

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE DIVISION**

In the Matter of **Western Grocers Employee Benefits Trust.** ) **STIPULATION** and  
 ) **FINAL ORDER**  
 ) File No. 308268 IV  
 ) Case No. INS 02-04-021

**STIPULATION**

The Director of the Department of Consumer and Business Services (director) commenced this administrative proceeding, pursuant to Oregon Revised Statutes (ORS) 731.256, to take disciplinary action against Western Grocers Employee Benefits Trust (Western Grocers).

Western Grocers enters into this Stipulation to conclude this proceeding without further administrative or judicial proceedings, as provided by ORS 183.415(5) and related rules. The person signing this Stipulation on behalf of Western Grocers represents that he or she is so authorized by Western Grocers.

Western Grocers waives the right to receive a notice of proposed action, to receive a notice of the rights of a party and procedures in contested cases, to have a hearing, to be represented by an attorney at the hearing, and to judicial review of the Final Order. Western Grocers admits and agrees to the following facts, conclusions, and action.

**Facts and Conclusions**

Licensing

Western Grocers has been licensed in Oregon as a multiple employer welfare arrangement (MEWA) pursuant to ORS 750.301 *et seq.* since 12/30/94. Western Grocers' Oregon Insurance Division company number is 650 and its NAIC identification number is 700650. Julie Cassidy is the Chairperson of the Board of Directors of Western Grocers. Western Grocers' principal mailing address is PO Box 22166, Portland, OR 97269-2166.

Western Grocers was formed and commenced business on 10/1/79 as a voluntary employee beneficiary association (VEBA) pursuant to 26 U.S.C. § 501(c)(9).

Western Grocers provides health, disability, and life insurance benefits to the food industry employers who are members or customers of United Grocers in Oregon, Washington, and northern California. United Grocers, Inc. is the Trustor of Western Grocers.

#### Failure to Comply with Recommendations of Market Conduct Examination

The Insurance Division conducted a standard market conduct examination of Western Grocers for the period from 4/1/96 to 3/31/98, pursuant to ORS 731.300 *et seq.* The purpose of the examination was to determine whether Western Grocers was complying with the Oregon Insurance Code and related administrative rules relating to complaint handling, claims handling, and underwriting. On 1/13/99, the Insurance Division issued a report of the examination.

The Insurance Division conducted a special target market conduct examination of Western Grocers for the period from 1/1/98 to 3/31/99, pursuant to ORS 731.300 *et seq.* The purpose of the examination was to determine whether Western Grocers was complying with the Patient Protection Action of 1997 (Oregon Laws 1997, Chapter 343 (Senate Bill 21)). On 11/5/99, the Insurance Division issued a report of the examination.

The Insurance Division conducted a follow-up market conduct examination of Western Grocers for the period from 2/1/01 to 3/31/01, pursuant to ORS 731.300 *et seq.* The purpose of the examination was to determine whether Western Grocers had complied with the Insurance Division's recommendations in the standard market conduct examination report dated 1/13/99. On 7/9/01, the Insurance Division issued a report of the examination.

The Insurance Division conducted a follow-up market conduct examination of Western Grocers for the period from 2/1/01 to 4/30/01, pursuant to ORS 731.300 *et seq.* The purpose of the examination was to determine whether Western Grocers had complied with the Insurance Division's recommendations in its special target

market conduct examination report dated 11/5/99. On 7/9/01, the Insurance Division issued a report of the examination.

As a result of the first follow up examination, the Insurance Division found that Western Grocers did not comply with the following recommendations made by the Insurance Division during the standard examination.

Recommendation #4 - I recommend the Trust send notices as required by ORS 743.560 and OAR 836-052-0800 through 836-052-0860 in all cases where group health insurance policies terminate, unless there is sufficient documentation to determine conclusively that the group policyholder is obtaining replacement coverage through another carrier.

Recommendation #5 - I recommend the Trust include in its solicitation and sales materials information concerning the extent to which age, family composition, and geographic factors are considered in establishing premium rates for small employer health benefit plans, and limitations on its authority to adjust those rates, in keeping with ORS 743.737(9)(b) [formerly ORS 743.737(11)(b)].

Recommendation #6 - I recommend the Trust revise its enrollment application to include the Oregon Standard Health Statement required by OAR 836-053-0510, space for enrollees to document prior coverage, and a section for eligible employees who are covered by another plan to sign a waiver of coverage.

As a result of the second follow up examination, the Insurance Division found that Western Grocers did not comply with the following recommendations made by the Insurance Division during the standard examination.

Recommendation #2 - I recommend the Trust establish a written grievance policy that complies with ORS 743.804(3)(a)-(f).

Recommendation #3 - I recommend the Trust provide to all enrollees a summary of information explaining the grievance procedures that discloses their right to file a complaint with or seek assistance from the Insurance Division in accordance with ORS 743.804(5)(q) and OAR 836-053-1030(6).

Recommendation #4 - I recommend the Trust provide enrollees who have filed grievances with detailed information about the Trust's grievance procedures and

how to use them and include information on how to access the Insurance Division's complaint line in accordance with ORS 743.804(8).

Recommendation #5 - I recommend the Trust provide notice in all written decisions regarding grievances of the right to file a complaint with or seek assistance from the Director of the Department of Consumer and Business Services in accordance with ORS 743.804(3)(e).

Recommendation #8 - I recommend the Trust have a written procedure to offer emergency health benefits without prior authorization in compliance with ORS 743.699(1)(a)(b) and (c).

Recommendation #9 - I recommend the Trust provide the required emergency disclosures to all enrollees in compliance with ORS 743.699(2) and OAR 836-053-1030(4).

Recommendation #10 - I recommend the Trust provide coverage without prior authorization for emergency medical screening exams, stabilization of emergency medical conditions and emergency services of a nonparticipating provider using the prudent layperson standard in compliance with ORS 743.699(1)(a)(b) and (c).

Recommendation #11 - I recommend the Trust apply the same claim payment standards, including the prudent layperson standard, to all ancillary emergency services including ambulance in compliance with ORS 743.699(1)(c).

Recommendation #12 - I recommend the Trust provide all enrollees with summary information on how the insurer makes decisions regarding utilization review requirements that affect coverage or payment in compliance with ORS 743.804(5)(j).

Recommendation #13 - I recommend the Trust provide to enrollees, upon request, a written summary of information that the insurer may consider in its utilization review of a particular condition or disease to the extent the insurer maintains such criteria in compliance with ORS 743.804(7).

Recommendation #14 - I recommend the Trust provide for an appropriate appeal process before a medical consultant or peer review committee when a request for

treatment or payment for services is denied as not medically necessary or experimental in compliance with ORS 743.807(2)(c).

Recommendation #15 - I recommend the Trust provide all enrollees with summary information on how the insurer makes decisions regarding requirements for prior authorization that affect coverage or payment in compliance with ORS 743.804(5)(j).

Recommendation #16 - I recommend the Trust bind prior authorization determinations relating to benefit coverage and medical necessity for 30 days in compliance with ORS 743.837(1).

Recommendation #17 - I recommend the Trust bind prior authorization determinations relating to eligibility for five business days unless the insurer knows coverage will terminate in less than five business days and specifies the termination date in compliance with ORS 743.837(2) and OAR 836-053-1200(6).

Recommendation #18 - I recommend the Trust answer provider requests for prior authorization of nonemergency service within two days in accordance with ORS 743.807(2)(d).

Recommendation #19 - I recommend the Trust respond to a request by a provider for prior authorization of nonemergency services with one of the required responses in compliance with OAR 836-053-1200(9).

Recommendation #20 - I recommend the Trust provide participating providers upon request a summary of policies on enrollee's rights and responsibilities that includes all of the elements required by ORS 743.804(1) in compliance with ORS 743.804(2).

Recommendation #21 - I recommend the Trust's utilization review process activities be made available for review to contracting providers upon request in compliance with ORS 743.807(2)(a).

Recommendation #22 - I recommend the Trust use the correct definition of late enrollee in compliance with ORS 743.730(24) [formerly ORS 743.730(23)].

Recommendation #23 - I recommend the Trust include a question on all enrollment forms regarding potential creditable coverage in compliance with OAR 836-053-0040(4)(a) and OAR 836-053-0230(8)(a).

Recommendation #24 - I recommend the Trust revise their enrollment requirements to comply with ORS 743.730(24) [formerly ORS 743.730(23)(a)(b)(c)].

Recommendation #25 - I recommend the Trust revise their late enrollment provisions to comply with ORS 743.737(4) and ORS 743.754(4).

Recommendation #26 - I recommend the Trust include a notice about potential creditable coverage whenever a claim has been denied for preexisting conditions in compliance with OAR 836-053-0040(4) and OAR 836-053-0230(8)(b).

Recommendation #27 - I recommend the Trust exempt maternity services from the category of preexisting conditions in compliance with OAR 836-053-0060(3) and OAR 836-053-0250(1).

Recommendation #28 - I recommend the Trust have a policy which allows enrollees to change participating primary care physicians at will in compliance with ORS 743.808(1)(a).

Recommendation #29 - I recommend the Trust comply with the federal Newborns' and Mothers' Health Protection Act of 1996 in compliance with ORS 743.823 and OAR 836-053-1000(10) [formerly OAR 836-053-1000(11)].

Recommendation #31 - I recommend the Trust allow female enrollees direct access to a women's health care provider for at least one annual preventative women's health examination and pregnancy care if the enrollee has not chosen a women's health care provider as her primary care physician in compliance with ORS 743.845(3).

Recommendation #32 - I recommend the Trust provide the following disclosures to all enrollees in accordance with ORS 743.804(5)(e)(g)(k)(L)(n) and (o), OAR 836-053-1030(8) and (12):

1. The Trust's procedures for notifying enrollees of a change in or termination of any benefit, termination of a primary care delivery office or site, and assistance available in selecting a new primary care delivery office or site.

2. The procedures for changing providers.
3. Notice that enrollees may request an additional written summary of information that the Trust may consider in its utilization review of a particular condition.
4. A summary of criteria used to determine if a service or drug is considered experimental or investigational.
5. How to obtain information about the availability of individual providers and the hours the providers are available.
6. A summary of the Trust's procedures for protecting the confidentiality of medical records and other enrollee information.
7. A description of the assistance provided to non-English speaking enrollees.
8. Notice that additional information is available to enrollees upon request that includes the name and telephone number of the Trust's section that handles enrollee requests for information.

**Action**

Western Grocers shall pay a civil penalty of \$5,000 pursuant to ORS 731.988. The payment shall be made in the form of a check payable to the "Department of Consumer and Business Services" for the full amount due. The payment shall be delivered or mailed to the Insurance Division at 350 Winter Street NE, Room 440, Salem, OR 97301-3883. The payment shall be received by the Insurance Division by the date of the Final Order.

Dated \_\_\_\_\_

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[Signature of Representative]

\_\_\_\_\_  
[Printed Name of Representative]

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[Printed Title of Representative]

Western Grocers Employee Benefits Trust

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**FINAL ORDER**

The director adopts and incorporates herein by this reference the above Stipulation as the director's final decision in this proceeding.

Dated \_\_\_\_\_

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Mary C. Neidig  
Director  
Department of Consumer and Business Services

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