

Oregon Medical Insurance Pool
Board Meeting Minutes
June 25, 2014
Wilsonville Training Center – Clackamas Community College
Wilsonville, Oregon

Board Members Present

Patrick Allen, Department of Consumer and Business Services
Kelly Ballas, Oregon Health Authority (OHA)
Chris Ellertson, Non-designated Representative, Board Vice-Chair
William Ely, HMO Representative
Robert Gluckman, M.D., Non-designated Representative
Paul Harmon, Domestic Insurance Representative
Ken Provencher, Health Care Services Contractor Representative
Robin Richardson, Reinsurer Representative, Board Chair
Suzan Turley, Public Representative

Board Members Absent

None

OMIP Staff Present

Craig Urbani – OTRP Program Manager - OHA
Matt Smith – OTRP Budget Analyst – OHA
Cindy Lacey – OTRP Operations and Policy Analyst - OHA

Others Present

Don Myron – OHA
Ted Falk – DOJ
Deanna Laidler – DOJ
Jeremy Vandehey – Kaiser Permanente

Minutes approved for the April 24th and May 22nd, 2014 meetings.

Reinsurance Update Report

Mr. Urbani gave an update on the Transitional Reinsurance Pool (OTRP). We attended the Insurance Industry Communications (IIC) meeting with OID to update them on OTRP. Communicated the reduction of the maximum 2015 assessment from \$3.50 per month to \$2.65, alerted them to the portability and CRP data call that will be on the way from OID.

Working on three board appointments – need to fill two per new legislation and one due to resignation. Have completed outreach to business associations. Legislation requires two business community members from assessed entities. We have one lead that was put forward by the Oregon Business Association (OBA). Important element to have board members appointed before legislature comes back into session. It is important to have them in place before assessments are set.

Staff is working on the tagging of eligible OTRP members. Staff is working with Mr. Falk at DOJ to finalize whether Social Security Numbers (SSN) may be used in the tagging process. Mr. Urbani is working on submitting additional information to DOJ. Discussed what happens if no SSN is available. Asking carriers to provide if available; it is not a requirement. Any communication to carriers needs to be very clear that asking for SSN is not a requirement. Members do not need to be contacted to get this information. Need to resolve SSN issue to make the matching process as simple as possible.

OMIP staff is working with the Oregon Insurance Division on a data call to identify the Portability and Children's Reinsurance Lives that are potentially eligible for Reinsurance. Lives that became insured during the Special Enrollment Period in April will be eligible for reinsurance from the Oregon Transitional Reinsurance Pool. Reinsurance eligible lives enrolled in Medicaid are not eligible for reinsurance while in Medicaid, but are eligible for reinsurance if they move into ACA compliant coverage and meet all other eligibility criteria. Approximately 30 percent of OMIP members have moved to Medicaid. Without a SSN tagging will be difficult and time consuming, SSN's are especially important for checking on movement between Medicaid and the individual market. SSN's will make it easier for automated matching; otherwise it will be a manual process. This is a big issue for the carriers and tagging needs to be completed before the next open enrollment. Timing of the data call should be within the next 2 to 3 weeks.

Draft Administrative Rules for the Oregon Transitional Reinsurance Pool are being developed in cooperation with the Oregon Insurance

Division. The draft will be distributed to the Board for review and comments.

The 2014 Assessment will be based on the Second Quarter Enrollment Report submitted to the Oregon Insurance Division. Historically the OMIP Assessment has been based on the First Quarter Report. Using the Second Quarter report allows enrollment during the special enrollment in April to be counted for assessment purposes to spread the assessment over as many lives as possible. The assessment recommendation for 2014 will probably occur in August or September. The assessment will be for the statutory maximum. If less funding is needed in the future, the assessment for 2016 will be reduced or even eliminated. There will be no board meeting in July; a recommendation will be at the August meeting for vote in September.

OMIP staff expressed thanks and appreciation to the OID on working with us and inviting us to the IIC meeting.

OMIP Reserves Update

Mr. Falk from DOJ introduced Deanna Laidler who joined them recently. She has two decades of legal experience, most of which was in the insurance industry. Mr. Falk and Ms. Laidler worked together on reviewing the disposition of OMIP reserves.

In order for the board to put the issue into context Mr. Richardson asked how the question to the DOJ came about. Mr. Myron advised that at the April 2014 board meeting there was discussion about forming a subcommittee to identify refund timeline options. Ms. Sumpter had also asked if there were limitations on how the reserve funds could be used and could those funds be used for the benefit of OMIP members once the program closed? Mr. Myron indicated he would be surprised if we could use those funds for another purpose but he would ask DOJ for their opinion. Up to this point previous board discussions involved the understanding that any OMIP reserve surplus would need to be refunded to the carriers, by check, for their pro rata share. Therefore Mr. Myron took the OMIP reserve question to legal for advisement; the DOJ reported details of their analysis.

Ms. Laidler indicated the question reviewed was whether or not the OMIP board had the ability to refund or credit carriers for excess OMIP assessments collected through 2013.

She advised there were new laws passed in 2013 and 2014 which became effective on January 1, 2014. Ms. Laidler explained that the original OMIP program laws, in place prior to the end of 2013, only allowed refunds in the case of insurers who reported incorrect life counts; which resulted in assessment overpayments that could be refunded. There were no other refund provisions in place with the original OMIP laws.

Analysis of the new laws indicated an OMIP surplus refund can only be made in 2017 after the end of the reinsurance program. That is because laws that were put in place for the new reinsurance program, effective January 1, 2014, gave the board different refund abilities. It was important to note there were two different components to review. Under one portion of the law, for assessments effective January 1, 2014 and beyond, for the reinsurance program itself, refunds can be issued on a pro-rata basis for calendar years 2014, 2015 & 2016. Those refunds were specifically tied to reinsurance assessments for those years. At the end of the reinsurance program, once all claims are paid out, OMIP surplus refunds can be processed. At that time the OMIP board and account is also abolished. Pro-rata refunds of the remaining account balance must be made to affected carriers in an equitable manner no later than October 31, 2017.

Ms. Laidler explained the struggle was that there were no provisions made for the ability to refund with prior OMIP laws. She looked at the issue of whether or not a credit could be issued to insurers. It was determined that refunds were not appropriate for OMIP program funds that were left in the account when OMIP coverage ended on December 31, 2013, however, she did see an opportunity to issue credits within the OMIP account itself, which could be used to offset reinsurance assessments. This would mean credits can be used to offset reinsurance assessments.

Mr. Richardson asked for comments then recapped the board's previous expectation that they would be able to refund OMIP surplus funds and the main intent of this meeting was to be able to ask DOJ

about their interpretations of the laws. He advised the boards previous expectations were incorrect based on new legislation that was put in place.

Board decisions will need to be made on how to move forward. The previous thought process was to have clean breaks between the two programs, this would help prevent confusion and avoid other complications that might exist. Another concern was the risk that additional 2015 legislation could access OMIP surplus funds. Mr. Richardson thought it wasn't possible at this time for a sweep but it could be possible if legislation is changed during the 2015 session. The board needed to have this conversation about the issues at hand and what can be done but a decision did not need to be made today.

Mr. Provencher asked if the final OMIP assessment would be used to determine each carrier's pro-rata share. Mr. Myron reported that was correct because the bulk of the reserve was built with 2013 life counts and would be the most equitable way to return any surplus. Mr. Provencher asked if the same insurers are involved in the reinsurance program. Yes, per Mr. Myron. Mr. Urbani indicated we weren't aware of many changes in the make-up of the individual market. Per Mr. Falk the definition of the assessable life base did not change, he indicated there could be market share changes because it's possible a company could have left or entered the state due to normal market shifts.

Mr. Provencher was surprised that OMIP & reinsurance funds could be intermingled in the same account. Mr. Falk responded that the character of the fund was essentially not changed between programs. OMIP was created to assist a certain group of high risk people and the underlying purpose of the money is much the same for the reinsurance program and, the assessment mechanism is the same. He sees continuity in keeping the same fund.

Ms. Lacey asked if a carrier has left the market do we still give them the OMIP surplus credit.

Per Mr. Falk it is up to the board how to structure the credit and determine how to handle the situation. Using the model Mr. Myron suggested would work for those cases; there certainly will be

variations in the market share so not everything will line up exactly between programs. Ms. Lacey asked if those insurers with credits, who are no longer in the Oregon market, must wait for a refund until after the program closes. Mr. Falk responded that was correct, if they didn't have enough of a reinsurance assessment to use the full credit, the credit would remain in the account until the credit balance could be refunded. Mr. Urbani assumes the reinsurance assessment will be greater than OMIP surplus credits.

Mr. Richardson indicated that the reality is it's more complicated for carriers'; while the intention is that we are helping the same population we are assessing different periods and timing could make a difference at the carrier level as far as cash flow etc.

Staff envisioned the OMIP ending balance would be calculated on the 2013 life count, to determine the surplus credit amount, and then independently determine the assessment for the reinsurance program. OMIP claims run out is 15 months which ends 3/31/15. Does the full credit need to be issued or is it ok to leave a reserve amount in the account? Mr. Falk agreed any option is available to the board.

The only major outstanding liability is CRP and claims projections should be requested from carriers in July, for an August response, to get some idea of the liability and to have more information for upcoming decisions at the September meeting.

Discussed 2014 legislation, it was not intended for the OMIP reserves to be used to fund the TMIP program, TMIP run out is 12 months which ends 3/31/15. OHA funds from the unused premium tax will be more than enough to cover TMIP's liability and will not affect the OMIP surplus. Per Mr. Myron the OMIP fund was meant only as a backup if there were not enough funds from the insurance tax to cover TMIP.

Mr. Richardson wanted to know about any potential liabilities so decisions can be made about sufficient funds to be held back for claims run out.

Mr. Provencher asked if the credit was basically a timing issue. It's clear the money belongs to carriers no matter what and the credit is

simply a mechanism to move the money sooner. Since the board has several carriers involved are there any other potential issues in regards to using this money? Mr. Falk indicated the funds cannot be used for any other purpose and must be distributed in a fair and equitable manner. The statutes for the end of the program are vaguely written which leaves room for interpretation, it's up to the board to decide, until then it's an open question. From Mr. Richardson's perspective this has always been viewed as two separate issues. The intent was to close OMIP and then start the new reinsurance program. For the first year we know the amount of the reinsurance assessment but we don't know enough about the reinsurance program expenditures yet to deal with adjustments to future assessments.

Mr. Ely mentioned his understanding was the intent of previous decisions was to be very conservative and to have enough OMIP reserves in place with the understanding or assumption that a mechanism was in place to return unused OMIP funds.

Mr. Provencher's biggest concern was perceived conflict of interest about the funds being returned to a carrier dominated board; he doesn't want to sit in front of legislators explaining why the money was returned to carriers. We need to be aware of potential perception issues. Mr. Falk explained the board has always been carrier dominated and there shouldn't be that perception concern from legislators.

Mr. Allen stated in regards to the sweep risk if we have made it the last 4 years without being swept that we are at less risk now. He doesn't expect it to be an issue. He thought the bigger more realistic risk is overall health care expenses and where legislators might look for extra funding.

Mr. Richardson had previously received concerns about a possible sweep and appreciated Mr. Allen's interpretation. The statutes do clearly reflect a refund is appropriate; it is the timing that is in question.

Ms. Turley asked if relabeling the surplus balance as a credit to carriers would reduce the potential risk of a sweep. Mr. Urbani said

they could always do a sweep but there would be less money for the reinsurance pool if that happened.

Mr. Urbani reminded the board that the reinsurance program has a finite number of members and the total eligible will decline as the program progresses.

Mr. Ellertson suggested a review of previous reserve decisions with a recap of the sequence of events that caused the surplus. A history record of how we got to the surplus was formally requested. We need to remember we overcharged ourselves. Assessments weren't actually increased in 2013 they were left the same, and actuaries were involved in these calculations. It was suggested that staff pull excerpts from previous minutes and memo's.

Next steps necessary to make informed decisions about how much should remain in reserve for the end of the program:

- (1) Need the approximate amount of expected OMIP reserves by the next meeting.
- (2) What will the 2013 OMIP reserve allocation be for each carrier?
- (3) Need CRP estimates or an additional early reporting file – possibly in July/August to get a sense of final liability.
- (4) Are there any other program liabilities to consider? Need to leave enough in reserve to cover end of program obligations. The board would like an actuarial opinion on how much or what % to hold back.
- (5) Estimated 2014 assessments using second quarter enrollment life count.
- (6) Prepare a historical recap of decision points that led to the reserve totals – pull info out of past meeting minutes/memos.
- (7) New board members need to be appointed and brought up to speed prior to the September meeting.

Public Testimony

No public testimony

Meeting adjourned at 2:10 pm.