

Requested by SENATE COMMITTEE ON HEALTH CARE

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO
A-ENGROSSED HOUSE BILL 2341**

1 On page 1 of the printed A-engrossed bill, line 2, after “insurance;” insert
2 “creating new provisions;”.

3 In line 3, after “746.600;” insert “repealing section 1, chapter ___, Oregon
4 Laws 2017 (Enrolled Senate Bill 271);”.

5 On page 12, after line 11, insert:

6 **“SECTION 8a. If Senate Bill 271 becomes law, section 1, chapter ___,**
7 **Oregon Laws 2017 (Enrolled Senate Bill 271) (amending ORS 743B.005),**
8 **is repealed and ORS 743B.005, as amended by section 8 of this 2017 Act,**
9 **is amended to read:**

10 “743B.005. For purposes of ORS 743.004, 743.007, 743.022, 743.535, 743B.003
11 to 743B.127 and 743B.128:

12 “(1) ‘Actuarial certification’ means a written statement by a member of
13 the American Academy of Actuaries or other individual acceptable to the
14 Director of the Department of Consumer and Business Services that a carrier
15 is in compliance with the provisions of ORS 743B.012 based upon the person’s
16 examination, including a review of the appropriate records and of the
17 actuarial assumptions and methods used by the carrier in establishing pre-
18 mium rates for small employer health benefit plans.

19 “(2) ‘Affiliate’ of, or person ‘affiliated’ with, a specified person means any
20 carrier who, directly or indirectly through one or more intermediaries, con-
21 trols or is controlled by or is under common control with a specified person.

1 For purposes of this definition, ‘control’ has the meaning given that term in
2 ORS 732.548.

3 “(3) ‘Affiliation period’ means, under the terms of a group health benefit
4 plan issued by a health care service contractor, a period:

5 “(a) That is applied uniformly and without regard to any health status
6 related factors to an enrollee or late enrollee;

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

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

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

14 “(4) ‘Bona fide association’ means an association that:

15 “(a) Has been in active existence for at least five years;

16 “(b) Has been formed and maintained in good faith for purposes other
17 than obtaining insurance;

18 “(c) Does not condition membership in the association on any factor re-
19 lating to the health status of an individual or the individual’s dependent or
20 employee;

21 “(d) Makes health insurance coverage that is offered through the associ-
22 ation available to all members of the association regardless of the health
23 status of the member or individuals who are eligible for coverage through
24 the member;

25 “(e) Does not make health insurance coverage that is offered through the
26 association available other than in connection with a member of the associ-
27 ation;

28 “(f) Has a constitution and bylaws; and

29 “(g) Is not owned or controlled by a carrier, producer or affiliate of a
30 carrier or producer.

1 “(5) ‘Carrier’ means any person who provides health benefit plans in this
2 state, including:

3 “(a) A licensed insurance company;

4 “(b) A health care service contractor;

5 “(c) A health maintenance organization;

6 “(d) An association or group of employers that provides benefits by means
7 of a multiple employer welfare arrangement and that:

8 “(A) Is subject to ORS 750.301 to 750.341; or

9 “(B) Is fully insured and otherwise exempt under ORS 750.303 (4) but
10 elects to be governed by ORS 743B.010 to 743B.013; or

11 “(e) Any other person or corporation responsible for the payment of ben-
12 efits or provision of services.

13 “(6) ‘Dependent’ means the spouse or child of an eligible employee, subject
14 to applicable terms of the health benefit plan covering the employee.

15 “(7) ‘Eligible employee’ means an employee who is eligible for coverage
16 under a group health benefit plan.

17 “(8) ‘Employee’ means any individual employed by an employer.

18 “(9) ‘Enrollee’ means an employee, dependent of the employee or an indi-
19 vidual otherwise eligible for a group or individual health benefit plan who
20 has enrolled for coverage under the terms of the plan.

21 “(10) ‘Exchange’ means an American Health Benefit Exchange described
22 in 42 U.S.C. 18031, 18032, 18033 and 18041.

23 “(11) ‘Exclusion period’ means a period during which specified treatments
24 or services are excluded from coverage.

25 “(12) ‘Financial impairment’ means that a carrier is not insolvent and is:

26 “(a) Considered by the director to be potentially unable to fulfill its con-
27 tractual obligations; or

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

30 “(13)(a) ‘Geographic average rate’ means the arithmetical average of the

1 lowest premium and the corresponding highest premium to be charged by a
2 carrier in a geographic area established by the director for the carrier's:

3 “(A) Group health benefit plans offered to small employers; or

4 “(B) Individual health benefit plans.

5 “(b) ‘Geographic average rate’ does not include premium differences that
6 are due to differences in benefit design, age, tobacco use or family composi-
7 tion.

8 “(14) ‘Grandfathered health plan’ has the meaning prescribed by rule by
9 the United States Secretaries of Labor, Health and Human Services and the
10 Treasury pursuant to 42 U.S.C. 18011(e) that is in effect on January 1, 2017.

11 “(15) ‘Group eligibility waiting period’ means, with respect to a group
12 health benefit plan, the period of employment or membership with the group
13 that a prospective enrollee must complete before plan coverage begins.

14 “(16)(a) ‘Health benefit plan’ means any:

15 “(A) Hospital expense, medical expense or hospital or medical expense
16 policy or certificate;

17 “(B) Subscriber contract of a health care service contractor as defined in
18 ORS 750.005; or

19 “(C) Plan provided by a multiple employer welfare arrangement or by
20 another benefit arrangement defined in the federal Employee Retirement In-
21 come Security Act of 1974, as amended, to the extent that the plan is subject
22 to state regulation.

23 “(b) ‘Health benefit plan’ does not include:

24 “(A) Coverage for accident only, specific disease or condition only, credit
25 or disability income;

26 “(B) Coverage of Medicare services pursuant to contracts with the federal
27 government;

28 “(C) Medicare supplement insurance policies;

29 “(D) Coverage of TRICARE services pursuant to contracts with the fed-
30 eral government;

1 “(E) Benefits delivered through a flexible spending arrangement estab-
2 lished pursuant to section 125 of the Internal Revenue Code of 1986, as
3 amended, when the benefits are provided in addition to a group health ben-
4 efit plan;

5 “(F) Separately offered long term care insurance, including, but not lim-
6 ited to, coverage of nursing home care, home health care and community-
7 based care;

8 “(G) Independent, noncoordinated, hospital-only indemnity insurance or
9 other fixed indemnity insurance;

10 “(H) Short term health insurance policies that are in effect for periods
11 of three months or less, including the term of a renewal of the policy;

12 “(I) Dental only coverage;

13 “(J) Vision only coverage;

14 “(K) Stop-loss coverage that meets the requirements of ORS 742.065;

15 “(L) Coverage issued as a supplement to liability insurance;

16 “(M) Insurance arising out of a workers’ compensation or similar law;

17 “(N) Automobile medical payment insurance or insurance under which
18 benefits are payable with or without regard to fault and that is statutorily
19 required to be contained in any liability insurance policy or equivalent self-
20 insurance; or

21 “(O) Any employee welfare benefit plan that is exempt from state regu-
22 lation because of the federal Employee Retirement Income Security Act of
23 1974, as amended.

24 “(c) For purposes of this subsection, renewal of a short term health in-
25 surance policy includes the issuance of a new short term health insurance
26 policy by an insurer to a policyholder within 60 days after the expiration of
27 a policy previously issued by the insurer to the policyholder.

28 “(17) ‘Individual health benefit plan’ means a health benefit plan:

29 “(a) That is issued to an individual policyholder; or

30 “(b) That provides individual coverage through a trust, association or

1 similar group, regardless of the situs of the policy or contract.

2 “(18) ‘Initial enrollment period’ means a period of at least 30 days fol-
3 lowing commencement of the first eligibility period for an individual.

4 “(19) ‘Late enrollee’ means an individual who enrolls in a group health
5 benefit plan subsequent to the initial enrollment period during which the
6 individual was eligible for coverage but declined to enroll. However, an eli-
7 gible individual shall not be considered a late enrollee if:

8 “(a) The individual qualifies for a special enrollment period in accordance
9 with 42 U.S.C. 300gg or as prescribed by rule by the Department of Consumer
10 and Business Services;

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

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

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

19 “(e) The individual’s coverage under Medicaid, Medicare, TRICARE, In-
20 dian Health Service or a publicly sponsored or subsidized health plan, in-
21 cluding, but not limited to, the medical assistance program under ORS
22 chapter 414, has been involuntarily terminated within 63 days after applying
23 for coverage in a group health benefit plan.

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

28 “(21) ‘Preexisting condition exclusion’ means:

29 “(a) Except for a grandfathered health plan, a limitation or exclusion of
30 benefits or a denial of coverage based on a medical condition being present

1 before the effective date of coverage or before the date coverage is denied,
2 whether or not any medical advice, diagnosis, care or treatment was recom-
3 mended or received for the condition before the date of coverage or denial
4 of coverage.

5 “(b) With respect to a grandfathered health plan, a provision applicable
6 to an enrollee or late enrollee that excludes coverage for services, charges
7 or expenses incurred during a specified period immediately following enroll-
8 ment for a condition for which medical advice, diagnosis, care or treatment
9 was recommended or received during a specified period immediately preced-
10 ing enrollment. For purposes of this paragraph pregnancy and genetic infor-
11 mation do not constitute preexisting conditions.

12 “(22) ‘Premium’ includes insurance premiums or other fees charged for a
13 health benefit plan, including the costs of benefits paid or reimbursements
14 made to or on behalf of enrollees covered by the plan.

15 “(23) ‘Rating period’ means the 12-month calendar period for which pre-
16 mium rates established by a carrier are in effect, as determined by the car-
17 rier.

18 “(24) ‘Representative’ does not include an insurance producer or an em-
19 ployee or authorized representative of an insurance producer or carrier.

20 “(25) ‘Small employer’ [*has the meaning given that term in 42 U.S.C. 18024*
21 *as amended and in effect on January 1, 2017*] **means an employer who**
22 **employed an average of at least one but not more than 50 full-time**
23 **equivalent employees on business days during the preceding calendar**
24 **year and who employs at least one full-time equivalent employee on**
25 **the first day of the plan year, determined in accordance with a meth-**
26 **odology prescribed by the Department of Consumer and Business Ser-**
27 **vices by rule.**

28 **“SECTION 8b. The amendments to ORS 743B.005 by section 8a of**
29 **this 2017 Act become operative on January 1, 2018.”.**

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