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Re: Oregon Health Authority's Health Care Market Oversight Program Draft Rules (October 18)

Dear Mr. Vandehey and Mr. Goldman:

Thank you for the opportunity to provide comments on the Oregon Health Authority's first set of draft regulations to implement the Health Care Market Oversight Program, as created by HB 2362. America's Health Insurance Plans (AHIP)¹ writes today to express concerns we have with the draft regulations as they apply to health insurers.

Oregon's insurance market enjoys healthy competition among insurers; this competition was recently highlighted by the Oregon Health Authority (OHA) during their presentation to the Health Insurance Marketplace Advisory Committee on October 14 regarding the development of a public option. Oregon already has a robust and transparent process for reviewing proposed mergers, acquisitions, and other similar transactions involving an Oregon health insurer to maintain this competitive marketplace.² Moreover, a near identical process has been adopted by all 50 states to maintain their accreditation with the National Association of Insurance Commissioners.³

We believe that the Oregon legislature intended for the existing process involving insurers carried out by the Department of Consumer and Business Services (DCBS) to remain in force. Not only did HB 2362 not repeal the acquisitions and mergers provisions in the insurance statutes, but the existing insurance statutes are explicitly referred to in the bill. In fact, the bill creates a process for transactions involving health insurers that is woven into the existing DCBS process. While HB 2362 allows OHA to conduct a review, it is clear that while DCBS must consider OHA's review when making their determination, DCBS has the authority to make the final determination regarding a transaction involving a health insurer.

We are concerned about draft OAR 409-070-0035, Material Change Transactions Involving a Domestic Health Insurer, and believe that it does not comport with the legislative intent of HB 2362. Draft OAR 409-070-0035(a)(b) requires OHA to review the proposed transaction and provide to DCBS the "final order"

¹ AHIP is the national association whose members provide health care coverage, services, and solutions to hundreds of millions of Americans every day. We are committed to market-based solutions and public-private partnerships that make health care better and coverage more affordable and accessible for everyone. Visit www.ahip.org to learn how working together, we are Guiding Greater Health.

² See ORS 732.517 to 732.547.

³ See [Model #440, Insurance Holding Company System Model Act](#).

regarding the proposal. In draft OAR 409-070-0060, “final order” is described as OHA’s final determination on a proposed transaction; its finality is clear by the fact that a party to the proposed transaction can contest a “final order” in an administrative hearing.

As we stated, we do not believe that HB 2362 intended for OHA to be the final arbiter of proposed material change transactions involving health insurers. We believe that the provisions in the bill allowing OHA to conduct a review was merely meant as an informative tool, to help further advise DCBS as they conducted their process. We believe that OHA issuing a “final order” on a proposed material change transaction involving an insurer is inappropriate. Draft OAR 409-070-0035 and the characteristics of a “final order” elsewhere in the regulations reduce the DCBS review to a nominal process, which was not the intent of the legislature.

Furthermore, it is unclear how the DCBS process will continue under the structure contemplated in the draft rules. For example, if OHA decides to undertake a comprehensive review of a transaction involving a health insurer, could DCBS still hold hearings, as allowed by ORS § 732.526 and ORS § 732.527? Would an insurer retain its appeal rights under ORS § 732.528, or would it only be allowed to contest OHA’s final order under draft OAR 409-070-0075?

There is one section of the draft rules that are inconsistent with draft OAR 409-070-0035, but which we believe more correctly aligns with the intent of the legislation. Draft OAR 409-070-0060(8) states “The Authority shall approve, or approve with conditions as provided in OAR 409-070-0065, a material change transaction, or, **in the case of a material change transaction involving a domestic health insurer, recommend to the Department that the transaction be approved**, unless the Authority makes any one or more of the following findings and conclusions...” (emphasis added). We believe that a “recommendation” from OHA to DCBS about whether a transaction be approved is a more appropriate form of review and one that is more consistent with the intent of the legislation to not impair, but rather supplement, the existing DCBS process. We urge you to amend the rest of the draft regulations, specifically OAR 409-070-0035, to align with this terminology and level of review for transactions involving health insurers.

Our members have expressed concerns with specific provisions regarding the draft regulations, including the definition of “material change transaction” and the timing. Specifically, our members are concerned that the added layer of review between OHA and DCBS could extend the approval process beyond the 180-day time period as referenced in statute. We hope that these issues can be worked out at further RAC meetings but may provide more detailed comments on future drafts if necessary.

Thank you for accepting these comments. We hope that the draft rules can be amended to protect the integrity of DCBS’s existing review process, in accordance with the intent of the legislature. Please do not hesitate to contact me with any questions at sberry@ahip.org or 202.807.9984.

Sincerely,



Stephanie Berry
Regional Director