



Memorandum

Date: November 26, 2014

To: All Interested Stakeholders

From: Oregon Insurance Division

Re: Individual Health Benefit Plan Premium Assistance Programs and Third-Party Assistance

Purpose:

This memorandum addresses issues related to the payment of individual health benefit plan premiums and member cost sharing by persons or entities other than (1) those enumerated in 45 CFR 156.1250 and (2) the member or the member's employer, family, or fiduciary. The purpose of this memorandum is to urge issuers of individual health benefit plans (issuers) to accept premium and cost-sharing assistance (premium assistance) when such assistance meets the criteria outlined herein and to caution issuers and premium assistance programs against engaging in unfair discrimination or violation of ORS 743.024 or 743.027.

Concerns:

Many premium assistance programs provide a means for consumers with financial need to obtain health insurance coverage, and some consumers may rely heavily on the assistance provided by these programs for their coverage. Concerns about some premium assistance programs include steering and adverse selection (the use of agents or other parties to steer patients with high medical needs to one or more specific issuers), and provider conflict of interest (the payment of premiums by a medical provider or group of providers to enrich the provider whether through the setting of prices, the conditioning of care, the provision of medical services of questionable need or benefit, or other means). Such practices may negatively impact the insurance markets and the cost of insurance, as well as the health and well being of consumers.

The Oregon Insurance Division has additional concerns regarding the following: (1) Premium assistance programs that base payment criteria on standards that constitute unfair discrimination, particularly with respect to the severity of an individual's health condition, or base payment on a specific course of treatment; (2) Issuers that accept third-party payments in a manner that is unfairly discriminatory, particularly when health status is a factor in the issuer's decision to accept or reject such payments; and (3) Premium assistance programs that lack transparency in such a way that creates an appearance that a contractual relationship for insurance coverage exists between the program, provider, or payer and the issuer instead of the issuer and the insured. Programs that lack transparency in this way potentially violate the provisions of the Oregon Insurance Code related to insurable interests, ORS 743.024 and ORS 743.027. The

Division will take action when appropriate to enforce the provisions of ORS 743.024 and 743.027 and to protect Oregon citizens from unfair discrimination.

Criteria:

All issuers are urged to accept premium assistance from third-parties when assistance meets all of the following criteria:

- It is not unfairly discriminatory;
- It is provided by a bona fide non-profit organization that the IRS has determined to be tax-exempt under 501(c)(3) and that is registered as a charity with the Oregon Department of Justice if required to do so;
- It is provided based on the financial need of the member;
- It is provided for the individual's entire policy year;
- It is provided in a manner that:
 - is transparent to both consumers and issuers by a premium assistance program that demonstrates to consumers and issuers satisfaction of the criteria enumerated here; and
 - clearly informs a consumer that the contract of insurance is between the issuer and the consumer and that the consumer may have rights and responsibilities under that contract.
- It is not made directly to the issuer by a provider of medical services, products, or drugs; and
- It is not conditioned on a member receiving a specific branded medical product or drug, a specific course of treatment, or care from a particular provider or group of providers or at a particular facility.

Even though assistance may not meet the criteria outlined above, Oregon law does not prohibit issuers from accepting premium assistance from non-employer third parties including those from (1) well-established premium assistance programs operated by bona fide tax-exempt, non-profit charitable organizations in accordance with applicable law, and (2) other legitimate tax-exempt, non-profit charitable organizations that provide premium or cost-share assistance on less than a policy-year basis when such assistance is at least in part need-based.