

# Senate Bill 1003

Sponsored by Senators MONNES ANDERSON, KRUSE, Representatives HARKER, MAURER (Presession filed.)

## 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**.

Authorizes Director of Department of Consumer and Business Services to grant exemption from 95 percent retention rate requirement for association health plan according to rules adopted by director.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1  
2 Relating to association health plans; amending ORS 743.734 and section 13, chapter 752, Oregon  
3 Laws 2007; and declaring an emergency.

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

5 **SECTION 1.** ORS 743.734 is amended to read:

6 743.734. (1) Every group health benefit plan shall be subject to the provisions of ORS 743.733 to  
7 743.737, if the plan provides health benefits covering one or more employees of a small employer and  
8 if any one of the following conditions is met:

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

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

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

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

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

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

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

30 (5) Except in the case of a late enrollee and as otherwise provided in this section, a small em-

**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    employer carrier shall not impose different terms or conditions on the coverage, premiums or contri-  
 2    butions of any eligible employee in a small employer group that are based on the actual or expected  
 3    health status of any eligible employee.

4        (6) A small employer carrier may provide different health benefit plans to different categories  
 5    of employees of a small employer when the employer has chosen to establish different categories of  
 6    employees in a manner that does not relate to the actual or expected health status of such em-  
 7    ployees or their dependents. The categories must be based on bona fide employment-based classi-  
 8    fications that are consistent with the employer's usual business practice. Except as provided in ORS  
 9    743.736 (10):

10        (a) When a small employer carrier offers coverage to a small employer with no more than 25  
 11    eligible employees, the small employer carrier shall offer coverage to all eligible employees of the  
 12    small employer, without regard to the actual or expected health status of any eligible employee.

13        (b) When a small employer carrier offers coverage to a small employer with at least 26 but not  
 14    more than 50 eligible employees, the small employer carrier may limit coverage to the categories  
 15    of employees that the small employer has established as eligible for coverage, provided that the  
 16    categories are based on bona fide employment-based classifications that are consistent with the  
 17    employer's usual business practice.

18        (c) If the small employer elects to offer coverage to dependents of eligible employees, the small  
 19    employer carrier shall offer coverage to all dependents of eligible employees, without regard to the  
 20    actual or expected health status of any eligible dependent.

21        (7) A health benefit plan issued to a small employer group through an association health plan  
 22    is exempt from subsection (1) of this section. For purposes of this subsection, an association health  
 23    plan is group health insurance described in ORS 743.522 (2) or a health benefit plan that:

24        (a) Is delivered or issued for delivery to:

25        (A) An association or trust established in this state, that meets applicable requirements of ORS  
 26    743.524 or 743.526, or to a multiple employer welfare arrangement located inside this state, subject  
 27    to ORS 750.301 to 750.341; or

28        (B) An association or trust established in another state, that is approved by the Director **of the**  
 29    **Department of Consumer and Business Services** under ORS 731.486 (7), or a multiple employer  
 30    welfare arrangement located in another state that complies with ORS 750.311; and

31        (b) Satisfies all of the following:

32        (A) The initial premium rate for the association health plan does not vary by more than 50  
 33    percent across the groups of small employers under the plan.

34        (B) The association policyholder does not discriminate in membership requirements based on  
 35    actual or expected health status of individual enrollees or prospective enrollees, in accordance with  
 36    ORS 743.752 (5).

37        (C) Small employer groups that have two or more eligible employees and that meet the mem-  
 38    bership requirements for the association are not excluded from the association health plan.

39        (D) Except as provided in subsection (8) of this section, the association health plan maintains  
 40    a 95 percent retention rate.

41        (8)(a) The 95 percent retention rate in subsection (7) of this section does not include employer  
 42    groups that:

43        (A) Go out of business, whether through merger, acquisition or any other reason;

44        (B) No longer meet eligibility requirements for membership in the association, **including failure**  
 45    **to pay association dues;**

1 (C) No longer meet participation requirements for employers that are set forth in the plan doc-  
 2 uments; or

3 (D) Fail to pay premiums.

4 (b) An association health plan that fails to maintain the 95 percent retention rate during any  
 5 year may have 12 months to correct the retention level before losing the exemption under subsection  
 6 (7) of this section.

7 **(c) The director may exempt an association health plan from the 95 percent retention**  
 8 **rate requirement in subsection (7) of this section according to criteria prescribed by the di-**  
 9 **rector by rule.**

10 **SECTION 2.** ORS 743.734, as amended by section 9, chapter 752, Oregon Laws 2007, is amended  
 11 to read:

12 743.734. (1) Every group health benefit plan shall be subject to the provisions of ORS 743.733 to  
 13 743.737, if the plan provides health benefits covering one or more employees of a small employer and  
 14 if any one of the following conditions is met:

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

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

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

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

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

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

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

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

40 (6) A small employer carrier may provide different health benefit plans to different categories  
 41 of employees of a small employer when the employer has chosen to establish different categories of  
 42 employees in a manner that does not relate to the actual or expected health status of such em-  
 43 ployees or their dependents. The categories must be based on bona fide employment-based classi-  
 44 fications that are consistent with the employer's usual business practice. Except as provided in ORS  
 45 743.736 (10):

1 (a) When a small employer carrier offers coverage to a small employer with no more than 25  
2 eligible employees, the small employer carrier shall offer coverage to all eligible employees of the  
3 small employer, without regard to the actual or expected health status of any eligible employee.

4 (b) When a small employer carrier offers coverage to a small employer with at least 26 but not  
5 more than 50 eligible employees, the small employer carrier may limit coverage to the categories  
6 of employees that the small employer has established as eligible for coverage, provided that the  
7 categories are based on bona fide employment-based classifications that are consistent with the  
8 employer's usual business practice.

9 (c) If the small employer elects to offer coverage to dependents of eligible employees, the small  
10 employer carrier shall offer coverage to all dependents of eligible employees, without regard to the  
11 actual or expected health status of any eligible dependent.

12 **(7) A health benefit plan issued to a small employer group through an association health  
13 plan is exempt from subsection (1) of this section. For purposes of this subsection, an asso-  
14 ciation health plan is group health insurance described in ORS 743.522 (2) or a health benefit  
15 plan that:**

16 **(a) Is delivered or issued for delivery to:**

17 **(A) An association or trust established in this state, that meets applicable requirements  
18 of ORS 743.524 or 743.526, or to a multiple employer welfare arrangement located inside this  
19 state, subject to ORS 750.301 to 750.341; or**

20 **(B) An association or trust established in another state, that is approved by the Director  
21 of the Department of Consumer and Business Services under ORS 731.486 (7), or a multiple  
22 employer welfare arrangement located in another state that complies with ORS 750.311; and**

23 **(b) Satisfies all of the following:**

24 **(A) The initial premium rate for the association health plan does not vary by more than  
25 50 percent across the groups of small employers under the plan.**

26 **(B) The association policyholder does not discriminate in membership requirements based  
27 on actual or expected health status of individual enrollees or prospective enrollees, in ac-  
28 cordance with ORS 743.752 (5).**

29 **(C) Small employer groups that have two or more eligible employees and that meet the  
30 membership requirements for the association are not excluded from the association health  
31 plan.**

32 **(D) Except as provided in subsection (8) of this section, the association health plan  
33 maintains a 95 percent retention rate.**

34 **(8)(a) The 95 percent retention rate in subsection (7) of this section does not include  
35 employer groups that:**

36 **(A) Go out of business, whether through merger, acquisition or any other reason;**

37 **(B) No longer meet eligibility requirements for membership in the association, including  
38 failure to pay association dues;**

39 **(C) No longer meet participation requirements for employers that are set forth in the  
40 plan documents; or**

41 **(D) Fail to pay premiums.**

42 **(b) An association health plan that fails to maintain the 95 percent retention rate during  
43 any year may have 12 months to correct the retention level before losing the exemption un-  
44 der subsection (7) of this section.**

45 **(c) The director may exempt an association health plan from the 95 percent retention**

1 **rate requirement in subsection (7) of this section according to criteria prescribed by the di-**  
 2 **rector by rule.**

3 **SECTION 3.** ORS 743.734, as amended by section 9, chapter 752, Oregon Laws 2007, and section  
 4 2 of this 2010 Act, is amended to read:

5 743.734. (1) Every group health benefit plan shall be subject to the provisions of ORS 743.733 to  
 6 743.737, if the plan provides health benefits covering one or more employees of a small employer and  
 7 if any one of the following conditions is met:

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

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

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

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

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

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

23 (4) Except to determine the application of a preexisting conditions provision for a late enrollee,  
 24 a small employer carrier shall not use health statements when offering small employer health benefit  
 25 plans and shall not use any other method to determine the actual or expected health status of eli-  
 26 gible enrollees. Nothing in this subsection shall prevent a carrier from using health statements or  
 27 other information after enrollment for the purpose of providing services or arranging for the pro-  
 28 vision of services under a health benefit plan.

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

33 (6) A small employer carrier may provide different health benefit plans to different categories  
 34 of employees of a small employer when the employer has chosen to establish different categories of  
 35 employees in a manner that does not relate to the actual or expected health status of such em-  
 36 ployees or their dependents. The categories must be based on bona fide employment-based classi-  
 37 fications that are consistent with the employer's usual business practice. Except as provided in ORS  
 38 743.736 (10):

39 (a) When a small employer carrier offers coverage to a small employer with no more than 25  
 40 eligible employees, the small employer carrier shall offer coverage to all eligible employees of the  
 41 small employer, without regard to the actual or expected health status of any eligible employee.

42 (b) When a small employer carrier offers coverage to a small employer with at least 26 but not  
 43 more than 50 eligible employees, the small employer carrier may limit coverage to the categories  
 44 of employees that the small employer has established as eligible for coverage, provided that the  
 45 categories are based on bona fide employment-based classifications that are consistent with the

1 employer's usual business practice.

2 (c) If the small employer elects to offer coverage to dependents of eligible employees, the small  
3 employer carrier shall offer coverage to all dependents of eligible employees, without regard to the  
4 actual or expected health status of any eligible dependent.

5 *[(7) A health benefit plan issued to a small employer group through an association health plan is  
6 exempt from subsection (1) of this section. For purposes of this subsection, an association health plan  
7 is group health insurance described in ORS 743.522 (2) or a health benefit plan that:]*

8 *[(a) Is delivered or issued for delivery to:]*

9 *[(A) An association or trust established in this state, that meets applicable requirements of ORS  
10 743.524 or 743.526, or to a multiple employer welfare arrangement located inside this state, subject to  
11 ORS 750.301 to 750.341; or]*

12 *[(B) An association or trust established in another state, that is approved by the Director of the  
13 Department of Consumer and Business Services under ORS 731.486 (7), or a multiple employer welfare  
14 arrangement located in another state that complies with ORS 750.311; and]*

15 *[(b) Satisfies all of the following:]*

16 *[(A) The initial premium rate for the association health plan does not vary by more than 50 percent  
17 across the groups of small employers under the plan.]*

18 *[(B) The association policyholder does not discriminate in membership requirements based on ac-  
19 tual or expected health status of individual enrollees or prospective enrollees, in accordance with ORS  
20 743.752 (5).]*

21 *[(C) Small employer groups that have two or more eligible employees and that meet the membership  
22 requirements for the association are not excluded from the association health plan.]*

23 *[(D) Except as provided in subsection (8) of this section, the association health plan maintains a  
24 95 percent retention rate.]*

25 *[(8)(a) The 95 percent retention rate in subsection (7) of this section does not include employer  
26 groups that:]*

27 *[(A) Go out of business, whether through merger, acquisition or any other reason;]*

28 *[(B) No longer meet eligibility requirements for membership in the association, including failure to  
29 pay association dues;]*

30 *[(C) No longer meet participation requirements for employers that are set forth in the plan docu-  
31 ments; or]*

32 *[(D) Fail to pay premiums.]*

33 *[(b) An association health plan that fails to maintain the 95 percent retention rate during any year  
34 may have 12 months to correct the retention level before losing the exemption under subsection (7) of  
35 this section.]*

36 *[(c) The director may exempt an association health plan from the 95 percent retention rate re-  
37 quirement in subsection (7) of this section according to criteria prescribed by the director by rule.]*

38 **SECTION 4.** Section 13, chapter 752, Oregon Laws 2007, is amended to read:

39 **Sec. 13.** The amendments to ORS 731.146, 731.484, 731.486, 743.734 and 743.748 by sections 6 to  
40 [10 of this 2007 Act] **8 and 10, chapter 752, Oregon Laws 2007, and section 3 of this 2010 Act**  
41 become operative on January 2, 2014.

42 **SECTION 5. This 2010 Act being necessary for the immediate preservation of the public**  
43 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**  
44 **on its passage.**