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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

Add arbitration language for HCE and CCO Contracting Disputes

Not more than 15 words

RULEMAKING ACTION

ADOPT:

AMEND: 410-141-3268

SUSPEND:

Stat. Auth.: ORS 414.042, 414.615, 414.625, 414.635 and 414.651

Other Auth.: None

Stats. Implemented: ORS 414. 610-414. 685

RULE SUMMARY

The Medical Assistance Program needs to amend this rule to incorporate arbitration language for when a dispute involves a Health Care Entity (HCE) who chooses not to contract with a Coordinated Care Organization (CCO). Changes have been made for clarity of rule language, legislative intent and program requirements. This rule revision is needed immediately to assist the CCOs who currently have or will be seeking contractual relationships with a Health Care Entity.

STATEMENT OF NEED AND JUSTIFICATION

The Proposed Amendment of OAR 410-141-3268

In the Matter of

SB 568 & 2013 Oregon Laws, Chapter 27

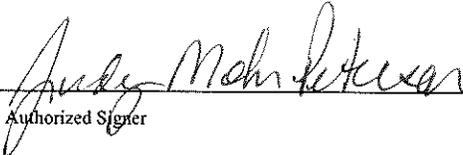
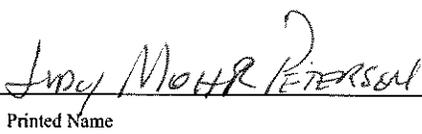
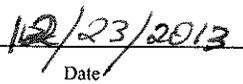
Documents Relied Upon, and where they are available

The Medical Assistance Program needs to amend this rule to incorporate arbitration language for when a dispute involves a Health Care Entity (HCE) who chooses not to contract with a Coordinated Care Organization (CCO). Changes have been made for clarity of rule language, legislative intent and program requirements. This rule revision is needed immediately to assist the CCOs who currently have or will be seeking contractual relationships with a Health Care Entity.

Need for the Temporary Rule(s)

A temporary rule was necessary as CCOs must integrate services which require contracts with multiple health care entities. A dispute resolution process must be in place due to the following reasons: An HCE refuses to contract with a CCO, an HCE terminates a contract with a CCO or the HCE does not extend or renew a contract with a CCO. The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority and clients, providers and CCOs. These rules need to be amended promptly to comply with legislative requirements, eliminate barriers and provide dispute resolution to facilitate contractual relationships for HCEs and CCOs.

Justification of Temporary Rules

  
Authorized Signer Printed Name Date

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410-141-3268

Process for Resolving Disputes on Formation of CCOs

(1) The dispute resolution process described in this rule applies only when, under ORS 414.635:

(a) An entity is applying to the Authority for certification as a CCO (applicant);

(b) A Health Care Entity (HCE) and the applicant (together, the "parties" for purposes of this rule) have failed to agree upon terms for a contract; and

(c) One or more of the following occurs:

(A) The applicant states that the HCE is necessary for the applicant to qualify as a CCO;

(B) An HCE states that its inclusion is necessary for the applicant to be certified as a CCO; or

(C) In reviewing the applicant's information, the Authority identifies the HCE as necessary for the applicant to qualify as a CCO.

(2) If an applicant and HCE disagree about whether the HCE is necessary for the applicant's certification as a CCO, the applicant or HCE may request the Authority to review the issue.

(3) If the Authority determines the HCE is not necessary for the applicant's certification, the process described in this rule does not apply.

(4) If the Authority determines or the parties agree the HCE is necessary for the applicant's certification, the following applies:

(a) The HCE and the applicant shall participate in good faith contract negotiations. The parties must take the following actions in an attempt to reach a good faith resolution:

(A) The applicant must provide a written offer of terms and conditions to the HCE. The HCE must explain the area of disagreement to the applicant;

(B) The applicant's or HCE's chief financial officer, chief executive officer, or an individual authorized to make decisions on behalf of the HCE or applicant must have at least one face-to-face meeting in a good faith effort to resolve the disagreement.

(b) The applicant or HCE may request the Authority to provide technical assistance. The Authority also may offer technical assistance, with or without a request. The Authority's

technical assistance is limited to clarifying the CCO certification process, criteria, and other program requirements.

(5) Pursuant to 2013 Engrossed SB 568 and 2013 Oregon Laws chapter 27, if the applicant and HCE cannot reach agreement on contract terms within ten (10) calendar days of the face-to-face meeting, either party may request arbitration. The requesting party must notify the other party in writing to initiate a referral to an independent third party arbitrator; for a HCE's refusal to contract with the CCO or the termination, extension or renewal of a HCE's contract with a CCO. The party initiating the referral must provide a copy of the notification to the Authority.

(6) After notification that one party initiated arbitration, the parties shall attempt to agree upon the selection of the arbitrator and complete the paperwork required to secure the arbitrator's services. If the parties are unable to agree, each party shall appoint an arbitrator, and these arbitrators shall select the final arbitrator.

(7) The parties shall pay for all arbitration costs. In consideration of potentially varied financial resources between the parties, which may pose a barrier to the use of this process, the parties may ask the arbitrator to allocate costs between the parties based on ability to pay.

(8) Within ten (10) calendar days of a referral to an arbitrator, the applicant and HCE must submit to each other and to the arbitrator:

(a) Their most reasonable contract offer; or

(b) The HCE's statement that a contract is not desirable and an explanation of why this is reasonable.

(9) Within ten (10) calendar days of receiving the other party's offer or the HCE's statement that a contract is not desirable, each party must submit to the arbitrator and the other party their advocacy briefs regarding whether the HCE is reasonably or unreasonably refusing to contract with the applicant.

(10) The arbitrator shall apply the following standards when making a determination about whether an HCE reasonably or unreasonably refused to contract with the applicant:

(a) An HCE may reasonably refuse to contract when an applicant's reimbursement to an HCE for a health service is below the reasonable cost to provide the service. The arbitrator shall apply federal or state statutes or regulations that establish specific reimbursements, such as payments to federally qualified health centers, rural health centers and tribal health centers; and

(b) An HCE may reasonably refuse to contract if that refusal is justified in fact or by circumstances, taking into consideration the Health Services Transformation (HST)

legislative policies. Facts or circumstances outlining what is a reasonable or unreasonable refusal to contract include, but are not limited to:

(A) Whether contracting with the applicant would impose demands that the HCE, taking into consideration the legislative policies described in the HST laws, cannot reasonably meet without significant negative impact on HCE costs, obligations or structure, in the context of the proposed reimbursement arrangement or other CCO requirements, including, but not limited to, the use of electronic health records, service delivery requirements or quality or performance requirements;

(B) Whether the HCE's refusal affects access to covered services in the applicant's community. This factor alone cannot result in a finding that the refusal to contract is unreasonable; however, the HCE and applicant should make a good faith effort to work out differences in order to achieve beneficial community objectives and HST policy objectives;

(C) Whether the HCE has entered into a binding obligation to participate in the network of a different CCO or applicant, and that participation significantly reduces the HCE's capacity to contract with the applicant.

(11) The following outlines the arbitrator determination and the parties' final opportunity to settle:

(a) The arbitrator must evaluate the final offers or statement of refusal to contract and the advocacy briefs from each party and issue a determination within 15 calendar days of the receipt of the parties' information;

(b) The arbitrator shall provide the determination to the parties. The arbitrator and the parties may not disclose the determination to the Authority for ten (10) calendar days to allow the parties an opportunity to resolve the issue themselves. If the parties resolve the issue no later than the end of the ten10th day, the arbitrator may not release the determination to the Authority;

(c) If the parties have not reached an agreement after ten (10) calendar days, the arbitrator must provide its decision to the Authority. After submission to the Authority, the arbitrator's determination becomes a public record, subject to protection of trade secret information if identified by one of the parties prior to the arbitrator's submission of the determination.

(12) If the parties cannot agree, the Authority shall evaluate the arbitrator's determination and may take the following actions:

(a) The Authority may certify an applicant if the arbitrator determined the applicant made a reasonable attempt to contract with the HCE or the HCE's refusal to contract was unreasonable;

(b) The Authority may refuse to certify, recertify or continue to certify an applicant when the arbitrator determined the applicant did not reasonably attempt to contract with the HCE or the HCE's refusal to contract was reasonable, and the Authority determines that participation from that the HCE remains necessary for certification of applicant as a CCO;

(c) The Authority may not pay fee-for-service reimbursements to an HCE if the arbitrator determined the HCE unreasonably refused to contract with the applicant; this applies to health services available through a CCO;

(d) In any circumstance within the scope of this rule when the parties have failed to agree, the current statutes regarding reimbursement to non-participating providers shall apply to certified CCOs and the HCE, consistent with ORS 414.743 for hospitals, and consistent with Authority rules for other providers.

(13) To be qualified to resolve disputes under this rule, the arbitrator must:

(a) Be a knowledgeable and experienced arbitrator;

(b) Be familiar with health care provider contracting matters;

(c) Be familiar with HST; and

(d) Follow the terms and conditions specified in this rule for the arbitration process.

Stat. Auth.: ORS 414.042, 414.615, 414.625, 414.635, 414.651

Stats. Implemented: ORS 414.610 – 414.685

Hist.: ~~DMAP 16-2012(Temp), f. & cert. ef. 3-26-12 thru 9-21-12; DMAP 37-2012, f. & cert. ef. 8-1-12~~