

House Bill 3103

Sponsored by Representative NATHANSON

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 Department of Consumer and Business Services to make premium rate filing information immediately available to public. Creates exceptions.

A BILL FOR AN ACT

1
2 Relating to public disclosure of rate filing information; amending ORS 743.018, 743.737 and 743.760.

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

4 **SECTION 1.** ORS 743.018 is amended to read:

5 743.018. (1) Except for group life and health insurance, and except as provided in ORS 743.015,
6 every insurer shall file with the Director of the Department of Consumer and Business Services all
7 schedules and tables of premium rates for life and health insurance to be used on risks in this state,
8 and shall file any amendments to or corrections of such schedules and tables.

9 (2) **Except as provided ORS 743.737 and 743.760 and subsection (3) of this section, a rate**
10 **filing by a carrier for any of the following health benefit plans subject to ORS 743.730 to**
11 **743.773 shall be available for public inspection immediately upon submission of the filing to**
12 **the director:**

13 (a) **Health benefit plans for small employers.**

14 (b) **Portability health benefit plans.**

15 (c) **Individual health benefit plans.**

16 (3) **The director, upon request by a carrier, may exempt from disclosure any part of the**
17 **filing that the director determines to contain trade secrets and that would, if disclosed, harm**
18 **competition. The part that the director determines to be exempt from disclosure shall be**
19 **considered confidential for purposes of ORS 705.137. The director may not disclose a part of**
20 **a filing subject to a carrier's request pending the director's determination under this sub-**
21 **section.**

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

24 743.737. Health benefit plans covering small employers shall be subject to the following pro-
25 visions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (C) May not cancel coverage under the plans for 90 days after the date of the notice required
 44 under subparagraph (A) of this paragraph if coverage is discontinued in a specified service area
 45 because of an inability to reach an agreement with the health care providers or organization of

1 health care providers to provide services under the plans within the service area; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

43 (6) Notwithstanding any provision of subsection (5) of this section to the contrary, any small
44 employer carrier health benefit plan subject to the provisions of ORS 743.733 to 743.737 may be
45 rescinded by a small employer carrier for fraud, material misrepresentation or concealment by a

1 small employer and the coverage of an enrollee may be rescinded for fraud, material misrepresenta-
2 tion or concealment by the enrollee.

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

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

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

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

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

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

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

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

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

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

32 (d) A small employer carrier may not increase the rates of a health benefit plan issued to a
33 small employer more than once in a 12-month period. Annual rate increases shall be effective on the
34 plan anniversary date of the health benefit plan issued to a small employer. The percentage increase
35 in the premium rate charged to a small employer for a new rating period may not exceed the sum
36 of the following:

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

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

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

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

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

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

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

5 (d) Provisions affecting any preexisting conditions provision.

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

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

16 (c) A small employer carrier shall make the information and documentation described in para-
17 graph (a) of this subsection available to the director upon request. **Except as provided in ORS**
18 **743.018 and** except in cases of violations of ORS 743.733 to 743.737, the information shall be con-
19 sidered proprietary and trade secret information and shall not be subject to disclosure by the di-
20 rector to persons outside the Department of Consumer and Business Services except as agreed to
21 by the small employer carrier or as ordered by a court of competent jurisdiction.

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

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

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

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

32 **SECTION 3.** ORS 743.760 is amended to read:

33 743.760. (1) As used in this section:

34 (a) "Carrier" means an insurer authorized to issue a policy of health insurance in this state.
35 "Carrier" does not include a multiple employer welfare arrangement.

36 (b)(A) "Eligible individual" means an individual who:

37 (i) Has left coverage that was continuously in effect for a period of 180 days or more under one
38 or more Oregon group health benefit plans, has applied for portability coverage not later than the
39 63rd day after termination of group coverage issued by an Oregon carrier and is an Oregon resident
40 at the time of such application; or

41 (ii) On or after January 1, 1998, meets the eligibility requirements of 42 U.S.C. 300gg-41, as
42 amended and in effect on January 1, 1998, has applied for portability coverage not later than the
43 63rd day after termination of group coverage issued by an Oregon carrier and is an Oregon resident
44 at the time of such application.

45 (B) Except as provided in subsection (12) of this section, "eligible individual" does not include

1 an individual who remains eligible for the individual's prior group coverage or would remain eligible
2 for prior group coverage in a plan under the federal Employee Retirement Income Security Act of
3 1974, as amended, were it not for action by the plan sponsor relating to the actual or expected
4 health condition of the individual, or who is covered under another health benefit plan at the time
5 that portability coverage would commence or is eligible for the federal Medicare program.

6 (c) "Portability health benefit plans" and "portability plans" mean health benefit plans for eli-
7 gible individuals that are required to be offered by all carriers offering group health benefit plans
8 and that have been approved by the Director of the Department of Consumer and Business Services
9 in accordance with this section.

10 (2)(a) In order to improve the availability and affordability of health benefit plans for individuals
11 leaving coverage under group health benefit plans, the Health Insurance Reform Advisory Commit-
12 tee created under ORS 743.745 shall submit to the director two portability health benefit plans
13 pursuant to ORS 743.745. One plan shall be in the form of insurance and the second plan shall be
14 consistent with the type of coverage provided by health maintenance organizations. For each type
15 of portability plan, the committee shall design and submit to the director:

16 (A) A prevailing benefit plan, which shall reflect the benefit coverages that are prevalent in the
17 group health insurance market; and

18 (B) A low cost benefit plan, which shall emphasize affordability for eligible individuals.

19 (b) Except as provided in ORS 743.730 to 743.773, no law requiring the coverage or the offer of
20 coverage of a health care service or benefit shall apply to portability health benefit plans.

21 (3) The director shall approve the portability health benefit plans if the director determines that
22 the plans provide for appropriate accessibility and affordability of needed health care services and
23 comply with all other provisions of this section.

24 (4) After the director's approval of the portability plans submitted by the committee under this
25 section, each carrier offering group health benefit plans shall submit to the director the policy form
26 or forms containing at least one low cost benefit and one prevailing benefit portability plan offered
27 by the carrier that meets the required standards. Each policy form must be submitted as prescribed
28 by the director and is subject to review and approval pursuant to ORS 742.003.

29 (5) Within 180 days after approval by the director of the portability plans submitted by the
30 committee, as a condition of transacting group health insurance in this state, each carrier offering
31 group health benefit plans shall make available to eligible individuals the prevailing benefit and low
32 cost benefit portability plans that have been submitted by the carrier and approved by the director
33 under subsection (4) of this section.

34 (6) A carrier offering group health benefit plans shall issue to an eligible individual who is
35 leaving or has left group coverage provided by that carrier any portability plan offered by the car-
36 rier if the eligible individual applies for the plan within 63 days of termination of prior coverage and
37 agrees to make the required premium payments and to satisfy the other provisions of the portability
38 plan.

39 (7) Premium rates for portability plans shall be subject to the following provisions:

40 (a) Each carrier must file the geographic average rate for each of its portability health benefit
41 plans for a rating period with the director on or before March 15 of each year.

42 (b) The premium rates charged during the rating period for each portability health benefit plan
43 shall not vary from the geographic average rate, except that the premium rate may be adjusted to
44 reflect differences in benefit design, family composition and age. Adjustments for age shall comply
45 with the following:

1 (A) For each plan, the variation between the lowest premium rate and the highest premium rate
2 shall not exceed 100 percent of the lowest premium rate.

3 (B) Premium variations shall be determined by applying uniformly the carrier's schedule of age
4 adjustments for portability plans as approved by the director.

5 (c) Premium variations between the portability plans and the rest of the carrier's group plans
6 must be based solely on objective differences in plan design or coverage and must not include dif-
7 ferences based on the actual or expected health status of individuals who select portability health
8 benefit plans. For purposes of determining the premium variations under this paragraph, a carrier
9 may:

10 (A) Pool all portability plans with all group health benefit plans; or

11 (B) Pool all portability plans for eligible individuals leaving small employer group health benefit
12 plan coverage with all plans offered to small employers and pool all portability plans for eligible
13 individuals leaving other group health benefit plan coverage with all health benefit plans offered to
14 such other groups.

15 (d) A carrier may not increase the rates of a portability plan issued to an enrollee more than
16 once in any 12-month period. Annual rate increases shall be effective on the anniversary date of
17 the plan issued to the enrollee. The percentage increase in the premium rate charged to an enrollee
18 for a new rating period may not exceed the average increase in the rest of the carrier's applicable
19 group health benefit plans plus an adjustment for age.

20 (8) No portability plans under this section may contain preexisting conditions provisions, ex-
21 clusion periods, waiting periods or other similar limitations on coverage.

22 (9) Portability health benefit plans shall be renewable with respect to all enrollees at the option
23 of the enrollee, except:

24 (a) For nonpayment of the required premiums by the policyholder;

25 (b) For fraud or misrepresentation by the policyholder;

26 (c) When the carrier elects to discontinue offering all of its group health benefit plans in ac-
27 cordance with ORS 743.737 and 743.754; or

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

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

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

32 (10)(a) Each carrier offering group health benefit plans shall maintain at its principal place of
33 business a complete and detailed description of its rating practices and renewal underwriting prac-
34 tices relating to its portability plans, including information and documentation that demonstrate that
35 its rating methods and practices are based upon commonly accepted actuarial practices and are in
36 accordance with sound actuarial principles.

37 (b) Each such carrier shall file with the director annually on or before March 15 an actuarial
38 certification that the carrier is in compliance with this section and that its rating methods are
39 actuarially sound. Each such certification shall be in a form and manner and shall contain such in-
40 formation as specified by the director. A copy of such certification shall be retained by the carrier
41 at its principal place of business.

42 (c) Each such carrier shall make the information and documentation described in paragraph (a)
43 of this subsection available to the director upon request. **Except as provided in ORS 743.018 and**
44 **except in cases of violations of the Insurance Code, the information is proprietary and trade secret**
45 **information and shall not be subject to disclosure by the director to persons outside the Department**

1 of Consumer and Business Services except as agreed to by the carrier or as ordered by a court of
2 competent jurisdiction.

3 (11) A carrier offering group health benefit plans shall not provide any financial or other in-
4 centive to any insurance producer that would encourage the insurance producer to market and sell
5 portability plans of the carrier on the basis of an eligible individual's anticipated claims experience.

6 (12) An individual who is eligible to obtain a portability plan in accordance with this section
7 may obtain such a plan regardless of whether the eligible individual qualifies for a period of con-
8 tinuation coverage under federal law or under ORS 743.600 or 743.610. However, an individual who
9 has elected such continuation coverage is not eligible to obtain a portability plan until the contin-
10 uation coverage has been discontinued by the individual or has been exhausted.

11