



## PERMANENT ADMINISTRATIVE ORDER

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CHAPTER 836

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

INSURANCE REGULATION

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

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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