



# Oregon

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## Insurance Division Bulletin INS 2008-5

**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 2008-4.**

### 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.

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 has three options for rating the association and its small employer group members:

1. The carrier may treat the association as a single large group. In this case, a carrier may use claims experience, and may use risk status or financial condition as criteria for premium rating.
2. The carrier may treat small employer groups within the association as subsets for rating purposes.

In this case, if the association health plan does not exclude any small employer groups that meet membership requirements and the plan meets the initial premium rate and retention rate requirements, as well as other qualifications set forth in ORS 743.734 (7), a carrier may use claims experience, and may use risk status or financial condition as criteria for premium rating. The claims experience factor is not subject to the five percent limitation within the applicable rate band.

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.

3. The carrier may treat the small employer groups within the association as subsets for rating purposes in order to apply a different rating methodology from the rest of the association by applying to each small employer group the applicable rating requirements for small employer groups under ORS 743.730 to 743.737.

In this case, 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.

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

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.

**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 28th day of August 2008 at Salem, Oregon.

(Signed)

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Scott J. Kipper, Insurance Administrator