



Report to the Legislative Assembly 2023 Annual Rulemaking Report

January 2024



TO: Oregon Legislative Assembly

FROM: Andrew Stolfi, Director

RE: DCBS 2023 Rulemaking Report

House Bill 4106 (2016 legislative session) asks state agencies to annually report on permanent and temporary rulemaking actions. In 2023, the Department of Consumer and Business Services adopted, amended or repealed a total of 93 rules. The department processed six temporary rulemakings that adopted, amended or suspended a total of 46 rules. The following is a synopsis of the department’s temporary rulemaking activities.

Description of Rulemaking	Oregon Administrative Rules and Action
BCD 2-2023 : Extending the fire hardening grant program to June 2025 and including 2021 wildfire survivors	Amend: OAR 918-001-5000, OAR 918-001-5010, OAR 918-001-5020, OAR 918-001-5030, OAR 918-001-5040, OAR 918-001-5050, OAR 918-001-5060, OAR 918-001-5070
FSR 3-2023 : Adoption of Temporary Rules for Data Brokers Registry HB 2052 (2023)	Adopt: OAR 441-840-0010, OAR 441-840-0020, OAR 441-840-0030, OAR 441-840-0040, OAR 441-840-0050, OAR 441-840-0060, OAR 441-840-0070, OAR 441-840-0080, OAR 441-840-0090
ID 48-2023 : Adoption of temporary rules to allow for copayment on primary care visits	Adopt: OAR 836-053-0027
ID 54-2023 : Rules for disclosure and care obligations for recommendations or sales of annuities to prospective purchasers	Amend: OAR 836-051-0905, OAR 836-080-0170, OAR 36-080-0172, OAR 836-080-0178, OAR 836-080-0183, OAR 836-080-0185, OAR 836-080-0190, OAR 836-080-0193 Suspend: OAR 836-080-0175, OAR 836-080-0180, 836-080-0188

Description of Rulemaking	Oregon Administrative Rules and Action
OSHA 1-2023 : Suspended Rules Addressing the COVID-19 Public Health Emergency and Amended Work Clothing Rules	Amend: OAR 437-002-0134, OAR 437-003-0134, OAR 437-004-1030 Suspend: OAR 437-001-0744, OAR 437-004-1115
WCD 6-2023 : Adoption of temporary changes to OAR 436-009, new medical billing codes for 2024	Amend: OAR 436-009-0004, OAR 436-009-0010, OAR 436-009-0012, OAR 436-009-0023, OAR 436-009-0040, OAR 436-009-0080

An electronic version of this report is available at <http://dcbspage.org/FFGZD>,

For questions, please contact:

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Department of Consumer and Business Services, Building Codes Division

Annual Report Regarding Temporary Rules (ORS 183.403)

Report contains rules filed during calendar year January 01, 2023 through December 31, 2023

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	20
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	8
Suspended	0

BCD 2-2023	Filed: 08/07/2023 11:40 AM
918-001-5000	Amend
918-001-5010	Amend
918-001-5020	Amend
918-001-5030	Amend
918-001-5040	Amend
918-001-5050	Amend
918-001-5060	Amend
918-001-5070	Amend

Statement of Need

The 2021 Oregon Legislature directed the Department of Consumer and Business Services through the Building Codes Division to create and administer a grant program to benefit owners of residences or businesses that were damaged in the 2020 wildfires. The grant program would incentivize design choices during rebuilding that would help mitigate future damage to the buildings by wildfire. The 2023 legislature extended the program to the end of the 2023-25 biennium and making survivors of the 2021 wildfires eligible for the program. These temporary rules make minor amendments to the rules establishing the program to incorporate these changes to the population eligible for the program and the new program expiration date of June 30, 2025.

Justification

Without temporary rules there would be a significant gap between the current expiration date of the program in rule and the date that the new permanent rule amendments can be filed. The temporary rules will allow continuity of service until permanent rule amendments are adopted.

Department of Consumer and Business Services, Director's Office

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2023 through December 31, 2023

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	2
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Consumer and Business Services, Finance and Securities Regulation

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2023 through December 31, 2023

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	3
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	9
Amended	0
Suspended	0

FSR 3-2023

Filed: 11/29/2023 10:35 AM

441-840-0010	Adopt
441-840-0020	Adopt
441-840-0030	Adopt
441-840-0040	Adopt
441-840-0050	Adopt
441-840-0060	Adopt
441-840-0070	Adopt
441-840-0080	Adopt
441-840-0090	Adopt

Statement of Need

HB 2052 was introduced by Attorney General Ellen Rosenblum and was developed in consultation with the Attorney General's Consumer Privacy Task Force to address the dangers data brokers pose to Oregonians' safety and privacy, and to provide Oregon consumers with information about data broker practices in the state. HB 2052 defines a data broker as someone who collects, sells, or licenses brokered personal data to another person. HB 2052 requires a data broker to register with the Department of Consumer and Business Services (DCBS) prior to collecting and selling or licensing brokered personal data to another person.

The purpose of this rulemaking is to effectuate a program to prevent data brokers from collecting, selling, or licensing personal data of Oregonians without registration. The registration program will provide Oregonians with important information about what data brokers might have their data, and how they can opt-out of the sale or request deletion of their data.

With this rulemaking, DCBS will provide consumers with a transparent, understandable and easy-to-use way to access information about data brokers operating in Oregon and will provide consumers with the information they need to opt-out of the collection and brokerage of their data.

Justification

The registration program for the data brokers registry created by House Bill 2052 (2023), takes effect on January 1, 2024, and requires extensive rules and stakeholder input to fully implement. Given the short timeline, the department needs to set up temporary provisions for website development and registration commencement to allow for registration of applicants to begin December 1, 2023, for 2024. The final rules will contain finalized language related to registration process, information required at registration, parameters for filing timely and adequately with the director, and the consequences related to noncompliance with the program.

Department of Consumer and Business Services, Insurance Regulation

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2023 through December 31, 2023

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	5
Amended	8
Repealed	1

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	1
Amended	8
Suspended	3

ID 48-2023

Filed: 07/28/2023 3:12 PM

836-053-0027

Adopt

Statement of Need

Oregon law (section 6, chapter 37, Oregon Laws 2022) prior to the passage of House Bill 3008 (2023) required three primary care visits with a \$0 copayment. Providing three primary care visits with no cost-sharing as required by this law would have the effect, for many health benefit plans, of providing "substantially all" medical primary care visits without cost-sharing, as defined by federal mental health parity regulations. [45 CFR § 146.136] As a result, to comply with these regulations, all behavioral health office visits would also be required to have no cost-sharing. Such a benefit change would be an unintended consequence of chapter 37, Oregon Laws 2022, and would result in increased premium rates for Oregon consumers. Adoption of this rule prevents that outcome.

Justification

Insurance carriers are in the process of submitting rates and plan benefits to DCBS for approval. These documents must be approved and submitted to Health and Human Services by August 16, 2023. The passage of HB 3008 requires modification of these documents and with the federal timeline, there is not sufficient time to conduct permanent rulemaking.

ID 54-2023

Filed: 12/20/2023 4:16 PM

836-051-0905

Amend

836-080-0170

Amend

836-080-0172

Amend

836-080-0175

Suspend

836-080-0178

Amend

836-080-0180

Suspend

836-080-0183

Amend

836-080-0185

Amend

836-080-0188	Suspend
836-080-0190	Amend
836-080-0193	Amend

Statement of Need

2023 Senate Bill 536 (SB 536) was adopted during the 2023 Legislative Session and establishes disclosure and care obligations for sales of annuities to prospective purchasers. SB 536 closely aligns with the National Association of Insurance Commissioners (NAIC) updated Model Law #275 - Suitability in Annuity Transactions Model Regulation. In 2020, the NAIC revised Model Law #275 language by incorporating consumer disclosure and care obligations for annuity sales, a higher level of consumer care compared to the previous product suitability standard. Under these standards, insurance producers, insurers, and securities-brokers must meet specific care obligation in recommending products to consumers, taking into account the circumstances known at the time an annuity product recommendation is made.

More than 10 years ago, the Department of Consumer and Business Services (DCBS) adopted the earlier version of the NAIC's Model Law #275 via rulemaking (OAR 836-080-0170 to -0193), establishing a product suitability standard.

Regarding OAR 836-080-0170 to -0193,

SB 536 duplicates nearly all of the language currently in rules and adds or revises language where necessary to establish the disclosure and care obligations. In effect, SB 536 supersedes existing rule language pertaining to annuity product suitability. Additionally, rulemaking is required to effectuate certain components of the bill, including adopting forms that are the same or similar to NAIC Model Law #275:

- Insurance Agent (Producer) Disclosure for Annuities,
- Consumer Refusal to Provide Information, and
- Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

Justification

Rulemaking associated with 2023 Senate Bill 536 must take effect on January 1, 2024. Passage of 2023 Senate Bill 536 creates new disclosure and care obligations for producers, agents, and insurers for recommendations and sales of individual annuities, requiring modification or repeal of numerous existing administrative rules rendered obsolete by the bill. Additionally, new forms detailing producer, agent, and insurer consumer care and disclosure requirements were created as Exhibits 1-3 and Exhibits 1A-3A to the draft rules. Based upon comments and input received from the Rulemaking Advisory Committee (RAC), DCBS staff made several edits to the draft rules and exhibit documents and initiated an internal review process. Due to the length and complexity of the rulemaking, the proposed rule text and exhibit forms were not finalized in time for DCBS to file permanent rulemaking effective January 1. DCBS staff will continue to engage the RAC members to initiate a permanent rulemaking process in early 2024. The permanent rules and Exhibit 1-3 forms will contain finalized language governing disclosure and care obligations for producers, agents, and insurers when recommending and selling individual annuities.

Department of Consumer and Business Services, Prescription Drug Affordability Board

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2023 through December 31, 2023

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	0
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Consumer and Business Services, Oregon Occupational Safety and Health Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

Report contains rules filed during calendar year January 01, 2023 through December 31, 2023

Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	2
Amended	19
Repealed	2

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	3
Suspended	2

OSHA 1-2023 Filed: 03/30/2023 10:46 AM

437-001-0744	Suspend
437-002-0134	Amend
437-003-0134	Amend
437-004-1030	Amend
437-004-1115	Suspend

Statement of Need

Due to a sustained decline in COVID-19 cases and hospitalizations, Oregon OSHA is suspending OAR 437-001-0744 Rule Addressing COVID-19 Workplace Risks and 437-004-1115 COVID-19 Workplace Requirements for Employer-Provided Labor Housing. These changes are in alignment with the Oregon Health Authority's (OHA) announcement on March 3, 2023 that workers in healthcare settings will no longer be required to wear masks starting April 3, 2023. The decision by OHA to end statewide health care mask requirements aligns with decisions in other states, including Washington.

As of March 9, 2023, OHA announced downward trending test positivity rates for COVID-19, and stated that, "Indicators of COVID-19, RSV and influenza spread have significantly decreased in the last several months and continue to decline."

There is a need for Oregon OSHA to align its requirements with the latest data and guidance from OHA. As a result, Oregon OSHA is suspending both of its COVID-19 rules through temporary rulemaking.

In recognition that some workers may still wish to wear a facial covering due to the ongoing risks from COVID-19, OSHA is temporarily amending Division 2, 3, and 4 work clothing rules to give employees the right to do so if they so choose.

Justification

If Oregon OSHA does not pursue suspension of COVID-19 workplace rules, these rules will not align with Oregon Health Authority's direction removing mask requirements in health care settings on April 3, 2023. If Oregon OSHA does not make these changes, businesses and organizations will see conflicting guidance between agencies, which could cause

confusion given the current status of the COVID-19 pandemic and ending of the federal COVID-19 public health emergency announced for May 11, 2023. By suspending the rules to align with the Oregon Health Authority, Oregon OSHA will prevent conflicting guidance and stakeholder confusion on which rules must be currently followed.

Department of Consumer and Business Services, Workers' Compensation Board

Administrative Rules Annual Report

HB 4106 (2016 Session)

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Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	0
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	0
Suspended	0

Department of Consumer and Business Services, Workers' Compensation Division

Administrative Rules Annual Report

HB 4106 (2016 Session)

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Rules Adopted, Amended, or Repealed [ORS 183.335(2) and (3)]

Adopted	0
Amended	27
Repealed	0

Temporary Rules Adopted, Amended, or Suspended [ORS 183.335(5)]

Adopted	0
Amended	12
Suspended	0

WCD 5-2023 Filed: 12/26/2023 11:51 AM

- 436-009-0004 Amend
- 436-009-0010 Amend
- 436-009-0012 Amend
- 436-009-0023 Amend
- 436-009-0040 Amend
- 436-009-0080 Amend

Statement of Need

Temporary rules are needed to allow health care providers and workers' compensation insurers to use 2024 medical billing codes on and after Jan. 1, 2024.

Justification

Failure to act promptly will result in serious prejudice to the public interest or the interest of the parties concerned. Delay in adoption of up-to-date codes creates procedural friction in workers' compensation billing and payment. Adoption of 2024 codes will keep workers' compensation billing codes consistent with industry standards.

The agency finds that issuing temporary rules under ORS 183.335(5) is appropriate because it will avert administrative burdens to health care providers, workers' compensation insurers, and self-insured employers we would expect with delayed adoption of 2024 codes. Without these temporary rule changes: providers and payers would be required to use only 2023 codes until the agency can formally adopt new codes effective April 1, 2024 (projected); workers' compensation bills would have to be processed differently than bills for private health insurance, Medicare, etc.; providers using new codes would be subject to bill rejection; and insurers submitting data containing new codes to the agency would be subject to civil penalties. In addition, workers' access to quality health care is jeopardized if health care providers perceive workers' compensation care as too burdensome.

The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because updated billing codes are not published by the Centers for Medicare and Medicaid Services and others in time for Oregon to adopt changes using standard (permanent) rulemaking procedures.

WCD 6-2023	Filed: 12/26/2023 3:31 PM
436-009-0004	Amend
436-009-0010	Amend
436-009-0012	Amend
436-009-0023	Amend
436-009-0040	Amend
436-009-0080	Amend

Statement of Need

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The agency finds that issuing permanent rules under ORS 183.335(2) and (3) is not appropriate because updated billing codes are not published by the Centers for Medicare and Medicaid Services and others in time for Oregon to adopt changes using standard (permanent) rulemaking procedures.