

May 22, 2013

**Claim: This is a new mandate the State will be required to pay.
Answer: CCIIO*, LC, and DOJ agree that this is *NOT* a new
mandate.**

*Center for Consumer Information & Insurance Oversight Answer (CCIIO) (The Feds),
Cover Oregon (the State), Legislative Counsel, and Department of Justice (DOJ)

See email confirmation below for actual correspondence.

Legislative Counsel (LC) Poses Question:

From: Freeman Lorey [<mailto:lorey.freeman@state.or.us>]

Sent: Tuesday, May 14, 2013 3:13 PM

Subject: state required benefits

Hi Lisa-- I am a senior deputy legislative counsel to the Oregon Legislative Assembly. You were very helpful in answering my question, a couple of weeks ago, about applied behavioral analysis therapy as a state-required benefit. A Senate committee is considering another bill, that has passed out of the House, that removes from the statute requiring coverage of mental health treatment, the exclusion of substance use treatment that is court-ordered as a result of a conviction of driving while under the influence of intoxicants. The result is that insurers would no longer be permitted to deny coverage of substance abuse treatment just because it is court-ordered.

The DHHS regulations define the essential health benefits to include “mental health and substance use disorder services, including behavioral health treatment”, 45 CFR 156.115. Does that mean that substance use treatment would be required as an EHB regardless of whether it’s court-ordered? Or would the removal of the exclusion in the state statute amount to a new state-required benefit for which the state would be liable for defraying the cost under 45 CFR 155.170? I couldn’t find any specific guidance on this issue and the senate committee chair asked me to see what I could find out.

I appreciate your help with this!

Lorey Freeman

Office of Legislative Counsel Committee
(503) 986-1243; Direct line: (503) 986-1746
900 Court Street NE, S-101
Salem, OR 97301

Center for Consumer Information & Insurance Oversight Answer (CCIIO):

Sent: Thursday, May 16, 2013 8:51 AM
To: Freeman Lorey
Subject: RE: state required benefits

Hi Lorey,

Apologies for the delay! I was unexpectedly away from the office most of yesterday.

Hopefully this language, which is posted on the CCIIO website, will provide some guidance. Note the last line.

We consider state-required benefits (or mandates) to include only specific care, treatment, or services that a health plan must cover. We do not consider provider mandates, which require a health plan to reimburse specific health care professionals who render a covered service within their scope of practice, to be state-required benefits for purposes of EHB coverage. Similarly, we do not consider state-required benefits to include dependent mandates, which require a health plan to define dependents in a specific manner or to cover dependents under certain circumstances (e.g., newborn coverage, adopted children, domestic partners, and disabled children). Finally, we do not consider state anti-discrimination requirements, and state requirements relating to service delivery method (e.g., telemedicine) to be state-required benefits.

Please let me know if you need more.

Have a great day, Lisa

Request for Confirmation that Department of Justice (DOJ) Agrees with CCIIO:

From: Holman Jeannette [<mailto:jeannette.holman@state.or.us>]
Sent: Friday, May 17, 2013 11:29 AM
To: ANDERSON Judith K
Cc: BEHRENS Anthony A
Subject: HB 2385

Judith,

Representative Barnhart's office would like an email confirming that we agree with the advice Lorey received from her contact at CCIIO. Can you just zip me an email that says that?

I'm attaching my earlier email so you don't have to go searching for it. I told them we will still be waiting until sometime next week for your take on whether the Exchange makes the ultimate decision...

Thanks much,

Jeannette

Confirmation that DOJ Agrees with CCIIO:

From: ANDERSON Judith K
Sent: Friday, May 17, 2013 11:49 AM
To: HOLMAN Jeannette
Subject: RE: HB 2385

Jeanette,

I agree with the advice, as I understand it, from CCIIO regarding the effect of removal of the exemption under Oregon's current statute (ORS 743A.168) for screening ordered by a court in conjunction with a conviction under ORS 813.010. Based on CCIIO's information, I agree that the removal of this exemption is the removal of a discriminatory provision related to an existing benefit and as such is not a new benefit that would be subject to state payments to defray the costs of the mandate.

Judith

Judith K. Anderson
Sr. Assistant Attorney General, Business Activities Section
Oregon Department of Justice
(voice) 503-947-4330

Claim: Fiscal Impact on PEBB and OEBC is too small Answer: Oregon Health Authority Stands by their minimal fiscal impact

Oregon Health Authority further explains their assessment:

From: Nieuburt Brian [mailto:brian.nieuburt@state.or.us]
Sent: Thursday, May 16, 2013 11:33 AM
To: Rep Barnhart
Subject: Re: HB 2385 Impact on PEBB/OEBB

Hi Sonya,

We have confirmed our initial fiscal impact assessment to PEBB/OEBB from HB 2385. While DUII screening interviews and treatment programs could statutorily be excluded

from PEBB/OEBB plans our understanding is that they are likely currently being paid for because billing information necessary to distinguish these from otherwise covered services is often not submitted. Therefore, HB 2385 continues to have a negligible impact for PEBB/OEBB.

I am happy to meet with Rep. Barnhart to provide any more detail or to coordinate any follow-up he would like.

Please let me know if you have any additional questions.

Brian

Brian Nieuburt
Legislative Coordinator for Health Care Programs
Oregon Health Authority
(503)269-5970 (mobile)
brian.nieuburt@state.or.us

Claim: Technical Amendment Needed

Answer: LC Agreed

Issue raised by Department of Consumer & Business Services (DCBS):

From: Holman Jeannette [<mailto:jeannette.holman@state.or.us>]
Sent: Wednesday, May 15, 2013 12:33 PM
To: REP Barnhart
Cc: Holman Jeannette; Savage Louis D; THIELECIRKA Sandy; VanWinkle Theresa A
Subject: Issue raised by insurers

Sonja,

As we discussed, the issue raised by the insurers is the possible conflict that must be resolved between ORS 743A.168 as it is proposed to be amended to delete the exclusion for court ordered screening (ORS 743A.168(4)(a)(E)), and the language in ORS 813.021 which they argue requires the person convicted to pay for the cost of the program or the screening.

As I said, I have not looked at this at all, so don't know if this is really a problem or not and I'm not prepared to say one way or the other yet; Lorey may have already looked at it and found no conflict. ORS 813.023 may shed some light on the intent in that it says if the person is eligible for the state medical assistance program, that program may cover some of the costs to the extent they are covered, but the person remains responsible. Tell Lorey to feel free to give me a call to kick this around if she would like.

Here's the statute:

813.021 Requirements for screening interview and treatment program. (1) When a court, in accordance with ORS 813.020, requires a person to complete a screening interview and a treatment program, the court shall require the person to do all of the following:

(a) Complete a screening interview for the purpose of determining appropriate placement of the person in a program for treatment for alcoholism, drug dependency or dependency on inhalants.

(b) Pay directly to the agency or organization conducting the screening interview a fee of \$150.

(c) Complete the treatment program to which the person is referred.

(d) Pay for the treatment program to which the person is referred.

(2) The screening interview required by this section shall be conducted by an agency or organization designated by the court. The designated agency or organization must meet the standards set by the Director of the Oregon Health Authority to conduct the screening interviews. Wherever possible a court shall designate agencies or organizations to perform the screening interview that are separate from those that may be designated to carry out a treatment program.

(3) An agency or organization doing a screening interview under this section may not refer a person to a treatment program that has not been approved by the Director of the Oregon Health Authority.

(4) The agency or organization conducting a screening interview under this section shall monitor the progress of the person referred to the agency or organization. The agency or organization shall make a report to the referring court stating the person's successful completion or failure to complete all or any part of the screening interview or of the treatment program to which the person was referred by the agency or organization. The report shall be in a form determined by agreement between the court and the agency or organization. [1999 c.126 §3; 1999 c.619 §8a; 2005 c.303 §1; 2009 c.595 §1140]

Let me know if you have any further questions. I'll keep you posted on what we at the Insurance Division learn.

Thanks much,

Jeannette

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LC Response:

From: Freeman Lorey
Sent: Wednesday, May 15, 2013 1:34 PM
To: Rep Barnhart
Cc: HOLMAN Jeannette; SAVAGE Louis D; ThieleCirka Sandy; VANWINKLE Theresa A
Subject: RE: Issue raised by insurers

Hi Sonya!

I agree that we should prepare an amendment to the bill that includes modifications to ORS 813.021 to resolve the potential conflict. I'm glad someone caught that.

Lorey

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See Amendment on next page, which addresses the problem:

**PROPOSED AMENDMENTS TO
HOUSE BILL 2385**

1 On page 1 of the printed bill, line 3, after “743A.168” insert “and
2 813.023”.

3 On page 4, after line 3, insert:

4 **“SECTION 2.** ORS 813.023 is amended to read:

5 “813.023. A person required to pay for a screening interview, treatment
6 program or diagnostic assessment under ORS 813.021, 813.200, 813.210 or
7 813.240 who is eligible for the state medical assistance program **or is en-**
8 **rolled in a health benefit plan, as defined in ORS 743.730,** may utilize the
9 state medical assistance program **or health benefit plan** as a third party
10 [*resource to support*] **payer for the costs of** medically necessary chemical
11 dependency services that are covered under the state medical assistance
12 program **or health benefit plan.** The person remains responsible for the
13 costs of the screening interview, treatment program or diagnostic assessment,
14 regardless of the amount of coverage or the failure of the third party [*re-*
15 *source to pay*] **payer to reimburse all of the costs.”.**

16 In line 4, delete “2” and insert “3”.

17 In line 6, delete “3” and insert “4”.

18
