

House Bill 2277

Introduced and printed pursuant to House Rule 12.00. Pre-session 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

1
2 Relating to regulating third-party insurance plan administrators; creating new provisions; amending
3 ORS 744.700, 744.702, 744.704, 744.720, 744.724, 744.728, 744.730, 744.732, 744.734, 744.736, 744.738
4 and 744.740; repealing ORS 744.714; and prescribing an effective date.

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

6 **SECTION 1.** ORS 744.700 is amended to read:

7 744.700. As used in ORS 744.700 to 744.740:

8 (1) "Affiliate" of, or person "affiliated" with, a specific person means any person *[who]* **that** di-
9 rectly or indirectly through one or more intermediaries, controls or is controlled by, or is under
10 common control with, *[a]* **the** specified person.

11 (2) "Control" has the meaning given that term in ORS 732.548.

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

14 (b) "Insurer" does not include a bona fide employee benefit plan established by an employer or
15 an employee organization, or both, for which the insurance laws of this state are preempted *[pur-*
16 *suant to]* **under** the Employee Retirement Income Security Act of 1974.

17 (4) "**Payor**" **means an insurer or an employer that administers the employer's employee**
18 **benefit plan or the employee benefit plan of an affiliated employer that is under common**
19 **management and control.**

20 *[(4)]* (5) "Underwrite" or "underwriting" *[includes the acceptance of]* **means accepting** employer
21 or individual applications for coverage of individuals in accordance with the written rules of the
22 insurer, *[the overall]* planning and coordinating *[of]* an insurance program **as a whole** and **having**
23 the ability to procure bonds and excess insurance.

24 **SECTION 2.** ORS 744.702 is amended to read:

25 744.702. (1) Subject to ORS 744.704, a person *[shall]* **may** not transact business or purport or
26 offer to transact business as a third party administrator in this state unless the person holds a third
27 party administrator license issued by the Director of the Department of Consumer and Business
28 Services.

29 (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.

1 business as a third party administrator *[when]* **if** the person directly or indirectly solicits or effects
 2 coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, resi-
 3 dents of this state or residents of another state from offices in this state, in connection with life
 4 insurance or health insurance coverage.

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

8 **SECTION 3.** ORS 744.704 is amended to read:

9 744.704. (1) The following persons are exempt from the licensing requirement for third party
 10 administrators in ORS 744.702 and from all other provisions of ORS 744.700 to 744.740 applicable to
 11 third party administrators:

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

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

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

19 (A) The employer's employees;

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

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

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

25 (e) An insurer that is authorized to transact insurance in this state *[with respect to a policy is-*
 26 *sued and delivered in and pursuant to the laws of this state or another state]* **and that does not act**
 27 **as a third party administrator on behalf of any other payor.**

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

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

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

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

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

44 (k) A person who adjusts or settles claims in the normal course of practice or employment as
 45 an attorney at law. The exemption under this subsection applies only if the person does not collect

1 charges or premiums in connection with life insurance or health insurance coverage.

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

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

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

11 *[(o)] (n)* Any person designated by the Director of the Department of Consumer and Business
 12 Services by rule.

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

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

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

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

21 **SECTION 4.** ORS 744.720 is amended to read:

22 744.720. (1) A third party administrator licensed under ORS 744.702 may transact business as a
 23 third party administrator only pursuant to a written agreement between the third party adminis-
 24 trator and the *[insurer]* **payor**. The agreement *[shall]* **must** contain all provisions required by this
 25 section. However, any provision that does not apply to the functions to be performed by the third
 26 party administrator need not be included.

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

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

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

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

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

44 (d) Provisions governing withdrawals from the fiduciary account required under ORS 744.730,
 45 and provisions otherwise relating to the fiduciary account, addressing at least the following matters:

1 (A) Remittance to [*an insurer*] **a payor** entitled to the remittance;

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

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

5 (D) Payment to a group policyholder for remittance to the [*insurer*] **payor** entitled to the re-
6 mittance;

7 (E) Payment to the third party administrator of [*its*] **the third party administrator's** commis-
8 sion fees or charges; and

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

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

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

18 (5) A third party administrator shall make available for inspection to the Director of the De-
19 partment of Consumer and Business Services copies of all contracts, and amendments [*thereto*] **to**
20 **contracts**, with [*insurers*] **payors** or other persons using [*its*] **the third party administrator's**
21 services.

22 **SECTION 5.** ORS 744.724 is amended to read:

23 744.724. (1) Except as provided in subsection (4) of this section, a third party administrator shall
24 maintain and make available to the [*insurer*] **payor** complete books and records of each transaction
25 performed on behalf of the [*insurer*] **payor**. The books and records [*shall*] **must** be maintained in
26 accordance with prudent standards of insurance recordkeeping and must be maintained for a period
27 of not less than five years from the date [*of their creation*] **on which the third party administrator**
28 **creates the books and records**.

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

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

41 (4) If [*an insurer*] **a payor** and third party administrator cancel their agreement, the third party
42 administrator may agree in writing with the [*insurer*] **payor** to transfer all records to a successor
43 third party administrator. If the agreement includes provisions to transfer the records, the third
44 party administrator is no longer responsible for retaining the records for the five-year period. The
45 successor third party administrator shall acknowledge in writing as part of [*its*] **the successor third**

1 **party administrator's** agreement with the *[insurer]* **payor** that *[it]* **the successor third party**
 2 **administrator** is responsible for retaining the records of the prior third party administrator as re-
 3 quired in subsection (1) of this section.

4 **SECTION 6.** ORS 744.728 is amended to read:

5 744.728. A third party administrator may use only such advertising pertaining to the business
 6 underwritten by *[an insurer]* **a payor** that the *[insurer]* **payor** has approved in advance of *[its]* **the**
 7 **advertising's** use.

8 **SECTION 7.** ORS 744.730 is amended to read:

9 744.730. (1) A third party administrator shall hold in a fiduciary capacity all insurance charges
 10 or premiums collected by the third party administrator on behalf of or for *[an insurer]* **a payor**, and
 11 all return premiums received from the *[insurer]* **payor**. The third party administrator shall imme-
 12 diately remit all charges, premiums or return premiums to the person entitled to *[them]* **the charges,**
 13 **premiums or return premiums** or shall deposit *[them]* **the charges, premiums or return pre-**
 14 **miums** promptly in a fiduciary account established and maintained by the third party administrator
 15 in a federally or state insured financial institution. The fiduciary account may be used only for de-
 16 posits authorized under this subsection.

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

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

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

27 (5) A third party administrator that is an insurance producer licensed under this chapter need
 28 not comply with this section if the third party administrator is in compliance with ORS 744.083 or
 29 744.084 with respect to the premiums, charges and return premiums referred to in this section.

30 **SECTION 8.** ORS 744.732 is amended to read:

31 744.732. (1) A third party administrator *[shall]* **may** not enter into any agreement or under-
 32 standing with *[an insurer]* **a payor** the effect of which is to make the amount of the third party
 33 administrator's commissions, fees or charges contingent upon savings effected in the adjustment,
 34 settlement and payment of losses covered by the obligations of the *[insurer]* **payor**.

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

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

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

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

44 **SECTION 9.** ORS 744.734 is amended to read:

45 744.734. (1) When *[an insurer]* **a payor** uses the services of a third party administrator, the third

1 party administrator shall provide to covered individuals a written notice approved by the *[insurer]*
 2 **payor** that advises *[them]* **the covered individuals** of the identity of and relationship among the
 3 third party administrator, the policyholder and the *[insurer]* **payor**.

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

8 **SECTION 10.** ORS 744.736 is amended to read:

9 744.736. When the third party administrator receives policies, certificates, booklets, termination
 10 notices or other written communications from the *[insurer]* **payor** for delivery to insured parties or
 11 covered individuals, the third party administrator shall promptly make the delivery after receiving
 12 instructions from the *[insurer]* **payor**.

13 **SECTION 11.** ORS 744.738 is amended to read:

14 744.738. (1) Each third party administrator shall file an annual report for the preceding calendar
 15 year with the Director of the Department of Consumer and Business Services on or before March
 16 1 of each year, or within such extension of time *[therefor]* **for filing** as the director may grant. The
 17 report *[shall]* **must** be in the form and contain such information as the director prescribes and
 18 *[shall]* **must** be verified by at least two officers of the third party administrator if the third party
 19 administrator is a corporation, and by two partners if the third party administrator is a partnership.

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

22 **SECTION 12.** ORS 744.740 is amended to read:

23 744.740. (1) *[An insurer who]* **A payor that** uses the services of a third party administrator is
 24 responsible for determining the benefits, premium rates, underwriting criteria and claims payment
 25 procedures applicable to the coverage and for securing any reinsurance. The rules pertaining to
 26 such matters must be provided in writing by the *[insurer]* **payor** to the third party administrator.

27 (2) An insurer *[is solely responsible for providing competent administration of its programs]* **that**
 28 **uses the services of a third party administrator is responsible for the acts of the third party**
 29 **administrator and must provide to the Director of the Department of Consumer and Busi-**
 30 **ness Services, at the director's request, those of the third party administrator's books and**
 31 **records that involve matters related to the insurer.**

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

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

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

44 *[(3)]* (6) *[When]* **If** a third party administrator administers benefits for more than 100 certificate
 45 holders on behalf of an insurer, the insurer shall conduct a review of the operations of the third

1 party administrator at least annually.

2 **SECTION 13. ORS 744.714 is repealed.**

3 **SECTION 14. (1) The amendments to ORS 744.700, 744.702, 744.704, 744.720, 744.724,**
4 **744.728, 744.730, 744.732, 744.734, 744.736, 744.738 and 744.740 by sections 1 to 12 of this 2023**
5 **Act and the repeal of ORS 744.714 by section 13 of this 2023 Act become operative on January**
6 **2, 2024.**

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

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

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