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**TEMPORARY ADMINISTRATIVE RULES**

Oregon Health Authority, Division of Medical Assistance  
Programs

410

Agency and Division

Administrative Rules Chapter Number

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Upon filing.

Adopted on

01/01/2014 thru 06/30/2014

Effective dates

**RULE CAPTION**

Extends deadline for Coordinated Care Organizations to start non-emergent medical transportation; makes technical changes.

Not more than 15 words

**RULEMAKING ACTION**

**ADOPT:**

AMEND: 410-136-3000, 410-136-3020, 410-136-3060, 410-136-3140, 410-136-3220, 410-136-3240

**SUSPEND:**

Stat. Auth.: ORS 413.042

**Other Auth.:**

Stats. Implemented: ORS 414.065

**RULE SUMMARY**

Amendments also fix numbering issues; remove Standard as a designation of OHP clients who are not eligible for the NEMT benefit to respond to Oregon Health Plan changes effective on January 1, 2014; extend the time clients have to return reimbursement paperwork from 30 to 45 days in response to constituent requests; and clarify that an overpayment includes reimbursements made to a client and a service provider for the same service.

## STATEMENT OF NEED AND JUSTIFICATION

Proposed Amendments to Oregon Administrative Rules 410-136-3000, 410-136-3020, 410-136-3060, 410-136-3140, 410-136-3220, 410-136-3240.

In the Matter of

None

Documents Relied Upon, and where they are available

The Authority granted an extension to the date currently in rule by which Coordinated Care Organizations must take responsibility for non-emergent medical transportation (NEMT) services from January 1, 2014 to July 1, 2014.

Amendments also fix numbering issues; remove Standard as a designation of OHP clients who are not eligible for the NEMT benefit to respond to Oregon Health Plan changes effective on January 1, 2014; extend the time clients have to return reimbursement paperwork from 30 to 45 days in response to constituent requests; and clarify that an overpayment includes reimbursements made to a client and a service provider for the same service.

Need for the Temporary Rule(s)

The Authority needs more time to consult with clients, Coordinated Care Organizations, transportation brokerages and other constituents to make this rule permanent.

Justification of Temporary Rules

  
Authorized Signer

Judy MOHR PETERSON  
Printed Name

12/23/2013  
Date

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## DIVISION 136

### MEDICAL TRANSPORTATION SERVICES

#### 410-136-3000

##### Responsibility for Providing Non-Emergent Medical Transportation

(1) The Authority shall provide non-emergent medical transportation (NEMT) for eligible clients who receive their OHP covered medical services on a fee-for-service basis or are members enrolled in prepaid health plans (PHP) or coordinated care organizations (CCO). The Authority shall cease providing this service to CCO enrollees when CCOs provide the service to their enrollees pursuant to sections (2) and (3) of this rule.

(2) From July 1, 2013 to July 1, 2014, the Authority may allow some CCOs to pilot providing NEMT services for their enrollees.

(3) All CCOs shall provide NEMT services for their enrollees by July 1, 2014. When a CCO begins providing this service, the Authority shall provide NEMT services in the CCO's service area only to clients not enrolled in a CCO for health care services.

(a) The Authority may not pay for services covered by a CCO; reimbursement is a matter between the CCO and its transportation subcontractor.

(b) For clients enrolled in a CCO responsible for NEMT, the transportation provider must coordinate all transportation services with the client's transportation brokerage or CCO prior to providing services.

(4) The requirements in OAR 410-136-3000 – OAR 410-136-3360 apply to NEMT services for which the Authority is responsible pursuant to this rule.

(5) A brokerage may request that the Authority delay responsibility for reimbursement to clients pursuant to OAR 410-136-3240, Client Reimbursed Mileage, Meals and Lodging, until a CCO in the brokerage's service area assumes NEMT services for the CCO's enrollees. The delay of the brokerage's responsibility also includes reimbursing clients in the fee-for-service delivery system.

(6) OAR 410-136-3040, Vehicle Equipment and Subcontractor Standards, and 410-136-3120, Secured Transports, do not apply to ambulance providers, ambulance vehicles or ambulance personnel that are licensed and regulated by ORS Chapter 682 and OAR Chapter 333, Divisions 250, 255, 260 and 265, whether providing ambulance or stretcher transports.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13

#### 410-136-3020

##### General Requirements for NEMT

(1) The Authority may enroll governmental transportation brokerages (local units of government) or other entities to arrange rides and pay subcontractors for NEMT services. The Authority may limit the enrollment with brokerages to units of local government.

(2) For purposes of the rules (OAR 410-136-3000 through 410-136-3360), "subcontractor" means the individual or entity with which the brokerage subcontracts or employs to drive the client to and from OHP covered medical services.

(3) The brokerage shall:

(a) Prior authorize and pay subcontractors for the least costly but most appropriate mode of transport for the client's medical needs to and from an OHP covered medical service. The most appropriate and least costly ride may include requiring the client to share the ride with other clients;

(b) Verify that the client is obtaining OHP covered medical services in the client's local area. "Local area" means an area within the accepted community standard and includes the client's metropolitan area, city or town of residence;

(c) Verify the client's OHP eligibility and that the client's benefit package includes NEMT services. The brokerage shall verify this through electronic eligibility information;

(d) Assess the client's access to other means of transportation, such as driving their own car or getting a ride from a family member or neighbor;

(e) Verify the client's attendance for continuing requests for rides if the medical provider could not affirm an appointment for a previous ride;

(f) Schedule a ride with an alternate subcontractor if the subcontractor originally assigned is unable to provide the ride; and

(g) Assign rides based on an evaluation of several factors, including but not limited to:

(A) Cost;

(B) The client's need for appropriate equipment and transportation;

(C) Any factors related to a subcontractor's capabilities, availability and past performance; and

(D) Any factors related to the brokerage's need to maintain sufficient service capacity to meet client needs.

(4) Pursuant to OAR 410-120-1210, Medical Assistance Benefit Packages and Delivery System, clients receiving the following benefit packages are not eligible for NEMT:

(a) Citizen Alien Waived Emergency Medical (CWM); and

(b) Qualified Medicare Beneficiary (QMB) only.

(5) The brokerage shall maintain records of the reasons for authorizing a ride:

- (a) That is not cost effective or not based on the factors specified in section (3);
  - (b) With more than two attendants for an ambulance or stretcher car; or
  - (c) With more than one attendant for a wheelchair van.
- (6) The brokerage shall provide a ride to a client to fill prescription medication only in the following situation:
- (a) The client needs to stop on the way home to fill or pick up prescribed medication related to the medical service for which the brokerage provided the ride;
  - (b) It is medically necessary to fill or pick up the medication immediately; and
  - (c) The pharmacy is located on the return route or is the closest pharmacy to the return route.
- (7) The brokerage may provide a ride to a client to fill prescribed medication under the following situations:
- (a) The brokerage asks the client if the prescription service is available through the Authority's contracted postal prescription service, and the client responds that it is not available through that source;
  - (b) The client has an urgent need to fill or pick up prescribed medication because the postal prescription service mailed the wrong medication, or the client has an unexpected problem caused by the medication; or
  - (c) The client is transient or without regular access to a mailbox. In this situation, the brokerage may evaluate the need on a case-by-case basis.
- (8) The brokerage shall provide rides outside the brokerage's service area, as described in Table 136-3380, under the following circumstances:
- (a) The client is receiving an OHP covered medical service that is not available in the service or local area but is available in another area of the state;
  - (b) The client is receiving a covered service in California, Idaho or Washington where the service location is no more than 75 miles from the Oregon border; or
  - (c) No local medical provider or facility will provide OHP covered medical services for the client.
- (9) Brokerages may coordinate to provide a return ride to a client who receives medical services outside the client's local area.
- (10) Brokerages shall retroactively authorize and pay for NEMT services that have already occurred only when the brokerage could not prior authorize the service because the brokerage was closed and the request for authorization is within 30 days of the date of service. The brokerage also must confirm that one of the following circumstances supported the ride:
- (a) The eligible client needed urgent medical care;

- (b) The eligible client required secured transport pursuant to OAR 410-136-3120, Secured Transports; or
- (c) The client was in a hospital, and the hospital discharged or transferred the client.

(11) Notwithstanding section (10), a brokerage shall retroactively authorize NEMT services for ambulance transports when:

- (a) An ambulance provider responds to an emergency call, but the client's medical condition does not warrant an emergency transport;
- (b) The ambulance provider transports the client as a NEMT service; and
- (c) The ambulance provider requests retroactive authorization within 30 days of the NEMT service.

(12) Brokerages shall not authorize or pay for rides outside their service areas based only on client preference or convenience.

(13) Brokerages shall provide toll-free call centers for clients to request rides. The following pertain to the brokerage's call center and scheduling of rides:

(a) The call center shall operate at a minimum Monday through Friday from 9:00 a.m. to 5:00 p.m., but the brokerage may close the call center on New Year's Day, Memorial Day, July 4, Labor Day, Thanksgiving and Christmas, The Authority may approve, in writing, additional days of closure if the brokerage requests the closure at least 30 days in advance.

(b) Brokerages shall make all reasonable efforts for clients to have access to available NEMT services 24 hours a day. When the call center is closed, the brokerages shall provide a recording or answering service to refer the client directly to a subcontractor. If no subcontractor is available, the brokerage must provide clients with recorded information about service hours and how to reach emergency services by calling 911;

(c) The brokerage shall allow a client to schedule rides at least 30 days in advance of the medical service; and

(d) The brokerage shall allow a client to request multiple ride requests at one time.

(e) The brokerage shall develop procedures and make reasonable efforts to arrange a ride requested on the day of the medical service when the medical service is:

(A) For an urgent medical condition; and

(B) Due to the urgency of the medical condition, the client scheduled an immediate medical appointment.

(14) The brokerage is not responsible for providing emergency medical transportation services. However, brokerages shall have procedures for referring clients requesting emergency medical transportation services to the appropriate emergency transportation resources and procedures for subcontractors per OAR 410-136-3040, Vehicle Equipment and Subcontractor Standards.

(15) The Authority shall collaborate with brokerages and CCOs to develop and conduct a statewide client satisfaction survey at least once every two years. The Authority may contract with one or more brokerages to conduct the survey. The Authority shall use the results of the survey to identify and address potential operational deficiencies and to identify and share successes in the NEMT program.

(16) Brokerages shall establish regional advisory groups consisting of representatives from the Authority, DHS, Area Agencies on Aging, consumers, representatives of client advocacy groups from within the service or local area, brokerage subcontractors and providers of NEMT ambulance services. The role of the group includes, but is not limited to:

(a) Assisting in monitoring and evaluating the NEMT program; and

(b) Recommending potential policy or procedure changes and program improvements to brokerages and the Authority and assisting in prioritizing those changes and improvements.

(17) Brokerages shall have the discretion to use or not use DHS-approved volunteers. DHS shall provide brokerages with a list of approved and trained volunteers. DHS shall supervise the volunteers and assumes all liability for each volunteer as provided by law.

(18) Brokerages or their subcontractors shall not bill eligible clients for any transports to and from OHP covered medical services or any transports where the Authority denied reimbursement.

(19) On a minimum of five percent of the ride requests, brokerages shall contact medical providers to verify appointments and that the appointments are for OHP covered medical services.

(20) Brokerages may purchase tickets for common carrier transportation, such as inter- or intra-city bus, train or commercial airline when deemed cost effective and safe for the client.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13

**410-136-3060**

### **Insurance Requirements**

(1) Brokerages must obtain and maintain general and automobile liability coverage for personal injury and death in accordance with ORS 30.271, Limitations on Liability of State for Personal Injury and Death.

(2) Brokerages must obtain and maintain general and automobile liability coverage for property damage and destruction in accordance with ORS 30.273, Limitations on Liability of Public Bodies for Property Damage or Destruction.

(3) The liability coverage required by sections (1) and (2) of this rule shall include the State of Oregon, Oregon Health Authority and its divisions, officers, employees and agents as additional insureds but only as related to the brokerages' NEMT services.

(4) In lieu of purchasing liability coverage under sections (1) and (2) of this rule, the Authority may authorize a brokerage to establish and maintain a Self-Insurance Reserve Fund. The following apply to requirements of the fund:

(a) The Authority shall establish the fund at \$1,000,000 through the fixed rate for rides established in OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport;

(b) The fund shall comply with OMB Circular 87;

(c) If the brokerage subsequently terminates its enrollment with the state as a Medicaid provider, the brokerage shall refund the Authority the balance of any monies in the fund within two years from the termination of its enrollment or at the conclusion of any claim or litigation related to the brokerage's NEMT services for eligible clients;

(d) Once funded, the fund shall be maintained at an amount not less than \$1,000,000 through the fixed rate for rides established in OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport;

(e) The Authority shall reconcile the fund amount during the annual cost settlement process pursuant to OAR 410-136-3200, Reimbursement and Accounting for all Modes of Transport, and shall increase or decrease the fixed rate for ride to maintain the \$1,000,000 fund amount; and

(f) The brokerage shall maintain a separate account for the fund.

(5) Brokerages and their subcontractors that employ workers as defined in ORS 656.027 shall comply with 656.017 and shall provide workers' compensation insurance coverage for those workers, unless they meet the requirement for an exemption under 656.126 (2). Brokerages shall require each of their subcontractors to comply with this requirement.

(6) In lieu of purchasing workers' compensation insurance coverage as required by section (5), a brokerage may self-insure for all of its subject workers. The Authority shall not fund this reserve and shall only reimburse the brokerage for costs of self-insurance in the event of a claim arising from the brokerage's NEMT services to eligible clients.

(7) Brokerages and their subcontractors shall furnish proof of liability coverage and insurance to the Authority upon request.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13

#### **410-136-3140**

#### **Transports of Clients Changing Hospitals or Other Facilities**

(1) Brokerages shall arrange and pay for transporting an eligible client who has had a change in condition, noted in the client's DHS care plan, resulting in a need for a new service setting with a lower or higher level of care. This includes clients who are changing levels of care between their community-based care

settings or between institutional and community-based settings. The client's DHS worker must request the ride.

(2) Brokerages shall not arrange or pay for:

(a) The transport or return of an inpatient client from an admitting hospital to another hospital (or facility) for diagnostic or other short-term services when the patient will return to the admitting hospital within the first 24-hours of admission. The subcontractor shall bill the admitting hospital directly for these transports;

(b) The transport of a client receiving long-term care service in their home or residing in a long-term care facility for the sole purpose of shopping for another long-term care facility, even if the client is looking for a new facility to receive a lower or higher level of care;

(c) The transport of a client moving from one type of facility to a facility of the same type, such as from an adult foster home to another adult foster home; and

(d) The transport of a client who is relocating to another state, unless the transport is to receive an OHP covered medical service pursuant to OAR 410-136-3080, Out-of-State Transportation.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13

#### **410-136-3220**

##### **Brokerage Reimbursements to Subcontractors**

(1) Brokerages shall reimburse their NEMT subcontractors for the most cost-effective route from point of origin to point of destination that most benefits the client's condition.

(2) Brokerages shall establish a base rate with its subcontractors. "Base rate" for all modes of transportation except ground and air ambulance means the rate the brokerage and its subcontractors agree on for each mode of transportation.

(3) If a subcontractor uses an ambulance as a stretcher car or van, the brokerage shall reimburse the subcontractor using the base rate for stretcher cars or vans.

(4) Notwithstanding section (3), brokerages shall pay ambulance subcontractors at the ambulance rate instead of the stretcher car or van rate when the transport exceeds two hours, necessitating a health care professional to care for the client during the ride.

(5) Brokerages shall not reimburse their subcontractors for waiting for clients to get to the vehicle or for assisting clients to get in or out of a vehicle.

(6) Brokerages may reimburse their subcontractors for waiting time:

(a) In special situations, such as when the subcontractor has to wait for a client who is using the subcontractor's gurney and cannot transfer to a gurney at a medical facility; or

(b) Because of a medical issue during the ride, such as:

(A) The client is nauseous or is vomiting after dialysis or chemotherapy; or

(B) The client needs to stop to get prescription medication or medical supplies related to the medical service.

(7) Brokerages shall reimburse their subcontractors at the base rate for ambulatory vehicles if the subcontractor provides a ride to an ambulatory client in a non-ambulatory vehicle.

(8) Brokerages may authorize a subcontractor to transport a non-ambulatory client in an ambulatory vehicle if the vehicle can accommodate and transport the client and if allowed by local ordinance. The brokerage shall reimburse its subcontractor at the non-ambulatory vehicle rate.

(9) The wheelchair base rate applies to the transport of a client with a reclining wheelchair; wheelchairs do not qualify as stretchers or gurneys.

(10) The following applies to reimbursement for deceased clients:

(a) If a client dies before the subcontractor arrives at the scene, the brokerage shall not reimburse its subcontractors; or

(b) If a client dies after the transport begins but before reaching the destination, the brokerage's payment is limited to the base rate for the mode of transportation and mileage. For ambulance transports, the payment also would include costs for an extra attendant, if applicable.

(11) Brokerages may authorize shared-ride transports of two or more clients at the same time when the shared-ride transports are allowable under the Health Insurance Portability and Accountability Act of 1996 (HIPAA).

(12) Brokerages shall reimburse subcontractors:

(a) At the full base rate for the first client and one-half the base rate for each additional client when all of these clients need the same mode of transportation, such as by wheelchair van; or

(b) At the full base rate for the client with the need for the highest mode of transportation and one-half the base rate of the appropriate mode of transportation for each additional client. This applies when the additional client needs a less costly mode of transportation than the first client. For example, the first client needs an ambulance, but the additional client needs a less costly wheelchair van.

(13) When transporting two or more clients at the same time, brokerages shall pay subcontractors only from the first pickup point to the final destination under the following circumstances:

(a) The clients have a single pick up point but different destinations;

(b) The clients have different pick up points but a single destination; or

(c) The clients have different pick up points and different destinations.

(14) Brokerages shall reimburse subcontractors only for actual miles traveled, regardless of the number of clients transported.

(15) A brokerage shall not reimburse a subcontractor if:

(a) A county or city ordinance prohibits any charging for services identified in the medical transportation services administrative rules; or

(b) The subcontractor does not charge the public for such services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13

**410-136-3240**

#### **Client Reimbursed Mileage, Meals and Lodging**

(1) The brokerage must prior authorize a client's mileage, meals and lodging to an OHP covered medical service in order for the client to qualify for reimbursement. If the brokerage prior authorized the travel costs, a client may request reimbursement up to 45 days after the travel.

(2) The client must return any documentation the brokerage requires before receiving reimbursement. Documentation required shall include a receipt for lodging.

(3) The brokerage may hold reimbursements under the amount of \$10 until the client's reimbursement reaches \$10.

(4) Brokerages shall reimburse clients for meals when a client, with or without an attendant, travels a minimum of four hours round-trip out of their local area. The travel, however, must span the following meal times:

(a) For a breakfast allowance, the travel must begin before 6 a.m.;

(b) For a lunch allowance, the travel must span the entire period from 11:30 a.m. through 1:30 p.m.; and

(c) For a dinner allowance, the travel must end after 6:30 p.m.

(5) Brokerages shall reimburse for meals at the Authority's allowable rate.

(6) Brokerages shall not reimburse clients for meals that a hospital or other medical facility provides.

(7) Brokerages shall reimburse clients for lodging when:

(a) A client would otherwise be required to begin travel before 5 a.m. in order to reach a scheduled appointment;

(b) Travel from a scheduled appointment would end after 9 p.m.; or

(c) The client's health care provider documents a medical need.

(8) Brokerages shall reimburse for lodging at the Authority's allowable rate or the actual cost of the lodging, whichever is less.

(9) Brokerages shall reimburse for meals or lodging for only one attendant, which may be a parent, to accompany the client if medically necessary, but only if:

(a) The client is a minor child and unable to travel without an attendant;

(b) The client's attending physician provides a signed statement indicating the reason an attendant must travel with the client;

(c) The client is mentally or physically unable to reach his or her medical appointment without assistance; or

(d) The client is or would be unable to return home without assistance after the treatment or service.

(10) The brokerage shall not reimburse for the attendant's time or services.

(11) If a client's health care provider admits the client for inpatient care, an attendant is no longer medically necessary because the facility provides all necessary services for the client. Therefore, the attendant is no longer eligible for lodging and travel expenses. The brokerage shall reimburse for meals and lodging for the attendant's transportation home. However, the brokerage may pay for the attendant's meals and lodging if it is more cost effective for the attendant to remain near the client to accompany the client on the return trip as allowed by section (12).

(12) Upon the client's release from inpatient care, if the attendant is medically necessary based on one of the conditions or circumstances listed in section (9), the brokerage shall reimburse for the attendant to return to the inpatient facility to accompany the client on the return trip. This only applies if the brokerage prior authorizes the attendant's travel.

(13) Brokerages shall not reimburse for mileage, meals and lodging for an attendant visiting an inpatient client, unless the physician provides a signed statement of the medical need. This exclusion includes, but is not limited to, parents of minors, breastfeeding mothers and spouses.

(14) The state shall recover overpayments made to a client. Overpayments occur when the brokerage paid the client:

(a) For mileage, meals and lodging, and another resource also paid:

(A) The client or;

(B) The ride, meal or lodging provider directly;

(b) Directly to travel to medical appointments, and the client did not use the money for that purpose, did not attend the appointment or shared the ride with another client whom the brokerage also directly paid;

(c) For common carrier or public transportation tickets or passes, and the client sold or otherwise transferred the tickets or passes to another person.

(15) If a person or entity other than the client or the minor client's parent or legal guardian provides the ride, the brokerage may reimburse the person or entity that provided the ride. However, the client or the minor client's parent or legal guardian must approve in writing of the reimbursement.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

Hist: DMAP 36-2013, f. 6-27-13, cert. ef. 7-1-13