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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED
09/20/2019 4:34 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: New Administrative Rules on OHA Financial Oversight of Coordinated Care Organizations (CCOs).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/18/2019 5:00 PM

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

CONTACT: Brean Arnold
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500 Summer St NE
Salem, OR 97301

Filed By:
Brean Arnold
Rules Coordinator

HEARING(S)

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

DATE: 11/15/2019

TIME: 9:00 AM - 12:00 PM

OFFICER: Brean Arnold

ADDRESS:

500 Summer St NE

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Salem, OR 97301

SPECIAL INSTRUCTIONS:

Submit written comments to:

HSD.Rules@dhsosha.state.or.us

NEED FOR THE RULE(S):

To implement provisions of Senate Bill 1041 from the 2019 Oregon Legislative Assembly.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 1041 from the 2019 Oregon Legislative Assembly viewable at:

<https://olis.leg.state.or.us/liz/2019R1/Downloads/MeasureDocument/SB1041/Enrolled>

FISCAL AND ECONOMIC IMPACT:

In-determinant

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the

expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

In-determinant

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

Interested small businesses were invited to participate in two (2) Rules Advisory Committees.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

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

ADOPT: 410-141-5000

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

CHANGES TO RULE:

410-141-5000

FINANCIAL SOLVENCY REGULATION: Definitions

(1) When used and not otherwise defined in OAR 410-141-5005 through OAR-141-5380, the following terms shall have the meaning give in this section.¶

(2) "AICPA" means the American Institute of Certified Public Accountants.¶

(3) "Applicable Law" means S.B. 1041, OAR 410-141-5000 to OAR-141-5380, and any other state or federal laws, rules, regulations or regulatory guidance applicable to the operations of CCOs in this state.¶

(4) "Assumption Reinsurance Agreement" means a contract that 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 is intended to effect 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's contract obligations to the Members are extinguished.¶

(5) "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.¶

(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) "Loss Protection Program" means a program or set of arrangements maintained by a CCO that collectively are designed and operate to protect the CCO against catastrophic and unexpected loss or expenses related to capitated services the CCO is obligated to provide to its Members.¶

(9) "CCO Board" or "CCO's Board" means the individuals who are vested with overall management of the affairs of the CCO company, irrespective of the name by which the individuals 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 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(2)(o) that is not the CCO Board.¶

(10) "Member" means an individual covered by, and entitled to managed health care services under, a CCO's

contract with the Authority.¶

(11) "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.¶

(12) "NAIC" means the National Association of Insurance Commissioners.¶

(13) "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.¶

(14) "Qualified United States Financial Institution" means an institution that 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 is regulated, supervised and examined by federal or state authorities having regulatory authority over banks and trust companies.¶

(15) "Primary Reserve" means the primary Restricted Reserve Fund required by OAR 410-141-5285.¶

(16) "Restricted Reserve Account" means the reserve account required by OAR 410-141-5285.¶

(17) "Restricted Reserve Funds" means the funds required to be deposited and maintained in the Restricted Reserve Account under OAR 410-141-5285.¶

(18) "Restricted Reserve" means the Restricted Reserve Account, the Primary Reserve, the Secondary Reserve and the Restricted Reserve Funds required by OAR 410-141-5285.¶

(19) "Secondary Reserve" means the secondary Restricted Reserve Fund required by OAR 410-141-5285.¶

(20) "S.B. 1041" means 2019 Oregon Laws Ch. 478 (Enrolled S.B. 1041), as approved and enacted on June 20, 2019.¶

(21) "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.¶

(22) "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 Authority in return for a fixed capitation payment, the effect of which is to transfer claim frequency and utilization risk to the third-party provider. ¶

(23) "Sub-Capitated Counterparty" means the third-party provider under a Sub-Capitated Arrangement with a CCO.¶

(24) "SVO" means the Securities Valuation Office of the NAIC.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5005

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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. ¶
- (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 applicable solvency requirements of Division 141 of Chapter 410 and as specified in the CCO's agreements with the Authority. Solvency requirements shall include the following components:¶
 - (a) Maintenance of Restricted Reserve Funds as required by OAR 410-141-5285 and by the CCO's agreements with the Authority:¶
 - (b) Protection against catastrophic and unexpected loss or expenses related to capitated services for 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 414.615, 414.625, 414.635, 414.651, ORS 413.042

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5010

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 410-141-5010 through OAR 410-141-5469, and the CCO contract. 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 determine financial solvency, any reference to the Authority in these rules shall include DCBS when DCBS is working cooperatively with the Authority to implement these provisions. However, only the Authority may take enforcement action or other regulatory sanctions related to the implementation of OAR 410-141-5010 to OAR 410-141-5380 and the CCO contract.¶¶

(2) 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 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) 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) Applicants for a CCO contract shall submit all required information to the Authority as part of the application process, and the Authority shall transmit certain information to DCBS 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 a CCO or its officers in relation to the activities or condition of the CCO or any other matter connected with its transactions. All such persons shall promptly and truthfully reply to the inquiries using the form of communication requested by the Authority. The reply shall be timely, accurate, and complete and, if the Authority requires, verified by an officer of the CCO. ¶¶

(7) CCOs may be required to use specific required reporting forms or items 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) 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. 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5015

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

CHANGES TO RULE:

410-141-5015

FINANCIAL SOLVENCY REGULATION: Financial Statement Reporting

(1) A CCO shall submit the following financial reports to the Authority:¶

(a) On or before April 30 of each year, a CCO shall submit an unaudited financial statement for the year ending December 31 immediately preceding.¶

(b) On or before May 31, August 31, and November 30 of each year, a CCO shall submit an unaudited financial statement for the quarter ending March 31, June 30 and September 30, respectively. ¶

(c) On or before June 30 of each year, a CCO shall submit an audited financial statement for the year ending 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. ¶

(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 subsections (4), (5) and (6) of this section.¶

(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. ¶

(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 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 filing. ¶

(b) A report of Health-Related Services (as defined by OAR 410-141-3150 and as described in Oregon's Medicaid 1115 Waiver for 2017 - 2022) 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 410-141-3150 and as described in the CMS section 1115 Waiver): ¶

(A) Health Related Services shall be considered in the rate setting consistent with the current 1115 Waiver.¶

(B) Health Related Services shall be included as Activities that Improve Health Care Quality in the Minimum Medical Loss 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 (FCHPs, DCOs, and PCOs) 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 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 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 contract, the annual reports described in this section 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610-414.685

ADOPT: 410-141-5020

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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) The date on which the CCO first becomes subject to this section.

(4) A CCO shall obtain a letter from the 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 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 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5025

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 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.

(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 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 to determine whether an independent certified public accountant is qualified and, considering the evidence presented, may rule 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) 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 CCO'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.¶

(8) 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.¶

(9) 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 (7) and that do not conflict with subsection (8), only if the activity is approved in advance by the CCO's audit committee in accordance with subsection (10).¶

(10) 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.¶

(11) 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.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610-414.685

ADOPT: 410-141-5030

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 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 the CCO does not meet the minimum capital and surplus requirements under these rules or if 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. The CCO shall require the independent certified public accountant to submit the report not later than the fifth business day after the independent certified public accountant makes such a determination. A CCO that has received a report under this section shall forward a copy of the report to the Authority not later than the fifth business day after receiving the report and shall provide the independent certified public accountant with evidence that the report was furnished to the Authority. 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 not later than the fifth business day after the end of the period within which the CCO was required to submit the report.¶

(2) 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) 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610-414.685

ADOPT: 410-141-5035

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610-414.685

ADOPT: 410-141-5040

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5045

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

CHANGES TO RULE:

410-141-5045

FINANCIAL SOLVENCY REGULATION: Corporate Governance Annual Disclosure Filing

(1) A CCO shall file a corporate governance annual disclosure 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 CCO'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(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 meet the needs of the CCO.¶

(B) How an appropriate amount of independence is maintained on 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 CCO'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.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610-414.685

ADOPT: 410-141-5050

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

CHANGES TO RULE:

410-141-5050

FINANCIAL SOLVENCY REGULATION: Requirements for Reinsurance

(1) Except with the prior written approval of the Authority, 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610-414.685

ADOPT: 410-141-5055

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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, 414.635, 414.651, ORS 413.042

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5060

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 shall 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) 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¶
- (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 Member 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, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5065

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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), 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 500), 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 500, 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:¶

(l) 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 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5070

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 owned by the CCO and which consist of:

(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 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 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 impliedly excluded by this section, 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 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5075

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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, 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) 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 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5080

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

CHANGES TO RULE:

410-141-5080

FINANCIAL SOLVENCY REGULATION: Transparency

(1) Pursuant to ORS 414.018 and Section 54(2) of S.B. 1041, interactions between the Authority and CCOs shall be done in a transparent and public manner. Without limitation of the preceding sentence, the Authority shall publicly disclose all information pertaining to CCOs required by Section 54(3) of S.B. 1041.¶

(2) Certain documents pertaining to a CCO's financial condition may be considered confidential, when so described in these rules. 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, 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 192.410 to 192.505. If the Authority, in its sole discretion, determines that the cited exemption 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.¶

(3) The Authority or DCBS may use a confidential document, material or other information in administering these rules and in furthering a 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 192.502, with other state, federal, foreign and international regulatory and law enforcement agencies and with the NAIC and affiliates or subsidiaries of the NAIC, if the recipient agrees to maintain the confidentiality of 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 section, the Authority shall maintain the confidentiality of documents, materials or other information received upon notice or with an understanding that the document, material 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 the Authority, or sharing a document, material or other information, does not waive an applicable privilege or claim of confidentiality in the document, material or other information.¶

(5) The Authority may release a final, adjudicated action, including the termination of an CCO's 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) 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 410-141-5310.¶

(7) Section 54(3) of S.B. 1041 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.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5085

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

CHANGES TO RULE:

410-141-5085

ASSET VALUATION AND PERMITTED INVESTMENTS: Definitions

As used in OAR 410-141-5085 to 410-141-5165:¶

(1) "Amly 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

ADOPT: 410-141-5090

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 Law.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5095

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5100

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 depository 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5105

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5110

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 410-141-5125 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, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5115

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 will 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 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 410-141-5135 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 will suffer by a "forced sale" of the property.

Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685

ADOPT: 410-141-5120

RULE SUMMARY: These rules are written to implement requirements of OHA under Senate Bill 1041 from the 2019 Oregon Legislative Assembly. They are designed to improve OHA's financial oversight of Coordinated Care Organizations (CCOs).

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 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, 414.625, 414.635, 414.651

Statutes/Other Implemented: ORS 414.610 - 414.685