

Senate Bill 587

Sponsored by COMMITTEE ON HEALTH POLICY AND PUBLIC AFFAIRS (at the request of Doug Barber)

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**.

Allows small employer carriers to provide discounts for employees who do not smoke tobacco.

Expands rate band for small employer carriers to 50 percent deviation from geographic average rate.

Permits small employer carriers to provide discounts to businesses in which all employees participate in plan, that stay with carrier and that provide dependent coverage.

A BILL FOR AN ACT

Relating to small employer carriers; amending ORS 743.737.

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

SECTION 1. ORS 743.737, as amended by section 6, chapter 599, Oregon Laws 2003, is amended to read:

743.737. Health benefit plans covering small employers shall be subject to the following provisions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 discontinued, the carrier must:

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

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

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

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

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

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

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

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

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

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

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

26 (6) Notwithstanding any provision of subsection (5) of this section to the contrary, any small
27 employer carrier health benefit plan subject to the provisions of ORS 743.733 to 743.737 may be
28 rescinded by a small employer carrier for fraud, material misrepresentation or concealment by a
29 small employer and the coverage of an enrollee may be rescinded for fraud, material misrepresen-
30 tation or concealment by the enrollee.

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

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

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

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

45 [*i*] 50 percent on October 1, 1996.]; *and*]

1 *[(ii) 33 percent on October 1, 1999.]*

2 (B) The variations in premium rates described in subparagraph (A) of this paragraph shall be
3 based solely on differences in the ages of participating employees **and whether the participating**
4 **employees smoke tobacco**, except that the premium rate may be adjusted to reflect the provision
5 of benefits not required to be covered by the basic health benefit plan and differences in family
6 composition. In addition:

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

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

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

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

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

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

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

27 **(f)(A) A small employer carrier may apply a participation credit of five percent to the**
28 **rates determined under paragraph (b) of this subsection for a small employer if:**

29 **(i) All eligible employees enroll in the health benefit plan;**

30 **(ii) The small employer stays with the same carrier; or**

31 **(iii) The small employer contributes toward dependent coverage.**

32 **(B) If a carrier applies a participation credit under this paragraph, the carrier must apply**
33 **the credit to each small employer that qualifies.**

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

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

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

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

41 (d) Provisions affecting any preexisting conditions provision.

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

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

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

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

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

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

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

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