

Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
A Statement of Need and Justification accompanies this form.

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 10/11/10 by the

Date prior to or same as filing date.

Department of Human Services, Division of Medical Assistance Programs 410  
Agency and Division Administrative Rules Chapter Number

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to become effective Upon filing through 3/25/11

Date upon filing or later A maximum of 180 days including the effective date.

**RULEMAKING ACTION**

**Rule Filing Caption:** Additional filing (retroactive to 10/1/10) to ensure that public safety and medical appropriateness requirements for durable medical equipment are discerned within rule

**AMEND:** 410-122-0080

**SUSPEND:** 410-122-0080(T)

Statutory Authority: ORS 409.010, 409.040, & 409.050

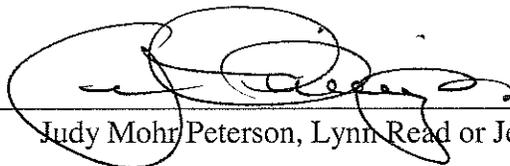
Other Authority: None

Statutes Implemented: ORS 414.025 & 414.065

**Subject Matter:** The DMEPOS administrative rules govern Division payments for services and supplies to certain clients.

The Division temporarily amended OAR 410-122-0080, effective 10/1/10, to provide clarity of coverage, ensure client safety, and ensure medically appropriate devices are provided. This temporary rule is re-filed to update section (1) (a) and section (19) effective retroactively to 10/1/10.

Authorized Signers:



Judy Mohr Peterson, Lynn Read or Jean Phillips

10-13-2010

Secretary of State  
**Statement of Need and Justification**

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services (Department), Division of Medical Assistance Programs (Division) 410  
Agency and Division Administrative Rule Chapter Number

**In the Matter of:** The temporary and retroactive amendment of an administrative rule that governs payment for the Durable Medical Equipment, Prosthetics, Orthotics and Supplies (DMEPOS) Services Program. The Division amended 410-122-0080 and suspended 410-122-0080 (T).

**Rule Filing Caption:** Additional filing (retroactive to 10/1/10) to ensure that public safety and medical appropriateness requirements for durable medical equipment are discerned within rule

**Statutory Authority:** ORS 409.010, 409.040, & 409.050

**Other Authority:** None

**Statutes Implemented:** ORS 414.025 & 414.065

**Need for Rule(s):** The Division needs to temporarily amend OAR 410-122-0080 (T), effective retroactively to 10/1/10, to provide additional clarity of coverage, ensure client safety, and ensure medically appropriate devices are provided. This temporary rule is re-filed to update section (1) (a) and section (19).

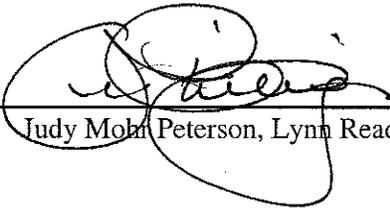
**Justification of Temporary Rule(s):** Following the permanent rulemaking process, rather than the temporary rulemaking action will jeopardize the public interest and the interests of DMEPOS providers of and managed care organizations that provide such services to Division clients. This temporary rule amendment is needed to assist clients and providers of equipment to have clear and precise knowledge of prescription and medical appropriateness requirements for devices acquired through the Oregon Health Plan.

Failure to amend this rule will result in jeopardizing client needs, providers, and the Division because of misinterpretation of the rule text, confusion, and anticipation of services and specific equipment that are not covered by Oregon Health Plan. This temporary rulemaking action will avoid or mitigate these consequences immediately providing clients, providers, and the managed care plans clear information regarding the requirements for services or supplies rendered.

**Documents Relied Upon, and where these can be viewed or obtained:** None.

**Other Agencies affected:** No impact on other state agencies is anticipated.

**Authorized Signers:**



Judy Mohr Peterson, Lynn Read or Jean Phillips

10-13-2010

Date

## **410-122-0080 Conditions of Coverage, Limitations, Restrictions and Exclusions**

(1) The Division of Medical Assistance Programs (Division) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing and registered or listed as a medical device by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended. In the event of delay in FDA approval and registration, the Division will review purchase options on a case by case basis;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of the Division rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the Oregon Health Services Commission's Prioritized List of Health Services (Prioritized List of Health Services or List) found in ~~Prioritized List of Health Services~~, OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500; and

(i) Is included in the Oregon Health Plan (OHP) client's benefit package of covered services.

(2) Conditions for Medicare-Medicaid Services:

(a) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to the Division for payment. If Medicare denies payment based on failure to submit a timely appeal, the Division may reduce any amount the Division determines could have been paid by Medicare;

(b) If Medicare denies payment on appeal, the Division will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the OHP.

(3) ~~DMAP~~ The Division will not cover DMEPOS items when the item or the use of the item is:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of client or caregiver;

(c) A self-help device;

(d) Not therapeutic or diagnostic in nature;

(e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(h) Reimbursed as part of the all-inclusive rate in a nursing facility, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

(4) In addition to the particular requirements in this rule, particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. To the extent that codes are identified in these rules or in fee schedules, the codes are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request must

document that prior authorization was obtained in compliance with the rules in this division.

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in rule. The Division may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to the Division on request.

(8) To identify non-covered items at a code level, providers can refer to the Division fee schedule, subject to the limitation that fee schedules and codes do not determine coverage, and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitutes a buy-up and are prohibited. Refer to the Division General Rules (chapter 410, division 120) for specific language on buy-ups.

(11) Equipment purchased by the Division for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) The Division will not pay DMEPOS providers for medical supplies separately while a client is under a home health plan of care and covered home health care services.

(16) ~~DMAP~~ The Division will not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, the Division or other carrier.

(17) Separate payment will not be made to DMEPOS providers for equipment and medical supplies provided to a client in their home when the cost of such items is already included in the capitated (per diem) rate paid to a facility or organization.

(18) Non-contiguous out-of-state DMEPOS providers may seek Medicaid payment only under the following circumstances:

(a) Medicare/Medicaid clients:

(A) For Medicare covered services and then only Medicaid payment of a client's Medicare cost sharing expenses for DMEPOS services when all of the following criteria are met:

(i) Client is a qualified Medicare beneficiary;

(ii) Service is covered by Medicare;

(iii) Medicare has paid on the specific code. Prior authorization is not required;

(B) Services not covered by Medicare:

(i) Only when the service or item is not available in the State of Oregon and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(ii) Some examples of services not reimbursable to a non-contiguous out of-state provider are incontinence supplies, grab bars, etc. This list is not all-inclusive;

(iii) Services billed must be covered under the OHP;

(iv) Services provided and billed to the Division must be in accordance with all applicable Division rules;

(b) Medicaid-only clients:

(A) For a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous borders of Oregon and only when the prescribing practitioner has documented that a delay in service may cause client harm;

(B) For foster care or subsidized adoption children placed out of state;

(C) Only when the service or item is not available in the State of Oregon and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(D) Services billed must be covered under the OHP;

(E) Services provided and billed to the Division must be in accordance with all applicable ~~DMAP~~ Division rules.

(19) ~~Effective on or after October 1, 2010, t~~The items listed in Table 122-0080 generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. Effective on or after October 1, 2010, aA request for equipment or an item on this list will not be granted until all criteria in this rule are met.

(20) See General Rules OAR 410-120-1200 Excluded Services and Limitations for more information on general scope of coverage and limitations.

(21) Table 122-0080, Exclusions.

Statutory Authority: ORS 409.010, 409.050, 409.110 and 414.065

Statutes Implemented: 414.065

10-11-10 (T)

## Table 122-0080 Exclusions

Air conditioners, air cleaners, air purifiers  
Ankle-foot orthoses, graphite, spiral  
Appliances, household, small electrics  
Assistive devices for activities of daily living  
Balls, therapy  
Bandages, adhesive (i.e., Band-aids)  
Bed cradle, any type  
Bedding, any kind  
Beds, age-specific, enclosed bed systems, metal-caged, total electric, water, youth  
Bedwetting prevention devices  
Bladder stimulators (pacemakers)  
Bracelets, medical alert  
Car seats, any type, standard, customized or custom-made  
Chairs, geriatric, positioning  
Cleanser, incontinent, perineal, wound  
Clothing, except some orthopedic shoes & support hose  
Cribs, any type, including hospital cribs, rail padding  
Deodorizers, room  
Dilators, esophageal  
Elevators  
Exercise equipment  
Feminine hygiene products  
Furnishings, household, any kind  
Generators  
Hand controls for vehicles  
High frequency chest wall oscillation air-pulse generator system  
Humidifiers, room  
Hot tubs/spas  
Identification tags  
Incubators/Isolates  
Jacuzzis  
Lifts, barrier-free ceiling track, chair, mechanism, stairs, van  
Light box for SAD  
Linens, any type  
Mattresses, egg crate  
Medicine cups, paper or plastic  
Mobility monitor  
Mucus trap (included in laboratory fee)  
Nipple shields

Oscillatory positive expiratory pressure device  
Overbed tables  
Passive motion exercise device (CPM device)  
Positioning seats, any type, standard, customized or custom-made  
Ramps, van, wheelchair  
Reachers  
Restraints  
Safety enclosures frame/canopy for use with hospital bed, any type  
Scales, bath, diet  
Sharps containers  
Sheets, cloth draw, rubber  
Showerheads, hand held  
Sports equipment  
Strollers  
Supplemental Breast Feeding Nutrition System  
Supplies used in the management of incontinence, including but not limited to creams, salves, lotions, barriers (liquid, spray, wipes, powder, paste) or other skin care products (does not include covered ostomy and incontinent supplies listed in Chapter 410 Division 122)  
Swamp coolers  
Telephone alert systems  
Telephones  
Therapeutic Electrical Stimulator  
Thermometers  
Tie-downs for wheelchairs in vans  
Tissue, facial, toilet  
Tocolytic Pumps  
Towelettes, any type  
Utensils, eating  
Typewriters  
Vans  
Washcloths, any type  
Waterpiks® (and similar oral irrigation appliances)  
Whirlpool