

## HOUSE AMENDMENTS TO RESOLVE CONFLICTS TO A-ENGROSSED SENATE BILL 97

By COMMITTEE ON BUSINESS AND LABOR

May 22

1 On page 17 of the printed A-engrossed bill, after line 43, insert:

2 **“SECTION 16a. If Senate Bill 754 becomes law, section 16 of this 2017 Act (amending ORS**  
3 **743B.013) is repealed and ORS 743B.013, as amended by section 23, chapter \_\_, Oregon Laws**  
4 **2017 (Enrolled Senate Bill 754), is amended to read:**

5 “743B.013. (1) A health benefit plan issued to a small employer:

6 “(a) Other than a grandfathered health plan, must cover essential health benefits consistent with  
7 42 U.S.C. 300gg-11.

8 “(b) May require an affiliation period that does not exceed two months for an enrollee or 90  
9 days for a late enrollee.

10 “(c) May not apply a preexisting condition exclusion to any enrollee.

11 “(2) Late enrollees in a small employer health benefit plan may be subjected to a group eligi-  
12 bility waiting period that does not exceed 90 days.

13 “(3) Each small employer health benefit plan [*shall be*] **is** renewable with respect to all eligible  
14 enrollees at the option of the policyholder, small employer or contract holder unless:

15 “(a) The policyholder, small employer or contract holder fails to pay the required premiums.

16 “(b) The policyholder, small employer or contract holder or, with respect to coverage of indi-  
17 vidual enrollees, an enrollee or a representative of an enrollee engages in fraud or makes an in-  
18 tentional misrepresentation of a material fact as prohibited by the terms of the plan.

19 “(c) The number of enrollees covered under the plan is less than the number or percentage of  
20 enrollees required by participation requirements under the plan.

21 “(d) The small employer fails to comply with the contribution requirements under the health  
22 benefit plan.

23 “(e) The carrier discontinues both offering and renewing all of [*its*] **the carrier’s** small employer  
24 health benefit plans in this state or in a specified service area within this state. In order to dis-  
25 continue plans under this paragraph, the carrier:

26 “(A) Must give notice of the decision to the Department of Consumer and Business Services and  
27 to all policyholders covered by the plans;

28 “(B) May not cancel coverage under the plans for 180 days after the date of the notice required  
29 under subparagraph (A) of this paragraph if coverage is discontinued in the entire state or[, *except*  
30 *as provided in subparagraph (C) of this paragraph,*] in a specified service area[, *and*], **except that:**

31 **“(i) The carrier shall cancel coverage in accordance with subparagraph (C) of this para-**  
32 **graph if the cancellation is for a specified service area in the circumstances described in**  
33 **subparagraph (C) of this paragraph; and**

34 **“(ii) The Director of the Department of Consumer and Business Services may specify a**  
35 **cancellation date other than the cancellation date specified in this subparagraph if the car-**

1 **rier is subject to a delinquency proceeding, as defined in ORS 734.014; and**

2 “(C) May not cancel coverage under the plans for 90 days after the date of the notice required  
3 under subparagraph (A) of this paragraph if coverage is discontinued in a specified service area  
4 because of an inability to reach an agreement with the health care providers or organization of  
5 health care providers to provide services under the plans within the service area.

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

10 “(A) Must give notice to the department and to all policyholders covered by the plan;

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

13 “(C) Must offer in writing to each small employer covered by the plan, all other small employer  
14 health benefit plans that the carrier offers to small employers in the specified service area. The  
15 carrier shall issue any such plans pursuant to the provisions of ORS 743B.010 to 743B.013. The  
16 carrier shall offer the plans at least 90 days prior to discontinuation.

17 “(g) The carrier discontinues both offering and renewing a health benefit plan, other than a  
18 grandfathered health plan, for all small employers in this state or in a specified service area within  
19 this state, other than a plan discontinued under paragraph (f) of this subsection.

20 “(h) The carrier discontinues both offering and renewing a grandfathered health plan for all  
21 small employers in this state or in a specified service area within this state, other than a plan dis-  
22 continued under paragraph (f) of this subsection.

23 “(i) With respect to plans that are being discontinued under paragraph (g) or (h) of this sub-  
24 section, the carrier must:

25 “(A) Offer in writing to each small employer covered by the plan, all other health benefit plans  
26 that the carrier offers to small employers in the specified service area.

27 “(B) Issue any such plans pursuant to the provisions of ORS 743B.010 to 743B.013.

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

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

31 “(j) The Director of the Department of Consumer and Business Services orders the carrier to  
32 discontinue coverage in accordance with procedures specified or approved by the director upon  
33 finding that the continuation of the coverage would:

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

35 “(B) Impair the carrier’s ability to meet contractual obligations.

36 “(k) In the case of a small employer health benefit plan that delivers covered services through  
37 a specified network of health care providers, there is no longer any enrollee who lives, resides or  
38 works in the service area of the provider network.

39 “(L) In the case of a health benefit plan that is offered in the small employer market only to  
40 one or more bona fide associations, the membership of an employer in the association ceases and  
41 the termination of coverage is not related to the health status of any enrollee.

42 “(4) A carrier may modify a small employer health benefit plan at the time of coverage renewal.  
43 The modification is not a discontinuation of the plan under subsection (3)(e), (g) and (h) of this sec-  
44 tion.

45 “(5) Notwithstanding any provision of subsection (3) of this section to the contrary, a carrier

1 may not rescind the coverage of an enrollee in a small employer health benefit plan unless:

2 “(a) The enrollee or a person seeking coverage on behalf of the enrollee:

3 “(A) Performs an act, practice or omission that constitutes fraud; or

4 “(B) Makes an intentional misrepresentation of a material fact as prohibited by the terms of the  
5 plan;

6 “(b) The carrier provides at least 30 days’ advance written notice, in the form and manner pre-  
7 scribed by the department, to the enrollee; and

8 “(c) The carrier provides notice of the rescission to the department in the form, manner and  
9 time frame prescribed by the department by rule.

10 “(6) Notwithstanding any provision of subsection (3) of this section to the contrary, a carrier  
11 may not rescind a small employer health benefit plan unless:

12 “(a) The small employer or a representative of the small employer:

13 “(A) Performs an act, practice or omission that constitutes fraud; or

14 “(B) Makes an intentional misrepresentation of a material fact as prohibited by the terms of the  
15 plan;

16 “(b) The carrier provides at least 30 days’ advance written notice, in the form and manner pre-  
17 scribed by the department, to each plan enrollee who would be affected by the rescission of cover-  
18 age; and

19 “(c) The carrier provides notice of the rescission to the department in the form, manner and  
20 time frame prescribed by the department by rule.

21 “(7)(a) A carrier may continue to enforce reasonable employer participation and contribution  
22 requirements on small employers. However, participation and contribution requirements shall be  
23 applied uniformly among all small employer groups with the same number of eligible employees ap-  
24 plying for coverage or receiving coverage from the carrier. In determining minimum participation  
25 requirements, a carrier shall count only those employees who are not covered by an existing group  
26 health benefit plan, Medicaid, Medicare, TRICARE, Indian Health Service or a publicly sponsored  
27 or subsidized health plan, including but not limited to the medical assistance program under ORS  
28 chapter 414.

29 “(b) A carrier may not deny a small employer’s application for coverage under a health benefit  
30 plan based on participation or contribution requirements but may require small employers that do  
31 not meet participation or contribution requirements to enroll during the open enrollment period  
32 beginning November 15 and ending December 15.

33 “(8) Premium rates for small employer health benefit plans, except grandfathered health plans,  
34 *[shall be]* **are** subject to the following provisions:

35 “(a) Each carrier must file with the department the initial geographic average rate and any  
36 changes in the geographic average rate with respect to each health benefit plan issued by the car-  
37 rier to small employers.

38 “(b)(A) The variations in premium rates charged during a rating period for health benefit plans  
39 issued to small employers *[shall]* **must** be based solely on the factors specified in subparagraph (B)  
40 of this paragraph. A carrier may elect which of the factors specified in subparagraph (B) of this  
41 paragraph apply to premium rates for health benefit plans for small employers. All other factors  
42 must be applied in the same actuarially sound way to all small employer health benefit plans.

43 “(B) The variations in premium rates described in subparagraph (A) of this paragraph may be  
44 based only on one or more of the following factors as prescribed by the department by rule:

45 “(i) The ages of enrolled employees and their dependents, except that the rate for adults may

1 not vary by more than three to one;

2 “(ii) The level at which enrolled employees and *[their]* dependents **of enrolled employees** en-  
3 gage in tobacco use, except that the rate may not vary by more than 1.5 to one; and

4 “(iii) Adjustments to reflect differences in family composition.

5 “(C) A carrier shall apply the carrier’s schedule of premium rate variations as approved by the  
6 department and in accordance with this paragraph. Except as otherwise provided in this section, the  
7 premium rate established by a carrier for a small employer health benefit plan *[shall apply]* **applies**  
8 uniformly to all employees of the small employer enrolled in that plan.

9 “(c) Except as provided in paragraph (b) of this subsection, the variation in premium rates be-  
10 tween different health benefit plans offered by a carrier to small employers must be based solely on  
11 objective differences in plan design or coverage, age, tobacco use and family composition and must  
12 not include differences based on the risk characteristics of groups assumed to select a particular  
13 health benefit plan.

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

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

21 “(B) Any adjustment attributable to changes in age and differences in family composition.

22 “(9) Premium rates for grandfathered health plans *[shall be]* **are** subject to requirements pre-  
23 scribed by the department by rule.

24 “(10) In connection with the offering for sale of any health benefit plan to a small employer,  
25 each carrier shall make a reasonable disclosure as part of *[its]* **the carrier’s** solicitation and sales  
26 materials of:

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

28 “(b) The authority of the carrier to adjust rates and premiums, and the extent to which the  
29 carrier considers age, tobacco use, family composition and geographic factors in establishing and  
30 adjusting rates and premiums; and

31 “(c) The benefits and premiums for all health insurance coverage for which the employer is  
32 qualified.

33 “(11)(a) Each carrier shall maintain at *[its]* **the carrier’s** principal place of business a complete  
34 and detailed description of *[its]* **the carrier’s** rating practices and renewal underwriting practices  
35 relating to *[its]* **the carrier’s** small employer health benefit plans, including information and doc-  
36 umentation that demonstrate that *[its]* **the carrier’s** rating methods and practices are based upon  
37 commonly accepted actuarial practices and are in accordance with sound actuarial principles.

38 “(b) A carrier offering a small employer health benefit plan shall file with the department at  
39 least once every 12 months an actuarial certification that the carrier is in compliance with ORS  
40 743B.010 to 743B.013 and that the rating methods of the carrier are actuarially sound. Each certi-  
41 fication *[shall]* **must** be in a uniform form and manner and *[shall]* **must** contain such information  
42 as specified by the department. *[A copy of each certification shall be retained by]* The carrier *[at its]*  
43 **shall retain a copy of each certification at the carrier’s** principal place of business. A carrier  
44 is not required to file the actuarial certification under this paragraph if the department has ap-  
45 proved the carrier’s rate filing within the preceding 12-month period.

1           “(c) A carrier shall make the information and documentation described in paragraph (a) of this  
2 subsection available to the department upon request. Except as provided in ORS 743.018 and except  
3 in cases of violations of ORS 743B.010 to 743B.013, the information [*shall be considered*] **is** proprie-  
4 tary and trade secret information and [*shall not be*] **is not** subject to disclosure to persons outside  
5 the department except as agreed to by the carrier or as ordered by a court of competent jurisdiction.

6           “(12) A carrier [*shall*] **may** not provide any financial or other incentive to any insurance pro-  
7 ducer that would encourage the insurance producer to sell health benefit plans of the carrier to  
8 small employer groups based on a small employer group’s anticipated claims experience.

9           “(13) For purposes of this section, the date a small employer health benefit plan is continued  
10 [*shall be*] **is** the anniversary date of the first issuance of the health benefit plan.

11           “(14) A carrier [*must*] **shall** include a provision that offers coverage to all eligible employees of  
12 a small employer and to all dependents of the eligible employees to the extent the employer chooses  
13 to offer coverage to dependents.

14           “(15) All small employer health benefit plans [*shall*] **must** contain special enrollment periods  
15 during which eligible employees and dependents may enroll for coverage, as provided by federal law  
16 and rules adopted by the department.

17           “(16) A small employer health benefit plan may not impose annual or lifetime limits on the dollar  
18 amount of essential health benefits.”.

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