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DMAP 143-2024
CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILING CAPTION: Update and Clarify Rules for Coordinated Care Organizations, Including Comprehensive Updates to Financial Rules.

EFFECTIVE DATE: 01/01/2025

AGENCY APPROVED DATE: 12/06/2024

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RULES:
410-141-3500, 410-141-3505, 410-141-3515, 410-141-3565, 410-141-3585, 410-141-3590, 410-141-3805, 410-141-3835, 410-141-3885, 410-141-3890, 410-141-3915, 410-141-3960, 410-141-5000, 410-141-5005, 410-141-5010, 410-141-5015, 410-141-5020, 410-141-5025, 410-141-5030, 410-141-5035, 410-141-5040, 410-141-5045, 410-141-5050, 410-141-5055, 410-141-5060, 410-141-5065, 410-141-5070, 410-141-5075, 410-141-5080, 410-141-5085, 410-141-5090, 410-141-5095, 410-141-5100, 410-141-5105, 410-141-5110, 410-141-5115, 410-141-5120, 410-141-5125, 410-141-5130, 410-141-5135, 410-141-5140, 410-141-5145, 410-141-5150, 410-141-5155, 410-141-5160, 410-141-5165, 410-141-5170, 410-141-5175, 410-141-5180, 410-141-5185, 410-141-5186, 410-141-5190, 410-141-5195, 410-141-5200, 410-141-5205, 410-141-5210, 410-141-5215, 410-141-5220, 410-141-5225, 410-141-5230, 410-141-5235, 410-141-5240, 410-141-5245, 410-141-5250, 410-141-5255, 410-141-5260, 410-141-5265, 410-141-5270, 410-141-5275, 410-141-5278, 410-141-5280, 410-141-5283, 410-141-5285, 410-141-5290, 410-141-5295, 410-141-5300, 410-141-5305, 410-141-5310, 410-141-5315, 410-141-5320, 410-141-5323, 410-141-5325, 410-141-5330, 410-141-5335, 410-141-5340, 410-141-5345, 410-141-5350, 410-141-5355, 410-141-5360, 410-141-5365, 410-141-5370, 410-141-5375, 410-141-5380

AMEND: 410-141-3500

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Add definition for “Downstream Entity” and revise definition for “Material Change to Delivery System.”

CHANGES TO RULE:

410-141-3500
Definitions
(1) The following definitions apply with respect to OAR chapter 410, division 141. The Oregon Health Authority (Authority) also incorporates the definitions in OAR 410-120-0000, 309-032-0860 for any terms not defined in this rule.¶

(2) "Adjudication" means the act of a court or entity in authority when issuing an order, judgment, or decree, as in a final Managed Care Entity (MCE) claims decision or the Authority issuing a final hearings decision. For a final Managed Care Entity (MCE) claims decision, the date of "Adjudication" is the date on which an MCE has both (a) processed and (b) either paid or denied a Member's claim for services.¶
(3) "Aging and People with Disabilities (APD)" means the division in the Oregon Department of Human Services (ODHS) that administers programs for seniors and people with disabilities, as set forth in OAR 410-120-0000.¶
(4) "Area Agency on Aging (AAA)" means the designated entity with which the ODHS contracts in planning and providing services to elderly populations, as set forth in OAR 410-120-0000.¶
(5) "The Authority" means the Oregon Health Authority (OHA).¶
(6) "Alternate Format" means any alternate approach to presenting print information to an individual with a disability. The Americans with Disabilities Act (ADA) groups the standard alternate formats: braille, large (18 point) print, audio narration, oral presentation, and electronic file along with other aids and services for other disabilities, including sign language interpretation and sighted guide; Centers for Medicare and Medicaid Services (CMS) Section 1557 of the Affordable Care Act (ACA) outlines requirements for health plans and providers on alternative formats.¶
(7) "Auxiliary Aids and Services" means services available to members as defined in 45 Code of Federal Regulations (CFR) Part 92.¶
(8) "Behavioral Health" means mental health, mental illness, addiction disorders, and substance use disorders.¶
(9) "Benefit Period" means a period of time shorter than the five-year contract term, for which specific terms and conditions in a contract between a coordinated care organization and The Authority are in effect.¶
(10) "Business Day" means any day except Saturday, Sunday, or a legal holiday. The word "day" not qualified as business day means calendar day.¶
(11) "Capitated Services" means those covered services that an Managed Care Entity (MCE) agrees to provide for a capitation payment under contract with the Authority.¶
(12) "Capitation Payment" means monthly prepayment to an Managed Care Entity (MCE) for capitated services to Managed Care Entity (MCE) members.¶
(13) "Care Coordination" means the act and responsibility of CCOs to deliberately organize a members service, care activities and information sharing among all participants involved with a members care according to the physical, developmental, behavioral, dental and social needs (including Health Related Social Needs and Social Determinants of Health and Equity) of the member. Care Coordination requirements are described in OAR 410-141-3860, 410-141-3865, 410-141-3870, and in accordance with CFR 438.208.¶
(14) "Care Plan" means a care plan that is developed for and in collaboration with the member, their family, representatives or guardian; and in consultation with the member's providers, community supports and services, where applicable, to ensure continuity and coordination of a member's care according to their needs. Care Plan requirements are described in OAR 410-141-3865 and 410-141-3870.¶
(15) "Care Profile" means the electronic record a CCO develops and maintains for all members. The Care Profile is the platform that receives feeds from different data sources used to identify, track and manage a member's needs and risk level to direct the frequency of the CCOs outreach and Care Coordination activities/opportunities that shall be offered to the member. Care Profile requirements are further described in OAR 410-141-3865 and OAR 410-141-3870.¶
(16) "Care Setting Transitions" means a transition between different locations, settings or levels of care. ¶
(17) ~~"Coordinated Care Organization Payment or CCO Payment" means the monthly payment to a Coordinated Care Organization (CCO) for services the CCO provides to members in accordance with the global budget.¶~~
~~(18)~~ "Certificate of Authority" means the certificate issued by Department of Consumer and Business Services (DCBS) to a licensed health entity granting authority to transact insurance as a health insurance company or health care service contractor.¶
(1~~9~~8) "Client" means an individual found eligible to receive Oregon Health Plan (OHP) health services, whether or not the individual is enrolled as an CCO member.¶
(~~20~~19) "Community Advisory Council (CAC)" means the CCO-convened council that meets regularly to ensure the CCO is addressing the health care needs of CCO members and the community consistent with ORS 414.572 and in accordance with criteria specified in ORS 414.575. CCOs shall seek an opportunity for tribal participation on CACs to bring nominee(s) to the attention of the CAC Selection Committee as follows:¶
(a) In a Service Area where only one (1) federally recognized tribe exists, the CCO shall seek one (1) tribal representative to serve on the CAC;¶
(b) In Service Areas where multiple federally recognized tribes exist, the CCO shall seek one (1) tribal representative from each tribe to serve on the CAC; and¶
(c) In metropolitan Service Areas where no federally recognized tribe exists, CCOs shall solicit the Urban Indian Health Program for a representative to serve on the CAC.¶
(2~~1~~0) "Community Benefit Initiatives" (CBI) means community-level interventions focused on improving

population health and health care quality.¶
(2~~2~~1) "Condition-Specific Program" and "Condition-Specific Facility" mean programs or facilities that treat a narrowly defined illness, disorder or condition, such as:¶
(a) Behavioral and Mental Health conditions, Substance Use Disorder (SUD) or addiction, including but not limited to;¶
(A) Alcohol;¶
(B) Illicit Drugs; and¶
(C) Gambling.¶
(b) Physical Health conditions, including but not limited to:¶
(A) Cancer;¶
(B) Diabetes;~~-~~¶
(C) Bariatric ~~l~~Care.¶
(c) Developmental Disabilities.¶
(2~~3~~2) "Continuous Inpatient Stay" means an uninterrupted period of time that a patient spends as inpatient, regardless of whether there have been changes in assigned specialty or facility during the stay. This includes discharge transfer to another inpatient facility, in or out of state, such as another acute care hospital, acute care psychiatric hospital, skilled nursing facility, psychiatric residential treatment facility (PRTF) or other residential facility for inpatient care and services.¶
(24~~3~~) "Contract" means an agreement between the State of Oregon acting by and through The Authority and a Managed Care Entity (MCE) to provide health services to eligible members.¶
(2~~5~~4) "Coordinated Care Organization (CCO)" means a corporation, governmental agency, public corporation, or other legal entity that is certified as meeting the criteria adopted by the Authority under ORS 414.572 to be accountable for care management and to provide integrated and coordinated health care for each of the organization's members.¶
(25) "Coordinated Care Organization Payment or CCO Payment" means the monthly payment to a Coordinated Care Organization (CCO) for services the CCO provides to members in accordance with the global budget.¶
(26) "Coordinated Care Services" mean a Managed Care Entity's (MCE) fully integrated physical, behavioral, dental and social needs (including Health Related Social Needs and Social Determinants of Health and Equity) services.¶
(27) "Corrective Action" or "Corrective Action Plan (CAP)" means an Authority-initiated request for a Managed Care Entity (MCE) or a Managed Care Entity (MCE)-initiated request for a subcontractor to develop and implement a time specific plan for the correction of identified areas of noncompliance.¶
(28) "Culturally and Linguistically Responsive and Appropriate Services" means the provision of effective, equitable, understandable, and respectful quality care and services that are responsive to diverse cultural beliefs and practices, preferred languages, health literacy, and other communication needs. Culturally and Linguistically appropriate services are further defined in 42 CFR ▯ 59.2.¶
(29) "Delivery System Network (DSN)" means the entirety of those Participating Providers who:¶
(a) Contracts with; or~~-~~¶
(b) Are employed by, a CCO for purposes of providing services to the Members of such CCO. "Provider Network" has the same meaning.¶
(30) "Dental Care Organization (DCO)" has the meaning as provided for in ORS 414.025 (24).¶
(31) "Dental Health" means conditions of the mouth, teeth, and gums.¶
(32) "Department" means the Oregon Department of Human Services (ODHS).¶
(33) "Department of Consumer and Business Services (DCBS)" means Oregon's business regulatory and consumer protection department.¶
(34) "Disenrollment" means the act of removing a member from enrollment with an MCE.¶
(35) "Diversity of the workforce" refers to the ethnic, racial, linguistic, gender, and social variation among members of the health professional workforce. It is generally understood that a more diverse workforce represents a greater opportunity for better quality health care service, due to the array of life experiences and empathy of a mix of providers that can be brought to the delivery of health care.¶
(36) "Downstream Entity" means any party that enters into a written contract or other agreement with a CCO's subcontractor pursuant to which such party performs one or more of the obligations of the Subcontractor under the subcontractor's subcontract with the CCO. Regardless of the number of parties that are downstream from a CCO's subcontractor, a party is deemed a "downstream entity" of a CCO subcontractor if such party is, pursuant to a written or oral contract or agreement, performing the obligations the subcontractor is required to perform on behalf of the CCO under its subcontract therewith.¶
(37) "Encounter Data" means the information relating to the receipt of any item(s) or service(s) by an enrollee under a contract between a State and a Managed Care Entity (MCE) that is subject to the requirements of 42 CFR 438.242 and 42 CFR 438.818 and under OAR 410-141-3570 and related to services that were provided to

Members regardless of whether the services provided:¶
(a) Were covered services, non-covered services, or other Health-Related Social Needs services; or¶
(b) Were not paid; or¶
(c) Paid for on a Fee- For-Service or capitated basis; or¶
(d) Were performed by a Participating Provider, Non-Participating Provider, Subcontractor, or Contractor; and¶
(e) Were performed pursuant to Subcontractor agreement, special arrangement with a facility or program, or other arrangement.¶
(3~~7~~8) "Enrollment" means the assignment of a member to a Managed Care Entity (MCE) for management and coordination of health services.¶
(3~~8~~9) "Family Planning" means services that enable individuals to plan and space the number of their children and avoid unintended pregnancies. The Oregon Health Plan covers family planning services for clients of childbearing age, including minors who are considered to be sexually active. Family Planning services include:¶
(a) Annual exams;¶
(b) Contraceptive education and counseling to address reproductive health issues;¶
(c) Prescription contraceptives (such as birth control pills, patches or rings);¶
(d) IUDs and implantable contraceptives and the procedures requires to inserted remove them;¶
(e) Injectable hormonal contraceptives (such as Depo-Provera);¶
(f) Prescribed pharmaceutical supplies and devices (such as male and female condoms, diaphragms, cervical caps, and foams);¶
(g) Laboratory tests including appropriate infectious disease and cancer screening;¶
(h) Radiology services;¶
(i) Medical and surgical procedures, including vasectomies, tubal ligations and abortions.¶
(~~39~~40) "Flexible Services" means those services that are cost-effective services offered as an adjunct to covered benefits.¶
(4~~0~~1) "Global Budget" means the total amount of payment as established by the Authority to a CCO to deliver and manage health services for its members including providing access to and ensuring the quality of those services.¶
(4~~1~~2) "Grievance System" means the overall system that includes:¶
(a) Grievances to a Managed Care Entity (MCE) on matters other than adverse benefit determinations;¶
(b) Appeals to a Managed Care Entity (MCE) on adverse benefit terminations; and¶
(c) Contested case hearings through the Authority on adverse benefit determinations and other matters for which the member is given the right to a hearing by rule or statute.¶
(4~~2~~3) "Health Literacy" means the degree to which individuals have the capacity to obtain, process, and understand basic health information needed to make appropriate health decisions regarding services needed to prevent or treat illness.¶
(4~~3~~4) "Health-Related Services (HRS)" means non-covered services under Oregon's Medicaid State Plan intended to improve care delivery and overall member and community health and well-being, as defined in OAR 410-141-3845. Health-related services include flexible services and community benefit initiatives.¶
(4~~4~~5) "Health Risk Assessment (HRA)" means a survey or questionnaire administered verbally, digitally or in writing, to collect information from a member, their representative or guardian about key areas of their health, including their physical, developmental, behavioral, dental and social needs (including Health Related Social Needs and Social Determinants of Health). The HRA is intended to inform the coordination of services and supports that meet the members individualized needs as described in OAR 410-141-3860, 410-141-3865 and 410-141-3870.¶
(4~~5~~6) "Health System Transformation" means the vision established by the Oregon Health Policy Board for reforming health care in Oregon, including both the Oregon Integrated and Coordinated Health Care Delivery System and reforms that extend beyond the context of Oregon Health Plan (OHP).¶
(4~~6~~7) "Home CCO" means the CCO enrollment situation that existed for a member prior to placement, including services received through Oregon Health Plan (OHP) fee-for-service, based on permanent residency.¶
(4~~7~~8) "Indian" and/or "American Indian/Alaska Native (AI/AN)" means any individual defined at 25 USC 1603(13), 1603(28), or 1679(a), or who has been determined eligible as an Indian, under 42 CFR 136.12; or as defined under 42 CFR 438.14(a).¶
(4~~8~~9) "Indian Health Care Provider (IHCP)" means a health care program operated by the Indian Health Service (IHS) or by an Indian Tribe, Tribal Organization, or Urban Indian Organization (otherwise known as an I/T/U) as those terms are defined in section 4 of the Indian Health Care Improvement Act (25 U.S.C. 1603).¶
(4~~9~~50) "In Lieu of Service" (ILOS) means a setting or service determined by the Authority to be a medically appropriate and cost-effective substitute for a Covered Services consistent with provisions in OAR 410-141-3820. The utilization and actual cost of an ILOS is included in developing the components of the Capitation Payment. In lieu of services must meet the requirements of 42 CFR 438.3(e)(2).¶
(5~~0~~1) "Individual with Limited English Proficiency" means a person whose primary language for communication is not English and who has a limited ability to read, write, speak, or understand English.¶

(5~~1~~2) "Institution for Mental Diseases (IMD)" means, as defined in 42 CFR 435.1010, a hospital, nursing facility, or other institution of more than 16 beds that is primarily engaged in providing inpatient psychiatric services such as diagnosis, treatment, or care of individuals with mental diseases, including medical attention, nursing care, and related services. Its primary character is that of a facility established and maintained primarily for the care and treatment of individuals with mental diseases, whether or not it is licensed as such.¶
(5~~2~~3) "Legal Holiday" means the days described in ORS 187.010 and 187.020.¶
(5~~3~~4) "Licensed Health Entity" means a Managed Care Entity (MCE) that has a Certificate of Authority issued by DCBS as a health insurance company or health care service contractor.¶
(5~~4~~5) "Managed Care Entity (MCE)" is a general term that means an entity that enters into one or more contracts with the Authority to provide services in a managed care delivery system, including but not limited to the following types of entities defined in and subject to 42 CFR Part 438: managed care organizations (MCOs), primary care case managers (PCCMs), prepaid ambulatory health plans (PAHPs), and prepaid inpatient health plans (PIHPs). A CCO is an MCE for its managed care contract(s) with the Authority, without regard to whether the contract(s) involves federal funds or state funds or both.¶
(5~~5~~6) "Managed Care Organization (MCO)" is a specific term that means an MCE defined in 42 CFR Part 438. A CCO is an MCO for its managed care contract(s) subject to federal managed care requirements specified in 42 CFR Part 438.¶
(5~~6~~7) "Material Change to Delivery System" means:¶
(a) Any change to the CCO's Delivery System Network (DSN) that may result in more than five (5) percent of ~~its members~~either its total Members or its Members in a county changing the physical location(s) of where services are received; or¶
(b) Any change to CCO's DSN that may likely affect less than five (5) percent of its Members but involves a Provider or Provider group that is the sole provider specialty type within the overall Provider Network or is the sole provider specialty type with a practice within a county in the CCO's service area; or¶
(c) Any change in CCO's overall operations that affects its ability to meet a required DSN standard including, but not limited to: termination or loss of a Provider or Provider group, or any change likely to affect more than five (5) percent of CCO's total Members or Provider Network or both; or¶
(d) Any combination of the above changes.¶
(5~~7~~8) "Medicaid-Funded Long-Term Services and Supports (LTSS)" means all Medicaid funded services CMS defines as long-term services and supports, including both:¶
(a) "Long-term Care," the system through which the Department of Human Services provides a broad range of social and health services to eligible adults who are aged, blind, or have disabilities for extended periods of time. This includes nursing homes and behavioral health care outlined in OAR chapter 410, division 172 Medicaid Payment for Behavioral Health Services, including state psychiatric hospitals;¶
(b) "Home and Community-Based Services," the Medicaid services and supports provided under a CMS-approved waiver to avoid institutionalization as defined in OAR chapter 411, division 4 and defined as Home and Community-Based Services (HCBS) and as outlined in OAR chapter 410, division 172 Medicaid Payment for Behavioral Health Services.¶
(5~~8~~9) "Member" means an Oregon Health Plan (OHP) client enrolled with a CCO.¶
(5~~9~~60) "Member Representative" means an individual who can make Oregon Health Plan (OHP)-related decisions for a member who is not able to make such decisions themselves.¶
(6~~0~~1) "National Association of Insurance Commissioners (NAIC)" means the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories.¶
(6~~1~~2) "Non-Participating Provider" means a provider that does not have a contractual relationship with an MCE and is not on their panel of providers.¶
(6~~2~~3) "Ombudsperson Services" means patient advocacy services available through the Authority for clients who are concerned about access to, quality of, or limitations in the health services provided.¶
(6~~3~~4) "Oregon Health Plan (OHP)" means Oregon's Medicaid program or related state-funded health programs. Any OHP contract shall identify whether it concerns Oregon's Medicaid program or a related state-funded health program, or both.¶
(6~~4~~5) "Oregon Integrated and Coordinated Health Care Delivery System" means the set of state policies and actions that promote integrated care delivery by CCOs to OHP clients, pursuant to ORS 414.570.¶
(6~~5~~6) "Participating Provider" means a provider that has a contractual relationship with an MCE. A Participating Provider is not a Subcontractor solely by virtue of a Participating Provider agreement with an MCE. "Network Provider" has the same meaning as Participating Provider.¶
(6~~6~~7) "Patient-Centered Primary Care Home (PCPCH)" means a recognized clinic that takes a patient and family-centered approach to all aspects of care. PCPCHs work with the member and their health care team to improve and coordinate care and help to eliminate repetitive procedures. As defined in ORS 414.655, meets the standards

pursuant to OAR 409-055-0040, and has been recognized through the process pursuant to OAR 409-055-0040 and means the definition as set forth in OAR 409-055-0010.¶
(6~~7~~8) "Permanent Residency" means the county code-zip code combination of the physical residence in which the member/client lived, as found in the benefit source system, prior to placement and to which the member/client is expected to return to after placement ends.¶
(6~~8~~9) "Plan Type" means the designation used by the Authority to identify which health care services covered by a client's OHP Plus or equivalent benefit package are paid by a CCO, by the Authority's fee-for-service program, or both. If a client does not have a plan type designation, then all of the client's health care services are paid by the fee-for-service program. Regardless of plan type, some health care services are carved out from CCOs by contract or rule and are instead paid by the fee-for-service program. The plan type designations are as follows:¶
(a) CCOA: Physical, dental, and behavioral health services are paid by the client's CCO;¶
(b) CCOB: Physical and behavioral health services are paid by the client's CCO. Dental services are paid the fee-for-service program;¶
(c) CCOE: Behavioral health services are paid by the client's CCO. Physical health and dental services are paid by the fee-for-service program;¶
(d) CCOF: Dental services are paid by the client's CCO. Physical health and behavioral health services are paid by the fee-for-service program, except for individuals receiving dental services through the Compact of Free Association (COFA) Dental Program or the Veteran Dental Program defined in OAR chapter 141, division 120. Any reference to CCOF means the benefit package covers dental services only; and¶
(e) CCOG: Dental and behavioral health services are paid by the client's CCO. Physical health services are paid by the fee-for-service program.¶
(~~6~~9~~7~~0) "Post Hospital Extended Care Services" (PHECS). Consistent with 42 USC 1395x(i), PHECS means extended care services furnished an individual after transfer from a hospital in which a member was an inpatient for not less than three (3) consecutive days before discharge from the hospital in connection with such transfer. For purposes of the preceding sentence, items and services shall be deemed to have been furnished to a member after transfer from a hospital, and the member shall be deemed to have been an inpatient in the hospital immediately before transfer there from, if the member is admitted to the skilled nursing facility:¶
(a) Within thirty (30) days after discharge from such hospital; or¶
(b) Within such time as it may be medically appropriate to begin an active course of treatment, in the case of an individual whose condition is such that skilled nursing facility care may not be medically appropriate within thirty (30) days after discharge from a hospital; and¶
(c) An individual shall be deemed not to have been discharged from a skilled nursing facility if, within thirty (30) days after discharge therefrom, the member is admitted to such facility or any other skilled nursing facility.¶
(7~~0~~1) "Potential Member" means an individual who meets the eligibility requirements to enroll in the Oregon Health Plan but has not yet enrolled with a specific MCE.¶
(7~~1~~2) "Primary Care Provider (PCP)" means an enrolled medical assistance provider who has responsibility for supervising, coordinating, and providing initial and primary care within their scope of practice for identified clients. PCPs are health professionals who initiate referrals for care outside their scope of practice, consultations, and specialist care, and assure the continuity of medically appropriate client care. PCPs include:¶
(a) The following provider types: physician, naturopath, nurse practitioner, physician assistant or other health professional licensed or certified in this state, whose clinical practice is in the area of primary care;¶
(b) A health care team or clinic certified by the Authority as a PCPCH as defined in OAR 409-055-0010 and OAR 410-120-0000.¶
(7~~2~~3) "Provider" means an individual, facility, institution, corporate entity, or other organization that:¶
(a) Is engaged in the delivery of services or items or ordering or referring for those services or items; or¶
(b) Bills, obligates, and receives reimbursement from the Authority's Health Services Division on behalf of a Provider, (and also termed a "Billing Provider"); and¶
(c) Supplies health services or items (also termed a "Rendering Provider").¶
(7~~3~~4) "Readily Accessible" means electronic information and services that comply with modern accessibility standards such as section 508 guidelines, section 504 of the Rehabilitation Act, and W3C's Web Content Accessibility Guidelines (WCAG) 2.0 AA and successor versions.¶
(7~~4~~5) "Service Area" means the geographic area within which the MCE agreed under contract with the Authority to provide health services.¶
(7~~5~~6) "Serious Emotional Disorder" (SED) means a subpopulation of individuals under age 21 who meet the following criteria:¶
(a) An infant, child or youth, between the ages of birth to 21 years of age; and¶
(b) Must meet criteria for diagnosis, functional impairment and duration:¶
(A) Diagnosis: The infant, child or youth must have an emotional, socio-emotional, behavioral or mental disorder diagnosable under the DSM-5 or its ICD-10-CM equivalents, or subsequent revisions (with the exception of DSM

"V" codes, substance use disorders and developmental disorders, unless they co-occur with another diagnosable serious emotional, behavioral, or mental disorder):¶
(i) For children three (3) years of age or younger. The child or youth must have an emotional, socio-emotional, behavioral or mental disorder diagnosable under the Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood-Revised (DC: 0-3R) (or subsequent revisions);¶
(ii) For children four (4) years of age and older. The child or youth must have an emotional, socio-emotional, behavioral or mental disorder diagnosable under the Diagnostic Interview Schedule for Children (DISC) or DSM-5 or its ICD-10-CM equivalents, or subsequent revisions (with the exception of DSM "V" codes, substance use disorders and developmental disorders, unless they co-occur with another diagnosable serious emotional, behavioral, or mental disorder).¶
(B) Functional impairment: An individual is unable to function in the family, school or community, or in a combination of these settings; or the level of functioning is such that the individual requires multi-agency intervention involving two or more community service agencies providing services in the areas of mental health, education, child welfare, juvenile justice, substance abuse, or primary health care;¶
(C) Duration: The identified disorder and functional impairment must have been present for at least one (1) year or, on the basis of diagnosis, severity or multi-agency intervention, is expected to last more than one (1) year.¶
(7~~6~~7) Social Determinants of Health and Equity (SDOH-E) ~~each~~ has the meaning provided for in OAR 410-141-3735.¶
(7~~7~~8) "Special Health Care Needs" means individuals who have high health care needs, multiple chronic conditions, mental illness or substance use disorders and either:¶
(a) Have functional disabilities;¶
(b) Live with health or social conditions that place them at risk of developing functional disabilities (for example, serious chronic illnesses, or certain environmental risk factors such as homelessness or family problems that lead to the need for placement in foster care), or¶
(c) Are a Prioritized Population member. This includes members who:¶
(A) Are older adults, individuals who are hard of hearing, deaf, blind, or have other disabilities;¶
(B) Have complex or high health care needs, or multiple or chronic conditions, or SPMI, or are receiving Medicaid-funded long-term care services and supports (LTSS);¶
(C) Are children ages 0-5:¶
(i) Showing early signs of social/emotional or behavioral problems; or¶
(ii) Have a Serious Emotional Disorder (SED) diagnosis.¶
(D) Are in medication assisted treatment for SUD;¶
(E) Are women who have been diagnosed with a high-risk pregnancy;¶
(F) Are children with neonatal abstinence syndrome;¶
(G) Children in Child Welfare;¶
(H) Are IV drug users;¶
(I) People with SUD in need of withdrawal management;¶
(J) Have HIV/AIDS or have tuberculosis;¶
(K) Are veterans and their families;¶
(L) Are at risk of first episode psychosis;¶
(M) Individuals within the Intellectual and developmental disability (IDD) populations.¶
(7~~8~~9) "Subcontract" means either:¶
(a) A contract between a CCO and a subcontractor pursuant to which such subcontractor is obligated to perform certain work that is otherwise required to be performed by the CCO under its contract with the State; or¶
(b) Is the infinitive form of the verb "to Subcontract", i.e. the act of delegating or otherwise assigning to a Subcontractor certain work required to be performed by an MCE under its contract with the State.¶
(~~79~~80) "Subcontractor" means an individual or entity that has a contract with an MCE that relates directly or indirectly to the performance of the MCE's obligations under its contract with the State. A Participating Provider is not a Subcontractor solely by virtue of having entered into a Participating Provider agreement with an MCE.¶
(8~~0~~1) "Transition of Care" applies to Medicaid members who are enrolled in a CCO ("the receiving CCO") immediately after disenrollment from a "predecessor plan" which may be another CCO (including disenrollment resulting from termination of the predecessor CCO's contract) or Medicaid fee-for-service (FFS). Transition of Care does not apply to a member who is ineligible for Medicaid or who has a gap in coverage following disenrollment from the predecessor plan. Meets the standards pursuant to OAR 410-141-3850."¶
(8~~1~~2) "Trauma Informed Approach" means approach undertaken by providers and healthcare or human services programs, organizations, or systems in providing mental health and substance use disorders treatment wherein there is a recognition and understanding of the signs and symptoms of trauma in, and the intensity of such trauma on, individuals, families, and others involved within a program, organization, or system and then takes into account those signs, symptoms, and their intensity and fully integrating that knowledge when implementing and providing

potential paths for recovery from mental health or substance use disorders. The Trauma Informed Approach also means that providers and healthcare or human services programs, organizations, or systems and actively resist re-traumatization of the individuals being served within their respective entities.¶
(8~~2~~3) "Temporary Placement" means, for purposes of this rule, hospital, institutional, and residential placement only, including those placements occurring inside or outside of the service area with the expectation to return to the Home CCO service area.¶
(8~~3~~4) "Trauma-informed services" means those services provided using a Trauma Informed Approach.¶
(84~~5~~) "Treatment Plan" means a documented plan that describes the patient's condition and procedures that shall be needed, detailing the treatment to be provided and expected outcome and expected duration of the treatment prescribed by the health care professional. This therapeutic strategy shall be designed in collaboration with the member, the member's family, or the member's representative.¶
(8~~5~~6) "Urban Indian Health Program" (UIHP) means an urban Indian organization as defined in section 1603 of Title 25 that has an IHS Title V contract as described in section 1653 of Title 25.¶
(8~~6~~7) "Workforce diversity capacity" means the organization's ability to foster an environment where diversity is commonplace and enhances execution of the organization's objectives. It means creating a workplace where differences demographics and culture are valued, respected and used to increase organizational capacity.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, 414.727

AMEND: 410-141-3505

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify that the Coordinated Care Organization (CCO) is accountable for the performance of the work of downstream entities contracted by the subcontractor and must provide OHA with a list of those downstream entities and their functions.

CHANGES TO RULE:

410-141-3505
Use of Subcontractors
(1) MCEs may delegate their activities or obligations to subcontractors except as otherwise provided by law or in the MCE contract:¶
(a) MCEs remain fully accountable for the performance of all subcontracted work, including that of all downstream entities contracted by MCE's subcontractor;¶
(b) MCEs shall monitor subcontractor performance on an ongoing basis;¶
(c) MCEs shall notify the Authority of subcontractor relationships. MCEs shall provide the Authority:¶
(A) A comprehensive list of subcontractor and downstream entities and, for each one, the activities and functions that have been delegated, to be submitted to OHA on an annual basis;¶
(B) Copies of all subcontracts upon request; and¶
(C) Adequate documentation demonstrating monitoring of subcontractor compliance or subcontractor auditing, as applicable, in accordance with the contract and with CMS requirements including 42 C.F.R 438.230, 438.602(a) and 438.66.¶
(2) Each subcontract must include the following elements:¶
(a) With respect to any MCE activities or obligations defined by law or in the MCE's contract with the Authority that the MCE is delegating to a subcontractor:¶
(A) The subcontract must specify the delegated activities or obligations, as well as any related reporting responsibilities;¶
(B) The subcontractor agrees to perform the delegated activities and reporting responsibilities specified in compliance with the MCE's contract obligations; and¶
(C) The subcontract must either provide for revocation of the delegation or specify other remedies in instances where the Authority or the MCE determines that the subcontractor has not performed satisfactorily.¶
(b) The subcontractor agrees to comply with all applicable laws, regulations, sub-regulatory guidance, as well as the requirements in the MCE contract:¶
(A) The subcontractors agrees to comply with Section C Part 10 of Attachment I of the 2017-2022 Medicaid 1115 Waiver regarding timely Payment to IHCP Providers;¶
(B) Timely payments means that IHCPs must be paid the agreed upon rate within 30-90 calendar days of billing;¶
(C) The subcontractor agrees to perform any activities necessary to support the MCE and the Authority's obligations as specified in the MCE contract, state law, and federal law, including requirements related to:¶
(i) Program integrity and data submission, including the requirements in 42 CFR, Part 438, Subpart H.;¶
(ii) Grievances and appeals, including the requirements in 42 CFR, Part 438, Subpart F;¶
(iii) Exclusions, as noted in 42 CFR 438.808; and¶
(iv) Linguistic and disability access for members, as outlined in 42 CFR 438.10, as well as 42 U.S.C. 18116 and 45 CFR Part 92.
Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651
Statutes/Other Implemented: ORS 414.610 - 414.685

AMEND: 410-141-3515

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Allow exceptions to time and distance standards. Clarify that when participating providers aren't available to treat a member, the non-participating provider may in fact be within the CCOs service area to provide care as geographically close to the member as possible. The CCO must notify OHA that 10 or more members are on a waitlist for Assertive Community Treatment in addition to taking action to reduce the waitlist.

CHANGES TO RULE:

410-141-3515
Network Adequacy
(1) Managed Care Entities (MCEs) shall maintain and monitor a network of participating providers that is sufficient in number, provider type, and geographic distribution to ensure adequate service capacity and availability to provide available and timely access to medically appropriate and culturally responsive covered services to both current members and those the MCE anticipate shall become enrolled as members.¶
(2) The MCE shall develop a provider network that enables members to access services within the standards defined in this rule.¶
(3) The MCE shall meet access-to-care standards that allow for appropriate choice for members. Services and supports shall be as close as possible to where members reside and, to the extent necessary, offered in nontraditional settings that are accessible to families, diverse communities, and underserved populations.¶
(4) MCEs shall meet quantitative network access standards defined in rule and contract.¶
(5) MCEs shall ensure access to integrated and coordinated care as outlined in OAR 410-141-3860, which includes access to a primary care provider or primary care team that is responsible for coordination of care and transitions.¶
(6) In developing its provider network, the MCEs shall anticipate access needs so that the members receive the right care at the right time and place, using a patient-centered, trauma informed approach. The provider network shall support members, especially those with behavioral health conditions, in the most appropriate and independent setting, including in their own home or independent supported living.¶
(7) In assessing the capacity and adequacy of its provider network, MCEs shall consider, in conjunction with the quantitative standards set forth in this rule, the variety of provider and facility types with the demonstrated ability and expertise to render specific medically or dentally appropriate covered services within the scope of applicable licensing and credentialling. This includes, but is not limited to, the prescribing of Medication-Assisted Treatment and more specialized oral health care services.¶
(8) All MCEs shall ensure 95 percent of members can access the following provider and facility types, further defined by the Authority in guidance made available on the CCO Contracts Forms webpage https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx, within acceptable travel time or distance standards set forth this rule:¶
(a) Tier one:¶
(A) Primary care providers serving adults and those serving pediatrics;¶
(B) Primary care dentists serving adults and those serving pediatrics;¶
(C) Mental health providers serving adults and those serving pediatrics;¶
(D) Substance use disorder providers serving adults and those serving pediatrics¶
(E) Pharmacy;¶
(F) Additional provider types when it promotes the objectives of the Authority or as required by legislation.¶
(b) Tier two:¶
(A) Obstetric and gynecological service providers;¶
(B) The following specialty providers, serving adults and those serving pediatrics;¶
(i) Cardiology;¶
(ii) Neurology;¶
(iii) Occupational Therapy;¶
(iv) Medical Oncology;¶
(v) Radiation Oncology;¶
(vi) Ophthalmology;¶
(vii) Optometry;¶
(viii) Physical Therapy;¶
(ix) Podiatry;¶
(x) Psychiatry;¶

(xi) Speech Language Pathology.¶
(C) Hospital;¶
(D) Durable medical equipment;¶
(E) Methadone Clinic;¶
(F) Additional provider types when it promotes the objectives of the Authority or as required by legislation.¶
(c) Tier three:¶
(A) The following specialty providers, serving adults and those serving pediatrics;¶
(i) Allergy & Immunology;¶
(ii) Dermatology;¶
(iii) Endocrinology;¶
(iv) Gastroenterology;¶
(v) Hematology;¶
(vi) Nephrology;¶
(vii) Otolaryngology;¶
(viii) Pulmonology;¶
(ix) Rheumatology;¶
(x) Urology.¶
(B) Post-hospital skilled nursing facilities;¶
(C) Additional provider types when it promotes the objectives of the Authority or as required by legislation.¶
(9) All MCE acceptable travel time and distance monitoring must assess the geographic distribution of providers relative to members and calculate driving time and distance from the member's physical address to the provider's location through the use of geocoding software or other mapping applications. The Authority shall provide tools and additional guidance specific to time and distance monitoring on the CCO Contracts Forms webpage https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.¶
(a) A CCO service area may contain multiple geographic designations. When calculating travel time and distance, geographic designations shall not overlap and the following definitions of geographic designations shall apply:¶
(A) Large urban area: Conjoined urban areas with a total population of at least 1 million people or with a population density greater than 1,000 people per square mile.¶
(B) Urban area: An area with greater than 40,000 people within a 10 mile radius of a city center.¶
(C) Rural area: An area greater than 10 miles from the center of an urban area.¶
(D) County with extreme access considerations: County with a population density of 10 or fewer people per square mile.¶
(b) When calculating travel time and distance, MCEs shall use the following standards:¶
(A) Large Urban Area:¶
(i) Tier one: 10 minutes or 5 miles;¶
(ii) Tier two: 20 minutes or 10 miles;¶
(iii) Tier three: 30 minutes or 15 miles.¶
(B) Urban Area:¶
(i) Tier one: 25 minutes or 15 miles;¶
(ii) Tier two: 30 minutes or 20 miles;¶
(iii) Tier three: 45 minutes or 30 miles.¶
(C) Rural Area:¶
(i) Tier one: 30 minutes or 20 miles;¶
(ii) Tier two: 75 minutes or 60 miles;¶
(iii) Tier three: 110 minutes or 90 miles.¶
(D) County with Extreme Access Considerations:¶
(i) Tier one: 40 minutes or 30 miles;¶
(ii) Tier two: 95 minutes or 85 miles;¶
(iii) Tier three: 140 minutes or 125 miles.¶
(10) MCEs may request an exception to a standard set ~~abov~~in (8) and (9) of this rule. MCEs may request multiple exceptions.¶
(a) Exception requests must be submitted in a format provided by the Authority and made available on the CCO Contract Forms webpage https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.¶
(b) The Authority shall review and approve or deny exception requests based on criteria made available on the CCO Contracts Forms webpage. Approved exceptions must be reviewed at least annually.¶
(11) OHA may grant exceptions to the standards set in (8) and (9) of this rule when enrollment capacity is increased.¶
(12) MCEs shall have an access plan that establishes a protocol for monitoring and ensuring access, outlines how provider capacity is determined, and establishes procedures for monthly monitoring of capacity and access and

for improving access and managing access in times of reduced participating provider capacity. The access plan and associated monitoring protocol shall address the following:¶
(a) Expected utilization of services based on anticipated member enrollment and health care needs of the member population;¶
(b) The number and types of providers required to furnish the contracted services based on the expected utilization of services referenced above and the number and types of providers actively providing services within the MCE's current provider network;¶
(c) How the MCE shall meet the accommodation and language needs of individuals with LEP as defined in OAR 410-141-3500 and people with disabilities in their service area in compliance with state and federal rules including but not limited to ORS 659A, Title VI of the Civil Rights Act of 1964, Section 1557 of the Affordable Care Act, the Americans with Disabilities Act, and Section 504 of the Rehabilitation Act of 1973;¶
(d) The availability of telemedicine within the MCE's contracted provider network.¶
(12~~2~~3) MCEs shall make the services it provides (including primary care, specialists, pharmacy, hospital, vision, ancillary, and behavioral health services or other services as necessary to achieve compliance with the requirements of 42 CFR 438, subpart K) as accessible to members for timeliness, amount, duration, and scope as those services are to other patients within the same service area. If the MCE is unable to provide those services ~~locally by~~through the use of participating providers qualified and specialized to treat a member's condition, it must arrange for the member to access care from non-participating providers as geographically close to the member as possible, including providers outside the service area.¶
(13~~4~~) MCEs shall have policies and procedures and a monitoring system to ensure that members who are aged, blind, or disabled, or who have complex or high health care needs, multiple chronic conditions, or have behavioral health conditions, or who are children receiving Department or Oregon Youth Authority (OYA) services have access to primary care, oral care (when the MCE is responsible for oral care), behavioral health providers, and referral, and involve those members in accessing and managing appropriate preventive, health, remedial, and supportive care and services. MCEs shall monitor and have policies and procedures to ensure:¶
(a) Access to providers of pharmacy, hospital, vision, ancillary, and behavioral health services;¶
(b) Priority access for pregnant women and children ages birth through five (5) years to health services, developmental services, early intervention, targeted supportive services, oral and behavioral health treatment.¶
(14~~5~~) MCEs shall have policies and procedures that ensure scheduling and rescheduling of member appointments are appropriate to the reasons for and urgency of the visit. The member shall be seen, treated, or referred within the following timeframes:¶
(a) Physical health:¶
(A) Emergency care: Immediately or referred to an emergency department depending on the member's condition;¶
(B) Urgent care: Within 72 hours or as indicated in initial screening and in accordance with OAR 410-141-3840;¶
(C) Well care: Within four (4) weeks, or as otherwise required by applicable care coordination rules, including OAR 410-141-3860 through 410-141-3870.¶
(b) Oral and Dental care for children and non-pregnant individuals:¶
(A) Dental Emergency services as defined in OAR 410-120-0000: Seen or treated within 24 hours;¶
(B) Urgent dental l care: Within two (2) weeks;¶
(C) Routine oral care: Within eight (8) weeks, unless there is a documented special clinical reason that makes a period of longer than eight (8) weeks appropriate.¶
(c) Oral and Dental care for pregnant individuals:¶
(A) Dental Emergency services. Seen or treated within 24 hours;¶
(B) Urgent dental care, within one (1) week;¶
(C) Routine oral care: Within four (4) weeks, unless there is a documented special clinical reason that must make access longer than four (4) weeks appropriate.¶
(d) Behavioral health:¶
(A) Urgent behavioral health care for all populations: Within 24 hours;¶
(B) Specialty behavioral health care for priority populations:¶
(i) In accordance with the timeframes listed in this rule for assessment and entry, terms are defined in OAR 309-019-0105, with access prioritized per OAR 309-019-0135. If a timeframe cannot be met due to lack of capacity, the member must be placed on a waitlist and provided interim services within 72 hours of being put on a waitlist. Interim services must be comparable to the original services requested based on the level of care and may include referrals, methadone maintenance, HIV/AIDS testing, outpatient services for substance use disorder, risk reduction, residential services for substance use disorder, withdrawal management, and assessments or other services described in OAR 309-019-0135;¶
(ii) Pregnant women, veterans and their families, women with children, unpaid caregivers, families, and children ages birth through five years, individuals with HIV/AIDS or tuberculosis, individuals at the risk of first episode

psychosis and the I/DD population: Immediate assessment and entry. If interim services are necessary due to capacity restrictions, treatment at appropriate level of care must commence within 120 days from placement on a waitlist;¶
(iii) IV drug users including heroin: Immediate assessment and entry. Admission for treatment in a residential level of care is required within fourteen (14) days of request, or, if interim series are necessary due to capacity restrictions, admission must commence within 120 days from placement on a waitlist;¶
(iv) Opioid use disorder: Assessment and entry within 72 hours;¶
(v) Medication assisted treatment: As quickly as possible, not to exceed 72 hours for assessment and entry;¶
(vi) Children with serious emotional disturbance as defined in OAR 410-141-3500: Any limits that the Authority may specify in the contract or in sub regulatory guidance.¶
(C) Routine behavioral health care for non-priority populations: Assessment within seven days of the request, with a second appointment occurring as clinically appropriate.¶
(15~~6~~) HRSN Services. All MCEs or, as applicable, the Authority, must make a referral to an HRSN Service Provider that is capable of delivering the authorized HRSN Service(s) as expeditiously as a Member's circumstances requires. The time period for delivery of the HRSN Service must not exceed four (4) weeks, which is the same time frame for scheduling appointments for Well Care as set forth in this OAR. The HRSN Service(s) is considered "delivered" once the Member receives the HRSN Service that was authorized.¶
(a) The timelines identified in this rule are not required to be met in circumstances of impossibility related to HRSN Service Vendor availability, as determined by the Authority in its sole discretion.¶
(b) The timelines identified in of this rule are not applicable to Members who are receiving HRSN Outreach and Engagement Services only. Instead, HRSN Outreach and Engagement Services must be delivered within a reasonable period of time in light of the Member's availability.¶
(c) For Members who have not authorized the sharing their information with an HRSN Service Provider, the four (4) week timeline identified in section (11) of this rule, shall commence when the HRSN-Authorized Member has delivered the referral to the referred HRSN Service Providers and the HRSN Service Provider has confirmed with the MCE or, as applicable, the Authority, receipt of the referral.¶
(d) MCEs and the Authority, are not responsible for preventing Imminent Eviction. MCEs and the Authority shall refer Members facing imminent eviction to local or state providers or programs that has the ability to address a Member's imminent eviction. MCEs and the Authority must still screen these Members for eligibility for other HRSN Services, including other HRSN Housing Supports, and if Authorized for the other HRSN Service, refer the HRSN Authorized Member to the applicable HRSN Service Providers.¶
(16~~7~~) MCEs shall implement procedures for communicating with and providing care to members who have difficulty communicating due to a medical condition, who need accommodation due to a disability, or, as detailed in OAR chapter 950, division 050 for those who have Limited English Proficiency, prefer to communicate in a language other than English or who communicates in signed language.¶
(a) The policies and procedures shall ensure the provision of Oregon certified or Oregon qualified interpreter services by phone or in person anywhere the member is attempting to access care or communicate with the MCE or its representatives;¶
(b) MCEs shall ensure the provision of certified or qualified interpreter services for all covered services to interpret for members with hearing impairment or in the primary language of non-English-speaking members;¶
(c) All interpreters must be linguistically appropriate and capable of communicating in both English and the member's primary language and be able to translate clinical information effectively. Interpreter services must enable the provider to understand the member's complaint, make a diagnosis, respond to the member's questions and concerns, and communicate instructions to the member;¶
(d) MCEs shall ensure the provision of services that are culturally appropriate as described in National CLAS Standards, demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect on the member's care. MCEs shall ensure the provision of Oregon certified or Oregon qualified interpreters.¶
(e) MCEs shall comply with requirements of the Americans with Disabilities Act of 1990, as amended via the ADA Amendments Act of 2008, in providing access to covered services for all members and shall arrange for services to be provided by non-participating providers when necessary;¶
(f) MCEs shall collect and actively monitor data on language accessibility to ensure compliance with these language access requirements;¶
(g) MCEs shall report to the Authority such language access data and other language access related analyses in the form and manner set forth in this rule and as may otherwise be required in the MCE contract. The Authority shall provide supplemental instructions about the use of any required forms:¶
(A) Using the interpreter services self-assessment reporting template provided by the Authority, MCEs shall conduct an annual language access self-assessment and submit the completed language access self-assessment to the Authority on or before the third Monday of each January;¶
(B) MCEs shall collect and report language access and interpreter services to the Authority quarterly using the

report form provided by the Authority. The quarterly due date for each Report is the first day of each calendar quarter, reporting data for the twelve (12) months ending one quarter before the due date.¶
(C) MCEs shall complete and submit to the Authority any other language access reporting that may be required in the MCE contract.¶
(1~~7~~8) MCEs shall collect and actively monitor data on provider-to-enrollee ratios, interpretation utilization by the MCE and the MCE's provider network, travel time and distance to providers, percentage of contracted providers accepting new members, wait times to appointment (including specific data for behavioral health wait times), and hours of operation. MCEs shall also collect and actively monitor data on call center performance and accessibility for both member services and NEMT brokerage services call centers.¶
(1~~8~~9) MCEs must submit a Delivery System Network (DSN) report annually to the Authority that includes access data and other access-related analyses in the form and manner required by the Authority, including but not limited to capacity reports on:¶
(a) Behavioral health access;¶
(b) Interpreter utilization by the MCE's provider network;¶
(c) Behavioral health provider network.¶
(~~19~~20) MCEs shall report the methodology for monitoring network adequacy to the Authority and the Authority-contracted External Quality Review Organization (EQRO).¶
(2~~0~~1) MCEs shall implement and require its providers to adhere to the following appointment and wait time requirements:¶
(a) A member may request to reschedule an appointment if the wait time for a scheduled appointment exceeds 30 minutes. If the member requests to reschedule, they shall not be penalized for failing to keep the appointment;¶
(b) MCEs shall implement written procedures and a monitoring system for timely follow-up with members when a participating provider has notified the MCE that the member failed to keep scheduled appointments. The procedures shall address:¶
(A) Timely rescheduling of missed appointments, as deemed medically appropriate;¶
(B) Documentation in the clinical record or non-clinical record of missed appointments;¶
(C) Recall or notification efforts; and¶
(D) Method of member follow-up.¶
(c) If failure to keep a scheduled appointment is a symptom of the member's diagnosis or disability or is due to lack of transportation to the MCE's participating provider office or clinic, or lack of interpreter services, MCEs shall provide outreach services and offer Care Coordination as medically appropriate to make a plan with the member to resolve barriers;¶
(d) Recognition of whether NEMT services were the cause of the member's missed appointment.¶
(2~~1~~2) MCEs shall assess the needs of their membership and make available supported employment and Assertive Community Treatment services when members are referred and eligible:¶
(a) MCEs shall report the number of individuals who receive supported employment and assertive community treatment services, at a frequency to be determined by the Authority. When no appropriate provider is available, the MCE shall consult with the Authority and develop an approved plan to make supported employment and Assertive Community Treatment (ACT) services available;¶
(b) If ten (10) or more members in a MCE region have been referred, are eligible, and are appropriate for assertive community treatment, and have been on a waitlist to receive ACT for more than thirty (30) days, MCEs shall notify the Authority and take action to reduce the waitlist and serve those individuals by:¶
(A) Increasing team capacity to a size that is still consistent with fidelity standards; or¶
(B) Adding additional Assertive Community Treatment teams; or¶
(C) When no appropriate ACT provider is available, the MCE shall consult with the Authority and develop an approved plan to increase capacity and add additional teams.¶
(2~~2~~3) HRSN Service Provider Minimum Network Requirements.¶
(a) An MCE must offer HRSN Services in all service areas in which the MCE operates.¶
(b) The MCE must ensure that HRSN Services are delivered to Members within the timelines outlined in OAR 410-120-2000.
Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651
Statutes/Other Implemented: ORS 414.610 - 414.685~~, 414.572, 414.605, 414.665, 414.719~~

AMEND: 410-141-3565

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify that School-based Health Services are not to apply towards a member's CCO utilization limits.

CHANGES TO RULE:

410-141-3565
Managed Care Entity Billing
(1) Providers shall submit all claims for MCE members in the following timeframes:¶
(a) Submit initial claims within no more than 120 days of the date of service for all cases, except as provided for in section (1)(b) of this rule. MCEs may negotiate terms within this timeframe agreeable to both parties;¶
(b) Submit initial claims within 365 days of the date of service in the following cases:¶
(A) Pregnancy;¶
(B) Eligibility issues such as retroactive deletions or retroactive enrollments;¶
(C) Medicare is the primary payer, except where the MCE is responsible for the Medicare reimbursement;¶
(D) Other cases that delay the initial claim to the MCE, not including failure of the provider to verify the member's eligibility; or¶
(E) Third Party Liability (TPL). Pursuant to 42 CFR 136.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payers of last resort and are not considered an alternative liability or TPL.¶
(c) For initial claims submitted timely that need correction, have prompted a provider appeal as outlined in OAR 410-120-1560, or for a reason not included in (1)(b) of this rule that otherwise require a re-submission, MCEs shall establish a time-frame in their policies and procedures which allow a billing provider to make such re-submissions or appeals for a minimum of 180 days after the initial adjudication date.¶
(2) Providers shall be enrolled with the Authority to be eligible for fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), shall be approved by the Local Mental Health Authority (LMHA) and the Authority before enrollment with the Authority or to be eligible for MCE payment for services. FFS providers may be retroactively enrolled in accordance with OAR 410-120-1260 Provider Enrollment.¶
(3) Providers, including mental health providers, shall be enrolled with the Authority as a Medicaid FFS provider or an MCE encounter-only provider prior to submission of encounter claims to ensure the encounter claim is accepted.¶
(4) Providers shall verify before providing services that the client is:¶
(a) Eligible for Authority programs and;¶
(b) Assigned to an MCE on the date of service.¶
(5) Providers shall use the Authority's and MCE's tools to determine if the service to be provided is covered under the member's OHP benefit package. Providers shall also identify the party responsible for covering the intended service and seek Prior Authorizations from the appropriate payer before providing services. Before providing a non-covered service, the provider shall complete an OHP 3165 "OHP Client Agreement to Pay for Health Services", or OHP "3166 OHP Client Agreement to Pay for Pharmacy Services" or facsimile signed by the client as described in OAR 410-120-1280.¶
(6) If a member has other insurance coverage available for payment of covered services, the insurance must be exhausted prior to payment for the covered services. Member cost-sharing incurred as part of other coverage shall be paid to the insurer by the MCE.¶
(7) MCEs shall pay for all covered services. These services shall be billed directly to the MCE, unless the MCE or the Authority specifies otherwise. No contracting provider or agent, trustee or assignee of the contracting provider shall bill a member, send a member's bill to a Collection Agency, or maintain a civil action against a member to collect any amounts owed by the CCO for which the member is not liable to the contracting provider in this rule and under OAR 410-120-1280:¶
(a) A client may not be billed for missed appointments. A missed appointment is not considered to be a distinct Medicaid service by the federal government and as such is not billable to the client or the Division;¶
(b) A client may not be billed for services or treatments that have been denied due to provider error (e.g., required documentation not submitted, Prior Authorization not obtained, etc.).¶
(8) Payment by the MCE to participating providers for capitated or coordinated care services is a matter between the MCE and the participating provider:¶
(a) MCEs shall have written policies and procedures for processing claims submitted from any source. The policies and procedures shall specify timeframes for:¶

(A) Date stamping claims when received;¶
(B) Determining within a specific number of days from receipt whether a claim is valid or non-valid;¶
(C) The specific number of days allowed for follow-up on pended claims to obtain additional information;¶
(D) Sending written notice of the decision with appeal rights to the member when the determination is a denial, in whole or in part, of payment for a service rendered as outlined in OAR 410-141-3875 and 410-141-3885.¶
(b) MCEs shall pay or deny at least 90 percent of valid claims within 30 days of receipt and at least 99 percent of valid claims within 90 days of receipt. MCEs shall make an initial determination on 99 percent of all claims submitted within 60 days of receipt;¶
(c) MCEs shall provide written notification of MCE determinations when the determinations result in a denial of payment for services as outlined in OAR 410-141-3885;¶
(d) MCEs may not require providers to delay claims submission to the MCE;¶
(e) MCEs may not require Medicare be billed as the primary insurer for services or items not covered by Medicare or require non-Medicare approved providers to bill Medicare;¶
(f) MCEs may not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the member's clinical record;¶
(g) MCEs may not delay or deny payments because a co-payment was not collected at the time of service;¶
(h) ~~MCEs may not delay or deny payments for occupational therapy, physical therapy, speech therapy, nurse services, etc., when a child is receiving such services as School-Based Health Services (SBHS) through either an Individual Educational Plan (IEP) or an Individualized Family Service Plan (IFSP)~~School-based Health Services (SBHS) must not apply toward a member's health services allowances limited by an MCE's utilization management policy. These services are supplemental to other health plan covered therapy services and are not considered duplicative services. ~~Individuals with Disabilities Education Act (IDEA) mandated school sponsored SBHS will not apply toward the member's therapy allowances. SBHS Medicaid co~~This includes, but is not limited to, occupational therapy, physical therapy, speech and language therapy, cognitive re~~d IDEA services are provided to eligible children in their e~~habilitation, and dental services when a child is receiving such services as SBHS through an Individualized Education ~~p~~Program ~~settings by public education enrolled providers billing MMIS for these services to Medicaid through the Authority for reimbursement under Federal Financial Participation (FFP) as part of cost sharing on a FFS basis~~(IEP), an Individualized Family Service Plan (IFSP), a Section 504 Accommodation Plan, or any other individualized plan of care established for services provided by education agencies in support of the child or young adult's education;¶
(i) MCEs may not deny a claim for behavioral health services on the basis that such services were delivered in the member's home unless the MCE would deny a claim for comparable physical health services performed at the same site of service.¶
(9) MCEs shall pay for Medicare coinsurances and deductibles consistent with Oregon's State Plan methodology up to the Medicare or MCE's allowable for all Medicare Part A and Part B covered services the member receives from a Medicare enrolled provider after adjudication with Medicare or a Medicare Advantage plan:¶
(a) Providers must be enrolled in Oregon Medicaid to receive cost-sharing payments and non-enrolled providers should be given information on how to enroll to receive cost-sharing. Pursuant to OAR 410-120-1280, FFS Medicare providers should be encouraged to submit the Medicaid information necessary to enable electronic crossover to the MCE with their Medicare claims;¶
(b) MCEs and affiliated Medicare Advantage plan shall provide a process for automatic Medicare to Medicaid crossover payments to ensure cost-sharing and reduce duplicate provider submission of claims;¶
(c) Federal law bars Medicare providers and suppliers from billing an individual enrolled in the Qualified Medicare Beneficiary (QMB) program for Medicare Part A and Part B cost-sharing under any circumstances (see Sections 1902(n)(3)(B), 1902(n)(3)(C), 1905(p)(3), 1866(a)(1)(A), and 1848(g)(3)(A) of the Social Security Act [the Act]). The QMB program is a State Medicaid benefit that assists low-income Medicare beneficiaries with Medicare Part A and Part B premiums and cost-sharing, including deductibles, coinsurance, and copays;¶
(d) MCEs must inform providers of rules that prohibit balance billing and ensure providers serving and accepting plan payment for Qualified Medicare Beneficiaries that members cannot be balance-billed per Sections 1902(n)(3)(C) and 1905(p)(3) of the Social Security Act.¶
(10) MCEs shall pay transportation, meals, and lodging costs for the member and any required attendant for services that the MCE has arranged and authorized when those services are not available within the state, unless otherwise approved by the Authority.¶
(11) MCEs shall pay for ancillary covered services provided by a non-participating provider under the following conditions:¶
(a) MCEs shall pay for ancillary covered services provided by a non-participating provider that are not prior authorized if all of the following conditions exist:¶
(A) It can be verified that a participating provider ordered or directed the covered services to be delivered by a non-participating provider;¶

(B) The ancillary covered service was delivered in good faith without the Prior Authorization;¶
(C) The ancillary covered service would have been prior authorized with a participating provider if the MCE's referral procedures had been followed.¶
(b) The MCE shall pay non-participating providers (providers enrolled with the Authority that do not have a contract with the MCE) for ancillary covered services that are subject to reimbursement from the MCE in the amount specified in OAR 410-120-1295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with OAR 410-141-3565 (12-14);¶
(c) Except as specified in OAR 410-141-3840 Emergency and Urgent Care Services, MCEs shall not be required to pay for covered treatment services provided by a non-participating provider, unless:¶
(A) The MCE does not have a participating provider that will meet the member's medical need; and¶
(B) The MCE has authorized care to a non-participating provider.¶
(d) Notwithstanding OAR 410-120-1280, non-participating providers may not attempt to bill the member for services rendered;¶
(e) MCEs shall reimburse hospitals for services provided on or after January 1, 2012, using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods that incorporate the most recent Medicare payment methodologies for both inpatient and outpatient services established by CMS for hospital services and alternative payment methodologies including but not limited to pay-for-performance, bundled payments, and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to Type A or Type B hospitals. MCEs shall attest annually to the Authority in a manner to be prescribed to MCE's compliance with these requirements. MCEs shall pay hospitals any applicable Qualified Directed Payments pursuant to OAR 410-125-0230.¶
(12) For Type A or Type B hospitals transitioning from Cost-Based Reimbursement (CBR) to an Alternative Payment Methodology (APM):¶
(a) Sections (12) and (14) only apply to services provided by Type A or Type B hospitals to members that are enrolled in an MCE;¶
(b) The Authority may upon evaluation by an actuary retained by the Authority, on a case-by-case basis, require MCEs to continue to reimburse fully a rural Type A or Type B hospital determined to be at financial risk for the cost of covered services based on a cost-to-charge ratio;¶
(c) For those Type A or Type B hospitals that transitioned from CBR to an APM, the Authority shall require hospitals and MCEs to enter into good faith negotiations for contracts. Dispute resolution during the contracting process shall be subject to OAR 410-141-3555 and 410-141-3560;¶
(d) For monitoring purposes, MCEs shall submit to the Authority no later than November 30 of each year a list of those hospitals with which they have contracted for these purposes.¶
(13) Determination of which Type A or Type B hospitals shall stay on CBR or transition from CBR:¶
(a) No later than June 30 of the odd numbered years, the Authority shall update the algorithm for calculation of the CBR determination methodology with the most recent data available;¶
(b) After determination for each Type A and Type B hospital, any changes in a hospital's status from CBR to APM or from APM to CBR shall be effective January 1 of the following (even numbered) year;¶
(c) Type A and Type B hospitals located in a county that is designated as "Frontier" are not subject to determination via the algorithm and shall remain on CBR.¶
(14) Non-contracted Type A or Type B hospital rates for those transitioning or transitioned from CBR:¶
(a) Reimbursement rates under this section shall be based on discounted hospital charges for both inpatient and outpatient services;¶
(b) Reimbursement rates effective for the initial year of a hospital transitioning from CBR shall be based on that hospital's most recently filed Medicare cost report adjusted to reflect the hospital's OHP mix of services;¶
(c) Subsequent year reimbursement rates for hospitals transitioned from CBR shall be calculated by the Authority based on the individual hospital's annual price increase and the Authority's global budget rate increase as defined by the CMS 1115 waiver using the following formula: Current Reimbursement Rate x (1+Global Budget Increase) / (1+Hospital Price Increase);¶
(d) On an annual basis, each Type A or Type B hospital that has transitioned from CBR shall complete a template provided by the Authority that calculates the hospital's change in prices for their MCE population;¶
(e) Inpatient and outpatient reimbursement rates shall be calculated separately;¶
(f) Non-contracted Type A or Type B hospital reimbursement rates can be found in the Rate Table on the Authority's website.¶
(15) Members may receive certain services on a Fee-for-Service (FFS) basis:¶
(a) Certain services shall be authorized by the MCE or the Community Mental Health Program (CMHP) for some mental health services, even though the services are then paid by the Authority on a FFS basis. Before providing services, providers shall verify a member's eligibility and MCE assignment as provided for in this rule;¶

(b) Services authorized by the MCE or CMHP are subject to the Authority's administrative rules and supplemental information including rates and billing instructions;¶
(c) Providers shall bill the Authority directly for FFS services in accordance with billing instructions contained in the Authority administrative rules and supplemental information;¶
(d) The Authority shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the Authority's administrative rules, contracts, and billing instructions;¶
(e) The Authority may not pay a provider for providing services for which an MCE has received an MCE payment unless otherwise provided for in rule;¶
(f) When an item or service is included in the rate paid to a medical institution, a residential facility, or foster home, provision of that item or service is not the responsibility of the Authority or an MCE except as provided in Authority administrative rules and supplemental information (e.g., coordinated care and capitated services that are not included in the nursing facility all-inclusive rate);¶
(g) MCEs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment that the MCE would pay for the same service furnished by a provider who is not an FQHC nor RHC, consistent with the requirements of Section 4712(b)(2) of the Balanced Budget Act of 1997.¶
(16) MCEs shall maintain a Coordination of Benefits Agreement that allows participation in the automated claims crossover process with Medicare for those members dually eligible for Medicaid and Medicare services.¶
(17) MCEs shall ensure providers under the MCE contract are notified of billing processes for crossover claims processing, as described in OAR 410-120-1280.¶
(18) Coverage of services through the OHP benefit package of covered services is limited by OAR 410-141-3825 Excluded Services and Limitations for OHP Clients.¶
(19) MCEs shall engage in collaborative efforts with the Authority to achieve the requirements of the CCO Value-based Purchasing Roadmap.
Statutory/Other Authority: ORS 413.042, 414.065, 414.615, 414.625, 414.635, 414.651
Statutes/Other Implemented: ORS 414.065, 414.610 - 414.685

AMEND: 410-141-3585

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Remove outdated term of intensive care coordination services consistent with care coordination terminology. Incorporate Section 1557 federal regulations on nondiscrimination and meaningful language access notices. Align machine readability requirements with federal regulations. Revise Provider Directory requirements to include National Provider Identifier when available. Require use of OHA Model Member Handbook.

CHANGES TO RULE:

410-141-3585
MCE Member Relations: Education and Information
(1) Managed Care Entity's (MCEs) may engage in activities for existing members related to outreach, health promotion, and health education. MCE must obtain approval of the Authority prior to distribution of any written communication by the MCE or its subcontractors and providers that:¶
(a) Is intended solely for members; and¶
(b) Pertains to requirements for obtaining coordinated care services at service area sites or benefits.¶
(2) MCEs may communicate with providers, caseworkers, community agencies, and other interested parties for informational purposes or to enable care coordination and address social determinants of health or community health. The intent of these communications should be informational only for building community linkages to impact social determinants of health or member care coordination and not to entice or solicit membership. Communication methodologies may include but are not limited to brochures, pamphlets, newsletters, posters, fliers, websites, health fairs, or sponsorship of health-related events. MCEs shall address health literacy issues by preparing these documents at a low literacy reading level, incorporating graphics and utilizing alternate formats.¶
(3) MCEs shall have a mechanism to help members understand the requirements and benefits of the MCE's coordinated care model. The mechanisms developed shall be culturally and linguistically appropriate. Written materials, including provider directories, member handbooks, appeal and grievance notices, and all denial and termination notices are made available in the prevalent non-English languages as defined in OAR 410-141-3575 in its particular service area and be available in formats noted in section (5) of this rule for members with disabilities. MCEs shall accommodate requests made by other sources such as members, family members, or caregivers for language accommodation, translating to the member's language needs as requested.¶
(4) MCEs shall have written procedures, criteria, and an ongoing process of member education and information sharing that includes member orientation, member handbook, and health education. MCEs shall update their educational material as they add coordinated services. Member education shall:¶
(a) ~~Include information about the coordinated care approach and how to navigate the coordinated health care system, including how to access Intensiv~~Be made available in the prevalent non-English languages in the MCEs service area and provided in alternate formats upon request and free of charge in compliance with 42 CFR 438.10. Auxiliary aids and services must also be made available upon request at no cost;¶
(b) Include information about the ~~C~~care ~~C~~coordination ~~(ICC) Services,~~approach and how to navigate the coordinated health care system and where applicable for Full Benefit Dual Eligible (FBDE) members, the process for coordinating Medicaid and Medicare benefits;¶
(~~b~~c) Clearly explain how members may receive assistance from certified and qualified health care interpreters and Traditional Health Workers as defined in OAR ~~410-180-0305 and include information to members that interpreter services in any language required by the member, including American Sign Language, auxiliary aids and alternative format materials at provider offices are free to MCE members as stated in 42 CFR 438.~~950-060-0010;¶
(~~c~~d) Inform all members of the availability of Ombudsperson services.¶
(5) Written member materials shall comply with the following language and access requirements:¶
(a) Materials shall be translated in the prevalent non-English languages as defined in OAR 410-141-3575 in the service area as well as include a tagline in large print (font size 18) explaining the availability of written translation or oral interpretation to understand the information provided, as well as alternate formats, and the toll-free and TTY/TDY telephone number of the MCE's member/customer service unit;¶
(b) Materials shall be made available in alternative formats upon request of the member at no cost. Auxiliary aids and services must also be made available upon request of the member at no cost. The MCE's process for providing alternative formats and auxiliary aids to members may not in effect deny or limit access to covered services, grievance, appeals, or hearings;¶
(c) Electronic versions of member materials shall be made available on the MCE website, including provider directories, formularies, and handbooks in a form that can be electronically retained and printed, available in a

machine-readable file and format, is searchable and Readily Accessible~~, e.g., a PDF document posted on the plan website that meets language requirements of this section~~. For any required member education materials on the MCE website, the member is informed that the information is available in paper form without charge upon request to Members and Member representatives, and the MCE shall provide it upon request within five business days.¶
(6) MCE provider directories shall be a single, comprehensive resource that encompasses the MCE's entire Provider Network, including any Providers contracted by Subcontractors that serve the MCE's Members. MCEs may not utilize a Subcontractor's separate or standalone provider directory to meet the Provider Directory requirement and shall include:¶
(a) The provider's name as well as any group affiliation;¶
(b) Street address(es);¶
(c) Telephone number(s);¶
(d) Website URL, as appropriate;¶
(e) Provider Specialty, as appropriate;¶
(f) National Provider Identifier (NPI), as appropriate;¶
(g) Whether the provider shall accept new members;¶
(~~g~~h) Whether the provider offers both telehealth and in-person appointments;¶
(~~h~~i) Information about the provider's race and ethnicity, cultural and linguistic capabilities, including languages (including American Sign Language) offered by the provider or an Authority-approved qualified and, as applicable, certified health care interpreter(s) at no cost to members at the provider's office;¶
(~~i~~j) Availability of auxiliary aids and services for all members with disabilities upon request and at no cost;¶
(~~j~~k) Narrative space that is optional for providers to list biographical, cultural, linguistic, or other relevant information.¶
(~~k~~L) Whether the provider's office or facility is accessible and has accommodations for people with physical disabilities, including but not limited to information on specific accessibility features of provider's offices, exam rooms, ~~restrooms, and~~and equipment (e.g., wide entries, wheelchair access, accessible exam tables and rooms, lifts, scales, restrooms, grab bars, or other equipment).¶
(~~L~~m) The information for each of the following provider types covered under the contract, as applicable to the MCE contract:¶
(A) Physicians, including specialists, available to members on an outpatient basis and not solely available in a nursing facility or other institutional setting;¶
(B) Hospitals;¶
(C) Pharmacies;¶
(D) Behavioral health providers; including specifying substance use treatment providers;¶
(E) Dental providers;¶
(F) HRSN Service Providers.¶
(~~m~~n) Information included in the provider directory shall be updated at least monthly, and electronic provider directories shall be updated no later than thirty (30) days after the MCE receives updated provider information. Updated materials shall be available on the MCE website in a readily accessible and machine-readable file~~, e.g., a PDF document posted on the plan website,~~ per form upon request and another alternative format.¶
(7) Each MCE shall make available in electronic or paper form the following information about its formulary:¶
(a) Which medications are covered both generic and name brand;¶
(b) What tier each medication is on.¶
(8) Within fourteen (14) days of an MCE's receiving notice of a member's enrollment, MCEs shall mail a welcome packet to new members and to members returning to the MCE twelve (12) months or more after previous enrollment. The packet shall include, at a minimum, a welcome letter, a member handbook, and information on how to access a provider directory, including a list of any in-network retail and mail-order pharmacies.¶
(9) For existing MCE members, an MCE shall notify members annually of the availability of a member handbook and provider directory and how to access those materials. MCEs shall send hard copies upon request within five days. MCEs must also notify members of their nondiscrimination policies annually and as otherwise specified in 45 CFR 92.10.¶
(10) MCEs must notify enrollees:¶
(a) That ~~oral~~ interpret~~ation is available free of charge for any language~~er services in any language required by the member, including American Sign Language, a~~nd written information is available in prevalent non-English languag~~uxiliary aids and alternative format materials are available free of charge to MCE members in its health programs and activities as ~~defin~~stated in ~~OAR 410-141-3575 and alternate formats that include but are not limited to audio recording, close-captioned videos, large type (18 font), and braille~~42 CFR 438.10. This notice must be provided in the manner specified in 45 CFR 92.11;¶
(b) The process for requesting and accessing interpreters or auxiliary aids and alternative formats, including where appropriate how to contact specific providers responsible through sub-contracts to ensure provision of

language and disability access;¶
(c) Language access services also applies to member representatives, family members and caregivers with hearing impairments or limited English proficiency who need to understand the member's condition and care.¶
(11) An MCE shall electronically provide to the Authority for approval each version of the printed welcome packet that includes a welcome letter, member handbook, and information on how to access a provider directory.¶
(12) MCE ~~Member Handbooks shall comply with the Authority's formatting and readability standards and contain all elements outlined in the Member Handbook Evaluation Criteria issued by~~s shall adopt the language in the Authority's Model Member Handbook. MCE Member Handbooks shall comply with the Authority ~~in accordance with the requirements described in Exhibit B, Part 3, Section 5 of the Contract~~'s formatting and readability standards.¶
(13) Member health education shall include:¶
(a) Information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. MCE providers or other individuals or programs approved by the MCE may provide health education. MCEs shall make every effort to provide health education in a culturally sensitive and linguistically appropriate manner in order to communicate most effectively with individuals from non-dominant cultures;¶
(b) Information specifying that MCEs shall not prohibit or otherwise restrict a provider acting within the lawful scope of practice from advising or advocating on behalf of a member who is their patient for the following:¶
(A) The member's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;¶
(B) Any information the member needs to decide among all relevant treatment options;¶
(C) The risks, benefits, and consequences of treatment or non-treatment.¶
(c) MCEs shall ensure development and maintenance of an individualized health educational plan for members whom their provider has identified as requiring specific educational intervention. The Authority may assist in developing materials that address specifically identified health education problems to the population in need;¶
(d) An explanation of ~~ICC services and how eligible members may access~~care coordination and how members may participate in those services. MCEs sh~~ould~~all ensure that ~~ICC~~care coordination related education ~~reaches potentially eligible members, including those with special health care needs including those who are aged, blind, or disabled, or who have complex medical needs or high health care needs, multiple chronic conditions, mental illness, chemical dependency, or who receive additional Medicaid-funded LTSS~~is provided to members with special health care needs as defined in OAR 410-141-3500;¶
(e) The appropriate use of the delivery system, including proactive and effective education of members on how to access emergency services and urgent care services appropriately;¶
(f) MCEs shall provide written notice to affected members of any Material Changes to Delivery System as defined in OAR 410-141-3500 or any other significant changes in provider(s), program, or service sites that affect the member's ability to access care or services from MCE's participating providers. The MCE shall provide, translated as appropriate, the notice at least thirty (30) days before the effective date of that change, or within fifteen (15) calendar days after receipt or issuance of the termination notice if the participating provider has not given the MCE sufficient notification to meet the thirty (30) day notice requirement. The Authority shall review and approve the materials within two (2) working days.¶
(14) MCEs shall provide an identification card to members, unless waived by the Authority, that contains simple, readable, and usable information on how to access care in an urgent or emergency situation. The cards are solely for the convenience of the MCE, members, and providers.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, 414.727

AMEND: 410-141-3590

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Include CMS guidance that a member can request communications be received by alternative means or at alternative locations.

CHANGES TO RULE:

410-141-3590
MCE Member Relations: Member Rights and Responsibilities
(1) MCEs shall:¶
(a) Have written policies and procedures that ensure that members have the rights and responsibilities included in this rule;¶
(b) Communicate these policies and procedures to participating providers;-¶
(c) Monitor compliance with these policies and procedures, take corrective action as needed, and report findings to the Quality Improvement Committee defined under OAR 410-141-3525.¶
(2) MCE members shall have the following rights and are entitled to:¶
(a) Be treated with dignity and respect;¶
(b) Be treated by participating providers the same as other people seeking health care benefits to which they are entitled and to be encouraged to work with the member's care team, including providers and community resources appropriate to the member's needs;¶
(c) Choose a Primary Care Provider (PCP) or service site and to change those choices as permitted in the MCE's administrative policies;¶
(d) Refer oneself directly to behavioral health or family planning services without getting a referral from a PCP or other participating provider;¶
(e) Have a friend, family member, member representative, or advocate present during appointments and other times as needed within clinical guidelines;¶
(f) Be actively involved in the development of their treatment plan;¶
(g) Be given information about their condition and covered and non-covered services to allow an informed decision about proposed treatments;¶
(h) Consent to treatment or refuse services and be told the consequences of that decision, except for court ordered services;¶
(i) Receive written materials describing rights, responsibilities, benefits available, how to access services, and what to do in an emergency;¶
(j) Have written materials explained in a manner that is understandable to the member and be educated about the coordinated care approach being used in the community and how to navigate the coordinated health care system;¶
(k) Receive communications of individually identifiable health information from the MCE by alternative means or at alternative locations per 45 CFR 164.522 if the member provides a written statement that includes:¶
(A) A valid alternative address or other method of contact suitable for enabling the member to receive communications from the MCE (e.g., valid cell phone number, verifiable e-mail address); and¶
(B) If required by the MCE, a clearly stated disclosure that all or part of the protected health information could put the member in danger.¶
(L) Receive culturally and linguistically appropriate services and supports in locations as geographically close to where members reside or seek services as possible and choice of providers within the delivery system network that are, if available, offered in non-traditional settings that are accessible to families, diverse communities, and underserved populations;-¶
(~~l~~m) Receive oversight, care coordination and transition and planning management from their MCE within the targeted population to ensure culturally and linguistically appropriate community-based care is provided in a way that serves them in as natural and integrated an environment as possible and that minimizes the use of institutional care;¶
(~~m~~n) Receive necessary and reasonable services to diagnose the presenting condition;¶
(~~n~~o) Receive integrated person-centered care and services designed to provide choice, independence and dignity and that meet generally accepted standards of practice and are medically appropriate;¶
(~~o~~p) Have a consistent and stable relationship with a care team that is responsible for comprehensive care management;¶
(~~p~~q) Receive assistance in navigating the health care delivery system and in accessing community and social support services and statewide resources including but not limited to the use of certified or qualified health care interpreters, certified traditional health workers including community health workers, peer wellness specialists,

peer support specialists, doulas, and personal health navigators who are part of the member's care team to provide cultural and linguistic assistance appropriate to the member's need to access appropriate services and participate in processes affecting the member's care and services;¶
(~~q~~r) Obtain covered preventive services;¶
(~~r~~s) Have access to urgent and emergency services 24 hours a day, seven days a week without prior authorization;¶
(~~s~~t) Receive a referral to specialty providers for medically appropriate covered coordinated care services in the manner provided in the MCE's referral policy;¶
(~~t~~u) Have a clinical record maintained that documents conditions, services received, and referrals made;¶
(~~u~~v) Have access to one's own clinical record, unless restricted by statute;¶
(~~v~~w) Transfer of a copy of the clinical record to another provider;¶
(~~w~~x) Execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, or behavioral health treatment and the right to execute directives and powers of attorney for health care established under ORS 127;¶
(~~x~~y) Receive written notices before a denial of, or change in, a benefit or service level is made, unless a notice is not required by federal or state regulations;¶
(~~y~~z) Be able to make a complaint or appeal with the MCE and receive a response;¶
(~~z~~aa) Request a contested case hearing;¶
(~~aa~~bb) Receive certified or qualified health care interpreter services; and¶
(~~bb~~cc) Receive a notice of an appointment cancellation in a timely manner;¶
(~~cc~~dd) Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation, as specified in other federal regulations on the use of restraints and seclusion.¶
(3) CCO members shall have the following responsibilities:¶
(a) Choose or help with assignment to a PCP or service site;¶
(b) Treat the MCE, provider, and clinic staff members with respect;¶
(c) Be on time for appointments made with providers and to call in advance to cancel if unable to keep the appointment or if expected to be late;¶
(d) Seek periodic health exams and preventive services from the PCP or clinic;¶
(e) Use the PCP or clinic for diagnostic and other care except in an emergency;¶
(f) Obtain a referral to a specialist from the PCP or clinic before seeking care from a specialist unless self-referral to the specialist is allowed;¶
(g) Use urgent and emergency services appropriately and notify the member's PCP or clinic within 72 hours of using emergency services in the manner provided in the MCE's referral policy;¶
(h) Give accurate information for inclusion in the clinical record;¶
(i) Help the provider or clinic obtain clinical records from other providers that may include signing an authorization for release of information;¶
(j) Ask questions about conditions, treatments, and other issues related to care that is not understood;¶
(k) Use information provided by MCE providers or care teams to make informed decisions about treatment before it is given;¶
(L) Help in the creation of a treatment plan with the provider;¶
(m) Follow prescribed agreed upon treatment plans and actively engage in their health care;¶
(n) Tell the provider that the member's health care is covered under the OHP before services are received and, if requested, show the provider the Division Medical Care Identification form;¶
(o) Tell the Department or Authority worker of a change of address or phone number;¶
(p) Tell the Department or Authority worker if the member becomes pregnant and notify the worker of the birth of the member's child;¶
(q) Tell the Department or Authority worker if any family members move in or out of the household;¶
(r) Tell the Department or Authority worker if there is any other insurance available;¶
(s) Pay for non-covered services under the provisions described in OAR 410-120-1200 and 410-120-1280;¶
(t) Pay the monthly OHP premium on time if so required;¶
(u) Assist the MCE in pursuing any third-party resources available and reimburse the MCE the amount of benefits it paid for an injury from any recovery received from that injury; and¶
(v) Bring issues or complaints or grievances to the attention of the MCE.
Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651, CFR 164.522
Statutes/Other Implemented: ORS 414.610 - 414.685

AMEND: 410-141-3805

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Indicate when CCOs may request maximum enrollment capacity exceptions and when OHA may grant them.

CHANGES TO RULE:

410-141-3805
Mandatory MCE Enrollment Exceptions
(1) In addition to the definitions in OAR 410-120-0000, the following definitions apply:¶
(a) "Eligibility Determination" means an approval or denial of eligibility and a renewal or termination of eligibility as set forth in OAR 410-200-0015;¶
(b) "Newly Eligible" means recently determined through the eligibility determination process as having the right to obtain state health benefits, satisfying the appropriate conditions;¶
(c) "Renewal" means a regularly scheduled periodic review of eligibility resulting in a renewal or change of program benefits, including the assignment of a new renewal date or a change in eligibility status;¶
(d) "Healthier Oregon" and "Healthier Oregon Cover All Kids" means the benefit packages described in OAR 410-134-0003;¶
(e) Compact of Free Association (COFA) Dental Program means the benefit package described in OAR 410-120-1210;(f) Veteran Dental Program means the benefit package described in OAR 410-120-1210.¶
(f) "Citizenship Waived Medical (CWM) Benefits Package" means the benefit package described in OAR 410-134-0005(2), which ended on June 30, 2023;¶
(g) "Citizenship Waived Medical Plus (CWM) Benefit Package" means the benefit package described in OAR 410-134-0005(2), which was previously referred to as CWX and ended on June 30, 2023.¶
(2) CCO enrollment is mandatory in all areas served by a CCO. A client eligible for or receiving health services shall enroll in a CCO as required by ORS 414.631, except as provided in ORS 414.631(2), (3), (4) and (5), and this rule.¶
(3) MCE enrollment is mandatory in service areas with adequate access and capacity to provide health care services through an MCE. If upon application or redetermination a client does not select an MCE, the Authority shall auto-assign the client and the client's household to an MCE that has adequate access and capacity. Enrollment may vary depending on which options are available in the member's service area at the time of enrollment:¶
(a) The member shall be enrolled with a CCO that offers bundled physical health, behavioral health, and dental services, which is the CCOA plan type;¶
(b) The member shall be enrolled with a CCO for physical health and behavioral health services and shall remain fee-for-service (FFS) for dental services, which is the CCOB plan type;¶
(c) The member shall be enrolled with a CCO for behavioral health and dental services and shall remain FFS for physical health services, which is the CCOG plan type;¶
(d) The member shall be enrolled with a CCO for behavioral health services and shall remain FFS for physical health services and dental services, which is the CCOE plan type;¶
(e) The member shall be enrolled with a CCO for dental services and remain FFS for physical health and behavioral health services, which is the CCOF plan type;¶
(f) The member shall remain FFS for health care services if no MCE is available; or¶
(g) Members eligible for the Compact of Free Association (COFA) Dental Program or the Veteran Dental Program benefit packages shall be enrolled in a CCO for dental services. Pharmacy services covered under these benefit packages are Carve-Out Services paid by the Authority through the Oregon Prescription Drug Program.¶
(4) MCE enrollment is voluntary in service areas without adequate access and capacity to provide health care services through an MCE.¶
(5) If a service area changes from mandatory enrollment to voluntary enrollment while a member is enrolled with an MCE, the member shall remain enrolled with the MCE for the remainder of their eligibility period or until the Authority or Department redetermines their eligibility, whichever comes first, unless the member is otherwise eligible to disenroll pursuant to OAR 410-141-3810.¶
(6) Members who are exempt from physical health services shall receive behavioral health services and dental services through an MCE. The member shall:¶
(a) Be enrolled with a CCO that offers behavioral health and dental services;¶
(b) Be enrolled with a CCO for dental services and shall remain FFS for behavioral health services; or¶
(c) Remain FFS for both behavioral health and dental services if a CCO is not available.¶
(7) If the member qualifies for enrollment into an MCE and submits a CCO preference, the following pertains to

the effective date of the enrollment:¶
(a) The Authority shall provide the enrollment list to MCEs on the next business day following eligibility, redetermination, or upon review by the authority. When eligibility, redeterminations, or reviews occur on a Saturday or Sunday, MCEs shall receive the enrollment list on Tuesday.¶
(b) The effective date of enrollment occurs within two ~~(2)~~ business days after the MCE receives the enrollment information.¶
(c) If a member is required to enroll and does not express preference, the Authority shall auto assign, and the effective date of enrollment occurs during the next weekly enrollment cycle.¶
(d) Newly eligible members that qualify for MCE enrollment shall receive health care services on a fee-for service (FFS) basis until they are enrolled into an MCE.¶
(8) Coordinated care services shall begin as of the effective date of enrollment with the MCE except for:¶
(a) A newborn's enrollment shall begin on the date of birth if the mother was a member of a CCO and the newborn is OHP eligible at the time of birth;¶
(b) For adopted children or children placed in an adoptive placement, the date of enrollment shall be the date specified by the Authority.¶
(9) The following populations may not be enrolled into an MCE, as indicated below in this rule, for any type of health care coverage or for the type of coverage specified:¶
(a) Individuals eligible for OHP through the Healthier Oregon or Healthier Oregon Cover All Kids benefit package described in OAR 410-134-0003, but for whom the Authority has not provided capitation or other payment rates in the applicable CCO contract;¶
(b) Clients with Medicare receiving premium assistance through the Specified Low-Income Medicare Beneficiary, Qualified Individuals, Qualified Disabled Working Individuals and Qualified Medicare Beneficiary programs without another Medicaid;¶
(c) Individuals who are dually eligible for Medicare and Medicaid and enrolled in a program of all-inclusive care for the elderly (PACE);¶
(d) Before June 30, 2023, individuals eligible for CWM or CWX (CWX began being referred to as CWM Plus effective July 1, 2023) benefit packages described in OAR 410-134-0005(2).¶
(10) Individuals currently enrolled with an Indian Managed Care Entity (IMCE) consistent with OAR 410-146-5000 may not also be enrolled in the CCOA or CCOB plan type.¶
(11) If enrollment action coincides with an individual's Continuous Inpatient Stay as defined in OAR 410-141-3500, the following enrollment rules apply:¶
(a) A newly eligible OHP client who became eligible while admitted as an inpatient is exempt from all levels of CCO enrollment, except for newborn enrollments in accordance with OAR 410-141-3805(8)(a). The newly eligible OHP client shall receive health care services on a Fee-For-Service (FFS) basis until the individual is discharged from the continuous inpatient stay;¶
(b) In settings where the CCO is fully responsible for covered services, such as an acute care hospital, acute care psychiatric hospital, skilled nursing facility specific to the Post-Hospital Extended Care (PHEC) benefit, Psychiatric Residential Treatment Facility (PRTF), or a residential Behavioral Health or Substance Use Disorder treatment facility that is not considered a Home and Community-Based Services (HCBS) setting as described in OAR 410-173-0035:¶
(A) The CCO is responsible for covered services if the individual is enrolled as of the date they are admitted to the inpatient setting. No enrollment changes shall be made until the member is discharged from their continuous inpatient stay to ensure continuity of care and care coordination, and to mitigate billing confusion;¶
(B) If the individual is enrolled in a CCO after the first day of admission to the inpatient setting, the enrollment shall be cancelled as never effective and the date of enrollment shall be the next available enrollment date following discharge from the continuous inpatient stay to ensure continuity of care and care coordination, and to mitigate billing confusion;¶
(C) When a justice-involved individual, meeting the definition for Inmate stated within OAR 410-200-0015, is admitted to an inpatient setting with an expected stay of at least 24 hours, the individual temporarily resumes OHP eligibility and the inpatient stay is covered by FFS; CCO enrollment shall be the next available enrollment date following release from the penal facility as consistent with OAR 410-200-0140, OAR 461-135-0950, and OAR 410-141-3810, and based on the service area of the member's current permanent residence.¶
(c) In settings where the CCO is responsible for care coordination but not health services, including, but not limited to Medicaid-Funded Long Term Services and Supports (LTSS) or Behavioral Health Carve-Out Services:¶
(A) Contractor is responsible for care coordination if the individual is enrolled as of the date they are admitted to the inpatient setting. No enrollment changes shall be made (CCO-to-FFS, CCO-to-CCO, or FFS-to-CCO) until the member is discharged from their continuous inpatient stay to ensure continuity of care coordination;¶
(B) If the individual is enrolled in a CCO after the first day of admission to the inpatient setting, the enrollment shall be cancelled as never effective, and the date of enrollment shall be the next available enrollment date

following discharge from the continuous inpatient stay to ensure continuity of care coordination;¶
(C) When a resident of a public institution, as defined in OAR 461-135-0950, is voluntarily or involuntarily admitted to the Oregon State Hospital, OHP eligibility is suspended and any associated CCO enrollment is ended with an effective date of the inpatient admission; however, the CCO is responsible for care coordination.¶
(d) If an individual is currently experiencing an extended but temporary hold within an Emergency Department due to unavailability of inpatient placement or delay in secure transportation to a facility that can evaluate appropriate psychiatric referrals, no enrollment changes shall be made (CCO-to-FFS or CCO-to-CCO) until the individual is no longer in the Emergency Department or, if subsequent action is admission to an inpatient setting, until the individual is discharged from their continuous inpatient stay.¶
(12) A client may not be enrolled with a CCO in the CCOA, CCOB, CCOE, or CCOG plan type if the client is covered under a major medical insurance policy, Third Party Liability (TPL), or other Third-Party Resource (TPR) that covers the cost of services to be provided by a CCO as specified in ORS 414.631 and except as provided for children in Child Welfare through the Behavior Rehabilitation Services (BRS) and Psychiatric Residential Treatment Services (PRTS) programs outlined in OAR 410-141-3800:¶
(a) A client shall be enrolled with a CCO in the CCOF plan type for dental services even if they have a dental TPR;¶
(b) At the Authority's discretion, a client shall be enrolled with the highest level of CCO coverage, including physical health, behavioral health, and dental services, if coverage through the TPR poses a safety risk to the member, specific to Good Cause determination as described in OAR 461-120-0350(1) and OAR 410-200-0220(6). In these situations:¶
(A) Recovery of third-party insurance shall not be pursued; and¶
(B) Explanation of Benefits (EOB) shall be suppressed.¶
(13) Individuals who are American Indian and Alaskan Native (AI/AN) beneficiaries per OAR 410-141-3500(41) are exempt from mandatory enrollment into an MCE, except for IMCE enrollment per OAR 410-146-5000.¶
(14) A child in the legal custody of the Department or where the child is expected to be in a substitute care placement for less than 30 calendar days is exempt from mandatory enrollment for physical health services from a CCO but is subject to mandatory enrollment into both behavioral and dental services as available in the member's service area unless:¶
(a) Access to health care on an FFS basis is not available; or¶
(b) Enrollment preserves continuity of care. In these cases, the member may be manually enrolled into a physical health plan or remain enrolled as deemed appropriate by the Authority.¶
(15) Clients who are dually eligible for Medicare and full Medicaid but not enrolled in a program of all-inclusive care for the elderly (PACE) may be automatically enrolled into an MCE. The following apply to automated duals enrollment:¶
(a) The dually eligible Medicare and Medicaid client shall receive choice counseling on Medicare-Medicaid options at their request from a local APD/AAA office or other Department or Authority designated entity, as well as information on the benefits for clients in aligning Medicare and Medicaid;¶
(b) If a client is already enrolled in a Medicare Advantage or Dual Special Needs Plan (D-SNP), the member shall be enrolled into an affiliated CCO if one exists. Otherwise, the client shall be enrolled in a CCO available to the member based on the member's residential address or home geographic region;¶
(c) A full Medicare and Medicaid dually eligible member may request to opt out of enrollment for physical health services from a CCO but is subject to mandatory enrollment into both behavioral and dental services as available in the member's service area. Disenrollment requests are subject to review or delay as deemed appropriate by the Authority when:¶
(A) Access to health care on an FFS basis is not available; or¶
(B) Enrollment preserves continuity of care. In these cases, the member has a condition, treatment, or specialized consideration that requires individual care transition, members may not be disenrolled without review and approval by the Authority. The Authority shall consider the following in its review;¶
(i) The development of a prior-authorized treatment plan;¶
(ii) Care management requirements based on the beneficiary's medical condition;¶
(iii) Transitional care planning including but not limited to hospital admissions/discharges, palliative and hospice care, long-term care and services; and¶
(iv) Need for individual case conferences to ensure a "warm hand-off."¶
(d) The following choices of plans shall be extended to dually eligible Medicare-Medicaid clients or members with full Medicaid as follows:¶
(A) The option to enroll in a CCO regardless of whether they are enrolled in an affiliated Medicare Advantage, enrolled in Medicare Advantage with another entity, or if the member remains in FFS Medicare;¶
(B) The option to enroll in a CCO when enrolled in Medicare Advantage, whether or not they pay their own premium, even if the MCE does not have a corresponding Medicare Advantage plan;¶
(C) The option to enroll with a CCO even if the client withdrew from the CCO's Medicare Advantage plan.¶

(e) The CCO shall accept the client's enrollment if the CCO has adequate health access and capacity;¶
(f) CCO care coordination and communication requirements to reduce duplication of care planning activities in OAR 410-141-3860 and OAR 410-141-3870 are required regardless of the member's choices in Medicare and Medicaid enrollments.¶
(16) The Authority may temporarily exempt clients for other just causes as determined by the Authority through medical review. The Authority may set an exemption period on a case-by-case basis for those as follows:¶
(a) Children under 19 years of age who are medically fragile and who have special health care needs. The Authority may enroll these children in CCOs on a case-by-case basis. Children not enrolled in a CCO shall continue to receive services on a FFS basis;¶
(b) The following apply to clients and exemptions relating to organ transplants:¶
(A) Newly eligible clients are exempt from enrollment with a CCO if the client is newly diagnosed and under the treatment protocol for an organ transplant;¶
(B) Newly eligible clients with existing transplants are not exempt from enrollment unless the Authority determines there are other just causes to preserve the continuity of care.¶
(17) MCE enrollment standards:¶
(a) MCEs shall remain open for enrollment unless the Authority has closed enrollment. Reasons for closing enrollment may include:¶
(A) The MCE has exceeded its enrollment limit or does not have sufficient capacity to provide access to services, as mutually agreed upon by the Authority and the MCE;¶
(B) Closed enrollment as a sanction for MCE misconduct.¶
(b) MCEs shall accept all eligible potential members, regardless of health status at the time of enrollment, subject to the stipulations in contracts/agreements with the Authority to provide covered services;¶
(c) MCEs may confirm the enrollment status of a client by one of the following:¶
(A) The individual's name appears on the monthly or daily enrollment list produced by the Authority;¶
(B) The individual presents a valid medical care identification that shows they are enrolled with the MCE;¶
(C) The Automated Voice Response (AVR) verifies that the individual is currently eligible and enrolled with the MCE;¶
(D) An appropriately authorized staff member of the Authority states that the individual is currently eligible and enrolled with the MCE.¶
(d) MCEs shall have open enrollment for thirty (30) continuous calendar days during each 12-month period of January through December, regardless of the MCE's enrollment limit. The open enrollment periods for consecutive years may not be more than fourteen (14) months apart;¶
(e) OHA may increase a CCO's enrollment capacity as needed in response to unforeseen events or legislative changes impacting the number of eligible members in one or more plan regions;¶
(f) MCEs may request increases to their maximum enrollment capacity for one or more regions when member enrollment meets or exceeds 95 percent of contract maximum, subject to OHA approval.¶
(18) If the Authority permits an MCE to assign its contract to another MCE, members shall be automatically enrolled in the MCE that has assumed the contract:¶
(a) Each member shall have thirty (30) calendar days from the date of notice of enrollment to request disenrollment from the MCE that has assumed the contract;¶
(b) If the MCE that has assumed the contract is a Medicare Advantage plan, those members who are Medicare beneficiaries shall not be automatically enrolled but shall be offered enrollment in the succeeding MCE.¶
(19) If an MCE engages in an activity such as the termination of a participating provider or participating provider group that has significant impact on access in that service area such that the MCE cannot meet the access to care requirements set forth in OAR 410-141-3515 and which necessitates either transferring members to other providers or the MCE withdrawing from part or all of a service area, the MCE shall provide the Authority at least ninety (90) calendar days written notice before the planned effective date of such activity:¶
(a) An MCE may provide less than the required ninety (90) calendar-day notice to the Authority upon approval by the Authority when the MCE must terminate a participating provider or participating provider group due to problems that could compromise member care, or when such a participating provider or participating provider group terminates its contract with the MCE and refuses to provide the required ninety (90) calendar-day notice;¶
(b) The MCE shall provide members with at least a thirty (30) calendar-day notice of such changes. In the event the MCE is not available to provide members with notice of a change in participating providers or MCE, the Authority shall instead notify members of a change in participating providers or MCEs. In such instances the MCE shall provide the Authority with the name, prime number, and address label of the members affected by such changes at least thirty (30) calendar days before the planned effective date of such activity.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, 414.727

AMEND: 410-141-3835

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Incorporate changes reflecting passage of SB 1508 and HB 4002 (Section 5) during 2024 legislative session. Correct error in language.

CHANGES TO RULE:

410-141-3835
MCE Service Authorization
(1) Coverage of services is outlined by MCE contract and Oregon Health Plan (OHP) benefits coverage in OAR 410-120-1210 and OAR 410-120-1160.¶
(2) A member may access urgent and emergency services 24 hours a day, seven (7) days a week without prior authorization.¶
(3) The MCE may not require a member to obtain the approval of a primary care physician to gain access to behavioral assessment and evaluation services. A member may self-refer to assessment, evaluation, and behavioral health services from the Provider Network. Members may obtain primary care services in a behavioral health setting, and behavioral health services in a primary care setting without authorization.¶
(4) A member may access the following outpatient behavioral health services from within the MCE's Provider Network, without Prior Authorization, including but not limited to:¶
(a) "Assertive Community Treatment" as defined in OAR 309-019-0105, "Enhanced Care Services" as defined in OAR 309-019-0105, "Enhanced Care Outreach Services" as defined in OAR 309-019-0105, "Wraparound" as defined in OAR 309-019-0105, "Behavior Supports, Crisis Care" as defined in OAR 309-019-0105, "Respite Care" as defined in OAR 309-019-0105, and "Intensive Outpatient Services and Supports" as defined in OAR 309-019-0165;¶
(b) Behavioral Health Peer Delivered Services as defined in OAR 309-019-0125 from within the MCE's Provider Network;¶
(c) Medication-Assisted Treatment for Substance Use Disorders as defined in OAR 309-019-0105, including opioid and opiate use disorders~~, within the MCE's Provider Network without Prior Authorization of payment during the first thirty (30) days of treatm~~. Prior authorization may only be required:¶
(A) For a medication approved by the United States Food and Drug Administration after January 1, 2024; or¶
(B) For a brand name drug for medication-assisted treatment if a generic equivalent is available to substitute for the prescribed brand name drug. For the purposes of this rule, a different formulation of the medication is not a generic equivalent.¶
(5) Contractors must permit out-of-network IHCPs to refer an MCE-enrolled American Indian/Alaska Native to a network provider for covered services as required by 42 CFR 438.14(b)(6).¶
(6) The MCE shall ensure the services are furnished in an amount, duration, and scope that is no less than the amount, duration, and scope for the same services furnished to beneficiaries under FFS Medicaid and as described in ORS chapter 414 and applicable administrative rules, based on the Prioritized List of Health Services and OAR 410-120-1160, 410-120-1210, and 410-141-3830.¶
(7) MCEs may not arbitrarily deny or reduce the amount, duration, or scope of a required service solely because of diagnosis, type of illness, or condition of the beneficiary.¶
(8) MCEs shall observe required timelines for standard authorizations, expedited authorizations, and specific OHP rule requirements for authorizations for services, including but not limited to residential treatment or substance use disorder treatment services and requirements for advance notice set forth in OAR 410-141-3885. MCEs shall observe required timely access to service timelines as indicated in OAR 410-141-3515.¶
(9) MCEs may place appropriate limits on a service authorization for Covered Services based on Medical Necessity and Medical Appropriateness as defined in OAR 410-120-0000, or for utilization control provided that the MCE:¶
(a) Ensures the services are sufficient in amount, duration, or scope to reasonably achieve the purpose for which the services are furnished;¶
(b) Authorizes the services supporting individuals with ongoing or chronic conditions or those conditions requiring long-term services and supports in a manner that reflects the member's ongoing need for the services and supports;¶
(c) Provides family planning services in a manner that protects and enables the member's freedom to choose the method of family planning to be used consistent with 42 CFR § 441.20 and the member's free choice of provider consistent with 42 USC § 1396a(a)(23)(B) and 42 CFR § 431.51; and¶
(d) Ensures compensation to individuals or entities that conduct utilization management activities is not structured to provide incentives for the individual or entity to deny, limit, delay, or discontinue medically

necessary services to any member.¶
(10) MCEs may not use quality of life in general measures in establishing utilization controls (e.g., prior authorization) or otherwise making benefit determinations per OAR 410-120-1320.¶
(11) Once a member is determined to be eligible for HRSN Services as outlined in OAR 410-120-2000, MCEs may place appropriate limits on a service authorization for HRSN Services or for utilization control provided the MCE:¶
(a)-Ensures the HRSN Services are sufficient in amount, duration, or scope to reasonably achieve the purpose for which the services are furnished; and¶
(b)-Authorizes the HRSN Services supporting individuals with ongoing or chronic conditions or those conditions requiring long-term services and supports in a manner that reflects the member's ongoing need for the services and supports;¶
(c) Ensures compensation to individuals or entities that conduct utilization management activities is not structured to provide incentives for the individual or entity to deny, limit, delay, or discontinue the delivery of HRSN Services to any member who is eligible for those services under OAR 410-120-2000.¶
(11~~1~~2) For authorization of services:¶
(a) Each MCE shall follow the following timeframes for authorization requests other than for drug services:¶
(A) For standard authorization requests for services not previously authorized, provide notice as expeditiously as the member's condition requires and no later than fourteen (14) days following receipt of the request for service with a possible extension of up to Fourteen (14) additional days if the following applies:¶
(i) The member, the member's representative, or provider requests an extension; or¶
(ii) The MCE justifies to the Authority upon request a need for additional information and how the extension is in the member's interest.¶
(B) For ~~notices of adverse benefit determinations that affect services previously authorized, the MCE shall mail the notice at least ten (10) days before the date the adverse benefit determination takes effect:¶~~
~~(i) The MCE shall make an expedited authorization decision and~~expedited authorization decisions:¶
(i) The MCE shall provide notice as expeditiously as the member's health condition requires and no later than 72 hours after receipt of the request for service, which period of time shall be determined by the time and date stamp on the receipt of the request;¶
(ii) The MCE may extend the 72 hour period up to fourteen (14) days if the member requests an extension or if the MCE justifies to the Authority upon request a need for additional information and how the extension is in the member's interest.¶
(b) Prior authorization requests for outpatient drugs, including a practitioner administered drug (PAD), shall be addressed by the MCEs as follows:¶
(A) Respond to requests for prior authorizations for outpatient drugs within 24 hours as described in 42 CFR 438.210(d)(3) and section 1927(d)(5) of the Social Security Act. An initial response shall include:¶
(i) A written, telephonic or electronic communication of approval of the drug as requested to the member, and prescribing practitioner, and when known to the MCE, the pharmacy; or¶
(ii) A written notice of adverse benefit determination of the drug to the member, and telephonic or electronic notice to the prescribing practitioner, and when known to the MCE, the pharmacy if the drug is denied or partially approved; or¶
(iii) A written, telephonic, or electronic request for additional documentation to the prescribing practitioner when the prior authorization request lacks the MCE's standard information collection tools such as prior authorization forms or other documentation necessary to render a decision; or¶
(iv) A written, telephonic, or electronic acknowledgment of receipt of the prior authorization request that gives an expected timeframe for a decision. An initial response indicating only acceptance of a request shall not delay a decision to approve or deny the drug within 72 hours.¶
(B) The 72 hour window for a coverage decision begins with the initial date and time stamp of a prior authorization request for a drug;¶
(C) If the response is a request for additional documentation, the MCE shall identify and notify the prescribing practitioner of the documentation required to make a coverage decision and comply within the following timeframes:¶
(i) Upon receiving the MCE's completed prior authorization forms and required documentation, the MCE shall issue a decision as expeditiously as the member's health requires, but no later than 72 hours from the date and time stamp of the initial request for prior authorization as follows:¶
(I) If the drug is approved as requested, the MCE shall notify the member in writing and prescribing practitioner, and when known to the MCE, the pharmacy, telephonically, or electronically; or¶
(II) If the drug is denied or partially approved, the MCE shall issue a written notice of adverse benefit determination to the member, and telephonic or electronic notice to the prescribing practitioner, and when known to the MCE, the pharmacy.¶

(ii) If the requested additional documentation is not received within 72 hours from the date and time stamp of the initial request for prior authorization, the MCE shall issue a written notice of adverse benefit determination to the member, and telephonic or electronic notice to the prescribing practitioner, and when known to the MCE, the pharmacy.¶
(D) The MCE shall provide approved services as expeditiously as the member's health condition requires;¶
(E) If an emergency situation justifies the immediate medical need for the drug during this review process, an emergency supply of 72 hours or longer shall be made available until the MCE makes a coverage decision.¶
(c) For members with special health care needs as determined through an assessment requiring a course of treatment or regular care monitoring, each MCE shall have a mechanism in place to allow members to directly access a specialist (for example, through a standing referral or an approved number of visits) as appropriate for the member's condition and identified needs;¶
(d) Any service authorization decision not reached within the timeframes specified in this rule shall constitute a denial and becomes an adverse benefit determination. A notice of adverse benefit determination shall be issued on the date the timeframe expires;¶
(e) MCEs shall give the member written notice of any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested or when reducing a previously authorized service authorization. The notice shall meet the requirements of CFR § 438.404 and OAR 410-141-3885;¶
(f) The MCE and its subcontractors shall have and follow written policies and procedures to ensure consistent application of review criteria for service authorization requests including the following:¶
(A) For medical, behavioral, or oral health Covered Services:¶
(i) The MCE shall consult with the requesting provider for medical, behavioral, or oral health services when necessary:¶
(I) Requesting all the appropriate information to support decision making as early in the review process as possible; and¶
(II) Adding documentation in the authorization file on outreach methods and dates when additional information was requested from the requesting provider.¶
(ii) Decisions shall be made by an individual who has clinical expertise in addressing the member's medical, behavioral, or oral health needs or in consultation with a health care professional with clinical expertise in treating the member's condition or disease. This applies to decisions to:¶
(I) Deny a service authorization request;¶
(II) Reduce a previously authorized service request; or¶
(III) Authorize a service in an amount, duration, or scope that is less than requested.¶
(B) For HRSN Services, the MCE shall comply with OAR 410-120-2000.¶
(C) MCEs shall have written policies and procedures for processing prior authorization requests received from any provider. The policies and procedures shall specify timeframes for the following:¶
(i) Date and time stamping prior authorization requests when received;¶
(ii) Determining within a specific number of days from receipt whether a prior authorization request is valid or non-valid;¶
(iii) The specific number of days allowed for follow-up on pended prior authorization requests to obtain additional information;¶
(iv) The specific number of days following receipt of the additional information that an approval or denial shall be issued;¶
(v) Providing services after office hours and on weekends that require prior authorization.¶
(D) An MCE shall make a determination on at least 95 percent of valid prior authorization requests within two (2) working days of receipt of a prior authorization or reauthorization request related to:¶
(i) Drugs;¶
(ii) Alcohol;¶
(iii) Drug services; or¶
(iv) Care required while in a skilled nursing facility.¶
(g) MCEs shall notify providers of an approval, a denial, or the need for further information for all other prior authorization requests within fourteen (14) days of receipt of the request as set forth in OAR 410-141-3885 unless otherwise specified in OHP program rules:¶
(A) MCEs shall make three reasonable attempts using two methods to obtain the necessary information during the fourteen (14) day period;¶
(B) If the MCE needs to extend the timeframe, the MCE shall give the member written notice of the reason for the extension;¶
(C) The MCE shall make a determination as the member's health or mental health condition requires, but no later than the expiration of the extension.¶

(12~~2~~3) Report to the Authority annually requests for prior authorization. The report shall include:¶
(a) The number of requests received;¶
(b) The number of requests that were initially denied and the reasons for the denials, including, but not limited to, lack of medical necessity or failure to provide additional clinical information requested by the insurer;¶
(c) The number of requests that were initially approved; and¶
(d) The number of denials that were reversed by internal appeals or external reviews.
Statutory/Other Authority: ORS 413.042, ORS 414.065, 414.651, 414.615, 414.625, 414.635
Statutes/Other Implemented: ORS 414.065, ORS 414.610-414.685

AMEND: 410-141-3885

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Add that a member's representative can request that a member have benefits continue pending the resolution of the appeal or contested case hearing. Include a member representative be copied on service denial notices.

CHANGES TO RULE:

410-141-3885
Grievances & Appeals: Notice of Action/Adverse Benefit Determination
(1) When a Managed Care Entity (-MCE) has made an adverse benefit determination, the MCE shall give the requesting provider, the Member and the member's representative a written Notice of Adverse Benefit Determination (NOABD). The notice shall:¶
(a) Comply with the Authority's formatting and readability standards in OAR 410-141-3585 and 42 CFR 438.10 and be written in plain language sufficiently clear that a layperson could understand the notice and make an informed decision about appealing and following the process for requesting an appeal;¶
(b) For timing of notices, follow timelines required for the specific service authorization or type via oral and written mechanisms for any service request of the member or the member's provider outlined in OAR 410-141-3835 MCE Service Authorization or otherwise specified in this rule.¶
(2) The following are notice requirements for preservice denials:¶
(a) Meet the content notice requirements specified in 42 CFR 438.404 and in the MCE contract, including the following information:¶
(A) MCE contact information and subcontractor contact information including name, address, and telephone number, if applicable, included in the ABD notice excluding any cover pages;¶
(B) Date of the notice;¶
(C) Name of the member's Primary Care Practitioner (PCP), Primary Care Dentist (PCD), or Behavioral Health (BH) professional if the member has an assigned practitioner or the most specific information available if a member is not assigned to a practitioner due to the clinic/facility model. If the member has not been assigned a practitioner because they enrolled in the MCE within the last ninety (90) days, the NOABD shall state PCP, PCD, BH provider assignment has not occurred;¶
(D) Member's name, date of birth, address, and OHP member ID number;¶
(E) Service requested and the adverse benefit determination the MCE intends to make, including whether the MCE is denying, (in whole or part) terminating, suspending, or reducing a service;¶
(F) Date service was requested by the provider or member;¶
(G) Name of the provider who requested the service;¶
(H) Effective date of the adverse benefit determination if different from the date of the notice;¶
(I) Diagnosis and procedure codes submitted with the authorization request including a description of all codes in plain language. For services that do not include a procedure code a description of the requested service;¶
(J) Whether the MCE considered other conditions such as co-morbidity factors if the condition was below the funding line on the Prioritized List of Health Services pursuant to OAR 410-141-3820 and 410-141-3830;¶
(K) Clear and thorough explanation of the specific reasons for the adverse benefit determination. If the service has been denied as the provider did not submit the supporting documentation include a statement in the NOABD that before denying the requested service attempts by the MCE have been made to obtain the documentation from the provider;¶
(L) A reference to the specific statutes and administrative rules to the highest level of specificity for each reason and specific circumstance identified in the NOABD;¶
(M) The Member, member representative or, the provider with the member's written consent as required under OAR 410-141-3890(1), may file a written or oral appeal of the MCE's adverse benefit determination with the MCE within sixty (60) days from the date of the NOABD, including information on exhausting the MCE's one level of appeal, and the procedures to exercise that right;¶
(N) The Member, member representative or the provider with the member's written consent has the right to request a contested case hearing either orally or in writing with the Authority 120 days from the date of the MCE's Notice of Appeal Resolution or where the MCE failed to meet appeal timelines (standard appeal sixteen (16) days to review and resolve appeal from date of receipt with a possible fourteen (14) day extension OAR 410-141-3890, expedited appeal 72 hours to review and resolve appeal from date of receipt with a possible fourteen (14) day extension OAR 410-141-3895), and the procedures to exercise that right;¶
(O) The circumstances under which an appeal process or contested case hearing can be expedited and how the Member, member representative or the member's provider may request it. If the MCE denies a request for an expedited appeal, it shall be transferred to the standard appeal resolution timeframes;¶

(P) The member's right to have benefits continue pending resolution of the appeal or contested case hearing~~,~~ and that continued benefits can be requested by the Member~~,~~ or member's representative ~~or the provider with the member's written consent orally or in writing, t~~. The timeframes to request that benefits be continued ~~as described in OAR 410-141-3910~~ and the circumstances under which the member may be required to pay the cost of these services~~;~~ as described in OAR 410-141-3910 ;¶
(Q) The member's right to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the member's adverse benefit determination including any processes, strategies, or evidentiary standards used by the MCE in setting coverage limits or making the adverse benefit determination;¶
(R) Information on requesting help and who to contact;~~-~~¶
(S) To support their appeal, the member's right to give information and testimony in person or in writing, and make legal and factual arguments in person or in writing within the appeal timelines; and¶
(T) Inclusion of the names of providers ~~or~~, clinics or member's representative copied on the notice;¶
(b) Use an Authority approved NOABD notice form unless the member is a dually eligible member of affiliated Medicare and Medicaid plans, in which case the CMS Integrated Denial Notice may be used as long as it incorporates required information fields in the NOABD.¶
(3) The following are notice requirements for post service denials:¶
(a) Meet the content notice requirements specified in 42 CFR 438.404 and in the MCE contract, including the following information:¶
(A) MCE contact information including name, address, and telephone number and subcontractor contact information, if applicable, included in the NOABD excluding any cover pages;¶
(B) Date of the notice;¶
(C) Name of the member's Primary Care Practitioner (PCP), Primary Care Dentist (PCD), or Behavioral Health (BH) professional if the member has an assigned practitioner or the most specific information available if a member is not assigned to a practitioner due to the clinic/facility model. If the member has not been assigned a practitioner because they enrolled in the MCE within the last ninety (90) days, the NOABD shall state PCP, PCD, BH provider assignment has not occurred;¶
(D) Member's name, D.O.B, address, and OHP member ID number;¶
(E) Service previously provided in plain language and the adverse benefit determination the MCE made;¶
(F) Date the service was provided;¶
(G) Name of the provider who provided the service;¶
(H) Effective date (date claim denied) of the adverse benefit determination if different from the date of the notice;¶
(I) Diagnosis and procedure codes submitted on the claim including a description of all codes in plain language. For services that do not include a procedure code a description of the service provided in plain language;¶
(J) Whether the MCE considered other conditions such as co-morbidity factors if the condition was below the funding line on the Prioritized List of Health Services and other services pursuant to OAR 410-141-3820 and 410-141-3830. NOABD shall clearly indicate whether a medical review was performed and if not that the provider can resubmit claim with chart notes for review of comorbidity;¶
(K) Clear and thorough explanation of the specific reasons for the adverse benefit determination. If the service has been denied as the provider did not submit the supporting documentation include a statement in the NOABD that before denying the requested service attempts by the MCE have been made to obtain the documentation from the provider;¶
(L) A reference to the specific statutes and administrative rules to the highest level of specificity for each reason and specific circumstance identified in the ABD notice;¶
(M) The Member, member representative or, the provider with the member's written consent as required under OAR 410-141-3890(1), may file a written or oral appeal of the MCE's adverse benefit determination with the MCE within 60 days from the date of the NOABD, including information on exhausting the MCE's one level of appeal, and the procedures to exercise that right;~~-~~¶
(N) The Member, member representative or the provider with the member's written consent has the right to request a contested case hearing either orally or in writing with the Authority 120 days from the date of the MCE's Notice of Appeal Resolution or where the MCE failed to meet appeal timelines (standard appeal 16 days to review and resolve appeal from date of receipt with a possible fourteen (14) day extension 410-141-3890, expedited appeal seventy two (72) hours to review and resolve appeal from date of receipt with a possible 14 day extension 410-141-3895) and the procedures to exercise that right;¶
(O) An explanation to the member that there are circumstances under which an appeal process or contested case hearing can be expedited and how the Member, member representative or the member's provider may request it, but that an expedited appeal and hearing shall not be granted for post-service denials as the service has already been provided;¶

(P) The member's right to have benefits continue pending resolution of the appeal or contested case hearing, and that continued benefits can be requested by the mMember, or member's representative or the provider with the member's written consent orally or in writing, t. The timeframes to request that benefits be continued as described in OAR 410-141-3910 and the circumstances under which the member may be required to pay the cost of these services as described in OAR 410-141-3910 ;¶
(Q) The member's right to be provided upon request and free of charge, reasonable access to and copies of all documents, records, and other information relevant to the member's adverse benefit determination including any processes, strategies, or evidentiary standards used by the MCE in setting coverage limits or making the adverse benefit determination; and¶
(R) A statement that the provider cannot bill the member for a service rendered unless the member signed an OHP Agreement to Pay form (OHP 3165 or 3166);¶
(S) To support their appeal, the member's right to give information and testimony in person or in writing, and make legal and factual arguments in person or in writing within the appeal timelines;¶
(T) Information on requesting help and who to contact; and¶
(U) Inclusion of the names of providers or, clinics or member's representative copied on the notice.¶
(b) Use an Authority approved form unless the member is a dually eligible member of affiliated Medicare and Medicaid plans, in which case the CMS Integrated Denial Notice may be used as long as it incorporates required information fields in the NOABD.¶
(4) The MCE shall provide a copy of the following when an NOABD is issued:¶
(a) Request to Review a Health Care Decision Appeal and Hearing Request form (OHP 3302) or approved facsimile;¶
(b) Non-Discrimination Policy.¶
(5) For requirements of NOABD that affect services previously authorized, the MCE shall mail the notice at least ten (10) days before the date the adverse benefit determination reduction, termination, or suspension takes effect, as referenced in 42 CFR 431.211.¶
(6) In 42 CFR 431.213 and 431.214, exceptions related to advance notice include the following:¶
(a) The MCE may mail the notice no later than the date of adverse benefit determination if:¶
(A) The MCE has factual information confirming the death of the member;¶
(B) The MCE receives notice that the services requested by the member are no longer desired or the MCE is provided with information that requires termination or reduction in services:¶
(i) All notices sent to a member under this section shall be in writing, clearly indicate the member understands that the services previously requested shall be terminated or reduced as a result of the notice and signed by the member;¶
(ii) All notices sent by the MCE under this section shall be in writing and shall include a clear statement that advises the member what information was received and that such information required the termination or reduction in the services the member requested.¶
(C) The MCE may verify that the member has been admitted to an institution where the member is no longer eligible for OHP services from the MCE;¶
(D) The MCE is unaware of the member's location and the MCE receives returned mail directed to the member from the post office indicating no forwarding address and the Authority or Department has no other address;¶
(E) The MCE verifies another state, territory, or commonwealth accepted the member for Medicaid services; or¶
(F) The member's PCP, PCD, or behavioral health professional prescribed a change in the level of health services.¶
(b) The MCE must mail the notice five days before the adverse benefit determination when the MCE has:¶
(A) Facts indicating that an adverse benefit determination may be taken because of probable fraud on part of the member; and¶
(B) Verified those facts, whenever possible, through secondary resources.¶
(c) For denial of payment, the adverse benefit determination shall be mailed at the time of any adverse benefit determination that affects the claim.¶
(7) Within sixty (60) days from the date on the notice: The member or provider may file an appeal; the member may request a Contested Case Hearing with the Authority after receiving notice that the MCE's adverse benefit determination is upheld; or if the MCE fails to adhere to the notice and timing requirements in 42 CFR 483.408, the Authority may consider the MCE appeals process exhausted.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, 414.727

AMEND: 410-141-3890

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Add that the member be told what benefits they may now access that were previously denied and how to access them.

CHANGES TO RULE:

410-141-3890
Grievances & Appeals: Appeal Process
(1) A member, member representative, or provider with the member's written consent, may file an oral or written appeal with the Managed Care Entity (MCE) to:¶
(a) Express disagreement with an adverse benefit determination; or¶
(b) Oral appeals timeframes shall begin when there is established contact made between the member and an MCE representative. If the member leaves a voice mail message with the MCE indicating that they wish to appeal a denial the MCE shall make reasonable efforts (multiple calls at different times of day) to reach the member by phone to get the details of the service they wish to appeal. The MCE shall document each attempt to reach the member (date(s) and time(s)) by phone and make note of the date they establish contact with the member and are able to attain the appeal information needed to process the appeal.¶
(2) Each MCE may have only one level of appeal for members, and members shall complete the appeals process with the MCE prior to requesting a contested case hearing.¶
(3) For standard resolution of an appeal and notice to the affected parties, the MCE shall establish a timeframe that is no longer than 16 days from the day the MCE receives the appeal:¶
(a) If an MCE fails to adhere to the notice and timing requirements in 42 CFR § 438.408, the member is considered to have exhausted the MCE's appeals process. In this case, the member may initiate a contested case hearing;¶
(b) The MCE may extend the timeframes from section (3) of this rule by up to 14 days if:¶
(A) The member requests the extension; or¶
(B) The MCE shows to the satisfaction of the Authority upon its request that there is need for additional information and how the delay is in the member's interest.¶
(c) If the MCE extends the timeframes but not at the request of the member, the MCE shall:¶
(A) Make reasonable efforts (including as necessary multiple calls at different times of day) to give the member prompt oral notice of the delay;¶
(B) Within two (2) days, give the member written notice of the reason for the decision to extend the timeframe and inform the member of the right to file a grievance if the member disagrees with that decision;¶
(C) Resolve the appeal as expeditiously as the member's health condition requires and no later than the date the extension expires.¶
(4) For expedited resolution of an appeal please see OAR 410-141-3895. A request for an expedited appeal for a service that has already been provided to the member (post-service) shall not be granted. The MCE shall transfer the appeal to the timeframe for standard resolution as set forth above section (3) of this rule.¶
(5) For purposes of this rule, an appeal includes a request from the Authority to the MCE for review of a notice.¶
(6) A member or the provider on the member's behalf may request an appeal either orally or in writing directly to the MCE for any notice or failure to act within the timeframes provided in 42 CFR §438.408 (a) regarding the standard resolution of appeals by the MCE:¶
(a) The MCE shall ensure oral requests for appeal of a notice are treated as appeals to establish the earliest possible filing date;¶
(b) The member shall file the appeal with the MCE no later than 60 days from the date on the notice.¶
(7) Parties to the appeal include, as applicable:¶
(a) The member and their representative; or¶
(b) The legal representative of a deceased Member's estate.¶
(8) The MCE shall resolve each standard appeal in time period defined above in section (4) of this rule. The MCE shall provide the member with a notice of appeal resolution as expeditiously as the member's health condition requires, or within 72 hours for matters that meet the requirements for expedited appeals in OAR 410-141-3895.¶
(9) If the MCE or the Administrative Law Judge reverses a decision to deny, limit, or delay services that were not furnished while the appeal was pending, the MCE shall authorize or provide the disputed services promptly and as expeditiously as the member's health condition requires but no later than 72 hours from the date it receives notice reversing the determination. The MCE must take the following steps:¶
(a) notify the Member, the member's representative (if applicable) both orally and in writing and the member's provider in writing of the available services and how to access them;¶

(b) Enter the prior authorization into the system or adjust the encounter data claim representing the service.¶
(10) If the MCE or the Administrative Law Judge reverses a decision to deny authorization of services, and the member received the disputed services while the appeal was pending, the MCE or the State shall pay for those services in accordance with the Authority policy and regulations.¶
(11) The written notice of appeal resolution shall be in a format approved by the Authority. The notice shall contain, as appropriate, the same elements as the notice of adverse benefit determination, as specified in OAR 410-141-3885, in addition to:¶
(a) The date the member filed the appeal with the MCE;¶
(b) The results of the resolution process and the date the MCE completed the resolution;-¶
(c) Effective date of the appeal decision;¶
(d) For appeals resolved partially or wholly in favor of the member, an explanation that the member may now access those benefits that were denied and how to do so; and¶
(~~d~~e) For appeals not resolved wholly in favor of the member:¶
(A) Reasons for the resolution and a reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Appeal Resolution relied upon to deny the appeal;¶
(B) The right to request a contested hearing or expedited hearing with the Authority and how to do so;¶
(C) The right to request to continue receiving benefits while the hearing is pending and how to do so; and¶
(D) An explanation that the member may be held liable for the cost of those benefits if the hearing decision upholds the MCE's adverse benefit determination;¶
(E) Copies of the appropriate forms: Request to Review a Health Care Decision Appeal and Hearing Request form (OHP 3302) or approved facsimile.¶
(~~e~~f) For appeals resolved partially or wholly in favor of the member an explanation that the member may now access those benefits that were denied and how to do so.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, 414.727

AMEND: 410-141-3915

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Add Notices of Adverse Benefit Determinations and prior authorizations to the recordkeeping requirements in addition to the grievances and appeals documents.

CHANGES TO RULE:

410-141-3915
Grievances & Appeals: System Recordkeeping
(1) Each MCE shall maintain records of grievances ~~and,~~ appeals, Notices of Adverse Benefit Determinations (NOABDs) and prior authorizations and shall review the information as part of its ongoing monitoring procedures, as well as for updates and revisions to the state quality strategy as stated in 42 CFR 438.416 and in alignment with contractual requirements.¶
(2) Consistent with record retention requirements in OAR 410-141-3520, MCE's must maintain yearly logs of all appeals ~~and,~~ grievances, NOABDs and prior authorizations for 10 years, which must include information about the reasons for each grievance ~~or appe~~, appeal, NOABD and prior authorization denial, as well as the resolution and supporting reasoning.¶
(3) The MCE must review the log monthly for completeness, accuracy, and compliance with required procedures.¶
(4) MCE's shall submit for the Authority's review the Grievance and Appeals Log, samples of N~~otices of Adverse Benefit Determin~~OABDs, prior authorization documentation~~,~~ and other reports as required under the MCE contract.¶
(5) The Grievance System Report and Grievance and Appeals Log shall be forwarded to the MCE's Quality Improvement committee to comply with the Quality Improvement standards as follows:¶
(a) Review of completeness, accuracy, and timeliness of documentation;¶
(b) Compliance with written procedures for receipt, disposition, and documentation; and¶
(c) Compliance with applicable OHP rules.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, 414.727

AMEND: 410-141-3960

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Remove reference to outdated rule language.

CHANGES TO RULE:

410-141-3960
Transportation: Member Reimbursed Mileage, Meals, and Lodging
(1) A Coordinated Care Organization (CCO) may prior authorize a member's mileage, meals, and lodging to covered medical service in order for the member to qualify for reimbursement.¶
(2) A CCO may disallow a client reimbursement request received more than 45 days after the travel.¶
(3) A CCO shall reimburse a member for mileage, meals, and lodging at rates not less than the Authority's allowable rates. The Oregon Health Plan (OHP) fee schedule is available on the Oregon Health Authorities (Authority's) website.¶
(4) The member must return any documentation a CCO requires before receiving reimbursement.¶
(5) A member must be reimbursed within fourteen (14) days after verifying the member's attendance of the appointment after the CCO receiving the reimbursement request.¶
(a) A CCO may hold reimbursements under the amount of $10 until the member's reimbursement reaches $10; or¶
(b) A CCO must issue the member a Notice of Adverse Benefit Determination, in accordance with requirements in OAR 410-141-3885, within fourteen (14) days if the member reimbursement is denied for any reason. If the member reimbursement request is incomplete the CCO shall take an additional fourteen (14) days to assist the member in completing the submission.¶
(6) A CCO shall reimburse members for meals when a member travels:¶
(a) ~~Out of their local area as outlined in OAR 410-141-3515;¶~~
~~(b)~~ For a minimum of four (4) hours round-trip; or¶
(~~c~~b) The travel must span the following meal times:¶
(A) For a breakfast allowance, the travel must begin before 6:00 a.m.;¶
(B) For a lunch allowance, the travel must span the entire period from 11:30 a.m. through 1:30 p.m.; and¶
(C) For a dinner allowance, the travel must end after 6:30 p.m.¶
(7) A CCO's brokerage or other transportation subcontractor shall reimburse members for lodging when:¶
(a) A member would otherwise be required to begin travel before 5:00 a.m. in order to reach a scheduled appointment; or¶
(b) Travel from a scheduled appointment would end after 9:00 p.m.; or¶
(c) The member's health care provider documents a medical need.¶
(8) A CCO may reimburse members for lodging under additional circumstances at the CCO's discretion.¶
(9) A CCO shall reimburse for meals or lodging for one attendant, which may be a parent, to accompany the member if medically necessary, if:¶
(a) The member is a minor child and unable to travel without an attendant;¶
(b) The member's attending physician provides a signed statement indicating the reason an attendant must travel with the member;¶
(c) The member is mentally or physically unable to reach their medical appointment without assistance; or¶
(d) The member is or would be unable to return home without assistance after the treatment or service.¶
(10) A CCO may reimburse members for meals or lodging for additional attendants or under additional circumstances at the CCO's discretion.¶
(11) A CCO may recover overpayments made to a member. Overpayments occur when a CCO's brokerage or other transportation subcontractor paid the member:¶
(a) For mileage, meals, and lodging, and another resource also paid:¶
(A) The member; or¶
(B) The ride, meal, or lodging provider directly.¶
(b) Directly to travel to medical appointments, and the member did not use the money for that purpose, did not attend the appointment, or shared the ride with another member whom the brokerage also paid directly;¶
(c) For common carrier or public transportation tickets or passes, and the member sold or otherwise transferred the tickets or passes to another individual.¶
(12) If an individual or entity other than the member or the minor member's parent or guardian provides the ride, a CCO's brokerage or other transportation subcontractor may reimburse the individual or entity that provided the ride.
Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 413.042

AMEND: 410-141-5000

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify defined terms. Fix incorrect cross-references. Clarify references to NAIC forms and documents. Update statutory references.

CHANGES TO RULE:

410-141-5000
FINANCIAL SOLVENCY REGULATION: Definitions
When used and not otherwise defined in OAR 410-141-5005 through OAR-141-5380, the following terms shall have the meaning given in this section:¶
(1) "AICPA" means the American Institute of Certified Public Accountants.¶
(2) ~~"Applicable Law" means,¶~~
~~(a) S.B. 1041;¶~~
~~(b) OAR 410-141-5000 to OAR-141-5380 and;¶~~
~~(c) Any other state or federal laws, rules, regulations or regulatory guidance applicable to the operations of CCOs in this state.¶~~
~~(3)~~ "Assumption Reinsurance Agreement" means a contract that:¶
(a) Transfers obligations or risks of existing or in-force Member Contracts from a cedent CCO to a reinsurer that acquires the obligations or risks from the cedent; and¶
(b) Is intended to affect a novation of the transferred Member Contracts with the result that the reinsurer becomes directly liable to the Members of the ~~transferor and the transferor~~cedent CCO and the cedent CCO's contract obligations to the Members are extinguished.¶
(~~4~~3) "Board" means the board of directors or other equivalent governing body of a company that is vested by the company's organizational document(s) with responsibility and authority for the governance and overall management of the affairs of the company, irrespective of the name by which the governing body or the members of that governing body are designated, except that:¶
(a) An individual or a group of individuals is not the board of directors because of powers delegated to the individual or group by provisions in the articles of incorporation or other equivalent organizational documents authorizing the individual or group to exercise some or all of the powers which would otherwise be exercised by a board; and¶
(b) A coordinated care organization may have a governing body as required by ORS 414.~~625~~572 (2)(o) that is not the board of the CCO entity.¶
(~~5~~4) "Capitated Subcontractor" means a third-party provider that enters into a Sub-capitation Arrangement with a CCO for any portion of the health care services covered by the CCO's agreement with the Authority.¶
(5) "CCO Contract" means the CCO's agreement to provide managed health care services to a Member pursuant to the CCO's contract with the Authority.¶
(6) "CGAD Report" means the corporate governance annual disclosure report described at OAR 410-141-5045.¶
(7) "DCBS" means the Department of Consumer and Business Services.¶
(8) "Delinquency proceeding" means any proceeding commenced against a CCO for the purpose of liquidating, rehabilitating or conserving the CCO.¶
(9) "Director" means, as the context requires;¶
(a) A member of the board of directors or other equivalent governing body of a company that is vested by the company's organizational document(s) with the responsibility and authority for the governance and overall management of the affairs of the company; or¶
(b) The Director of the Authority.¶
(10) "Impaired" with respect to a CCO means that the CCO's allowed assets do not exceed its liabilities ~~and~~plus its required capitalization.¶
(11) "Loss Protection Program" means a program or set of arrangements a CCO maintain~~ed by a CCO that collectively are designed and operate~~s that are designed to protect the CCO against catastrophic and unexpected loss or expenses related to capitated services the CCO is obligated to provide to its Members.¶
(12) "Member" means an individual covered by, and entitled to, managed health care services under~~,~~ a CCO's contract with the Authority.¶
(13) ~~"Member Contract" means the CCO's agreement to provide managed health care services to a Member pursuant to the CCO's contract with the Authority.¶~~
~~(14)~~ "NAIC" means the National Association of Insurance Commissioners.¶
(1~~5~~4) "NAIC Forms and Instructions" means the ~~current~~ financial statement blanks, forms and instructions for health insurers as published and as revised by the NAIC from time to time and identified by the Authority to be

applicable for the reporting period. The applicable NAIC Forms and Instructions prescribed by the Director referred to in this rule are available for inspection at the office of the Authority. Any person interested in inspecting the NAIC Forms and Instructions may contact the Authority at actuarial.services@dhsoha.state.or.us.¶
(16 5) "Qualified United States Financial Institution" means an institution that:¶
(a) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, is licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and¶
(b) Is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.¶
(17 6) "Political subdivision" means, consistent with ORS 192.005, any city, county, district or any other municipal or public corporation in the State of Oregon.¶
(18 7) "Primary Reserve" means the primary Restricted Reserve Fund required by OAR 410-141-52 185.¶
(19 8) "Receiver" means a receiver, rehabilitator, liquidator or conservator, as the cCCO Contract may require.¶
(20 19) "Restricted Reserve Account" means the reserve account required by OAR 410-141-52 185.¶
(21 0) "Restricted Reserve Funds" means the funds required to be deposited and maintained in the Restricted Reserve Account under OAR 410-141-52 185.¶
(22 1) "Restricted Reserve" means the Restricted Reserve Account, the Primary Reserve, the Secondary Reserve and the Restricted Reserve Funds required by OAR 410-141-52 185.¶
(23 2) "Secondary Reserve" means the secondary Restricted Reserve Fund required by OAR 410-141-52 185.¶
(24) "S.B. 1041" means 2019 Oregon Laws Ch. 478 (Enrolled S.B. 1041), as approved and enacted on June 20, 2019.¶
(25 3) "Statutory Accounting Principles" means generally accepted statutory accounting principles for health insurers as prescribed, adopted or otherwise approved by DCBS for the financial and solvency regulation of health insurers under Oregon law, as supplemented by generally accepted statutory accounting principles prescribed, adopted or otherwise approved by the NAIC, including without limitation, those accounting practices, principles and procedures set forth in the NAIC's Accounting Practices and Procedures Manual.¶
(26 4) "Sub-Capitated Arrangement" means a contract or other arrangement between the CCO and a Sub-Capitated Counterparty under which the Sub-Capitated Counterparty agrees to provide, as subcontractor to the CCO, certain of the health care services required of the CCO under its agreement with the AuthorityCCO Contract in return for a fixed capitation payment, the effect of which is to transfer claim frequency and utilization risk to the third-party provider.¶
(27 5) "Sub-Capitated Counterparty" means the third-party provider under a Sub-Capitated Arrangement with a CCO.¶
(28 6) "SVO" means the Securities Valuation Office of the NAIC.
Statutory/Other Authority: ORS 413.042, 414.615572, 414.625, 414.635591, 414.6051
Statutes/Other Implemented: ORS 414.610 - 414.685570-414.686, ORS 415.001-415.430

AMEND: 410-141-5005

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Update statutory references.

CHANGES TO RULE:

410-141-5005
FINANCIAL SOLVENCY REGULATION: CCO Financial Solvency Requirements
(1) A CCO shall assume the risk for providing capitated services under ~~its agreements with the Authority.~~ the CCO Contract.¶
(2) Each CCO must demonstrate that it is able to provide coordinated care services efficiently, effectively, and economically. CCOs shall maintain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports as provided in these rules.¶
(3) A CCO shall comply with ~~the~~all applicable laws relating to solvency requirements of ~~Division 141 of Chapter 410 and as specified in the CCO's agreements with the Authority~~CCOs and the terms of the Contract. Solvency requirements shall include the following components:¶
(a) Maintenance of Restricted Reserve Funds as required by OAR 410-141-52~~2~~185 ~~and by the CCO's agreements with the Authority~~;¶
(b) Protection against catastrophic and unexpected loss or expenses related to capitated services for a CCOs Loss Protection Program~~.~~; A CCO's Loss Protection Program:¶
(A) May include stop loss insurance coverage, reinsurance or such other alternative protection(s) as may be approved by the Authority, and¶
(B) Shall be subject to the Authority's review and approval.¶
(c) Any material change to a CCO's Loss Protection Program shall be submitted to the Authority in writing and shall be subject to the Authority's review and approval;¶
(d) Maintenance of professional liability coverage of not less than $1,000,000 per person per incident and not less than $1,000,000 in the aggregate either through binder issued by an insurance carrier or by self-insurance with proof of same acceptable to the Authority; and¶
(e) Management systems, practices and procedures that capture, compile, and evaluate information and data concerning financial operations. Such systems shall include, without limitation, the following features and functionalities:¶
(A) Determination of future budget requirements for the next three quarters.¶
(B) Determination of incurred but not reported expenses.¶
(C) Tracking additions and deletions of Members and accounting for capitation payments.¶
(D) Tracking claims payment.¶
(E) Tracking all monies collected from third party resources on behalf of Members.¶
(F) Documentation of, and reports on the use of, incentive payment mechanisms, risk-sharing, and risk-pooling, as applicable.
Statutory/Other Authority: ORS 41~~4.615, 414.625~~3.042, 414.~~635~~572, 414.~~6~~591, ~~ORS 413.042~~414.605
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5010

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Update statutory references.

CHANGES TO RULE:

410-141-5010
FINANCIAL SOLVENCY REGULATION: Procedure for General Financial Reporting and for Determining Financial Solvency Matters
(1) The Authority shall determine financial solvency of a CCO in accordance with OAR 410-141-5010405 through OAR 410-141-5469, and the terms of the CCO cContract. ~~In implementing OAR 410-141-5010 to OAR 410-141-5469, the Authority may enter into a cooperative agreement with the DCBS to carry out these provisions. For purposes of obtaining necessary information to determin~~¶
(2) The Authority shall collaborate with DCBS to review CCO financial reports and evaluate financial solvency~~,~~ an~~y reference to the Authority in these rules shall include DCBS when DCBS is workingd may enter into a~~ cooperative~~ly with the Authority to implemen~~ agreement with the DCBS to carry out the~~se~~ provisions~~. However, o~~ of OAR 410-141-5005 to OAR 410-141-5469. Only the Authority may take enforcement action or other regulatory sanctions related to ~~the implementat~~OAR 410-141-5005 to OAR 410-141-5380 and the CCO Contract.¶
(3) When DCBS is working cooperatively with the Authority to carry out the provisions of OAR 410-141-5010405 to OAR 410-141-5380~~and the CCO contract.~~: ¶
(a) Any reference to the Authority in these rules shall include DCBS; ¶
(~~2~~b) Where these rules specify that the Authority may request or receive information or provide a response or take any action, DCBS may act on behalf of the Authority~~. A response to DCBS under these rules~~; ¶
(c) CCOs are not required to file financial reports with both the Authority and DCBS except as may otherwise be provided in the CCO Contract;¶
(d) A response to DCBS shall be considered a response to the Authority ~~on the matter~~, consistent with the objective of providing a single point of reporting by CCOs.¶
(~~3~~4) ~~The Authority shall collaborate with DCBS to review CCO financial reports and evaluate financial solvency. CCOs are not required to file financial reports with both the Authority and DCBS except as may otherwise be provided in the CCO contract.~~¶
~~(4)~~CCO Contract Applicants. Applicants for a CCO cContract shall submit all required information to the Authority as part of the application process, and the Authority shall transmit certain information to DCBS, as necessary, for its review. In making its determination about the qualifications of the applicant, the Authority shall consult with DCBS about the financial materials and reports submitted with the application.¶
(5) ~~For purposes of these financial reporting and solvency rules, DCBS is authorized to make recommendations to the Authority and to act in conjunction with the Authority in accordance with these rules. If quarterly reports or other evidence suggest that a CCO's financial solvency is in jeopardy, the Authority shall act as necessary to protect the public interest.~~¶
~~(6) The Authority may address inquiries to~~The Authority may address inquiries to or request additional information or clarification from a CCO or its officers in relation to the activities or condition of the CCO or any other matter connected with its transactions. ¶
(a) All such persons shall promptly and truthfully reply to the inquiries using the form of communication requ~~esti~~red by the Authority~~. The reply shall be timely, accurate, and complete and, if the Authority~~ and, if the Authority requires, verified by an officer of the CCO;¶
(b) No person shall file or cause to be filed with the Authority or the Department any report, statement, application, article, or any other information require~~s, verified by an officer of the CCO.~~ d or permitted to be filed and known to such person to be false or misleading in any material respect.¶
(~~7~~6) CCOs may be required to use specific required reporting forms or ~~item~~documents in order to supply information related to financial responsibility, financial solvency, and financial management. The Authority or DCBS, as applicable, shall provide supplemental instructions about the use of these forms.¶
~~(8) The Authority may require a CCO to produce books, records, accounts, papers, documents, and computer and other electronic or digital records in the possession, custody or control of the CCO or the CCO's affiliates that are needed to determine the CCO's financial condition or compliance with Applicable Law, or which are needed to determine the CCO's compliance with the CCO's contracts and agreements with the Authority.~~ ¶
(~~9~~7) The standards established in OAR 410-141-5005 through OAR 410-141-5380 are intended ~~to be consistent with and may utilize procedures and standards common to CCOs and to DCBS in its administration of financial reporting and solvency requirements.~~align with the regulation of domestic insurers, to the extent the provisions

are applicable to CCOs and are in accordance with ORS Chapters 413 and 414. Any reference in these rules to the Insurance Code or to rules or regulations adopted by DCBS under the Insurance Code shall not make a CCO subject to regulation as an insurer, but instead shall be construed to adopt and incorporate such rules by reference as Authority rules applicable to CCOs.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, ORS 415.001-415.430

AMEND: 410-141-5015

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify submission schedule. Include reference to specific National Association of Insurance Commissioners (NAIC) forms and instructions through term of CCO contract. Update 1115 waiver reference. Update statutory references.

CHANGES TO RULE:

410-141-5015
FINANCIAL SOLVENCY REGULATION: Financial Statement Reporting
(1) Financial reports to the Authority. A CCO shall submit the following to the Authority:¶
(a) On or before April 30 of each year, an unaudited financial statement for the ~~year ending~~12-month period ending the 31st day of December ~~31~~ immediately preceding;¶
(b) ~~On or before May 31, August 31, and November 30 of each year, an unaudited financial statement~~Unaudited quarterly financial statements each year according to the following schedule:¶
(A) On or before May 31 for the quarter ending the 31st day of March immediately preceding; ¶
(B) On or before August 31 for the quarter ending the 30th day of June immediately preceding; ¶
(C) On or before November 30 of each year for the quarter ending ~~March 31, June 30 and September 30, respectively;~~the 30th day of September immediately preceding.¶
(c) On or before June 30 of each year, an audited financial statement for the year ending the 31st of December ~~31~~ immediately preceding.¶
(2) Except as otherwise allowed or required by the Authority, all annual and quarterly financial statements filed by a CCO with the Authority shall:¶
(a) Follow and be presented in accordance with Statutory Accounting Principles;¶
(b) Use ~~NAIC Forms and Instructions;~~a form established by the NAIC, including the instructions, and must complete the form according to the instructions:¶
(A) For the 2024 reporting year, on the annual statement approved for the 2024 reporting year by the NAIC, according to the applicable instructions published for that year by the NAIC; ¶
(B) For the 2025 reporting year, on the annual statement approved for the 2025 reporting year by the NAIC, according to the applicable instructions published for that year by the NAIC;¶
(C) For the 2026 reporting year, on the annual statement approved for the 2026 reporting year by the NAIC, according to the applicable instructions published for that year by the NAIC;¶
(D) For the 2027 reporting year, on the annual statement approved for the 2027 reporting year by the NAIC, according to the applicable instructions published for that year by the NAIC.¶
(c) Be verified by the oaths of the president and secretary of the CCO or, in their absence, by two other duly authorized and acting principal officers; and¶
(d) Include the additional information listed in sections (4), (5) and (6) of this rule.¶
(3) Audited annual financial statements shall be subject to, and shall comply with, the ~~additional~~ requirements set forth in OAR 410-141-5020 through OAR 410-141-5040. ~~NAIC Forms and Instructions are available for inspection at the office of the Authority. Any person interested in inspecting the NAIC Forms and Instructions may contact the Authority at actuarial.services@dhsoha.state.or.us. A CCO shall be responsible for purchasing the current software version of the NAIC Forms and Instructions from the NAIC as required to prepare the financial statement filings required by these rules~~ Additional instructions for the filing of financial statements and reports are posted on the Authority's website at https://www.oregon.gov/oha/hsd/ohp/pages/cco-contract-forms.aspx.¶
(4) A CCO shall include the following as supplements to the CCO's quarterly and annual financial statement filings, using forms and templates prescribed by the Authority:¶
(a) A ~~Supplemental~~n Annual Disclosure of Compensation Exhibit, ~~as published by the NAIC,~~ disclosing the salary and benefits of the three officers or employees having the highest total compensation for the period. This exhibit shall be required only with the CCO's annual ~~financial statement~~Exhibit L filing;¶
(b) A report of Health-Related Services (as defined by OAR 410-141-350~~15~~0 and ~~as described in Oregon's Medicaid 1115 Waiver for 2017 - 2022~~410-141-3845) and additional supplemental information, including care coordination, case management, flexible services, and community benefit expenses. CCOs shall comply with the following additional requirements regarding Health-Related Services ~~(as defined by OAR 410-141-5015 and as described in the CMS section 1115 Waiver)~~:¶
(A) Health-Related Services shall be considered in the rate setting consistent with the ~~current~~State 1115 Waiver;¶
(B) Health-Related Services shall be included as Activities that Improve Health Care Quality in the Minimum Medical Loss Ratio Rebate Calculation report.¶

(c) A certification of compliance with financial and encounter data reporting requirements;¶
(d) A report of third-party resources collections (CCO contractor);¶
(e) A report of Corporate Relationships of Contractors and Incentive Plan Disclosure and Detail (CCOs);¶
(f) CCO-specific utilization reports;¶
(g) Any other supplemental information deemed necessary by the Authority and specified in Exhibit L to the CCO~~'s c~~ Contract ~~with the Authority~~.¶
(5) A CCO shall report the following information in respect of the CCO's Restricted Reserve, using forms and templates prescribed by the Authority:¶
(a) Identification of custodians, account balances and assets comprising Restricted Reserve Funds held by a third-party;¶
(b) A bank statement from each custodian of Restricted Reserve Funds of the account balance or aggregate fair market value of the assets comprising the Restricted Reserve Funds held by the custodian;¶
(c) Documentation of the liability that would be owed to creditors in the event of the CCO's insolvency;¶
(d) Documentation of the dollar amount of that liability that is covered by any identified risk-adjustment mechanisms.¶
(6) A CCO shall report the following information in respect of any Sub-Capitation Arrangements to which the CCO is a party, using forms and templates prescribed by the Authority:¶
(a) A CCO that sub-capitates any work described in its agreements with the Authority shall require the Sub-Capitated Counterparty to report financial information as specified in the CCO's agreements with the Authority;¶
(b) CCOs that make sub-capitation payments exceeding an annual amount defined by financial reporting instructions under the CCO~~'s c~~ Contract shall submit to the Authority on an annual basis the following financial reports with respect to each of the CCO's Sub-Capitated Counterparties:¶
(A) Statements of revenue, expenses and net income;¶
(B) Restricted Reserve Account documentation;¶
(C) Certification of compliance with financial and encounter data reporting requirements;¶
(D) Any supplemental information deemed necessary by the Authority.¶
(7) Following termination of the CCO ~~c~~Contract, the annual reports described in this rule are due for the last calendar year during which the CCO operated, and its quarterly reports are due until its last annual report has been filed.¶
(8) The CCO shall make such additional filings with the Authority as are required by the CCO's agreement with the Authority and as otherwise may be determined by the Authority from time to time to be necessary under the circumstances.
Statutory/Other Authority: ORS 413.042, ORS 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1
Statutes/Other Implemented: ORS 414.~~61~~570-414.68~~5~~6, ORS415.001-415.430

AMEND: 410-141-5020

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify requirements for independent certified accountant and filing of letter with Authority. Update statutory references.

CHANGES TO RULE:

410-141-5020
FINANCIAL SOLVENCY REGULATION: Annual Audited Financial Statements and Auditors Report
(1) Annual audited financial statements shall report the financial position of the CCO as of the end of the most recent calendar year and the results of its operations, cash flows and changes in capital and surplus for the year then ended in accordance with the form and content requirements of OAR 410-141-5015.¶
(2) The audit of the CCO's annual financial statements shall be performed by an independent accounting firm and shall include, but not limited to:~~:~~¶
(a) A report of the independent accounting firm that meets the requirements of this section.¶
(b) A written statement of opinion by the independent accounting firm based on the firm's audit regarding the CCO's annual financial statements.¶
(c) A written statement of opinion by an independent actuarial firm with respect to the assumptions and methods used in determining the CCO's loss reserves, actuarial liabilities and related items, and the consistency of those assumptions and methods with generally accepted actuarial standards and practices for such matters.¶
(3) Each CCO required to file an annual audited financial report must register with the Authority in writing the name and address of the independent certified public accountant or accounting firm retained to conduct the annual audit. A CCO shall register under this rule on or before the later of sixty (60) days following~~: ¶~~
~~(a) The effective date of this section, and ¶~~
~~(b) T~~ the date on which the CCO first becomes subject to this section.¶
(4) ~~A~~In addition to the requirement of OAR 410-141-5035, a CCO shall obtain a letter from the independent certified accountant retained by the CCO stating that ~~the accountant~~ is aware of the provisions of these rules that relate to CCO accounting and financial matters; and affirming that the accountant will express the opinion of the accountant on the financial statements in terms of their conformity with the Statutory Accounting Principles, specifying exceptions that the accountant believes appropriate. ~~The CCO shall file a copy of the letter with the Authority.~~¶
(5) If the accountant who was the CCO's certified public accountant for the immediately preceding filed audited financial report is dismissed or resigns, the CCO shall so notify the Authority not later than the fifth business day after the dismissal or resignation. The CCO shall also do the following:¶
(a) Notify the Authority in a separate letter, not later than the 10th business day after the date of the notice of dismissal or resignation, whether in the 24 months preceding the ~~engagement~~dismissal or resignation there were any disagreements with the former accountant on any matter of accounting principles or practices, financial statement disclosure or auditing scope or procedure that, if not resolved to the satisfaction of the former accountant, would have caused the former accountant to make reference to the subject matter of the disagreement in connection with the accountant's opinion. The disagreements required to be reported in response to this subsection include both those resolved to the former accountant's satisfaction and those not resolved to the former accountant's satisfaction and are those disagreements that occur at the decision-making level, between personnel of the CCO responsible for presentation of its financial statements and personnel of the accounting firm responsible for rendering its report.¶
(b) Request the former accountant~~, in writing, to~~ furnish a letter addressed to the CCO stating whether the accountant agrees with the statements contained in the CCO's letter and, if not, stating the reasons for which the accountant does not agree.¶
(c) Furnish the Authority the letter received from the former accountant under subsection (b) of this section together with a response by the CCO to that letter.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5025

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Rearrange and clarify language in rule. Include a waiver process for relief from rotation requirement. Update statutory references. Remove hearing language and treat as information request.

CHANGES TO RULE:

410-141-5025
FINANCIAL SOLVENCY REGULATION: Qualifications of Independent Certified Public Accountant
(1) The Authority shall not recognize any person as a qualified independent certified public accountant for the purposes of OAR 410-141-5020, or accept an annual audited financial report that is prepared in whole or in party by a person, if the person:¶
(a) Is not in good standing with the AICPA and in all states in which the person is licensed to practice as a certified public accountant; ~~or~~¶
(b) Has either directly or indirectly entered into an agreement of indemnity or a release from liability (collectively referred to as indemnification) with respect to the audit of the CCO; ¶
(c) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;¶
(d) Has been found to have violated the laws of this state with respect to any previous reports submitted under OAR 410-141-5020 or to DCBS; or¶
(e) Has demonstrated a pattern or practice of failing to detect or disclose material information in any report filed under OAR 410-141-5020 or to DCBS.¶
(2) Except as otherwise provided in this section, the Authority shall recognize an independent certified public accountant as qualified as long as the certified public accountant conforms to the standards of the certified public accountant profession, as contained in the Code of Professional Ethics of the AICPA and the rules and the Code of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.¶
(3) A qualified independent certified public accountant may enter into an agreement with a CCO to have disputes relating to an audit resolved by mediation or arbitration. In the event of a delinquency proceeding commenced against the CCO, however, the mediation or arbitration provisions shall operate at the option of the statutory successor.¶
(4) The lead or coordinating audit partner having primary responsibility for the audit may not act in that capacity for more than five consecutive years, beginning with the year 2020. The partner or other person is disqualified from acting in that or a similar capacity for the same CCO or its subsidiaries or affiliates for a period of five consecutive years. A CCO may ~~apply to the Authority for relief from the rotation requirement~~request a waiver of this section on the basis of unusual circumstances. A CCO must apply for relief at least 30 days before the end of the calendar year. The Authority may consider the following factors in determining whether the relief should be granted:¶
(a) The number of partners, the expertise of the partners or the number of CCO and insurance clients in the currently registered firm.¶
(b) The capitated revenue volume of the CCO.¶
(c) The number of jurisdictions in which the CCO transacts business.¶
(5) The Authority ~~shall not recognize an individual as an independent certified public accountant, or accept an annual audited financial report required by OAR 410-141-5020 that is prepared in whole or part by an individual, if the individual:¶~~
~~(a) Has been convicted of fraud, bribery, a violation of the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. Sections 1961-1968, or any dishonest conduct or practices under federal or state law;¶~~
~~(b) Has been found to have violated the laws of this state with respect to any previous reports submitted under OAR 410-141-5020 or to DCBS; or¶~~
~~(c) Has demonstrated a pattern or practice of failing to detect or disclose material information in any report filed under OAR 410-141-5020 or to DCBS.¶~~
~~(6) The Authority may hold a hearing~~may request information to determine whether an independent certified public accountant is qualified and, considering the ~~evidence~~information presented, may ~~rul~~determine that the accountant is not qualified for purposes of expressing the accountant's opinion on the financial statements in the annual audited financial report made pursuant to OAR 410-141-5020 and require the CCO to replace the accountant with another accountant who is qualified with respect to the CCO as provided in this section. ¶
(~~7~~6) The Authority may not recognize an accountant as a qualified independent certified public accountant or accept an annual audited financial report prepared in whole or in part by the accountant if the accountant

provides to a CCO, contemporaneously with the audit, any of the following non-audit services:¶
(a) Bookkeeping or other services related to the accounting records or financial statements of the CCO.¶
(b) Financial information systems design and implementation.¶
(c) Appraisal or valuation services, fairness opinions, or contribution-in-kind reports.¶
(d) Actuarially-oriented advisory services involving the determination of amounts recorded in the financial statements. The accountant may assist a CCO in understanding the methods, assumptions and inputs used in the determination of amounts recorded in the financial statement only if it is reasonable to conclude that the services provided will not be subject to audit procedures during an audit of the CCO's financial statements. An accountant's actuary may also issue an actuarial opinion or certification on a CCO's reserves if all of the following conditions have been met:¶
(A) Neither the accountant nor the accountant's actuary has performed any management functions or made any management decisions.¶
(B) The CCO has competent personnel (or engages a third-party actuary) to estimate the reserves for which management takes responsibility.¶
(C) The accountant's actuary tests the reasonableness of the reserves after the C'CO's management has determined the amount of the reserves.¶
(e) Internal audit outsourcing services.¶
(f) Management functions or human resources.¶
(g) Broker or dealer, investment adviser or investment banking services.¶
(h) Legal services or expert services unrelated to the audit.¶
(87) In general, the principles of independence with respect to services provided by a qualified independent certified public accountant are largely predicated on three basic principles, violations of which would impair the accountant's independence. The principles are that the accountant cannot function in the role of management, cannot audit the accountant's own work, and cannot serve in an advocacy role for the CCO.¶
(98) A qualified independent certified public accountant who performs the audit may engage in other non-audit services, including tax services, that are not described in subsection (76) and that do not conflict with subsection (87), only if the activity is approved in advance by the CCO's audit committee in accordance with subsection (109).¶
(109) All auditing services and non-audit services provided to a CCO by a qualified independent certified public accountant of the CCO shall be preapproved by a duly constituted audit committee of the CCO's Board. The preapproval requirement is waived with respect to non-audit services if all of the following conditions are met:¶
(a) The aggregate amount of all such non-audit services provided to the CCO constitutes not more than five percent of the total amount of fees paid by the CCO to its qualified independent certified public accountant during the fiscal year in which the non-audit services are provided.¶
(b) The services were not recognized by the CCO at the time of the engagement to be non-audit services.¶
(c) The services are promptly brought to the attention of the audit committee and approved prior to the completion of the audit by the audit committee.¶
(110) The Authority may not recognize an independent certified public accountant as qualified for a particular CCO if a member of the board, president, chief executive officer, controller, chief financial officer, chief accounting officer or any person serving in an equivalent position for that CCO was employed by the independent certified public accountant and participated in the audit of that CCO during the one-year period preceding the date that the most current statutory opinion is due. This section applies only to partners and senior managers involved in the audit. A CCO may apply to the Authority for relief from the requirement of this subsection on the basis of unusual circumstances pursuant to subsection (4).
Statutory/Other Authority: ORS 413.042, 414.615572, 414.625, 414.635591, 414.6051
Statutes/Other Implemented: ORS 414.61570-414.6856, 415.001-415.430

AMEND: 410-141-5030

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references. Clarification of rule language.

CHANGES TO RULE:

410-141-5030
FINANCIAL SOLVENCY REGULATION: Notification of Adverse Financial Condition
(1) A CCO required to furnish an annual audited financial report shall require the independent certified public accountant to report in writing to the CCO's Board, or to the audit committee of the CCO, any determination by the independent certified public accountant that ~~t~~:¶
(a) The CCO has materially misstated its financial condition as reported to the Authority as of the date of the balance sheet currently under audit ~~or that t~~; ¶
(b) The CCO does not meet the minimum capital and surplus requirements under these rules; or ~~if t~~¶
(c) The CCO's risk-based capital, as determined in accordance with OAR 410-141-5195 to 5220 is below the Company Action Level threshold for the CCO. ¶
(2) The CCO shall require the independent certified public accountant to submit the report no~~t~~ later than the fifth business day after the independent certified public accountant makes such a determination under subsection (1). A CCO that has received a report under this section shall both forward a copy of the report to the Authority ~~not later than the fifth business day after receiving the report and shall~~and provide the independent certified public accountant with evidence that the report was furnished to the Authority no later than the fifth business day after receiving the report. If the independent certified public accountant does not receive such evidence within the required period, the independent certified public accountant shall furnish to the Authority a copy of its report no~~t~~ later than the fifth business day after the end of the period within which the CCO was required to submit the report.¶
(~~2~~3) An independent certified public accountant shall not be liable to any person for any statement made in connection with the requirements of subsection (1) if the statement is made in good faith and in compliance with subsection (1).¶
(~~3~~4) If the accountant, after the date of the audited financial report filed pursuant to OAR 410-141-5020, becomes aware of facts that might have affected the report, the Authority notes the obligation of the accountant to act as prescribed in Volume 1, Section AU 561 of the Professional Standards of the AICPA.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.6051
Statutes/Other Implemented: ORS 414.~~61~~570-414.68~~5~~6, 415.001-415.430

AMEND: 410-141-5035

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates statutory references.

CHANGES TO RULE:

410-141-5035
FINANCIAL SOLVENCY REGULATION: Accountant's Letter of Qualifications
(1) An accountant shall furnish the CCO, in connection with and for inclusion in the filing of the annual audited financial report, a letter stating the following:¶
(a) That the accountant is independent with respect to the CCO and conforms to the standards of the accounting profession as contained in the Code of Professional Ethics and pronouncements of the AICPA and the Rules of Professional Conduct of the Oregon State Board of Accountancy, or a similar code of conduct of the state board regulating the practice of accountancy in the state in which the accountant is licensed to practice.¶
(b) The background and experience in general, and the experience in audits of CCOs, of the staff assigned to the engagement and whether each is an independent certified public accountant.¶
(c) That the accountant understands that the annual audited financial report and the opinion of the accountant thereon must be filed in compliance with OAR 410-141-5020 and that the Authority will rely on the information contained in the report and opinion in the monitoring and regulation of the financial position of CCOs.¶
(d) That the accountant consents to the requirements of OAR 410-141-5020 and that the accountant agrees to make the workpapers described in OAR 410-141-5040 available for review by the Authority, or the Authority's designee or appointed agent.¶
(e) A representation that the accountant is currently licensed by an appropriate state licensing authority and is a member in good standing in the American Institute of Certified Public Accountants.¶
(f) A representation that the accountant is in compliance with OAR 410-141-5025.¶
(2) This section does not prohibit an independent certified public accountant from using such staff as the accountant determines appropriate when use of the staff is consistent with the standards prescribed by generally accepted auditing standards.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~61~~570-414.68~~5~~6, 415.001-415.430

AMEND: 410-141-5040

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references.

CHANGES TO RULE:

410-141-5040
FINANCIAL SOLVENCY REGULATION: Independent Certified Public Accountants Workpapers
(1) For the purpose of this section, workpapers are the records kept by an independent certified public accountant of the procedures followed, the tests performed, the information obtained and the conclusions reached pertinent to the accountant's audit of the financial statements of a CCO. Accordingly, workpapers may include audit planning documentation, work programs, analyses, memoranda, letters of confirmation and representation, abstracts of company documents and schedules or commentaries prepared or obtained by the independent certified public accountant in the course of the accountant's audit of the financial statements of a CCO and which support the accountant's opinion.¶
(2) A CCO that is required to file an audited financial report pursuant to OAR 410-141-5020 shall require the accountant to make available for review by the Authority, all workpapers prepared in the conduct of the accountant's audit and any communications related to the audit between the accountant and the CCO, at the offices of the CCO, at the Authority's offices or at any other reasonable place designated by the Authority. The CCO shall require that the accountant retain the audit workpapers and communications until the Authority has filed a report on examination covering the period of the audit but no longer than seven years from the date of the audit report.¶
(3) In the conduct of a periodic review by the Authority's examiners, the Authority may make and retain photocopies of pertinent audit workpapers. Any such review by the Authority's examiners is an investigation and all working papers and communications obtained during the course of such an investigation must be given the same confidentiality as other examination workpapers generated by the Authority.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.6~~0~~05~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5045

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references. Cross-references updated.

CHANGES TO RULE:

410-141-5045
FINANCIAL SOLVENCY REGULATION: Corporate Governance Annual Disclosure Filing
(1) A CCO shall file a corporate governance annual disclosure (CGAD) report with the Authority, as described in this section, no later than June 1 of each calendar year. ~~A CCO that is not subject to the requirement under this section to submit a CGAD Report shall nevertheless submit a CGAD Report at the Authority's request.~~¶
(2) A CGAD Report shall contain the following information:¶
(a) The CGAD Report shall describe the ~~C~~'CO's corporate governance framework and structure including consideration of the following:¶
(A) The CCO's Board and the various committees thereof that are ultimately responsible for overseeing the CCO and the level(s) at which that oversight occurs (e.g. ultimate control level, intermediate holding company, legal entity, etc.). The CGAD Report shall describe and discuss the rationale for the current CCO Board size and structure.¶
(B) The duties of the CCO Board and each of its significant committees and how they are governed (e.g. bylaws, charters, informal mandates, etc.), as well as how the CCO Board's leadership is structured, including a discussion of the roles of Chief Executive Officer and Chairman of CCO Board, as applicable, within the organization.¶
(C) The membership, structure and authority of the CCO's governing body, if the CCO is a coordinated care organization whose governing body as required by ORS 414.~~625~~572(2)(o) is not the CCO Board.¶
(b) The CGAD Report shall describe the policies and practices of the most senior governing entity and significant committees thereof, including a discussion of the following factors:¶
(A) How the qualifications, expertise and experience of each CCO Board member meets the needs of the CCO.¶
(B) How an appropriate amount of independence is maintained ~~on~~by the CCO Board and its significant committees.¶
(C) The number of meetings held by the CCO Board and its significant committees over the past year as well as information on director attendance.¶
(D) How the CCO or its controlling affiliate nominates~~,~~ and elects members to the CCO Board and its committees. The discussion should include, for example:¶
(i) Whether a nomination committee is in place to identify and select individuals for consideration.¶
(ii) Whether term limits are placed on directors.¶
(iii) How the election and re-election processes function.¶
(iv) Whether a CCO Board diversity policy is in place and if so, how it functions.¶
(E) The processes in place for the CCO Board to evaluate its performance and the performance of its committees, as well as any recent measures taken to improve performance (including any Board or committee training programs that have been put in place).¶
(c) The CGAD Report shall describe the CCO Board's policies and practices for directing senior management, including a description of the following factors:¶
(A) Any processes or practices (i.e. suitability standards) to determine whether officers and key persons in control functions have the appropriate background, experience and integrity to fulfill their prospective roles, including identification of the specific positions for which suitability standards have been developed and a description of the standards employed.¶
(B) Any changes in an officer's or key person's suitability as outlined by the CCO's standards and procedures to monitor and evaluate such changes.¶
(C) The CCO's code of business conduct and ethics, the discussion of which considers, for example:¶
(i) Compliance with laws, rules and regulations.¶
(ii) Proactive reporting of any illegal or unethical behavior.¶
(iii) The CCO's processes for performance evaluation, compensation and corrective action to ensure effective senior management throughout the organization, including a description of the general objectives of significant compensation programs and what the programs are designed to reward. The description shall include sufficient detail to allow the Authority to understand how the organization ensures that compensation programs do not encourage and/or reward excessive risk taking. Elements to be discussed may include, for example:¶
(I) The Board's role in overseeing management compensation programs and practices.¶
(II) The various elements of compensation awarded in the CCO's compensation programs and how the CCO determines and calculates the amount of each element of compensation paid.¶

(III) How compensation programs are related to both company and individual performance over time.¶
(IV) Whether compensation programs include risk adjustments and how those adjustments are incorporated into the programs for employees at different levels.¶
(V) Any claw back provisions built into the programs to recover awards or payments if the performance measures upon which they are based are restated or otherwise adjusted.¶
(VI) Any other factors relevant in understanding how the CCO monitors its compensation policies to determine whether its risk management objectives are met by incentivizing its employees.¶
(iv) The CCO's plans for senior management succession.¶
(d) The CGAD Report shall describe the processes by which the CCO Board, its committees and senior management ensure an appropriate amount of oversight to the critical risk areas impacting the CCO's business activities, including a discussion of:¶
(A) How oversight and management responsibilities are delegated between the CCO Board, its committees and senior management.¶
(B) How CCO Board is kept informed of the CCO's strategic plans, the associated risks and steps that senior management is taking to monitor and manage those risks.¶
(C) How reporting responsibilities are organized for each critical risk area. The description should allow the Authority to understand the frequency at which information on each critical risk area is reported to and reviewed by senior management and the CCO Board. This description may include, for example, the following critical risk areas of the insurer:¶
(i) Risk management processes.¶
(ii) Actuarial function.¶
(iii) Investment decision-making processes.¶
(iv) Reinsurance decision-making processes.¶
(v) Business strategy/finance decision-making processes.¶
(vi) Compliance function.¶
(vii) Financial reporting/internal auditing.¶
(viii) Market conduct decision-making processes.¶
(3) The chief executive officer or corporate secretary of a CCO shall sign the CGAD Report and attest that to the best of the officer's or secretary's belief and knowledge the CCO has implemented the corporate governance practices identified in the CGAD Report and that the CCO's Board, or an appropriate committee of the CCO's Board, has received a copy of the disclosure.¶
(4) A CCO that submits a CGAD Report under subsection (1) of this section may provide information in the disclosure at any of the following levels:¶
(a) At the level of the CCO, an intermediate holding company or any controlling affiliate, depending on how the CCO and its controlling affiliates have structured corporate governance.¶
(b) At the level at which the CCO or any controlling affiliate oversees or coordinates and exercises supervision over the ~~C~~'CO's earnings, capital, liquidity operations and reputation.¶
(c) At the level at which legal liability for failing in the duties of general corporate governance would occur.¶
(5) A CCO shall identify the level at which its CGAD Report is presented and explain the basis on which that level was determined to be appropriate. A CCO also shall explain any subsequent changes in the level of reporting.¶
(6) The CCO shall have discretion regarding the appropriate format for providing the information required by this section and is permitted to customize the CGAD Report to provide the most relevant information necessary to permit the Authority to gain an understanding of the corporate governance structure, policies and practices utilized by the CCO.¶
(7) Each year following the initial filing of the CGAD Report, the CCO shall file an amended version of the previously filed CGAD Report indicating where changes have been made. If no changes were made in the information or activities reported by the CCO, the filing should so state.¶
(8) Upon written application of a CCO, the Authority may grant an exemption from compliance with the CGAD Report filing requirement under this section if the Authority finds upon review of the application that compliance would constitute a financial or organizational hardship upon the CCO. An exemption may be granted at any time and from time to time for a specified period or periods. Not later than the 10th day after denial of a CCO's written request for an exemption under this section, the CCO may request in writing a hearing on its application for an exemption pursuant to the requirements of OAR 410-141-5082.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~61~~570-414.68~~5~~6, 415.001-415.430

AMEND: 410-141-5050

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references. Clarification of rule language.

CHANGES TO RULE:

410-141-5050
FINANCIAL SOLVENCY REGULATION: Requirements for Reinsurance
(1) Except with the prior written approval of the Authority, as outlined in the terms of the CCO Contract, a CCO may not reinsure risks written or insured by other CCOs or other insurers.¶
(2) A CCO may cede and reinsure risks, on an indemnity reinsurance basis, to another CCO authorized to transact such business in this state or with a health insurer authorized to reinsure such risks provided that such other CCO or such other health insurer has been approved or accepted by the Authority to act as a reinsurer of the CCO and the reinsurance qualifies for financial statement credit to the cedent CCO under this section. The Authority shall not approve or accept any such reinsurance by the cedent CCO in an unauthorized CCO or unauthorized health insurer, or which the Authority finds for good cause would otherwise be contrary to the interests of the Members of the cedent CCO.¶
(3) Credit shall not be allowed, as an asset or as a deduction from liability, to any cedent CCO for reinsurance unless the reinsurance contract provides, in substance, that in the event of the insolvency of the cedent CCO, the reinsurance shall be payable on the basis of reported claims allowed by the court hearing the liquidation proceeding, without diminution because of the insolvency of the cedent CCO. Such payments shall be made directly to the cedent CCO or to its domiciliary liquidator except when the reinsurer, with the consent of the Authority, has assumed the policy obligations of the cedent CCO as direct obligations of the reinsurer and in substitution for the obligations of the cedent CCO.¶
(4) For the purposes of subsection (3) of this section, the reinsurance agreement may provide that the domiciliary liquidator of the insolvent cedent CCO shall, within a reasonable time after the claim is filed in the liquidation proceeding, give written notice to the reinsurer of the pendency of a claim against the cedent CCO on the risk reinsured. During the pendency of the claim, the reinsurer may investigate the claim and interpose, at its own expense, in the proceeding in which the claim is to be adjudicated any defenses that the reinsurer determines to be available to the cedent CCO or its liquidator. The reinsurer's expense in doing so may be filed as a claim against the insolvent cedent CCO to the extent of a proportionate share of the benefit that may accrue to the cedent CCO solely as a result of the defense undertaken by the reinsurer. When two or more reinsurers are involved in the same claim and a majority in interest elect to interpose one or more defenses to the claim, the expense shall be apportioned in accordance with the terms of the reinsurance agreement as though the expense had been incurred by the cedent CCO.¶
(5) The Authority may disallow financial statement credit for reinsurance that would otherwise be allowed if the Authority determines that allowing credit would be contrary to accurate financial reporting or proper financial management or may be hazardous to Members of the CCO or the public generally.¶
(6) A cedent CCO promptly shall inform the Authority in writing of the cancellation of, or any other material change to, any of its reinsurance agreements or arrangements.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~61~~570-414.68~~5~~6, 415.001-415.430

AMEND: 410-141-5055

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references.

CHANGES TO RULE:

410-141-5055
FINANCIAL SOLVENCY REGULATION: Requirements for Obtaining Credit for Reinsurance
(1) The Authority shall not allow financial statement credit for reinsurance to a cedent CCO as either an asset or a reduction from liability on account of reinsurance ceded unless the reinsurance meets the requirements of subsection (2) or (3) of this section.¶
(2) Credit shall be allowed when the reinsurance is ceded to an authorized assuming CCO or an authorized health insurer that has been approved and accepted by the Authority to act as a reinsurer of the cedent CCO in accordance with OAR 410-141-5050. The Authority shall not allow credit to a cedent CCO if the approval or acceptance of the reinsurer has been revoked by the Authority after notice and opportunity for hearing.¶
(3) The Authority shall allow a reduction from liability for reinsurance ceded by a CCO to an assuming reinsurer not meeting the requirements of subsection (2) in an amount not exceeding the liabilities carried by the cedent CCO. The reduction shall be in the amount of funds held by or on behalf of the cedent CCO, including funds held in trust for the exclusive benefit of the cedent CCO, under a reinsurance contract with such reinsurer as security for the payment of obligations under the reinsurance contract. The security must be held in the United States subject to withdrawal solely by and under the exclusive control of the cedent CCO insurer or, in the case of a trust, held in a Qualified United States Financial Institution. The security may be in the form of any of the following:¶
(a) Cash.¶
(b) Securities listed by the SVO.¶
(c) Clean, irrevocable, unconditional and "evergreen" letters of credit issued or confirmed by a Qualified United States Financial Institution effective no later than December 31 of the year for which filing is being made, and in the possession of, or in trust for, the cedent CCO on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance or confirmation shall, notwithstanding the issuing or confirming institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.¶
(d) Any other form of security acceptable to the Authority.¶
(4) An allowed asset or a reduction from liability for reinsurance ceded to an unauthorized reinsurer pursuant to subsection (3) of this section shall be allowed only when the applicable requirements of OAR 410-141-5050 to OAR 410-141-5070 are satisfied.
Statutory/Other Authority: ORS 414~~.615, 414.625~~3.042, 414.~~635~~572, 414.~~6~~591, ~~ORS 413.042~~414.605
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5060

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references. Clarification of rule language.

CHANGES TO RULE:

410-141-5060
FINANCIAL SOLVENCY REGULATION: Qualified Trust Agreements
(1) As used in this section:¶
(a) "Beneficiary" includes any successor by operation of law of the named beneficiary, including without limitation any liquidator, rehabilitator, receiver or conservator.¶
(b) "Grantor" means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unauthorized or unlicensed unaccredited reinsurer.¶
(c) "Obligations" as used in subsection (2) means:¶
(A) Reinsured losses and allocated loss expenses paid by the cedent CCO, but not recovered from the reinsurer;¶
(B) Reserves for reinsured losses reported and outstanding;¶
(C) Reserves for reinsured losses incurred but not reported; and¶
(D) Reserves for allocated reinsured loss expenses and unearned capitated revenue.-¶
(2) The following are required conditions applicable to the trust agreement:¶
(a) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee that must be a Qualified United States Financial Institution.¶
(b) The trust agreement shall create a trust account into which assets must be deposited.¶
(c) All assets in the trust account shall be held by the trustee at the trustee's office in the United States.¶
(d) The trust agreement shall provide that:¶
(A) The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;¶
(B) No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;¶
(C) It is not subject to any conditions or qualifications outside of the trust agreement; and¶
(D) It shall not contain references to any other agreements or documents except as provided for under subsection (l) of this section.¶
(e) The trust agreement shall be established for the sole benefit of the beneficiary.¶
(f) The trust agreement shall require the trustee to:¶
(A) Receive assets and hold all assets in a safe place;¶
(B) Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;¶
(C) Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;¶
(D) Notify the grantor and the beneficiary within ten days of any deposits to or withdrawals from the trust account;¶
(E) Upon written demand of the beneficiary, immediately take all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary; and¶
(F) Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of, but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.¶
(g) The trust agreement shall provide that at least 30 days but not more than 45 days prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.¶
(h) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is domiciled.¶
(i) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying commissions to or reimbursing the expenses of the trustee.-¶
(j) In order for a letter of credit to qualify as an asset of the trust, the trustee must have the right and the obligation pursuant to the deed of trust or some other binding agreement, as duly approved by the Authority, to immediately draw down the full amount of the letter of credit and hold the proceeds in trust for the beneficiaries of the trust if

the letter of credit will otherwise expire without being renewed or replaced.¶
(k) The trust agreement shall provide that the trustee is~~hall be~~ liable for its negligence, willful misconduct or lack of good faith. The failure of the trustee to draw against the letter of credit in circumstances in which such a draw would be required shall be deemed to be negligence or willful misconduct, or both.¶
(~~l~~L) The trust agreement may provide that the cedent CCO shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the cedent CCO or the reinsurer, only for the following purposes:¶
(A) To pay or reimburse the cedent CCO for the reinsurer's share under the reinsurance agreement of any losses and allocated loss expenses paid by the cedent CCO, but not recovered from the reinsurer, or for unearned capitated revenue due to the cedent CCO if not otherwise paid by the reinsurer;¶
(B) To pay the reinsurer any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the reinsurer's obligations under the reinsurance agreement; ~~or~~and ¶
(C) When the cedent CCO has received notification of termination of the trust account and if the reinsurer's entire obligations under the reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and deposit those amounts in a separate account held apart from its general assets, in the name of the cedent CCO in any Qualified United States Financial Institution, in trust for such uses and purposes specified in paragraphs (A) and (B) of this subsection as may remain executory after such withdrawal and for any period after the termination date.¶
(3) The following are permitted conditions applicable to the trust agreement:¶
(a) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after the beneficiary and grantor receive the notice, and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after the trustee and the beneficiary receive the notice, except that such a resignation or removal shall not be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.¶
(b) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time-to-time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor's name.¶
(c) The trustee may be given authority to invest and accept substitutions of any funds in the account, except that an investment or substitution shall not be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions that the trustee determines are at least equal in market value to the assets withdrawn.¶
(d) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such a transfer may be conditioned upon the trustee receiving other specified assets prior to or simultaneously with the transfer.¶
(e) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall be delivered to the grantor with written approval by the beneficiary.¶
(4) The following are additional conditions applicable to reinsurance agreements:¶
(a) A reinsurance agreement may contain provisions that:¶
(A) Require the reinsurer to enter into a trust agreement and to establish a trust account for the benefit of the cedent CCO and specify what the agreement is to cover.¶
(B) Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash in United States dollars; certificates of deposit issued by a United States bank and payable in United States dollars; and investments permitted by OAR 410-141-5095 to 410-141-5165 or any combination thereof, except that investments in or issued by an entity controlling, controlled by or under common control with either the grantor or the beneficiary of the trust shall not exceed five percent of total investments.¶
(C) Require the reinsurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations or any other assets requiring assignments, in order that the cedent CCO, or the trustee upon the direction of the cedent CCO, may whenever necessary negotiate these assets without consent or signature from the reinsurer or any other entity.¶
(D) Require that all settlements of account between the cedent CCO and the reinsurer be made in cash or its equivalent.¶
(E) Stipulate that the reinsurer and the cedent CCO agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the cedent CCO at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be used and applied by the cedent CCO or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of the cedent CCO, without diminution because of insolvency on the part of the cedent

CCO or the reinsurer, only for the following purposes:¶
(i) To pay or reimburse the cedent CCO for:¶
(I) The reinsurer's share under the specific reinsurance agreement of unearned capitated revenue returned, but not yet recovered from the reinsurer.¶
(II) The reinsurer's share of benefits or losses paid by the cedent CCO pursuant to the provisions of the MemberCCO Contracts reinsured under the reinsurance agreement.¶
(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the cedent CCO.¶
(ii) To make payment to the reinsurer of amounts held in the trust account in excess of the amount necessary to secure the credit or reduction from liability for reinsurance taken by the cedent CCO.¶
(b) The reinsurance agreement may also contain provisions that:¶
(A) Give the reinsurer the right to seek the cedent CCO's approval, which the cedent CCO shall not unnecessarily or arbitrarily withhold, to withdraw from the trust account all or any part of the trust assets and transfer those assets to the reinsurer. The right to seek approval under this paragraph must be subject to one of the following requirements:¶
(i) The reinsurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount; or¶
(ii) After withdrawal and transfer, the market value of the trust account is no less than 102 percent of the required amount.¶
(B) Provide for:¶
(i) The reinsurer's return of any amount withdrawn in excess of the actual amounts required under subsection (2)(I)(B) of this section; and¶
(ii) Interest payments at a rate not in excess of the prime rate of interest on the amounts held in trust pursuant to this section.¶
(iii) Permit the award by any arbitration panel or court of competent jurisdiction of:¶
(I) Court or arbitration costs;¶
(II) Attorney fees; and¶
(III) Any other reasonable expenses.¶
(c) A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized reinsurer in financial statements required to be filed with the Authority in compliance with the provisions of OAR 410-141-5010 to 5020 when established on or before the date of filing of the financial statement of the cedent CCO. The reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.
Statutory/Other Authority: ORS 413.042, 414.615572, 414.625, 414.635591, 414.6051
Statutes/Other Implemented: ORS 414.610 - 414.685570-414.686, 415.001-415.430

AMEND: 410-141-5065

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references. Updated publications to align with Department of Consumer and Business Services (DCBS) requirements.

CHANGES TO RULE:

410-141-5065
FINANCIAL SOLVENCY REGULATION: Letters of Credit; Other Security
(1) A letter of credit for purposes of OAR 410-141-5055 must be clean, irrevocable, unconditional and issued or confirmed by a Qualified United States Financial Institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented.¶
(2) The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities.¶
(3) As used in this section, "beneficiary" means the CCO for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).¶
(4) The heading of the letter of credit may include a boxed section containing the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.¶
(5) The letter of credit shall contain a statement to the effect that the obligation of the Qualified United States Financial Institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.¶
(6) The term of the letter of credit shall be for at least one year and shall contain an "evergreen clause" that prevents the expiration of the letter of credit without due notice from the issuer. The "evergreen clause" shall provide for a period of not less than 30 days' notice prior to expiration date or nonrenewal.¶
(7) The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication ~~500~~600), or International Standby Practices of the International Chamber of Commerce Publication 590 (ISP98), or any successor publication, and all drafts drawn thereunder shall be presentable at an office in the United States of a Qualified United States Financial Institution.¶
(8) If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication ~~5~~600), or any successor publication, the letter of credit shall specifically address and provide for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 17 of Publication ~~5~~600, or any successor publication, occur.¶
(9) The letter of credit shall be issued or confirmed by a Qualified United States Financial Institution authorized to issue letters of credit.¶
(10) The following apply to reinsurance agreement provisions:¶
(a) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions described in this subsection. All of the provisions of this subsection must be applied without diminution because of insolvency on the part of the cedent CCO or reinsurer. The provisions are as follows:¶
(A) A provision requiring the reinsurer to provide letters of credit to the cedent CCO and specify what they are to cover.¶
(B) A provision stipulating that the reinsurer and cedent CCO agree that the letter of credit provided by the reinsurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and must be used by the cedent CCO or its successors in interest only for one or more of the following reasons:¶
(i) To pay or reimburse the cedent CCO for:¶
(I) The reinsurer's share under the specific reinsurance agreement of unearned capitated revenue returned, but not yet recovered from the reinsurers;¶
(II) The reinsurer's share, under the specific reinsurance agreement, of benefits or losses paid by the cedent CCO, but not yet recovered from the reinsurers, under the terms and provisions of the ~~Member~~CCO Contracts reinsured under the reinsurance agreement; and¶
(III) Any other amounts necessary to secure the credit or reduction from liability for reinsurance taken by the cedent CCO.¶
(ii) When the letter of credit will expire without renewal or be reduced or replaced by a letter of credit for a

reduced amount and when the reinsurer's entire obligations under the specific reinsurance remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the reinsurer's share of the liabilities, to the extent that the liabilities have not yet been funded by the reinsurer and exceed the amount of any reduced or replacement letter of credit, and deposit those amount in a separate account in the name of the cedent CCO in a Qualified United States Financial Institution apart from its general assets, in trust for such uses and purposes specified in subparagraph (i) of this paragraph as may remain after withdrawal and for any period after the termination date.¶

(b) Nothing contained in subsection (10)(a) shall preclude the cedent CCO and reinsurer from providing for:¶

(A) An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to subsection (10)(a)(B); or¶

(B) The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or any amounts that are subsequently determined not to be due.¶

(11) A cedent CCO may take credit for unencumbered funds withheld by the cedent CCO in the United States subject to withdrawal solely by the cedent CCO and under its exclusive control.

Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~

Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5070

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory and Oregon Administrative Rule (OAR) references. Clarification of rule language. Updates to cross-references.

CHANGES TO RULE:

410-141-5070
FINANCIAL SOLVENCY REGULATION: Assets, Liabilities, Reserves
(1) In any determination of the financial condition of a CCO, ~~there shall be allowed as assets only such assets as are~~only assets owned by the CCO a~~n~~re allowed which consist of the following:¶
(a) Cash in the possession or control of the CCO, including the true balance of any deposit in a solvent bank or trust company.¶
(b) Investments permitted by OAR 410-141-5095 to 410-141-5165 and held in accordance with these rules, and due or accrued income items in connection therewith to the extent considered by the Authority to be collectible.¶
(c) Receivables for capitated revenue payments due the CCO, to the extent allowed by the Authority.¶
(d) Amounts recoverable from reinsurers if credit for reinsurance may be allowed to the CCO pursuant to OAR 410-141-5050 to 410-141-5070.¶
(e) Other assets considered by the Authority to be available for the payment of losses and claims, at values determined by the Authority.¶
(2) In addition to assets ~~implied~~specifically excluded by ~~this~~ subsection (1), the following ~~expressly~~ shall not be allowed as assets in any determination of the financial condition of a CCO:¶
(a) Advances to officers, employees, agents and other persons on personal security only.¶
(b) Stock or other equivalent equity interests of such CCO owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock or equivalent equity interest acquired or held through the ownership by such CCO of an interest in another firm, corporation or business unit.¶
(c) Tangible personal property, except such property as the CCO is otherwise permitted to acquire and retain as an investment under these rules and which is deemed by the Authority to be available for the payment of losses and claims or which is otherwise expressly allowable, in whole or in part, as an asset.¶
(d) The amount, if any, by which the book value of any investment as carried in the ledger assets of the CCO exceeds the value thereof as determined under these rules.¶
(3) In any determination of the financial condition of a CCO, liabilities to be charged against its assets shall be calculated in accordance with these rules and shall include:¶
(a) The amount necessary to pay all of its unpaid losses and claims incurred on or prior to the date of the statement, whether reported or unreported to the CCO, together with the expenses of adjustment or settlement thereof.¶
(b) A reserve equal to the unearned portion of capitated revenue held by the CCO as of the financial statement date.¶
(c) Reserves which place a sound value on its liabilities and which are not less than the reserves according to accepted actuarial standards consistently applied and based on actuarial assumptions relevant to ~~c~~CCO Contract provisions.¶
(d) Taxes, expenses and other obligations due or accrued at the date of the statement.¶
(e) Any additional reserves for asset valuation contingencies or loss contingencies required by these rules or considered to be necessary by the Authority for the protection of the Authority and the Members of the CCO.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5075

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory references. Clarification of rule language. Remove hearing language and cross reference to process outlined in CCO Contract.

CHANGES TO RULE:

410-141-5075
FINANCIAL SOLVENCY REGULATION: Disallowance of Certain Reinsurance Transactions
(1) The Authority shall disallow as an asset or as a credit against liabilities any reinsurance found by the Authority ~~after a hearing thereon~~ to have been arranged for the purpose principally of deception as to the ceding CCO's financial condition as of the date of any financial statement of the CCO. ~~Without limiting the general purport of the foregoing provision~~A CCO shall follow the process for approval outlined in the CCO Contract. ¶
(2) Without limiting the significance of the subsection (1), reinsurance of any substantial part of the CCO's outstanding risks placed within four months prior to the date of any such financial statement and canceled in fact within eight months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or substantial risk of net loss to itself, shall ~~prima facie~~ be deemed to have been arranged for the principal purpose of deception.¶
(~~2~~3) The Authority shall disallow as an asset any deposit, funds or other assets of the CCO found by the Authority ~~after a hearing thereon~~:¶
(a) Not to be the property of the CCO;¶
(b) Not freely subject to withdrawal or liquidation by the CCO at any time for the payment or discharge of claims or other obligations arising under its ~~Member~~CCO Contracts; or¶
(c) To result from arrangements made principally for the purpose of deception as to the CCO's financial condition as of the date of any financial statement of the CCO.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.605~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5080

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarification of language related to confidentiality requirements. Cross reference with new merger and acquisition confidentiality rule. Update statutory references.

CHANGES TO RULE:

410-141-5080
FINANCIAL SOLVENCY REGULATION: Transparency
(1) Pursuant to ORS 414.018 and ~~Section 54(2) of S.B. 1041~~414.593(2), interactions between the Authority and CCOs shall be done in a transparent and public manner. ~~Without limitation of the preceding sentence, t~~¶
(2) The Authority shall publicly disclose all information pertaining to CCOs required by ~~Section 54(3) of S.B. 1041.~~ORS 414.593(3) that is not deemed confidential in this subsection. Such confidential documents include:¶
(~~2~~a) Certain documents pertaining to a CCO's financial condition ~~may be considered confidential, when so~~, as described in these rules. ¶
(b) Financial analysis solvency tools and analytical reports developed by the NAIC, and comparable reports developed or used by DCBS or the Authority~~, are confidential. In addition, a~~. ¶
(c) Any work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to the Authority or DCBS, or any other person in the course of an examination or in the course of analysis by the Authority or DCBS of the financial condition or market conduct of an CCO ~~may be considered confidential~~, if the CCO specifically designates the confidential portions and cites an exemption from public disclosure under the Oregon Public Records Law, ORS 192.311 to 192.478. ~~If t~~The Authority may, in its sole discretion, determine~~s~~ that the ~~cited~~ exemption cited by the CCO does not apply or disclosure is necessary to protect the public interest, ~~the Authority may make available work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Authority or any other person in the course of the examination~~ in accordance with Oregon Public Records Law.¶
(3) The Authority ~~or DCBS~~ may use a confidential document, material or other information in administering these rules and in ~~furthering a~~any regulatory or legal action brought as a part of the Authority's duties. In order to assist in the performance of the Authority's duties, the Authority may:¶
(a) Authorize sharing a confidential document, material or other information as appropriate among the administrative divisions and staff offices of the Authority or DCBS for the purpose of administering and enforcing the statutes within the authority of the Authority, in order to enable the administrative divisions and staff offices to carry out their functions and responsibilities;¶
(b) Share a document, material or other information, including a confidential document, material or other information that is subject to this rule or that is otherwise exempt from disclosure under ORS 192.~~501 or ORS~~311 to 192.~~502, with other~~478, in response to a request from the NAIC or a state, federal, foreign ~~and~~, or international ~~regulatory and~~ law enforcement agenc~~ies and with the NAIC and affiliates or subsidiaries of the NAIC, if the recipient agrees to maintay~~.¶
(4) Upon notice or with an understanding the ~~confidentiality of~~at the document, material or other information~~;~~ ~~and~~¶
~~(c) Receive a document, material or other information, including an otherwise confidential document, material or other information, from state, federal, foreign and international regulatory and law enforcement agencies and from the NAIC and affiliates or subsidiaries of the NAIC. As provided in this sec~~ is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other informa~~t~~ion, the Authority shall maintain the confidentiality of documents, materials or other information received ~~upon notice or with an understanding that the document, mat~~from state, fede~~r~~ri~~a~~l ~~or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.¶~~
(4) Disclosing a document, material or other information to t~~, foreign and international regulatory and law enforcement agencies and from the NAIC.¶
(5) The Authority~~, or~~'s use, sharing, and disclosure of a document, material or other information~~,~~ does not waive an applicable privilege or claim of confidentiality in the document, material or other information.¶
(~~5~~6) The Authority may release a final, adjudicated action, including the termination of a~~n~~ CCO~~'s c~~ Contract, if the action is otherwise open to public inspection, to a database or other clearinghouse service maintained by the NAIC or affiliates or subsidiaries of the NAIC.¶
(~~6~~7) All information, documents and copies thereof obtained by or disclosed to the Authority, DCBS or any other person in the course of an examination or investigation made or conducted under these rules shall be subject to the provisions of OAR 410-141-53~~1~~05.¶
(~~7~~8) ~~Section 54(3) of S.B. 1041~~ORS 414.593 requires the Authority to make readily available to the public on an

easily accessible website, and to annually report to the Legislative Assembly, certain information regarding each CCO contracting with the Authority. Nothing in this rule shall be construed as making confidential any information described in the previous sentence.¶
(9) Nothing in this rule shall be construed as waiving the Confidentiality requirements of OAR 410-141-5278.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5085

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updates to statutory authority. Update definition of "amply secured obligation."

CHANGES TO RULE:

410-141-5085
ASSET VALUATION AND PERMITTED INVESTMENTS: Definitions
As used in OAR 410-141-5085 to 410-141-5165:¶
(1) "Amply secured obligation" means an obligation which is not in default and as to which no default is imminent, and which satisfies the requirements of one or more of the following subsections:¶
(a) An obligation of a sovereign or political subdivision thereof, if it is issued, assumed or guaranteed by the governmental unit involved and is payable either from:¶
(b) Taxes levied or which may be levied by such governmental unit; or¶
(c) Adequate special revenues pledged or otherwise appropriated or required by law to be used for the purpose of such payment, provided the law authorizing the issuance of the obligation requires that adequate rates be fixed, maintained and collected at all times so as to produce sufficient revenue or earnings to pay all operating expenses, maintenance charges, and the principal, interest and dividends on the obligation. An obligation payable solely out of special assessments on real property benefited by local improvements shall not be considered amply secured unless the total amount so payable is less than 50 percent of the market value of the real property (including any improvements thereon) and constitutes a lien on such property.¶
(d) An obligation issued, assumed or guaranteed by a corporation, if the corporation is solvent, has not been in default on any of its obligations during the preceding three years, and if the obligation is secured by the pledge of property the market value of which exceeds the amount of the obligation by 25 percent or more. Obligations which are the subject of OAR 410-141-5105 and OAR 410-141-5110 are not included within the provisions of this subsection.¶
(e) An obligation otherwise found to be amply secured by the Authority. In making such determinations, the Authority shall give consideration to model laws, model regulations and other statutory accounting guidance pertaining to amply secured obligations issued from time to time by the NAIC, and shall consider the financial condition of the issuing, assuming or guaranteeing corporation as well as the existence or absence of any pledge of property as security.¶
(2) "Corporation" means a corporation, joint stock association or business trust organized and existing under the laws of a sovereign.¶
(3) "Improved real property" means:¶
(a) Farmland used for tillage, crop or pasture;¶
(b) Real estate on which permanent improvements, or improvements under construction or in process of construction, suitable for residence, institutional, commercial or industrial use, are situated; and¶
(c) Real estate to be developed for the use or uses set forth in subsection (2) of this section on which improvements, or improvements under construction or in process of construction, such as streets, sidewalks, sewers and utilities which will become an integral part of such development, are situated.¶
(4) "Obligation" means a bond, debenture, note, warrant, certificate or other evidence of indebtedness.¶
(5) "Political subdivision" means an incorporated county, city, town, village, municipality, or subdivision thereof, or a public corporation, district, agency, commission, authority or instrumentality, or subdivision thereof.¶
(6) "Sovereign" means the United States, or a state, or Canada or a province thereof.¶
(7) "Unencumbered" means the nonexistence of any lien, burden or charge having priority over the lien securing the CCO's investment. The following shall not be considered encumbrances on real property or leasehold interests therein:¶
(a) Reservations of mineral, oil or timber rights, easements, rights of way, sewer rights or rights of walls.¶
(b) Liens for taxes or assessments not delinquent.¶
(c) Building restrictions or other restrictive covenants common to the community.¶
(d) Where the loan is secured by a lien upon real property, a lease under which rents or profits are reserved to the owner, if in any event the security for the loan would be a first lien upon the real property except for such lease.¶
(e) Where the loan is secured by a lien on a leasehold, a prior lien on the real property, provided the security for the loan is a first lien upon the leasehold and there exists no provision preventing the CCO from continuing the lease in force for the duration of the lease or no condition or rights of reentry or forfeiture under which such lien can be cut off, subordinated or otherwise disturbed so long as the lessee's obligations under the lease are discharged.
Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635~~, 414.651~~

Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5090

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarification of language. Update to statutory references.

CHANGES TO RULE:

410-141-5090
ASSET VALUATION AND PERMITTED INVESTMENTS: Calculation of Value; Books and Records
(1) Securities held by a CCO, other than bonds or other evidences of debt to which OAR 410-141-5095, applies, must be valued in the discretion of the Authority at their market value, at their appraised value or at prices determined by the Authority as representing their fair market value.¶
(2) Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value instead of market value, at the discretion of the Authority and in accordance with any method of valuation approved by the Authority.¶
(3) Stock of a subsidiary corporation of a CCO may not be valued at an amount in excess of the net value thereof as based upon the assets only of the subsidiary that would be eligible under OAR 410-141-5095 to 410-141-5140 for investment of the funds of the CCO directly.¶
(4) The Authority may determine the method of calculating values as provided in this section, but the method or valuation may not be inconsistent with any applicable method or valuation used by CCOs in general or any such method of valuation then currently formulated or approved by the NAIC or its successor organization.¶
(5) Assets may be allowed as deductions from corresponding liabilities, liabilities may be charged as deductions from assets, deductions from assets may be charged as liabilities, and deductions from liabilities may be allowed as assets, in accordance with the form of annual statement prescribed by the Authority, or otherwise in the discretion of the Authority.¶
(6) A CCO shall keep its books, records, accounts and transaction source data in such manner that the Authority may readily verify its statements of financial condition and ascertain whether the CCO is unimpaired, has given proper treatment to Members and has complied with ~~Applicable L~~state and federal law.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5095

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5095
ASSET VALUATION AND PERMITTED INVESTMENTS: Assets Other Than Securities; Bonds; Real Property; Mortgages; Compensating Balances
(1) Each bond or other evidence of debt having a fixed term and rate of interest may be valued as follows, if amply secured and not in default as to principal or interest:¶
(a) If purchased at par, at the par value.¶
(b) If purchased above or below par, according to an accepted method of valuation approved by the Authority.¶
(2) For the purpose of subsection (1) of this section, the purchase price shall not be a higher amount than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such bond or other evidence of debt.¶
(3) For purposes of subsections (1) and (2) of this section, the Authority may determine the method of calculating values. The method or valuation may not be inconsistent with any applicable method or valuation used by CCOs in general or any such method or valuation then currently formulated or approved by the NAIC or its successor organization.¶
(4) Real property shall be valued as follows:¶
(a) Real property acquired pursuant to a mortgage loan or contract of sale shall be valued at an amount not greater than the unpaid principal of the defaulted loan or contract at the date of such acquisition, together with any taxes and expenses paid or incurred in connection with such acquisition, and the cost of improvements thereafter made by the CCO and any amounts thereafter paid by the CCO on assessments levied for improvements in connection with the property.¶
(b) Other real property held by a CCO shall be valued at an amount not in excess of the cost of the acquired property and the cost of improvements thereafter made by the CCO, less a reasonable allowance for depreciation.¶
(5) Purchase money mortgages on real property referred to in subsection (4)(a) of this section shall be valued in an amount not exceeding the acquisition cost of the real property covered thereby or 90 percent of the fair value of such real property, whichever is less.¶
(6) Other assets, other than securities, shall be valued at cost of acquisition less any repaid portion thereof, unless the Authority determines that another value is proper.¶
(7) Except as provided in OAR 410-141-5100, funds of a CCO shall not be used as compensating balances for loans to other persons, or otherwise pledged for the benefit of other persons.¶
(8) A CCO shall not have any combination of investments in or secured by the stocks, obligations, and property of one person, corporation or political subdivision in excess of 10 percent of the CCO's assets, nor shall it invest more than 10 percent of its assets in a single parcel of real property or in any other single investment. This subsection does not apply to:¶
(a) Investments in, or loans upon, the security of the general obligations of a sovereign.¶
(b) Investments by a CCO in all real or personal property used exclusively by such CCO to provide health services or in real property used primarily for its home office.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5100

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5100
ASSET VALUATION AND PERMITTED INVESTMENTS: Investments Used to Provide Compensating Balances
Investments of a CCO of the kind described in OAR 410-141-5105(2) that are made for the purpose of providing compensating balances for other persons will not be prohibited by OAR 410-141-5140 while the following conditions are met:¶
(1) The investment is made in the name of and remains the sole property of the CCO;¶
(2) The investment is not subject to appropriation in any manner by any person, including the person for whom the compensating balance is being provided, the institution in which the deposit is made and other creditors of such persons;¶
(3) The CCO holds an irrevocable written waiver from the depositary institution, in a form satisfactory to the Authority, waiving all right, title and interest in or to any setoff, banker's or similar lien or other security interest in such investment or any funds represented thereby;¶
(4) The investment is unrestricted as to right of withdrawal except for such restrictions as may be usual and customary for such investments under OAR 410-141-5105(2) when no compensating balance is involved; and¶
(5) The CCO receives a reasonable fee, taking into consideration its return on other funds, for providing the compensating balance involved.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5105

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5105
ASSET VALUATION AND PERMITTED INVESTMENTS: Investment of Required Capitalization
(1) Funds of a CCO at least equal to its required capitalization shall be invested and kept invested as follows:¶
(a) In amply secured obligations of the United States, a state or a political subdivision of this state.¶
(b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in this state where:¶
(A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;¶
(B) The lien does not exceed 66-2/3 percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the installment payments are sufficient to repay the loan within a period of not more than 25 years; or¶
(C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Department of Veterans Affairs, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.¶
(2) In deposits, certificates of deposit, deposit accounts, savings accounts, or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations to the extent such investments are insured by the Federal Deposit Insurance Corporation.¶
(3) Investments made pursuant to this section shall be kept free of any lien or pledge. The term "lien or pledge" as used in this section shall not include a deposit of securities with a sovereign, nor assets held in trust for the benefit or protection of all or any class of policyholders of a CCO.¶
(4) Funds of a CCO may be invested in amply secured obligations of a sovereign, political subdivision thereof or corporation. Expressly included, but not by way of limitation, are obligations of the following federal agencies and authorities: Federal Home Loan Banks, Federal Land Banks, Home Owners Loan Corporation, Public Housing Authorities (to the extent that such obligations are secured by a pledge of annual contributions to be paid by the United States or an agency thereof), and Federal Intermediate Credit Banks.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5110

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory and rule references.

CHANGES TO RULE:

410-141-5110
ASSET VALUATION AND PERMITTED INVESTMENTS: Investment in Mortgage Loans
(1) Funds of a CCO may be invested in:¶
(a) Loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in the manner and subject to the same terms and conditions set forth in OAR 410-141-5105, except that the property may be located within the boundaries of any sovereign; for loans described in OAR 410-141-5105 (1)(b)(B), the maximum permitted ratio of the loan to the appraised value shall be 80 rather than 66-2/3 percent, and the maximum term of the loan shall be 30 rather than 25 years.¶
(b) Loans secured by first liens upon a leasehold of improved, unencumbered real property located within the boundaries of any sovereign if:¶
(A) The leasehold has a period of not less than 20 years to run from the date of the loan, inclusive of the term which may be provided by an enforceable option of renewal, the loan does not exceed 70 percent of the fair market value of the leasehold together with any improvements located thereon which are subject to the lien, the terms of the loan provide for amortization payments to be made by the borrower on the principal thereof at least once in each year in amounts sufficient to completely amortize the loan within a period of four-fifths of the term of the leasehold, and the CCO is entitled to be subrogated to all rights of the lessee under the leasehold; or¶
(B) The investment is insured or guaranteed in the manner provided in OAR 410-141-5105 (1)(b)(C).¶
(2) A loan upon the security of real property or a leasehold interest therein which is a participation in or a part of a series or issue shall not be made unless the CCO holds a senior participation or similar security interest in the mortgage or deed of trust giving it substantially the rights of a first mortgagee.¶
(3) Nothing in OAR 410-141-5085 to 410-141-51~~2~~6<u>5</u> shall prohibit a CCO from renewing or extending a proper loan secured by a first lien upon real property or a leasehold interest therein made pursuant to this section or to OAR 410-141-5105 for the original or a lesser amount even though such amount is a greater percentage of the current fair market value of the real property or leasehold than would otherwise be permitted under such sections.¶
(4) On loans secured by liens upon real property or leasehold interests therein, the buildings and other improvements located on the premises shall be kept insured against loss or damage from fire in an amount not less than the unpaid balance of the obligation or the insurable value of the property, whichever is the lesser. The fire insurance policy or policies shall be payable to the CCO, or a trustee for its benefit, and continued in force until the loan is repaid or satisfied. Such policy or policies shall be held by the CCO or the trustee, unless the Authority has determined that a different method of protecting the CCOs against loss is satisfactory and has given prior approval of such method to the CCO.
Statutory/Other Authority: ~~ORS 414.615,~~ ORS 413.042, 414.~~625~~<u>572</u>, 414.~~635~~<u>591</u>, 414.6<u>0</u>5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~<u>570-414.686, 415.001-415.430</u>

AMEND: 410-141-5115

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory and rule references.

CHANGES TO RULE:

410-141-5115
ASSET VALUATION AND PERMITTED INVESTMENTS: Investment in Real Property
(1) Except as otherwise provided in OAR 410-141-5105 and OAR 410-141-5110, a CCO may invest in real property only if used for the purposes or acquired in the manner and within the limits as follows:¶
(a) A CCO may invest in the land and the buildings thereon in which it has its principal office, and in such other real property as required for its convenient accommodation in the transaction of business. Such investments shall not exceed in the aggregate ten percent of the assets of the CCO, except with the consent of the Authority.¶
(b) A CCO may invest in real property that is acquired in satisfaction of loans, mortgages, liens, judgments or debts previously owing to the CCO in the course of its business.¶
(c) A CCO may invest in real property acquired in part payment of the consideration on the sale of other real property owned by the CCO if the transaction does not increase the investment of the CCO in real property.¶
(d) A CCO may invest in real property acquired by gift or devise or through merger, consolidation or bulk reinsurance of another CCO.¶
(e) A CCO may invest in the vendor's interest in real property subject to a contract of sale. The amount invested in the vendor's interest under such a contract shall not exceed, except with the consent of the Authority:¶
(A) Ninety percent of the market value of the subject real property, when the real property is one, or two-family residential property.¶
(B) Eighty percent of the market value of the subject real property, when the real property is other than that described in subparagraph (A) of this paragraph.¶
(f) A CCO may invest in real property or any interest therein that is acquired or held by purchase, lease or otherwise, other than real property used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement or club purposes, if the real property or interest therein is acquired as an investment for the production of income or acquired to be improved or developed for such investment purposes pursuant to an existing program therefor. A CCO may hold, improve, develop, maintain, manage, lease, sell and convey real property acquired by it under this paragraph. Real property and interests therein so acquired may be leased or sublet. Except with the consent of the Authority, a CCO shall not have an amount exceeding five percent of its assets at any one time invested in real property and interests therein under this paragraph.¶
(g) A CCO may invest in additional real property and in equipment incident to real property if necessary or convenient for the purpose of enhancing the sale or other value of real property previously acquired or held by the CCO under paragraph (b), (c), (d) or (f) of this subsection. The real property and equipment shall be included, together with the real property for the enhancement of which it was acquired, for the purpose of applicable investment limits.¶
(h) A CCO may invest in real property without regard to whether the property is income-producing when acquired if the CCO intends to improve the property for resale or if the CCO intends that the property ~~wi~~shall be income-producing. The CCO may also invest in real property that is income-producing and used primarily for agricultural, ranch, mining, development of oil or mineral resources, recreational, amusement or club purposes. Funds invested under this paragraph shall not exceed the lesser of five percent of the CCO's assets or ~~50~~fifty percent of the CCO's capital and surplus, except with the consent of the Authority.¶
(i) Except with the consent of the Authority, all real property owned by the CCO under this subsection, except as to properties described in paragraphs (a) and (e) of this subsection, shall not at any time exceed 10 percent of the assets of the CCO.¶
(2) Except as otherwise provided in subsection (3) of this section:¶
(a) Real property acquired under this section shall be disposed of within five years after it ceases to be income-producing or to be used by the CCO for its business operation, whichever is later.¶
(b) Real property acquired under subsection (1)(h) of this section that is not income-producing when acquired shall be disposed of within five years after acquisition if the real property is not improved for resale or if the real property is not income-producing during the five years.¶
(c) When an investment or any combination of investments by a CCO in real property exceeds any applicable limitation under this section other than a limitation of time, the CCO, not later than the fifth year after the limitation is exceeded, shall dispose of sufficient real property that is subject to the limitation to comply with the limitation.¶
(3) Any real property acquired under this section that otherwise qualifies as an investment under OAR 410-141-

5085 to 410-141-513<u>6</u>5 may be retained and held if approved as an investment in the manner prescribed by OAR 410-141-5155 and 410-141-5160. The Authority may extend the time limit prescribed in subsection (2) of this section if the interests of the CCO ~~wi~~<u>sha</u>ll suffer by a "forced sale" of the property.
Statutory/Other Authority: ORS 413.042, 414.~~615~~<u>572</u>, 414.~~625, 414.635~~<u>591</u>, 414.6<u>0</u>5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~<u>570-414.686, 415.001-415.430</u>

AMEND: 410-141-5120

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5120
ASSET VALUATION AND PERMITTED INVESTMENTS: Investment in Corporate Stocks
(1) Funds of a CCO may be invested in stocks (including trust certificates) of solvent corporations organized and carrying on a business under the laws of a sovereign as follows:¶
(a) Preferred or guaranteed stocks if the corporation is not in default or arrears as to any preferred or guaranteed dividend and has continuously and regularly paid such dividends during the preceding three years or has paid cash dividends for five years on common stock.¶
(b) Common stocks as provided in paragraph (c) of this subsection if:¶
(A) The obligations and preferred stock, if any, of such corporation are eligible for investment under these rules; and¶
(B) The stock is registered on a national securities exchange regulated under the Securities Exchange Act of 1934, 15 U.S.C. 78a et seq., or if of a type not commonly so registered is regularly traded on a broad national or regional basis.¶
(C) Notwithstanding OAR 410-141-5165(1), not more than ~~25~~twenty five percent of admitted assets may be in common stocks that have not paid a cash dividend during each of the five years preceding the date of acquisition.¶
(2) A CCO shall not invest so as to own or control more than five percent of the voting power outstanding of a corporation, nor shall it invest in the obligations or stocks of a corporation if the CCO and its directors, trustees and officers own or control, or as a result thereof shall own and control, in the aggregate more than 50 percent of the voting power. This subsection does not apply to limit the amount of a CCO's assets that may be invested in the voting securities of a depository institution or any company that controls the depository institution.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5125

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5125
ASSET VALUATION AND PERMITTED INVESTMENTS: Loans; Security; Limitations
(1) Funds of a CCO may be invested in loans secured by pledges of obligations and stocks eligible for investment under these rules. As of the date the loan is made, it shall not exceed in amount ~~80~~eighty percent of the market value of the collateral pledged. No such loan shall be made for the purpose of providing funds to purchase or carry stocks registered on a national securities exchange.¶
(2) Funds of a CCO may be invested in loans secured by personal property or fixtures if such loan is:¶
(a) In connection with a loan on the security of real property or a leasehold as provided in OAR 410-141-5110;¶
(b) In an amount not exceeding ~~20~~twenty percent of the amount loaned on the real property or leasehold;¶
(c) For a term of not more than five years;¶
(d) Secured by a security interest which constitutes a first lien, except for taxes not then delinquent, on tangible, permanent personal property of the borrower kept and used on the premises, other than stocks of goods held for sale or transfer in the ordinary course of business or items which by normal use ~~wi~~shall be consumed or depleted during the period of the loan; and¶
(e) In an amount, the ratio of which to the value of the security does not exceed the ratio of the companion loan to the value of the real property or leasehold.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5130

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5130
ASSET VALUATION AND PERMITTED INVESTMENTS: Investments; Certain Obligations, Property, Loans and Other Specified Items
Funds of a CCO may be invested in the following:¶
(1) Obligations secured by a mortgage or deed of trust payment of which is guaranteed by a policy of mortgage insurance.¶
(2) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.¶
(3) Bank and bankers' acceptances and other bills of exchange of the kind and nature made eligible by law for purchase in the open market by federal reserve banks.¶
(4) Deposits, certificates of deposits, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations insured with the Federal Deposit Insurance Corporation or qualified to do business under the laws of this state.¶
(5) Obligations issued by trustees or receivers of a corporation created or existing under the laws of a sovereign which, or the assets of which, are being administered under the direction of a court having jurisdiction if the obligation is adequately secured as to principal and interest.¶
(6) Transportation equipment used wholly or in part within a sovereign, or adequately secured trust certificates of participation or similar obligations or contracts evidencing an interest in such transportation equipment, where the investor is entitled to receive a determined or determinable portion of rental, purchase or other obligatory payments for use or purchase of the equipment.¶
(7) Purchase contracts or lease-purchase agreements executed under the Federal Public Buildings Purchase Contract Act of 1954, or the Post Office Department Property Act of 1954.¶
(8) Stock of the Federal Home Loan Bank to the extent of the minimum required by the Federal Home Loan Bank Act. A CCO acquiring such stock may exercise all rights and powers given to members under such Act, including but not by way of limitation the right to obtain advances or borrow money from such bank and to pledge collateral as security therefor.¶
(9) Obligations issued, assumed or guaranteed by the Inter-American Development Bank.¶
(10) Obligations issued, assumed or guaranteed by the Asian Development Bank.¶
(11) Obligations issued, assumed or guaranteed by the African Development Bank.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5135

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5135
ASSET VALUATION AND PERMITTED INVESTMENTS: Personal Property; Protection of Investment Property; Custom
(1) A CCO may acquire and retain personal property received as a dividend, gift or devise, or pursuant to a lawful plan of merger, consolidation or reorganization or bona fide agreement of bulk reinsurance, or in satisfaction or liquidation of an obligation, or in exchange or part payment for real or personal property previously owned or to protect or enhance such property.¶
(2) A CCO may make purchases or loan sums necessary to protect, preserve or enhance investment property, real or personal, which it is otherwise authorized to acquire or hold.¶
(3) The Authority shall allow as assets in any determination of the financial condition of the CCO only such property or investments acquired or retained under this section as are consistent with the customary operations of a CCO.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5140

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5140
ASSET VALUATION AND PERMITTED INVESTMENTS: Prudent Investor Standard
(1) Funds of a CCO may be invested in a manner not expressly prohibited under OAR 410-141-5145 and OAR 410-141-5165 provided such investments are made in the exercise of the judgment and care under the circumstances then prevailing which investors of prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.¶
(2) Funds invested under this section shall not exceed the lesser of seven and one-half percent of the CCO's assets or the excess of the CCO's assets over all liabilities and required capitalization.¶
(3) If the Authority has reason to believe that loans or investments made pursuant to this section are not adequately secured or are not yielding an income the Authority may direct the CCO to report under oath the amount of such loans or investments, the security therefor and its market value.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5145

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5145
ASSET VALUATION AND PERMITTED INVESTMENTS: Prohibited Conduct by Directors, Trustees, Officers, Agents or Employees
(1) Except in the case of the issuance or sale of the CCO's securities, as approved by a majority of the disinterested members of the CCO's Board, or failing such majority by the shareholders, a director, trustee, officer, agent or employee, or spouse or relative thereof, shall not receive any fee, commission, compensation or other valuable consideration whatsoever, directly or indirectly, for aiding, promoting or assisting:¶
(a) The planning, preparing or executing of an activity described in OAR 410-141-5160; or¶
(b) The planning, preparing or executing of any plan for the issuance, sale or acquisition of shares or other securities of the CCO for any purpose.¶
(2) Except as provided in subsections (4) and (5) of this section, a director, trustee or officer of a CCO shall not:¶
(a) Accept any money or thing of value for negotiating, procuring, recommending or aiding in:¶
(A) The purchase or sale of property by the CCO; or¶
(B) The making of a loan to or from the CCO.¶
(b) Have a pecuniary interest, whether as principal, agent or beneficiary, in a purchase, sale or loan under paragraph (a) of this subsection.¶
(3) Except as provided in subsections (4) and (5) of this section, a CCO shall not do any of the following:¶
(a) Pay any money or thing of value to a director, trustee or officer of the CCO for negotiating, procuring, recommending or aiding in:¶
(A) The purchase or sale of property by the CCO; or¶
(B) The making of a loan to or from the CCO.¶
(b) Make a loan to a director, trustee or officer of the CCO.¶
(c) Make any advances to a director, trustee or officer of the CCO for future services to be performed.¶
(d) Guarantee any financial obligations of a director, trustee or officer of the CCO.¶
(4) A CCO may contract, or otherwise enter into a transaction, for the provision of goods or services to the CCO in the normal course of business with a director, trustee or officer, or a partnership or corporation in which a director, trustee or officer has, directly or indirectly, a proprietary interest in excess of five percent, if the interest of the director, trustee or officer is fully disclosed to the CCO's Board and the CCO's board thereafter approves and authorizes the contract or transaction by a vote sufficient for the purpose without counting the vote of the interested person.¶
(5) The prohibitions set forth in this section shall not apply to or affect:¶
(a) The payment to any director, officer or trustee of reasonable compensation, whether based in whole or in part upon commission or otherwise;¶
(b) The payment of a fee to any approved person for legal or other specialized or professional services rendered to the CCO and approved by the CCO's Board;¶
(c) The making of loans or advances to agents or other employees of a CCO as required or as is expedient in the conduct of its business;¶
(d) The issuance of a debt obligation by a CCO to a director, officer or trustee of the CCO; and¶
(e) The advance of expenses to a director, officer or trustee for travel or other related business activities of the CCO.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5150

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5150
ASSET VALUATION AND PERMITTED INVESTMENTS: Investment of Funds in Obligations That Are Not Investment Quality; Percentage of Assets
(1) A CCO may acquire or hold obligations that are not investment grade only as provided in this section.¶
(2) For purposes of this section, an obligation is not investment grade if the obligation is either of the following:¶
(a) A "medium grade obligation", which means an obligation that is rated three by the SVO;¶
(b) A "lower grade obligation", which means an obligation that is rated four, five or six by SVO.¶
(3) A CCO shall not acquire, directly or indirectly, any medium grade or lower grade obligation of any person if, after given effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the CCO would exceed 20% of its allowed assets. For purposes of this section, the aggregate amount of medium grade and lower grade obligations shall be the aggregate value of the obligations as set forth in the most recent financial statement required by, and filed with, the Authority.¶
(4) In addition to the prohibition in subsection (3) on the aggregate amount of medium grade and lower grade obligations, a CCO shall not acquire or hold:¶
(a) More than ten percent of its allowed assets in obligations rated four, five or six by the SVO;¶
(b) More than three percent of its allowed assets in obligations rated five or six by the SVO;¶
(c) More than one percent of its allowed assets in obligations rated six by the SVO.¶
(5) Attaining the limit of any one category under subsection (4) does not preclude a CCO from acquiring or holding obligations in other categories, subject to the specific and multi-category limits of this section.¶
(6) The following prohibitions apply to investments in lower grade obligations and medium grade obligations issued, guaranteed or insured by any one person:¶
(a) A CCO shall not acquire or hold more than an aggregate of one percent of its allowed assets in medium grade obligations issued, guaranteed or insured by any one person;¶
(b) A CCO shall not acquire or hold more than one-half of one percent of its allowed assets in lower grade obligations issued, guaranteed or insured by any one person;¶
(c) In addition to the prohibitions in subsections (a) and (b) of this section, a CCO shall not acquire or hold more than one percent of its allowed assets in any medium or lower grade obligations issued, guaranteed or insured by any one person.¶
(7) This section does not prohibit a CCO from doing any of the following:¶
(a) Acquiring any obligation that the CCO committed prior to the effective date of this section to acquire if the CCO would have been permitted to acquire the obligation when the CCO made the commitment;¶
(b) Acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held.¶
(8) A CCO may acquire a medium or lower grade obligation of a person in which the CCO already has one or more medium or lower grade obligations if the obligation is acquired in order to protect an investment previously made in the obligations of the person. All such acquired obligations, however, shall not exceed one-half of one percent of the CCO's allowed assets.¶
(9) The board of directors of a CCO that acquires, hold or invests, directly or indirectly, more than two percent of its allowed assets in medium grade and lower grade obligations shall adopt a written plan for the making of such investments. The plan shall contain guidelines with respect to the quality of the issues invested in as well as diversification standards. The diversification standards shall at least include standards regarding the issuer, industry, duration, liquidity and geographic location.¶
(10) A CCO shall not acquire any lower grade or medium grade obligation that in whole or in part exceed the applicable limitation established in this section. The requirement under this section does not apply to the acquisition of an obligation to which subsection (7) applies.¶
(11) If an obligation held by a CCO is of investment grade when acquired but subsequently becomes a medium grade or lower grade obligation, and that event causes the obligations of the CCO to exceed an applicable limit established under this section, the CCO shall not count the excess as an allowed asset. A CCO shall not hold any excess ascribable to deterioration of an obligation as described in this section longer than a continuous period of three years during which the obligation is a medium or lower grade obligation, except with the consent of the Authority.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5155

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update to statutory references.

CHANGES TO RULE:

410-141-5155
ASSET VALUATION AND PERMITTED INVESTMENTS: Approval by Board
(1) The investment policy shall be approved by the CCO's Board or a committee thereof charged with the duty of investing the funds of the CCO.¶
(2) Deposits shall be made in banks or banking institutions approved by the CCO's Board.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5160

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5160
ASSET VALUATION AND PERMITTED INVESTMENTS: Record of Investments
As to each investment, a CCO shall make a written record in permanent form, signed by a person authorized by the CCO's Board or by a committee thereof charged with the duty of investing the funds. The record shall show the authorization and approval of the investment and in addition shall contain:¶
(1) In the case of mortgage loans:¶
(a) The name of the borrower;¶
(b) The location and legal description of the property;¶
(c) A physical description and the appraised value of the security as determined by a competent and qualified appraiser; and¶
(d) The amount of the loan, rate of interest and terms of repayment.¶
(2) In the case of obligations:¶
(a) The name of the obligor;¶
(b) A description of the security and record of earnings;¶
(c) The amount invested and the rate of interest or dividend; and¶
(d) The maturity and yield based upon the purchase price.¶
(3) In the case of corporate stocks:¶
(a) The name of the issuing corporation;¶
(b) The record of earnings and of dividends paid for the preceding three years for preferred stock and for the preceding five years for common stock;¶
(c) A summary of the financial statement of the corporation as of the end of the preceding fiscal year;¶
(d) The exchange, if any, on which the stock is listed; and¶
(e) The amount invested and the number of shares acquired and held.¶
(4) In the case of real estate, leaseholds or vendors' interests under contracts of sale therein:¶
(a) The location and legal description of the property;¶
(b) A physical description and the appraised value of the property and interest therein;¶
(c) The purchase price and terms;¶
(d) The amount of any lien known to be against the property;¶
(e) If of a leasehold, the terms of the outstanding lease; and¶
(f) If a vendor's interest under a contract of sale, the terms and status of payments under the contract.¶
(5) In the case of all investments:¶
(a) The amount of any expenses and commissions incurred on account of the investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents that are part of the CCO's records; and¶
(b) The name of any director, trustee or officer of the CCO, having a direct, indirect or contingent interest in the loan, security or property, or who would derive, directly or indirectly, any benefit therefrom, and the nature of such interest or benefit.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5165

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Revised language pertaining to hearing requirements. Update to statutory references.

CHANGES TO RULE:

410-141-5165
ASSET VALUATION AND PERMITTED INVESTMENTS: Prohibited Investments
(1) A CCO shall not make investments:¶
(a) Which at the time of purchase or acquisition are not interest-bearing or dividend or income-paying, or are in default in any respect; or¶
(b) From which the CCO is not entitled to receive for its exclusive account and benefit the interest, dividends or income.¶
(2) Subsection (1)(a) of this section shall not apply to property acquired under OAR 410-141-5115, OAR 410-141-5135 or OAR 410-141-5140 if the property is acquired with the intent and expectation that it ~~wi~~shall be income-producing.¶
(3) A CCO shall not have any combination of investments in or secured by the stocks, obligations, and property of one person, corporation or political subdivision in excess of ten percent of the CCO's assets, nor shall it invest more than ten percent of its assets in a single parcel of real property or in any other single investment. This subsection does not apply to investments in, or loans upon, the security of the general obligations of a sovereign.¶
(4) A CCO shall not invest its funds in any investment or security found by the Authority to be designed to evade any prohibition of ~~Applicable Law.¶~~
~~(5) After a hearing, the Authority may by written order~~state or federal law.¶
(5) The Authority may issue a determination require~~e~~ing the disposal of an investment which the Authority finds to be made or retained in violation of ~~Applicable L~~state or federal law, or of an investment which the Authority, for good cause, determines to be prejudicial to, or to impair the security of, the stockholders or Members of the CCO.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5170

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarification of language. Update to statutory references.

CHANGES TO RULE:

410-141-5170
CAPITALIZATION: Capital and Surplus
(1) ~~A~~ CCO shall possess and thereafter maintain capital or surplus or any combination thereof equal to no less than $2.5 million.¶
(2) ~~A CCO applying for its original CCO contract this state shall possess, when so applying, additional capital or surplus, or any combination thereof, of not less than $500,000.¶~~
~~(3)~~ Notwithstanding a CCO's compliance with subsection~~s~~ (1) ~~and (2),~~ a CCO shall at all times also comply with the risk-based capital standards set forth at OAR 410-141-5295 to 5320.¶
(43) For the protection of the public, the Authority may require a CCO to possess and maintain capital or surplus, or any combination thereof, in excess of the amounts otherwise required under this section, owing to the type, volume and nature of business transacted by the CCO~~.~~, if the Authority determines under OAR 410-141-5175 that the greater amount is necessary for maintaining the CCO's solvency in accordance with OAR 410-141-5195 et seq For the purpose of determining the reasonableness and adequacy of a CCO's capital and surplus, the Authority may consider the ~~following factors, as am~~net effect of factors bearing on the financial condition~~g~~ of the~~rs~~ CCO including but not limited to:¶
(a) The size of the CCO, as measured by its assets, capital and surplus, reserves, capitated revenue and other appropriate criteria.¶
(b) The number of Members covered by the CCO.¶
(c) The extent of the geographical dispersion of the Members covered by the CCO.¶
(d) The nature and extent of the reinsurance program of the CCO.¶
(e) The quality, diversification and liquidity of the investment portfolio of the CCO.¶
(f) The recent past and projected future trend in the size of the investment portfolio of the CCO.¶
(g) The combined capital and surplus maintained by comparable CCOs.¶
(h) The adequacy of the reserves of the CCO.¶
(i) The quality and liquidity of investments in affiliates. The Authority may treat any such investment as a disallowed asset for purposes of determining the adequacy of combined capital and surplus whenever in the judgment of the Authority the investment so warrants.¶
(j) The quality of the earnings of the CCO and the extent to which the reported earnings include extraordinary items.¶
(~~5) The factors set forth in this rule for the purpose of determining the reasonableness and adequacy of the CCO's capital and surplus are not intended to be an exhaustive list. In determining the adequacy and reasonableness of 's capital and surplus, no single factor is necessarily controlling. Instead, the Authority shall consider the net effect of all of such factors and also other factors bearing on the financial condition of the CCO.~~4) In comparing the capital and surplus maintained by other CCOs, the Authority shall consider the extent to which each of such factors varies from CCO to CCO. In determining the quality and liquidity of investments in subsidiaries, the Authority shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.
Statutory/Other Authority: ORS 413.042, ~~ORS~~ 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5175

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update outdated and inaccurate references. Update statutory references.

CHANGES TO RULE:

410-141-5175
CAPITALIZATION: Impaired Capital and Surplus
(1) If the Authority determines in accordance with OAR 410-141-5195 ~~et seq.~~to 410-141-5220 that a CCO's reserves, however calculated or estimated, are inadequate, the Authority may require the CCO to maintain reserves in such additional amount as is needed to make them adequate. ¶
(2) Whenever the Authority determines from any showing or statement made to the Authority or from any examination made by the Authority that the assets of a CCO are less than its liabilities plus required capitalization, the Authority may proceed immediately under the provisions of ~~OAR 410-141-5469 and Section 26 of S.B. 1041~~ ORS 415.203 or the Authority may allow the CCO a period of time, not to exceed ninety (90) days, in which to make good the amount of the impairment with cash or authorized investments.¶
(3) If the amount of any such impairment is not made good within the time prescribed by the Authority under subsection (~~1~~2) of this section, the Authority shall proceed under the provisions of O~~A~~RS 41~~0-141-5469 and Section 26 of the S.B. 1041~~5.203.¶
(4) An order directing a CCO to cure an impairment shall be confidential for such time as the Authority considers proper but not exceeding the time prescribed by the Authority for making the amount of the impairment good. If the Authority determines that the public interest in disclosure outweighs the public interest in protecting the solvency of the CCO, the Authority may make the order available for public inspection.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5180

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Add in time period and process for seeking approval from OHA. Statutory reference updates.

CHANGES TO RULE:

410-141-5180
CAPITALIZATION: Dividend and Distribution Restrictions
(1) Unless prior written approval of the Authority is first obtained pursuant to (2), a CCO shall not:¶
(~~1~~a) Make any distribution of assets by dividend or other distribution to shareholders, equity members, parent companies or any related parties that would cause the CCO's capital and surplus to fall below the prescribed minimum under OAR 410-141-5~~3~~170.¶
(~~2~~b) Reduce its total adjusted capital by partial distribution of its assets, by payment in the form of a dividend or otherwise to shareholders, equity members, parent companies or any related parties below an amount equal to ~~300%~~three hundred (300) percent of the CCO's authorized control level risk-based capital, as defined in and calculated pursuant to OAR 410-141-52~~9~~15.¶
(~~3~~c) Declare or pay dividends to shareholders, equity members, parent companies or any related parties other than from earned surplus. For purposes of this subsection, "earned surplus" does not include surplus arising from unrealized capital gains or revaluation of assets.¶
(~~4~~d) Declare or pay an extraordinary dividend or distribution to shareholders, equity members, parent companies or any related parties. A dividend or dividend is "extraordinary" for purposes of this subsection if it exceeds an amount equal to the aggregate of the CCO's net after-tax income for the prior three calendar years, less any dividends or distributions paid during the prior two calendar years and the current year. "Extraordinary dividend or distribution" does not include pro rata distributions of any class of the CCO's own securities.¶
(2) A CCO shall notify the Authority no later than twenty (20) business days prior to taking any action pursuant to subsection (1). The Authority shall approve or disapprove such payment within twenty (20) business days and the CCO shall not pay or make any extraordinary dividend or distribution unless or until the Authority provides written approval of such payment to the CCO.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5185

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Add in procedure of notification to OHA regarding withdrawal of proceeds from restricted reserve account. Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5185
CAPITALIZATION: Restricted Reserve Account
(1) A CCO shall establish a Restricted Reserve Account and maintain sufficient Restricted Reserve Funds in the Restricted Reserve Account to meet the Authority's Primary Reserve and Secondary Reserve requirements. Restricted Reserve Funds shall be held for the purpose of:¶
(a) Making payments to providers in the event of the CCO's insolvency; and¶
(b) Assuring the CCO's performance in the event its ~~c~~CCO Contract ~~with the Authority~~ is terminated.¶
(2) A CCO's Primary Reserve and Secondary Reserve balances shall be determined by calculating the CCO's average monthly medical expense incurred, unless the Authority agrees upon an exception to the below calculations:¶
(a) If a CCO has submitted quarterly financial statements for the current quarter and the prior three quarters, the average monthly medical expense incurred shall be derived by adding together the "total hospital and medical" expense (NAIC statement of revenue and expenses) for the prior four quarters and dividing by 12;¶
(b) A newly formed CCO ~~wi~~shall use an average of hospital and medical expense projected for the first four quarters of operation;¶
(c) Each quarter, the average expense liability ~~wi~~shall be recalculated using historical quarter data available;¶
(d) The Authority may allow a CCO to adjust its calculation of its average monthly medical expenses by excluding any commercial line of business or any Medicare line of business from the "total hospital and medical" expense.¶
(3) The amount a CCO must deposit and maintain in its Restricted Reserve Account shall be calculated as follows:¶
(a) If a CCO's average monthly medical expense incurred is less than or equal to $250,000, an amount equal to the average monthly medical expense incurred shall be deposited into, and maintained in, the Restricted Reserve Account. This amount ~~wi~~shall be referred to as the CCO's "Primary Reserve" and the CCO shall have no "Secondary Reserve" (hereinafter defined) until such time as the CCO's average monthly medical expense exceeds $250,000;¶
(b) If a CCO's average monthly medical expense is greater than $250,000, an amount equal to fifty (50) percent ~~(50%)~~ of the difference between the average monthly medical expense and the Primary Reserve balance of $250,000 shall be deposited into, and maintained in, the Restricted Reserve Account. This additional amount is referred to as the CCO's "Secondary Reserve;"¶
(c) A CCO's Primary Reserve and, if applicable, its Secondary Reserve shall be recalculated and the balance of the Restricted Reserve Account shall be adjusted accordingly each quarter based upon the CCO's then current average monthly medical expense;¶
(d) The Authority may allow a CCO to adjust its calculation of its Primary Reserve and Secondary Reserve, based on the CCO's use of value-based payments.¶
(4) A CCO shall establish its Restricted Reserve Account with a third-party financial institution for the purpose of holding the CCO's Primary Reserve and Secondary Reserve.¶
(5) The Authority's ~~m~~Model ~~d~~Depository ~~a~~Agreement shall be used by the CCO to establish its Restricted Reserve Account. CCOs shall request the model depository agreement form from the Authority. CCOs shall submit the model depository agreement to the Authority at the time of the CCO's application to the Authority under OAR 410-141-3700 and the model depository agreement shall remain in effect throughout the period of time that the CCO ~~c~~Contract is in effect. The model depository agreement cannot be changed without the Authority's prior written approval.¶
(6) The CCO shall not withdraw funds, change third party financial institutions, or change account numbers within the Restricted Reserve Account without the prior written consent of the Authority.¶
(7) A CCO shall submit a copy of the model depository agreement at the time of application. If a CCO requests and receives written authorization from the Authority to make a change to its existing Restricted Reserve Account, the CCO shall submit a model depository agreement reflecting the changes to the Authority within ~~15~~fifteen (15) business days of the date of the change.¶
(8) The following instruments are considered eligible deposits for the purposes of a CCO's Primary Reserve and Secondary Reserve:¶
(a) Cash;¶

(b) Certificates of Deposit; ~~or~~¶
(c) Amply secured obligations of the United States or a state; and ¶
(d) Amply secured obligations of a political subdivision as determined by the Authority to be acceptable.¶
(9) If a CCO has multiple ~~c~~CCO Contracts or agreements with the Authority, separate Restricted Reserve Accounts shall be maintained for each ~~c~~CCO Contract and agreement, except as required in this subsection. Separate Restricted Reserve Accounts shall not be required for state-funded services and Oregon Health Plan contracts. However, the CCO shall be obligated to maintain actuarially sound and sufficient aggregate loss reserves for all its contractual liabilities, including both contractual liabilities that are supported by a Restricted Reserve Account and those which are not so supported.¶
(10) CCOs that enter into Sub-Capitation Arrangements for any portion of the health care services covered by the CCO's agreement with the Authority may require that the Capitated Subcontractor establish, fund and maintain a Restricted Reserve Account and Restricted Reserve Funds for the Capitated Subcontractor's portion of the risk assumed. Alternatively, the CCO may elect to establish, fund and maintain a single Restricted Reserve Account for all risk assumed under the agreement with the Authority (including the portion of those risks assumed by the Capitated Subcontractor). In either event, the CCO shall assure that the aggregate of the Restricted Reserve Account(s) and Restricted Reserve Funds comply with the requirements of this section.¶
(11) All the requirements of this section in respect of a CCO's Restricted Reserve Account shall respectively apply to a Restricted Reserve Account established, funded and maintained by a Capitated Subcontractor under subsection (10).¶
(12) If a Restricted Reserve Fund of a CCO is held in a combined account or pool with other entities, the CCO and its subcontractors, as applicable, shall provide a statement from the pool or account manager or custodian confirming that the proceeds of the Restricted Reserve Fund shall be available for payment to the CCO and the Authority, on demand, and that no other payee has the contractual right to withdraw the proceeds of the Restricted Reserve Account under or pursuant to the agreement(s) governing administration of the Restricted Reserve Account.¶
(13) If a CCO wishes to withdraw proceeds from its Restricted Reserve Account in order to cover services under its ~~Member~~CCO Contracts~~,~~, the CCO shall provide advance notice to the Authority of the amount to be withdrawn, the reason for withdrawal, when and how the Restricted Reserve Fund ~~wi~~shall be replenished, and measures to avoid the need for future withdrawals from the Restricted Reserve Account. ~~No such withdrawal shall be made~~A CCO shall notify the Authority no later than twenty (20) business days prior to withdrawing proceeds from its Restricted Reserve Account pursuant to subsection. The Authority shall approve or disapprove such payment within twenty (20) business days. A CCO shall not withdraw such proceeds without the prior written approval of the Authority.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5186

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5186
CAPITALIZATION: Restricted Reserve Account-Permitted Investments in Obligations with Political Subdivisions; Public Supported Housing
(1) With prior written approval from the Authority, a CCO may invest up to ~~25%~~twenty-five (25) percent of its Primary Reserve and Secondary Reserve with one or more public housing authorities created under ORS 456.055 to 456.235 and governed by a county in the CCO's service area.¶
(a) The housing authority(ies) must address a documented social determinant of health ~~need~~and equity need, as outlined in OAR 410-141-3735, for that community;¶
(b) The CCO shall complete and file with the Authority a Form D as described and required under OAR 410-141-5320 for each housing authority that the CCO contracts with under this section;¶
(c) The CCO shall complete and file with the Authority the Model Depository Agreement specific to any obligation described in this section that ~~wi~~shall not be held with a third-party financial institution.¶
(2) The obligation shall be supported by an agreement between the CCO and the housing authority.¶
(a) The agreement shall describe the use of the funds provided (e.g. newly constructed vs. purchased; public housing vs. affordable housing vs. mixed income housing; owned vs. operated; type of housing unit such as single-family dwellings, multifamily dwellings, emergency shelters, dwelling accommodations, living accommodations, manufactured dwelling parks, residential units) and how the funds ~~wi~~shall address a documented social determinant of health need for that community;¶
(b) The agreement shall require and describe financial reporting requirements including but not limited to audited financial statements;¶
(c) A draft copy of the agreement shall be included with the Form D submission ~~and reviewed by the Authority~~.¶
(3) The obligation ~~wi~~shall be secured through written guarantees by a regulated guarantor who is adequately capitalized. The guarantor's adequate capitalization is demonstrated through financial reports submitted at least annually to, and evaluated by, either the Authority or a state or federal insurance or bank regulatory agency.¶
(a) The guarantee shall be unconditional and absolute for the full and prompt payment and performance of all obligations under the promissory note;¶
(b) The guarantee shall remain in full force and effect and be binding upon guarantors until the promissory note is paid and performed in full;¶
(c) A draft copy of the guarantee, together with the most recent audited financial statement and regulatory examination of the guarantor, shall be included with the Form D submission.¶
(4) The obligation shall be supported by a promissory note between the housing authority and the CCO.¶
(a) The promissory note shall mature no later than the date of the end of the ~~CCO's~~ current ~~c~~CCO Contract;¶
(b) The promissory note may be extended in the event that the CCO~~'s c~~ Contract is extended;¶
(c) A draft copy of the promissory note shall be included with the Form D submission ~~and reviewed by the Authority~~.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1
Statutes/Other Implemented: ORS 414.~~610 - 414.68~~570-414.686, 415.001-415.430

AMEND: 410-141-5190

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5190
CAPITALIZATION: Surplus Notes
(1) With the prior approval of the Authority, a CCO may issue one or more surplus notes in order to secure funding needed to comply with minimum capital and surplus requirements and/or minimum risk-based capital requirements under these rules, or otherwise to provide additional funding required for the CCO's operations.¶
(2) Approval by the Authority of the issuance and sale of a surplus note by a CCO, including the form and terms of the surplus note and the purchaser of the surplus note, is required and shall be at the sole discretion of the Authority.¶
(3) The issuance and sale of a surplus note, and the form and terms of the surplus note, shall comply with the standards for the issuance of surplus notes set forth in the Accounting Practices and Procedures Manual published by the NAIC, as well as the following requirements:¶
(a) A surplus note shall be sold only in return for cash or marketable securities having readily determinable values and liquidity satisfactory to the Authority.¶
(b) Commissions, promotion expenses or finders' fees may not be paid in connection with a surplus note sale except for commissions, expenses and fees customarily incurred within the context of public or private placement offerings underwritten by an investment banking or similar entity.¶
(c) Payment of principal or interest on a surplus note may not be made without the prior written approval of the Authority. The issuer shall provide the Authority with written notice at least t~~hirty~~wenty (20) business days prior to the intended date of the payment of principal or interest on a surplus note or such shorter period as the Authority may permit.¶
(d) Payment of principal or interest on a surplus note shall be subordinated to payment of all other liabilities of the issuer.¶
(e) Payment of interest on a surplus note may be made only from the unassigned funds of the issuer.¶
(f) Surplus notes shall not be assignable or negotiable without the prior written approval of the Authority.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5195

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language on Risk-based Capital instructions. Statutory reference updates.

CHANGES TO RULE:

410-141-5195
CAPITALIZATION: Risk-based Capital (RBC) Definitions
As used in OAR 410-141-5195 to 410-141-5220:~~-~~¶
(1) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions.~~-~~¶
(2) "Company Action Level RBC" means, with respect to any CCO, the product of 2.0 (200~~%~~ percent) and the CCO's Authorized Control Level RBC.~~-~~¶
(3) "Corrective Order" means an order entered by the Authority under ~~OAR 410-141-5310 to OAR 410-141-5320~~ specifying corrective actions the Authority determines are required of a CCO in respect of its Total Adjusted Capital and its RBC Level.~~-~~¶
(4) "Mandatory Control Level RBC" means the product of .70 (70~~%~~ percent) and the CCO's authorized control level RBC.~~-~~¶
(5) "RBC Instructions" means the RBC Report form and including risk-based capital instructions adopted by the NAIC, as such form and instructions may be amended by the NAIC from time to time~~.~~ and identified by the Authority to be applicable for the reporting period. The applicable RBC Instructions prescribed by the Director referred to in this rule are available for inspection at the office of the Authority. Any person interested in inspecting RBC Instructions may contact the Authority at actuarial.services@oha.oregon.gov.¶
(6) "RBC Level" means a CCO's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC or Mandatory Control Level RBC.~~-~~¶
(7) "RBC Plan" means a comprehensive financial plan containing the elements specified in OAR 410-141-5~~2~~195 to 410-141-5~~3~~220. If the Authority rejects the RBC Plan and it is revised by the CCO with or without the Authority's recommendation, the plan shall be called the "revised RBC Plan."~~-~~¶
(8) "RBC Report" means the report required by OAR 410-141-5~~3~~200.~~-~~¶
(9) "Regulatory Action Level RBC" means the product of 1.5 (150~~%~~ percent) and the CCO's Authorized Control Level RBC.~~-~~¶
(10) "Total Adjusted Capital" means the sum of:~~-~~¶
(a) A CCO's capital and surplus as determined in accordance with the ~~s~~Statutory ~~a~~Accounting Principles applicable to the annual financial statements required to be filed under OAR 410-141-5015; and~~-~~¶
(b) Such other items, if any, as the RBC instructions may provide.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5200

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5200
CAPITALIZATION: RBC Reports
(1) On or before April 30 of each year, a CCO shall prepare and submit to the Authority a report of its Total Adjusted Capital and its RBC Levels as of the end of the calendar year ~~just ended~~immediately preceding, in a form and containing such information as are required by the RBC instructions. ~~In addition, a~~A CCO shall file its RBC Report with the NAIC in accordance with the RBC instructions. The CCO shall report in its annual financial statement its Total Adjusted Capital and its Authorized Control Level RBC as calculated in its RBC Report. A CCO's RBC Report will be considered confidential and shall not be made available to the public.¶
(2) A CCO's Total Adjusted Capital shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following factors into account (and may adjust for the covariance between such factors) determined in each case by applying the factors in the manner set forth in the RBC instructions:¶
(a) Asset risk;¶
(b) Credit risk;¶
(c) Underwriting risk; and¶
(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.¶
(3) A substantial excess of Total Adjusted Capital over Company Action Level RBC is desirable. Accordingly, a CCO should seek to maintain Total Adjusted Capital that exceeds the CCO's Company Action Level RBC. Additional capital is used and useful in the business of a risk-bearing entity and helps to secure a CCO against various risks inherent in, or affecting, the business of a CCO and not accounted for or only partially measured by the risk-based capital requirements contained in OAR 410-141-5195 to 410-141-5220. The Authority recommends that a CCO endeavor to maintain its Total Adjusted Capital at no less than ~~300%~~three hundred (300) percent of its Authorized Control Level RBC.¶
(4) If a CCO files an RBC Report that in the judgment of the Authority is inaccurate, then the Authority shall adjust the RBC Report to correct the inaccuracy and shall notify the CCO of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "adjusted RBC Report."
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5205

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5205
CAPITALIZATION: Company Action Level Event
(1) "Company Action Level Event" means any of the following events:¶
(a) The filing of an RBC Report by a CCO that indicates that the CCO's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of a Company Action Level Event.¶
(b) Notification by the Authority to the CCO of an adjusted RBC Report that indicates an event in subsection (a), if the CCO does not challenge the adjusted RBC Report.¶
(c) If a CCO challenges an adjusted RBC Report according to the terms of the CCO Contract that indicates the event in subsection (a), notification by the Authority to the CCO that the Authority has~~, after a hearing,~~ rejected the CCO's challenge.¶
(2) In the event of a Company Action Level Event, the CCO shall prepare and submit to the Authority an RBC Plan that:¶
(a) Identifies the conditions that caused or contributed to the Company Action Level Event.¶
(b) Contains proposed corrective actions that the CCO intends to take and that are expected to result in the elimination of the Company Action Level Event.¶
(c) Provides projections of the CCO's financial results in the current year and at least two (2) succeeding years, both in the absence of the proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels.¶
(d) Identifies the key assumptions impacting the CCO's projections and the sensitivity of the projections to those assumptions.¶
(e) Identifies the quality of, and problems associated with, the CCO's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any.¶
(3) The RBC Plan shall be submitted:¶
(a) Within thirty (30) days of the Company Action Level Event; or¶
(b) Within thirty (30) days after notification to the CCO that the Authority has~~, after a hearing,~~ rejected the CCO's challenge, if the CCO challenges an adjusted RBC Report according to the terms of the CCO Contract which indicated a Company Action Level Event.¶
(4) Within sixty (60) days after the submission by a CCO of an RBC Plan to the Authority, the Authority shall notify the CCO whether the RBC Plan shall be implemented or is, in the judgment of the Authority, unsatisfactory. If the Authority determines the RBC Plan is unsatisfactory, the notification to the CCO shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the Authority. Upon notification from the Authority, the CCO shall prepare a revised RBC Plan, which may incorporate by reference any revisions proposed by the Authority, and shall submit the revised RBC Plan to the Authority:¶
(a) Within fourty-five (45) days after the notification from the Authority; or¶
(b) Within fourty-five (45) days after a notification to the CCO that the Authority has~~, after a hearing,~~ rejected the CCO's challenge, if the CCO challenges the notification from the Authority under this section according to the terms of the CCO Contract.¶
(5) In the event of a notification by the Authority to a CCO that the CCO's RBC Plan or revised RBC Plan is unsatisfactory, the Authority may at the Authority's discretion, subject to the CCO's right to a hearing under this section, specify in the notification that the notification constitutes a Regulatory Action Level Event.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5210

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5210
CAPITALIZATION: Regulatory Action Level Event
(1) "Regulatory Action Level Event" means, with respect to a CCO, any of the following events:¶
(a) The filing of an RBC Report by the CCO that indicates that the CCO's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of a Regulatory Action Level Event.¶
(b) Notification by the Authority to a CCO of an adjusted RBC Report that indicates the event in subsection (a), if the CCO does not challenge the adjusted RBC Report.¶
(c) If the CCO challenges an adjusted RBC Report, according to the terms of the CCO Contract, that indicates the event in subsection (a), the notification by the Authority to the CCO that the Authority has~~, after a hearing,~~ rejected the CCO's challenge.¶
(d) The failure of the CCO to file an RBC Report by the filing date, unless the CCO has provided an explanation for the failure that is satisfactory to the Authority and has cured the failure within ten days after the filing date.¶
(e) The failure of the CCO to submit an RBC Plan to the Authority within the time period set forth in this section.¶
(f) Notification by the Authority to the CCO that:¶
(A) The RBC Plan or revised RBC Plan submitted by the CCO under this section is, in the judgment of the Authority, unsatisfactory; and¶
(B) The CCO has not challenged the determination.¶
(g) If the CCO challenges a determination by the Authority according to the terms of the CCO Contract, the notification by the Authority to the CCO that the Authority has~~, after a hearing,~~ rejected the challenge;¶
(h) Notification by the Authority to the CCO that the CCO has failed to adhere to its RBC Plan or revised RBC Plan, but only if the failure has a substantial adverse effect on the ability of the CCO to eliminate the Company Action Level Event in accordance with its RBC Plan or revised RBC Plan and the Authority has so stated in the notification, if the CCO has not challenged the determination; or¶
(i) If the CCO challenges a determination by the Authority, according to the terms of the CCO Contract, the notification by the Authority to the CCO that the Authority has~~, after a hearing,~~ rejected the challenge.¶
(2) In the event of a Regulatory Action Level Event, the Authority may take some or all of the following actions:¶
(a) Require the CCO to prepare and submit an RBC Plan or, if applicable, a revised RBC Plan.¶
(b) Perform such examination or analysis as the Authority deems necessary of the assets, liabilities and operations of the CCO including a review of its RBC Plan or revised RBC Plan.¶
(c) Subsequent to the examination or analysis, issue a Corrective Order specifying such corrective actions as the Authority shall determine are required.¶
(d) Prohibit or limit enrollments until further notice.¶
(e) Require the CCO to provide monthly financial statements.¶
(3) In determining corrective actions, the Authority may take into account factors the Authority deems relevant with respect to the CCO based upon the Authority's examination or analysis of the assets, liabilities and operations of the CCO, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC Plan or revised RBC Plan shall be submitted:¶
(a) Within thirty (30) days after the occurrence of the Regulatory Action Level Event; or¶
(b) Within thirty (30) days after the notification to the CCO that the Authority has, after a hearing, rejected the CCO's challenge.¶
(4) The Authority may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Authority to review the CCO's RBC Plan or revised RBC Plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the CCO and formulate a Corrective Order with respect to the CCO. The fees, costs and expenses relating to consultants shall be borne by the affected CCO or such other party as directed by the Authority.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5215

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5215
CAPITALIZATION: Authorized Control Level Event
(1) "Authorized Control Level Event" means any of the following events: ¶
(a) The filing of an RBC Report by the CCO that indicates that the CCO's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of an Authorized Control Level Event;¶
(b) The notification by the Authority to the CCO of an adjusted RBC Report that indicates the event in subsection (a), if the CCO does not challenge the adjusted RBC Report;¶
(c) If the CCO challenges an adjusted RBC Report that indicates the event in subsection (a), according to the terms of the CCO Contract, notification by the Authority to the CCO that the Authority has, after a hearing, rejected the CCO's challenge;¶
(d) The failure of the CCO to respond, in a manner satisfactory to the Authority, to a Corrective Order if the CCO has not challenged the Corrective Order;¶
(e) If the CCO has challenged a Corrective Order according to the terms of the CCO Contract and the Authority has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the CCO to respond, in a manner satisfactory to the Authority, to the Corrective Order subsequent to rejection or modification by the Authority. ¶
(2) In the event of an Authorized Control Level Event, the Authority may take any or all of the following actions: ¶
(a) Take such actions as are allowed under OAR 410-141-5210 regarding a CCO with respect to which a Regulatory Action Level Event has occurred;¶
(b) If the Authority deems it to be in the best interests of the Members and creditors of the CCO and of the public, the Authority may: ¶
(A) Place the CCO under regulatory control and/or apply to have the CCO made the subject of court-ordered conservancy proceedings pursuant to Sections 24 through 37 of S.B. 1041ORS 415.203 to 415.400;¶
(B) Terminate the CCO's c Contract(s) with the Authority and cause the Members covered by the CCO to be transferred to one or more other CCOs.
Statutory/Other Authority: ORS 413.042, 414.615572, 414.625, 414.635591, 414.6051
Statutes/Other Implemented: ORS 414.610 - 414.685570-414.686, 415.001-415.430

AMEND: 410-141-5220

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5220
CAPITALIZATION: Mandatory Control Level Event
(1) "Mandatory Control Level Event" means any of the following events:¶
(a) The filing of an RBC Report that indicates that the CCO's Total Adjusted Capital is less than its Mandatory Control Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of a Mandatory Control Level Event.¶
(b) Notification by the Authority to the CCO of an adjusted RBC Report that indicates the event in subsection (a), if the CCO does not challenge the adjusted RBC Report.¶
(c) If the CCO challenges an adjusted RBC Report, according to the terms of the CCO Contract, that indicates the event in subsection (a), notification by the Authority to the CCO that the Authority has, ~~after a hearing,~~ rejected the CCO's challenge.¶
(2) In the event of a Mandatory Control Level Event, the Authority shall take the following actions:¶
(a) Place the CCO under regulatory control and/or apply to have the CCO made the subject of court-ordered conservancy proceedings pursuant to Sections 24 through 37 of S.B. 1041.¶
(b) Terminate the CCO~~'s c~~ Contract(s) with the Authority and cause the Members covered by the CCO to be transferred to one or more other CCOs.¶
(3) Upon the occurrence of any of the following events, a CCO may ~~request a hearing for the purpose of challenging any~~appeal determination or action by the Authority in connection with any event described in this section~~. The CCO shall notify the Authority of its request for a hearing not later than the fifth day after notification by the Authority under any of the events described in this section. Upon receipt of the CCO's request for a hearing, the Authority shall set a date for the hearing. The date shall be not less than 10 or more than 30 days after the date of the CCO's request. The events to which the opportunity for a hearing under this section relate~~ pursuant to the terms of the CCO Contract. These events are as follows:¶
(a) Notification to a CCO by the Authority of an adjusted RBC Report;¶
(b) Notification to a CCO by the Authority that:¶
(A) The CCO's RBC Plan or revised RBC Plan is unsatisfactory; and¶
(B) Notification constitutes a Regulatory Action Level Event with respect to the CCO.¶
(c) Notification to a CCO by the Authority that the CCO has failed to adhere to its RBC Plan or revised RBC Plan and that the failure has a substantial adverse effect on the ability of the CCO to eliminate the Company Action Level Event with respect to the CCO in accordance with its RBC Plan or revised RBC Plan; or¶
(d) Notification to a CCO by the Authority of a Corrective Order with respect to the CCO.¶
(4) The Authority may keep confidential a CCO's RBC Plan or the results or report of any examination or analysis conducted by the Authority in connection with a CCO's RBC Plan if the Authority determines that disclosure of such information is not necessary to protect the public interest and may jeopardize the CCO's ability to successfully implement the RBC Plan.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5225

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5225
REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Extraordinary Dividends and Other Distributions
(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:¶
(a) The amount of the proposed dividend;¶
(b) The date established for payment of the dividend;¶
(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;¶
(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper must include the following information:¶
(A) The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the CCO's own securities, paid within the period of twelve (12) consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;¶
(B) Total capital and surplus as of the 31st day of December immediately preceding;¶
(C) Net income for the 12-month period ending the 31st day of December immediately preceding and the two preceding 12-months periods; and¶
(D) Dividends paid to stockholders excluding distributions of the CCO's own securities in the preceding two calendar years.¶
(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Authority and the end of the month preceding the month in which the request for dividend approval is submitted; and¶
(f) A brief statement as to the effect of the proposed dividend upon the CCO's capital and surplus and the reasonableness of combined capital and surplus in relation to the CCO's outstanding liabilities and the adequacy of surplus relative to the CCO's financial needs.¶
(2) Each registered CCO shall report to the Authority all dividends and other distributions to shareholders within five business days following the declaration thereof, including the same information required by section (1)(d)(A) to (D) of this section.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5230

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5230
REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Reports of Material Acquisitions And Dispositions Of Assets, and Changes to Ceded Reinsurance Agreements; Assumption Reinsurance
(1) Every CCO shall file a report with the Authority disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the subject transaction has been submitted to the Authority for review, approval or information under or pursuant to another provision of ~~A~~applicable ~~L~~law.¶
(2) The report required in subsection (1) is due no later than the 15th day following the end of the calendar month in which any of the reportable transaction occurred.¶
(3) A CCO shall not enter a transaction in which the CCO assumes or transfers obligations or risks on contracts under an Assumption Reinsurance Agreement or any equivalent agreement, unless the Authority first approves the transaction.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5235

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5235
REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Reports of Material Materiality and Reporting Standards for Asset Acquisitions and Dispositions
(1) No acquisitions or dispositions of assets need be reported pursuant to OAR 410-141-5230 if the acquisition or disposition is not material. For purposes of OAR 410-141-5230, a material acquisition (or the aggregate of any series of related acquisitions during any 30-day period) or disposition (or the aggregate of any series of related dispositions during any 30-day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent of the reporting CCO's total allowed assets as reported in its most recent statutory statement filed with the Authority.¶
(2) OAR 410-141-5230 applies to the following asset acquisitions and asset dispositions:¶
(a) Asset acquisitions include every purchase, lease, exchange, merger, consolidation, succession or other acquisition by or for the reporting CCO.¶
(b) Asset dispositions include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction or other disposition.¶
(3) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:¶
(a) Date of the transaction.¶
(b) Manner of acquisition or disposition.¶
(c) Description of the assets involved.¶
(d) Nature and amount of the consideration given or received.¶
(e) Purpose of, or reason for, the transaction.¶
(f) Manner by which the amount of consideration was determined.¶
(g) Gain or loss recognized or realized as a result of the transaction.¶
(h) Name or names of the person or persons from whom the assets were acquired or to whom they were disposed.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5240

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5240
REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Materiality and Reporting Standards for Changes in Ceded Reinsurance Agreements
(1) No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to OAR 410-141-5230 if the nonrenewals, cancellations or revisions are not material. A material nonrenewal, cancellation or revision is one that affects:¶
(a) More than fifty percent of the CCO's total ceded capitated revenue;-¶
(b) More than fifty percent of the CCO's total ceded indemnity and loss adjustment reserves; or¶
(c) More than fifty percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the CCO's most recent annual statement.¶
(2) Either of the following events shall constitute a material revision that must be reported:¶
(a) An authorized reinsurer representing more than ten percent of a total cession is replaced by one or more unauthorized reinsurers.¶
(b) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.¶
(3) No filing shall be required if the CCO's total ceded capitated revenue represents, on an annualized basis, less than ten percent of its total written capitated revenue for direct and assumed business.¶
(4) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of a ceded reinsurance agreement:¶
(a) Effective date of the nonrenewal, cancellation or revision;¶
(b) The description of the transaction with an identification of the initiator thereof;¶
(c) Purpose of, or reason for, the transaction; and¶
(d) If applicable, the identity of the replacement reinsurers.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5245

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify rule language. Statutory reference updates.

CHANGES TO RULE:

410-141-5245
EXAMINATIONS: CCO Production of Books and Records
(1) The Authority may require a CCO to produce books, records, accounts, papers, documents and computer and other recordings in the possession, custody or control of the CCO or the CCO's affiliates that the Authority determines are needed for the Authority to investigate or examine the CCO's financial condition or to investigate, examine or determine the CCO's compliance with ~~A~~applicable Law ~~or~~, with the CCO~~'s c~~ Contracts~~,~~ and other agreements with the Authority.¶
(2) No person shall file or cause to be filed with the Authority ~~or DCBS~~ any article, certificate, report, statement, application or any other information required or permitted to be so filed under Applicable Law or the CCO Contract and known to such person to be false or misleading in any material respect.¶
(3) If a CCO, without good cause, fails to comply with its obligations under subsections (1) or (2), the Authority may impose a civil penalty on the CCO pursuant to OAR 410-141-5380 and/or may suspend or revoke the CCO~~'s~~ Contract, and other agreements with the Authority.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625~~591, 414.6~~3~~05, ~~414.651~~ORS 415.101-415.430
Statutes/Other Implemented: ORS 414.~~610 -~~570-414.68~~5~~6

AMEND: 410-141-5250

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Updated statutory references. Inserted requirement for examination at least once every 5 years per Oregon Revised Statute (ORS). Clarify language on the hearing process. Updated reference to NAIC publications.

CHANGES TO RULE:

410-141-5250
EXAMINATIONS: Authority Examinations of CCOs
(1) The Authority ~~may~~shall examine every CCO, including an audit of the financial affairs of a CCO, as often as the Authority determines an examination to be necessary or otherwise appropriate under the circumstances. Without limiting the Authority's right to examine a CCO at such times and with such frequency as the Authority determines to be necessary or otherwise appropriate under the circumstances, a CCO ~~wi~~shall be examined ~~a~~not l~~east once during the CCO's contract period~~ss than once (1) every five (5) years. An examination ~~wi~~shall be conducted for such purposes and such scope as the Authority determines to be necessary or otherwise appropriate under the circumstances, including, without limitation, an investigation and examination of the financial condition of the CCO, its ability to fulfill its obligations and its manner of fulfillment, the nature of its operations and its compliance with these rules and applicable CCO ~~c~~Contract requirements.¶
(2) Examinations ~~wi~~shall be conducted under and pursuant to the following practices and procedures, subject to such exceptions, modifications and other practices and procedures as the Authority determines to be necessary or otherwise appropriate under the circumstances:¶
(a) The Authority ~~wi~~shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. The Authority may contract and coordinate all or portions of the examination with DCBS. Any reference to the Authority in this section shall include DCBS when DCBS is working under an interagency agreement with the Authority to conduct the examination. DCBS is authorized to make recommendations to the Authority and to act in conjunction with the Authority in accordance with this section.¶
(b) The examiner(s) shall conduct the examination in accordance with the guidelines, practices, principles and procedures set forth in the Examiners Handbook ~~publish~~adopted by the NAIC and identified by the Authority to be applicable for the examination. The Authority may instruct or allow the examiner(s) to follow or employ such other guidelines, practices, principles and procedures as the Authority determines to be necessary or otherwise appropriate under the circumstances.¶
(c) The Authority may retain appraisers, independent actuaries, independent certified public accountants and other professionals and specialists as needed. All costs associated with third parties engaged by the Authority is the financial responsibility of the CCO.¶
(d) The Authority, including its appointed examiners, may examine under oath all persons who may have material information regarding the property or business of the person being examined or investigated.¶
(3) Every person being examined or investigated shall produce all books, records, accounts, papers, documents and computer and other recordings in its possession or control, including, in the case of an examination, the property, assets, business and affairs of the person.¶
(4) Upon written request of the Authority or its examiners, the CCO, its affiliates and each officer, director, employee, contractor, agent or representative of the CCO and/or the CCO's affiliates promptly shall produce to the Authority or its examiners, or otherwise shall promptly provide the Authority or its examiners with convenient, complete and free access to, all books, records, accounts, papers, documents and computer and other recordings in the possession, custody or control of such persons that relate in any way to the subject matter of the examination. The CCO shall use its best efforts to cause the CCO's affiliates and each officer, director, employee, contractor, agent or representative of the CCO and/or the CCO's affiliates to comply with a request made by the Authority or its examiners under this subsection 4.¶
(5) The procedure for completion of an examination shall be as follows:¶
(a) Not later than sixty days following completion the examination, the examiner(s) shall submit to the Authority a draft Report of Examination. The draft report shall include fact-findings and conclusions and also may include proposed recommendations for curative actions to be undertaken by the CCO based on the draft report's fact-findings and conclusions.¶
(b) The Authority ~~wi~~shall provide the CCO with a copy of the draft report and allow the CCO a reasonable opportunity to review and comment on the draft report. A copy of the draft report shall be delivered to the CCO by certified mail, addressed to the CCO's home office or to such other point of contact as the CCO may designate in writing to the Authority for this purpose. The Authority ~~wi~~shall consider the CCO's comments on the draft report and may request additional information or meet with the CCO for the purpose of resolving questions or obtaining additional information. The Authority may consult with or cause the examiner(s) to consider any

submissions made by the CCO in response to the draft report and any additional information provided to the Authority by the CCO.¶
(c) Before the Authority accepts and files the draft report as a final examination report available for publication or makes any matters relating thereto public, the CCO may request a contested case hearing on the draft report and any of its fact-findings, conclusions and recommendations. The CCO must request a hearing ~~by letter, delivered by certified mail to the Authority no later than thirty~~no later than twenty business days following the date on which the draft report was delivered to the CCO ("Hearing Request Period").¶
(~~d~~A) ~~The Authority will appoint an Authority staff member or other representative to conduct the hearing contemplated by Section 5(c) ("Hearing Officer"). The Hearing Officer shall consider the evidence and comments presented by the CCO at the hearing, together with an~~Contested case hearings shall be conducted pursuant to ORS 183.411 through ORS 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 through OAR 137-003-0700, and the provisions of this rule.¶
(B) In a contested case conducted pursuant to this rule, an administrative law judge assigned by ~~other evidence or comments offered by the examiner(s). Following the hearing, the Hearing Officer will report to the Authority whether any changes should be made to the draft report. The Authority will consider the Hearing Officer's report and will determine whether the draft report should be adopt~~ Office of Administrative Hearings shall serve a proposed order incorporating the final examination report on all parties and the Authority, unless prior to the hearing the Authority notifies the administrative law judge that a final order may be served, with~~out change, should be modified or whe~~in thirty (30) calendar days of the~~r comments offered by the CCO should be included as a supplement to the draft report. The Authority shall not be bound by the Hearing Officer's report and may ac~~lose of the evidentiary record in the contested case. ¶
(C) The Authority shall issue a final order on the final examination report within thirty (30) days of receipt ~~or decline to adopt any changes recommended by the Hearing Officer in the Authority's sole discretion. The Authority shall adopt the draft report, and make it available for public inspection as a final examination report on the first to occur of:¶~~
~~(A) Expiration of the Hearing Request Period if no request for hearing is received from the CCO, or~~f the proposed order, which may adopt some or all of the proposed order, as the Authority shall determine in its sole discretion. The final order is effective immediately upon being signed or as otherwise provided in the order. ¶
(B~~D~~) ~~If a hearing is requested by the CCO, completion of the hearing and the Hearing Officer's report, followed by the Authority's adoption of the draft report, with or without modificat~~The time limits established in rule may be waived or shortened by agreement among the parties and the Authority. ¶
(E) All contested case hearing decisions~~, as a final examination report~~re subject to judicial review under ORS 183.482 in the Court of Appeals.¶
(6) The Authority shall make a final examination report available for public inspection. If the Authority, in its sole discretion, considers that doing so is in the public interest, the Authority may publish notice of a final examination report, its availability for public inspection and/or a summary of, or excerpts from, the final examination report by such means (including print, broadcast and web-based media) as the Authority determines to be appropriate under the circumstances.¶
(7) OAR 410-141-5080 applies generally to examinations and the examination process under this section. In accordance with OAR 410-141-5080, the Authority may designate as confidential and exempt from public inspection any work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to the examiner(s) or the Authority during the course of an examination (collectively, "Examination Materials"). If the Authority, in the Authority's sole discretion after notice to the CCO, determines that disclosure is necessary to protect the public interest, the Authority may make available any such Examination Materials to any other person in the course of the examination or to the public generally.¶
(8) Nothing in this section shall be construed or operate to limit the Authority's right or obligation to disclose a draft report or final examination report, or any Examination Materials to any other federal or state regulatory authority where required by law, where permitted by the CCO's agreement with the Authority, or where otherwise determined by the Authority to be in the public interest.¶
(9) No cause of action may arise, and no liability may be imposed against the Authority or DCBS, an authorized representative of the Authority or DCBS or any examiner appointed by the Authority or DCBS for any statements made or conduct performed in good faith pursuant to an examination or investigation. No cause of action may arise and no liability may be imposed against any person for communicating or delivering information or documents to the examiner(s) or the Authority or any authorized representative of the Authority in connection with an examination, or for providing testimony in the course of an examination, unless the person doing so acted in bad faith, with fraudulent intent or intent to deceive.¶
(10) Subsection (9) supplements, and does not abrogate or modify in any way, any common law or statutory privilege or immunity otherwise enjoyed by any person to which that subsection applies.¶

(11) Facts determined and conclusions made by the Authority pursuant to an examination shall be presumptive evidence of the relevant facts and conclusions in any judicial or administrative action.¶
(12) In addition to other powers of the Authority under these rules relating to the examination and investigation of CCOs, the Authority may order, at any time and from time to time, a CCO to produce such books, records, accounts, papers, documents and computer and other recordings in the possession of the CCO or its affiliates as are necessary to ascertain the financial condition of the CCO or to determine compliance with these rules. If the CCO fails to comply with such an order, the Authority may examine the affiliates to obtain such information, in addition to imposing sanctions or other remedies under these the Authority rules or the CCO ~~c~~Contract.¶
(13) At any time during the course of, or following, an examination, the Authority may take any other actions and exercise any other powers, remedies or authority available to the Authority or otherwise contemplated by these rules.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625~~591, 414.6~~3~~05, 41~~4.651~~5.101-415.430
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5255

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory and rule reference updates. Align with OHA definition of “Health Equity.”

CHANGES TO RULE:

410-141-5255
CCO ACQUISITIONS AND MERGERS: Purpose; Definitions
(1) The purpose of OAR 410-141-5255 to OAR 410-141-5285~~5~~0 is that of regulating the control or ownership of a CCO or of a CCO holding company system, in order to promote the public interest including the interests of CCO Members and stakeholders and to advance the goals and mission of the Authority and the Oregon Integrated and Coordinated Care Delivery System described in ORS 414.~~-~~018 and ORS 414.~~62~~570.~~-~~¶
(2) The Authority shall adhere to the following guiding principles when reviewing proposed acquisitions:¶
(a) The health of Oregon Health Plan members and all Oregonians are at the center when analyzing potential impacts of proposed acquisitions;~~-~~¶
(b) Health equity, access to care, health care quality, and costs are fundamental;¶
(c) The process shall be transparent, robust and informed by the public and stakeholders through meaningful engagement; and¶
(d) The Authority shall use resources wisely and collaborate with DCBS when applicable.¶
(3) Unless the context otherwise requires, as used in OAR 410-141-5255 to OAR 410-141-5285~~:~~.~~-~~0:¶
(a) "Acquiring party" means a person that acquires or attempts to acquire control of a CCO, that enters into an agreement to merge with or otherwise acquire control of a CCO as described in OAR 410-141-5260 or that engages in an activity described in OAR 410-141-5260, or an intermediary or subsidiary corporation that holds, directly or indirectly, the assets or voting securities or assumes the liabilities of a CCO or other entity~~::~~.¶
(b) "Acquisition" means an agreement, arrangement or activity that results in a person acquiring control of another person, directly or indirectly, including but not limited to an acquisition of voting securities, a merger, an acquisition of assets or bulk reinsurance;¶
(c) "Coordinated Care Organization (CCO)" means a CCO or a person that controls a CCO;¶
(d) "Health Equity" definition: Oregon ~~wi~~shall have established a health system that creates health equity when all people can reach their full health potential and well-being and are not disadvantaged by their race, ethnicity, language, disability, age, gender, gender identity, sexual orientation, social class, intersections among these communities or identities, or other socially determined circumstances. Achieving health equity requires the ongoing collaboration of all regions and sectors of the state, including tribal governments to address:¶
(A) The equitable distribution or redistributing of resources and power; and¶
(B) Recognizing, reconciling and rectifying historical and contemporary injustices.¶
(e) "Significant portion" means, when acquired in one transaction or in a related or integrated series of transactions within any consecutive twelve-month period, ten percent or more of:~~-~~¶
(A) The assets of the CCO; or~~-~~¶
(B) The CCO's in-force benefit contracts.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5260

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update confidentiality language in rule to align with DCBS and Health Care Market Oversight (HCMO) language. Statutory reference updates.

CHANGES TO RULE:

410-141-5260
CCO ACQUISITIONS AND MERGERS: Activities Prohibited Unless Certain Provisions Satisfied
(1) Unless a person first satisfies the provisions of OAR 410-141-5265 to OAR 410-141-5280, the person may not engage in any of the following activities:¶
(a) A person other than the person that issues voting securities of a CCO may not acquire or attempt to acquire control of the CCO. For purposes of this paragraph, a person acquires or attempts to acquire control of a CCO if, as a result of engaging in and completing any of the following actions, in the open market or otherwise, the person would directly or indirectly control the CCO, or would control the CCO by exercising a right to acquire or by conversion:¶
(A) Making a tender offer for or a request or invitation for tenders of any voting security of the CCO;¶
(B) Entering into any agreement to exchange securities for any voting security of the CCO;¶
(C) Acquiring or seeking to acquire any voting security of the CCO; or¶
(D) Otherwise engaging in any activity that constitutes a change in control of a CCO requiring pre-approval from the Authority, as described in the CCO ~~Health Plan Services Contract with the Authority~~Contract.¶
(b) A person may not close or finalize an agreement to merge with or otherwise acquire control of a CCO.¶
(c) A person may not engage or attempt to engage in any of the following activities:¶
(A) Acquiring, directly or indirectly, ownership of all or a significant portion of the assets of a CCO. For purposes of this subparagraph, such an acquisition includes an offer, a request or invitation for offers, an acquisition or series of acquisitions in the open market, an exchange offer or agreement, an agreement that provides an option to purchase, or a purchase of or offer to purchase securities that are convertible into voting securities.¶
(B) Bulk reinsurance by one CCO of all or a significant portion of the Members, or a major class of the Members, who are covered by another CCO or related or affiliated group of CCOs. The provisions of this subparagraph do not apply to ordinary or customary reinsurance, or reinsurance pursuant to a treaty or treaties approved by the Authority.¶
(C) Any other arrangement that brings together under common ownership, control or responsibility all or a significant portion of the assets, liabilities or ~~Member~~CCO Contracts~~s~~ in force of two or more persons, at least one of which is a CCO.¶
(2) The provisions of subsection (1) of this section do not apply to any offer, request, invitation, agreement or acquisition the Authority exempts by order as:¶
(a) Not having been made or entered into for the purpose and not having the effect of changing or influencing the control or ownership of a CCO; or¶
(b) Otherwise not comprehended within the purposes of subsection (1) of this section.¶
(3) A person that seeks in any manner to give up a controlling interest in a CCO shall file a confidential notice of the person's proposed divestiture with the Authority and send a copy of the notice to the CCO at least 30 days before the person ceases to own or hold a controlling interest in the CCO. The notice is confidential until the transaction that transfers control of the CCO concludes, unless the Authority determines, in the Authority's sole discretion, that keeping the notice confidential will interfere with the enforcement of this subsection.¶
(a) The Authority shall determine in which instances an acquisition or divestiture of control will require a person to file for and obtain approval of the transaction;¶
(b) This subsection does not apply if a person files a statement under OAR 410-141-5350.¶
(4) If an acquisition is otherwise subject to this section, the acquiring party shall file a notice with the Authority in accordance with OAR 410-141-5265. An acquiring party that does not file the notice may be subject to the penalty specified in OAR 410-141-5380.¶
(5) The Authority shall treat a notice and information that a person submits in accordance with this section, as well as any information that the person submits in accordance with OAR 410-141-5265 or 410-141-5270, as confidential and exempt from disclosure under ORS 192.311 to 192.478, to the extent the Authority determines that such information is trade secret, as defined in ORS 192.345, including compensation paid to providers by a CCO.¶
(6) The Authority shall treat a notice and information that a person submits in connection with a transaction that is subject to review by either the Health Care Market Oversight Program or DCBS in accordance with the provisions of OAR 410-141-5278.(7) In addition to satisfying the requirements of OAR 410-141-5265 to OAR 410-141-

5280, a material change transaction (as defined in OAR 409-070-0005) involving a CCO must satisfy the requirements of OAR 409-070-0000 to OAR 409-070-0085.
Statutory/Other Authority: ORS 413.042, 414.~~625~~572, 414.~~635~~591, 414.6~~1~~05
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5265

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify language. Statutory reference updates.

CHANGES TO RULE:

410-141-5265
CCO ACQUISITIONS AND MERGERS: Procedure For Acquiring Controlling Interest
(1) An acquiring party shall:¶
(a) ~~Complete and file Form A which i~~File a complete Form A, as described in OAR 410-141-5270, with the Authority for approval. If more than one acquiring party ~~must~~is required to file a Form A under this paragraph, any or all acquiring parties that are acting in concert may jointly file a Form A.;¶
(b) Deliver or mail ~~to the CCO to which the activity described in OAR 410-141-5260 applies, concurrently with filing the statement under paragraph (a) of this subsection, a statement that has the information specified in this section. A statement mailed under this paragraph must~~a statement, as described in (4) below, to the Authority concurrently with a complete Form A, as described in (a) above. this statement is required to be sent by certified mail, return receipt requested. If a joint statement is filed under paragraph (a) of this subsection, the joint statement must be ~~the statement~~ mailed or delivered under this paragraph;¶
~~(2) A person required to file Form A pursuant to OAR 410-141-5260 and this rule shall furnish the required information on Form A which is described in OAR 410-141-5270. .~~¶
(~~3~~2) If the person being acquired is considered to be a CCO solely because of the definition of "CCO" in OAR 410-141-5255, the name of the CCO on the cover page shall be indicated as follows: "ABC Company, a subsidiary of XYZ Holding Company."¶
(~~4~~3) References to "the CCO" contained in Form A shall refer to both the subsidiary CCO and the person being acquired.¶
(~~5~~4) The statement an acquiring party is required to file~~s~~ with the Authority under this ~~section~~(1)(b) above must be made under oath or affirmation and ~~must have~~contain the following information:¶
(a) The name and address of the CCO that is subject to the acquisition and of each acquiring party that must file the statement, additional biographical and business information about each acquiring party that must file the statement, and business plans and information regarding persons who ~~wi~~shall serve as or perform functions of directors or officers, as required by the Authority.¶
(b) The source, nature and amount of the consideration used or to be used in effecting the activity, a description of any transaction in which funds were or are to be obtained for the activity and the identity of persons that provide the consideration. If a source of consideration is a loan made in the lender's ordinary course of business, the identity of the lender must remain confidential if the acquiring party filing the statement requests confidentiality.¶
(c) Fully audited financial information as to the earnings and financial condition of each acquiring party for the acquiring party's preceding five fiscal years, or for as long as the acquiring party and any predecessors of the acquiring party have existed, if the acquiring party and the acquiring party's predecessors have existed for a shorter period of time, and similar unaudited information as of a date not earlier than 90 days before the statement was filed.¶
(d) Any plan or proposals that each acquiring party that must file a statement has to liquidate the CCO, to sell the CCO's assets or to merge or consolidate the CCO with any person or to make any other material change in the CCO's business, corporate structure or management.¶
(e) The number of shares of any security of a type described in OAR 410-141-5260 that each acquiring party proposes to acquire, the terms of any offer, request, invitation, agreement or acquisition of any security of a type described in OAR 410-141-5260 and a statement as to the method by which the acquiring party determined the fairness of the proposal.¶
(f) The amount of each class of any security of a type described in OAR 410-141-5260 that each acquiring party owns beneficially or concerning which each acquiring party has a right to acquire beneficial ownership.¶
(g) A full description of any contracts, agreements or understandings with respect to any security of a type described in OAR 410-141-5260 in which any acquiring party is involved, including but not limited to contracts, agreements or understandings that govern a transfer of any of the securities or that relate to joint ventures, loan or option arrangements, puts or calls, loan guarantees, guarantees against loss or guarantees of profits, division of losses or profits, or giving or withholding proxies. The description must identify the persons with which each acquiring party has entered into the contract, agreement or understanding.¶
(h) The names of persons who have purchased any securities of a type described in OAR 410-141-5260 during the 12 months before the date on which the acquiring party files the statement under this section, together with the

dates of purchase and the amount and type of consideration the persons paid or agreed to pay.¶
(i) A description of any recommendations to purchase any securities of a type described in OAR 410-141-5260 that an acquiring party made during the twelve (12) months before the date on which the acquiring party files the statement under this section, or of any recommendations that another person made as a result of interviewing an acquiring party or at an acquiring party's suggestion.¶
(j) Copies of all tender offers, requests, exchange offers, invitations to tender or agreements to acquire securities of a type described in OAR 410-141-5260, along with any additional material used to solicit the tender offers, requests, exchange offers, invitations to tender or agreements, if any additional material was distributed.¶
(k) The term of any contract, agreement or understanding for soliciting securities of a type described in OAR 410-141-5260 for tender that is made with or proposed to be made with a broker-dealer, together with the fees, commissions or other compensation the broker-dealer will receive in connection with the solicitation.¶
(L) Business plans for the CCO after the proposed activity, including analyses of the following (with any relevant supporting documentation):¶
(A) How, after the proposed activity, the CCO ~~wi~~shall be able to:¶
(i) Innovate, coordinate care, provide value, and deliver high-quality services;¶
(ii) Demonstrate commitment to addressing health disparities and inequities;¶
(iii) Be strongly connected to the community served by the CCO, including the CCO's community advisory council, community health improvement plan, and the Authority's requirements to engage with the community;¶
(iv) Provide services cost effectively and within cost growth limits imposed by the Authority or the state;¶
(v) Support social determinants of health in the community served by the CCO, as required by its CCO Contract ~~with the Authority~~;¶
(vi) Perform its responsibilities under the CCO Contract and applicable law;¶
(vii) Comply with requirements in the CCO Contract and applicable law concerning its governing body; and¶
(viii) Satisfy the policy priorities adopted by the Oregon Health Policy Board.¶
(B) If the proposed activity may result in the termination of members from a CCO or the transition of members from one CCO to another CCO, how the acquiring entity and CCO ~~wi~~shall facilitate those terminations and transitions in compliance with 42 C.F.R. ⍰⍰ 438.52, 438.56, 438.62 and the CCO~~'s c~~ Contract~~ual obligations to the Authority~~.¶
(C) Cost of, access to and quality of health care for Oregonians, including health care outside of the Medicaid program;¶
(D) Health equity in Oregon, including data on race, ethnicity, preferred spoken and written languages and disability status (collected in accordance with the practices and standards established in OAR chapter 943, ~~D~~division 70) of patient populations impacted by the proposed activity;¶
(E) The financial stability of the CCO and the financial strategies that may influence the CCO; and¶
(F) The CCO's medical loss ratio.¶
(m) An agreement to submit an annual enterprise risk report under OAR 410-141-5330 ~~each year~~ during which the acquiring party controls the CCO and an acknowledgment that the acquiring party and all subsidiaries in the holding company system that are within the acquiring party's control will provide, at the director's request, information the director needs to evaluate enterprise risk to the CCO~~;¶~~
~~(n) Any additional information the Authority may require..~~¶
(~~6~~5) All requests or invitations for tenders or advertisements that make a tender offer or request or invite tenders of securities for control of a CCO made by or on behalf of any acquiring party required to file Form A under this section must have the information specified in subsection (2) of this rule. Copies of the materials must be filed with the Authority at least ten (10) days before the time the materials are first published or sent or given to security holders. Any additional materials that solicit or request the tenders after the initial solicitation or request must have the information specified in subsection (2) of this rule. Copies of the additional materials must be filed with the Authority at least ten (10) days prior to the time the materials are first published or sent or given to security holders.¶
(~~7~~6) If any acquiring party required to file Form A under this section is a partnership, limited partnership, syndicate or other group, the Authority may require that the information specified in subsection (2) of this rule be given with respect to each partner of the partnership or limited partnership, each member of the syndicate or group and each person that controls the partner or member. If any partner, member or person is a corporation or if the acquiring party is a corporation, the Authority may require that the information described in subsection (2) of this rule be given with respect to the corporation and each officer and Authority of the corporation and each person that is directly or indirectly the beneficial owner of more than 10 percent of the outstanding securities of the corporation.¶
(~~8~~7) If any material change occurs in the facts set forth in the statement filed under this section, the party that filed the statement shall file with the Authority and send to the CCO, within two business days after the party learns of the change, an amendment that sets forth the change together with copies of all documents and other

material relevant to the change.¶
(~~9~~8) If an offer, request, invitation, agreement or acquisition described in OAR 410-141-5260 is proposed to be made by means of a registration statement under the Securities Act of 1933, 15 U.S.C.A. 77a et seq., or in circumstances that require disclosing similar information under the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq., or under a state law that requires a similar registration or disclosure, the party or parties may use the registration statement or disclosure to provide the information the party or parties must provide in the statement required under subsection (1) of this section. Such a registration statement may be used to supply information required by a Form A, not to replace the Form A.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5270

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5270
CCO ACQUISITIONS AND MERGERS: Information to Be Included in Form A
When Form A is required to be filed with the Authority pursuant to OAR 410-141-5265, the Form A shall include the following information:¶
(1) If any acquiring party required to file Form A is an individual, the individual shall identify their principal occupation and all offices and positions held during the past five years, and list any arrests, charges, and conviction of crimes other than minor traffic violations during the past 10 years,¶
(2) If any acquiring party required to file Form A is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as the acquiring party and any predecessors of the acquiring party have been in existence, an informative description of the business intended to be done by the acquiring party and its subsidiaries, and a list of all individuals who are or who have been selected to become directors or executive officers of the acquiring party or who perform or ~~wi~~shall perform functions appropriate to the positions. The list shall include for each individual the information required by subsection (1).¶
(3) For each acquiring party required to file a Form A, the number of shares of any security that each acquiring party proposes to acquire in connection with the acquisition, the terms of any proposed offer or agreement relating to the acquisition and a statement as to the method by which the fairness of the proposal was determined.¶
(4) The amount of each class of any security of the type to be acquired in connection with the acquisition that is beneficially owned or concerning which there is a right to acquire beneficial ownership by any acquiring party.¶
(5) For each acquiring party required to file a Form A, a full description of any contracts, arrangements or understandings with respect to any security of the type to be acquired in connection with the acquisition in which such acquiring party is involved with, including, without limitation, those involving transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits or the giving or withholding of proxies. The description shall identify the persons with whom the contracts, arrangements or understandings have been entered.¶
(6) A description of the purchase of any security of the type to be acquired in connection with the acquisition during the 12 calendar months preceding the filing of the statement, by any acquiring party required to file Form A, including the dates of purchase, names of the purchasers and consideration paid or agreed to be paid for the security.¶
(7) A description of any recommendation to purchase any security of the type to be acquired in connection with the acquisition made by any acquiring party required to file Form A, or by anyone based upon interviews or at the suggestion of any acquiring party required to file Form A, during the 12 calendar months preceding the filing of the statement.¶
(8) Copies of all tender offers for, requests or invitations for tenders of, exchange offers for and agreements to acquire or exchange any securities of the type to be acquired in connection with the acquisition and, if distributed, copies of additional soliciting material relating thereto.¶
(9) A description of the terms of any agreement, contract or understanding made with or proposed to be made with any broker-dealer as to solicitation for tender of securities of the type to be acquired in connection with the acquisition, including the amount of any fees, commissions or other compensation to be paid to any broker-dealer in connection with the agreement, contract or understanding.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5275

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update provisions to reflect requirement to hold contested case hearing in alignment with ORS. Statutory reference updates.

CHANGES TO RULE:

410-141-5275
CCO ACQUISITIONS AND MERGERS: Hearing, Request, Notice
(1) ~~If a person has duly filed a written request for a hearing or if, within 10 days after an acquiring party has filed its completed Form A in accordance with OAR 410-141-5265, the Authority finds that holding a hearing is necessary or advisable,~~Contested case hearings shall be conducted pursuant to ORS 183.411 through ORS 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 through OAR 137-003-0700, and the provisions of this rule. ¶
(2) A party to a CCO Form A application that wishes to contest a Notice of Proposed Final Order issued by the Authority ~~st~~ha~~ll cause a hearing to be held. ¶~~
~~(2) The Authority will determine whether a hearing is necessary or advisable within 30 days after the acquiring party has filed its completed Form A. In the event the Authority orders a~~t fully resolves the Form A application must request a hearing within fifteen (15) calendar days from the date of service of the final order and a notice of right to a hearing. ¶
(3) A contested case hearing must be held within thirty (30) business days after the date the written request for a hearing was filed. ¶
(4) In addition to any other notice required under ORS Chapter 183, at least twenty (20) business days before the hearing, the ~~Authority shall designate the date, time, and place of the hearing, which shall be held within 30 days of the Authority's order for a hearing. In addition to any other notice required under this section, at least 20 days before~~Director shall notify the parties to the CCO Form A application that requested a hearing of the hearing. ¶
(5) The issues to be considered in a contested case conducted pursuant to this rule shall be limited in scope to the facts and conclusions contained in the final order or determination. ¶
(6) In a contested case conducted pursuant to this rule, an administrative law judge assigned by the Office of Administrative Hearings shall serve a proposed order on all parties and the Authority, unless prior to the hearing the Authority ~~shall~~ notif~~y~~ies the ~~person that filed the written request and the acquiring party of the hearing. At least seven days before the hearing, one or more of the acquiring parties shall give notice of date, time, and place of the hearing to those persons the Authority designates. The acquiring party shall bear the expense of~~administrative law judge that a final order may be served, within thirty (30) calendar days of the close of the evidentiary record in the contested case. ¶
(7) The Authority shall issue a final order within thirty (30) days of receipt of the proposed order, which may adopt some or all of the proposed order, as the Authority shall determine in its sole discretion. The final order is effective immediately upon being signed or as otherwise provided in~~g~~ the ~~notice~~order. ¶
(~~3~~8) The ~~hearing must be conducted in accordance with the provisions for a contested case proceeding under ORS chapter 183~~time limits established in rule may be waived or shortened by agreement among the parties and the Authority. ¶
(9) All contested case hearing decisions are subject to judicial review under ORS 183.482 in the Court of Appeals.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.6~~0~~05~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

ADOPT: 410-141-5278

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: New rule to include confidentiality provisions to align with DCBS and HCMO.

CHANGES TO RULE:

410-141-5278
CCO ACQUISITIONS AND MERGERS: Confidentiality
(1) The Authority shall maintain all information and materials filed by an applicant in connection with a material change transaction under review by the Health Care Market Oversight Program pursuant to the confidentiality requirements of ORS 415.501(13) and OAR 409-070-0070. ¶
(2) Confidential materials filed by an applicant in connection with a transaction that is subject to review by each of the Authority and the Department shall be maintained as confidential materials in accordance with ORS 705.137.
Statutory/Other Authority: ORS 415.501
Statutes/Other Implemented: ORS 414.570-414.686, 415.001-415.430

AMEND: 410-141-5280

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarifying language updates. Updated language referencing hearings to align with contested case hearing requirements. Update statutory references.

CHANGES TO RULE:

410-141-5280
CCO ACQUISITIONS AND MERGERS: Determination Concerning Proposed Activity, Time For Decision, Grounds For Refusal
(1) Prior to approving or disapproving the proposed activity, the Authority shall engage the public, Oregon's Medicaid Advisory Committee, and the Community Advisory Councils of the CCO. The Authority's engagement of the public shall include the following, coordinated with DCBS where efficient:¶
(a) Seeking recommendations by the Community Advisory Councils of the CCO regarding persons who should be notified;¶
(b) A public hearinglistening session in each service area of the CCO;¶
(c) A public comment period;¶
(d) An opportunity to provide input on a draft of the Authority's detailed analyses described under subsection (4);¶
(e) Seeking feedback from the Medicaid Advisory Committee; and¶
(f) Posting on the Authority's web site of the Form A and significantupporting documentsation relating to the Form A. If any such document contains information protected from disclosure by OAR 410-141-5278, state or federal law or protected from disclosure as a trade secret, as defined in ORS 192.345, including compensation paid to providers by the CCO, then the Authority shall redact the document pursuant to ORS 192.338. ¶
(2) T¶
(2) The effective date of the activity shall not be allowable until 60 days after the Authority shall makes rendered a determination concerning the proposed activity described in OAR 410-141-5260 within a period that begins 60 days before the effective date of the activity.. The Authority may refuse, after a publiccontested case hearing, to approve a proposed activity if:¶
(a) The activity is contrary to law or would result in a prohibited combination of risks or classes of insurance;¶
(b) The activity is inequitable or unfair to the Members or shareholders of any CCO involved in, or to any other person affected by, the proposed activity. However, in connection with an acquisition of the CCO's voting securities from the CCO's shareholders, the Authority shall evaluate whether the proposed acquisition is fair to the shareholders of the CCO to be acquired only with respect to any shareholders that are unaffiliated with the acquiring party or parties and that would remain after the acquisition is completed;¶
(c) The activity would substantially reduce;¶
(A) The security of and service to be rendered to Members of any CCO involved in the proposed activity or would otherwise prejudice the interests of such Members or other Oregonians;¶
(B) Access to and quality of health care for Oregonians, or would substantially increase the cost of health care for Oregonians, including health care outside of the Medicaid program; or¶
(C) The ability of any CCO involved in the proposed activity to:¶
(i) Perform its contractual obligations to the Authority; described in the CCO Contract;¶
(ii) Innovate, coordinate care, provide value, and deliver high-quality services;¶
(iii) Demonstrate commitment to addressing health disparities and inequities;¶
(iv) Be strongly connected to the community served by the CCO, including the CCO's community advisory council, community health improvement plan, and the Authority requirements to engage with the community;¶
(v) Provide services cost effectively and within cost growth limits imposed by the Authority or the state;¶
(vi) Support social determinants of health in the community served by the CCO, as required by its CCO Contract with the Authority; or¶
(vii) Satisfy the Authority's policy priorities as required by its cCCO Contract with the Authority or as adopted by the Oregon Health Policy Board.¶
(d) The activity provides for a foreign or alien CCO to be an acquiring party, and the Authority further finds that the CCO cannot satisfy the requirements of this state for transacting the CCO business that would be affected by the activity;¶
(e) The activity or the completion of the activity would substantially diminish competition in this state or tend to create a monopoly. An activity that the Authority determines would substantially diminish competition in this state or tend to create a monopoly may be approved if within a specific period of time a party removes the basis upon which the Authority would have otherwise disapproved the activity;¶

(f) After the change of control or ownership, the CCO to which the activity described in OAR 410-141-5260 applies would not be able to satisfy the requirements for receiving a CCO ~~c~~Contract to transact the line or lines of business for which the CCO is currently authorized~~.~~;¶
(g) The financial condition of any acquiring party might jeopardize the financial stability of the CCO~~.~~;¶
(h) The plans or proposals that the acquiring party has to liquidate the CCO, sell the CCO's assets or consolidate or merge the CCO with any person, or to make any other material change in the CCO's business or corporate structure or management, are unfair and unreasonable to the CCO's Members and not in the public interest~~.~~;¶
(i) The competence, experience and integrity of the persons that would control the operation of the CCO are such that permitting the activity or permitting completion of the activity would not be in the interest of the CCO's Members and the public~~.~~;¶
(j) Any CCO involved in the activity or any acquiring party does not comply with, or the activity presents a substantial risk that any such CCO or acquiring party will not comply with:~~.~~¶
(A) ORS 414.~~625~~572(2), with respect to the CCO's governing body;¶
(B) 42 C.F.R. Part 438, Subpart H or 42 C.F.R. 438.808, with respect to the CCO's ownership, control and affiliations;~~.~~¶
(C) Minimum medical loss ratio requirements;~~.~~¶
(D) Any other applicable law; or¶
(E) The ~~CCO's contractual obligations to the Authority~~obligations described in the CCO Contract.¶
(k) The activity or completing the activity is likely to be hazardous or prejudicial to members of the CCO, other Medicaid members, or the insurance-buying public~~.~~;¶
(L) The activity or completing the activity is likely to reduce the CCO's demonstrated commitment to addressing health disparities and inequities, create or increase disparities or inequities, or make it more difficult to achieve health equity in the state~~.~~;¶
(m) The activity is subject to other material and reasonable objections.~~.~~¶
(3)~~.~~If the Authority does not approve the activity, then the activity may not proceed, without regard to whether DCBS has approved it. If the activity is subject to approval by DCBS, then:¶
(a) The Authority shall work in concert with DCBS to jointly analyze the proposed acquisition;¶
(b) The Authority may rely on DCBS as to grounds that are common to the DCBS approval and the Authority approval;~~.~~¶
(c) The Authority shall exercise independent judgment as to grounds for the Authority's approval that are not grounds for DCBS approval; and¶
(d) The Authority shall approve the activity only if DCBS also approves the activity and shall do so concurrently.¶
(4) The Authority may disapprove, approve, or approve with conditions a proposed acquisition. OHA shall publish detailed analyses justifying OHA's decisions. If the Authority disapproves the proposed activity, the Authority shall promptly notify, in writing, the CCO and each acquiring party involved in the proposed activity, specifying the bases, factors and reasons for the disapproval and giving the CCO and each acquiring party that filed the statement relating to the proposed activity an opportunity to amend the statement, if possible, to obviate the Authority's objections.~~.~~¶
(5) If the Authority determines that a party that proposes to acquire control of a CCO must maintain or restore the CCO's capital to a level required under the laws and rules of this state, the Authority shall make and communicate the determination to the acquiring party not later than 60 days after the acquiring party files the statement required under OAR 410-141-5265.~~.~~¶
(6) The acquiring party or parties that filed Form A under OAR 410-141-5265 shall file any amendment to Form A that responds to the Authority's ~~objection and, if a~~disapproval and, if a contested case hearing was held on the proposed activity pursuant to OAR 410-141-5275, shall resubmit the amendment ~~at a hearing held under this section unless the Authority finds that a hearing is not necessary to protect the Members, shareholders or any other person the proposed activity affects~~to the Authority no later than 30 days following the date of the Authority's order. ¶
(7) The Authority may retain at the acquiring party's expense any actuaries, accountants and other experts not otherwise a part of the Authority's staff as the Authority may reasonably need to assist the Authority in reviewing the proposed activity.~~.~~¶
(8) The Authority may establish the effective date of an activity to which OAR 410-141-5260 applies in the order that approves the activity.~~.~~¶
(9) If the Authority issues a notice of approval, the acquiring party and the CCO must submit to the Authority the disclosures required by 42 C.F.R. § 455.104.¶
(10) ~~Within 60 days after receiving a notice of approval or disapproval, any CCO or other party to a proposed activity, including the CCO subject to the acquisition, may appeal the Authority's final order as provided in ORS chapter 183. For purposes of the judicial review, the specifications the Authority must set forth in the Authority's written notice are the findings of fact and conclusions of law of the Authority.~~ ¶

~~(11)~~ Not later than the 30th day after consummation of an activity described in OAR 410-141-5260, the acquiring party shall submit to the Authority a statement that the activity has been consummated. The statement must be made under the oath of the presiding officer of the board of directors of the acquiring party.¶
(1~~2~~1) Not later than one year after consummation of an activity described in OAR 410-141-5260, the CCO subject to the acquisition shall submit to the Authority a retrospective review of the transaction. The retrospective review shall include analyses of the following (with any relevant supporting documentation, and with specific regard to each of the paragraphs of OAR 410-141-5265(5)(L)):¶
(~~A~~a) The extent to which the business plans for the CCO after the proposed activity, as submitted to the Authority in response to OAR 410-141-5265(5)(L), have been realized; and¶
(~~B~~b) The explanation for, and the CCO's planned rectification of, any respect in which those business plans have not been realized.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

ADOPT: 410-141-5283

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: New rule to specify OHA may verify compliance with terms and conditions of approved transaction.

CHANGES TO RULE:

410-141-5283
CCO ACQUISITIONS AND MERGERS: Compliance with Conditions
(1) Following approval of a Form A, the Authority may verify compliance with any conditions that the Authority included in its approval of the transaction and issue such additional orders, following notice and opportunity for hearing, as may be necessary to enforce compliance with the terms and conditions of the approval of the transaction; provided however, that the Authority may not impose new conditions that are unrelated to, or not reasonably required to enforce compliance with, those conditions, if any, that were included in the Authority's approval of the transaction. ¶
(2) No person shall file or cause to be filed with the Authority or the Department any notice, article, certificate, report, statement, application or any other information required or permitted to be so filed and known to such person to be false or misleading in any material respect.
Statutory/Other Authority: ORS 413.042, 414.572, 414.591, 414.605
Statutes/Other Implemented: ORS 414.570-414.686, 415.001-415.430

AMEND: 410-141-5285

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update and clarify definitions. Statutory reference updates.

CHANGES TO RULE:

410-141-5285
CCO HOLDING COMPANY REGULATION: Definitions
Unless the context otherwise requires, as used in OAR 410-141-5225 to OAR 410-141-5355:¶
(1) "Affiliate" means a person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another person.¶
(2) "CCO holding company system" means two or more affiliated persons, one or more of which is a CCO, and includes a financial holding company as described in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102).¶
(a) "Person" means an individual, corporation, political subdivision, limited liability company, partnership, association, joint stock company, trust or unincorporated organization, or an entity or combination of entities similar to the entities described in this paragraph.¶
(b) "Person" does not include:¶
(A) A joint venture partnership that is engaged exclusively in owning, managing, leasing or developing real or tangible personal property; or¶
(B) For the purposes of OAR 410-141-5000 through 410-141-53~~80~~55, a securities broker that holds, in the usual and customary broker's function, less than 20 percent of the voting securities of a CCO or of any person that controls.¶
(~~3~~4) "CCO subject to registration" means a CCO that is subject to the holding company registration requirements of OAR 410-141-5290.¶
(~~4~~5) "Control" means possessing the direct or indirect power to ~~manage a person or set the person's policies,~~direct or cause the direction of the management and policies of a person whether by owning voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position or corporate office the person holds.¶
(~~5~~6) "Enterprise risk" means an activity, circumstance, event or series of events that involve one or more of a CCO's affiliates and that, if not remedied promptly, are likely to have an adverse material effect on the CCO's or the CCO holding company system's financial condition or liquidity, including but not limited to an activity, circumstance, event or series of events that would cause the CCO's risk-based capital to fall into company action level or cause the Authority to determine that the CCO is in hazardous financial condition.¶
(~~6~~7) "Executive officer" means chief executive officer, chief operating officer, chief financial officer, treasurer, secretary, controller and any other individual performing functions corresponding to those performed by the foregoing officers under whatever title.¶
(~~7~~8) "Form A" means the form prescribed by OAR 410-141-5270.¶
(~~8~~9) "Form B" means the form prescribed by OAR 410-141-5300.¶
(~~9~~10) "Form C" means the form prescribed by OAR 410-141-5300.¶
(1~~0~~1) "Form D" means the form prescribed by OAR 410-141-5320.¶
(1~~1~~2) "Form F" means the form prescribed by OAR 410-141-5330.¶
(13) "Political subdivision" has the meaning prescribed by OAR 410-141-5000. ¶
(1~~2~~4) "Security holder" means a person that owns a security of another person, including a security denominated as common stock, preferred stock, membership, or a debt obligation and any instrument that is convertible into or that is evidence of the right to acquire the security of another person.¶
(1~~3~~5) "Subsidiary" means an affiliate that ~~a person controls~~is controlled by a person directly or indirectly through one or more intermediaries.¶
(1~~4~~6) "Voting security" means a security that entitles the owner or holder of the security to vote at a meeting of shareholders or members, including a security that is convertible into a voting security or that is evidence of a right to acquire a voting security.¶
(1~~5~~7) "Ultimate controlling person" means ~~the~~a person ~~who~~that is not controlled by any other person. A CCO holding company system may have more than one ultimate controlling person.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5290

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify language. Statutory and rule reference updates.

CHANGES TO RULE:

410-141-5290
CCO HOLDING COMPANY REGULATION: Members of Holding Company Systems; Registration Requirements
(1) Every CCO that is a member of a CCO holding company system shall register with the Authority as provided in this section.¶
(2) A CCO that is subject to registration under this section shall register not later than 15 days after the date the CCO becomes subject to registration, and annually thereafter on or before April 30 for the previous calendar year, unless the Authority for good cause shown extends the time for registration, and then within such extended time.¶
(3) The Authority may require or allow two or more affiliated CCOs subject to registration requirements under this section to file a consolidated registration statement.¶
(4) The registration requirements of OAR 410-141-5290 to OAR 410-141-53~~80~~55 do not apply to any CCO, information or transaction the Authority exempts by rule or order.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5295

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarified required form for filing and removed blanket reference to NAIC forms. Remove arbitrary language. Statutory reference updates.

CHANGES TO RULE:

410-141-5295
CCO HOLDING COMPANY REGULATION: Form and Contents of Registration Statement
(1) Every CCO that is subject to the registration requirements of OAR 410-141-5290 shall file with the Authority a completed Form B. ~~In the alternative, the Authority shall consider and may approve as the registration statement form for this section the form that the NAIC prescribes.~~ ¶
~~(2) Form B, or if approved by the Authority, the NAIC prescribed registration statement~~ ¶
(2) Form B, must list, describe, summarize or include, as appropriate:¶
(a) The capital structure, general financial condition, ownership and management of the CCO and any person that controls the CCO;¶
(b) The identity and relationship of every member of the CCO holding company system;¶
(c) The following agreements in force and transactions currently outstanding or that have occurred during the last calendar year between the CCO and the CCO's affiliates:¶
(A) Loans, other investments, or purchases, sales or exchanges of securities of the affiliates by the CCO or of the CCO by the CCO's affiliates;¶
(B) Purchases, sales or exchanges of assets;¶
(C) Transactions not in the ordinary course of business;¶
(D) Guarantees or undertakings for the benefit of an affiliate that result in an actual contingent exposure of the CCO's assets to liability;¶
(E) All management agreements, service contracts and all cost-sharing arrangements;¶
(F) Reinsurance agreements;¶
(G) Dividends and other distributions to shareholders; ~~and~~ ¶
(H) Consolidated tax allocation agreements; and¶
(I) Any pledge of the CCO's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of the CCO holding company system.¶
(d) Financial statements of or within a CCO holding company system, including financial statements of affiliates, if the Authority requests the financial statements.:¶
(A) Financial statements that are subject to this paragraph include, but are not limited to, annual audited financial statements that the CCO or the CCO holding company system files with the United States Securities and Exchange Commission under Securities Act of 1933, 15 U.S.C.A. 77a et seq., or the Securities Exchange Act of 1934, 15 U.S.C.A. 78a et seq;¶
(B) A CCO that must file financial statements under this paragraph may satisfy the requirement by providing the Authority with the parent corporation financial statements that have been filed most recently with the United States Securities and Exchange Commission.¶
(e) Other matters concerning transactions between registered CCOs and any affiliates as may be included from time to time in any registration forms prescribed by the Authority;¶
(f) Affidavits that state that:¶
(A) The CCO's Board is responsible for and oversees corporate governance and internal controls; and¶
(B) The CCO's officers or senior management have approved and implemented, and continue to maintain and monitor, corporate governance and internal control procedures;¶
~~(C) Any other information the Authority requires;¶~~
~~(g) Each Form B or the Authority approved NAIC prescribed registration statement filed under this section.~~ ¶
(g) Each Form B must have a summary that outlines all items in the current Form B or Authority approved NAIC prescribed registration statement that have changed from the previously filed Form B or registration statement.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.605~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5300

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory and rule reference updates.

CHANGES TO RULE:

410-141-5300
CCO HOLDING COMPANY REGULATION: Registration Statement Filing
(1) A CCO required to file an annual registration statement pursuant to OAR 410-141-5290 shall:-¶
(a) Furnish the required information on Form B. Form B is set forth on the website of the Authority at https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.-¶
(b) Include a statement that the CCO's Board oversees corporate governance and internal controls.-¶
(2) The Authority may allow a CCO that is part of a CCO holding company system to register on behalf of an affiliated CCO that is required to register under OAR 410-141-5290 and to file all information and material required to be filed under the registration requirements of OAR 410-141-5285 to OAR 410-141-5355.-¶
(3) A CCO required to file an annual registration statement pursuant to OAR 410-141-5~~35~~29<u>0</u> is also required to furnish information required on Form C. Form C is set forth on the website of the Authority at https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.-¶
(4) The Authority may allow an authorized CCO that is part of a CCO holding company system to register on behalf of an affiliated CCO that is required to register under OAR 410-141-5290 and to file all information and material required to be filed under the registration requirements of OAR 410-141-5290 to OAR 410-141-53~~80~~<u>55</u>.
Statutory/Other Authority: ORS 413.042, 414.~~615, 414.625~~<u>572</u>, 414.63<u>0</u>5, 414.~~6~~5<u>9</u>1
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~<u>570-414.686, 415.001-415.430</u>

AMEND: 410-141-5305

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Switch order for clarity and clarify language. Statutory reference updates.

CHANGES TO RULE:

410-141-5305
CCO HOLDING COMPANY REGULATION: Information Required to Be Disclosed
(1) ~~Information that is not material for the purposes of registration under OAR 410-141-5285 to OAR 410-141-5380 need not be disclosed on the registration statement filed pursuant to OAR 410-141-5290. ¶~~
~~(2)~~ Unless the Authority by rule or order provides otherwise, sales, purchases, exchanges, loans or extensions of credit, investments or guarantees involving one-half of one percent or less of a CCO's admitted assets as of the December 31 immediately preceding the date of the registration statement or amendment shall not be deemed material for purposes of registration under OAR 410-141-5290 to OAR 410-141-5380.¶
(2) Information that is not deemed material under subsection (1) for the purposes of registration under OAR 410-141-5285 to OAR 410-141-5380 need not be disclosed on the registration statement filed pursuant to OAR 410-141-5355.¶
(3) Any person within a CCO holding company system subject to registration shall provide complete and accurate information to a CCO when such information is necessary to enable the CCO to comply with the registration requirements of OAR 410-141-5285 to OAR 410-141-5355.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5310

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update language to align with other rules and provide additional clarification. Statutory reference updates.

CHANGES TO RULE:

410-141-5310
CCO HOLDING COMPANY REGULATION: Presumption of Control; Rebuttal
(1) The Authority shall presume that a person controls another person if the person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of the other person. ¶
(2) A person may rebut this presumption ~~with a showing~~by filing a disclaimer of affiliation in the manner provided under OAR 410-141-5315 ~~that control does not exist in fact. The Authority may determine, after giving persons that have an interest in the Authority's determination notice and opportunity to be heard and after making specific findings of fact to support the determination.~~ ¶
(3) The Authority may determine that control exists in fact, notwithstanding the absence of a presumption that control exists in fact.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5315

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update language to align with other rules and provide additional clarification. Add in contested case hearing rights per ORS. Statutory reference updates.

CHANGES TO RULE:

410-141-5315
CCO HOLDING COMPANY REGULATION: Disclaimer of Affiliation
(1) Any person, CCO or member of a CCO holding company system may file with the Authority a disclaimer of affiliation with any authorized CCO. The disclaimer must ~~fully disclose all material relationships and bases for affiliation between the person, CCO or member and the CCO to which the disclaimer of affiliation applies, as well as the basis for disclaiming the affiliation.~~contain the following information: ¶
(a) The number of authorized, issued and outstanding voting securities of the subject;¶
(~~2~~b) ~~After the person, CCO or member files a disclaimer, the person, CCO or member and the CCO to which the disclaimer applies~~With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities which are ~~r~~he~~liev~~ed of ~~any duty to register or report under OAR 410-141-5290 to OAR 410-141-5380 that may arise out of the CCO's relationship with the person, CCO or member of the CCO holding company system that filed the disclaimer unless the Authority disallows the disclaimer~~record or known to be beneficially owned, and the number of shares concerning which there is a right to acquire, directly or indirectly.¶
(2) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person.¶
(3) A disclaimer that the person, CCO or member of the CCO holding company system files under this section is effective unless within 30 days after the Authority receives a complet~~he~~ disclaimer the Authority notifies the person, the CCO or the member of the CCO holding company system that Authority has disallowed the disclaimer, unless tolled by agreement between the Authority and the disclaiming party.¶
(4) The Authority shall ~~grant a hearing if~~hold a contested case hearing upon written request for a hearing by the person, CCO or member of a CCO holding company system that filed the disclaimer. Such request~~s a~~ must be filed within 15 business days from the date the Authority provides written notice it has disallowed the disclaimer. The provisions of ORS Chapter 183 govern the hearing procedures and any judicial review of a final order issued in a contested case hearing.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5320

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Update language. Statutory reference updates.

CHANGES TO RULE:

410-141-5320
CCO HOLDING COMPANY REGULATION: Transactions Within Holding Company
(1) A transaction within a CCO holding company system, to which a CCO subject to registration is a party, is subject to the following standards:¶
(a) The terms must be fair and reasonable.¶
(b) Charges or fees for services performed must be reasonable.¶
(c) Expenses incurred and payment received must be allocated to the CCO in conformity with customary insurance accounting practices that are consistently applied.¶
(d) The books, accounts and records of each party to the transaction must be maintained so as to disclose clearly and accurately the nature and details of the transaction, including accounting information that is necessary to support the reasonableness of the charges or fees to the respective parties.¶
(e) The combined capital and surplus of the CCO following any transaction with an affiliate or any shareholder dividend must be reasonable in relation to the CCO's outstanding liabilities and adequate to the CCO's financial needs.¶
(2) The Authority may prescribe from time to time required provisions that must be included in agreements with affiliates for cost-sharing services and management.¶
(3) A CCO and any person in the CCO's CCO holding company system may enter into a transaction described in subsection (4), including an amendment to or modification of an affiliate agreement that is subject to standards set forth in this section, only if:¶
(a) The CCO has notified the Authority of the CCO's intention to enter into the transaction in writing and not later than the 30th day before the transaction, or within a shorter period the Authority allows; and¶
(b) The Authority does not disapprove the transaction within the period.¶
(4) Subsection (3) applies to the following transactions:¶
(a) Sales, purchases, exchanges, loans or extensions of credit, guarantees or investments, if the transactions equal or exceed the lesser of three percent of the CCO's allowed assets or 25 percent of the CCO's combined capital and surplus, each as of the 31st day of December immediately preceding.¶
(b) Loans or extensions of credit to any person that is not an affiliate, if the CCO makes the loans or extensions of credit with the agreement or understanding that the proceeds of the transactions, in whole or in substantial part, are to be used to make loans or extensions of credit to, to purchase assets of, or to make investments in any affiliate of the CCO that is making the loans or extending the credit. This subparagraph applies to transactions that equal or exceed the lesser of three percent of the CCO's allowed assets or 25 percent of the CCO's combined capital and surplus, each as of the 31st day of December immediately preceding.¶
(c) Reinsurance agreements or modifications to reinsurance agreements, reinsurance pooling agreements and agreements in which the reinsurance premium or a change in the CCO's liabilities, the projected reinsurance premium or a projected change in the CCO's liabilities in any of the next three years equals or exceeds five percent of the CCO's combined capital and surplus, as of the 31st day of December immediately preceding, including agreements that may require as consideration the transfer of assets from a CCO to a nonaffiliate if an agreement or understanding exists between the CCO and nonaffiliate that any portion of the assets will be transferred to one or more affiliates of the CCO.¶
(d) All management agreements, service contracts, tax allocation agreements, guarantees and all cost-sharing arrangements.¶
(e) A guarantee that a CCO makes if the guarantee is not quantifiable as to amount. If the guarantee is quantifiable as to amount, the CCO is not required to notify the Authority under this section unless the guarantee exceeds the lesser of one-half of one percent of the CCO's admitted assets or 10 percent of surplus with respect to Members as of the 31st day of December immediately preceding.¶
(f) Direct or indirect acquisitions or investments in a person that controls the CCO or in an affiliate of the CCO, the amount of which, together with the CCO's existing acquisitions or investments in the person or affiliate, exceeds two and one-half percent of the CCO's surplus to Members.¶
(g) Any other material transactions specified by the Authority from time to time as transactions that may adversely affect the interests of the CCO's Members.¶
(5) A notice for a transaction under subsection (3) that is an amendment to or modification of an affiliate agreement that was previously filed must include a statement of reasons for the change and an estimate of the

financial impact the change would have on the CCO.¶
(6) A CCO shall notify the Authority informally within 30 days after a previously filed agreement has terminated, and the Authority, after receiving the notice, shall determine the type of filing the CCO must submit, if any.¶
(7) A CCO may not enter into one or more transactions during any 12-month period that are part of a plan or series of like transactions with persons that are within the CCO holding company system if the purpose of the separate transactions is to avoid the statutory threshold amount and thus avoid the review that would occur otherwise.¶
(8) In reviewing a transaction in accordance with subsection (3) of this section, the Authority shall consider whether the transaction complies with the standards set forth in subsection (1) of this section and whether the transaction may adversely affect the interests of Members.¶
(9) A CCO shall notify the Authority not later than the 30th day after any investment the CCO makes in any one corporation or other legal entity if the total investment the CCO holding company system makes in the corporation or other legal entity exceeds 10 percent of the corporation's voting securities or other equivalent ownership interests.¶
(10) This section does not authorize or permit any transaction that, in the case of a CCO that is not a member of the same CCO holding company system, would be otherwise contrary to law.~~¶~~
~~(11) A CCO required to give notice of a proposed transaction pursuant to subsection (3) shall furnish the required information on Form D. Form D is set forth on the website of the Authority at https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.~~
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

ADOPT: 410-141-5323

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: New rule to align with changes to NAIC holding company regulations. DCBS made this change as well in 2021.

CHANGES TO RULE:

410-141-5323
CCO HOLDING COMPANY REGULATION: Transaction Types Within Holding Company for Disclosure
(1) A CCO required to give notice of a proposed transaction pursuant OAR 410-141-5320 shall furnish the required information on Form D. Form D is set forth on the website of the Authority at https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.¶
(2) Agreements for cost sharing services and management services shall at a minimum and as applicable:¶
(a) Identify the person providing services and the nature of such services;¶
(b) Set forth the methods to allocate costs;¶
(c) Require timely settlement, not less frequently than on a quarterly basis, and compliance with the requirements in the Accounting Practices and Procedures Manual;¶
(d) Prohibit advancement of funds by the CCO to the affiliate except to pay for services defined in the agreement;¶
(e) State that the CCO shall maintain oversight for functions provided to the CCO by the affiliate and that the CCO shall monitor services annually for quality assurance;¶
(f) Define books and records of the CCO to include all books and records developed or maintained under or related to the agreement;¶
(g) Specify that all books and records of the CCO are and remain the property of the CCO and are subject to the control of the CCO;¶
(h) State that all funds and invested assets of the CCO are the exclusive property of the CCO, held for the benefit of the CCO and are subject to the control of the CCO;¶
(i) Include standards for termination of the agreement with and without cause;¶
(j) Include provisions for indemnification of the CCO in the event of gross negligence or willful misconduct on the part of the affiliate providing the services;¶
(k) Specify that, if the CCO is placed in receivership or seized by the Authority under ORS chapter 415:¶
(A) All of the rights of the CCO under the agreement extend to the receiver or the Authority, and,¶
(B) All books and records shall immediately be made available to the receiver or the Authority, and shall be turned over to the receiver or the Authority immediately upon the receiver or the Authority's request;¶
(L) Specify that the affiliate has no automatic right to terminate the agreement if the CCO is placed in receivership pursuant to ORS chapter 415; and¶
(m) Specify that the affiliate shall continue to maintain any systems, programs, or other infrastructure notwithstanding a seizure by the Authority under ORS chapter 415, and shall make them available to the receiver, for so long as the affiliate continues to receive timely payment for services rendered.
Statutory/Other Authority: ORS 413.042, 414.572, 414.591, 414.605
Statutes/Other Implemented: ORS 414.570-414.686, 415.001-415.430

AMEND: 410-141-5325

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5325
CCO HOLDING COMPANY REGULATION: Director and Officer Liability; Effect of Control of CCO Subject to Registration; Board of Directors
(1) A person's control of a CCO that is subject to registration does not relieve the officers and directors of the CCO of any obligation or liability to which the officers and directors ~~would~~may otherwise be subject by law. The CCO must be managed so as to assure the CCO's separate operating identity.¶
(2) This section does not preclude a CCO from having or sharing a common management, or from using personnel, property or services jointly or cooperatively, with another person under an arrangement that meets the standards set forth in OAR 410-141-5320.¶
(3) At least one-third of a CCO's directors and at least one-third of the members of each committee of the CCO's Board must be persons who are not:¶
(a) Officers or employees of the CCO or of any entity that controls, is controlled by or is under common control with the CCO; or¶
(b) Beneficial owners of a controlling interest in the voting securities of the CCO or of an entity that controls, is controlled by or is under common control with the CCO.¶
(4) A quorum for transacting business at a meeting of the CCO's Board or any committee of the CCO's Board must include at least one person with the qualifications described in paragraph (a) of this subsection.¶
(5) A CCO's Board shall establish at least one committee of which the entire membership consists of persons who have the qualifications described in subsection (3) of this section. The CCO Board shall give the committee established under this subsection responsibility for:¶
(a) Recommending independent certified public accountants for the board to select;¶
(b) Reviewing the CCO's financial condition and the scope and results of any independent or internal audit;¶
(c) Nominating candidates for election to the CCO Board;¶
(d) Recommending principal officers for selection and the compensation for the principal officers; and¶
(e) Evaluating the principal officers' performance.¶
(6) Subsections (3), (4) and (5) of this section do not apply to a CCO if the person that controls the CCO has a board of directors, and committees of the person's board of directors, that meet the requirements set forth in subsections (3), (4) and (5) of this section.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5330

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Remove unnecessary language. Statutory reference updates.

CHANGES TO RULE:

410-141-5330
CCO HOLDING COMPANY REGULATION: Annual Enterprise Risk Report
(1) Every CCO subject to registration shall file an enterprise risk report each year. The enterprise risk report must identify, to the best of the CCO's knowledge and belief, the material risks within the holding company system of which the CCO is a part that ~~could~~may pose enterprise risk to the CCO. ~~The Director of the Authority shall make the determination in accordance with procedures the director adopts by rule after considering procedures set forth in a Financial Analysis Handbook that the National Association of Insurance Commissioners has adopted.~~¶
(2) A CCO required to file an enterprise risk report pursuant to this rule shall furnish the required information on Form F. Form F is set forth on the website of the Authority at https://www.oregon.gov/oha/HSD/OHP/Pages/CCO-Contract-Forms.aspx.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5335

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify this rule is for termination of registration to separate from separate disclaimer of affiliation rule. Statutory reference updates.

CHANGES TO RULE:

410-141-5335
CCO HOLDING COMPANY REGULATION: Disclaimers and Termination of Registration
(1) The Authority shall terminate the registration of any CCO which demonstrates that it no longer is a member of a CCO holding company system.¶
(2) A ~~disclaimer of affiliation or a~~ request for termination of registration claiming that a person does not, or ~~wi~~shall not upon the taking of some proposed action, control another person (referred to as the "subject" in this section) shall contain:¶
(a) The number of authorized, issued and outstanding voting securities of the subject;¶
(b) With respect to the person whose control is denied and all affiliates of such person, the number and percentage of shares of the subject's voting securities that are held of record or known to be beneficially owned, and the number of such shares concerning which there is a right to acquire, directly or indirectly;¶
(c) All material relationships and bases for affiliation between the subject and the person whose control is denied and all affiliates of such person; and¶
(d) A statement explaining why such person ~~should~~may not be considered to control the subject.¶
(3) A request for termination of registration shall be considered granted unless the Authority, within thirty (30) days after the Authority receives the request, notifies the registrant otherwise.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5340

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory and rule reference updates.

CHANGES TO RULE:

410-141-5340
CCO HOLDING COMPANY REGULATION: Forms; General Requirements
(1) Forms A, B, C, D, E and F are intended to be guides in the preparation of the statements required by OAR 410-141-5290 to OAR 410-141-53~~80~~55, including but not limited to the registration provisions thereof. The forms are not intended to be blank forms that are to be filled in. The statements filed shall contain the numbers and captions of all items, but the text of the items may be omitted if the answers to the items are prepared so as to indicate clearly the scope and coverage of the items. All instructions, whether appearing under the items of the form or elsewhere, are to be omitted. Unless expressly provided otherwise, if any item is inapplicable or the answer to any item is in the negative, an appropriate statement to that effect shall be made.¶
(2) One complete copy of each statement, including exhibits and all other papers and documents filed as a part of the statement, shall be filed with the Authority by electronic delivery according to the terms of the CCO Contract. Each statement shall be signed and certified in the manner prescribed on the form. Unsigned copies shall be confirmed. If the signature of any person is affixed pursuant to a power of attorney or other similar authority, a copy of such power of attorney or other authority shall also be filed with the statement.¶
(3) Statements must be prepared electronically and clearly named. Exhibits and financial statements, unless specifically prepared for the filing, may be submitted in their original size. All copies of any statement, financial statements or exhibits shall be clear, easily readable, and suitable for printing. Debits in credit categories and credits in debit categories shall be designated so as to be clearly distinguishable as such on photocopies. Statements shall be in the English language and monetary values shall be stated in United States currency. If any exhibit or other paper or document filed with the statement is in a foreign language, it shall be accompanied by a translation into the English language and any monetary value shown in a foreign currency shall be converted into United States currency.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5345

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5345
CCO HOLDING COMPANY REGULATION: Forms; Incorporation by Reference, Summaries, And Omissions
(1) Information required by any item of Form A, B, D, E or F may be incorporated by reference in answer or partial answer to any other item. Information contained in any financial statement, annual report, proxy statement, statement filed with a governmental authority or any other document may be incorporated by reference in answer or partial answer to any item of Form A, B, D, E or F if the document or paper is filed as an exhibit to the statement. Excerpts of documents may be attached as exhibits if the documents are extensive. Documents currently on file with the Authority that were filed within three (3) years need not be filed as exhibits. References to information contained in exhibits or in documents already on file shall clearly identify the material and shall specifically indicate that such material is to be incorporated by reference in answer to the item. Matter shall not be incorporated by reference in any case in which the incorporation would render the statement incomplete, unclear, or confusing.¶
(2) If an item requires a summary or outline of the provisions of any document, only a brief statement of the pertinent provisions of the document shall be made. The summary or outline may in addition incorporate by reference particular parts of any exhibit or document currently on file with the Authority that was filed within three (3) years and may be qualified in its entirety by such reference. If two or more documents required to be filed as exhibits are substantially identical in all material respects except as to the parties thereto, the dates of execution or other details, a copy of only one of such documents need be filed, but it shall have attached a schedule identifying the omitted documents and setting forth the material details in which such documents differ from the documents of which a copy is filed.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~5~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5350

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify language. Statutory reference updates.

CHANGES TO RULE:

410-141-5350
CCO HOLDING COMPANY REGULATION: Forms; Information Unknown or Unavailable and Extension of Time to Furnish
(1) Required information need be given only insofar as it is known or reasonably available to the person filing the statement. If any required information is unknown and not reasonably available to the person filing, either because obtaining it would involve unreasonable effort or expense, or because it rests peculiarly within the knowledge of another person not affiliated with the person filing, the information may be omitted. However, the person filing shall:¶
(a) Give such information on the subject as the person possesses or can acquire without unreasonable effort or expense, together with the sources thereof; and¶
(b) Include a statement either showing that unreasonable effort or expense would be involved or indicating the absence of any affiliation with the person within whose knowledge the information rests and stating the result of a request made to such person for the information.¶
(2) If it is impractical to furnish any required information, document, or report at the time it is required to be filed, ~~an application may be filed~~ person may file a waiver request with the Authority:¶
(a) Identifying the information, document, or report in question;¶
(b) Stating why the filing thereof at the time required is impractical; and¶
(c) Requesting an extension of time for filing the information, document, or report to a specified date.¶
(3) An ~~application~~waiver request submitted under subsection (2) shall be considered granted unless the Authority, within thirty (30) days after receipt thereof, enters an order denying the application.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.605~~1~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5355

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify language. Statutory reference updates.

CHANGES TO RULE:

410-141-5355
CCO HOLDING COMPANY REGULATION: Forms; Additional Information; Amendments
(1) In addition to the information expressly required to be included in Forms A, B, C, D, E and F ~~there~~, a person filing such forms shall ~~be~~ include~~d~~ further material information, if any, as may be necessary to make the information contained in the form not misleading. The person filing may also file exhibits in addition to those expressly required by the statement. Such exhibits shall be marked to clearly indicate ~~clearly~~ the subject matters to which they refer.¶
(2) A change to Form A, B, C, D, E and F shall include on the top of the cover page the phrase: "Change No. ____ to" and shall indicate the date of the change and not the date of the original filing.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625, 414.635~~591, 414.60~~51~~
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5360

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5360
CCO INSOLVENCY AND DISSOLUTION: Access to Funds and Transition of Members and Records
(1) CCOs shall provide the Authority access to Restricted Reserve Funds if insolvency occurs.¶
(2) CCOs shall have written policies and procedures to ensure that if insolvency occurs, Members and related clinical records are transitioned to other CCOs or providers with minimal disruption.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625~~591, 414.6~~3~~05, 41~~4.651~~5.013, 415.101-415.430
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5365

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Correcting language on contested case hearing per ORS. Statutory reference updates.

CHANGES TO RULE:

410-141-5365
CCO INSOLVENCY AND DISSOLUTION: Hazardous Operations
(1) Without limitation or exclusion of any other authority, actions or remedies that are available to the Authority under these rules or under ~~A~~applicable Law, if the Authority determines that the continued operation of a CCO is hazardous to its Members or to the public in general, the Authority may ~~order~~issue a Notice of Intent to the CCO to take one or more of the following actions:¶
(a) Reduce the total amount of present and potential liability for Member services by reinsurance.¶
(b) Reduce, suspend or limit the volume of business being accepted or renewed.¶
(c) Reduce general expenses by methods specified by the Authority.¶
(d) Increase the capital and surplus of the CCO.¶
(e) Suspend or limit the declaration and payment of dividends by the CCO to its stockholders or members.¶
(f) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the Authority determines such action to be necessary.¶
(2) ~~The Authority may issue an order under subsectio~~A CCO may file a written request for a contested case hearing within fifteen (15) ~~with or without a hearing. A CCO subject to an order issued without a hearing may file a written request for a hearing to review the order. A request for h~~days following the date of the Notice of Intent¶
(a) Contested case hearings shall be conducted pursuant to ORS 183.411 through ORS 183.497 and the Attorney General's Uniform and Model Rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 through OAR 137-003-0700, and the provisions of this rule. ¶
(b) The contested case hearing shall be held within thirty business days after the date the written request for a hearing was filed. ¶
(c) In a contested case conducted pursuant to this rule, an administrative law judge assigned by the Office of Administrative Hearings shall ~~not stay the effect of the order. The hearing shall be held within thirty days following the filing of the request.~~serve a proposed order on all parties and the Authority, unless prior to the hearing the Authority notifies the administrative law judge that a final order may be served, within 30 calendar days of the close of the evidentiary record in the contested case. ¶
(d) The Authority shall ~~ren~~issue a final order wit~~s decision within thirty days following completion of the hearing and the closing of~~hin 30 days of receipt of the proposed order, which may adopt some or all of the proposed order, as the Authority shall determine in its sole discretion. The final order is effective immediately upon being signed or as otherwise provided in the order. ¶
(e) The time limits established in rule may be waived or shortened by agreement among the ~~hearing record.~~parties and the Authority. ¶
(3) Without limiting the facts, conditions, circumstances or factors that the Authority may identify, evaluate or rely upon in determining whether the continued operation of a CCO could be hazardous to the CCO's Members, its creditors or the general public, and without limiting the Authority's discretion to make such determinations, the Authority may consider the following:¶
(a) Adverse findings reported in financial condition examination reports, audit reports, and actuarial opinions, reports or summaries.¶
(b) Whether the CCO has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the CCO, when considered in light of the assets held by the CCO with respect to such reserves and related actuarial items including but not limited the investment earnings on such assets, and the considerations anticipated to be received and retained under such contracts.¶
(c) The ability of a CCO's reinsurers to perform and whether the CCO's reinsurance program provides sufficient protection for the CCO's capital and surplus after taking into account the CCO's cash flow and the classes of business written as well as the financial condition of the CCO's reinsurers.¶
(d) Whether the CCO's operating loss in the last 12-month period or any shorter period of time is greater than 50 percent of the CCO's remaining capital and surplus in excess of the minimum required.¶
(e) Whether the CCO's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the CCO's remaining surplus in excess of the minimum required.¶
(f) Whether any of the CCO's reinsurers or any of the CCO's other counterparty obligors, or any entity within the CCO's holding company system is insolvent, threatened with insolvency or delinquent in payment or performance

of its monetary or other obligations to the CCO, which could materially and adversely affect the solvency of the CCO.¶
(g) Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount that may materially and adversely affect the solvency of the CCO.¶
(h) Whether any "controlling person" of a CCO is delinquent in remitting amounts due the CCO.¶
(i) The age and collectability of receivables.¶
(j) Whether the management of a CCO, including officers, directors or any other person who directly or indirectly controls the operation of the CCO, fails to possess and demonstrate the competence, fitness and reputation determined by the Authority to be necessary to serve the CCO in such position.¶
(k) Whether management of a CCO has failed to respond to inquiries relating to the condition of the CCO or has furnished false and misleading information concerning an inquiry.¶
(L) Whether the CCO has failed to meet financial responsibility, accountability or filing requirements.¶
(m) Whether management of a CCO has filed a false or misleading sworn financial statement or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the CCO.¶
(n) Whether the CCO has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.¶
(o) Whether the CCO has experienced or is projected to experience in the foreseeable future cash flow or liquidity issues that could materially and adversely affect the CCO's solvency and/or prospects for continued operation.¶
(p) Whether management has established reserves that do not comply with minimum standards established by the CCO ~~c~~Contract or regulations, accounting standards, sound actuarial principles and standards of practice.¶
(q) Whether management of the CCO has caused the CCO to maintain materially insufficient statutory loss reserves or loss adjustment expense reserves.¶
(r) In respect of transactions between or among the CCO and affiliates within the CCO's holding company system:¶
(A) Whether the CCO has accurately and timely reported those transactions;¶
(B) Whether the CCO has filed for and obtained required regulatory approvals of those transactions;¶
(C) Whether those transactions are fair and reasonable to the CCO, and are otherwise consistent with terms that would be available to the CCO in an unaffiliated arms-length transaction;¶
(D) Whether any of those transactions were for the principal benefit of an affiliate of the CCO or otherwise were not in the best interests of the CCO and its Members; and¶
(E) Whether those transactions otherwise comply with the procedural and substantive standards that apply under Applicable Law.¶
(s) Any other fact, condition or circumstance found by the Authority to be hazardous to the CCO's Members, creditors or the general public.¶
(4) For the purposes of making a determination of the financial condition of a CCO under these rules or the CCO ~~c~~Contract, the Authority may do one or more of the following:¶
(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding.¶
(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates.¶
(c) Refuse to recognize the stated value of accounts receivable and/or amounts due from affiliates if the ability to collect receivables is speculative in view of the age of the account or the financial condition of the debtor or affiliated organization.¶
(d) Increase the CCO's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the CCO ~~wi~~shall be called upon to meet the obligation undertaken within the next twelve-month period.¶
(5) In circumstances where the Authority determines, in its discretion, that the financial condition, operating history or future prospects of a CCO warrant such actions, the Authority may require that the CCO:¶
(a) Promptly provide written responses to an inquiry of the Authority for a current valuation of assets or liabilities of the CCO.¶
(b) In addition to the required annual and quarterly financial statements, file interim financial statements as of a particular date or with such greater frequency as the Authority may specify.¶
(c) Promptly produce its personnel and/or records, and/or the records and personnel of its affiliates, for examination by the Authority.¶
(d) Correct corporate governance practice deficiencies and adopt and utilize governance practices acceptable to the Authority.¶
(e) Provide a business plan to the Authority demonstrating corrective action the CCO ~~wi~~shall take to improve its financial condition or such other conditions or deficiencies as may be identified by the Authority.

Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625~~591, 414.6~~3~~05, 41~~4.651~~5.013, 415.101-415.430
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5370

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify statutory authority. Statutory reference updates.

CHANGES TO RULE:

410-141-5370
CCO INSOLVENCY AND DISSOLUTION: Recovery From Parent Corporation Or Holding Company In The Event Of Liquidation Or Rehabilitation
(1) If an order for liquidation or rehabilitation of a CCO has been entered pursuant to ORS 415.280, the receiver appointed under the order may recover, on behalf of the CCO, from any parent corporation or holding company or person or affiliate who otherwise controlled the CCO, the amount of distributions, other than distributions of shares of the same class of stock, paid by the CCO on the CCO's capital stock, or any payment in the form of a bonus, termination settlement or extraordinary lump sum salary adjustment made by the CCO or the CCO's subsidiary to a director, officer or employee, when such a distribution or payment is made at any time during the 12 calendar months preceding the petition for liquidation, conservation or rehabilitation, as the case may be, subject to the limitations of subsections (2), (3) and (4) of this section.¶
(2) A distribution to which subsection (1) of this section applies is not recoverable if the parent or affiliate shows that the distribution was lawful and reasonable when paid and that the CCO did not know and could not reasonably have known that the distribution might adversely affect the ability of the CCO to fulfill the CCO's contractual obligations.¶
(3) Any person who was a parent corporation or holding company or a person who otherwise controlled the CCO or affiliate at the time a distribution to which subsection (1) of this section applies was paid is liable in an amount that is not more than the amount of distributions or payments received by the person under subsection (1) of this section. Any person who otherwise controlled the CCO at the time such distributions were declared is liable up to the amount of distributions the person would have received if the distributions had been paid immediately. If two or more persons are liable with respect to the same distributions, the persons are jointly and severally liable.¶
(4) The maximum amount recoverable under this section is the amount needed in excess of all other available assets of the impaired or insolvent CCO to pay the contractual obligations of the impaired or insolvent CCO.¶
(5) To the extent that any person liable under subsection (3) of this section is insolvent or otherwise fails to pay claims due from the person pursuant to subsection (3) of this section, the person's parent corporation or holding company or other person who otherwise controlled the person liable under subsection (3) of this section when the distribution was paid are jointly and severally liable for any resulting deficiency in the amount recovered from the parent corporation or holding company or person who otherwise controlled the person liable under subsection (3) of this section.¶
(6) If a CCO is placed into rehabilitation or liquidation and the CCO engages in transactions within its holding company system that are subject to OAR 410-141-5320, the Authority retains jurisdiction over the CCO, any interested affiliates of the CCO and the transaction for purposes of regulation and enforcement under O~~R~~AR 410-141-5320.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625~~591, 414.6~~3~~05, 41~~4.651~~5.013, 415.101-415.430
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5375

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Clarify language. Statutory reference updates.

CHANGES TO RULE:

410-141-5375
CCO INSOLVENCY AND DISSOLUTION: Voluntary Dissolution; Approval of Plan
(1) No CCO may be dissolved voluntarily until the Authority has approved a plan for liquidation of the CCO's assets and obligations.¶
(2) The plan of dissolution must provide for the reinsurance and assumption of all in-force ~~Member C~~CCO contracts to which the CCO is a party.¶
(3) The Authority shall require that the plan of dissolution provide adequate reserves in trust or otherwise for the satisfaction of all remaining obligations of the CCO.
Statutory/Other Authority: ORS 414~~.615~~3.042, 414.572, 414.~~625~~591, 414.630~~5~~, 414~~.651, ORS 413.042~~5.013, 415.101-415.430
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430

AMEND: 410-141-5380

NOTICE FILED DATE: 09/30/2024

RULE SUMMARY: Statutory reference updates.

CHANGES TO RULE:

410-141-5380
CIVIL PENALTIES
(1) ~~A person that violates any provision of Sections 5000 through~~ The Director of the Oregon Health Authority may impose a civil penalty for violations of OAR 410-141-5000 to 410-141-5380 or any final order of the Authority entered under any of ~~Sections 5000 through 5380, shall forfeit and pay to the General Fund of the State Treasury a civil penalty~~OAR 410-141-5000 to 410-141-5380, in an amount determined by the Authority that shall not exceed $10,000 for each offense. Each violation is a separate offense.¶
(2) In addition to the civil penalty specified in subsections (1), (3) and (4) of this section, the Director of the Authority may require a person that violates any provision of OAR 410-141-5000 to 410-141-5380 or any final order of the Authority entered under any of OAR 410-141-5000 to 410-141-5380, ~~may be required by the Authority to forfeit and pay to the General Fund of the State Treasur~~to forfeit and pay a civil penalty in an amount determined by the Authority that shall not exceed the amount by which the person profited by or through or as a result of such violation~~, as determined by the Authority~~.¶
(3) In addition to the penalties specified in subsection (1), (2) and (4) of this section, the Director of the Authority may impose on a director or officer of a CCO or any affiliate within a CCO's holding company system who engages in a transaction or makes an investment that has not been properly reported under, or that otherwise does not comply with~~,~~ OAR 410-141-5360 to ~~OAR~~ 410-141-5~~510~~375, who knowingly participates in or assents to the transaction or investment, or who permits another officer or an agent of the holding company system to engage in the transaction or make the investment~~, shall pay,~~ in the director or officer's individual capacity, a civil penalty in an amount determined by the Authority that shall not exceed $10,000.¶
(4) In addition to the penalties specified in subsections (1), (2) and (3) of this section, the Director of the Authority may impose a civil penalty on a CCO or other person that fails to make a required filing or demonstrate a good faith effort to comply with a filing requirement under OAR 410-141-5~~350~~285 to OAR 410-141-5~~285 shall pay a civil penalty~~355 in an amount determined by the Authority that does not exceed $50,000.¶
(5) Civil penalties under this section shall be imposed and enforced in accordance with ORS 183.745.¶
(6) ~~A civil penalty imposed under this section may be recovered either as provided in subsection (5) of this section or in an action brought in the name of the State of Oregon in any court of appropriate jurisdiction.¶~~
~~(7)~~ The provisions of this section are in addition to and not in lieu of, any other enforcement provisions ~~specified in Division OAR 410 of Chapter~~imposed by law, including ORS Chapter 415, OAR Chapter 410, Division 141, or in the CCO~~'s c~~ Contract ~~with the Authority.~~¶
(7) Moneys received by the Authority under this section shall be paid to the State Treasury and credited to the General Fund.
Statutory/Other Authority: ORS 413.042, 414.~~615~~572, 414.~~625~~591, 414.6~~3~~05, 41~~4.651~~5.063, 415.109
Statutes/Other Implemented: ORS 414.~~610 - 414.685~~570-414.686, 415.001-415.430