

Enrolled
House Bill 3074

Sponsored by Representative NOSSE

CHAPTER

AN ACT

Relating to health insurance; amending ORS 743.018, 743.019, 743.020 and 750.055.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 743.019 is amended to read:

743.019. (1) When an insurer files a schedule or table of premium rates for individual or small employer health *[insurance]* **benefit plans** under ORS 743.018, the Department of Consumer and Business Services shall open a 30-day public comment period on the rate filing that begins on the date the insurer files the schedule or table of premium rates. The department shall post all of the comments received to the department's website without delay.

(2) **After the close of the public comment period described in subsection (1) of this section**, the department shall *[make]* **issue** a preliminary decision to approve, disapprove or modify a rate filing. The department shall notify the insurer of, and make available to the public, the preliminary decision, including:

(a) An explanation of the findings and rationale that are the basis for the **preliminary** decision; and

(b) Any actuarial or other analyses, calculations or evaluations relied upon by the department in arriving at the **preliminary** decision.

(3) The department shall provide the insurer or any person adversely affected or aggrieved by the preliminary decision the opportunity to meet with the department to discuss and respond to the preliminary decision. However, an insurer or other person may not substitute new facts or data for the facts or data submitted by the insurer in the filing. The meeting shall:

(a) Include a department employee who reviewed the rate filing; and

(b) Comply with the requirements of ORS 192.610 to 192.690.

[(4)(a) The department may approve a modified rate filing only with the written consent of the insurer. An insurer's consent to the modified rate filing does not preclude the insurer from contesting the modified rate filing by requesting a reconsideration under subsection (6) of this section or by requesting a contested case hearing.]

[(b) If the modified rate filing is reversed as a result of a reconsideration or contested case hearing, the rate filing, as approved in the reconsideration or final order in a contested case, may take effect on or after the date of the reconsideration or final order, in accordance with rules adopted by the department.]

[(5)(a)] **(4)(a)** The department shall issue *[an]* **a proposed** order, no later than 30 days after the *[close of the public comment period described in subsection (1) of this section, approving, disapproving or modifying]* **department issues a preliminary decision under subsection (2) of this section**,

to approve, disapprove or modify the rate filing based on the information submitted during the public comment period. *[However,]*

(b) In issuing the proposed order, the department may not consider new facts or data that are offered as a substitute for the facts or data submitted by the insurer in the filing.

(c) The *[order shall be mailed]* **department shall mail the proposed order** to the insurer and *[posted]* **post the proposed order** to the department's website.

[(b)] **(d)** The **proposed** order must include:

(A) An explanation of the findings and rationale that are the basis for the **proposed** order, including any actuarial or other analyses, calculations or evaluations relied upon by the department in its findings or rationale; and

(B) Notice of the right of the insurer or any person adversely affected or aggrieved by the **proposed** order to *[contest the order by requesting:]*

[(i) An expedited reconsideration in accordance with subsection (6) of this section; or]

[(ii) A contested case hearing in accordance with ORS chapter 183.] **request a review by the Director of the Department of Consumer and Business Services, in accordance with subsection (6) of this section, no later than 10 days after the date that the proposed order was issued.**

(5) If the insurer or person adversely affected or aggrieved by the proposed order does not timely request a review of the proposed order by the director, the director shall issue a final order as described in subsection (6)(d) of this section.

[(6) If an insurer or a person adversely affected or aggrieved by an order approving, disapproving or modifying a rate filing submits to the department a request for reconsideration no later than 10 days after the date the order is issued under subsection (5) of this section:]

(6) If the insurer or a person adversely affected or aggrieved by the proposed order timely requests a review by the director of the proposed order:

(a) The requester may not substitute new facts or data for the facts and data that were submitted by the insurer in the filing, but may provide a brief, memorandum or analysis based on the evidence contained in the filing or received and considered by the department during the public comment period;

(b) The director *[of the Department of Consumer and Business Services]* may not delegate the decision-making authority for the *[reconsideration]* request **for review** to any other individual;

(c) The director shall issue a *[decision on the request for reconsideration]* **final order** no later than 30 days after the request **for review** is received by the *[department]* **director**; and

(d) The *[decision]* **final order** shall include:

(A) An explanation of the findings and rationale that are the basis for the *[decision]* **final order**; and

(B) Notice of the right to a contested case hearing in accordance with ORS chapter 183.

(7)(a) If, following the issuance of a final order under subsection (6)(c) of this section but before the effective date of the premium rates approved by the final order, an event occurs that materially affects the director's decision to approve the rates, the director may open a new public comment period for a period of time that the director determines is necessary to receive comments concerning the event. Based upon the event and the public comments received, the director shall affirm the final order by providing a written explanation of the basis for affirming the final order or issue a new proposed order, as described in subsection (4) of this section.

(b) In the consideration of public comments or the event described in paragraph (a) of this subsection or in issuing any new proposed order, the director:

(A) May not consider new facts or data that are offered as a substitute for the facts or data submitted by the insurer in the original filing.

(B) May consider supplemental facts or data reasonably related to the event described in paragraph (a) of this subsection.

[7] (8) Subsections (2) [and (5)] to (7) of this section do not require the department to perform any actuarial or other analyses, calculations or evaluations.

[8] (9) The department may adopt rules modifying the procedures described in subsections (2) to [6] (7) of this section, but only to the extent necessary to comply with 42 U.S.C. 300gg-94.

SECTION 2. ORS 743.018, as amended by section 8, chapter 7, Oregon Laws 2018, is amended to read:

743.018. (1) Except for group life and health insurance, and except as provided in ORS 743.015, every insurer shall file with the Director of the Department of Consumer and Business Services all schedules and tables of premium rates for life and health insurance to be used on risks in this state, and shall file any amendments to or corrections of such schedules and tables. Premium rates are subject to approval, disapproval or withdrawal of approval by the director as provided in ORS 742.003, 742.005, 742.007 and, **for health benefit plans as defined in ORS 743B.005, ORS 743.019.**

(2) Except as provided in ORS 743B.013 and subsection (3) of this section, a rate filing by a carrier for any of the following health benefit plans subject to ORS 743.004, 743.022, 743.535 and 743B.003 to 743B.127 shall be available for public inspection immediately upon submission of the filing to the director:

(a) Health benefit plans for small employers.

(b) Individual health benefit plans.

(3) The director may by rule:

(a) Specify all information a carrier must submit as part of a rate filing under this section; and

(b) Identify the information submitted that will be exempt from disclosure under this section because the information constitutes a trade secret and would, if disclosed, harm competition.

(4) The director, after conducting an actuarial review of the rate filing, may approve a proposed premium rate for a health benefit plan for small employers or for an individual health benefit plan if, in the director's discretion, the proposed rates are:

(a) Actuarially sound;

(b) Reasonable and not excessive, inadequate or unfairly discriminatory; and

(c) Based upon reasonable administrative expenses.

(5) In order to determine whether the proposed premium rates for a health benefit plan for small employers or for an individual health benefit plan are reasonable and not excessive, inadequate or unfairly discriminatory, the director may consider:

(a) The insurer's financial position, including but not limited to profitability, surplus, reserves and investment savings.

(b) Historical and projected administrative costs and medical and hospital expenses, including expenses for drugs reported under section 5, chapter 7, Oregon Laws 2018.

(c) Historical and projected loss ratio between the amounts spent on medical services and earned premiums.

(d) Any anticipated change in the number of enrollees if the proposed premium rate is approved.

(e) Changes to covered benefits or health benefit plan design.

(f) Changes in the insurer's health care cost containment and quality improvement efforts since the insurer's last rate filing for the same category of health benefit plan.

(g) Whether the proposed change in the premium rate is necessary to maintain the insurer's solvency or to maintain rate stability and prevent excessive rate increases in the future.

(h) Any public comments received under ORS 743.019 pertaining to the standards set forth in subsection (4) of this section and this subsection.

(6) The requirements of this section do not supersede other provisions of law that require insurers, health care service contractors or multiple employer welfare arrangements providing health insurance to file schedules or tables of premium rates or proposed premium rates with the director or to seek the director's approval of rates or changes to rates.

SECTION 3. ORS 743.020 is amended to read:

743.020. An insurer licensed by the Department of Consumer and Business Services shall include in any rate filing under ORS 743.018 with respect to individual and small employer health *insurance*

policies] **benefit plans, as defined in ORS 743B.005**, a statement of administrative expenses in the form and manner prescribed by the department by rule. The statement must include, but is not limited to:

- (1) A statement of administrative expenses on a per member per month basis; and
- (2) An explanation of the basis for any proposed premium rate increases or decreases.

SECTION 4. ORS 750.055, as amended by section 9, chapter 7, Oregon Laws 2018, is amended to read:

750.055. (1) The following provisions apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

- (a) ORS 705.137, 705.138 and 705.139.
- (b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.
- (c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not including ORS 732.582.
- (d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.
- (e) ORS 734.014 to 734.440.
- (f) ORS 735.600 to 735.650.
- (g) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to 742.542.
- (h) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, [743.019,] 743.020, 743.022, 743.023, 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406, 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.788 and 743.790.
- (i) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044, 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260 and section 2, chapter 771, Oregon Laws 2013.
- (j) ORS 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195 to 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310, 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 and section 5, chapter 7, Oregon Laws 2018.
- (k) The following provisions of ORS chapter 744:
 - (A) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033, 744.037, 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;
 - (B) ORS 744.605, 744.609, 744.619, 744.621, 744.626, 744.631, 744.635, 744.650, 744.655 and 744.665, relating to the regulation of insurance consultants; and
 - (C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.
 - (L) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.
- (2) The following provisions of the Insurance Code apply to health care service contractors except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act:
 - (a) ORS 731.485, if the group practice health maintenance organization wholly owns and operates an in-house drug outlet.

(b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse practitioner associated with a group practice health maintenance organization.

(3) For the purposes of this section, health care service contractors are insurers.

(4) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(5)(a) A health care service contractor is a domestic insurance company for the purpose of determining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

(b) A health care service contractor's classification as a domestic insurance company under paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510 to 734.710.

(6) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are necessary for the proper administration of these provisions.

SECTION 5. ORS 750.055, as amended by section 21, chapter 771, Oregon Laws 2013, section 7, chapter 25, Oregon Laws 2014, section 82, chapter 45, Oregon Laws 2014, section 9, chapter 59, Oregon Laws 2015, section 7, chapter 100, Oregon Laws 2015, section 7, chapter 224, Oregon Laws 2015, section 11, chapter 362, Oregon Laws 2015, section 10, chapter 470, Oregon Laws 2015, section 30, chapter 515, Oregon Laws 2015, section 10, chapter 206, Oregon Laws 2017, section 6, chapter 417, Oregon Laws 2017, section 22, chapter 479, Oregon Laws 2017, and section 10, chapter 7, Oregon Laws 2018, is amended to read:

750.055. (1) The following provisions apply to health care service contractors to the extent not inconsistent with the express provisions of ORS 750.005 to 750.095:

(a) ORS 705.137, 705.138 and 705.139.

(b) ORS 731.004 to 731.150, 731.162, 731.216 to 731.362, 731.382, 731.385, 731.386, 731.390, 731.398 to 731.430, 731.428, 731.450, 731.454, 731.485, as provided in subsection (2) of this section, ORS 731.488, 731.504, 731.508, 731.509, 731.510, 731.511, 731.512, 731.574 to 731.620, 731.640 to 731.652, 731.730, 731.731, 731.735, 731.737, 731.750, 731.752, 731.804, 731.808 and 731.844 to 731.992.

(c) ORS 732.215, 732.220, 732.230, 732.245, 732.250, 732.320, 732.325 and 732.517 to 732.596, not including ORS 732.582.

(d) ORS 733.010 to 733.050, 733.080, 733.140 to 733.170, 733.210, 733.510 to 733.680 and 733.695 to 733.780.

(e) ORS 734.014 to 734.440.

(f) ORS 735.600 to 735.650.

(g) ORS 742.001 to 742.009, 742.013, 742.016, 742.061, 742.065, 742.150 to 742.162 and 742.518 to 742.542.

(h) ORS 743.004, 743.005, 743.007, 743.008, 743.010, 743.018, [743.019,] 743.020, 743.022, 743.023, 743.028, 743.029, 743.038, 743.040, 743.044, 743.050, 743.100 to 743.109, 743.402, 743.405, 743.406, 743.417, 743.472, 743.492, 743.495, 743.498, 743.522, 743.523, 743.524, 743.526, 743.535, 743.550, 743.650 to 743.656, 743.680 to 743.689, 743.788 and 743.790.

(i) ORS 743A.010, 743A.012, 743A.014, 743A.020, 743A.034, 743A.036, 743A.040, 743A.044, 743A.048, 743A.051, 743A.052, 743A.058, 743A.060, 743A.062, 743A.063, 743A.064, 743A.065, 743A.066, 743A.068, 743A.070, 743A.080, 743A.082, 743A.084, 743A.088, 743A.090, 743A.100, 743A.104, 743A.105, 743A.108, 743A.110, 743A.124, 743A.140, 743A.141, 743A.148, 743A.150, 743A.160, 743A.168, 743A.170, 743A.175, 743A.185, 743A.188, 743A.190, 743A.192, 743A.250, 743A.252 and 743A.260.

(j) ORS 743B.001, 743B.003 to 743B.127, 743B.128, 743B.130, 743B.195 to 743B.204, 743B.220, 743B.222, 743B.225, 743B.227, 743B.250, 743B.252, 743B.253, 743B.254, 743B.255, 743B.256, 743B.257, 743B.258, 743B.280 to 743B.285, 743B.287, 743B.300, 743B.310, 743B.320, 743B.323, 743B.330, 743B.340, 743B.341, 743B.342, 743B.343 to 743B.347, 743B.400, 743B.403, 743B.407, 743B.420, 743B.423, 743B.450, 743B.451, 743B.452, 743B.453, 743B.470, 743B.475, 743B.505, 743B.550, 743B.555, 743B.601, 743B.602 and 743B.800 and section 5, chapter 7, Oregon Laws 2018.

(k) The following provisions of ORS chapter 744:

(A) ORS 744.001 to 744.009, 744.011, 744.013, 744.014, 744.018, 744.022 to 744.033, 744.037, 744.052 to 744.089, 744.091 and 744.093, relating to the regulation of insurance producers;

(B) ORS 744.605, 744.609, 744.619, 744.621, 744.626, 744.631, 744.635, 744.650, 744.655 and 744.665, relating to the regulation of insurance consultants; and

(C) ORS 744.700 to 744.740, relating to the regulation of third party administrators.

(L) ORS 746.005 to 746.140, 746.160, 746.220 to 746.370, 746.600, 746.605, 746.607, 746.608, 746.610, 746.615, 746.625, 746.635, 746.650, 746.655, 746.660, 746.668, 746.670, 746.675, 746.680 and 746.690.

(2) The following provisions of the Insurance Code apply to health care service contractors except in the case of group practice health maintenance organizations that are federally qualified pursuant to Title XIII of the Public Health Service Act:

(a) ORS 731.485, if the group practice health maintenance organization wholly owns and operates an in-house drug outlet.

(b) ORS 743A.024, unless the patient is referred by a physician, physician assistant or nurse practitioner associated with a group practice health maintenance organization.

(3) For the purposes of this section, health care service contractors are insurers.

(4) Any for-profit health care service contractor organized under the laws of any other state that is not governed by the insurance laws of the other state is subject to all requirements of ORS chapter 732.

(5)(a) A health care service contractor is a domestic insurance company for the purpose of determining whether the health care service contractor is a debtor, as defined in 11 U.S.C. 109.

(b) A health care service contractor's classification as a domestic insurance company under paragraph (a) of this subsection does not subject the health care service contractor to ORS 734.510 to 734.710.

(6) The Director of the Department of Consumer and Business Services may, after notice and hearing, adopt reasonable rules not inconsistent with this section and ORS 750.003, 750.005, 750.025 and 750.045 that are necessary for the proper administration of these provisions.

Passed by House April 11, 2019

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Repassed by House June 11, 2019

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Approved:

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Timothy G. Sekerak, Chief Clerk of House

.....M.,....., 2019

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Tina Kotek, Speaker of House

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Kate Brown, Governor

Passed by Senate May 23, 2019

Filed in Office of Secretary of State:

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Peter Courtney, President of Senate

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Bev Clarno, Secretary of State