



# Oregon

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## Insurance Division Bulletin INS 2008-4

**TO:** Health Insurers and Health Care Service Contractors

**RE:** Prohibition Against Use of Health Status for Underwriting Associations with Small Employer Groups and Allowable Rating Practices for Associations with Small Employer Groups

**This bulletin replaces Insurance Division Bulletin 2006-4.**

### Purpose

The purpose of this Bulletin is to ensure that carriers consistently apply ORS 743.733 to 743.737 and ORS 743.751 and 743.752 to associations holding group health benefit plans that include small employer groups. Laws relating to this topic were amended in the 2007 regular session of the Legislative Assembly. See ch. 752, Oregon Laws 2007. This bulletin applies to trusts, discretionary groups and multiple employer welfare associations, as well as to associations generally.

### Definitions

For purposes of this Bulletin:

A *small employer* has the meaning given that term in ORS 743.730. The definition of general applicability is as follows: “An employer that employed an average of at least two but not more than 50 employees on business days during the preceding calendar year, the majority of whom are employed within this state, and that employs at least two eligible employees on the date on which coverage takes effect under a health benefit plan issued by a small employer carrier.” Please note the exceptions in the statutory definition for a person that is treated as a single employer under provisions of the Internal Revenue Code and for an employer who was not in existence throughout the preceding calendar year.

“*Association*” means an association as that term is used in the definition of “group health insurance” in ORS 743.522, and includes a trust, discretionary group or multiple employer welfare association.

## **Enrollment in Associations**

### **Use of Health Statements or Other Method to Reveal Health Status**

A carrier may not use health statements or any other method to determine actual or expected health status when quoting or offering health benefit plans to any group. Thus, when a carrier insures an association, the insurer, the association and any group within the association may not determine or use health status of individual members for any of the following purposes:

- a. Quoting or offering a health benefit plan to a prospective small employer group;
- b. Quoting or offering a health benefit plan to a prospective association or a small employer group within an association;
- c. Underwriting a prospective small employer group, or any subgroup of a small employer group within an association; or
- d. Enrolling a prospective enrollee.

SEE: [ORS 743.734, 743.751 and 743.752](#).

A carrier offering group health benefit plans may use a health statement only for the purpose of determining whether a preexisting condition exists with respect to a late enrollee or to provide services or arrange for the provision of services under a health benefit plan.

### **Use of Claims Experience**

A carrier may not use claims experience, except for premium rating as provided herein, to underwrite a small employer group, whether separately or as a part of an association health benefit plan. (See [ORS 743.734, 743.751 and 743.752](#).) A carrier may not use any method to determine the actual or expected health status of an eligible prospective enrollee before or after enrollment in a group health benefit plan. Claims experience is one such prohibited method for underwriting. For the use of claims experience in setting premium rates, see section 4.D, below.

A carrier offering group health benefit plans may not use claims experience to underwrite or identify individuals within a small employer group, to underwrite or identify a small employer group or to underwrite or identify subgroups of a small employer group.

A carrier offering health benefit plans to associations may use risk status, claims experience and the financial condition *of the association as a whole* as a criterion for declination of the association as a whole. *As a whole* means as one group with no subgroups within the group, but only if an association as a whole does not meet the definition of a small employer group.

### **Implementation**

This discussion under “Enrollment in Associations” applies to all health benefit plans issued or renewed to an association on and after January 1, 2008.

## Premium Rating of Associations

A carrier offering a health benefit plan to an association with small employer group members may rate the association and its small employer group members according to either of the following options:

- a. The carrier may write the association as a single large group.
- b. The carrier may treat the small employer groups within the association as a subset for rating purposes in order to apply a different rating methodology from the rest of the association. In this case, the carrier must either:
  - (1) Pool the small employer groups to treat them as a large group; or
  - (2) Apply to each small employer group the applicable rating requirements for small employer groups under ORS 743.730 to 743.737.

When a carrier separately rates a small employer group that participates in an association health plan, the carrier may use claims experience as a criterion for premium rating the group only as authorized by ORS 743.737(8)(b)(D): the carrier may adjust the premium rates to reflect the expected claims experience of the small employer, “but the extent of this adjustment may not exceed five percent of the annual premium rate otherwise payable by the small employer.” A carrier may otherwise use claims experience, and may use risk status or financial condition, as a criterion for premium rating of an association group health benefit plan that includes small employer group members, but only as follows:

- (1) When the carrier rates the association group as a whole; or
- (2) When the carrier rates the subset of small employer group members as a whole and the number of small employer group members exceeds 50, thereby qualifying the subset as a large group. For example, if an association includes five small employer groups composed of 40 members each, the carrier may count all members of all of the small employer groups as one group of 200 members for rating purposes.

A carrier may use a factor for rating purposes that is based on an insured’s claims experience not exceeding five percent within the applicable rate band, when the carrier treats a small employer group separately rather than as part of a large group.

Risk status, claims experience or financial condition may not be used as a criterion for premium rating of individual enrollees within a group of any size. ORS 743.734 no longer requires a group health benefit plan covering one or more employees of a small employer to meet the requirements applicable to small employer groups when the plan is issued to a small employer group through an association health plan and the plan meets the requirements of ORS 743.734(7).

The requirements of ORS 743.734(7) apply to a carrier that pools small employer groups within the association separately from the association as a whole. To determine compliance with the

required retention rate when two or more carriers provide health plan coverage to the small employer group members of an association, each carrier may use its own retention rate for each small employer group in the association or may combine the retention rates of the carriers for the small employer groups.

A group health benefit plan issued to a small employer group through an association that is not exempt from ORS 743.734(7) remains subject to the underwriting and claims experience requirements of ORS 743.734.

### **Implementation**

This discussion under “Premium Rating of Associations” applies to all health benefit plans issued or renewed to an association on or after January 1, 2008.

This bulletin takes effect immediately.

This bulletin is dated the 15th day of July 2008 at Salem, Oregon.

(Signed)

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Scott Kipper, Insurance Administrator