



Oregon

Theodore R. Kulongoski, Governor

Department of Consumer and Business Services

Insurance Division

350 Winter St. NE, Room 440

PO Box 14480

Salem, OR 97309-0405

(503) 947-7980

FAX (503) 378-4351

TTY (503) 947-7280

www.oregoninsurance.org

OREGON INSURANCE DIVISION BULLETIN INS 2006-4 Revised

THIS BULLETIN HAS BEEN WITHDRAWN

DATE: August 25, 2006

All Health Insurers and Health Care Service Contractors

Prohibition on Use of Health Status for Underwriting All Associations with Small Groups and HIPAA Groups and Allowable Rating Practices for All Associations with Small Groups

Bulletin INS 2006-4 dated August 3, 2006 is hereby revised to read as set forth below.

Purpose

The purpose of this Bulletin is to ensure the consistent application of ORS 743.751, 743.752, and ORS 743.733 to 743.737 prohibiting use of health status for underwriting or for premium rating for individuals or subgroups of individuals within a larger group such as an association, trust, discretionary group, or MEWA.

For purposes of this Bulletin *small group* means employer groups with 2-25 eligible employees as defined in ORS 743.730 and *HIPAA group* means employer groups with 2-50 employees as defined in 42 U.S.C. 300gg or qualified employees as defined in ORS 743.733. For purposes of this Bulletin *association* means associations, trusts, discretionary groups, and MEWAs.

2. Enrollment in Associations, Trusts, Discretionary Groups, and MEWAs

Use of Health Statements or Other Information that Reveal Health Status

ORS 743.734, 743.751, and 743.752 prohibit the use of health statements or other information to determine actual or expected health status when quoting or offering health benefit plans to a group. Associations are group policy holders (ORS 743.522).

Insurers offering health benefit plans to associations may not use health statements or other information to determine actual or expected health status of any eligible enrollee, any small group, or any HIPAA group, or to determine the actual or expected health status of any small group or HIPAA group within an association, for purposes of:

- A. Quoting or offering plans to prospective small groups or HIPAA groups;
- B. Quoting or offering plans to prospective small groups or HIPAA groups within an association or trust;
- C. Underwriting a prospective individual, small group, HIPAA group, or any subgroup of small groups or HIPAA groups within an association;
- D. Determining health status of any prospective enrollees; or
- E. Imposing different terms or conditions on the coverage, premiums, or contributions of any prospective enrollee, small group, HIPAA group, or subgroup of small groups or HIPAA groups within an association.

Insurers offering group health benefit plans may use health statements only for the purpose of determining a preexisting conditions provision for a late enrollee or for the purpose of providing services or arranging for the provision of services under a health benefit plan.

Membership in Associations, Trusts, Discretionary Groups, and MEWAs

ORS 743.736 prohibits the use of any mechanism relating to the actual or expected health status of an enrollee as a requirement for membership in associations, trusts, discretionary groups, or MEWAs.

Implementation

Section 2 applies to all health benefit plans issued or renewed to an association, trust, discretionary group, or MEWA. The Division intends to pursue enforcement pursuant to ORS 731.256 against any health insurance carrier found to be in violation of this section.

3. Use of Claims Experience

ORS 743.733 to 743.737 prohibit underwriting in small groups and HIPAA groups; specifically the statutes prohibit use of any method to determine the actual or expected health status of eligible prospective enrollees before or after enrollment in a group health benefit plan. Claims experience is one such method prohibited by statute.

Carriers offering group health benefit plans may not use claims experience to underwrite or identify individuals within a small group or a HIPAA group, to underwrite or identify small groups, to underwrite or identify HIPAA groups, or to underwrite or identify subgroups of small groups or HIPAA groups within an association.

Carriers offering health benefit plans to associations and trusts may use risk status, claims experience, and the financial condition, *of the association as a whole*, as a criterion for declination of the association or the trust as a whole. *As a whole* mean as one group with no subgroups within the group provided the association as a whole does not meet the definition of a small group or HIPAA group.

Implementation

Section 3 applies to all health benefit plans issued or renewed to an association, trust, discretionary group, or MEWA after July 1, 2007. The Division intends to pursue enforcement pursuant to ORS 731.256 against any health insurance carrier offering or renewing group health benefit plans after July 1, 2007, that are in violation of this section.

4. Premium Rating of Associations, Trusts, Discretionary Groups, and MEWAs

Carriers offering health benefit plans to associations and trusts with small group members may use risk status, claims experience, or the financial condition, **only of the association as a whole**, as a criterion for premium rating of an association group health benefit plan.

ORS 743.734 requires any group health benefit plan covering one or more employees of a small employer to meet the small employer health insurance (SEHI) rules. A carrier offering a group plan to an association covering employees of a SEHI employer must comply with SEHI rating rules including rate bands and restrictions on rating factors in ORS 743.737 unless the carrier rates the association as a whole.

Risk status, claims experience, or financial condition may not be used as a criterion for premium rating of individual enrollees within any size group.

Implementation

Section 4 applies to all health benefit plans issued or renewed to an association, trust, discretionary group, or MEWA after July 1, 2007. The Division intends to pursue enforcement pursuant to ORS 731.256 against any health insurance carrier offering or renewing group health benefit plans after July 1, 2007, that are in violation of this section.

This bulletin takes effect immediately.

This bulletin is dated the 25th day of August 2006 at Salem, Oregon.



Joel Ario, Oregon Insurance Administrator