

OFFICE OF THE SECRETARY OF STATE
DENNIS RICHARDSON
SECRETARY OF STATE

LESLIE CUMMINGS
DEPUTY SECRETARY OF STATE



ARCHIVES DIVISION
MARY BETH HERKERT
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED
02/27/2018 3:18 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendment to the 2019 standard silver health benefit plan

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 03/29/2018 5:00 PM

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative economic impact of the rule on business.

CONTACT: Karen Winkel
503-947-7694
karen.j.winkel@oregon.gov

350 Winter St NE
Salem, OR 97301

Filed By:
Karen Winkel
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 03/22/2018

TIME: 2:30 PM

OFFICER: Ethan Baldwin

ADDRESS: Labor & Industries Building

350 Winter St NE

Conference Room F

Salem, OR 97301

NEED FOR THE RULE(S):

Each year, the Department of Health and Human Services is required by law to update the actuarial value (AV) calculator for material changes that may include costs, plan designs, populations, developments in the function and operation of the AV calculator and other actuarially relevant factors. DCBS inputs our existing standard bronze and silver plan benefits into the newly released calculator to see if the AV for each of those plans is still within the proper range for their metal level. As a result of changes made to the federal AV calculator for 2019, the standard bronze plan AV was still in compliance, while the standard silver plan AV was too high, resulting in a need to update the silver plan benefits. Failure to update the standard silver plan would result in DCBS requiring carriers to submit plans that are illegal with respect to federal law.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Draft rules are available from the division's rules coordinator, located at 350 Winter St. NE, Rm. 410, Salem, OR 97301 and are available on the division's Web site at <http://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>. For other documents:

The AV Calculator and Changes to the Standard Silver Plan Advisory Committee Meeting and Proposed Options

FISCAL AND ECONOMIC IMPACT:

This amended rule updates the Oregon standard silver plan for plan years beginning on and after January 1, 2019. The amended rule does not contain new requirements, but rather adjusts certain benefits within plans. There will likely be a fiscal impact to consumers who purchased the standard silver plan in 2018 and purchase the same plan again 2019 as the newly selected plan will have a reduction in certain benefits. However, there is no data available to demonstrate what that impact would be.

The fiscal impacts to insurers will be a potential, though quite miniscule, increase in administrative costs resulting from insurers needing to update plan language. Because insurers are already required to adjust plan language to conform to current requirements, the fiscal impact is not solely resulting from adoption of these rules. Inclusion of clearer language providing clear guidance to insurers may help to counter any increased administrative costs.

The plan selected by the rulemaking advisory committee is an updated version of the current standard silver plan.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) Based on available information, these proposed rules would have no financial impact on state agencies or local governments, because they create no new mandates for state or local government entities.

The proposed rules apply to commercial payers only and would require minimal administrative effort to comply with the requirements of proposed rules. The insurers would already be required to adjust plan language to conform to current requirements, so this cost is not solely resulting from adoption of these rules. Inclusion of clearer language providing guidance to insurers may help to counter any increased administrative cost.

Also, because members of the public may or may not choose a standard silver plan, we are unable to quantify any potential fiscal impact on individual members of the public may experience in price differentials between plans.

(2)(a) It is unknown exactly how many small businesses would be impacted by this rule. According to Oregon Employment Department statistics from 2016, approximately 96% of Oregon businesses employed 50 or fewer individuals. But not all small business purchase insurance on the small-group market, so without information on each employer's insurance purchases, the department cannot quantify any potential fiscal impact these proposed rules have on those businesses.

The most direct impact of these proposed rules would be on health insurers, and no health insurers in Oregon employ 50 or fewer employees.

(2)(b) The proposed rule effectively results in no change and would not require additional resource for compliance for small businesses.

(2)(c) Based on available information, the department does not anticipate insurers acquiring equipment and supplies, or hiring or contracting for staff to comply with these proposed rules. The insurers would be required to adjust plan language to conform to current requirements, so this cost is not solely resulting from adoption of these rules. Inclusion of clearer language providing clear guidance to insurers may help to counter any increased administrative cost.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Members of organizations representing small businesses, including producers and providers served on the rulemaking advisory committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 836-053-0013

RULE SUMMARY: Amending for updating of standard silver health benefit plan.

CHANGES TO RULE:

836-053-0013

Oregon Standard Bronze and Silver Health Benefit Plans for ~~Plan Years Beginning on and after January 1, 2018~~

- (1) This rule applies to plan years beginning on and after January 1, 2017.
- (2) As used in this rule, "coverage" includes medically necessary benefits, services, prescription drugs and medical devices. "Coverage" does not include coinsurance, copayments, deductibles, other cost sharing, provider networks, out-of-network coverage, or administrative functions related to the provision of coverage, such as eligibility and medical necessity determinations.
- (3) For purposes of coverage required under this rule:
 - (a) "Inpatient" includes but is not limited to:
 - (A) Inpatient surgery;
 - (B) Intensive care unit, neonatal intensive care unit, maternity and skilled nursing facility services; and
 - (C) Mental health and substance abuse treatment.
 - (b) "Outpatient" includes but is not limited to services received from ambulatory surgery centers and physician and anesthesia services and benefits when applicable.
 - (c) A reference to a specific version of a code or manual, including but not limited to references to ICD-10, CPT, Diagnostic and Statistical Manual of Mental Disorders, (DSM-5), Fifth Edition; place of service and diagnosis includes a reference to a code with equivalent coverage under the most recent version of the code or manual.
- (4) When offering a plan required under ORS 743B.130, an insurer must:
 - (a) Use the following naming convention: "[Name of Insurer] Standard [Bronze/HSA/Silver] Plan." The name of insurer may be shortened to an easily identifiable acronym that is commonly used by the insurer in consumer facing publications.
 - (b) Include a service area or network identifier in the plan name if the plan is not offered on a statewide basis with a statewide network.
- (5) Coverage required under ORS 743B.130 must be provided in accordance with the requirements of sections (6) to (11) of this rule.

- (6) Coverage must be provided in a manner consistent with the requirements of:¶¶
- (a) 45 CFR 156, except that actuarial substitution of coverage within an essential health benefits category is prohibited;¶¶
 - (b) OAR 836-053-1404, 836-053-1405, 836-053-1407 and 836-053-1408; and¶¶
 - (c) The federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, 29 U.S.C. 1185a and implementing regulations at 45 CFR 146.136 and 147.160;¶¶
 - (7) Coverage must provide essential health benefits as defined in OAR 836-053-0012.¶¶
 - (8) Except when a specific benefit exclusion applies, or a claim fails to satisfy the insurer's definition of medical necessity or fails to meet other issuer requirements the following coverage must be provided:¶¶
 - (a) Ambulatory services;¶¶
 - (b) Emergency services;¶¶
 - (c) Hospitalization services;¶¶
 - (d) Maternity and newborn services;¶¶
 - (e) Rehabilitation and habilitation services including:¶¶
 - (A) Professional physical therapy services;¶¶
 - (B) Professional occupational therapy;¶¶
 - (C) Physical therapy performed by an occupational therapist; and¶¶
 - (D) Professional speech therapy;¶¶
 - (f) Laboratory services;¶¶
 - (g) All grade A and B United States Preventive Services Task Force preventive services, Bright Futures recommended medical screenings for children, Institute of Medicine recommended women's guidelines, and Advisory Committee on Immunization Practices recommended immunizations for children coverage must be provided without cost share; and¶¶
 - (h)(A) Prescription drug coverage at the greater of:¶¶
 - (i) At least one drug in every United States Pharmacopeia (USP) category and class as the prescription drug coverage of the plan described in OAR 836-053-0012(2); or¶¶
 - (ii) The same number of prescription drugs in each category and class as the prescription drug coverage of the plan described in OAR 836-053-0012(2).¶¶
 - (B) Insurers must submit the formulary drug list for review and approval. The formulary drug list must comply with filing requirements posted on the Department of Consumer and Business Services website.¶¶
 - (C) For plan years beginning on or after January 1, 2017 insurers must use a pharmacy and therapeutics committee that complies with the standards set forth in 45 CFR 156.122.¶¶
 - (9) Copays and coinsurance for coverage required under ORS 743B.130 must comply with the following:¶¶
 - (a) Non-specialist copays apply to physical therapy, speech therapy, occupational therapy and vision services when these services are provided in connection with an office visit.¶¶
 - (b) Subject to the federal Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act, 29 U.S.C. 1185a, specialist copays apply to specialty providers including mental health and substance abuse providers, if and when such providers act in a specialist capacity as determined under the terms of the health benefit plan.¶¶
 - (c) Coinsurance for emergency room coverage must be waived if a patient is admitted, at which time the inpatient coinsurance applies.¶¶
 - (10) Deductibles for coverage required under ORS 743B.130 must comply with the following:¶¶
 - (a) For a bronze plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a bronze plan set forth in the cost-sharing matrix as adopted in Exhibit 1 to this rule, ~~beginning with plan year 2018.~~¶¶
 - (b) For a silver plan, in accordance with the coinsurance, copayment and deductible amounts and coverage requirements for a silver plan set forth in the cost-sharing matrix as adopted in Exhibit 2 to this rule, ~~beginning with plan year 2018.~~¶¶
 - (c) The individual deductible applies to all enrollees, and the family deductible applies when multiple family

members incur claims.¶

(11) Dollar limits for coverage required under ORS 743B.130 must comply with the following:¶

(a) Annual dollar limits must be converted to a non-dollar actuarial equivalent.¶

(b) Lifetime dollar limits must be converted to a non-dollar actuarial equivalent.

Statutory/Other Authority: ORS 731.244, 45 CFR 156.135(g)

Statutes/Other Implemented: ORS 743B.130