Department of Consumer and Business Services
Division of Financial Regulation
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OREGON DIVISION OF FINANCIAL REGULATION BULLETIN DFR 2017 – 1

TO: All Entities Transacting Insurance in Oregon

RE: Contraceptive Extended Dispensing Mandate Administration

Purpose:

The purpose of this bulletin is to clarify expectations for insurers and third parties providing administrative or other functions when administering contraceptive coverage in accordance with the Oregon contraceptive reimbursement requirements found in ORS 743A.066. It is our purpose to remind insurers to monitor and control vendor relationships in accordance with Oregon law.

Authority:

- ORS 743A.066 [Contraceptives]
- ORS 744.740 [Responsibility of insurer using third party administrator]
- 45 CFR § 147.130 [Coverage of Preventive Health Services]

Background:

In 2015, the Oregon Legislative Assembly enacted House Bill 3343. HB 3343 amended ORS 743A.066 to require insurers to reimburse for a three- and subsequent twelve-month dispensing of prescription contraceptives. Since enactment of the Act, the department has received complaints and inquiries that indicate insurers and their subcontractors (e.g., pharmacy benefit managers) may not be complying with reimbursement requirements for extended dispensing of prescription contraceptives.

Explanation of terms used in this bulletin:

- "Contraceptive" has the meaning given in ORS 743A.066.
- "Division" means the Department of Consumer and Business Services, Division of Financial Regulation
- "Extended dispensing" means a dispensing intended to last for longer than a one-month period.
- "Health benefit plan" has the meaning given in ORS 743B.005.

Discussion

Through the Insurance Code, the legislature has conferred on the division the authority to ensure that insurers offering health benefit plans in the individual, small group, and large group markets operate in compliance with the Insurance Code. Furthermore, if an insurer uses a third-party entity contracted to administer a function of the insurer, the insurer is solely responsible for providing competent administration of its plans. In particular, for purposes of this bulletin insurers remain responsible for the administration of pharmacy benefits through a pharmacy benefit manager (PBM) to manage the prescription drug portion of its benefit program.

ORS 743A.066 requires insurers to reimburse a health care provider or dispensing entity for contraceptives intended to last for a three-month period for the first dispensing. After this first dispensing, the same contraceptive can be disbursed on a twelve-month basis to the insured. Under the law, it is irrelevant whether the insured was enrolled in the plan at the time of the first dispensing.

The Insurance Code prohibits activities that prevent consumers from accessing extended dispensing of prescription contraceptives required under ORS 743A.066. Insurers violate extended dispensing requirements for prescription contraceptives if they prescribe, dispense, process claims, or implement any other requirements that prevent consumers from obtaining more than a one-month supply of prescription contraceptives for one copay. Additionally, insurers that fail to direct and control third-party entities contracted to prescribe, dispense, process claims, or implement any other requirements related to dispensing requirements for prescription contraceptives may also be found out of compliance with ORS 743A.066.

Some examples of activities that prevent use of extended dispensing and are noncompliant with ORS 743A.066 include, but are not limited to:

- Imposing supply limits that establish the maximum quantity of a drug covered in a copay or a specified timeframe that are less than the twelve-month dispensing quantities for contraceptives.

- Failing to honor a prescription when the quantity dispensed is greater than what is prescribed, even if it is within the total quantity allowed over the life of the prescription.

- Requiring consumers to pay twelve copays in order to receive a twelve-month supply in a single dispensing.

- Interpreting ORS 743A.066(2)(b)(A) to mean that a consumer must initially fill a three-month supply of the prescription if the prescription is not on file with that particular carrier, regardless of whether or not the insured is simply renewing/refilling a prescription which the insured has previously paid for with another payer.

- Imposing supply limits based on a pharmacy’s network tier placement so that prescriptions filled in one pharmacy network tier allow for three- and twelve-month dispensing while pharmacies in other network tiers do not.

Director's expectations for insurers and other regulated entities

The Director expects that access to contraceptive coverage will not be limited or administered in a way that violates ORS 743A.066. This bulletin takes effect March 7, 2017.

Dated this 7th day of March at Salem, Oregon.

Laura Cali Robison
Insurance Commissioner
Oregon Division of Financial Regulation