".
2	In line 3, after "750.333" insert "; and declaring an emergency".
3	Delete lines 5 through 29 and delete page 2.
4	On page 3, delete lines 1 through 40 and insert:
5	"SECTION 1. Section 2 of this 2015 Act is added to and made a part of the Insurance
6	Code.
7	" <u>SECTION 2.</u> (1) As used in this section:
8	"(a) 'Carrier' has the meaning given that term in ORS 743.730.
9	"(b) 'Communication' includes:
10	"(A) An explanation of benefits notice;
11	"(B) Information about an appointment, including a confirmation and a reminder;
12	"(C) A notice of an adverse benefit determination;
13	"(D) A carrier's or third party administrator's request for additional information re-
14	garding a claim;
15	"(E) A notice of a contested claim;
16	"(F) The name and address of a provider, a description of services provided and other
17	visit information; and
18	"(G) Any written, oral or electronic communication from a carrier or a third party ad-
19	ministrator to a policyholder, certificate holder or enrollee that contains personal health
20	information.
21	"(c) 'Confidential communications request' means a request from an enrollee to a carrier
22	or third party administrator that communications be sent directly to the enrollee at a spec-
23	ified mail or electronic mail address or specified telephone number designated by the enrollee
24	and that the carrier or third party administrator refrain from sending communications
25	concerning the enrollee to the policyholder or certificate holder.
26	"(d) 'Personal health information' means information or data created by or derived from
27	a provider about an individual that relates to:
28	"(A) The past, present or future health condition of the individual;
29	"(B) The provision of health care to the individual;
30	"(C) A request for the provision of health care to the individual; or
31	"(D) The cost of or payment for health care provided to the individual.
32	"(2) A carrier and a third party administrator doing business in this state:
33	"(a) Shall comply with a confidential communications request made by an enrollee if the
34	enrollee states that disclosure of all or part of a communication regarding the enrollee may

1 lead to abuse of the enrollee.

2 "(b) Shall update an enrollee on the status of implementing a confidential communi-3 cations request upon the enrollee's inquiry.

4 "(3) The procedure adopted by a carrier or third party administrator for enrollees to 5 make confidential communications requests:

6 "(a) Must use the form described in subsection (5) of this section and may also allow 7 enrollees to make the request by other means such as telephone or the Internet.

8 "(b) May not require the enrollee to explain why the enrollee fears that disclosure may 9 lead to abuse.

"(c) Shall ensure that the confidential communications request remains in effect until
 the enrollee revokes the request in writing or submits a new confidential communications
 request.

13 "(d) Shall ensure that the confidential communications request is acted upon and imple-14 mented by the carrier or third party administrator not later than seven days after receipt 15 of a request by electronic means or 30 days after receipt of a request in hard copy.

"(e) May not require an enrollee to waive any right to limit disclosure under this section
 as a condition of eligibility for or coverage under a health benefit plan.

"(f) Must be easy to understand and to complete.

19 "(4) A provider may make an arrangement with an enrollee for the enrollee to pay to the 20 provider any cost sharing required under the health benefit plan and shall communicate the 21 arrangement to the carrier or third party administrator.

"(5) The Department of Consumer and Business Services shall work with stakeholders to develop and make available to the public a standardized form that an enrollee may submit to a carrier or third party administrator to make a confidential communications request. The department shall encourage health care providers to clearly display the form and make it available to patients. At a minimum, the form must:

"(a) Inform an enrollee about the enrollee's right to have personal health information
sent to the enrollee and not disclosed to the policyholder or certificate holder;

29 "(b) Allow an enrollee to indicate whether communications containing personal health 30 information should be withheld by the carrier or third party administrator or should be re-31 directed to a specified mail or electronic mail address or specified telephone number;

32 "(c) Allow an enrollee to designate a mail or electronic mail address or telephone number 33 by which the carrier or third party administrator may contact the enrollee if additional in-34 formation or clarification is necessary to process the confidential communications request; 35 and

36 "(d) Include a disclaimer that it may take up to 30 days from the date of receipt for a 37 carrier or third party administrator to process the form.

38 "(6) The department shall work with carriers, third party administrators and other 39 stakeholders to develop effective systems to protect the confidentiality of personal health 40 information and to ensure that carriers and third party administrators communicate directly 41 with an enrollee regarding health care services sought or received by the enrollee.

42 "(7) The department shall interpret this section in a manner that is consistent with fed43 eral law.

44 "<u>SECTION 3.</u> (1) No later than February 1, 2017, the Department of Consumer and Busi 45 ness Services shall report, in the manner prescribed by ORS 192.245, on:

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1 "(a) The effectiveness of the process described in section 2 of this 2015 Act in allowing 2 health insurance enrollees to redirect insurance communications containing personal health 3 information, the extent to which enrollees are using the process and whether the process is 4 working properly; and

5 "(b) The education and outreach activities conducted by carriers or third party adminis-6 trators to inform Oregonians about their right to have personal health information redi-7 rected.

8 "(2) The department shall require carriers or third party administrators to report data 9 necessary for the department to produce the report described in subsection (1) of this sec-10 tion.".

11 On page 8, lines 22 through 25, delete the boldfaced material and insert "and the requirement 12 under section 2 of this 2015 Act that a carrier or third party administrator send communications 13 containing personal health information only to the enrollee who is the subject of the personal health 14 information".

15 On page 14, after line 39, insert:

16 "SECTION 13. ORS 419B.050 is amended to read:

"419B.050. (1) As used in this section, 'health care provider' has the meaning given that
 term in ORS 192.556.

"(2) A health care provider may make a report of abuse, in accordance with ORS
419B.015, if the provider receives from a patient a confidential communications request, as
defined in section 2 of this 2015 Act, and the patient:

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"(a) Is an unemancipated minor under 19 years of age; and

"(b) States in the confidential communications request that disclosure of all or part of
a communication regarding the patient may lead to abuse of the patient.

25"[(1)] (3) Upon notice by a law enforcement agency, the Department of Human Services, a 26member agency of a county multidisciplinary child abuse team or a member of a county multidisci-27 plinary child abuse team that a child abuse investigation is being conducted under ORS 419B.020, a health care provider must permit the law enforcement agency, the department, the member agency 28 of the county multidisciplinary child abuse team or the member of the county multidisciplinary child 29 30 abuse team to inspect and copy medical records, including, but not limited to, prenatal and birth records, of the child involved in the investigation without the consent of the child, or the parent 3132or guardian of the child. A health care provider who in good faith disclosed medical records under 33 this section is not civilly or criminally liable for the disclosure.

34 "[(2) As used in this section, 'health care provider' has the meaning given that term in ORS 35 192.556.]

36 "<u>SECTION 14.</u> Section 2 of this 2015 Act applies to health benefit plans issued or renewed
 37 on or after January 1, 2016.

38 "<u>SECTION 15.</u> This 2015 Act being necessary for the immediate preservation of the public 39 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect 40 on its passage.".

41 /s/ Cedric Hayden 42 /s/ Cedric Hayden 84 /s/ Jim Weidner 45