

**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 OAR 836-053-0415,)	
836-053-0825, 836-053-0830, 836-053-0857,)	
836-053-0862, 836-053-1033 and 836-053-1035;)	
Amending 836-053-0410, 836-053-0851,)	SUMMARY OF TESTIMONY
836-053-1000, 836-053-1030, 836-053-1060,)	AND HEARING OFFICER'S
836-053-1070, 836-053-1080, 836-053-1100,)	RECOMMENDATION
836-053-1110, 836-053-1140, 836-053-1310,)	
836-053-1340, 836-053-1342 and 836-053-1350;)	
and Repealing OAR 836-053-0856, 836-053-0861)	
and 836-053-0866 Relating to Health Care Reform)	

Procedures Followed

On October 14, 2011, the Director of the Department of Consumer and Business Services filed with the Secretary of State a Notice of Proposed Rulemaking Hearing (Notice), giving notice that the Director proposed to begin rulemaking to implement provisions of Chapter 500, Oregon Laws 2011 (Enrolled Senate Bill 89), enacted by the 2011 Legislative Assembly. The new rules and amendments to the existing rules are necessary to ensure that the Insurance Division administrative rules are consistent with the Affordable Care Act, the federal health care reform law signed by President Obama on March 23, 2010, and with other health insurance reform measures included in other state and federal legislation.

The Notice announced that a public hearing on the proposed rules would be held on November 30, 2011, and that interested persons could submit comments through December 7, 2011. The Notice was filed with a Statement of Need and Fiscal Impact which included a Statement of Statutory Authority, Need for the Rules, Documents Relied Upon, Fiscal and Economic Impact, Statement of Cost of Compliance, and Advisory Committee Consultation. A copy of the Notice was published in the Secretary of State's Oregon Bulletin of November 2011. Copies of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking Hearing were delivered or mailed to or otherwise distributed to health insurers, third party administrators, to persons on the Insurance Division mailing list established under the Administrative Procedures Act, to those members of the Legislative Assembly to whom notice is required to be given, 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 external advisory committee for these rules met four times following initial meetings with interested stakeholders to determine the scope of the rulemaking. The advisory committee discussed in detail the proposed changes relating to rescission, state continuation, notice required

prior to cancelation (the “Clem” amendment) and finally, the grievance process and appeals of adverse benefit determinations.

Some of the specific changes in the rules discussed by the advisory committee include:

- Revisions to Oregon’s rescission provisions including requirements for the contents of the notice required to be provided to enrollees whose coverage is rescinded, and requirements and timelines for notice of rescissions that insurers must provide to the director of the Department of Consumer and Business Services Division.
- Clarifying when notice requirements are triggered when an insurer takes administrative action to cancel coverage under an individual health benefit plan.
- Implementing the changes made to the state continuation laws during the 2009 and 2011 legislative sessions including clarifying the requirements of the notice that insurers must send to covered persons and qualified beneficiaries eligible for state continuation coverage; defining or clarifying statutory terms such as “enrollee,” “certificate holder”, “claim,” “coverage,” “dissolution,” “notice,” and “similar;” and explaining circumstances under which a person is not considered to be a qualified beneficiary.
- Defining requirements for cultural and linguistic appropriateness in accordance with federal law.
- Implementing changes to Oregon’s internal and external review processes for adverse benefit determinations in a manner that is consistent with and approved by federal regulators. These changes in large part carry forward provisions adopted as temporary rules in July 2011. The temporary rules expire December 21, 2011 and must be replaced with permanent rules that comply with federal requirements. The Division’s appeal process as set forth in the temporary rules and SB 89 changes was found to comply with federal requirements, so in this rulemaking, the Division did not change the temporary rules in any significant way. The rules also are changed to make the annual grievance reporting requirements consistent with the new grievance procedure set forth in SB 89.
- A new requirement that specifies that the summary of benefits and explanation of coverage must be provided in the manner and form consistent with federal law.
- Repeal of rules related to state continuation that are no longer relevant because the rules were specifically adopted to provide subsidy benefits to Oregonians under federal law that are no longer applicable to state continuation.

In addition to these changes, the rules include a number of minor changes to clarify the statutory changes enacted by Senate Bill 89.

In the course of the advisory committee discussion, some issues were identified that could only be accomplished by legislation. It is our understanding that the carriers intend to bring these issues to the February 2012 session.

The proposed rules and the fiscal impact were reviewed by members of the external advisory committee that included insurers and consumers. The external advisory committee made only one specific suggestion to change the fiscal impact statement and that was to change the statement regarding the impact of the rules on insurers included reference to the provisions in the rules that were not resulting from the federal Affordable Care Act, such as the cancelation notice and changes to state continuation. The fiscal impact was revised to reflect this suggestion.

Testimony Received and Hearing Officer Recommendation

The hearing was held as scheduled. Jeannette Holman, Senior Policy Analyst, was the hearing officer. No persons attended the hearing and the Division received no written comments by the comment deadline of December 7, 2011.

The hearing officer recommends that the rules be adopted with typographical and form and style changes to the proposed rules that have been identified during the public comment period. The rules will take effect immediately upon filing. Portions of these rules will replace temporary rules on the appeals process adopted in July 2011 that will expire December 21, 2011.

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 15th day of December 2011.

Department of Consumer and Business Services
/s/

Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this 15th day of December 2011.

Department of Consumer and Business Services
/s/

Lou Savage, Acting Insurance Administrator