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

FILING CAPTION: New Administrative Rules on OHA Financial Oversight of Coordinated Care Organizations (CCOs) 5125-5250

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RULES:
410-141-5125, 410-141-5130, 410-141-5135, 410-141-5140, 410-141-5145, 410-141-5150, 410-141-5155, 410-141-5160, 410-141-5165, 410-141-5170, 410-141-5175, 410-141-5180, 410-141-5185, 410-141-5190, 410-141-5195, 410-141-5200, 410-141-5205, 410-141-5210, 410-141-5215, 410-141-5220, 410-141-5225, 410-141-5230, 410-141-5235, 410-141-5240, 410-141-5245, 410-141-5250

ADOPT: 410-141-5125

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Loans; Security; Limitations

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:
(1) Funds of a CCO may be invested in loans secured by pledges of obligations and stocks eligible for investment under these rules. As of the date the loan is made, it shall not exceed in amount 80 percent of the market value of the collateral pledged. No such loan shall be made for the purpose of providing funds to purchase or carry stocks registered on a national securities exchange.
(2) Funds of a CCO may be invested in loans secured by personal property or fixtures if such loan is:
(a) In connection with a loan on the security of real property or a leasehold as provided in OAR 410-141-5110;
(b) In an amount not exceeding 20 percent of the amount loaned on the real property or leasehold;
(c) For a term of not more than five years;
(d) Secured by a security interest which constitutes a first lien, except for taxes not then delinquent, on tangible, permanent personal property of the borrower kept and used on the premises, other than stocks of goods held for sale or transfer in the ordinary course of business or items which by normal use will be consumed or depleted during the period of the loan; and
(e) In an amount, the ratio of which to the value of the security does not exceed the ratio of the companion loan to the

value of the real property or leasehold.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5130

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Investments; Certain Obligations, Property, Loans and Other Specified Items

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:
Funds of a CCO may be invested in the following:
(1) Obligations secured by a mortgage or deed of trust payment of which is guaranteed by a policy of mortgage insurance.
(2) Obligations issued, assumed or guaranteed by the International Bank for Reconstruction and Development.
(3) Bank and bankers' acceptances and other bills of exchange of the kind and nature made eligible by law for purchase in the open market by federal reserve banks.
(4) Deposits, certificates of deposits, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations insured with the Federal Deposit Insurance Corporation or qualified to do business under the laws of this state.
(5) Obligations issued by trustees or receivers of a corporation created or existing under the laws of a sovereign which, or the assets of which, are being administered under the direction of a court having jurisdiction if the obligation is adequately secured as to principal and interest.
(6) Transportation equipment used wholly or in part within a sovereign, or adequately secured trust certificates of participation or similar obligations or contracts evidencing an interest in such transportation equipment, where the investor is entitled to receive a determined or determinable portion of rental, purchase or other obligatory payments for use or purchase of the equipment.
(7) Purchase contracts or lease-purchase agreements executed under the Federal Public Buildings Purchase Contract Act of 1954, or the Post Office Department Property Act of 1954.
(8) Stock of the Federal Home Loan Bank to the extent of the minimum required by the Federal Home Loan Bank Act. A CCO acquiring such stock may exercise all rights and powers given to members under such Act, including but not by way of limitation the right to obtain advances or borrow money from such bank and to pledge collateral as security therefor.
(9) Obligations issued, assumed or guaranteed by the Inter-American Development Bank.
(10) Obligations issued, assumed or guaranteed by the Asian Development Bank.
(11) Obligations issued, assumed or guaranteed by the African Development Bank.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5135

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Personal Property; Protection of Investment Property; Custom

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:
(1) A CCO may acquire and retain personal property received as a dividend, gift or devise, or pursuant to a lawful plan of merger, consolidation or reorganization or bona fide agreement of bulk reinsurance, or in satisfaction or liquidation of an obligation, or in exchange or part payment for real or personal property previously owned or to protect or enhance such property.
(2) A CCO may make purchases or loan sums necessary to protect, preserve or enhance investment property, real or personal, which it is otherwise authorized to acquire or hold.
(3) The Authority shall allow as assets in any determination of the financial condition of the CCO only such property or investments acquired or retained under this section as are consistent with the customary operations of a CCO.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5140

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: “Prudent Investor” Standard

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) Funds of a CCO may be invested in a manner not expressly prohibited under OAR 410-141-5145 and OAR 410-141-5165 provided such investments are made in the exercise of the judgment and care under the circumstances then prevailing which investors of prudence, discretion and intelligence exercise in the management of their own affairs not in regard to speculation but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital.

(2) Funds invested under this section shall not exceed the lesser of seven and one-half percent of the CCO's assets or the excess of the CCO's assets over all liabilities and required capitalization.

(3) If the Authority has reason to believe that loans or investments made pursuant to this section are not adequately secured or are not yielding an income the Authority may direct the CCO to report under oath the amount of such loans or investments, the security therefor and its market value.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5145

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Prohibited Conduct by Directors, Trustees, Officers, Agents or Employees

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) Except in the case of the issuance or sale of the CCO's securities, as approved by a majority of the disinterested members of the CCO's Board, or failing such majority by the shareholders, a director, trustee, officer, agent or employee, or spouse or relative thereof, shall not receive any fee, commission, compensation or other valuable consideration whatsoever, directly or indirectly, for aiding, promoting or assisting:

(a) The planning, preparing or executing of an activity described in OAR 410-141-5160; or

(b) The planning, preparing or executing of any plan for the issuance, sale or acquisition of shares or other securities of the CCO for any purpose.

(2) Except as provided in subsections (4) and (5) of this section, a director, trustee or officer of a CCO shall not:

(a) Accept any money or thing of value for negotiating, procuring, recommending or aiding in:

(A) The purchase or sale of property by the CCO; or

(B) The making of a loan to or from the CCO.

(b) Have a pecuniary interest, whether as principal, agent or beneficiary, in a purchase, sale or loan under paragraph (a) of this subsection.

(3) Except as provided in subsections (4) and (5) of this section, a CCO shall not do any of the following:

(a) Pay any money or thing of value to a director, trustee or officer of the CCO for negotiating, procuring, recommending or aiding in:

(A) The purchase or sale of property by the CCO; or

(B) The making of a loan to or from the CCO.

(b) Make a loan to a director, trustee or officer of the CCO.

(c) Make any advances to a director, trustee or officer of the CCO for future services to be performed.

(d) Guarantee any financial obligations of a director, trustee or officer of the CCO.

(4) A CCO may contract, or otherwise enter into a transaction, for the provision of goods or services to the CCO in the normal course of business with a director, trustee or officer, or a partnership or corporation in which a director, trustee or officer has, directly or indirectly, a proprietary interest in excess of five percent, if the interest of the director, trustee or officer is fully disclosed to the CCO's Board and the CCO's board thereafter approves and authorizes the contract or transaction by a vote sufficient for the purpose without counting the vote of the interested person.

(5) The prohibitions set forth in this section shall not apply to or affect:

(a) The payment to any director, officer or trustee of reasonable compensation, whether based in whole or in part upon commission or otherwise;

(b) The payment of a fee to any approved person for legal or other specialized or professional services rendered to the CCO and approved by the CCO's Board;

(c) The making of loans or advances to agents or other employees of a CCO as required or as is expedient in the conduct of its business;

(d) The issuance of a debt obligation by a CCO to a director, officer or trustee of the CCO; and

(e) The advance of expenses to a director, officer or trustee for travel or other related business activities 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: 410-141-5150

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Investment of Funds in Obligations That Are Not Investment Quality; Percentage of Assets

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) A CCO may acquire or hold obligations that are not investment grade only as provided in this section.

(2) For purposes of this section, an obligation is not investment grade if the obligation is either of the following:

(a) A "medium grade obligation", which means an obligation that is rated three by the SVO;

(b) A "lower grade obligation", which means an obligation that is rated four, five or six by SVO.

(3) A CCO shall not acquire, directly or indirectly, any medium grade or lower grade obligation of any person if, after given effect to the acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the CCO would exceed 20% of its allowed assets. For purposes of this section, the aggregate amount of medium grade and lower grade obligations shall be the aggregate value of the obligations as set forth in the most recent financial statement required by, and filed with, the Authority.

(4) In addition to the prohibition in subsection (3) on the aggregate amount of medium grade and lower grade obligations, a CCO shall not acquire or hold:

(a) More than ten percent of its allowed assets in obligations rated four, five or six by the SVO;

(b) More than three percent of its allowed assets in obligations rated five or six by the SVO;

(c) More than one percent of its allowed assets in obligations rated six by the SVO.

(5) Attaining the limit of any one category under subsection (4) does not preclude a CCO from acquiring or holding obligations in other categories, subject to the specific and multi-category limits of this section.

(6) The following prohibitions apply to investments in lower grade obligations and medium grade obligations issued, guaranteed or insured by any one person:

(a) A CCO shall not acquire or hold more than an aggregate of one percent of its allowed assets in medium grade obligations issued, guaranteed or insured by any one person;

(b) A CCO shall not acquire or hold more than one-half of one percent of its allowed assets in lower grade obligations issued, guaranteed or insured by any one person;

(c) In addition to the prohibitions in subsections (a) and (b) of this section, a CCO shall not acquire or hold more than one percent of its allowed assets in any medium or lower grade obligations issued, guaranteed or insured by any one person.

(7) This section does not prohibit a CCO from doing any of the following:

(a) Acquiring any obligation that the CCO committed prior to the effective date of this section to acquire if the CCO would have been permitted to acquire the obligation when the CCO made the commitment;

(b) Acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held.

(8) A CCO may acquire a medium or lower grade obligation of a person in which the CCO already has one or more medium or lower grade obligations if the obligation is acquired in order to protect an investment previously made in the obligations of the person. All such acquired obligations, however, shall not exceed one-half of one percent of the CCO's allowed assets.

(9) The board of directors of a CCO that acquires, hold or invests, directly or indirectly, more than two percent of its allowed assets in medium grade and lower grade obligations shall adopt a written plan for the making of such investments. The plan shall contain guidelines with respect to the quality of the issues invested in as well as diversification standards. The diversification standards shall at least include standards regarding the issuer, industry, duration, liquidity and geographic location.

(10) A CCO shall not acquire any lower grade or medium grade obligation that in whole or in part exceed the applicable

limitation established in this section. The requirement under this section does not apply to the acquisition of an obligation to which subsection (7) applies.

(11) If an obligation held by a CCO is of investment grade when acquired but subsequently becomes a medium grade or lower grade obligation, and that event causes the obligations of the CCO to exceed an applicable limit established under this section, the CCO shall not count the excess as an allowed asset. A CCO shall not hold any excess ascribable to deterioration of an obligation as described in this section longer than a continuous period of three years during which the obligation is a medium or lower grade obligation, except with the consent of 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: 410-141-5155

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Approval by Board

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) The investment policy shall be approved by the CCO's Board or a committee thereof charged with the duty of investing the funds of the CCO.

(2) Deposits shall be made in banks or banking institutions approved by the CCO's Board.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5160

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Record of Investments

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

As to each investment, a CCO shall make a written record in permanent form, signed by a person authorized by the CCO's Board or by a committee thereof charged with the duty of investing the funds. The record shall show the authorization and approval of the investment and in addition shall contain:

(1) In the case of mortgage loans:

(a) The name of the borrower;

(b) The location and legal description of the property;

(c) A physical description and the appraised value of the security as determined by a competent and qualified appraiser; and

(d) The amount of the loan, rate of interest and terms of repayment.

(2) In the case of obligations:

(a) The name of the obligor;

(b) A description of the security and record of earnings;

(c) The amount invested and the rate of interest or dividend; and

(d) The maturity and yield based upon the purchase price.

(3) In the case of corporate stocks:

(a) The name of the issuing corporation;

(b) The record of earnings and of dividends paid for the preceding three years for preferred stock and for the preceding five years for common stock;

(c) A summary of the financial statement of the corporation as of the end of the preceding fiscal year;

(d) The exchange, if any, on which the stock is listed; and

(e) The amount invested and the number of shares acquired and held.

(4) In the case of real estate, leaseholds or vendors' interests under contracts of sale therein:

(a) The location and legal description of the property;

(b) A physical description and the appraised value of the property and interest therein;

(c) The purchase price and terms;

(d) The amount of any lien known to be against the property;

(e) If of a leasehold, the terms of the outstanding lease; and

(f) If a vendor's interest under a contract of sale, the terms and status of payments under the contract.

(5) In the case of all investments:

(a) The amount of any expenses and commissions incurred on account of the investment or loan and by whom and to whom payable if not covered by contracts with mortgage loan representatives or correspondents that are part of the CCO's records; and

(b) The name of any director, trustee or officer of the CCO, having a direct, indirect or contingent interest in the loan, security or property, or who would derive, directly or indirectly, any benefit therefrom, and the nature of such interest or benefit.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5165

RULE TITLE: ASSET VALUATION AND PERMITTED INVESTMENTS: Prohibited Investments

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) A CCO shall not make investments:

(a) Which at the time of purchase or acquisition are not interest-bearing or dividend or income-paying, or are in default in any respect; or

(b) From which the CCO is not entitled to receive for its exclusive account and benefit the interest, dividends or income.

(2) Subsection (1)(a) of this section shall not apply to property acquired under OAR 410-141-5115, OAR 410-141-5135 or OAR 410-141-5140 if the property is acquired with the intent and expectation that it will be income-producing.

(3) 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 ten percent of the CCO's assets, nor shall it invest more than ten percent of its assets in a single parcel of real property or in any other single investment. This subsection does not apply to investments in, or loans upon, the security of the general obligations of a sovereign.

(4) A CCO shall not invest its funds in any investment or security found by the Authority to be designed to evade any prohibition of Applicable Law.

(5) After a hearing, the Authority may by written order require the disposal of an investment which the Authority finds to be made or retained in violation of Applicable Law, or of an investment which the Authority, for good cause, determines to be prejudicial to, or to impair the security of, the stockholders or 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: 410-141-5170

RULE TITLE: CAPITALIZATION: Capital and Surplus

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) A CCO shall possess and thereafter maintain capital or surplus or any combination thereof equal to no less than $2.5 million.

(2) A CCO applying for its original CCO contract this state shall possess, when so applying, additional capital or surplus, or any combination thereof, of not less than $500,000.

(3) Notwithstanding a CCO's compliance with subsections (1) and (2), a CCO shall at all times also comply with the risk-based capital standards set forth at OAR 410-141-5295 to 5320.

(4) For the protection of the public, the Authority may require a CCO to possess and maintain capital or surplus, or any combination thereof, in excess of the amounts otherwise required under this section owing to the type, volume and nature of business transacted by the CCO. For the purpose of determining the reasonableness and adequacy of a CCO's capital and surplus, the Authority may consider the following factors, as among others:

(a) The size of the CCO, as measured by its assets, capital and surplus, reserves, capitated revenue and other appropriate criteria.

(b) The number of Members covered by the CCO.

(c) The extent of the geographical dispersion of the Members covered by the CCO.

(d) The nature and extent of the reinsurance program of the CCO.

(e) The quality, diversification and liquidity of the investment portfolio of the CCO.

(f) The recent past and projected future trend in the size of the investment portfolio of the CCO.

(g) The combined capital and surplus maintained by comparable CCOs.

(h) The adequacy of the reserves of the CCO.

(i) The quality and liquidity of investments in affiliates. The Authority may treat any such investment as a disallowed asset for purposes of determining the adequacy of combined capital and surplus whenever in the judgment of the Authority the investment so warrants.

(j) The quality of the earnings of the CCO and the extent to which the reported earnings include extraordinary items.

(5) The factors set forth in this rule for the purpose of determining the reasonableness and adequacy of the CCO's capital and surplus are not intended to be an exhaustive list. In determining the adequacy and reasonableness of 's capital and surplus, no single factor is necessarily controlling. Instead, the Authority shall consider the net effect of all of such factors and also other factors bearing on the financial condition of the CCO. In comparing the capital and surplus maintained by other CCOs, the Authority shall consider the extent to which each of such factors varies from CCO to CCO. In determining the quality and liquidity of investments in subsidiaries, the Authority shall consider the individual subsidiary and may discount or disallow its valuation to the extent that the individual investments so warrant.

STATUTORY/OTHER AUTHORITY: ORS 413.042, ORS 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5175

RULE TITLE: CAPITALIZATION: Impaired Capital and Surplus

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) If the Authority determines in accordance with OAR 410-141-5195 et seq. that a CCO's reserves, however calculated or estimated, are inadequate, the Authority may require the CCO to maintain reserves in such additional amount as is needed to make them adequate.

(2) Whenever the Authority determines from any showing or statement made to the Authority or from any examination made by the Authority that the assets of a CCO are less than its liabilities plus required capitalization, the Authority may proceed immediately under the provisions of OAR 410-141-5469 and Section 26 of S.B. 1041 or the Authority may allow the CCO a period of time, not to exceed 90 days, in which to make good the amount of the impairment with cash or authorized investments.

(3) If the amount of any such impairment is not made good within the time prescribed by the Authority under subsection (1) of this section, the Authority shall proceed under the provisions of OAR 410-141-5469 and Section 26 of the S.B. 1041.

(4) An order directing a CCO to cure an impairment shall be confidential for such time as the Authority considers proper but not exceeding the time prescribed by the Authority for making the amount of the impairment good. If the Authority determines that the public interest in disclosure outweighs the public interest in protecting the solvency of the CCO, the Authority may make the order available for public inspection.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5180

RULE TITLE: CAPITALIZATION: Dividend and Distribution Restrictions

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

Unless prior written approval of the Authority is first obtained, a CCO shall not:

(1) Make any distribution of assets by dividend or other distribution to shareholders, equity members, parent companies or any related parties that would cause the CCO's capital and surplus to fall below the prescribed minimum under OAR 410-141-5370.

(2) Reduce its total adjusted capital by partial distribution of its assets, by payment in the form of a dividend or otherwise to shareholders, equity members, parent companies or any related parties below an amount equal to 300% of the CCO's authorized control level risk-based capital, as defined in and calculated pursuant to OAR 410-141-5295.

(3) Declare or pay dividends to shareholders, equity members, parent companies or any related parties other than from earned surplus. For purposes of this subsection, "earned surplus" does not include surplus arising from unrealized capital gains or revaluation of assets.

(4) Declare or pay an extraordinary dividend or distribution to shareholders, equity members, parent companies or any related parties. A dividend or dividend is "extraordinary" for purposes of this subsection if it exceeds an amount equal to the aggregate of the CCO's net after-tax income for the prior three calendar years, less any dividends or distributions paid during the prior two calendar years and the current year. "Extraordinary dividend or distribution" does not include pro rata distributions of any class of the CCO's own securities.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5185

RULE TITLE: CAPITALIZATION: Restricted Reserve Account

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) A CCO shall establish a Restricted Reserve Account and maintain sufficient Restricted Reserve Funds in the Restricted Reserve Account to meet the Authority's Primary Reserve and Secondary Reserve requirements. Restricted Reserve Funds shall be held for the purpose of:

(a) Making payments to providers in the event of the CCO's insolvency, and

(b) Assuring the CCO's performance in the event its contract with the Authority is terminated.

(2) A CCO's Primary Reserve and Secondary Reserve balances shall be determined by calculating the CCO's average monthly medical expense incurred, unless the Authority agrees upon an exception to the below calculations.

(a) If a CCO has submitted quarterly financial statements for the current quarter and the prior three quarters, the average monthly medical expense incurred shall be derived by adding together the "total hospital and medical" expense (NAIC statement of revenue and expenses) for the prior four quarters and dividing by 12.

(b) A newly formed CCO will use an average of hospital and medical expense projected for the first four quarters of operation.

(c) Each quarter, the average expense liability will be recalculated using historical quarter data available.

(d) The Authority may allow a CCO to adjust its calculation of its average monthly medical expenses by excluding any commercial line of business or any Medicare line of business from the "total hospital and medical" expense.

(3) The amount a CCO must deposit and maintain in its Restricted Reserve Account shall be calculated as follows:

(a) If a CCO's average monthly medical expense incurred is less than or equal to $250,000, an amount equal to the average monthly medical expense incurred shall be deposited into, and maintained in, the Restricted Reserve Account. This amount will be referred to as the CCO's "Primary Reserve" and the CCO shall have no "Secondary Reserve" (hereinafter defined) until such time as the CCO's average monthly medical expense exceeds $250,000.

(b) If a CCO's average monthly medical expense is greater than $250,000, an amount equal to fifty percent (50%) of the difference between the average monthly medical expense and the Primary Reserve balance of $250,000 shall be deposited into, and maintained in, the Restricted Reserve Account. This additional amount is referred to as the CCO's "Secondary Reserve."

(c) A CCO's Primary Reserve and, if applicable, its Secondary Reserve shall be recalculated and the balance of the Restricted Reserve Account shall be adjusted accordingly each quarter based upon the CCO's then current average monthly medical expense.

(d) The Authority may allow a CCO to adjust its calculation of its Primary Reserve and Secondary Reserve, based on the CCO's use of value-based payments.

(4) A CCO shall establish its Restricted Reserve Account with a third-party financial institution for the purpose of holding the CCO's Primary Reserve and Secondary Reserve.

(5) The Authority's model depository agreement shall be used by the CCO to establish its Restricted Reserve Account. CCOs shall request the model depository agreement form from the Authority. CCOs shall submit the model depository agreement to the Authority at the time of application and the model depository agreement shall remain in effect throughout the period of time that the CCO contract is in effect. The model depository agreement cannot be changed without the Authority's prior written approval.

(6) The CCO shall not withdraw funds, change third party financial institutions, or change account numbers within the Restricted Reserve Account without the prior written consent of the Authority.

(7) A CCO shall submit a copy of the model depository agreement at the time of application. If a CCO requests and

receives written authorization from the Authority to make a change to its existing Restricted Reserve Account, the CCO shall submit a model depository agreement reflecting the changes to the Authority within 15 days of the date of the change.
(8) The following instruments are considered eligible deposits for the purposes of a CCO's Primary Reserve and Secondary Reserve:
(a) Cash;
(b) Certificates of Deposit; or
(c) Amply secured obligations of the United States, or of a state or a political subdivision thereof as determined by the Authority.
(9) If a CCO has multiple contracts or agreements with the Authority, separate Restricted Reserve Accounts shall be maintained for each contract and agreement, except as required in this subsection. Separate Restricted Reserve Accounts shall not be required for state-funded services and Oregon Health Plan contracts. However, the CCO shall be obligated to maintain actuarially sound and sufficient aggregate loss reserves for all its contractual liabilities, including both contractual liabilities that are supported by a Restricted Reserve Account and those which are not so supported.
(10) CCOs that enter into Sub-Capitation Arrangements for any portion of the health care services covered by the CCO's agreement with the Authority may require that the Capitated Subcontractor establish, fund and maintain a Restricted Reserve Account and Restricted Reserve Funds for the Capitated Subcontractor's portion of the risk assumed. Alternatively, the CCO may elect to establish, fund and maintain a single Restricted Reserve Account for all risk assumed under the agreement with the Authority (including the portion of those risks assumed by the Capitated Subcontractor). In either event, the CCO shall assure that the aggregate of the Restricted Reserve Account(s) and Restricted Reserve Funds comply with the requirements of this section.
(11) All the requirements of this section in respect of a CCO's Restricted Reserve Account shall respectively apply to a Restricted Reserve Account established, funded and maintained by a Capitated Subcontractor under subsection (10).
(12) If a Restricted Reserve Fund of a CCO is held in a combined account or pool with other entities, the CCO and its subcontractors, as applicable, shall provide a statement from the pool or account manager or custodian confirming that the proceeds of the Restricted Reserve Fund shall be available for payment to the CCO and the Authority, on demand, and that no other payee has the contractual right to withdraw the proceeds of the Restricted Reserve Account under or pursuant to the agreement(s) governing administration of the Restricted Reserve Account.
(13) If a CCO wishes to withdraw proceeds from its Restricted Reserve Account in order to cover services under its Member Contracts, the CCO shall provide advance notice to the Authority of the amount to be withdrawn, the reason for withdrawal, when and how the Restricted Reserve Fund will be replenished, and measures to avoid the need for future withdrawals from the Restricted Reserve Account. No such withdrawal shall be made without the prior written approval of 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: 410-141-5190

RULE TITLE: CAPITALIZATION: Surplus Notes

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) With the prior approval of the Authority, a CCO may issue one or more surplus notes in order to secure funding needed to comply with minimum capital and surplus requirements and/or minimum risk-based capital requirements under these rules, or otherwise to provide additional funding required for the CCO's operations.

(2) Approval by the Authority of the issuance and sale of a surplus note by a CCO, including the form and terms of the surplus note and the purchaser of the surplus note, is required and shall be at the sole discretion of the Authority.

(3) The issuance and sale of a surplus note, and the form and terms of the surplus note, shall comply with the standards for the issuance of surplus notes set forth in the Accounting Practices and Procedures Manual published by the NAIC, as well as the following requirements:

(a) A surplus note shall be sold only in return for cash or marketable securities having readily determinable values and liquidity satisfactory to the Authority.

(b) Commissions, promotion expenses or finders' fees may not be paid in connection with a surplus note sale except for commissions, expenses and fees customarily incurred within the context of public or private placement offerings underwritten by an investment banking or similar entity.

(c) Payment of principal or interest on a surplus note may not be made without the prior written approval of the Authority. The issuer shall provide the Authority with written notice at least thirty days prior to the intended date of the payment of principal or interest on a surplus note or such shorter period as the Authority may permit.

(d) Payment of principal or interest on a surplus note shall be subordinated to payment of all other liabilities of the issuer.

(e) Payment of interest on a surplus note may be made only from the unassigned funds of the issuer.

(f) Surplus notes shall not be assignable or negotiable without the prior written approval of 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: 410-141-5195

RULE TITLE: CAPITALIZATION: Risk-based Capital (RBC) Definitions

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

As used in OAR 410-141-5195 to 410-141-5220:

(1) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions.

(2) "Company Action Level RBC" means, with respect to any CCO, the product of 2.0 (200%) and the CCO's Authorized Control Level RBC.

(3) "Corrective Order" means an order entered by the Authority under OAR 410-141-5310 to OAR 410-141-5320 specifying corrective actions the Authority determines are required of a CCO in respect of its Total Adjusted Capital and its RBC Level.

(4) "Mandatory Control Level RBC" means the product of .70 (70%) and the CCO's authorized control level RBC.

(5) "RBC Instructions" means the RBC Report form and including risk-based capital instructions adopted by the NAIC, as such form and instructions may be amended by the NAIC from time to time.

(6) "RBC Level" means a CCO's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC or Mandatory Control Level RBC.

(7) "RBC Plan" means a comprehensive financial plan containing the elements specified in OAR 410-141-5295 to 410-141-5320. If the Authority rejects the RBC Plan and it is revised by the CCO with or without the Authority's recommendation, the plan shall be called the "revised RBC Plan."

(8) "RBC Report" means the report required by OAR 410-141-5300.

(9) "Regulatory Action Level RBC" means the product of 1.5 (150%) and the CCO's Authorized Control Level RBC.

(10) "Total Adjusted Capital" means the sum of:

(a) A CCO's capital and surplus as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under OAR 410-141-5015; and

(b) Such other items, if any, as the RBC instructions may provide.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5200

RULE TITLE: CAPITALIZATION: RBC Reports

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) On or before April 30 of each year, a CCO shall prepare and submit to the Authority a report of its Total Adjusted Capital and its RBC Levels as of the end of the calendar year just ended, in a form and containing such information as are required by the RBC instructions. In addition, a CCO shall file its RBC Report with the NAIC in accordance with the RBC instructions. The CCO shall report in its annual financial statement its Total Adjusted Capital and its Authorized Control Level RBC as calculated in its RBC Report. A CCO's RBC Report will be considered confidential and shall not be made available to the public.

(2) A CCO's Total Adjusted Capital shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following factors into account (and may adjust for the covariance between such factors) determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) A substantial excess of Total Adjusted Capital over Company Action Level RBC is desirable. Accordingly, a CCO should seek to maintain Total Adjusted Capital that exceeds the CCO's Company Action Level RBC. Additional capital is used and useful in the business of a risk-bearing entity and helps to secure a CCO against various risks inherent in, or affecting, the business of a CCO and not accounted for or only partially measured by the risk-based capital requirements contained in OAR 410-141-5195 to 410-141-5220. The Authority recommends that a CCO endeavor to maintain its Total Adjusted Capital at no less than 300% of its Authorized Control Level RBC.

(4) If a CCO files an RBC Report that in the judgment of the Authority is inaccurate, then the Authority shall adjust the RBC Report to correct the inaccuracy and shall notify the CCO of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC Report as so adjusted is referred to as an "adjusted RBC Report."

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5205

RULE TITLE: CAPITALIZATION: Company Action Level Event

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) "Company Action Level Event" means any of the following events:

(a) The filing of an RBC Report by a CCO that indicates that the CCO's Total Adjusted Capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of a Company Action Level Event.

(b) Notification by the Authority to the CCO of an adjusted RBC Report that indicates an event in subsection (a), if the CCO does not challenge the adjusted RBC Report.

(c) If a CCO challenges an adjusted RBC Report that indicates the event in subsection (a), notification by the Authority to the CCO that the Authority has, after a hearing, rejected the CCO's challenge.

(2) In the event of a Company Action Level Event, the CCO shall prepare and submit to the Authority an RBC Plan that:

(a) Identifies the conditions that caused or contributed to the Company Action Level Event.

(b) Contains proposed corrective actions that the CCO intends to take and that are expected to result in the elimination of the Company Action Level Event.

(c) Provides projections of the CCO's financial results in the current year and at least two succeeding years, both in the absence of the proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels.

(d) Identifies the key assumptions impacting the CCO's projections and the sensitivity of the projections to those assumptions.

(e) Identifies the quality of, and problems associated with, the CCO's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any.

(3) The RBC Plan shall be submitted:

(a) Within 30 days of the Company Action Level Event; or

(b) Within 30 days after notification to the CCO that the Authority has, after a hearing, rejected the CCO's challenge, if the CCO challenges an adjusted RBC Report which indicated a Company Action Level Event.

(4) Within 60 days after the submission by a CCO of an RBC Plan to the Authority, the Authority shall notify the CCO whether the RBC Plan shall be implemented or is, in the judgment of the Authority, unsatisfactory. If the Authority determines the RBC Plan is unsatisfactory, the notification to the CCO shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC Plan satisfactory, in the judgment of the Authority. Upon notification from the Authority, the CCO shall prepare a revised RBC Plan, which may incorporate by reference any revisions proposed by the Authority, and shall submit the revised RBC Plan to the Authority:

(a) Within 45 days after the notification from the Authority; or

(b) Within 45 days after a notification to the CCO that the Authority has, after a hearing, rejected the CCO's challenge, if the CCO challenges the notification from the Authority under this section.

(5) In the event of a notification by the Authority to a CCO that the CCO's RBC Plan or revised RBC Plan is unsatisfactory, the Authority may at the Authority's discretion, subject to the CCO's right to a hearing under this section, specify in the notification that the notification constitutes a Regulatory Action Level Event.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5210

RULE TITLE: CAPITALIZATION: Regulatory Action Level Event

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) "Regulatory Action Level Event" means, with respect to a CCO, any of the following events:

(a) The filing of an RBC Report by the CCO that indicates that the CCO's Total Adjusted Capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of a Regulatory Action Level Event.

(b) Notification by the Authority to a CCO of an adjusted RBC Report that indicates the event in subsection (a), if the CCO does not challenge the adjusted RBC Report.

(c) If the CCO challenges an adjusted RBC Report that indicates the event in subsection (a), the notification by the Authority to the CCO that the Authority has, after a hearing, rejected the CCO's challenge.

(d) The failure of the CCO to file an RBC Report by the filing date, unless the CCO has provided an explanation for the failure that is satisfactory to the Authority and has cured the failure within ten days after the filing date.

(e) The failure of the CCO to submit an RBC Plan to the Authority within the time period set forth in this section.

(f) Notification by the Authority to the CCO that:

(A) The RBC Plan or revised RBC Plan submitted by the CCO under this section is, in the judgment of the Authority, unsatisfactory; and

(B) The CCO has not challenged the determination.

(g) If the CCO challenges a determination by the Authority, the notification by the Authority to the CCO that the Authority has, after a hearing, rejected the challenge;

(h) Notification by the Authority to the CCO that the CCO has failed to adhere to its RBC Plan or revised RBC Plan, but only if the failure has a substantial adverse effect on the ability of the CCO to eliminate the Company Action Level Event in accordance with its RBC Plan or revised RBC Plan and the Authority has so stated in the notification, if the CCO has not challenged the determination; or

(i) If the CCO challenges a determination by the Authority, the notification by the Authority to the CCO that the Authority has, after a hearing, rejected the challenge.

(2) In the event of a Regulatory Action Level Event, the Authority may take some or all of the following actions:

(a) Require the CCO to prepare and submit an RBC Plan or, if applicable, a revised RBC Plan.

(b) Perform such examination or analysis as the Authority deems necessary of the assets, liabilities and operations of the CCO including a review of its RBC Plan or revised RBC Plan.

(c) Subsequent to the examination or analysis, issue a Corrective Order specifying such corrective actions as the Authority shall determine are required.

(d) Prohibit or limit enrollments until further notice.

(e) Require the CCO to provide monthly financial statements.

(3) In determining corrective actions, the Authority may take into account factors the Authority deems relevant with respect to the CCO based upon the Authority's examination or analysis of the assets, liabilities and operations of the CCO, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC Plan or revised RBC Plan shall be submitted:

(a) Within 30 days after the occurrence of the Regulatory Action Level Event; or

(b) Within 30 days after the notification to the CCO that the Authority has, after a hearing, rejected the CCO's challenge.

(4) The Authority may retain actuaries and investment experts and other consultants as may be necessary in the judgment of the Authority to review the CCO's RBC Plan or revised RBC Plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the CCO and formulate a Corrective Order with respect to the CCO. The fees, costs and expenses relating to consultants shall be borne by the affected CCO or such other party as directed 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: 410-141-5215

RULE TITLE: CAPITALIZATION: Authorized Control Level Event

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) "Authorized Control Level Event" means any of the following events:

(a) The filing of an RBC Report by the CCO that indicates that the CCO's Total Adjusted Capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of an Authorized Control Level Event;

(b) The notification by the Authority to the CCO of an adjusted RBC Report that indicates the event in subsection (a), if the CCO does not challenge the adjusted RBC Report;

(c) If the CCO challenges an adjusted RBC Report that indicates the event in subsection (a), notification by the Authority to the CCO that the Authority has, after a hearing, rejected the CCO's challenge;

(d) The failure of the CCO to respond, in a manner satisfactory to the Authority, to a Corrective Order if the CCO has not challenged the Corrective Order;

(e) If the CCO has challenged a Corrective Order and the Authority has, after a hearing, rejected the challenge or modified the Corrective Order, the failure of the CCO to respond, in a manner satisfactory to the Authority, to the Corrective Order subsequent to rejection or modification by the Authority.

(2) In the event of an Authorized Control Level Event, the Authority may take any or all of the following actions:

(a) Take such actions as are allowed under OAR 410-141-5210 regarding a CCO with respect to which a Regulatory Action Level Event has occurred;

(b) If the Authority deems it to be in the best interests of the Members and creditors of the CCO and of the public, the Authority may:

(A) Place the CCO under regulatory control and/or apply to have the CCO made the subject of court-ordered conservancy proceedings pursuant to Sections 24 through 37 of S.B. 1041;

(B) Terminate the CCO's contract(s) with the Authority and cause the Members covered by the CCO to be transferred to one or more other CCOs.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5220

RULE TITLE: CAPITALIZATION: Mandatory Control Level Event

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) "Mandatory Control Level Event" means any of the following events:

(a) The filing of an RBC Report that indicates that the CCO's Total Adjusted Capital is less than its Mandatory Control Level RBC. The CCO shall provide prompt written notice to the Authority, together with an RBC Report, if it learns that the CCO is the subject of a Mandatory Control Level Event.

(b) Notification by the Authority to the CCO of an adjusted RBC Report that indicates the event in subsection (a), if the CCO does not challenge the adjusted RBC Report.

(c) If the CCO challenges an adjusted RBC Report that indicates the event in subsection (a), notification by the Authority to the CCO that the Authority has, after a hearing, rejected the CCO's challenge.

(2) In the event of a Mandatory Control Level Event, the Authority shall take the following actions:

(a) Place the CCO under regulatory control and/or apply to have the CCO made the subject of court-ordered conservancy proceedings pursuant to Sections 24 through 37 of S.B. 1041.

(b) Terminate the CCO's contract(s) with the Authority and cause the Members covered by the CCO to be transferred to one or more other CCOs.

(3) Upon the occurrence of any of the following events, a CCO may request a hearing for the purpose of challenging any determination or action by the Authority in connection with any event described in this section. The CCO shall notify the Authority of its request for a hearing not later than the fifth day after notification by the Authority under any of the events described in this section. Upon receipt of the CCO's request for a hearing, the Authority shall set a date for the hearing. The date shall be not less than 10 or more than 30 days after the date of the CCO's request. The events to which the opportunity for a hearing under this section relates are as follows:

(a) Notification to a CCO by the Authority of an adjusted RBC Report;

(b) Notification to a CCO by the Authority that:

(A) The CCO's RBC Plan or revised RBC Plan is unsatisfactory; and

(B) Notification constitutes a Regulatory Action Level Event with respect to the CCO.

(c) Notification to a CCO by the Authority that the CCO has failed to adhere to its RBC Plan or revised RBC Plan and that the failure has a substantial adverse effect on the ability of the CCO to eliminate the Company Action Level Event with respect to the CCO in accordance with its RBC Plan or revised RBC Plan; or

(d) Notification to a CCO by the Authority of a Corrective Order with respect to the CCO.

(4) The Authority may keep confidential a CCO's RBC Plan or the results or report of any examination or analysis conducted by the Authority in connection with a CCO's RBC Plan if the Authority determines that disclosure of such information is not necessary to protect the public interest and may jeopardize the CCO's ability to successfully implement the RBC Plan.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5225

RULE TITLE: REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Extraordinary Dividends and Other Distributions

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) Requests for approval of extraordinary dividends or any other extraordinary distribution to shareholders shall include the following:

(a) The amount of the proposed dividend;

(b) The date established for payment of the dividend;

(c) A statement as to whether the dividend is to be in cash or other property and, if in property, a description thereof, its cost, and its fair market value together with an explanation of the basis for valuation;

(d) A copy of the calculations determining that the proposed dividend is extraordinary. The work paper must include the following information:

(A) The amounts, dates and form of payment of all dividends or distributions, including regular dividends but excluding distributions of the CCO's own securities, paid within the period of 12 consecutive months ending on the date fixed for payment of the proposed dividend for which approval is sought and commencing on the day after the same day of the same month in the last preceding year;

(B) Total capital and surplus as of the 31st day of December immediately preceding;

(C) Net income for the 12-month period ending the 31st day of December immediately preceding and the two preceding 12-months periods; and

(D) Dividends paid to stockholders excluding distributions of the CCO's own securities in the preceding two calendar years.

(e) A balance sheet and statement of income for the period intervening from the last annual statement filed with the Authority and the end of the month preceding the month in which the request for dividend approval is submitted; and

(f) A brief statement as to the effect of the proposed dividend upon the CCO's capital and surplus and the reasonableness of combined capital and surplus in relation to the CCO's outstanding liabilities and the adequacy of surplus relative to the CCO's financial needs.

(2) Each registered CCO shall report to the Authority all dividends and other distributions to shareholders within five business days following the declaration thereof, including the same information required by section (1)(d)(A) to (D) of this section.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5230

RULE TITLE: REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Reports of Material Acquisitions And Dispositions Of Assets, and Changes to Ceded Reinsurance Agreements; Assumption Reinsurance

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:
(1) Every CCO shall file a report with the Authority disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements unless the subject transaction has been submitted to the Authority for review, approval or information under or pursuant to another provision of Applicable Law.
(2) The report required in subsection (1) is due no later than the 15th day following the end of the calendar month in which any of the reportable transaction occurred.
(3) A CCO shall not enter a transaction in which the CCO assumes or transfers obligations or risks on contracts under an Assumption Reinsurance Agreement or any equivalent agreement, unless the Authority first approves the transaction.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5235

RULE TITLE: REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Reports of Material Materiality and Reporting Standards for Asset Acquisitions and Dispositions

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) No acquisitions or dispositions of assets need be reported pursuant to OAR 410-141-5230 if the acquisition or disposition is not material. For purposes of OAR 410-141-5230, a material acquisition (or the aggregate of any series of related acquisitions during any 30-day period) or disposition (or the aggregate of any series of related dispositions during any 30-day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent of the reporting CCO's total allowed assets as reported in its most recent statutory statement filed with the Authority.

(2) OAR 410-141-5230 applies to the following asset acquisitions and asset dispositions:

(a) Asset acquisitions include every purchase, lease, exchange, merger, consolidation, succession or other acquisition by or for the reporting CCO.

(b) Asset dispositions include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction or other disposition.

(3) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

(a) Date of the transaction.

(b) Manner of acquisition or disposition.

(c) Description of the assets involved.

(d) Nature and amount of the consideration given or received.

(e) Purpose of, or reason for, the transaction.

(f) Manner by which the amount of consideration was determined.

(g) Gain or loss recognized or realized as a result of the transaction.

(h) Name or names of the person or persons from whom the assets were acquired or to whom they were disposed.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5240

RULE TITLE: REPORTING AND APPROVAL OF CERTAIN TRANSACTIONS: Materiality and Reporting Standards for Changes in Ceded Reinsurance Agreements

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) No nonrenewals, cancellations or revisions of ceded reinsurance agreements need be reported pursuant to OAR 410-141-5230 if the nonrenewals, cancellations or revisions are not material. A material nonrenewal, cancellation or revision is one that affects:

(a) More than fifty percent of the CCO's total ceded capitated revenue;

(b) More than fifty percent of the CCO's total ceded indemnity and loss adjustment reserves; or

(c) More than fifty percent of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the CCO's most recent annual statement.

(2) Either of the following events shall constitute a material revision that must be reported:

(a) An authorized reinsurer representing more than ten percent of a total cession is replaced by one or more unauthorized reinsurers.

(b) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent of a total cession.

(3) No filing shall be required if the CCO's total ceded capitated revenue represents, on an annualized basis, less than ten percent of its total written capitated revenue for direct and assumed business.

(4) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of a ceded reinsurance agreement:

(a) Effective date of the nonrenewal, cancellation or revision;

(b) The description of the transaction with an identification of the initiator thereof;

(c) Purpose of, or reason for, the transaction; and

(d) If applicable, the identity of the replacement reinsurers.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685

ADOPT: 410-141-5245

RULE TITLE: EXAMINATIONS: CCO Production of Books and Records

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) The Authority may require a CCO to produce books, records, accounts, papers, documents and computer and other recordings in the possession, custody or control of the CCO or the CCO's affiliates that the Authority determines are needed for the Authority to investigate or examine the CCO's financial condition or to investigate, examine or determine the CCO's compliance with Applicable Law or with the CCO's contracts and agreements with the Authority.

(2) No person shall file or cause to be filed with the Authority or DCBS any article, certificate, report, statement, application or any other information required or permitted to be so filed under Applicable Law or the CCO Contract and known to such person to be false or misleading in any material respect.

(3) If a CCO, without good cause, fails to comply with its obligations under subsections (1) or (2), the Authority may impose a civil penalty on the CCO pursuant to OAR 410-141-5380 and/or may suspend or revoke the CCO's agreement with 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: 410-141-5250

RULE TITLE: EXAMINATIONS: Authority Examinations of CCOs

NOTICE FILED DATE: 09/23/2019

RULE SUMMARY: The 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).

RULE TEXT:

(1) The Authority may examine every CCO, including an audit of the financial affairs of a CCO, as often as the Authority determines an examination to be necessary or otherwise appropriate under the circumstances. Without limiting the Authority's right to examine a CCO at such times and with such frequency as the Authority determines to be necessary or otherwise appropriate under the circumstances, a CCO will be examined at least once during the CCO's contract period. An examination will be conducted for such purposes and such scope as the Authority determines to be necessary or otherwise appropriate under the circumstances, including, without limitation, an investigation and examination of the financial condition of the CCO, its ability to fulfill its obligations and its manner of fulfillment, the nature of its operations and its compliance with these rules and applicable CCO contract requirements.

(2) Examinations will be conducted under and pursuant to the following practices and procedures, subject to such exceptions, modifications and other practices and procedures as the Authority determines to be necessary or otherwise appropriate under the circumstances:

(a) The Authority will appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. The Authority may contract and coordinate all or portions of the examination with DCBS. Any reference to the Authority in this section shall include DCBS when DCBS is working under an interagency agreement with the Authority to conduct the examination. DCBS is authorized to make recommendations to the Authority and to act in conjunction with the Authority in accordance with this section.

(b) The examiner(s) shall conduct the examination in accordance with the guidelines, practices, principles and procedures set forth in the Examiners Handbook published by the NAIC. The Authority may instruct or allow the examiner(s) to follow or employ such other guidelines, practices, principles and procedures as the Authority determines to be necessary or otherwise appropriate under the circumstances.

(c) The Authority may retain appraisers, independent actuaries, independent certified public accountants and other professionals and specialists as needed.

(d) The Authority, including its appointed examiners, may examine under oath all persons who may have material information regarding the property or business of the person being examined or investigated.

(3) Every person being examined or investigated shall produce all books, records, accounts, papers, documents and computer and other recordings in its possession or control, including, in the case of an examination, the property, assets, business and affairs of the person.

(4) Upon written request of the Authority or its examiners, the CCO, its affiliates and each officer, director, employee, contractor, agent or representative of the CCO and/or the CCO's affiliates promptly shall produce to the Authority or its examiners, or otherwise shall promptly provide the Authority or its examiners with convenient, complete and free access to, all books, records, accounts, papers, documents and computer and other recordings in the possession, custody or control of such persons that relate in any way to the subject matter of the examination. The CCO shall use its best efforts to cause the CCO's affiliates and each officer, director, employee, contractor, agent or representative of the CCO and/or the CCO's affiliates to comply with a request made by the Authority or its examiners under this subsection 4.

(5) The procedure for completion of an examination shall be as follows:

(a) Not later than sixty days following completion the examination, the examiner(s) shall submit to the Authority a draft Report of Examination. The draft report shall include fact-findings and conclusions and also may include proposed recommendations for curative actions to be undertaken by the CCO based on the draft report's fact-findings and

conclusions.
(b) The Authority will provide the CCO with a copy of the draft report and allow the CCO a reasonable opportunity to review and comment on the draft report. A copy of the draft report shall be delivered to the CCO by certified mail, addressed to the CCO's home office or to such other point of contact as the CCO may designate in writing to the Authority for this purpose. The Authority will consider the CCO's comments on the draft report and may request additional information or meet with the CCO for the purpose of resolving questions or obtaining additional information. The Authority may consult with or cause the examiner(s) to consider any submissions made by the CCO in response to the draft report and any additional information provided to the Authority by the CCO.
(c) Before the Authority accepts and files the draft report as a final examination report available for publication or makes any matters relating thereto public, the CCO may request a hearing on the draft report and any of its fact-findings, conclusions and recommendations. The CCO must request a hearing by letter, delivered by certified mail to the Authority no later than thirty days following the date on which the draft report was delivered to the CCO ("Hearing Request Period").
(d) The Authority will appoint an Authority staff member or other representative to conduct the hearing contemplated by Section 5(c) ("Hearing Officer"). The Hearing Officer shall consider the evidence and comments presented by the CCO at the hearing, together with any other evidence or comments offered by the examiner(s). Following the hearing, the Hearing Officer will report to the Authority whether any changes should be made to the draft report. The Authority will consider the Hearing Officer's report and will determine whether the draft report should be adopted without change, should be modified or whether comments offered by the CCO should be included as a supplement to the draft report. The Authority shall not be bound by the Hearing Officer's report and may accept or decline to adopt any changes recommended by the Hearing Officer in the Authority's sole discretion. The Authority shall adopt the draft report, and make it available for public inspection as a final examination report on the first to occur of:
(A) Expiration of the Hearing Request Period if no request for hearing is received from the CCO, or
(B) If a hearing is requested by the CCO, completion of the hearing and the Hearing Officer's report, followed by the Authority's adoption of the draft report, with or without modifications, as a final examination report.
(6) The Authority shall make a final examination report available for public inspection. If the Authority, in its sole discretion, considers that doing so is in the public interest, the Authority may publish notice of a final examination report, its availability for public inspection and/or a summary of, or excerpts from, the final examination report by such means (including print, broadcast and web-based media) as the Authority determines to be appropriate under the circumstances.
(7) OAR 410-141-5080 applies generally to examinations and the examination process under this section. In accordance with OAR 410-141-5080, the Authority may designate as confidential and exempt from public inspection any work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to the examiner(s) or the Authority during the course of an examination (collectively, "Examination Materials"). If the Authority, in the Authority's sole discretion after notice to the CCO, determines that disclosure is necessary to protect the public interest, the Authority may make available any such Examination Materials to any other person in the course of the examination or to the public generally.
(8) Nothing in this section shall be construed or operate to limit the Authority's right or obligation to disclose a draft report or final examination report, or any Examination Materials to any other federal or state regulatory authority where required by law, where permitted by the CCO's agreement with the Authority, or where otherwise determined by the Authority to be in the public interest.
(9) No cause of action may arise, and no liability may be imposed against the Authority or DCBS, an authorized representative of the Authority or DCBS or any examiner appointed by the Authority or DCBS for any statements made or conduct performed in good faith pursuant to an examination or investigation. No cause of action may arise and no liability may be imposed against any person for communicating or delivering information or documents to the examiner(s) or the Authority or any authorized representative of the Authority in connection with an examination, or for providing testimony in the course of an examination, unless the person doing so acted in bad faith, with fraudulent

intent or intent to deceive.
(10) Subsection (9) supplements, and does not abrogate or modify in any way, any common law or statutory privilege or immunity otherwise enjoyed by any person to which that subsection applies.
(11) Facts determined and conclusions made by the Authority pursuant to an examination shall be presumptive evidence of the relevant facts and conclusions in any judicial or administrative action.
(12) In addition to other powers of the Authority under these rules relating to the examination and investigation of CCOs, the Authority may order, at any time and from time to time, a CCO to produce such books, records, accounts, papers, documents and computer and other recordings in the possession of the CCO or its affiliates as are necessary to ascertain the financial condition of the CCO or to determine compliance with these rules. If the CCO fails to comply with such an order, the Authority may examine the affiliates to obtain such information, in addition to imposing sanctions or other remedies under these the Authority rules or the CCO contract.
(13) At any time during the course of, or following, an examination, the Authority may take any other actions and exercise any other powers, remedies or authority available to the Authority or otherwise contemplated by these rules.

STATUTORY/OTHER AUTHORITY: ORS 413.042, 414.615, 414.625, 414.635, 414.651

STATUTES/OTHER IMPLEMENTED: ORS 414.610 - 414.685