

**STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE DIVISION**

Before the Insurance Administrator
Department of Consumer and Business Services

In the Matter of Amending OAR 836-052-1005,)	
Relating to Clarification of Law to Prohibit)	SUMMARY OF TESTIMONY
Separate Cost Sharing For Mandates When Not)	AND HEARING OFFICER'S
Otherwise Permitted By Law)	RECOMMENDATION
)	
)	

Procedures Followed

On October 14, 2010, the Director filed with the Secretary of State a Notice of Proposed Rulemaking Hearing (Notice), giving notice that the Director proposed to begin rulemaking to adopt changes to clarify the law related to cost sharing requirements established by insurers for mandated coverage when not otherwise permitted by law. The notice announced the Division's intent to adopt rules necessary to clarify the requirements for insurers to provide coverage of mandated benefits without separate cost sharing, treatment limitations, limits on total payments or any other restrictions such as deductibles, copayments, coinsurance and visit limits for mandated services under ORS chapter 743A unless otherwise allowed by law. The rule was not intended to add any new requirements or limitations, but only to provide clarity in the imposition of deductibles, copayment and coinsurance requirements and visit limits as they are applied to services mandated by legislative action.

The Notice announced that a rulemaking hearing would be held on December 14, 2010, and that interested persons could submit comments through December 17, 2010. The notice was filed with a Statement of Need and Fiscal Impact which included a Statement of Statutory Authority, Need for Action, Advisory Committee, Principal Documents Relied Upon and Fiscal and Economic Impact. A copy of the Notice was published in the Secretary of State's Oregon Bulletin of November 2010. Copies of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking were delivered or mailed to Oregon health insurers, to persons on the Division mailing list established under the Administrative Procedures Act, to legislators who are required by law to be notified, and to the press and to other interested persons. Copies were also made available to interested persons through the Division's e-notify system and were posted on the Division's web site.

The division conducted a number of advisory committee meetings and solicited information from the participants about both the substance of the proposed rules and the fiscal impact of the rules. At these meetings, we received comments from carriers indicating that the Insurance Division did not need this rule to address issues raised related to cost sharing arrangements and other limitations on mandates as it was noted that the division already had the authority to reject contract language on a case-by-case bases that goes against a mandate's legislative intent. During the discussion, consumer organizations noted that due to federal and state healthcare reform efforts, any decision made on this issue would be temporary. Consumers and carriers seemed to agree that more direction on Oregon mandates would be required from the federal government,

Oregon legislature and the Oregon Health Authority. There was also discussion about inconsistencies between the Oregon mandates and the new federal health care reform law and possible unintended consequences of these rules.

After discussions in the advisory committee, the Division added a provision to the proposed rule that exempts from the rule any health benefit package approved by the Oregon Health Authority (OHA) pursuant to the provisions of House Bill 2009 (2009 Legislative Session) because there was some concern that packages and plans developed to address the OHA's guidelines for evidence-based treatment and associated coverages would conflict with some of the requirements of the statutes. This exemption would allow that policy decision to be addressed by the Legislative Assembly rather than in this rulemaking.

The committee reviewed the proposed fiscal impact. There will be little fiscal impact for the Division. There should be no fiscal impact on other state agencies or local bodies.

In discussions with the advisory committee carriers indicated they may expend some resources in changing how they handle mandated services, but because this rule is intended to clarify and not to change the current statutory requirements, those expenses should be minimal. However, subsequent written testimony indicated these rules would result in costs to carriers in restructuring their processes and in costs to determine the applicability of the rules.

There is no cost of compliance for small businesses, as there are no small businesses subject to this rule.

Members of the advisory committee reviewed the draft fiscal impact statement and had no changes to recommend at that time.

Testimony Received and Hearing Officer Recommendation

The hearing was held as scheduled. Jeannette Holman, Senior Policy Analyst was the hearing officer. No members of the public testified at the hearing, but three people submitted written comments. Lisa Trussell, Health Net Health Plan of Oregon, Inc. submitted a comment that stated that one problem with the proposed rules is how a "predominant" benefit is to be determined. She stated that the one instance that idea was used actually amounted to a benefit take away for the PPO market. Leanne Gassaway, Senior Regional Director – State Affairs, America's Health Insurance Plans (AHIP) submitted comments that included earlier comments from AHIP submitted during the advisory committee process and reiterated that AHIP believes these rules are inconsistent with the authority of the Division and adoption of the rules as proposed would increase costs and litigation resulting in harm to Oregonians. Ms. Gassaway expressed concern about the unintended consequences to Oregonians if the Division adopts these rules and suggested that the rules would hinder insurers' attempts to address state and federal health reform through the use of innovative health plans. Kim Wirtz, Regence, submitted comments echoing AHIP's concerns and again expressed concern about unintended consequences of the rules.

The hearing officer recommends that the proposed rules not be adopted at this time. Although the Division has experienced some opposition in practice when the Division attempted to address problems created when carriers did impose separate deductibles or cost sharing requirements, and in light of the discussions with carriers that indicate the Division has the authority to address these kinds of problems already on a case-by-case basis, the hearing officer recommends the

Division continue with this current practice. Discussions with the advisory committee included discussion about how these mandates will be implemented with federal health reform provisions. There was confusion about which mandates the rules would apply to and a suggestion was made that the Division should simply follow “legislative intent” for each mandate. Because of the state of flux of health care mandates at the federal level and the impact of those on state mandates, there was concern about possible unintended consequences resulting from the adoption of these rules. The possibility of legislation to clarify the mandates and how they will work with the Affordable Care Act was discussed. Because there are many new and unanswered questions about the operations of mandates at this time, the recommendation of the hearings officer is to postpone adoption of these rules at this time.

The rulemaking is within the Director's rulemaking authority, and applicable rulemaking procedures were complied with.

Signed this 2nd day of February 2011.

Department of Consumer and Business Services
/s/

Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 3rd day of February 2011.

Department of Consumer and Business Services
/s/

Teresa Miller, Insurance Administrator