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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

10/26/2023 3:25 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Primary Care Provider Assignment (SB 1529)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/22/2023 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: 11/16/2023

TIME: 2:30 PM - 3:00 PM

OFFICER: Lisa Emerson

HEARING LOCATION

ADDRESS: Labor and Industries Building, 350 Winter St. NE, Basement, Conf Rm E, Salem, OR 97301

REMOTE MEETING DETAILS

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

PHONE NUMBER: 1-503-446-4951

CONFERENCE ID: 191624174

SPECIAL INSTRUCTIONS:

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

NEED FOR THE RULE(S)

Oregon Senate Bill 1529 (2022) requires the Department of Consumer and Business Services (DCBS) to adopt rules prescribing a methodology for insurers offering individual or group health benefit plans to assign a primary care provider (PCP) to their enrollees if an enrollee does not choose a PCP by the 90th day of the plan year.

This rulemaking establishes a PCP assignment methodology that ensures accuracy and agreement between insurers and providers. This proposed rule aligns with a set of PCP assignment principles that are recommended by the Primary Care Payment Reform Collaborative (PCPRC). This proposed rule establishes an assignment hierarchy and will provide insurers flexibility with the specific business processes of assignment.

DCBS convened a Rulemaking Advisory Committee (RAC), which met on July 11, August 8, and September 26, 2023.

The RAC included insurers, providers, and consumer representatives.

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>.

Oregon Senate Bill 1529 (2022) Enrolled

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

A Rulemaking Advisory Committee was consulted regarding this equity statement. This rule is not anticipated to have any disparate impact on any particular demographic of consumers. Overall, the rule will improve consumer protection for all health insurance consumers by ensuring that PCP assignments prioritize consumer choice and enable all enrollees the best opportunity to access covered primary care services without unreasonable delay.

FISCAL AND ECONOMIC IMPACT:

Some insurers are already engaged in the practice of assigning PCPs to members that do not choose their own PCP. Some insurers may experience increased administrative costs associated with having to contact and communicate with members and PCPs about the requirement to choose a PCP.

A positive indirect impact may be experienced by PCPs that meet the definition of small business. The PCP assignment requirement may increase patient panels for these PCPs and their organizations, thus increasing opportunity for insurance reimbursements.

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

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, local governments, or the general public. There may be economic and health benefits to certain members of the public to the extent that the proposed rule results in great utilization of primary care services.

A positive impact may be experienced by PCPs that are small businesses. The PCP assignment requirement may increase patient panels for PCPs, thus increasing opportunity for reimbursements.

Based on financial filings and other information available to the DFR, the department does not believe that any health insurer affected by this 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. As noted above, the rule may have a positive impact on primary care providers, many of which meet the definition of small business, but PCPs are not directly subject to the rule.

(2)(b) Some insurers may experience increased administrative costs associated with having to contact and communicate with members and PCPs about the requirement to choose a PCP.

Based on financial filings and other information available to the DFR, the department does not believe that any health insurer affected by this rule 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 this rule would primarily affect health insurers and is estimated to have minimal added cost for compliance. Based on information available to the DFR, the department believes adoption of this rule amendment will have minimal impact for health insurers.

Based on financial filings and other information available to the DFR, the department does not believe that any health insurer affected by this rule 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):

The RAC membership included primary care provider association representatives and an individual primary care provider. Many primary care providers meet the definition of small business.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

ADOPT: 836-053-0028

RULE SUMMARY: Insurers must assign enrollees who are residents of the state of Oregon to an individual or group of individuals who are "primary care providers" in a specified hierarchal order.

CHANGES TO RULE:

836-053-0028

Primary Care Provider Assignment Methodology

(1) As used in these rules: ¶

(a) "Enrollee" means an employee, dependent of the employee or an individual otherwise eligible for a group or individual health benefit plan who has enrolled for coverage under the terms of the plan.¶

(b) "Primary care provider" means an individual licensed or certified in this state to provide outpatient, non-specialty medical services or the coordination of health care for the purpose of:¶

(A) Promoting or maintaining mental and physical health and wellness; and¶

(B) Diagnosis, treatment or management of acute or chronic conditions caused by disease, injury or illness.¶

(2) An insurer offering an individual or group policy or certificate of health insurance that reimburses the cost of hospital, medical or surgical expenses, other than coverage limited to expenses from accidents or specific diseases and limited benefit coverage, must assign an enrollee under the policy or certificate to a primary care provider if the enrollee or a parent of a minor enrollee has not selected a primary care provider by the 90th day of the plan year. If the insurer assigns the enrollee to a primary care provider, the insurer shall provide notice of the assignment to the enrollee or parent and to the primary care provider. The requirement to provide notice under this subsection does not require an insurer to disclose protected health information if such disclosure would be prohibited under the federal Health Insurance Portability and Accountability Act (HIPAA).¶

(3) An enrollee may select a different primary care provider at any time.¶

(4) Insurers must assign enrollees who are residents of the state of Oregon to an individual or group of individuals who are "primary care providers" in the following hierarchal order: ¶

(a) According to the enrollee's selection. In order to prioritize enrollee choice of a primary care provider, insurers must make all reasonable efforts to communicate with enrollees to complete an initial primary care provider assignment.¶

(b) If the enrollee does not choose a primary care provider, insurers must assign the enrollee to a primary care provider using claim utilization information and the insurer's assignment methodology that enables the enrollee the best opportunity to access primary care services without unreasonable delay.¶¶

(c) If the enrollee chooses a primary care provider, but has predominant claim utilization with a different primary care provider, the insurer may communicate with the enrollee the opportunity to select the primary care provider with predominant claim utilization. ¶¶

(d) If the insurer has no information pertinent to enrollee choice or prior utilization, the insurer must assign the enrollee to a primary care provider using the insurer's assignment methodology that enables the enrollee the best opportunity to access primary care services without unreasonable delay.¶¶

(5) Insurers must establish a primary care provider assignment correction process that works in partnership with providers to correct inaccurately assigned enrollees.

Statutory/Other Authority: ORS 731.244, Or Laws 2022, ch 37, sec 8

Statutes/Other Implemented: Or Laws 2022, ch 37, sec 8