



MEMORANDUM

March 18, 2019

To: Sen. Monnes Anderson, Chair, Senate Committee on Health Care
Sen. Linthicum, Vice-Chair, Senate Committee on Health Care
Members of the Senate Committee on Health Care

From: Richard Y. Blackwell, Policy Manager, DFR

Subject: Senate Bill 911 - Clarification

On March 11, the committee heard testimony on Senate Bill 911, a bill that requires coverage of fertility preservation services for those individuals who may become infertile as a result of medical treatment (i.e., iatrogenic infertility). During the public hearing, there were questions from witness panels regarding how the department would interpret the legislation. The panel raised interpretations with 2018 legislation as the source of concern.

HB 4104 (2018) passed both chambers with bipartisan support. The bill expanded an earlier law requiring reimbursement for bilateral cochlear implants and related devices and services – such as ear molds, batteries, and diagnostic and treatment services. The bill applied these updated reimbursable products and services to enrollees in health benefit plans that were up to 19 years in age, and from 19 to 25 years of age if the enrollee was also attending secondary school.

The reimbursement requirements in HB 4104 can be distinguished from SB 911 (2019) because of how state and federal law worked in the case of HB 4104. Because of ongoing questions and concerns about the applicability of HB 4104, the Division of Financial Regulation published Bulletin No. 2018-08 in November 2018. In the bulletin, we explained the interplay between federal non-discrimination regulations and the Insurance Code:

Non-grandfathered individual and small group health benefit plans must comply with state and federal requirements for Essential Health Benefits (EHBs). This includes a federal prohibition on discrimination as set forth in 45 CFR § 156.125. In compliance with federal guidance for interpreting this prohibition, ORS 731.097, as implemented by OAR 836-053-0012(3)(a)(C), prohibits Oregon carriers from imposing age-based limits on hearing aid coverage in individual and small group health benefit plans subject to

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EHB requirements. This is the case even if those limits would otherwise be allowed under Oregon law.¹

Unlike in the case of HB 4104, we do not anticipate any interpretation from DCBS that takes into account federal nondiscrimination requirements if the Senate takes up SB 911. The limits of the coverage SB 911 would require are not prohibited by 45 CFR § 156.125, and we have not found a related provision in federal regulation that would require a more expansive application of the benefit, as was the case with HB 4104.

Please feel free to contact me at 503.947.7056 or at richard.y.blackwell@oregon.gov if you have any further questions.

¹ A full copy of the bulletin may be found at: <https://dfr.oregon.gov/laws-rules/Documents/Bulletins/bulletin2018-08.pdf>