HB 2303-1
(LC 507)
3/27/17 (LHF/ps)

At the request of the Oregon Health Authority

PROPOSED AMENDMENTS TO
HOUSE BILL 2303

On page 1 of the printed bill, line 2, after "244.050," insert "441.221, 441.233," and delete "and 442.120" and insert ", 731.036, 743B.001, 743B.197 and 743B.200".

In line 3, after "2015" insert "; and repealing ORS 735.721, 735.723, 735.725, 735.727 and 743B.206".

On page 9, delete lines 40 through 45 and delete pages 10 and 11 and insert:

"**SECTION 6.** ORS 441.221 is amended to read:

"441.221. (1) The Advisory Committee on Physician Credentialing Information is established within the Oregon Health Authority. The committee consists of nine members appointed by the Director of the Oregon Health Authority **or the director's designee** as follows:

"(a) Three members who are health care practitioners licensed by the Oregon Medical Board or representatives of health care practitioners' organizations doing business within the State of Oregon;

"(b) Three representatives of hospitals licensed by the Oregon Health Authority; and

"(c) Three representatives of health care service contractors that have been issued a certificate of authority to transact health insurance in this state by the Department of Consumer and Business Services.

"(2) All members appointed pursuant to subsection (1) of this section shall

be knowledgeable about national standards relating to the credentialing of health care practitioners.

"(3) The term of appointment for each member of the committee is three years. If, during a member's term of appointment, the member no longer qualifies to serve as designated by the criteria of subsection (1) of this section, the member must resign. If there is a vacancy for any cause, the director shall make an appointment to become immediately effective for the unexpired term.

"(4) Members of the committee are not entitled to compensation or reimbursement of expenses.

"SECTION 7. ORS 441.233 is amended to read:

"441.233. The [*Director of the*] Oregon Health Authority shall adopt rules necessary for the administration of ORS 441.224 to 441.233.

"SECTION 8. ORS 731.036 is amended to read:

"731.036. Except as provided in ORS 743.029 or as specifically provided by law, the Insurance Code does not apply to any of the following to the extent of the subject matter of the exemption:

"(1) A bail bondsman, other than a corporate surety and its agents.

"(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years prior to January 1, 1961, and for which a certificate of authority was not required on that date.

"(3) A religious organization providing insurance benefits only to its employees, if the organization is in existence and exempt from taxation under section 501(c)(3) of the federal Internal Revenue Code on September 13, 1975.

"(4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for tort liability in accordance with ORS 30.282.

"(5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for property damage in accordance with ORS 30.282.

"(6) Cities, counties, school districts, community college districts, community college service districts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure for health insurance coverage, excluding disability insurance, their employees or retired employees, or their dependents, or students engaged in school activities, or combination of employees and dependents, with or without employee or student contributions, if all of the following conditions are met:

"(a) The individual or jointly self-insured program meets the following minimum requirements:

"(A) In the case of a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals;

"(B) In the case of an individual public body program other than a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals; and

"(C) In the case of a joint program of two or more public bodies, the number of covered employees and dependents and retired employees and dependents aggregates at least 1,000 individuals;

"(b) The individual or jointly self-insured health insurance program includes all coverages and benefits required of group health insurance policies under ORS chapters 743, 743A and 743B;

"(c) The individual or jointly self-insured program must have program documents that define program benefits and administration;

"(d) Enrollees must be provided copies of summary plan descriptions including:

"(A) Written general information about services provided, access to services, charges and scheduling applicable to each enrollee's coverage;

"(B) The program's grievance and appeal process; and

"(C) Other group health plan enrollee rights, disclosure or written procedure requirements established under ORS chapters 743, 743A and 743B;

"(e) The financial administration of an individual or jointly self-insured program must include the following requirements:

"(A) Program contributions and reserves must be held in separate accounts and used for the exclusive benefit of the program;

"(B) The program must maintain adequate reserves. Reserves may be invested in accordance with the provisions of ORS chapter 293. Reserve adequacy must be calculated annually with proper actuarial calculations including the following:

"(i) Known claims, paid and outstanding;

"(ii) A history of incurred but not reported claims;

"(iii) Claims handling expenses;

"(iv) Unearned contributions; and

"(v) A claims trend factor; and

"(C) The program must maintain adequate reinsurance against the risk of economic loss in accordance with the provisions of ORS 742.065 unless the program has received written approval for an alternative arrangement for protection against economic loss from the Director of the Department of Consumer and Business Services;

"(f) The individual or jointly self-insured program must have sufficient personnel to service the employee benefit program or must contract with a third party administrator licensed under ORS chapter 744 as a third party administrator to provide such services;

"(g) The individual or jointly self-insured program shall be subject to assessment in accordance with section 2, chapter 698, Oregon Laws 2013;

"(h) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the Department of Consumer and Business Services copies of all documents creating and governing the program, all forms used to communicate the

coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of the program for the preceding year. A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing requirement; and

"(i) Each public body in a joint insurance program is liable only to its own employees and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool.

"(7) All ambulance services.

"(8) A person providing any of the services described in this subsection. The exemption under this subsection does not apply to an authorized insurer providing such services under an insurance policy. This subsection applies to the following services:

"(a) Towing service.

"(b) Emergency road service, which means adjustment, repair or replacement of the equipment, tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated under its own power.

"(c) Transportation and arrangements for the transportation of human remains, including all necessary and appropriate preparations for and actual transportation provided to return a decedent's remains from the decedent's place of death to a location designated by a person with valid legal authority under ORS 97.130.

"(9)(a) A person described in this subsection who, in an agreement to lease or to finance the purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in paragraph (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft or other occurrence, as specified in the agreement. The exemption established in this subsection applies to the following persons:

"(A) The seller of the motor vehicle, if the sale is made pursuant to a

motor vehicle retail installment contract.

"(B) The lessor of the motor vehicle.

"(C) The lender who finances the purchase of the motor vehicle.

"(D) The assignee of a person described in this paragraph.

"(b) The amount waived pursuant to the agreement shall be the difference, or portion thereof, between the amount received by the seller, lessor, lender or assignee, as applicable, that represents the actual cash value of the motor vehicle at the date of loss, and the amount owed under the agreement.

"(10) A self-insurance program for tort liability or property damage that is established by two or more affordable housing entities and that complies with the same requirements that public bodies must meet under ORS 30.282 (6). As used in this subsection:

"(a) 'Affordable housing' means housing projects in which some of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to individuals of low income.

"(b) 'Affordable housing entity' means any of the following:

"(A) A housing authority created under the laws of this state or another jurisdiction and any agency or instrumentality of a housing authority, including but not limited to a legal entity created to conduct a self-insurance program for housing authorities that complies with ORS 30.282 (6).

"(B) A nonprofit corporation that is engaged in providing affordable housing.

"(C) A partnership or limited liability company that is engaged in providing affordable housing and that is affiliated with a housing authority described in subparagraph (A) of this paragraph or a nonprofit corporation described in subparagraph (B) of this paragraph if the housing authority or nonprofit corporation:

"(i) Has, or has the right to acquire, a financial or ownership interest in the partnership or limited liability company;

"(ii) Has the power to direct the management or policies of the partner-

ship or limited liability company;

"(iii) Has entered into a contract to lease, manage or operate the affordable housing owned by the partnership or limited liability company; or

"(iv) Has any other material relationship with the partnership or limited liability company.

"[*(11) A community-based health care initiative approved by the Oregon Health Authority under ORS 735.723 operating a community-based health care improvement program approved by the authority.*]

"[*(12)*] **(11)** Except as provided in ORS 735.500 and 735.510, a person certified by the Department of Consumer and Business Services to operate a retainer medical practice.

"SECTION 9. ORS 731.036, as amended by section 37, chapter 698, Oregon Laws 2013, and section 42, chapter 318, Oregon Laws 2015, is amended to read:

"731.036. Except as provided in ORS 743.029 or as specifically provided by law, the Insurance Code does not apply to any of the following to the extent of the subject matter of the exemption:

"(1) A bail bondsman, other than a corporate surety and its agents.

"(2) A fraternal benefit society that has maintained lodges in this state and other states for 50 years prior to January 1, 1961, and for which a certificate of authority was not required on that date.

"(3) A religious organization providing insurance benefits only to its employees, if the organization is in existence and exempt from taxation under section 501(c)(3) of the federal Internal Revenue Code on September 13, 1975.

"(4) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for tort liability in accordance with ORS 30.282.

"(5) Public bodies, as defined in ORS 30.260, that either individually or jointly establish a self-insurance program for property damage in accordance with ORS 30.282.

"(6) Cities, counties, school districts, community college districts, community college service districts or districts, as defined in ORS 198.010 and 198.180, that either individually or jointly insure for health insurance coverage, excluding disability insurance, their employees or retired employees, or their dependents, or students engaged in school activities, or combination of employees and dependents, with or without employee or student contributions, if all of the following conditions are met:

"(a) The individual or jointly self-insured program meets the following minimum requirements:

"(A) In the case of a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals;

"(B) In the case of an individual public body program other than a school district, community college district or community college service district, the number of covered employees and dependents and retired employees and dependents aggregates at least 500 individuals; and

"(C) In the case of a joint program of two or more public bodies, the number of covered employees and dependents and retired employees and dependents aggregates at least 1,000 individuals;

"(b) The individual or jointly self-insured health insurance program includes all coverages and benefits required of group health insurance policies under ORS chapters 743, 743A and 743B;

"(c) The individual or jointly self-insured program must have program documents that define program benefits and administration;

"(d) Enrollees must be provided copies of summary plan descriptions including:

"(A) Written general information about services provided, access to services, charges and scheduling applicable to each enrollee's coverage;

"(B) The program's grievance and appeal process; and

"(C) Other group health plan enrollee rights, disclosure or written procedure requirements established under ORS chapters 743, 743A and 743B;

"(e) The financial administration of an individual or jointly self-insured program must include the following requirements:

"(A) Program contributions and reserves must be held in separate accounts and used for the exclusive benefit of the program;

"(B) The program must maintain adequate reserves. Reserves may be invested in accordance with the provisions of ORS chapter 293. Reserve adequacy must be calculated annually with proper actuarial calculations including the following:

"(i) Known claims, paid and outstanding;

"(ii) A history of incurred but not reported claims;

"(iii) Claims handling expenses;

"(iv) Unearned contributions; and

"(v) A claims trend factor; and

"(C) The program must maintain adequate reinsurance against the risk of economic loss in accordance with the provisions of ORS 742.065 unless the program has received written approval for an alternative arrangement for protection against economic loss from the Director of the Department of Consumer and Business Services;

"(f) The individual or jointly self-insured program must have sufficient personnel to service the employee benefit program or must contract with a third party administrator licensed under ORS chapter 744 as a third party administrator to provide such services;

"(g) The public body, or the program administrator in the case of a joint insurance program of two or more public bodies, files with the Director of the Department of Consumer and Business Services copies of all documents creating and governing the program, all forms used to communicate the coverage to beneficiaries, the schedule of payments established to support the program and, annually, a financial report showing the total incurred cost of

the program for the preceding year. A copy of the annual audit required by ORS 297.425 may be used to satisfy the financial report filing requirement; and

"(h) Each public body in a joint insurance program is liable only to its own employees and no others for benefits under the program in the event, and to the extent, that no further funds, including funds from insurance policies obtained by the pool, are available in the joint insurance pool.

"(7) All ambulance services.

"(8) A person providing any of the services described in this subsection. The exemption under this subsection does not apply to an authorized insurer providing such services under an insurance policy. This subsection applies to the following services:

"(a) Towing service.

"(b) Emergency road service, which means adjustment, repair or replacement of the equipment, tires or mechanical parts of a motor vehicle in order to permit the motor vehicle to be operated under its own power.

"(c) Transportation and arrangements for the transportation of human remains, including all necessary and appropriate preparations for and actual transportation provided to return a decedent's remains from the decedent's place of death to a location designated by a person with valid legal authority under ORS 97.130.

"(9)(a) A person described in this subsection who, in an agreement to lease or to finance the purchase of a motor vehicle, agrees to waive for no additional charge the amount specified in paragraph (b) of this subsection upon total loss of the motor vehicle because of physical damage, theft or other occurrence, as specified in the agreement. The exemption established in this subsection applies to the following persons:

"(A) The seller of the motor vehicle, if the sale is made pursuant to a motor vehicle retail installment contract.

"(B) The lessor of the motor vehicle.

"(C) The lender who finances the purchase of the motor vehicle.

"(D) The assignee of a person described in this paragraph.

"(b) The amount waived pursuant to the agreement shall be the difference, or portion thereof, between the amount received by the seller, lessor, lender or assignee, as applicable, that represents the actual cash value of the motor vehicle at the date of loss, and the amount owed under the agreement.

"(10) A self-insurance program for tort liability or property damage that is established by two or more affordable housing entities and that complies with the same requirements that public bodies must meet under ORS 30.282 (6). As used in this subsection:

"(a) 'Affordable housing' means housing projects in which some of the dwelling units may be purchased or rented, with or without government assistance, on a basis that is affordable to individuals of low income.

"(b) 'Affordable housing entity' means any of the following:

"(A) A housing authority created under the laws of this state or another jurisdiction and any agency or instrumentality of a housing authority, including but not limited to a legal entity created to conduct a self-insurance program for housing authorities that complies with ORS 30.282 (6).

"(B) A nonprofit corporation that is engaged in providing affordable housing.

"(C) A partnership or limited liability company that is engaged in providing affordable housing and that is affiliated with a housing authority described in subparagraph (A) of this paragraph or a nonprofit corporation described in subparagraph (B) of this paragraph if the housing authority or nonprofit corporation:

"(i) Has, or has the right to acquire, a financial or ownership interest in the partnership or limited liability company;

"(ii) Has the power to direct the management or policies of the partnership or limited liability company;

"(iii) Has entered into a contract to lease, manage or operate the afford-

able housing owned by the partnership or limited liability company; or

"(iv) Has any other material relationship with the partnership or limited liability company.

"[*(11) A community-based health care initiative approved by the Oregon Health Authority under ORS 735.723 operating a community-based health care improvement program approved by the authority.*]

"[*(12)*] **(11)** Except as provided in ORS 735.500 and 735.510, a person certified by the Department of Consumer and Business Services to operate a retainer medical practice.

"SECTION 10. ORS 743B.001, as amended by sections 3 and 4, chapter 59, Oregon Laws 2015, is amended to read:

"743B.001. As used in this section and ORS 743.008, 743.035, 743B.195, 743B.197, 743B.200, 743B.202, 743B.204, [*743B.206,*] 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 and 743B.555:

"(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; or

"(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.

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

"(3) 'Credit card' has the meaning given that term in 15 U.S.C. 1602.

"(4) 'Electronic funds transfer' has the meaning given that term in ORS 293.525.

"(5) 'Enrollee' has the meaning given that term in ORS 743B.005.

"(6) 'Essential community provider' has the meaning given that term in rules adopted by the Department of Consumer and Business Services consistent with the description of the term in 42 U.S.C. 18031 and the rules adopted by the United States Department of Health and Human Services, the United States Department of the Treasury or the United States Department of Labor to carry out 42 U.S.C. 18031.

"(7) 'Grievance' means:

"(a) A communication from an enrollee or an authorized representative of an enrollee expressing dissatisfaction with an adverse benefit determination, without specifically declining any right to appeal or review, that is:

"(A) In writing, for an internal appeal or an external review; or

"(B) In writing or orally, for an expedited response described in ORS 743B.250 (2)(d) or an expedited external review; or

"(b) A written complaint submitted by an enrollee or an authorized representative of an enrollee regarding the:

"(A) Availability, delivery or quality of a health care service;

"(B) Claims payment, handling or reimbursement for health care services and, unless the enrollee has not submitted a request for an internal appeal, the complaint is not disputing an adverse benefit determination; or

"(C) Matters pertaining to the contractual relationship between an enrollee and an insurer.

"(8) 'Health benefit plan' has the meaning given that term in ORS

743B.005.

"(9) 'Independent practice association' means a corporation wholly owned by providers, or whose membership consists entirely of providers, formed for the sole purpose of contracting with insurers for the provision of health care services to enrollees, or with employers for the provision of health care services to employees, or with a group, as described in ORS 731.098, to provide health care services to group members.

"(10) 'Insurer' includes a health care service contractor as defined in ORS 750.005.

"(11) 'Internal appeal' means a review by an insurer of an adverse benefit determination made by the insurer.

"(12) 'Managed health insurance' means any health benefit plan that:

"(a) Requires an enrollee to use a specified network or networks of providers managed, owned, under contract with or employed by the insurer in order to receive benefits under the plan, except for emergency or other specified limited service; or

"(b) In addition to the requirements of paragraph (a) of this subsection, offers a point-of-service provision that allows an enrollee to use providers outside of the specified network or networks at the option of the enrollee and receive a reduced level of benefits.

"(13) 'Medical services contract' means a contract between an insurer and an independent practice association, between an insurer and a provider, between an independent practice association and a provider or organization of providers, between medical or mental health clinics, and between a medical or mental health clinic and a provider to provide medical or mental health services. 'Medical services contract' does not include a contract of employment or a contract creating legal entities and ownership thereof that are authorized under ORS chapter 58, 60 or 70, or other similar professional organizations permitted by statute.

"(14)(a) 'Preferred provider organization insurance' means any health

benefit plan that:

"(A) Specifies a preferred network of providers managed, owned or under contract with or employed by an insurer;

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

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

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

"(15) 'Prior authorization' means a determination by an insurer prior to provision of services that the insurer will provide reimbursement for the services. 'Prior authorization' does not include referral approval for evaluation and management services between providers.

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

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

"(17) 'Utilization review' means a set of formal techniques used by an insurer or delegated by the insurer designed to monitor the use of or evaluate the medical necessity, appropriateness, efficacy or efficiency of health care services, procedures or settings.

"SECTION 11. ORS 743B.197 is amended to read:

"743B.197. The Director of the Department of Consumer and Business Services shall appoint a Health Care Consumer Protection Advisory Com-

mittee with fair representation of health care consumers, providers and insurers. The committee shall advise the director regarding the implementation of ORS 743.008, 743A.012, 743B.001, 743B.195, 743B.197, 743B.200, 743B.202, 743B.204, [*743B.206,*] 743B.220, 743B.250, 743B.400, 743B.403, 743B.405, 743B.420, 743B.422, 743B.423, 743B.424 and 743B.550 and other issues related to health care consumer protection.

"SECTION 12. ORS 743B.200 is amended to read:

"743B.200. [*All insurers*] **Each insurer** offering managed health insurance in this state shall:

"(1) Have a quality assessment program that enables the insurer to evaluate, maintain and improve the quality of health services provided to enrollees. The program shall include data gathering that allows the plan to measure progress on specific quality improvement goals chosen by the insurer.

"(2) File an annual summary with the Department of Consumer and Business Services that describes quality assessment activities, including any activities related to credentialing of providers, and reports any progress on the insurer's quality improvement goals.

"(3) File annually with the department the following information:

"(a) Results of all publicly available federal Centers for Medicare and Medicaid Services reports and accreditation surveys by national accreditation organizations.

"(b) The insurer's health promotion and disease prevention activities, if any, including a summary of screening and preventive health care activities covered by the insurer. [*In addition to the summary required in this paragraph, the consortium established pursuant to ORS 743B.206 shall develop recommendations for, and the department shall adopt rules requiring, reporting of an insurer's health promotion and disease prevention activities related to:*]

"[*(A) Two specific preventive measures;*]

"[*(B) One specific chronic condition; and*]

"[*(C) One specific acute condition.*]

"SECTION 13. ORS 735.721, 735.723, 735.725, 735.727 and 743B.206 are repealed.".
