

# THE DIVISION OF FINANCIAL REGULATION OF THE STATE OF OREGON DEPARTMENT OF CONSUMER AND BUSINESS SERVICES

## CLARIFICATION OF REASONABLE ASSURANCE REGULATORY GUIDANCE RELATING TO PEDIATRIC DENTAL BENEFITS AND INDIVIDUAL AND SMALL GROUP HEALTH BENEFIT PLANS OFFERED *OUTSIDE* OF THE MARKETPLACE

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The following guidance applies to issuers of nongrandfathered individual and small group health benefit plans *outside* of the Marketplace, the state's health insurance exchange.

The Affordable Care Act (ACA) requires an issuer to ensure that coverage offered to an enrollee provides coverage consistent with Sections 1301 and 1302 of the ACA.<sup>1</sup> Individual and small group health benefit plans offered outside of the Marketplace must include all ten categories of essential health benefits. However, if a carrier is reasonably assured that the enrollees under the health benefit plan have obtained Marketplace certified pediatric dental coverage through a separate individual *or* small group plan,<sup>2</sup> the issuer may issue coverage that does not provide pediatric dental benefits.

Whether an issuer is reasonably assured, is a determination that only the issuer can make. However, an absence of reasonable assurance is not an exception to the ACA's guaranteed issue requirements.<sup>3</sup> The Division of Financial Regulation will investigate complaints relating to an issuer's use of reasonable assurance in a discriminatory manner or to deny enrollment and will take appropriate regulatory action.

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<sup>1</sup> See also, Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, Final Rule. 78 Fed. Reg. 12834 at 12853 (February, 25, 2013): "The Affordable Care Act does not provide for the exclusion of a pediatric dental EHB outside of the Exchange as it does in section 1302(b)(4)(F) of the Affordable Care Act for QHPs. Therefore, individuals enrolling in health insurance coverage not offered on an Exchange must be offered the full ten EHB categories, including the pediatric dental benefit. However, in cases in which an individual has purchased stand-alone pediatric dental coverage offered by an Exchange-certified stand-alone dental plan off the Exchange, that individual would already be covered by the same pediatric dental benefit that is a part of EHB. When an issuer is reasonably assured that an individual has obtained such coverage through an Exchange-certified stand-alone dental plan offered outside an Exchange, the issuer would not be found noncompliant with EHB requirements if the issuer offers that individual a policy that, when combined with the Exchange-certified stand-alone dental plan, ensures full coverage of EHB. We note that the stand-alone dental plan would have to be an Exchange-certified stand-alone dental plan to ensure that it covered the pediatric dental EHB, as required for Exchange certification under section 1311(d)(2)(B)(ii) of the Affordable Care Act. However, the Exchange-certified stand-alone dental plan would not need to be purchased through an Exchange. This alternate method of compliance is at the option of the medical plan issuer, and would only apply with respect to individuals for whom the medical plan issuer is reasonably assured have obtained pediatric dental coverage through an Exchange-certified stand-alone dental plan."

<sup>2</sup> "When an issuer is reasonably assured that an *individual* has obtained such coverage through an Exchange-certified stand-alone dental plan offered outside an Exchange, the issuer would not be found non-compliant with EHB requirements if the issuer offers that individual a policy that, when combined with the Exchange-certified stand-alone dental plan, ensures full coverage of EHB." *Id.* (Emphasis added.)

<sup>3</sup> "With respect to other individuals [people without other pediatric dental coverage] seeking to enroll in the same plan, the issuer would be required to offer the same coverage generally (there would be no exception to guaranteed availability that would apply), but would have to make pediatric dental benefits available to such individuals." Patient Protection and Affordable Care Act; Standards Related to Essential Health Benefits, Actuarial Value, and Accreditation, Final Rule. 78 Fed. Reg. 12834 at 12853 (February 25, 2013).