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## NOTICE OF PROPOSED RULEMAKING INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 111  
OREGON HEALTH AUTHORITY  
OREGON EDUCATORS BENEFIT BOARD

**FILED**

07/29/2022 1:32 PM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Repealing OEBB rules that extended healthcare coverage during the COVID-19 pandemic

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/31/2022 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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Salem, OR 97301

Filed By:  
April Kelly  
Rules Coordinator

### HEARING(S)

*Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.*

DATE: 08/23/2022

TIME: 11:00 AM

OFFICER: OEBB Staff

ADDRESS: REMOTE MEETING ONLY

500 Summer Street NE

Salem, OR 97301

### SPECIAL INSTRUCTIONS:

Due to COVID-19, all public meetings are being held remotely. To provide oral testimony during the hearing, please dial 1-971-277-2343 and enter access pin 131829581#

Accessibility Statement: For individuals with disabilities or individuals who speak a language other than English, OHA can provide free help. Some examples are: sign language and spoken language interpreters, real-time captioning, braille, large print, audio, and written materials in other languages. If you need help with these services, please contact the Oregon Educators Benefit Board (OEBB) at 503-378-6783 711 TTY or oebb.benefits@dhsosha.state.or.us at least 48 hours before the meeting. All relay calls are accepted. To best ensure our ability to provide a modification please contact us if you are considering attending the meeting and require a modification. The earlier you make a request the more likely we can meet the need.

### NEED FOR THE RULE(S)

The Oregon Health Authority, Oregon Educators Benefit Board, is repealing the administrative rules that protect member benefits during the COVID-19 pandemic. These administrative rules were effective during the time in which the Governor's Executive Order (EO) 20-03 was in effect. The EO was the result of a declaration of an emergency due to the public health threat posed by the novel infectious coronavirus (COVID-19). Executive Order 20-03, in part, addressed filing temporary rules to provide services and support during the Emergency Declaration. OEBB filed temporary rules and then went through the permanent rulemaking process to ensure they did not expire, as Oregon

was still in a declared state of emergency. The Governor rescinded EO 20-03 April 1, 2022, and thus the declared state of emergency is lifted. OEBC Board Leadership recommended the repeal of these rules to coincide with OEBC's benefit plan year, which ends 9/30/2022.

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#### DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Office of the Governor, State of Oregon. Executive Order No. 22-03. Available online at:  
[https://www.oregon.gov/gov/eo/eo\\_22-03.pdf](https://www.oregon.gov/gov/eo/eo_22-03.pdf)

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#### STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

The rules that are being repealed were in place during the COVID-19 state of emergency and were to protect educational entity and participating local government employees' health benefits if they failed to meet benefit eligibility and were directly impacted by COVID-19. The effect on racial equity was thoughtfully considered, and a determination was made that there is no likely impact due to this rule repeal.

We know that data exists on how marginalized and underserved populations on the East Coast (local to Baltimore and Chicago) were treated during the COVID-19 pandemic, and we attempted to track down information on our own members experience. We inquired with some Human Resource administrators to hopefully obtain some data or insight into the use of the COVID rule, what the races of individuals who fell below eligibility (and not due to protected or other leave such as ACA), and any additional need that the marginalized and underserved employees may need. It was not information that was readily available since there were strategies in place to assist employees if needed. One strategy noted were the use of job assignment accommodations for employees who are immuno-compromised. Of those employees, there is not any data currently available on their race or ethnicity.

Employee benefits through OEBC are offered to eligible employees of educational entities and participating local governments regardless of their race, ethnicity, ability, sexual orientation, gender identity, gender, geography, or socio-economic status. Eligibility for employee benefits through OEBC is solely based on the individual's employment status with the previously mentioned entities.

For individuals with disabilities or individuals who speak a language other than English, OEBC can provide free help. Any items requested in an alternate format or alternative language will be provided.

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#### FISCAL AND ECONOMIC IMPACT:

This rule repeal is not expected to have any fiscal or economic impact.

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#### 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) There are no state agencies, units of local government, and members of the public that are likely to be affected by this rule repeal.

(2)(a) Effect of small business: There are no small businesses subject to these rules.

(2)(b) None

(2)(c) No estimated cost, since small businesses are not subject to these rules.

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#### DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Since small businesses are not impacted by OEGB rules, none were invited to participate in the development of this rule repeal.

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WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

A Rule Advisory Committee (RAC) was not convened. OEGB was granted an exception to the RAC process by the OHA Administrative Rules Program Coordinator since these rules are being repealed due to the lifting of the Governor's Executive Order 20-03. All OEGB's list serves will receive this notice of rulemaking. List serves include Business Managers, Superintendents, Benefit Management System users (HR/payroll contacts) and anyone signed up under OEGB's general interested parties list. Furthermore, this information will be included in the "Welcome to Open Enrollment" email that is sent out to all HR/payroll contacts on or around August 15, 2022.

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REPEAL: 111-015-0005

RULE SUMMARY: OAR 111-015-0005 provided continuous benefit coverage for those OEGB members who failed to meet standard benefit eligibility and were directly affected by the COVID-19 pandemic. This rule explains that premium arrangements are agreed to by the employee and their employer.

CHANGES TO RULE:

~~111-015-0005~~

~~All Other Benefit-Eligible Employees Not Included in Emergency Family Medical Leave Expansion Act during the COVID-19 pandemic~~

~~(1) Benefit eligible full-time and part-time employees who do not meet current benefit eligibility due to their furlough or layoff directly related to COVID-19 and who are not in a current stability period under the Affordable Care Act or on approved FMLA or other protected leave, remain eligible for active OEGB benefits.¶¶~~

~~(a) This rule is to be used in those temporary situations when the intent is to bring the employee back to active coverage. If the intent is to terminate the employee's position or reduce this position to a non-benefit eligible position, then the employing entity needs to terminate active benefits and offer the employee COBRA at the end of the month in which this determination is made.¶¶~~

~~(b) This rule does not stipulate premium arrangements as those are based on an agreement between the employee and their employer.¶¶~~

~~(2) An employee may choose to self-pay or cancel their optional coverages through their employing entity. Failure to self-pay for these optional coverages may result in the cancellation of these coverages. These optional coverages may be reinstated when the employee returns to work. The employee may have a lapse in these coverages and may not use these benefits during their period of premium non-payment. If an employee cancels their Long-Term Care coverage, the employee must re-apply at their current age upon returning to work.~~

~~Statutory/Other Authority: ORS 243.860–243.886~~

~~Statutes/Other Implemented: ORS 243.864(1)(a)~~