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ARCHIVES DIVISION

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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

04/28/2023 8:46 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: 2023 Coordination of Benefits and Medicare Part B Rulemaking

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/30/2023 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 St. 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: 05/23/2023

TIME: 11:00 AM - 11:30 AM

OFFICER: Lisa Emerson

HEARING LOCATION

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conference Room A, Salem, OR 97301

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-503-446-4951

CONFERENCE ID: 917370802

SPECIAL INSTRUCTIONS:

This is a hybrid meeting conducted in-person and virtually via Microsoft Teams.

NEED FOR THE RULE(S)

The proposed rule amends OAR 836-020-0780 to address Coordination of Benefit (COB) issues arising out of individuals being entitled to, but not enrolled in Medicare Part B, due to missing their initial, general or special Medicare enrollment period. This amendment will prohibit a plan from reducing or denying benefits to individuals that are eligible, but not enrolled in Medicare Part B.

Since the implementation of individual/family Qualified Health Plans (QHPs) under the Affordable Care Act (ACA), the division has received a number of COB related complaints. These complaints are from individuals that are enrolled in QHPs and do not make a smooth transition to Medicare Part B because they miss their Medicare enrollment period or they lack entitlement to premium-free Medicare Part A. Some QHPs deny claims or only pay secondary when their member did not enroll in Medicare Part B upon turning age 65.

Several of these complaints involved financial harm to consumers.

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>.

ORS 731.244: https://www.oregonlegislature.gov/bills_laws/ors/ors731.html

ORS 743B.475: https://www.oregonlegislature.gov/bills_laws/ors/ors743B.html

OAR 836-020-0780: <https://secure.sos.state.or.us/oard/view.action?ruleNumber=836-020-0780>

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

A Rules Advisory Committee (RAC) was consulted regarding this racial equity statement. Overall, the rule amendment will improve consumer protection for all health insurance consumers. The rules will likely disproportionately benefit economically disadvantaged consumers, including consumers of color, though we do not have enough information to quantify the impact. These rules are not anticipated to have any disparate impact on any particular group of consumers on the basis of race.

FISCAL AND ECONOMIC IMPACT:

Based on information available to the Division of Financial Regulation (DFR), the division believes adoption of this rule amendment will have minimal impact for health insurers. The cost of complying with the rule most directly affects health insurers. Division health actuaries have estimated a possible 1-2% increase for QHPs' premiums considering the rare occurrence of a QHP's Medicare eligible member delaying enrollment in Medicare Part B because they missed their enrollment period, or they are not eligible for premium-free Medicare Part A and have a legal right to continue to be enrolled a QHP. RAC members representing health insurers did not indicate the rule will have any significant additional cost for compliance.

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) The proposed rule does not have a financial impact on state agencies or local governments. There may be economic advantage to limited members of the public generally.

Based on financial filings and other information available to the DFR, the division does not believe that any health insurer affected by the rule would meet the definition of a small business under ORS 183.310.

(2)(a) Based on financial filings made to the 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) Any additional costs of reporting, recordkeeping and administration associated with these rules would primarily affect health insurers. Based on information available to the DFR, the division believes adoption of this rule amendment

will have minimal impact for health insurers.

Based on financial filings and other information available to DFR, the division 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 equipment, supplies, labor and increased administration associated with these rules would primarily affect health insurers and is estimated to have minimal added cost for compliance. Based on information available to the DFR, the division believes adoption of this rule amendment will have minimal impact for health insurers.

Based on financial filings and other information available to DFR, the division 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):

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

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 836-020-0780

RULE SUMMARY: Amended to address Coordination of Benefit (COB) issues arising out of individuals being entitled to but not enrolled in Medicare Part B.

CHANGES TO RULE:

836-020-0780

Use of Model COB Contract Provision ¶¶

(1) Appendix A (Exhibit 1 to this rule) contains a model COB provision for use in contracts. The use of this model COB provision is subject to OAR 836-020-0785(1), (2) and (3).¶¶

(2) Appendix B (Exhibit 2 to this rule) is a plain language description of the COB process that explains to the covered person how health plans will implement coordination of benefits. It is not intended to replace or change the provisions that are set forth in the contract. Its purpose is to explain the process by which the two or more plans will pay for or provide benefits.¶¶

(3) The COB provision contained in Appendix A and the plain language explanation in Appendix B do not have to use the specific words and format shown in Appendix A or Appendix B. Changes may be made to fit the language and style of the rest of the contract or to reflect differences among plans that provide services, that pay benefits for expenses incurred and that indemnify. No substantive changes are permitted.¶¶

(4) A COB provision may not be used that permits a plan to reduce its benefits on the basis that:¶¶

(a) Another plan exists and the covered person did not enroll in that plan;¶¶

(b) A person is eligible or could have been covered under another plan, ~~except with respect to including~~ Part B of Medicare; or¶¶

(c) A person has elected an option under another plan providing a lower level of benefits than another option that could have been elected.¶¶

(5) A plan may not contain a provision that its benefits are "always excess" or "always secondary" except in accordance with the rules permitted by OAR 836-020-0770 to 836-020-0806.¶¶

(6) Under the terms of a closed panel plan, benefits are not payable if the covered person does not use the services of a closed panel provider. In most instances, COB does not occur if a covered person is enrolled in two or more closed panel plans and obtains services from a provider in one of the closed panel plans because the other closed panel plan (the one whose providers were not used) has no liability. However, COB may occur during the plan year when the covered person receives emergency services that would have been covered by both plans. Then the secondary plan shall use OAR 836-020-0790 to determine the amount it should pay for the benefit.¶¶

(7) A plan may not use a COB provision, or any other provision that allows it to reduce its benefits with respect to any other coverage its insured may have, that does not meet the definition of plan in OAR 836-020-0775.¶¶

[ED. NOTE: Appendices referenced are available from the agency.]
Statutory/Other Authority: ORS 731.244, 743.552ORS 743B.475
Statutes/Other Implemented: ORS 743.552B.475