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Oregon Department of Consumer and Business Services
Division of Financial Regulation, Bulletin No. DFR 2023-1

TO: All Entities Transacting Health Insurance in Oregon; All Insurance Producers Selling Health Benefit Plan Policies

DATE: May 11, 2023

RE: End of federal COVID-19 public health emergency

Purpose

Bulletin No. DFR 2023-1:

- Clarifies the division's expectations regarding coverage of COVID-19 vaccines, testing, treatment, and telehealth.
- Provides information about the end of the Oregon Health Plan's continuous Medicaid enrollment period.
- Clarifies the division's expectations regarding Medicare Supplement Insurance Guaranteed Issue protections for people whose Medicaid is terminated due to the end of the Medicaid continuous coverage requirement.

COVID testing, vaccines, treatment, and telehealth

Testing

When the federal public health emergency (PHE) ends, federal requirements for health insurance issuers to cover over-the-counter and laboratory-based COVID-19 PCR and antigen tests will end. The division expects health benefit plans will continue to cover medically necessary COVID tests. However, tests administered after May 11, 2023, may be subject to cost sharing, network requirements, and medical management. These restrictions may vary by plan, and consumers are encouraged to contact their health insurer for the most up-to-date information. Insurers are encouraged to continue covering COVID tests without cost sharing or medical management, and the division expects that insurers will notify enrollees of any changes to their coverage as a result of the end of the PHE.

Vaccines

Section 3203 of the federal Coronavirus Aid, Relief, and Economic Security (CARES) Act requires health insurers to cover, without cost sharing, any COVID vaccines that have been recommended by the Centers for Disease Control and Prevention's (CDC) Advisory Committee on Immunization Practices (ACIP). Interim final rules issued in November 2020 expanded this requirement to include coverage of COVID vaccines administered by out-of-network providers. While the CARES Act requirements for coverage of qualifying coronavirus preventive services will continue after the PHE ends, the interim regulations do not.

Nonetheless, in January 2021, Oregon's public health director issued a declaration under ORS 743A.264[1] that requires health benefit plans to provide coverage of COVID vaccines without cost sharing, network limitations, prior authorization, or other prohibited limitations. DFR Bulletin 2021-1[2] provides guidance on coverage requirements under the declaration. Until such time as the public health declaration is rescinded by the public health director, health benefit plans that are subject to the Oregon Insurance Code are expected to continue to cover COVID vaccines without cost sharing, even when administered by an out-of-network provider. The division encourages health plan members to contact their health plan and primary care provider to coordinate and receive in-network care.

Treatment

While Oregon took no specific legislative or regulatory action to require insurers to provide coverage of COVID treatments, the division expects that health insurance plans will continue to cover medically necessary procedures, items, and services for the treatment of COVID in accordance with the terms and conditions of the policy.

Telehealth

In 2021, the Oregon Legislature enacted House Bill 2508, which established expanded telehealth coverage for commercial health insurance and the Oregon Health Plan (OHP). Specifically, HB 2508 amended ORS 743A.058 to require health benefit plans to cover any medically necessary health service covered by the plan (including physical, oral, and behavioral health) as long as the service can be safely and effectively provided via telemedicine in accordance with privacy laws. The bill increased the number and type of telemedicine technologies that must be reimbursed and also requires insurers to reimburse telehealth services at the same level as in-person services. HB 2508 remains in effect and its requirements are not tied to the PHE; therefore, no changes to insurance coverage of telehealth are expected.

It should be noted that, while insurance coverage will remain in place, some federal or state actions designed to encourage telehealth during the pandemic will expire with the end of the PHE. The expiration of these flexibilities may indirectly affect some enrollees'

[1] https://www.oregon.gov/oha/ERD/Documents/COVID_19_ORS_743A_264_declaration%2001202021.pdf
[2] https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2021-01.pdf

ability to receive certain services via telehealth. For example, people seeking prescriptions for controlled substances will need to be seen in person, telehealth visits will need to be conducted via Health Insurance Portability and Accountability Act (HIPAA)-compliant technology, and some state licensing allowances for remote telehealth will expire.

End of continuous Medicaid enrollment period

Background

In March 2020, at the beginning of the COVID pandemic, Congress passed the Family First Coronavirus Recovery Act (FFCRA). The FFCRA provided an enhanced federal match rate to state Medicaid programs and directed those programs to not terminate Medicaid members' coverage. Normally, state Medicaid programs must redetermine member eligibility at least annually, with enrollees who no longer meet eligibility criteria being disenrolled on an ongoing basis. Under the FFCRA, however, all people who were determined eligible for Medicaid during the PHE were allowed to remain enrolled on a continuous basis until the end of the PHE.

In Oregon, Medicaid members receive coverage through OHP. During the PHE, in accordance with the FFCRA, Oregon has not terminated coverage of members, except in narrow circumstances identified in the FFCRA. Oregon has continued to perform annual redeterminations, but only to keep member contact information and income data current, not to determine eligibility. The effect is that OHP enrollment has risen considerably, from about 1 million members before the pandemic to about 1.4 million members today (900,000 cases or family groups).

On Dec. 29, 2022, the Consolidated Appropriations Act of 2023 (CAA) was signed into law. The CAA includes a provision directing state Medicaid agencies to resume normal eligibility determinations no later than April 1, 2023, as outlined by the Centers for Medicare and Medicaid Services. In accordance with these requirements, the Oregon Health Authority (OHA) will determine OHP member eligibility using a phased approach from April 2023 to January 2024. Over this period, it is estimated that up to 300,000 Oregonians currently enrolled in OHP could be found ineligible to participate.

Disenrollment timing will be based on criteria established by OHA, the state agency responsible for OHP and the Oregon Health Insurance Marketplace (Marketplace).

OHA and the Oregon Department of Human Services (ODHS) are working together to prepare the upcoming changes to Medicaid with the goal of preserving benefits for individuals and families. Medicaid redeterminations and other benefit information to assist partners is available at https://www.oregon.gov/oha/PHE/Pages/partners.aspx.

Key points about OHP renewal process

- All 1.4 million people in Oregon who have health coverage through OHP will receive renewal notices between April 2023 and January 2024. OHA will guide members through the process and tell them what they need to do to keep benefits.

- For those losing OHP benefits, there is a Marketplace Special Enrollment Period (SEP) from April 1, 2023, through June 30, 2024. Members who are no longer eligible for benefits will be referred to the Marketplace to consider other affordable coverage options. OHP will send participant information directly to the Marketplace, which will communicate information and help with a Marketplace plan enrollment.

    - A Special Enrollment Period also exists for OHP members who lose coverage and have access to employer-based coverage. The employee must request enrollment in the employer plan within 60 days of their OHP termination date.

    - CMS issued a final rule in October 2022 to provide a Special Enrollment Period for Medicare enrollment if Medicaid coverage is terminated on or after Jan. 1, 2023. For more information visit https://www.cms.gov/newsroom/fact-sheets/implementing-certain-provisions-consolidated-appropriations-act-2021-and-other-revisions-medicare-2.

Licensed agents, brokers, issuers, and other interested parties are encouraged to help individuals and families understand and facilitate enrollment in Marketplace plans or employer-based coverage. Additionally, OHA and Marketplace community partners across the state will be helping with enrollments.

Medicare Supplement insurance guaranteed issue rights reminders

The division reminds insurers writing Medicare Supplement policies to guarantee the issue of any Medicare Supplement insurance policies available in this state to eligible people who:

- Enrolled under a state Medicaid plan as described in Title XIX of the Social Security Act that provides health benefits that supplement the benefits under Medicare, and the plan terminates or the plan ceases to provide all such supplemental health benefits to the individual (OAR 836-052-0142(2)(a)); and

    - Apply for a Medicare Supplement insurance policy during the 63 days following the later of their notice of termination or disenrollment from Medicaid or their date of termination from Medicaid; as well as

    - Submit evidence of the date of termination or disenrollment from Medicaid with the application for a Medicare Supplement policy.

Oregon Medicare Supplement rules prohibit insurers from using a preexisting condition to deny or condition the issuance or effectiveness of a Medicare Supplement policy that is offered and is available for issuance to new enrollees; or discriminating in the pricing of a Medicare Supplement policy because of health status, claims experience, receipt of health care, or medical condition. OAR 836-052-0142(1)(b).

Requests for additional information or other inquiries regarding this Bulletin may be directed to DFR.Bulletin@dcbs.oregon.gov

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May 11, 2023
Date