

Secretary of State
Statement of Need and Justification

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

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) 410
Agency and Division Administrative Rule Chapter Number

In the Matter of: The temporary amendment of OAR 410-141-0264.

Rule Filing Caption: Adopts Attorney General's model rules with the exception to the postmark date

Statutory Authority: ORS 183.341, 413.042

Other Authority:

Statutes Implemented: ORS 183.411 - 183.470, 414.025, 414.065

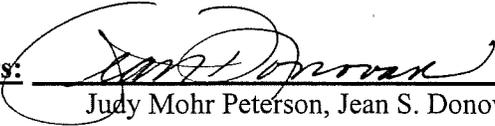
Need for Rule(s): . The Division needs temporarily amend OAR 410-141-0264 effective to February 1, 2012, This rule needs to be amended because basing timeliness of a hearing request on the date of a postmark, as set forth in the Department of Justice model rules OAR 137 division 003 would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Division receives it, not the date of the postmark.

Justification of Temporary Rule(s): The Authority finds that failure to act promptly by amending OAR 410-141-0264 will result in serious prejudice to the public interest, the Authority, and claimants in contested cases. This rule needs to be amended because basing timeliness of a hearing request on the date of a postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Division receives it, not the date of the postmark. The Division needs to amend this rule promptly because new rules in Chapter 137-003 are scheduled to be filed on January 31, 2012 and the Division has a large volume of hearing requests filed each day.

Documents Relied Upon, and where these can be viewed or obtained: Statewide rules in Division 137-003 are scheduled to be filed on January 31, 2012 available at http://www.doj.state.or.us/help/pdf/amended_proposed_rules_71411.pdf

Other Agencies affected: None

Authorized Signers:


Judy Mohr Peterson, Jean S. Donovan or Sandy Wood

2/7/2012
Date

410-141-0264 Administrative Hearings

The Division of Medical Assistance Programs (Division) may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

(1) An individual who is or was a Division member (see definition) at the time of the Notice of Action is entitled to an administrative hearing by the Division if a Prepaid Health Plan (PHP) has denied requested services, payment of a claim, or terminates, discontinues or reduces a course of treatment, or any other “action.”

(a) If the Division member initiates an administrative hearing directly with the Division, the decision in the Notice of Action is the document that will trigger the right to request a state administrative hearing:

(b) If the Division member requests an administrative hearing after receiving a Notice of Appeal Resolution, the decision in the Notice of Appeal Resolution is the document that will trigger the right to request a state administrative hearing:

(c) Client (see definition) administrative hearings are governed by OAR 410-120-1860, 410-120-1865, and this rule.

(2) A written hearing request must be received by the Hearings Unit at the Division not later than the 45th day following the date of the Notice of Action, or if the hearing request was initiated after an appeal, not later than the 45th day following the Notice of Appeal Resolution.

(3) Effective, February 1, 2012, , the method described in OAR 137-003-0520(8)–(10) is used in computing any period of time prescribed in the division of rules in OAR 410 division 120 and 141 applicable to timely filing of requests for hearing. Due to operational conflicts, the procedures needing revision and the expense of doing so, OAR 137-003-0520(9) and 137-003-0528(1)(a), which allows hearing requests to be treated as timely based on the date of postmark, does not apply to Division hearing requests.

(3) If, at the Division member’s request, the PHP continued or reinstated services while an appeal was pending, the benefits must be continued pending the administrative hearing until one of the following occurs:

(a) The Division member withdraws the request for an administrative hearing;

(b) Ten calendar days pass after the PHP mails the Notice of Appeal Resolution, providing the resolution of the appeal against the Division member, unless the Division member within the 10-day timeframe, has

requested a Division administrative hearing with continuation of benefits until the Division administrative hearing decision is reached;

(c) A final order is issued in a Division administrative hearing adverse to the Division member; or

(d) The time period or service limits of a previously authorized service have been met.

(4) The Division representative (see definition) shall review the administrative hearing request, documentation related to the administrative hearing issue, and computer records to determine whether the claimant or the person for whom the request is being made is or was a Division member at the time the action was taken, and whether the hearing request was timely.

(5) PHPs shall immediately transmit to the Division any administrative hearing request submitted on behalf of a Division member, including a copy of the Division member's Notice of Action and, if applicable, Notice of Appeal Resolution.

(6) If the Division member files a request for an administrative hearing with the Division, the Division will send a copy of the hearing request to the PHP.

(7) PHPs shall review an administrative hearing request, which has not been previously received or reviewed as an appeal, using the PHP's appeal process as follows:

(a) The appeal shall be reviewed immediately and shall be resolved, if possible, within 16 calendar days, pursuant to OAR 410-141-0262;

(b) The PHP's Notice of Appeal Resolution shall be in writing and shall be provided to the Division member.

(8) When an administrative hearing is requested by a Division member, the PHP shall cooperate with providing relevant information required for the hearing process to the Division, as well as the results of the review by the PHP of the appeal and the administrative hearing request, and any attempts at resolution by the PHP.

(9) Information about Division members used for administrative hearings is handled in confidence consistent with ORS 411.320, 42 CFR 431.300 et seq, the Health Insurance Portability and Accountability Act (HIPAA) Privacy Rules, and other applicable federal and state confidentiality laws and regulations. The Division will safeguard the Division member's right to confidentiality of information used in the administrative hearing as follows:

(a) The Division, the Division member and their representative, the PHP and any practitioner (see definition) whose authorization, treatment, services, items, or request for payment is involved in the administrative

hearing have a right to use this information for purposes of resolving the administrative hearing without a signed release from the Division member. The Division may also use this information, pursuant to OAR 410-120-1360(4), for health oversight purposes, and for other purposes authorized or required by law. The information may also be disclosed to the Office of administrative hearings and the Administrative Law Judge assigned to the administrative hearing, and to the Court of Appeals if the Division member seeks judicial review of the final order;

(b) Except as provided in subsection (a), the Division will ask the Division member to authorize a release of information regarding the administrative hearing to other individuals. Before any information related to the administrative hearing is disclosed under this subsection, the Division must have an authorization for release of information documented in the administrative hearing file.

(10) The hearings request (DHS 443), along with the Notice of Appeal Resolution, shall be referred to the Office of Administrative Hearings and the hearing will be scheduled.

(a) The parties to the administrative hearing shall include the PHP, as well as the Division member and his or her representative, or the representative of a deceased Division member's estate;

(b) The procedures applicable to the administrative hearing shall be conducted consistent with OAR 410-120-1860 and 410-120-1865;

(c) A final order should be issued or the case otherwise resolved by Division ordinarily within 90 calendar days from the earlier of the following: the date the Division member requested a PHP appeal (not including the number of days the Division member took to subsequently file for a Division administrative hearing) or the date the Division member filed for direct access to a Division administrative hearing. The final order is the final decision of the Division.

(11) If the final resolution of the administrative hearing is adverse to the Division member, that is, if the final order upholds the PHP's action, the PHP may recover the cost of the services furnished to the Division member while the administrative hearing is pending, to the extent that they were furnished solely because of the requirements of this section and in accordance with the policy set forth in 42 CFR 438.420.

(12) The PHP must promptly correct the action taken up to the limit of the original request or authorization, retroactive to the date the action was taken, if the hearing decision is favorable to the Division member, or Division and/or the PHP decides in the Division member's favor before the

hearing even if the Division member has lost eligibility after the date the action was taken:

(a) If the PHP, or a Division hearing decision reverses a decision to deny, limit, or delay services that were not furnished while the administrative hearing was pending, the PHP must authorize or provide the disputed services promptly and as expeditiously as the Division member's health condition requires;

(b) If the PHP, or the Division hearing decision reverses a decision to deny authorization of services and the Division member received the disputed services while the administrative hearing was pending, the PHP must pay for the services in accordance with Division policy and regulations in effect when the request for services was made by the Division member.

Stat. Auth.: ORS 409.110 and 413.042

Stats. Implemented: ORS 414.065
