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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

ID 48-2023

CHAPTER 836
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
INSURANCE REGULATION

FILED

07/28/2023 3:12 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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

EFFECTIVE DATE: 07/28/2023 THROUGH 01/23/2024

AGENCY APPROVED DATE: 07/19/2023

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Filed By:
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Rules Coordinator

NEED FOR THE RULE(S):

Oregon law (section 6, chapter 37, Oregon Laws 2022) prior to the passage of House Bill 3008 (2023) 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 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 chapter 37, Oregon Laws 2022, and would result in increased premium rates for Oregon consumers. Adoption of this rule prevents that outcome.

JUSTIFICATION OF TEMPORARY FILING:

Insurance carriers are in the process of submitting rates and plan benefits to DCBS for approval. These documents must be approved and submitted to Health and Human Services by August 16, 2023. The passage of HB 3008 requires modification of these documents and with the federal timeline, there is not sufficient time to conduct permanent rulemaking.

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:
dfr.oregon.gov/laws-rules/Pages/proposed-rules.aspx.

ADOPT: 836-053-0027

RULE SUMMARY: House Bill 3008 (2023) grants 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.

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