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ARCHIVES DIVISION

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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836  
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES  
INSURANCE REGULATION

**FILED**

11/23/2022 3:19 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Amending OAR 836-150-0040 to add ORP payment parameters for 2023

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/22/2022 5:00 PM

*The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.*

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350 Winter St. NE  
Salem, OR 97301

Filed By:  
Karen Winkel  
Rules Coordinator

HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 12/15/2022

TIME: 11:00 AM - 11:30 AM

OFFICER: Numi Griffith

ADDRESS: Labor & Industries Building

350 Winter St. NE

Basement, Conf Rm E

Salem, OR 97301

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams:

Join on your computer, mobile app or room device

Meeting ID: 297 579 504 446

Passcode: v3RKxA

Or call in (audio only)

+1 503-446-4951,,414740685# United States, Portland

Phone Conference ID: 414 740 685#

NEED FOR THE RULE(S)

The Oregon Reinsurance Program lowers health insurance premiums by reimbursing health benefit plans for a portion of certain very high-cost claims. The program is funded by a combination of state funds and federal pass-through dollars generated under the state's Affordable Care Act §1332 State Innovation Waiver. The waiver has been extended to permit operation of the reinsurance program through 2027. OAR 836-150-0040 sets the program's payment parameters, including the attachment point (minimum claim size covered by the program), coinsurance rate (percentage of the claim covered by the program), and reinsurance cap (the maximum amount the program will pay for any given claim).

Payment parameters for each year are developed in collaboration with the department's actuarial contractor NovaRest, and aim to match expected claims paid to the program's available budget. The final payment parameters for 2023 were provided to carriers in March 2022 to inform rate setting considerations for plan year 2023. The current permanent rule only defines payment parameters up until plan year 2022.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This amended rule defines payment parameters for the Oregon Reinsurance Program (ORP) for claims incurred during the 2023 benefit year. The new payment parameters are calibrated to maintain the program's existing premium reduction target, effectively maintaining the status quo into 2023. ORP reduces base premiums for health plan enrollees in the individual market. Thus, while adoption of the original rule may have had an impact on equity, this amendment will not result in significant changes for any groups in the state.

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#### FISCAL AND ECONOMIC IMPACT:

This amended rule will define payment parameters for the Oregon Reinsurance Program (ORP) for claims incurred during the 2023 benefit year consistent with information provided to health insurance carriers during Oregon's 2023 rate review process. This will allow the department to disburse federal pass-through funds to Oregon insurance carriers under the specified conditions, mitigating their risk of exposure to unusually high-cost medical claims.

Continued operation of ORP is projected to continue lowering individual insurance premiums by a net of 6 percent. This will have a financial benefit for consumers in the form of increased choice and lower premiums for at least some insurance purchasers.

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#### COST OF COMPLIANCE:

*(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).*

(1) Based on available information currently available to the Department of Consumer and Business Services (DCBS), these proposed rules would have no financial impact on state agencies or local governments. The proposed rules modify, but do not expand, the operational parameters of the Oregon Reinsurance Program, and align state expenditures on the program with existing expectations.

(2)(a) The rules will apply to licensed health insurers that offer individual health benefit plans in Oregon and that elect to seek reimbursement from the Oregon Reinsurance Program. DCBS does not have complete information on the number of employees employed by each such insurer. Based on financial filings made to the Division of Financial Regulation (DFR), no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

(2)(b) The proposed rule effectively results in no change and would not require additional resource for compliance for small businesses. Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

(2)(c) Based on available information, the department does not anticipate insurers acquiring equipment and supplies or hiring or contracting for staff to comply with these proposed rules. Based on financial filings made to DFR, no insurers meet the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

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DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

The department reached out to stakeholder organizations representing small businesses regarding the draft rule.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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AMEND: 836-150-0040

RULE SUMMARY: Amended to define payment parameters for plan year 2023.

CHANGES TO RULE:

836-150-0040

Reinsurance Parameters

(1) For the benefit year beginning on January 1, 2018 the parameters for the Oregon Reinsurance Program are:¶

(a) An attachment point of \$95,000; ¶

(b) A reinsurance cap of \$1,000,000; and ¶

(c) A coinsurance rate of 59.2 percent. ¶

(2) For the benefit year beginning on January 1, 2019 the parameters for the Oregon Reinsurance Program are:¶

(a) An attachment point of \$90,000; ¶

(b) A reinsurance cap of \$1,000,000; and ¶

(c) A coinsurance rate of fifty percent. ¶

(3) For the benefit year beginning on January 1, 2020 the parameters for the Oregon Reinsurance Program are:¶

(a) An attachment point of \$90,000; ¶

(b) A reinsurance cap of \$1,000,000; and ¶

(c) A coinsurance rate of fifty percent. ¶

(4) For the benefit year beginning on January 1, 2021 the parameters for the Oregon Reinsurance Program are:¶

(a) An attachment point of \$83,000; ¶

(b) A reinsurance cap of \$1,000,000; and ¶

(c) A coinsurance rate of fifty percent. ¶

(5) For the benefit year beginning on January 1, 2022 the parameters for the Oregon Reinsurance Program are:¶

(a) An attachment point of \$92,000; ¶

(b) A reinsurance cap of \$1,000,000; and ¶

(c) A coinsurance rate of fifty percent. ¶

(6) For the benefit year beginning on January 1, 2023 the parameters for the Oregon Reinsurance Program are:¶

(a) An attachment point of \$95,000; ¶

(b) A reinsurance cap of \$1,000,000; and ¶

(c) A coinsurance rate of fifty percent.

Statutory/Other Authority: ORS 731.244, Or Laws 2017, ch 538, sec 19

Statutes/Other Implemented: Or Laws 2017, ch 538, sec 18-21