

B-Engrossed
House Bill 3391

Ordered by the House June 30
Including House Amendments dated April 19 and June 30

Sponsored by Representatives BARKER, WILLIAMSON, FAHEY, Senators DEVLIN, MONNES ANDERSON; Representatives ALONSO LEON, BOONE, GOMBERG, HELM, HERNANDEZ, HOLVEY, KENY-GUYER, LININGER, MALSTROM, MARSH, MCLAIN, MEEK, NOSSE, PILUSO, POWER, RAYFIELD, REARDON, SANCHEZ, SMITH WARNER, SOLLMAN, WITT, Senators BEYER, DEMBROW, FREDERICK, GELSER, MANNING JR, RILEY, STEINER HAYWARD, TAYLOR

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.

Requires health benefit plan coverage of specified health care services, drugs, devices, products and procedures related to reproductive health. Allows exemption for plans sold to religious employers.

Requires Oregon Health Authority to implement program to reimburse costs of services, drugs, devices, products and procedures related to reproductive health provided to individuals who can become pregnant and who would be eligible for medical assistance if not for certain federal requirements.

Prohibits discrimination in provision of health care coverage.

Prohibits interference by public body in consenting individual's choice to terminate pregnancy. Prohibits public body's interference with health care provider terminating or assisting in termination of pregnancy of health care provider's patient, if health care provider is acting within scope of provider's license.

Requires authority, in consultation with Department of Consumer and Business Services, to design program to provide statewide access to abortion coverage for Oregon residents enrolled in health benefit plans that do not cover abortion. Requires authority, in consultation with department, to implement program, to extent authorized by state law, if funding is available. Requires authority to report to Speaker of House of Representatives, President of Senate and interim committees of Legislative Assembly related to health on actions taken and recommendations for legislative changes to fully implement program.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to reproductive health care; and declaring an emergency.

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

4 **SECTION 1. Section 2 of this 2017 Act is added to and made a part of the Insurance Code.**

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

6 (a) **"Contraceptives" means health care services, drugs, devices, products or medical**
7 **procedures to prevent a pregnancy.**

8 (b) **"Enrollee" means an insured individual and the individual's spouse, domestic partner**
9 **and dependents who are beneficiaries under the insured individual's health benefit plan.**

10 (c) **"Health benefit plan" has the meaning given that term in ORS 743B.005, excluding**
11 **Medicare Advantage Plans and including health benefit plans offering pharmacy benefits ad-**
12 **ministered by a third party administrator or pharmacy benefit manager.**

13 (d) **"Religious employer" has the meaning given that term in ORS 743A.066.**

14 (2) **A health benefit plan offered in this state must provide coverage for all of the fol-**
15 **lowing services, drugs, devices, products and procedures:**

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 (a) Well-woman care prescribed by the Department of Consumer and Business Services
2 by rule consistent with guidelines published by the United States Health Resources and Ser-
3 vices Administration.

4 (b) Counseling for sexually transmitted infections, including but not limited to human
5 immunodeficiency virus and acquired immune deficiency syndrome.

6 (c) Screening for:

7 (A) Chlamydia;

8 (B) Gonorrhea;

9 (C) Hepatitis B;

10 (D) Hepatitis C;

11 (E) Human immunodeficiency virus and acquired immune deficiency syndrome;

12 (F) Human papillomavirus;

13 (G) Syphilis;

14 (H) Anemia;

15 (I) Urinary tract infection;

16 (J) Pregnancy;

17 (K) Rh incompatibility;

18 (L) Gestational diabetes;

19 (M) Osteoporosis;

20 (N) Breast cancer; and

21 (O) Cervical cancer.

22 (d) Screening to determine whether counseling related to the BRCA1 or BRCA2 genetic
23 mutations is indicated and counseling related to the BRCA1 or BRCA2 genetic mutations if
24 indicated.

25 (e) Screening and appropriate counseling or interventions for:

26 (A) Tobacco use; and

27 (B) Domestic and interpersonal violence.

28 (f) Folic acid supplements.

29 (g) Abortion.

30 (h) Breastfeeding comprehensive support, counseling and supplies.

31 (i) Breast cancer chemoprevention counseling.

32 (j) Any contraceptive drug, device or product approved by the United States Food and
33 Drug Administration, subject to all of the following:

34 (A) If there is a therapeutic equivalent of a contraceptive drug, device or product ap-
35 proved by the United States Food and Drug Administration, a health benefit plan may pro-
36 vide coverage for either the requested contraceptive drug, device or product or for one or
37 more therapeutic equivalents of the requested drug, device or product.

38 (B) If a contraceptive drug, device or product covered by the health benefit plan is
39 deemed medically inadvisable by the enrollee's provider, the health benefit plan must cover
40 an alternative contraceptive drug, device or product prescribed by the provider.

41 (C) A health benefit plan must pay pharmacy claims for reimbursement of all
42 contraceptive drugs available for over-the-counter sale that are approved by the United
43 States Food and Drug Administration.

44 (D) A health benefit plan may not infringe upon an enrollee's choice of contraceptive
45 drug, device or product and may not require prior authorization, step therapy or other

1 utilization control techniques for medically appropriate covered contraceptive drugs, devices
2 or other products approved by the United States Food and Drug Administration.

3 (k) Voluntary sterilization.

4 (L) As a single claim or combined with other claims for covered services provided on the
5 same day:

6 (A) Patient education and counseling on contraception and sterilization.

7 (B) Services related to sterilization or the administration and monitoring of
8 contraceptive drugs, devices and products, including but not limited to:

9 (i) Management of side effects;

10 (ii) Counseling for continued adherence to a prescribed regimen;

11 (iii) Device insertion and removal; and

12 (iv) Provision of alternative contraceptive drugs, devices or products deemed medically
13 appropriate in the judgment of the enrollee's provider.

14 (m) Any additional preventive services for women that must be covered without cost
15 sharing under the 42 U.S.C. 300gg-13, as identified by the United States Preventive Services
16 Task Force or the Health Resources and Services Administration of the United States De-
17 partment of Health and Human Services as of January 1, 2017.

18 (3) A health benefit plan may not impose on an enrollee a deductible, coinsurance,
19 copayment or any other cost-sharing requirement on the coverage required by this section.
20 A health care provider shall be reimbursed for providing the services described in this sec-
21 tion without any deduction for coinsurance, copayments or any other cost-sharing amounts.

22 (4) Except as authorized under this section, a health benefit plan may not impose any
23 restrictions or delays on the coverage required by this section.

24 (5) This section does not exclude coverage for contraceptive drugs, devices or products
25 prescribed by a provider, acting within the provider's scope of practice, for:

26 (a) Reasons other than contraceptive purposes, such as decreasing the risk of ovarian
27 cancer or eliminating symptoms of menopause; or

28 (b) Contraception that is necessary to preserve the life or health of an enrollee.

29 (6) This section does not limit the authority of the Department of Consumer and Busi-
30 ness Services to ensure compliance with ORS 743A.063 and 743A.066.

31 (7) This section does not require a health benefit plan to cover:

32 (a) Experimental or investigational treatments;

33 (b) Clinical trials or demonstration projects, except as provided in ORS 743A.192;

34 (c) Treatments that do not conform to acceptable and customary standards of medical
35 practice;

36 (d) Treatments for which there is insufficient data to determine efficacy; or

37 (e) Abortion if the insurer offering the health benefit plan excluded coverage for abortion
38 in all of its individual, small employer and large employer group plans during the 2017 plan
39 year.

40 (8) If services, drugs, devices, products or procedures required by this section are pro-
41 vided by an out-of-network provider, the health benefit plan must cover the services, drugs,
42 devices, products or procedures without imposing any cost-sharing requirement on the
43 enrollee if:

44 (a) There is no in-network provider to furnish the service, drug, device, product or pro-
45 cedure that is geographically accessible or accessible in a reasonable amount of time, as de-

1 **fined by the Department of Consumer and Business Services by rule consistent with the**
2 **requirements for provider networks in ORS 743B.505; or**

3 **(b) An in-network provider is unable or unwilling to provide the service in a timely**
4 **manner.**

5 **(9) An insurer may offer to a religious employer a health benefit plan that does not in-**
6 **clude coverage for contraceptives or abortion procedures that are contrary to the religious**
7 **employer's religious tenets only if the insurer notifies in writing all employees who may be**
8 **enrolled in the health benefit plan of the contraceptives and procedures the employer refuses**
9 **to cover for religious reasons.**

10 **(10) If the Department of Consumer and Business Services concludes that enforcement**
11 **of this section may adversely affect the allocation of federal funds to this state, the depart-**
12 **ment may grant an exemption to the requirements but only to the minimum extent neces-**
13 **sary to ensure the continued receipt of federal funds.**

14 **(11) An insurer that is subject to this section shall make readily accessible to enrollees**
15 **and potential enrollees, in a consumer-friendly format, information about the coverage of**
16 **contraceptives by each health benefit plan and the coverage of other services, drugs, devices,**
17 **products and procedures described in this section. The insurer must provide the information:**

18 **(a) On the insurer's website; and**

19 **(b) In writing upon request by an enrollee or potential enrollee.**

20 **(12) This section does not prohibit an insurer from using reasonable medical management**
21 **techniques to determine the frequency, method, treatment or setting for the coverage of**
22 **services, drugs, devices, products and procedures described in subsection (2) of this section,**
23 **other than coverage required by subsection (2)(g) and (j) of this section, if the techniques:**

24 **(a) Are consistent with the coverage requirements of subsection (2) of this section; and**

25 **(b) Do not result in the wholesale or indiscriminate denial of coverage for a service.**

26 **SECTION 3. No later than September 15, 2019, the Department of Consumer and Business**
27 **Services shall report to the interim committees of the Legislative Assembly related to health**
28 **on the degree of compliance by insurers with section 2 of this 2017 Act and of any actions**
29 **taken by the department under ORS 731.988 to enforce compliance with section 2 of this 2017**
30 **Act.**

31 **SECTION 4. Section 5 of this 2017 Act is added to and made a part of ORS chapter 414.**

32 **SECTION 5. (1) The Oregon Health Authority shall administer a program to reimburse**
33 **the cost of medically appropriate services, drugs, devices, products and procedures described**
34 **in section 2 of this 2017 Act, for individuals who can become pregnant and who would be el-**
35 **igible for medical assistance if not for 8 U.S.C. 1611 or 1612.**

36 **(2) The authority shall provide the medical assistance for pregnant women that is au-**
37 **thorized by Title XXI, section 2112, of the Social Security Act (42 U.S.C. 13971l) for 60 days**
38 **immediately postpartum.**

39 **(3) The authority shall collect data and analyze the cost-effectiveness of the services,**
40 **drugs, devices, products and procedures paid for under this section.**

41 **(4) The authority, in collaboration with the Department of Consumer and Business Ser-**
42 **vices if necessary, shall explore any and all opportunities to obtain federal financial partic-**
43 **ipation in the costs of implementing this section, including but not limited to waivers or**
44 **demonstration projects under Title X of the Public Health Service Act or Title XIX or XXI**
45 **of the Social Security Act. However, the implementation of this section is not contingent**

1 upon the authority's receipt of a waiver or authorization to operate a demonstration project.

2 **SECTION 6.** Not later than September 15, 2018, the Oregon Health Authority shall report
3 to the interim committees of the Legislative Assembly related to health on the implementa-
4 tion of section 5 of this 2017 Act.

5 **SECTION 7.** (1) An individual may not, on the basis of actual or perceived race, color,
6 national origin, sex, sexual orientation, gender identity, age or disability, be excluded from
7 participation in, be denied the benefits of or otherwise be subjected to discrimination by any
8 health benefit plan issued or delivered in this state, in the receipt of medical assistance as
9 defined in ORS 414.025 or in the coverage of or payment for the services, drugs, devices,
10 products and procedures described in section 2 of this 2017 Act.

11 (2) Violation of this section is an unlawful practice under ORS 659A.403.

12 (3) Nothing in this section shall be construed to invalidate or limit the rights, remedies,
13 procedures or legal standards available to individuals under ORS 659A.820 or 659A.885 or to
14 supersede state or local laws that provide additional protections against discrimination on
15 any basis described in subsection (1) of this section.

16 **SECTION 8.** A public body as defined in ORS 174.109 or, except as provided in ORS
17 435.225, an officer, employee or agent of a public body may not:

18 (1) Deprive a consenting individual of the choice of terminating the individual's preg-
19 nancy;

20 (2) Interfere with or restrict, in the regulation or provision of benefits, facilities, services
21 or information, the choice of a consenting individual to terminate the individual's pregnancy;

22 (3) Prohibit a health care provider, who is acting within the scope of the health care
23 provider's license, from terminating or assisting in the termination of a patient's pregnancy;
24 or

25 (4) Interfere with or restrict, in the regulation or provision of benefits, facilities, services
26 or information, the choice of a health care provider, who is acting within the scope of the
27 health care provider's license, to terminate or assist in the termination of a patient's preg-
28 nancy.

29 **SECTION 9.** The Health Evidence Review Commission shall review the coverage described
30 in section 2 (2) of this 2017 Act and, no later than November 1 of each even-numbered year,
31 report to the interim committees of the Legislative Assembly related to health any recom-
32 mended changes to the coverage described in section 2 (2) of this 2017 Act based upon the
33 latest clinical research.

34 **SECTION 10.** (1) As used in this section, "health benefit plan" has the meaning given that
35 term in section 2 of this 2017 Act.

36 (2) In consultation with the Department of Consumer and Business Services, the Oregon
37 Health Authority shall design a program to provide statewide access to abortion coverage for
38 Oregon residents enrolled in health benefit plans described in section 2 (7)(e) and (9) of this
39 2017 Act.

40 (3) In developing the design of the program described in subsection (2) of this section, the
41 authority and the department shall consult with consumer advocates, insurers transacting
42 insurance in this state that offer the health benefit plans described in section 2 (7)(e) and (9)
43 of this 2017 Act and other stakeholders.

44 (4) The authority, in collaboration with the department, shall:

45 (a) If funding is available, take any actions authorized by state law to implement the

1 program described in subsection (2) of this section; and

2 (b) Not later than November 1, 2017, report to the Speaker of the House of Represen-
3 tatives, the President of the Senate and the interim committees of the Legislative Assembly
4 related to health:

5 (A) Any actions taken by the authority under paragraph (a) of this subsection; and

6 (B) Recommendations for legislative changes necessary to fully implement the program
7 described in subsection (2) of this section.

8 SECTION 11. In addition to and not in lieu of any other appropriation, there is appro-
9 priated to the Oregon Health Authority, for the biennium beginning July 1, 2017, out of the
10 General Fund, the amount of \$10,195,935, which may be expended for carrying out the pro-
11 visions of section 5 of this 2017 Act.

12 SECTION 12. Section 2 of this 2017 Act applies to health benefit plan policies or certif-
13 icates issued, renewed, modified or extended on or after January 1, 2019.

14 SECTION 13. (1) Sections 5 and 9 of this 2017 Act become operative on January 1, 2018.

15 (2) The Oregon Health Authority shall take any action before January 1, 2018, that is
16 necessary for the authority to implement the provisions of sections 5 and 9 of this 2017 Act
17 on or after January 1, 2018.

18 SECTION 14. Section 10 of this 2017 Act is repealed on January 2, 2019.

19 SECTION 15. This 2017 Act being necessary for the immediate preservation of the public
20 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect
21 on its passage.

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