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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

10/26/2023 3:31 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: List of Prosthetic and Orthotic Devices under Oregon SB 797 (2023)

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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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: 10:30 AM - 11:00 AM

OFFICER: Michael Schopf

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: 414075919

SPECIAL INSTRUCTIONS:

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

NEED FOR THE RULE(S)

These rules implement 2023 Oregon Enrolled Senate Bill 797 (SB 797), Oregon Laws 2023, chapter 113, which requires certain health insurance policies to provide coverage for prosthetic and orthotic devices as defined in the bill. The rules are adopted pursuant to the authority granted to the department under SB 797 as well as the authority of the Department of Consumer and Business Services (DCBS) to adopt rules necessary to administer the Oregon Insurance Code under ORS 731.244.

Section 2, subsection 2 of SB 797 requires all individual and group health insurance policies that provide coverage for the expenses of hospital, medical or surgical services or supplies to also provide coverage for prosthetic and orthotic devices that are medically necessary to restore or maintain the ability to complete activities of daily living or essential job-related activities and that are not solely for comfort or convenience. The coverage required by SB 797 includes all

services and supplies medically necessary for the effective use of a prosthetic or orthotic device, including design formulation, fabrication, material and component selection, measurements, fittings, static and dynamic alignments and patient instruction in the use of the device.

For purposes of SB 797, "orthotic device" means a rigid or semirigid device supporting a weak or deformed leg, foot, arm, hand, back or neck, or restricting or eliminating motion in a diseased or injured leg, foot, arm, hand, back or neck. "Prosthetic device" means an artificial limb device or appliance designed to replace in whole or in part an arm or a leg.

Section 2, subsection 3 of SB 797 requires the director of DCBS to adopt and annually update rules listing the prosthetic and orthotic devices that insurance policies must cover under SB 797. Section 2, subsection 3 of SB 797 requires that the list of devices be no more restrictive than the list of prosthetic and orthotic devices and supplies in the Medicare Fee Schedule for Durable Medical Equipment, Prosthetics, Orthotics and Supplies, but only to the extent consistent with SB 797. These rules carry out the rulemaking described in this subsection of SB 797.

These proposed rules provide that, for purposes of SB 797, the list of the list of devices that must be covered under Oregon Laws 2023, chapter 113, section 2, includes any prosthetic or orthotic device for which the Centers for Medicare and Medicaid Services (CMS) has established an L Code in the Healthcare Common Procedure Coding System (HCPCS) Level II. The rule also adopts the definitions of "orthotic device" and "prosthetic device" that are used in SB 797.

In addition to the provisions discussed above, section 2, subsection 4 of SB 797 provides that the coverage of prosthetic and orthotic devices required under SB 797 may be made subject to, and no more restrictive than, the provisions of a health insurance policy that apply to other benefits under the policy. Section 2, subsection 5 of SB 797 further provides that, when coverage subject to SB 797 is provided through a managed care organization, an insured must have access to at least two distinct prosthetic and orthotic providers within the managed care organization's provider network.

To implement these provisions, the proposed rules prohibit internal or separate limits or caps on the coverage of prosthetic and orthotic devices, however the proposed rules do not prohibit plans from imposing a policy lifetime maximum benefits limit, if such a limit is otherwise permitted under state and federal law. In addition, the proposed rules provide that, for purposes of SB 797, coverage provided through a managed care organization includes a health insurance policy that requires an enrollee to use a closed network of providers to receive benefit under the plan.

The proposed rules were developed in conjunction with a Rules Advisory Committee (RAC) that included representatives of domestic health insurers and advocates for amputees and other persons with limb loss and limb difference. The RAC met two times, first on August 31, 2023, and again on September 27, 2023.

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>.

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

Key groups affected by these rules include Oregon health insurers, consumers that purchase health insurance policies in this state, and individuals enrolled in health insurance policies in this state. The proposed rule will most directly impact Oregon health insurers. Health insurers will need to ensure that each health insurance policy offered in this state provides coverage for the prosthetic and orthotic devices listed in the rule and complies with all other provisions of the

rule.

Individuals and businesses that purchase health insurance policies in Oregon may see changes to covered benefits under their policy if any such changes are necessary for the policy to comply with these rules. Any such changes would likely occur upon the first policy renewal date falling on or after the January 1, 2024, effective date. Individuals enrolled in these plans may become entitled to additional benefits and coverage for prosthetics and orthotics relative to the current level of coverage. While the rules are not expected to have a significant impact on overall premiums, certain policies may experience incremental rate increases or decreases as a result of these rules. The division is not aware of any data suggesting a disproportionate impact on any specific groups of enrollees or policyholders.

Importantly, these rules will help increase health equity by ensuring equitable access for individuals with limb loss and limb difference who are enrolled in individual or group health insurance policies. These individuals will be assured that any health insurance policy offered in this state will provide coverage for a broad range of prosthetic and orthotic devices, and the availability of insurance coverage to offset costs will make those devices more affordable and accessible to individuals who need them. These benefits will likely be disproportionately experienced by Oregonians most at risk for injuries or other health conditions resulting in amputation, including but not limited to veterans or people with diabetes.

FISCAL AND ECONOMIC IMPACT:

The primary cost of complying with these rules will fall on licensed health insurers. Based on financial filings made to the Division of Financial Regulation (DFR), no health insurer meets the definition of a small business under ORS 183.310, because no insurer is independently owned and operated.

The rules may have indirect impacts upon businesses, including small businesses, that purchase a fully insured group health insurance policy in Oregon. Because plans sold to employers with fewer than 50 employees are already required to cover prosthetic and orthotic devices as part of Oregon's essential health benefits under ORS 731.097 and 743B.013, the adoption of these rules is not expected to have a significant additional cost impact on small employers.

Based on the information available to DCBS, the proposed rules would not have any additional fiscal or economic impact on state agencies, local governments or the public beyond the underlying statutory requirements.

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, the proposed rule does not have a fiscal or economic impact on state agencies or local government units.

Members of the public who may be economically affected by the rulemaking may include health insurers that offer policies that are subject to the rule, individuals and businesses that purchase health insurance policies in this state, and any individuals enrolled in these plans.

The division does not have information available about economic impacts to other members of the public.

(2)(a) These rules apply to health insurers offering health insurance policies that are subject to SB 797. Based on

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

(2)(b) The rules may impose recordkeeping and other administrative obligations on health insurers that may be necessary to ensure compliance with the list of devices and other requirements of these rules. The division does not have information available to estimate these costs. Because health benefit plans sold to individual and small employers are already required to cover prosthetic and orthotic devices as part of the essential health benefits package (and because health benefit plans sold to large employers often choose to cover these devices voluntarily), these rules are not expected to impose significant additional reporting, recordkeeping and administrative activities and costs.

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

(2)(c) Health insurers offering plans that are subject to these rules may incur costs related to professional services, labor, and increased administration. The division does not have information available to estimate these costs. Because health benefit plans sold to individuals and small employers are already required to cover prosthetic and orthotic devices as part of Oregon's essential health benefits package (and because health benefit plans sold to large employers often choose to cover these devices voluntarily), the rules are not expected to impose significant additional reporting, recordkeeping and administrative activities and cost.

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

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

The Rules Advisory Committee included participation from an advocacy organization representing the interests of businesses providing prosthetic and orthotic services, some of which are likely small businesses. Representatives of small businesses were also invited to provide comments on the rule.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

AMEND: 836-052-1000

RULE SUMMARY: Establishes list of prosthetic and orthotic devices; prohibits internal or separate limits or caps on prosthetic and orthotic devices, other than the lifetime policy maximum, when permitted by law; defines when coverage for prosthetic and orthotic device is provided through a managed care organization.

CHANGES TO RULE:

836-052-1000

Prosthetic and Orthotic Devices ¶¶

~~(1) This rule is adopted under the authority of ORS 731.244. For purposes of this rule, the terms "or the purpose of clarifying position of the Department of Consumer and Business Services regarding the status and enforcement of ORS 743A.144."~~

~~(2) Because the Oregon Legislative Assembly has not updated ORS 743A.144, the provisions of that statute are subject to the automatic device" and "prosthetic device" have the meanings given to those terms under Oregon Laws 2023, chapter 113, section 2.~~

~~(2) The list of devices that must be covered under Oregon Laws 2023, chapter 113, section 2, includes any prosthetic or orthotic device for which the Centers for Medicare and Medicaid Services (CMS) has established an L Code in the~~

Healthcare Common Procedure Coding System (HCPCS) Level II. ¶

(3) Coverage for the prosthetic and orthotic devices and supplies described in subject to the mandated provisions. However, many of these devices and supplies may be required under other state or federal law and the department will continue to review provision (2) of this section may not be subject to internal or separate limits or caps other than the policy lifetime maximum benefits. This subsection does not authorize a health benefit plan or other policy of health insurance to impose a lifetime or annual dollar limit that is otherwise prohibited under state or federal law.¶

(4) For purposes of Oregon Laws 2023, chapter 113, section 2, coverage provided through a managed care organizations in plans and policies for compliance with other applicable state and federal laws related to prosthetic or orthotic devicescludes a health insurance policy that requires an enrollee to use a closed network of providers managed, owned, under contract with or employed by the insurer in order to receive benefits under the plan.

Statutory/Other Authority: ORS 731.244, 743A.144Or Laws 2023, ch 113

Statutes/Other Implemented: ORS 743A.144r Laws 2023, ch 113