

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Consumer and Business Services
Agency and Division

Insurance Division

836

Administrative Rules Chapter Number

In the Matter of: Rulemaking Relating to Long Term Care Insurance, Adopting proposed OAR 836-052-0508, 836-052-0531, 836-052-0639, 836-052-0738 and 836-052-0740, and Amending OAR 836-052-0500, 836-052-0516, 836-052-0526, 836-052-0546, 836-052-0556, 836-052-0566, 836-052-0576, 836-052-0616, 836-052-0626, 836-052-0636, 836-052-0656, 836-052-0666, 836-052-0676, 836-052-0696, 836-052-0706, 836-052-0726, 836-052-0736, 836-052-0746, 836-052-0756, 836-052-0766, 836-052-0776 and 836-052-0786, Relating to Long Term Care Insurance; and Renumbering OAR 836-052-0700 to 836-052-0900, Relating to Physician Credentialing.

Rule Caption: Rulemaking Relating to Long Term Care Insurance

Statutory Authority: ORS 731.244, 742.023, 743.013, 743.655, 743.656, 743.685 & 746.240; and sections 9 and 9a, chapter , Oregon Laws 2007 (Enrolled Senate Bill 191).

Other Authority:

Stats. Implemented: ORS 731.244, 742.003, 742.005, 742.009, 743.010, 743.013, 743.018, 743.650, 743.653, 743.655, 743.656, 746.240; and sections 9 and 9a, chapter , Oregon Laws 2007 (Enrolled Senate Bill 191)

Need for the Rule(s): This proposed rulemaking implements recent state legislation, chapter 486, Oregon Laws 2007 (Enrolled SB 191), which amends Oregon statutes governing long term care insurance. This legislation enables Oregon consumers to benefit from federal legislation, the Long Term Care Insurance Partnership Act. The state and federal legislation together encourage people to purchase long term care insurance by permitting people with eligible "partnership" long term care insurance policies to access Medicaid services, once their policy benefits are exhausted, without having to spend down their assets. The value of the assets protected equals the amount of benefits received from the partnership long term care policy coverage. The state legislation also amends Oregon's Medicaid statutes to enable this state's Medicaid program to participate in the Long Term Care Insurance Partnership Act and to allow for protection of estate assets. The Department of Consumer and Business Services and the Department of Human Services jointly supported the legislation.

The state legislation also incorporates consumer protections and insurance policy provisions from the NAIC Long Term Care Insurance Model Act that are required under the federal legislation. For example, an insurer will be required to provide a minimum level of benefits that relates to the amount of premium paid, to a policyholder who has paid a minimum amount of premium on the policy and then decides to discontinue further payment. A new requirement limits the period within which an insurer may rescind a policy or deny an otherwise valid claim because of a material misrepresentation. The bill also establishes specific training requirements for insurance producers selling long term care insurance.

Corresponding changes are needed to the rules that implement Oregon statutes governing long term care insurances, as amended by chapter 486, Oregon Laws 2007. These changes implement these amended statutes, and also include the most recent changes to the NAIC Long-Term Care Insurance Model Regulation. In addition, a proposed new rule states for state insurance regulation purposes the necessary elements of a Partnership Policy and requires insurers and insurance producers to provide to potential applicants a Partnership Program notice, indicating the requirements and benefits of a partnership policy. The rule also requires an insurer or insurance producer to provide to a purchaser of a partnership policy, with delivery of the policy, a Partnership Disclosure Notice, which explains the benefits associated with a partnership policy and indicating that the policy is a qualified policy. These notices are established as exhibits to the rule.

The Insurance Division's current rules already contain most of the changes needed to allow the sale of policies under the Long Term Care Insurance Partnership Act. This rulemaking includes the remaining needed changes. Model wording is added to describe the scope of the long term care insurance rules as including life insurance policies that accelerate benefits for long term care and qualified long term care contracts, and issuers, including insurers, fraternal benefit societies and health maintenance organizations. Definitions of "qualified actuary" and "similar policy forms" are added and existing definitions are amended. A new rule requires an insurer to notify policyholders of the availability of new long term care policy series and to make the new coverage available on any of several specified means. Another new rule requires a policy or certificate to allow the policyholder or certificate holder to reduce coverage and lower the policy or certificate premium by reducing the maximum benefit or the daily, weekly or monthly benefit amount, or other consistent reduction options. An amendment adds another ground on which a contingent benefit on lapse may be triggered, and specifies the triggers. More specific wording about coverage of services by types of provider is added, as is regulation of long term care insurance sold to associations.

One of the most important new provisions in the recent legislation, section 9, chapter 486, Oregon Laws 2007, requires insurance producers to satisfy training requirements in order to transact long term care insurance. An individual producer is required to complete a one-time training course of not less than eight hours before transacting long term care insurance, and then complete four hours of training in each two-year cycle thereafter. Proposed OAR 836-052-0639 implements this requirement in three respects. First, the rule authorizes an insurer to accept alternative qualifications in satisfaction of part of the initial one-time training course for insurance producers who are licensed as of January 1, 2008. These qualifications are certain industry designations and the related course work, and recent continuing education course work. Each insurer is responsible for ensuring that its insurance producers have received the required training and have demonstrated an understanding of partnership policies and their relation to long term care. This requirement acknowledges the expertise of insurance producers who have attained substantial industry designations through rigorous coursework, but the option is strictly limited to well-qualified insurance producers, to ensure that insurance producers selling long term care insurance have appropriate grounding in this complex area of insurance. The rule also requires insurance producers to report their satisfactory completion of training to their appointing insurers and to the Insurance Division. This requirement is intended to ensure that the Insurance Division receives appropriate notice that producers have taken the necessary training and have demonstrated understanding, as is required by section 9, chapter 486, Oregon Laws 2007. This requirement will assist the Director in carrying out the Director's responsibilities under section 9, chapter 586, Oregon Laws 2007.

This rulemaking also proposes a significant consumer protection in its amendment to OAR 836-052-0526, which prohibits approval of a premium increase greater than a cumulative total of 40 percent during any three year period and requires the total amount of an approved rate increase to be spread equally over the three year period. This provision closely follows a California provision of law governing long term care insurance and is proposed in response to instances in which insurers have sought exceedingly large premium increases on their books of outstanding long term care insurance policies. When permission for such an increase is granted, the resulting substantial premium increases can impose a significant and sudden economic burden on policyholders, especially those who are on fixed income and have had no reason to anticipate increases of such proportion. It is expected that this proposal will reduce policy lapses arising from such increases. This provision applies to rate changes approved by the Director on or after January 1, 2008 for policies that were issued prior to March 1, 2006.

Corresponding changes are made to two exhibits: Exhibit 2, OAR 836-052-0556, and Exhibit 1, OAR 836-052-0726. Most of the other changes are editorial corrections and clarifications, made so that the proposed rules track more closely with the current version of the model regulation. The rulemaking will make our regulation of long term care insurance more consistent with that of the several other states that have adopted the model regulation. Failure to adopt the proposed rulemaking changes will leave the existing rules inconsistent with the NAIC Long Term Care Insurance Model Regulation and with requirements of the federal legislation.

OAR 836-052-0700, relating to physician credentialing for health care service contractors, is proposed to be renumbered to OAR 836-052-0900. The rule is currently misplaced because it is located within the series of rules relating to long term care insurance, and the subject matters are not related.

Documents Relied Upon, and where they are available: Long- Term Care Insurance Model Regulation, date of printing January 2007. Letter from Christine R. Gerhardt, Health Insurance Specialist, CMS, to B. Wilson, Department of Insurance, State of Maryland. Partnership Program Notice and Partnership Disclosure Notice, forms 200-A and 200-B, State of Virginia. Draft rule amendments dated February 27, 2007, to 14 Virginia Administrative Code 5-200-205. "Long Term Care Partnership Expansion, A New Opportunity for States," Robert Wood Johnson Foundation, Issue Brief May 2007. These documents are available for public inspection at the Insurance Division, 350 Winter St NE, Room 440, Salem, Oregon 97301-3883, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday.

Fiscal and Economical Impact, including Statement of Cost of Compliance: The Division stated in its Fiscal Impact Statement for SB 191 that the legislation has no fiscal impact for the Division. Because the legislation and amended rules allow insurers to offer partnership long term care insurance policies in Oregon, insurers are likely to file appropriate policy forms for approval by the Division. There is no fiscal impact because review of form filings is one of the normal ongoing functions of the Insurance Division, and it is expected that review of new form filings owing to this legislation will be absorbed with existing resources. Other state agencies and local governments are not expected to incur any fiscal impacts. The Division will incur costs of reviewing and approving rating and policy form changes arising from the rule changes. Specific costs are unknown, but will be absorbed by the Division. Other state agencies and local governments will incur no fiscal impact.

Insurers that decide to enter the long term care partnership insurance market will incur costs owing to amending their rates and policy forms and submitting them to the Division for approval. The amount of the costs is unknown because of a lack of data, but is expected to vary among insurers, depending on the extent to which their policy forms must be amended, on the research needed to price the new products according to the changes in the rules and on each insurer's systems costs. It is anticipated that the changes needed in Oregon policy forms will be the same as those needed in the other states that have adopted the most current NAIC Long Term Care Insurance Model Regulation, because the proposed rulemaking conforms closely to the model regulation. It is expected that Oregon's amended rules will be closely similar if not identical to those of other states that agree with the federal government to become a partnership state. Insurers in the national market that have kept up with NAIC changes in standards consequently may need to make only minor

changes. Other insurers' changes may be greater. A positive fiscal effect for insurers, though unknown and variable, is expected from making the rules more uniform with those of other states since filing and compliance costs will be less. Costs to insurers owing to their acceptance of qualifying coursework in satisfaction of their producers' initial training obligations are unknown because of a lack of data, but any such costs are expected to vary among insurers according to differences in recordkeeping systems used, and depending on whether an insurer is willing to accept the alternative credits.

Insurance producers will incur costs for taking and completing the initial eight hour training requirement required for all producers who solicit or sell long term care insurance on or after January 31, 2008, and the four hour training requirement in each two year period thereafter. The general range of costs for an eight hour continuing education course can vary widely—perhaps in the approximate range of \$100 to \$600, and it is expected that the cost of training will be comparable. The Division does not track costs of the courses, so specific data are unavailable. Insurance producers will also incur costs of reporting their completion of training requirements to insurers as appropriate, and costs of regularly reporting to the Division. Insurance producers will incur the administrative and office costs for these reporting requirements. The amount of such costs is unknown because of a lack of data, but the amount is expected to vary. To the extent that the training providers report directly to the insurers, the producers will not incur such costs. The extent of the additional costs is unknown because of a lack of data but is expected to be minimal because the reporting will occur at the same time as license renewal and reporting of continuing education compliance.

Consumers who purchase partnership policies are expected to benefit financially from them to the extent that they use the benefits. They will also be favorably affected if they use up their policy benefits and must seek Medicaid assistance, to the extent that their assets are protected from Medicaid liens. Personal assets are protected in the amount of benefits received from a partnership policy. Producers will incur varying costs for providing revised disclosure forms and for learning the rule changes. The fiscal impact on consumers for benefits owing to the rule changes and for regulatory costs is unknown. Except as discussed below, actual dollar costs to small insurance businesses (primarily insurance producers and long term care insurance advisors and consultants) owing to the rules are likely to be comparable to costs incurred by larger producer businesses. It should be noted that most insurance producers meet the definition of small business, and that small businesses incur more costs in meeting the training requirements because they cannot "cover" their office activities while they are out of the office in training as easily as larger producer businesses. The extent of such additional costs is unknown because the Division does not maintain such data, but costs are expected to vary among producers according to their office operations.

Small businesses that are likely to be affected by this rulemaking are insurance producers that transact long term care insurance. The following is a statement of cost of compliance effect on small businesses, based on available information:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule: It is estimated that 300 insurance producers transact at least some long term care insurance in their business. Because the Division does not license producers on the basis of transacting long term care insurance or otherwise maintain this information, this estimate is necessarily very general.

(b) A brief description of the projected reporting, recordkeeping and other administrative activities required for compliance with the proposed rule, including costs of professional services. Producers will incur the reporting responsibilities relating to the required training, as described above.

(c) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule. No equipment, supplies or labor are anticipated; the increased administrative responsibilities owing to training reporting are described above.

(d) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule. The Insurance Division invited three organizations representing insurance producers, as well as individual insurance producers, to participate in the advisory committee meetings, and sought these participants' comment on the rulemaking and on the statement of need and fiscal impact.

How were small businesses involved in the development of this rule? As noted in the preceding paragraph, the Division invited the participation of organizations representing insurance producers generally, and also insurance producers that are small businesses.

Administrative Rule Advisory Committee consulted? Yes. The committee met on August 8, 2007. The Division invited representatives of insurers selling long term care products; insurance producers and their representative organizations; consumers and consumer representatives; and the Department of Human Services, whose attendance is required by ORS 743.655. The Division also convened an advisory committee on July 16, 2007, to discuss the specific issue of producer training. Insurers, producers and consumers were invited to participate in that meeting.

(Signed)
Authorized Signer

Carl Lundberg, Acting Insurance Administrator
Printed Name

August 15, 2007
Date