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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED
10/27/2020 5:23 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Additions to Essential Health Benefits for Plan Years Beginning on or after January 1, 2022

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/30/2020 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 Street 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: 11/23/2020

TIME: 2:30 PM

OFFICER: Michael Schopf

ADDRESS: Labor & Industries Building

350 Winter Street NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Conference call only due to COVID-19.

Dial-in: 877-336-1831

Access code: 9971342#

In case of technical issues, call
Karen Winkel at 971-345-1108.

NEED FOR THE RULE(S):

These rules make additions to Oregon's Essential Health Benefits (EHB) for plan years 2022 and beyond. The changes are designed to help reduce the prevalence of opioid-use disorder in Oregon by ensuring coverage of medically necessary treatments for opioid use disorder and increasing access to non-opioid pain relief.

Under the rule, non-grandfathered individual and small employer health benefit plans issued or renewed on or after January 1, 2022 will be required to cover the following items and services as part of Oregon's EHB:

- Up to 20 visits per year for spinal manipulation;
- Up to 12 visits per year for acupuncture;
- Coverage of Buprenorphine or brand equivalent products for medication-assisted treatment of opioid use disorder without prior authorization, dispensing limits, fail first policies, or lifetime limits; and
- At least one intranasal opioid reversal agent for initial prescriptions of opioids with dosages of 50 morphine milligram equivalents (MME) or more.

Under the federal Patient Protection and Affordable Care Act, insurance plans sold to individuals and small employers must cover a set of EHB as defined by each state. Oregon has incorporated these requirements into state insurance law, and ORS 731.098 gives the Department of Consumer and Business Services authority to prescribe Oregon's EHB by rule.

These rules were developed in conjunction with the 2022 Essential Health Benefits Rules Advisory Committee. The committee met four times between February 21, 2020 and September 29, 2020. Members of the committee included representatives of health insurers, health care providers, insurance producers, and consumer groups. Several members of the committee, including representatives of insurance producers and alternative care providers were also small business owners.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Draft rules are available from Karen Winkel located at 350 Winter St. NE, Salem, OR 97301 and are available on the division's website:

<https://dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx>.

FISCAL AND ECONOMIC IMPACT:

The additions to Oregon's EHB under these rules are expected to increase the premium charged for non-grandfathered individual and small employer health benefit plans beginning with the 2022 plan year. An actuarial analysis performed by NovaRest Actuarial Consulting estimates the average premium impact of the additional EHBs as \$2.84 per member per month (PMPM), with \$1.89 PMPM attributable to spinal manipulation visits and \$0.95 PMPM attributable to acupuncture visits.

A copy of the NovaRest report is available from the division's Essential Health Benefits website:

<https://dfr.oregon.gov/help/committees-workgroups/Pages/EHB-rulemaking-committee.aspx>.

Individuals and small employers that purchase health benefit plans in Oregon are expected to see these additional costs reflected in their 2022 premiums. The impacts to specific policyholders will vary depending on demographics and may be offset by other market conditions. Small employers that require employees to contribute toward the cost of their health insurance coverage may shift a portion of the additional premium to enrolled employees.

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) As described above, individuals and small employers that purchase health benefits plans may see slight premium increases as a result of these rules. These costs may be offset by increased access to medically necessary care and increased productivity.

Health care providers, particularly those that perform acupuncture and spinal manipulation, may receive additional insurance reimbursement as a result of the rule.

The rules are not expected to have a significant impact on state agencies or units of local government.

(2)(a) The department does not have information on the number of small businesses that purchase small employer health benefit plans. Based on quarterly enrollment reports submitted to the Division of Financial Regulation (DFR), the total number of Oregonians enrolled in these plans was approximately 171,000 as of June 30, 2020.

(2)(b) Any additional costs of reporting, recordkeeping and administration associated with these rules would likely fall on licensed health insurers. Based on financial filings and other information available to DFR, the department does not believe that any health insurer affected by these rules would meet the definition of a small business under ORS 183.310.

(2)(c) Any costs of professional services, equipment, supplies, labor and increased administration associated with these rules would likely fall on licensed health insurers. Based on financial filings and other information available to DFR, the department does not believe that any health insurer affected by these rules would meet the definition of a small business under ORS 183.310.

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

Several members of the rules advisory committee were owners or employees of small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 836-053-0017

RULE SUMMARY: Identifies four additional benefits that health benefit plans that are subject to Oregon's essential health benefits must cover beginning in 2022.

CHANGES TO RULE:

836-053-0017

Additions to Essential Health Benefits for Plan Years Beginning on and after January 1, 2022

(1) In addition to any other benefits required under state or federal law, a health benefit plan required to provide

essential health benefits within the meaning of ORS 731.097 must, at a minimum, provide coverage for the following items and services:¶¶

(a) Up to 20 visits per year for spinal manipulation if within the scope of license of the healthcare provider; ¶¶

(b) Up to 12 visits per year for acupuncture; ¶¶

(c) Coverage of Buprenorphine or brand equivalent products for medication-assisted treatment of opioid use disorder without prior authorization, dispensing limits, fail first policies, or lifetime limits; and¶¶

(d) At least one intranasal opioid reversal agent for initial prescriptions of opioids with dosages of 50 or more morphine milligram equivalents (MME).¶¶

(2) The requirements of this rule apply to health benefit plans issued or renewed on or after January 1, 2022.

Statutory/Other Authority: ORS 731.097

Statutes/Other Implemented: ORS 731.097