

**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 836-100-0011,)	
836-100-0016, 836-100-0025, 836-100-0030,)	
836-100-0035, 836-100-0040 and 836-100-0045)	
Repealing OAR 836-100-0015 and Amending and)	SUMMARY OF TESTIMONY
Renumbering OAR 836-100-0020 Relating to)	AND HEARING OFFICER'S
Adoption of Rules to Implement Children's)	RECOMMENDATION
Reinsurance Program)	

Procedures Followed

On May 13, 2011, 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 rules to establish and implement a reinsurance program to provide coverage for children. This rule will adopt the mechanism to provide coverage for children through the ceding of risk to the Children's Reinsurance Program. The Children's Reinsurance Program will be funded through premiums submitted by carriers with each ceded risk, and if necessary, through the Oregon Medical Insurance Pool (OMIP) assessment.

Under the federal Affordable Care Act, carriers are no longer able to impose pre-existing conditions periods on coverage for persons less than 19 years of age, and must issue policies on a guaranteed issue basis. In order to alleviate stresses on the market, these rules are intended to provide a mechanism for those children to obtain coverage throughout the year, rather than only during two month-long open enrollment periods. Under this program a carrier in the individual market and carriers providing coverage through Healthy Kids Connect could elect to participate in the reinsurance program. The ceding of a risk would be invisible to the child and to the parent applying for coverage on behalf of a child because the carrier accepting the application would continue to provide services and manage the risk under the policy.

This program will operate very simply. The child or the parent on behalf of the child would complete the standard health statement used by the carrier as with all other individual market enrollments. The carrier would accept the child on a guaranteed issue basis with no pre-existing condition period but based on the underwriting criteria of the carrier, the carrier could elect to cede the risk to the reinsurance program. The carrier would have up to 105 days after the effective date of coverage to decide whether to cede the risk to the program. Once ceded to the reinsurance program, the child would remain in the program as long as they were enrolled with that carrier or until January 1, 2014 (the effective date of the implementation of federal reinsurance, risk adjustment and risk corridor programs) which ever occurs first.

In developing these rules, the department worked closely with staff from the Oregon Office of Private Health Partnerships (OPHP) and a technical advisory group to determine the basic parameters of the rules. The rules were then reviewed by an external rulemaking advisory

committee comprised of insurers, producers, consumers and representatives of OPHP. Adoption of the rules at this time will allow the program to be in place by August 1, 2011, the previously scheduled start of the next open enrollment period for children. This would avoid the need for a limited open enrollment period and allow carriers to cede the risk for children who apply for coverage with a carrier at that time. These rules specifically repeal the open enrollment periods because with these rules, a child under 19 will be allowed to apply for (and be accepted for coverage) throughout the year.

The rules will become operative July 1, 2011.

The Insurance Division conducted a rulemaking hearing on June 21, 2011, and interested persons could submit comments through June 28, 2011.

Almost all of the feedback we have received on the proposed rules has been positive.

Fiscal impact: The EAC reviewed the proposed fiscal impact statement for these rules. These rules will have a minimal impact to the Department of Consumer and Business Services which the Division can absorb with existing resources. The department envisions developing an interagency agreement with the Oregon Medical Insurance Pool Board for the administration of this program so OMIP may incur some minimal costs in integrating this program with other similar programs administered by OMIP. In the fiscal for Enrolled Senate Bill 514, the Oregon Health Authority, which encompasses both OMIP and OPHP, reported that any work associated with the implementation of benefit plan changes would be absorbed by existing staff and resources.

Testimony Received and Hearing Officer Recommendation

The hearing was held as scheduled. Jeannette Holman, Senior Policy Analyst was the hearing officer. Although a number of persons attended the hearing, no one submitted comments or testified at the hearing. Mr. Mark Charpentier submitted written comments after the hearing on behalf of Kaiser Foundation Health Plan of the Northwest. He expressed concern about the lack of any restrictions about which risks could be ceded under the program and suggests that the rules include assessment standards for ceding a risk similar to those that currently exist for the Oregon Medical Insurance Pool (OMIP) assessment. Kaiser believes that this would encourage better management of health care costs among all carriers in the individual market. Mr. Charpentier also suggested three technical modifications.

In response to the comments received from Mr. Charpentier, the Division determined that to add the suggested assessment standards at this time would be contrary to the recommendations of the advisory committee and technical work group that assisted in the development of the rules. The vision for this program was to keep it very simple for ceding risks. To establish sideboards or to add the assessment mechanism would be to add complexity. The goals of the program are to make it as easy as possible to administer, to be invisible to the enrollees and to minimize costs to insurers and to the agencies charged with administering the program. If additional sideboards become necessary after the program is in operation the agencies would consider adopting additional sideboards in a future rulemaking. In addition to expressing concern about the lack of restrictions on ceding risks, Mr. Charpentier made several other suggested changes or corrections to the rules. The hearing officer recommends making these additional changes suggested by Mr. Charpentier and those changes have been incorporated into the final rules.

Ms. Kim Wirtz, representing Regence, also submitted comments. She suggested that the rules should not include references to the Healthy KidsConnect carriers and that a better option would be to incorporate the Children's Reinsurance Program provisions in rules relating to Healthy KidsConnect (specifically, OAR division 442-10). The hearing officer recommends not adopting this approach to the rules. First, the Healthy KidsConnect is authorized under separate statutes and authority of the Oregon Health Authority; the Insurance Division does not have rulemaking authority over that program, so obviously cannot amend those rules, or adopt new rules for the Healthy KidsConnect program. Second, the provisions of chapter 131, Oregon Laws 2011 (Enrolled Senate Bill 514) specifically directed the Department of Consumer and Business Services to adopt the Children's Reinsurance Program by rule. Regence's suggestion would be contrary to this specific legislative directive.

Ms. Wirtz also submitted a number of suggestions to the language of the rules. Many of these suggestions add clarity and the hearing officer recommends making many of these changes, which have been incorporated in the final rules.

In addition to the changes in response to comments received from Ms. Wirtz and Mr. Charpentier, these rules reflect many changes suggested by comments on these rules made prior to the public hearing and as a result of ongoing work by Don Myron and Barry Burke from OPHP. The department anticipates that this program will be administered by the Office of Private Health Partnerships through an interagency agreement between the department and OPHP, so Mr. Myron and Mr. Burke have been working with a group of interested stakeholders to ready the nuts and bolts of this program for implementation beginning August 1, 2011. In the course of those discussions, they have noted a number of changes necessary to the rules which are included in the final rules.

The hearing officer recommends that the proposed rules be adopted with the changes outlined 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 5th day of July 2011.

Department of Consumer and Business Services

Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this _____ day of July 2011.

Department of Consumer and Business Services

Teresa Miller, Insurance Administrator