

# House Bill 3391

Sponsored by Representatives BARKER, WILLIAMSON, FAHEY, Senators DEVLIN, MONNES ANDERSON; Representatives ALONSO LEON, BOONE, GOMBERG, HERNANDEZ, KENY-GUYER, LININGER, MALSTROM, MARSH, MCLAIN, NOSSE, PILUSO, POWER, 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 **as introduced**.

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 female'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.

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 services, drugs, devices, products or procedures to prevent**  
7 **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:**

16 (a) **Well-woman care, including screenings, assessments and counseling.**

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

19 (c) **Screening for:**

20 (A) **Chlamydia;**

21 (B) **Gonorrhea;**

22 (C) **Hepatitis B;**

23 (D) **Hepatitis C;**

**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 (E) Human immunodeficiency virus and acquired immune deficiency syndrome;
- 2 (F) Human papillomavirus;
- 3 (G) Syphilis;
- 4 (H) Anemia;
- 5 (I) Urinary tract infection;
- 6 (J) Pregnancy;
- 7 (K) Rh incompatibility;
- 8 (L) Gestational diabetes;
- 9 (M) Osteoporosis;
- 10 (N) Breast cancer; and
- 11 (O) Cervical cancer.

12 (d) Screening to determine whether counseling related to the BRCA1 or BRCA2 genetic  
13 mutations is indicated and counseling related to the BRCA1 or BRCA2 genetic mutations if  
14 indicated.

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

- 16 (A) Tobacco use; and
- 17 (B) Domestic and interpersonal violence.
- 18 (f) Folic acid supplements.
- 19 (g) Abortion.
- 20 (h) Breastfeeding comprehensive support, counseling and supplies.
- 21 (i) Breast cancer chemoprevention counseling.
- 22 (j) Any contraceptive drug, device or product approved by the United States Food and  
23 Drug Administration, subject to all of the following:

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

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

31 (C) A health benefit plan must provide coverage without a prescription for all  
32 contraceptive drugs available for over-the-counter sale that are approved by the United  
33 States Food and Drug Administration.

34 (D) A health benefit plan may not infringe upon an enrollee's choice of contraception and  
35 may not require prior authorization, step therapy or other utilization control techniques for  
36 covered contraceptive drugs, devices or other products approved by the United States Food  
37 and Drug Administration.

38 (k) Voluntary sterilization.

39 (L) Patient education and counseling on contraception and sterilization.

40 (m) Services related to sterilization or the administration and monitoring of  
41 contraceptive drugs, devices and products, including but not limited to:

- 42 (A) Management of side effects;
- 43 (B) Counseling for continued adherence to a prescribed regimen;
- 44 (C) Device insertion and removal; and
- 45 (D) Provision of alternative contraceptive drugs, devices or products deemed medically

1 appropriate in the judgment of the enrollee's provider.

2 (n) Any additional preventive services for women that must be covered without cost  
 3 sharing under the 42 U.S.C. 300gg-13, as identified after the effective date of this 2017 Act  
 4 by the United States Preventive Services Task Force or the Health Resources and Services  
 5 Administration of the United States Department of Health and Human Services.

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

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

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

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

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

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

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

20 (a) Experimental or investigational treatments;

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

22 (c) Treatments that do not conform to acceptable and customary standards of medical  
 23 practice; or

24 (d) Treatments for which there is insufficient data to determine efficacy.

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

29 (a) There is no in-network provider to furnish the service, drug, device, product or pro-  
 30 cedure that is geographically accessible or accessible in a reasonable amount of time, as de-  
 31 fined by the Department of Consumer and Business Services by rule; or

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

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

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

43 (11) An insurer that is subject to this section shall make readily accessible to enrollees  
 44 and potential enrollees, in a consumer-friendly format, information about the coverage of  
 45 contraceptives by each health benefit plan and the coverage of other services, drugs, devices,

1 products and procedures described in this section. The insurer must provide the information:

- 2 (a) On the insurer’s website; and
- 3 (b) In writing upon request by an enrollee or potential enrollee.

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

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

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

14 (2) The authority shall provide the medical assistance for pregnant women that is au-  
 15 thorized by Title XXI, section 2112, of the Social Security Act (42 U.S.C. 1397ll) for 60 days  
 16 immediately postpartum.

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

19 (4) The authority, in collaboration with the Department of Consumer and Business Ser-  
 20 vices if necessary, shall explore any and all opportunities to obtain federal financial partic-  
 21 ipation in the costs of implementing this section, including but not limited to waivers or  
 22 demonstration projects under Title X of the Public Health Service Act or Title XIX or XXI  
 23 of the Social Security Act. However, the implementation of this section is not contingent  
 24 upon the authority’s receipt of a waiver or authorization to operate a demonstration project.

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

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

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

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

39 **SECTION 8.** A public body as defined in ORS 174.109 or, except as provided in ORS  
 40 435.225, an officer, employee or agent of a public body may not:

- 41 (1) Deprive a consenting female of the choice of terminating her pregnancy;
- 42 (2) Interfere with or restrict, in the regulation or provision of benefits, facilities, services  
 43 or information, the choice of a consenting female to terminate her pregnancy;
- 44 (3) Prohibit a health care provider, who is acting within the scope of the health care  
 45 provider’s license, from terminating or assisting in the termination of a patient’s pregnancy;

1 or

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

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

10 SECTION 10. Section 2 of this 2017 Act applies to health benefit plan policies or certif-  
11 icates issued, renewed, modified or extended on or after January 1, 2019.

12 SECTION 11. (1) Section 5 of this 2017 Act becomes operative on January 1, 2018.

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

16 SECTION 12. This 2017 Act being necessary for the immediate preservation of the public  
17 peace, health and safety, an emergency is declared to exist, and this 2017 Act takes effect  
18 on its passage.

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