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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED
06/22/2022 2:50 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Issuance of Group Health Benefit Coverage to Employer Association

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 07/29/2022 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

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350 Winter Street NE
Salem,OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 07/25/2022
TIME: 1:15 PM
OFFICER: Lisa Emerson
ADDRESS: Labor & Industries Building
350 Winter St NE
Basement, Conference Room E
Salem, OR 97301
SPECIAL INSTRUCTIONS:
This is a hybrid meeting conducted in-person and virtually via Microsoft TEAMS.
Contact rules coordinator to receive meeting link if you wish to join virtually.
Or call in (audio only)
+1 503-446-4951,,39661075# United States, Portland
Phone Conference ID: 396 610 75#

NEED FOR THE RULE(S)

These rules establish standards for the issuance of a group health benefit coverage to an employer association in Oregon. The rules clarify the types of employer associations that are eligible to act as the policyholder of a group health benefit plan under ORS 731.098 and the types of information that must be submitted to the division in accordance with ORS 743.524.

The rules will help ensure that the issuance of group health insurance to an employer association is consistent with the requirements of the federal Patient Protection and Affordable Care Act. The department has authority to adopt these rules under ORS 731.244 and ORS 743.524.

These rules were developed in conjunction with a Rules Advisory Committee, which met on May 14, 2021, March 17,

2022 and April 26, 2022. Members of the committee included representatives of health insurers, employer associations, insurance producers and consumers. Several members of the committee, including representatives of the employer associations and insurance producers were also or represented small business owners.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website: https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

A rules advisory committee was consulted regarding this racial equity statement. The rule most directly affects licensed health insurers and employer associations (small businesses); therefore, this rule is not anticipated to have any direct impact, positive or negative, on racial equity. While individuals and families participate in AHPs, we have no information to suggest that the rule will have a disparate impact on any particular group of consumers.

FISCAL AND ECONOMIC IMPACT:

Because the proposed rules reflect existing federal requirements, these rules are not expected to have a significant cost of compliance. In many instances, the evidentiary standards and approval processes required under the rule mirror the standards and processes that the division has applied to employer associations under Insurance Bulletin 2013-12, which was issued in May 2013.

In cases where these rules would require an existing employer association to provide additional information, to make changes to existing benefit programs, or to provide information on a more frequent basis, the cost of complying with the rules will fall on licensed health insurers and the employer association. The division does not expect these rules to have a fiscal impact on any small businesses that purchase health insurance through employer associations.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) The rules are not expected to have a significant impact on state agencies or units of local government. As described above, the rules may impose some additional costs on health insurers and employer associations.

Based on financial filings and other information available to the Division of Financial Regulation (DFR), the department does not believe that any health insurer affected by these rules would meet the definition of a small business under ORS 183.310. The DFR does not collect information about the number of persons employed by an employer association, however some employer associations subject to this rule may be, or largely comprised of, small businesses within the meaning of ORS 183.310.

(2)(a) Based on a data call conducted in 2019, licensed health insurers reported a total of 62 associations had purchased group health benefit plans in Oregon, with 32 of those associations claiming to meet the definition of "employer association" in the proposed rule or its predecessors. These 32 employer associations represent a diverse set of industries across the state.

The department does not have information on the number and type of small businesses that purchase health coverage

through employer associations. Based on quarterly enrollment reports submitted to DFR, the total number of Oregonians enrolled in these plans issued to an association, trust, or MEWA was approximately 139,000 as of March 31, 2021. Many of these enrollees are likely employed by a small business within the meaning of ORS 183.310.

Based on financial filings made to DFR, no health insurers meet the definition of a small business under ORS 183.310, because no health insurer is independently owned and operated.

(2)(b) Any additional costs of reporting, recordkeeping and administration associated with these rules would likely fall on licensed health insurers and employer associations. The rules may require these entities to report additional information to the DFR regarding the association's purpose, its membership, and other relevant activities related to the provision of health benefit plan coverage. These rules also require these entities to update the required information at least annually.

Based on financial filings and other information available to DFR, the department does not believe that any health insurer affected by these rules would meet the definition of a small business under ORS 183.310. The DFR does not collect information about the number of persons employed by an employer association, however some employer associations subject to this rule may be small businesses within the meaning of ORS 183.310.

(2)(c) Any costs of equipment, supplies, labor and increased administration associated with these rules would likely fall on licensed health insurers and employer associations. The department does not have information available to estimate the costs of these items, but expects the amount of these costs to vary by employer association.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Members of the rules advisory committee were owners or employees of small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 836-053-0006

RULE SUMMARY: Defines the term "employer association" and specifies the items that a health insurance carrier must provide to the department for approval prior to issuing group health benefit coverage to an employer association. Requires carriers to notify the department of any changes to the required information at least annually.

CHANGES TO RULE:

836-053-0006
Issuance of Group Health Benefit Coverage to Employer Association
(1) As used in this rule, the term "employer association" refers to an association or other group of employers that sponsors, or wishes to sponsor one or more fully insured group health benefit plan for its members, employees, or employees of its members. For purposes of this rule, the term does not include a labor union. ¶
(2) A health insurance carrier may not issue a policy of group health benefit coverage to an employer association as the policyholder or offer coverage under such a policy, whether issued in this or another state, unless the director of the Department of Consumer and Business Services determines that:¶
(a) The employer association meets the requirements of ORS 731.098 (2); and¶
(b) Issuance of the policy or coverage would be consistent with the requirements of this rule and the Insurance Code. ¶
(3) A carrier proposing to offer group health benefit coverage to an employer association must submit, in the form prescribed by the director, the following information to the department's Division of Financial Regulation for approval:¶
(a) A signed copy of the employer association's current constitution and bylaws.¶
(b) A statement describing the purpose of the employer association and demonstrating that the employer

association is organized and will be maintained in good faith primarily for purposes other than that of obtaining insurance. ¶
(c) A statement of membership requirements describing any requirements for an employer to become and remain a member of the employer association, including requirements related to participation in a particular trade, business or industry and any geographic requirements. ¶
(A) If only a subset of the employer association's employer-members will be eligible to participate in the group health benefit coverage, the statement of membership requirements must explain any additional requirements that an employer-member must satisfy in order to participate. Notwithstanding any requirements, a "working owner" is not allowed to enroll in the group health benefit coverage. For purposes of this rule, the term "working owner" means sole proprietors and other self-employed individuals who do not employ at least one common law employee.¶
(B) If membership in the employer association is limited to a particular trade, business or industry, the statement of membership requirements must define the trade, business, or industry served by the employer association and describe how the employer association determines if the requirement is satisfied. ¶
(d) A statement of eligibility describing the types of individuals who will be eligible to enroll in the group health benefit coverage sponsored by the employer association, whether as a subscriber or as a dependent, and any terms or conditions for continued eligibility that will be set by the carrier or by the employer association. ¶
(e) Evidence demonstrating that the employer association may sponsor the group health benefit coverage under section 3(5) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(5)). The filing must include a letter from an attorney that concludes that the employer association qualifies as an employer under 29 U.S.C. 1002(5) and explains the basis for the conclusion using, at a minimum, the following criteria:¶
(A) The employer association sponsoring and the individuals benefitting from the group health benefit coverage are tied by a common economic or representational interest, or commonality of interest, beyond the provision of health insurance, considering: ¶
(i) How employer-members of the employer association are solicited; ¶
(ii) Eligibility criteria to participate in the employer association; ¶
(iii) The process by which the employer association was formed; ¶
(iv) The purpose for the formation of the employer association; and¶
(v) Preexisting relationships of any of the employer-members of the employer association. ¶
(B) The members of the employer association that participate in the group health benefit coverage will exercise control, in both form and substance, over the administration and operation of the group health benefit coverage. ¶
(f) If the employer association will offer coverage to small employer-members, evidence demonstrating that the group health benefit coverage meets 60 percent actuarial value through: ¶
(A) Certification by an actuary in accordance with 45 CFR 156.145; or¶
(B) A plan that is the equivalent to an Affordable Care Act bronze level plan in accordance with 45 CFR 156.140.¶
(g) Any additional information requested by the division. ¶
(4) With respect to membership in the employer association or the ability to enroll in group health benefit coverage, no carrier, employer association, or employer-member of the employer association may discriminate against an individual on the basis of the individual's health status. This section does not prevent an employer association or carrier from charging different premium rates to different employer groups within the employer association, provided the methods used to establish each employer's premium rate are consistent with 45 CFR 146.121. ¶
(5) Beginning in 2023, no later than October 31 of each year, a health insurance carrier offering group health benefit coverage to an employer association must inform the division of changes to the information required under section (3) of this rule, or provide confirmation to the division that the employer association's information has not changed since the last filing. ¶
(6) For a carrier that was approved to offer group health benefit coverage to an employer association prior to the effective date of this rule, the requirements of this rule become effective on July 1, 2023. The carrier must file the information required under section (3) of this rule no later than October 31, 2023. If the division determines the filing is not in compliance with the requirements of this rule, the carrier offering coverage to the employer association may file a transition plan no later than 60 calendar days following the disposition of the filing, demonstrating how and when compliance will be met. The division may allow a carrier to continue offering coverage pursuant to the terms of the transition plan for up to two years following the final disposition regarding the acceptability of the transition plan.
Statutory/Other Authority: ORS 731.244, ORS 743.524
Statutes/Other Implemented: ORS 743.524, ORS 731.098