

SENATE AMENDMENTS TO SENATE BILL 91

By COMMITTEE ON HEALTH CARE, HUMAN SERVICES AND RURAL HEALTH
POLICY

April 20

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and delete lines 3
2 and 4 and insert “743.730.”.

3 Delete lines 8 through 23 and insert:

4 **“SECTION 2. The Director of the Department of Consumer and Business Services shall**
5 **prescribe by rule the:**

6 **“(1) Requirements for a bronze plan to ensure that a bronze plan offered in this state is**
7 **actuarially equivalent to 60 percent of the full actuarial value of benefits included in the es-**
8 **sential health benefits package prescribed by the United States Secretary of Health and Hu-**
9 **man Services under 42 U.S.C. 18022(a).**

10 **“(2) Requirements for a silver plan to ensure that a silver plan offered in this state is**
11 **actuarially equivalent to 70 percent of the full actuarial value of benefits included in the es-**
12 **sential health benefits package prescribed by the United States Secretary of Health and Hu-**
13 **man Services under 42 U.S.C. 18022(a).**

14 **“(3) Form, level of coverage and benefit design for the bronze and silver plans to be used**
15 **by carriers in the individual and small group market in this state.**

16 **“SECTION 3. As a condition of transacting business in the health benefit plan market in**
17 **this state, a carrier shall offer to residents of this state bronze and silver plans approved by**
18 **the Department of Consumer and Business Services as meeting the requirements of section**
19 **2 of this 2011 Act in each individual and small group market in which the carrier offers a**
20 **health benefit plan through the Oregon Health Insurance Exchange or outside of the ex-**
21 **change.”.**

22 Delete pages 2 through 31 and insert:

23 **“SECTION 5. ORS 743.730 is amended to read:**

24 **“743.730. For purposes of ORS 743.730 to 743.773:**

25 **“(1) ‘Actuarial certification’ means a written statement by a member of the American Academy**
26 **of Actuaries or other individual acceptable to the Director of the Department of Consumer and**
27 **Business Services that a carrier is in compliance with the provisions of ORS 743.736, 743.760 or**
28 **743.761, based upon the person’s examination, including a review of the appropriate records and of**
29 **the actuarial assumptions and methods used by the carrier in establishing premium rates for small**
30 **employer and portability health benefit plans.**

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

35 **“(3) ‘Affiliation period’ means, under the terms of a group health benefit plan issued by a health**

1 care service contractor, a period:

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

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

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

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

9 “(4) ‘Basic health benefit plan’ means a health benefit plan [*for small employers*] **that provides**
10 **bronze plan coverage and** that is required to be offered by all small employer carriers and ap-
11 proved by the Director of the Department of Consumer and Business Services in accordance with
12 ORS 743.736.

13 “(5) ‘Bona fide association’ means an association that meets the requirements of 42 U.S.C.
14 [*300gg-11*] **300gg-91** as amended and in effect on [*July 1, 1997*] **March 23, 2010.**

15 “(6) **‘Bronze plan’ means a health benefit plan that meets the criteria for a bronze plan**
16 **prescribed by the director by rule pursuant to section 2 of this 2011 Act.**

17 “[*6*] (7) ‘Carrier’ means any person who provides health benefit plans in this state, including
18 a licensed insurance company, a health care service contractor, a health maintenance organization,
19 an association or group of employers that provides benefits by means of a multiple employer welfare
20 arrangement or any other person or corporation responsible for the payment of benefits or provision
21 of services.

22 “(8) **‘Catastrophic plan’ means a health benefit plan that meets the requirements for a**
23 **catastrophic plan under 42 U.S.C. 18022(e) and that is offered through the Oregon Health**
24 **Insurance Exchange.**

25 “[*7*] (9) ‘Committee’ means the Health Insurance Reform Advisory Committee created under
26 ORS 743.745.

27 “[*8*] (10) ‘Creditable coverage’ means prior health care coverage as defined in 42 U.S.C. 300gg
28 as amended and in effect on [*July 1, 1997*] **February 27, 2010**, and includes coverage remaining in
29 force at the time the enrollee obtains new coverage.

30 “[*9*] *‘Department’ means the Department of Consumer and Business Services.*]

31 “[*10*] (11) ‘Dependent’ means the spouse or child of an eligible employee, subject to applicable
32 terms of the health benefit plan covering the employee.

33 “[*11*] *‘Director’ means the Director of the Department of Consumer and Business Services.*]

34 “(12) ‘Eligible employee’ means an employee of a small employer who works on a regularly
35 scheduled basis, with a normal work week of 17.5 or more hours. The employer may determine hours
36 worked for eligibility between 17.5 and 40 hours per week subject to rules of the carrier. ‘Eligible
37 employee’ does not include employees who work on a temporary, seasonal or substitute basis. Em-
38 ployees who have been employed by the small employer for fewer than 90 days are not eligible em-
39 ployees unless the small employer so allows.

40 “(13) ‘Employee’ means any individual employed by an employer.

41 “(14) ‘Enrollee’ means an employee, dependent of the employee or an individual otherwise eligi-
42 ble for a group, individual or portability health benefit plan who has enrolled for coverage under the
43 terms of the plan.

44 “(15) **‘Exchange’ means the Oregon Health Insurance Exchange established pursuant to**
45 **section 17, chapter 595, Oregon Laws 2009.**

1 “[(15)] (16) ‘Exclusion period’ means a period during which specified treatments or services are
2 excluded from coverage.

3 “[(16)] (17) [*Financially impaired*] means a member that] **‘Financial impairment’ means that**
4 **a carrier** is not insolvent and is:

5 “(a) Considered by the director [*of the Department of Consumer and Business Services*] to be
6 potentially unable to fulfill its contractual obligations; or

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

8 “[(17)(a)] (18)(a) ‘Geographic average rate’ means the arithmetical average of the lowest pre-
9 mium and the corresponding highest premium to be charged by a carrier in a geographic area es-
10 tablished by the director for the carrier’s:

11 “(A) [*Small employer*] Group health benefit plans **offered to small employers**;

12 “(B) Individual health benefit plans; or

13 “(C) Portability health benefit plans.

14 “(b) ‘Geographic average rate’ does not include premium differences that are due to differences
15 in benefit design or family composition.

16 “[(18)] (19) ‘Group eligibility waiting period’ means, with respect to a group health benefit plan,
17 the period of employment or membership with the group that a prospective enrollee must complete
18 before plan coverage begins.

19 “[(19)(a)] (20)(a) ‘Health benefit plan’ means any hospital expense, medical expense or hospital
20 or medical expense policy or certificate, health care service contractor or health maintenance or-
21 ganization subscriber contract, any plan provided by a multiple employer welfare arrangement or
22 by another benefit arrangement defined in the federal Employee Retirement Income Security Act of
23 1974, as amended.

24 “(b) ‘Health benefit plan’ does not include coverage for accident only, specific disease or condi-
25 tion only, credit, disability income, coverage of Medicare services pursuant to contracts with the
26 federal government, Medicare supplement insurance policies, coverage of CHAMPUS services pur-
27 suant to contracts with the federal government, benefits delivered through a flexible spending ar-
28 rangement established pursuant to section 125 of the Internal Revenue Code of 1986, as amended,
29 when the benefits are provided in addition to a group health benefit plan, long term care insurance,
30 hospital indemnity only, short term health insurance policies (the duration of which does not exceed
31 six months including renewals), student accident and health insurance policies, dental only, vision
32 only, a policy of stop-loss coverage that meets the requirements of ORS 742.065, coverage issued as
33 a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law,
34 automobile medical payment insurance or insurance under which benefits are payable with or
35 without regard to fault and that is statutorily required to be contained in any liability insurance
36 policy or equivalent self-insurance.

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

40 “[(20)] (21) ‘Health statement’ means any information that is intended to inform the carrier or
41 insurance producer of the health status of an enrollee or prospective enrollee in a health benefit
42 plan. ‘Health statement’ includes the standard health statement developed by the Health Insurance
43 Reform Advisory Committee.

44 “[(21)] (22) ‘Implementation of chapter 836, Oregon Laws 1989’ means that the Health Services
45 Commission has prepared a priority list, the Legislative Assembly has enacted funding of the list

1 and all necessary federal approval, including waivers, has been obtained.

2 “[22] (23) ‘Individual coverage waiting period’ means a period in an individual health benefit
3 plan during which no premiums may be collected and health benefit plan coverage issued is not ef-
4 fective.

5 “[23] (24) ‘Initial enrollment period’ means a period of at least 30 days following commence-
6 ment of the first eligibility period for an individual.

7 “[24] (25) ‘Late enrollee’ means an individual who enrolls in a group health benefit plan sub-
8 sequent to the initial enrollment period during which the individual was eligible for coverage but
9 declined to enroll. However, an eligible individual shall not be considered a late enrollee if:

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

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

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

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

18 “(e) The individual’s coverage under Medicaid, Medicare, CHAMPUS, Indian Health Service or
19 a publicly sponsored or subsidized health plan, including but not limited to the medical assistance
20 program under ORS chapter 414, has been involuntarily terminated within 63 days of applying for
21 coverage in a group health benefit plan.

22 “(26) **‘Minimal essential coverage’ has the meaning given that term in section 5000A(f)**
23 **of the Internal Revenue Code.**

24 “[25] (27) ‘Multiple employer welfare arrangement’ means a multiple employer welfare ar-
25 rangement as defined in section 3 of the federal Employee Retirement Income Security Act of 1974,
26 as amended, 29 U.S.C. 1002, that is subject to ORS 750.301 to 750.341.

27 “[26] (28) ‘Oregon Medical Insurance Pool’ means the pool created under ORS 735.610.

28 “[27] (29) ‘Preexisting conditions provision’ means a health benefit plan provision applicable
29 to an enrollee or late enrollee that excludes coverage for services, charges or expenses incurred
30 during a specified period immediately following enrollment for a condition for which medical advice,
31 diagnosis, care or treatment was recommended or received during a specified period immediately
32 preceding enrollment. For purposes of ORS 743.730 to 743.773:

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

34 “(b) Genetic information does not constitute a preexisting condition in the absence of a diagno-
35 sis of the condition related to such information; and

36 “(c) A preexisting conditions provision shall not be applied to a newborn child or adopted child
37 who obtains coverage in accordance with ORS 743A.090.

38 “[28] (30) ‘Premium’ includes insurance premiums or other fees charged for a health benefit
39 plan, including the costs of benefits paid or reimbursements made to or on behalf of enrollees cov-
40 ered by the plan.

41 “[29] (31) ‘Rating period’ means the 12-month calendar period for which premium rates estab-
42 lished by a carrier are in effect, as determined by the carrier.

43 “(32) **‘Silver plan’ means an individual or small group health benefit plan that meets the**
44 **criteria for a silver plan prescribed by the director by rule pursuant to section 2 of this 2011**
45 **Act.**

1 “[(30)(a)] (33)(a) ‘Small employer’ means an employer that employed an average of at least two
2 but not more than 50 employees on business days during the preceding calendar year, the majority
3 of whom are employed within this state, and that employs at least two eligible employees on the date
4 on which coverage takes effect under a health benefit plan issued by a small employer carrier.

5 “(b) Any person that is treated as a single employer under subsection (b), (c), (m) or (o) of sec-
6 tion 414 of the Internal Revenue Code of 1986 shall be treated as one employer for purposes of this
7 subsection.

8 “(c) The determination of whether an employer that was not in existence throughout the pre-
9 ceding calendar year is a small employer shall be based on the average number of employees that
10 it is reasonably expected the employer will employ on business days in the current calendar year.

11 “[(31)] (34) ‘Small employer carrier’ means any carrier that offers health benefit plans covering
12 eligible employees of one or more small employers. A fully insured multiple employer welfare ar-
13 rangement otherwise exempt under ORS 750.303 (4) may elect to be a small employer carrier gov-
14 erned by the provisions of ORS 743.733 to 743.737.

15 “**SECTION 6. Sections 2, 3 and 4 of this 2011 Act and the amendments to ORS 743.730 by**
16 **section 5 of this 2011 Act become operative on January 2, 2014.**

17 “**SECTION 7. The Director of the Department of Consumer and Business Services may**
18 **take any action before the operative date specified in section 6 of this 2011 Act that is nec-**
19 **essary to enable the director to exercise, on and after the operative date specified in section**
20 **6 of this 2011 Act, all of the duties, functions and powers conferred on the director by this**
21 **2011 Act.”.**

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