



MEMORANDUM

April 8, 2009

To: House Health Care Committee

From: Cory Streisinger, Director
Teresa Miller, Acting Administrator, Insurance Division

Subject: HB 2009-9 Amendments

We appreciate the opportunity to address proposed changes to HB 2009 as set forth in HB 2009-9 amendments.

The HB 2009-9 amendments make a number of major changes to the original bill, many of which respond to our earlier comments, including keeping the regulation of health insurance generally with the Department of Consumer and Business Services (DCBS) and clarifying issues related to the transfer of programs to the Oregon Health Authority (OHA). We offer the following observations and suggestions in hopes of further refining and clarifying the language of the bill and the activities encompassed by the bill.

Rate Review

With respect to rate regulation (Section 10(1)(i)), the HB 2009-9 amendments differ somewhat from the hand-engrossed amendments previously discussed by the committee. The hand-engrossed amendments directed the OHA to develop standards and methodologies for review of health insurance rates. Since most standards are statutory, it was our understanding that the OHA would develop new standards and methodologies as recommendations for the 2011 Legislature. Under the -9 amendments, however, the OHA is charged with adopting, by rule, standards and methodologies for reviewing administrative expenses of insurers, approving health insurance premium rates, and enforcing these rules. DCBS would be required to comply with these rules in addition to the existing statutory requirements. We are not clear how this will interrelate with existing and proposed statutory standards and responsibilities of DCBS. Specifically, we see the following issues:

- What does it mean to have the OHA responsible for enforcing rules related to rate review and review of administrative expenses? How will one agency enforce rules implemented by another agency?

- The language states that OHA “shall” adopt these rules. What is the consequence if OHA does not adopt rules? May DCBS continue to enforce existing standards? May DCBS continue to exercise its existing rulemaking authority in this area?

These issues could be addressed by directing OHA to develop recommended standards to be considered by the 2011 legislature, which was our understanding of the committee’s intent. If this is the approach taken, Section 1130 (page 1057), Section 1132 (page 1068), and Section 1133 (page 1073) should be deleted as well.

If the committee prefers to give OHA rulemaking authority, we suggest making the authority discretionary rather than mandatory (moving it from (Section 10(1) to Section 10(2)), and deleting the reference to “enforcing rules.”

Oregon Health Insurance Exchange

The language with respect to duties and responsibilities of the Exchange (Section 17) has also changed in the HB 2009-9 amendments. The hand-engrossed amendments stated that in developing the duties and responsibilities of the Exchange, the OHA Board would “take into account” a number of factors. The HB 2009-9 amendments now state that the “duties and responsibilities of the exchange shall include” all of these factors. Many of these are not actually duties and responsibilities; they are simply intended as factors to be considered in developing a workable business plan for the Exchange. Stating that the OHA Board will consider various factors in developing the Exchange duties and responsibilities is very different from saying that the Exchange “shall include” them. This is particularly problematic with respect to subsections 17(3)(h) and (3)(i).

Similarly, the prior draft said the OHA Board “may consider” factors such as the use of an individual mandate – which, in our view, means that the OHA Board could consider how to structure an Exchange with or without such a mandate. The HB 2009-9 amendments say that the duties and responsibilities of an Exchange may include “establishment” of an individual mandate – something that is not an Exchange role but would instead require legislation. We recommend returning to the prior language, which stated that these factors are to be taken into account or considered.

Other specific issues related to the Exchange include:

- The term “vendor” in subsection 17(3)(g) is not a term used in the Insurance Code. The term “producer” (meaning an insurance agent) is the more appropriate term as it is already defined and used in the Insurance Code.
- Subsection (3)(h) (providing benefit plans at little or no cost to low income individuals) seems to be an appropriate role for the OHA, rather than the Exchange. It will require some form of subsidy, which would require legislation. As noted above, it is particularly problematic given the language requiring its inclusion in Exchange duties and responsibilities.

- The committee has discussed the need for additional legislative action before the Exchange becomes operative. We do not see any such requirement in the -9 amendments. We doubt whether it would be possible to implement an Exchange without further legislative action, and it may be desirable to make this explicit in the bill.

Health Care Assessment (Insurers)

It is our understanding that this issue will be separately addressed, so we will not discuss it in this memo.

Oregon Medical Insurance Board

We believe the provisions of the -9 amendments appropriately accomplish the transfer of OMIP from DCBS to the OHA. However, the amendments omit one suggestion that we have previously discussed with the committee chair, relating to the composition of the OMIP Board after the transfer. We recommend that the Director of DCBS remain as a member of the board, in addition to the director of OHA. This can be accomplished by a minor change to Section 1118, amending ORS 735.610(2) as follows:

“(2) The board shall consist of nine individuals, *[eight]* **seven** of whom shall be appointed by the Director of the *[Department of Consumer and Business Services]* **Oregon Health Authority**. The Director of the Department of Consumer and Business Services or *[the director’s]* designee **and the Director of the Oregon Health Authority or designee** shall be *[a member]* **members** 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.”

Dual Authority of OHA and DCBS

A few sections of the -9 amendments still appear to assign some duplicative insurance duties and responsibilities to OHA. These sections may simply reflect drafting errors. To alleviate confusion, DCBS would suggest changes to the following sections of the HB 2009-9 amendments:

- Section 1116 (page 1043), amending ORS 731.216 – The amendment to the lead-in sentence of this statute results in OHA having power over all insurance matters, not just health insurance, and in its most extreme, could be read to give OHA the power to establish within DCBS a workers’ compensation rating bureau (ORS 731.216(3)). A separate section should be created for OHA, giving them the appropriate authority.

- Section 1122 (page 1048), amending ORS 735.700 – This statute should not be amended and the section can be deleted from the bill entirely. Insurers will still receive the certificate of authority from the Director of DCBS.
- Section 1131 (page 1065), amending ORS 743.745 –Subsections (2) and (4) of ORS 743.745 deal with regulation of insurers outside the areas under OHA jurisdiction; the references to the OHA should be eliminated in these subsections and the functions should remain with DCBS. The other references to the OHA in this section are appropriate.

Office of Private Health Partnerships

We understand Rocky King, Administrator of the Office of Private Health Partnerships, has communicated the technical concerns listed below to the committee. For your convenience, we have included them in this memo, as well.

This Office is not a part of the Department of Administrative Services. The transfer functions for the Office should be spelled out separately as it is a stand-alone agency.

The following related technical corrections are needed:

- Section 19 (3) — The transfer language should be added for the Office of Private Health Partnerships (perhaps as a new subsection.)
- Section 19 (5) — Add the administrator of the Office of Private Health Partnerships to the list of agencies.
- Section 20 (1) — Add the Office of Private Health Partnerships to the list of agencies.
- Section 20 (3) — Add the Office of Private Health Partnerships to the list of agencies.
- Section 20a — Add the Office of Private Health Partnerships to the list of agencies.
- Section 21 (2) — Add the Office of Private Health Partnerships added to the list of agencies in both places.
- Section 22 — Add the Office of Private Health Partnerships to the list of agencies.

Please do not hesitate to contact us if you have questions.