

Secretary of State  
Certificate and Order for Filing  
**PERMANENT ADMINISTRATIVE RULES**

I certify that the attached copies\* are true, full and correct copies of the PERMANENT Rule(s) adopted on [upon filing] by the  
Date prior to or same as filing date

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

Cheryl Peters, 500 Summer St Ne, Salem, OR 97301 503-945-6527  
Rules Coordinator Address Telephone

to become effective [8/4/2012]. Rulemaking Notice was published in the [7/1/2012 ] Oregon Bulletin.\*\*  
Date upon filing or lat Month and Year

**RULE CAPTION**

Adopts Attorney General's model rules with the exception to the postmark date.

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**Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.**

**RULEMAKING ACTION**

List each rule number separately (000-000-0000)

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**AMEND:** OAR 410-141-0264

Stat. Auth.: ORS 183.341, 413.042

Other Auth.:

Stats. Implemented: ORS 183.411- 183.470, 414.025, 414.065

**RULE SUMMARY**

The Division needs to amend this rule 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.

The Division is also amending these rules to reflect new terminology, and to correct formatting, grammar and punctuation.

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Authorized Signer

Printed name

Date

\*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. \*\*The Oregon Bulletin is published the 1st of each month and updates rules found in the OAR Compilation. For publication in Bulletin, rule and notice filings must be submitted by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a weekend or legal holiday, when filings are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

## 410-141-0264

### Contested Case Hearings

(1) An individual who is or was a Division member at the time of the notice of action is entitled to a contested case hearing 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 a member receives an adverse notice of action, the member may file a request for a contested case hearing. :

(b) If a member receives an adverse notice of appeal resolution from the PHP, the member may request a contested case hearing based on the notice of appeal resolution. :

(c) Contested case hearings are governed by OAR 410-120-1860, 410-120-1865, and this rule.

(2) A written hearing request must be received by 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.

(4) A member who may be entitled to continuing benefits may request and receive continuing benefits in the same manner and same amount while an appeal or contested case hearing is pending.

(a) To be entitled to continuing benefits, the member must complete a hearing request or request for appeal, requesting continuing benefits, no later than:

(A) The tenth day following the date of the notice or the notice of appeal resolution; and

(B) The effective date of the action proposed in the notice, if applicable.

(b) In determining timeliness under section (4)(a) of this rule, delay caused by circumstances beyond the control of the member is not counted.

- (c) The benefits must be continued until:
- (A) A final appeal resolution resolves the appeal, unless the member requests a hearing with continuing benefits, no later than ten days following the date of the notice of appeal resolution;
  - (B) A final order resolves the contested case;
  - (C) The time period or service limits of a previously authorized service have been met; or
  - (D) The member withdraws the request for hearing.
- (5) The Division representative shall review the hearing request, documentation related to the hearing issue, and computer records to determine whether the claimant or the individual 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.
- (6) PHPs shall immediately transmit to the Division any hearing request submitted on behalf of a member, including a copy of the notice of action and, if applicable, notice of appeal resolution.
- (7) If the member files a request for hearing with the Division, the Division shall send a copy of the hearing request to the PHP.
- (8) PHPs shall review a 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 shall provide the member with a written notice of appeal resolution.
- (9) When a member requests a hearing, 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.
- (10) Information about 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 shall safeguard the member's right to confidentiality of information used in the hearing as follows:

(a) The Division, the member and their representative, the PHP and any practitioner whose authorization, treatment, services, items, or request for payment is involved in the hearing may use this information for purposes of resolving the hearing without a signed release from the 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 hearing and to the Court of Appeals if the member seeks judicial review of the final order;

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

(11) The hearings request and 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 hearing shall include the PHP, the member and his or her representative, or the representative of a deceased member's estate;

(b) The procedures applicable to the 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 the Division ordinarily within 90 calendar days from the earlier of the following:

(A) The date the member requested a PHP appeal, not including the number of days the member took to subsequently file a request for hearing or

(B) The date the member filed a request for contested case hearing.

(d) The final order is the final decision of the Division.

(12) If the hearing decision is adverse to the member, the PHP may recover the cost of the services furnished to the member while the hearing is pending, to the extent that they were furnished solely because of the requirements of this rule and in accordance with forth in 42 CFR 438.420.

(13) 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 member, or Division or the PHP decides in the member's favor before the hearing even if the member has lost eligibility after the date the action was taken:

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

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

Stat. Auth.: ORS 409.110 & 413.042

Stats. Implemented: ORS 414.065

Hist.: HR 19-1996, f. & cert. ef. 10-1-96; HR 25-1997, f. & cert. ef. 10-1-97; OMAP 21-1998, f. & cert. ef. 7-1-98; OMAP 39-1999, f. & cert. ef. 10-1-99; OMAP 26-2000, f. 9-28-00, cert. ef. 10-1-00; OMAP 24-2003, f. 3-26-03 cert. ef. 4-1-03; OMAP 50-2003, f. 7-31-03 cert. ef. 8-1-03; OMAP 35-2004, f. 5-26-04 cert. ef. 6-1-04; DMAP 22-2008, f. 6-13-08, cert. ef. 7-1-08; DMAP 45-2009, f. 12-15-09, cert. ef. 1-1-10; DMAP 7-2012(Temp), f. & cert. ef. 2-7-12 thru 8-4-12