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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 409  
OREGON HEALTH AUTHORITY  
HEALTH POLICY AND ANALYTICS

**FILED**  
09/16/2021 3:27 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Establish permanent rules for Sustainable Health Care Cost Growth Target Program data submission.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/21/2021 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.*

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Filed By:  
Pete Edlund  
Rules Coordinator

HEARING(S)

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

DATE: 10/19/2021

TIME: 10:00 AM - 11:00 AM

OFFICER: Pete Edlund

ADDRESS: Remote Meeting Only

421 SW Oak St

Ste 850

Portland, OR 97204

SPECIAL INSTRUCTIONS:

Meeting is REMOTE ONLY via  
Microsoft Teams. To join please call  
(971) 277-2343,  
then Conference ID 225 940 851#  
or email  
peter.m.edlund@dhsosha.state.or.us to  
request a link to join the meeting.

NEED FOR THE RULE(S):

- (1) The Cost Growth Target Program is a newly-created program, and would not be able to operate without these rules.
- (2) Program staff would not have authority in rule to perform their duties.
- (3) Temporary rules (filed June 2, 2021 lasting 180-days) allows the program to operate, while permanent rulemaking occurs, but must be replaced by permanent rules before the expiration date.
- (4) Align data submission requirements with program needs and statutory requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

ORS 442.385 and 442.386 are available at: <[https://www.oregonlegislature.gov/bills\\_laws/ors/ors442.html](https://www.oregonlegislature.gov/bills_laws/ors/ors442.html)>

SB 889 (2019) and HB 2081 (2021 session), available from OLIS:

<<https://olis.oregonlegislature.gov/liz/2019R1/Downloads/MeasureDocument/SB889>>

<<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/HB2081>>

Implementation Committee Recommendations Final Report to the Oregon Legislature is available at:

<<https://www.oregon.gov/oha/HPA/HP/HCCGBDocs/Cost%20Growth%20Target%20Committee%20Recommendations%20R>>

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#### FISCAL AND ECONOMIC IMPACT:

There is no cost to data submitters due to these rules though complying with data reporting requirements may add administrative burden. Noncompliance to the reporting requirements may result in civil penalties for mandatory data submitters.

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#### 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).*

(1) Current staff will manage the program.

(2a) None. Rules apply to public and private payers (data submitters) as defined in ORS 442.385

(2b) Data submitters may experience some increases to administrative burden in complying with the new data reporting requirements of this program. These new reporting requirements include compiling and submitting an annual data file of total medical expenditures to OHA.

(2c) Increased labor and administration to report medical expenditure data in the manner required by the program.

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

Rules affect public and private payers (data submitters) as defined in ORS 442.385. Data submitters invited to participate in the rules advisory committee have been providing input to the data submission process via participating in the implementation committee and technical advisory group.

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#### WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

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#### RULES PROPOSED:

409-065-0000, 409-065-0005, 409-065-0010, 409-065-0015, 409-065-0020, 409-065-0025, 409-065-0030

ADOPT: 409-065-0000

RULE SUMMARY: Establishes purpose of 409-065 rule division.

#### CHANGES TO RULE:

#### 409-065-0000

##### Purpose

Senate Bill 889 (2019 Legislature) established the Sustainable Health Care Cost Growth Target Program within the Oregon Health Authority. These rules (OAR 409-065-0000 to 409-065-0030) define reporting requirements to the Oregon Health Authority. The data will inform the work of the Sustainable Health Care Cost Growth Target Program as it reports on health care cost drivers and trends.

Statutory/Other Authority: ORS 442.386

Statutes/Other Implemented: ORS 442.386, ORS 442.385

ADOPT: 409-065-0005

RULE SUMMARY: Defines terms for 409-065.

CHANGES TO RULE:

409-065-0005

Definitions

The following definitions apply to OAR 409-065-0000 to 409-065-0030: ¶

- (1) "Accident policy" means an insurance policy that provides benefits only for a loss due to accidental bodily injury.¶
- (2) "Authority" means the Oregon Health Authority.¶
- (3) "DCBS" means the Oregon Department of Consumer and Business Services.¶
- (4) "Dental-only insurance" means an insurance policy that provides benefits only for dental services.¶
- (5) "Disability policy" means an insurance policy that provides benefits for losses due to a covered illness or disability.¶
- (6) "Health benefit plan" has the meaning provided in ORS 743B.005.¶
- (7) "Health care" has the meaning provided in ORS 442.385.¶
- (8) "Health insurance" has the meaning provided in ORS 731.162.¶
- (9) "Hospital indemnity policy" means an insurance policy that provides benefits only for covered hospital stays.¶
- (10) "Long-term care insurance" has the meaning provided in ORS 743.652.¶
- (11) "Mandatory Reporter" means any payer or licensed third party administrator with a mean total lives of 1,000 or more across all lines of business, as calculated by the Authority.¶
- (12) "Medicare supplemental insurance" means a group or individual insurance policy or a subscriber contract, other than a policy issued pursuant to a contract under Section 1876 of the federal Social Security Act (42 U.S.C. section 1395 et seq.) or an issued policy under a demonstration project specified in 42 U.S.C. section 1395ss(g)(1) that is advertised, marketed or designed primarily as a supplement to reimbursements under Medicare for the hospital, medical or surgical expenses of persons eligible for Medicare.¶
- (13) "Payer" has the meaning provided in ORS 442.385.¶
- (14) "Specific disease policy" means an insurance policy that provides benefits only for a loss due to a covered disease.¶
- (15) "Stand-alone prescription drug plan" means an insurance policy that provides benefits only for prescription drugs. ¶
- (16) "Stop-loss plan" means insurance against the risk of economic loss assumed under a less than fully-insured employee health benefit plan as provided in ORS 742.065.¶
- (17) "Third-party administrator (TPA)" means any person who directly or indirectly solicits or effects coverage of, underwrites, collects charges or premiums from, or adjusts or settles claims on, residents of Oregon or residents of another state from offices in Oregon, in connection with life insurance or health insurance coverage; or any person or entity who must otherwise be licensed under ORS 744.702.¶
- (18) "Vision policy" means a health benefits plan covering only vision health care.¶
- (19) "Voluntary reporter" means a payer or third-party administrator that does not meet the requirements to be considered a Mandatory Reporter and elects to submit cost growth target data on a voluntary basis.

Statutory/Other Authority: ORS 442.386

Statutes/Other Implemented: ORS 442.386, ORS 442.385

ADOPT: 409-065-0010

RULE SUMMARY: Sets reporting requirements for mandatory reporters to the Cost Growth Target program.

CHANGES TO RULE:

409-065-0010

General Reporting Requirements

(1) The Authority shall make mandatory reporter determinations on an annual basis and provide written notification no later than April 30 to all reporters subject to the reporting requirements of the current year. ¶

(2) All Mandatory Reporters must submit data files in a manner and form as prescribed by 409-065-0015.¶

(3) The Authority will identify voluntary reporters that have calculated mean total lives of 1,000 or higher across all lines of business and invite them to participate in the annual data submission.¶

(4) If an entity believes a determination by the Authority of its mandatory reporter status to be in error, the organization must contact the Authority to contest the determination no later than 30 calendar days after receipt of notification.¶

(5) New mandatory reporters submitting for the first time, or mandatory reporters that did not submit data in the previous year, must attend a data submission training session prior to their first submission of data, as provided by the Authority.

Statutory/Other Authority: ORS 442.386

Statutes/Other Implemented: ORS 442.386, ORS 442.385

ADOPT: 409-065-0015

RULE SUMMARY: Sets data submission requirements for mandatory reporters to the Cost Growth Target program.

CHANGES TO RULE:

409-065-0015

Data Submission Requirements

(1) Annual data submission dates are provided in the Cost Growth Target Data Specification Manual (CGT-2); the data submission dates must not be before September 1st of each year. ¶

(2) CGT-1 must be submitted in accordance with instructions published by the Authority in the Cost Growth Target Data Specification Manual (CGT-2). ¶

(3) Mandatory and voluntary reporters must submit data files for all required lines of business as defined in the Cost Growth Target Data Specification Manual (CGT-2). They may submit data files for the voluntary lines of business and may not submit data files for any excluded lines of business. ¶

(a) Required lines of business include: ¶

(A) Commercial;¶

(B) Medicare;¶

(C) Medicaid.¶

(b) Excluded lines of business include: ¶

(A) Accident policy; ¶

(B) Disability policy; ¶

(C) Hospital indemnity policy; ¶

(D) Long-term care insurance; ¶

(E) Medicare supplemental insurance; ¶

(F) Stand-alone prescription drug plans; ¶

(G) Specific disease policy; ¶

(H) Stop-loss plans; ¶

(I) Supplemental insurance that pays deductibles, copays or coinsurance;¶

(J) Vision-only insurance;¶

(K) Workers compensation; and¶

(L) Dental-only insurance. ¶

(c) A mandatory reporter that contracts with another entity remains responsible for reporting all required lines of business. If the mandatory reporter elects to have the data reported by a contracted entity, the mandatory reporter must notify the Authority and provide contact information for the contracted entity.¶

(4) The Authority has 90 calendar days to review and request clarification or corrections to the annual data submission (CGT-1). If the Authority finds errors through edit checks or validation, mandatory reporters must make corrections and resubmit data or submit a waiver request within 30 calendar days of notification by the Authority of the error(s). The Authority may make multiple requests for corrections or resubmissions. The annual data submission is only considered complete when all corrections and resubmissions have been submitted and approved by the Authority. ¶

(5) If a mandatory reporter changes its health risk adjustment method or software (including version updates), it must resubmit at least one prior year of data using the updated adjustment method in order to ensure comparability between years.

Statutory/Other Authority: ORS 442.386

Statutes/Other Implemented: ORS 442.386, ORS 442.385

ADOPT: 409-065-0020

RULE SUMMARY: Outlines procedures and requirements for requesting a waiver or deadline extension to data submission requirements.

CHANGES TO RULE:

409-065-0020

Waivers

- (1) The Authority may grant a waiver or deadline extension to the data submission requirements.¶
  - (2) If a mandatory reporter believes they are eligible for a waiver of all or part of the data submission requirements they may request a waiver of reporting requirements by submitting a Cost Growth Target Data Submission Waiver/Extension Request (CGT-3).¶
    - (a) Mandatory reporters may submit a CGT-3 form for the following reasons:¶
      - (A) To request a partial waiver to the data submission requirements. The request must be submitted no later than 14 calendar days prior to the annual reporting deadline; ¶
      - (B) To request a waiver of all data submission or validation requirements. The request must be submitted no later than 60 calendar days prior to the applicable deadline.¶
    - (b) The Authority must approve or deny the waiver request and provide written notification to the requestor within 14 calendar days of receipt of the request.¶
    - (c) If the Authority denies the request, the requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 calendar days of the denial. The appeal process is conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 to 137-003-0700. The requestor shall have the burden to prove a compelling need for the waiver.¶
    - (d) The Authority shall only grant waivers for one data submission cycle at a time. ¶
  - (3) If a mandatory reporter believes they require a deadline extension they must notify the Authority by submitting a Cost Growth Target Data Submission Waiver/Extension Request (CGT-3).¶
    - (a) Mandatory reporters may submit a CGT-3 form for the following reasons:¶
      - (A) To request a deadline extension for the data submission. The request must be submitted no later than 14 calendar days prior to the annual reporting deadline; or¶
      - (B) To request a deadline extension for data correction, resubmission, or validation requirements. The request must be submitted no later than 7 calendar days after the Authority requests the data correction, resubmission, or validation requirement.¶
    - (b) The Authority must approve or deny the deadline extension request and provide written notification to the requestor within 14 calendar days of receipt of the request.¶
    - (c) If the Authority denies the request, the requestor may appeal the denial by requesting a contested case hearing. The appeal must be filed within 30 calendar days of the denial. The appeal process is conducted pursuant to ORS Chapter 183 and the Attorney General's Uniform and Model rules of Procedure for the Office of Administrative Hearings, OAR 137-003-0501 to 137-003-0700. The requestor shall have the burden to prove a compelling need for the exception.¶
    - (d) The Authority shall only grant waivers for one data submission cycle at a time.
- Statutory/Other Authority: ORS 442.386  
Statutes/Other Implemented: ORS 442.386, ORS 442.385

ADOPT: 409-065-0025

RULE SUMMARY: Establishes enforcement methods for noncompliance with reporting requirements.

CHANGES TO RULE:

409-065-0025

Compliance and Enforcement

(1) Unless approved by a waiver or exception, failure to comply with general data submission requirements includes but is not limited to: ¶

(a) Failure to submit data files by the specified submission date;¶

(b) Failure to submit data files for a required line of business. ¶

(2) Unless approved by a waiver or exception, failure to comply with data file requirements includes but is not limited to: ¶

(a) Submitting a data file in an unapproved layout; ¶

(b) Submitting a data element in an unapproved format; ¶

(c) Submitting a data element with unapproved coding; ¶

(d) Failure to submit a required data element; or¶

(e) Failure to comply with validation and quality control efforts, including resubmitting or correcting data as requested by the Authority. ¶

(3) The Authority must provide mandatory reporters written notification of each failure to comply with data submission requirements prior to imposing a civil penalty. Mandatory reporters will have 30 calendar days from notification to come into compliance.¶

(4) The Authority may impose civil penalties against mandatory reporters for each failure to comply that is not resolved within 30 calendar days of written notification. If a mandatory reporter does not come into compliance within 30 calendar days of written notification, penalties may be assessed starting from the date the mandatory reporter was notified of non-compliance. Pursuant to ORS 442.993, the Authority may adopt a schedule of civil penalties not to exceed \$500 per day of violation, determined by the severity of the violation for any mandatory reporter that fails to report cost growth data. ¶

(5) If a mandatory reporter has made documented efforts to comply with these rules, the Authority may consider this a mitigating factor before imposing civil penalties against the mandatory reporter.

Statutory/Other Authority: ORS 442.386, 442.993

Statutes/Other Implemented: ORS 442.386, ORS 442.385, 442.993

ADOPT: 409-065-0030

RULE SUMMARY: Sets data disclosure rules for the Cost Growth Target program.

CHANGES TO RULE:

409-065-0030

Data Access and Disclosure

(1) The Authority may use and disclose data submitted to it under these rules in accordance with ORS 442.386 and any applicable Authority policies and state and federal rules, regulations, and statutes.

(2) The Authority may provide a public use data set in compliance with applicable Authority policies and state and federal rules, regulations, and statutes.

Statutory/Other Authority: ORS 442.386

Statutes/Other Implemented: ORS 442.386, ORS 442.385