

**REPORT OF THE**  
**DEPARTMENT OF CONSUMER AND BUSINESS SERVICES**  
**ON ASSOCIATION HEALTH PLANS**  
  
**TO**  
  
**THE SEVENTY-SIXTH LEGISLATIVE ASSEMBLY**



**In Accordance with House Bill 3321 (2007)**

**January 2011**

**2011 REPORT OF THE DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
ON HOUSE BILL 3321 (2007)**

**BACKGROUND**

In 2007, the legislature enacted House Bill 3321<sup>1</sup> to exempt health benefit plans issued to small employer groups through association health plans from the statutes governing small employer group plans, if the association plans meet standards for initial premiums, do not discriminate in membership based on enrollees' health status, and maintain high retention rates. The bill requires the Department of Consumer and Business Services (DCBS) to monitor association health plans to determine the degree to which the claims experience of non-retained association groups exceeds the claims experience of the association's member groups as a whole and report the findings to the Legislative Assembly by February 1 of each odd-numbered year. This report is provided to the 2011 Legislative Assembly as required.

Association health plans offer members of an association, who are often small employers, access to group health insurance coverage. In order for an insurer to offer coverage through an association, the association itself must meet certain standards and must have been formed for purposes other than obtaining insurance. The bill was intended to resolve issues related to how small group laws apply to association health plans. House Bill 3321 allows insurers writing association health plans to qualify for an exemption from the small employer rating laws if they meet certain access and retention standards aimed at preventing "cherry-picking" or in other words, providing less-expensive coverage only to the healthiest groups, leaving the less-healthy groups to buy coverage in the general market, which makes the general market less healthy and leads to increased rates over time.

**ASSOCIATION RETENTION DATA**

As directed by House Bill 3321, DCBS continues to monitor association health plans to determine the degree to which the claims experience of non-retained association groups exceeds the claims experience of the association's member groups as a whole. Continued monitoring of claims experience and of employer group retention rates is designed to identify potential patterns of cherry picking and to prevent their occurrence.

Association health plans are required under ORS 743.734(7) to maintain an employer group retention rate of 95 percent to qualify for continued exemption from small employer health insurance statutes. In other words, an association health plan may not lose more than five percent of its members, with certain exceptions. Those that fail to maintain the 95 percent retention rate enter a 12-month correction period during which the association health plan may correct the retention level before losing the exemption from the requirements of ORS 743.734(1).

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<sup>1</sup> 2007 Or Laws ch. 752, codified primarily at ORS 743.734(7) & (8)

A number of association health plans have struggled to meet the retention requirement under recent economic circumstances. As a result, ORS 743.734(7) was revised by the legislature in 2010 to allow the department to grant a waiver of the 95 percent retention rate requirement. DCBS implemented rules under which the requirement may be waived. Under the rules, the association health plan insurer may submit a written request for a waiver to the department. To allow the department to make a determination, the request must provide specific information pertaining to each terminated small employer group and the association as a whole, including premium, claims experience, enrollment and employer group retention histories.

In the department's 2009 report to the legislature, we reported that nine of the 22 associations failed to meet the 95 percent retention rate during the first year of reporting and had 12 months to correct the retention level before losing the exemption from small employer health insurance laws. Of those nine, four requested an exemption upon implementation of the new legislation in 2010, two were found to have met the retention requirement, one was terminated, and two lost their exemption and are now subject to small employer regulations after being given a year to meet the retention requirements.

Six insurers claiming exemption from statutes applicable to small employer groups submitted reports in 2010 for 23 associations, including two association health plans that cancelled coverage. For the remaining 21 association health plans, seven reported retention rates at or above 95 percent and 14 reported retention rates below 95 percent. Of those 14, five are in the 12 month correction period and nine submitted written requests to waive the 95 percent retention rate requirement.

The department reviewed each request and all accompanying information to ensure no pattern of cherry-picking was evident. The department found no such pattern. In fact, the department determined that the employer groups were not retained due to economic conditions and a majority of the non-retained groups were, in fact, not small groups. The department also found that current association health plan retention rates are in line with the retention rates for small group business overall. Therefore, finding no pattern of cherry-picking, the department granted the waivers. Unless otherwise withdrawn by the department, at the expiration of the approved waivers, the association health plans are exempt from small employer statutes only if the health plans then satisfy the requirements of ORS 743.734(7) and (8)(a).

### **FUTURE REPORTING**

DCBS will continue to monitor association health plans to determine the degree to which the claims experience of non-retained association groups exceeds the claims experience of the association's member groups as a whole and will additionally report to the 2013 Legislative Assembly. House Bill 3321 sunsets on January 2, 2014.