



INSURANCE DIVISION

MEMORANDUM

July 29, 2016

To: Laura Cali, Oregon Insurance Commissioner,
TK Keen, Deputy Administrator, Oregon Insurance Division

From: Aeron Teverbaugh, Senior Policy Analyst

Subject: Temporary rulemaking to establish the process for a special enrollment period

Explanation: Recently, the Department of Consumer and Business Services petitioned the Marion County Circuit Court for receivership of Oregon's Health Co-Op (cooperative), due to the sudden deterioration of the cooperative's financial position. The cooperative was providing health insurance coverage for approximately 20,000 Oregonians. One result of placing the cooperative into receivership is that all plans issued by the cooperative will end on July 31, 2016 leaving 20,000 Oregon consumers facing a short time span to obtain new insurance coverage, and the loss of moneys already paid towards their deductibles and out-of-pocket expenses.

In order for the cooperative's enrollees to maintain continuous health insurance coverage, the department must open a special enrollment period allowing affected enrollees to obtain other, substantially-similar health insurance coverage. While federal regulations implementing the Patient Protection and Affordable Care Act, Pub. L. 111-148, allow states to establish special enrollment periods for exceptional circumstances, Oregon's rules implementing the Insurance Code do not specifically address a special enrollment period for exceptional circumstances such as exist in the cooperative's case. This temporary rule allows the Director to establish a special enrollment period due to a health insurer's insolvency, allowing individuals covered by an insurer in receivership to continue coverage in a plan substantially similar to that offered by the entity in receivership with another insurance carrier. This temporary rule also allows the Director to require any insurer that acquires policyholders from an insurer in receivership during the special enrollment period to carry over accumulators for deductibles and annual limitations on cost sharing. Prompt action is required in order to allow affect enrollees to find a new plan prior to their existing plans terminating or with a minimal gap in coverage.

Anticipated Reaction: Due to extensive outreach there should be no surprise associated with the temporary rule. Staff have been in frequent communication and for the most part an agreement has been reached with insurers affected by the rule.

Fiscal impact: There is likely to be a fiscal impact to insurers required to accept an affected enrollee's deductibles and out of pocket expenses paid to the cooperative.

Recommended Action: Adopt the temporary rules effective immediately because the affected enrollees lose their existing coverage on July 31. Initiate permanent rulemaking to adopt the changes incorporated in the temporary rules before October 15, 2016 in order to have permanent rules in place before the temporary rules expire on January 24, 2017.