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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
03/30/2023 3:37 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Repeal relating to Disclosure of Information about Complaints Regarding Unlawful Claims Settlement Practices

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/02/2023 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: 04/25/2023
TIME: 11:00 AM - 11:30 AM
OFFICER: Thomas Hojem

HEARING LOCATION

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conference Room A, Salem, OR 97301

SPECIAL INSTRUCTIONS:

This is a hybrid hearing conducted in-person and virtually via Microsoft Teams.

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)
PHONE NUMBER: 1-503-446-4951
CONFERENCE ID: 933852507

NEED FOR THE RULE(S)

The Department of Consumer and Business Services (DCBS) must repeal OAR 836-005-0405 because the statutory authority for the administrative rule expired in 2021. DCBS must remove obsolete, non-operational language from OAR 836-005-0405.

In 2016, ORS 731.264 was amended to allow DCBS to publicly release some documents related to complaints against insurance companies that the department received from consumers. Upon passage, the 2016 law change was set to expire on January 1, 2021.

In October of 2017, using authority from the 2016 law change, DCBS enacted OAR 836-005-0405, which required the

department to release certain records relating to consumer complaints against an insurance company when requested by a member of the public.

The statutory authority for the administrative rule expired in 2021. This means that DCBS can no longer release these records. Because of this, OAR 836-005-0405 must be repealed to align DCBS rules with applicable law and eliminate the possibility of any confusion regarding the disclosure of insurance complaint records under ORS 731.264.

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>.

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

This rule change will not affect DCBS's operations in any way. Instead, this rule change removes obsolete, nonoperational language from OAR 836-005-0405. This change will affect every person in the same manner by making clear that the current provisions of ORS 731.264 govern the disclosure of insurance complaint records and no longer allow the disclosure of records that had been available under a prior version of ORS 731.264.

FISCAL AND ECONOMIC IMPACT:

Because this rule change will not have any effect on DCBS's operations, the repeal of this rule will have no significant fiscal or economic impact. It will not affect how any small business operates. This rule change merely removes nonoperational language from the administrative rule, thereby harmonizing it with the applicable statute.

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) DCBS does not expect any fiscal impact as a result from the repeal of these rules based on information available to the department.

(2)(a) None.

(2)(b) It is expected to be no reporting, recordkeeping, and administrative activities or cost because this repeals a rule that related exclusively to DCBS operations.

(2)(c) It is expected that there will be no costs associated with professional services, equipment supplies, labor and increase administration, because this repeals a rule that related exclusively to DCBS operations.

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

The repeal of this rule is required because the underlying statute authorizing the rule no longer exists. There was no small business involved in the development due to this however there will be an opportunity to hear from a small business during the public hearing.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The repeal is required by statute since the underlying statute authorizing the rule no longer exists. No advisory committee was consulted however stakeholders were made aware that the department planned to repeal the rule and will have the opportunity to provide feedback at the public hearing. This rule change removes non-operational language from OAR 836-005-0405.

REPEAL: 836-005-0405

RULE SUMMARY: Repeal of disclosure of information about complaints regarding unlawful claims settlement practices.

*Needed to refile due to an error. The initial filing stated that an administrative RAC was consulted. This filing correctly states than an administrative Rule Advisory Committee (RAC) was not consulted.

CHANGES TO RULE:

836-005-0405

~~Disclosure of Information about Complaints Regarding Unlawful Claims Settlement Practices~~

~~(1) Subject to subsections (2) through (4), the director shall provide to a person who submits a request, records associated with complaints submitted to the director, for which:~~

~~(a) The director has confirmed the complaint to be about an alleged unlawful practice described in ORS 746.230;~~

~~(b) The complaint:~~

~~(A) Has been closed and the complainant has been provided a closing letter; or~~

~~(B) Has been open for more than 120 days;~~

~~(c) The complaint was submitted after January 1, 2017; and~~

~~(d) The complaint was submitted during a period in which disclosure of complaint information was authorized under ORS 731.264(3).~~

~~(2) For each complaint subject to disclosure, the director shall provide:~~

~~(a) The complaint intake form;~~

~~(b) Any narrative description submitted by the complainant with the initial complaint;~~

~~(c) Any request for information submitted by the director to an insurer on behalf of the complainant in order to resolve the complaint; and~~

~~(d) Any closing letter provided to the complainant by the director, which summarizes:~~

~~(A) The complaint;~~

~~(B) Steps the director took to investigate and resolve the complaint; and~~

~~(C) Any findings and conclusions reached by the director.~~

~~(3) Before providing records to a requestor, the director:~~

~~(a) Shall remove any information that could be used to identify any individual;~~

~~(b) Shall remove any information for which disclosure is prohibited under applicable federal or state law;~~

~~(c) May remove any information exempt from public records requests under ORS 192.410 to 192.505; and~~

~~(d) May require the requestor to pay any fees listed in OAR 440-005-0025 and 440-005-0030, unless waived under ORS 192.440.~~

~~(4) The director shall not provide complaint records:~~

~~(a) Unless a request is submitted to the director in writing;~~

~~(b) If a request is made with regard to a particular person, unless the request is made with regard to an insurer; nor~~

~~(c) If the director determines that release of such records would clearly and convincingly cause harm to the public interest in the particular instance. If such a determination is made, the director shall provide to the requestor, a written explanation of why the records will not be disclosed.~~

~~Statutory/Other Authority: ORS 731.264, 2016 Or Laws ch 62 (Enrolled Senate Bill 1591)~~

~~Statutes/Other Implemented: ORS 731.264~~