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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 2:14 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Adoption of insulin cost-sharing rule

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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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: 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 743A.069 requires that a health benefit plan may not require an enrollee in the plan to incur cost-sharing or other out-of-pocket costs above a certain limit for insulin prescribed for the treatment of diabetes. The statute further requires the Department of Consumer and Business Services (DCBS), by rule, to increase the maximum co-pays for insulin, by the percentage increase in the cost of living.

The original language in the statute capped the co-pays for insulin at \$75 for a 30-day supply and \$225 for a 90-day supply for the first year. DCBS must now adjust those co-pays in rule, to comply with the statute.

For calendar year 2023, DCBS will increase the maximum cost sharing of a 30-day supply of insulin to \$80. This represents the percentage increase in CPI-U, western regions, all items, between 2020 and 2021, on an annual basis, rounded to the nearest \$5. In addition, maximum cost sharing of a 90-day supply of insulin will increase to \$240, or

three times the 30-day maximum. DCBS will repeat this methodology going forward for each year as it is the most consistent and reproducible method.

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.

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#### 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>.

Bureau of Labor and Statistics:

[https://www.bls.gov/regions/west/news-release/consumerpriceindex\\_west.htm](https://www.bls.gov/regions/west/news-release/consumerpriceindex_west.htm).

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#### 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 the insulin requirements apply to all health benefit plans equally. Further, existing state and federal regulations prohibit discrimination in the sale and utilization of health benefits plans.

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#### FISCAL AND ECONOMIC IMPACT:

This amended rule updates benefits for health benefits plans in Oregon 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 a plan in 2022 and purchase the same plan again 2023 as the newly selected plan will have a slight increase in the cost of the 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.

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.

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#### 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 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) 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.

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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.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 836-053-0025

RULE SUMMARY: Regulation of the insulin co-pay amount for health benefit plans.

CHANGES TO RULE:

836-053-0025

Insulin

(1) "Type of insulin" means various types of insulin analogs and insulin-like medications, regardless of activation period or whether the solution is mixed before or after dispensation.

(2) For plan years starting January 1, 2023, a health benefit plan offered in this state may not require an enrollee in the plan to incur cost-sharing or other out-of-pocket costs for a type of insulin prescribed for the treatment of diabetes that exceed:

(a) \$80 for each 30-day supply; or

(b) \$240 for each 90-day supply.

Statutory/Other Authority: ORS 731.244

Statutes/Other Implemented: ORS 743A.069