Secretary of State

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form

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Department of Consumer and Business Services, Insurance Regulation — 836

Agency and Division — Administrative Rules Chapter Number

Establishes a process for special enrollment periods related to individual health benefit plans.

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

Rulemaking - Special Enrollment Periods

Statutory Authority:
ORS 731.244, 734.220, 743B.100, 743B.110, 743B.126, & 743B.285

Other Authority:
47 CFR 155.420

Statutes Implemented:
ORS 731.008, 731.016, 734.220, 743B.100, 743B.110, 743B.125, 743B.126, & 743B.330

Need for the Temporary Rule(s):
The Department of Consumer and Business Services (DCBS) administer the state's Insurance Code (ORS 731 to 744). One of the department's key regulatory functions is overseeing the financial condition of individual carriers, which includes the ability to pay policyholder claims. ORS chapters 731 and 734 outline the authority and mechanisms for the department to exercise direct insurer oversight, such as supervision and receivership.

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.

If the department does not establish a special enrollment period 20,000 affected enrollees will be left without health coverage for at least five months until the next open enrollment period, October 15, opens for coverage effective January 1, 2017. Affected enrollees face a substantial risk of harm in the form of possible, penalties for failure to have health insurance coverage as required by federal law and also out of pocket expenses for health services that an insurer would have otherwise covered. Additionally, these enrollees may have already satisfied the maximum out-of-pocket payments under their existing coverage, which could be as high as $6,850.00 per individual. They are faced with having lost the accumulators and being required to re-meet their portion of cost sharing. This rule allows the Director to require insurers acquiring affected enrollees and placing them in new plans credit them with any cost-sharing amounts they may already have paid during the 2016 plan year. This rule will allow acquiring insurers to enroll individuals affected by the receivership and make them whole insofar as cost-sharing amounts paid without compromising the financial integrity of the acquiring insurers.

Documents Relied Upon, and where they are available:
45 CFR Section 155.420. These documents are available from the Division of Financial Regulation, Department of Consumer and Business Services, Labor and Industries Building, 350 Winter St. NE., Salem, OR 97301 or online at www.ecfr.gov/cgi-bin/text-idx?node=45:1.0.1.2.70.5.27.5&rgn=div8 . These materials are also available upon request from Karen Winkel at Karen.j.winkel@oregon.gov.

Justification of Temporary Rule(s):

Adopting this temporary rule is essential to prevent serious prejudice and substantial harm to up to 20,000 Oregonians at risk of losing minimum essential coverage on July 31, 2016, due to the cooperative's receivership. Failure to adopt this temporary rule may result serious prejudice to the estimated 20,000 individuals currently covered by the cooperative, in the form of outright financial loss caused by unexpected health events without adequate health insurance coverage, or by ongoing medical events and resulting in significant and possibly duplicative out-of-pocket expenses. Additionally, failing to adopt this temporary rule may also result in enrollees suffering federal tax penalties levied due to the lack of health care coverage. Adopting this temporary rule mitigates the risk that the cooperative's current enrollees will lose health insurance coverage and the risk that tax penalties may be levied on affected enrollees.

Finally, failure to adopt this rule may result in a serious prejudice to the public as a whole. Without health insurance, enrollees with chronic or acute medical conditions may need to turn to public assistance to obtain further medical care. By adopting this temporary rule, enrollees may still obtain medical care reimbursement from private health insurance markets and through the health insurance exchange established to provide access to the private markets.

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