B-Engrossed

House Bill 3074

Ordered by the Senate May 20
Including House Amendments dated April 8 and Senate Amendments dated May 20

Sponsored by Representative NOSSE

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.

Modifies rate review process for approving rates for health benefit plans.

A BILL FOR AN ACT

Relating to health insurance; amending ORS 743.018, 743.019, 743.020 and 750.055.

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

SECTION 1. ORS 743.019 is amended to read:

743.019. (1) When an insurer files a schedule or table of premium rates for individual or small employer health [insurance] benefit plans under ORS 743.018, the Department of Consumer and Business Services shall open a 30-day public comment period on the rate filing that begins on the date the insurer files the schedule or table of premium rates. The department shall post all of the comments received to the department’s website without delay.

(2) After the close of the public comment period described in subsection (1) of this section, the department shall [make] issue a preliminary decision to approve, disapprove or modify a rate filing. The department shall notify the insurer of, and make available to the public, the preliminary decision, including:

(a) An explanation of the findings and rationale that are the basis for the preliminary decision; and

(b) Any actuarial or other analyses, calculations or evaluations relied upon by the department in arriving at the preliminary decision.

(3) The department shall provide the insurer or any person adversely affected or aggrieved by the preliminary decision the opportunity to meet with the department to discuss and respond to the preliminary decision. However, an insurer or other person may not substitute new facts or data for the facts or data submitted by the insurer in the filing. The meeting shall:

(a) Include a department employee who reviewed the rate filing; and

(b) Comply with the requirements of ORS 192.610 to 192.690.

[(4)(a) The department may approve a modified rate filing only with the written consent of the insurer. An insurer’s consent to the modified rate filing does not preclude the insurer from contesting the modified rate filing by requesting a reconsideration under subsection (6) of this section or by requesting a contested case hearing.]

[(b) If the modified rate filing is reversed as a result of a reconsideration or contested case hearing,]
the rate filing, as approved in the reconsideration or final order in a contested case, may take effect
on or after the date of the reconsideration or final order, in accordance with rules adopted by the de-
partment.]  

[(5)(a)] (4)(a) The department shall issue [an] a proposed order, no later than 30 days after the
close of the public comment period described in subsection (1) of this section, approving, disapproving
or modifying] department issues a preliminary decision under subsection (2) of this section,
to approve, disapprove or modify the rate filing based on the information submitted during the
public comment period. [However,]  
(b) In issuing the proposed order, the department may not consider new facts or data that
are offered as a substitute for the facts or data submitted by the insurer in the filing.  
(c) The [order shall be mailed] department shall mail the proposed order to the insurer and
posted] post the proposed order to the department’s website.  
[(b)] (d) The proposed order must include:  
(A) An explanation of the findings and rationale that are the basis for the proposed order, in-
cluding any actuarial or other analyses, calculations or evaluations relied upon by the department
in its findings or rationale; and
(B) Notice of the right of the insurer or any person adversely affected or aggrieved by the
proposed order to [contest the order by requesting:]  
[i(i) An expedited reconsideration in accordance with subsection (6) of this section; or]
[ii(i) A contested case hearing in accordance with ORS chapter 183.] request a review by the
Director of the Department of Consumer and Business Services, in accordance with sub-
section (6) of this section, no later than 10 days after the date that the proposed order was
issued.  
(5) If the insurer or person adversely affected or aggrieved by the proposed order does
not timely request a review of the proposed order by the director, the director shall issue a
final order as described in subsection (6)(d) of this section.  
[(6) If an insurer or a person adversely affected or aggrieved by an order approving, disapproving
or modifying a rate filing submits to the department a request for reconsideration no later than 10 days
after the date the order is issued under subsection (5) of this section:]  
(6) If the insurer or a person adversely affected or aggrieved by the proposed order
timely requests a review by the director of the proposed order:  
(a) The requester may not substitute new facts or data for the facts and data that were sub-
mitted by the insurer in the filing, but may provide a brief, memorandum or analysis based on the
evidence contained in the filing or received and considered by the department during the public
comment period;  
(b) The director [of the Department of Consumer and Business Services] may not delegate the
decision-making authority for the [reconsideration] request for review to any other individual;
(c) The director shall issue a [decision on the request for reconsideration] final order no later
than 30 days after the request for review is received by the [department] director; and
(d) The [decision] final order shall include:
(A) An explanation of the findings and rationale that are the basis for the [decision] final
order; and
(B) Notice of the right to a contested case hearing in accordance with ORS chapter 183.
(7)(a) If, following the issuance of a final order under subsection (6)(c) of this section but
before the effective date of the premium rates approved by the final order, an event occurs
that materially affects the director’s decision to approve the rates, the director may open a
new public comment period for a period of time that the director determines is necessary to
receive comments concerning the event. Based upon the event and the public comments re-
ceived, the director shall affirm the final order by providing a written explanation of the
basis for affirming the final order or issue a new proposed order, as described in subsection
(4) of this section.
    (b) In the consideration of public comments or the event described in paragraph (a) of
this subsection or in issuing any new proposed order, the director:
    (A) May not consider new facts or data that are offered as a substitute for the facts or
data submitted by the insurer in the original filing.
    (B) May consider supplemental facts or data reasonably related to the event described in
paragraph (a) of this subsection.
[7] (8) Subsections (2) [and (5)] to (7) of this section do not require the department to perform
any actuarial or other analyses, calculations or evaluations.
[8] (9) The department may adopt rules modifying the procedures described in subsections (2)
to (6) (7) of this section, but only to the extent necessary to comply with 42 U.S.C. 300gg-94.

SECTION 2. ORS 743.018, as amended by section 8, chapter 7, Oregon Laws 2018, is amended
to read:

743.018. (1) Except for group life and health insurance, and except as provided in ORS 743.015,
every insurer shall file with the Director of the Department of Consumer and Business Services all
schedules and tables of premium rates for life and health insurance to be used on risks in this state,
and shall file any amendments to or corrections of such schedules and tables. Premium rates are
subject to approval, disapproval or withdrawal of approval by the director as provided in ORS
742.003, 742.005, 742.007 and
, for health benefit plans as defined in ORS 743B.005, ORS 743.019.

(2) Except as provided in ORS 743B.013 and subsection (3) of this section, a rate filing by a
carrier for any of the following health benefit plans subject to ORS 743.004, 743.022, 743.535 and
743B.003 to 743B.127 shall be available for public inspection immediately upon submission of the
filing to the director:
    (a) Health benefit plans for small employers.
    (b) Individual health benefit plans.

(3) The director may by rule:
    (a) Specify all information a carrier must submit as part of a rate filing under this section; and
    (b) Identify the information submitted that will be exempt from disclosure under this section
because the information constitutes a trade secret and would, if disclosed, harm competition.

(4) The director, after conducting an actuarial review of the rate filing, may approve a proposed
premium rate for a health benefit plan for small employers or for an individual health benefit plan
if, in the director’s discretion, the proposed rates are:
    (a) Actuarially sound;
    (b) Reasonable and not excessive, inadequate or unfairly discriminatory; and
    (c) Based upon reasonable administrative expenses.

(5) In order to determine whether the proposed premium rates for a health benefit plan for small
employers or for an individual health benefit plan are reasonable and not excessive, inadequate or
unfairly discriminatory, the director may consider:
    (a) The insurer’s financial position, including but not limited to profitability, surplus, reserves
and investment savings.
(b) Historical and projected administrative costs and medical and hospital expenses, including
expenses for drugs reported under section 5, chapter 7, Oregon Laws 2018.
(c) Historical and projected loss ratio between the amounts spent on medical services and
earned premiums.
(d) Any anticipated change in the number of enrollees if the proposed premium rate is approved.
(e) Changes to covered benefits or health benefit plan design.
(f) Changes in the insurer’s health care cost containment and quality improvement efforts since
the insurer’s last rate filing for the same category of health benefit plan.
(g) Whether the proposed change in the premium rate is necessary to maintain the insurer’s
solventy or to maintain rate stability and prevent excessive rate increases in the future.
(h) Any public comments received under ORS 743.019 pertaining to the standards set forth in
subsection (4) of this section and this subsection.

SECTION 3. ORS 743.020 is amended to read:
ORS 743.020. An insurer licensed by the Department of Consumer and Business Services shall include
in any rate filing under ORS 743.018 with respect to individual and small employer health [insurance
policies] benefit plans, as defined in ORS 743B.005, a statement of administrative expenses in the
form and manner prescribed by the department by rule. The statement must include, but is not lim-
ited to:
(1) A statement of administrative expenses on a per member per month basis; and
(2) An explanation of the basis for any proposed premium rate increases or decreases.

SECTION 4. ORS 750.055, as amended by section 9, chapter 7, Oregon Laws 2018, is amended
to read:
ORS 750.055. (1) The following provisions apply to health care service contractors to the extent not
inconsistent with the express provisions of ORS 750.005 to 750.095:
(a) ORS 705.137, 705.138 and 705.139.
(b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398
to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS
731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652,
731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.
including ORS 732.582.
(d) ORS 733.014 to 734.440.
(e) ORS 735.600 to 735.650.
(f) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to
742.542.
(h) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, [743.019,] 743.020, 743.022, 743.023,
743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406,
to 743.656, 743.680 to 743.689, 743.788 and 743.790.


(k) The following provisions of ORS chapter 744:

(A) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033, 744.037, 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;

(B) ORS 744.605, 744.609, 744.619, 744.621, 744.626, 744.631, 744.635, 744.650, 744.655 and 744.665, relating to the regulation of insurance consultants; and

(C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.


(2) The following provisions of the Insurance Code apply to health care service contractors except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act:

(a) ORS 731.485, if the group practice health maintenance organization wholly owns and operates an in-house drug outlet.

(b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse practitioner associated with a group practice health maintenance organization.

(3) For the purposes of this section, health care service contractors are insurers.

(4) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(5)(a) A health care service contractor is a domestic insurance company for the purpose of determining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

(b) A health care service contractor’s classification as a domestic insurance company under paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510 to 734.710.

(6) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are necessary for the proper administration of these provisions.

Oregon Laws 2018, is amended to read:

750.055. (1) The following provisions apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.138 and 705.139.

(b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.


(d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(e) ORS 734.014 to 734.440.

(f) ORS 735.600 to 735.650.

(g) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to 742.542.

(h) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, [743.019], 743.020, 743.022, 743.023, 743.028, 743.029, 743.040, 743.044, 743.050, 743.061, 743.065, 743.100 to 743.109, 743.402, 743.405, 743.406, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.730, 743.731, 743.735, 743.737, 743.804, 743.808 and 743.992.


(k) The following provisions of ORS chapter 744:

(A) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033, 744.037, 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;

(B) ORS 744.605, 744.609, 744.619, 744.621, 744.626, 744.631, 744.635, 744.650, 744.655 and 744.665, relating to the regulation of insurance consultants; and

(C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.


(2) The following provisions of the Insurance Code apply to health care service contractors except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act:

(a) ORS 731.485, if the group practice health maintenance organization wholly owns and operates an in-house drug outlet.

(b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse
practitioner associated with a group practice health maintenance organization.

(3) For the purposes of this section, health care service contractors are insurers.

(4) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(5)(a) A health care service contractor is a domestic insurance company for the purpose of determining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

(b) A health care service contractor’s classification as a domestic insurance company under paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510 to 734.710.

(6) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are necessary for the proper administration of these provisions.