



Report to Agency on Public Comment Period

Date: February 24, 2017
To: Department of Consumer and Business Services
From: Gayle Woods, Senior Policy Advisor
Subject: Oregon Division of Financial Regulation Proposed Bulletin on Contraceptive Extended Dispensing Mandate Administration DFR 2017-1

Comment Period Start: December 16, 2016
Comment Period End: January 16, 2017

Background

House Bill 3343 was enacted by the 2015 Legislative Assembly and codified in ORS 743A.066. The Division of Financial Regulation (DFR), through communication with stakeholders learned of possible confusion among health carriers and their vendors regarding implementation of this law resulting in noncompliance with the new dispensing requirements.

Bulletin DFR 2017-1 was developed to provide clarification of DFR expectations for insurers and third parties providing administrative or other functions when administering contraceptive coverage in accordance with the Oregon contraceptive reimbursement requirements found in ORS 743A.066.

Summary of Written Comments

Moda Health acknowledged that many contraceptives are covered with no member cost-sharing under federal requirements. Moda also stated there are some contraceptives that are not covered in full. For those, Moda's interpretation of ORS 743A.066 allows for application of cost-sharing provisions (copays, coinsurance, deductible) that apply equally to other prescription drugs. For these contraceptives, Moda determined that the statute permits application of the cost-sharing that would be due based on a 12-month supply for a contraceptive refill covered under the law.

Moda provided this example:

If plan participants pay \$10 for a 30 day supply for a non-contraceptive drug or for a contraceptive to which cost-sharing applies, the consumer would pay \$120 in copays for a year of coverage for that drug.

Planned Parenthood recommended the examples of activities that prevent use of extended dispensing found on page two of the bulletin also clarify that these examples represent violations of ORS 743A.066.

Planned Parenthood also recommended the list of noncompliant activities include denial of 12-month supply and no-cost coverage if the prescription is written for a 30 or 60 or 90 days supply, but with automatic refills up to 12-months.

Providence Health Plan commented on inclusion of this statement in the list of non-compliant activities:

“Imposing supply limits based on a pharmacy’s network tier placement so that prescriptions filled in one pharmacy network tier allow for three- and twelve-month dispensing while pharmacies in other network tiers do not.”

Providence objects to this statement because Providence believes it does not take into account the subsection that permits subjecting contraception coverage to “provisions of the program, plan or policy that apply equally to other prescription drugs covered by the program, plan or policy that apply equally to other prescription drugs covered by the program, plan or policy, including but not limited to required copayments, deductibles and coinsurance.” ORS 743A.066(2)(a).

Providence noted that the passage of HB 3343 during the 2015 Legislative Session modified an existing contraceptive mandate by adding the provision requiring health plans to reimburse a health care provider or dispensing entity for 12-month fills.

Providence explained that one type of permissible, generally applicable provision of a pharmacy benefit program is for a carrier to limit prescription fills of greater than a specified duration to a preferred tier of the pharmacy network. Providence stated this is a legitimate cost-control approach for a pharmacy plan or program that is not designed to single-out contraception for negative treatment. They indicated preferred pharmacies will agree to accept lower reimbursement than non-preferred pharmacies precisely because it allows them to fill supplies of drugs greater than the specified period, which in turn makes them pharmacies-of-choice to consumers. Providence stated that the resulting cost-savings accrue to broader efforts to curb premium growth. Providence also commented that ORS 743A.066 does not require health plans to reimburse an out-of-network pharmacy if there is no out of network pharmacy benefit, that that this law should not be interpreted to override provisions of the plan related to supply-limits for lower tier pharmacies by requiring 12-month reimbursement to any and all network pharmacies when the tier-supply restriction applies equally to all prescription drugs.

Discussion

The division did not revise the bulletin to reflect Moda’s determination of how copays should be applied when contraceptives are subject to cost-sharing. ORS 743A.066 states that health benefit plans must reimburse a health care provider or dispensing entity for a dispensing of contraceptives intended to last for a three-month period for the first dispensing of the contraceptive and for a twelve-month period for subsequent dispensings of the same contraceptive. If the prescription is written for *a* dispensing intended to last for three months or *a* dispensing of contraceptives intended to last twelve months, then the enrollee should be

responsible for one copay for the dispensing, regardless of the number of months covered by that dispensing. Oregon Board of Pharmacy administrative rules allow refill quantities to be combined into a single filling if the prescription is not for a controlled substance or psychotherapeutic drug and the prescriber is notified of the change. A consumer eligible to receive a 12-month supply should be able to obtain it for one copay if the prescription is written for an initial amount with subsequent refills covering the 12-month period if the entire 12-month supply is provided in a single filling.

The division revised the bulletin's language that presents examples of actions that would be considered noncompliant with ORS 743A.066 as suggested by comments received from Planned Parenthood. The division disagrees with Planned Parenthood's determination that prescribed contraceptives subject to cost-sharing should be covered for a twelve-month period for just one copay regardless of the number of dispensings for the reason outlined in the discussion of Moda's recommendation shown above.

The division finds that inclusion of the statement, "Imposing supply limits based on a pharmacy's network tier placement so that prescriptions filled in one pharmacy network tier allow for three- and twelve-month dispensing while pharmacies in other network tiers do not," in the list of noncompliant actions is appropriate. The dispensing requirements in ORS 743A.066(2)(b) are in addition to the provisions stated in ORS 743A.066(2)(a) that allow the contraceptive benefits to be subject to provisions of the program, plan or policy that apply equally to other prescription drugs. Cost containment strategies that don't allow for equitable coverage of the required dispensings are noncompliant with this law.

Summary

Having considered fully all written and oral submissions, I recommend the following:

Adopt proposed bulletin as amended in accordance with the Planned Parenthood recommendation.

Gayle Woods
Senior Policy Advisor