OFFICE OF THE SECRETARY OF STATE
LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

PERMANENT ADMINISTRATIVE ORDER

FILED
11/08/2024 4:21 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

ID 37-2024

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILING CAPTION: Repealing rules for calculating out-of-network provider reimbursement rates and prevent enrollee balance billing

EFFECTIVE DATE: 12/01/2024

AGENCY APPROVED DATE: 11/07/2024

CONTACT: Karen Winkel
503-947-7694
dfr.rules@dcbs.oregon.gov

350 Winter St. NE
Salem,OR 97304

Filed By:
Karen Winkel
Rules Coordinator

RULES:
836-053-1600, 836-053-1605, 836-053-1610, 836-053-1615

REPEAL: 836-053-1600

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Repealed because the statutory authority for their enactment expired January 2, 2022.

CHANGES TO RULE:

~~836-053-1600~~
~~Purpose; Statutory Authority; Applicability~~
~~(1) 836-053-1600 to 836-053-1615 are adopted for the purpose of implementing ORS 743B.287.¶~~
~~(2) 836-053-1600 to 836-053-1615 apply to payments required under ORS 743B.287(6).~~
~~Statutory/Other Authority: ORS 743B.287~~
~~Statutes/Other Implemented: ORS 743B.287~~

REPEAL: 836-053-1605

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Repealed because the statutory authority for their enactment expired January 2, 2022.

CHANGES TO RULE:

~~836-053-1605~~
~~Definitions for 836-053-1600 to 836-053-1615~~
~~(1) "Anesthesia Conversion factor" means the dollar value assigned to the following geographic rating area where the procedure is performed:¶~~
~~(a) Area 1 is $68.00;¶~~
~~(b) Area 2 is $70.40;¶~~
~~(c) Area 3 is $67.85;¶~~
~~(d) Area 4 is $75.88;¶~~
~~(e) Area 5 is $68.00;¶~~
~~(f) Area 6 is $66.17; and¶~~
~~(g) Area 7 is $70.77.¶~~
~~(2) "Base units" means the number of units assigned to the relevant CPT code for the anesthesia-related procedure published in the American Society of Anesthesiologists (ASA), Relative Value Guide 2018. To obtain a copy of the ASA Relative Value Guide 2018, contact the American Society of Anesthesiologists, 1061 American Lane, Schaumberg, IL 60173, 847-825-5586, or www.asahq.org.¶~~
~~(3) "Base Rate" means the dollar amount listed on the Non-Anesthesia Base Rate Fee Schedule under Appendix A.¶~~
~~(4) "CMS" means the Center for Medicare and Medicaid Services.¶~~
~~(5) "CPT" means Current Procedural Terminology codes and terminology under the American Medical Association's (AMA) Current Procedural Terminology (CPT 2018), Fourth Edition Revised, 2017, for billing by medical providers. ¶~~
~~(6) "CPI adjustment" means the annual adjustment designated by the director calculated with the Consumer Price Index for All Urban Consumers U.S. city average series for all items, not seasonally adjusted. Prior to January 1 of each year the director shall publish the adjustment figure representing the Consumer Price Index adjustment from January 2015 to July of the prior year. For 2019, the designated CPI adjustment is 107.83%.¶~~
~~(7) "Director" means the Director of the Department of Consumer and Business Services.¶~~
~~(8) "Geographic rating area" means the rating area defined under OAR 836-053-0063(6).¶~~
~~(9) "Modifier adjustment" means the adjustment allowed under the CMS CY 2018 Physician Fee Schedule Final Rule as of January 1, 2018, for the following modifiers, if applicable: AS, FX, FY, SA, UE, 22, 23, 25, 47, 50, 51, 52, 53, 54, 55, 56, 62, 66, 73, 78, 80, 81, 82. The CY 2018 Physician Fee Schedule Final Rule is available at https://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/PhysicianFeeSched/PFS-Federal-Regulation-Notices-Items/CMS-1676-F.html. The adjustment for any other modifier or no modifier is 100%.¶~~
~~(10) "Out-of-network reimbursement" means the allowable rate paid by the insurer to the out-of-network provider for emergency services or other covered inpatient or outpatient services provided at an in-network health care facility in Oregon in accordance with ORS 743B.287(3). The amount to be paid by the insurer may include applicable coinsurance, copayment, and deductible amounts paid by the enrollee as outlined in the insurance policy.¶~~
~~(11) "Physical status units" means the number of units assigned based on the provider's assessment of the medical condition of the patient. Physical status units are assigned as follows:¶~~
~~(a) 1 unit for P3 - A patient with severe systemic disease;¶~~
~~(b) 2 units for P4 - A patient with severe systemic disease that is a constant threat to life;¶~~
~~(c) 3 units for P5 - A moribund patient who is not expected to survive without the operation; and¶~~
~~(d) 0 units for all others.¶~~
~~(12) "Q modifier adjustment" means the relevant percentage adjustment, if applicable, assigned for the following modifiers:¶~~
~~(a) 50% for QK - medical direction of two, three, or four concurrent anesthesia procedures involving qualified individuals;¶~~
~~(b) 50% for QX - CRNA service; with medical direction by a physician;¶~~
~~(c) 50% for QY - Medical direction of one certified registered nurse anesthetist (CRNA) by an anesthesiologist; and¶~~
~~(d) 100% for no modifier or any other modifier.¶~~
~~(13) "Time units" means the relevant amount of time for an anesthesia-related procedure expressed in 15-minute~~

~~increments.~~
~~Statutory/Other Authority: ORS 743B.287~~
~~Statutes/Other Implemented: ORS 743B.287~~

REPEAL: 836-053-1610

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Repealed because the statutory authority for their enactment expired January 2, 2022.

CHANGES TO RULE:

~~836-053-1610~~
~~Non-anesthesia-related claims~~
~~(1) Out-of-network reimbursement for non-anesthesia-related claims shall be no less than:¶~~
~~Base rate x Modifier adjustment x CPI adjustment¶~~
~~(2) Out-of-network reimbursement for a non-anesthesia-related claim that does not have a base rate listed on the Non-Anesthesia Fee Schedule shall be at a rate agreed upon in good faith by the insurer and the provider to be usual and customary for in-network commercial claims, using best efforts to establish a rate within a reasonable amount of time.~~
~~Statutory/Other Authority: ORS 743B.287~~
~~Statutes/Other Implemented: ORS 743B.287~~

REPEAL: 836-053-1615

NOTICE FILED DATE: 08/27/2024

RULE SUMMARY: Repealed because the statutory authority for their enactment expired January 2, 2022.

CHANGES TO RULE:

~~836-053-1615~~
~~Anesthesia-related claims~~
~~(1) Out-of-network reimbursement for anesthesia-related claims, including obstetric anesthesia claims, shall be no less than:¶~~
~~(Base units + Time units + Physical status units) x Anesthesia Conversion factor x Q modifier adjustment x CPI adjustment¶~~
~~(2) Out-of-network reimbursement for an anesthesia-related claim that does not have a number of base units published in the CY 2018 Physician Fee Schedule Final Rule shall be reimbursed at a rate calculated with a number of base units agreed upon in good faith by the insurer and provider to be usual and customary for in-network commercial claims, using best efforts to establish a rate within a reasonable amount of time.~~
~~Statutory/Other Authority: ORS 743B.287~~
~~Statutes/Other Implemented: ORS 743B.287~~