OFFICE OF THE SECRETARY OF STATE
BEV CLARNO
SECRETARY OF STATE

JEFF MORGAN
INTERIM DEPUTY SECRETARY OF STATE

ARCHIVES DIVISION
STEPHANIE CLARK
DIRECTOR

800 SUMMER STREET NE
SALEM, OR 97310
503-373-0701

TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

OEBB 1-2020

CHAPTER 111
OREGON HEALTH AUTHORITY
OREGON EDUCATORS BENEFIT BOARD

FILED
03/18/2020 5:04 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Clarification to OEBB's Payment for Hospital Services rule

EFFECTIVE DATE: 03/18/2020 THROUGH 09/13/2020

AGENCY APPROVED DATE: 03/17/2020

CONTACT: April Kelly
503-378-6588
April.R.Kelly@state.or.us

500 Summer Street NE, E-88
Salem,OR 97301

Filed By:
April Kelly
Rules Coordinator

NEED FOR THE RULE(S):

OEBB needs to amend this rule to clarify how contracted health insurance carriers and third-party administrators shall pay claims for hospital services to comply with requirements of 243.879. This rule clarification will support consistent implementation of the statutory hospital reimbursement maximum across all of OEBB's carriers and third party administrators, and support fiscal stewardship of OEBB health care dollars. The temporary rule is being filed so that amended rule language can take effect immediately until a permanent rule can be filed.

JUSTIFICATION OF TEMPORARY FILING:

OEBB finds that failure to act promptly will result in serious prejudice to the public interest, OEBB benefit programs, and OEBB members. Prompt action is needed ensure consistency in both how the statutory maximum reimbursement amount for OEBB hospital services is implemented and in how member cost-sharing for hospital services is determined. Failure to act promptly risks increasing costs to the OEBB program and increasing cost-sharing for members who receive inpatient or outpatient hospital services. The permanent administrative rule process requires more time to complete than available in this instance.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Senate Bill 1067 (2017 Regular Session), ORS 243.879 This statute can be found at oregonlegislature.gov
Meeting video recording from the OEBB Board meeting from Tuesday, March 17, 2020. The rule amendments were reviewed and approved by the Board and authority was given to file these temporary. This can be found online: https://www.oregon.gov/OHA/OEBB/Pages/Public-Meetings.aspx

AMEND: 111-080-0065

RULE SUMMARY: The amendments to this rule serve to clarify that the actual reimbursement amount carriers shall pay hospitals is the lesser of billed charges, the carrier's contracted rate for the provider, or the maximum reimbursement amount established in statute. In addition, the amendments provide further clarification in that the carriers must capture data fields on claims for services and supplies that are necessary to determine the Medicare rate for the service

or supply in order to ensure that the actual reimbursement amount does not exceed the maximum reimbursement amount.

CHANGES TO RULE:

111-080-0065
Hospital Payments
(1) Except as provided in section (~~8~~9), the maximum reimbursement amount for each claim subject to ORS 243.879 and these rules shall be determined by the carrier applying the applicable percentage of the Medicare rate, or the Medicare rate for similar services or supplies, as of the date of service of the claim. ¶
(2) The ~~carrier shall determine the OEBB member's cost sharing based upon the low~~actual reimbursement amount for each claim subject to ORS 243.879 and this rule shall be based on the lesser of billed charges, the carrier's contracted rate for the provider, o~~f~~r the ~~amount allow~~maximum reimbursement amount established ~~by~~in ORS 243.879 ~~or the carrier's contracted rate for the provider~~and this rule.¶
(3) The carrier shall determine the OEBB member's cost sharing based upon the actual reimbursement amount as determined in Section (2) above. ¶
(~~3~~4) The following payments shall not be included under ORS 243.879(1) or these rules:¶
(a) services or supplies that are not covered by Medicare¶
(b) services or supplies provided at Ambulatory Surgery Centers¶
(c) professional services provided in a Hospital. ¶
(~~4~~5) If a third-party administrator of a self-insured plan provides total fee-for-service payments to an in-network hospital under ORS 243.879(1) or (2) that exceed twice the total payments at the Medicare rate for the plan year, the self-insured plan third-party administrator will return the difference to OEBB. Moneys returned to OEBB under this rule will be deposited in the Oregon Educators Revolving Fund for purposes consistent with ORS 243.884.¶
(~~5~~6) If a fully-insured carrier provides total fee-for-service payments to an in-network hospital under ORS 243.879(1) or (2) that exceed twice the total payments at the Medicare rate for the plan year, the fully-insured carrier will provide OEBB a credit to fully-insured premium rates equivalent to this difference. ¶
(~~6~~7) If a third-party administrator of a self-insured plan provides total fee-for-service payments to an out-of-network hospital under ORS 243.879(1) or (2) that exceed 1.85 times the total payments at the Medicare rate for the plan year, the self-insured third-party administrator will return the difference to OEBB. Moneys returned to OEBB under this rule will be deposited in the Oregon Educators Revolving Fund for purposes consistent with ORS 243.884.¶
(~~7~~8) If a fully-insured carrier provides total fee-for-service payments to an out-of-network hospital under ORS 243.879(1) or (2) that exceed 1.85 times the total payments at the Medicare rate for the plan year, the fully-insured carrier will provide OEBB a credit to fully-insured premium rates equivalent to this difference.¶
(~~8~~9) If a carrier or third-party administrator does not reimburse hospitals on a fee-for-service basis, it may pursue an alternative payment method that maintains total payments while taking into account the limits established in ORS 243.879 and described in this rule, including, but not limited to: ¶
(a) value based payments, ¶
(b) capitation payments and¶
(c) bundled payments. A carrier or third-party administrator using alternative payment methods must provide actuarial calculations that show the payment methods used adhere to the limits specified in ORS 243.879. Such alternative payment methods must be reported to OEBB as part of its benefit plan agreement with the carrier or third-party administrator. If payments under the alternative payment arrangement exceed the limits specified in ORS 243.879 the carrier or third-party administrator will return the difference to OEBB. Moneys returned to OEBB under this rule will be deposited in the Oregon Educators Revolving Fund for purposes consistent with ORS 243.884.¶
(~~9~~10) For purposes of this rule, the "Medicare rate" is the amount of reimbursement for a claim that would be paid as if ~~Medicare~~the Centers for Medicare and Medicaid Services (CMS) reimbursed the claim. Therefore, the

outpatient reimbursements apply the Medicare Ambulatory Payment Classification (APC) or Hospital Outpatient Prospective Payment System (OPPS), and that for inpatient the reimbursements apply Medicare Severity Diagnosis Related Groups (MS-DRG). All rebates, incentives, or adjustments that would have applied if reimbursed by Medicare would also apply. The "Medicare rate" as defined in this rule is used to determine the maximum reimbursement amount for each claim subject to ORS 243.879 and this rule and in no way prohibits a carrier or third-party administrator from establishing contracted claims reimbursement rates that are lower than the maximum reimbursement amount. This includes contracted claims reimbursement rates informed by Medicare Advantage rates, so long as contracted rates do not exceed the maximum reimbursement amount established in ORS 243.879 and this rule. Futhermore, this includes capturing data fields on claims for services or supplies that are necessary to determine the Medicare rate for the service or supply in order to ensure that the actual reimbursement amount does not exceed the maximum reimbursement amount established in ORS 243.879 and this rule.

Statutory/Other Authority: ORS 243.860 to 886

Statutes/Other Implemented: ORS 243.879, ORS 243.864(1)(a)