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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

10/25/2023 11:17 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adoption of rule to allow for copayment on primary care visits

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: 1:30 PM - 2:30 PM

OFFICER: Ethan Baldwin

HEARING LOCATION

ADDRESS: Labor & 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: 485040729

SPECIAL INSTRUCTIONS:

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

NEED FOR THE RULE(S)

House Bill 3008 (2023) grants the Department of Consumer and Business Services (DCBS) the authority to adopt rules to allow an individual or group policy or certificate of health insurance to impose a copayment of not more than \$5 for certain primary care or behavioral health office visits if necessary to comply with the requirements of the Paul Wellstone and Pete Domenici Mental Health Parity and Addiction Equity Act of 2008. Proposed OAR 836-053-0027 exercises this authority to authorize copayments of no more than \$5.

Prior to the passage of House Bill 3008, Oregon law (Oregon Laws 2022, chapter 37, section 6) required three primary care visits with a \$0 copayment. Providing three primary care visits with no cost-sharing as required by this law would have had the effect, for many health benefit plans, of providing "substantially all" medical primary care visits without cost-sharing, as defined by federal mental health parity regulations, 45 CFR § 146.136. As a result, to comply with these

regulations, all behavioral health office visits would also be required to have no cost-sharing. Such a benefit change would be an unintended consequence of Oregon Laws 2022, chapter 37, and would result in increased premium rates for Oregon consumers. Adoption of this rule prevents that outcome.

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

The proposed changes to the rules will impact Oregon insurance companies and consumers who buy health benefit plans in this state. The copayments will apply to all Oregon consumers purchasing health benefit plans. The copayments may be disproportionately paid by the health benefit plan enrollees who most frequently access primary care or behavioral health office visits, but DCBS is unaware of any data suggesting a disproportionate impact on any specific groups of people.

The rule is necessary to ensure compliance with federal mental health parity laws while minimizing harm to consumers. While this rule is one approach to ensuring compliance, another approach would be to prohibit cost-sharing for all behavioral health visits. This would result in significant premium increases for consumers. While this rule will result in higher copays for primary care and behavioral health office visits than would be imposed in the absence of the rule, it is a more favorable resolution for consumers.

Additionally, since the cost-sharing requirements of Oregon Laws 2022, chapter 37 have yet to go into effect, many Oregon consumers will still experience an overall decrease in out-of-pocket expenditures for these services.

To the extent that the rule prevents or mitigates future premium rate increases, it can be expected to make health benefit plans more affordable for Oregon consumers, which will have a disproportionate positive effect on populations struggling to afford health insurance coverage.

FISCAL AND ECONOMIC IMPACT:

Based on information available to the Division of Financial Regulation (DFR), DCBS 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.

Based on financial filings and other information available to the DFR, DCBS does not believe that any health insurer affected by the 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).

Based on information currently available to DCBS, the proposed rule would not have a fiscal or economic impact on state agencies, local government units, nor the public.

The proposed rules apply to commercial health insurance carriers only and would require minimal administrative effort

to comply with the requirements of the proposed rules.

The proposed rule can be expected to have an economic impact on the general public beyond the underlying statutory requirements. The allowance of up to a \$5 copayment on three primary care visits would directly be passed onto consumers visiting their primary care provider. This will impose a modest economic burden on some health benefit plan enrollees. The rule may also have the indirect impact of slightly reducing utilization of primary care services, which could have small economic impacts on health care providers, some of whom are small businesses. To the extent that the rule prevents or mitigates future premium rate increases, the rule will also reduce the economic burden of the cost of health insurance for Oregon consumers and businesses.

(2)(a) Estimate the number and type of small businesses subject to the rule(s).

As noted above, the rule only directly applies to health insurance companies. 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.

Based on feedback from the RAC, this rule would have the indirect effect of reducing premium burdens for small group health insurance purchasers. According to the most recent data available to the department, 160,832 Oregonians are enrolled in health benefit plans purchased by small employers.

(2)(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s).

Based on feedback from the RAC, there would likely be minimal to no impact on small businesses to comply with this rule.

(2)(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

Based on feedback from the RAC, there would likely be minimal to no impact on small businesses to comply with this rule.

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

ADOPT: 836-053-0027

RULE SUMMARY: Allow for copayment on primary care visits.

CHANGES TO RULE:

836-053-0027

Copayments for certain primary care visits

(1) As used in this section, "primary care" means outpatient behavioral health services, nonspecialty medical services or the coordination of health care for the purpose of:

(a) Promoting or maintaining behavioral and physical health and wellness; and

(b) Diagnosis, treatment or management of acute or chronic conditions caused by disease, injury or illness.¶
(2) An individual or group policy or certificate of health insurance that is not offered on the health insurance exchange and 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, shall, in each plan year, reimburse the cost of at least three primary care visits for behavioral health or physical health treatment.¶
(3) The coverage under subsection (2) of this section:¶
(a) May not be subject to copayments, coinsurance or deductibles in excess of \$5, except as provided in ORS 742.008; and¶
(b) Is in addition to one annual preventive primary care visit that must be covered without cost-sharing.¶
(4) An insurer that offers a qualified health plan on the health insurance exchange must offer at least one plan in each metal tier offered by the insurer that provides the coverage described in subsections (2) and (3) of this section.¶
(5) This section does not apply to health benefit plans offered to public employees by insurers that contract with the Public Employees' Benefit Board or the Oregon Educators' Benefit Board.
Statutory/Other Authority: ORS 731.244, Oregon House Bill 3008 (2023)
Statutes/Other Implemented: Oregon House Bill 3008 (2023), Or Laws 2022, ch 37, sec 6