

Secretary of State  
**STATEMENT OF NEED AND FISCAL IMPACT**  
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Consumer and Business Services  
Agency and Division

Insurance Division

836

Administrative Rules Chapter Number

In the Matter of: Adoption of OAR 836-053-1401 to 836-053-1415, Relating to Health Insurance;  
Estimates of Enrollee Share of Costs for Covered Procedures and Services

Rule Caption: Health Insurance, Estimates of Enrollee Share of Costs for Covered Procedures and Services

Statutory Authority: ORS 731.244 and 743.893

Other Authority:

Stats. Implemented: ORS 743.874, 743.876 and 743.878.

Need for the Rule(s): Chapter 390, Oregon Laws 2007 (Enrolled House Bill 2213) requires health insurers to establish a procedure for providing to an enrollee an estimate of the portion of costs for which the enrollee will be responsible, for a procedure or service covered by the health benefit plan and performed in-network or out-of-network. When the service or procedure is performed by an out-of-network provider, the insurer must include the difference between the insurer's allowable charge and the billed charge for the procedure or service. An insurer must provide this estimate when the enrollee furnishes information about the procedure, provider and other matters. This requirement applies to an insurer's five most common procedures or services within each of seven categories. The purpose of this legislation is to give consumers accurate and timely estimates for a consumer's share of costs for specific procedures and services. With this information, a consumer will be able to evaluate and compare costs among in-network and out-of-network providers.

ORS 743.893 authorizes the Director to adopt rules necessary to carry out the legislation. The proposed rules establish general principles for insurers to allocate covered procedures and services to the categories in ORS 743.874 for in-network procedures and services and the categories in ORS 743.876 for out-of-network procedures and services so that the insurer will be able to provide a reasonable estimate of an enrollee's share of costs for a procedure or service according to the legislation. The rules also provide for combined estimates, when two or more procedures or services will be performed, and requires that an estimate state whether it applies only to the costs specifically relating to the procedure or service alone or applies to an episode of care that includes the procedure or service. The rules also give guidance for insurers to make instructions available to consumers for obtaining estimates and benefit information under the legislation and specify data that insurers must report, to enable the Department to assess the effect of the disclosure requirements under ORS 743.874, 743.876 and 743.878.

Documents Relied Upon, and Where They Are Available: Chapter 390, Oregon Laws 2007, (Enrolled House Bill 2213); "Industry Discussion, HB 2213—Reporting Requirements," as modified May 28, 2008.

These documents are available for public inspection at the Insurance Division, 350 Winter St. NE, Room 440, Salem, Oregon 97301-3883, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday.

Fiscal and Economic Impact, Including Statement of Cost of Compliance: The Department of Consumer and Business Services (DCBS), Insurance Division, will incur minimal fiscal impact, primarily relating to the adoption of this rulemaking. Expenses incurred by the Division will be absorbed with existing resources, as will

any costs of implementation of the legislation and rules. There is no fiscal impact for other state agencies or local governments. Carriers that are subject to this legislation (health insurers and health care service contractors) will incur costs of establishing the procedures for making estimates and benefit information available upon request, as provided in the legislation. Consumers must be able to request estimates on and after July 1, 2009; carriers have informed the Director that the time between adoption of the rules and July 1, 2009 will be used in its entirety to prepare for implementation of the rules and legislation. According to carrier comments in the advisory committee for this rulemaking, carriers' call-in centers already deal frequently with consumer requests for estimated costs. The differences are that this legislation adds consideration of the allowable charges to the information provided to consumers and that the information will be made available in writing. Carriers anticipate initial costs of implementation as well as ongoing costs. For example, carriers anticipate both an increase in the number of phone calls for information about covered costs and an increase in the length of the calls, particularly initially. The extent of the increases is unknown, but is likely to vary among carriers according to differences in their administrative procedures. Carriers also anticipate increased costs owing to additional filings of grievances and appeals, as well as increased costs relating to needed changes in their information technology. The increased costs can be broken down between initial implementation and ongoing maintenance.

In response to the Division's request in the first rulemaking advisory committee meeting for estimates of insurer costs for implementing this legislation and rulemaking, one insurer responded that its estimate of the cost of building the system for July 1, 2009 implementation is \$1,449,000. Maintaining this system after July 1, 2009 will cost an additional \$151,455 per year, and staffing the services to members and providers will cost another \$402,942 per year. According to the insurer, the cost of building the system is composed of planning and project costs from now through implementation in July 2009, and includes management, labor and applicable software costs. The maintenance costs include ongoing maintenance of website hardware and software, some data update and entry costs and some provider education costs. This estimate for maintenance assumes that costs owing to the legislation will not be significantly increased by this rulemaking. Thus, to the extent that this rulemaking increases the implementation costs, the estimated numbers will correspondingly increase. Finally, the staffing costs for the insurer are for salary, benefits and overhead for six new positions needed because of anticipated increases in the volume of customer service calls, provider correspondence and inquiries, and member grievances and appeals. These costs are in addition to costs for this insurer's existing program for providing cost information to their insureds. Another smaller insurer responded that it tentatively expects its initial implementation costs to range from \$800,000 to \$1,300,000 and its ongoing maintenance costs to range from \$100,000 to \$200,000. The insurer also expects an additional two to three full time positions would need to be added. A larger insurer estimates that its costs for system development will range between \$1.0 and \$1.5 million during implementation; staffing resources (for web operations, medical operations, membership services and other) approximately \$114,000; and communication development and ongoing training, approximately \$20,000 annually. All told, the estimated costs for the first year are expected to range from \$1,234,000 to \$1,734,000, and for the second year and beyond, approximately \$234,000. Another larger company estimates that its initial implementation, development and licensing costs will be approximately \$3.6 million; its annual maintenance, licensing and system support approximately \$575,000 and its annual customer services staffing for online and telephone communications approximately \$320,000.

Carriers will also incur costs of collecting data and submitting it to the Department, as required by ORS 743.878, so that the Department may assess the effect of the disclosure requirements under ORS 743.874 and 743.876. The amount of such costs is unknown but is expected to vary among carriers according to the costs of their procedures for gathering and reporting this information. These costs should not be substantial because it is anticipated that carriers will be collecting this information already. The rules do not require carriers to collect and report individual estimates or actual costs of procedures and services because such a requirement would require each carrier to incur significant costs in developing an appropriate reporting platform

The statement of cost of compliance effect on small businesses (defined in ORS 183.310 to be a for-profit legal entity that is independently-owned and operated, with 50 or fewer employees) required by ORS 183.335(2)(b) is as follows:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule: This rulemaking applies to carriers, but none is a small business. Those who will make use of the estimates to be provided by carriers are individual insureds. It is possible that some of these individuals are also small businesses, but the costs to which the estimates apply relate to these individual insureds as individuals rather than as small businesses. Small businesses will incur indirect costs in rating owing to the absorption of costs by the insurers. The amount of costs is unknown now because of a lack of data.

(b) A brief description of the projected reporting, record keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services: There are no activities required for compliance that apply to small businesses.

(c) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule: None, with respect to small businesses.

(d) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule: Representatives of businesses, insurance producers and consumers, some of whom are small businesses, were involved in the advisory meetings for this rulemaking.

Administrative Rule Advisory Committee consulted? Yes. An advisory committee composed of health insurance carriers, insurance producers transacting health insurance, consumers and hospital and medical care providers met in multiple sessions to discuss and develop the rulemaking. To establish the data reporting requirements under ORS 743.787 as described above, the Division convened the Health Insurance Reform Advisory Committee and requested its recommendation in prescribing the information.

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(Signed)  
Authorized Signer

\_\_\_\_\_  
Scott Kipper, Insurance Administrator  
Printed Name

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June 12, 2008  
Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.      ARC 925-2005