OFFICE OF THE SECRETARY OF STATE
SHEMIA FAGAN
SECRETARY OF STATE

CHERYL MYERS
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 4-2021
CHAPTER 111
OREGON HEALTH AUTHORITY
OREGON EDUCATORS BENEFIT BOARD

FILED
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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Amends OEBB's definitions to include expanded eligibility for disabled dependents and other clarifying language

EFFECTIVE DATE: 12/31/2021 THROUGH 06/28/2022

AGENCY APPROVED DATE: 12/07/2021

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):

Senate Bill 748 requires the Oregon Educators Benefit Board (OEBB) to provide coverage to adult disabled children of enrollees. Adult disabled children are eligible for coverage if a physician has certified that they are unable to engage in self-sustaining employment; if they were covered by a parent's insurance policy immediately before they exceeded the age for eligibility for coverage; and if the insured parent claims the adult disabled child as a dependent, or the adult disabled child has an adjusted gross income that does not exceed 150 percent of the federal poverty level. This requires a change in OEBB's definitions division, as it expands eligibility for disabled dependents. Additionally, housekeeping/clarifying amendments were identified and included in this rule change filing.

JUSTIFICATION OF TEMPORARY FILING:

Senate Bill 748 passed out of the 2021 legislative session with an effective date of January 1, 2022. OEBB staff began working internally to determine what changes would be needed because of SB 748, including changes to our benefit management system, forms, communications and rules. Staff worked with legal counsel on the implications of a member adding a dependent to benefit coverage that is not a tax dependent, per the Internal Revenue Code. This resulted in language being added to rule. OEBB has been working with members who have already contacted us wanting to add their disabled child, who will be eligible as a result of this expanded eligibility. Without filing temporary, our rules would not align with the effective date of the bill, and there could be a potential issue with these dependents not being able to be added to coverage. The OEBB Board reviewed and approved these rule amendements for temporary filing at their December 7, 2021 Board meeting.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

AMEND: 111-010-0015

RULE SUMMARY: Amendments to Division 10, OEBB's Definitions division, are mostly housekeeping or clarifying in nature. There is an amendment due to SB 748 (2021) which expands the eligibility for a disabled dependent.

CHANGES TO RULE:

111-010-0015
Definitions ¶

Unless the context indicates otherwise, as used in OEBB administrative rules, the following definitions will apply:¶
(1) "Actuarial value" means the expected financial value for the average member of a particular benefit plan.¶
(2) "Adverse Benefit Determination" means a denial, reduction, or termination of, or a failure to provide or make payment (in whole or in part), for a benefit, including any such denial, reduction, termination, or failure to provide or make payment that is based on but not limited to:¶
(a) A determination of a member's eligibility to participate in the plan;¶
(b) A determination that the benefit is not a covered benefit; or¶
(c) A rescission of coverage, whether or not, in connection with rescission, there is an adverse effect on any particular benefit.¶
(3) "Affidavit of Domestic Partnership" means a document that attests the eligible employee and one other eligible individual meet the criteria in section (15)(b).¶
(4) "Benefit plan" includes, but is not limited to, insurance or other benefits including:¶
(a) Medical (including non-integrated health reimbursement arrangements (HRAs));¶
(b) Dental;¶
(c) Vision;¶
(d) Life, disability and accidental death;¶
(e) Long term care;¶
(f) Employee Assistance Program Plans;¶
(g) Supplemental medical, dental and vision coverages (including Integrated General Purpose and Integrated Post-Deductible health reimbursement arrangements (HRAs); and Limited Purpose, Post-Separation/Retiree, and Premium Only health reimbursement arrangements (HRAs));¶
(h) Any other remedial care recognized by state law, and related services and supplies;¶
(i) Comparable benefits for employees who rely on spiritual means of healing; and¶
(j) Self-insurance programs managed by the Board.¶
(5) "Benefits" means goods and services provided under Benefit Plans.¶
(6) "Board" means the ~~ten-member board established in the Department of Administrative Services as the Oregon Educators Benefit Board under chapter 00007, Oregon Laws 2007~~Oregon Educators Benefit Board which consists of at least ten members appointed by the Governor and is established under the Oregon Health Authority.¶
(7) "Child" means and includes the following:¶
(a) An eligible employee's, spouse's, or domestic partner's biological son or daughter; adopted child; child placed for adoption; or legally placed child, who ~~is 25 or younger on the first day of the month~~has not reached age 26. An eligible employee must provide the required custody or legal documents to their ~~Educational~~ Entity showing proof of adoption, legal guardianship or other court order if enrolling a child for whom the employee, spouse, or domestic partner is not the biological parent. Grandchildren are only eligible when the eligible employee is the legal guardian or adoptive parent of the grandchild.¶
(b) A person who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. There is no age limit for a dependent child who is incapable of self-sustaining employment because of a developmental disability, mental illness, or physical disability. When the dependent child is 26 years of age or older all the following requirements must be met:¶
(A) The disability must have existed before attaining age 26.¶
(B) The employee must provide evidence to the Entity or OEBB that (1) the person had health plan coverage, group or individual, prior to attaining age 26, and (2) health plan coverage continued without a gap until the OEBB health plan effective date.¶
(C) The person's attending physician must submit documentation of the disability to the eligible employee's OEBB health insurance plan for review and approval. If the person receives health plan approval, the health plan may review the person's health status at any time to determine continued OEBB coverage eligibility.¶
(D) (i)The ~~person must not have termina~~dependent child must be the employee's qualifying IRS dependent and must be claimed on the eligible employee's most recent years tax return, or¶
(ii) The child files a tax return and demonstrates that their adjusted ~~f~~gro~~m OEBB health plan coverage after attaining the age of 26~~ss income does not exceed 150 percent of the federal poverty level (FPL), or¶
(iii) The employee is the legal guardian of the disabled dependent child.¶
(c) Eligibility for coverage under this rule includes people who may not be dependents under federal or state tax law and may require an Entity to adjust an eligible employee's income based on the imputed value of the benefit.

Imputed taxes may apply, per IRC provisions, when an employee enrolls and covers dependents on their OEBB coverage that are not claimed on their federal taxes, and thus are not tax dependents.¶
(8) "Comparable cost (Medical, Dental and Vision)" means that the total cost to a district for enrollment in OEBB plans comparable in design to the district's plan(s) do not exceed the total cost to a district for enrollment in the district's plan(s) using the rate(s) in effect or proposed for the benefit plan year.¶
(9) "Comparable cost (Basic and Optional Life Insurance, Accidental Death & Dismemberment, and Short and Long Term Disability)" means that the premium rates of an OEBB plan design option do not exceed the average, aggregate premium rates of a district's pre-OEBB plan design in effect the year prior to implementation.¶
(10) "Comparable plan design (Medical, Dental and Vision)" means that the actuarial values of two plan designs are within 2.5 percent higher or lower of each other.¶
(11) "Comparable plan design (Basic and Optional Life Insurance and Accidental Death & Dismemberment)" means that 90 percent of district employees can obtain a maximum benefit through an OEBB plan design that is within $2,500 of the maximum benefit obtained through a pre-OEBB plan design in effect the year prior to implementation.¶
(12) "Comparable plan design (Short and Long Term Disability)" means 90 percent of the district employees can obtain the same elimination period, percentage of covered compensation, definition of covered compensation, coverage period duration, and maximum payment per benefit period through an OEBB plan design as through a pre-OEBB plan design in effect the year prior to implementation.¶
(13) "Dependent" means and includes the eligible employee's spouse or domestic partner, or child as defined by OAR 111-010-0010(7), unless otherwise defined in another OEBB rule.¶
(14) "Documented entity policies" means Entities' policies and practices that apply to an employee group and are submitted to the Oregon Educators Benefit Board during the plan selection process. Entities' policies and practices must be identified and submitted with the applicable employee group plan selections.¶
(15) "Eligible Domestic partner," unless otherwise defined by a collective bargaining agreement or documented district policy in effect on January 31, 2008, means and includes the following:¶
(a) An unmarried individual of the same sex who has entered into a "Declaration of Domestic Partnership" with the eligible employee that is recognized under Oregon law; or¶
(b) An unmarried individual of the same or opposite sex who has entered into a partnership that meets the following criteria:¶
(A) Both are at least 18 years of age;¶
(B) Are responsible for each other's welfare and are each other's sole domestic partners;¶
(C) Are not married to anyone and have not had a spouse or another domestic partner within the prior six months. If previously married, the six-month period starts on the final date of divorce;¶
(D) Share a close personal relationship and are not related by blood closer than would bar marriage in the State of Oregon;¶
(E) Have jointly shared the same regular and permanent residence for at least six months immediately preceding the date the Affidavit of Domestic Partnership is signed and submitted to the Entity; and¶
(F) Are jointly financially responsible for basic living expenses defined as the cost of food, shelter and any other expenses of maintaining a household. Financial information must be provided if requested.¶
(G) The eligible employee and domestic partner must jointly complete and submit to the Entity an Affidavit of Domestic Partnership form, within five business days of the electronic enrollment date or the date the Entity received the enrollment/change form. If the affidavit is not received, coverage will terminate for the domestic partner retroactive to the effective date.¶
(c) The eligible employee must notify the Entity within 31 days of meeting all criteria as defined in 111-010-0015 (15)(b) or obtaining the "Declaration of Domestic Partnership" which is recognized under Oregon law.¶
(d) Entities' must calculate and apply applicable imputed value tax for domestic partners covered under OEBB benefit plans.¶
(16) "Educational Entity" means public school districts (K-12), education service districts (ESDs), community colleges and public charter schools participating in OEBB.¶
(17) "Eligible employee" means and includes an employee of an Educational Entity or Local Government who is actively working or on paid or unpaid leave that is recognized by federal or state law, and:¶
(a) Is employed in a half time or greater position or is in a job-sharing position; or¶
(b) Meets the definition of an eligible employee under a separate OEBB rule or under a collective bargaining agreement or documented district policy in effect on January 31, 2008; or¶
(c) Is an employee of a community college who is covered under a collectively bargained contract and has worked a class load of between 25 percent and 49 percent for a minimum period of two years and is expected to continue to work a class load of at least 25 percent. ~~Coverage is limited to medical to include Kaiser Medical Plan 2, Kaiser Medical Plan 3 (where available), Moda Health Cedar Plan, Moda Health Dogwood Plan, or Moda Health Evergreen Plan. The tiered rate structure will apply to all medical plans.~~¶

(18) "Eligible Early Retiree" means and includes a previously eligible employee who is:¶
(a) Not Medicare-eligible; or¶
(b) Under 65 years old; and¶
(A) Receiving a service or disability retirement allowance or pension under the Public Employees Retirement System (PERS) or under any other retirement or disability benefit plan or system offered by an OEBB participating organization for its employees;¶
(B) Eligible to receive a service retirement allowance under PERS and has reached earliest retirement age under ORS Chapter 238;¶
(C) Eligible to receive a pension under ORS 238A.100 to 238A.245 and has reached earliest retirement age as described in ORS 238A.165; or¶
(D) Eligible to receive a service retirement allowance or pension under another retirement benefit plan or system offered by an OEBB participating organization and has reached earliest retirement age under the plan or system.¶
(19) "Employee Group" means employees and early retirees of a similar employment type, for example administrative, represented classified, non-represented classified, confidential, represented licensed, or non-represented licensed, within an Entity. If one or more collective bargaining unit exists within an employee group, each unit will be considered a separate employee group.¶
(20) "Entity" means an Educational Entity, Local Government or Special district.¶
(21) "Flexible benefit plan" includes plans that allow contributions on a tax-favored basis including health savings accounts.¶
(22) "Health Reimbursement Arrangement (HRA)" means an account established and funded solely by the employer that can be used to pay for qualified health care expenses for eligible employees and their spouses and federal tax dependents, up to a maximum dollar amount for a coverage period, and any unused portion of the maximum dollar amount at the end of a coverage period is carried forward to increase the maximum reimbursement amount in subsequent coverage periods. This definition should be interpreted to comply with the guidelines established by the IRS for treatment of HRAs on a tax-favored basis in Technical Release No. 2013-03, IRS Publication 969 and IRS Notice 2002-45. HRA includes, but is not limited to, the following:¶
(a) "Integrated General Purpose HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses and is available only to eligible employees who are enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.¶
(b) "Integrated Post-Deductible HRA" is an HRA that allows participants to be reimbursed for expenses up to a certain amount, but only after the participants have met the annual deductible on an OEBB medical plan in which the employee participant is enrolled as the primary subscriber, or as an eligible dependent.¶
(c) "Limited Purpose HRA" is an HRA that allows participants to be reimbursed for only standard dental, vision, and orthodontia expenses and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.¶
(d) "Non-integrated HRA" is an HRA that allows participants to be reimbursed for all IRS qualified expenses when the employee participant is not enrolled in an OEBB medical plan as the primary subscriber, or as an eligible dependent.¶
(e) "Post-Separation/Retiree HRA" is an HRA that allows participants to be reimbursed for qualified expenses only after the employee separates/retires and does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.¶
(f) "Premium Only HRA" is an HRA that allows participants to be reimbursed only for insurance premiums paid on an after tax basis, where the employee participant has no ability to pay the premium on a pre-tax basis and the HRA does not require the employee participant to be enrolled in an OEBB medical plan as the primary subscriber, or as a dependent.¶
(23) "Health Savings Account (HSA)" means a tax-exempt trust or custodial account that is set up with a qualified HSA trustee to pay or reimburse certain incurred medical expenses, as defined in 26 U.S.C. Sec. 223(d) and IRS Publication 969.¶
(24) "High Deductible Health Plan (HDHP)" means a health plan that meets the criteria for a "high deductible health plan" as outlined in 26 U.S.C. Sec. 223(c)(2). Enrollment in an HDHP is one of the requirements that must be met in order to qualify to contribute to a health savings account (HSA).¶
(25) "Local Government" means cities, counties and special districts in Oregon.¶
(26) "Members" means and includes the following:¶
(a) "Eligible employee" as defined by OAR 111-010-0015(17).¶
(b) "Child" as defined by OAR 111-010-0015(7).¶
(c) "Domestic Partner" as defined by OAR 111-010-0015(15).¶
(d) "Spouse" as defined by OAR 111-010-0015(34).¶
(27) Newly-hired and newly-eligible employee means a benefit-eligible employee who is being hired at an Entity and has not been employed or eligible for benefits through the hiring Entity in the past six months, or within the

same benefit Plan Year.¶
(28) "Non-subject District" means a community college not yet participating in benefit plans provided by the Oregon Educators Benefit Board, or a charter school whose employees are not considered employees of a school district.¶
(29) "Oregon Educators Benefit Board or OEBB" means the program created under chapter 00007, Oregon Laws 2007.¶
(30) "OEBB participating organization" means a Subject District, Non-subject District, or Provisional Non-subject District that participates in benefit plans provided by the Oregon Educators Benefit Board (OEBB).¶
(31) "Provisional Non-subject District" means a common school district, a union high school district, or an education service district that:¶
(a) Was self-insured on December 31, 2006;¶
(b) Had an independent health insurance trust established and functioning on December 31, 2006; or¶
(c) Can provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this Rule.¶
(32) "Qualified Status Change (QSC)" means a change in family or work status that allows limited mid-year changes to benefit plans consistent with the individual event. Outside of annual open enrollment, a QSC is the only time a change in enrollments can occur.¶
(33) "Special district" means any district listed in ORS chapter 198 "Special Districts Generally," or as determined by the Board.¶
(34) "Spouse" means a person who is married under the laws of the State of Oregon or under the laws of any other state or country. The definition of spouse does not include a former spouse and a former spouse does not qualify as a dependent.¶
(35) "Subject District" means a common school district, a union high school district, or an education service district that:¶
(a) Did not self-insure on January 1, 2007;¶
(b) Did not have a health trust in effect on January 1, 2007; or¶
(c) Does not provide comparable plan designs at a comparable cost as defined by sections (8) and (10) of this rule.
Statutory/Other Authority: ORS 243.860 - 243.886
Statutes/Other Implemented: ORS 243.864(1)(a), Chapter 342, 2021 Laws