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Background Brief on ...

Health Insurance Mandates

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The law requires that most group and individual health insurance plans include coverage for certain illnesses or conditions, that care by certain providers be reimbursed by insurance, and that certain populations, such as newborns, be covered. These requirements are called “health insurance mandates.” Mandates also address other areas, such as requiring coverage for continuation and insurance portability, coverage regardless of pre-existing conditions, and requirements that health insurance carriers undertake certain duties like utilization review. Mandatory condition/illness and provider reimbursement tend to receive the most attention because these areas comprise the largest segment of mandates and impact the costs of health insurance coverage.

The Department of Consumer and Business Services (**DCBS**) Insurance Division is responsible for consumer protection and regulation of the 1,500 insurance companies doing business in Oregon. The division investigates and resolves complaints against insurance companies and agents, investigates violations of Oregon insurance law and takes appropriate enforcement actions when necessary, monitors companies selling insurance to ensure they are financially sound, reviews policies to ensure they comply with state law, and monitors policy issues such as health insurance mandates.

Attached is a chart of Oregon’s mandates for diseases/conditions and provider reimbursement, including statutory information and types of insurance subject to the law.

Types of Mandates

Most of Oregon’s mandates require either that the specified condition, illness, or service be covered to the same extent as other benefits, or that the services by the specified provider be covered to the same extent as services provided by a physician. However, there is an exception to this policy that applies to Oregon’s health-related benefits; mandatory offering requires that insurers offer the option of a policy with certain coverage, and that the optional coverage can be accepted by the insured, usually with an additional or higher premium. Oregon requires a mandatory offering of alcoholism treatment in individual policies, but allows the insurance company to charge a different premium for this benefit if chosen.

Federal Versus State

The federal Employee Retirement Income Security Act (**ERISA**)

allows self-insured employers (employers who provide funds to make claim payments for company employees and dependents instead of paying premiums to an insurance company for coverage) to be exempt from state regulation. However, self-insured employers are regulated by the U.S. Department of Labor and must adhere to federally-mandated benefits that currently include reconstructive breast surgery for women after covered mastectomies, rules on minimal hospital stays after birth, and portability and preexisting condition issues. A group health insurance policy that is governed by Oregon law and issued to an employer will include the statutorily mandated benefits as well as any federal health insurance mandates.

Costs and Benefits

There is debate around the issues of health insurance mandates. Proponents contend that mandates are necessary to ensure that insured individuals have adequate access to a broad spectrum of health care, and that people do not have to turn to public-sector health care because they cannot receive treatment through private insurance. Opponents note that excessive mandates add to the costs of health insurance and result in employers dropping employee health insurance, spending more for coverage, and/or passing costs on to their employees, leading to more uninsured individuals in the state as companies and workers can no longer afford basic insurance.

Proposing New Mandates

ORS 171.875 requires that every proposed legislative measure containing health insurance coverage mandates is accompanied by a report that assesses both the social and financial effects of the coverage. Areas that must be addressed in this report include:

- The extent that treatment or service will be used in Oregon
- The extent of coverage already available in Oregon
- The proportion of Oregonians who already have such coverage
- The extent to which lack of coverage results

in financial hardship in Oregon

- Evidence of medical need in Oregon for the proposed treatment or services
- The financial effect of the proposed measure, including the increase/decrease of costs of treatment, the extent that coverage will increase treatment, the extent that mandated treatment is expected to be a substitute for more expensive treatment, the impact on administrative expenses of the insurer and premiums/administrative expenses of policyholders, and the overall impact on total cost of health care

Automatic Repeal

In 1985, legislation was enacted that automatically repealed health insurance mandates effective on or after July 13, 1985 that do not specify a repeal date (ORS 743A.001). This “automatic repealer” abolishes such statutes on the sixth anniversary of each law’s effective date. The law applies to individual or group health insurance mandates that do any of the following:

- Requires coverage of specific physical or mental health conditions or specific hospital, medical, surgical or dental services
- Requires coverage for specific people
- Requires carriers to reimburse specific providers
- Requires insurers to provide coverage on a nondiscriminatory basis
- Forbids insurers from excluding covered services from payment or reimbursement
- Forbids excluding people due to their medical history

In 2002, the division received an Attorney General’s (AG) opinion regarding two mandates that were revised in 1999. The AG opined that, as a general rule, subsequent amendments to a health insurance mandate do not modify the automatic repeal date of a mandate. However, the exception to the rule is when “substantial or material changes” are amended into current law on health insurance mandates, and that the six-year automatic repealer (unless noted otherwise in the amended bill) starts from the effective date of the newly amended law.

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