



# Oregon

Kate Brown, Governor

## Department of Consumer and Business Services

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### EXHIBIT 1 TO OAR 836-010-0014(T)

September 23, 2015

TO: Health Insurers of Groups with 51 to 100 Employees

RE: Expansion of the Small Group Definition—Guidance for Transitional Plans

Effective January 1, 2016, the definition of “small group” set forth in ORS 743.730(29)(a) is modified to mean an employer that employed at least one but not more than 100 employees. The 2015 Oregon Legislature enacted Senate Bill 2466 that allows insurers (“carriers”) the option to provide transitional relief to employer groups with 51 to 100 employees. HB 2466 also provides that DCBS shall adopt rules for determining group size. DCBS has drafted separate guidance that covers how group size will be calculated. The current draft calls for a “full-time equivalents” calculation.

For purposes of this guidance, transitional grandfathered health benefit plans offered by an employer with 51 to 100 employees will be referred to as “expanded transitional GF plans.” Transitional health benefit plans, as defined in HB 2466 Section (2)(e), will be referred to as “expanded transitional plans.” Collectively, these plans will be referred to as “expanded plans.”

The coverage period for (non-grandfathered) expanded transitional plans will be subject to existing small group transitional plan guidance issued by the Insurance Division (“division”) dated February 6, 2015. That guidance provides that small group transitional plans may not be offered by a carrier after October 1, 2016, and the carrier must discontinue transitional plans effective no later than October 1, 2017.

TOPIC	QUESTION	ANSWER
Benefits	What benefits must expanded transitional GF plans and expanded transitional plans offer?	<p>Expanded transitional GF plans do not need to comply with the Affordable Care Act (ACA) mandates. However, these groups may not have annual or lifetime limits.</p> <p>The same requirements that apply to small group transitional plans apply to expanded transitional plans. These plans are not considered to be out of compliance if they do not provide the following:</p> <ul style="list-style-type: none"> <li>• Section 2701 (relating to fair health insurance premiums)</li> <li>• Section 2702 (relating to guaranteed availability of coverage)</li> <li>• Section 2703 (relating to guaranteed renewability of coverage)</li> <li>• Section 2704 (relating to the prohibition of pre-existing condition exclusions or other discrimination based on health status), with respect to adults, except with respect to group coverage</li> <li>• Section 2705 (relating to the prohibition of</li> </ul>

		<p>discrimination against individual participants and beneficiaries based on health status), except with respect to group coverage</p> <ul style="list-style-type: none"> <li>• Section 2706 (relating to non-discrimination in health care)</li> <li>• Section 2707 (relating to comprehensive health insurance coverage)</li> <li>• Section 2709, as codified at 42 U.S.C. § 300gg-8 (relating to coverage for individuals participating in approved clinical trials)</li> <li>• Section 1312(c) of the Affordable Care Act (relating to the single risk pool requirement)</li> </ul> <p>Expanded transitional plans cannot have annual or lifetime limits and must cover children up to age 26.</p>
Benefits	Are expanded transitional plans considered minimum essential coverage? <sup>1</sup>	Yes. Expanded transitional plans are considered minimum essential coverage and satisfy the employer mandate to provide health insurance.
Benefits	May a carrier allow an employer to negotiate for benefit changes and the plan still qualify for transitional relief?	No. Consistent with prior transitional plans, significant changes to plans are not allowed, unless required by state or federal regulation. The purpose of transitional plans is to allow more time and gradual movement to small group requirements.
OID Filing	What product standards do I use to file expanded transitional GF and expanded transitional plans?	Use the same product standards that you have used in the past. Product Standards H440-2448 found at: <a href="http://www.oregon.gov/DCBS/Insurance/insurers/rates-forms/filing/Pages/Health/health-grp-majored-HBP.aspx">http://www.oregon.gov/DCBS/Insurance/insurers/rates-forms/filing/Pages/Health/health-grp-majored-HBP.aspx</a>
Applicability	Are groups with 101 or more employees affected by this change?	The expansion of the small group definition applies to employer groups with 51 to 100 employees. Those with 101 or more employees are not affected. Group size of 101 is considered a large group plan.
Offer	What should a carrier do if a new group, defined as a small group under the new definition, has already been quoted as a large group?	Carriers need to ensure that groups have been properly classified as either small group (as defined in the expanded definition) or large group under the established employee counting method. If a group has been provided an incorrect quote, the carrier must ensure it is corrected.
Rates	If a carrier chooses to offer expanded transitional plans to provide coverage up to October 1, 2017, can the group's rate increase at renewal?	Yes. Renewals in 2016 should be handled and rated as normal. However, the division is prohibiting benefit changes to the expanded transitional plans, unless required by state or federal law.
Rates	How should expanded plans be	For 2016, expanded plans should be rated as large

<sup>1</sup> CMS FAQs about Transition Plans

<http://www.cms.gov/CCIIO/Resources/Fact-Sheets-and-FAQs/Downloads/Final-Master-FAQs-5-16-14.pdf>

CMS Guidance about Transition Plans:

<http://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/transition-to-compliant-policies-03-06-2015.pdf>

	rated?	groups.
Rates	Can rates for expanded plans be negotiated?	Yes.
Rates	Does the actuarial value requirement and metal levels apply to expanded plans?	No. As long as the group renews coverage in an expanded transitional GF plan or expanded transitional plan.
Renewal	May a group's plan be renewed/continued that has a "non-embedded" deductible?	Yes, if it meets the definition of an expanded plan.
Renewal	How long can expanded transitional plans remain in effect?	Expanded transitional GF plans may continue as grandfathered plans. All coverage under expanded transitional plans must be discontinued effective no later than October 1, 2017.
Renewal	Can expanded transitional plans with coverage extending into 2017 renew for a full 12 months?	If renewed on or before October 1, 2016, the renewal can be for the full 12 months. If a plan renews on or after November 1, 2016, it must renew as an ACA compliant small group plan. We are not allowing short contract years.
Renewal	Can expanded transitional plans with coverage extending into 2017 renew with a policy of more than 12 months?	<p>Yes. Short contracts of less than 12 months are not considered health benefit plans. Carriers offering to renew expanded transitional plans must use calendar year accumulators. Carriers must also credit expenses inuring to deductibles and out-of-pocket maximums toward new accumulators if a policyholder enrolls in a new ACA-compliant plan with the same carrier.</p> <p>Carriers offering to renew expanded transitional plans must use plan year accumulators as defined in the existing contract. If a renewed plan is issued for more than 12 months, the plan year is the renewal period. These carriers must also credit expenses inuring to deductibles and out-of-pocket maximums toward new accumulators if a policyholder enrolls in a new ACA-compliant plan with the same carrier prior to discontinuation of renewed coverage.</p> <p>Any carrier may, at its option, offer credit for deductible and out-of-pocket maximum expenses paid by a policyholder on another carrier's plan.</p>
Renewal	May an employer request an early renewal in 2016 to take advantage of transitional relief through September 2017?	Employers may request a change in the policy anniversary date. However, if in granting the employer's request, the carrier issues a new policy, adjusts terms of the plan, or offers substantially different benefits, the division considers that a termination/change of plan and would therefore not qualify for transitional relief. Adjusting terms of the policy includes but is not limited to changing employer contributions; adding or removing dependent coverage; adjusting probationary or

		exclusion periods; or changing minimum hour requirements.
Offer	Can a group purchase a new plan January 2, 2016, and qualify for transitional relief?	No. Transitional relief only applies to grandfathered plans and health benefit plans that were issued or renewed before January 1, 2016, in effect on December 31, 2015, and that qualify under federal guidance as transitional plans.
Applicability	Does transitional relief apply to expanded groups that purchased a large group plan after March 5, 2014, the date the federal guidance for transitional plans was issued? <sup>1</sup>	Yes. Transitional relief applies to expanded transitional plans issued or renewed and in effect prior to January 1, 2016. However, it would not be considered an expanded transitional GF plan because it was not issued before March 23, 2010.
Applicability	Are large and small group grandfathered plans subject to the same federal and state provisions?	Yes. Grandfathered status applies to any health plan in effect when the Affordable Care Act became law March 23, 2010.
Applicability	Will a rate increase on an expanded transitional GF plan make the plan lose the grandfathered status?	No. Grandfathered plans will lose that status if one or more of the following occurs: <ul style="list-style-type: none"> <li>• Cost-sharing changes, such as a percentage increase in coinsurance</li> <li>• Benefits are eliminated or reduced</li> <li>• Lowering the amount of the employer contribution toward the cost of coverage</li> <li>• Annual limit changes</li> <li>• Merger, acquisition, restructure if the purpose is to increase grandfathered plan membership</li> </ul>
Applicability	Do the existing limitations for grandfathered plans apply to expanded transitional GF plans regarding loss of grandfathered status?	Yes. Grandfathered plans will lose that status if one or more of the following occurs: <ul style="list-style-type: none"> <li>• Cost-sharing changes, such as a percentage increase or decrease in coinsurance</li> <li>• Benefits are eliminated or reduced</li> <li>• Lowering the amount of the employer contribution toward the cost of coverage</li> <li>• Annual limit changes</li> <li>• Merger, acquisition, restructure if the purpose is to increase grandfathered plan membership</li> </ul>
OID Filing	Are carriers required to let the division know if it will offer transitional plans or discontinue them?	Yes. HB 2466 requires a carrier to give notice to the division if it plans to discontinue expanded transitional plans. The division asks that carriers planning to offer expanded transitional plans give notice to the division. The notice should include the carrier's decision and provide the number of groups and members that could be affected by the carrier's decision for both expanded transitional GF plans and expanded transitional plans. Please send your notice to Annette Boyce, Product Regulation Manager by e-mail by September 25, 2015: <a href="mailto:Annette.c.boyce@oregon.gov">Annette.c.boyce@oregon.gov</a>

Offer	If a carrier decides to offer renewal of expanded plans, can it offer to renew some groups but not others?	No. If a carrier offers to renew expanded transitional GF plans, it must make that offer to all groups with grandfathered plans. If a carrier offers to renew expanded transitional plans, it must make that offer to all groups with transitional plan coverage.
Policyholder Notice	What renewal notices are required to be provided for expanded plan renewals?	Notice must be provided 60 days in advance of renewal. Please refer to the division's February 6, 2015, transitional plan guidance Exhibit 3, as a guide for developing your notices. Please submit your notices as an informational filing in SERFF. <a href="http://www.oregon.gov/DCBS/Insurance/insurers/other/Documents/regulatory-guidance/transitional-plan-guidance-201502.pdf">http://www.oregon.gov/DCBS/Insurance/insurers/other/Documents/regulatory-guidance/transitional-plan-guidance-201502.pdf</a>
Policyholder Notice	What discontinuation notices are required to be provided if a carrier plans to discontinue offering expanded plans?	Notice must be provided 90 days in advance of discontinuation or non-renewal due to expiration of transitional relief. Please refer to the division's February 6, 2015, transitional plan guidance Exhibit 2, as a guide for developing your notices. Please submit your notices as an informational filing in SERFF. <a href="http://www.oregon.gov/DCBS/Insurance/insurers/other/Documents/regulatory-guidance/transitional-plan-guidance-201502.pdf">http://www.oregon.gov/DCBS/Insurance/insurers/other/Documents/regulatory-guidance/transitional-plan-guidance-201502.pdf</a>

If you have questions, please contact either Annette Boyce at [Annette.c.boyce@oregon.gov](mailto:Annette.c.boyce@oregon.gov) or Tashia Sample at [Tashia.m.sample@oregon.gov](mailto:Tashia.m.sample@oregon.gov).