

Requested by HOUSE COMMITTEE ON BUSINESS AND LABOR

**PROPOSED AMENDMENTS TO RESOLVE CONFLICTS TO  
A-ENGROSSED SENATE BILL 97**

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**  
3 **Act (amending ORS 743B.013) is repealed and ORS 743B.013, as**  
4 **amended by section 23, chapter \_\_, Oregon Laws 2017 (Enrolled Senate**  
5 **Bill 754), is amended to read:**

6 “743B.013. (1) A health benefit plan issued to a small employer:

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

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

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

12 “(2) Late enrollees in a small employer health benefit plan may be sub-  
13 jected to a group eligibility waiting period that does not exceed 90 days.

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

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

19 “(b) The policyholder, small employer or contract holder or, with respect  
20 to coverage of individual enrollees, an enrollee or a representative of an  
21 enrollee engages in fraud or makes an intentional misrepresentation of a

1 material fact as prohibited by the terms of the plan.

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

5 “(d) The small employer fails to comply with the contribution require-  
6 ments under the health benefit plan.

7 “(e) The carrier discontinues both offering and renewing all of *[its]* **the**  
8 **carrier’s** small employer health benefit plans in this state or in a specified  
9 service area within this state. In order to discontinue plans under this par-  
10 agraph, the carrier:

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

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

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

21 “(ii) **The Director of the Department of Consumer and Business**  
22 **Services may specify a cancellation date other than the cancellation**  
23 **date specified in this subparagraph if the carrier is subject to a delin-**  
24 **quency proceeding, as defined in ORS 734.014; and**

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

30 “(f) The carrier discontinues both offering and renewing a small employer

1 health benefit plan in a specified service area within this state because of  
2 an inability to reach an agreement with the health care providers or organ-  
3 ization of health care providers to provide services under the plan within the  
4 service area. In order to discontinue a plan under this paragraph, the carrier:

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

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

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

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

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

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

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

27 “(B) Issue any such plans pursuant to the provisions of ORS 743B.010 to  
28 743B.013.

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

30 “(D) Act uniformly without regard to the claims experience of the affected

1 policyholders or the health status of any current or prospective enrollee.

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

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

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

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

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

16 “(4) A carrier may modify a small employer health benefit plan at the  
17 time of coverage renewal. The modification is not a discontinuation of the  
18 plan under subsection (3)(e), (g) and (h) of this section.

19 “(5) Notwithstanding any provision of subsection (3) of this section to the  
20 contrary, a carrier may not rescind the coverage of an enrollee in a small  
21 employer health benefit plan unless:

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

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

24 “(B) Makes an intentional misrepresentation of a material fact as pro-  
25 hibited by the terms of the plan;

26 “(b) The carrier provides at least 30 days’ advance written notice, in the  
27 form and manner prescribed by the department, to the enrollee; and

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

30 “(6) Notwithstanding any provision of subsection (3) of this section to the

1 contrary, a carrier may not rescind a small employer health benefit plan  
2 unless:

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

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

5 “(B) Makes an intentional misrepresentation of a material fact as pro-  
6 hibited by the terms of the plan;

7 “(b) The carrier provides at least 30 days’ advance written notice, in the  
8 form and manner prescribed by the department, to each plan enrollee who  
9 would be affected by the rescission of coverage; and

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

12 “(7)(a) A carrier may continue to enforce reasonable employer partic-  
13 ipation and contribution requirements on small employers. However, partic-  
14 ipation and contribution requirements shall be applied uniformly among all  
15 small employer groups with the same number of eligible employees applying  
16 for coverage or receiving coverage from the carrier. In determining minimum  
17 participation requirements, a carrier shall count only those employees who  
18 are not covered by an existing group health benefit plan, Medicaid, Medi-  
19 care, TRICARE, Indian Health Service or a publicly sponsored or subsidized  
20 health plan, including but not limited to the medical assistance program  
21 under ORS chapter 414.

22 “(b) A carrier may not deny a small employer’s application for coverage  
23 under a health benefit plan based on participation or contribution require-  
24 ments but may require small employers that do not meet participation or  
25 contribution requirements to enroll during the open enrollment period be-  
26 ginning November 15 and ending December 15.

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

29 “(a) Each carrier must file with the department the initial geographic  
30 average rate and any changes in the geographic average rate with respect

1 to each health benefit plan issued by the carrier to small employers.

2 “(b)(A) The variations in premium rates charged during a rating period  
3 for health benefit plans issued to small employers [*shall*] **must** be based  
4 solely on the factors specified in subparagraph (B) of this paragraph. A car-  
5 rier may elect which of the factors specified in subparagraph (B) of this  
6 paragraph apply to premium rates for health benefit plans for small employ-  
7 ers. All other factors must be applied in the same actuarially sound way to  
8 all small employer health benefit plans.

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

12 “(i) The ages of enrolled employees and their dependents, except that the  
13 rate for adults may not vary by more than three to one;

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

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

18 “(C) A carrier shall apply the carrier’s schedule of premium rate vari-  
19 ations as approved by the department and in accordance with this paragraph.  
20 Except as otherwise provided in this section, the premium rate established  
21 by a carrier for a small employer health benefit plan [*shall apply*] **applies**  
22 uniformly to all employees of the small employer enrolled in that plan.

23 “(c) Except as provided in paragraph (b) of this subsection, the variation  
24 in premium rates between different health benefit plans offered by a carrier  
25 to small employers must be based solely on objective differences in plan de-  
26 sign or coverage, age, tobacco use and family composition and must not in-  
27 clude differences based on the risk characteristics of groups assumed to  
28 select a particular health benefit plan.

29 “(d) A carrier may not increase the rates of a health benefit plan issued  
30 to a small employer more than once in a 12-month period. Annual rate in-

1 creases [*shall be*] **are** effective on the plan anniversary date of the health  
2 benefit plan issued to a small employer. The percentage increase in the pre-  
3 mium rate charged to a small employer for a new rating period may not ex-  
4 ceed the sum of the following:

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

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

9 “(9) Premium rates for grandfathered health plans [*shall be*] **are** subject  
10 to requirements prescribed by the department by rule.

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

14 “(a) The full array of health benefit plans that are offered to small em-  
15 ployers by the carrier;

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

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

21 “(11)(a) Each carrier shall maintain at [*its*] **the carrier’s** principal place  
22 of business a complete and detailed description of [*its*] **the carrier’s** rating  
23 practices and renewal underwriting practices relating to [*its*] **the carrier’s**  
24 small employer health benefit plans, including information and documenta-  
25 tion that demonstrate that [*its*] **the carrier’s** rating methods and practices  
26 are based upon commonly accepted actuarial practices and are in accordance  
27 with sound actuarial principles.

28 “(b) A carrier offering a small employer health benefit plan shall file with  
29 the department at least once every 12 months an actuarial certification that  
30 the carrier is in compliance with ORS 743B.010 to 743B.013 and that the

1 rating methods of the carrier are actuarially sound. Each certification  
2 [*shall*] **must** be in a uniform form and manner and [*shall*] **must** contain such  
3 information as specified by the department. [*A copy of each certification shall*  
4 *be retained by*] The carrier [*at its*] **shall retain a copy of each certification**  
5 **at the carrier's** principal place of business. A carrier is not required to file  
6 the actuarial certification under this paragraph if the department has ap-  
7 proved the carrier's rate filing within the preceding 12-month period.

8 “(c) A carrier shall make the information and documentation described  
9 in paragraph (a) of this subsection available to the department upon request.  
10 Except as provided in ORS 743.018 and except in cases of violations of ORS  
11 743B.010 to 743B.013, the information [*shall be considered*] **is** proprietary and  
12 trade secret information and [*shall not be*] **is not** subject to disclosure to  
13 persons outside the department except as agreed to by the carrier or as or-  
14 dered by a court of competent jurisdiction.

15 “(12) A carrier [*shall*] **may** not provide any financial or other incentive  
16 to any insurance producer that would encourage the insurance producer to  
17 sell health benefit plans of the carrier to small employer groups based on a  
18 small employer group's anticipated claims experience.

19 “(13) For purposes of this section, the date a small employer health ben-  
20 efit plan is continued [*shall be*] **is** the anniversary date of the first issuance  
21 of the health benefit plan.

22 “(14) A carrier [*must*] **shall** include a provision that offers coverage to  
23 all eligible employees of a small employer and to all dependents of the eli-  
24 gible employees to the extent the employer chooses to offer coverage to de-  
25 pendants.

26 “(15) All small employer health benefit plans [*shall*] **must** contain special  
27 enrollment periods during which eligible employees and dependents may en-  
28 roll for coverage, as provided by federal law and rules adopted by the de-  
29 partment.

30 “(16) A small employer health benefit plan may not impose annual or



1 lifetime limits on the dollar amount of essential health benefits.”.

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