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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

04/29/2022 1:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Amendment to 2023 standard bronze and silver health benefit plan

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/27/2022 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.

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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: 05/23/2022

TIME: 1:30 PM

OFFICER: Ethan Baldwin

ADDRESS: Labor & Industries Building

350 Winter St NE

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Microsoft Teams meeting

Call in (audio only):

+1 503-446-4951,,519267807# United States, Portland

Phone Conference ID: 519 267 807#

NEED FOR THE RULE(S)

ORS 743B.130 requires the Department of Consumer and Business Services (DCBS) to prescribe by rule the form, level of coverage, and benefit design for bronze and silver health benefit plans that must be offered by insurance carriers. These plans must meet federal requirements issued by the Department of Health and Human Services (HHS). Each year, HHS updates the Actuarial Value (AV) calculator used for determining coverage levels. Changes may include costs, plan designs, populations, developments in the function and operation of the AV calculator and other actuarially relevant factors. DCBS provides exhibits to the standard bronze and silver plans, in rule, that prescribe the benefits the plans must provide.

The changes made by HHS this year resulted both the bronze and silver standard plans having too high of an AV, requiring DCBS to lower certain other benefits to come into compliance with HHS.

Based on the information available to DCBS, the proposed rules would not have any additional fiscal or economic impact on state agencies, local governments, the public, nor small businesses beyond the underlying statutory requirements.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Draft rules are available from Karen Winkel, Rules Coordinator, Division of Financial Regulation 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>.

The 2023 AV Calculator Methodology is available at:

<https://www.cms.gov/CCIIO/Resources/Regulations-and-Guidance/Downloads/Draft-2023-AV-Calculator-Methodology.pdf>.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The proposed changes to the rules will impact Oregon insurance companies and consumers who buy health benefit plans in this state. It is unlikely to impact one group of people differently than others because consumers have the choice to purchase different health benefit plans. Further, existing state and federal regulations prohibit discrimination in the sale and utilization of health benefits plans.

FISCAL AND ECONOMIC IMPACT:

This amended rule updates the Oregon standard bronze and silver plans for plan years beginning on and after January 1, 2023. The amended rule does not contain new requirements. There will likely be a fiscal impact to consumers who purchased the standard bronze or silver plan in 2022 and purchase the same plan again 2023 as the newly selected plan will have a reduction in certain benefits to accommodate the increased benefit. However, there is no data available to demonstrate what that impact would be.

The fiscal impacts to insurers could have a quite small 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 plans selected by the rulemaking advisory committee are an updated version of the current standard bronze and silver plans.

Based on financial filings made to DFR, no health insurers meet the definition of a small business under ORS 183.310, because no health insurer is independently owned and operated.

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 information currently available to DCBS, 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 bronze or 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. 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.

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

Based on financial filings made to DFR, no health insurers meet the definition of a small business under ORS 183.310, because no health insurer is independently owned and operated.

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

Based on financial filings made to DFR, no health insurers meet the definition of a small business under ORS 183.310, because no health insurer is independently owned and operated.

(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.

Based on financial filings made to DFR, no health insurers meet the definition of a small business under ORS 183.310, because no health insurer is independently owned and operated.

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

Members of organizations representing small businesses were invited but declined to participate in the rulemaking advisory committee.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 836-053-0013

RULE SUMMARY: Update standard bronze and silver plans.

CHANGES TO RULE:

836-053-0013

Oregon Standard Bronze and Silver Health Benefit Plans ¶¶

(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; ¶

(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; and¶

(d) For plan years beginning on or after January 1, 2019, Chapter 721, Oregon Laws 2017 (Enrolled House Bill 3391). ¶

(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.¶¶

(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.¶¶

(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

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

2023 Standard Bronze Plan_DRAFT

Exhibit 1 to OAR 836-053-0013

Benefit	2023 Standard Bronze
2023 Federal AV	64.65%
Deductible	Combined Medical and Drug \$8,800
Maximum OOP	Combined Medical and Drug \$8,800
Family multiplier	2x Individual; Embedded Approach
Primary Care Visit to Treat an Injury or Illness	\$50
Specialist Visit	\$100
Outpatient Facility Fee (e.g., Ambulatory Surgery Center)	0% After Deductible
Outpatient Surgery Physician/Surgical Services	0% After Deductible
Inpatient Hospital Services (e.g., Hospital Stay)	0% After Deductible
Inpatient Physician and Surgical Services	0% After Deductible
Inpatient Rehabilitation Services	0% After Deductible
Inpatient Habilitation Services	0% After Deductible
Urgent Care Centers of Facilities	\$100
Emergency Room Services	0% After Deductible
Generic Drugs	\$20**
Preferred Brand Drugs	0% After Deductible**
Non-Preferred Brand Drugs	0% After Deductible**
Specialty Drugs	0% After Deductible**
Pediatric Vision	Exams at \$0 for these codes: 92002/92004, 92012/92014, S0620/S0621; for other codes cost shares may apply. Contact lenses - Actuarial equivalent of \$150 per year. Frames - Actuarial equivalent of \$150 per year. Lenses at \$0 for codes V2100-2299, V2300-2399, V2121, V2221, V2321; for other codes cost shares may apply.
Outpatient Rehabilitation Services	\$50 (Applies to PT,OT, ST provided in an office setting); PT OT, ST provided in emergency room or urgent care setting is subject to applicable co-insurance.
Outpatient Habilitation Services	\$50 (Applies to PT,OT, ST provided in an office setting); PT OT, ST provided in emergency room or urgent care setting is subject to applicable co-insurance.
Biofeedback	0% After Deductible
Cardiac Rehabilitation	\$50
Imaging (CT/PET Scans, MRIs)	0% After Deductible
Preventive Benefits *	\$0
Diabetes Education	0% After Deductible
Nutritional Counseling	0% After Deductible
Diabetic Supplies	0% After Deductible
Laboratory Outpatient and Professional Services	0% After Deductible
X-rays and Diagnostic Imaging	0% After Deductible
Acupuncture	\$50 - limit 12 visits per year
Chiropractic	\$50 - limit 20 visits per year

* Preventive Benefits include, but are not limited to, services a carrier is required to provide without cost sharing under Oregon Laws 2017, Chapter 721 (HB 3391).

**ORS 743A.069 Limits cost-sharing for health benefit plan coverage of insulin prescribed for treatment of diabetes

2023 Standard Silver Plan_DRAFT

Exhibit 2 to OAR 836-053-0013

Benefit	2023 Standard Silver
2023 Federal AV	71.86%
Deductible	Medical: \$4,800 Drug: \$0
Maximum OOP	Combined Medical and Drug \$9,100
Family multiplier	2x Individual; Embedded Approach
Primary Care Visit to Treat an Injury or Illness	\$40
Specialist Visit	\$80
Outpatient Facility Fee (e.g., Ambulatory Surgery Center)	30% After Deductible
Outpatient Surgery Physician/Surgical Services	30% After Deductible
Inpatient Hospital Services (e.g., Hospital Stay)	30% After Deductible
Inpatient Physician and Surgical Services	30% After Deductible
Inpatient Rehabilitation Services	30% After Deductible
Inpatient Habilitation Services	30% After Deductible
Urgent Care Centers of Facilities	\$70
Emergency Room Services	30% After Deductible
Generic Drugs	\$15**
Preferred Brand Drugs	\$60**
Non-Preferred Brand Drugs	50%**
Specialty Drugs	50%**
Pediatric Vision	Exams at \$0 for these codes: 92002/92004, 92012/92014, S0620/S0621; for other codes cost shares may apply. Contact lenses - Actuarial equivalent of \$150 per year. Frames - Actuarial equivalent of \$150 per year. Lenses at \$0 for codes V2100-2299, V2300-2399, V2121, V2221, V2321; for other codes cost shares may apply.
Outpatient Rehabilitation Services	\$40 (Applies to PT,OT, ST provided in an office setting); PT OT, ST provided in emergency room or urgent care setting is subject to applicable co-insurance.
Outpatient Habilitation Services	\$40 (Applies to PT,OT, ST provided in an office setting); PT OT, ST provided in emergency room or urgent care setting is subject to applicable co-insurance.
Biofeedback	\$40
Cardiac Rehabilitation	\$40
Imaging (CT/PET Scans, MRIs)	30% After Deductible
Preventive Benefits *	\$0
Diabetes Education	\$0
Nutritional Counseling	\$0
Diabetic Supplies	\$0
Laboratory Outpatient and Professional Services	30% After Deductible
X-rays and Diagnostic Imaging	30% After Deductible
Acupuncture	\$40 - limit 12 visits per year
Chiropractic	\$40 - limit 20 visits per year

* Preventive Benefits include, but are not limited to, services a carrier is required to provide without cost sharing under Oregon Laws 2017, Chapter 721 (HB 3391).

**ORS 743A.069 Limits cost-sharing for health benefit plan coverage of insulin prescribed for treatment of diabetes