

**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 Adopting OAR836-100-0100,)	
836-100-0105, 836-100-0110, 836-100-0115, and)	SUMMARY OF TESTIMONY
836-100-0120 Relating to Adoption of)	AND HEARING OFFICER'S
the Oregon Companion Guide for Eligibility)	RECOMMENDATION
Inquiries and Responses)	

Procedures Followed

On April 14, 2011, the Director filed with the Secretary of State a Notice of Proposed Rulemaking Hearing (Notice), giving notice that the Director proposed to adopt by rule the first of a series of “companion guides” that will further the goal of administrative simplification in health insurance and health care processes. These rules will adopt the “Oregon Companion Guide for the Implementation of the ASCX12N/005010X279 Health Care Eligibility Benefit Inquiry and Response (270/271)” (Companion Guide) which is the first of a series of uniform standards for administrative simplification of health insurance financial and administrative transactions developed by the Office of Oregon Health Policy and Research. This development process began under the provisions of Section 1193, Chapter 595, Oregon Laws 2009. Section 1192, Chapter 595, Oregon Laws 2009. During the process, the Oregon Legislative Assembly passed and the Governor signed Senate Bill 94 (chapter 130, Oregon Laws 2011) which replaced and expanded the authority under the 2009 legislation. Under both laws, the Department of Consumer and Business Services is required to adopt these standards by rule.

The Notice announced that a rulemaking hearing would be held on May 25, 2011, and that interested persons could submit comments through June 15, 2011. 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 May 2011. Copies of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking were delivered or mailed to Oregon health insurers and other health care entities, 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 process used to develop this Companion Guide was a collaborative effort with involvement of over 35 different organizations including health plans, associations, providers, state agencies and clearinghouses. Upon completion of the guide, a survey was conducted to assess the support for the Companion Guide.

These rules include provisions to address recommendations included in the final report of the Administrative Simplification Work Group including:

- A waiver process to allow for flexibility. During development and Oregon Health Leadership Council (OHLIC) approval of the guide, it was noted that there were some aspects of the guide that will be difficult for some organizations to meet in the short term. Rather than softening the guide, the OHLIC kept the key provisions but strongly encouraged DCBS to include a process that would enable those that legitimately cannot meet the requirements in the short term to get a waiver.
- Ongoing coordination between rulemaking team & Administrative Simplification Workgroup.
- Reference the Oregon Companion Guide but do not incorporate content of the guide in rule. We anticipate that the content of the Companion Guide will need to be modified over the course of time and it would be simpler to keep the content of the Guide current without having to go through a rulemaking process each time.
- An ongoing and regular process to keep the guide up to date with industry and federal government driven changes.
- Clearly defined method to ensure compliance by all constituents with the Companion Guide and a path for issue escalation.
- Technical support strategy and process.

The requirements of the rules, as set forth in OAR 836-100-0110 will apply on January 1, 2012 for those health care providers that submit the inquiry electronically on the effective date of these rules and October 1, 2012, for all inquiries from all health care providers.

The hearing officer recommends adoption of the rule with changes to reflect the provisions of Senate Bill 94 signed by the Governor on May 23, 2011 and effective upon passage. At the beginning of this rulemaking, the department did not have authority to impose these standardization requirements on all of the entities included in Senate Bill 94. However, in anticipation of passage of Senate Bill 94, the department included with its Notice of Rulemaking a version of the rules that included the changes made by Senate Bill 94. With passage of the bill, it is possible to adopt the alternate language alleviating the need to immediately open another rulemaking process to extend the applicability of the rule to the entities included in Senate Bill 94. Those additional entities include:

- prepaid managed care health services organizations,
- third party administrators,
- health care clearinghouses or other entities that process or facilitate the processing of health care financial and administrative transactions from a nonstandard format to a standard format,
- self insured programs, including those otherwise exempt from the Insurance Code and
- any other person identified by the department that processes health care financial and administrative transactions between a health care provider and an entity described in section 2 of Senate Bill 94.

Fiscal impact: The advisory committee reviewed the proposed fiscal impact statement for these rules. There will a fiscal impact for health insurers and other health care entities that must come into compliance with the requirements of the Companion Guide. The Office of Oregon Health

Policy and Research examined the costs and benefits of implementing the companion guides. For the state agencies, there will be a minimal fiscal impact, which can be absorbed by the agencies. For insurers and other entities, and providers, there should be a small impact in the short term and potentially substantial cost-savings in the long-term as administrative simplification streamlines processes.

Certain small providers may be impacted, though it is difficult to estimate how many. Providers currently unable or unwilling to interact with health insurers or health care entities in the manner provided by the rules will have over a year after enactment of the rule to come into compliance. Moreover, there are multiple options for developing a compliant electronic process, including one that requires only an internet connection to implement. Finally, the costs to providers associated with this rulemaking are only attributable to the rule insofar as the rule is implementing the final outcome of a process created by statute: these costs cannot be avoided by forgoing rulemaking because the department is required to adopt the rule in this instance.

The Oregon Health Authority, having studied the costs and efficiencies of interoperable electronic health record systems in solo and small group practices, estimates that the median cost for initial implementation will be \$45,747, with an ongoing median annual cost of \$7,231. This is offset by a median annual efficiency and revenue savings of \$38,450 including a median annual savings from transactions of \$10,800. OHA expects that even those providers who do not recoup their initial costs in the first year of operation will likely do so in the second. This is the best information currently available.

Over the long term, the standardization enforced by this rule should bring down administrative costs and speed delivery of information, claims payments, and ultimately health care services.

Members of the advisory committee reviewed the fiscal impact and agreed that there would be an initial expense. They were unsure whether the projected cost savings will be realized.

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. We received written comments from:

1. Elise Brown and Leanne Gassaway, America's Health Insurance Plans (AHIP), requesting that we add provisions to allow an insurer to request a waiver.
2. Lisa Trussell, Health Net Health Plan of Oregon, Inc., asking that we include provisions to request a waiver.
3. Chris Ellertson, President, Health Net Health Plan of Oregon, Inc., requesting that the Insurance Division put the adoption of the uniform standards on hold pending federal operating rules under section 1104 of the Affordable Care Act, or, in the alternative, changing the companion guide to be consistent with the basic CAQH CORE requirements or explicitly stating in the rules that waivers will be granted for CAQH CORE certified carriers.
4. Grace Ah Yo, Manager, Contracts and Compliance Department, Willamette Dental, asking that we change all references to "all health insurers" to "all health insurers that offer health benefit plans."

In response to the comments received, the hearing officer recommends adding two provisions to the proposed rules. The first addresses the concerns of Elise Brown, Leanne Gassaway, Lisa

Trussell and Chris Ellertson by adding a new subsection to the waiver provision in OAR 836-100-0115 that states the department will consider a health insurer's efforts to comply with the federal requirements contained in Section 1104 of the Patient Protection and Affordable Care Act. The language added does not grant an outright waiver, but it does look at compliance with the federal regulations. The language added was suggested by AHIP and agreed to by the department and OHA during negotiations on Senate Bill 94 during the legislative session.

The second change is in response to concerns expressed by Willamette Dental that the companion guide does not apply to all health insurers, so the rules should be amended to clearly apply only to health insurers that offer health benefit plans, thus excluding health insurers that provide limited or specialized coverage only. However, the provisions of Senate Bill 94 direct the administrative streamlining rules to apply to health insurers, not only health insurers that offer health benefit plans. So the rules must apply to all health insurers; however, as pointed out by Willamette Dental, some companion guides are limited in applicability. To address this conflict, we have added language in OAR 836-100-0100 (2) that clarify that the uniform standards apply to all health insurers and health care entities in Oregon *as specified in each companion guide*.

The hearing officer recommends that the proposed rules be adopted with the changes discussed above.

The rulemaking was reviewed again for its economic effect on businesses, including small businesses, and there is no need for further change. The rulemaking is within the Director's rulemaking authority, and applicable rulemaking procedures were complied with.

Signed this 14th day of July 2011.

Department of Consumer and Business Services
/s/

Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 14th day of July 2011.

Department of Consumer and Business Services
/s/

Berri Leslie, Deputy Insurance Administrator