

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted upon filing by the
Date prior to or same as filing date

Oregon Health Authority, Division of Medical Assistance Programs
Agency and Division

410

Administrative Rules Chapter Number

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Rules Coordinator Address

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Telephone

to become effective March 10, 2012 thru September 15, 2012
Date upon filing or later

A maximum of 180 days including the effective date.

RULE CAPTION

Implementation of Financial Solvency Requirements for Oregon Health Plan Coordinated Care Organizations
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

List each rule number separately, 000-000-0000.

Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT: OARs 410-141-3340, 410-141-3345, 410-141-3350, 410-141-3355, 410-141-3360, 410-141-3365, 410-141-3370, 410-141-3375, 410-141-3380, 410-141-3385, 410-141-3390, and 410-141-3395.

AMEND:

SUSPEND:



Stat. Auth.: ORS 410.032

Other Auth.:

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011 and 2012 SB 1580

RULE SUMMARY

OARs 410-141-3340 through 3395 establish the financial requirements for entities to be Coordinated Care Organizations under Oregon's Integrated and Coordinated Health Care Delivery System. CCOs will improve health, increase the quality, reliability, availability and continuity of care, as well as to reduce costs. CCOs will provide medical assistance recipients with health care services that are supported by alternative payment methodologies that focus on prevention and that use patient-centered primary care homes, evidence-based practices and health information technology to improve health and reduce health disparities. The Authority needs to adopt these rules to establish transitional processes, the application process, application criteria, financial solvency requirements and the client grievance system.

[Signature]
Authorized Signer

JEAN DONOVAN
Printed name

3-20-12
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

APR 10 2012

ARC 940-2005

DMAP RECEPTION

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Health Authority, Division of Medical Assistance Programs

410

Agency and Division
Number

Administrative Rules Chapter

In the Matter of: The adoption of OARs 410-141-3340, 410-141-3345, 410-141-3350, 410-141-3355, 410-141-3360, 410-141-3365, 410-141-3370, 410-141-3375, 410-141-3380, 410-141-3385, 3390, and 410-141-3395.

Rule Caption: (Not more than 15 words that reasonably identify the subject matter of the agency's intended action.)
Implementation of Financial Solvency Requirements for Oregon Health Plan Coordinated Care Organizations

Statutory Authority: ORS 410.032

Other Authority: None

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011 and 2012 SB 1580

Need for the Temporary Rule(s):

OARs 410-141-3340 through 3395 establish the financial requirements for entities to be Coordinated Care Organizations under Oregon's Integrated and Coordinated Health Care Delivery System. CCOs will improve health, increase the quality, reliability, availability and continuity of care, as well as to reduce costs. CCOs will provide medical assistance recipients with health care services that are supported by alternative payment methodologies that focus on prevention and that use patient-centered primary care homes, evidence-based practices and health information technology to improve health and reduce health disparities. The Authority needs to adopt these rules to establish transitional processes, the application process, application criteria, financial solvency requirements and the client grievance system.

Documents Relied Upon, and where they are available:

2011 HB 3650: <http://www.leg.state.or.us/11reg/measures/hb3600.dir/hb3650.en>

2012 SB 1580: <http://www.leg.state.or.us/12reg/measures/sb1500.dir/sb1580.en.html>

The Health Policy Board's *Coordinated Care Organizations Implementation Proposal*: www.health.oregon.gov

Justification of Temporary Rule(s):

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and low-income Oregonians eligible for medical assistance programs. The Authority needs to adopt these rules promptly to clarify requirements to apply to be a CCO and to clarify compliance criteria after becoming a CCO. Without these rules to guide their decisions, CCOs would be unable to apply.

Authorized Signer

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 945-2005

410-141-3340 General Financial Reporting and Financial Solvency Matters; Transition

(1) Each CCO must demonstrate that it is able to provide coordinated care services efficiently, effectively and economically. CCOs shall maintain sound financial management procedures, maintain protections against insolvency and generate periodic financial reports for the submission to the OHA or DCBS as provided in these rules.

(2) These rules of the Authority have been developed in consultation with the Department of Consumer and Business Services (DCBS) in accordance with Section 13(3) of 2011 House Bill 3650, 2011 Oregon Laws chapter 602, and Chapter 8 of the Coordinated Care Organizations Implementation Proposal (January 24, 2012) approved by the Section 1, 2012 Senate Bill 1580, 2012 Oregon Laws chapter 8.

(3) The Authority will collaborate with DCBS to review CCO financial reports and evaluate financial solvency. Except as provided in this rule, CCOs are not required to file financial reports with both OHA and DCBS; DCBS will be the recipient of any required financial reports from CCOs.

(4) Initial applicants for certification as a CCO will submit all their information to the Authority as part of their application process, and the Authority will transmit that information directly to DCBS for its review. The Authority will consult with DCBS about the financial reports submitted with the application, in making its determination about the qualifications of the applicant.

(5) Upon certification, CCOs will submit their financial reports established in these rules directly to DCBS.

(6) For purposes of these financial reporting and solvency rules, OHA authorizes DCBS to act in accordance with these rules. If quarterly reports or other evidence suggest that a CCO's financial solvency is in jeopardy, OHA and DCBS will act as necessary to protect the public interest.

(7) Where these rules specify that the DCBS will request or receive information or provide a response or take any action, DCBS shall have such authority under these rules to act on behalf of OHA. A response to DCBS under these rules shall be deemed a response to the OHA on the matter, consistent with the objective providing a single point of reporting by CCOs.

(8) OHA and DCBS may address any proper inquiries to any CCO, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply to such inquiries using the form of communication requested by OHA or DCBS. The reply shall be timely, accurate and complete, and, if OHA or DCBS so requires, verified by an officer of such person. A reply is subject to the provisions of ORS 731.260.

(9) For purposes of financial statement preparation, reporting and determination of financial solvency, CCOs shall use and are subject to Statutory Accounting Principles as set forth by the NAIC in its Accounting Practices and Procedures Manual, as updated by the NAIC, except as provided subsection (10) of this section.

(10) CCOs that have converted from an prepaid managed health care organization (MCO) to a CCO that have not historically used NAIC reporting procedures may receive an extension of time in order to develop the necessary reporting capacity. To exercise this option, the CCO shall request a temporary exception that describes a plan to begin using NAIC reporting requirements no later than effective with the financial statement due as of December 31, 2012, subject to OHA approval.

(11) CCOs receiving a temporary exception from NAIC reporting requirements under subsection (10) of this section shall use reporting procedures authorized for prepaid managed health care organizations (MCO) in accordance with MCO contract requirements.

(12) These rules incorporate specific required reporting forms or items in order to supply information related to financial responsibility and financial management. The Authority or DCBS will provide supplemental instructions about the use of these forms. The forms and instructions will be posted on the Authority's website at: <http://www.cco.health.oregon.gov>.

(13) The standards established in OAR 410-141-3345 through 410-141-3395 are intended to be consistent with, and may utilize procedures and standards common to insurers and to DCBS in its administration of financial reporting and solvency requirements. Any reference in these rules to the Insurance Code or to rules adopted by DCBS thereunder shall not be deemed to require a CCO to be an insurer, but is adopted and incorporated by reference as the Authority's standard. These rules implement and carry out the financial reporting and solvency criteria applicable to CCOs that contract with the Authority under ORS 414.651.

(14) "Premium" is defined as having the same meaning as "CCO payments" when the payment is made by the Authority to the CCO, for purposes of this rule. Premium also includes any other revenue received by the CCO for the provision of healthcare services over a defined period of time.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3345 Assets, Liabilities, Reserves

(1) In any determination of the financial condition of a CCO, there shall be allowed as assets only such assets as are owned by the CCO and which consist of:

- (a) Cash in the possession or control of the CCO, including the true balance of any deposit in a solvent bank or trust company;
- (b) Investments held in accordance with these rules, and due or accrued income items in connection therewith to the extent considered by DCBS to be collectible;
- (c) Due premiums, deferred premiums, installment premiums, and written obligations taken for premiums, to the extent allowed by DCBS;
- (d) The amount recoverable from a reinsurer if credit for reinsurance may be allowed to the CCO pursuant to OAR 410-141-3375;
- (e) Deposits or equities recoverable from any suspended banking institution, to the extent deemed by DCBS to be available for the payment of losses and claims;
- (f) Other assets considered by DCBS to be available for the payment of losses and claims, at values determined by DCBS.

(2) In addition to assets impliedly excluded by OAR 410-141-3345, the following expressly shall not be allowed as assets in any determination of the financial condition of a CCO:

- (a) Advances to officers, employees, agents and other persons on personal security only;
- (b) Stock of such CCO owned by it, or any material equity therein or loans secured thereby, or any material proportionate interest in such stock acquired or held through the ownership by such CCO of an interest in another firm, corporation or business unit;
- (c) Tangible personal property, except such property as the CCO is otherwise permitted to acquire and retain as an investment under these rules and which is deemed by DCBS to be available for the payment of losses and claims or which is otherwise expressly allowable, in whole or in part, as an asset;
- (d) The amount, if any, by which the book value of any investment as carried in the ledger assets of the CCO exceeds the value thereof as determined under these rules.

(3) In any determination of the financial condition of a CCO, liabilities to be charged against its assets shall be calculated in accordance with these rules and shall include:

- (a) The amount necessary to pay all of its unpaid losses and claims incurred on or prior to the date of the statement, whether reported or unreported to the CCO, together with the expenses of adjustment or settlement thereof;
- (b) For insurance other than specified in subsection (3)(c) of this section, the amount of reserves equal to the unearned portions of the gross premiums charged on policies in force, calculated in accordance with these rules;

(c) Reserves which place a sound value on its liabilities and which are not less than the reserves according to accepted actuarial standards consistently applied and based on actuarial assumptions relevant to contract provisions;

(d) Taxes, expenses and other obligations due or accrued at the date of the statement;

(e) Any additional reserves for asset valuation contingencies or loss contingencies required by these rules or considered to be necessary by DCBS for the protection of OHA or DCBS and the members of the CCO.

(4) If DCBS determines that a CCO's reserves, however calculated or estimated, are inadequate, OHA shall require the CCO to maintain reserves in such additional amount as is needed to make them adequate.

(5) Funds of a CCO may be invested in a bond, debenture, note, warrant, certificate or other evidence of indebtedness that are not investment grade as established by these rules, but the funds that a CCO may invest under this section shall not exceed 20 percent of the CCO's assets. For purposes of this rule CCOs shall be subject to the requirements of OAR 836-033-0105 through 836-033-0130.

(6) 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 10 percent of the CCO's assets, nor shall it invest more than 10 percent of its assets in a single parcel of real property or in any other single investment. This subsection does not apply to:

(a) Investments in, or loans upon, the security of the general obligations of a sovereign; or

(b) Investments by a CCO in all real or personal property used exclusively by such CCO to provide health services or in real property used primarily for its home office.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3350 Restricted Reserves, Capital and Surplus

(1) A CCO, unless exempt, shall establish a Restricted Reserve Account and maintain adequate funds in this account to meet OHA's Primary and Secondary Restricted Reserve requirements. Reserve funds are held for the purpose of making payments to Providers in the event of the CCO's insolvency.

(2) If a CCO holds a certificate of authority as an insurer or health care service contractor from DCBS, the CCO is not required to establish a Restricted Reserve Account or maintain Primary and Secondary Restricted Reserves as set forth by this [rule/Contract].

(3) Unless exempt under subsection (2) of this section, a CCO shall establish a Restricted Reserve Account with a third party financial institution for the purpose of holding the CCO's Primary and Secondary Restricted Reserve Funds. CCOs shall use the Model Depository Agreement to establish a Restricted Reserve Account.

(4) A Model Depository Agreement shall be used by the CCO to establish a Restricted Reserve Account. CCOs shall request the Model Depository Agreement form from OHA. CCOs shall submit the Model Depository Agreement to OHA at the time of application and the Model Depository Agreement shall remain in effect throughout the period of time that this Contract is in effect. The Model Depository Agreement cannot be changed without the Administrator or his/her designee's written authorization.

(5) The CCO shall not withdraw funds, change third party financial institutions, or change account numbers within the Restricted Reserve Account without the written consent of the Administrator of OHA or his/her designee.

(6) A CCO shall submit a copy of the Model Depository Agreement at the time of application for certification. If a CCO requests and receives written authorization from the Director of the Medical Assistance Programs of OHA or his/her designee to make a change to their existing Restricted Reserve Account, the CCO shall submit a Model Depository Agreement reflecting the changes to OHA within 15 days of the date of the change.

(7) The following instruments are considered eligible deposits for the purposes of OHA's Primary and Secondary Restricted Reserves:

(a) Cash;

(b) Certificates of Deposit; or

(c) Amply secured obligations of the United States, a state or a political subdivision thereof as determined by OHA;

(d) Additionally, the Primary Restricted Reserve amount may be satisfied by a Surety Bond provided it meets the requirements listed below:

(A) Such a bond is prepaid at the beginning of the Contract year for 18 months;

(B) Evidence of prepayment is provided to OHA;

(C) The Surety Bond is purchased by a surety bond company approved by the Oregon Insurance Division;

(D) The Surety Bond Agreement contains a clause stating the payment of the bond will be made to the third party entity holding the Restricted Reserve Account on behalf of the contracting company for deposit into the Restricted Reserve Account;

(E) The Surety Bond Agreement contains a clause that no changes to the Surety Bond Agreement will occur until approved by the OHA Administrator or his/her designee; and

(F) OHA approves the terms of the Surety Bond Agreement.

(8) A CCO's Primary and Secondary Reserve balances are determined by calculating the average monthly medical expense incurred. A CCO that has submitted quarterly financial statements under this Contract for the current quarter and the prior 3 quarters, the average monthly medical expense incurred is 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. A newly formed CCO will use an average of hospital and medical expense projected for the first 4 quarters of operation. Each quarter the average expense liability will be recalculated using historical quarter data available. A CCO shall deposit into the Restricted Reserve Account the amount required by sections (9) and (10).

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

(10) If a CCO's average monthly medical expense is greater than \$250,000, the CCO is required to deposit into the Restricted Reserve Account funds equaling 50 percent of the difference between the average monthly medical expense and the Primary Reserve balance of \$250,000.

(11) A CCO shall calculate its average monthly medical expense each quarter and adjust its Restricted Reserves accordingly.

(12) Except as provided in Working Capital, CCOs shall possess and thereafter maintain capital or surplus, or any combination thereof, equal to the greater of \$2.5 million or the amount required from the application of the risk-based capital standards in OAR 410-141-3355.

(13) A CCO that possesses the amount required in subsection (12) as of the effective date of this rule must thereafter maintain that capital and surplus.

(14) For purposes of subsection (15), "Net healthcare revenue" is defined as direct healthcare premium less the following: amounts paid for reinsurance ceded, HRA and GME payments (if any received by a CCO), and MCO taxes. Net healthcare revenue includes all healthcare related revenue and fee-for-service revenue adjusted for the change in unearned premium reserves.

(15) Except as provided in Working Capital, if a CCO does not possess the minimum capital and surplus as of the effective date of these rules as specified in section (12), the CCO shall possess and thereafter maintain capital or surplus, or any combination thereof as provided as follows:

(a) 5% of annualized total net healthcare revenue as of August 1, 2012. The CCO shall calculate its authorized control level and file the RBC report in accordance with these rules;

(b) The greater of 5% annualized total net healthcare revenue or its authorized control level risk-based capital as of January 1, 2014;

(c) The greater of 6% of annualized total net healthcare revenue or 125% of its authorized control level risk-based capital as of January 1, 2015;

(d) The greater of 7% of annualized total net healthcare revenue or 150% of its authorized control level risk-based capital as of January 1, 2016;

(e) The greater of 8% of annualized total net healthcare revenue or 175% of its authorized control level risk-based capital as of January 1, 2017;

(f) The greater of 9% of annualized total net healthcare revenue or 200% of its authorized control level risk-based capital as of January 1, 2018;

(g) The greater of 10% of annualized total net healthcare revenue or 200% of its authorized control level risk-based capital as of January 1, 2019.

(16) Insurers that possess a certificate of authority issued by DCBS are exempt from this standard and shall follow the standards set forth in the Insurance Code.

(17) A CCO may use a subordinated surplus note to meet its minimum capital and surplus requirement provided it meets the standards in Statements of Statutory Accounting Principles #41 and DCBS has given prior approval of the form and content of the surplus note.

(18) If a CCO formerly was an MCO that has converted to a CCO, the CCO will initially be subject to financial responsibility and solvency standards applicable to prepaid managed health care organizations formerly applicable to the MCO prior to converting to a CCO ("converting CCO" for purposes of this rule). Effective January 1, 2014, the converting CCO shall comply with the minimum capital and surplus set forth in paragraphs (12) – (15) of this section.

(19) The converting CCO shall calculate its authorized control level and file the RBC report in accordance with this rule.

(20) Funds of a CCO at least equal to its required capital and surplus shall be invested and kept invested as follows:

(a) In amply secured obligations of the United States, a state or a political subdivision of this state;

(b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in this state where:

(A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;

(B) The lien does not exceed 66-2/3 percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the installment payments are sufficient to repay the loan within a period of not more than 25 years; or

(C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Department of Veterans Affairs, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.

(c) In deposits, certificates of deposit, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations to the extent such investments are insured by the Federal Deposit Insurance Corporation.

(21) Investments made pursuant to this section shall be kept free of any lien or pledge.

(22) A CCO that is not a converting CCO shall possess \$500,000 working capital above the minimum capital and surplus requirement upon the contract date sufficient to pay initial expenses without causing the CCO to fall below the minimum capital and surplus required by these rules.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3355 Risk-based capital

(1) For the purpose of determining the reasonableness and adequacy of a CCO's capital and surplus, DCBS must consider at least the following factors, as applicable:

- (a) The size of the CCO, as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria;
- (b) The number of lives insured;
- (c) The extent of the geographical dispersion of the lives insured 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. DCBS 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 DCBS the investment so warrants;
- (j) The quality of the earnings of the CCO and the extent to which the reported earnings include extraordinary items.

(2) As used in OAR 410-141-3355 and these financial solvency and monitoring rules:

- (a) "NAIC" means the National Association of Insurance Commissioners;
- (b) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC;
- (c) "RBC level" means a CCO's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC or Mandatory Control Level RBC, defined as follows;
- (d) "Company Action Level RBC" means, with respect to any CCO, the product of 2.0 and its Authorized Control Level RBC;
- (e) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;
- (f) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;
- (g) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC;
- (h) "RBC plan" means a comprehensive financial plan containing the elements specified in subsection (8). If DCBS rejects the RBC plan and it is revised by the CCO with or without DCBS's recommendation, the plan shall be called the "revised RBC plan;"

(i) "RBC report" means the report required in OAR 410-141-3355 (3) to (6);

(j) "Total adjusted capital" means the sum of:

(A) A CCO's capital and surplus (i.e. net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under these rules; and

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

(3) A CCO shall, on or prior to each March 1 (the "filing date"), prepare and submit to DCBS a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is 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 the authorized control level calculated using its RBC report. However, its RBC report will be considered confidential under OAR 410-141-3385.

(4) A CCO's RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) 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.

(5) An excess of capital (i.e. net worth) over the amount produced by the risk-based capital requirements contained in OAR 410-141-3355(1) to (22) and the formulas, schedules and instructions referenced in OAR 410-141-3355 (1) to (22) is desirable in the business of a CCO. Accordingly, CCOs should seek to maintain capital above the RBC levels required by OAR 410-141-3355 (1) to (22). 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 410-141-3355 (1) to (22).

(6) If a CCO files an RBC report that in the judgment of DCBS is inaccurate, then DCBS 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."

(7) "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; or

(b) If a CCO has total adjusted capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions;

- (c) Notification by DCBS to the CCO of an adjusted RBC report that indicates an event in subsection (7)(a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 (21); or
- (d) If, pursuant to OAR 410-141-3355 (21), a CCO challenges an adjusted RBC report that indicates the event in subsection (7)(a) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.
- (8) In the event of a Company Action Level Event, the CCO shall prepare and submit to DCBS an RBC plan that shall:
- (a) Identify the conditions that contribute to the Company Action Level Event;
 - (b) Contain proposals of corrective actions that the CCO intends to take and that would be expected to result in the elimination of the Company Action Level Event;
 - (c) Provide projections of the CCO's financial results in the current year and at least the two succeeding years, both in the absence of 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. The projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant income, expense and benefit component;
 - (d) Identify the key assumptions impacting the CCO's projections and the sensitivity of the projections to the assumptions; and
 - (e) Identify 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, in each case.
- (9) The RBC plan shall be submitted:
- (a) Within 45 days of the Company Action Level Event; or
 - (b) If the CCO challenges an adjusted RBC report pursuant to OAR 410-141-3355 (21), within 45 days after notification to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.
- (10) Within 60 days after the submission by a CCO of an RBC plan to DCBS, DCBS shall notify the CCO whether the RBC plan shall be implemented or is, in the judgment of DCBS, unsatisfactory. If DCBS 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 DCBS. Upon notification from DCBS, the CCO shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by DCBS, and shall submit the revised RBC plan to DCBS:
- (a) Within 45 days after the notification from DCBS; or
 - (b) If the CCO challenges the notification from DCBS under OAR 410-141-3355 (21), within 45 days after a notification to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.
- (11) In the event of a notification by DCBS to a CCO that the CCO's RBC plan or revised RBC plan is unsatisfactory, DCBS may at DCBS's discretion, subject to the CCO's right to a hearing under OAR

410-141-3355 (21), specify in the notification that the notification constitutes a Regulatory Action Level Event.

(12) "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;

(b) Notification by DCBS to a CCO of an adjusted RBC report that indicates the event in subsection (12)(a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 (21);

(c) If, pursuant to OAR 410-141-3355(21), the CCO challenges an adjusted RBC report that indicates the event in subsection (12)(a) of this section, the notification by DCBS to the CCO that DCBS 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 DCBS and has cured the failure within ten days after the filing date;

(e) The failure of the CCO to submit an RBC plan to DCBS within the time period set forth in subsection (10) of this section;

(f) Notification by DCBS to the CCO that:

(A) The RBC plan or revised RBC plan submitted by the CCO is, in the judgment of DCBS, unsatisfactory; and

(B) Notification constitutes a Regulatory Action Level Event with respect to the CCO, if the CCO has not challenged the determination under OAR 410-141-3355(21).

(g) If, pursuant to OAR 410-141-3355 (21), the CCO challenges a determination by DCBS under subsection (12)(f) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the challenge;

(h) Notification by DCBS 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 DCBS has so stated in the notification, if the CCO has not challenged the determination under OAR 410-141-3355 (21); or

(i) If, pursuant to OAR 410-141-3355(21), the CCO challenges a determination by DCBS under subsection (12)(f) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the challenge.

(13) In the event of a Regulatory Action Level Event DCBS shall:

(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 DCBS deems necessary of the assets, liabilities and operations of the CCO including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as DCBS shall determine are required (a "corrective order").

(14) In determining corrective actions, DCBS may take into account factors DCBS deems relevant with respect to the CCO based upon DCBS'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 45 days after the occurrence of the Regulatory Action Level Event;

(b) If the CCO challenges an adjusted RBC report pursuant to OAR 410-141-3355 (21) and the challenge is not frivolous in the judgment of DCBS within 45 days after the notification to the CCO that DCBS has, after a hearing, rejected the CCO's challenge; or

(c) If the CCO challenges a revised RBC plan pursuant to OAR 410-141-3355 (21) and the challenge is not frivolous in the judgment of DCBS, within 45 days after the notification to the CCO that the care service CCO has, after a hearing, rejected the CCO's challenge.

(15) DCBS may retain actuaries and investment experts and other consultants as may be necessary in the judgment of DCBS 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 the 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 DCBS.

(16) "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;

(b) The notification by DCBS to the CCO of an adjusted RBC report that indicates the event in subsection (16)(a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 (21);

(c) If, pursuant to OAR 410-141-3355 (21), the CCO challenges an adjusted RBC report that indicates the event in subsection (16)(a) of this section, notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO's challenge;

(d) The failure of the CCO to respond, in a manner satisfactory to DCBS, to a corrective order (if the CCO has not challenged the corrective order under OAR 410-141-3355 (21)); or

(e) If the CCO has challenged a corrective order under OAR 410-141-3355 (21) and DCBS has, after a hearing, rejected the challenge or modified the corrective order, the failure of the CCO to respond, in a manner satisfactory to DCBS, to the corrective order subsequent to rejection or modification by DCBS.

(17) In the event of an Authorized Control Level Event with respect to a CCO, DCBS shall:

(a) Take such actions as are required under subsections (12) to (15) regarding a CCO with respect to which an Regulatory Action Level Event has occurred; or

(b) If DCBS deems it to be in the best interests of the members and creditors of the CCO and of the public, take such actions as are necessary to work with the Authority, which may terminate the

Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals.

(18) "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;

(b) Notification by DCBS to the CCO of an adjusted RBC report that indicates the event in subsection (18)(a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 (21); or

(c) If, pursuant to OAR 410-141-3355 (21), the CCO challenges an adjusted RBC report that indicates the event in subsection (18)(a) of this section, notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.

(19) In the event of a Mandatory Control Level Event, DCBS shall take such actions as are necessary to work with the Authority, which may terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals. Notwithstanding the provisions of this rule, DCBS may forego action for up to 90 days after the Mandatory Control Level Event if DCBS finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90 day period.

(20) 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 DCBS in connection with any event described in this rule. The CCO shall notify DCBS of its request for a hearing not later than the fifth day after notification by DCBS under any of the events described in this rule. Upon receipt of the CCO's request for a hearing, DCBS 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 rule relates are as follows:

(a) Notification to a CCO by DCBS of an adjusted RBC report;

(b) Notification to a CCO by DCBS 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 DCBS 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 DCBS of a corrective order with respect to the CCO.

(21) DCBS may keep a CCO's RBC plan or the results or report of any examination or analysis conducted under 410-141-3355 if DCBS determines that disclosure of such information would jeopardize the CCO's corrective action plan.

(22) OAR 410-141-3355 (1) to (22) shall not preclude or limit any other powers or duties of OHA or DCBS under other laws and rules.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3360 Financial Reporting

(1) Every CCO shall file with DCBS, on or before March 1 of each year, a financial statement for the year ending December 31 immediately preceding. The CCO shall also file with DCBS, on or before May 15, August 15, and November 15 of each year, quarterly financial statements for the quarter ending March 31, June 30 and September 30, respectively. All financial statements shall be completed in accordance with NAIC annual statement instructions. OHA or DCBS may also require additional filings as OHA or DCBS determines necessary.

(2) The financial statement filed by a CCO under subsection (1) of this section shall be verified by the oaths of the president and secretary of the CCO or, in their absence, by two other principal officers.

(3) Each CCO shall have an annual audit conducted by an independent certified public accountant and shall file an audited financial report annually with DCBS. The annual audited financial report shall be in the form required of insurers by the Insurance Code, specifically ORS 731.488 and Oregon Administrative Rules OAR 836-011-0100 through 836-011-0220.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3365 Solvency Monitoring/Corrective Actions

(1) DCBS shall examine every authorized CCO, including an audit of the financial affairs of such CCO, as often as DCBS determines an examination to be necessary but at least once each five years. An examination shall be conducted for the purpose of determining 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.

(2) When DCBS determines that an examination should be conducted, DCBS shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, each examiner shall consider the guidelines and procedures in the examiner handbook, or its successor publication, adopted by the National Association of Insurance Commissioners. DCBS may prescribe the examiner handbook or its successor publication and employ other guidelines and procedures that DCBS determines to be appropriate.

(3) When making an examination, DCBS may retain appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as needed. The cost of retaining such professionals and specialists shall be borne by the CCO that is the subject of the examination.

(4) At any time during the course of an examination, OHA or DCBS may take other action pursuant to these rules.

(5) Facts determined and conclusions made pursuant to an examination shall be presumptive evidence of the relevant facts and conclusions in any judicial or administrative action.

(6) Upon an examination or investigation DCBS may examine under oath all persons who may have material information regarding the property or business of the person being examined or investigated.

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

(8) With regard to an examination, the officers, directors and agents of the person being examined shall provide timely, convenient and free access at all reasonable hours at the offices of the person being examined to all books, records, accounts, papers, documents and computer and other recordings. The officers, directors, employees and agents of the person must facilitate the examination.

(9) Not later than the 60th day after completion of an examination, the examiner in charge of the examination shall submit to DCBS a full and true report of the examination, verified by the oath of the examiner. The report shall comprise only facts appearing upon the books, papers, records, accounts, documents or computer and other recordings of the person, its agents or other persons being examined or facts ascertained from testimony of individuals concerning the affairs of such person, together with such conclusions and recommendations as reasonably may be warranted from such facts.

(10) DCBS shall make a copy of the report submitted under subsection (9) of this section available to the person who is the subject of the examination and shall give the person an opportunity to review and comment on the report. DCBS may request additional information or meet with the person for the

purpose of resolving questions or obtaining additional information, and may direct the examiner to consider the additional information for inclusion in the report.

(11) Before DCBS files the examination report as a final examination report or makes the report or any matters relating thereto public, the person being examined shall have an opportunity for a hearing. A copy of the report must be mailed by certified mail to the person being examined. The person may request a hearing not later than the 30th day after the date on which the report was mailed. This subsection does not limit the authority of DCBS to disclose a preliminary or final examination report as otherwise provided in this section.

(12) DCBS shall consider comments presented at a hearing requested under subsection (11) of this section and may direct the examiner to consider the comments or direct that the comments be included in documentation relating to the report, although not as part of the report itself. DCBS may file the report as a final examination report at any time after consideration of the comments or at any time after the period for requesting a hearing has passed if a hearing is not requested.

(13) A report filed as a final examination report is subject to public inspection. DCBS, after filing any report, if DCBS considers it for the interest of the public to do so, may publish any report or the result of any examination as contained therein in one or more newspapers of the state without expense to the person examined.

(14) DCBS may disclose the content of an examination report that has not yet otherwise been disclosed or may disclose any of the materials described in this section as provided in OAR 410-141-3385.

(15) No cause of action may arise and no liability may be imposed against OHA or DCBS, an authorized representative of OHA or DCBS or any examiner appointed by OHA or DCBS for any statements made or conduct performed in good faith pursuant to an examination or investigation.

(16) No cause of action may arise and no liability may be imposed against any person for communicating or delivering information or data to OHA or DCBS or an authorized representative of OHA or DCBS or examiner pursuant to an examination or investigation if the communication or delivery was performed in good faith and without fraudulent intent or an intent to deceive.

(17) This section does not abrogate or modify in any way any common law or statutory privilege or immunity otherwise enjoyed by any person to which subsection (15) or (16) of this section applies.

(18) Any CCO or applicant for CCO certification examined under ORS 731.300 shall pay to DCBS the just and legitimate costs of the examination as determined by DCBS, including actual necessary transportation and traveling expenses.

(19) In addition to other powers of OHA or DCBS under these rules relating to the examination and investigation of CCOs, OHA or DCBS may also order any 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, OHA or DCBS may examine the affiliates to obtain such information.

(20) A CCO shall pay the costs of an examination of the CCO under this section as provided in subsection (18).

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3370 Hazardous Operations

- (1) Based upon standards established by these rules, if DCBS determines that the continued operation of a CCO is hazardous to patients or to the public in general, DCBS may order the CCO to take one or more of the following actions:
- (a) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
 - (b) Reduce, suspend or limit the volume of business being accepted or renewed;
 - (c) Reduce general insurance and commission expenses by methods specified by DCBS;
 - (d) Increase the capital and surplus of the CCO;
 - (e) Suspend or limit the declaration and payment of dividends by the CCO to its stockholders or members;
 - (f) Limit or withdraw from certain investments or discontinue certain investment practices to the extent DCBS determines such action to be necessary.
- (2) DCBS may exercise authority under subsection (1) of this section in addition to or instead of any other authority that OHA or DCBS may exercise under these rules.
- (3) DCBS may issue an order under this section with or without a hearing. A CCO subject to an order issued without a hearing may file a written request for a hearing to review the order. Such a request shall not stay the effect of the order. The hearing shall be held within 30 days after the filing of the request. DCBS shall complete the review within 30 days after the record for the hearing is closed, and shall discontinue the action taken under subsection (1) of this section if DCBS determines that none of the conditions giving rise to the action exists.
- (4) DCBS may consider the following standards, either singly or in combination of two or more, to determine whether the continued operation of any CCO transacting insurance in this state might be determined to be hazardous to OHA or DCBS, the members, its creditors or the general public:
- (a) Adverse findings reported in financial condition examination reports, audit reports, and actuarial opinions, reports or summaries;
 - (b) Whether the CCO has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the CCO, when considered in light of the assets held by the CCO with respect to such reserves and related actuarial items including but not limited the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
 - (c) The ability of an assuming reinsurer to perform and whether the CCO's reinsurance program provides sufficient protection for the CCO's remaining capital and surplus after taking into account the CCO's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
 - (d) Whether the CCO's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets and cash dividends

paid to shareholders, is greater than 50 percent of the CCO's remaining capital and surplus in excess of the minimum required;

(e) Whether the CCO's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the CCO's remaining surplus in excess of the minimum required;

(f) Whether a reinsurer or obligor, or any entity within the CCO's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations and which, in the opinion of DCBS may affect the solvency of the CCO;

(g) Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount that in the opinion of DCBS may affect the solvency of the CCO;

(h) Whether any "controlling person" of a CCO is delinquent in the transmitting to, or payment of, net premiums to the CCO;

(i) The age and collectability of receivables;

(j) Whether the management of a CCO, including officers, directors or any other person who directly or indirectly controls the operation of the CCO, fails to possess and demonstrate the competence, fitness and reputation determined by DCBS to be necessary to serve the CCO in such position;

(k) Whether management of a CCO has failed to respond to inquiries relating to the condition of the CCO or has furnished false and misleading information concerning an inquiry;

(l) Whether the CCO has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to DCBS;

(m) Whether management of a CCO either has filed a false or misleading sworn financial statement or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the CCO;

(n) Whether the CCO has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;

(o) Whether the CCO has experienced or will experience in the foreseeable future cash flow or liquidity problems, or both;

(p) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;

(q) Whether management persistently engages in material under reserving that results in adverse development;

(r) Whether transactions among affiliates, subsidiaries or controlling persons for which the CCO receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the CCO's ability to meet its outstanding obligations as they mature;

(s) Any other finding determined by DCBS to be hazardous to OHA or DCBS, the CCO's members, creditors or general public.

(5) For the purposes of making a determination of the financial condition of a CCO under OAR 836-013-0100 to 836-013-0120, DCBS may do one or more of the following:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the CCO's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the CCO will be called upon to meet the obligation undertaken within the next 12-month period.

(6) In addition to the requirements DCBS may impose under subsection (1) to (3) of this section, if DCBS determines that the continued operation of the CCO licensed to transact business in this state may be hazardous to DCBS, the members or the general public, DCBS may require the CCO to:

(a) File reports in a form acceptable to DCBS concerning the market value of the CCO's assets;

(b) In addition to regular annual statements, file interim financial reports on the form specified by DCBS;

(c) Correct corporate governance practice deficiencies, and adopt and utilize the governance practices acceptable to DCBS; or

(d) Provide a business plan to DCBS demonstrating corrective action the CCO will take to improve its financial condition.

(7) No domestic CCO shall reduce its combined capital and surplus by partial distribution of its assets, by payment in the form of a dividend to stockholders or otherwise, below:

(a) Its required capitalization; or

(b) A greater amount which DCBS, by rule or by order after hearing upon the motion of OHA or DCBS or the petition of any interested person, finds necessary to avoid injury or prejudice to the interest of OHA or DCBS, members or creditors.

(8) Whenever DCBS determines from any showing or statement made to DCBS or from any examination made by DCBS that the assets of a domestic CCO are less than its liabilities plus required capitalization, OHA may proceed immediately to terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals, or OHA 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.

(9) If the amount of any such impairment is not made good within the time prescribed by OHA under subsections (1) to (3) of this section, OHA shall proceed immediately to terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3375 Disallowance of Transactions

(1) DCBS shall disallow as an asset or as a credit against liabilities any reinsurance found by DCBS after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding CCO's financial condition as of the date of any financial statement of the CCO. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the CCO's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception.

(2) DCBS shall disallow as an asset any deposit, funds or other assets of the CCO found by DCBS after a hearing thereon:

(a) Not to be in good faith the property of the CCO;

(b) Not freely subject to withdrawal or liquidation by the CCO at any time for the payment or discharge of claims or other obligations arising under its policies; and

(c) To be resulting from arrangements made principally for the purpose of deception as to the CCO's financial condition as of the date of any financial statement of the CCO.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3380 Holding Company

(1) Every CCO that is a member of a holding company system shall be subject to ORS 732.551 to 732.572, except 732.554. For purposes of this rule, "holding company system" as it applies to a CCO means two or more affiliated persons, one or more of which is a CCO, and includes a financial holding company as referred to in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102). Such CCO shall also be subject to OAR 836-027-0001 through 836-027-0050 to the extent those rules relate to the filing of a registration statement (Form B filing).

(2) A transaction within a holding company system to which a CCO subject to registration is a party is subject to the following standards:

(a) The terms must be fair and reasonable;

(b) Charges or fees for services performed must be reasonable;

(c) Expenses incurred and payment received must be allocated to the CCO in conformity with customary insurance accounting practices consistently applied;

(d) The books, accounts and records of each party to the transaction must be so maintained as to disclose clearly and accurately the nature and details of the transaction, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties;

(e) The combined capital and surplus of the CCO following any transaction with an affiliate or any shareholder dividend must be reasonable in relation to the CCO's outstanding liabilities and adequate to its financial needs.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3385 Transparency

(1) Pursuant to ORS 414.018(3)(g), interactions between OHA or DCBS and CCOs shall be done in a transparent and public manner. Without limitation of the preceding sentence, OHA or DCBS shall publicly disclose all information pertaining to CCOs of a character that DCBS publicly discloses pertaining to insurers or health care service CCOs.

(2) Certain documents pertaining to a CCO's financial condition may be considered confidential, when so described in these rules. Financial Analysis Solvency Tools and analytical reports developed by the National Association of Insurance Commissioners are confidential. In addition, any work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to DCBS or any other person in the course of an examination or in the course of analysis by DCBS of the financial condition or market conduct of a CCO may be considered confidential, if the CCO, OHA, or DCBS specifically designates the confidential portions and cites an exemption from public disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. If DCBS, in its sole discretion, determines that the cited exemption does not apply or disclosure is necessary to protect the public interest, DCBS may make available work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to DCBS or any other person in the course of the examination.

(3) The DCBS may use a confidential document, material or other information in administering these rules and in furthering a regulatory or legal action brought as a part of the OHA or DCBS's duties.

(4) In order to assist in the performance of DCBS's duties, DCBS may:

(a) Authorize sharing a confidential document, material or other information as appropriate among the administrative divisions and staff offices of the OHA or DCBS for the purpose of administering and enforcing the statutes within the authority of OHA or DCBS, in order to enable the administrative divisions and staff offices to carry out the functions and responsibilities of the administrative divisions and staff offices;

(b) Share a document, material or other information, including a confidential document, material or other information that is subject to subsection (3) of this section or that is otherwise exempt from disclosure under ORS 192.501 or 192.502, with other state, federal, foreign and international regulatory and law enforcement agencies and with the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners, if the recipient agrees to maintain the confidentiality of the document, material or other information;

(c) Receive a document, material or other information, including an otherwise confidential document, material or other information, from state, federal, foreign and international regulatory and law enforcement agencies and from the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners. As provided in this section, the DCBS shall maintain the confidentiality of documents, materials or other information received upon notice or with an understanding that the document, material or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(5) Disclosing a document, material or other information to the OHA or DCBS under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

(6) OHA or DCBS may release a final, adjudicated action, including a suspension or revocation of a CCO's certification, if the action is otherwise open to public inspection, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or affiliates or subsidiaries of the National Association of Insurance Commissioners.

(7) All information, documents and copies thereof obtained by or disclosed to DCBS or any other person in the course of an examination or investigation made pursuant to OAR 410-141-3365 (19) are subject to the provisions of ORS 731.312.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3390 Insolvency of CCO

(1) In the event of a finding of impairment by DCBS or of a termination of certification or of the Contract with a CCO, members of the CCO shall be offered replacement coverage as provided in this section.

(2) All other CCOs and prepaid health plans in operating in the service area of the insolvent CCO shall offer members of the insolvent CCO enrollment, as ordered by OHA.

(3) If the other insurers and CCOs lack sufficient health care delivery resources to assure that health services will be available and accessible to all of the members of the insolvent CCO, OHA shall equitably allocate the members among all CCOs that operate within a portion of the service area of the insolvent CCO. OHA shall take into consideration the health care delivery resources of each CCO or prepaid health plan.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3395 Hold harmless provisions

- (1) For the purpose of this section only, and only in the event of a finding of impairment by DCBS or of a termination of certification or of the Contract with a CCO, any covered health care service furnished within the state by a provider to a member of a CCO shall be considered to have been furnished pursuant to a contract between the provider and the CCO with whom the member was enrolled when the services were furnished.
- (2) Each contract between a CCO and a provider of health services shall provide that if the CCO fails to pay for covered health services as set forth in the contract, the member is not liable to the provider for any amounts owed by the CCO.
- (3) If the contract between the contracting provider and the CCO has not been reduced to writing or fails to contain the provisions required by subsection (2) of this section, the member is not liable to the contracting provider for any amounts owed by the CCO.
- (4) No contracting provider or agent, trustee or assignee of the contracting provider may maintain a civil action against a member to collect any amounts owed by the CCO for which the member is not liable to the contracting provider under this section.
- (5) Nothing in this section impairs the right of a provider to charge, collect from, attempt to collect from or maintain a civil action against a member for any of the following:
 - (a) Deductible, copayment or coinsurance amounts;
 - (b) Health services not covered by the CCO;
 - (c) Health services rendered after the termination of the contract between the CCO and the provider, unless the health services were rendered during the confinement in an inpatient facility and the confinement began prior to the date of termination or unless the provider has assumed post-termination treatment obligations under the contract.
- (6) Nothing in this section prohibits a member from seeking noncovered health services from a provider and accepting financial responsibility for these services, subject to requirements of the Authority about how those arrangements may be made under appropriate waiver.
- (7) No CCO shall limit the right of a provider of health services to contract with the patient for payment of services not within the scope of the coverage offered by the CCO, subject to requirements of the Authority about how those arrangements may be made under appropriate waiver.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580