

Senate Bill 361

Sponsored by COMMITTEE ON RULES

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 individual or group health insurance policy to pay for services rendered by professional counselors or marriage and family therapists acting within their scope of practice if policy provides payment or reimbursement for services by other professionals providing same or similar services.

Adds facilities operated by professional counselors or marriage and family therapists to definition of "outpatient service" for purposes of statutes governing certain treatment programs and facilities.

A BILL FOR AN ACT

1
2 Relating to licensees of Oregon Board of Licensed Professional Counselors and Therapists; creating
3 new provisions; and amending ORS 430.010, 430.065 and 743.556.

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

5 **SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS chapter 743.**

6 **SECTION 2. (1) Whenever any individual or group health insurance policy provides for**
7 **payment or reimbursement for services performed by a physician, psychologist, clinical so-**
8 **cial worker or nurse practitioner, the policy also shall pay or reimburse the insured for**
9 **services provided by a professional counselor or marriage and family therapist licensed under**
10 **ORS 675.715 to 675.835 when the counselor or therapist is acting within the counselor's or**
11 **therapist's lawful scope of practice.**

12 **(2) The insured under the policy is entitled to have payment or reimbursement made to**
13 **the insured or on behalf of the insured for the services performed. The payment or re-**
14 **imbursement shall be in accordance with the benefits provided in the policy and shall be**
15 **computed in the same manner whether performed by a physician, psychologist, clinical social**
16 **worker, nurse practitioner, professional counselor or marriage and family therapist, accord-**
17 **ing to the customary and usual fee of professional counselors and marriage and family**
18 **therapists in the area served.**

19 **SECTION 3. ORS 430.010 is amended to read:**

20 430.010. As used in ORS 430.010 to 430.050, 430.140 to 430.170, 430.265, 430.270 and 430.610 to
21 430.695:

22 (1) "Department" means the Department of Human Services.

23 (2) "Health facility" means a facility licensed as required by ORS 441.015 or a facility accredited
24 by the Joint Commission on Accreditation of Hospitals, either of which provides full-day or part-day
25 acute treatment for alcoholism, drug addiction or mental or emotional disturbance, and is licensed
26 to admit persons requiring 24-hour nursing care.

27 (3) "Residential facility" or "day or partial hospitalization program" means a program or facility
28 providing an organized full-day or part-day program of treatment. Such a program or facility shall

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 be licensed, approved, established, maintained, contracted with or operated by the department under:

2 (a) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

3 (b) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

4 (c) ORS 430.610 to 430.880 for mental or emotional disturbance.

5 (4) "Outpatient service" means:

6 (a) A program or service providing treatment by appointment and by medical or osteopathic
7 physicians licensed by the Board of Medical Examiners for the State of Oregon under ORS 677.010
8 to 677.450; psychologists licensed by the State Board of Psychologist Examiners under ORS 675.010
9 to 675.150; nurse practitioners registered by the Oregon State Board of Nursing under ORS 678.010
10 to 678.410; [or] clinical social workers licensed by the State Board of Clinical Social Workers under
11 ORS 675.510 to 675.600; **or professional counselors or marriage and family therapists licensed
12 by the Oregon Board of Licensed Professional Counselors and Therapists under ORS 675.715
13 to 675.835;** or

14 (b) A program or service providing treatment by appointment that is licensed, approved, estab-
15 lished, maintained, contracted with or operated by the department under:

16 (A) ORS 430.265 to 430.380 and 430.610 to 430.880 for alcoholism;

17 (B) ORS 430.265 to 430.380, 430.405 to 430.565 and 430.610 to 430.880 for drug addiction; or

18 (C) ORS 430.610 to 430.880 for mental or emotional disturbance.

19 **SECTION 4.** ORS 743.556 is amended to read:

20 743.556. A group health insurance policy providing coverage for hospital or medical expenses
21 shall provide coverage for expenses arising from treatment for chemical dependency including
22 alcoholism and for mental or nervous conditions. The following [*conditions apply to the requirement
23 for such coverage*] **apply to coverage for chemical dependency and for mental or nervous con-
24 ditions:**

25 (1) **As used in this section:**

26 (a) **"Chemical dependency" means the addictive relationship with any drug or alcohol
27 characterized by either a physical or psychological relationship, or both, that interferes with
28 the individual's social, psychological or physical adjustment to common problems on a re-
29 curring basis. For purposes of this section, chemical dependency does not include addiction
30 to, or dependency on, tobacco, tobacco products or foods.**

31 (b) **"Child" means a person who is under 18 years of age.**

32 (c) **"Facility" means a corporate or governmental entity or other provider of services for
33 the treatment of chemical dependency or for the treatment of mental or nervous conditions.**

34 (d) **"Program" means a particular type or level of service that is organizationally distinct
35 within a facility.**

36 [(1)] (2) The coverage may be made subject to provisions of the policy that apply to other ben-
37 efits under the policy, including but not limited to provisions relating to deductibles and
38 coinsurance. Deductibles and coinsurance for treatment in health care facilities or residential pro-
39 grams or facilities [*shall be no*] **may not be** greater than those under the policy for expenses of
40 hospitalization in the treatment of illness. Deductibles and coinsurance for outpatient treatment
41 [*shall be no*] **may not be** greater than those under the policy for expenses of outpatient treatment
42 of illness.

43 [(2)] (3) Treatment provided in health care facilities, residential programs or facilities, day or
44 partial hospitalization programs or outpatient services shall be considered eligible for reimburse-
45 ment if it is provided by:

1 (a) Programs or providers described in ORS 430.010 or approved by the Department of Human
2 Services under subsection [(3)] (4) of this section.

3 (b) Programs accredited for the particular level of care for which reimbursement is being re-
4 quested by the Joint Commission on Accreditation of Hospitals or the Commission on Accreditation
5 of Rehabilitation Facilities.

6 (c) Inpatient programs provided by health care facilities as defined in ORS 442.015. Residential,
7 outpatient, or day or partial hospitalization programs offered by or through a health care facility
8 must meet the requirements of either paragraph (a) or (b) of this subsection in order to be eligible
9 for reimbursement.

10 (d) Residential programs or facilities described in subsection [(3)] (4) of this section if the patient
11 is staying overnight at the facility and is involved in a structured program at least eight hours per
12 day, five days per week.

13 (e) Programs in which staff are directly supervised or in which individual client treatment plans
14 are approved by a person described in ORS 430.010 (4)(a) and [which] **that** meet the standards es-
15 tablished under subsection [(3)] (4) of this section.

16 [(3)] (4) Subject to ORS 430.065, the Department of Human Services shall adopt rules relating
17 to the approval, for insurance reimbursement purposes, of noninpatient chemical dependency pro-
18 grams that are not related to the department or any county mental health program. The department
19 shall adopt rules relating to the approval, for insurance reimbursement purposes, of noninpatient
20 programs for mental or nervous conditions that are not related to the department or any county
21 mental health program.

22 [(4)] (5) A program that provides services for persons with both a chemical dependency diagnosis
23 and a mental or nervous condition shall be considered to be a distinct and specialized type of pro-
24 gram for both chemical dependency and mental or nervous conditions. The Department of Human
25 Services shall develop specific standards related to such programs for program approval purposes
26 and shall adopt rules relating to the approval, for insurance reimbursement purposes, of such
27 noninpatient programs that are not related to the department and any county mental health pro-
28 gram.

29 [(5) *As used in this section:*]

30 [(a) *“Chemical dependency” means the addictive relationship with any drug or alcohol character-*
31 *ized by either a physical or psychological relationship, or both, that interferes with the individual’s*
32 *social, psychological or physical adjustment to common problems on a recurring basis. For purposes*
33 *of this section, chemical dependency does not include addiction to, or dependency on, tobacco, tobacco*
34 *products or foods.*]

35 [(b) *“Child or adolescent” means a person who is 17 years of age or younger.*]

36 [(c) *“Facility” means a corporate or governmental entity or other provider of services for the*
37 *treatment of chemical dependency or for the treatment of mental or nervous conditions.*]

38 [(d) *“Program” means a particular type or level of service that is organizationally distinct within*
39 *a facility.*]

40 (6) Notwithstanding the limits for particular types of services specified in this section, a policy
41 shall not limit the total of payments for all treatment of any kind under this section for chemical
42 dependency, together with payments for all treatment of any kind for mental or nervous conditions,
43 to less than \$13,125 for adults and \$15,625 for children [or adolescents]. For persons requesting
44 payments for treatment of any kind for chemical dependency, but not requesting payments for
45 treatment of any kind of mental or nervous condition, a policy shall not limit the total of payments

1 for all treatment to less than \$8,125 for adults and \$13,125 for children [*and adolescents*].

2 (7) The limits for mental or nervous conditions specified in this section shall apply to persons
3 with diagnoses of both chemical dependency and mental or nervous conditions, who are being
4 treated for both types of diagnosis, as well as persons with only a diagnosis of a mental or nervous
5 condition.

6 (8) The higher benefit levels in this section for children [*or adolescents*] are in recognition of the
7 longer period of treatment and the greater levels of staffing that may be required for children [*or*
8 *adolescents*] and are intended to permit more services to meet the needs of children [*and*
9 *adolescents*].

10 (9) Payments shall not be made under this section for educational programs to which drivers are
11 referred by the judicial system, nor for volunteer mutual support groups.

12 (10) Except as permitted by subsections [(1)] (2), (6) and (12) of this section, the policy shall not
13 limit payments for inpatient treatment in hospitals and other health care facilities thereunder:

14 (a) For chemical dependency to an amount less than \$5,625 for adults and \$5,000 for children
15 [*or adolescents*]; and

16 (b) For mental or nervous conditions to an amount less than \$5,000 for adults and \$7,500 for
17 children [*or adolescents*].

18 (11) Except as permitted by subsections [(1)] (2), (6) and (12) of this section, the policy shall not
19 limit payments for treatment in residential programs or facilities or day or partial hospitalization
20 programs:

21 (a) For chemical dependency to an amount less than \$4,375 for adults and \$3,750 for children
22 [*or adolescents*]; and

23 (b) For mental or nervous conditions to an amount less than \$1,250 for adults and \$3,125 for
24 children [*or adolescents*].

25 (12) Notwithstanding the minimum benefits for particular types of services specified in sub-
26 sections (10) and (11) of this section, and except as permitted by subsection [(1)] (2) of this section,
27 the policy shall not limit total payments for inpatient, residential and day or partial hospitalization
28 program care or treatment:

29 (a) For chemical dependency to an amount less than \$10,625 for children [*or adolescents*]; and

30 (b) For mental or nervous conditions to an amount less than \$10,625 for adults and \$13,125 for
31 children [*or adolescents*].

32 (13) Except as permitted by subsections [(1)] (2) and (6) of this section, in the case of benefits
33 for outpatient services, the policy shall not limit payments:

34 (a) For chemical dependency to an amount less than \$1,875 for adults and \$2,500 for children
35 [*or adolescents*]; and

36 (b) For mental or nervous conditions to an amount less than \$2,500.

37 (14) If so specified in the policy, outpatient coverage may include follow-up in-home service as-
38 sociated with any health care facility, residential, day or partial hospitalization or outpatient ser-
39 vices. The policy may limit coverage for in-home service to persons who have completed their initial
40 health care facility, residential, day or partial hospitalization or outpatient treatment and did not
41 terminate that initial treatment against advice. The policy may also limit coverage for in-home ser-
42 vice by defining the circumstances of need under which payment will or will not be made.

43 (15) Under ORS 430.021 and 430.315, the Legislative Assembly has found that health care cost
44 containment is necessary and intends to encourage insurance policies designed to achieve cost
45 containment by [*assuring*] **ensuring** that reimbursement is limited to appropriate utilization under

1 criteria incorporated into such policies, either directly or by reference.

2 (16) A group health insurance policy may provide, with respect to treatment for chemical de-
3 pendency or mental or nervous conditions, that any one or more of the following cost containment
4 methods shall be in effect and the method or methods used by an insurer in one part of the state
5 may be different from the method or methods used by that insurer in another part of the state:

6 (a) Proportion of coinsurance required for treatment in residential programs or facilities, day
7 or partial hospitalization programs or outpatient services less than the proportion of coinsurance
8 required for treatment in health care facilities.

9 (b) Subject to the patient or client confidentiality provisions of ORS 40.235 relating to physi-
10 cians, ORS 40.240 relating to nurse practitioners, ORS 40.230 relating to psychologists, [and] ORS
11 40.250 and 675.580 relating to licensed clinical social workers **and ORS 40.262 relating to licensed**
12 **professional counselors and licensed marriage and family therapists**, review for level of treat-
13 ment of admissions and continued stays for treatment in health care facilities, residential programs
14 or facilities, day or partial hospitalization programs and outpatient services by either insurer staff
15 or personnel under contract to the insurer, or by a utilization review contractor, who shall have the
16 authority to certify for or deny level of payment:

17 (A) This review shall be made according to criteria made available to providers in advance upon
18 request.

19 (B) To facilitate implementation of utilization review programs by insurers, the Director of Hu-
20 man Services shall draft an advisory or model set of criteria for appropriate utilization of inpatient,
21 residential, day or partial hospitalization, and outpatient facilities, programs and services by
22 adults[,] **and** children [*and adolescents*], and persons with both a chemical dependency diagnosis and
23 a mental or nervous condition. These criteria shall be consistent with this section and shall not be
24 binding on any insurer or other party. However, at the time of contract negotiation or amendment,
25 with the agreement of the parties to the contract, any insurer may adopt the criteria or similar
26 criteria with or without modification. The director shall revise these criteria at least every two
27 years. In developing and revising these criteria, the director shall organize a technical advisory
28 panel including representatives of the Department of Consumer and Business Services, the Depart-
29 ment of Human Services, the insurance industry, the business community and providers of each level
30 of care. The director shall place substantial weight on the advice of this panel.

31 (C) Review shall be performed by or under the direction of a medical or osteopathic physician
32 licensed by the Board of Medical Examiners for the State of Oregon; a psychologist licensed by the
33 State Board of Psychologist Examiners; a nurse practitioner registered by the Oregon State Board
34 of Nursing; [*or*] a clinical social worker licensed by the State Board of Clinical Social Workers; **or**
35 **a professional counselor or marriage and family therapist licensed by the Oregon Board of**
36 **Licensed Professional Counselors and Therapists**, with physician consultation readily available.
37 The reviewer shall have expertise in the evaluation of mental or nervous condition services or
38 chemical dependency services.

39 (D) Review may involve prior approval, concurrent review of the continuation of treatment,
40 post-treatment review or any combination of these. However, if prior approval is required, provision
41 shall be made to allow for payment of urgent or emergency admissions, subject to subsequent re-
42 view. If prior approval is not required, insurers shall permit treatment providers, policyholders or
43 persons acting on their behalf to make advance inquiries regarding the appropriateness of a partic-
44 ular admission to a treatment program. Insurers shall provide a timely response to such inquiries.
45 Approval of a particular admission does not represent a guarantee of future payment.

1 (E) An appeals process shall be provided.

2 (F) An insurer may choose to review all providers on a sampling or audit basis only; or to re-
3 view on a less frequent basis those providers who consistently supply full documentation, consistent
4 with confidentiality statutes on each case in a timely fashion to the insurer.

5 (17) For purposes of subsection (16)(b) of this section, a utilization review contractor is a pro-
6 fessional review organization or similar entity which, under contract with an insurance carrier,
7 performs certification of reimbursability of level of treatment for admissions and maintained stays
8 in treatment programs, facilities or services.

9 (18) For purposes of subsection (16)(b) of this section, when implemented through an insurance
10 contract, reimbursability of inpatient treatment requires demonstration that medical circumstances
11 require 24-hour nursing care, or physician or nurse assessment, treatment or supervision that cannot
12 be readily made available on an outpatient basis, or in:

- 13 (a) The current living situation;
14 (b) An alternative, nontreatment living situation;
15 (c) An alternative residential program or facility; or
16 (d) A day or partial hospitalization program.

17 (19) For purposes of subsection (16)(b) of this section, when implemented through an insurance
18 contract, reimbursability of treatment at the residential, day or partial hospitalization level of
19 treatment shall require demonstration that outpatient services, if appropriate and less costly than
20 residential, day or partial hospitalization services:

- 21 (a) Are not presently appropriate and available;
22 (b) Cannot be readily and timely made available; and
23 (c) Cannot meet documented needs for nonmedical supervision, protection, assistance and treat-
24 ment, either in the current living situation or in a readily and timely available alternative, non-
25 treatment living situation, taking into account the extent of both the available positive support and
26 existing negative influences in the occupational, social and living situations; risks to self or others;
27 and readiness to participate consistently in treatment.

28 (20) For purposes of subsection (16)(b) of this section, reimbursability of treatment at the level
29 for outpatient facility, service or program shall require demonstration that treatment is justified,
30 considering the individual's history, and the current medical, occupational, social, **therapeutic** and
31 psychological situation, and the overall prognosis.

32 (21) Discrete medical or neurologic diagnostic or treatment services including any professional
33 component of that service, costing in excess of \$300, occurring concurrently with but not directly
34 related to treatment of mental or nervous conditions shall not be charged against the inpatient
35 benefit level.

36 (22) The benefits described in this section shall renew in full either on the first day of the 25th
37 month of coverage following the first use of services for the treatment of chemical dependency or
38 mental or nervous conditions, or both, or on the first day following two consecutive contract years.

39 (23) Health maintenance organizations, as defined in ORS 750.005, shall be subject to the fol-
40 lowing conditions and requirements in their provision of benefits for chemical dependency or mental
41 or nervous conditions to enrollees:

42 (a) Notwithstanding the provisions of subsection [(1)] (2) of this section, health maintenance
43 organizations may establish reasonable provisions for enrollee cost-sharing, so long as the amount
44 the enrollee is required to pay does not exceed the amount of coinsurance and deductible custom-
45 arily required by other insurance policies which are subject to the provisions of this chapter for that

1 type and level of service.

2 (b) Nothing in this section prevents health maintenance organizations from establishing dura-
3 tional limits which are actuarially equivalent to the benefits required by this section.

4 (c) Health maintenance organizations may limit the receipt of covered services by enrollees to
5 services provided by or upon referral by providers associated with the health maintenance organ-
6 ization.

7 (d) The Department of Human Services shall make rules establishing objective and quantifiable
8 criteria for determining when a health maintenance organization meets the conditions and require-
9 ments of this subsection.

10 (24) Nothing in this section shall prevent an insurer or health care service contractor other than
11 a health maintenance organization, except as provided in subsection (23) of this section, from con-
12 tracting with providers of health care services to furnish services to policyholders or certificate
13 holders according to ORS 743.531 or 750.005, subject to the following conditions:

14 (a) An insurer or health care service contractor may establish limits for contracted services
15 which are actuarially equivalent to the benefits required by this section, [so] **as** long as the same
16 range of treatment settings is made available.

17 (b) An insurer or health care service contractor, other than a health maintenance organization,
18 may negotiate with contracting providers as to the cost of actuarially equivalent benefits, and such
19 actuarially equivalent benefits for services of contracting providers shall be deemed to equal the
20 minimum benefit levels specified in this section.

21 (c) An insurer or health care service contractor is not required to contract with all eligible
22 providers, and payment for covered services of contracting providers may be in alternative methods
23 or amounts rather than as specified in this section.

24 (d) Insurers and health care service contractors other than health maintenance organizations
25 shall pay benefits toward the covered charges of noncontracting providers of services for the treat-
26 ment of chemical dependency or mental or nervous conditions at the same level of deductible or
27 coinsurance as would apply to covered charges of noncontracting providers of other health services
28 under the same group policy or contract. The insured shall have the right to use the services of a
29 noncontracting provider of services for the treatment of chemical dependency or mental or nervous
30 conditions. Policies described in this subsection shall be subject to the provisions of subsection
31 [(1)] **(2)** of this section, whether or not the services for chemical dependency or mental or nervous
32 conditions are provided by contracting or noncontracting providers.

33 (e) The department shall make rules establishing objective and quantifiable criteria for deter-
34 mining that a contract meets the conditions and requirements of this subsection and that actuarially
35 equivalent services of contracting providers equal or exceed services obtainable with the minimum
36 benefits specified in this section.

37 (25) The intent of the Legislative Assembly in adopting this section is to reserve benefits for
38 different types of care to encourage [*cost effective*] **cost-effective** care and to [*assure*] **ensure** con-
39 tinuing access to levels of care most appropriate for the insured's condition and progress.

40 (26) The Director **of the Department of Consumer and Business Services**, after notice and
41 hearing, may adopt reasonable rules not inconsistent with this section that are considered necessary
42 for the proper administration of these provisions.

43 **SECTION 5.** ORS 430.065 is amended to read:

44 430.065. (1) In adopting rules pursuant to ORS 743.556 [(3)] **(4)**, the Department of Human Ser-
45 vices may consider standards proposed by the American Association of Partial Hospitalization as

1 one possible source for such rules. In addition, an insurer or insurers and the department may mu-
 2 tually develop agreements, standards and procedures for programs that are approved by the de-
 3 partment and that provide alternative arrangements for supervision or for review of treatment plans
 4 to become qualified to receive payments for treatment.

5 (2) The Department of Human Services may require payment of an application fee and a certif-
 6 ication fee for the approval of noninpatient programs described in ORS 743.556 [(3) and] (4) **and**
 7 **(5)**.

8 (3) Subject to the review of the Oregon Department of Administrative Services, the Department
 9 of Human Services may establish any fees to be imposed under subsection (2) of this section. The
 10 fees and charges established under this section [shall] **may** not exceed the cost of administering the
 11 regulatory program of the Department of Human Services pertaining to the purpose for which the
 12 fee or charge is established, as authorized by the Legislative Assembly for the department's budget,
 13 as the budget may be modified by the Emergency Board.

14 **SECTION 6. Section 2 of this 2005 Act applies to:**

15 **(1) Health care service contractors as defined in ORS 750.005; and**

16 **(2) Trusts carrying out a multiple employer welfare arrangement as defined in ORS**
 17 **750.301.**

18 **SECTION 7. Section 2 of this 2005 Act and the amendments to ORS 430.010, 430.065 and**
 19 **743.556 by sections 3 to 5 of this 2005 Act apply to health insurance policies issued or renewed**
 20 **on or after the effective date of this 2005 Act.**

21