

**STATE OF OREGON  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
DIVISION OF FINANCIAL REGULATION**

Before the Insurance Commissioner  
Department of Consumer and Business Services

In the Matter of Adopting OAR 836-053-0015,	)	
836-053-1500, 836-053-1505, 836-053-1510;	)	
Amending OAR 836-010-0013, 836-052-1000,	)	
836-053-0010, 836-053-0021, 836-053-0030,	)	SUMMARY OF TESTIMONY
836-053-0050, 836-053-0066, 836-053-0230,	)	AND HEARING OFFICER'S
836-053-0410, 836-053-0431, 836-053-0465,	)	RECOMMENDATION
836-053-0472, 836-053-0510, 836-053-0825,	)	
836-053-0830 and 836-053-0835; and Repealing	)	
OAR 836-053-0014(T), 836-053-0015(T),	)	
836-053-1500(T), 836-053-1505(T),	)	
836-053-1510(T), 836-009-0020, 836-009-0025,	)	
836-009-0030, 836-009-0035 and 836-009-0040;	)	
related to aligning health insurance rules to	)	
changes in applicable state and federal laws	)	
	)	

**Procedures Followed**

On December 14, 2015, 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 adopt rules necessary to align the health insurance rules to changes made to applicable state and federal statutes and regulations.

The Notice announced that a rulemaking hearing would be held on January 28, 2016, and that interested persons could submit comments until 5:00 PM on February 4, 2016. 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 January 2016. Copies of the Statement of Need and Fiscal Impact and the Notice of Proposed Rulemaking were delivered or mailed or otherwise distributed to all health insurers, consumers, providers, to persons on the Division of Financial Regulation 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.

These rules are necessary to reflect changes in state and federal law that impact current rules and require new rules. The rules include provisions defining "small employer" and establishing

eligible employees and counting methodology to determine whether an employer qualifies as a small employer or a large employer for purposes of obtaining group health insurance.

These rules are necessary to permanently implement requirements of Senate Bill 231 (2015 Session) as amended by House Bill 4017 (2016 Session) to establish the definition of “prominent carrier” and to prescribe the expenditures primary care services that prominent carriers must report to the Department of Consumer and Business Services (DCBS). The rules define “prominent carrier” based on annual premium income, clarify the data to be reported to DCBS and establish the reporting dates and requirements for prominent carriers until 2018 in accordance with enrolled HB 4017.

The rules also eliminate provisions related to individual transitional plans which ended on December 31, 2015 as provided in Senate Bill 1582 (2014 Session), because those provisions are no longer necessary. In updating the rules, the guidance to insurers on transitional plans, included as exhibits to OAR 836-010-0013, are also updated.

The rules specify the intent of the DCBS to not enforce provisions of a state mandate related to prosthetics and orthotics those sunsets by operation of the state law. Other federal statutes may impose similar coverage requirements.

The rules clarify that an insurer may not rescind a policy or certificate on the basis of statements related to pediatric dental coverage.

Rules relating to a one percent assessment on health insurers are repealed because the statutes imposing the assessment have been repealed.

Finally, the rules eliminate obsolete references to 2014 special enrollment periods, the Oregon Health Insurance Exchange Corporation, the use of health statements for underwriting purposes and to the Insurance Division, which as a result of the merger of the Division of Finance and Corporate Securities and the Insurance Division is now known as the Division of Financial Regulation.

Two provisions of these rules adopt permanent rules that were previously adopted as temporary rules. The first of these relates to the definition of “small employer” and related provisions outlining how employees are counted to determine the size of a group and which employees are eligible. These rules reflect provisions of House Bill 2466 (2015 Session) that adopted the federal definition of “small employer” while directing the department to adopt rules necessary to align the state definition with the federal definition. Subsequent to passage of HB 2466, Congress changed the federal definition of “small employer” from an employer having 1 to 100 employees to 1 to 50 employees. After receiving nearly unanimous recommendations from employers, insurers, producers and consumers, the department decided to exercise its discretion to change the definition back to 1 to 50 employees. Although the 1 to 100 definition was not scheduled to become operative until January 1, 2016, the department adopted the temporary rules to provide certainty to all parties during the open enrollment period and to allow insurers an opportunity to make any adjustments necessary to forms. At the time the department adopted the temporary rule, it also suspended the operation of the extended transitional plan for employers having 51 to 100 employees rule, OAR 836-053-0014(T). Because of the change in the definition of small employer, such transitional plans are no longer necessary so this rulemaking also permanently repeals OAR 836-053-0014(T).

A second set of provisions previously adopted as temporary rules are those needed to implement Senate Bill 231 (2015 Session) related to reporting required of “prominent carriers” and PEBB and OEBC related to costs of primary care services. Some insurers were concerned about adopting these provisions as a permanent rule as there was some uncertainty about whether the reporting requirements were only a one-time requirement or a multi-year requirement. We have recently received guidance from the Legislative Assembly with the passage of House Bill 4017 which clarifies that the reporting requirement is a multiyear requirement ending on December 31, 2018 with the report on 2017 data. The final rules reflect that clarification.

The proposed rules and the fiscal impact were reviewed by members of the external rulemaking advisory committee that included insurers, providers, producers and consumer representatives.

**Fiscal impact:** The advisory committee reviewed the proposed rule and the proposed fiscal impact statement for the rule. Generally, these proposed rules do not have a financial impact on state agencies or local governments. One provision in these rules that may have an impact on a state agency is the reporting requirement under SB 231 that is imposed on PEBB and OEBC but that requirement is imposed by the underlying legislation. One provision related to reporting by prominent carriers as required by Senate Bill 231 could have an impact on eight health insurers who must comply with the reporting requirements if those requirements are imposed for more than one year. Use of the information reported could have a positive impact on consumers in the long term, but that is indeterminate at this time. These rules impact the business of insurance producers who market health benefit plans and small businesses that purchase health benefit plans. It is unknown how many such small businesses exist or what the fiscal impact, if any, would be on these businesses. Large businesses having 51 to 100 employees are also affected by these rules because the rules remove these businesses from the regulation of small group insurance products and allow these businesses to continue as part of the large group market. It is unknown how many of these businesses exist in Oregon, but they would likely be positively impacted by these rules.

### **Testimony Received and Hearing Officer Recommendation**

The hearing was held as scheduled. Jeannette Holman, Senior Policy Analyst was the hearing officer. One member of the public attended and presented testimony at the hearing and one person representing the division testified at the hearing. Ms. Jennifer Baker, representing Cambia, testified to request clarification on how to determine whether an entity qualified as a small employer for purposes of obtaining small group insurance. Ms. Gayle Woods testified and submitted written comments on behalf of the department explaining the need to add provisions to the rules to address the annual reporting requirements of Senate Bill 231 (2015 Legislative Session).

The hearing officer recommends that the proposed rules be adopted with the following changes to the rules:

1. Change the exhibit to OAR 836-053-0015 entitled, “Revised Counting Methodology for Determining Small or Large Group,” to clarify how to determine whether an entity is qualified to obtain small employer group insurance;
2. Add the clarification that SB 231 requires prominent carriers to report annually through 2018;
3. Make any technical changes necessary to reflect the merger of two DCBS divisions (Insurance and Finance and Corporate Securities Divisions) into the Division of Financial Regulation; and

4. Include as a third exhibit to OAR 836-010-0013 a guidance issued in 2015 related to filing and other requirements for small employer transitional plans in 2016 and 2017.

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 7th day of April 2016.

Department of Consumer and Business Services

---

Jeannette Holman, Hearing Officer

This Summary and Recommendation are reviewed and adopted.

Signed this \_\_\_\_\_ day of April 2016.

Department of Consumer and Business Services

---

Laura N. Cali, Insurance Commissioner