

Examples illustrating principles expressed in Oregon Insurance Division Bulletin INS 2008-2

February 20, 2008

The following examples, in question-and-answer format, are intended to illustrate the application of House Bill 2007 (now ch. 99, Oregon Laws 2007, but referred to in these examples as HB 2007) to insurance contracts and policies subject to the Insurance Code, as explained in Oregon Insurance Division Bulletin [INS 2008-2](#) (the Bulletin). These examples are not intended to be inclusive or comprehensive, or to limit or restrict application of the legislation to the Oregon Insurance Code (the Code), but are intended simply as examples of the application of HB 2007 to the Code and rules.

Question 1 – Effective Date: Insurance company A submitted its contract forms for approval in September 2007 and the Insurance Division approved them in December 2007. If, on February 15, 2008, insurance company A issues a contract to a group policyholder in Oregon for a contract year beginning April 1, 2008, will the rules in the Bulletin apply to that contract?

Answer: Yes. Because the contract was issued with an effective date of April 1, 2008 or later, the contract is subject to HB 2007 as described in the Bulletin, even though the contract is based on a form approved by the Insurance Division before February 4, 2008. If the facts had been the same *except* that the contract's effective date had been earlier than April 1, 2008, the contract would not have been subject until the subsequent renewal.

Question 2 – Effective Date: Health care service contractor H submitted its contract forms for approval in October 2007 and the Insurance Division approved them on or after February 4, 2008. If, in March 2008, H issues a contract to a group policyholder in Oregon for a contract year beginning March 15, 2008, using the forms approved by the Division on or after February 4, 2008, is the contract subject to the requirements of HB 2007 as applicable to the Insurance Code?

Answer: Yes. Because the contract form was approved on or after February 4, 2008, the contract referred to in this question *is* subject to the HB 2007 requirements, even though the contract was issued with an effective date before April 1, 2008. If the facts had been the same *except* that the contract form had been approved before February 4, 2008, the contract issued with a March 15, 2008 effective date would not be subject until the subsequent renewal.

Question 3 – Definition of Domestic Partnership—opposite sex couple: Does HB 2007 impose requirements on insurance contracts and policies with respect to opposite-sex domestic partners?

Answer: No. The definition of a domestic partnership in HB 2007 is “a civil contract entered into in person between two individuals of the *same sex* who are at least 18 years of age, who are otherwise capable and at least one of whom is a resident of Oregon.”

Question 4 – Proof of Domestic Partnership: Does HB 2007 prohibit an insurer offering coverage pursuant to a contract or policy from requiring a person claiming to be an eligible domestic partner to provide evidence of the domestic partnership?

Answer: Item 8 of the Bulletin provides that “an insurer must require and apply the same level of proof for existence of a domestic partnership that the insurer requires and applies for the existence of a marriage.” Accordingly, if the insurer accepts the statements of married persons regarding the existence of their marriage, without requiring more evidence, the insurer must accept the statements of domestic partners regarding the existence of their domestic partnership, without requiring more evidence.

Question 5 – Employer’s Health Plan: If an employer’s health plan for its employees prohibits enrollment of partners in domestic partnerships that meet the definition in HB 2007, may a health insurer issue a health insurance contract or policy that complies with HB 2007 to an employer as group policyholder if the contract or policy benefits are provided according to the terms of the prohibition in the employer’s health plan?

Answer: No. Because a contract or policy that is subject to the Insurance Code is subject to HB 2007, the contract or policy may not be applied to prohibit enrollment of partners in domestic partnerships that meet the definition in HB 2007.

Question 6 – Employer Contributions for Insurance Coverage – Does HB 2007 prohibit insurers from issuing contracts or policies to employers as group policyholders if the employers contribute different amounts for coverage of the eligible spouses and domestic partners of similarly situated employees?

Answer: No. HB 2007 doesn’t regulate employers or other group policyholders and the Bulletin expresses no view regarding whether other laws would prohibit the practice described in this question.

Question 7 – Midyear Enrollment: If health insurer P issues a policy that permits midyear enrollment, outside of annual enrollment periods, of a covered individual’s new spouse, must the policy permit midyear enrollment, on the same terms, of a covered individual’s domestic partner, as defined in HB 2007?

Answer: It depends. To the extent the midyear enrollment meets the minimum special-enrollment requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, (HIPAA), those special-enrollment rights need not be extended to domestic partners. To the extent the policy permits midyear enrollment more broadly than HIPAA requires and those additional midyear-enrollment rights apply to spouses, those additional midyear enrollment rights must be offered on the same terms to same-sex domestic partners.

Question 8 – Oregon Continuation Coverage: If health care service contractor R issues a contract that provides, pursuant to ORS 743.610, for continuation coverage for a former spouse in the event of a loss of coverage due to divorce, must the policy also provide for continuation coverage pursuant to ORS 743.610 on the same terms for a domestic partner as defined in HB 2007 in the event of termination of the domestic partnership?

Answer: Yes. The terms and provisions in contracts and policies that refer to or indicate the marital relationship include terms relating to the dissolution of marriage, and those terms must apply in the same manner to domestic partnerships and their dissolution.

Question 9 – COBRA Continuation Coverage: Health insurer S issues a policy providing for continuation coverage that meets the minimum requirements of the federal Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (COBRA) and that is therefore not subject to ORS 743.610. The policy provides for continuation coverage for a former spouse in the event of a loss of coverage due to divorce. Must the policy also provide for continuation coverage on the same terms for a domestic partner as defined in HB 2007 in the event of termination of the domestic partnership?

Answer: No. Under federal law, COBRA continuation coverage applies only to married couples and not to domestic partners. Therefore, HB 2007 does not apply to continuation coverage provided by a policy that is subject to the requirement of minimum continuation coverage in COBRA, and COBRA continuation coverage is not required to be extended to domestic partners.

Question 10 – Dependent Coverage: If health insurer T issues a policy that permits covered individuals to enroll their own or their spouse's dependents for coverage under the policy, must the policy also permit covered individuals to enroll their domestic partners' dependents?

Answer: Yes. The terms and provision in policies that refer to or indicate the marital relationship include terms relating to dependents in a marital relationship, and those terms must apply in the same manner to dependents in a domestic partnership.

Question 11 – Right to obtain life, health coverage on family member: Does the right of a spouse to obtain individual life or health insurance on the life of the other spouse under ORS 743.027 without consent of the other spouse apply in the same way to a member of a domestic partnership?

Answer: Yes, and this principle also applies with respect to consent to coverage under a family policy, because a family policy may be issued insuring any two or more family members upon an application signed by either parent, a stepparent, or by a husband or wife.

Question 12 – Uninsured motorist coverage: For uninsured motorist coverage as governed by ORS 742.504, the definition of “insured” applies to the spouse of a named insured and the relatives of either. Does that definition apply as well to the domestic partner of a named insured and to relatives of either the named insured or partner in the same manner?

Answer: Yes, because HB 2007 establishes that a privilege, immunity, right or benefit granted by statute to an individual because the individual is or was married is granted on equivalent terms to an individual who is or was in a domestic partnership or because the individual is or was related in a specified way to another individual because of a domestic partnership.

Question 13 – Personal injury protection: Does the requirement in ORS 742.520, that personal injury protection benefits apply to the person insured under the policy and, in relevant part, to members of that person’s family residing in the same household, apply to family members of a domestic partner residing in the same household?

Answer: Yes. The references in this statute to members of a “family” apply in the same way to family members in a domestic partnership.

Question 14 – Refiling of policy forms: The Bulletin states that the DCBS Director will not consider the law applicable to a group life or health policy issued or renewed before April 1, 2008, as long as the policy form was filed and approved for use prior to February 4, 2008. Must all such forms be refiled after April 1, 2008?

Answer: No. Individual and group forms do not need to be refiled, but a policy issued on or after April 1, 2008 under a form filed and approved for use prior to February 4, 2008, will be subject to the requirements of HB 2007 as explained in the Bulletin.

Question 15 – Individual and group life and health insurance policies: Do the requirements of HB 2007 apply to both individual and group policies of life and health insurance under the Insurance Code?

Answer: Yes. We find no ground for distinguishing between individual and group policies in the application of HB 2007.