

Chapter 735

2007 EDITION

Alternative Insurance

ESSENTIAL PROPERTY INSURANCE	
735.005	Definitions for ORS 735.005 to 735.145
735.015	Purpose
735.025	Construction
735.035	Application
735.045	Oregon FAIR Plan Association; insurers required to be members; plan of operation
735.055	Association board of directors; appointment; compensation, expenses of members; quorum
735.065	Required association functions; assessments
735.075	Discretionary association functions
735.085	Plan of operation; submission to director; approval of plan; compliance with plan; rules
735.095	Contents of plan of operation
735.105	Regulation of association as insurer; financial report to director
735.115	Exemption of association from fees and taxes
735.145	Immunity from legal action in carrying out duties
MARKET ASSISTANCE PLANS; JOINT UNDERWRITING ASSOCIATIONS	
735.200	Legislative findings; purpose
735.205	Definitions for ORS 735.200 to 735.260
735.210	Formation of market assistance plans; rules
735.215	Findings prior to formation of joint underwriting association; hearing
735.220	Formation of joint underwriting association; funds
735.225	Membership in joint underwriting association
735.230	Rates; approval
735.235	Board of directors
735.240	Annual statement
735.245	Conditions for policyholder surcharge
735.250	Exemption from liability
735.255	State not liable to pay debts of association
735.260	Rules
735.265	Liquor liability insurance risk and rate classifications; rules
LIABILITY RISK RETENTION LAW	
735.300	Purpose of ORS 735.300 to 735.365
735.305	Definitions for ORS 735.300 to 735.365
735.310	Qualifications for risk retention group; plan of operation; application; notification to National Association of Insurance Commissioners
735.315	Foreign risk retention groups; conditions of doing business in Oregon; prohibited acts
735.320	Relationship to insurance guaranty fund and joint underwriting association
735.325	Exemption of purchasing groups from certain laws
735.330	Purchasing groups; notice of intent to do business; registration; exceptions
735.335	Purchase of insurance by purchasing group
735.340	Insurance Code enforcement authority subject to federal law
735.345	Violation of ORS 735.300 to 735.365; penalties
735.350	Agent or broker; license
735.355	Court orders enforceable in Oregon
735.360	Rules
735.365	Short title
SURPLUS LINES LAW	
735.400	Purposes of ORS 735.400 to 735.495
735.405	Definitions for ORS 735.400 to 735.495
735.410	Conditions for procuring insurance through nonadmitted insurer; rules
735.415	Qualifications for placement of coverage with nonadmitted insurer; rules
735.420	Declaration of ineligibility of surplus lines insurer
735.425	Filing by licensee after placement of surplus lines insurance; rules
735.430	Surplus Line Association of Oregon
735.435	Evidence of insurance; contents; change; penalty; notice regarding Insurance Guaranty Association; rules
735.440	Validity of contracts
735.445	Effect of payment of premium to surplus lines licensee
735.450	Requirements for license as surplus lines insurance licensee
735.455	Authority of licensee; rules
735.460	Records of licensee; examination
735.465	Monthly reports; rules
735.470	Premium tax; collection; payment; refund; rules
735.475	Suit to recover unpaid tax
735.480	Suspension or revocation of license; refusal to renew; grounds
735.485	Actions against surplus lines insurer
735.490	Jurisdiction in action against insurer; service of summons and complaint; response
735.492	Application of certain Insurance Code provisions to surplus lines insurers
735.495	Short title; severability
MEDICAL INSURANCE POOL	
735.600	Legislative intent
735.605	Definitions for ORS 735.600 to 735.650
735.610	Oregon Medical Insurance Pool Board; members; authority; rules

INSURANCE

<p>735.612 Oregon Medical Insurance Pool Account; sources; uses</p> <p>735.614 Assessments for expenses of pool</p> <p>735.615 Eligibility for pool coverage; rules</p> <p>735.616 Portability coverage under pool</p> <p>735.620 Administration of pool insurance program</p> <p>735.625 Coverage; rules</p> <p>735.630 Exemption from liability</p> <p>735.635 Exemption from taxation</p> <p>735.640 Study; adjustment of operation and benefits plans</p> <p>735.645 Notice of existence of pool</p> <p>735.650 Application of provisions of Insurance Code</p> <p style="text-align: center;">OFFICE OF PRIVATE HEALTH PARTNERSHIPS (Generally)</p> <p>735.700 Definitions for ORS 735.700 to 735.714</p> <p>735.701 Office of Private Health Partnerships</p> <p>735.702 Duties of office</p> <p>735.703 Administrator</p> <p>735.705 Appointment of deputy director, officers and employees</p> <p>735.706 Office of Private Health Partnerships Account</p> <p>735.707 Rules</p> <p>735.709 Appointment of advisory committees</p> <p>735.710 Additional duties of office; rules</p> <p>735.711 Criminal records checks</p> <p>735.712 Office to encourage health insurance coverage among small employers</p>	<p>735.714 Renewal of health benefit plans for small employers</p> <p style="text-align: center;">(Family Health Insurance Assistance Program)</p> <p>735.720 Definitions for ORS 735.720 to 735.740</p> <p>735.722 Family Health Insurance Assistance Program; eligibility for participation; selection of administrator</p> <p>735.724 Application to participate in program; issuance of subsidies; restrictions; enrollment in employer-sponsored coverage</p> <p>735.726 Level of assistance determinations</p> <p>735.728 Subsidies limited to funds appropriated; enrollment restrictions</p> <p>735.730 Establishment of minimum benefit requirements for plan subsidy</p> <p>735.731 Coverage of immunizations; rules</p> <p>735.732 Confidentiality of information in enrollment applications; exchange of information with governmental agencies; use of Social Security numbers</p> <p>735.733 Basic benchmark health benefit plan eligible for subsidy</p> <p>735.734 Rules</p> <p>735.736 Family Health Insurance Assistance Program Account</p> <p>735.738 Reports of program operation</p> <p>735.740 Sanctions for violation of program requirements; civil penalties</p> <p>735.750 Definitions</p> <p>735.752 Eligibility for coverage for certain members</p> <p>735.754 System for payment or reimbursement of subsidies and costs</p> <p>735.756 Determination of subsidies and costs</p>
---	---

ESSENTIAL PROPERTY INSURANCE

735.005 Definitions for ORS 735.005 to 735.145. As used in ORS 735.005 to 735.145, unless the context requires otherwise:

(1) "Association" means the Oregon FAIR Plan Association created by ORS 735.045.

(2) "Board" means the board of directors of the association.

(3) "Essential property insurance" means insurance against direct loss to property as defined and limited in standard fire policies and extended coverage endorsements thereon, as approved by the Director of the Department of Consumer and Business Services, and insurance against the perils of vandalism and malicious mischief. "Essential property insurance" does not include automobile insurance or insurance on such types of manufacturing risks as may be excluded by the director.

(4) "Inspection bureau" means the person or persons designated by the association with the approval of the director to make inspections as required under ORS 731.418, 733.010 and 735.005 to 735.145 and to perform such other duties as may be authorized by the association.

(5) "Service insurer" means any insurer designated as such by the board.

(6) "Member insurer" means an insurer authorized to transact insurance in this state that writes any kind of essential property insurance.

(7) "Net direct written premiums" means direct gross premiums written in this state on insurance policies to which ORS 735.005 to 735.145 apply, less return premiums thereon and dividends paid or credited to policyholders on such direct business. "Net direct written premiums" does not include premiums on contracts between insurers or reinsurers.

(8) "Plan" means the plan of operation of the association established pursuant to ORS 735.085. [1971 c.321 §5; 1979 c.818 §2]

735.015 Purpose. The purpose of ORS 735.005 to 735.145 is:

(1) To assure stability in the property insurance market for certain property located in this state.

(2) To assure the availability of essential property insurance to the owners of insurable property.

(3) To encourage maximum use, in obtaining essential property insurance, of the normal insurance market provided by authorized insurers.

(4) To provide for the equitable distribution among authorized insurers of the re-

sponsibility for insuring certain insurable property for which essential property insurance cannot be obtained through the normal insurance market by the establishment of the Oregon FAIR Plan Association. [1971 c.321 §2]

735.025 Construction. ORS 735.005 to 735.145 shall be liberally construed to effect the purpose provided in ORS 735.015. [1971 c.321 §3]

735.035 Application. ORS 735.005 to 735.145 apply only to essential property insurance on domestic risks. [1971 c.321 §4]

735.045 Oregon FAIR Plan Association; insurers required to be members; plan of operation. There is hereby created the Oregon FAIR Plan Association. Each insurer that is a member insurer shall become and remain a member of the association as a condition of its authority to transact insurance in this state. The association shall perform its functions in accordance with a plan of operation established pursuant to ORS 735.085, and shall exercise its powers through its board of directors. [1971 c.321 §6]

735.055 Association board of directors; appointment; compensation, expenses of members; quorum. (1) The board of directors of the Oregon FAIR Plan Association shall consist of five members selected by the member insurers, subject to the approval of the Director of the Department of Consumer and Business Services, and four persons selected by the Governor, one of whom shall be an insurance producer holding an appointment as an Oregon insurance producer of a member insurer. Of the other three persons appointed by the Governor, one shall be a resident of a county of over 400,000 population and none shall have been an employee or insurance producer of a member insurer. The term of each member shall be as specified in the plan, but in no event for longer than four years. A vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as for the initial selection.

(2) In making or approving selections to the board, the Director of the Department of Consumer and Business Services shall consider among other things whether member insurers are fairly represented.

(3) A member of the board shall receive no compensation for services as a member. However, a member shall be reimbursed from the assets of the association for actual and necessary travel and other expenses incurred by the member in the performance of duties.

(4) A majority of the members of the board constitutes a quorum for the transaction of business. [1971 c.321 §7; 1979 c.818 §2a; 2003 c.364 §88]

735.065 Required association functions; assessments. (1) The Oregon FAIR Plan Association shall:

(a) Have authority on behalf of its members to arrange for the issuance of property insurance policies by service insurers and to reinsure any of those policies in whole or in part and to cede such reinsurance, subject to the plan.

(b) Assess member insurers the amounts necessary to pay the expenses incurred by the association in meeting its obligations and exercising its duties and powers under ORS 735.005 to 735.145.

(2) Except as provided in subsection (3)(a) and (b) of this section, the assessment of each member insurer for a particular calendar year shall be in the proportion that the net direct written premiums of the member insurer for the second preceding calendar year bears to the net direct written premiums of all member insurers for the second preceding calendar year. Each member insurer shall be notified of an assessment not later than the 30th day before the day it is due. If the funds of the association do not provide in any one year an amount sufficient to pay the expenses of the association, the funds available shall be prorated among the expenses and the unpaid portion shall be paid as soon thereafter as funds become available. If an assessment would cause a member insurer's financial statement to reflect an amount of surplus less than the minimum amount required for a certificate of authority by any jurisdiction in which the member insured is authorized to transact insurance, the association may, in whole or in part, exempt the member insurer from payment of the assessment or defer payments.

(3)(a) The maximum assessment of a member insurer for any calendar year shall be two percent of the insurer's net direct written premiums for the second preceding calendar year.

(b) The minimum assessment of a member insurer for any calendar year shall be \$50.

(4) Reimburse inspection bureaus, service insurers and employees of the association for expenses incurred in the inspection or insuring of property on behalf of the association, and pay all other expenses the association incurs in carrying out the provisions of ORS 735.005 to 735.145.

(5) Undertake a continuing public education program in cooperation with member insurers and insurance producers to assure that the plan receives adequate attention.

(6) Undertake a continuing education program to advise the public of the steps which may be taken to make property more insurable against crime, personal liability

and the perils named in ORS 735.005 (3). [1971 c.321 §8; 1979 c.818 §3; 2003 c.364 §89]

735.075 Discretionary association functions. The Oregon FAIR Plan Association may:

(1) With the approval of the Director of the Department of Consumer and Business Services, employ or retain such persons and designate such inspection bureaus and service insurers as are necessary to handle applications, inspect and insure property and perform the other duties of the association.

(2) Borrow funds as necessary to carry out ORS 735.005 to 735.145 in such manner as may be specified in the plan.

(3) Sue or be sued.

(4) Negotiate and become a party to such contracts as are necessary to carry out ORS 735.005 to 735.145.

(5) At the end of any calendar year, refund to member insurers, in proportion to each insurer's payments to the association, the amount by which the board of directors finds that the funds of the association exceed its current liabilities plus the liabilities estimated for the coming year.

(6) Perform such other acts as are necessary or proper to carry out ORS 735.005 to 735.145. [1971 c.321 §9]

735.085 Plan of operation; submission to director; approval of plan; compliance with plan; rules. (1) The Oregon FAIR Plan Association shall submit to the Director of the Department of Consumer and Business Services, not later than September 7, 1971, a plan of operation, and may thereafter submit such amendments thereto as will provide for the reasonable and equitable exercise of the duties and powers of the association. The plan of operation, and any amendments thereto, shall become effective upon approval in writing by the director.

(2) If the association fails to submit a plan that receives the approval of the director as provided in subsection (1) of this section, or if the association after such approval fails to maintain a plan satisfactory to the director, the director shall by rule prescribe a plan of operation that meets the standards provided in subsection (1) of this section. A plan prescribed by the director shall remain in effect until the director by rule provides otherwise.

(3) No member insurer shall fail to comply with the currently effective plan. [1971 c.321 §10]

735.095 Contents of plan of operation. The plan shall:

(1) Establish procedures for the submission and processing of applications for

insurance and the payment of claims for losses.

(2) Establish procedures for record keeping, payment of other expenses and administration of all other financial affairs of the Oregon FAIR Plan Association.

(3) Establish times and places for meetings of the board.

(4) Establish procedures for selection of members of the board and for approval of such selections by the Director of the Department of Consumer and Business Services.

(5) Establish a procedure for appeal to the director of final actions or decisions of the association.

(6) Establish such other procedures as may be necessary or proper to carry out the duties and powers of the association.

(7) Provide that the association shall file periodically with the director statements of the insurance provided through the association and estimates of anticipated claims against the association. [1971 c.321 §11; 1979 c.818 §4]

735.105 Regulation of association as insurer; financial report to director. The Oregon FAIR Plan Association is subject to regulation by the Director of the Department of Consumer and Business Services in the same manner as an insurer, to the extent determined by the director to be necessary to carry out the purpose of ORS 735.005 to 735.145. Not later than March 30 of each year the board shall submit to the director, in a form approved by the director, a financial report for the preceding calendar year. [1971 c.321 §12]

735.115 Exemption of association from fees and taxes. Except for taxes levied on real or personal property, the Oregon FAIR Plan Association shall be exempt from the payment of all fees and taxes levied by this state or by any city, county, district or other political subdivision of this state. [1971 c.321 §13]

735.125 [1971 c.321 §14; repealed by 1979 c.818 §5]

735.135 [1971 c.321 §15; repealed by 1979 c.818 §5]

735.145 Immunity from legal action in carrying out duties. No person shall have a cause of action against the Oregon FAIR Plan Association or its employees or servicing facilities, any member of the board, or the Director of the Department of Consumer and Business Services or the employees of the director for any action taken by them in carrying out ORS 735.005 to 735.145. [1971 c.321 §16]

MARKET ASSISTANCE PLANS; JOINT UNDERWRITING ASSOCIATIONS

735.200 Legislative findings; purpose.

(1) The Legislative Assembly finds that:

(a) Some businesses and service providers in Oregon have experienced major problems in both the availability and affordability of commercial liability insurance. Premiums for such insurance policies have recently grown as much as 500 percent and the availability of such insurance in Oregon markets has greatly diminished.

(b) These businesses and service providers are essential to achieve goals such as increased workforce productivity, family self-sufficiency and the maintenance and improvement of the health of the citizens of Oregon. The lack of adequate commercial liability insurance threatens these businesses and services.

(2) The Legislative Assembly therefore declares it is the purpose of ORS 735.200 to 735.260 to remedy the problem of unavailable commercial liability insurance for these businesses and service providers by authorizing the Director of the Department of Consumer and Business Services to assist in the establishment of a market assistance plan for providing commercial liability insurance for these businesses and service providers, or, if necessary, by requiring all insurers authorized to write commercial liability insurance in Oregon to be members of one or more joint underwriting associations created to provide commercial liability insurance for these businesses and service providers. [1987 c.774 §73]

735.205 Definitions for ORS 735.200 to 735.260.

As used in ORS 735.200 to 735.260:

(1) "Joint underwriting association" means a mechanism requiring casualty insurers doing business in Oregon to provide commercial liability insurance to certain businesses and service providers on either an assigned risk basis or through a joint underwriting pool underwritten to standards adopted under the Insurance Code.

(2) "Market assistance plan" means a mechanism through which admitted casualty insurers in this state provide commercial liability insurance for classes of risks designated by the Director of the Department of Consumer and Business Services. [1987 c.774 §74]

735.210 Formation of market assistance plans; rules. (1) After a public hearing, the Director of the Department of Consumer and Business Services may by rule require insurers authorized to write and writing commercial liability insurance in this state to form a market assistance plan to assist businesses and service providers unable

to purchase specified classes of commercial liability insurance in adequate amounts from either the admitted or nonadmitted market.

(2) The market assistance plan shall operate under a plan of operations prepared by admitted insurers, eligible surplus line insurers and insurance producers, and approved by the director. [1987 c.774 §75; 2003 c.364 §90]

735.215 Findings prior to formation of joint underwriting association; hearing.

(1) The Director of the Department of Consumer and Business Services may mandate the formation of a joint underwriting association under ORS 735.220 if after directing the formation of a market assistance plan and allowing it a reasonable time to alleviate insurance availability problems, the director finds that:

(a) There exist in Oregon certain businesses or service providers for which no commercial liability insurance is available; and

(b) There is a need in Oregon for the goods or services provided by these businesses or service providers and the lack of available commercial liability insurance will cause a substantial number of the entities to cease operations within the state.

(2) Notwithstanding subsection (1) of this section, if the lack of availability of insurance is due to legitimate insurance underwriting considerations, including past claims experience, licensing noncompliance or inadequate risk management, formation of a joint underwriting association shall not be appropriate.

(3) The director may make the findings required under subsection (1) of this section only after conducting a public hearing according to the applicable provisions of ORS chapter 183. The director must specify the specific classes of business or lines of insurance determined to be unavailable.

(4) At least once each year, the director shall hold a public hearing to determine if the classes of business or lines of insurance offered by the joint underwriting association are still unavailable in the voluntary insurance market. If any class or line is found to be available, the joint underwriting association shall cease to underwrite such class of business or line of insurance. [1987 c.774 §76]

735.220 Formation of joint underwriting association; funds. After finding under ORS 735.215 that there is a need in Oregon for a joint underwriting association, the Director of the Department of Consumer and Business Services may form and put into operation a temporary, nonprofit, nonexclusive joint underwriting association constituting a legal entity separate and distinct from its

members for commercial liability insurance subject to the conditions and limitations contained in the Insurance Code. All funds and reserves of the association shall be separately held and invested. [1987 c.774 §77]

735.225 Membership in joint underwriting association. The joint underwriting association established under ORS 735.220 shall be comprised of all insurers authorized to write and who are writing commercial liability insurance within this state on a direct basis, including the commercial liability portions of multiperil policies. Every such insurer shall remain a member of the association as a condition of its authority to continue to transact insurance in this state. [1987 c.774 §78]

735.230 Rates; approval. The board of directors of the joint underwriting association shall engage the services of an independent actuarial firm to develop and recommend actuarially sound rates, rating plans, rating rules and classifications. The Director of the Department of Consumer and Business Services shall approve rates filed by the joint underwriting association in accordance with ORS 737.310. All rates approved for the joint underwriting association shall be actuarially sound and calculated to be self-supporting. [1987 c.774 §79]

735.235 Board of directors. The joint underwriting association formed under ORS 735.220 shall be under the administrative control of a seven person board of directors appointed by the Governor. Two directors shall represent insurance carriers participating in the association; one director shall represent insurance producers; three directors shall represent the affected classes of insureds; and one director shall be a public member with no ties to the insurance industry. The board shall elect one of its members as chairperson. [1987 c.774 §80; 2003 c.364 §91]

735.240 Annual statement. The joint underwriting association shall file an annual statement prepared by an independent certified public accountant containing a financial statement, a summary of its transactions and operations for the prior year and other information as prescribed by the Director of the Department of Consumer and Business Services by rule. [1987 c.774 §81]

735.245 Conditions for policyholder surcharge. (1) Upon a determination of the board of directors that the joint underwriting association will be unable to pay its outstanding lawful obligations as they mature, the board shall certify the existence of this condition to the Director of the Department of Consumer and Business Services. A schedule for policyholder surcharges shall be submitted by the board at the time of certification.

(2) The surcharge schedule shall become final 30 days after certification unless the director finds, after a public hearing, that the surcharge amounts are unreasonable or unjustifiable. Such surcharges may be adjusted to take into consideration the past and prospective loss and expense experience in different geographical areas within the state. Such surcharges shall be in addition to and not in lieu of the premiums charged for the coverages provided.

(3) Moneys collected in accordance with subsection (2) of this section shall be held in a fund separate from other joint underwriting association funds. Such funds shall be invested in accordance with applicable law governing publicly held trust funds. The association shall file an annual financial statement covering such funds.

(4) Surcharge funds shall be subject to the control of the board of directors and may be used to satisfy the legal obligations of the joint underwriting association.

(5) No part of the profit or loss of the joint underwriting association shall inure to the benefit of any member insurer or be an obligation of any member insurer. [1987 c.774 §82]

735.250 Exemption from liability.

There shall be no liability or cause of action against any member insurer, self-insurer, or its agents or employees, the joint underwriting association or its agents or employees, members of the board of directors, the Department of Consumer and Business Services or its representatives for any action taken by or statement made by them in performance of their powers and duties under ORS 735.210 to 735.260. [1987 c.774 §83]

735.255 State not liable to pay debts of association. The state is not liable to pay any debts or obligations of any association formed under ORS 735.220 and no person may assert any claim against the state or any of its agencies for any act or omission of the association. [1987 c.774 §84]

735.260 Rules. The Director of the Department of Consumer and Business Services may adopt all rules necessary to insure the efficient, equitable operation of the market assistance plan or the joint underwriting association, including but not limited to rules requiring or limiting certain policy provisions. [1987 c.774 §85]

735.265 Liquor liability insurance risk and rate classifications; rules. If a market assistance plan is formed under ORS 735.210, or a joint underwriting association is formed under ORS 735.220, the Director of the Department of Consumer and Business Services shall by rule establish such liquor liability insurance risk and rate classifications as

may be necessary to facilitate the availability and affordability of this commercial insurance product. Risk and rate classifications shall be established for all facets of the liquor industry including those who sell at wholesale or retail and the State of Oregon, as allowed by law. Risk classifications and rating plans shall be developed upon considerations including, but not limited to, the following factors:

(1) Past loss experience and prospective loss experience of different license types.

(2) Past loss experience and prospective loss experience in different geographic areas.

(3) Prior claims experience of the individual licensee.

(4) Prior compliance with public safety and alcoholic beverage laws, rules and ordinances pertaining to the sale and service of alcoholic beverages.

(5) Evidence of responsible management policies including, but not limited to, procedures and actions which:

(a) Encourage persons not to become intoxicated if they consume alcoholic beverages on the licensee's premises;

(b) Promote availability of nonalcoholic beverages and food;

(c) Promote safe transportation alternatives to driving while intoxicated;

(d) Prohibit employees and agents of the licensee from consuming alcoholic beverages while acting in their capacity as employee or agent;

(e) Establish promotions and marketing efforts which publicize responsible business practices to the licensee's customers and community;

(f) Implement comprehensive training procedures; and

(g) Maintain an adequate, trained number of employees and agents for the type and size of licensee's business. [1987 c.774 §88]

LIABILITY RISK RETENTION LAW

735.300 Purpose of ORS 735.300 to 735.365. The purpose of ORS 735.300 to 735.365 is to regulate the formation and operation of risk retention groups and purchasing groups in this state formed pursuant to the provisions of the federal Liability Risk Retention Act of 1986 (P.L. 99-563). [1987 c.774 §98; 1989 c.700 §10]

735.305 Definitions for ORS 735.300 to 735.365. As used in ORS 735.300 to 735.365:

(1) "Director" means the Director of the Department of Consumer and Business Services of this state or the commissioner, director or superintendent of insurance in any other state.

(2) "Completed operations liability" means liability arising out of the installation, maintenance or repair of any product at a site that is not owned or controlled by any person who performs that work or by any person who hires an independent contractor to perform that work. The term also includes liability for activities that are completed or abandoned before the date of the occurrence giving rise to the liability.

(3) "Domicile," for purposes of determining the state in which a purchasing group is domiciled, means:

(a) For a corporation, the state in which the purchasing group is incorporated; and

(b) For an unincorporated entity, the state of its principal place of business.

(4) "Hazardous financial condition" means that a risk retention group, based on its present or reasonably anticipated financial conditions, although not yet financially impaired or insolvent, is unlikely to be able:

(a) To meet obligations to policyholders with respect to known claims and reasonably anticipated claims; or

(b) To pay other obligations in the normal course of business.

(5) "Insurance" means primary insurance, excess insurance, reinsurance, surplus lines insurance and any other arrangement for shifting and distributing risk that is determined to be insurance under the laws of this state.

(6) "Liability":

(a) Means legal liability for damages, including costs of defense, legal costs and fees and other claims expenses, because of injuries to other persons, damage to their property or other damage or loss to such other persons resulting from or arising out of:

(A) Any business that is for-profit or not-for-profit, or any trade, product, premises, operations or services, including professional services; or

(B) Any activity of any state or local government, or any agency or political subdivision thereof.

(b) Does not include personal risk liability and an employer's liability with respect to its employees other than legal liability under the Federal Employers' Liability Act (45 U.S.C. 51 et seq.).

(7) "Personal risk liability" means liability for damages because of injury to any person, damage to property or other loss or damage resulting from any personal, familial or household responsibilities or activities, rather than from responsibilities or activities referred to in subsection (6) of this section.

(8) "Plan of operation or a feasibility study" means an analysis that presents the expected activities and results of a risk retention group, and includes at a minimum:

(a) The coverages, deductibles, coverage limits, rates and rating classification systems for each line of insurance the group intends to offer;

(b) Historical and expected loss experience of the proposed members and national experience of similar exposures to the extent that this experience is reasonably available;

(c) Pro forma financial statements and projections;

(d) Appropriate opinions by a qualified independent casualty actuary, including a determination of minimum premium or participation levels required to commence operations and prevent a hazardous financial condition;

(e) Identification of management, underwriting procedures, managerial oversight methods and investment policies; and

(f) Other matters that the director requires for liability insurance companies authorized by the insurance laws of the state in which the risk retention group is chartered.

(9) "Product liability" means liability for damages because of any personal injury, death, emotional harm, consequential economic damage or property damage, including damages resulting from the loss of use of property, arising out of the manufacture, design, importation, distribution, packaging, labeling, lease or sale of a product. The term does not include the liability of any person for those damages if the product involved was in the possession of such a person when the incident giving rise to the claim occurred.

(10) "Purchasing group" means any group that:

(a) Has as one of its purposes the purchase of liability insurance on a group basis;

(b) Purchases such insurance only for its group members and only to cover their similar or related liability exposure, as described in paragraph (c) of this subsection;

(c) Is composed of members whose business or activities are similar or related with respect to the liability to which members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations; and

(d) Is domiciled in any state.

(11) "Risk retention group" means any corporation or other limited liability association formed under the laws of any state:

(a) Whose primary activity consists of assuming and spreading all, or any portion of, the liability exposure of its group members;

(b) That is organized for the primary purpose of conducting the activity described in paragraph (a) of this subsection;

(c) That:

(A) Is chartered and licensed as a liability insurance company and authorized to engage in the business of insurance under the laws of any state; or

(B) Before January 1, 1985, was chartered or licensed and authorized to engage in the business of insurance under the laws of Bermuda or the Cayman Islands and, before that date, had certified to the insurance commissioner of at least one state that it satisfied the capitalization requirements of that state. However, any such group shall be considered to be a risk retention group only if it has been engaged in business continuously since that date and only for the purpose of continuing to provide insurance to cover product liability or completed operations liability, as such terms were defined in the federal Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986, before the date of the enactment of the federal Liability Risk Retention Act of 1986 (P.L. 99-563);

(d) That does not exclude any person from membership in the group solely to provide for members of such a group a competitive advantage over such a person;

(e) That:

(A) Has as its members only persons who have an ownership interest in the group and has as its owners only persons who are members that are provided insurance by the risk retention group; or

(B) Has as its sole member and sole owner an organization that is owned by persons who are provided insurance by the risk retention group;

(f) Whose members are engaged in businesses or activities similar or related with respect to the liability to which such members are exposed by virtue of any related, similar or common business, trade, product, services, premises or operations;

(g) Whose activities do not include the provision of insurance other than:

(A) Liability insurance for assuming and spreading all or any portion of the liability of its group members; and

(B) Reinsurance with respect to the liability of any other risk retention group, or any members of such other group, that is engaged in businesses or activities so that

such group or member meets the requirement described in paragraph (f) of this subsection for membership in the risk retention group that provides such reinsurance; and

(h) The name of which includes "Risk Retention Group."

(12) "State" means any state of the United States or the District of Columbia. [1987 c.774 §99; 1993 c.744 §29]

735.310 Qualifications for risk retention group; plan of operation; application; notification to National Association of Insurance Commissioners. (1) A risk retention group seeking to be organized in this state:

(a) Must be organized as a liability insurer in this state and authorized by a subsisting certificate of authority issued by the director to transact liability insurance in this state, as provided in ORS chapter 732; and

(b) Except as otherwise provided in ORS 735.300 to 735.365, must comply with all laws, rules and other requirements applicable to such insurers authorized to transact insurance in this state and with ORS 735.315 to the extent the requirements under ORS 735.315 are not a limitation on other laws, rules or requirements of this state.

(2) Before a risk retention group may offer insurance in any state, the risk retention group shall submit for approval to the director of this state a plan of operation or a feasibility study and revisions of such plan or study if the group intends to offer any additional lines of liability insurance.

(3) Immediately upon receipt of an application for organization, the director shall provide summary information concerning the filing to the National Association of Insurance Commissioners, including the name of the risk retention group, the identity of the initial members of the group, the identity of those individuals who organized the group or who will provide administrative services or otherwise influence or control the activities of the group, the amount and nature of initial capitalization, the coverages to be afforded and the states in which the group intends to operate. Providing notification to the National Association of Insurance Commissioners is in addition to and shall not be sufficient to satisfy the requirements of ORS 735.300 to 735.365. [1987 c.774 §100]

735.315 Foreign risk retention groups; conditions of doing business in Oregon; prohibited acts. Risk retention groups chartered in states other than this state and seeking to do business as a risk retention group in this state must observe and abide by the laws of this state as follows:

(1) Before transacting insurance in this state, a risk retention group shall submit to the director:

(a) A statement identifying the state or states in which the risk retention group is chartered and licensed as a liability insurance company, its date of chartering, its principal place of business and such information, including information on its membership, as the director may require to verify that the risk retention group is qualified under ORS 735.305 (11);

(b) A copy of its plan of operation or a feasibility study and revisions of such plan or study submitted to its state of domicile. The requirement of the submission of a plan of operation or a feasibility study shall not apply with respect to any line or classification of liability insurance that:

(A) Was defined in the federal Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986, before October 27, 1986; and

(B) Was offered before October 27, 1986, by any risk retention group that had been chartered and operating for not less than three years before October 27, 1986; and

(c) A statement of registration that designates the director as its agent for the purpose of receiving service of legal documents or process.

(2) A risk retention group doing business in this state shall submit to the director:

(a) A copy of the group's financial statement submitted to its state of domicile, which shall be certified by an independent public accountant and contain a statement of opinion on loss and loss adjustment expense reserves made by a member of the American Academy of Actuaries or a qualified loss reserve specialist, under criteria established by the National Association of Insurance Commissioners;

(b) A copy of each examination of the risk retention group as certified by the director or public official conducting the examination;

(c) Upon request by the director, a copy of any audit performed with respect to the risk retention group; and

(d) Such information as may be required to verify its continuing qualification as a risk retention group under ORS 735.305 (11).

(3) A risk retention group is subject to taxation in this state as follows:

(a) All premiums paid for coverage within this state to risk retention groups shall be subject to taxation at the rate applicable to foreign admitted insurers and the taxes owing shall be subject to the same interest,

finances and penalties for nonpayment as those applicable to foreign admitted insurers.

(b) To the extent insurance producers are used, they shall report and pay the taxes for the premiums for the risks that they have placed with or on behalf of a risk retention group not organized in this state.

(c) To the extent insurance producers are not used or fail to pay the tax, each risk retention group shall pay the tax for risks insured within the state. Further, each risk retention group shall report all premiums paid to it for risks insured within the state.

(4) A risk retention group and its agents and representatives shall comply with ORS 746.230 and 746.240. If the director seeks an injunction regarding such conduct, the injunction must be obtained from a court of competent jurisdiction.

(5) A risk retention group must submit to an examination by the director to determine its financial condition if the director of the jurisdiction in which the group is chartered has not initiated an examination or does not initiate an examination within 60 days after a request by the director of this state. Any such examination shall be coordinated to avoid unjustified repetition. Examinations may be conducted in accordance with the examiner handbook of the National Association of Insurance Commissioners.

(6) A policy issued by a risk retention group shall contain in 10 point type on the front page and the declaration page, the following notice:

Notice

This policy is issued by your risk retention group. Your risk retention group may not be subject to all of the insurance laws and rules of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

(7) The following acts by a risk retention group are prohibited:

(a) The solicitation or sale of insurance by a risk retention group to any person who is not eligible for membership in such group; and

(b) The solicitation or sale of insurance by, or operation of, a risk retention group that is in a hazardous financial condition or is financially impaired.

(8) No risk retention group shall be allowed to do business in this state if an insurer is directly or indirectly a member or owner of the risk retention group, other than

in the case of a risk retention group all of whose members are insurers.

(9) No risk retention group may offer insurance policy coverage prohibited by the Insurance Code.

(10) A risk retention group not organized in this state and doing business in this state must comply with a lawful order issued in a voluntary dissolution proceeding or in a delinquency proceeding commenced by the insurance commissioner of any state if there has been a finding of financial impairment after an examination under subsection (5) of this section. [1987 c.774 §101; 2003 c.364 §92]

735.320 Relationship to insurance guaranty fund and joint underwriting association. (1) No risk retention group shall be permitted to join or contribute financially to any insurance insolvency guaranty fund, or similar mechanism, in this state. No risk retention group, or its insureds, shall receive any benefit from any such fund for claims arising out of the operations of the risk retention group.

(2) A risk retention group shall participate in this state's joint underwriting associations and mandatory liability pools as provided by the Insurance Code. [1987 c.774 §102]

735.325 Exemption of purchasing groups from certain laws. Any purchasing group meeting the criteria established under the provisions of the federal Liability Risk Retention Act of 1986 (P.L. 99-563), shall be exempt from any law of this state relating to the creation of groups for the purchase of insurance or the prohibition of group purchasing, or any law that would discriminate against a purchasing group or its members. In addition, an insurer shall be exempt from any law of this state that prohibits providing or offering to provide advantages to a purchasing group or its members based on their loss and expense experience not afforded to other persons with respect to rates, policy forms, coverages or other matters. A purchasing group shall be subject to all other applicable laws of this state. [1987 c.774 §103]

735.330 Purchasing groups; notice of intent to do business; registration; exceptions. (1) A purchasing group that intends to do business in this state shall furnish notice to the director, which shall:

(a) Identify the state in which the group is domiciled;

(b) Specify the lines and classifications of liability insurance that the purchasing group intends to purchase;

(c) Identify the insurer from which the group intends to purchase its insurance and the domicile of the insurer;

(d) Identify the principal place of business of the group; and

(e) Provide such other information as may be required by the director to verify that the purchasing group is qualified under ORS 735.305 (10).

(2) The purchasing group shall register with the director and designate the director as its agent solely for the purpose of receiving service of legal documents or process, except that such requirements shall not apply in the case of a purchasing group that meets the following qualifications:

(a) That:

(A) Was domiciled before April 1, 1986, in any state; and

(B) Is domiciled on and after October 27, 1986, in any state;

(b) That:

(A) Before October 27, 1986, purchased insurance from an insurance carrier licensed in any state; and

(B) On and after October 27, 1986, purchased insurance from an insurance carrier licensed in any state;

(c) That was a purchasing group under the requirements of the federal Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986, before October 27, 1986; and

(d) That does not purchase insurance that was not authorized for purposes of an exemption under the federal Product Liability Risk Retention Act of 1981, as in effect before October 27, 1986. [1987 c.774 §104]

735.335 Purchase of insurance by purchasing group. A purchasing group may not purchase insurance from a risk retention group that is not chartered in a state or from an insurer not admitted in the state in which the purchasing group is located, unless the purchase is effected through a licensed insurance producer acting pursuant to the surplus lines laws and regulations of that state. [1987 c.774 §105; 2003 c.364 §93]

735.340 Insurance Code enforcement authority subject to federal law. The director is authorized to make use of any of the powers established under the Insurance Code to enforce the laws of this state so long as those powers are not specifically preempted by the federal Product Liability Risk Retention Act of 1981, as amended by the Risk Retention Amendments of 1986. This includes, but is not limited to, the director's administrative authority to investigate, issue subpoenas, conduct depositions and hearings, issue orders and impose penalties. With regard to any investigation, administrative proceedings or litigation, the director may rely on the procedural law and rules of the

state. The injunctive authority of the director in regard to risk retention groups is restricted by the requirement that any injunction be issued by a court of competent jurisdiction. [1987 c.774 §106]

735.345 Violation of 735.300 to 735.365; penalties. A risk retention group that violates any provision of ORS 735.300 to 735.365 is subject to criminal and civil penalties applicable to insurers generally, and to suspension or revocation of its certificate of authority to transact insurance. [1987 c.774 §107]

735.350 Agent or broker; license. Any person acting or offering to act as an insurance producer for a risk retention group or purchasing group that solicits members, sells insurance coverage, purchases coverage for its members located within this state or otherwise does business in this state shall, before commencing any such activity, obtain a license as an insurance producer from the director under ORS chapter 744. [1987 c.774 §108; 1989 c.701 §71; 2003 c.364 §94]

735.355 Court orders enforceable in Oregon. An order issued by any district court of the United States enjoining a risk retention group from soliciting or selling insurance or operating in any state or in all states or in any territory or possession of the United States, upon a finding that such a group is in a hazardous financial condition shall be enforceable in the courts of this state. [1987 c.774 §109]

735.360 Rules. The director may adopt rules that the director determines are necessary for carrying out ORS 735.300 to 735.365. [1987 c.774 §110; 1989 c.700 §11]

735.365 Short title. ORS 735.300 to 735.365 shall be known and may be cited as the Oregon Liability Risk Retention Law. [1987 c.774 §98a]

SURPLUS LINES LAW

735.400 Purposes of ORS 735.400 to 735.495. ORS 735.400 to 735.495 shall be liberally construed and applied to promote its underlying purposes which include:

(1) Protecting persons seeking insurance in this state;

(2) Permitting surplus lines insurance to be placed with reputable and financially sound nonadmitted insurers and exported from this state pursuant to ORS 735.400 to 735.495;

(3) Establishing a system of regulation which will permit orderly access to surplus lines insurance in this state and encourage admitted insurers to provide new and innovative types of insurance available to consumers in this state; and

(4) Protecting revenues of this state. [1987 c.774 §117]

735.405 Definitions for ORS 735.400 to 735.495. As used in ORS 735.400 to 735.495:

(1) "Admitted insurer" means an insurer authorized to do an insurance business in this state.

(2) "Capital" means funds paid in for stock or other evidence of ownership.

(3) "Eligible surplus lines insurer" means a nonadmitted insurer with which a surplus lines licensee may place surplus lines insurance.

(4) "Export" means to place surplus lines insurance with a nonadmitted insurer.

(5) "Kind of insurance" means one of the types of insurance required to be reported in the annual statement which must be filed with the Director of the Department of Consumer and Business Services by authorized insurers.

(6) "Nonadmitted insurer" means an insurer not authorized to do an insurance business in this state. This definition shall include insurance exchanges as authorized under the laws of various states.

(7) "Producing insurance producer" means the individual insurance producer dealing directly with the party seeking insurance.

(8) "Surplus" means funds over and above liabilities and capital of the insurer for the protection of policyholders.

(9) "Surplus lines licensee" means an insurance producer licensed under ORS chapter 744 to place insurance on risks resident, located or to be performed in this state with nonadmitted insurers eligible to accept such insurance. [1987 c.774 §118; 1991 c.810 §25; 2001 c.191 §44a; 2003 c.364 §38]

735.410 Conditions for procuring insurance through nonadmitted insurer; rules. (1) Insurance may be procured through a surplus lines licensee from a nonadmitted insurer if:

(a) The insurer is an eligible surplus lines insurer;

(b) A diligent search has first been made among the insurers who are authorized to transact and are actually writing the particular kind and class of insurance in this state, and it is determined that the full amount or kind of insurance cannot be obtained from those insurers; and

(c) All other requirements of ORS 735.400 to 735.495 are met.

(2) Subsection (1) of this section does not apply to a placement of surplus lines insurance outside this state by a nonresident surplus lines licensee or by a nonresident

surplus lines insurance producer who is not licensed to transact surplus lines insurance in this state when the insurance covers a risk with exposures both in this state and outside this state, if both of the following conditions are met:

(a) If the nonresident surplus lines licensee or insurance producer is licensed in the state as an insurance producer to transact surplus lines policies in the state in which the insurance is placed and is in good standing in that state; and

(b) If the surplus lines policy complies with all of the requirements for placement of nonadmitted insurance in the state in which the insurance is placed.

(3) The Director of the Department of Consumer and Business Services by rule may establish requirements applicable to the placement of surplus lines insurance outside this state by a nonresident surplus lines licensee or by a nonresident surplus lines insurance producer who is not licensed in this state, when the insurance covers a risk with exposures both in this state and outside this state. The rules may include such matters as the procurement of surplus lines insurance, eligibility of the insurer, the conditions under which surplus lines insurance may be obtained, the necessary evidence of insurance, filing requirements and other matters necessary for regulation of surplus lines insurance transactions that affect risk exposures in this state. The rules may not interfere with or hinder implementation of the federal Gramm-Leach-Bliley Act (P.L. 106-102) with respect to licensing reciprocity among the states. [1987 c.774 §119; 2001 c.191 §44b]

735.415 Qualifications for placement of coverage with nonadmitted insurer; rules. (1) A surplus lines licensee may not place any coverage with a nonadmitted insurer unless at the time of placement the nonadmitted insurer has done all of the following:

(a) Established satisfactory evidence of good repute and financial integrity.

(b) Qualified under one of the following subparagraphs:

(A) Has capital and surplus or its equivalent under the laws of its domiciliary jurisdiction that equals either the minimum capital and surplus requirements under the laws of this state or \$5 million, except that the requirements of this paragraph may be satisfied by an insurer possessing less than \$5 million capital and surplus upon an affirmative finding of acceptability by the Director of the Department of Consumer and Business Services. The finding shall be based upon such factors as quality of management, capital and surplus of any parent company,

company underwriting profit and investment income trends and company record and reputation within the industry. In no event shall the director make an affirmative finding of acceptability when the surplus lines insurer's capital and surplus is less than \$3 million.

(B) Except as otherwise provided in subparagraph (C) of this paragraph, in the case of an alien insurer, maintains in the United States an irrevocable trust fund in either a national bank or a member of the Federal Reserve System, in an amount not less than \$1.5 million for the protection of all its policyholders in the United States and such trust fund consists of cash, securities, irrevocable letters of credit, or of investments of substantially the same character and quality as those which are eligible investments for the capital and statutory reserves of admitted insurers authorized to write like kinds of insurance in this state. Such trust fund, which shall be included in any calculation of capital and surplus or its equivalent, shall have an expiration date which at no time shall be less than five years.

(C) In the case of a group of insurers that includes incorporated and individual unincorporated underwriters, maintains a trust fund of not less than \$50 million as security to the full amount thereof for all policyholders and creditors in the United States of each member of the group, and such trust shall likewise comply with the terms and conditions established in subparagraph (B) of this paragraph for alien insurers, except that the incorporated members of the group shall not be engaged in any business other than underwriting as a member of the group and shall be subject to the same level of solvency regulation and control by the group's domiciliary regulators as are the unincorporated members.

(D) In the case of an insurance exchange created by the laws of individual states, maintains capital and surplus, or the substantial equivalent thereof, of not less than \$15 million in the aggregate. For insurance exchanges that maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall maintain minimum capital and surplus, or the substantial equivalent thereof, of not less than \$1.5 million. In the event the insurance exchange does not maintain funds for the protection of all insurance exchange policyholders, each individual syndicate shall meet the minimum capital and surplus requirements of subparagraph (A) of this paragraph.

(E) Is on the most current list of alien insurers approved by the National Association of Insurance Commissioners and meets

additional requirements regarding the use of the list established by rule of the director.

(c) Unless qualified under paragraph (b)(E) of this subsection, provided to the director no more than six months after the close of the period reported upon a certified copy of its current annual statement that is:

(A) Filed with and approved by the regulatory authority in the domicile of the non-admitted insurer;

(B) Certified by an accounting or auditing firm licensed in the jurisdiction of the insurer's domicile; or

(C) In the case of an insurance exchange, an aggregate combined statement of all underwriting syndicates operating during the period reported.

(2) When a nonresident surplus lines licensee or nonresident surplus lines insurance producer who is not licensed to transact surplus lines insurance in this state places surplus lines insurance outside this state that covers a risk with exposures both in this state and outside this state, the licensee or insurance producer is not subject to the requirements of subsection (1) of this section if the nonadmitted insurer with which the coverage is placed:

(a) Meets the requirements for nonadmitted placement of insurance in the state in which the insurance is placed; or

(b) Is an authorized or admitted insurer in the state in which the insurance is placed. [1987 c.774 §120; 1995 c.99 §2; 2001 c.191 §44c; 2005 c.185 §11]

735.420 Declaration of ineligibility of surplus lines insurer. (1) The Director of the Department of Consumer and Business Services may declare a surplus lines insurer described in ORS 735.415 (1) ineligible if the director has reason to believe that the surplus lines insurer:

(a) Is in unsound financial condition;

(b) Is no longer eligible under ORS 735.415;

(c) Has willfully violated the laws of this state; or

(d) Does not make reasonably prompt payment of just losses and claims in this state or elsewhere.

(2) The director shall promptly mail notice of all such declarations to each surplus lines licensee. [1987 c.774 §121; 2001 c.191 §44d]

735.425 Filing by licensee after placement of surplus lines insurance; rules. (1) Within 90 days after the placing of any surplus lines insurance in this state, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services:

(a) A statement signed by the licensee regarding the insurance, which shall be kept confidential as provided in ORS 705.137, including the following:

(A) The name and address of the insured;

(B) The identity of the insurer or insurers;

(C) A description of the subject and location of the risk;

(D) The amount of premium charged for the insurance; and

(E) Such other pertinent information as the director may reasonably require.

(b) A statement on a standardized form furnished by the director, as to the diligent efforts by the producing insurance producer to place the coverage with admitted insurers and the results thereof. The statement shall be signed by the producing insurance producer and shall affirm that the insured was expressly advised prior to placement of the insurance that:

(A) The surplus lines insurer with whom the insurance was to be placed is not licensed in this state and is not subject to its supervision; and

(B) In the event of the insolvency of the surplus lines insurer, losses will not be paid by the state insurance guaranty fund.

(2) The director may direct that filings required under subsection (1) of this section be made to the Surplus Line Association of Oregon. The director may also require that such filings be made electronically but may exempt a licensee from the requirement for good cause shown.

(3) A nonresident surplus lines licensee or nonresident producing insurance producer not licensed to transact surplus lines insurance in this state who places a surplus lines policy on a risk with exposures located both in this state and outside this state shall satisfy filing requirements established by the director by rule. The director shall ensure that the rules facilitate interstate regulation of surplus lines insurance transactions.

(4) Facsimile signatures and electronic signatures subject to ORS 84.001 to 84.061 are acceptable and have the same force as original signatures. [1987 c.774 §122; 1993 c.182 §1; 2001 c.377 §§13,13a; 2003 c.364 §39; 2005 c.185 §12]

735.430 Surplus Line Association of Oregon. (1) The Surplus Line Association of Oregon shall be the advisory organization of surplus lines licensees to:

(a) Facilitate and encourage compliance by resident and nonresident surplus lines licensees with the laws of this state and the rules of the Director of the Department of

Consumer and Business Services relative to surplus lines insurance;

(b) Provide means for the examination, which shall remain confidential as provided in ORS 705.137, of all surplus lines coverage written by resident and nonresident surplus lines licensees to determine whether the coverages comply with the Oregon Surplus Lines Law;

(c) Communicate with organizations of admitted insurers with respect to the proper use of the surplus lines market;

(d) Receive and disseminate to resident and nonresident surplus lines licensees information relative to surplus lines coverages; and

(e) Receive and collect on behalf of the state and remit to the state premium receipts tax for surplus lines insurance.

(2) The Surplus Line Association of Oregon shall file with the director:

(a) A copy of its constitution, articles of agreement or association or certificate of incorporation;

(b) A copy of its bylaws and rules governing its activities;

(c) A current list of members;

(d) The name and address of a resident of this state upon whom notices or orders of the director or processes issued at the direction of the director may be served;

(e) An agreement that the director may examine the Surplus Line Association of Oregon in accordance with the provisions of this section; and

(f) A schedule of fees and charges.

(3) The director may make or cause to be made an examination of the Surplus Line Association of Oregon. The reasonable cost of any such examination shall be paid by the association upon presentation to it by the director of a detailed account of each cost. The officers, managers, agents and employees of the association may be examined at any time, under oath, and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. The director shall furnish two copies of the examination report to the association and shall notify the association that it may, within 20 days thereof, request a hearing on the report or on any facts or recommendations therein. If the director finds the association or any member thereof to be in violation of ORS 735.400 to 735.495, the director may issue an order requiring the discontinuance of such violation.

(4) The Surplus Line Association of Oregon may charge resident and nonresident surplus lines licensees and nonresident

producing insurance producers a fee for reviewing surplus lines policies and for collecting, on behalf of the state, taxes imposed under ORS 735.470. The association shall adopt bylaws implementing this subsection. [1987 c.774 §123; 2001 c.377 §14; 2005 c.185 §13; 2007 c.71 §235]

735.435 Evidence of insurance; contents; change; penalty; notice regarding Insurance Guaranty Association; rules.

(1) Upon placing surplus lines insurance, the surplus lines licensee shall promptly deliver to the insured or the producing insurance producer the policy, or if such policy is not then available, a certificate as described in subsection (4) of this section, cover note or binder. The certificate, as described in subsection (4) of this section, cover note or binder shall be executed by the surplus lines licensee and shall show the description and location of the subject of the insurance, coverages including any material limitations other than those in standard forms, a general description of the coverages of the insurance, the premium and rate charged and taxes to be collected from the insured, and the name and address of the insured and surplus lines insurer or insurers and proportion of the entire risk assumed by each, and the name of the surplus lines licensee and the licensee's license number.

(2) No surplus lines licensee shall issue or deliver any insurance policy or certificate of insurance or represent that insurance will be or has been written by any eligible surplus lines insurer, unless the licensee has authority from the insurer to cause the risk to be insured, or has received information from the insurer in the regular course of business that such insurance has been granted.

(3) If, after delivery of an insurance policy or certificate of insurance, there is any change in the identity of the insurers, or the proportion of the risk assumed by any insurer, or any other material change in coverage as stated in the surplus lines licensee's original insurance policy, or in any other material as to the insurance coverage, the surplus lines licensee shall promptly issue and deliver to the insured or the original producing insurance producer an appropriate substitute for, or indorsement of the original document, accurately showing the current status of the coverage and the insurers responsible thereunder.

(4) As soon as reasonably possible after the placement of any such insurance the surplus lines licensee shall deliver a copy of the policy or, if not available, a certificate of insurance to the insured or producing insurance producer to replace an insurance policy or certificate of insurance theretofore

issued. Each certificate or policy of insurance shall contain or have attached thereto a complete record of all policy insuring agreements, conditions, exclusions, clauses, indorsements or any other material facts that would regularly be included in the policy.

(5) Any surplus lines licensee who fails to comply with the requirements of this section shall be subject to the penalties provided.

(6) Each insurance policy or certificate of insurance negotiated, placed or procured under the provisions of ORS 735.400 to 735.495 by the surplus lines licensee shall bear the name of the licensee and the following legend in bold type: "This insurance was procured and developed under the Oregon surplus lines laws. It is NOT covered by the provisions of ORS 734.510 to 734.710 relating to the Oregon Insurance Guaranty Association. If the insurer issuing this insurance becomes insolvent, the Oregon Insurance Guaranty Association has no obligation to pay claims under this insurance."

(7) The Director of the Department of Consumer and Business Services by rule may establish requirements relating to insurance policies and certificates of insurance and other applicable requirements governing placement of insurance by a nonresident surplus lines licensee outside this state that covers a risk with exposures located both in this state and outside this state. [1987 c.774 §124; 2001 c.191 §45a; 2003 c.364 §40]

735.440 Validity of contracts. Insurance contracts procured under ORS 735.400 to 735.495 shall be valid and enforceable as to all parties. [1987 c.774 §125]

735.445 Effect of payment of premium to surplus lines licensee. A payment of premium to a surplus lines licensee acting for a person other than the surplus lines licensee in negotiating, continuing or renewing any policy of insurance under ORS 735.400 to 735.495 shall be deemed to be payment to the insurer, whatever conditions or stipulations may be inserted in the policy or contract notwithstanding. [1987 c.774 §126]

735.450 Requirements for license as surplus lines insurance licensee. (1) A person shall not procure any contract of surplus lines insurance with any nonadmitted insurer unless the person is licensed under ORS chapter 744 to transact surplus lines insurance. A person may obtain a license to transact surplus lines insurance only if the person is licensed as an insurance producer under ORS chapter 744 to transact property and casualty insurance.

(2) The prohibition in subsection (1) of this section does not apply to a nonresident

surplus lines licensee or to a nonresident surplus lines insurance producer who is not a licensee in this state if:

(a) The insurance contract covers a risk with exposures both in this state and outside this state;

(b) Procurement of the insurance contract described in paragraph (a) of this subsection did not occur in this state; and

(c) The licensee or insurance producer is licensed to transact surplus lines insurance in the state in which the insurance contract described in paragraph (a) of this subsection was procured. [1987 c.774 §127; 1989 c.288 §1; 1991 c.810 §26; 1995 c.639 §14; 2001 c.191 §46; 2003 c.364 §41]

735.455 Authority of licensee; rules. (1) A surplus lines licensee may originate surplus lines insurance or accept such insurance from any other insurance producer duly licensed as to the kinds of insurance involved, and the surplus lines licensee may compensate the insurance producer therefor.

(2) A surplus lines licensee may charge a producing insurance producer a fee or a combination of a fee and a commission when transacting surplus lines for the producing insurance producer if the surplus lines licensee has a written agreement with the producing insurance producer prior to the binding or issuance of a surplus lines insurance policy. When a surplus lines licensee transacts surplus lines insurance directly for a prospective insured, the surplus lines licensee may charge the prospective insured a fee or a combination of a fee and a commission if the surplus lines licensee has a written agreement with the prospective insured prior to the binding or issuance of a surplus lines insurance policy.

(3) A producing insurance producer may charge a fee to a prospective insured when the producing insurance producer pays a fee or a combination of a fee and a commission to a surplus lines licensee under subsection (2) of this section if the producing insurance producer has a written agreement with the prospective insured prior to the binding or issuance of the surplus lines insurance policy. The fee may not exceed the amount of compensation paid by the producing insurance producer to the surplus lines licensee.

(4) For the purpose of determining the charge under subsection (2) of this section, the producing insurance producer and the surplus lines licensee may agree to any allocation of the fee that the producing insurance producer charges the prospective insured under this section.

(5) The fee or the fee and commission charged by a surplus lines licensee under subsection (2) of this section must be commensurate with the services provided by the

surplus lines licensee. The Director of the Department of Consumer and Business Services may establish by rule minimum conditions for written agreements entered into under this section. An insurer or insurance producer who enters into a written agreement as provided in this section is not in violation of ORS 746.035 or 746.045. [1987 c.774 §128; 2003 c.364 §42]

735.460 Records of licensee; examination. (1) Each surplus lines licensee shall keep a full and true record of each surplus lines insurance contract placed by or through the licensee on each risk resident in this state as required by ORS 744.068, including a copy of the policy, certificate, cover note or other evidence of insurance showing any of the following items that are applicable:

- (a) Amount of the insurance and perils insured;
- (b) Brief description of the property insured and its location;
- (c) Gross premium charged;
- (d) Any return premium paid;
- (e) Rate of premium charged upon the several items of property;
- (f) Effective date of the contract and the terms thereof;
- (g) Name and address of the insured;
- (h) Name and address of the insurer;
- (i) Amount of tax and other sums to be collected from the insured; and
- (j) Identity of the producing insurance producer, any confirming correspondence from the insurer or its representative and the application.

(2) The record of each contract shall be kept open at all reasonable times to examination by the Director of the Department of Consumer and Business Services without notice for a period not less than five years following termination of the contract. [1987 c.774 §129; 2001 c.191 §47; 2003 c.364 §43]

735.465 Monthly reports; rules. (1) On or before the end of each month, each surplus lines licensee shall file with the Director of the Department of Consumer and Business Services, as prescribed by the director, a verified report of all surplus lines insurance transacted on risks resident in this state during the preceding 90 days. The report need not show transacted surplus lines insurance that was reported in an earlier report. The report shall show:

- (a) Aggregate gross premiums written;
- (b) Aggregate return premiums; and
- (c) Amount of aggregate tax.

(2) The director may direct that reports required under subsection (1) of this section be made to the Surplus Line Association of Oregon and that the Surplus Line Association of Oregon file a combined report thereof with the director. The director may also require that reports required under subsection (1) of this section be made electronically but may exempt a licensee from the requirement for good cause shown.

(3) For the purpose of collecting taxes on insurance covering the Oregon portion of risks when the insurance is placed outside this state and covers a risk with exposures located both in this state and outside this state, the director may establish by rule requirements for filing reports on surplus lines insurance transacted outside this state on risks with exposures located both in this state and outside this state. [1987 c.774 §130; 2001 c.191 §48; 2007 c.71 §236]

735.470 Premium tax; collection; payment; refund; rules. (1) The surplus lines licensee shall pay the Director of the Department of Consumer and Business Services an amount equal to the tax that would have been imposed under ORS 731.816 (1993 Edition) if that section were in effect and operative, and the tax that is imposed by ORS 731.820, on authorized insurers for the premiums shown in the report required by ORS 735.465. The tax shall be collected by the surplus lines licensee as specified by the director, in addition to the full amount of the gross premium charged by the insurer for the insurance. The tax on any portion of the premium unearned at termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the surplus lines licensee or through the producing insurance producer, if any. The surplus lines licensee is prohibited from absorbing such tax and from rebating for any reason, any part of such tax.

(2) The surplus lines tax is due quarterly on the 45th day following the calendar quarter in which the premium is collected. The tax shall be paid to and reported on forms prescribed by the director or upon the director's order paid to and reported on forms prescribed by the Surplus Line Association of Oregon.

(3) Notwithstanding subsection (2) of this section, if a surplus lines license is terminated or nonrenewed for any reason, the taxes described in this section are due on the 30th day after the termination or nonrenewal.

(4) In applying ORS 731.816 (1993 Edition) for purposes of this section, the rate shall be two percent rather than two and one-quarter percent.

(5) The director by rule shall establish procedures for payment of taxes on the Oregon portion of risks covered by surplus lines insurance policies transacted outside this state that cover risks with exposures both in this state and outside this state. [1987 c.774 §131; 1989 c.288 §2; 1995 c.786 §10; 2001 c.191 §48a; 2003 c.364 §44; 2007 c.71 §237]

735.475 Suit to recover unpaid tax. If the tax collectible by a surplus lines licensee under ORS 735.400 to 735.495 is not paid within the time prescribed, the same shall be recoverable in a suit brought by the Director of the Department of Consumer and Business Services against the surplus lines licensee. [1987 c.774 §132; 1989 c.288 §3; 2001 c.191 §48b]

735.480 Suspension or revocation of license; refusal to renew; grounds. The Director of the Department of Consumer and Business Services may suspend, revoke or refuse to renew the license of a surplus lines licensee after notice and hearing as provided under the applicable provision of this state's laws upon any one or more of the following grounds:

(1) Removal of the surplus lines licensee's office from this state, if the licensee is a resident insurance producer;

(2) Removal of the surplus lines licensee's office accounts and records from the principal place of business of the licensee under ORS 744.068 during the period during which such accounts and records are required to be maintained under ORS 735.460;

(3) Closing of the surplus lines licensee's office for a period of more than 30 business days, unless permission is granted by the director;

(4) Failure to make and file required reports;

(5) Failure to transmit required tax on surplus lines premiums;

(6) Violation of any provision of ORS 735.400 to 735.495; or

(7) For any cause for which an insurance license could be denied, revoked, suspended or renewal refused under ORS 744.074. [1987 c.774 §133; 1989 c.288 §4; 2001 c.191 §49; 2003 c.364 §45]

735.485 Actions against surplus lines insurer. (1) A surplus lines insurer may be sued upon any cause of action arising in this state under any surplus lines insurance contract made by it or evidence of insurance issued or delivered by the surplus lines licensee pursuant to the procedure provided in ORS 735.490. Any surplus lines policy issued by the surplus lines licensee shall contain a provision stating the substance of this section and designating the person to whom process shall be delivered.

(2) Each surplus lines insurer assuming surplus lines insurance shall be considered thereby to have subjected itself to ORS 735.400 to 735.495.

(3) The remedies provided in this section are in addition to any other methods provided by law for service of process upon insurers.

(4) A surplus lines insurance contract covering risks with exposures both in this state and outside this state that is placed outside this state by a nonresident surplus lines licensee, and the surplus lines insurer of the contract, are not subject to the provisions of subsection (2) of this section or ORS 735.490:

(a) If the nonresident surplus lines licensee is currently licensed as an insurance producer authorized to transact surplus lines insurance contracts in the state in which the surplus lines insurance contract is placed and is in good standing in that state; and

(b) If the surplus lines insurance contract complies with all of the requirements for placement of nonadmitted insurance in the state in which the surplus lines insurance contract is placed.

(5) When a nonresident surplus lines insurance producer who is not a surplus lines licensee in this state transacts outside this state a surplus lines insurance contract covering risks with exposures both in this state and outside this state, the producer and the surplus lines insurer of the contract are subject to this section and to ORS 735.490 or to rules adopted by the director in lieu thereof unless:

(a) The producer is currently licensed to transact surplus lines policies in the state in which the surplus lines insurance contract is placed and is in good standing in that state; and

(b) The surplus lines insurance contract complies with all of the requirements for placement of nonadmitted insurance in the state in which the surplus lines insurance contract is placed. [1987 c.774 §134; 1989 c.288 §5; 2001 c.191 §49a]

735.490 Jurisdiction in action against insurer; service of summons and complaint; response. (1) An insurer transacting insurance under the provisions of ORS 735.400 to 735.495 may be sued upon any cause of action, arising under any policy of insurance so issued and delivered by it, in the courts for the county where the insurance producer who registered or delivered the policy resides or transacts business, by the service of summons and complaint made upon the insurance producer for the insurer.

(2) Any insurance producer served with summons and complaint in any such cause

shall forthwith mail the summons and complaint, or a true and complete copy thereof, by registered or certified mail with proper postage affixed and properly addressed, to the insurer being sued.

(3) The insurer shall have 40 days from the date of the service of the summons and complaint upon the insurance producer in which to plead, answer or defend any such cause.

(4) Upon service of summons and complaint upon the insurance producer for the insurer, the court in which the action is begun shall be deemed to have duly acquired personal jurisdiction of the defendant insurer so served.

(5) An insurer and policyholder may agree to waive the provisions of subsections (1) to (4) of this section governing service and venue with respect to a surplus lines insurance contract for commercial property and casualty risk if the waiver is specifically referred to in the contract or in an indorsement attached to the contract. [1987 c.774 §137; 2001 c.191 §49b; 2003 c.364 §46]

735.492 Application of certain Insurance Code provisions to surplus lines insurers. ORS 731.324, 731.328, 731.512 and 731.624 do not apply to surplus lines insurers. [2005 c.185 §17]

735.495 Short title; severability. (1) ORS 735.400 to 735.495 shall be known and may be cited as "The Oregon Surplus Lines Law."

(2) If any provisions of ORS 735.400 to 735.495, or the application of such provision to any person or circumstance, is held invalid, the remainder of ORS 735.400 to 735.495 and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected. [1987 c.774 §§116,136]

MEDICAL INSURANCE POOL

735.600 Legislative intent. The intent of the Legislative Assembly in enacting ORS 735.600 to 735.650 is to provide access to medical insurance coverage to all residents of this state who are denied adequate medical insurance, while at the same time avoiding undue financial impact on the state and on private insurers. [1987 c.838 §2]

735.605 Definitions for ORS 735.600 to 735.650. As used in ORS 735.600 to 735.650:

(1) "Benefits plan" means the coverages to be offered by the pool to eligible persons pursuant to ORS 735.600 to 735.650.

(2) "Board" means the Oregon Medical Insurance Pool Board.

(3) "Insured" means any individual resident of this state who is eligible to receive benefits from any insurer.

(4) "Insurer" means:

(a) Any insurer as defined in ORS 731.106 or fraternal benefit society as defined in ORS 748.106 required to have a certificate of authority to transact health insurance business in this state, and any health care service contractor as defined in ORS 750.005, issuing medical insurance in this state on or after September 27, 1987.

(b) Any reinsurer reinsuring medical insurance in this state on or after September 27, 1987.

(c) To the extent consistent with federal law, any self-insurance arrangement covered by the Employee Retirement Income Security Act of 1974, as amended, that provides health care benefits in this state on or after September 27, 1987.

(d) All self-insurance arrangements not covered by the Employee Retirement Income Security Act of 1974, as amended, that provides health care benefits in this state on or after September 27, 1987.

(5) "Medical insurance" means any health insurance benefits payable on the basis of hospital, surgical or medical expenses incurred and any health care service contractor subscriber contract. Medical insurance does not include accident only, disability income, hospital confinement indemnity, dental or credit insurance, coverage issued as a supplement to liability insurance, coverage issued as a supplement to Medicare, insurance arising out of a workers' compensation or similar law, automobile medical-payment insurance or insurance under which benefits are payable with or without regard to fault and which is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(6) "Medicare" means coverage under Part A, Part B and Part D of Title XVIII of the Social Security Act, 42 U.S.C. 1395 et seq., as amended.

(7) "Plan of operation" means the plan of operation of the pool, including articles, bylaws and operating rules, adopted by the board pursuant to ORS 735.600 to 735.650.

(8) "Pool" means the Oregon Medical Insurance Pool as created by ORS 735.610.

(9) "Reinsurer" means any insurer as defined in ORS 731.106 from whom any person providing medical insurance to Oregon insureds procures insurance for itself in the insurer, with respect to all or part of the medical insurance risk of the person.

(10) "Self-insurance arrangement" means any plan, program, contract or any other ar-

rangements under which one or more employers, unions or other organizations provide health care services or benefits to their employees or members in this state, either directly or indirectly through a trust or third party administrator, unless the health care services or benefits are provided by an insurance policy issued by an insurer other than a self-insurance arrangement. [1987 c.838 §3; 1989 c.838 §6; 2003 c.33 §4; 2005 c.634 §4]

735.610 Oregon Medical Insurance Pool Board; members; authority; rules.

(1) There is created in the Department of Consumer and Business Services the Oregon Medical Insurance Pool Board. The board shall establish the Oregon Medical Insurance Pool and otherwise carry out the responsibilities of the board under ORS 735.600 to 735.650.

(2) The board shall consist of nine individuals, eight of whom shall be appointed by the Director of the Department of Consumer and Business Services. The Director of the Department of Consumer and Business Services or the director's designee shall be a member of the board. The chair of the board shall be elected from among the members of the board. The board shall at all times, to the extent possible, include at least one representative of a domestic insurance company licensed to transact health insurance, one representative of a domestic not-for-profit health care service contractor, one representative of a health maintenance organization, one representative of reinsurers and two members of the general public who are not associated with the medical profession, a hospital or an insurer.

(3) The director may fill any vacancy on the board by appointment.

(4) The board shall have the general powers and authority granted under the laws of this state to insurance companies with a certificate of authority to transact health insurance and the specific authority to:

(a) Enter into such contracts as are necessary or proper to carry out the provisions and purposes of ORS 735.600 to 735.650 including the authority to enter into contracts with similar pools of other states for the joint performance of common administrative functions, or with persons or other organizations for the performance of administrative functions;

(b) Recover any assessments for, on behalf of, or against insurers;

(c) Take such legal action as is necessary to avoid the payment of improper claims against the pool or the coverage provided by or through the pool;

(d) Establish appropriate rates, rate schedules, rate adjustments, expense allow-

ances, insurance producers' referral fees, claim reserves or formulas and perform any other actuarial function appropriate to the operation of the pool. Rates may not be unreasonable in relation to the coverage provided, the risk experience and expenses of providing the coverage. Rates and rate schedules may be adjusted for appropriate risk factors such as age and area variation in claim costs and shall take into consideration appropriate risk factors in accordance with established actuarial and underwriting practices;

(e) Issue policies of insurance in accordance with the requirements of ORS 735.600 to 735.650;

(f) Appoint from among insurers appropriate actuarial and other committees as necessary to provide technical assistance in the operation of the pool, policy and other contract design, and any other function within the authority of the board;

(g) Seek advances to effect the purposes of the pool; and

(h) Establish rules, conditions and procedures for reinsuring risks under ORS 735.600 to 735.650.

(5) Each member of the board is entitled to compensation and expenses as provided in ORS 292.495.

(6) The Director of the Department of Consumer and Business Services shall adopt rules, as provided under ORS chapter 183, implementing policies recommended by the board for the purpose of carrying out ORS 735.600 to 735.650.

(7) In consultation with the board, the director shall employ such staff and consultants as may be necessary for the purpose of carrying out responsibilities under ORS 735.600 to 735.650. [1987 c.838 §4; 1989 c.838 §7; 1993 c.744 §190; 1995 c.79 §361; 2001 c.356 §1; 2003 c.364 §95]

735.612 Oregon Medical Insurance Pool Account; sources; uses. (1) There is established in the State Treasury, the Oregon Medical Insurance Pool Account, which shall consist of:

(a) Moneys appropriated to the account by the Legislative Assembly to obtain the coverage described in ORS 735.625.

(b) Interest earnings from the investment of moneys in the account.

(c) Assessments and other revenues collected or received by the Oregon Medical Insurance Pool Board.

(2) All moneys in the Oregon Medical Insurance Pool Account are continuously appropriated to the Oregon Medical Insurance Pool Board to carry out the provisions of ORS 735.600 to 735.650.

(3) The Oregon Medical Insurance Pool Board shall transfer to the Consumer and Business Services Fund created by ORS 705.145 an amount equal to the operating budget authorized by the Legislative Assembly or as that budget may be modified by the Emergency Board or the Oregon Department of Administrative Services, for operation of the Oregon Medical Insurance Pool Board. [1989 c.838 §§2,3; 1993 c.744 §191]

735.614 Assessments for expenses of pool. (1) If the Oregon Medical Insurance Pool Board determines at any time that funds in the Oregon Medical Insurance Pool Account are or will become insufficient for payment of expenses of the pool in a timely manner, the board shall determine the amount of funds needed and shall impose and collect assessments against insurers, as provided in this section, in the amount of the funds determined to be needed.

(2) Each insurer's assessment shall be determined by multiplying the total amount to be assessed by a fraction, the numerator of which equals the number of Oregon insureds and certificate holders insured or re-insured by each insurer, and the denominator of which equals the total of all Oregon insureds and certificate holders insured or re-insured by all insurers, all determined as of March 31 each year.

(3) The board shall ensure that each insured and certificate holder is counted only once with respect to any assessment. For that purpose, the board shall require each insurer that obtains reinsurance for its insureds and certificate holders to include in its count of insureds and certificate holders all insureds and certificate holders whose coverage is reinsured in whole or part. The board shall allow an insurer who is a reinsurer to exclude from its number of insureds those that have been counted by the primary insurer or the primary reinsurer for the purpose of determining its assessment under this subsection.

(4) Each insurer shall pay its assessment as required by the board.

(5) If assessments exceed the amounts actually needed, the excess shall be held and invested and, with the earnings and interest, used by the board to offset future net losses or to reduce pool premiums. For purposes of this subsection, "future net losses" includes reserves for claims incurred but not reported.

(6) Each insurer's proportion of participation in the pool shall be determined by the board based on annual statements and other reports deemed necessary by the board and filed by the insurer with the board. The board may use any reasonable method of estimating the number of insureds and certificate holders of an insurer if the specific

number is unknown. With respect to insurers that are reinsurers, the board may use any reasonable method of estimating the number of persons insured by each reinsurer.

(7) The board may abate or defer, in whole or in part, the assessment of an insurer if, in the opinion of the board, payment of the assessment would endanger the ability of the insurer to fulfill the insurer's contractual obligations. In the event an assessment against an insurer is abated or deferred in whole or in part, the amount by which the assessment is abated or deferred may be assessed against the other insurers in a manner consistent with the basis for assessments set forth in this section. The insurer receiving the abatement or deferment shall remain liable to the board for the deficiency for four years.

(8) The board shall abate or defer assessments authorized by this section if a court orders that assessments cannot be made applicable to reinsurers. However, if a court orders that assessments cannot be made applicable to reinsurers, the board may continue to assess insurers to the end of the biennium in which the determination is made.

(9) Subject to the approval of the Director of the Department of Consumer and Business Services, the board may develop a program for adjusting the assessment of an insurer in the individual health benefits market based on that insurer's contribution to reducing the enrollment in the Oregon Medical Insurance Pool. When developing the program, the board may consider, but is not limited to, the following factors:

- (a) The insurer's level of participation;
- (b) Level of health benefit plan coverage offered; and
- (c) Assumption of risk in the individual health benefits market. [1989 c.838 §4; 1991 c.333 §1; 1995 c.603 §28; 2005 c.304 §1; 2005 c.635 §1]

735.615 Eligibility for pool coverage; rules. (1) Except as provided in subsection (3) of this section, a person who is a resident of this state, as defined by the Oregon Medical Insurance Pool Board, is eligible for medical pool coverage if:

(a) An insurer, or an insurance company with a certificate of authority in any other state, has made within a time frame established by the board an adverse underwriting decision, as defined in ORS 746.600 (1)(a)(A), (B) or (D), on individual medical insurance for health reasons while the person was a resident;

(b) The person has a history of any medical or health conditions on the list adopted by the board under subsection (2) of this section;

(c) The person is a spouse or dependent of a person described in paragraph (a) or (b) of this subsection; or

(d) The person is eligible for the credit for health insurance costs under section 35 of the federal Internal Revenue Code, as amended and in effect on December 31, 2004.

(2) The board may adopt a list of medical or health conditions for which a person is eligible for pool coverage without applying for individual medical insurance pursuant to this section.

(3) A person is not eligible for coverage under ORS 735.600 to 735.650 if:

(a) Except as provided in ORS 735.625 (3)(c), the person is eligible to receive health services as defined in ORS 414.705 that meet or exceed those adopted by the board or is eligible for Medicare;

(b) The person has terminated coverage in the pool within the last 12 months and the termination was for:

(A) A reason other than becoming eligible to receive health services as defined in ORS 414.705; or

(B) A reason that does not meet exception criteria established by the board;

(c) The person has exceeded the maximum lifetime benefit established by the board;

(d) The person is an inmate of or a patient in a public institution named in ORS 179.321;

(e) The person has, on the date of issue of coverage by the board, coverage under health insurance or a self-insurance arrangement that is substantially equivalent to coverage under ORS 735.625; or

(f) The person has the premiums paid or reimbursed by a public entity or a health care provider for the sole purpose of reducing the financial loss or obligation of the payer.

(4) A person applying for coverage shall establish initial eligibility by providing evidence that the board requires.

(5)(a) Notwithstanding ORS 735.625 (4)(c) and subsection (3)(a) of this section, if a person becomes eligible for Medicare after being enrolled in the pool for a period of time as determined by the board by rule, that person may continue coverage within the pool as secondary coverage to Medicare.

(b) The board may adopt rules concerning the terms and conditions for the coverage provided under paragraph (a) of this subsection.

(6) The board may adopt rules to establish additional eligibility requirements for a person described in subsection (1)(d) of this

section. [1987 c.838 §5; 1989 c.838 §11; 1993 c.130 §1; 1993 c.212 §1; 1999 c.754 §1; 2005 c.305 §§1,3; 2005 c.634 §1; 2005 c.635 §§2,3]

735.616 Portability coverage under pool. (1) In addition to individuals otherwise qualified under ORS 735.615, the following individuals qualify for portability health insurance coverage under the Oregon Medical Insurance Pool if an application for coverage is made not later than the 63rd day after the date of first eligibility, as provided in subsection (2) of this section, and the individual is an Oregon resident at the time of such application:

(a) An individual who has left coverage that was continuously in effect for a period of 180 days or more under one or more group health benefit plans, if:

(A) The terminated coverage was in a plan issued or established in a state other than Oregon; and

(B) The individual was an Oregon resident for at least 180 consecutive days immediately prior to the termination of coverage;

(b) An eligible individual, as defined in ORS 743.760, who has left coverage under a group health benefit plan or a portability health benefit plan and whose carrier cannot offer a portability plan under ORS 743.760 (6) because of:

(A) A change in residence of the eligible individual within Oregon;

(B) A change in the geographic area served by the group carrier; or

(C) The carrier's withdrawal from the group market in Oregon in accordance with ORS 743.737 and 743.754;

(c) An individual who has left coverage that was continuously in effect for a period of 180 days or more under one or more Oregon group health benefit plans and the terminated coverage was provided by:

(A) An employee welfare benefit plan that is exempt from state regulation under the federal Employee Retirement Income Security Act of 1974, as amended;

(B) A multiple employer welfare arrangement subject to ORS 750.301 to 750.341; or

(C) A public body of this state in accordance with ORS 731.036; and

(d) On or after January 1, 1998, an individual who meets the eligibility requirements of 42 U.S.C. 300gg-41, as amended and in effect on January 1, 1998, and does not otherwise qualify to obtain portability coverage from an Oregon group carrier in accordance with ORS 743.760.

(2) Eligibility for coverage pursuant to subsection (1) of this section is subject to the following provisions:

(a) An eligible individual does not include:

(A) An individual who remains eligible for the individual's prior group coverage or would remain eligible for prior group coverage in a plan under the federal Employee Retirement Income Security Act of 1974, as amended, were it not for action by the plan sponsor relating to the actual or expected health condition of the individual;

(B) An individual who is covered under another health benefit plan at the time that portability coverage would commence;

(C) An individual who is eligible to enroll in another health benefit plan offered by the employer, other than as a late enrollee, at the time that portability coverage would commence; or

(D) An individual who is eligible for the federal Medicare program.

(b) If an eligible individual has left group coverage issued by an insurance company, a health care service contractor or a health maintenance organization, the date of first eligibility is the day following the termination date of the group coverage, including any period of continuation coverage that was elected by the individual under federal law or under ORS 743.600 or 743.610.

(c) If an eligible individual has left group coverage issued by an entity other than an insurance company, a health care service contractor or a health maintenance organization, the date of first eligibility is the day following the termination date of the group coverage, including the full extent of continuation coverage available to the individual under federal law and ORS 743.600 and 743.610.

(d) If an individual is eligible for coverage pursuant to subsection (1)(b) of this section, the date of first eligibility is the day following the loss of the group or portability coverage.

(3) Coverage under the Oregon Medical Insurance Pool pursuant to subsection (1) of this section shall be offered according to the following provisions:

(a) Coverage is subject to ORS 743.760 (2) and (8);

(b) Coverage may not be subject to a preexisting conditions provision, exclusion period, waiting period, residency period or other similar limitation on coverage; and

(c) The individual shall be required to pay a premium rate not more than the applicable portability risk rate determined by the Oregon Medical Insurance Pool Board pursuant to ORS 735.625. [Formerly 743.763; 1999 c.987 §1; 2001 c.356 §2]

735.620 Administration of pool insurance program. (1) Except as provided in subsection (4) of this section, the Oregon Medical Insurance Pool Board shall select an insurer or insurers through a competitive bidding process to administer the insurance program or components of the insurance program. The board shall evaluate bids submitted based on criteria established by the board that include but are not limited to:

(a) The insurer's proven ability to handle individual medical insurance.

(b) The efficiency of the insurer's claim paying procedures.

(c) An estimate of total charges for administering the plan.

(d) The insurer's ability to administer the pool in a cost-effective manner.

(2)(a) The administering insurer shall serve for a period of three years subject to removal for cause.

(b) At least one year prior to the expiration of each three-year period of service by an administering insurer, the board shall invite all insurers, including the current administering insurer, to submit bids to serve as the administering insurer for the succeeding three-year period. Selection of the administering insurer for the succeeding period shall be made at least six months prior to the end of the current three-year period.

(3) The administering insurer shall be responsible for one or more of the following:

(a) Performing eligibility and administrative claims payment functions relating to the pool.

(b) Establishing a premium billing procedure for collection of premiums from insured persons on a periodic basis as determined by the board.

(c) Performing all necessary functions to assure timely payment of benefits to covered persons under the pool including:

(A) Making available information relating to the proper manner of submitting a claim for benefits and distributing forms upon which submission shall be made.

(B) Evaluating the eligibility of each claim for payment.

(d) Submitting regular reports to the board regarding the operation of the pool. The frequency, content and form of the report shall be as determined by the board.

(e) Following the close of each calendar year, determining net written and earned premiums, the expense of administration and the paid and incurred losses for the year and reporting this information to the board on a form prescribed by the board.

(f) Being paid as provided in the plan of operation for its expenses incurred in the performance of its services.

(4) The board may contract with third party administrators or other vendors to provide services described in subsection (5) of this section that are in addition to or that replace services provided by the administering insurer.

(5) A third party administrator or vendor may provide services that include but are not limited to:

(a) Any or all of the services provided by an administering insurer.

(b) Disease case management.

(c) Direct provider or provider network contracts.

(d) Pharmacy benefit management. [1987 c.838 §6; 1989 c.838 §12; 2005 c.635 §4]

735.625 Coverage; rules. (1) Except as provided in subsection (3)(c) of this section, the Oregon Medical Insurance Pool Board shall offer major medical expense coverage to every eligible person.

(2) The coverage to be issued by the board, its schedule of benefits, exclusions and other limitations, shall be established through rules adopted by the board, taking into consideration the advice and recommendations of the pool members. In the absence of such rules, the pool shall adopt by rule the minimum benefits prescribed by section 6 (Alternative 1) of the Model Health Insurance Pooling Mechanism Act of the National Association of Insurance Commissioners (1984).

(3)(a) In establishing portability coverage under the pool, the board shall consider the levels of medical insurance provided in this state and medical economic factors identified by the board. The board may adopt rules to establish benefit levels, deductibles, coinsurance factors, exclusions and limitations that the board determines are equivalent to the portability health benefit plans established under ORS 743.760.

(b) In establishing medical insurance coverage under the pool, the board shall consider the levels of medical insurance provided in this state and medical economic factors identified by the board. The board may adopt rules to establish benefit levels, deductibles, coinsurance factors, exclusions and limitations that the board determines are equivalent to those found in the commercial group or employer-based medical insurance market.

(c) The board may provide a separate Medicare supplement policy for individuals under the age of 65 who are receiving Medicare disability benefits. The board shall adopt

rules to establish benefits, deductibles, coinsurance, exclusions and limitations, premiums and eligibility requirements for the Medicare supplement policy.

(d) In establishing medical insurance coverage for persons eligible for coverage under ORS 735.615 (1)(d), the board shall consider the levels of medical insurance provided in this state and medical economic factors identified by the board. The board may adopt rules to establish benefit levels, deductibles, coinsurance factors, exclusions and limitations to create benefit plans that qualify the person for the credit for health insurance costs under section 35 of the federal Internal Revenue Code, as amended and in effect on December 31, 2004.

(4)(a) Premiums charged for coverages issued by the board may not be unreasonable in relation to the benefits provided, the risk experience and the reasonable expenses of providing the coverage.

(b) Separate schedules of premium rates based on age and geographical location may apply for individual risks.

(c) The board shall determine the applicable medical and portability risk rates either by calculating the average rate charged by insurers offering coverages in the state comparable to the pool coverage or by using reasonable actuarial techniques. The risk rates shall reflect anticipated experience and expenses for such coverage. Rates for pool coverage may not be more than 125 percent of rates established as applicable for medically eligible individuals or for persons eligible for pool coverage under ORS 735.615 (1)(d), or 100 percent of rates established as applicable for portability eligible individuals.

(d) The board shall annually determine adjusted benefits and premiums. The adjustments shall be in keeping with the purposes of ORS 735.600 to 735.650, subject to a limitation of keeping pool losses under one percent of the total of all medical insurance premiums, subscriber contract charges and 110 percent of all benefits paid by member self-insurance arrangements. The board may determine the total number of persons that may be enrolled for coverage at any time and may permit and prohibit enrollment in order to maintain the number authorized. Nothing in this paragraph authorizes the board to prohibit enrollment for any reason other than to control the number of persons in the pool.

(5)(a) The board may apply:

(A) A waiting period of not more than 90 days during which the person has no available coverage; or

(B) Except as provided in paragraph (c) of this subsection, a preexisting conditions

provision of not more than six months from the effective date of coverage under the pool.

(b) In determining whether a preexisting conditions provision applies to an eligible enrollee, except as provided in this subsection, the board shall credit the time the eligible enrollee was covered under a previous health benefit plan if the previous health benefit plan was continuous to a date not more than 63 days prior to the effective date of the new coverage under the Oregon Medical Insurance Pool, exclusive of any applicable waiting period. The Oregon Medical Insurance Pool Board need not credit the time for previous coverage to which the insured or dependent is otherwise entitled under this subsection with respect to benefits and services covered in the pool coverage that were not covered in the previous coverage.

(c) The board may adopt rules applying a preexisting conditions provision to a person who is eligible for coverage under ORS 735.615 (1)(d).

(d) For purposes of this subsection, a "preexisting conditions provision" means a provision that excludes coverage for services, charges or expenses incurred during a specified period not to exceed six months following the insured's effective date of coverage, for a condition for which medical advice, diagnosis, care or treatment was recommended or received during the six-month period immediately preceding the insured's effective date of coverage.

(6)(a) Benefits otherwise payable under pool coverage shall be reduced by all amounts paid or payable through any other health insurance, or self-insurance arrangement, and by all hospital and medical expense benefits paid or payable under any workers' compensation coverage, automobile medical payment or liability insurance whether provided on the basis of fault or nonfault, and by any hospital or medical benefits paid or payable under or provided pursuant to any state or federal law or program except the Medicaid portion of the Oregon Health Plan offering a level of health services described in ORS 414.707.

(b) The board shall have a cause of action against an eligible person for the recovery of the amount of benefits paid which are not for covered expenses. Benefits due from the pool may be reduced or refused as a setoff against any amount recoverable under this paragraph.

(7) Except as provided in ORS 735.616, no mandated benefit statutes apply to pool coverage under ORS 735.600 to 735.650.

(8) Pool coverage may be furnished through a health care service contractor or

such alternative delivery system as will contain costs while maintaining quality of care. [1987 c.838 §8; 1989 c.838 §13; 1993 c.130 §2; 1995 c.603 §27; 1999 c.987 §2; 2001 c.356 §3; 2003 c.684 §5; 2005 c.634 §2; 2005 c.635 §5a]

735.630 Exemption from liability. Neither participation in the pool as members, the establishment of rates, forms or procedures, nor any other action taken in the performance of the powers and duties under ORS 735.600 to 735.650 shall be the basis of any legal action, criminal or civil liability or penalty against the Oregon Medical Insurance Pool Board, any members, the Director of the Department of Consumer and Business Services or any of their agents or employees. [1987 c.838 §9; 1989 c.838 §14]

735.635 Exemption from taxation. The pool established pursuant to ORS 735.600 to 735.650 shall be exempt from any and all taxes assessed by the State of Oregon. [1987 c.838 §10; 1989 c.838 §15]

735.640 Study; adjustment of operation and benefits plans. After two years of operation of the pool, and every two years thereafter, the Oregon Medical Insurance Pool Board shall conduct a study of the pool and adjust the plan of operation and benefits plan to reflect the findings of the study. The board may also recommend amendments to ORS 735.600 to 735.650 and other statutes as necessary to the Legislative Assembly to address the claims loss experience of the pool. [1987 c.838 §12; 1989 c.838 §16]

735.645 Notice of existence of pool. Every insurer shall include a notice of the existence of the Oregon Medical Insurance Pool in any adverse underwriting decision on individual medical insurance for reasons of the health of the applicant, as described in ORS 735.615 (1)(a). [1987 c.838 §13; 1989 c.838 §17; 1993 c.130 §3; 2005 c.22 §489; 2005 c.634 §3]

735.650 Application of provisions of Insurance Code. (1) The following provisions of the Insurance Code shall apply to the pool to the extent applicable and not inconsistent with the express provisions of ORS 735.600 to 735.650: ORS 731.004 to 731.022, 731.052 to 731.146, 731.162, 731.216 to 731.328, 742.023, 742.028, 742.046, 742.051, 742.056, 743.024, 743.027, 743.028, 743.041, 743.050, 743.100 to 743.106, 743.402, 743.801, 743.803, 743.804, 743.806, 743.807, 743.808, 743.811, 743.814, 743.817, 743.819, 743.821, 743.823, 743.827, 743.829, 743.834, 743.837, 743.839, 743.845, 743A.084, 743A.090, 746.005 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) For the purposes of this section only, the pool shall be deemed an insurer, pool coverage shall be deemed individual health

insurance and pool coverage contracts shall be deemed policies. [1987 c.838 §14; 1989 c.701 §72; 1989 c.838 §18; 1999 c.987 §3; 2001 c.356 §4; 2003 c.87 §20]

OFFICE OF PRIVATE HEALTH PARTNERSHIPS

(Generally)

735.700 Definitions for ORS 735.700 to 735.714. As used in ORS 735.700 to 735.714, unless the context requires otherwise:

(1) “Carrier” means an insurance company or health care service contractor holding a valid certificate of authority from the Director of the Department of Consumer and Business Services, or two or more companies or contractors acting together pursuant to a joint venture, partnership or other joint means of operation.

(2) “Eligible employee” means an employee of an employer who is employed by the employer for an average of at least 17.5 hours per week who elects to participate in one of the group benefit plans provided through action of the Office of Private Health Partnerships, and sole proprietors, business partners, and limited partners. The term does not include individuals:

(a) Engaged as independent contractors.

(b) Whose periods of employment are on an intermittent or irregular basis.

(c) Who have been employed by the employer for a period of time established by the employer or for fewer than 90 days, whichever is less.

(3) “Family member” means an eligible employee’s spouse, any unmarried child or stepchild within age limits and other conditions imposed by the office with regard to unmarried children or stepchildren, or any other dependents eligible under the terms of the health benefit plan selected by the employee’s employer.

(4) “Health benefit plan” means a contract for group medical, surgical, hospital or any other remedial care recognized by state law and related services and supplies.

(5) “Premium” means the monthly or other periodic charge for a health benefit plan.

(6) “Small employer” means a person, firm, corporation, partnership or association actively engaged in business that, on at least 50 percent of its working days during the preceding year, employed no more than 50 eligible employees and no fewer than two eligible employees, the majority of whom are employed within this state, and in which a bona fide partnership or employer-employee relationship exists. “Small employer” includes corporations that are eligible to file a consolidated tax return pursuant to ORS

317.715. [Formerly 653.705; 2003 c.742 §§1,6; 2005 c.238 §§1,2; 2005 c.262 §§1,2; 2005 c.727 §§1,2; 2005 c.744 §§14,15]

Note: 735.700 to 735.714 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.701 Office of Private Health Partnerships. (1) The Office of Private Health Partnerships is established.

(2) The office shall carry out the duties described under ORS 414.831, 735.700 to 735.714 and 735.720 to 735.740. [2005 c.744 §2]

Note: 735.701 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.702 Duties of office. To increase access to health insurance and health care, the Office of Private Health Partnerships shall provide:

(1) Information about health benefit plans and the premiums charged for those plans to self-employed individuals and small employers in Oregon;

(2) Direct assistance to health insurance producers and health insurance consumers regarding health benefit plans;

(3) A central source for information about resources for health care and health insurance; and

(4) Health benefit plans for small employers that have not provided a group health benefit plan for eligible employees for a period of at least one year. [Formerly 653.715; 2003 c.364 §96; 2003 c.742 §§2,7; 2005 c.744 §§16,17]

Note: See note under 735.700.

735.703 Administrator. (1) The Office of Private Health Partnerships is under the supervision and control of an administrator, who is responsible for the performance of the duties, functions and powers of the office.

(2) The Governor shall appoint the Administrator of the Office of Private Health Partnerships, who holds office at the pleasure of the Governor.

(3) The administrator shall be paid a salary as provided by law or, if not so provided, as prescribed by the Governor.

(4) For purposes of administration, subject to the approval of the Governor, the administrator may organize and reorganize the office as the administrator considers necessary to properly conduct the work of the office. [2005 c.744 §3]

Note: 735.703 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.704 [Formerly 653.725; repealed by 2005 c.744 §41]

735.705 Appointment of deputy director, officers and employees. (1) The Administrator of the Office of Private Health Partnerships shall, by written order filed with the Secretary of State, appoint a deputy director. The deputy director serves at the pleasure of the administrator, has authority to act for the administrator in the absence of the administrator and is subject to the control of the administrator at all times.

(2) Subject to any applicable provisions of ORS chapter 240, the administrator shall appoint all subordinate officers and employees of the Office of Private Health Partnerships, prescribe their duties and fix their compensation. [2005 c.744 §4]

Note: 735.705 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.706 Office of Private Health Partnerships Account. The Office of Private Health Partnerships Account is established separate and distinct from the General Fund. All moneys received by the Office of Private Health Partnerships, other than appropriations from the General Fund and except for moneys in the account established by ORS 735.736, shall be deposited into the account and are continuously appropriated to the office to carry out the duties, functions and powers of the office. [2001 c.716 §16; 2005 c.744 §18]

Note: See note under 735.700.

735.707 Rules. In accordance with applicable provisions of ORS chapter 183, the Administrator of the Office of Private Health Partnerships may adopt rules necessary for the administration of the laws that the Office of Private Health Partnerships is charged with administering. [2005 c.744 §5]

Note: 735.707 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.708 [Formerly 653.735; repealed by 2005 c.744 §41]

735.709 Appointment of advisory committees. (1) To aid and advise the Administrator of the Office of Private Health Partnerships in the performance of the functions of the Office of Private Health Partnerships, the administrator may establish advisory committees that the administrator considers necessary. These committees may be continuing or temporary. The administrator shall determine the representation, membership, terms and organization of the committees and shall appoint their members. The administrator is an ex officio member of each committee.

(2) Members appointed to the committees shall represent business, labor, employers,

insurance carriers or producers and consumers.

(3) Members of the committees are not entitled to compensation, but at the discretion of the administrator may be reimbursed from funds available to the office for actual and necessary travel and other expenses incurred in the performance of their official duties in the manner and amount provided in ORS 292.495. [2005 c.744 §10]

Note: 735.709 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.710 Additional duties of office; rules. (1) In carrying out its duties under ORS 735.700 to 735.714 and 735.720 to 735.740, the Office of Private Health Partnerships shall:

(a) Enter into contracts for administration of ORS 735.700 to 735.714 and 735.720 to 735.740, including collection of premiums and paying carriers.

(b) Retain consultants and employ staff.

(c) Enter into contracts with carriers or health care providers for health benefit plans, including contracts where final payment may be reduced if usage is below a level fixed in the contract.

(d) Set premium rates for eligible employees and small employers.

(e) Perform other duties to provide low-cost health benefit plans of types likely to be purchased by small employers.

(f) Establish contributions to be paid by small employers toward the premiums incurred on behalf of covered eligible employees.

(g) Establish procedures by rule for the publication or release of aggregate data relating to:

(A) Applicants for enrollment and persons enrolled in the Family Health Insurance Assistance Program;

(B) Health benefit plans for small employers offered by the office; and

(C) Other programs operated by the office.

(2) Notwithstanding any other health benefit plan contracted for and offered by the office, the office shall contract for a health benefit plan or plans best designed to meet the needs and provide for the welfare of eligible employees and small employers.

(3) The office may approve more than one carrier for each type of plan contracted for and offered, but the number of carriers shall be held to a number consistent with adequate service to eligible employees and family members.

(4) Where appropriate for a contracted and offered health benefit plan, the office shall provide options under which an eligible employee may arrange coverage for family members of the employee.

(5) In developing any health benefit plan, the office may provide an option of additional coverage for eligible employees and family members at an additional cost or premium.

(6) Transfer of enrollment from one health benefit plan to another shall be open to all eligible employees and family members under rules adopted by the office.

(7) If the office requests less health care service or benefit than is otherwise required by state law, a carrier is not required to offer such service or benefit.

(8) Health benefit plans for small employers contracted for and offered by the office must provide a sufficient level of benefits to be eligible for a subsidy under ORS 735.724.

(9) The office may employ whatever means are reasonably necessary to carry out the purposes of ORS 735.700 to 735.714 and 735.720 to 735.740. Such authority includes but is not limited to authority to seek clarification, amendment, modification, suspension or termination of any agreement or contract that in the office's judgment requires such action. [Formerly 653.745; 2003 c.742 §§3,8; 2005 c.238 §§3,4; 2005 c.262 §§3,4; 2005 c.727 §§3,4; 2005 c.744 §§19,20]

Note: See note under 735.700.

735.711 Criminal records checks. For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Office of Private Health Partnerships may require the fingerprints of a person who:

(1)(a) Is employed or applying for employment by the office; or

(b) Provides services or seeks to provide services to the office as a contractor, vendor or volunteer; and

(2) Is, or will be, working or providing services in a position in which the person has or will have access to information that is confidential under state or federal laws, rules or regulations. [2007 c.619 §3]

Note: 735.711 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.712 Office to encourage health insurance coverage among small employers. (1) The Office of Private Health Partnerships shall encourage increased health insurance coverage among small employers:

(a) By providing information, benefit comparisons, premium comparisons and technical assistance on obtaining employee benefits and on incentives including, but not limited to, information on the pretax health benefit options allowed under section 125 of the United States Internal Revenue Code; and

(b) By using other means necessary to market health benefit plan coverage to small employers.

(2) The office shall provide information about other resources for accessing health care and shall assist consumers in accessing those resources. [Formerly 653.747; 2005 c.744 §21]

Note: 735.712 was enacted into law by the Legislative Assembly but was not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.714 Renewal of health benefit plans for small employers. The Office of Private Health Partnerships may renew health benefit plans for small employers offered by the office on or after September 2, 2003, that are not eligible for a subsidy under ORS 735.724. [2003 c.742 §12; 2005 c.744 §22]

Note: See note under 735.700.

(Family Health Insurance Assistance Program)

735.720 Definitions for ORS 735.720 to 735.740. For purposes of ORS 735.720 to 735.740:

(1) "Carrier" has the meaning given that term in ORS 735.700.

(2) "Eligible individual" means an individual who:

(a) Is a resident of the State of Oregon;

(b) Is not eligible for Medicare;

(c) Either has been without health benefit plan coverage for a period of time established by the Office of Private Health Partnerships, or meets exception criteria established by the office;

(d) Except as otherwise provided by the office, has family income less than 200 percent of the federal poverty level;

(e) Has investments and savings less than the limit established by the office; and

(f) Meets other eligibility criteria established by the office.

(3)(a) "Family" means:

(A) A single individual;

(B) An adult and the adult's spouse;

(C) An adult and the adult's spouse, all unmarried, dependent children under 23 years of age, including adopted children, children placed for adoption and children under the legal guardianship of the adult or

the adult's spouse, and all dependent children of a dependent child; or

(D) An adult and the adult's unmarried, dependent children under 23 years of age, including adopted children, children placed for adoption and children under the legal guardianship of the adult, and all dependent children of a dependent child.

(b) A family includes a dependent elderly relative or a dependent adult child with a disability who meets the criteria established by the office and who lives in the home of the adult described in paragraph (a) of this subsection.

(4)(a) "Health benefit plan" means a policy or certificate of group or individual health insurance, as defined in ORS 731.162, providing payment or reimbursement for hospital, medical and surgical expenses. "Health benefit plan" includes a health care service contractor or health maintenance organization subscriber contract, the Oregon Medical Insurance Pool and any plan provided by a less than fully insured multiple employer welfare arrangement or by another benefit arrangement defined in the federal Employee Retirement Income Security Act of 1974, as amended.

(b) "Health benefit plan" does not include coverage for accident only, specific disease or condition only, credit, disability income, coverage of Medicare services pursuant to contracts with the federal government, Medicare supplement insurance, student accident and health insurance, long term care insurance, hospital indemnity only, dental only, vision only, coverage issued as a supplement to liability insurance, insurance arising out of a workers' compensation or similar law, automobile medical payment insurance, insurance under which the benefits are payable with or without regard to fault and that is legally required to be contained in any liability insurance policy or equivalent self-insurance or coverage obtained or provided in another state but not available in Oregon.

(5) "Income" means gross income in cash or kind available to the applicant or the applicant's family. Income does not include earned income of the applicant's children or income earned by a spouse if there is a legal separation.

(6) "Investment and savings" means cash, securities as defined in ORS 59.015, negotiable instruments as defined in ORS 73.0104 and such similar investments or savings as the office may establish that are available to the applicant or the applicant's family to contribute toward meeting the needs of an applicant or eligible individual.

(7) "Medicaid" means medical assistance provided under 42 U.S.C. section 1396a (section 1902 of the Social Security Act).

(8) "Resident" means an individual who meets the residency requirements established by rule by the office.

(9) "Subsidy" means payment or reimbursement to an eligible individual toward the purchase of a health benefit plan, and may include a net billing arrangement with carriers or a prospective or retrospective payment for health benefit plan premiums and eligible copayments or deductible expenses directly related to the eligible individual.

(10) "Third-party administrator" means any insurance company or other entity licensed under the Insurance Code to administer health insurance benefit programs. [Formerly 653.800; 2003 c.684 §8; 2005 c.727 §§5,5a; 2005 c.744 §§23d,23e,23g; 2007 c.70 §317]

Note: 735.720 to 735.740 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.722 Family Health Insurance Assistance Program; eligibility for participation; selection of administrator.

(1) There is established the Family Health Insurance Assistance Program in the Office of Private Health Partnerships. The purpose of the program is to remove economic barriers to health insurance coverage for residents of the State of Oregon with family income less than 200 percent of the federal poverty level, and investment and savings less than the limit established by the office, while encouraging individual responsibility, promoting health benefit plan coverage of children, building on the private sector health benefit plan system and encouraging employer and employee participation in employer-sponsored health benefit plan coverage.

(2) The Office of Private Health Partnerships shall be responsible for the implementation and operation of the Family Health Insurance Assistance Program. The Administrator of the Office for Oregon Health Policy and Research, in consultation with the Oregon Health Policy Commission, shall make recommendations to the Office of Private Health Partnerships regarding program policy, including but not limited to eligibility requirements, assistance levels, benefit criteria and carrier participation.

(3) The Office of Private Health Partnerships may contract with one or more third-party administrators to administer one or more components of the Family Health Insurance Assistance Program. Duties of a third-party administrator may include but are not limited to:

- (a) Eligibility determination;
- (b) Data collection;
- (c) Assistance payments;
- (d) Financial tracking and reporting; and
- (e) Such other services as the office may deem necessary for the administration of the program.

(4) If the office decides to enter into a contract with a third-party administrator pursuant to subsection (3) of this section, the office shall engage in competitive bidding. The office shall evaluate bids according to criteria established by the office, including but not limited to:

- (a) The bidder's proven ability to administer a program of the size of the Family Health Insurance Assistance Program;
- (b) The efficiency of the bidder's payment procedures;
- (c) The estimate provided of the total charges necessary to administer the program; and
- (d) The bidder's ability to operate the program in a cost-effective manner. [Formerly 653.805; 2003 c.128 §1; 2003 c.683 §4; 2003 c.784 §12; 2005 c.238 §6; 2005 c.262 §6; 2005 c.727 §6; 2005 c.744 §24a]

Note: See note under 735.720.

735.724 Application to participate in program; issuance of subsidies; restrictions; enrollment in employer-sponsored coverage. (1) To enroll in the Family Health Insurance Assistance Program established in ORS 735.720 to 735.740, an applicant shall submit a written application to the Office of Private Health Partnerships or to the third-party administrator contracted by the office to administer the program pursuant to ORS 735.722 in the form and manner prescribed by the office. Except as provided in ORS 735.728, if the applicant qualifies as an eligible individual, the applicant shall either be enrolled in the program or placed on a waiting list for enrollment.

(2) After an eligible individual has enrolled in the program, the individual shall remain eligible for enrollment for the period of time established by the office.

(3) After an eligible individual has enrolled in the program, the office or third-party administrator shall issue subsidies in an amount determined pursuant to ORS 735.726 to either the eligible individual or to the carrier designated by the eligible individual, subject to the following restrictions:

- (a) Subsidies may not be issued to an eligible individual unless all eligible children, if any, in the eligible individual's family are covered under a health benefit plan or Medicaid.

(b) Subsidies may not be used to subsidize premiums on a health benefit plan whose premiums are wholly paid by the eligible individual's employer without contribution from the employee.

(c) Such other restrictions as the office may adopt.

(4) The office may issue subsidies to an eligible individual in advance of a purchase of a health benefit plan.

(5) To remain eligible for a subsidy, an eligible individual must enroll in a group health benefit plan if a plan is available to the eligible individual through the individual's employment and the employer makes a monetary contribution toward the cost of the plan, unless the office implements specific cost or benefit structure criteria that make enrollment in an individual health insurance plan more advantageous for the eligible individual.

(6) Notwithstanding ORS 735.720 (4)(b), if an eligible individual is enrolled in a group health benefit plan available to the eligible individual through the individual's employment and the employer requires enrollment in both a health benefit plan and a dental plan, the individual is eligible for a subsidy for both the health benefit plan and the dental plan. [Formerly 653.810; 2003 c.128 §2; 2003 c.683 §1; 2005 c.238 §7; 2005 c.262 §7; 2005 c.727 §7; 2005 c.744 §25]

Note: See note under 735.720.

735.726 Level of assistance determinations. (1) The Office of Private Health Partnerships shall determine the level of assistance to be granted under ORS 735.724 based on a sliding scale that considers:

- (a) Family size;
- (b) Family income;
- (c) The number of members of a family who will receive health benefit plan coverage subsidized through the Family Health Insurance Assistance Program; and
- (d) Such other factors as the office may establish.

(2) Notwithstanding the sliding scale established in subsection (1) of this section, the office may establish different assistance levels for otherwise similarly situated eligible individuals based on factors including but not limited to whether the individual is enrolled in an employer-sponsored group health benefit plan or an individual health benefit plan. [Formerly 653.815; 2005 c.744 §26]

Note: See note under 735.720.

735.728 Subsidies limited to funds appropriated; enrollment restrictions. (1) Notwithstanding eligibility criteria and subsidy amounts established pursuant to ORS 735.720 to 735.740, subsidies shall be provided

only to the extent the Legislative Assembly specifically appropriates funds to provide such assistance.

(2) The Office of Private Health Partnerships shall prohibit or limit enrollment in the Family Health Insurance Assistance Program to ensure that program expenditures are within legislatively appropriated amounts. Prohibitions or limitations allowed under this section may include but are not limited to:

(a) Lowering the allowable income level necessary to qualify as an eligible individual; and

(b) Establishing a waiting list of eligible individuals who shall receive subsidies only when sufficient funds are available. [Formerly 653.820; 2005 c.744 §27]

Note: See note under 735.720.

735.730 Establishment of minimum benefit requirements for plan subsidy. The Office of Private Health Partnerships may, based on the recommendation of the Administrator of the Office for Oregon Health Policy and Research, establish minimum benefit requirements for individual health benefit plans subject to subsidy pursuant to the Family Health Insurance Assistance Program, including but not limited to the type of services covered and the amount of cost sharing to be allowed. [Formerly 653.825; 2005 c.744 §28]

Note: See note under 735.720.

735.731 Coverage of immunizations; rules. (1) The Family Health Insurance Assistance Program shall provide coverage of age-appropriate immunizations or other health care services when an eligible individual is enrolled in a health benefit plan that does not provide coverage of age-appropriate immunizations or other health care services required by the state medical assistance program and the eligible individual is receiving a subsidy described in ORS 414.839.

(2) The Office of Private Health Partnerships shall adopt rules implementing subsection (1) of this section. [2003 c.683 §3; 2003 c.735 §12; 2005 c.744 §29]

Note: See note under 735.720.

735.732 Confidentiality of information in enrollment applications; exchange of information with governmental agencies; use of Social Security numbers. (1) Except as otherwise provided in this section and ORS 735.710, the Office of Private Health Partnerships may not disclose information provided to the office as part of an application for enrollment in the Family Health Insurance Assistance Program.

(2) The office may exchange information provided to the office with other state and

federal agencies for the purposes of verifying eligibility for the program, improving provision of services and identifying economic trends relevant to administration of the program.

(3) In accordance with applicable state and federal law, the office may require applicants to provide their Social Security numbers and use those numbers in the administration of the program. [Formerly 653.830; 2005 c.744 §30]

Note: See note under 735.720.

735.733 Basic benchmark health benefit plan eligible for subsidy. The Office of Private Health Partnerships shall establish at least one basic benchmark health benefit plan that qualifies for a subsidy described by ORS 414.839. In establishing a basic benchmark plan, the office shall consider employer-sponsored health benefit plans offered to employees and dependents of employees in Oregon. [2003 c.684 §11; 2005 c.744 §31]

Note: See note under 735.720.

735.734 Rules. The Office of Private Health Partnerships, in consultation with the Administrator of the Office for Oregon Health Policy and Research and the Department of Human Services, shall adopt all rules necessary for the implementation and operation of the Family Health Insurance Assistance Program. [Formerly 653.835; 2005 c.744 §32]

Note: See note under 735.720.

735.736 Family Health Insurance Assistance Program Account. There is established in the State Treasury the Family Health Insurance Assistance Program Account, which shall consist of moneys appropriated to the account by the Legislative Assembly and interest earnings from the investment of moneys in the account. All moneys in the Family Health Insurance Assistance Program Account are continuously appropriated to the Office of Private Health Partnerships to carry out the provisions of ORS 735.720 to 735.740. [Formerly 653.840; 2005 c.744 §33]

Note: See note under 735.720.

735.738 Reports of program operation. The Administrator of the Office for Oregon Health Policy and Research shall report biennially to the appropriate interim human resources committee and to the Legislative Assembly on the effectiveness and efficiency of the Family Health Insurance Assistance Program, including services and benefits covered under the purchased health insurance plans, consumer satisfaction and other program operational issues. [Formerly 653.845; 2005 c.238 §8; 2005 c.727 §8]

Note: See note under 735.720.

735.740 Sanctions for violation of program requirements; civil penalties. (1) The Office of Private Health Partnerships may impose sanctions against an individual who violates any provision of ORS 735.720 to 735.740 or rules adopted pursuant thereto, including but not limited to suspension or termination from the Family Health Insurance Assistance Program and repayment of any subsidy amounts paid due to the omission or misrepresentation of an applicant or enrolled individual. Sanctions allowed under this subsection shall be imposed in the manner prescribed in ORS chapter 183.

(2) In addition to the sanctions available pursuant to subsection (1) of this section, the office may impose a civil penalty not to exceed \$1,000 against any individual who violates any provision of ORS 735.720 to 735.740 or rules adopted pursuant thereto. Civil penalties imposed pursuant to this section shall be imposed pursuant to ORS 183.745. [Formerly 653.850; 2003 c.684 §9; 2005 c.744 §34; 2007 c.71 §238]

Note: See note under 735.720.

735.750 Definitions. As used in ORS 735.750 to 735.756:

(1) "Benefits plan" has the meaning given that term in ORS 735.605.

(2) "Other costs" means costs incurred by the Oregon Medical Insurance Pool that are not covered by the premiums received by the pool for a subsidized member.

(3) "Premium" has the meaning given that term in ORS 735.700.

(4) "Subsidized member" means a medical assistance program client who is enrolled in a benefits plan and who is receiving a subsidy from the Family Health Insurance Assistance Program established in ORS 735.720 to 735.740.

(5) "Subsidy" has the meaning given that term in ORS 735.720. [2003 c.684 §1; 2005 c.744 §35]

Note: 735.750 to 735.756 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 735 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

735.752 Eligibility for coverage for certain members. Notwithstanding ORS 735.615 (3)(a) and (f), a subsidized member is eligible for coverage under ORS 735.600 to 735.650. [2003 c.684 §2]

Note: See note under 735.750.

735.754 System for payment or reimbursement of subsidies and costs. (1) In order to increase public subsidies for the

purchase of health insurance coverage provided by public programs or private insurance described by ORS 414.839, the Office of Private Health Partnerships, the Oregon Medical Insurance Pool Board and the Department of Human Services shall work cooperatively to obtain federal matching dollars. The office, the Oregon Medical Insurance Pool Board and the department shall develop a system for payment or reimbursement of other costs and subsidies provided to subsidized members.

(2) For each subsidized member, the Oregon Medical Insurance Pool Board shall determine:

(a) The full cost of administering the benefits plan of the subsidized member; and

(b) The amount of other costs.

(3) The Oregon Medical Insurance Pool Board shall bill the Family Health Insurance Assistance Program for the total amount of the premium received by the Oregon Medical Insurance Pool Board and for the amount of other costs. The program shall forward the bill to the department.

(4) The department shall pay the program an amount equal to the portion of the premium that is a subsidy and for other costs. The program shall forward the payment to the Oregon Medical Insurance Pool Board. [2003 c.684 §3; 2005 c.744 §36]

Note: See note under 735.750.

735.756 Determination of subsidies and costs. (1) Of payments made to the Family Health Insurance Assistance Program by the Department of Human Services under ORS 735.754 (4), the department shall determine:

(a) The portion of a subsidy of a subsidized member that is from the General Fund; and

(b) The portion of other costs that is from the General Fund.

(2) The department shall bill the program for the amounts determined under subsection (1) of this section. The program shall forward the bill for the amount determined under subsection (1)(b) of this section to the Oregon Medical Insurance Pool Board.

(3) The board shall:

(a) Determine the amount of funds needed for the payment of other costs under subsection (1)(b) of this section; and

(b) Impose and collect assessments in that amount against insurers, using the methodology described in ORS 735.614 (2), (6) and (9).

(4) The board shall pay the program for the amounts determined under subsection (1)(b) of this section.

(5) The program shall forward to the department the amounts determined under subsection (1) of this section.

(6) ORS 735.614 (3), (4), (5), (7) and (8) applies to assessments collected under this section. [2003 c.684 §4]

Note: See note under 735.750.

735.990 [1987 c.774 §135; repealed by 1991 c.810 §29]

INSURANCE
