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Implementation of State and Federal Health Insurance Reform Measures
HB 2240

Background: In March 2010, President Obama signed major health care reform legislation into law. The Affordable Care Act (ACA) makes significant changes to health insurance regulation, such as prohibiting preexisting condition exclusions, requiring coverage of essential health benefits at specific actuarial value levels, guaranteeing access to coverage regardless of health condition, and specifying health insurance rating factors. States that fail to enforce these and other provisions of the ACA are subject to enforcement of these provisions by the federal government. States that fail to enforce the ACA also risk significant fines for their domestic health insurers.

In general, the ACA preempts Oregon laws that conflict with the federal provisions in a way that is less protective for consumers. The 2011 Legislature, in passing Senate Bill 89, eliminated inconsistencies with the "early" reforms of the ACA – those that took effect prior to 2014.

Concept: In an approach consistent with SB 89, HB 2240 implements the provisions of the ACA that take effect in 2014 by eliminating impermissible inconsistencies within the Insurance Code. These provisions include the following:

- Authority to define essential health benefits according to federal law and guidance.
- Definition of "pre-existing condition" in accordance with federal law; insurers cannot exclude or deny coverage to Oregonians based on a pre-existing condition.
- Repeal of portability statutes and requirements in light of the ACA's guaranteed issue provisions and a requirement that all portability plans be discontinued by December 31, 2013.
- Authority for the department to regulate multistate plans by including multistate plans in the definition of "transacting insurance." This ensures that these plans are subject to the same regulations as plans sold only in Oregon and makes certain that all Oregonians enjoy the same protection under the Insurance Code.
- Authority for the department to establish by rule a risk adjustment mechanism.
- Changes to Oregon statutes relating to small group and individual rating factors to conform to the requirements of the ACA. Under the ACA, rating factors for the individual and small group markets are limited to composition (individual or family), geographic rating areas, age and tobacco use.
- Requirements for insurers to pool all individual (exchange and outside) market risks (excluding grandfathered) and all small group (exchange and outside) market risks (excluding grandfathered).
- Changes to the statutory definition of small group from 2 to 50 to 1 to 50 in 2013 with a delayed provision that will change the definition to 1 to 100 in 2016.
- Modification of the Oregon clinical trials mandate to be consistent with the ACA mandate.

- A provision that allows carriers to ask a person to respond to health-related questions but only for the purpose of managing the individual's health care and not to deny coverage.
- A definition of individual health benefit plan consistent with federal law.
- Authority to streamline insurer notice requirements to ensure compliance with ACA and encourage administrative efficiency.
- Repeal of the small employer health insurance basic plan requirements in light of the ACA's essential health benefit and actuarial value requirements.
- Authority for the department to determine requirements for student health benefit plans to ensure they are consistent with the ACA.
- Changes to the definition of "bona fide association" so it is consistent with federal law.
- Repeal of the authority to provide funding by rule for a children's' reinsurance program and transfer of authority to the Oregon Health Authority (OHA) to wind down the existing program.
- Changes necessary to operate a health insurance exchange in Oregon, including amending grace periods; granting authority by rule to impose and standardize open and special enrollment periods.
- Provision that address network adequacy requirements, first by compliance with federal requirements, while a study is conducted by OHA to develop recommendations that DCBS can consider in establishing network adequacy requirements by rule after 2016.
- Abolishing the Office of Private Health Partnership and the Family Health Insurance Assistance Program.

If the department receives additional clarification of federal regulation, the department will propose additional changes to this concept through the amendment process.

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