

House Bill 2835

Sponsored by Representative SCHAUFLER

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**.

Exempts association health plans from requirements for small employer group health insurance.

A BILL FOR AN ACT

Relating to association health plans; amending ORS 743.730, 743.733, 743.734, 743.737 and 743.751.

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

SECTION 1. ORS 743.730 is amended to read:

743.730. As used in ORS 743.730 to 743.773:

(1) "Actuarial certification" means a written statement by a member of the American Academy of Actuaries or other individual acceptable to the Director of the Department of Consumer and Business Services that a carrier is in compliance with the provisions of ORS 743.736, 743.760 or 743.761, based upon the person's examination, including a review of the appropriate records and of the actuarial assumptions and methods used by the carrier in establishing premium rates for small employer and portability health benefit plans.

(2) "Affiliate" of, or person "affiliated" with, a specified person means any carrier who, directly or indirectly through one or more intermediaries, controls or is controlled by or is under common control with a specified person. For purposes of this definition, "control" has the meaning given that term in ORS 732.548.

(3) "Affiliation period" means, under the terms of a group health benefit plan issued by a health care service contractor, a period:

(a) That is applied uniformly and without regard to any health status related factors to an enrollee or late enrollee in lieu of a preexisting conditions provision;

(b) That must expire before any coverage becomes effective under the plan for the enrollee or late enrollee;

(c) During which no premium shall be charged to the enrollee or late enrollee; and

(d) That begins on the enrollee's or late enrollee's first date of eligibility for coverage and runs concurrently with any eligibility waiting period under the plan.

(4) "Basic health benefit plan" means a health benefit plan for small employers that is required to be offered by all small employer carriers and approved by the Director of the Department of Consumer and Business Services in accordance with ORS 743.736.

(5) "Bona fide association" means an association that meets the requirements of 42 U.S.C. 300gg-11 as amended and in effect on July 1, 1997.

(6) "Carrier" means any person who provides health benefit plans in this state, including a licensed insurance company, a health care service contractor, a health maintenance organization, an association or group of employers that provides benefits by means of a multiple employer welfare

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 arrangement or any other person or corporation responsible for the payment of benefits or provision
2 of services.

3 (7) "Committee" means the Health Insurance Reform Advisory Committee created under ORS
4 743.745.

5 (8) "Creditable coverage" means prior health care coverage as defined in 42 U.S.C. 300gg as
6 amended and in effect on July 1, 1997, and includes coverage remaining in force at the time the
7 enrollee obtains new coverage.

8 (9) "Department" means the Department of Consumer and Business Services.

9 (10) "Dependent" means the spouse or child of an eligible employee, subject to applicable terms
10 of the health benefit plan covering the employee.

11 (11) "Director" means the Director of the Department of Consumer and Business Services.

12 (12) "Eligible employee" means an employee of a small employer who works on a regularly
13 scheduled basis, with a normal work week of 17.5 or more hours. The employer may determine hours
14 worked for eligibility between 17.5 and 40 hours per week subject to rules of the carrier. "Eligible
15 employee" includes sole proprietors, partners of a partnership, leased workers as defined in ORS
16 743.522 or independent contractors if they are included as employees under a health benefit plan of
17 a small employer but does not include employees who work on a temporary, seasonal or substitute
18 basis. Employees who have been employed by the small employer for fewer than 90 days are not
19 eligible employees unless the small employer so allows.

20 (13) "Enrollee" means an employee, dependent of the employee or an individual otherwise eligi-
21 ble for a group, individual or portability health benefit plan who has enrolled for coverage under the
22 terms of the plan.

23 (14) "Exclusion period" means a period during which specified treatments or services are ex-
24 cluded from coverage.

25 (15) "Financially impaired" means a member that is not insolvent and is:

26 (a) Considered by the Director of the Department of Consumer and Business Services to be po-
27 tentially unable to fulfill its contractual obligations; or

28 (b) Placed under an order of rehabilitation or conservation by a court of competent jurisdiction.

29 (16)(a) "Geographic average rate" means the arithmetical average of the lowest premium and the
30 corresponding highest premium to be charged by a carrier in a geographic area established by the
31 director for the carrier's:

32 (A) Small employer group health benefit plans;

33 (B) Individual health benefit plans; or

34 (C) Portability health benefit plans.

35 (b) "Geographic average rate" does not include premium differences that are due to differences
36 in benefit design or family composition.

37 (17) "Group eligibility waiting period" means, with respect to a group health benefit plan, the
38 period of employment or membership with the group that a prospective enrollee must complete be-
39 fore plan coverage begins.

40 (18)(a) "Health benefit plan" means any hospital expense, medical expense or hospital or medical
41 expense policy or certificate, health care service contractor or health maintenance organization
42 subscriber contract, any plan provided by a multiple employer welfare arrangement or by another
43 benefit arrangement defined in the federal Employee Retirement Income Security Act of 1974, as
44 amended.

45 (b) "Health benefit plan" does not include coverage for accident only, specific disease or condi-

1 tion only, credit, disability income, coverage of Medicare services pursuant to contracts with the
2 federal government, Medicare supplement insurance policies, coverage of CHAMPUS services pur-
3 suant to contracts with the federal government, benefits delivered through a flexible spending ar-
4 rangement established pursuant to section 125 of the Internal Revenue Code of 1986, as amended,
5 when the benefits are provided in addition to a group health benefit plan, long term care insurance,
6 hospital indemnity only, short term health insurance policies (the duration of which does not exceed
7 six months including renewals), student accident and health insurance policies, dental only, vision
8 only, a policy of stop-loss coverage that meets the requirements of ORS 742.065, coverage issued as
9 a supplement to liability insurance, insurance arising out of a workers' compensation or similar law,
10 automobile medical payment insurance or insurance under which benefits are payable with or
11 without regard to fault and that is statutorily required to be contained in any liability insurance
12 policy or equivalent self-insurance.

13 (c) Nothing in this subsection shall be construed to regulate any employee welfare benefit plan
14 that is exempt from state regulation because of the federal Employee Retirement Income Security
15 Act of 1974, as amended.

16 (19) "Health statement" means any information that is intended to inform the carrier or insur-
17 ance producer of the health status of an enrollee or prospective enrollee in a health benefit plan.
18 "Health statement" includes the standard health statement developed by the Health Insurance Re-
19 form Advisory Committee.

20 (20) "Implementation of chapter 836, Oregon Laws 1989" means that the Health Services Com-
21 mission has prepared a priority list, the Legislative Assembly has enacted funding of the list and
22 all necessary federal approval, including waivers, has been obtained.

23 (21) "Individual coverage waiting period" means a period in an individual health benefit plan
24 during which no premiums may be collected and health benefit plan coverage issued is not effective.

25 (22) "Initial enrollment period" means a period of at least 30 days following commencement of
26 the first eligibility period for an individual.

27 (23) "Late enrollee" means an individual who enrolls in a group health benefit plan subsequent
28 to the initial enrollment period during which the individual was eligible for coverage but declined
29 to enroll. However, an eligible individual shall not be considered a late enrollee if:

30 (a) The individual qualifies for a special enrollment period in accordance with 42 U.S.C. 300gg
31 as amended and in effect on July 1, 1997;

32 (b) The individual applies for coverage during an open enrollment period;

33 (c) A court has ordered that coverage be provided for a spouse or minor child under a covered
34 employee's health benefit plan and request for enrollment is made within 30 days after issuance of
35 the court order;

36 (d) The individual is employed by an employer who offers multiple health benefit plans and the
37 individual elects a different health benefit plan during an open enrollment period; or

38 (e) The individual's coverage under Medicaid, Medicare, CHAMPUS, Indian Health Service or
39 a publicly sponsored or subsidized health plan, including but not limited to the Oregon Health Plan,
40 has been involuntarily terminated within 63 days of applying for coverage in a group health benefit
41 plan.

42 (24) "Multiple employer welfare arrangement" means a multiple employer welfare arrangement
43 as defined in section 3 of the federal Employee Retirement Income Security Act of 1974, as amended,
44 29 U.S.C. 1002, that is subject to ORS 750.301 to 750.341.

45 (25) "Oregon Medical Insurance Pool" means the pool created under ORS 735.610.

1 (26) “Preexisting conditions provision” means a health benefit plan provision applicable to an
 2 enrollee or late enrollee that excludes coverage for services, charges or expenses incurred during
 3 a specified period immediately following enrollment for a condition for which medical advice, diag-
 4 nosis, care or treatment was recommended or received during a specified period immediately pre-
 5 ceding enrollment. For purposes of ORS 743.730 to 743.773:

6 (a) Pregnancy does not constitute a preexisting condition except as provided in ORS 743.766;

7 (b) Genetic information does not constitute a preexisting condition in the absence of a diagnosis
 8 of the condition related to such information; and

9 (c) A preexisting conditions provision shall not be applied to a newborn child or adopted child
 10 who obtains coverage in accordance with ORS 743.707.

11 (27) “Premium” includes insurance premiums or other fees charged for a health benefit plan,
 12 including the costs of benefits paid or reimbursements made to or on behalf of enrollees covered by
 13 the plan.

14 (28) “Rating period” means the 12-month calendar period for which premium rates established
 15 by a carrier are in effect, as determined by the carrier.

16 (29) “Small employer” means any person, firm, corporation, partnership or association actively
 17 engaged in business that, on at least 50 percent of its working days during the preceding year, em-
 18 ployed no more than 25 eligible employees and no fewer than two eligible employees, the majority
 19 of whom are employed within this state, and in which a bona fide partnership, independent con-
 20 tractor or employer-employee relationship exists. “Small employer” includes companies that are eli-
 21 gible to file a consolidated tax return pursuant to ORS 317.715.

22 (30) “Small employer carrier” means any carrier that offers health benefit plans [*covering eligible*
 23 *employees of one or more*] to small employers. A fully insured multiple employer welfare arrangement
 24 otherwise exempt under ORS 750.303 (4) may elect to be a small employer carrier governed by the
 25 provisions of ORS 743.733 to 743.737.

26 **(31) “Small employer health benefit plan” means a health benefit plan issued by a small**
 27 **employer carrier directly to a small employer and covering only the eligible employees of that**
 28 **small employer. It does not include a small employer’s subscription to a group health benefit**
 29 **plan issued to an association under ORS 743.524.**

30 **SECTION 2.** ORS 743.733 is amended to read:

31 743.733. (1) For purposes of this section, “qualified employees” means employees who work on
 32 a regularly scheduled basis, with a normal workweek of 17.5 or more hours, but does not include
 33 employees who work on a temporary, seasonal or substitute basis.

34 (2) If an affiliated group of employers that is eligible to file a consolidated tax return pursuant
 35 to ORS 317.715 includes one or more small employers, a carrier may issue a group health benefit
 36 plan to the affiliated group on the basis of the number of employees in the affiliated group if the
 37 group requests such coverage.

38 (3) Subsequent to the issuance of a health benefit plan to an employer pursuant to the provisions
 39 of ORS 743.733 to 743.737 and for the purposes of determining eligibility, the number of employees
 40 of an employer shall be determined annually by the small employer carrier. Except as otherwise
 41 provided, the provisions of ORS 743.733 to 743.737 that apply to an employer shall continue to apply
 42 until the plan anniversary date following the date the employer no longer meets the requirements
 43 of this section.

44 (4) A carrier that offers health benefit plans [*covering employees of*] to an employer who em-
 45 ployed an average of at least two but not more than 50 qualified employees on business days during

1 the preceding calendar year and who employs at least two qualified employees on the first day of
 2 the plan year, in accordance with 42 U.S.C. 300gg as amended and in effect on July 1, 1997, shall
 3 be considered a small employer carrier for purposes of this section and ORS 743.736. A health ben-
 4 efit plan issued to an employer described in this section, provided the employer does not otherwise
 5 qualify as a small employer in accordance with ORS 743.730, shall be considered a small employer
 6 health benefit plan for purposes of ORS 743.737, except that the plan or carrier shall not be required
 7 to comply with ORS 743.737 (7), (8), (10), (11) and (13).

8 **SECTION 3.** ORS 743.734 is amended to read:

9 743.734. (1) Every [*group*] **small employer** health benefit plan shall be subject to the provisions
 10 of ORS 743.733 to 743.737[, *if the plan provides health benefits covering one or more employees of a*
 11 *small employer and*] if any one of the following conditions is met:

12 (a) Any portion of the premium or benefits is paid by a small employer or any eligible employee
 13 is reimbursed, whether through wage adjustments or otherwise, by a small employer for any portion
 14 of the health benefit plan premium; or

15 (b) The health benefit plan is treated by the employer or any of the eligible employees as part
 16 of a plan or program for the purposes of section 106, section 125 or section 162 of the Internal Re-
 17 venue Code of 1986, as amended.

18 (2) Except as provided in ORS 743.733 to 743.737, no law requiring the coverage or the offer of
 19 coverage of a health care service or benefit applies to the basic health benefit plans offered or de-
 20 livered to a small employer.

21 (3) Except as otherwise provided by law or ORS 743.733 to 743.737, no health benefit plan of-
 22 fered to a small employer shall:

23 (a) Inhibit a small employer carrier from contracting with providers or groups of providers with
 24 respect to health care services or benefits; or

25 (b) Impose any restriction on the ability of a small employer carrier to negotiate with providers
 26 regarding the level or method of reimbursing care or services provided under health benefit plans.

27 (4) Except to determine the application of a preexisting conditions provision for a late enrollee,
 28 a small employer carrier shall not use health statements when offering small employer health benefit
 29 plans **to small employers** and shall not use any other method to determine the actual or expected
 30 health status of eligible enrollees. Nothing in this subsection shall prevent a carrier from using
 31 health statements or other information after enrollment for the purpose of providing services or
 32 arranging for the provision of services under a health benefit plan.

33 (5) Except in the case of a late enrollee and as otherwise provided in this section, a small em-
 34 ployer carrier shall not impose different terms or conditions on the coverage, premiums or contri-
 35 butions of any eligible employee in a small employer group that are based on the actual or expected
 36 health status of any eligible employee.

37 (6) A small employer carrier may provide different health benefit plans to different categories
 38 of employees of a small employer when the employer has chosen to establish different categories of
 39 employees in a manner that does not relate to the actual or expected health status of such em-
 40 ployees or their dependents. Except as provided in ORS 743.736 (10):

41 (a) When a small employer carrier offers coverage to a small employer, the small employer
 42 carrier shall offer coverage to all eligible employees of the small employer, without regard to the
 43 actual or expected health status of any eligible employee.

44 (b) If the small employer elects to offer coverage to dependents of eligible employees, the small
 45 employer carrier shall offer coverage to all dependents of eligible employees, without regard to the

1 actual or expected health status of any eligible dependent.

2 **SECTION 4.** ORS 743.737 is amended to read:

3 743.737. **Small employer** health benefit plans [covering small employers] shall be subject to the
4 following provisions:

5 (1) A preexisting conditions provision in a small employer health benefit plan shall apply only
6 to a condition for which medical advice, diagnosis, care or treatment was recommended or received
7 during the six-month period immediately preceding the enrollment date of an enrollee or late
8 enrollee. As used in this section, the enrollment date of an enrollee shall be the earlier of the ef-
9 fective date of coverage or the first day of any required group eligibility waiting period and the
10 enrollment date of a late enrollee shall be the effective date of coverage.

11 (2) A preexisting conditions provision in a small employer health benefit plan shall terminate its
12 effect as follows:

13 (a) For an enrollee, not later than the first of the following dates:

14 (A) Six months following the enrollee's effective date of coverage; or

15 (B) Ten months following the start of any required group eligibility waiting period.

16 (b) For a late enrollee, not later than 12 months following the late enrollee's effective date of
17 coverage.

18 (3) In applying a preexisting conditions provision to an enrollee or late enrollee, except as pro-
19 vided in this subsection, all small employer health benefit plans shall reduce the duration of the
20 provision by an amount equal to the enrollee's or late enrollee's aggregate periods of creditable
21 coverage if the most recent period of creditable coverage is ongoing or ended within 63 days of the
22 enrollment date in the new small employer health benefit plan. The crediting of prior coverage in
23 accordance with this subsection shall be applied without regard to the specific benefits covered
24 during the prior period. This subsection does not preclude, within a small employer health benefit
25 plan, application of:

26 (a) An affiliation period that does not exceed two months for an enrollee or three months for a
27 late enrollee; or

28 (b) An exclusion period for specified covered services, as established by the Health Insurance
29 Reform Advisory Committee, applicable to all individuals enrolling for the first time in the small
30 employer health benefit plan.

31 (4) Late enrollees may be excluded from coverage for up to 12 months or may be subjected to
32 a preexisting conditions provision for up to 12 months. If both an exclusion from coverage period
33 and a preexisting conditions provision are applicable to a late enrollee, the combined period shall
34 not exceed 12 months.

35 (5) Each small employer health benefit plan shall be renewable with respect to all eligible
36 enrollees at the option of the policyholder, small employer or contract holder except:

37 (a) For nonpayment of the required premiums by the policyholder, small employer or contract
38 holder.

39 (b) For fraud or misrepresentation of the policyholder, small employer or contract holder or,
40 with respect to coverage of individual enrollees, the enrollees or their representatives.

41 (c) When the number of enrollees covered under the plan is less than the number or percentage
42 of enrollees required by participation requirements under the plan.

43 (d) For noncompliance with the small employer carrier's employer contribution requirements
44 under the health benefit plan.

45 (e) When the carrier discontinues offering or renewing, or offering and renewing, all of its small

1 employer health benefit plans in this state or in a specified service area within this state. In order
2 to discontinue plans under this paragraph, the carrier:

3 (A) Must give notice of the decision to the Director of the Department of Consumer and Busi-
4 ness Services and to all policyholders covered by the plans;

5 (B) May not cancel coverage under the plans for 180 days after the date of the notice required
6 under subparagraph (A) of this paragraph if coverage is discontinued in the entire state or, except
7 as provided in subparagraph (C) of this paragraph, in a specified service area;

8 (C) May not cancel coverage under the plans for 90 days after the date of the notice required
9 under subparagraph (A) of this paragraph if coverage is discontinued in a specified service area
10 because of an inability to reach an agreement with the health care providers or organization of
11 health care providers to provide services under the plans within the service area; and

12 (D) Must discontinue offering or renewing, or offering and renewing, all health benefit plans
13 issued by the carrier in the small employer market in this state or in the specified service area.

14 (f) When the carrier discontinues offering and renewing a small employer health benefit plan in
15 a specified service area within this state because of an inability to reach an agreement with the
16 health care providers or organization of health care providers to provide services under the plan
17 within the service area. In order to discontinue a plan under this paragraph, the carrier:

18 (A) Must give notice to the director and to all policyholders covered by the plan;

19 (B) May not cancel coverage under the plan for 90 days after the date of the notice required
20 under subparagraph (A) of this paragraph; and

21 (C) Must offer in writing to each small employer covered by the plan, all other small employer
22 health benefit plans that the carrier offers in the specified service area. The carrier shall issue any
23 such plans pursuant to the provisions of ORS 743.733 to 743.737. The carrier shall offer the plans
24 at least 90 days prior to discontinuation.

25 (g) When the carrier discontinues offering or renewing, or offering and renewing, a health ben-
26 efit plan for all small employers in this state or in a specified service area within this state, other
27 than a plan discontinued under paragraph (f) of this subsection. With respect to plans that are being
28 discontinued, the carrier must:

29 (A) Offer in writing to each small employer covered by the plan, all health benefit plans that
30 the carrier offers in the specified service area.

31 (B) Issue any such plans pursuant to the provisions of ORS 743.733 to 743.737.

32 (C) Offer the plans at least 90 days prior to discontinuation.

33 (D) Act uniformly without regard to the claims experience of the affected policyholders or the
34 health status of any current or prospective enrollee.

35 (h) When the director orders the carrier to discontinue coverage in accordance with procedures
36 specified or approved by the director upon finding that the continuation of the coverage would:

37 (A) Not be in the best interests of the enrollees; or

38 (B) Impair the carrier's ability to meet contractual obligations.

39 (i) When, in the case of a small employer health benefit plan that delivers covered services
40 through a specified network of health care providers, there is no longer any enrollee who lives, re-
41 sides or works in the service area of the provider network.

42 (j) When, in the case of a health benefit plan that is offered in the small employer market only
43 through one or more bona fide associations, the membership of an employer in the association ceases
44 and the termination of coverage is not related to the health status of any enrollee.

45 (k) For misuse of a provider network provision. As used in this paragraph, "misuse of a provider

1 network provision” means a disruptive, unruly or abusive action taken by an enrollee that threatens
2 the physical health or well-being of health care staff and seriously impairs the ability of the carrier
3 or its participating providers to provide services to an enrollee. An enrollee under this paragraph
4 retains the rights of an enrollee under ORS 743.804.

5 (L) A small employer carrier may modify a small employer health benefit plan at the time of
6 coverage renewal. The modification is not a discontinuation of the plan under paragraphs (e) and (g)
7 of this subsection.

8 (6) Notwithstanding any provision of subsection (5) of this section to the contrary, any small
9 employer carrier health benefit plan subject to the provisions of ORS 743.733 to 743.737 may be
10 rescinded by a small employer carrier for fraud, material misrepresentation or concealment by a
11 small employer and the coverage of an enrollee may be rescinded for fraud, material misrepresenta-
12 tion or concealment by the enrollee.

13 (7) A small employer carrier may continue to enforce reasonable employer participation and
14 contribution requirements on small employers applying for coverage. However, participation and
15 contribution requirements shall be applied uniformly among all small employer groups with the same
16 number of eligible employees applying for coverage or receiving coverage from the small employer
17 carrier. In determining minimum participation requirements, a carrier shall count only those em-
18 ployees who are not covered by an existing group health benefit plan, Medicaid, Medicare,
19 CHAMPUS, Indian Health Service or a publicly sponsored or subsidized health plan, including but
20 not limited to the Oregon Health Plan.

21 (8) Premium rates for small employer health benefit plans subject to ORS 743.733 to 743.737 shall
22 be subject to the following provisions:

23 (a) Each small employer carrier issuing **small employer** health benefit plans [*to small*
24 *employers*] must file its geographic average rate for a rating period with the director on or before
25 March 15 of each year.

26 (b)(A) The premium rates charged during a rating period for health benefit plans issued to small
27 employers may not vary from the geographic average rate by more than the following:

28 (i) 33 percent on or after October 1, 1999; and

29 (ii) 43 percent on or after July 1, 2004.

30 (B) The variations in premium rates described in subparagraph (A) of this paragraph shall be
31 based solely on differences in the ages of participating employees, except that the premium rate may
32 be adjusted to reflect the provision of benefits not required to be covered by the basic health benefit
33 plan and differences in family composition. In addition:

34 (i) A small employer carrier shall apply uniformly the carrier’s schedule of age adjustments for
35 small employer groups as approved by the director; and

36 (ii) Except as otherwise provided in this section, the premium rate established for a health
37 benefit plan by a small employer carrier shall apply uniformly to all employees of the small employer
38 enrolled in that plan.

39 (c) The variation in premium rates between different small employer health benefit plans offered
40 by a small employer carrier must be based solely on objective differences in plan design or coverage
41 and must not include differences based on the risk characteristics of groups assumed to select a
42 particular health benefit plan.

43 (d) A small employer carrier may not increase the rates of a **small employer** health benefit plan
44 [*issued to a small employer*] more than once in a 12-month period. Annual rate increases shall be
45 effective on the plan anniversary date of the health benefit plan issued to a small employer. The

1 percentage increase in the premium rate charged to a small employer for a new rating period may
 2 not exceed the sum of the following:

3 (A) The percentage change in the geographic average rate measured from the first day of the
 4 prior rating period to the first day of the new period; and

5 (B) Any adjustment attributable to changes in age, except an additional adjustment may be made
 6 to reflect the provision of benefits not required to be covered by the basic health benefit plan and
 7 differences in family composition.

8 (e) Premium rates for health benefit plans shall comply with the requirements of this section.

9 (f) A small employer carrier may apply a participation credit of five percent to the rates deter-
 10 mined under paragraph (b) of this subsection for a small employer if all eligible employees enroll in
 11 the health benefit plan. If a carrier applies a participation credit under this paragraph, the carrier
 12 must apply the credit to each small employer that qualifies.

13 (9) In connection with the offering for sale of any health benefit plan to a small employer, each
 14 small employer carrier shall make a reasonable disclosure as part of its solicitation and sales ma-
 15 terials of:

16 (a) The full array of health benefit plans that are offered to small employers by the carrier;

17 (b) The authority of the carrier to adjust rates, and the extent to which the carrier will consider
 18 age, family composition and geographic factors in establishing and adjusting rates;

19 (c) Provisions relating to renewability of policies and contracts; and

20 (d) Provisions affecting any preexisting conditions provision.

21 (10)(a) Each small employer carrier shall maintain at its principal place of business a complete
 22 and detailed description of its rating practices and renewal underwriting practices, including infor-
 23 mation and documentation that demonstrate that its rating methods and practices are based upon
 24 commonly accepted actuarial practices and are in accordance with sound actuarial principles.

25 (b) Each small employer carrier shall file with the director annually on or before March 15 an
 26 actuarial certification that the carrier is in compliance with ORS 743.733 to 743.737 and that the
 27 rating methods of the small employer carrier are actuarially sound. Each such certification shall be
 28 in a uniform form and manner and shall contain such information as specified by the director. A
 29 copy of such certification shall be retained by the small employer carrier at its principal place of
 30 business.

31 (c) A small employer carrier shall make the information and documentation described in para-
 32 graph (a) of this subsection available to the director upon request. Except in cases of violations of
 33 ORS 743.733 to 743.737, the information shall be considered proprietary and trade secret information
 34 and shall not be subject to disclosure by the director to persons outside the Department of Con-
 35 sumer and Business Services except as agreed to by the small employer carrier or as ordered by a
 36 court of competent jurisdiction.

37 (11) A small employer carrier shall not provide any financial or other incentive to any insurance
 38 producer that would encourage the insurance producer to market and sell health benefit plans of the
 39 carrier to small employer groups based on a small employer group's anticipated claims experience.

40 (12) For purposes of this section, the date a small employer health benefit plan is continued shall
 41 be the anniversary date of the first issuance of the health benefit plan.

42 (13) A small employer carrier must include a provision that offers coverage to all eligible em-
 43 ployees and to all dependents to the extent the employer chooses to offer coverage to dependents.

44 (14) All small employer health benefit plans shall contain special enrollment periods during
 45 which eligible employees and dependents may enroll for coverage, as provided in 42 U.S.C. 300gg

1 as amended and in effect on July 1, 1997.

2 **SECTION 5.** ORS 743.737, as amended by section 6, chapter 599, Oregon Laws 2003, is amended
3 to read:

4 743.737. **Small employer** health benefit plans [*covering small employers*] shall be subject to the
5 following provisions:

6 (1) A preexisting conditions provision in a small employer health benefit plan shall apply only
7 to a condition for which medical advice, diagnosis, care or treatment was recommended or received
8 during the six-month period immediately preceding the enrollment date of an enrollee or late
9 enrollee. As used in this section, the enrollment date of an enrollee shall be the earlier of the ef-
10 fective date of coverage or the first day of any required group eligibility waiting period and the
11 enrollment date of a late enrollee shall be the effective date of coverage.

12 (2) A preexisting conditions provision in a small employer health benefit plan shall terminate its
13 effect as follows:

14 (a) For an enrollee, not later than the first of the following dates:

15 (A) Six months following the enrollee's effective date of coverage; or

16 (B) Ten months following the start of any required group eligibility waiting period.

17 (b) For a late enrollee, not later than 12 months following the late enrollee's effective date of
18 coverage.

19 (3) In applying a preexisting conditions provision to an enrollee or late enrollee, except as pro-
20 vided in this subsection, all small employer health benefit plans shall reduce the duration of the
21 provision by an amount equal to the enrollee's or late enrollee's aggregate periods of creditable
22 coverage if the most recent period of creditable coverage is ongoing or ended within 63 days of the
23 enrollment date in the new small employer health benefit plan. The crediting of prior coverage in
24 accordance with this subsection shall be applied without regard to the specific benefits covered
25 during the prior period. This subsection does not preclude, within a small employer health benefit
26 plan, application of:

27 (a) An affiliation period that does not exceed two months for an enrollee or three months for a
28 late enrollee; or

29 (b) An exclusion period for specified covered services, as established by the Health Insurance
30 Reform Advisory Committee, applicable to all individuals enrolling for the first time in the small
31 employer health benefit plan.

32 (4) Late enrollees may be excluded from coverage for up to 12 months or may be subjected to
33 a preexisting conditions provision for up to 12 months. If both an exclusion from coverage period
34 and a preexisting conditions provision are applicable to a late enrollee, the combined period shall
35 not exceed 12 months.

36 (5) Each small employer health benefit plan shall be renewable with respect to all eligible
37 enrollees at the option of the policyholder, small employer or contract holder except:

38 (a) For nonpayment of the required premiums by the policyholder, small employer or contract
39 holder.

40 (b) For fraud or misrepresentation of the policyholder, small employer or contract holder or,
41 with respect to coverage of individual enrollees, the enrollees or their representatives.

42 (c) When the number of enrollees covered under the plan is less than the number or percentage
43 of enrollees required by participation requirements under the plan.

44 (d) For noncompliance with the small employer carrier's employer contribution requirements
45 under the health benefit plan.

1 (e) When the carrier discontinues offering or renewing, or offering and renewing, all of its small
2 employer health benefit plans in this state or in a specified service area within this state. In order
3 to discontinue plans under this paragraph, the carrier:

4 (A) Must give notice of the decision to the Director of the Department of Consumer and Busi-
5 ness Services and to all policyholders covered by the plans;

6 (B) May not cancel coverage under the plans for 180 days after the date of the notice required
7 under subparagraph (A) of this paragraph if coverage is discontinued in the entire state or, except
8 as provided in subparagraph (C) of this paragraph, in a specified service area;

9 (C) May not cancel coverage under the plans for 90 days after the date of the notice required
10 under subparagraph (A) of this paragraph if coverage is discontinued in a specified service area
11 because of an inability to reach an agreement with the health care providers or organization of
12 health care providers to provide services under the plans within the service area; and

13 (D) Must discontinue offering or renewing, or offering and renewing, all health benefit plans
14 issued by the carrier in the small employer market in this state or in the specified service area.

15 (f) When the carrier discontinues offering and renewing a small employer health benefit plan in
16 a specified service area within this state because of an inability to reach an agreement with the
17 health care providers or organization of health care providers to provide services under the plan
18 within the service area. In order to discontinue a plan under this paragraph, the carrier:

19 (A) Must give notice to the director and to all policyholders covered by the plan;

20 (B) May not cancel coverage under the plan for 90 days after the date of the notice required
21 under subparagraph (A) of this paragraph; and

22 (C) Must offer in writing to each small employer covered by the plan, all other small employer
23 health benefit plans that the carrier offers in the specified service area. The carrier shall issue any
24 such plans pursuant to the provisions of ORS 743.733 to 743.737. The carrier shall offer the plans
25 at least 90 days prior to discontinuation.

26 (g) When the carrier discontinues offering or renewing, or offering and renewing, a health ben-
27 efit plan for all small employers in this state or in a specified service area within this state, other
28 than a plan discontinued under paragraph (f) of this subsection. With respect to plans that are being
29 discontinued, the carrier must:

30 (A) Offer in writing to each small employer covered by the plan, all health benefit plans that
31 the carrier offers in the specified service area.

32 (B) Issue any such plans pursuant to the provisions of ORS 743.733 to 743.737.

33 (C) Offer the plans at least 90 days prior to discontinuation.

34 (D) Act uniformly without regard to the claims experience of the affected policyholders or the
35 health status of any current or prospective enrollee.

36 (h) When the director orders the carrier to discontinue coverage in accordance with procedures
37 specified or approved by the director upon finding that the continuation of the coverage would:

38 (A) Not be in the best interests of the enrollees; or

39 (B) Impair the carrier's ability to meet contractual obligations.

40 (i) When, in the case of a small employer health benefit plan that delivers covered services
41 through a specified network of health care providers, there is no longer any enrollee who lives, re-
42 sides or works in the service area of the provider network.

43 (j) When, in the case of a health benefit plan that is offered in the small employer market only
44 through one or more bona fide associations, the membership of an employer in the association ceases
45 and the termination of coverage is not related to the health status of any enrollee.

1 (k) For misuse of a provider network provision. As used in this paragraph, “misuse of a provider
2 network provision” means a disruptive, unruly or abusive action taken by an enrollee that threatens
3 the physical health or well-being of health care staff and seriously impairs the ability of the carrier
4 or its participating providers to provide services to an enrollee. An enrollee under this paragraph
5 retains the rights of an enrollee under ORS 743.804.

6 (L) A small employer carrier may modify a small employer health benefit plan at the time of
7 coverage renewal. The modification is not a discontinuation of the plan under paragraphs (e) and (g)
8 of this subsection.

9 (6) Notwithstanding any provision of subsection (5) of this section to the contrary, any small
10 employer carrier health benefit plan subject to the provisions of ORS 743.733 to 743.737 may be
11 rescinded by a small employer carrier for fraud, material misrepresentation or concealment by a
12 small employer and the coverage of an enrollee may be rescinded for fraud, material misrepresenta-
13 tion or concealment by the enrollee.

14 (7) A small employer carrier may continue to enforce reasonable employer participation and
15 contribution requirements on small employers applying for coverage. However, participation and
16 contribution requirements shall be applied uniformly among all small employer groups with the same
17 number of eligible employees applying for coverage or receiving coverage from the small employer
18 carrier. In determining minimum participation requirements, a carrier shall count only those em-
19 ployees who are not covered by an existing group health benefit plan, Medicaid, Medicare,
20 CHAMPUS, Indian Health Service or a publicly sponsored or subsidized health plan, including but
21 not limited to the Oregon Health Plan.

22 (8) Premium rates for small employer health benefit plans subject to ORS 743.733 to 743.737 shall
23 be subject to the following provisions:

24 (a) Each small employer carrier issuing **small employer** health benefit plans [*to small*
25 *employers*] must file its geographic average rate for a rating period with the director on or before
26 March 15 of each year.

27 (b)(A) The premium rates charged during a rating period for health benefit plans issued to small
28 employers may not vary from the geographic average rate by more than the following:

29 (i) 50 percent on October 1, 1996; and

30 (ii) 33 percent on October 1, 1999.

31 (B) The variations in premium rates described in subparagraph (A) of this paragraph shall be
32 based solely on differences in the ages of participating employees, except that the premium rate may
33 be adjusted to reflect the provision of benefits not required to be covered by the basic health benefit
34 plan and differences in family composition. In addition:

35 (i) A small employer carrier shall apply uniformly the carrier’s schedule of age adjustments for
36 small employer groups as approved by the director; and

37 (ii) Except as otherwise provided in this section, the premium rate established for a health
38 benefit plan by a small employer carrier shall apply uniformly to all employees of the small employer
39 enrolled in that plan.

40 (c) The variation in premium rates between different small employer health benefit plans offered
41 by a small employer carrier must be based solely on objective differences in plan design or coverage
42 and must not include differences based on the risk characteristics of groups assumed to select a
43 particular health benefit plan.

44 (d) A small employer carrier may not increase the rates of a **small employer** health benefit plan
45 [*issued to a small employer*] more than once in a 12-month period. Annual rate increases shall be

1 effective on the plan anniversary date of the health benefit plan issued to a small employer. The
2 percentage increase in the premium rate charged to a small employer for a new rating period may
3 not exceed the sum of the following:

4 (A) The percentage change in the geographic average rate measured from the first day of the
5 prior rating period to the first day of the new period; and

6 (B) Any adjustment attributable to changes in age, except an additional adjustment may be made
7 to reflect the provision of benefits not required to be covered by the basic health benefit plan and
8 differences in family composition.

9 (e) Premium rates for health benefit plans shall comply with the requirements of this section.

10 (9) In connection with the offering for sale of any health benefit plan to a small employer, each
11 small employer carrier shall make a reasonable disclosure as part of its solicitation and sales ma-
12 terials of:

13 (a) The full array of health benefit plans that are offered to small employers by the carrier;

14 (b) The authority of the carrier to adjust rates, and the extent to which the carrier will consider
15 age, family composition and geographic factors in establishing and adjusting rates;

16 (c) Provisions relating to renewability of policies and contracts; and

17 (d) Provisions affecting any preexisting conditions provision.

18 (10)(a) Each small employer carrier shall maintain at its principal place of business a complete
19 and detailed description of its rating practices and renewal underwriting practices, including infor-
20 mation and documentation that demonstrate that its rating methods and practices are based upon
21 commonly accepted actuarial practices and are in accordance with sound actuarial principles.

22 (b) Each small employer carrier shall file with the director annually on or before March 15 an
23 actuarial certification that the carrier is in compliance with ORS 743.733 to 743.737 and that the
24 rating methods of the small employer carrier are actuarially sound. Each such certification shall be
25 in a uniform form and manner and shall contain such information as specified by the director. A
26 copy of such certification shall be retained by the small employer carrier at its principal place of
27 business.

28 (c) A small employer carrier shall make the information and documentation described in para-
29 graph (a) of this subsection available to the director upon request. Except in cases of violations of
30 ORS 743.733 to 743.737, the information shall be considered proprietary and trade secret information
31 and shall not be subject to disclosure by the director to persons outside the Department of Con-
32 sumer and Business Services except as agreed to by the small employer carrier or as ordered by a
33 court of competent jurisdiction.

34 (11) A small employer carrier shall not provide any financial or other incentive to any insurance
35 producer that would encourage the insurance producer to market and sell health benefit plans of the
36 carrier to small employer groups based on a small employer group's anticipated claims experience.

37 (12) For purposes of this section, the date a small employer health benefit plan is continued shall
38 be the anniversary date of the first issuance of the health benefit plan.

39 (13) A small employer carrier must include a provision that offers coverage to all eligible em-
40 ployees and to all dependents to the extent the employer chooses to offer coverage to dependents.

41 (14) All small employer health benefit plans shall contain special enrollment periods during
42 which eligible employees and dependents may enroll for coverage, as provided in 42 U.S.C. 300gg
43 as amended and in effect on July 1, 1997.

44 **SECTION 6.** ORS 743.751 is amended to read:

45 743.751. (1) Except to determine the application of a preexisting conditions provision for a late

1 enrollee, a carrier offering group health benefit plans shall not use health statements when offering
2 such plans to a group of two or more prospective certificate holders and shall not use any other
3 method to determine the actual or expected health status of eligible prospective enrollees. Nothing
4 in this section shall prevent a carrier from using health statements or other information after en-
5 rollment for the purpose of providing services or arranging for the provision of services under a
6 health benefit plan or from obtaining aggregate group information related to historical medical
7 claims expenses and health behavior surveys for *[rating]* purposes **of rating an employer group**
8 **or subgroup subscribing to a health benefit plan issued to an association under ORS 743.524.**

9 (2) Subsection (1) of this section applies only to group health benefit plans that are not small
10 employer health benefit plans.

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