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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

04/29/2024 8:45 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Repeal the adjustment of insulin cost-sharing rule

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 05/29/2024 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: 05/22/2024

TIME: 10:00 AM - 10:30 AM

OFFICER: Ethan Baldwin

IN-PERSON HEARING DETAILS

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

REMOTE HEARING DETAILS

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

PHONE NUMBER: 503-446-4951

CONFERENCE ID: 13452931

SPECIAL INSTRUCTIONS:

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

Meeting ID: 287 301 802 055

Passcode: fSfuFr

Dial-in by phone

+1 503-446-4951,,13452931# United States, Portland

Phone conference ID: 134 529 31#

NEED FOR THE RULE(S)

ORS 743A.069 requires that a health benefit plan may not require an enrollee in the plan to incur cost-sharing or other out-of-pocket costs above a certain limit for insulin prescribed for the treatment of diabetes. Prior to passage of SB 1508 (2024), the statute further required DCBS, by rule, to increase the maximum co pays for insulin, by the percentage

increase in the cost of living.

The original language in the statute capped the co-pays for insulin at \$75 for a 30-day supply and \$225 for a 90-day supply for the first year. DCBS was directed to adjust those co-pays in rule annually, to comply with the statute.

During the 2024 Legislative Session, Senate Bill 1508 was passed. SB 1508 established a permanent statutory cap of \$35 for a 30-day supply and \$105 for a 90-day supply. The bill also removed the requirement that DCBS revisit these caps each year. To ensure compliance with SB 1508, DCBS will repeal the existing rule as it is no longer necessary.

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>.

Senate Bill 1508 Enrolled:

<https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/SB1508/Enrolled>.

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 enacting statute has a positive impact on consumers with diabetes, while slightly raising premiums for all consumers. There are disparities in diabetes incidence along racial and economic lines. The potential disproportionate impact is a result of the enacting statute and not the rule as the statute does not allow DCBS significant discretion. Existing state and federal regulations do prohibit discrimination in the sale and utilization of health benefits plans.

FISCAL AND ECONOMIC IMPACT:

This amended rule updates benefits for health benefits plans in Oregon for plan years beginning on and after January 1, 2025. The amended rule does not contain new requirements. There will likely be a fiscal impact to consumers who purchased a plan in 2024 and purchase the same plan again 2025 as the newly selected plan will have a significant decrease in the cost of the benefit. However, there is no data available to demonstrate what that impact would be.

The fiscal impacts to insurers could have a quite small increase in administrative costs resulting from insurers needing to update plan language. Because insurers are already required to adjust plan language to conform to current requirements, the fiscal impact is not solely resulting from adoption of these rules. Inclusion of clearer language providing clear guidance to insurers may help to counter any increased administrative costs.

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 would not have a fiscal or economic impact on state agencies, local government units, nor the public.

The proposed rules apply to commercial payers only and would require minimal administrative effort to comply with the requirements of proposed rules. The insurers would already be required to adjust plan language to conform to current

requirements, so this cost is not solely resulting from adoption of these rules. Inclusion of clearer language providing guidance to insurers may help to counter any increased administrative cost.

Consumers purchasing insulin will see a decrease in cost. All consumers purchasing plans in Oregon may experience slightly higher premiums as result of this benefit.

(2)(a) 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.

(2)(b) 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.

(2)(c) 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.

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

REPEAL: 836-053-0025

RULE SUMMARY: Repealing the regulation of the insulin co-pay amount for health benefit plans for the state of Oregon.

CHANGES TO RULE:

~~836-053-0025~~

~~Insulin~~

~~(1) "Type of insulin" means various types of insulin analogs and insulin-like medications, regardless of activation period or whether the solution is mixed before or after dispensation.~~

~~(2) For plan years starting January 1, 2024, a health benefit plan offered in this state may not require an enrollee in the plan to incur cost-sharing or other out-of-pocket costs for a type of insulin prescribed for the treatment of diabetes that exceed:~~

~~(a) \$85 for each 30-day supply; or~~

~~(b) \$255 for each 90-day supply.~~

~~Statutory/Other Authority: ORS 731.244~~

~~Statutes/Other Implemented: ORS 743A.069~~