

Oregon Division of Financial Regulation Bulletin No. DFR 2018-08

TO: All Entities Transacting Health Insurance in Oregon

DATE: November 6, 2018

RE: Implementation of Hearing Aid and Hearing Assistive Technology Legislation,
2018 House Bill 4104

Purpose

The purpose of this bulletin is to clarify the Department of Consumer and Business Services (DCBS), Division of Financial Regulation's (DFR) supervisory expectations with respect to Oregon's hearing aid and hearing assistive technology coverage requirements as recently amended by the Legislative Assembly.

Authority

- 2018 OR Laws CH 9 (Enrolled House Bill 4104)
- ORS 743A.140 and ORS 743A.141
- ORS 731.097 and OAR 836-053-0012

Background

Oregon House Bill 4104 (HB 4104) from the 2018 legislative session amends Oregon's existing coverage requirements for hearing aids and cochlear implants as found at ORS 743A.140 and ORS 743A.141, respectively. Prior to the passage of HB 4104, these statutes required, among other things, that health policies providing coverage of cochlear implants also cover bilateral cochlear implants. They also required coverage of one hearing aid per ear if medically necessary and under a limit of \$4,000 every 48 months.

HB 4104 amended these statutes to now require:

- Health benefit plans to cover bilateral cochlear implants regardless of whether they would otherwise cover (single) cochlear implants. ORS 743A.140
- Coverage of programming, reprogramming, and repair and replacement parts for cochlear implants. ORS 743A.140
- Coverage of ear molds and replacement ear molds, batteries, necessary diagnostic treatment services, bone conduction sound processors, and hearing assistive technology systems. ORS 743A.141

- The coverage limit on “hearing aids” (including bone conduction sound processors and hearing assistive technology systems) was amended to require coverage once every 36 months without a dollar limit. ORS 743A.141
- Health benefit plans are also required to provide new notices of coverage limitations and educational materials related to hearing loss to enrollees and their parents or legal guardians.

HB 4104 becomes effective on January 1, 2019. As noted above, the purpose of this Bulletin is to clarify the DFR’s expectations regarding health insurers’ obligations under the new law.

Guidance for insurers and other regulated entities

Applicability and timing

Although the new law becomes effective January 1, 2019, section 3 of HB 4104 limits its applicability as of that date in some respects. Section 3 of HB 4104 states that:

The amendments to ORS 743A.140 and 743A.141 by sections 1 and 2 of this 2018 Act apply to health benefit plans for which the Department of Consumer and Business Services has not approved rates as of the effective date of this 2018 Act.

Pursuant to section 3, the new coverage requirements take effect after January 1, 2019, in one of several ways. First, for all health plans for which DFR does not approve rates, such as large group plans, the new coverage requirements take effect for all plans issued or renewed on or after January 1, 2019. For individual and small group plans that file rates for approval with DFR, the new coverage requirements take effect for all plans issued or renewed following DFR approval of rates for that plan after January 1, 2019.

Age limits in plans subject to Essential Health Benefits (EHB)

HB 4104 includes age limits for its coverage requirements that, pursuant to federal law, may not be applied in some health plans.

Non-grandfathered individual and small group health benefit plans must comply with state and federal requirements for Essential Health Benefits (EHBs). This includes a federal prohibition on discrimination as set forth in 45 CFR § 156.125. In compliance with federal guidance for interpreting this prohibition, ORS 731.097, as implemented by OAR 836-053-0012(3)(a)(C), prohibits Oregon carriers from imposing age-based limits on hearing aid coverage in individual and small group health benefit plans subject to EHB requirements. This is the case even if those limits would otherwise be allowed under Oregon law.

The limits in HB 4104 are similar to age limits that DFR has previously determined to be disallowed for plans subject to EHB requirements. Consistent with this approach, DFR finds that the age limits in HB 4104 cannot be applied to non-grandfathered individual and small group health benefit plans. Plans not subject to EHB requirements, including large group plans, may apply the age limits in HB 4104 as written.

Notice requirement

Section 2(6) of HB 4104 states that

Upon receiving a claim for reimbursement for the diagnosis of hearing loss, an insurer shall provide notice of the coverage limits to the enrollee or to the parent or legal guardian of the enrollee.

Pursuant to this section, carriers must provide a coverage limits notice for cochlear implants, hearing aids and related services when an enrollee receives a first diagnosis indicating that these devices or services are medically necessary. Providing coverage limit information in regularly scheduled communications is helpful but not sufficient to meet this requirement.

However, this provision does not necessarily require an entirely separate notice. Rather, the notice may be included as a part of or along with an Explanation of Benefits or other member communications following a diagnosis of hearing loss, provided that the notice is sent to all enrollees who have received a diagnosis (or their parents or legal guardians).

A confidential communication request provided to a carrier by an enrollee per ORS 743B.555 supersedes the carrier's obligation to provide a notice of the coverage limits to the parents or legal guardians of that enrollee.

Educational materials requirement

Section 2(6) of HB 4104 states that

With respect to enrollees with hearing loss who are younger than 19 years of age, an insurer shall provide educational materials to the parent or legal guardian of the enrollee and shall have a process in place to ensure that appropriate technologies are available.

Insurers may meet this requirement by providing parents and legal guardians with links to relevant online educational resources. These materials must be actively provided to parents and legal guardians of enrollees with hearing loss and it is not sufficient for carriers to post educational materials online without taking further action. However, this provision does not necessarily require an entirely separate member communication and can be included in regularly scheduled communications with members, provided that it is sent to all parents and legal guardians of enrollees with hearing loss who are younger than 19 years of age.

These materials must provide information relevant to patients with hearing loss, and may include (but are not limited to) information about covered services and providers available through the patient's plan, treatment options and evidence-based practices, and community resources.

Since the educational materials provision is not a coverage requirement, the age limitation is not discriminatory under ORS 731.097, and can be applied in all health benefit plans.

A confidential communication request provided to a carrier by an enrollee per ORS 743B.555 supersedes the carrier's obligation to provide educational materials to the parents or legal guardians of that enrollee.

Nothing in this bulletin shall be construed to limit the DFR's authority under the Oregon Insurance Code or its ability to continue enforcing the laws of the State of Oregon.

This bulletin takes effect immediately. It remains in effect until amended by a further Bulletin of the Division of Financial Regulation.



Andrew Stolfi
Administrator, Division of Financial Regulation
Insurance Commissioner

11/6/18

Date



Report to Agency on Public Comment Period

Date: November 6, 2018

To: Department of Consumer and Business Services

From: Jesse Ellis O'Brien, Senior Policy Analyst

Subject: Oregon Division of Financial Regulation Proposed Bulletin on Implementation of Hearing Aid and Hearing Assistive Technology Legislation, 2018 House Bill 4104

Comment Period Start: October 2, 2018
Comment Period End: October 31, 2018

Background

Oregon House Bill 4104 (HB 4104) from the 2018 legislative session amends Oregon's existing coverage requirements for hearing aids and cochlear implants as found at ORS 743A.140 and ORS 743A.141, respectively. HB 4104 has been enrolled at 2018 Or Laws ch 9.

Bulletin DFR 2018-08 was developed to provide clarification of the Division of Financial Regulation's (DFR) supervisory expectations with respect to Oregon's hearing aid and hearing assistive technology coverage requirements as recently amended by the Legislative Assembly.

Summary of Written Comments

Cambia Health Solutions submitted comment to the effect that DFR's draft bulletin 2018-08 misinterpreted the applicability of HB 4104's age limits for coverage of hearing aids and hearing assistive technology by disallowing age limits for plans subject to federal and state Essential Health Benefits (EHB) requirements. Cambia asserts that HB 4104's age limits need not be interpreted as in conflict with federal EHB requirements because the legislature intended the law to mandate pediatric benefits that are not EHBs, and that therefore could be limited by age.

PacificSource Health Plans requested clarification that HB 4104's requirements for carriers to provide coverage limit notifications and educational materials to the parents or legal guardians of enrollees with hearing loss does not apply in situations where the enrollee has made a request for confidential communications as specified by ORS 743B.555.

Discussion

The Division did not revise the draft bulletin to reflect Cambia's request that the age limits in HB 4104 be permitted for health plans subject to EHB requirements.

45 CFR § 156.125 provides that “an issuer does not provide EHB if its benefit design, or the implementation of its benefit design, discriminates based on an individual's age, expected length of life, present or predicted disability, degree of medical dependency, quality of life, or other health conditions.” The division previously adopted OAR 836-053-0012(3)(a)(C), which requires the removal of age limits on hearing aids when establishing the state’s EHB benchmark plan.

Taken together, these regulations prohibit Oregon carriers from imposing age-based limits on hearing aid coverage in individual and small group health benefit plans subject to EHB requirements. This is the case even if those limits would otherwise be allowed under Oregon law. Permitting age limits to be applied to the expanded coverage for hearing aids and hearing assistive technology required by HB 4104 would be inconsistent with the Division’s approach to implementing these statutory requirements.

The Division revised the bulletin to provide the clarification requested by PacificSource.

Summary

Having considered fully all written and oral submissions, I recommend the bulletin be adopted with the following modifications:

1. On page 2 of the draft bulletin, add a sentence to clarify that the age limits in HB 4104 can be applied as written in large group plans and other plans not subject to EHB requirements.
2. On page 3 of the draft bulletin, clarify that the coverage limits notice requirement applies upon the first diagnosis indicating that hearing aids, cochlear implants or other hearing loss-related services are medically necessary.
3. On page 3 of the draft bulletin, clarify that an enrollee’s confidential communications request per ORS 743B.555 supersedes a carrier’s obligation to provide the required notices to the parents or legal guardians of that enrollee.
4. On page 4 of the draft bulletin, clarify that an enrollee’s confidential communications request per ORS 743B.555 supersedes a carrier’s obligation to provide the required educational materials to the parents or legal guardians of that enrollee.

Jesse Ellis O’Brien
Senior Policy Analyst