

# Insurance Company Compliance with Oregon Reproductive Health Equity Act (RHEA)

Feb. 1, 2023

## ADOPTION AND APPLICATION OF RHEA

The Oregon Reproductive Health Equity Act (RHEA)<sup>1</sup> was enacted in 2017 to provide a wide range of reproductive health services to health benefit plan enrollees without cost sharing. State-regulated insurance plans, such as individual, small group, and large group, are subject to RHEA. Other plans, such as those sponsored by a self-insured employer and Medicare, are not subject to RHEA.<sup>2</sup> The requirements in RHEA apply to health benefit plans issued, renewed, modified, or extended on or after Jan. 1, 2019.<sup>3</sup>

Starting in 2017, the Division of Financial Regulation continuously worked with the insurance industry and other stakeholders to provide guidance and write rules on the requirements of RHEA, including subsequent legislative changes in 2018 and 2019.

## 2020 DATA CALL

The division issued a data call in 2020 to enable it to evaluate insurer compliance with the law. The data call requested information on a limited set of RHEA-covered services in the individual, small group, and large group markets that revealed variations in coverage and indications of potential widespread noncompliance with the law – specifically the impermissible application of cost sharing for some services covered by RHEA.

## MARKET CONDUCT EXAMINATIONS

Based on the results of the data call, the division decided to conduct simultaneous market conduct examinations of all 12 health insurance

companies offering health benefit plans in Oregon to evaluate their compliance with RHEA. Data calls and market conduct exams are both tools the division can use to determine if a market (like health benefit plans) or individual insurers are in compliance with insurance regulations.<sup>4</sup> While a data call requires a response from insurers to questions posed by the division, a market conduct examination is a formal investigation, similar to an audit, of the insurers' practices, documents, procedures, and other aspects related to the matter under examination.

The division contracted with three examination companies to conduct the examinations under the division's oversight. To ensure consistency in the exam process, the division prepared a detailed Coordinator's Handbook that described required exam elements and examination instructions.

The RHEA examinations covered the period of claims adjudicated from Jan. 1, 2019, to Dec. 31, 2020. All claims with services covered by RHEA were subject to sample testing in the examination. Due to the COVID-19 pandemic, all but one of the examinations were performed remotely and insurers had to provide system access to examination staff to review claims subject to examination.

As allowed under state law, several insurers requested a hearing with the insurance commissioner about their exam reports. The hearings provided an opportunity for insurers to express any concerns about the exam process and provide additional details about their conduct and efforts to comply with RHEA, which were incorporated into the final reports.

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<sup>1</sup>ORS 743A.067

<sup>2</sup>A list of health plans subject to RHEA is available on the [DFR website](#).

<sup>3</sup>Different health plans are issued, renewed, modified, or extended at different points throughout the year, meaning RHEA did not apply across all plans in the market until at least sometime in late 2019.

<sup>4</sup>See ORS 731.296 for data call authority and ORS 731.300-308 for market conduct examination authority.

## FINDINGS AND RECOMMENDATIONS

The table below displays the findings that were identified through the examinations and which insurers were found to be noncompliant regarding that specific finding. [See the individual insurer reports for more information on the results of the examinations.](#)

### Finding

Noncompliance with ORS 743A.067 relating to the processing of claims – The insurer failed to equitably settle claims when the insurer applied member cost share to services or supplies where such services or supplies are required to be provided without member cost share under Oregon law.

### Insurers

Aetna Life Insurance Company, BridgeSpan Health Company, Cigna Health and Life Insurance Company, HealthNet Health Plan of Oregon, Kaiser Foundation Health Plan of the Northwest, Moda Health Plan, PacificSource Health Plans, Providence Health Plan, Regence BlueCross BlueShield of Oregon, Samaritan Health Plans, UnitedHealthcare Insurance Company, and UnitedHealthcare of Oregon

### Finding

Noncompliance with the requirement to reimburse 12-month contraceptive prescription refills as required by ORS 743A.066 and noncompliance with contraception coverage requirements under 743A.067 – The insurer failed to provide coverage for prescription contraceptive drugs which did not have a therapeutic equivalent and provided inconsistent access to 12-month refills of contraception.

### Insurers

Aetna, BridgeSpan, Regence

### Finding

Failure to resolve complaints and maintain records in violation of ORS 733.170 and OAR 836-053-1080 – The insurer failed to demonstrate it adequately resolved complaints in some instances. The insurer did not provide the examiners with evidence that the various controls over the complaint, appeal, or grievance processes such as reports are used to monitor and ensure compliance with RHEA. The insurer failed to demonstrate that personnel involved with complaints, appeals, and grievances are aware the requirements related to RHEA.

### Insurers

Cigna, HealthNet, Kaiser, Samaritan

## RECOMMENDATIONS

The examination reports also identified recommended corrective actions, which varied for each insurer. Individual reports should be consulted for recommendations specific to an insurer, but key recommendations across the market include:

1. Review all policies and procedures to ensure that all claims are adjudicated in accordance with Oregon insurance law, including RHEA.
2. Review claims adjudication systems and make all necessary adjustments to ensure that claims are adjudicated in accordance with Oregon insurance law.
3. Review all prescription contraceptive claims to ensure that all contraceptive claims, which are not in the formulary, are appropriately adjudicated. If there is not a therapeutic equivalent, then such contraceptive drugs should be covered without member cost share.
4. Provide further information to the division demonstrating handling of 12-month contraceptive claims to ensure compliance with refill requirements.
5. Identify all pertinent CPT codes for services, drugs, devices, products, and procedures listed in RHEA, and where applicable diagnostic codes required to properly adjudicate RHEA claims. Consider that the purpose of RHEA is to improve access to the services identified in statute and limit medical management of those services to ensure access consistent with the purpose.
6. Train personnel in all RHEA requirements for proper noncost-sharing requirements and payments for RHEA-related services without other restrictions or delays.
7. Provide proper monitoring of the complaint and grievance systems for trend analysis and compliance with state and federal law, including proper controls over the complaint and grievance process to track complaints based on subject.

- 8. Implement a specific review of actions and contracts by third-party administrators to ensure that these administrators are properly integrated and trained for adjustment of RHEA-related claims.

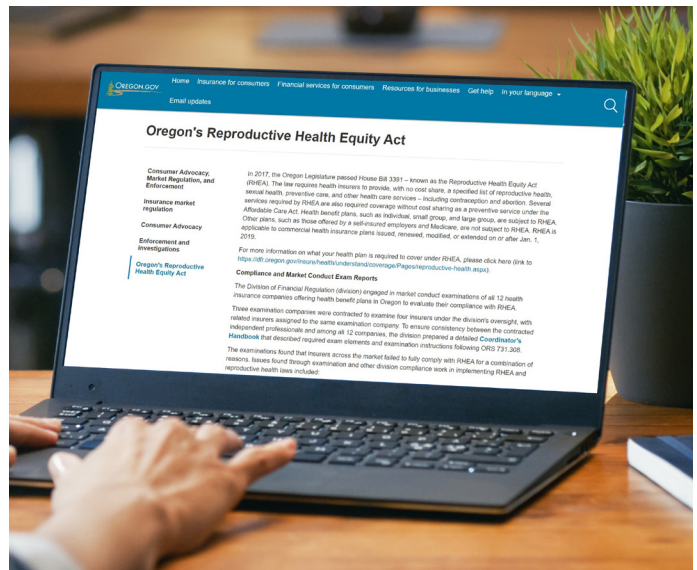
Carriers are expected to immediately implement applicable recommendations.

## NEXT STEPS

Throughout the examination process, the division identified issues for each insurance company to immediately address to ensure members receive benefits mandated under the law, and progress towards full implementation of RHEA was observed and noted in several reports. Completion of these reports is one of many steps the division takes in monitoring and addressing insurer compliance with the law, with additional steps including:

- **Ongoing compliance** – The division will work with each company to ensure that corrective action plans are implemented that address each of the findings and recommendations. The division will also institute ongoing data reporting and compliance monitoring until full compliance is found.
- **Enforcement** – The DFR enforcement team will review the results of each examination and determine the appropriate penalties, restitution, and other action for each company.
- **Regulatory guidance** – The division will work with stakeholders in issuing guidance to clarify expectations in complying with RHEA requirements.
- **Consumer education and engagement** – The division will continue working with community partners to raise awareness of available health benefits under RHEA, the Affordable Care Act, and other laws and encourage consumers to seek the care they need.

For more information on available benefits and to find a list of health insurance plans subject to RHEA, please visit the DFR [website](https://dfr.oregon.gov/help/Pages/index.aspx). Consumers who believe they have not received the services or benefits they are owed under the law are encouraged to contact their insurer or the division’s consumer advocacy team at 888-877-4894 (toll-free) or go to <https://dfr.oregon.gov/help/Pages/index.aspx>.



Department of Consumer and Business Services

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