

## **INTERSTATE RECIPROCITY FOR DISCRETIONARY GROUP LIFE POLICIES: OASIS OR MIRAGE?**

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Insurers should be wary of relying on statutes that seem to hold the promise of interstate reciprocity for discretionary group life policies. Oregon passed such a statute in 2002. The statute seems to suggest that Oregon will approve discretionary group life policies that are first approved in another state if the issuing state has substantially similar requirements to Oregon. In practice, however, it appears that Oregon's reciprocity statute may be more mirage than oasis.

Oregon's interstate reciprocity statute (Oregon Revised Statute "ORS 731.486(6)") was passed in 2002. While no legislative history exists, it appears that ORS 731.486(6) was intended to codify Section 2(B) of the NAIC's Group Life Insurance Standard Provisions Model Act (the "Model Act"). Under the Model Act, there are two ways to obtain approval for a discretionary group policy. Section 2(A) of the Model Act requires the insurer to demonstrate that the discretionary group policy meets several subjective requirements. Section 2(B) of the Model Act provides that a discretionary group policy issued in one state is entitled to reciprocity in another state if both states have enacted provisions substantially similar to Section 2(A) of the Model Act and the issuing state determined that its Section 2(A) requirements were met.

The Model Group Life Task Force ("Task Force") adopted Sections 2(A) and (B) to "encourage all states to adopt substantially similar standards in order to avoid subjecting the insurance carrier to the prior filing and approval of each state."<sup>1</sup> The NAIC's goal was to have only one state review the discretionary group policy for compliance with Section 2(A).<sup>2</sup> Once a state approved a filing, other states would honor that approval.<sup>3</sup> While there was sufficient support within the NAIC to adopt these provisions of the Model Act, there were also concerns. Specifically, some argued that each state insurance commission should retain the ultimate authority to approve the product. That argument was rejected in favor of reciprocity.<sup>4</sup>

ORS 731.486(6) provides that a master group life policy may be offered in Oregon if the Oregon Insurance Division determines that the state in which the policy was delivered or issued for delivery has requirements that are substantially similar to those established under ORS 743.360 (Oregon's version of Section 2(A) of the Model Act) and that the policy satisfies those requirements. One interpretation of ORS 731.486(6) seems to simply require an insurer to demonstrate that the laws of the issuing state are substantially similar to ORS 743.360 and provide proof that the issuing state approved the policy. However, the Oregon Insurance Division interprets ORS 731.486(6) differently.

The Oregon Insurance Division requires insurers seeking reciprocity of a group life policy approved by another state to submit the same information required for policies originally submitted in Oregon.<sup>5</sup> The submitted information is then reviewed to determine whether the policy satisfies ORS 743.360, rather than determining whether the policy met the issuing state's substantially similar Section 2(A) provisions. Obviously, if the issuing state has substantially similar Section 2(A) provisions and approved the policy, Oregon could conclude that the policy met the issuing state's substantially similar Section 2(A) provisions. Instead, it appears that the Oregon Insurance Division takes the position that the only way to determine that the Section 2(A) requirements of another state are "substantially similar" to ORS 743.360 is to find that the policy meets the requirements of ORS 743.360. This seems to make the approval process essentially the same for reciprocal and non-reciprocal applications.

While reasonable minds may differ on statutory interpretation, the position taken by the Oregon Insurance Division appears to eliminate the benefits of reciprocity sought by the NAIC and the Task Force. Oregon's approach may also be evidence of the reluctance of state insurance commissioners to defer their authority to the judgment of other states. While it may be understandable why state regulators want to retain jurisdiction over policies being issued in

their states, such attitudes may not be able to coexist with the concept of reciprocity.

*Endnotes*

1. II NAIC Proc. 524 (1981) *cited* in Addendum I of 1988-2 NAIC Proc 639, 650 (1988).
  2. Addendum I of 1988-2 NAIC Proc 639, 650 (1988).
  3. *Id.*
  4. *Id.*
  5. Compare Part II and III of the Oregon Insurance Division (Form 440-2441 (rev. 6/03)).■
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