Division of Medical Assistance Programs
Delivery Systems Unit

Oregon Health Plan (MCO and CCO) Administrative Rulebook

Chapter 410, Division 141

Effective Mar. 20, 2012

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410-141-0000 Definitions

In addition to the definitions in 410-120-0000, the following definitions apply.

(1) “Action” means in the case of a Prepaid Health Plan (PHP) or Coordinated Care Organization (CCO):

(a) The denial or limited authorization of a requested service, including the type or level of service;

(b) The reduction, suspension or termination of a previously authorized service;

(c) The denial in whole or in part, of payment for a service;

(d) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (Division);

(e) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(f) For a member in a single PHP or CCO service area, the denial of a request to obtain services outside of the participating provider panel pursuant to OAR 410-141-0160 and 410-141-0220 or OAR 410-141-3320, as applicable.

(2) “Appeal” means a request for review of an action.

(3) “Coordinated Care Services” mean a CCO’s fully integrated physical health, chemical dependency and mental health services pursuant to ORS 414.725 and dental health services pursuant to ORS 414.625(3) that a CCO agrees to provide under contract with the Authority.

(4) “Capitated Services” mean those covered services that a PHP or Primary Care Manager (PCM) agrees to provide for a capitation payment under contract with the Authority.

(5) “Capitation Payment” means:

(a) Monthly prepayment to a PHP for health services the PHP provides to members;

(b) Monthly prepayment to a PCM to provide primary care management services for a client enrolled with the PCM.

(6) “CCO Payment” means the monthly payment to a CCO for services the CCO provides to members in accordance with the global budget.

(7) “Chemical Dependency Organization (CDO)” means a PHP that provides and coordinates chemical dependency outpatient, intensive outpatient and opiate substitution treatment services as capitated services under OHP.

(8) “Chemical Dependency Services” mean assessment, treatment and rehabilitation on a regularly scheduled basis, or in response to crisis for alcohol or other drug abusing or dependent clients and their family members or significant others., consistent with Level I and/or Level II of the "Chemical Dependency Placement, Continued Stay, and Discharge Criteria."

(9) “Cold Call Marketing” means a PCP’s or CCO’s unsolicited personal contact with a potential member for marketing purposes.

(10) “Community Advisory Council” means the CCO-convened council that meets regularly to ensure the CCO is addressing the health care needs of CCO members and the community, consistent with ORS 414.625.

(11) “Community Health Worker” means an individual who:

(a) Has expertise or experience in public health;

(b) Works in an urban or rural community either for pay or as a volunteer in association with a local health care system;

(c) To the extent practicable, shares ethnicity, language, socioeconomic status and life experiences with the residents of the community where the worker serves;

(d) Assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness;

(e) Provides health education and information that is culturally appropriate to the individuals being served;

(f) Assists community residents in receiving the care they need;

(g) May give peer counseling and guidance on health behaviors; and

(h) May provide direct services such as first aid or blood pressure screening.

(12) “Community Mental Health Program (CMHP)” means the organization of all services for individuals with mental or emotional disorders operated by, or contractually affiliated with, a local Mental Health Authority, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Authority’s Addictions and Mental Health Division (AMH).

(13) “Co-morbid Condition” means a medical condition or diagnosis coexisting with one or more other current and existing conditions or diagnoses in the same patient.

(14) “Community Standard” means typical expectations for access to the health care delivery system in the client’s community of residence. Except where the community standard is less than sufficient to ensure quality of care, the Division requires that the health care delivery system available to Division members in PHPs and to PCM members take into consideration the community standard and be adequate to meet the needs of the Division and PCM members.

(15) “Condition/Treatment Pair” means diagnoses described in the International Classification of Diseases Clinical Modifications, 9th edition (ICD-9-CM), the Diagnostic and Statistical Manual of Mental Disorders, 4th edition (DSM-IV), and treatments described in the Current Procedural Terminology, 4th edition (CPT-4) or American Dental Association Codes (CDT-2), or the Authority AMH Medicaid Procedure Codes and Reimbursement Rates, which, when paired by the Health Evidence Review Commission, constitute the line items in the Prioritized List of Health Services. Condition/treatment pairs may contain many diagnoses and treatments.

(16) “Contract” means an agreement between the State of Oregon, acting by and through the Authority and a PHP or CCO to provide health services to eligible members.

(17) “Coordinated Care Organization (CCO)” means a corporation, governmental agency, public corporation or other legal entity that is certified as meeting the criteria adopted by the Oregon Health Authority under ORS 414.625 to be accountable for care management and to provide integrated and coordinated health care for each of the organization’s members.

(18) “Corrective Action or Corrective Action Plan” means a Division- initiated request for a contractor or a contractor-initiated request for a subcontractor to develop and implement a time specific plan for the correction of identified areas of noncompliance.

(19) “Covered Services” mean medically appropriate health services described in ORS Chapter 414 and applicable administrative rules that the Legislature funds, based on the Prioritized List of Health Services.

(20) “Declaration for Mental Health Treatment” means a written statement of an individual’s decisions concerning his or her mental health treatment. The individual makes the declaration when they are able to understand and make decisions related to treatment, which is honored when the individual is unable to make such decisions.

(21) “Dental Care Organization (DCO)” means a PHP that provides and coordinates dental services as capitated services under OHP.

(22) “Dental Case Management Services” mean services provided to ensure member receives dental services, including a comprehensive, ongoing assessment of the

member's dental and medical needs related to dental care and the development and implementation of a plan to ensure the member receives those services.

(23) "Diagnostic Services" mean those services required to diagnose a condition, including but not limited to radiology, ultrasound, other diagnostic imaging, electrocardiograms, laboratory and pathology examinations, and physician or other professional diagnostic or evaluative services.

(24) "Disenrollment" means the act of removing a client from enrollment with a PHP, PCM, or CCO.

(25) "Enrollment" means the assignment of a client to a PHP,PCM or CCO for management and receipt of health services.

(26) "Exceptional Needs Care Coordination (ENCC)" means a specialized case management service provided by fully capitated health plans to members identified as aged, blind or disabled who have complex medical needs, including:

(a) Early identification of members eligible for ENCC services;

(b) Assistance to ensure timely access to providers and capitated services;

(c) Coordination with providers to ensure consideration is given to unique needs in treatment planning;

(d) Assistance to providers with coordination of capitated services and discharge planning; and

(e) Aid with coordinating necessary and appropriate linkage of community support and social service systems with medical care systems .

(27) "Free-Standing Mental Health Organization (MHO)" means the single MHO in each county that provides only mental health services and is not affiliated with a fully capitated health plan for that service area.

(28) "Fully-Capitated Health Plan (FCHP)" means PHPs that contract with the Authority to provide capitated health services, including inpatient hospitalization.

(29) Global Budget means the total amount of payment as established by the Authority to a CCO to deliver and manage health services for its members, including providing access to and ensuring the quality of those services.

(30) "Grievance" means a member's complaint to a PHP, CCO or to a participating provider about any matter other than an action.

(31) "Grievance System" means the overall system that includes:

(a) Grievances to a PHP or CCO on matters other than actions;

(b) Appeals to a PHP or CCO on actions; and

(c) Contested case hearings through the state on actions.

(32) “Health Services” means:

(a) For purposes of CCOs, the integrated services authorized to be provided within the medical assistance program as defined in ORS 414.025, for the physical medical, mental health, chemical dependency and dental services funded by the Legislative Assembly based upon the Prioritized List of Health Services;

(b) For all other purposes, the services authorized to be provided within the medical assistance program as defined in ORS 414.025, for the physical medical, mental health, chemical dependency and dental services funded by the Legislative Assembly based upon the Prioritized List of Health Services.

(33) “Health System Transformation (HST)” means the transformation of health care delivery in medical assistance programs as prescribed by 2011 House Bill 3650, Chapter 602, Oregon Laws 2011 and 2012 Enrolled Senate Bill 1580, Chapter 8, Oregon Laws 2012; and including the CCO Implementation Proposal from the Oregon Health Policy Board (January 24, 2012) approved by Section 2 of 2012 Enrolled Senate Bill 1580.

(34) “Line Items” mean condition/treatment pairs or categories of services included at specific lines in the Prioritized List of Health Services.

(35) “Marketing” means any communication from a PHP or a CCO to a client who is not enrolled in the PHP or CCO, and the communication can reasonably be interpreted to be an attempt to influence the OHP client:

(a) To enroll in that particular PHP or CCO;

(b) To either disenroll or not to enroll with another PHP or CCO.

(36) “Medical Case Management Services” mean services provided to ensure members obtain health services necessary to maintain physical and emotional development and health.

(37) “Mental Health Assessment” means a qualified mental health professional’s determination of a member's need for mental health services.

(38) “Mental Health Case Management” means services provided to members who need assistance to ensure access to mental health benefits and services from local, regional or state allied agencies or other service providers.

(39) “Mental Health Organization (MHO)” means a PHP that provides capitated mental health services for clients.

(40) “Non-Participating Provider” means a provider that does not have a contractual relationship with a PHP or CCO and is not on their panel of providers.

(41) “Participating Provider” means a provider that has a contractual relationship with a PHP or CCO and is on their panel of providers.

(42) “PCM Member” means a client enrolled with a primary case manager.

(43) “Peer Wellness Specialist” means an individual who assists mental health services consumers to reduce stigmas and discrimination and to provide direct services to assist individuals to create and maintain recovery, health and wellness by:

(a) Assessing the individual’s mental health service and support needs through community outreach;

(b) Assisting individuals with access to available services and resources; and

(c) Addressing barriers to services and providing education and information about available resources and mental health issues.

(44) “Person Centered Care” means care that reflects the individual patient’s strengths and preferences; reflects the clinical needs of the patient as identified through an individualized assessment; is based upon the patient’s goals; and will assist the patient in achieving the goals.

(45) “Personal Health Navigator” means an individual who provides information, assistance, tools and support to enable a patient to make the best health care decisions in the patient’s particular circumstances and in light of the patient’s needs, lifestyle, combination of conditions and desired outcomes.

(46) “Physician Care Organization (PCO)” means a PHP that contracts with the Authority to provide partially-capitated health services under OHP, exclusive of inpatient hospital services.

(47) “Primary Care Management Services” mean services that ensure PCM members obtain health services that are necessary to maintain physical and emotional development and health.

(48) “Primary Care Manager (PCM)” means a primary care provider who agrees to provide primary care management services to their members.

(49) “Prioritized List of Health Services” mean the listing of condition and treatment pairs developed by the Health Evidence Review Commission for the purpose of administering OHP health services.

(50) “Service Area” means the geographic area within which the PHP or CCO agreed under contract with the Authority to provide health services.

(51) “Valid Pre-Authorization” means a document the Authority, a PHP or CCO receives requesting a health service for a client who would be eligible for the service at the time of the service, and the document contains:

(a) A beginning and ending date not exceeding twelve months; and

(b) All data fields required for processing of the request or payment of the service, including the appropriate billing codes.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-141-0010 - Prepaid Health Plan Contract Procurement Screening and Selection Procedures

(1) Basis and scope:

(a) The Oregon Health Authority (Authority) will use screening and selection procedures to procure managed care services pursuant to ORS 414.725. The Authority may award Qualified Managed Care Organizations (MCO) a contract as a prepaid health plan (PHP) for purposes of administering the Oregon Health Plan (OHP);

(b) The OHP is funded with Federal Medicaid funds. The Authority will interpret and apply this rule to satisfy federal procurement and contracting requirements in addition to state requirements applicable to contracts with PHPs. The Authority will seek prior federal approval of PHP contracts;

(c) For purposes of source selection and screening in the procurement of managed care services, the Authority may use:

(A) The Request for Application (RFA) process described in sections (3) through (6) of this rule; or

(B) Any method described in the Department of Justice's (DOJ) Model Rules (chapter 137, division 047) for source selection and procurement process, except for bidding.

(2) In addition to the terms defined in OAR 410-141-0000, the following definitions for screening and selection procedures apply:

(a) Addendum or Addenda -- an addition or deletion to, a material change in, or general interest explanation of an RFA;

(b) Application -- Documents submitted by an MCO that seeks qualification to be awarded a contract. The applicant is the MCO submitting the Application;

(c) Award -- As the context requires, the act or occurrence of the Authority's identification of a qualified MCO with which the Authority will enter into a contract;

(d) Closing -- The date and time announced in an RFA as the deadline for submitting Applications;

(e) MCO -- A corporation, governmental agency, public corporation or other legal entity that operates as a managed health, dental, chemical dependency, physician care, or mental health organization;

(f) Managed care services -- Capitated services provided by a PHP pursuant to ORS 414.725;

(g) Offer -- A response to an RFA, including all required responses and assurances, and the Certification of Application;

(h) Request for Applications (RFA) -- All documents used by the Authority for soliciting Applications for qualification in a specific RFA issued by the Authority, for one or more categories of contracts, one or more Service Areas or such other objective as the Authority may determine is appropriate for solicitation of managed care services.

(3) RFA process:

(a) The Authority will provide public notice of every RFA on its Web site. The RFA will indicate how prospective applicants will be made aware of Addenda by posting notice of the RFA on the electronic system for notifying the public of Authority procurement opportunities, or at the option of the requestor, mailing notice of the availability of the RFA to persons that have expressed interest in Authority procurement of managed care services;

(b) The RFA process begins with a public notice of the RFA, which will be communicated with the electronic notification system used by the Authority to notify the public of procurement opportunities. A public notice of a RFA shall identify the qualification requirements for the category of contract (e.g., Fully Capitated Health Plan FCHP), Dental Care Organization (DCO), etc.), the designated Service Area(s) where managed care services are requested or other objective that the Authority determines appropriate for solicitation of managed care services, and a sample contract;

(c) The Authority will provide notice of any RFA Addenda in a manner intended to foster competition and to make prospective applicants aware of the Addenda. The RFA will specify how the Authority will provide notice of Addenda;

(d) If the RFA so specifies, potential applicants must submit a letter of intent to the Authority within the time period specified in the RFA. The letter of intent does not commit any potential applicant to apply, however, if required, the Authority will not consider Applications from applicants who do not submit a timely letter of intent;

(e) Submitting the Application – The Authority will only consider Applications that are submitted in the manner described in the RFA. Applicants must:

(A) Identify electronic Application submissions as defined in the RFA. The Authority is not responsible for any failure attributable to the transmission or receipt of electronic or facsimile Applications, including but not limited to receipt of garbled or incomplete documents, delay in transmission or receipt of documents, or security and confidentiality of data;

(B) Submit Applications, when sent by mail, in a sealed envelope that is marked appropriately;

(C) Ensure the Authority receives their Applications at the required delivery point prior to the Closing date, listed in the RFA. The Authority will not accept late Applications.

(f) The Application must be completed as described in the RFA. To avoid duplication and burden, the Authority may permit a current contractor to submit an abbreviated Application that focuses only on additional or different requirements specific to the new contract or the new Service Area or capacity or other Authority objective that is the subject of the RFA;

(g) The Authority will enter into or renew a contract only if it determines that the action would be within the scope of the RFA and consistent with the effective administration of the OHP, including but not limited to:

(A) The capacity of any existing PHP(s) in the Service Area compared to the capacity of an additional PHP for the number of potential enrollees in the Service Area;

(B) The potential opportunity for clients to have a choice of more than one PHP.

(h) Disclosure of Application Contents and Release of Information:

(A) Application information, including the letter of intent, shall not be disclosed to any applicant (or other person) until the completion of the RFA process. The RFA process shall be considered complete when a contract has been awarded. No information will be given to any applicant (or other person) relative to their standing with other applicants during the RFA process;

(B) Application information shall be subject to disclosure upon the award date, with the exception of information that has been clearly identified and labeled "Confidential" under ORS 192.501-192.502, insofar as the Authority determines it meets the requirements for an exemption from disclosure;

(C) Any requestor shall be able to obtain copies of non-exempt information after the RFA process has been completed. The requestor shall be responsible for the time and material expense associated with the request. This fee includes the copying of the document(s) and the staff time (and agency attorney time, if requested by the Authority) associated with performing the task, in accordance with ORS 192.440(3). The Authority may require prepayment of estimated charges before acting on a request:

(i) Protests must be submitted, in writing, to the Authority prior to the protest date specified in the RFA. The protest shall state the reasons for the protest or request and any proposed changes to the RFA provisions, specifications or contract terms and conditions that the prospective applicant believes will remedy the conditions upon which the protest is based. Protests and judicial review of the RFA shall be handled using the process set forth in OAR 137-047-0730;

(j) The Authority is not obligated to enter into a contract with any applicant, and further, has no financial obligation to any applicant.

(4) Application for qualification:

(a) An MCO seeking qualification as a PHP must meet the requirements and provide the assurances specified in the RFA. The Authority determines whether the MCO qualifies based on the Application and any additional information and investigation that the Authority may require;

(b) The Authority determines an MCO is qualified when the MCO meets the requirements of the RFA, including written assurances, satisfactory to the Authority, that the MCO:

(A) Provides or will provide the services described in the contract;

(B) Provides or will provide the health services described in the contract in the manner described in the contract;

(C) Is organized and operated, and will continue to be organized and operated, in the manner required by the contract and described in the Application;

(D) Under arrangements that safeguard the confidentiality of patient information and records, will provide to the Authority, CMS, the Office of Inspector General, the Oregon Secretary of State, and the Oregon Medicaid Fraud Unit of the DOJ, or any of their duly authorized representatives, for the purpose of audit, examination or evaluation to any books, documents, papers, and records of the MCO relating to its operation as a PHP and to any facilities that it operates; and

(E) Will continue to comply with any other assurances it has given the Authority.

(c) The Authority may determine that an MCO is potentially qualified if within a specified period of time the MCO is reasonably susceptible of being made qualified. The Authority is not obligated to determine whether an applicant is potentially qualified if, in its discretion, the Authority determines that sufficient qualified applicants are available to obtain the Authority objectives under the RFA. The Authority determines that an MCO is potentially qualified if:

(A) The Authority finds that the MCO is reasonably susceptible to meeting the operational and solvency requirements of the Application within a specified period of time; and

(B) The MCO enters into discussions with the Authority about areas of qualification that must be met before the MCO is operationally and financially qualified. The Authority will determine the date and required documentation and written assurances required from the MCO;

(C) If the Authority determines that a potentially qualified applicant cannot become a qualified MCO within the time announced in the RFA for contract award, the Authority may:

(i) Offer the contract at a future date when the applicant demonstrates, to the Authority's satisfaction, that the applicant is a qualified MCO within the scope of the advertised RFA; or

(ii) Inform the applicant that it is not qualified for contract award.

(5) Evaluation and determination procedures:

(a) The Authority evaluates an Application for qualification on the basis of information contained in the RFA, the Application and any additional information that the Authority obtains. Evaluation of the Application will be based on the criteria in the RFA;

(b) The Authority will notify each MCO that applies for qualification of its qualification status;

(c) Review of Authority' qualification decisions shall be as set forth in ORS 279B.425;

(d) The Authority may enter into negotiation with qualified or potentially qualified applicants concerning potential capacity and enrollment in relation to other available, or potentially available, capacity and the number of potential enrollees within the Service Area. The Authority may determine that it will limit contract award(s) to fewer than the number of qualified or potentially qualified applicants, to achieve the objectives in the RFA.

(6) Contract award conditions:

(a) The applicant's submission of the Application with the executed Certification of Application is the MCO's Offer to enter into a contract. The Offer is a "Firm Offer," i.e., the Offer shall be held open by the applicant for the Authority' acceptance for the period specified in the RFA. The Authority's award of the contract constitutes acceptance of the Offer and binds the applicant to the contract;

(b) No Contingent Offers. Except to the extent the applicant is authorized to propose certain terms and conditions pursuant to the RFA, an MCO shall not make its Offer contingent upon the Authority's acceptance of any terms or conditions other than those contained in the RFA;

(c) By timely signing and submitting the Application and Certification of Application, the applicant acknowledges that it has read and understands the terms and conditions contained in the RFA and that it accepts and agrees to be bound by the terms and conditions of the RFA;

(d) The Authority may award multiple contracts in accordance with the criteria set forth in the RFA. The Authority may make a single award or limited number of awards rather than multiple awards to all qualified or potentially qualified applicants, in order to meet Authority' needs including but not limited to adequate capacity for the potential enrollees in the Service Area;

(e) An applicant who claims to have been adversely affected or aggrieved by the Authority contract award or intent to award a contract must file a written protest with the Authority issuing office within seven (7) calendar days after receiving the Notice of Award. Protests and judicial review of contract award shall be handled using the procedures set forth in OAR 137047-9740.

(7) Applicability of DOJ Model Rules: Except where inconsistent with the preceding sections of this rule, Authority will use the following DOJ Model Rules to govern solicitations for Managed Care Services:

(a) OAR 137-046 -- General Provisions Related to Public Contracting: 137046-0100, 137-046-0110 and 137-046-0400 through 137-046-0480;

(b) OAR 137-047 -- Public Procurements for Goods or Services: 137-0470100, 137-047-0260 through 137-047-0330, 137-047-0400 through 137047-0800.

Stat. Auth.: ORS 413.042 Stats. Implemented: ORS 414.065

410-141-0020 - Administration of Division of Medical Assistance Programs, Regulation and Rule Precedence

(1) The Oregon Health Authority (Authority) and its Division of Medical Assistance Programs (Division) may adopt reasonable and lawful policies, procedures, rules and interpretations to promote the orderly and efficient administration of medical assistance programs including the Oregon Health Plan pursuant to ORS 414.065 (generally, fee-for-service), 414.725 (Prepaid Health Plans), and 414.115 to 414.145 (services contracts) subject to the rulemaking requirements of Oregon Revised Statutes and Oregon Administrative Rule (OAR) procedures.

(2) In applying its policies, procedures, rules and interpretations, the Division will construe them as much as possible to be complementary. In the event that the Division's policies, procedures, rules and interpretations may not be complementary, the Division will apply the following order of precedence to guide its interpretation:

(a) For purposes of the provision of covered medical assistance to the Division clients, including but not limited to authorization and delivery of service, or denials of authorization or services, the Division, clients, enrolled Providers and the Prepaid Health Plans (PHP) will apply the following order of precedence:

(A) Those federal laws and regulations governing the operation of the medical assistance program and any waivers granted the Division by the Centers for Medicare and Medicaid Services to operate medical assistance programs including the Oregon Health Plan (OHP);

(B) Oregon Revised Statutes governing medical assistance programs;

(C) Generally for PHP, requirements applicable to the provision of covered medical assistance to the Division clients are provided in OAR 410-1410000 through 410-141-0860, Oregon Health Plan Administrative Rules for Prepaid Health Plans, inclusive, and where applicable, the Division's General Rules, 410-120-0000 through 410-120-1980, and the provider rules applicable to the category of medical service;

(D) Generally for enrolled fee-for-service providers or other contractors, requirements applicable to the provision of covered medical assistance to

Division clients are provided in the Division's General Rules, OAR 410-1200000 through 410-120-1980, the Prioritized List and program coverage described in 410-141-0480 to 410-141-0520,and the provider rules applicable to the category of medical service; and

(E) Any other applicable duly promulgated rules issued by the Division and other offices or units within the Authority necessary to administer the State of Oregon's medical assistance programs, such as Electronic Data Transaction Rules in OAR 407-120-0100 to 407-120-0200; and

(F) The basic framework for provider enrollment in OAR 407-120-0300 through 407-120-0380 generally applies to providers enrolled with the Authority, subject to more specific requirements applicable to the administration of the OHP and the Division. For purposes of this rule, “more specific” means the requirements, laws and rules applicable to the provider type and covered services described in subsections (i)-(v) of this section.

(b) For purposes of contract administration solely as between the Division and its PHP, the terms of the applicable contract and the requirements in subsection (2)(a) of this rule applicable to the provision of covered medical assistance to the Division clients.

(A) Nothing in this rule shall be deemed to incorporate into contracts provisions of law not expressly incorporated into such contracts, nor shall this rule be deemed to supercede any rules of construction of such contracts that may be provided for in such contracts.

(B) Nothing in this rule gives, is intended to give, or shall be construed to give or provide any benefit or right, whether directly or indirectly or otherwise, to any person or entity unless such person or entity is identified by name as a named party to the contract.

Stat. Auth.: ORS 409.110 and 413.042

Stats. Implemented: 414.065

410-141-0050 - MHO Enrollment for Children Receiving Child Welfare Services

Pursuant to and in the administration of the authority in OAR 410141-0060, Children, Adults and Families (CAF) or Oregon Youth Authority (OYA) selects Prepaid Health Plans (PHPs) or a Primary Care Manager (PCM) for a child receiving CAF Child Welfare Services or OYA Services, with the exception of children in subsidized adoption and guardianship. This rule implements and further describes how the Oregon Health Authority (Authority) will administer its authority under 410-141-0060 for purposes of making enrollment decisions and 410-141-0080 for purposes of making disenrollment decisions for children receiving CAF Child Welfare Services or OYA Services;

(1) The Authority has determined that, to the maximum extent possible, all children receiving CAF services should be enrolled in Mental Health Organizations (MHOs) at the next available enrollment date following eligibility, redetermination, or upon review by the Authority, unless disenrollment from a MHO is authorized by the Authority in accordance with this section and OAR 410-141-0080:

(a) Notwithstanding OAR 410-141-0060(4)(a) or 410-1410080(2)(b)(E), children receiving CAF services are not exempt from mandatory enrollment in an MHO on the basis of Third Party Resources (TPR) mental health services coverage;

(b) A decision to use Fee-For-Service (FFS) open card for a child receiving CAF services should be reviewed by the Authority if the child's circumstances change and at the time of redetermination to consider whether the child should be enrolled in a MHO.

(2) When a child receiving CAF services is being transferred from one MHO to another, or for children transferring from FFS to a MHO, the MHO must facilitate coordination of care consistent with OAR 410141-0160:

(a) MHOs are required to work closely with the Authority to ensure continuous MHO enrollment for children receiving CAF services;

(b) If the Authority determines that disenrollment should occur, the MHO will continue to be responsible for providing Covered Services until the disenrollment date established by the Authority, which shall provide for an adequate transition to the next responsible MHO.

(3) It is not unusual for a child receiving CAF services to experience a change of placement that may be permanent or temporary in nature. Consistent with OAR 410-141-0080(2)(b)(F), the Authority will verify the address change information to determine whether a child receiving CAF services no longer resides in the MHO's Service Area:

(a) A temporary absence as a result of a temporary placement out of the MHO's Service Area does not represent a change of residence if the Authority determines that the child is reasonably likely to return to a placement in the MHO's Service Area at the end of the temporary placement;

(b) Unless a corresponding change in MHO capitation rates is implemented, a child receiving CAF services placed in Behavioral Rehabilitation Services (BRS) settings will be enrolled in the MHO that serves the region in which the BRS setting is located, unless an out of area exception is requested by the MHO and agreed to by the Authority for purposes related to continuity of care.

(4) If the child receiving CAF services is enrolled in a MHO on the same day the child is admitted to psychiatric residential treatment services (PRTS), the MHO shall be responsible for Covered Services during that placement even if the location of the facility is outside of the MHO's Service Area:

(a) The child receiving CAF services is presumed to continue to be enrolled in the MHO with which the child was most recently enrolled. An admission to a PRTS facility shall be deemed a temporary placement for purposes of MHO enrollment. Any address change or Authority system identifier (e.g., C5 status) change associated with the placement in the PRTS facility does not constitute a change of residence for purposes of MHO enrollment and shall not constitute a basis for disenrollment from the MHO, notwithstanding OAR 410-1410080(2)(b)(F). If the Authority determines that a child was disenrolled for reasons not consistent with these rules, the Authority shall reenroll the child with the appropriate MHO and assign an enrollment

date that provides for continuous MHO coverage with the appropriate MHO. If the child had been enrolled in a different MHO in error, the Authority will disenroll the child from that MHO and recoup the Capitation Payments;

(b) Immediately upon discharge from Long Term Psychiatric Care and prior to admission to a PRTS, a child receiving CAF services should be enrolled in an MHO. At least two weeks prior to discharge of a child receiving CAF services from Long Term Psychiatric Care (SAIP, SCIP or STS) facility to a PRTS facility, the long term care facility shall consult with the Authority about which MHO will be assigned in order to provide for enrollment in the MHO and shall make every reasonable effort within the laws governing confidentiality to consult with the MHO that will be assigned in order to provide for continuity of care upon discharge from Long Term Psychiatric Care.

(5) Notwithstanding OAR 410-141-0060(6)(d) and (7) and 410-1410080(2)(b)(H), if a child receiving CAF services is enrolled in a MHO after the first day of an admission to PRTS, the date of enrollment shall be effective the next available enrollment date following discharge from PRTS to the MHO assigned by the Authority:

(a) For purposes of these rules and to assure continuity of care for the child upon discharge, the next available enrollment date shall mean immediately upon discharge;

(b) At least two weeks prior to discharge, the PRTS facility shall consult with the Authority about which MHO will be assigned and shall make every reasonable effort within the laws governing confidentiality to consult with the MHO that will be assigned in order to provide for continuity of care upon discharge.

Stat. Auth.: ORS 413.042 Stats. Implemented: 414.065

410-141-0060 – Oregon Health Plan Managed Care Enrollment Requirements

(1) Enrollment of an Oregon Health Plan (OHP) client, excluding the Health Plan New/Noncategorical client (HPN) and Children's Health Insurance Program (CHIP) clients in Prepaid Health Plans (PHPs) shall be mandatory unless exempted from enrollment by the Oregon Health Authority (Authority), or unless the OHP client resides in a Service Area where there is inadequate capacity to provide access to Capitated Services for all OHP clients through PHPs or Primary Care Managers (PCMs).

(2) Enrollment of the HPN and CHIP clients in PHPs shall be mandatory unless exempted from enrollment by the Authority under the terms in section (4) of this rule. Selection of PHPs in accordance with this rule is a condition of eligibility for HPN and CHIP clients. If, upon reapplication, HPN or CHIP clients do not select PHPs in accordance with this rule, PHPs will be selected by the Authority. This selection will be based on which PHPs the HPN or CHIP clients were previously enrolled in.

(3) OHP clients, except HPN and CHIP clients shall be enrolled with PHPs or PCMs according to the following criteria:

(a) Areas with sufficient physical health service capacity through a combination of Fully Capitated Health Plans (FCHP), Physician Care Organizations (PCO), and PCMs shall be called mandatory FCHP/PCO/PCM Service Areas. In mandatory FCHP/PCO/PCM Service Areas, an OHP client shall select:

(A) An FCHP or PCO; or

(B) A PCM if exempt from FCHP or PCO enrollment.

(b) Service areas with sufficient physical health service capacity through PCMs alone shall be called mandatory PCM Service Areas. An OHP client shall select a PCM in a mandatory PCM Service Area;

(c) Service Areas without sufficient physical health service capacity through FCHPs, PCOs and PCMs shall be called voluntary FCHP/PCO/PCM Service Areas. In voluntary FCHP/PCO/PCM Service Areas, an OHP client may choose to:

(A) Select any FCHP, PCO or PCM that is open for enrollment; or

(B) Remain in the Medicaid Fee-for-Service (FFS) physical health care delivery system.

(d) Service Areas with sufficient dental care service capacity through Dental Care Organizations (DCOs) shall be called mandatory DCO Service Areas. An OHP client shall select a DCO in a mandatory DCO Service Area;

(e) Service Areas without sufficient dental care service capacity through DCOs shall be called voluntary DCO Service Areas. In voluntary DCO Service Areas, an OHP client may choose to:

(A) Select any DCO open for enrollment; or

(B) Remain in the Medicaid FFS dental care delivery system;

(f) Service Areas with sufficient mental health service capacity through MHOs shall be called mandatory MHO Service Areas.OHP clients will be enrolled in an MHO in a mandatory MHO Service Area;

(g) Service Areas without sufficient mental health service capacity through MHOs shall be called voluntary MHO Service Areas. An OHP client may choose to select an MHO in voluntary MHO Service Areas if the MHO is open for enrollment, or may choose to remain in the Medicaid FFS mental health care delivery system;

(h) When a Service Area changes from mandatory to voluntary, the Division of Medical Assistance Programs (Division) member will remain with their PHP for the remainder of their eligibility period, unless the Division member meets the criteria stated in section (4) of this rule, or as provided by OAR 410-141-0080.

(4) The following are exemptions to mandatory enrollment in PHPs that allow OHP clients, including HPN and CHIP clients, to enroll with a PCM or remain in the Medicaid FFS delivery systems for physical, dental and/or mental health care:

(a) The OHP client is covered under a major medical insurance policy, such as a Medicare supplemental policy, Medicare employer group policy or other third party resource (TPR) which covers the cost

of services to be provided by a PHP, (excluding dental insurance. An OHP client shall be enrolled with a DCO even if they have a dental TPR). The OHP client shall enroll with a PCM if the insurance policy is not a private Health Maintenance Organization (HMO);

(b) Clients who meet all of the criteria listed in section (4)(b)(A) through (C) are exempt from mandatory enrollment:

(A) The OHP client has an established relationship with a Division enrolled Practitioner from whom the client receives ongoing treatment for a covered medical or dental condition, and;

(B) Subject to OAR 410-141-0080(1)(b)(B)(vi)(III), the Division-enrolled practitioner is not a member of the PHP's Participating Provider panel the OHP client would be enrolled in, and;

(C) Loss of continuity of care for the covered medical or dental condition would have a significant negative effect on the health status of the OHP client, as determined by the Authority through medical review, to change Practitioners and receive treatment from the PHP's Participating Provider Panel;

(D) When the Practitioner is a Primary Care Practitioner (PCP) enrolled with the Division as a PCM, the OHP client shall enroll with this Practitioner as a PCM member;

(E) Exemptions from mandatory enrollment in PHPs for this reason may be granted for a period of four months. Extensions may be granted by the Authority upon request, subject to review of unique circumstances. A 12-month exemption may be granted if the reason for the exemption is not likely to change or is due to a chronic or permanent condition or disability;

(c) OHP clients shall be exempted from mandatory enrollment with an FCHP or PCO, if the OHP client became eligible through a hospital hold process and are placed in the Adults/Couples category. The OHP client shall remain FFS for the first six (6) months of eligibility unless a change occurs with their eligibility or the category. At that time, the exemption shall be removed and the OHP client shall be enrolled into an open FCHP or PCO. The exemption shall not affect the mandatory enrollment requirement into a DCO or MHO.

(d) The OHP client is a Native American or Alaska Native with Proof of Indian Heritage and chooses to receive services from an Indian Health Service facility or tribal health clinic;

(e) The OHP client is a child in the legal custody of either the Oregon Youth Authority (OYA) or Children, Adults and Families (CAF) (Child Welfare Services), and the child is expected to be in a substitute care placement for less than 30 calendar days, unless:

(A) There is no FFS access; or

(B) There are continuity of care issues.

(f) The OHP client is in the third trimester of her pregnancy when first determined eligible for OHP, or at redetermination, and she wishes to continue obtaining maternity services from a Practitioner who is not a Participating Provider with an FCHP or PCO in the Service Area:

(A) In order to qualify for such exemption at the time of redetermination, the OHP client must not have been enrolled with an FCHP or PCO during the three months preceding redetermination;

(B) If the Division member moves out of her PHP's Service Area during the third trimester, the Division member may be exempted from enrollment in the new Service Area for continuity of care if the Division member wants to continue obstetric-care with

her previous physician, and that physician is within the travel time or distance indicated in 410-141-0220;

(C) If the Practitioner is a PCM, the Division member shall enroll with that Practitioner as a PCM member;

(D) If the Practitioner is not enrolled with the Division as a PCM, then the Division member may remain in the Medicaid FFS delivery system until 60 days after the birth of her child. After the 60-day period, the OHP client must enroll in a FCHP or PCO.

(g) The OHP client has End Stage Renal Disease (ESRD). The OHP client shall not enroll in an FCHP or PCO but shall enroll with a PCM unless exempt for some other reason listed in section (4) of this rule;

(h) The OHP client has been accepted by the Medically Fragile Children's Unit of the Addictions and Mental Health Division (AMH);

(i) An OHP client who is also a Medicare beneficiary and is in a hospice program shall not enroll in an FCHP or PCO that is also a Medicare Advantage plan. The OHP client may enroll in either an FCHP or PCO that does not have a Medicare Advantage plan or with a PCM unless exempt for some other reason listed in section (4) of this rule;

(j) The OHP client is enrolled in Medicare and the only FCHP or PCO in the Service Area is a Medicare Advantage plan. The OHP client may choose not to enroll in an FCHP or PCO;

(k) Other just causes as determined by the Authority through medical review, which include the following factors:

(A) The cause is beyond the control of the OHP client;

(B) The cause is in existence at the time that the OHP client first becomes eligible for OHP;

(C) Enrollment would pose a serious health risk; and

(D) The lack of reasonable alternatives.

(l) A woman eligible for the Breast and Cervical Cancer Medical (BCCM) Program, (refer to BCCM rules established by CAF), shall not enroll in an FCHP, PCO, DCO or MHO. A woman in the BCCM Program shall remain in the Medicaid FFS delivery system.

(5) The primary person in the household group and benefit group as defined in OAR 461-110-0110, 461-110-0210, and 461-110- 0720, respectively, shall select PHPs or

PCMs on behalf of all OHP clients in the benefit group. PHP or PCM selection shall occur at the time of application for OHP in accordance with section (1) of this rule:

(a) All OHP clients in the benefit group shall enroll in the same PHP for each benefit type (physical, dental or mental health care) unless exempted under the conditions stated in section (4) of this rule. If PCM selection is an option, OHP clients in the benefit group may select different PCMs;

(b) If the OHP client is not able to choose PHPs or PCMs on his or her own, the Representative of the OHP client shall make the selection. The hierarchy used for making enrollment decisions shall be in descending order as defined under Representative:

(A) If the Medicare Advantage Plan Election form (OHP 7208M), described in subsection (5)(d) of this rule, is signed by someone other than the OHP client, the OHP client's Representative must complete and sign the Signature by Mark or State Approved Signature sections of the OHP 7208M.

(B) If the OHP client is a Medicare beneficiary who is capable of making enrollment decisions, the client's Representative shall not have authority to select FCHPs or PCOs that have corresponding Medicare Advantage components.

(c) CAF or OYA shall select PHPs or a PCM for a child receiving CAF (Child Welfare Services) or OYA Services, with the exception of children in subsidized adoptions;

(d) Enrollment in a FCHP or PCO of an OHP client who is receiving Medicare and who resides in a Service Area served by PHPs or PCMs shall be as follows:

(A) If the OHP client, who is Medicare Advantage eligible, selects a FCHP or PCO that has a corresponding Medicare Advantage plan, the OHP client shall complete the 7208M, or other Centers for Medicare and Medicaid Services (CMS) approved Medicare plan election form:

(i) If the FCHP or PCO has not received the form within 10 calendar days after the date of enrollment, the FCHP or PCO shall send a letter to the Division member with a copy sent to SPD branch manager. The letter shall:

(I) Explain the need for the completion of the form;

(II) Inform the Division member that if the form is not received within 30 days, the FCHP or PCO may request disenrollment; and

(III) Instruct the Division member to contact their caseworker for other coverage alternatives.

(ii) The FCHP or PCO shall choose whether to disenroll or maintain enrollment for all the OHP clients from whom they do not receive a form at the end of 30 days, except as otherwise provided in this rule. The FCHP or PCO must notify the PHP Coordinator of the PHP's annual decision to disenroll or maintain enrollment for the OHP clients in writing. This notification must be submitted by January 31 of each year, or another date specified by the Division. If the FCHP or PCO has decided to:

(I) Disenroll the OHP clients and has not received a Division client's form at the end of 30 days, the FCHP or PCO shall request disenrollment. HMU will disenroll the Division member effective the end of the month following the notification.

(II) Maintain enrollment, the FCHP or PCO shall not request disenrollment at the end of 30 days.

(B) If the OHP client is enrolled as a private member of a Medicare Advantage plan, the OHP client may choose to remain enrolled as a private member or to enroll in the FCHP or PCO that corresponds to the Medicare Advantage plan:

(i) If the OHP client chooses to remain as a private member in the Medicare Advantage plan, the OHP client shall remain in the Medicaid FFS delivery system for physical health care services but shall select a DCO and MHO where available;

(ii) If the OHP client chooses to discontinue the Medicare Advantage enrollment and then, within 60 calendar days of disenrollment from the Medicare Advantage plan, chooses the FCHP or PCO that corresponds to the Medicare Advantage plan that was discontinued, the OHP client shall be allowed to enroll in the FCHP or PCO even if the FCHP or PCO is not open for enrollment to other OHP clients;

(iii) A Fully Dual Eligible (FDE) OHP client who has been exempted from enrollment in an MHO shall not be enrolled in a FCHP or PCO that has a corresponding Medicare Advantage plan unless the exemption was done for a Provider who is on the FCHP's or PCO's panel.

(e) MHO enrollment options shall be based on the OHP client's county of residence, the FCHP or PCO selected by the OHP client, and whether the FCHP or PCO selected serves as a MHO:

(A) If the OHP client selects a FCHP or PCO that is not a MHO, then the OHP client shall enroll in the MHO designated as the freestanding MHO for that county;

(B) If the OHP client selects a FCHP or PCO that is a MHO, then the OHP client shall receive OHP mental health benefits through that FCHP or PCO.

(6) If the OHP client resides in a mandatory Service Area and fails to select a DCO, MHO, PCO and/or FCHP or a PCM at the time of application for the OHP, the Division may enroll the OHP client with a DCO, MHO, PCO and/or FCHP or a PCM as follows:

(a) The OHP client shall be assigned to and enrolled with a DCO, MHO, and FCHP, PCO or PCM which meet the following requirements:

(A) Is open for enrollment;

(B) Serves the county in which the OHP client resides;

(C) Has Practitioners located within the Community Standard distance for average travel time for the OHP client.

(b) Assignment shall be made first to a FCHP or PCO and second to a PCM;

(c) The Authority shall send a notice to the OHP client informing the OHP client of the assignments and the right to change assignments within 30 calendar days of enrollment. A change in assignment shall be honored if there is another DCO, MHO, and FCHP, PCO or PCM open for enrollment in the county in which the OHP client resides;

(d) Enrollments resulting from assignments shall be effective the first of the month or week after the Authority enrolls the OHP client and notifies the OHP client of enrollment and the name of the PHP or PCM: If enrollment is initiated by an Authority worker on or before Wednesday, the date of enrollment shall be the following Monday. If enrollment is initiated by an Authority worker after Wednesday, the date of enrollment shall be one week from the following Monday. Monthly enrollment in a mandatory Service Area where there is only one FCHP, PCO, MHO or DCO shall be initiated by an auto-enrollment program of the Authority effective the first of the month following the month-end cutoff. Monthly enrollment in Service Areas where there is a choice of PHPs, shall be auto-enrolled by computer algorithm.

(7) The provision of Capitated Services to a Division member enrolled with a PHP or a PCM shall begin on the first day of enrollment with the PHP or a PCM except for:

(a) A newborn whose mother was enrolled at the time of birth. The date of enrollment shall be the newborn's date of birth;

(b) Persons, other than newborns, who are hospitalized on the date enrolled. The date of enrollment with a FCHP, PCO or MHO shall be the first possible enrollment date after the date the OHP client is discharged from inpatient hospital services and the date of enrollment with a PCM shall be the first of the month for which Capitation Payment is made;

(c) For Division members who are re-enrolled within 30 calendar days of disenrollment. The date of enrollment shall be the date specified by the Authority that may be retroactive to the date of disenrollment;

(d) Adopted children or children placed in an adoptive placement. The date of enrollment shall be the date specified by the Authority.

Stat. Auth.: ORS 413.042 Stats. Implemented: ORS 414.065

410-141-0070 Managed Care Fully Capitated Health Plan and Physician Care Organization Pharmaceutical Drug List Requirements

(1) Prescription drugs are a covered service based on the funded Condition/Treatment Pairs. Fully Capitated Health Plan (FCHP)'s and Physician Care Organization (PCO)'s shall pay for prescription drugs, except:

(a) As otherwise provided, mental health drugs that are in Class 7 & 11 (based on the National Drug Code (NDC) as submitted by the manufacturer to First Data Bank);

(b) Depakote, Lamictal and those drugs that the Division of Medical Assistance Programs (Division) specifically carved out from capitation according to sections (8) and (9) of this rule;

(c) Any applicable co-payments;

(d) For drugs covered under Medicare Part D when the client is fully dual eligible.

(2) FCHPs and PCOs may use a restrictive drug list as long as it allows access to other drug products not on the drug list through some process such as prior authorization (PA). The drug list must:

(a) Include (FDA) Federal Drug Administration- approved drug products for each therapeutic class sufficient to ensure the availability of covered drugs with minimal prior approval intervention by the provider of pharmaceutical services;

(b) Include at least one item in each therapeutic class of over-thecounter medications; and

(c) Be revised periodically to assure compliance with this requirement.

(3) FCHPs and PCOs shall provide their participating providers and their pharmacy subcontractor with:

(a) Their drug list and information about how to make non-drug listed requests;

(b) Updates made to their drug list within 30 days of a change that may include, but is not limited to:

(A) Addition of a new drug;

(B) Removal of a previously listed drug; and

(C) Generic substitution.

(4) If a drug cannot be approved within the 72-hour time requirement for prior authorization of drugs and the medical need for the drug is immediate, FCHPs and PCOs must provide (within 24 hours of receipt of the drug prior authorization request) for the dispensing of at least a 72-hour supply of a drug that requires prior authorization.

(5) FCHPs and PCOs shall authorize the provision of a drug requested by the Primary Care Physician (PCP) or referring provider, if the approved prescriber certifies medical necessity for the drug such as:

(a) The equivalent of the drug listed has been ineffective in treatment; or

(b) The drug listed causes or is reasonably expected to cause adverse or harmful reactions to the Division member.

(6) Prescriptions for Physician Assisted Suicide under the Oregon Death with Dignity Act are excluded; payment is governed solely by OAR 410-121-0150.

(7) FCHPs and PCOs shall not authorize payment for any Drug Efficacy Study Implementation (DESI) Less Than Effective (LTE) drugs which have reached the FDA Notice of Opportunity for Hearing NOOH) stage, as specified in OAR 410-121-0420 (DESI)(LTE) Drug List. The DESI LTE drug list is available at:

http://www.cms.hhs.gov/MedicaidDrugRebateProgram/12 LTEIRSDrugs.asp.

(8) An FCHP or PCO may seek to add drugs to the list contained in section (1) of this rule by submitting a request to the Division no later than March 1 of any given contract year that contains all of the following information:

(a) The name of the drug;

(b) The FDA approved indications that identifies the drug may be used to treat a severe mental health condition; and,

(c) The reason that the Division should consider this drug for carve out.

(9) Upon receipt of a request from an FCHP or PCO requesting a drug not be paid within the capitation rate of the FCHP or PCO, the Division shall exclude the drug from capitation rate for the following January contract cycle if the Division determines that the drug has an approved FDA indication for the treatment of a severe mental health condition such as major depressive, bi-polar or schizophrenic disorders.

(10) The Division will pay for a drug that is not included in the capitation rate pursuant to the Pharmaceutical Services Program rules (chapter 410, division 121). An FCHP or PCO may not reimburse providers for carved out drugs.

(11) FCHPs and PCOs shall submit quarterly utilization data, within 60 days of the date of service, as part of the Centers for Medicare and Medicaid Services (CMS) Medicaid Drug Rebate Program requirements pursuant to Section 2501 of the Affordable Care Act.

Stat. Auth.: ORS 413.042

Stats. Implemented: 414.065

0410-141-0080 Managed Care Disenrollment from Prepaid Health Plans

(1) Division member requests for disenrollment:

(a) All Oregon Health Plan (OHP) Division member-initiated requests for disenrollment from a Prepaid Health Plan (PHP) must be initiated, orally or in writing, by the primary person in the benefit group enrolled with a PHP, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For Division members who are not able to request disenrollment on their own, the request may be initiated by the Division member's Representative;

(b) Primary person or Representative requests for disenrollment shall be honored:

(A) Without cause:

(i) After six months of Division member's enrollment. The effective date of disenrollment shall be the first of the month following the Department's approval of disenrollment;

(ii) Whenever a Division member's eligibility is redetermined by the Department of Human Services (Department) and the primary person requests disenrollment without cause. The effective date of disenrollment shall be the first of the month following the date that the Division member's eligibility is redetermined by the Department;

(iii) Effective retroactively on or after September 1, 2011 and iIn accordance with SB 201 and the Division’s determination, Division members have the right to disenroll from a FCHP or PCO during their redetermination (enrollment period), or one additional time during their enrollment period based on the Division member’s choice and with OHA approval.

(B) With cause:

(i) At any time;

(ii) Division members who disenroll from a Medicare Advantage plan shall also be disenrolled from the corresponding Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO). The effective date of disenrollment shall be the first of the month that the Division member's Medicare Advantage plan disenrollment is effective;

(iii) Division members who are receiving Medicare and who are enrolled in a FCHP or PCO that has a corresponding Medicare Advantage component may disenroll from the FCHP or PCO at any time if they also request disenrollment from the Medicare Advantage plan. The effective date of disenrollment from the FCHP or PCO shall be the first of the month following the date of request for disenrollment;

(iv) PHP does not, because of moral or religious objections, cover the service the Division member seeks;

(v) The Division member needs related services (for example a cesarean section and a tubal ligation) to be performed at the same time, not all related services are available within the network, and the Division members' Primary Care Provider or another Provider determines that receiving the services separately would subject the Division member to unnecessary risk; or

(vi) Other reasons, including but not limited to, poor quality of care, lack of access to services covered under the contract, or lack of access to Participating Providers experienced in dealing with the Division member's health care needs. Examples of sufficient cause include but are not limited to:

(I) The Division member moves out of the PHP's Service Area;

(II) The Division member is a Native American or Alaskan Native with Proof of Indian Heritage who wishes to obtain primary care services from his or her Indian Health Service facility, tribal health clinic/program or urban clinic and the Fee-For-Service (FFS) delivery system;

(III) Continuity of care that is not in conflict with any section of 410141-0060 or this rule. Participation in the Oregon Health Plan, including managed care, does not guarantee that any Oregon Health Plan client has a right to continued care or treatment by a specific provider. A request for disenrollment based on continuity of care will be denied if the basis for this request is primarily for the convenience of an Oregon Health Plan client or a provider of a treatment, service or supply, including but not limited to a decision of a provider to participate or decline to participate in a PHP.

(IV) If 500 or more Division members choose to change plans in order to continue receiving care from a provider that is terminating their contractual relationship with a PHP;

(i) The member and all family (case) members will be transferred to the provider’s new PHP.

(ii) The transfer will take effect when the provider’s contract with their current PHP contractual relationship ends, or on a date approved by the Division;

(C) If the following conditions are met:

(i) The applicant is in the third trimester of her pregnancy and has just been determined eligible for OHP, or the OHP client has just been redetermined eligible and was not enrolled in a FCHP or PCO within the past 3 months; and

(ii) The new FCHP or PCO the Division member is enrolled with does not contract with the Division member's current OB Provider and the Division member wishes to continue obtaining maternity services from that Non-Participating OB Provider; and

(iii) The request to change FCHPs, PCOs or return to FFS is made prior to the date of delivery.

(c) In addition to the disenrollment constraints listed in (b), above, Division member disenrollment requests are subject to the following requirements:

(A) The Division member shall join another PHP, unless the Division member resides in a Service Area where enrollment is voluntary, or the Division member meets the exemptions to enrollment as stated in 410-141-0060(4);

(B) If the only PHP available in a mandatory Service Area is the PHP from which the Division member wishes to disenroll, the Division member may not disenroll without cause;

(C) The effective date of disenrollment shall be the end of the month in which disenrollment was requested unless retroactive disenrollment is approved by the Division;

(D) If the Department fails to make a disenrollment determination by the first day of the second month following the month in which the Division member files a request for disenrollment, the disenrollment is considered approved.

(2) Prepaid Health Plan requests for disenrollment:

(a) Causes for disenrollment:

(A) The Division may disenroll Division members for cause when requested by the PHP, subject to American with Disabilities Act requirements. Examples of cause include, but are not limited to the following:

(i) Missed appointments. The number of missed appointments is to be established by the Provider or PHP. The number must be the same as for commercial members or patients. The Provider must document they have attempted to ascertain the reasons for the missed appointments and to assist the Division member in receiving services. This rule does not apply to Medicare members who are enrolled in a FCHP's or PCO's Medicare Advantage plan;

(ii) Division member's behavior is disruptive, unruly, or abusive to the point that his/her continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either the Division member or other members, subject to the requirements in (2)(a)(B)(vii);

(iii) Division member commits or threatens an act of physical violence directed at a medical Provider or property, the Provider's staff, or other patients, or the PHP's staff to the point that his/her continued enrollment in the PHP seriously impairs the PHP's ability

to furnish services to either this particular Division member or other Division members, subject to the requirements in (2)(a)(B)(vii);

(iv) Division member commits fraudulent or illegal acts such as: permitting use of his/her medical ID card by others, altering a prescription, theft or other criminal acts (other than those addressed in (2)(a)(A)(ii) or (iii)) committed in any Provider or PHP's premises.

The PHP shall report any illegal acts to law enforcement authorities or to the office for Children, Adults and Families (CAF) Fraud Unit as appropriate;

(v) OHP clients who have been exempted from mandatory enrollment with a FCHP or PCO, due to the OHP client's eligibility through a hospital hold process and placed in the Adults/Couples category as required under 410-141-0060(4)(b)(F);

(vi) Division member fails to pay co-payment(s) for Covered Services as described in OAR 410-120-1230.

(B) Division members shall not be disenrolled solely for the following reasons:

(i) Because of a physical or mental disability;

(ii) Because of an adverse change in the Division member's health;

(iii) Because of the Division member's utilization of services, either excessive or lack thereof;

(iv) Because the Division member requests a hearing;

(v) Because the Division member has been diagnosed with End Stage Renal Disease (ESRD);

(vi) Because the Division member exercises his/her option to make decisions regarding his/her medical care with which the PHP disagrees;

(vii) Because of uncooperative or disruptive behavior, including but not limited to threats or acts of physical violence, resulting from the Division member's special needs (except when continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this Division member or other members).

(C) Requests by the PHP for disenrollment of specific Division members shall be submitted in writing to their PHP Coordinator for approval. The PHP must document the reasons for the request, provide written evidence to support the basis for the request, and document that attempts at intervention were made as described below. The procedures cited below must be followed prior to requesting disenrollment of a Division member:

(i) There shall be notification from the Provider to the PHP at the time the problem is identified. The notification must describe the problem and allow time for appropriate intervention by the PHP. Such notification shall be documented in the Division member's Clinical Record. The PHP shall conduct Provider education regarding the need for early intervention and the services they can offer the Provider;

(ii) The PHP shall contact the Division member either verbally or in writing, depending on the severity of the problem, to inform the Division member of the problem that has been identified, and attempt to develop an agreement with the Division member regarding the issue(s). If contact is verbal, it shall be documented in the Division member's record. The PHP shall inform the Division member that his/her continued behavior may result in disenrollment from the PHP;

(iii) The PHP shall provide individual education, counseling, and/or other interventions with the Division member in a serious effort to resolve the problem;

(iv)The PHP shall contact the Division member's Department caseworker regarding the problem and, if needed, involve the caseworker and other appropriate agencies' caseworkers in the resolution, within the laws governing confidentiality;

(v) If the severity of the problem and intervention warrants, the PHP shall develop a care plan that details how the problem is going to be addressed and/or coordinate a case conference. Involvement of the Provider, caseworker, Division member, family, and other appropriate agencies is encouraged. If necessary, the PHP shall obtain an authorization for release of information from the Division member for the Providers and agencies in order to involve them in the resolution of the problem. If the release is verbal, it must be documented in the Division member's record;

(vi) Any additional information or assessments requested by the Division PHP Coordinator;

(vii) If the Division member's behavior is uncooperative or disruptive, including but not limited to threats or acts of physical violence, as the result of his/her special needs or disability, the PHP must also document each of the following:

(I) A written assessment of the relationship of the behavior to the special needs or disability of the individual and whether the individual's behavior poses a direct threat to the health or safety of others. Direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures. In determining whether a Division member poses a direct threat to the health or safety of others, the PHP must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or best available objective evidence to ascertain the nature, duration and severity of the risk to the health or safety of others; the probability that potential injury to others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk to others;

(II) A PHP-staffed interdisciplinary team review that includes a mental health professional or behavioral specialist or other health care professionals who have the appropriate clinical expertise in treating the Division member's condition to assess the behavior, the behavioral history, and previous history of efforts to manage behavior;

(III) If warranted, a clinical assessment of whether the behavior will respond to reasonable clinical or social interventions;

(IV) Documentation of any accommodations that have been attempted;

(V) Documentation of the PHP's rationale for concluding that the Division member's continued enrollment in the PHP seriously impairs the PHP's ability to furnish services to either this particular Division member or other members.

(viii) If a Primary Care Provider (PCP) terminates the Provider/patient relationship, the PHP shall attempt to locate another PCP on their panel who will accept the Division member as their patient. If needed, the PHP shall obtain an authorization for release of information from the Division member in order to share the information necessary for a new Provider to evaluate if they can treat the Division member. All terminations of Provider/patient relationships shall be according to the PHP's policies and must be consistent with PHP or PCP's policies for commercial members.

(D) Requests will be reviewed according to the following process:

(i) If there is sufficient documentation, the request will be evaluated by the PHP's Coordinator or a team of PHP Coordinators who may request additional information from Ombudsman Services, AMH or other agencies as needed; If the request involves the Division member's mental health condition or behaviors related to substance abuse, the PHP Coordinator should also confer with the OHP Coordinator in AMH;

(ii) If there is not sufficient documentation, the PHP Coordinator will notify the PHP within 2 business days of what additional documentation is required before the request can be considered;

(iii) The PHP Coordinators will review the request and notify the PHP of the decision within ten working days of receipt of sufficient documentation from the PHP. Written decisions, including reasons for denials, will be sent to the PHP within 15 working days from receipt of request and sufficient documentation from the PHP.

(E) If the request is approved the PHP Coordinator must send the Division member a letter within 14 days after the request was approved, with a copy to the PHP, the Division member's Department caseworker and Division’s Health Management Unit (HMU). The letter must give the disenrollment date, the reason for disenrollment, and the notice of Division member's right to file a Complaint (as specified in 410-141-0260 through 410-141-0266) and to request an Administrative Hearing. If the Division member requests a hearing, the Division member will continue to be disenrolled until a

hearing decision reversing that disenrollment has been sent to the Division member and the PHP:

(i) In cases where the Division member is also enrolled in the FCHP's or PCO's Medicare Advantage plan and the plan has received permission to disenroll the client, the FCHP or PCO will provide proof of the CMS approval to disenroll the client and the date of disenrollment shall be the date approved by CMS;

(ii) The disenrollment date is 30 days after the date of approval, except as provided in subsections (iii) and (iv) of this section:

(I) The PHP Coordinator will determine when enrollment in another PHP or with a PCM is appropriate. If appropriate, the PHP Coordinator will contact the Division member's Department caseworker to arrange enrollment. The Division may require the Division member and/or the benefit group to obtain services from FFS Providers or a PCM until such time as they can be enrolled in another PHP;

(II) When the disenrollment date has been determined, HMU will send a letter to the Division member with a copy to the Division member's Department caseworker and the PHP. The letter shall inform the Division member of the requirement to be enrolled in another PHP, if applicable.

(iii) If the PHP Coordinator approves a PHP's request for disenrollment because of the Division member's uncooperative or disruptive behavior, including threats or acts of physical violence directed at a medical Provider, the Provider's staff, or other patients, or because the Division member commits fraudulent or illegal acts as stated in 410-141-0080(2)(a), the following additional procedures shall apply:

(I) The Division member shall be disenrolled as of the date of the PHP's request for disenrollment;

(II) All Division members in the Division member's benefit group, as defined in OAR 461-110-0720, may be disenrolled if the PHP requests;

(III) At the time of enrollment into another PHP, the Division shall notify the new PHP that the Division member and/or benefit group were previously disenrolled from another PHP at that PHP's request.

(iv) If a Division member who has been disenrolled for cause is reenrolled in the PHP, the PHP may request a disenrollment review by the PHP's PHP Coordinator. A Division member may not be disenrolled from the same PHP for a period of more than 12 months. If the Division member is reenrolled after the 12-month period and is again disenrolled for cause, the disenrollment will be reviewed by the Department for further action.

(b) Other reasons for the PHP's requests for disenrollment include the following:

(A) If the Division member is enrolled in the FCHP or MHO on the same day the Division member is admitted to the hospital, the FCHP or MHO shall be responsible for said hospitalization. If the Division member is enrolled after the first day of the inpatient stay, the Division member shall be disenrolled, and the date of enrollment shall be the next available enrollment date following discharge from inpatient hospital services;

(B) The Division member has surgery scheduled at the time their enrollment is effective with the PHP, the Provider is not on the PHP's Provider panel, and the Division member wishes to have the services performed by that Provider;

(C) The Medicare member is enrolled in a Medicare Advantage plan and was receiving Hospice Services at the time of enrollment in the PHP;

(D) The Division member had End Stage Renal Disease at the time of enrollment in the PHP;

(E) Excluding the DCO, the PHP determines that the Division member has a third party insurer. If after contacting The Health Insurance Group, the disenrollment is not effective the following month, the PHP may contact HMU to request disenrollment;

(F) If a PHP has knowledge of a Division member's change of address, the PHP shall notify the Department. The Department will verify the address information and disenroll the Division member from the PHP, if the Division member no longer resides in the PHP's Service Area. Division members shall be disenrolled if out of the PHP's Service Area for more than three (3) months, unless previously arranged with the PHP. The effective date of disenrollment shall be the date specified by the Division and the Division will recoup the balance of that month's Capitation Payment from the PHP;

(G) The Division member is an inmate who is serving time for a criminal offense or confined involuntarily in a State or Federal prison, jail, detention facility, or other penal institution. This does not include Division members on probation, house arrest, living voluntarily in a facility after their case has been adjudicated, infants living with an inmate, or inmates who become inpatients. The PHP is responsible for identifying the Division members and providing sufficient proof of incarceration to HMU for review of the disenrollment request. The Division will approve requests for disenrollment from PHPs for Division members who have been incarcerated for at least fourteen

(14) calendar days and are currently incarcerated. FCHPs are responsible for inpatient services only during the time a Division member was an inmate;

(H) The Division member is in a state psychiatric institution.

(3) The Division Initiated disenrollments:

(a) The Division may initiate and disenroll Division members as follows:

(A) If the Division determines that the Division member has sufficient third party resources such that health care and services may be cost effectively provided on a FFS basis, the Division may disenroll the Division member. The effective date of disenrollment shall be the end of the month in which the Division makes such a determination. The Division may specify a retroactive effective date of disenrollment if the Division member's third party coverage is through the PHP, or in other situations agreed to by the PHP and the Division;

(B) If the Division member moves out of the PHP's Service Area(s), the effective date of disenrollment shall be the date specified by the Division and the Division will recoup the balance of that month's Capitation Payment from the PHP;

(C) If the Division member is no longer eligible under the Oregon Health Plan Medicaid Demonstration Project or Children's Health Insurance Program, the effective date of disenrollment shall be the date specified by the Division;

(D) If the Division member dies, the effective date of disenrollment shall be through the date of death;

(E) When a non-Medicare contracting PHP is assumed by another PHP that is a Medicare Advantage plan, Division members with Medicare shall be disenrolled from the existing PHP. The effective date of disenrollment shall be the day prior to the month the new PHP assumes the existing PHP;

(F) If the Division determines that the PHP's Division member has enrolled with their Employer Sponsored Insurance (ESI) through FHIAP the effective date of the disenrollment shall be the Division member's effective date of coverage with FHIAP.

(b) Unless specified otherwise in these rules or in the Division notification of disenrollment to the PHP, all disenrollments are effective the end of the month after the request for disenrollment is approved by the Division;

(c) The Division shall inform the Division members of the disenrollment decision in writing, including the right to request an Administrative Hearing. OHP clients may request a Division hearing if they dispute a disenrollment decision by the Division;

(d) If the OHP client requests a hearing, the OHP client will continue to be disenrolled until a hearing decision reversing that disenrollment is sent the OHP client.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-141-0085 - Health Plan Disenrollment from Primary Care Managers

(1) Primary Care Manager (PCM) member requests for disenrollment:

(a) All PCM member-initiated requests for disenrollment from PCM must be initiated by the primary person in the benefit group, where primary person and benefit group are defined in OAR 461-110-0110 and 461-110-0720, respectively. For PCM members who are not able to request disenrollment on their own, the request may be initiated by the PCM member's representative;

(b) Primary person or representative requests for disenrollment shall be honored:

(A) During the first 30 days of enrollment without cause. The effective date of disenrollment shall be the first of the month following PCM member notification to the Authority;

(B) After six months of PCM member's enrollment without cause. The effective date of disenrollment shall be the first of the month following PCM member notification to the Oregon Health Authority (Authority);

(C) Whenever a PCM member's eligibility is re-determined by the Authority and the primary person requests disenrollment without cause. The effective date of disenrollment shall be the first of the month following the date that PCM member's eligibility is re-determined by the Authority;

(D) At any other time with cause:

(i) The Division of Medical Assistance Programs (Division) shall determine if sufficient cause exists to honor the request for disenrollment;

(ii) Examples of sufficient cause include but are not limited to:

(I) The PCM member moves out of the PCM service area;

(II) It would be detrimental to the PCM member's health to remain enrolled with the PCM;

(III) The PCM member is a Native American or Alaskan Native with proof of Indian heritage who wishes to obtain primary care services from his or her Indian Health Service facility, Tribal Health clinic/program or urban clinic and the fee-for-service delivery system.

(c) In addition to the disenrollment constraints listed in subsection (b) of this section, PCM member disenrollment requests are subject to the following requirements:

(A) The PCM member shall select another PCM or Prepaid Health Plan, unless the PCM member resides in a service area where enrollment is voluntary;

(B) If the only PCM or Prepaid Health Plan available in a PHP, PHP/ PCM or PCM mandatory service area is the PCM from which the PCM member wishes to disenroll, the PCM member may not disenroll without cause.

(2) PCM requests for disenrollment:

(a) Procedures for PCM requests for disenrollment are as follows:

(A) Requests by the PCM for disenrollment of specific PCM members shall be submitted in writing to the Division for approval prior to disenrollment. The PCM shall document the reason for the request, provide other records to support the request, and certify that the request is not due to an adverse change in the PCM member's health. If the situation warrants, the Division shall consider an oral request for disenrollment, with written documentation to follow, the Division shall approve PCM requests for disenrollment that meet the Division criteria;

(B) The Division shall respond to PCM requests in a timely manner and in no event greater than 30 calendar days;

(C) The PCM shall not disenroll or request disenrollment of any PCM member because of an adverse change in the PCM member's health.

(b) The Division may disenroll PCM members for cause when requested by the PCM:

(A) The Division shall inform the PCM member of:

(i) An approved disenrollment decision;

(ii) Any requirement to select another PCM;

(iii) Right to request a Division hearing if the disenrollment decision by the Division is disputed.

(B) Examples of cause include, but are not limited to the following:

(i) The PCM member refuses to accept medically appropriate treatment and/or follow Medically Appropriate guidelines;

(ii) The PCM member is unruly or abusive to others or threatens or commits an act of physical violence directed at a medical provider, the provider's staff or other patients;

(iii) The PCM member has permitted the use of his or her Medical Care Identification by another person or used another person's Medical Care Identification;

(iv) The PCM member has missed three appointments without canceling and/or without explanation and the PCM has documented attempts to accommodate the PCM member's needs and to counsel with or educate the PCM member.

(c) If the Division approves the PCM request for disenrollment of a PCM member because the PCM member is abusive to others or threatens or commits an act of physical violence, the following procedures shall apply:

(A) The Division shall inform the PCM member of the disenrollment decision;

(B) The PCM member shall be disenrolled. All PCM members in the PCM member's benefit group, as defined in OAR 461-110-0720, may be disenrolled;

(C) The effective date of disenrollment shall be the date of the PCM's request for disenrollment;

(D) The Division shall require the PCM member and/or the benefit group to obtain services from fee-for-service providers for six months;

(E) After six months the PCM member and/or the benefit group shall be required to select another PCM, if available in the service area;

(F) The Division shall notify the new PCM that the PCM member and/or benefit group was previously disenrolled from another PCM at the PCM's request.

(3) The Division may initiate and disenroll PCM members as follows:

(a) If the Division determines the PCM member has third party resources through a private HMO, the Division may disenroll the PCM member. The effective date of disenrollment shall be specified by the Division and shall be the first of the month after the Division determines the PCM member should be disenrolled;

(b) If the PCM member moves out of the PCM's service area, the effective date of disenrollment shall be the date specified by the Division, which may be retroactive up to one month prior to the month the Division notifies the PCM;

(c) If the PCM member is no longer eligible under the Oregon Health Plan (OHP) Medicaid Demonstration Project, the effective date of disenrollment shall be the date specified by the Division;

(d) If the PCM member dies, the effective date of disenrollment shall be through the date of death.

(4) Unless specified otherwise in this rule or at the time of notification of disenrollment to the PCM by the Division all disenrollments are effective the first of the month after the request for disenrollment is approved by the Division.

(5) OHP clients may request a Division hearing if they dispute a disenrollment decision by the Division.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.725

410-141-0120 Managed Care Prepaid Health Plan Provision of Health Care Services

(1) PHPs shall have written policies and procedures that ensure the provision of all medically and dentally appropriate covered services, including urgent care services and emergency services, preventive services and Ancillary services, in those categories of services included in contract or agreements with the Division of Medical Assistance Program (Division) and Addictions and Mental Health Division (AMH). PHPs shall communicate these policies and procedures to providers, regularly monitor providers' compliance with these policies and procedures, and take any corrective action necessary to ensure provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) PHPs shall ensure that all participating providers providing covered services to Division members are credentialed upon initial contract with the PHP and recredentialed no less frequently than every three years thereafter. The credentialing and recredentialing process shall include review of any information in the National Practitioners Databank and a determination, based on the requirements of the discipline or profession, that participating providers have current licensure in the state in which they practice, appropriate certification, applicable hospital privileges and appropriate malpractice insurance. This process shall include a review and determination based on the activity and results of a professional quality improvement review. PHPs may elect to contract for or to delegate responsibility for this process. PHPs shall accept both the Oregon Practitioner Credentialing Application and the Oregon Practitioner Recredentialing Application, both of which were approved by the Advisory Committee on Physician Credentialing Information (ACPI) on September 28, 2004, thereby implementing ORS 442.807. PHPs shall retain responsibility for delegated activities, including oversight of the following processes:

(A) PHPs shall ensure that covered services are provided within the scope of license or certification of the participating provider or facility, and within the scope of the participating provider’s contracted services and that participating providers are appropriately supervised according to their scope of practice;

(B) PHPs shall provide training for PHP staff and participating providers and their staff regarding the delivery of covered services, OHP administrative rules, and the PHP's administrative policies;

(C) PHPs shall maintain records documenting academic credentials, training received, licenses or certifications of staff and facilities used, and reports from the National Practitioner Data Bank and must provide accurate and timely information about license or certification expiration and renewal dates to the Division. PHPs shall not refer Division members to or use Providers who do not have a valid license or certification required by state or federal law. If a PHP knows or has reason to know that a provider’s license or certification is expired or not renewed or is subject to licensing or certification sanction, the PHP must immediately notify the Division’s Provider Services Unit.

(D) PHPs shall not refer Division members to or use providers who have been terminated from the Oregon Division of Medical Assistance Program (Division) or excluded as Medicare/Medicaid providers by Centers for Medicare and Medicaid Services (CMS) or who are subject to exclusion for any lawful conviction by a court for which the provider could be excluded under 42 CFR 1001.101. PHPs shall not accept billings for services to Division members provided after the date of such provider's exclusion, conviction or termination. The Oregon Health Authority (Authority) has developed disclosure statement forms for individual practitioners and entities. If a PHP wishes to use their own disclosure statement form, they must submit to their PHP Coordinator for Authority approval prior to use. PHPs must obtain information required on the appropriate disclosure form from individual practitioners and entities and must retain the disclosure statements in the PHP credential files. If a PHP knows or has reason to know that a provider has been convicted of a felony or misdemeanor related to a crime, or violation of federal or state laws under Medicare, Medicaid or Title XIX (including a plea of "nolo contender"), the PHP must immediately notify the Division's Provider Services Unit.

(E) PHPs must obtain and use the Division's Provider enrollment (encounter) number for providers when submitting provider capacity reports. Only registered National Provider Identifiers (NPIs) and taxonomy codes are to be used for purposes of encounter data submission, prior to submitting encounter data in connection with services by the provider. Effective January 1, 2007, provider number "999999" may no longer be used in encounter data reporting or provider capacity reporting. PHPs must require each qualified provider to have and use a National Provider Identifier as enumerated by the National Plan and Provider Enumeration System (NPPES).

(F) The provider enrollment request (for encounter purposes) and disclosure statement described in paragraphs (D) and (E) require the disclosure of taxpayer identification numbers. The taxpayer identification number will be used for the administration of this program including provider enrollment, internal verification and administrative purposes for the medical assistance program, for administration of tax laws and may be used to confirm whether the individual or entity is subject to exclusion from participation in the medical assistance program. Taxpayer identification number includes Employer Identification Number (EIN), Social Security Number (SSN), Individual Tax Identification Number (ITIN) used to identify the individual or entity on the enrollment request form or disclosure statement. Disclosure of tax identification numbers for these purposes is mandatory. Failure to submit the requested taxpayer identification number(s) may result in denial of enrollment as a provider and denial of a provider number for encounter purposes, or denial of continued enrollment as a provider and deactivation of all provider numbers used by the provider for encounters.

(b) Fully Capitated Health Plans (FCHPs), Physician Care Organizations (PCOs), and Dental Care Organizations (DCOs) shall have written procedures that provide newly enrolled Division members with information about which participating providers are currently not accepting new patients (except for staff models);

(c) FCHPs, PCOs, DCOs and CDOs shall have written procedures that allow and encourage a choice of a PCP or clinic for physical health, and dental health services by each Division member. These procedures shall enable a Division member to choose a participating PCP or clinic (when a choice is available for PCPs or clinics) to provide services within the scope of practice to that Division member;

(d) If the Division member does not choose a PCP within 30 calendar days from the date of enrollment, the FCHP or PCO must ensure the Division member has an ongoing source of primary care appropriate to his or her needs by formally designating a practitioner or entity. FCHPs and PCOs that assign Division members to PCPs or clinics shall document the unsuccessful efforts to elicit the Division member's choice before assigning a Division member to a PCP or clinic. FCHPs and PCOs who assign PCPs before 30 calendar days after enrollment, must notify the Division member of the assignment and allow the Division member 30 calendar days after assignment to change the assigned PCP or clinic.

(2) In order to make advantageous use of the system of public health services available through county health departments and other publicly supported programs and to ensure access to public health services through contract under ORS Chapter 414-153:

(a) Unless cause can be demonstrated to Division's satisfaction why such an agreement is not feasible, FCHPs and PCOs shall execute agreements with publicly funded Providers for payment of point-ofcontact services in the following categories:

(A) Immunizations;

(B) Sexually transmitted diseases; and

(C) Other communicable diseases.

(b) Division members may receive the following services from appropriate non-participating Medicaid providers. If the following services are not referred by the FCHP or PCO in accordance with the FCHP's or PCO's referral process (except as provided for under 410141-0420 Billing and Payment under the Oregon Health Plan (OHP), the Division is responsible for payment of such services:

(A) Family planning services; and

(B) Human immunodeficiency virus (HIV) and acquired immune deficiency syndrome (AIDS) prevention services.

(c) FCHPs and PCOs are encouraged to execute agreements with publicly funded providers for authorization of and payment for services in the following categories:

(A) Maternity case management;

(B) Well-child care;

(C) Prenatal care;

(D) School-based clinic services;

(E) Health services for children provided through schools and Head Start programs; and

(F) Screening services to provide early detection of health care problems among low-income women and children, migrant workers and other special population groups.

(d) Recognizing the social value of partnerships between county health departments, other publicly supported programs, and health providers, FCHPs and PCOs are encouraged to involve publicly supported health care and service programs in the development and implementation of managed health care programs through inclusion on advisory and/or planning committees;

(e) FCHPs and PCOs shall report to the Division on their status in executing agreements with publicly funded providers and on the involvement of publicly supported health care and service programs in the development and implementation of their program on an annual basis.

(3) FCHPs and PCOs shall ensure a newly enrolled Division member receives timely, adequate and appropriate health care services necessary to establish and maintain the health of the Division member. An FCHP's liability covers the period between the Division member's enrollment and disenrollment with the FCHP, unless the Division member is hospitalized at the time of disenrollment. In such an event, an FCHP is responsible for the inpatient hospital services until discharge or until the Division member’s PCP or designated practitioner determines the care is no longer medically appropriate.

(4) A PCO's liability covers the period between the Division members' enrollment and disenrollment with the PCO, unless the Division member is hospitalized at the time of disenrollment. In such an event, the PCO is not responsible for the inpatient hospital services by definition and the inpatient hospital services will be the responsibility of the Division.

(5) The Division member shall obtain all covered services, either directly or upon referral, from the PHP responsible for the service from the date of enrollment through the date of disenrollment.

(6) FCHPs and PCOs with a Medicare Health Maintenance Organization (HMO) component and MHOs have significant and shared responsibility for capitated services, and shall coordinate benefits for shared Division members to ensure that the Division member receives all medically appropriate services covered under respective capitation

payments. If the fully dual eligible Division member is enrolled in a FCHP or PCO with a Medicare HMO component the following apply:

(a) Mental health services covered by Medicare shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO;

(b) Mental health services that are not covered by the FCHP or PCO that are covered by the MHO shall be obtained from the MHO or upon referral by the MHO.

(7) PHPs shall coordinate services for each Division member who requires services from agencies providing health care services not covered under the capitation payment. The PCP shall arrange, coordinate, and monitor other medical and mental health, and/or dental care for that Division member on an ongoing basis except as provided for in Section (7)(c) of this rule:

(a) PHPs shall establish and maintain working relationships with local or allied agencies, community emergency service agencies, and local providers;

(b) PHPs shall refer Division members to the divisions of the Authority and local and regional allied agencies which may offer services not covered under the capitation payment;

(c) FCHPs and PCOs shall not require Division members to obtain the approval of a PCP in order to gain access to mental health and alcohol and drug assessment and evaluation services. Division members may refer themselves to MHO services.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 192.518 - 192.526, 414.010, 414.050, 414.065, 414.727 & 442.807

410-141-0140 Oregon Health Plan Prepaid Health Plan (PHP) Emergency and Urgent Care Services

(1) PHPs shall have written policies and procedures and monitoring systems that ensure the provision of appropriate urgent, emergency, and triage services 24-hours a day, 7-days-a-week for all Division of Medical Assistance Programs (Division) members. PHPs shall:

(a) Communicate these policies and procedures to Participating Providers;

(b) Regularly monitor participating providers' compliance with these policies and procedures; and

(c) Take any corrective action necessary to ensure participating provider's compliance. PHPs shall document all monitoring and corrective action activities.

(2) PHPs shall have written policies and procedures and monitoring processes to ensure that a practitioner provides a medically or dentally appropriate response as indicated to urgent or emergency calls consisting of the following elements:

(a) Telephone or face-to-face evaluation of the Division member to determine the nature of the situation and the Division member's immediate need for services;

(b) Capacity to conduct the elements of an assessment that is needed to determine the interventions necessary to begin stabilizing the urgent or emergency situation;

(c) Development of a course of action at the conclusion of the assessment;

(d) Provision of services and/or referral needed to address the urgent or emergency situation, begin post-stabilization care or provide outreach services in the case of a Mental Health Organization (MHO);

(e) Provision for notifying a referral emergency room, when applicable concerning the presenting problem of an arriving Division member, and whether or not the practitioner will meet the Division member at the emergency room; and

(f) Provision for notifying other providers requesting approval to treat Division members of the determination.

(3) PHPs shall ensure the availability of an after-hours call-in system adequate to triage urgent care and emergency calls from Division members. Urgent calls shall be returned appropriate to the Division member's condition but in no event more than 30 minutes after receipt. If information is not adequate to determine if the call is urgent, the call shall be returned within 60 minutes in order to fully assess the nature of the call. If information is adequate to determine the call may be emergent in nature, the call shall be returned immediately.

(4) If a screening examination in an emergency room leads to a clinical determination by the examining physician that an actual emergency medical condition exists under the prudent layperson standard as defined in emergency services, the PHP must pay for all services required to stabilize the patient, except as otherwise provided in (6) of this rule. The PHP may not require prior authorization for emergency services:

(a) The PHP may not retroactively deny a claim for an emergency screening examination because the condition, which appeared to be an emergency medical condition under the prudent layperson standard, turned out to be non-emergency in nature;

(b) The PHP may not limit what constitutes an emergency medical condition based on lists of diagnoses or symptoms;

(c) The PHP may not deny a claim for emergency services merely because the primary care physician (PCP) was not notified, or because the PHP was not billed within 10 calendar days of the service.

(5) When a Division member's primary care provider, designated practitioner or other health plan representative instructs the Division member to seek emergency care, in or out of the network, the PHP is responsible for payment of the screening examination and for other medically appropriate services. Except as otherwise provided in (6) of this rule, the PHP is responsible for payment of post-stabilization care that was:

(a) Pre-authorized by the PHP;

(b) Not pre-authorized by the PHP if the PHP (or the on-call provider) failed to respond to a request for pre-authorization within one hour of the request being made, or the PHP or Provider on call could not be contacted; or

(c) If the PHP and the treating physician cannot reach an agreement concerning the Division member's care and a PHP representative is not available for consultation, the PHP must give the treating physician the opportunity to consult with a PHP physician and the treating physician may continue with care of the patient until a PHP physician is reached or one of the following criteria is met:

(A) The participating provider with privileges at the treating hospital assumes responsibilities for the Division member's care;

(B) The participating provider assumes responsibility for the Division member's care through transfer;

(C) A contractor representative and the treating physician reach an agreement concerning the Division member's care; or

(D) The Division member is discharged.

(6) Physician Care Organization (PCO) responsibility with regard to emergency services, urgent care services, or post stabilization care services is as follows:

(a) A PCO is not financially responsible for emergency services, urgent care services, or post stabilization services, to the extent such services are inpatient hospital services. The PCO shall not authorize, cause, induce or otherwise furnish any incentive for emergency services, urgent care services, or post stabilization services to be rendered as inpatient hospital services except to the extent medically appropriate.

(b) A PCO is financially responsible for post stabilization services (other than inpatient hospital services) obtained by Division members within or outside the PCO's network under the following circumstances:

(A) Post stabilization services have been authorized by the PCO's authorized representative;

(B) Post stabilization services have not been authorized by the PCO's authorized representative, but are administered to maintain the Division member's stabilized condition within 1 hour of a request to the PCO's authorized representative for approval of further post stabilization services;

(C) Post stabilization services have not been authorized by the PCOs authorized representative, but are administered to maintain, improve, or resolve the Division member's stabilized condition if:

(i) The PCO's authorized representative does not respond to a request for authorization within 1 hour;

(ii) The PCO's authorized representative cannot be contacted; or

(iii) The PCO's authorized representative and the treating physician cannot reach an agreement concerning the Division member's care and the participating provider is not available for consultation. In this situation, the PCO must give the treating physician the opportunity to consult with the participating provider and the treating physician may continue with the care of the Division member until the participating provider is reached or one of the criteria in section (6) of this rule has been met.

(c) The PCO's financial responsibility for non-Inpatient post-stabilization services it has not approved ends when:

(A) The participating provider with privileges at the treating hospital assumes responsibilities for the Division member's care;

(B) The participating provider assumes responsibility for the Division member's care through transfer;

(C) A PCO representative and the treating physician reach an agreement concerning the Division member's care; or

(D) The Division member is discharged.

(7) PHPs shall have methods for tracking inappropriate use of emergency care and shall take action, individual Division member counseling, to improve appropriate use of urgent and emergency care settings. DCOs and MHOs shall be responsible for taking action to improve appropriate use of urgent and emergency care settings for dental or mental health related care when inappropriate use of emergency care is made known to them through reporting or other mechanisms.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.725

410-141-0160 Oregon Health Plan Prepaid Health Plan Coordination and Continuity of Care

(1) Prepaid Health Plans (PHPs) shall have written policies, procedures, and monitoring systems that ensure the provision of Medical Case Management Services, delivery of primary care to and coordination of health care services for all Division members:

(a) PHPs are to coordinate and manage capitated services and non-capitated services, and ensure that referrals made by the PHP's providers to other providers for covered services are noted in the appropriate Division of Medical Assistance Program (Division) member's clinical record;

(b) PHPs shall ensure Division members receiving Exceptional Needs Care Coordination (ENCC) services for the aged, blind or disabled who have complex medical needs as described in 410-141-0405, are noted in the appropriate Division member’s record. ENCC is a service available through Fully Capitated Health Plans (FCHPs) or Physician Care Organizations (PCOs) that is separate from and in addition to medical case management services;

(c) These procedures must ensure that each Division member has an ongoing source of primary care appropriate to his or her needs and a Practitioner or entity formally designated as primarily responsible for coordinating the health care services furnished to the Division member in accordance with OAR 410-141-0120;

(d) FCHPs and PCOs shall communicate these policies and procedures to providers, regularly monitor providers' compliance with these policies and procedures and take any corrective action necessary to ensure provider compliance. FCHPs and PCOs shall document all monitoring and corrective action activities:

(A) PHPs shall develop and maintain a formal referral system consisting of a network of consultation and referral providers, including applicable alternative care settings, for all services covered by contracts/agreements with the Division and/or Addictions and Mental Health Division (AMH) formerly known as Office of Mental Health and Addictions Services (OMHAS). PHPs shall ensure that access to and quality of care provided in all referral settings is monitored. Referral services and services received in alternative care settings shall be reflected in the Division member's clinical record. PHPs shall establish and follow written procedures for participating and non-participating providers in the PHP's referral system. Procedures shall include the maintenance of records within the referral system sufficient to document the flow of referral requests, approvals and denials in the system;

(B) The Division member shall obtain all covered services, either directly or upon referral, from the PHP or Primary Care Manager (PCM) responsible for the service from the date of enrollment through the date of disenrollment, except when the Division member is enrolled in a Medicare Health Maintenance Organization (HMO) or Medicare Advantage FCHP or PCO:

(i) FCHPs or PCOs with a Medicare HMO component or Medicare Advantage and MHOs have significant and shared responsibility for prepaid services, and shall coordinate benefits for the Division member to ensure that the Division member receives all medically appropriate services covered under respective capitation payments;

(ii) If the Division member is enrolled in a FCHP or PCO with a Medicare HMO component or Medicare Advantage, then Medicare covered mental health services shall be obtained from the FCHP or PCO or upon referral by the FCHP or PCO, respectively. Mental health services that are not covered by the FCHP or PCO, but are covered by the Mental Health Organization (MHO), shall be obtained from the MHO or upon referral by the MHO.

(C) PHPs shall have written procedures for referrals which ensure adequate prior notice of the referral to referral providers and adequate documentation of the referral in the Division member's clinical record;

(D) PHPs shall designate a staff member who is responsible for the arrangement, coordination and monitoring of the PHP's referral system;

(E) PHPs shall ensure that any staff member responsible for denying or reviewing denials of requests for referral is a health care professional;

(F) PHPs shall have written procedures that ensure that relevant medical, mental health, and/or dental information is obtained from referral providers, including telephone referrals. These procedures shall include:

(i) Review of information by the referring provider;

(ii) Entry of information into the Division member's clinical record;

(iii) Monitoring of referrals to ensure that information, including information pertaining to ongoing referral appointments, is obtained from the referral providers, reviewed by the referring practitioner, and entered into the clinical record.

(G) PHPs shall have written procedures to orient and train their staff, participating practitioners and their staff, and the staff in alternative care settings, and urgent and emergency care facilities in the appropriate use of the PHP's referral, alternative care, and urgent and emergency care systems. Procedures and education shall ensure use of appropriate settings of care;

(H) PHPs shall have written procedures which ensure that an appropriate staff person responds to calls from other providers requesting approval to provide care to Division members who have not been referred to them by the PHP. If the person responding to the call is not a health care professional, the PHP shall have established written protocols that clearly describe when a health care professional needs to respond to the

call. These procedures and protocols shall be reviewed by the PHP for appropriateness. The procedures shall address notification of acceptance or denial and entry of information into the PCP's clinical record;

(I) FCHPs and PCOs shall have written policies and procedures to ensure information on all emergency department visits is entered into the Division member's appropriate PCP's clinical record. FCHPs and PCOs shall communicate this policy and procedure to providers, monitor providers' compliance with this policy and procedure, and take corrective action necessary to ensure compliance;

(J) If a Division member is hospitalized in an inpatient or outpatient setting for a covered service, PHPs shall ensure that:

(i) A notation is made in the Division member's appropriate PCP's clinical record of the reason, date, and expected duration of the hospitalization;

(ii) Upon discharge, a notation is made in the Division member's appropriate PCP's clinical record of the actual duration of the hospitalization and follow-up plans, including appointments for provider visits; and

(iii) Pertinent reports from the hospitalization are entered in the Division member's appropriate PCP's clinical record. Such reports shall include, as applicable, the reports of consulting practitioners physical history, psycho-social history, list of medications and dosages, progress notes, and discharge summary.

(2) For Division members living in residential facilities or homes providing ongoing care, PHPs shall work with the appropriate staff person identified by the facility to ensure that the Division member has timely and appropriate access to covered services and to ensure coordination of care provided by the PHP and care provided by the facility or home. PHPs shall make provisions for a PCP or the facility's "house doctor or dentist" to provide care to Division members who, due to physical, emotional, or medical limitations, cannot be seen in a PCP office.

(3) For Division members living in residential facilities or homes providing ongoing care, FCHPs and PCOs shall provide medications in a manner that is consistent with the appropriate medication dispensing system of the facility, which meets state dispensing laws. FCHPs and PCOs shall provide emergency prescriptions on a 24hour basis.

(4) For Division members who are discharged to post hospital extended care, the FCHP shall notify the appropriate Department office at the time of admission to the skilled nursing facility (SNF) and begin appropriate discharge planning. The FCHP is not responsible for the post hospital extended care benefit unless the Division member was a member of the FCHP during the hospitalization preceding the nursing facility placement. The FCHP shall notify the nursing facility and the Division member no later than two full working days prior to discharge from post hospital extended care. For Division members who are discharged to medicare skilled care, the appropriate DHS

office shall be notified at the time the FCHP learns of the admission. The FCHP shall initiate appropriate discharge planning at the time of the notification to the Department office.

(5) PHPs shall coordinate the services the PHP furnishes to Division members with the services the Division member receives from any other PHP (FCHP, PCO, Dental Care Organization (DCO) or MHO) in accordance with OAR 410-141-0120 (6). PHPs shall ensure that in the process of coordinating care, each Division member's privacy is protected in accordance with the privacy requirements of 45 CFR parts 160 and 164 subparts A and E to the extent that they are applicable.

(6) When a Division member's care is being transferred from one PHP to another or for OHP clients transferring from fee-for-service to a PHP, the PHP shall make every reasonable effort within the laws governing confidentiality to coordinate transfer of the OHP client into the care of a PHP participating provider.

(7) PHPs shall make attempts to contact targeted Division population(s) by mail, telephone, in person or through the Oregon Health Authority (Authority) within the first three months of enrollment to assess medical, mental health or dental needs, appropriate to the PHP. The PHP shall, after reviewing the assessment, refer the Division member to his/her PCP or other resources as indicated by the assessment. Targeted Division population(s) shall be determined by the PHP and approved by the Division.

(8) MHOs shall establish working relationships with the Local Mental Health Authorities (LMHAs) and Community Mental Health Programs (CMHPs) operating in the service area for the purposes of maintaining a comprehensive and coordinated mental health delivery system and to help ensure Division member access to mental health services which are not provided under the capitation payment.

(9) MHOs shall ensure that Division members receiving services from extended or long term psychiatric care programs (e.g., secure residential facilities, PASSAGES projects, state hospital) will receive follow-up services as medically appropriate to ensure discharge within five working days of receiving notification of discharge readiness.

(10) MHOs shall coordinate with community emergency service agencies (e.g., police, courts and juvenile justice, corrections, and the LMHAs and CMHPs) to promote an appropriate response to Division members experiencing a mental health crisis.

(11) MHOs shall use a multi-disciplinary team service planning and case management approach for Division members requiring services from more than one public agency. This approach shall help avoid service duplication and assure timely access to a range and intensity of service options that provide individualized, medically appropriate care in the least restrictive treatment setting (e.g., clinic, home, school, community).

(12) MHOs shall consult with, and provide technical assistance to, FCHPs and PCOs to help assure that mental health conditions of Division members are identified early so that intervention and prevention strategies can begin as soon as possible.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.725

410-141-0180 Oregon Health Plan Prepaid Health Plan Record Keeping

(1) Maintenance and Security: Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure maintenance of a record keeping system that includes maintaining the security of records as required by the Health Insurance Portability and Accountability Act (HIPAA), 42 USC ¦ 1320-d et seq., and the federal regulations implementing the Act, and complete clinical records that document the care received by the Division of Medical Assistance Programs (Division) members from the PHP's primary care and referral providers. PHPs shall communicate these policies and procedures to participating providers, regularly monitor participating providers' compliance with these policies and procedures and take any corrective action necessary to ensure participating provider compliance. PHPs shall document all monitoring and corrective action activities. Such policies and procedures shall ensure that records are secured, safeguarded and stored in accordance with applicable Oregon Revised Statutes (ORS) and Oregon Administrative Rules (OAR).

(2) Confidentiality and Privacy: PHPs and PHP's participating providers shall have written policies and procedures to ensure that clinical records related to Division member's individual identifiable health information and the receiving of services are kept confidential and protected from unauthorized use and disclosure consistent with the requirements of Health Insurance Portability and Accountability Act (HIPAA) and in accordance with ORS 179.505 through 179.507, 411.320, 433.045(3), 42 CFR Part 2, 42 CFR Part 431, Subpart F, 45 CFR 205.50, and section 3 of this rule. If the PHP is a public body within the meaning of the Oregon Public Records Law, such policies and procedures shall ensure that Division member privacy is maintained in accordance with 192.502(2), 192.502(8) (Confidential under Oregon law) and 192.502(9) (Confidential under Federal law) or other relevant exemptions:

(a) PHPs and their participating providers shall not release or disclose any information concerning a Division member for any purpose not directly connected with the administration of Title XIX of the Social Security Act except as directed by the Division member;

(b) Except in an emergency, PHPs' participating providers shall obtain a written authorization for release of information from the Division member or the legal guardian, or the legal Power of Attorney for health care decisions of the Division member before releasing information. The written authorization for release of information shall specify the type of information to be released and the recipient of the information, and shall be placed in the Division member's record. In an emergency, release of service information shall be limited to the extent necessary to meet the emergency information needs and then only to those persons involved in providing emergency medical services to the Division member;

(c) PHPs may consider a Division member, age 14 or older competent to authorize or prevent disclosure of mental health and alcohol and drug treatment outpatient records

until the custodial parent or legal guardian becomes involved in an outpatient treatment plan consistent with the Division member's clinical treatment requirements.

(3) Exchange of protected health information for treatment purposes without authorization: In accordance with ORS 192.518 to 192.526 and with required acknowledgement, the Oregon Health Authority (Authority) and PHP's are allowed to share the following protected health information, without client authorization for the purpose of treatment activities. The protected health information that may be disclosed, commonly found in claims or encounters, includes the following:

(a) Oregon Health Plan member name;

(b) Medicaid recipient number;

(c) Performing provider number;

(d) Hospital provider name and attending physician name;

(e) Diagnosis;

(f) Dates of Service;

(g) Procedure code;

(h) Revenue code;

(i) Quantity of units of service provided;

(j) Medication prescription and monitoring;

(4) Access to clinical records:

(a) Provider access to clinical records:

(A) PHPs shall release health service information requested by a provider involved in the care of a Division member within ten working days of receiving a signed authorization for release of information;

(B) Mental Health Organizations (MHOs) shall assure that directly operated and subcontracted service components, as well as other cooperating health service providers, have access to the applicable contents of a Division member's mental health record when necessary for use in the diagnosis or treatment of the Division member. Such access is permitted under ORS 179.505(6);

(b) Division member Access to clinical records: Except as provided in ORS 179.505(9), PHPs' participating providers shall upon request, provide the Division member access to

his/her own clinical record, allow for the record to be amended or corrected and provide copies within ten working days of the request. PHPs' participating providers may charge the Division member for reasonable duplication costs;

(c) Third party access to records: Except as otherwise provided in this rule, PHPs' participating providers shall upon receipt of a written authorization for release of information for the Division member provide access to the Division member's clinical record. PHPs' participating providers may charge for reasonable duplication costs;

(d) Authority access to records: PHPs shall cooperate with the Division, the Addictions and Mental Health Division (AMH), the Medicaid Fraud Unit, and/or AMH representatives for the purposes of audits, inspection and examination of Division members' clinical and administrative records.

(5) Retention of records: All clinical records shall be retained for seven years after the date of services for which claims are made. If an audit, litigation, research and evaluation, or other action involving the records is started before the end of the seven-year period, the clinical records must be retained until all issues arising out of the action are resolved.

(6) Requirements for clinical records: PHPs shall have policies and procedures that ensure maintenance of a clinical record keeping system that is consistent with state and federal regulations to which the PHP is subject. The system shall assure accessibility, uniformity and completeness of clinical information that fully documents the Division member's condition, and the covered and non-covered services received from PHPs' participating or referred providers. PHPs shall communicate these policies and procedures to participating providers, regularly monitor participating providers' compliance with these policies and procedures, and take any corrective action necessary to ensure provider compliance. PHPs shall document all monitoring and corrective action activities:

(a) A Clinical record shall be maintained for each Division member receiving services that documents all types of care needed or delivered in all settings whether such services are delivered during or after normal clinic hours;

(b) All entries in the clinical record shall be signed and dated;

(c) Errors to the clinical record shall be corrected as follows:

(A) Incorrect data shall be crossed through with a single line;

(B) Correct and legible data shall be added followed by the date corrected and initials of the person making the correction;

(C) Removal or obliteration of errors shall be prohibited;

(d) The clinical record shall reflect a signed and dated authorization for treatment for the Division member, his/her legal guardian or the Power of Attorney for health care decisions for any invasive treatments;

(e) The Primary Care Physicians (PCP's) or clinic's clinical record shall include data that forms the basis of the diagnostic impression of the Division member's chief complaint sufficient to justify any further diagnostic procedures, treatments, recommendations for return visits, and referrals. The PCP or clinic's clinical record of the Division members receiving services shall include the following information as applicable:

(A) Division member's name, date of birth, sex, address, telephone number, and identifying number as applicable;

(B) Name, address and telephone number of next of kin, legal guardian, Power of Attorney for health care decisions, or other responsible party;

(C) Medical, dental or psychosocial history as appropriate;

(D) Dates of service;

(E) Names and titles of persons performing the services;

(F) Physicians' orders;

(G) Pertinent findings on examination and diagnosis;

(H) Description of medical services provided, including medications administered or prescribed; tests ordered or performed and results;

(I) Goods or supplies dispensed or prescribed;

(J) Description of treatment given and progress made;

(K) Recommendations for additional treatments or consultations;

(L) Evidence of referrals and results of referrals;

(M) Copies of the following documents if applicable:

(i) Mental health, psychiatric, psychological, psychosocial or functional screenings, assessments, examinations or evaluations;

(ii) Plans of care including evidence that the Division member was jointly involved in the development of his/her mental health treatment plan;

(iii) For inpatient and outpatient hospitalizations, history and physical, dictated consultations, and discharge summary;

(iv) Emergency department and screening services reports;

(v) Consultation reports;

(vi) Medical education and medical social services provided;

(N) Copies of signed authorizations for release of information forms;

(O) Copies of medical and/or mental health directives;

(f) Based on written policies and procedures, the clinical record keeping system developed and maintained by PHPs' participating providers shall include sufficient detail and clarity to permit internal and external clinical audit to validate encounter submissions and to assure medically appropriate services are provided consistent with the documented needs of the Division member. The system shall conform to accepted professional practice and facilitate an adequate system for follow up treatment;

(g) The PCP or clinic shall have policies and procedures that accommodate Division members requesting to review and correct or amend their clinical record;

(h) Other Records: PHPs' shall maintain other records in either the clinical record or within the PHP's administrative offices. Such records shall include the following:

(A) Names and phone numbers of the Division member's prepaid health plans, primary care physician or clinic, primary dentist and mental health practitioner, if any in the MHO records;

(B) Copies of Client Process Monitoring System (CPMS) enrollment forms in the MHO's records;

(C) Copies of long term psychiatric care determination request forms in the MHO's records;

(D) Evidence that the Division member has received a fee schedule for services not covered under the Capitation Payment in the MHO's records;

(E) Evidence that the Division member has been informed of his or her rights and responsibilities in the MHO records;

(F) Exceptional Needs Care Coordination (ENCC) records in the Fully Capitated Health Plans (FCHP's) or PCO's records;

(G) Complaint and appeal records; and

(H) Disenrollment Requests for Cause and the supporting documentation.

Stat. Auth.: ORS 409.110, 413.042 and 414.065

Stats. Implemented: ORS 414.725

410-141-0200 Oregon Health Plan Prepaid Health Plan Quality Improvement System

(1) QI Program:

(a) Fully Capitated Health Plans (FCHPs), Physician Care Organizations (PCOs) and Dental Care Organizations (DCOs) shall maintain an effective process for monitoring, evaluating, and improving the access, quality and appropriateness of services provided to Division members. This process shall include an internal QI Program based on written policies, evidenced-based practice guidelines, standards and procedures that are in accordance with relevant law and the community standards for dental care, and/or with accepted medical practice, whichever is applicable, and with accepted professional standards. The QI program shall include policies, standards, and written procedures that adequately address the needs of Division of Medical Assistance Program (Division) Members, including those who are aged, blind or disabled who have complex medical needs; or children receiving Children Adults and Families (CAF) State Office for Services to Children and Families (SOSCF) or Oregon Youth Authority (OYA) services. FCHPs, PCOs, DCOs and CDOs shall establish or adopt written criteria to monitor and evaluate the provision of adequate medical and/or dental care. The QI program must include QI projects that are designed to improve the access, quality and utilization of services;

(b) Mental Health Organizations (MHOs) shall abide by the Quality Assurance Requirements as stated in the MHO Agreement.

(2) The positions of Medical or Dental Director and the QI Coordinator shall have the qualifications, responsibility, experience, authority, and accountability necessary to assure compliance with this rule. FCHPs, PCOs, DCOs and CDOs shall designate a QI Coordinator who shall develop and coordinate systems to facilitate the work of the QI Committee. The Quality Improvement Coordinator is generally responsible for the operations of the QI program and must have the management authority to implement changes to the QI program as directed by the QI Committee. The QI Coordinator shall be qualified to assess the care of Division members including those who are aged, blind or disabled who have complex medical needs and children receiving CAF (SOSCF) or OYA services, or shall be able to retain consultation from individuals who are qualified.

(3) FCHPs, PCOs, DCOs and CDOs shall establish a QI Committee that shall meet at least every two months; The Committee shall retain authority and accountability to the Board of Directors for the assurance of quality of care. Committee membership shall include, but is not limited to, the Medical or Dental Director, the QI Coordinator, and other health professionals who are representative of the scope of the services delivered. If any QI functions are delegated, the QI Committee shall maintain oversight and accountability for those delegated functions. The QI Committee shall:

(a) Record and produce dated minutes of Committee deliberations. Document recommendations regarding corrective actions to address issues identified through the

QI Committee review process; and review of results, progress, and effectiveness of corrective actions recommended at previous meetings;

(b) Conduct and submit to the Division an annual written evaluation of the QI Program and of the Division member care as measured against the written procedures and protocols of the Division member care. The evaluation of the QI program and the Division member care is to include a description of completed and ongoing QI activities, The Division member education and an evaluation of the overall effectiveness of the QI program. This evaluation shall include:

(A) Prevention programs;

(B) Care of Division members who are aged, blind or disabled who have complex medical needs or children receiving CAF (SOSCF) or OYA services, and FCHP or PCO review of the Quality of Exceptional Needs Care Coordination program;

(C) Disease management programs;

(D) Adverse outcomes of Division members and Division members who are aged, blind or disabled who have complex medical needs or children receiving CAF (SOSCF) or OYA services;

(E) Actions taken by the FCHPs, PCOs, DCOs or CDOs to address health care concerns identified by Division members or their Representatives and changes which impact quality or access to care. This may include: clinical record keeping; utilization review; referrals; comorbidities; prior authorizations; Emergency Services; out of FCHPs, PCOs, DCOs or CDOs utilization; medication review; FCHPs, PCOs, DCOs or CDOs initiated disenrollments; encounter data management; and access to care and services.

(c) Conduct a quarterly review and analysis of all complaints and appeals received including a focused review of any persistent and significant Division member complaints and appeals;

(d) Review written procedures, protocols and criteria for Division member care no less than every two years, or more frequently as needed to maintain currency with clinical guidelines and administrative principles.

(4) FCHPs or PCOs that are NCQA accredited or accredited by other Division recognized accreditation organizations shall be deemed for Section (3)(b) of this rule. FCHPs and PCOs deemed by the Division shall annually submit to the Division an evaluation of the Exceptional Needs Care Coordination program; and an evaluation of Division Member care for Division members who are aged, blind or disabled who have complex medical needs or children receiving CAF (SOSCF) or OYA services. Copies of accreditation reports shall be submitted to the Division within 60 days of issuance.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-141-0220 Managed Care Prepaid Health Plan Accessibility

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure access to all covered services for all Division of Medical Assistance Program (Division) members. PHPs shall communicate these policies and procedures to participating providers, regularly monitor participating providers' compliance with these policies and procedures, and take any corrective action necessary to ensure participating provider compliance. PHPs shall document all monitoring and corrective action activities. PHPs shall not discriminate between Division members and non-Division members as it relates to benefits and covered services to which they are both entitled:

(a) PHPs shall have written policies and procedures which ensure that for 90% of their Division members in each service area, routine travel time or distance to the location of the PCP does not exceed the community standard for accessing health care participating providers. The travel time or distance to PCPs shall not exceed the following, unless otherwise approved by the Division:

(A) In urban areas -- 30 miles, 30 minutes or the community standard, whichever is greater;

(B) In rural areas -- 60 miles, 60 minutes or the community standard, whichever is greater.

(b) PHPs shall maintain and monitor a network of appropriate participating providers sufficient to ensure adequate service capacity to provide availability of, and timely access to, medically appropriate covered services for Division members:

(A) PHPs shall have an access plan that establishes standards for access, outlines how capacity is determined and establishes procedures for monthly monitoring of capacity and access, and for improving access and managing risk in times of reduced participating provider capacity. The access plan shall also identify populations in need of interpreter services and populations in need of accommodation under the Americans with Disabilities Act;

(B) PHPs shall make the services it provides including: specialists, pharmacy, hospital, vision and ancillary services, as accessible to Division members in terms of timeliness, amount, duration and scope as those services are to non-Division persons within the same service area. If the PHP is unable to provide those services locally, it must so demonstrate to the Division and shall provide reasonable alternatives for Division members to access care that must be approved by the Division. PHPs shall have a monitoring system that will demonstrate to the Division or AMH, as applicable, that the PHP has surveyed and monitored for equal access of Division members to referral providers pharmacy, hospital, vision and ancillary services;

(C) PHPs shall have written policies and procedures and a monitoring system to ensure that Division members who are aged, blind, or disabled who have complex medical

needs or who are children receiving Children Adults and Families (CAF) State Office for Services to Children and Families (SOSCF services) or Oregon Youth Authority (OYA) services have access to primary care, dental care, mental health providers and referral, as applicable. These providers shall have the expertise to treat, take into account and accommodate the full range of medical, dental or mental health conditions experienced by these Division members, including emotional, disturbance and behavioral responses, and combined or multiple diagnoses.

(2) PHPs and Primary Care Managers (PCMs) enrollment standards:

(a) PHPs and PCMs shall remain open for enrollment unless the Oregon Health Authority (Authority) has closed enrollment because the PHP or PCM has exceeded their enrollment limit or does not have sufficient capacity to provide access to services as mutually agreed upon by the Division or Addictions and Mental Health (AMH), as appropriate, and the PHP or PCM;

(b) PHPs enrollment may also be closed by the Division or AMH, as appropriate due to sanction provisions;

(c) PHPs and PCMs shall accept all Oregon Health Plan (OHP) clients, regardless of health status at the time of enrollment, subject to the stipulations in contracts/agreements with DHS to provide covered services or Primary Care management services;

(d) PHPs and PCMs may confirm the enrollment status of an OHP client by one of the following:

(A) The individual's name appears on the monthly or weekly enrollment list produced by the Division;

(B) The individual presents a valid medical care identification that shows he or she is enrolled with the PHP or PCM;

(C) The Automated Voice Response (AVR) verifies that the individual is currently eligible and enrolled with the PHP or PCM;

(D) An appropriately authorized staff member of the Authority states that the individual is currently eligible and enrolled with the PHP or PCM.

(e) PHPs shall have open enrollment for 30 continuous calendar days during each twelve-month period of January through December, regardless of the PHPs enrollment limit. The open enrollment periods for consecutive years may not be more than 14 months apart.

(3) If a PHP is assumed by another PHP, Division members shall be automatically enrolled in the succeeding PHP. The Division member will have 30 calendar days to

request disenrollment from the succeeding PHP. If the succeeding PHP is a Medicare Advantage plan, those Division members who are Medicare beneficiaries shall not be automatically enrolled but shall be offered enrollment in the succeeding PHP.

(4) If a PHP engages in an activity, such as the termination of a participating provider or participating provider group which has significant impact on access in that service area and necessitates either transferring Division members to other providers or the PHP withdrawing from part or all of a service area, the PHP shall provide the Authority at least 90 calendar days written notice prior to the planned effective date of such activity:

(a) A PHP may provide less than the required 90 calendar days notice to the Authority upon approval by the Authority when the PHP must terminate a participating provider or participating provider group due to problems that could compromise Division member care, or when such a participating provider or participating provider group terminates its contract with the PHP and refuses to provide the required 90 calendar days notice;

(b) If the Authority must notify Division members of a change in participating providers or PHPs, the PHP shall provide the Authority with the name, prime number, and address label of the Division members affected by such changes at least 30 calendar days prior to the planned effective date of such activity. The PHP shall provide Division members with at least 30 calendar-days notice of such changes.

(5) PHPs shall have written policies and procedures that ensure scheduling and rescheduling of Division member appointments are appropriate to the reasons for, and urgency of, the visit:

(a) PHPs shall have written policies and procedures and a monitoring system to assure that Division members have access to appointments according to the following standards:

(A) Fully Capitated Health Plans (FCHPs) and PCOs:

(i) Emergency Care -- The Division member shall be seen immediately or referred to an emergency department depending on the Division member's condition;

(ii) Urgent Care -- The Division member shall be seen within 48 hours or as indicated in initial screening, in accordance with OAR 410-1410140; and

(iii) Well Care -- The Division member shall be seen within 4 weeks or within the community standard.

(B) Dental Care Organizations (DCOs):

(i) Emergency Care -- The Division member shall be seen or treated within 24-hours;

(ii) Urgent Care -- The Division member shall be seen within one to two weeks or as indicated in the initial screening in accordance with OAR 410-123-1060; and

(iii) Routine Care –The Division member shall be seen for routine care within an average of eight (8) weeks and within twelve (12) weeks or the community standard, whichever is less, unless there is a documented special clinical reason which would make access longer than 12 weeks appropriate.

(C) Mental Health Organizations (MHOs):

(i) Emergency Care -- Division member shall be seen within 24-hours or as indicated in initial screening;

(ii) Urgent Care -- Division member shall be seen within 48 hours or as indicated in initial screening;

(iii) Non-Urgent Care -- Division member shall be seen for an intake assessment within 2 weeks from date of request.

(b) PHPs shall have written policies and procedures to schedule patients and provide appropriate flow of Division members through the office such that Division members are not kept waiting longer than non-Division member patients, under normal circumstances. If Division members are kept waiting or if a wait of over 45 minutes from the time of a scheduled appointment is anticipated, Division members shall be afforded the opportunity to reschedule the appointment. PHPs must monitor waiting time for clients at least through complaint and appeal reviews, Division termination reports, and Division member surveys to determine if waiting times for clients in all settings are appropriate;

(c) PHPs shall have written procedures and a monitoring system for timely follow-up with Division member(s) when participating providers have notified the PHP that the Division member(s) have failed to keep scheduled appointments. The procedures shall address determining why appointments are not kept, the timely rescheduling of missed appointments, as deemed medically or dentally appropriate, documentation in the clinical record or non-clinical record of missed appointments, recall or notification efforts, and outreach services. If failure to keep a scheduled appointment is a symptom of the Division member's diagnosis or disability or is due to lack of transportation to the PHP’s participating provider office or clinic, PHPs shall provide outreach services as medically appropriate;

(d) PHPs shall have policies and procedures that ensure participating providers will attempt to contact Division members if there is a need to cancel or reschedule the Division member's appointment and there is sufficient time and a telephone number available;

(e) PHPs shall have written policies and procedures to triage the service needs of Division members who walk into the PCP's office or clinic with medical, mental health or dental care needs. Such triage services must be provided in accordance with OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(f) Division members with non-emergent conditions who walk into the PCP's office or clinic should be scheduled for an appointment as appropriate to the Division member's needs or be evaluated for treatment within two hours by a medical, mental health or dental provider.

(6) PHPs shall have written policies and procedures that ensure the maintenance of 24-hour telephone coverage (not a recording) either on site or through call sharing or an answering service, unless this requirement is waived in writing by the Division and/or AMH because the PHP submits an alternative plan that will provide equal or improved telephone access:

(a) Such policies and procedures shall ensure that telephone coverage provides access to 24-hour care and shall address the standards for PCPs or clinics callback for emergency, urgent, and routine issues and the provision of interpretive services after office hours;

(b) FCHPs and PCOs shall have an adequate on-call PCP or clinic backup system covering internal medicine, family practice, OB/Gyn, and pediatrics, as an operative element of FCHP's and PCO's after hours care;

(c) Such policies and procedures shall ensure that relevant information is entered into the appropriate clinical record of the Division member regardless of who responds to the call or the time of day the call is received. PHPs shall monitor for compliance with this requirement;

(d) Such policies and procedures shall include a written protocol specifying when a medical, mental health or dental provider must be consulted. When medically appropriate, all such calls shall be forwarded to the on-call PCP who shall respond immediately to calls which may be emergent in nature. Urgent calls shall be returned appropriate to the Division member's condition, but in no event more than 30 minutes after receipt. If information is inadequate to determine if the call is urgent, the call shall be returned within 60 minutes;

(e) Such policies and procedures shall ensure that all persons answering the telephone (both for the PHP and the PHP's participating providers) have sufficient communication skills and training to reassure Division members and encourage them to wait for a return call in appropriate situations. PHPs shall have written procedures and trained staff to communicate with hearing impaired Division members via Telecommunications Devices for the Deaf (TDD)/Tele Typewriter (TTY);

(f) PHPs shall monitor compliance with the policies and procedures governing 24-hour telephone coverage and on-call PCP coverage, take corrective action as needed, and report findings to the PHP's quality improvement committee;

(g) PHPs shall monitor such arrangements to ensure that the arrangements provide access to 24-hour care. PHPs shall, in addition, have telephone coverage at PHP's administrative offices that will permit access to PHPs' administrative staff during normal office hours, including lunch hours.

(7) PHPs shall develop written policies and procedures for communicating with, and providing care to Division members who have difficulty communicating due to a medical condition or who are living in a household where there is no adult available to communicate in English or where there is no telephone:

(a) Such policies and procedures shall address the provision of qualified interpreter services by phone, in person, in PHP administrative offices, especially those of Division member services and complaint and grievance representatives and in emergency rooms of contracted hospitals;

(b) PHPs shall provide or ensure the provision of qualified interpreter services for covered medical, mental health or dental care visits, including home health visits, to interpret for Division members with hearing impairment or in the primary language of non-English speaking Division members. Such interpreters shall be linguistically appropriate and be capable of communicating in English and the primary language of the Division member and be able to translate clinical information effectively. Interpreter services shall be sufficient for the Provider to be able to understand the Division member's complaint; to make a diagnosis; respond to Division member's questions and concerns; and to communicate instructions to the Division member;

(c) PHPs shall ensure the provision of care and interpreter services which are culturally appropriate, i.e., demonstrating both awareness for and sensitivity to cultural differences and similarities and the effect of those on the medical care of the Division member;

(d) PHPs shall have written policies and procedures that ensure compliance with requirements of the Americans with Disabilities Act of 1990 in providing access to covered services for all Division members and shall arrange for services to be provided by Non- participating referral providers when necessary:

(A) PHPs shall have a written plan for ensuring compliance with these requirements and shall monitor for compliance;

(B) Such a plan shall include procedures to determine whether Division members are receiving accommodations for access and to determine what will be done to remove existing barriers and/or to accommodate the needs of Division members;

(C) This plan shall include the assurance of appropriate physical access to obtain covered services for all Division members including, but not limited to, the following:

(i) Street level access or accessible ramp into facility;

(ii) Wheelchair access to lavatory;

(iii) Wheelchair access to examination room; and

(iv) Doors with levered hardware or other special adaptations for wheelchair access.

(e) PHPs shall ensure that participating providers, their facilities and personnel are prepared to meet the complex medical needs of Division members who are aged, blind or disabled:

(A) PHPs shall have a written plan for meeting the complex medical needs of Division members who are aged, blind or disabled;

(B) PHPs shall monitor participating providers for compliance with the access plan and take corrective action, when necessary.

Stat. Auth.: ORS 413.042

Stats. Implemented: 414.065

410-141-0260 Managed Care Prepaid Health Plan Complaint or Grievance and Appeal Procedures

(1) Definitions:

(a) Action -- In the case of a Prepaid Health Plan (PHP):

(A) The denial or limited authorization of a requested service, including the type or level of service;

(B) The reduction, suspension or termination of a previously authorized service;

(C) The denial in whole or in part, of payment for a service;

(D) The failure to provide services in a timely manner, as defined by the Division of Medical Assistance Programs (Division);

(E) The failure of a PHP to act within the timeframes provided in 42 CFR 438.408(b); or

(F) For a Division member in a single PHP service area, the denial of a request to obtain services outside of the PHP's participating provider panel pursuant to OAR 410-141-0160 and 410-141-0220.

(b) Appeal -- A request by a Division member or representative for review of an "action" as defined in this section;

(c) Complaint -- A Division member's or Division member's representative's expression of dissatisfaction to a PHP or to a practitioner about any matter other than an action, as "action" is defined in this section;

(d) Grievance System -- The overall system that includes a complaint process, an appeals process and access to the Division's administrative hearing process.

(2) The purpose of OAR 410-141-0260 through 410-141-0266 is to describe the requirements for the overall grievance system. These rules will apply to all PHPs as defined in 410-141-0000.

(3) All PHPs shall have written policies and procedures for a grievance system that ensures that they meet the requirements of sections OAR 410141-0260 to 410-141-0266.

(4) Information provided to the Division member shall include at least:

(a) Written material describing the PHP's complaint and appeal procedures, and how to make a complaint or file an appeal; and

(b) Assurance in all written, oral, and posted material of Division member confidentiality in the complaint and appeal processes.

(5) A Division member or a Division member's representative may file a complaint and a PHP level appeal orally or in writing, and may request a Division administrative hearing.

(6) PHPs shall keep all information concerning a Division member's complaint or appeal confidential as specified in OAR 410-141-0261 and 410-141-0262.

(7) Consistent with confidentiality requirements, the PHP's staff person who is designated to receive complaints or appeals, shall begin to obtain documentation of the facts concerning the complaint or appeal upon receipt of the complaint or appeal.

(8) PHPs shall afford Division members full use of the grievance system procedures. If the Division member decides to pursue a remedy through the Division's administrative hearing process, the PHP will cooperate by providing relevant information required for the hearing process.

(9) A request for a Division administrative hearing made to the Division outside of the PHP's appeal procedures, or without previous use of the PHP's appeal procedures shall be reviewed by the PHP through the PHP's appeal process upon notification by the Division as provided for in OAR 410-141-0264.

(10) Under no circumstances may a PHP discourage a Division member or a Division member's representative from using the Division's administrative hearing process.

(11) Neither implementation of a Division hearing decision nor a Division member's request for a hearing may be a basis for a request by the PHP for a Division member's disenrollment.

(12) PHPs shall make available a supply of blank complaint forms (OMAP 3001) in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to complaints or appeals. PHPs shall make available a supply of blank Administrative Hearing Request forms (DHS 443) and the Notice of Hearing Rights forms (DMAP 3030). PHPs shall develop an appeal form and shall make the appeal forms, along with the DHS 443 and DMAP 3030 forms, available in all PHP administrative offices and in those medical/dental offices where staff have been designated by the PHP to respond to complaints or appeals.

(13) The PHP must provide information about the grievance system to all participating providers and subcontractors at the time they enter into a contract.

(14) The PHP must maintain logs that are in compliance with OAR 410141-0266 to document complaints and appeals received by the PHP, and the State must review the information as part of the State quality strategy.

Stat. Auth.: ORS 409.110, 413.042 and 414.065

Stats. Implemented: ORS 414.725

410-141-0261 Prepaid Health Plan Grievance Procedures

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) A grievance (see definition) procedure applies only to those situations in which the (Division) member (see definition) or their representative (see definition) expresses concern or dissatisfaction about any matter other than an “action.” Prepaid Health Plans (PHPs) shall have written procedures to acknowledge the receipt, disposition and documentation of each grievance from Division members. The PHP’s written procedures for handling grievances, shall, at a minimum:

(a) Address how the PHP will accept, process and respond to each grievance from a Division member or their representative, including:

(A) Acknowledgment to the Division member or representative of receipt of each grievance;

(B) Ensuring that Division members who indicate dissatisfaction or concern are informed of their right to file a grievance and how to do so;

(C) Ensuring that each grievance is transmitted timely to staff having authority to act upon it;

(D) Ensuring that each grievance is investigated and resolved in accordance with these rules; and

(E) Ensuring that the practitioner(s) or staff person(s) who make decisions on the grievance must be persons who are:

(i) Not involved in any previous level of review or decision-making; and

(ii) Who are health care professionals who have appropriate clinical expertise in treating the Division member’s condition or disease if the grievance concerns denial of expedited resolution of an appeal or if the grievance involves clinical issues:

(b) Describe how the PHP informs Division members, both orally and in writing, about the PHP’s grievance procedures;

(c) Designate the PHP staff member(s) or a designee who will be responsible for receiving, processing, directing, and responding to grievances;

(d) Include a requirement for grievances to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(2) The PHP must provide Division members with any reasonable assistance in completing forms and taking other procedural steps related to filing and disposition of a grievance. This includes, but is not limited to, providing interpreter services and toll free phone numbers that have adequate Tele Typewriter (TTY)/ Telecommunications Devices for the Deaf (TTD) and interpreter capabilities.

(3) The PHP shall assure Division members that grievances are 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 PHP shall safeguard the Division member's right to confidentiality of information about the grievance as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning a Division member's grievance is kept confidential, consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any practitioner whose services, items or quality of care is alleged to be involved in the grievance have a right to use this information for purposes of the PHP resolving the grievance, for purposes of maintaining the log required in OAR 410-1410266, and for health oversight purposes, without a signed release from the Division member;

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the Division member to authorize a release of information regarding the grievance to other individuals as needed for resolution. Before any information related to the grievance is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the grievance file. Copies of the form for obtaining the release of information shall be included in the PHP's written process.

(4) The PHPs procedures shall provide for the disposition of grievances within the following timeframes:

(a) The PHP must resolve each grievance, and provide notice of the disposition, as expeditiously as the Division member's health condition requires, within the timeframes established in this rule;

(b) For standard disposition of grievances and notice to the affected parties, within 5 working days from the date of the PHP's receipt of the grievance, the PHP must either:

(A) Make a decision on the grievance and notify the Division member; or

(B) Notify the Division member in writing that a delay in the PHP's decision of up to 30 calendar days from the date the grievance was received by the PHP is necessary to resolve the grievance. The PHP shall specify the reasons the additional time is necessary.

(5) The PHP's decision about the disposition of a grievance shall be communicated to the Division member orally or in writing within the timeframes specified in (4) of this rule:

(a) An oral decision about a grievance shall address each aspect of the Division member’s grievance and explain the reason for the PHP's decision;

(b) A written decision must be provided if the grievance was received in writing. The written decision on the grievance shall review each element of

the Division member's grievance and address each of those concerns specifically, including the reasons for the PHP’s decision.

(6) All grievances made to the PHP’s staff person designated to receive grievances shall be entered into a log and addressed in the context of quality improvement activity (OAR 410-141-0200) as required in OAR 410141-0266.

(7) All grievances that the Division member chooses to resolve through another process, and that the PHP is notified of, shall be noted in the grievance log.

(8) Division members who are dissatisfied with the disposition of a grievance may present their grievance to the Governors Advocacy Office.

Stat. Auth.: ORS 409.110, 413.042 and 414.065

Stats. Implemented: ORS 414.065

410-141-0262 Prepaid Health Plan Appeal Procedures

(1(1) A Division of Medical Assistance Programs (Division) Member or their representative that disagrees with a Notice of Action may file a Prepaid Health Plan (PHP) level appeal or request a Division administrative hearing. Division members may not be required to go through a PHP level appeal in order to request a Division administrative hearing.

(2) The PHP must have a system in place for Division member which includes an appeal process when a Division member has requested a Division administrative hearing. For purposes of this rule, an appeal includes a request to the PHP for review of an Action upon notification from the Division.

(3) An appeal must be filed with the PHP no later than 45 calendar days from the date on the Notice of Action required under OAR 410-141-0263.

(4) If the Division member initiates an appeal directly with the PHP, it shall be documented in writing by the PHP and handled as an appeal consistent with this rule. The Division member or Division member's representative may file an appeal with the PHP either orally or in writing and, unless he or she requests expedited resolution, must follow an oral filing with a written and signed appeal.

(5) Each PHP must adopt written policies and procedures for handling appeals that, at a minimum, meet the following requirements:

(a) Give Division members any reasonable assistance in completing forms and taking other procedural steps related to filing and resolution of an appeal or administrative hearings request. This includes, but is not limited to, providing interpreter services and toll-free numbers that have adequate Tele Typewriter (TTY)/ Telecommunications Devices for the Deaf (TTD) and interpreter capacity;

(b) Address how the PHP will accept, process and respond to such appeals, including how the PHP will acknowledge receipt of each appeal;

(c) Ensuring that Division members who receive a Notice of Action described in OAR 410-141-0263 are informed of their right to file an appeal and an administrative hearing request and how to do so;

(d) Ensuring that each appeal is transmitted timely to staff having authority to act on it;

(e) Ensuring that each appeal is investigated and resolved in accordance with these rules; and

(f) Ensuring that the individuals who make decisions on appeals are individuals:

(A) Who were not involved in any previous level of review or decision making; and

(B) Who are health care professionals who have the appropriate clinical expertise in treating the Division member's condition or disease if an appeal of a denial is based on lack of medical appropriateness or if an appeal involves clinical issues:

(g) Include a requirement for appeals to be documented in the log to be maintained by the PHP that is in compliance with OAR 410-141-0266.

(6) The PHP shall assure Division members that appeals are 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 PHP shall safeguard the Division member's right to confidentiality of information about the appeal as follows:

(a) PHPs shall implement and monitor written policies and procedures to ensure that all information concerning a Division member's appeal is kept confidential consistent with appropriate use or disclosure as treatment, payment, or health care operations of the PHP, as those terms are defined in 45 CFR 164.501. The PHP and any practitioner whose authorization, treatment, services, items, quality of care, or request for payment is alleged to be involved in the appeal have a right to use this information for purposes of resolving the appeal and for purposes of maintaining the log required in OAR 410-141-0266 and for health oversight purposes by Division, without a signed release from the Division member. The administrative hearing regarding the appeal without a signed release from the Division member, pursuant to 410-120-1360(4);

(b) Except as provided in subsection (a) or as otherwise authorized by all other applicable confidentiality laws, PHPs shall ask the Division member to authorize a release of information regarding the appeal to other individuals. Before any information related to the appeal is disclosed under this subsection, the PHP shall have an authorization for release of information documented in the appeal file.

(7) The process for appeals must:

(a) Provide that oral inquiries seeking to appeal an action are treated as appeals (to establish the earliest possible filing date for the appeal) and must be confirmed in writing, unless the Division member or Division member's representative requests expedited resolution;

(b) Provide the Division member a reasonable opportunity to present evidence and allegations of fact or law in person as well as in writing. (The PHP must inform the Division member or the Division member's representative of the limited time available in the case of an expedited resolution);

(c) Provide the Division member and/or the Division member's representative an opportunity, before and during the appeals process, to examine the Division member's file, including medical records and any other documents or records to be considered during the appeals process; and

(d) Include as parties to the appeal the Division member, the Division member's representative, or the legal representative of a deceased Division member's estate;

(8) The PHP must resolve each appeal and provide a client notice of the appeal resolution as expeditiously as the Division member's health condition requires and within the time frames in this section:

(a) For the standard resolution of appeals and client notices to the Division member and/or Division member's representative, the PHP shall resolve the appeal and provide a client notice no later than 16 calendar days from the day the PHP receives the appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(b) When the PHP has granted a request for expedited resolution of an appeal, the PHP shall resolve the appeal and provide a client notice no later than 3 working days after the PHP receives the appeal. This timeframe may be extended pursuant to subsection (c) of this section;

(c) The PHP may extend the timeframes from subsections (a) or (b) of this section by up to 14 calendar days as approved by the Division's Hearings Unit Staff if:

(A) The Division member or Division members representative requests the extension; or

(B) The PHP shows (to the satisfaction of the Division's Hearings Unit upon its request) that there is need for additional information and how the delay is in the Division member's interest:

(d) If the PHP extends the timeframes, it must, for any extension not requested by the Division member, give the Division member or Division members representative a written notice of the reason for the delay.

(9) For all appeals, the PHP must provide written Notice of Appeal Resolution to the Division member or their representative. If the PHP knows that there is a representative, the PHP must send a copy of the Notice to the representative. For notice on an expedited resolution, the PHP must also make reasonable efforts to provide oral notice.

(10) The written Notice of Appeal Resolution must include the following:

(a) The results of the resolution process and the date it was completed; and

(b) For appeals not resolved wholly in favor of the Division member, the notice must also include the following information:

(A) Reasons for the resolution and a reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Appeal Resolution relied upon to deny the appeal;

(B) Unless the appeal was referred to the PHP from the Division as part of an administrative hearings process, the right to request a Division

Administrative Hearing, and how to do so, which includes attaching the “Notice of Hearing Rights (DMAP 3030) and the Hearing Request form (DHS 443);

(C) The right to request to receive benefits while the hearing is pending, and how to make the request; and

(D) That the Division member may be held liable for the cost of those benefits if the hearing decision upholds the PHP’s Action.

(11) Unless the appeal was referred to the PHP as part of an administrative hearing process, a Division member may request a Division administrative hearing not later than 45 calendar days from the date on the Notice of Appeal Resolution. The parties to the Division administrative hearing include the PHP as well as the Division member and/or Division member’s representative, or the Representative of the deceased Division member’s estate.

(12) Each PHP shall establish and maintain an expedited review process for appeals, consistent with OAR 410-141-0265.

(13) Each PHP shall maintain records of appeals, enter appeals and their resolution into a log, and address the appeals in the context of quality improvement activity (OAR 410-141-0200) as required in OAR 410-1410266.

(14) Continuation of benefits pending appeal:

(a) As used in this section, “timely” filing means filing on or before the later of the following:

(A) Within 10 calendar days of the PHP mailing the Notice of Action; or

(B) The intended effective date of the PHP’s proposed Action:

(b) The PHP must continue the Division member’s benefits if:

(A) The Division member or Division member’s representative files the appeal or administrative hearing request timely;

(B) The appeal or administrative hearing request involves the termination, suspension, or reduction of a previously authorized course of treatment;

(C) The services were ordered by an authorized provider;

(D) The original period covered by the original authorization has not expired; and

(E) The Division member or representative requests extension of benefits:

(c) Continuation of benefits pending administrative hearing — If, at the Division member's request, the PHP continues or reinstates the Division member's benefits while the appeal or administrative hearing is pending , the benefits must be continued pending administrative hearing pursuant to OAR 410-141-0264.

(15) If the final resolution of the appeal or administrative hearing is adverse to the Division member, that is, upholds the PHP's Action, the PHP may recover the cost of the services furnished to the Division member while the appeal or administrative hearing was 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 431.230(b).

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

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

(18) If the appeal was referred to the PHP from the Division as part of an administrative hearing process, the PHP must immediately (within two business days) transmit the Notice of Appeal Resolution and the complete record of the appeal to the Division Hearings Unit.

(19) If the appeal was made directly by the Division member or Representative, and if the Notice of Appeal Resolution was not favorable to the Division member, the PHP must: Retain a complete record of the appeal for not less than 45 days so that, if an administrative hearing is requested, the record can be submitted to the Division's Hearings Unit within two business days of the Division's request.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-141-0263 Notice of Action by a Prepaid Health Plan

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

(1) When a Prepaid Health Plan (PHP) (or authorized practitioner (see definition) acting on behalf of the PHP) takes or intends to take any “action,” including but not limited to denials or limiting prior authorizations of a requested service(s) in an amount, duration, or scope that is less than requested, or reductions, suspension, discontinuation or termination of a previously authorized service, or any other action, the PHP (or authorized practitioner acting on behalf of the PHP) shall mail a written client (see definition) Notice of Action in accordance with section (2) of this rule to the Division member (see definition) within the timeframes specified in subsection (3) of this rule.

(2) The written client Notice of Action must be a Division approved format and it must be used for all denials of a requested service(s), reductions, discontinuations or terminations of previously authorized services, denials of claims payment, or other action. The client Notice of Action must meet the language and format requirements of 42 CFR 438.10(c) and (d) and shall inform the Division member of the following:

(a) Relevant information shall include, but is not limited to, the following:

(A) Date of client Notice of Action;

(B) PHP name;

(C) PCP/PCD name;

(D) The Division member's name and ID number;

(E) Date of service or item requested or provided;

(F) Who requested or provided the item or service; and

(G) Effective date of the action;

(b) The action the PHP or its participating provider (see definition) has taken or intends to take;

(c) Reasons for the action, with enough specificity to clearly explain the actual reason for the denial, including but not limited to the following reasons:

(A) The item requires pre-authorization and it was not pre-authorized;

(B) The service or item is received in an emergency care setting and does not qualify as an Emergency Service under the prudent layperson standard;

(C) The person was not a Division member at the time of the service or is not a Division member at the time of a requested service; and

(D) The provider is not on the PHP's panel and prior approval was not obtained (if such prior authorization would be required under the Oregon Health Plan rules):

(d) A reference to the particular sections of the statutes and rules involved for each reason identified in the Notice of Action pursuant to subsection (b) of this section, in compliance with the notice requirements in ORS 183.415(2)(c);

(e) The Division member's right to file an appeal with the PHP and how to exercise that right as required in OAR 410-141-0262;

(f) The Division member's right to request a Division administrative hearing and how to exercise that right. A copy of a Hearing Request form (DHS 443) and Notice of Hearing Rights (DMAP 3030) must be attached to the Notice of Action;

(g) The circumstances under which expedited appeal resolution is available and how to request it;

(h) The Division member's right to have benefits continue pending resolution of the appeal, how to request that benefit(s) be continued, and the circumstances under which the Division member may be required to pay the costs of these services; and

(i) The telephone number to contact the PHP for additional information.

(3) The PHP or practitioner acting on behalf of the PHP must mail the Notice of Action within the following time frames:

(a) For termination, suspension, or reduction of previously authorized Oregon Health Plan (OHP) covered services (see definition), the following time frames apply:

(A) The notice must be mailed at least 10 calendar days before the date of action, except as permitted under subsections (B) or (C) of this section;

(B) The PHP (or authorized practitioner acting on behalf of the PHP) may mail a notice not later than the date of action if:

(i) The PHP or practitioner receives a clear written statement signed by the Division member that he or she no longer wishes services or gives information that requires termination or reduction of services and indicates that he or she understands that this must be the result of supplying the information;

(ii) The Division member has been admitted to an institution where he or she is ineligible for covered services from the PHP;

(iii) The Division member's whereabouts are unknown and the post office returns PHP or practitioner's mail directed to him or her indicating no forwarding address;

(iv) The PHP establishes the fact that another State, territory, or commonwealth has accepted the Division member for Medicaid services;

(v) A change in the level of medical or dental care is prescribed by the Division member's PCP or Primary Care Dentist (PCD); or

(vi) The date of action will occur in less than 10 calendar days, in accordance with 42 CFR 483.12(a)(5)(ii), related to discharges or transfers and long-term care facilities:

(C) The PHP may shorten the period of advance notice to 5 calendar days before the date of the action if the PHP has facts indicating that an action should be taken because of probable fraud by the Division member.

Whenever possible, these facts should be verified through secondary sources:

(b) For denial of payment, at the time of any action affecting the claim;

(c) For standard prior authorizations that deny a requested service or that authorize a service in an amount, duration, or scope that is less than requested, the PHP must provide Notice of Action as expeditiously as the Division member's health condition requires and within 14 calendar days following receipt of the request for service, except that:

(A) The PHP may have a possible extension of up to 14 additional calendar days if the Division member or the provider requests the extension; or if the PHP justifies (to the Division upon request) a need for additional information and how the extension is in the Division member's interest;

(B) If the PHP extends the timeframe, in accordance with subsection (A) of this section, it must give the Division member written notice of the reason for the decision to extend the timeframe and inform the Division member of their right to file a grievance if he or she disagrees with that decision. The PHP must issue and carry out its prior authorization determination as expeditiously as the Division member's health condition requires and no later than the date the extension expires:

(d) For prior authorization decisions not reached within the timeframes specified in subsection (c) of this section, (which constitutes a denial and is thus an adverse action), on the date that the timeframes expire;

(e) For expedited prior authorizations, within the timeframes specified in OAR 410-141-0265.

Stat. Auth.: ORS 409.110, 413.042 and 414.065

Stats. Implemented: ORS 414.065

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

410-141-0265 Request for Expedited Appeal or Expedited Administrative Hearing

(1) Each Prepaid Health Plan (PHP) shall establish and maintain an expedited review process for appeals, when the PHP determines (upon request from the Division of Medical Assistance Programs (Division) member or the provider indicates (in making the request on a Division member's behalf or supporting the Division member's request) that taking the time for a standard resolution could seriously jeopardize the Division member's life, health, or ability to attain, maintain or regain maximum function.

(2) The PHP must ensure that punitive action is not taken against a provider who requests an expedited resolution or supports a Division member's appeal.

(3) If the PHP provides an expedited appeal, but denies the services or items requested in the expedited appeal, the PHP shall inform the Division member of the right to request an expedited Administrative Hearing and shall provide the Division member with a copy of both the Hearing Request form (DHS 443) and Notice of Hearing Rights (DMAP 3030) with the Notice of Appeal Resolution.

(4) If the PHP denies a request for expedited resolution on appeal, it must:

(a) Transfer the appeal to the time frame for standard resolution in accordance with OAR 410-141-0262;

(b) Make reasonable efforts to give the Division member prompt oral notice of the denial, and follow-up within 2 calendar days with a written notice.

(5) A Division member who believes that taking the time for a standard resolution of a request for an Administrative Hearing could seriously jeopardize the Division member's life or health or ability to attain, maintain or regain maximum function may request an expedited Administrative Hearing.

(6) The PHP shall submit relevant documentation to the Division's Medical Director within, as nearly as possible, 2 working days for a decision as to

the necessity of an expedited Administrative Hearing. The Division's Medical Director shall decide within, as nearly as possible, 2 working days from the date of receiving the medical documentation applicable to the request, whether that Division member is entitled to an expedited Administrative Hearing.

(7) If the Division's Medical Director denies a request for expedited Administrative Hearing, the Division must:

(a) Handle the request for Administrative Hearing in accordance with OAR 410-141-0264; and

(b) Make reasonable efforts to give the Division member prompt oral notice of the denial, and follow-up within 2 calendar days with a written notice.

Stat. Auth.: ORS 409.110 and 413.042

Stats. Implemented: ORS 414.065

410-141-0266 Prepaid Health Plan's Responsibility for Documentation and Quality Improvement Review of the Grievance System

(1) The Prepaid Health Plans (PHP's) documentation shall include, at minimum, a log of all oral and written complaints and appeals received by the PHP. The log shall identify the Division of Medical Assistance Programs (Division) member and the following additional information:

(a) For complaints, the date of the complaint, the nature of the complaint, the disposition and date of disposition of the complaint;

(b) For appeals, the date of the Notice of Action, the date of the appeal, the nature of the appeal, whether continuing benefits were requested and provided, the resolution and date of resolution of the appeal;

(c) If an administrative hearing was requested, whether continuing benefits were requested and provided, and the effect of the final order of the administrative hearing.

(2) The PHP shall also maintain a record for each of the complaints and appeals included in the log. The record shall include records of the review or investigation and resolution, including all written decisions and copies of correspondence with the Division member. The PHPs shall retain documentation of complaints and appeals for seven years to permit evaluation.

(3) The PHPs shall have written procedures for the review and analysis of the grievance system, including all complaints and appeals received by the PHP. The analysis of the grievance system shall be forwarded to the Quality Improvement Committee as necessary to comply with the quality improvement standards:

(a) PHPs shall monitor the completeness and accuracy of the written log, on a monthly basis;

(b) Monitoring of complaints and appeals shall review, at minimum, completeness, accuracy, timeliness of documentation, and compliance with written procedures for receipt, disposition, and documentation of complaints and appeals, and compliance with Oregon Health Plan rules.

Stat. Auth.: ORS 409.110 and 413.042

Stats. Implemented: ORS 414.065 and 442.807

410-141-0270 Oregon Health Plan Marketing Requirements

(1) Prepaid Health Plans (PHPs) may not conduct, directly or indirectly, door-to-door, telephonic, electronic, mail or other cold call marketing practices to entice OHP clients to enroll into their PHP.

(2) PHPs or their subcontractors shall not seek to influence OHP client's enrollment with the PHP. PHPs are allowed to engage in activities for purposes of outreach to existing Division of Medical Assistance Programs (Division) members, health promotion and health education.

(3) Any written communication by the PHP or its subcontractors and providers which is intended solely for Division members and pertains to provider requirements for obtaining services, care at service sites, or benefits, must be approved by the Division and/or Addictions and Mental Health Division (AMH) prior to distribution.

(4) PHPs may also communicate with providers, caseworkers, community agencies and other interested parties for informational purposes. The intent of these communications should be informational and not to entice or solicit membership. Communication methodologies may include, but are not limited to;

(a) Brochures, pamphlets, newsletters, posters, fliers, web sites, health fairs, or sponsorship of health-related events;

(b) The creation of name recognition, as a result of PHP's health promotion or education activities, shall not be deemed to constitute an attempt by PHPs to influence an Oregon Health Plan (OHP) client's enrollment;

(c) PHP shall cooperate in developing a comprehensive explanation of the services available from PHP under Contract/Agreement with the Oregon Health Authority (Authority) for the Division Comparison Charts.

(5) Subcontractors may post a sign listing all OHP PHPs to which the provider belongs and display PHP-sponsored health promotional materials.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065

410-141-0280 Managed Care Prepaid Health Plan Potential Member Informational Requirements

(1) Managed Care Organizations (MCOs) shall develop informational materials for potential Division of Medical Assistance Programs (Division) members:

(a) MCOs shall provide the Division and/or Addictions and Mental Health Division (AMH) with informational materials sufficient for the potential Division member to make an informed decision about provider selection and enrollment. Information on participating providers must be made available from the MCO, upon request to potential Division members, and must include participating providers' name, location, languages spoken other than English, qualification and the availability of the Primary Care Physician (PCP), clinic and specialists, including whether they are currently accepting members, and prescription drug formularies used. Informational materials may be included in the application packet for potential Division members;

(b) MCOs shall ensure that all MCOs staff who have contact with potential Division members are fully informed of MCO and the Division and/or AMH policies, including enrollment, disenrollment, complaint and grievance policies and the provision of interpreter services including which participating providers' offices have bilingual capacity;

(c) MCOs shall cooperate and provide accurate information to the Division for the updating of the comparison charts.

(d) Information for potential members will comply with marketing prohibitions in 42 CFR 438.104.

(2) Informational materials that MCOs develop for potential Division members shall meet the language requirements of, and be culturally sensitive to people with disabilities or reading limitations, including substantial populations whose primary language is not English in its particular service area(s).

(a) MCOs shall be required to follow the Division substantial household criteria required by ORS 411.970, which determines and identifies those populations that are considered non-English speaking households. The MCO shall be required to provide informational materials, which at a minimum, shall include the Division member handbook in the primary language of each substantial population.

Alternative forms may include, but are not limited to audio tapes, close-captioned videos, large type and Braille;

(c) All written informational materials distributed to potential Division members shall be written at the sixth grade reading level and printed in 12 point font or larger;

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.725

410-141-0300 Managed Care Prepaid Health Plan Member Education Requirements

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) MCOs shall have written procedures, criteria and an ongoing process of Division member education and information sharing that include orientation to the MCO, a member handbook and health education.

(2) MCOs shall mail a new member packet to new Division members, and to Division members returning to the plan 9 months or more after previous enrollment, within 14 calendar days of the date the plan receives notice of the Division member's enrollment, including at a minimum a member handbook, provider directory and welcome letter.

(3) MCO member handbook:

(a) For Division members who are ongoing enrollees, the MCO member handbook and provider directory shall be offered annually and sent on request. Whenever they are offered they shall be offered in print, and may also be offered online if available;

(b) Each version of the printed MCO member handbook and provider directory shall be submitted electronically to the Division's Materials Coordinator and Addictions and Mental Health (AMH) Representative for approval. At a minimum the MCO member handbook shall contain the following elements:

(A) Revision date;

(B) Tag lines in English and other languages spoken by substantial populations of MCO members. Substantial is defined as 35 or more households that speak the same language and in which no adult speaks English. The tag lines must describe how Division members are to access interpreter services including sign interpreters, translations, and materials in other formats;

(C) MCO's office location, mailing address, web address if applicable, office hours and telephone numbers (including TTY);

(D) How to choose a Primary Care Provider (PCP) or Primary Care Dentist (PCD) and make an appointment, and policy on changing PCPs or PCDs;

(E) How to access information on contracted providers currently accepting new members (which may be through an online provider directory), and any restrictions on the Division member's freedom of choice among participating providers;

(F) What services can be self-referred to either participating or nonparticipating providers for Fully Capitated Health Plans (FCHP), Primary Care Organizations (PCO) and Mental Health Organizations (MHO) only;

(G) Policies on referrals for specialty care, including preauthorization requirements and how to request a referral;

(H) Explanation of Exceptional Needs Care Coordination (ENCC) and how Division members with special health care needs, who are aged, blind or disabled, or who have complex medical needs, can access ENCC services (FCHPs and PCOs);

(I) How and where Division members are to access urgent care services and advice, including when away from home;

(J) How and when Division members are to use emergency services both locally and when away from home, including examples of emergencies;

(K) Information on contracted hospitals in the Division member’s service area;

(L) Information on post-stabilization care after a Division member is stabilized in order to maintain, improve or resolve the Division member's condition;

(M) Member appeal rights, including information on the MCO’s complaint process and information on Division fair hearing procedures;

(N) Information on the Division member’s rights and responsibilities;

(O) Information on copayments, charges for non-covered services, and the Division member's possible responsibility for charges if they go outside of the MCO for non-emergent care;

(P) The transitional procedures for new Division members to obtain prescriptions, supplies and other necessary items and services in the first month of enrollment with the MCO if they are unable to meet with a PCP, PCD, other prescribing practitioner, or obtain new orders during that period;

(Q) Information on advance directive policies (FCHPs, PCOs and MHOs only) including:

(i) Division member rights under federal and Oregon law to make decisions concerning their medical care, including the right to accept or refuse medical or surgical treatment, and the right to formulate advance directives;

(ii) The contractor’s policies for implementation of those rights, including a statement of any limitation regarding the implementation of advanced directives as a matter of conscience;

(R) Whether or not the MCO uses physician incentives to reduce cost by limiting services;

(S) The Division member's right to request and obtain copies of their clinical records (and whether they may be charged a reasonable copying fee), and to request that the record be amended or corrected;

(T) How and when Division members are to obtain ambulance services (FCHP, MHO and PCO only);

(U) Possible resources for help with transportation to appointments with providers;

(V) Explanation of the covered and non-covered services in sufficient detail to ensure that Division members understand the benefits to which they are entitled;

(W) How Division members are to obtain prescriptions including information on the process for obtaining non-formulary and over-thecounter drugs;

(X) MCO's confidentiality policy;

(Y) How and where Division members are to access any benefits that are available under OHP but are not covered under the MCO's' contract, including any cost sharing;

(Z) When and how members can voluntarily and involuntarily disenroll from OHP managed care and change MCOs;

(d) The MCO shall compile a printed provider directory for distribution to Division members, which may be part of the member handbook or separate, and will include currently contracted provider names and specialty, non-English languages spoken, office location, telephone numbers including TTY, office hours, and accessibility for Division members with disabilities;

(e) If the MCO handbook is returned with a new address, the MCO shall re-mail the handbook to the new address.

(f) MCOs shall, at a minimum, annually review their member handbook for accuracy and update it with new and corrected information as needed to reflect OHP program changes and the MCO's internal changes. If changes impact the Division member's ability to use services or benefits, the updated member handbook shall be offered to all Division members;

(g) The "Oregon Health Plan Client Handbook" is in addition to the MCO's Division member handbook and cannot be used to substitute for any component of the MCO's Division member handbook.

(4) Division member health education shall include:

(a) Information on specific health care procedures, instruction in self-management of health care, promotion and maintenance of optimal health care status, patient self-care, and disease and accident prevention. Health education may be provided by MCO's practitioners or other individuals or programs approved by the MCO. MCOs shall endeavor to provide health education in a culturally sensitive manner in order to communicate most effectively with individuals from non-dominant cultures.

(b) MCOs shall ensure development and maintenance of an individualized health educational plan for Division members who have been identified by their practitioner as requiring specific educational intervention. The Oregon Health Authority (Authority) may assist in developing materials that address specifically identified health education problems to the population in need.

(c) Explanation of Exceptional Needs Care Coordination (ENCC) and how to access ENCC, through outreach to Division members with special health care needs, who are aged, blind or disabled, or who have complex medical needs;

(d) The appropriate use of the delivery system, including proactive and effective education of Division members on how to access emergency services and urgent care services appropriately;

(e) MCOs shall provide written notice to affected Division members of any significant changes in program or service sites that impact the Division members' ability to access care or services from MCO's participating providers. Such notice shall be provided at least 30 calendar days prior to the effective date of that change, or as soon as possible if the participating provider(s) has not given the MCO sufficient notification to meet the 30 days notice requirement. The Division or AMH shall review and approve such materials within two working days.

(4) Informational materials that MCOs develop for Division members shall meet the language requirements of, and be culturally sensitive to, members with disabilities or reading limitations, including substantial populations whose primary language is not English;

(a) MCOs shall be required to translate materials for substantial populations of non-English speaking Division members in the MCO's caseload. Substantial is defined as follows: 35 or more households that speak the same non-English language and in which no adult speaks English. The MCO shall be required to provide informational materials which at a minimum shall include the Division member handbook in the primary language of each substantial population. Alternative forms may include, but are not limited to audio recordings, close-captioned videos, large type and Braille;

(b) Form correspondence sent to Division members, including but not limited to, enrollment information, choice and Division member counseling letters and notices of action to deny, reduce or stop a benefit shall include instructions in the language of

each substantial population of non-English speaking Division members on how to receive an oral or written translation of the material;

(c) All written informational materials and identification (ID) cards distributed to Division members shall be written at the sixth grade reading level and printed in 12 point font or larger;

(5) MCOs shall provide an ID card to Division members, unless waived by the Division or AMH that contains simple, readable and usable information on how to access care in an urgent or emergency situation. Such ID cards shall confer no rights to services or other benefits under the OHP and are solely for the convenience of the PHP, Division members and providers.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.725

410-141-0320 Oregon Health Plan Prepaid Health Plan Member Rights and Responsibilities

(1) Prepaid Health Plans (PHPs) shall have written policies and procedures that ensure Division of Medical Assistance Programs (Division) members have the rights and responsibilities included in this rule:

(a) PHPs shall communicate these policies and procedures to participating providers;

(b) PHPs shall monitor compliance with policies and procedures governing Division member rights and responsibilities, take corrective action as needed, and report findings to the PHP's Quality Improvement Committee.

(2) Division members shall have the following rights:

(a) To be treated with dignity and respect;

(b) To be treated by participating providers the same as other people seeking health care benefits to which they are entitled;

(c) To choose a PHP or PCM as permitted in OAR 410-141-0060, Oregon Health Plan Managed Care Enrollment Requirements, a Primary Care Physician (PCP) or service site, and to change those choices as permitted in OAR 410-141-0080, Oregon Health Plan Disenrollment from PHPs, and the PHP's administrative policies;

(d) To refer oneself directly to mental health, chemical dependency or family planning services without getting a referral from a PCP or other participating provider;

(e) To have a friend, family member, or advocate present during appointments and at other times as needed within clinical guidelines;

(f) To be actively involved in the development of his/her treatment plan;

(g) To be given information about his/her condition and covered and non-covered services to allow an informed decision about proposed treatment(s);

(h) To consent to treatment or refuse services, and be told the consequences of that decision, except for court ordered services;

(i) To receive written materials describing rights, responsibilities, benefits available, how to access services, and what to do in an emergency;

(j) To have written materials explained in a manner that is understandable to the Division member;

(k) To receive necessary and reasonable services to diagnose the presenting condition;

(l) To receive covered services under the Oregon Health Plan that meet generally accepted standards of practice and is medically appropriate;

(m) To obtain covered preventive services;

(n) To have access to urgent and emergency services 24 hours a day, 7 days a week as described in OAR 410-141-0140, Oregon Health Plan Prepaid Health Plan Emergency and Urgent Care Services;

(o) To receive a referral to specialty practitioners for medically appropriate covered services;

(p) To have a clinical record maintained which documents conditions, services received, and referrals made;

(q) To have access to one's own clinical record, unless restricted by statute;

(r) To transfer of a copy of his/her clinical record to another provider;

(s) To execute a statement of wishes for treatment, including the right to accept or refuse medical, surgical, chemical dependency or mental health treatment and the right to execute directives and powers of attorney for health care established under ORS 127 as amended by the Oregon Legislative Assembly 1993 and the OBRA 1990 -- Patient Self-Determination Act;

(t) To receive written notices before a denial of, or change in, a benefit or service level is made, unless such notice is not required by federal or state regulations;

(u) To know how to make a complaint or appeal with the PHP and receive a response as defined in OAR 410-141-0260 to 410-1410266;

(v) To request an administrative hearing with the Department of Human Services (DHS or Department);

(w) To receive interpreter services as defined in OAR 410-141-0220, Oregon Health Plan Prepaid Health Plan Accessibility; and

(x) To receive a notice of an appointment cancellation in a timely manner.

(3) Division members shall have the following responsibilities:

(a) To choose, or help with assignment to, a PHP or PCM as defined in 410-141-0060, Oregon Health Plan Enrollment Requirements, and a PCP or service site;

(b) To treat the PHP's, practitioner's, and clinic's staff with respect;

(c) To be on time for appointments made with practitioners and other providers and to call in advance either to cancel if unable to keep the appointment or if he/she expects to be late;

(d) To seek periodic health exams and preventive services from his/her PCP or clinic;

(e) To use his/her PCP or clinic for diagnostic and other care except in an emergency;

(f) To obtain a referral to a specialist from the PCP or clinic before seeking care from a specialist unless self-referral to the specialist is allowed;

(g) To use urgent and emergency services appropriately and notify the PHP within 72 hours of an emergency;

(h) To give accurate information for inclusion in the clinical record;

(i) To help the practitioner, provider or clinic obtain clinical records from other providers which may include signing an authorization for release of information;

(j) To ask questions about conditions, treatments and other issues related to his/her care that is not understood;

(k) To use information to make informed decisions about treatment before it is given;

(l) To help in the creation of a treatment plan with the provider;

(m) To follow prescribed agreed upon treatment plans;

(n) To tell the practitioner or provider that his/her health care is covered under the Oregon Health Plan before services are received and, if requested, to show the practitioner or other provider the Division’s Medical Care Identification form;

(o) To tell the Department worker of a change of address or phone number;

(p) To tell the Department worker if the Division member becomes pregnant and to notify the Department worker of the birth of the Division member's child;

(q) To tell the Department worker if any family members move in or out of the household;

(r) To tell the Department worker if there is any other insurance available;

(s) To pay for non-covered services under the provisions described in OAR 410-120-1200 and 410-120-1280;

(t) To pay the monthly OHP premium on time if so required;

(u) To assist the PHP in pursuing any third party resources available and to pay the PHP the amount of benefits it paid for an injury from any recovery received from that injury;

(v) To bring issues, or complaints or grievances to the attention of the PHP; and

(w) To sign an authorization for release of medical information so that the Department and the PHP can get information which is pertinent and needed to respond to an administrative hearing request in an effective and efficient manner.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0340 Oregon Health Plan Prepaid Health Plan Financial Solvency

(1) Prepaid Health Plans (PHPs) shall assume the risk for providing capitated services under their contracts/agreements with the Division of Medical Assistance Programs (Division) and/or the Addictions and Mental Health Division (AMH). PHPs shall maintain sound financial management procedures, maintain protections against insolvency, and generate periodic financial reports for submission to the Division and/or AMH, as applicable:

(a) PHPs shall comply with solvency requirements specified in contracts/agreements with the Division and/or AMH, as applicable. Solvency requirements of PHPs shall include the following components:

(A) Maintenance of restricted reserve funds with balances equal to amounts specified in contracts/agreements with the Division and/or AMH. If the PHP has contracts/agreements with both the Division and AMH, separate restricted reserve fund accounts shall be maintained for each contract/agreement;

(B) Protection against catastrophic and unexpected expenses related to capitated services for PHPs. The method of protection may include the purchase of stop loss coverage, reinsurance, self-insurance or any other alternative determined acceptable by the Division and/or AMH, as applicable. Self-insurance must be determined appropriate by the Division and/or AMH;

(C) Maintenance of professional liability coverage of not less than $1,000,000 per person per incident and not less than $1,000,000 in the aggregate either through binder issued by an insurance carrier or by self insurance with proof of same, except to the extent that the Oregon Tort Claims Act, ORS 30.260 to 30.300 is applicable;

(D) Systems that capture, compile and evaluate information and data concerning financial operations. Such systems shall provide for the following:

(i) Determination of future budget requirements for the next three quarters;

(ii) Determination of incurred but not reported (IBNR) expenses;

(iii) Tracking additions and deletions of Division members and accounting for capitation payments;

(iv) Tracking claims payment;

(v) Tracking all monies collected from third party resources on behalf of Division members; and

(vi) Documention of and reports on the use of incentive payment mechanisms, risk-sharing and risk-pooling, if applicable.

(b) PHPs shall submit the following applicable reports as specified in agreements with the Division and/or AMH:

(A) An annual audit performed by an independent accounting firm, containing, but not limited to:

(i) A written statement of opinion by the independent accounting firm, based on the firm's audit regarding the PHP's financial statements;

(ii) A written statement of opinion by an independent actuarial firm about the assumptions and methods used in determining loss reserve, actuarial liabilities and related items;

(iii) Balance Sheet(s);

(iv) Statement of Revenue, Expenses and Net Income, and Change in Fund Balance;

(v) Statements of Cash Flows;

(vi) Notes to Financial Statements;

(vii) Any supplemental information deemed necessary by the independent accounting firm or actuary; and

(viii) Any supplemental information deemed necessary by the Division and/or AMH.

(B) PHP-specific quarterly financial reports. Such quarterly reports shall include, but are not limited to:

(i) Statement of Revenue, Expenses and Net Income;

(ii) Balance Sheet;

(iii) Statement of Cash Flows;

(iv) Incurred But Not Reported (IBNR) Expenses;

(v) Fee-for-service liabilities and medical/hospital expenses that are covered by risk-sharing arrangements;

(vi) Restricted reserve documentation;

(vii) Third party resources collections (AMH contractors); and

(viii) Corporate Relationships of contractors (FCHPs, DCOs, CDOs and PCOs) or Incentive Plan Disclosure and Detail (MHOs).

(C) PHP-specific utilization reports;

(D) PHP-specific quarterly documentation of the restricted reserve. Restricted reserve funds of FCHPs, PCOs, DCOs and CDOs shall be held by a third party. Restricted reserve fund documentation shall include the following:

(i) A copy of the certificate of deposit from the party holding the restricted reserve funds;

(ii) A statement showing the level of funds deposited in the restricted reserve fund accounts;

(iii) Documentation of the liability that would be owed to creditors in the event of PHP insolvency;

(iv) Documentation of the dollar amount of that liability which is covered by any identified risk-adjustment mechanisms.

(2) MHOs shall comply with the following additional requirements regarding restricted reserve funds:

(a) MHOs that subcapitate any work described in agreements with AMH may require subcontractors to maintain a restricted reserve fund for the subcontractor's portion of the risk assumed or may maintain a restricted reserve fund for all risk assumed under the agreement with AMH. Regardless of the alternative selected, MHOs shall assure that the combined total restricted reserve fund balance meets the requirements of the agreement with AMH;

(b) If the restricted reserve fund of the MHO is held in a combined account or pool with other entities, the MHO, and its subcontractors as applicable, shall provide a statement from the pool or account manager that the restricted reserve fund is available to the MHO, or its subcontractors as applicable, and has not been obligated elsewhere;

(c) If the MHO must use its restricted reserve fund to cover services under its agreement with AMH, the MHO shall provide advance notice to AMH of the amount to be withdrawn, the reason for withdrawal, when and how the restricted reserve fund will be replenished, and steps to be taken to avoid the need for future restricted reserve fund withdrawals;

(d) MHOs shall provide AMH access to restricted reserve funds if insolvency occurs;

(e) MHOs shall have written policies and procedures to ensure that, if insolvency occurs, Division members and related clinical records are transitioned to other MHOs or providers with minimal disruption.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0400 Oregon Health Plan Prepaid Health Plan Case Management Services

(1) Prepaid Health Plans (PHPs) provide Case Management Services under the Oregon Health Plan (OHP).

(2) PHP Case Management Services are defined as follows:

(a) Fully Capitated Health Plans (FCHPs) and Physician Care Organizations (PCOs) provide Medical Case Management as defined in OAR 410-141-0000, Definitions;

(b) Dental Care Organizations (DCOs) provide Dental Case Management as defined in OAR 410-141-0000, Definitions. DCOs shall make Dental Case Management staff available for training, Regional OHP meetings, and case conferences involving their Division of Medical Assistance Programs (Division) Members in all service areas;

(c) Mental Health Organizations (MHOs) provide Mental Health Case Management for Capitated and Non-Capitated mental health services as defined in OAR 410-141-0000, Definitions.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.725

410-141-0405 Oregon Health Plan Fully Capitated Health Plan and Physician Care Organization Exceptional Needs Care Coordination

DMAP may have specific definitions for common terms. Please use OAR 410-141-0000, Definitions, in conjunction with this rule.

Fully Capitated Health Plans (FCHPs) and Physician Care Organizations (PCOs) provide Exceptional Needs Care Coordination (ENCC) under the Oregon Health Plan:

(1) FCHPs and PCOs shall make available ENCC services as defined in OAR 410-141-0000, Definitions, for all capitated services;

(2) FCHPs and PCOs shall make ENCC services available to Division members (see definition) or Division member's representative (see definition) identified as aged, blind or disabled who have complex medical needs at the request of a Division member or Division member's representative, a physician, other medical personnel serving the Division member, or the Division member's agency case manager;

(3) FCHPs and PCOs shall make Exceptional Needs Care Coordinators available for training, Regional OHP meetings and case conferences involving Division members or Division member's representative identified as aged, blind or disabled who have complex medical needs in all their service areas;

(4) FCHP and PCO staff who coordinate or provide ENCC services shall be trained to and exhibit skills in communication with and sensitivity to the unique health care needs of people who are aged, blind, disabled or who have complex medical needs. FCHPs and PCOs shall have a written position description for the staff member(s) responsible for managing ENCC services and for staff who provide ENCC services;

(5) FCHPs and PCOs shall have written policies that outline how the level of staffing dedicated to ENCC is determined;

(6) FCHPs and PCOs shall make ENCC services available to Division members identified as aged, blind or disabled who have complex medical needs during normal office hours, Monday through Friday. Information on ENCC services shall be made available when necessary to a Division member's representative during normal business hours, Monday through Friday;

(7) FCHPs and PCOs shall provide the aged, blind or disabled who have complex medical needs Division member or Division member's representative who requests ENCC services with an initial response by the next working day following the request, as appropriate;

(8) FCHPs and PCOs shall periodically inform all of their practitioners (see definition) and the practitioner's staff of the availability of ENCC services, provide training for medical office staff on ENCC services and other support services available for serving

the aged, blind, disabled or who have complex medical l needs Division members or Division member's representative; FCHPs and PCOs shall assure that the ENCCs name(s) and telephone number(s) are made available to both agency staff and Division members or Division member's representative;

(9) FCHPs and PCOs shall have written procedures that describe how they will respond to ENCC requests;

(10) FCHPs and PCOs shall make ENCC services available to coordinate the provision of covered services to aged, blind or disabled who have complex medical needs to Division members or Division member's representative who exhibit inappropriate, disruptive or threatening behaviors in a practitioner's office;

(11) Exceptional Needs Care Coordinators shall document ENCC services in Division member medical records as appropriate and/or in a separate Division member case file.

Stat. Auth.: ORS 409.010, 414.050, 409.110 and 414.065

Stats. Implemented: ORS 414.065

410-141-0407 Oregon Health Plan Ombudsman Services

(1) The Department provides ombudsman services to all Division members who are aged, blind or disabled who have complex medical needs as defined in OAR 410-141-0000, Definitions.

(2) The Department shall inform all Division members who are aged, blind or disabled who have complex medical needs of the availability of ombudsman services.

Stat. Auth.: ORS 409.050

Stats. Implemented: 414.725

410-141-0410 Oregon Health Plan Primary Care Managers

(1) Primary Care Managers provide Primary Care Management Services under the Oregon Health Plan. Primary Care Managers provide Primary Care Management Services as defined in OAR 410-141-0000, Definitions, for the following PCM Services:

(a) Preventive Services, primary care services and specialty services, including those provided by physicians, nurse practitioners, physician assistants, naturopaths, chiropractors, podiatrists, rural health clinics, migrant and community health clinics, federally qualified health centers, county health departments, Indian health service clinics, and Tribal health clinics;

(b) Inpatient hospital services; and

(c) Outpatient hospital services except laboratory, x-ray and maternity management services.

(2) Services which are not PCM Case Managed services include, but are not limited to, the following:

(a) Anesthesiology services;

(b) Dental care services;

(c) Durable medical equipment;

(d) Family planning services;

(e) Immunizations, treatment for communicable diseases, and treatment for sexually transmitted diseases provided by a publicly funded clinic;

(f) Laboratory services;

(g) Maternity case management services;

(h) Medical transportation services;

(i) Mental health and chemical dependency services;

(j) Pharmacy services;

(k) Physical therapy, occupational therapy, speech therapy, and audiology services;

(l) Preventive Services for acquired immune deficiency syndrome and human immuno-deficiency virus;

(m) Routine eye examinations and dispensing of vision materials;

(n) School-based services provided under an individual education plan or an individual family service plan;

(o) Targeted case management services; and

(p) Diagnostic imaging.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0420 Managed Care Prepaid Health Plan Billing and Payment under the Oregon Health Plan

The Division of Medical Assistance Programs (Division) may have specific definitions for common terms. Please use OAR 410-1410000, Definitions, in conjunction with this rule.

(1) Providers must submit all billings for Oregon Health Plan (OHP) clients to Prepaid Health Plans (PHPs) and to the Division within four

(4) months and twelve (12) months, respectively, of the date of service, subject to other applicable Division billing rules. Providers must submit billings to PHPs within the four (4) month time frame except in the following cases:

(a) Pregnancy;

(b) Eligibility issues such as retroactive deletions or retroactive enrollments;

(c) Medicare is the primary payer;

(d) Other cases that could have delayed the initial billing to the PHP (which does not include failure of provider to certify the Division member's (see definition) eligibility); or

(e) Third Party Liability (TPL). Pursuant to 42 CFR 36.61, subpart G: Indian Health Services and the amended Public Law 93-638 under the Memorandum of Agreement that Indian Health Service and 638 Tribal Facilities are the payer of last resort and is not considered an alternative liability or TPL.

(2) Providers must be enrolled with the Division to be eligible for Division fee-for-service (FFS) payments. Mental health providers, except Federally Qualified Health Centers (FQHC), must be approved by the Local Mental Health Authority (LMHA) and the Addictions and Mental Health (AMH) Division before enrollment with the Division or to be eligible for PHP payment for services . Providers may be retroactively enrolled, in accordance with OAR 410-120-1260, Provider Enrollment.

(3) Providers, including mental health providers (see definition), must be enrolled with the Division either as a Medicaid provider or an encounter-only provider prior to submission of encounter data to ensure the servicing provider is not excluded per federal and State standard as defined in OAR 407-120-0300.

(4) Providers shall verify, before rendering services, which Division member is eligible for the Medical Assistance Program on the date of service using the Division tools and optionally the PHP’s tools, as applicable and that the service to be rendered is covered under the Oregon Health Plan Benefit Package of covered services. Providers shall also identify the party responsible for covering the intended service and seek pre-authorizations from the appropriate payer before rendering services. Providers shall

inform Division members of any charges for non-covered services (see definition) prior to the services being delivered.

(5) Capitated services:

(a) PHPs receive a capitation payment to provide services to Division members. These services are referred to as capitated services;

(b) PHPs are responsible for payment of all capitated services. Such services should be billed directly to the PHP, unless the PHP or the Division specifies otherwise. PHPs may require providers to obtain preauthorization to deliver certain capitated services.

(6) Payment by the PHP to participating providers for capitated services is a matter between the PHP and the participating provider, except as follows:

(a) Pre-authorizations:

(A) PHPs shall have written procedures for processing pre-authorization requests received from any provider. The procedures shall specify time frames for:

(i) Date stamping pre-authorization requests when received;

(ii) Determining within a specific number of days from receipt whether a pre-authorization request is valid or non-valid;

(iii) The specific number of days allowed for follow up on pended preauthorization requests to obtain additional information; (iv)The specific number of days following receipt of the additional information that a redetermination must be made;

(v) Providing services after office hours and on weekends that require preauthorization;

(vi) Sending notice of the decision with appeal rights to the Division member when the determination is made to deny the requested service as specified in 410-141-0263.

(B) PHPs shall make a determination on at least 95% of valid preauthorization requests, within two working days of receipt of a preauthorization or reauthorization request related to urgent services; alcohol and drug services; and/or care required while in a skilled nursing facility. Preauthorization for prescription drugs must be completed and the pharmacy notified within 24 hours. If a preauthorization for a prescription cannot be completed within the 24 hours, the PHP must provide for the dispensing of at least a 72-hour supply if the medical need for the drug is immediate. PHP shall notify providers of such determination within 2 working days of receipt of the request;

(C) For expedited prior authorization requests in which the provider indicates, or the PHP determines, that following the standard timeframe could seriously jeopardize the

Division member's life or health or ability to attain, maintain, or regain maximum function:

(i) The PHP must make an expedited authorization decision and provide notice as expeditiously as the Division member's health condition requires and no later than three working days after receipt of the request for service;

(ii) The PHP may extend the three working days time period by up to 14 calendar days if the Division member requests an extension, or if the PHP justifies to Division a need for additional information and how the extension is in the Division member's interest.

(D) For all other preauthorization requests, PHPs shall notify providers of an approval, a denial or a need for further information within 14 calendar days of receipt of the request. PHPs must make reasonable efforts to obtain the necessary information during that 14day period. However, the PHP may use an additional 14 days to obtain follow-up information, if the PHP justifies (to the Division upon request) the need for additional information and how the delay is in the interest of the Division member. The PHP shall make a determination as the Division member's health condition requires, but no later than the expiration of the extension.

(b) Claims payment:

(A) PHPs shall have written procedures for processing claims submitted for payment from any source. The procedures shall specify time frames for:

(i) Date stamping claims when received;

(ii) Determining within a specific number of days from receipt whether a claim is valid or non-valid;

(iii) The specific number of days allowed for follow up of pended claims to obtain additional information;

(iv) The specific number of days following receipt of additional information that a determination must be made; and

(v) Sending notice of the decision with appeal rights to the Division member when the determination is made to deny the claim.

(B) PHPs shall pay or deny at least 90% of valid claims within 45 calendar days of receipt and at least 99% of valid claims within 60 calendars days of receipt. PHPs shall make an initial determination on 99% of all claims submitted within 60 calendar days of receipt;

(C) PHPs shall provide written notification of PHP determinations when such determinations result in a denial of payment for services, for which the Division member

may be financially responsible. Such notice shall be provided to the Division member and the treating provider within 14 calendar days of the final determination. The notice to the Division member shall be a Division or AMH approved notice format and shall include information on the PHPs internal appeals process, and the Notice of Hearing Rights (DMAP 3030) shall be attached. The notice to the provider shall include the reason for the denial;

(D) PHPs shall not require providers to delay billing to the PHP;

(E) PHPs shall not require Medicare be billed as the primary insurer for services or items not covered by Medicare, nor require non-Medicare approved providers to bill Medicare;

(F) PHPs shall not deny payment of valid claims when the potential TPR is based only on a diagnosis, and no potential TPR has been documented in the Division member's clinical record;

(G) PHPs shall not delay nor deny payments because a co-payment was not collected at the time of service.

(c) FCHPs, PCOs, and MHOs are responsible for payment of Medicare coinsurances and deductibles up to the Medicare or PHP's allowable for covered services the Division member receives within the PHP, for authorized referral care, and for urgent care services or emergency services the Division member receives from nonparticipating providers (see definition). FCHPs, PCOs, and MHOs are not responsible for Medicare coinsurances and deductibles for non-urgent or non-emergent care Division members receive from nonparticipating providers;

(d) FCHPs and PCOs shall pay transportation, meals and lodging costs for the Division member and any required attendant for out-ofstate services (as defined in General Rules, chapter 410, division 120) that the FCHP and PCO has arranged and authorized when those services are available within the state, unless otherwise approved by the Division;

(e) PHPs shall be responsible for payment of covered services (see definition) provided by a non-participating provider which was not pre-authorized if the following conditions exist:

(A) It can be verified that the participating provider (see definition) ordered or directed the covered services to be delivered by a nonparticipating provider; and

(B) The covered service was delivered in good faith without the pre-authorization; and

(C) It was a covered service that would have been pre-authorized with a participating provider if the PHP's referral protocols had been followed;

(D) The PHP shall be responsible for payment to non-participating providers (providers enrolled with the Division that do not have a contract with the PHP) for covered services that are subject to reimbursement from the PHP, the amount specified in OAR 410-1201295. This rule does not apply to providers that are Type A or Type B hospitals, as they are paid in accordance with ORS 414.727.

(E) PHP shall reimburse hospital for services provided on or after January 1, 2012 using Medicare Severity DRG for inpatient services and Ambulatory Payment Classification (APC) for outpatient services or other alternative payment methods per Oregon Senate Bill 204 (2011) which incorporates the most recent Medicare payment methodologies for both inpatient and outpatient services established by the Centers for Medicare and Medicaid Services for hospital services; and alternative payment methodologies, including but not limited to pay-for-performance, bundled payments and capitation. An alternative payment methodology does not include reimbursement payment based on percentage of billed charges. This requirement does not apply to type A or type B hospitals as referenced in ORS 442.470. PHP shall attest annually to OHA, in a manner to be prescribed, to PHP's compliance with section 3, 4, 6 and 8 of Oregon Senate Bill 204 (2011).

(7) Other services:

(a) Division members enrolled with PHPs may receive certain services on a Division FFS basis. Such services are referred to as non-capitated services (see definition);

(b) Certain services must be authorized by the PHP or the Community Mental Health Program (CMHP) for some mental health services, even though such services are then paid by the Division on a Division FFS basis. Before providing services, providers should verify a Division member's eligibility via the web portal or AVR. For some mental health services, providers will need to contact the CMHP directly. In addition, the provider may call the PHP to obtain information about coverage for a particular service or pre-authorization requirements;

(c) Services authorized by the PHP or CMHP are subject to the rules and limitations of the appropriate Division administrative rules and supplemental information, including rates and billing instructions;

(d) Providers shall bill the Division directly for non-capitated services in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(e) The Division shall pay at the Medicaid FFS rate in effect on the date the service is provided subject to the rules and limitations described in the relevant rules, contracts, billing instructions and Division administrative rules and supplemental information;

(f) The Division shall not pay a provider for provision of services for which a PHP has received a capitation payment unless otherwise provided for in OAR 410-141-0120;

(g) When an item or service is included in the rate paid to a medical institution, a residential facility or foster home, provision of that item or service is not the responsibility of the Division, AMH, nor a PHP except as provided for in Division administrative rules and supplemental information (e.g., capitated services that are not included in the nursing facility all-inclusive rate);

(h) FCHPs and PCOs that contract with FQHCs and RHCs shall negotiate a rate of reimbursement that is not less than the level and amount of payment which the FCHP or PCO would make for the same service(s) furnished by a provider, who is not an FQHC nor RHC, consistent with the requirements of BBA 4712(b)(2).

(8) Coverage of services through the Oregon Health Plan Benefit Package of covered services is limited by OAR 410-141-0500, excluded services and limitations for OHP clients.

(9) OHP clients who are enrolled with a PCM receive services on a FFS basis:

(a) PCMs are paid a per client-per month payment to provide Primary Care Management Services, in accordance with OAR 410-141-0410, Primary Care Manager Medical Management;

(b) PCMs provide primary care access, and management services for preventive services, primary care services, referrals for specialty services, limited inpatient hospital services and outpatient hospital services. The Division payment for these PCM managed services is contingent upon PCCM authorization;

(c) All PCM managed services are covered services that shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(d) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(10) All OHP clients who are enrolled with a PCO receive inpatient hospital services on a Division FFS basis:

(a) May receive services directly from any appropriately enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with FFS billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

(11) OHP clients who are not enrolled with a PHP receive services on a Division FFS basis:

(a) Services may be received directly from any appropriate enrolled Division provider;

(b) All services shall be billed directly to the Division in accordance with billing instructions contained in the Division administrative rules and supplemental information;

(c) The Division shall pay at the Division FFS rate in effect on the date the service is provided subject to the rules and limitations described in the appropriate Division administrative rules and supplemental information.

Stat. Auth.: ORS 413.042 and 414.065

Other Authority: Senate Bill 204

Stats. Implemented: 414.065

410-141-0440 Prepaid Health Plan Hospital Contract Dispute Resolution

When there is a failure to reach agreement on a contract between a Fully Capitated Health Plan (FCHP) or a Physician Care Organization (PCO) and a non Type A, Type B, or Critical Access hospital, the two disagreeing parties must engage in non-binding mediation. This requirement to engage in non-binding mediation does not apply to disagreements involving emergency or urgent services as defined in Oregon Health Plan administrative rules. The hospital, FCHP, and the PCO can call for mediation. If the parties agree on a mediator their selection shall stand. If a mediator cannot be mutually agreed on, the State will make the selection from the recommended names forwarded by each party. The cost of mediation will be evenly split between the FCHP or PCO and the hospital.

(1) The mediation will proceed under the following guidelines:

(a) Access to care for Oregon Health Plan members is of critical importance;

(b) Any agreement must operate within the capitation rate received by the FCHP or PCO;

(c) Reimbursement levels must bear some relationship to the cost of the services;

(d) Consideration shall be given to the efforts of each part to manage the overall utilization of health care resources and control costs;

(e) A comparison to statewide averages of each party's cost of services, service utilization rates and administrative costs may be considered in reaching a mediation recommendation.

(2) No client medical information, communication between parties, or any other non public information used in the mediation may be disclosed to any person not a party to the mediation. All such information shall not be admissible nor disclosed in any subsequent administrative, judicial or mediation proceeding.

(3) Within thirty (30) days of the conclusion of the mediation, the mediator will issue a report to the State and to the involved parties that will include mediation findings, and recommendations. All confidential information will be excluded from the mediator's report.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

410-141-0480 Oregon Health Plan Benefit Package of Covered Services

(1) Division members are eligible to receive, subject to Section (11) of this rule, those treatments for the condition/treatment pairs funded on the Oregon Health Services Commission's Prioritized List of Health Services adopted under OAR 410-141-0520 when such treatments are medically or dentally appropriate, except that services must also meet the prudent layperson standard defined in OAR 410-141-0140. Refer to 410-141-0520 for funded line coverage information.

(2) Medical Assistance Benefit Packages follow practice guidelines adopted by the Health Services Commission (HSC) in conjunction with the Prioritized List of Health Services unless otherwise specified in rule.

(3) Diagnostic services that are necessary and reasonable to diagnose the presenting condition of the Division member are covered services, regardless of the placement of the condition on the Prioritized List of Health Services.

(4) Comfort care is a covered service for a Division member with a terminal illness.

(5) Preventive Services promoting health and/or reducing the risk of disease or illness are covered services for Division members. Such services include, but are not limited to, periodic medical and dental exams based on age, sex and other risk factors; screening tests; immunizations; and counseling regarding behavioral risk factors, (See Prioritized List of Health Services, adopted in OAR 410-141-0520).

(6) Ancillary services are covered, subject to the service limitations of the OHP Program rules, when the services are medically or dentally appropriate for the treatment of a covered condition/treatment pair, or the provision of ancillary services will enable the Division member to retain or attain the capability for independence or self-care.

(7) The provision of chemical dependency services must be in compliance with the Addictions and Mental Health Division (AMH) administrative rules, OAR 415-020-0000 to 0090 and 415-051-0000 to 0130 and the requirements in the Chemical Dependency subsection of the Statement of Work in the Fully Capitated Health Plan and Physician Care Organization contracts.

(8) In addition to the coverage available under section (1) of this rule, a Division member may be eligible to receive, subject to section (11), services for treatments that are below the funded line or not otherwise excluded from coverage:

(a) Services can be provided if it can be shown that:

(A) The OHP client has a funded condition for which documented clinical evidence shows that the funded treatments are not working or are contraindicated; and

(B) Concurrently has a medically related unfunded condition that is causing or exacerbating the funded condition; and

(C) Treating the unfunded medically related condition would significantly improve the outcome of treating the funded condition;

(D) Ancillary Services that are excluded and other services that are excluded are not subject to consideration under this rule;

(E) Any unfunded or funded co-morbid conditions or disabilities must be represented by an ICD-9-CM diagnosis code or when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity; and

(F) In order for the treatment to be covered, there must be a medical determination and finding by the Division for fee-for-service OHP clients or a finding by the Prepaid Health Plan (PHP) for DMAP members that the terms of section (a)(A)-(C) of this rule have been met based upon the applicable:

(i) Treating physician opinion;

(ii) Medical research;

(iii) Community standards; and

(iv) Current peer review.

(b) Before denying treatment for an unfunded condition for any Division member, especially a Division member with a disability or with a co-morbid condition, providers must determine whether the Division member has a funded condition/treatment pair that would entitle the Division member to treatment under the program and both the funded and unfunded conditions must be represented by an ICD- 9-CM diagnosis code; or, when the condition is a mental disorder, represented by DSM-IV diagnosis coding to the highest level of axis specificity.

(9) The Division shall maintain a telephone information line for the purpose of providing assistance to Practitioners in determining coverage under the Oregon Health Plan Benefit Package of Covered Services. The telephone information line shall be staffed by registered nurses who shall be available during regular business hours. If an emergency need arises outside of regular business hours, the Division shall make a retrospective determination under this subsection, provided the Division is notified of the emergency situation during the next business day. If the Divisioin denies a requested service, the Division shall provide written notification and a notice of the right to an administrative hearing to both the OHP client and the treating physician within five working days of making the decision.

(10) If a condition/treatment pair is not on the Health Services Commission's Prioritized List of Health Services and the Division determines the condition/treatment pair has not been identified by the Commission for inclusion on the list, the Division shall make a coverage decision in consultation with the Health Services Commission.

(11) Coverage of services available through the Oregon Health Plan Benefit Package of Covered Services is limited by OAR 410-1410500, Excluded Services and Limitations for Oregon Health Plan clients.

(12) General anesthesia for dental procedures which are medically and/or dentally appropriate to be performed in a hospital or ambulatory surgical setting, is to be used only for those Division members as detailed in OAR 410-123-1490.

Stat. Auth.: ORS 409.050

Stats. Implemented: 414.065

410-141-0500 Excluded Services and Limitations for Oregon Health Plan Clients and or DMAP Members

(1) The following services are excluded:

(a) Any service or item identified in OAR 410-120-1200 and 410-120-1210, Excluded Services and Limitations. Services that are excluded under the Oregon Medical Assistance program shall be excluded under the Oregon Health Plan;

(b) Any service or item identified in the appropriate provider guides as a non-covered service, unless the service is identified as specifically covered under the Oregon Health Plan administrative rules;

(c) Any treatment, service, or item for a condition that is not included on the funded lines of the Prioritized List of Health Services except as specified in OAR 410-141-0480, OHP Benefit Package of Covered Services, subsection (8);

(d) Services that are currently funded on the Prioritized List of Health Services that are not included in the OHP client's and/or Division of Medical Assistance Programs (Division) member's OHP benefit package, are excluded;

(e) Any treatment, service, or item for a condition which is listed as a condition/treatment pair in both currently funded and non-funded lines where the qualifying description of the diagnosis appears only on the non-funded lines of the Prioritized list of Health Services, except as specified in OAR 410-141-0480, OHP Benefit Package of Covered Services, subsection (8);

(f) Diagnostic services not reasonably necessary to establish a diagnosis for a covered or non-covered condition/ treatment pair;

(g) Services requested by Oregon Health Plan (OHP) clients and/or Division member's in an emergency care setting which after a screening examination are determined not to meet the definition of emergency services and the provisions of 410-141-0140;

(h) Services provided to an Oregon Health Plan client and/or Division member outside the territorial limits of the United States, except in those instances in which the country operates a Medical Assistance (Title XIX) Program;

(i) Services or items, other than inpatient care, provided to an Oregon Health Plan client and/or Division member who is in the custody of a law enforcement agency or an inmate of a non-medical public institution, including juveniles in detention facilities, per OAR 410-141-0080(2)(b)(G);

(j) Services received while the Division member is outside the contractor's service area that were either:

(A) Not authorized by the Division member's Primary Care Provider; or

(B) Not urgent or emergency services, subject to the Division member's appeal rights, that the Division member was outside contractor's service area because of circumstances beyond the Division member's control. Factors to be considered include but are not limited to death of a family member outside of contractor's service area.

(2) The following services are limited or restricted:

(a) Any service which exceeds those that are medically appropriate to provide reasonable diagnosis and treatment or to enable the Oregon Health Plan client to attain or retain the capability for independence or self-care. Included would be those services which upon medical review, provide only minimal benefit in treatment or information to aid in a diagnosis;

(b) Diagnostic services not reasonably required to diagnose a presenting problem, whether or not the resulting diagnosis and indicated treatment are on the currently funded lines under the Oregon Health Plan Prioritized List of Health Services;

(c) Services that are limited under the Oregon Medical Assistance program as identified in OAR 410-120-1200 and 410-120-1210, Excluded Services and Limitations. Services that are limited under the Oregon Medical Assistance program shall be limited under the Oregon Health Plan.

(3) In the case of non-covered condition/treatment pairs, providers shall ensure that Oregon Health Plan clients are informed of:

(a) Clinically appropriate treatment that may exist, whether covered or not;

(b) Community resources that may be willing to provide non-covered services;

(c) Future health indicators that would warrant a repeat diagnostic visit.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

410-141-0520 Prioritized List of Health Services

(1) Effective Jan. 1, 2012, per HB 2100 (2010 Oregon Legislative Assembly), the Oregon Health Services Commission (HSC) was abolished and the new Health Evidenced Review Commission (HERC) shall assume responsibility for the former HSC's Prioritized List of Health Services (Prioritized List). The Prioritized List is the listing of physical and mental health services with "expanded definitions" of preventive services and the practice guidelines, as presented to the Oregon Legislative Assembly. The Prioritized List is generated and maintained by HERC. The HERC maintains the most current list on their website: www.oregon.gov/OHA/OHPR/HERC/Current-Prioritized-List.shtml, or for a hardcopy contact the Division of Medical Assistance Programs.

This rule incorporates by reference the Centers for Medicare and Medicaid Services (CMS) approved biennial January 1, 2011– December 31, 2012 Prioritized List, including January 1, 2012 modifications and technical revisions, expanded definitions, practice guidelines and condition treatment pairs funded through line498.

(2) Certain mental health services are only covered for payment when provided by a Mental Health Organization (MHO), Community Mental Health Program (CMHP) or authorized Fully Capitated Health Plan (FCHP) or Physician Care Organization (PCO).

(3) Chemical dependency (CD) services are covered for eligible OHP clients when provided by an FCHP, PCO, or by a provider who has a letter of approval from the Addictions and Mental Health Division and approval to bill Medicaid for CD services.

Stat. Auth.: ORS 192.527, 192.528, 413.042 & 414.065

Other: HB 2100

Stats. Implemented: ORS 192.527, 192.528, 414.065 & 414.727

410-141-0660 Oregon Health Plan Primary Care Manager Provision of Health Care Services

Primary Care Managers shall ensure provision of medically appropriate covered services, including preventive services, in those categories of service included in the agreement with Division of Medical Assistance Programs (Division):

(1) Each Primary Care Manager shall provide primary care, including preventive services.

(2) Primary Care Managers shall ensure that PCM members have the same access to the Primary Care Manager PCM referral practitioners that is available to non-Division patients.

(3) Primary Care Managers shall provide primary care to the PCM members and arrange, coordinate, and monitor other PCM managed services for the PCM member on an ongoing basis.

(4) Primary Care Managers shall ensure that professional and related health services provided by the Primary Care Manager or arranged through referral by the Primary Care Manager to another provider are noted in the PCM member's clinical record.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0700 OHP PCM Continuity of Care

(1) Primary Care Managers shall ensure the provision of PCM Managed Services for all PCM members and note in the PCM member's medical record referrals made by the Primary Care Manager to other providers for covered services:

(a) Primary Care Managers shall maintain a network of consultation and referral providers for all PCM Managed Services covered by the Primary Care Manager's agreement with Division of Medical Assistance Programs (Division). Primary Care Managers shall establish and follow procedures for referrals;

(b) Primary Care Managers shall have policies and procedures for the use of urgent care centers and emergency rooms. Primary Care Managers shall ensure that services provided in these alternative settings are documented and incorporated into the PCM member's medical record;

(c) Primary Care Managers shall have procedures for referrals that ensure adequate notice to referral providers and adequate documentation of the referral in the PCM member's medical record;

(d) Primary Care Managers shall personally take responsibility for, or designate a staff member who is responsible for, arrangement, coordination and monitoring of the Primary Care Manager's referral system;

(e) Primary Care Managers shall have procedures that ensure that relevant medical information is obtained from referral providers. These procedures shall include:

(A) Review of information by the Primary Care Manager;

(B) Entry of information into the PCM member's medical record;

(C) Arrangements for periodic reports from ongoing referral appointments; and

(f) Primary Care Managers shall have procedures to orient and train their staff/practitioners in the appropriate use of the Primary Care Manager's referral system. Procedures and education shall ensure use of appropriate settings of care;

(g) Primary Care Managers shall have procedures for processing all referrals made by telephone, whether during or after hours of operation, as a regular referral (e.g., referral form completed, information entered into PCM member's medical record, information requested from referral source);

(h) Primary Care Managers shall have procedures which ensure that an appropriate health professional will respond to calls from other providers requesting approval to provide care to PCM members who have not been referred to them by the Primary Care Manager;

(i) Primary Care Managers shall enter medical information from approved emergency visits into the PCM member's medical record;

(j) If a PCM member is hospitalized, Primary Care Managers shall ensure that:

(A) A notation is made in the PCM member's medical record of the reason, date, and expected duration of hospitalization;

(B) A notation is made in the PCM member's medical record upon discharge of the actual duration of hospitalization and follow-up plans, including appointments for practitioner visits; and

(C) Pertinent reports from the hospitalization are entered in the PCM member's medical record. Such reports shall include the reports of consulting practitioners and shall document discharge planning.

(k) Primary Care Managers shall have written policies and procedures that ensure maintenance of a record keeping system adequate to document all aspects of the referral process and to facilitate the flow of information to the PCM member's medical record.

(2) For PCM members living in residential facilities or homes providing ongoing care, Primary Care Managers shall either provide the PCM member's primary care or make provisions for the care to be delivered by the facility's "house doctor" for PCM members who cannot be seen in the Primary Care Manager's office.

(D) Monitoring of all referrals, where appropriate, to ensure that information is obtained from the referral providers.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0720 Oregon Health Plan Primary Care Manager Medical Record Keeping

Primary Care Manager shall ensure maintenance of a medical record keeping system adequate to fully disclose and document the medical condition of the PCM member and the extent of covered services and/or PCM Case managed services received by PCM members from the Primary Care Manager or the Primary Care Manager referral provider.

(1) Primary Care Manager shall ensure maintenance of a medical record for each PCM member that documents all types of care delivered whether during or after office hours.

(2) The medical record shall include data that forms the basis of the diagnostic impression or the PCM member's chief complaint sufficient to justify any further diagnostic procedures, treatments, recommendations for return visits, and referrals. The medical record shall also include:

(a) PCM member's name, date of birth, sex, address, phone number;

(b) Next of kin, sponsor, or responsible party; and

(c) Medical history, including baseline data, and preventive care risk assessment.

(3) The medical record shall include, for each PCM member encounter, as much of the following data as applicable:

(a) Date of service;

(b) Name and title of person performing the service;

(c) Pertinent findings on examination and diagnosis;

(d) Medications administered and prescribed;

(e) Referrals and results of referrals;

(f) Description of treatment;

(g) Recommendations for additional treatments or consultations;

(h) Medical goods or supplies dispensed or prescribed;

(i) Tests ordered or performed and results;

(j) Health education and medical social services provided; and

(k) Hospitalization order and discharge summaries for each hospitalization.

(4) Primary Care Managers shall have written procedures that ensure maintenance of a medical record keeping system that conforms with professional medical practice, permits internal and external medical audit, permits claim review, and facilitates an adequate system for follow-up treatment. All member medical records shall be maintained for at least four years after the date of medical services for which claims are made or for such length of time as may be dictated by the generally accepted standards for record keeping within the applicable provider type, whichever time period is longer.

(5) Primary Care Managers shall have written procedures that ensure the maintenance and confidentiality of medical record information and may release such information only to the extent permitted by the Primary Care Manager's agreement with the Division of Medical Assistance Programs (Division), by federal regulation 42 CFR 431 Subpart F and by Oregon Revised Statutes. Primary Care Managers shall ensure that confidentiality of PCM members' medical records and other medical information is maintained as required by state law, including ORS 433.045(3) with respect to HIV test information.

(6) Primary Care Managers shall cooperate with Division representatives for the purposes of audits, inspection and examination of PCM member medical records.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0740 Oregon Health Plan Primary Care Manager Quality Assurance System

(1) Primary Care Managers (PCM) shall provide services that are in accordance with accepted medical practices and with accepted professional standards:

(a) Primary Care Managers shall establish procedures and protocols for assessing quality of PCM member care:

(A) Primary Care Managers shall establish procedures for response to PCCM member complaints as outlined in OAR 410-141-0780, Primary Care Manager Complaint Procedures;

(B) Primary Care Managers shall establish or adopt criteria for adequate medical care for PCM members and shall review care received by the PCM member against these criteria. These criteria shall include those conditions and treatments identified by the Division and the Division of Additions and Mental Health (AMH) sponsored statewide quality assurance committee as in need of study, review, or improvement;

(C) Primary Care Managers may use the services of a local medical society, other professional societies, quality assurance organizations, or professional review organizations approved by the Secretary of the U.S. the Department, to assist in reviewing criteria and protocols for the adequate medical care of PCM members.

(b) Primary Care Managers are expected to maintain and improve professional competencies, when needed, in order to provide quality care to PCM members.

(2) The Division/AMH conducts continuous and periodic reviews of enrollment and disenrollment, service utilization, quality of care, PCM member satisfaction, PCM member medical outcomes for specific tracer conditions, accessibility, complaints, PCM member rights and other indicators of quality of care:

(a) The Division/AMH contracts with an external medical review organization to monitor the treatment of specific conditions against national standards for treatment of those conditions. These tracer conditions may include, but are not limited to, asthma, anemia, diabetes, hypertension, pelvic inflammatory disease, teen pregnancy, toxemia, hypertension and diabetes in pregnancy;

(b) The Division/AMH evaluates the management of adult and child preventive services through external medical review and through its research and evaluation program. These services are evaluated using national and state criteria, including criteria for mental health and chemical dependency screenings.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0760 Oregon Health Plan Primary Care Managers Accessibility

(1) Primary Care Managers shall have written procedures which ensure that primary care, including preventive services, is accessible to PCM members.

(2) The Primary Care Managers shall not discriminate between PCM members and non-PCM member patients as it relates to benefits to which they are both entitled.

(3) Primary Care Managers shall have procedures for scheduling of PCM member appointments which are appropriate to the reasons for the visit (e.g., PCM members with non-emergency needs; PCM members with persistent symptoms; PCM member routine visits; new PCM member initial assessment).

(4) Primary Care Managers are encouraged to establish a relationship with new PCM members.

(5) Under normal circumstances, Primary Care Managers shall ensure that PCM members are not kept waiting longer than non-PCM member patients.

(6) Primary Care Managers shall have procedures for following up of failed appointments, including rescheduling of appointments, as deemed medically appropriate, and documentation in the PCM member medical record of broken appointments and recall efforts.

(7) Primary Care Managers shall have procedures to ensure the provision of triage of walk-in PCM members with urgent non-emergency medical need.

(8) When not an emergency, walk-in PCM members should either be scheduled for an appointment as medically appropriate or be seen within two hours.

(9) Primary Care Managers shall have procedures that ensure the maintenance of telephone coverage (not a recording) at all times either on-site or through call sharing or an answering service, unless the Division of Medical Assistance Programs (Division) waives this requirement in writing because of the Primary Care Manager's submission of an alternative plan that will provide equal or improved telephone access.

(10) Primary Care Managers shall ensure that the persons responding to telephone calls enter relevant information into the PCM member's medical record.

(11) Primary Care Managers shall ensure a response to each telephone call within a reasonable length of time. The length of time shall be appropriate to the PCM member's stated condition.

(12) Primary Care Managers shall have procedures that ensure that all persons answering the telephone have sufficient communication skills to reassure PCM members and encourage them to wait for a return call in appropriate situations.

(13) Primary Care Managers are expected to have a plan to access qualified interpreters who can interpret in the primary language of each substantial population of non-English speaking PCM members. The plan shall address the provision of interpreter services by phone and in person. Such interpreters must be capable of communicating in English and the primary language of the PCM members and be able to translate medical information effectively. A substantial population is 35 non-English speaking households, enrolled with the Primary Care Manager, which have the same language. A non-English speaking household is a household that does not have an adult PCM member who is capable of communicating in English.

(14) Primary Care Managers shall provide education on the use of services, including Urgent Care Services and Emergency Services. The Division may provide Primary Care Managers with appropriate written information on the use of services in the primary language of each substantial population of non-English speaking PCM members enrolled with the Primary Care Manager.

(15) Primary Care Managers shall ensure that when a Medical Practitioner does not respond to a telephone call, there are written protocols specifying when a practitioner must be consulted and if medically appropriate, all such calls shall be forwarded to the on-call medical practitioner.

(16) Primary Care Managers shall have adequate practitioner backup as an operative element of the Primary Care Manager's after-hours care. Should the Primary Care Manager be unable to act as PCM for the PCM member, the Primary Care Manager shall designate a substitute Primary Care Manager.

(17) Primary Care Managers shall ensure compliance with requirements of the Americans with Disabilities Act of 1990.

(18) Primary Care Managers shall ensure that services, facilities and personnel are prepared to meet the special needs of visually and hearing impaired PCM members.

(19) Primary Care Managers shall arrange for services to be provided by referral providers when the Primary Care Manager does not have the capability to serve specific disabled populations.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0780 Oregon Health Plan Primary Care Manager Complaint Procedures

(1) PCMs shall have procedures for accepting, processing and responding to all complaints from PCM members or their representatives:

(a) PCMs shall have procedures for resolving all complaints. PCMs shall afford PCM members the full use of the procedures, and shall cooperate if the PCM member decides to pursue a remedy through the Division of Medical Assistance Programs (Division) hearing process. Complaints are defined in OAR 410-141-0000, Definitions;

(b) PCMs shall designate PCM staff member or staff members who shall be responsible for receiving, processing, directing, and responding to complaints;

(c) PCMs shall ensure that all information concerning a PCM member's complaint is kept confidential except that the Division has a right to this information without a signed authorization for release of medical information from the PCM member. If a PCM member makes a complaint or files a hearing request, the PCM may ask the PCM member to sign an authorization for release of medical information to those persons and to the extent necessary to resolve the complaint or hearing request. The PCM shall inform the PCM member that failure to sign an authorization for release of medical information may make it impossible to resolve the complaint or hearing request;

(d) PCMs shall have procedures for informing PCM members orally and in writing about complaint procedures, which shall include the following:

(A) Written material describing the complaint process; and

(B) Assurance in all written and posted material of PCM member confidentiality in the complaint process;

(C) Upon request, Division of Medical Assistance Programs shall provide PCMs with standard materials for tracking and documenting PCM member complaints.

(e) PCMs shall have procedures for the receipt, disposition and documentation of all Complaints from PCM members PCMs shall make available copies of the complaint forms (DMAP 3001). PCM members may register a complaint in the following manner. complaints: A PCM member may relate any incident or concern to the PCM or other staff person by stating this is a complaint:

(A) If the PCM member indicates dissatisfaction, the PCM or staff person shall advise the PCM member that he or she may make a complaint;

(B) A staff person shall direct the PCM member to the PCMs staff person designated for receiving complaints;

(C) A PCM member may choose to utilize the PCM's internal complaint procedure in addition to or in lieu of a Division hearing. If a PCM member makes a complaint to the PCM staff person designated for receiving complaints, the staff person shall notify the PCM member that the PCM member has the right to enter a written complaint with the PCM or may attempt to resolve the complaint orally;

(D) Complaints concerning denial of service or service coverage shall be handled as described in subsection (1)(h) of this section in addition to procedures for oral or written complaints;

(E) All Complaints made to the PCM staff person designated to receive complaints shall be entered into a log. The log shall identify the PCM member, the date of the complaint, the nature of the complaint, the resolution and the date of resolution;

(F) If the PCM denies a service or service coverage, the PCM shall notify the PCM member of the right to a hearing.

(f) Oral complaints:

(A) If the PCM member chooses to pursue the complaint orally through the PCM's internal complaint procedure, the PCM shall within five working days from the date the oral complaint was received by the PCM either:

(i) Make a decision on the complaint; or

(ii) Notify the PCM member in writing that a delay in the PCM's decision of up to 30 calendar days from the date the oral complaint was received by the PCM is necessary to resolve the complaint. The PCM shall specify the reasons the additional time is necessary.

(B) The PCM's decision shall be communicated to the PCM member orally or in writing no later than 30 calendar days from the date of receipt of the complaint. A written decision shall have both the Notice of Hearing Rights (DMAP 3030) and the complaint form (DMAP 3001) attached. An oral communication shall include informing the PCM member of their right to a hearing;

(C) If the PCM member indicates dissatisfaction with the decision, the PCM shall notify the PCM member that the PCM member may pursue the complaint further with a Division hearing.

(g) Written complaints: If the PCM member files a written complaint with the PCM, which does not concern denial of service or service coverage, the following procedures apply:

(A) The complaint shall be reviewed, investigated, considered or heard by the PCM;

(B) A written decision shall be made on a PCM member's written complaint. The decision shall be sent to the PCM member no later than 30 calendar days from the date of receipt of the written complaint, unless further time is needed for the receipt of information requested from or submitted by the PCM member. If the PCM member fails to provide the requested information within 30 calendar days of the request by the PCM, or another mutually agreed upon time-frame, the complaint may be resolved against the PCM member. The decision on the complaint shall review each element of the PCM member 's complaint and address each of those concerns specifically;

(C) The PCM's decision shall have the Notice of Hearing Rights (DMAP 3030) attached.

(h) Complaints concerning denial of service or service coverage: If a complaint made to the PCM staff person designated to receive complaints concerns a denial of service or a service coverage decision, the following procedures apply in addition to the regular complaint procedures. The PCM staff person shall notify the PCM member in writing of the decision which denied the service or coverage within five working days. The decision letter shall include at least the following elements:

(A) The service requested;

(B) A statement of service denial;

(C) The basis for the denial;

(D) A statement that the PCM member has a right to request a Division hearing, and that in order to request such a hearing the PCM member must submit a Fair Hearing Request form (CAF 443) to the PCM member's Department office within 45 calendar days of the date of the PCM's decision on an oral or written complaint concerning denial of service or service coverage;

(E) A statement that a Division hearing request may be made in addition to or instead of using the PCM's complaint procedure;

(F) A copy of the Notice of Hearing Rights (DMAP 3030) and Fair Hearing Request (CAF 443) shall be attached.

(i) PCM member use of PCM complaint procedure with request for hearing:

(A) If the PCM member chooses to use the PCM's complaint procedure as well as the Division hearing process, the PCM shall ensure that either the complaint procedure is completed prior to the date on which the Division hearing is scheduled or obtain the written consent of the PCM member to postpone the Division hearing. If the PCM member consents to a postponement of the Division hearing, the PCM shall immediately send such written consent to the Division and to the local Department office;

(B) The PCM staff person shall encourage the PCM member to use the PCM's complaint procedure first, but shall not discourage the PCM member from requesting a Division hearing;

(C) If the PCM member files a request for a Division hearing, the Division shall immediately notify the PCM. The Division hearing process cannot be delayed without the PCM member's consent;

(D) The PCM staff person shall begin the process of establishing the facts concerning the complaint upon receipt of the complaint regardless of whether the PCM member seeks a Division hearing or elects the complaint process, or both;

(E) If a Division hearing is requested by a PCM member, PCM shall cooperate in the hearing process and shall make available, as determined necessary by the hearings officer, all persons with relevant information and all pertinent files and medical records.

(j) Should a PCM member feel that his or her medical problem cannot wait for the normal PCM review process, including the PCM's final resolution, at the PCM member's request, the PCM shall submit documentation to the Division’s Medical Director within, as nearly as possible, two working days for decision as to the necessity of an expedited Division hearing. The Division’s Medical Director shall decide within, as nearly as possible, two working days if that PCM member is entitled to an expedited Division hearing.

(2) The PCM's documentation shall include the log of complaints, a file of written complaints and records or their review or investigation and resolution. Files of complaints shall be maintained for a minimum of two calendar years from date of resolution.

(3) PCMs shall review and analyze all complaints.

(4) PCMs shall comply with and fully implement the Division hearing decision. Neither implementation of a Division hearing decision nor a PCM member's request for a hearing may be a basis for a request by the PCM for disenrollment of a PCM member.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0800 Oregon Health Plan Primary Care Manager Informational Requirements

(1) The Division of Medical Assistance Programs (Division) shall provide basic models of informational materials which PCMs may adapt for PCM members' use.

(2) PCMs shall ensure that all of their staff who have contact with potential PCM members are fully informed of the PCM and Division policies, including enrollment, disenrollment and complaint policies.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0820 Oregon Health Plan Primary Care Manager Member Education

PCMs shall have an ongoing process of PCM member education and information sharing which includes orientation to the PCM, health education and appropriate use of emergency facilities and urgent care:

(1) The Division of Medical Assistance Programs (Division) shall provide basic information about the use of PCM services in a PCM Member Handbook;

(2) PCMs shall provide new PCM members with written information sufficient for the PCM member to use the PCM's services appropriately. Written information shall contain, at a minimum, the following elements:

(a) Location and office hours of the PCM;

(b) Telephone number to call for more information;

(c) Use of the appointment system;

(d) Use of the referral system;

(e) How to access urgent care services and advice;

(f) Use of emergency services; and

(g) Information on the complaint process.

(3) PCMs shall have procedures and criteria for health education designed to prepare PCM members for their participation in and reaction to specific medical procedures, and to instruct PCM members in self-management of medical problems and in disease and accident prevention. Health education may be provided by the PCM, by any health Practitioner or by any other individual or program approved by the PCM. The PCM shall endeavor to provide health education in a culturally sensitive manner in order to communicate most effectively with individuals from non-dominant cultures;

(4) PCMs shall develop an educational plan for PCM members for health promotion, disease and accident prevention, and patient self-care. The Division may assist in developing materials that address specifically identified health education problems to the population in need.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.725

410-141-0840 Oregon Health Plan Primary Care Manager Member Rights And Responsibilities

(1) Primary Care Managers (PCM) shall ensure that PCM members are treated with the same privacy, dignity and respect as other patients who receive services from the Primary Care Managers.

(2) PCM members have both rights and responsibilities as follows:

(a) PCM members have the right to appropriate access to the Primary Care Manager. PCM members have the responsibility to keep appointments made with the Primary Care Manager;

(b) PCM members have the right to preventive services. PCM members have the responsibility to seek periodic health exams for children and adults based on medically appropriate guidelines for age, sex and risk factors;

(c) PCM members have the right to services necessary and reasonable to diagnose the presenting condition of the PCM member. PCM members have the responsibility to seek out diagnostic services from the Primary Care Manager except in an emergency.

(d) PCM members have the right to appropriate urgent care services; and emergency services. PCM members have the responsibility to use the Primary Care Manager whenever possible. PCM members have the responsibility to use urgent care services before emergency services whenever possible:

(A) PCM members have the right to written information on how to access emergency care and urgent care. PCM members have the responsibility to use emergency care appropriately. PCM members have the right to make a complaint if they believe that a request for payment for emergency services has been erroneously denied by the Primary Care Manager. PCM members may request a hearing before a Division of Medical Assistance Programs (Division) representative if their complaint is not acted on, to their satisfaction, by the Primary Care Manager;

(B) In addition to access to emergency care, PCM members have the right to the following triage services:

(i) A service which allows PCM members to access Primary Care Managed Services and contact the Primary Care Manager on a 24-hour, 7-day-a-week basis, when the PCM member requires urgent or emergency care;

(ii) To have the referral emergency room notified about the PCM member's presenting problem, and whether or not the Primary Care Manager will meet the PCM member there;

(iii) To have a health professional available to Triage urgent care and emergencies for PCM members during regular working hours. This service includes individuals who walk in for service or who telephone for assessment.

(e) PCM members have the right to access specialty practitioners with the Primary Care Manager's referral when their condition warrants a referral. PCM members have the responsibility to access specialty services through referral by the Primary Care Manager;

(f) PCM members have the right to maintenance of a medical record which documents the medical condition of the PCM member and the services received by the PCM member. The PCM member has the right of access to his or her own medical record and to request transfer of a copy of his or her own record to another provider when appropriate. PCM members have the responsibility to give accurate information for inclusion into the record and to request transfer of a copy of the record to a new provider when changing providers;

(g) PCM members have the right to medically appropriate covered services which meet generally accepted standards of practice. PCM members have the right to information about medical services which permits them to make an informed decision about proposed medical services. PCM members have the right to refuse any recommended services. PCM members have the responsibility to use the information to make informed decisions about services. PCM members have the responsibility to follow prescribed treatment plans, once the PCM member has agreed to the plan;

(h) PCM members have the right to execute a statement of their wishes for treatment, including the right to accept or refuse medical or surgical treatment and the right to execute directives and powers of attorney for health care. This right is established and must be adhered to in accordance with ORS 127 as amended by the Oregon Legislative Assembly 1993 and the OBRA 1990 -- Patient Self-Determination Act.

(3) PCM members have the right to medically appropriate services covered under the Oregon Health Plan. PCM members have the responsibility to inform medical providers of their coverage as PCM members prior to receiving services

(4) PCM members enrolled with Primary Care Managers or their representatives have the right to make complaints to Primary Care Managers and to request hearings through the Division hearings process. PCM members have the responsibility to attempt resolution of complaints with the Primary Care Manager and to sign a authorization for release of pertinent files and medical records.

Stat. Auth.: ORS 409.050

Stats. Implemented: ORS 414.065

410-141-0860 Oregon Health Plan Primary Care Manager and Patient Centered Primary Care Home Provider Qualification and Enrollment

(1) Primary Care Managers (PCM) must be trained and certified or licensed, as applicable under Oregon statutes and administrative rules, in one of the following disciplines:

(a) Doctors of medicine;

(b) Doctors of osteopathy;

(c) Naturopathic physicians;

(d) Nurse Practitioners;

(e) Physician assistants.

(2) The following entities may enroll as PCMs:

(a) Hospital primary care clinics;

(b) Rural Health Clinics (RHC);

(c) Community and Migrant Health Clinics;

(d) Federally Qualified Health Clinics (FQHC);

(e) Indian Health Service Clinics;

(f) Tribal Health Clinics.

(3) Naturopaths must have a written agreement with a physician that is sufficient to support the provision of primary care, including prescription drugs, as well as the necessary referrals for hospital care.

(4) All applicants for enrollment as PCMs must:

(a) Be enrolled as Oregon Division of Medical Assistance Programs (Division) providers;

(b) Make arrangements to ensure provision of the full range of PCM Managed Services, including prescription drugs and hospital admissions;

(c) Complete and sign the PCM Application (DMAP 3030 (7/11)).

(5) If the Division determines that the PCM or an applicant for enrollment as a PCM does not comply with the OHP administrative rules pertaining to the PCM program or

the Division's General Rules; or if the Division determines that the health or welfare of Division members may be adversely affected or in jeopardy by the PCM the Division may:

(a) Deny the application for enrollment as a PCM; (b) Close enrollment with an existing PCM; or

(c) Transfer the care of those PCM members enrolled with that PCM until such time as the Division determines that the PCM is in compliance.

(6) The Division may terminate the PCM agreement without prejudice to any obligations or liabilities of either party already accrued prior to termination, except when the obligations or liabilities result from the PCM's failure to terminate care for those PCM members. The PCM shall be solely responsible for its obligations or liabilities after the termination date when the obligations or liabilities result from the PCM's failure to terminate care for those PCM members.

(7) Patient Centered Primary Care Homes (PCPCH):

(a) Definition:

(A) PCPCH is defined as a health care team, provider or clinic that is organized in accordance with these rules and as stated in the Oregon Health Authority (Authority) and the Office of Health Policy and Research (Office) Oregon Patient-Centered Primary Care Home Model Implementation Reference Guide:

(B) The (PCPCH) must be able to identify patients with high risk environmental or medical factors, including patients with special health care needs, who will benefit from additional care planning. The PCPCH must coordinate the care of all members to ensure high-risk patients or patients with special health care needs have a person-centered plan that has been developed and reviewed with the patient or caregivers. Further care management activities must include, but are not limited to defining and following self-management goals, developing goals for preventive and chronic illness care, developing action plans for exacerbations of chronic illnesses, and developing end-of-life care plans when appropriate.

(C) Providers who may apply to become a PCPCH, include but are not limited to: physicians (including pediatricians, gynecologists, obstetricians, Certified Nurse Practitioner and Physician Assistants); clinical practices or clinical group practices; FQHCs; RHC; Tribal clinics; community health centers; community mental health programs; and drug and alcohol treatment programs with integrated Primary Care Providers.

(D) The PCPCH team is interdisciplinary and inter-professional and must include non-physician health care professionals, such as a nurse care coordinator, nutritionist, social worker, behavioral health professional, or other traditional or non-traditional health care

workers authorized through state plan or waiver authorities. These professionals may operate in a variety of ways, such as free standing, virtual, or based at any of the clinics and facilities outlined above.

(b) Provider Enrollment:

(A) PCPCHs that are recognized through the Authority and determined by the Office in accordance with OAR 409-055-0030 to meet PCPCH standards may apply to be enrolled with the Division as a PCPCH provider. Upon completion of enrollment and assignment of members, the Division shall enroll the PCPCH providers in the Medicare Medicaid Information System (MMIS) to pair them with members receiving primary care from the provider and the Division shall pay providers a PMPM payment, or the FCHP as applicable to provide PCPCH services.

(B) Providers seeking reimbursement from the Division, except as otherwise provided in OAR 410-120-1295 or 943-120-1295, must be enrolled as a provider in accordance with OAR 410-120-1260. Signing the provider agreement enclosed in the application package constitutes agreement by performing and billing providers to comply with all applicable Division provider rules, federal and state laws and regulations. This also includes provider enrollment forms 3972, 3973, 3974 and any other applicable forms determined by provider type.

(C) In addition to completing the PCPCH provider enrollment packet, the provider must submit to the Division a list of Medicaid fee-for-service (FFS) members in a format provided by the Division. Those PCPCH providers serving FCHP clients must submit the information as required to the managed care plan.

(D) New Authority-recognized PCPCH enrollment shall be effective October 1, 2011 or the date established by the Authority upon receipt of required information.

(E) Authority-recognized PCPCH tier enrollment changes shall be effective the first of the next month following enrollment.

(F) Termination of Authority-recognized PCPCH enrollment shall be the date established by the Authority.

(c) Member Assignment and Provider Payment:

(A) The Division shall authorize appropriate payments only after the Centers for Medicare and Medicaid Services approves implementation of the PCPCH Program. This provision only affects the initial start-up of the Medicaid portion of the PCPCH program.

(B) PCPCH PMPM payment shall be as specified in an addendum to the provider enrollment form between the Division and the PCPCH provider. The payment shall be

based on the tier of PCPCH and each member's status as either ACA-qualified or non-ACA qualified.

(C) Members assigned must have full medical eligibility with either Oregon Health Plan (OHP) Plus or OHP Standard Benefits packages, this excludes CAWEM Plus and QMB only.

(D) ACA-qualified member is a member meeting criteria described in these rules as authorized by Section 1945 of the Social Security Act.

(E) ACA members are:

(i) Members with one or more of the following conditions;

(ii) Members with a mental health condition, substance abuse disorder, asthma, diabetes, heart disease and BMI over 25, HIV/AIDS, hepatitis, chronic kidney disease or cancer;

(F) All other members are considered non-ACA-qualified members.

(G) For ACA qualified members, the PMPM amount of the payment shall be based on the PCPCH tier as determined by the Authority and the Office and shall be:

(i) $10 for tier 1

(ii $15 for tier 2 and

(iii) $24 for tier 3

(H) For non-ACA qualified members, the PMPM amount of the payment shall be based on the PCPCH tier as determined by the Authority and the Office and shall be:

(i) $2 for tier 1

(ii) $4 for tier 2 and

(iii) $6 for tier 3.

(I) The Division shall make PMPM payment based on PCPCH tier specified through the PCPCH recognition process and on the members ACA qualification who are receiving primary care from a provider recognized by the Authority as a PCPCH in accordance with OAR 409-055-0030. Fully Capitated Health Plans (FCHP) and Physician Care Organizations (PCO) shall make payments to PCPCH with ACA-qualified members enrolled in PCPCH receiving primary care from a provider recognized by the Authority as a PCPCH in accordance with OAR 409-055-0030.

(J) Managed Care plans must use an alternative payment methodology that supports the Authority's goal of improving the efficiency and quality of health services for primary care homes by decreasing the use of fee-forservice reimbursement models.

(K) It is the Authority's intention that the PCPCH Program will not duplicate other similar programs such as PCM and Disease Management, and the Authority shall not make PCPCH payments for members who participate in these programs.

(d) Documentation Requirements:

(A) Providers must document in member's medical record the member's engagement, education and agreement to participate in PCPCH within twelve months of initial participation.

(B) For ACA-qualified members, providers must document in member's patients medical record the members engagement, education and agreement to participate in PCPCH within six months of initial participation.

(C) Provider, working with the member, shall develop a person centered plan for each ACA-qualified member within six months of initial participation and revise as needed.

(D) Providers must notify the Division program coordinator when a member moves out of the service area, terminates care, or no longer receives primary care from the provider's PCPCH as stated in OAR 410-141-0080 and 410-141-0120. Member assignment shall be terminated at the end of the month for which PCPCH services terminated, unless a move to another PCPCH provider begins primary care no later than the 15th of month.

(E) FCHPs and PCOs shall provide the Division a monthly list of PCPCH providers and members assigned to each provider. Information from the FCHP shall specify ACA-qualifying members.

(F) FCHP and PCOs shall provide quarterly reports to the Authority, no later than the 15th of January, April, and July that includes the following for the preceding quarter:

(i) Number of clinics or sites that meet PCPCH standards;

(ii) Number of Primary Care Providers in those service delivery sites;

(iii) Number of members receiving primary care in those sites; and

(iv) Number of members with one or more chronic conditions receiving primary care at those sites.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.065 and 413.042

410-141-3000- Definitions

The Oregon Health Authority adopts and incorporates by reference the definitions in the following administrative rules and applies them to Health System Transformation and the use of Coordinated Care Organizations:

(1) OAR 309-012-0140, 309-016-0605, 309-032-0860, 309-032-1505, 309-033-0210, applicable to mental health services;

(2) OAR 410-120-0000, definitions of the Oregon Health Plan's General Rules; and

(3) OAR 410-141-0000, definitions of the Oregon Health Plan's rules generally applicable to prepaid managed health care organizations and coordinated care organizations.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3010 CCO Application, Certification, and Contracting Procedures

(1) The following definitions apply to this rule:

(a) Applicant means the entity submitting an application to be certified as a CCO or to enter into or amend a contract for coordinated care services;

(b) Application means an entity's written response to a Request for Application (RFA);

(c) Award date means the date on which the Authority acts on the applications by issuing or denying certification and by awarding or not awarding contracts;

(d) Certification means the Authority's determination that an entity meets the standards, set forth in the RFA, for being a CCO, through initial certification or recertification;

(e) Coordinated care services means fully integrated physical health services, chemical dependency and mental health services, and shall include dental health services as provided in ORS 414.625(3), by July 1, 2014;

(f) CMS Medicare/Medicaid Alignment Demonstration means a demonstration proposal by the Authority to CMS that will align and integrate Medicare and Medicaid benefits and financing to the greatest extent feasible for individuals who are eligible for both programs. The Authority and CMS shall jointly establish its timelines and requirements for participation in the Demonstration;

(g) Entity means a single legal entity capable of entering into a risk contract that covers coordinated care services with the State and conducting the business of a coordinated care organization;

(h) Request for applications (RFA) means the document used for soliciting applications for certification as a CCO, award of or amendment of a contract coordinated care services, or other objectives as the Authority may determine appropriate for procuring coordinated care services.

(2) The Authority shall establish an application process for entities seeking certification and contracts as CCOs.

(3) The Authority shall use the following RFA processes for CCO certification and contracting:

(a) The Authority shall provide public notice of every RFA on its Web site. The RFA shall indicate how prospective applicants shall be made aware of addenda by posting notice of the RFA on the electronic system for notification to the public of Authority procurement opportunities, or upon request, by mailing notice of the availability of the RFA to persons that have expressed interest in the RFA;

(b) The RFA process begins with a public notice of the RFA, which shall be communicated using the Authority's website. A public notice of an RFA shall identify the certification requirements for the contract, the designated service areas where coordinated care services are requested and a sample contract;

(c) The RFA may specify that applicants must submit a letter of intent to the Authority within the specified time period. The letter of intent does not commit any applicant to apply. If a letter of intent is required, the Authority may not consider applications from applicants who fail to submit a timely letter of intent except as provided in the RFA;

(d) The RFA may request applicants to appear at a public meeting to provide information about the application;

(e) The RFA will request information from Applicants in order to allow the Authority to engage in appropriate state supervision necessary to promote state action immunity under state and federal antitrust laws;

(f) The Authority shall consider only applications that are responsive, completed as described in the RFA, and submitted in the time and manner described in the RFA. The RFA may require submission of the application on its web portal in accordance with OAR 137-047-0330 (Electronic Procurements). If Electronic Procurement is used, applications will be accepted only from applicants who accept the terms and conditions for use of the Authority's web portal.

(4) At recertification the Authority may permit a current CCO contractor to submit an abbreviated application that focuses only on additional or different requirements specific to the recertification and new contract or the new addenda or capacity, or other the Authority objective which is the subject of the RFA;

(5) The Authority shall evaluate applications for certification on the basis of information contained in the RFA, the application and any additional information that the Authority obtains. Application evaluations shall be based on RFA criteria;

(a) The Authority may enter into negotiation with Applicants concerning potential capacity and enrollment in relation to other available, or potentially available, capacity, the number of potential enrollees within the service area, and other factors identified in the RFA;

(b) The Authority shall notify each Applicant that applies for certification of its certification status;

(c) Applicants that meet the RFA criteria shall be certified to contract as a CCO.

(6) Review for certification:

(a) The Authority shall issue certification to only applicants that meet the requirements and provide the assurances specified in the RFA. The Authority determines whether the applicant qualifies for certification based on the application and any additional information and investigation that the Authority may require;

(b) The Authority determines an Applicant is eligible for certification when the Applicant meets the requirements of the RFA, including written assurances, satisfactory to the Authority, that the Applicant:

(A) Provides or will provide the coordinated care services in the manner described in the RFA and the Authority's rules;

(B) Is responsible and meets or will meet standards established by the Authority and DCBS for financial reporting and solvency;

(C) Is organized and operated, and shall continue to be organized and operated, in the manner required by the contract and described in the application; and

(D) Shall comply with any assurances it has given the Authority.

(7) The Authority shall certify CCOs for a period of 6 years from the date the certification application is approved, unless the Authority certifies a CCO for a shorter period.

(8) The Authority may determine that an applicant is potentially eligible for certification if within a specified period of time the applicant is reasonably capable of being eligible for certification. The Authority is not obligated to determine whether an applicant is potentially eligible for certification if, in its discretion, the Authority determines that sufficient Applicants eligible for certification are available to attain the Authority's objectives under the RFA.

(9) The Authority may determine that an Applicant is potentially eligible for certification if:

(a) The Authority finds that the Applicant is reasonably capable of meeting the operational and solvency requirements of the RFA within a specified period of time; and

(b) The Applicant enters into discussions with the Authority about areas of qualification that must be met before the Applicant is operationally and financially eligible for certification. The Authority shall determine the date and required documentation and written assurances required from the Applicant;

(c) If the Authority determines that an Applicant potentially eligible for certification cannot become certified within the time announced in the RFA for contract award, the Authority may:

(A) Offer certification at a future date when the applicant demonstrates, to the Authority's satisfaction, that the Applicant is eligible for certification within the scope of the RFA; or

(B) Inform the Applicant that it is not eligible for certification.

(10) The Authority may award contracts to certified CCOs for administering the Oregon Integrated and Coordinated Health Care Delivery System.

(11) The Authority shall enter into or renew a contract with a CCO only if the CCO has been certified and the Authority determines that the contract would be within the scope of the RFA and consistent with the purposes and effective administration of the Oregon Integrated and Coordinated Health Care Delivery System, which includes but is not limited to:

(a) The capacity of any existing CCO in the region compared to the capacity of an additional CCO for the number of potential enrollees in the addenda;

(b) The number of CCOs in the region.

(12) The application is the Applicant’s offer to enter into a contract and is a firm offer for the period specified in the RFA. The Authority's award of the contract constitutes acceptance of the offer and binds the Applicant to the contract:

(a) Except to the extent the Applicant is authorized to propose certain terms and conditions pursuant to the RFA, an Applicant may not make its offer contingent on the Authority's acceptance of any terms or conditions other than those contained in the RFA;

(b) Only an entity that the Authority has certified to contract as a CCO may enter into a contract as a CCO. Certification to contract as a CCO does not assure the CCO that it will be offered a CCO contract;

(c) The Authority may award multiple contracts or make a single award or limited number of awards to all certified or potentially certified Applicants, in order to meet Authority's needs including but not limited to adequate capacity for the potential enrollees in the service area, maximizing the availability of coordinated care services, and achieving the objectives in the RFA;

(d) Subject to any limitations in the RFA, the Authority may renew a contract for CCO services by amending an existing contract or issuing a replacement contract, without issuing a new RFA;

(e) The suspension or termination of a CCO contract issued under an RFA due to noncompliance with contract requirements or by a CCO’s voluntary suspension or termination shall also be a suspension or termination of certification.

(13) Disclosure of application contents and release of information:

(a) Except for the letter of intent to apply, and the technical application (with the exception of information that has been clearly identified and labled confidential in the manner specified in the RFA), application information may not be disclosed to any applicant or the public until the award date. No information may be given to any applicant or the public relative to its standing with other applicants before the award date, except under the following circumstances:

(A) The information in the application may be shared with the Authority, the Department of Consumer and Business Services, CMS, and those individuals involved in the application review and evaluation process; and

(B) Information may be provided by the applicant to the public as part of a public review process.

(b) Application information may be disclosed on the award date, with the exception of information that has been clearly identified and labeled confidential in the manner specified in the RFA, and if the Authority determines it meets the disclosure exemption requirements.

(14) CCOs may apply to participate in the CMS Medicare/Medicaid Alignment Demonstration, but participation is not required. This rule does not replace the CMS requirements related to the Medicare/Medicaid Alignment Demonstration, such as the CMS notice of intent to apply and required components for Part D coverage. The RFA provides information about the Demonstration requirements. Upon approval of the Demonstration by CMS, the Authority shall conduct, jointly with CMS, the evaluation for certification for the Medicare/Medicaid Alignment Demonstration and award of three-way contracts between CMS, the state, and Applicants who have been certified to contract as a CCO and participate in the Demonstration.

(15) The Authority shall interpret and apply this rule to satisfy federal procurement and contracting requirements in addition to state requirements applicable to contracts with CCOs. The Authority must seek and receive federal approval of CCO contracts.

(16) Except where inconsistent with the preceding sections of this rule, the Authority adopts the following DOJ Model Public Contract Rules (as in effect on January 1, 2012) to govern RFAs and certification and contracting with CCOs:

(a) OAR 137-046 -- General Provisions Related to Public Contracting: 137-046-0100, 137-046-0110 and 137-046-0400 through 137-046-0480;

(b) OAR 137-047 -- Public Procurements for Goods or Services: OAR 137-047-0100, 137-047-0260 through 137-047-0670, 137-047-700 to 137-047-0760 (excluding provisions governing judicial review) and OAR 137-047-0800;

(c) In applying the DOJ Model Rules to RFAs under this rule:

(A) An Application is a proposal under the DOJ Model Rules;

(B) An RFA is an RFP under the DOJ Model Rules;

(C) Certification as a CCO is pre-qualification under the DOJ Model Rules;

(D) Provisions of the Public Contracting Code referenced in the DOJ Model Rules are considered to be incorporated therein;

(E) Definitions in the DOJ Model Rules govern this rule except where a term is defined in section (1) of this rule.

(17) Judicial review of the Authority's decisions relating to a solicitation protest, certification, or contract award is governed by the Oregon Administrative Procedures Act (APA). The RFA may establish when an Authority may be considered a final order for purposes of APA review.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3340 General Financial Reporting and Financial Solvency Matters; Transition

(1) Each CCO must demonstrate that it is able to provide coordinated care services efficiently, effectively and economically. CCOs shall maintain sound financial management procedures, maintain protections against insolvency and generate periodic financial reports for the submission to the OHA or DCBS as provided in these rules.

(2) These rules of the Authority have been developed in consultation with the Department of Consumer and Business Services (DCBS) in accordance with Section 13(3) of 2011 House Bill 3650, 2011 Oregon Laws chapter 602, and Chapter 8 of the Coordinated Care Organizations Implementation Proposal (January 24, 2012) approved by the Section 1, 2012 Senate Bill 1580, 2012 Oregon Laws chapter 8 .

(3) The Authority will collaborate with DCBS to review CCO financial reports and evaluate financial solvency. Except as provided in this rule, CCOs are not required to file financial reports with both OHA and DCBS; DCBS will be the recipient of any required financial reports from CCOs.

(a) Initial applicants for certification as a CCO will submit all their information to the Authority as part of their application process, and the Authority will transmit that information directly to DCBS for its review. The Authority will consult with DCBS about the financial reports submitted with the application, in making its determination about the qualifications of the applicant.

(b) Upon certification, CCOs will submit their financial reports established in these rules directly to DCBS.

(c) For purposes of these financial reporting and solvency rules, OHA authorizes DCBS to act in accordance with these rules. If quarterly reports or other evidence suggest that a CCO's financial solvency is in jeopardy, OHA and DCBS will act as necessary to protect the public interest.

(d) Where these rules specify that the DCBS will request or receive information or provide a response or take any action, DCBS shall have such authority under these rules to act on behalf of OHA. A response to DCBS under these rules shall be deemed a response to the OHA on the matter, consistent with the objective providing a single point of reporting by CCOs.

(6) OHA and DCBS may address any proper inquiries to any CCO, licensee or its officers in relation to its activities or condition or any other matter connected with its transactions. Any such person so addressed shall promptly and truthfully reply to such inquiries using the form of communication requested by OHA or DCBS.

The reply shall be timely, accurate and complete, and, if OHA or DCBS so requires, verified by an officer of such person. A reply is subject to the provisions of ORS 731.260.

(7) For purposes of financial statement preparation, reporting and determination of financial solvency, CCOs shall use and are subject to Statutory Accounting Principles as set forth by the NAIC in its Accounting Practices and Procedures Manual, as updated by the NAIC, except as provided paragraph (a) of this section.

(a) CCOs that have converted from an prepaid managed health care organization (MCO) to a CCO that have not historically used NAIC reporting procedures may receive an extension of time in order to develop the necessary reporting capacity. To exercise this option, the CCO shall request a temporary exception that describes a plan to begin using NAIC reporting requirements no later than effective with the financial statement due as of December 31, 2012, subject to OHA approval.

(b) CCOs receiving a temporary exception from NAIC reporting requirements under subsection (a) of this rule shall use reporting procedures authorized for prepaid managed health care organizations (MCO) in accordance with MCO contract requirements.

(8) These rules incorporate specific required reporting forms or items in order to supply information related to financial responsibility and financial management. The Authority or DCBS will provide supplemental instructions about the use of these forms. The forms and instructions will be posted on the Authority's website at: http://www.cco.health.oregon.gov

(9) The standards established in OAR 410-141-3345 through 410-141-3395 are intended to be consistent with, and may utilize procedures and standards common to insurers and to DCBS in its administration of financial reporting and solvency requirements. Any reference in these rules to the Insurance Code or to rules adopted by DCBS thereunder shall not be deemed to require a CCO to be an insurer, but is adopted and incorporated by reference as the Authority's standard. These rules implement and carry out the financial reporting and solvency criteria applicable to CCOs that contract with the Authority under ORS 414.651.

(10) "Premium" is defined as having the same meaning as "CCO payments" when the payment is made by the Authority to the CCO, for purposes of this rule. Premium also includes any other revenue received by the CCO for the provision of healthcare services over a defined period of time.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3345 Assets, Liabilities, Reserves

A. Restricted Reserves

(1) A CCO, unless exempt, shall establish: 1) Restricted Reserve Account and 2) maintain adequate funds in this account to meet OHA's Primary and Secondary Restricted Reserve requirements. Reserve funds are held for the purpose of making payments to Providers in the event of the CCO's insolvency.

(2) **CCOs Exempt from the Restricted Reserve Requirement:** If a CCO holds a certificate of authority as an insurer or health care service contractor from DCBS, the CCO is not required to establish a Restricted Reserve Account or maintain Primary and Secondary Restricted Reserves as set forth by this [rule/Contract].

(3) **Restricted Reserve Account requirements:** Unless exempt under subsection (2) of this rule, a CCO shall establish a Restricted Reserve Account with a third party financial institution for the purpose of holding the CCO's Primary and Secondary Restricted Reserve Funds. CCOs shall use the Model Depository Agreement to establish a Restricted Reserve Account.

a. **Model Depository Agreement** shall be used by the CCO to establish a Restricted Reserve Account. CCOs shall request the Model Depository Agreement form from OHA. CCOs shall submit the Model Depository Agreement to OHA at the time of application and the Model Depository Agreement shall remain in effect throughout the period of time that this Contract is in effect. The Model Depository Agreement cannot be changed without the Administrator or his/her designee's written authorization.

Withdrawal of Funds from a Restricted Reserve Account: The CCO shall not withdraw funds, change third party financial institutions, or change account numbers within the Restricted Reserve Account without the written consent of the Administrator of OHA or his/her designee.

c. **Filing requirements:** A CCO shall submit a copy of the Model Depository Agreement at the time of application for certification. If a CCO requests and receives written authorization from the Director of the Medical Assistance Programs of OHA or his/her designee to make a change to their existing Restricted Reserve Account, the CCO shall submit a Model Depository Agreement reflecting the changes to OHA within 15 days of the date of the change.

d. **Eligible Deposits:** The following instruments are considered eligible deposits for the purposes of OHA's Primary and Secondary Restricted Reserves:

i. Cash,

ii. Certificates of Deposit, or

iii. Amply secured obligations of the United States, a state or a political subdivision thereof as determined by OHA.

iv. Additionally, the Primary Restricted Reserve amount may be satisfied by a Surety Bond provided it meets the requirements listed below:

1. Such a bond is prepaid at the beginning of the Contract year for 18 months;

2. Evidence of prepayment is provided to OHA;

3. The Surety Bond is purchased by a surety bond company approved by the Oregon Insurance Division;

4. The Surety Bond Agreement contains a clause stating the payment of the bond will be made to the third party entity holding the Restricted Reserve Account on behalf of the contracting company for deposit into the Restricted Reserve Account;

5. The Surety Bond Agreement contains a clause that no changes to the Surety Bond Agreement will occur until approved by the OHA Administrator or his/her designee; and

6. OHA approves the terms of the Surety Bond Agreement.

(4) **Primary and Secondary Restricted Reserves:** A CCO's Primary and Secondary Reserve balances are determined by calculating the average monthly medical expense incurred. A CCO that has submitted quarterly financial statements under this Contract for the current quarter and the prior 3 quarters, the average monthly medical expense incurred is derived by adding together the "total hospital and medical" expense (NAIC Statement of Revenue and Expenses) for the prior four quarters and dividing by 12. A newly formed CCO will use an average of hospital and medical expense projected for the first 4 quarters of operation. Each quarter the average expense liability will be recalculated using historical quarter data available. A CCO shall deposit into the Restricted Reserve Account the amount required by Paragraph (1) and (2), of this subsection.

(1) Determine Primary Reserve: If a CCO's average monthly medical expense incurred is less than or equal to $250,000, the CCO shall deposit into the Restricted Reserve Account an amount equal to the average monthly medical expense incurred. This amount will be referred to as the the CCO's Primary Reserve and the CCO shall have no Secondary Reserve, until such time as the average monthly medical expense exceeds $250,000.

(2) Determine Secondary Reserve: If a CCO's average monthly medical expense is greater than $250,000, the CCO is required to deposit into the Restricted Reserve Account funds equaling 50 percent of the difference between the average monthly medical expense and the Primary Reserve balance of $250,000.

(3) A CCO shall calculate its average monthly medical expense each quarter and adjust its Restricted Reserves accordingly.

B. Minimum capital and surplus

(1) Except as provided in Working Capital, CCOs shall possess and thereafter maintain capital or surplus, or any combination thereof, equal to the greater of $2.5 million or the amount required from the application of the risk-based capital standards in OAR 410-141-3355.

(2) A CCO that possesses the amount required in subsection (1) as of the effective date of this rule must thereafter maintain that capital and surplus.

(3) Except as provided in Working Capital, if a CCO does not possess the minimum capital and surplus as of the effective date of these rules as specified in subsection (1) of this section, the CCO shall possess and thereafter maintain capital or surplus, or any combination thereof as provided in this subsection. “Net healthcare revenue” is defined as direct healthcare premium less the following: amounts paid for reinsurance ceded, HRA and GME payments (if any received by a CCO), and MCO taxes. Net healthcare revenue includes all healthcare related revenue and fee-for-service revenue adjusted for the change in unearned premium reserves.

(a) 5% of annualized total net healthcare revenue as of August 1, 2012. The CCO shall calculate its authorized control level and file the RBC report in accordance with these rules.

(b) The greater of 5% annualized total net healthcare revenue or its authorized control level risk-based capital as of January 1, 2014.

(c) The greater of 6% of annualized total net healthcare revenue or 125% of its authorized control level risk-based capital as of January 1, 2015.

(c) The greater of 7% of annualized total net healthcare revenue or 150% of its authorized control level risk-based capital as of January 1, 2016.

(d) The greater of 8% of annualized total net healthcare revenue or 175% of its authorized control level risk-based capital as of January 1, 2017.

(e) The greater of 9% of annualized total net healthcare revenue or 200% of its authorized control level risk-based capital as of January 1, 2018.

(f) The greater of 10% of annualized total net healthcare revenue or 200% of its authorized control level risk-based capital as of January 1, 2019.

(4) Insurers that possess a certificate of authority issued by DCBS are exempt from this standard and shall follow the standards set forth in the Insurance Code.

(5) A CCO may use a subordinated surplus note to meet its minimum capital and surplus requirement provided it meets the standards in Statements of Statutory Accounting Principles #41 and DCBS has given prior approval of the form and content of the surplus note.

(6) If a CCO formerly was an MCO that has converted to a CCO, the CCO will initially be subject to financial responsibility and solvency standards applicable to prepaid managed health care organizations formerly applicable to the MCO prior to converting to a CCO ("converting CCO" for purposes of this rule). Effective January 1, 2014, the converting CCO shall comply with the minimum capital and surplus set forth in paragraphs (1) – (3) of this section.

(7) The converting CCO shall calculate its authorized control level and file the RBC report in accordance with this rule.

C. Investment of minimum capital and surplus

(1) Funds of a CCO at least equal to its required capital and surplus shall be invested and kept invested as follows:

(a) In amply secured obligations of the United States, a state or a political subdivision of this state.

(b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in this state where:

(A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;

(B) The lien does not exceed 66-2/3 percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the installment payments are sufficient to repay the loan within a period of not more than 25 years; or

(C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Department of Veterans Affairs, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.

(c) In deposits, certificates of deposit, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations to the extent such investments are insured by the Federal Deposit Insurance Corporation.

(2) Investments made pursuant to this section shall be kept free of any lien or pledge.

D. Working Capital

A CCO that is not a converting CCO shall possess $500,000 working capital above the minimum capital and surplus requirement upon the contract date sufficient to pay initial expenses without causing the CCO to fall below the minimum capital and surplus required by these rules.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3350 Restricted Reserves, Capital and Surplus

A. Restricted Reserves

(1) A CCO, unless exempt, shall establish: 1) Restricted Reserve Account and 2) maintain adequate funds in this account to meet OHA's Primary and Secondary Restricted Reserve requirements. Reserve funds are held for the purpose of making payments to Providers in the event of the CCO's insolvency.

(2) **CCOs Exempt from the Restricted Reserve Requirement:** If a CCO holds a certificate of authority as an insurer or health care service contractor from DCBS, the CCO is not required to establish a Restricted Reserve Account or maintain Primary and Secondary Restricted Reserves as set forth by this [rule/Contract].

(3) **Restricted Reserve Account requirements:** Unless exempt under subsection (2) of this rule, a CCO shall establish a Restricted Reserve Account with a third party financial institution for the purpose of holding the CCO's Primary and Secondary Restricted Reserve Funds. CCOs shall use the Model Depository Agreement to establish a Restricted Reserve Account.

a. **Model Depository Agreement** shall be used by the CCO to establish a Restricted Reserve Account. CCOs shall request the Model Depository Agreement form from OHA. CCOs shall submit the Model Depository Agreement to OHA at the time of application and the Model Depository Agreement shall remain in effect throughout the period of time that this Contract is in effect. The Model Depository Agreement cannot be changed without the Administrator or his/her designee's written authorization.

Withdrawal of Funds from a Restricted Reserve Account: The CCO shall not withdraw funds, change third party financial institutions, or change account numbers within the Restricted Reserve Account without the written consent of the Administrator of OHA or his/her designee.

c. **Filing requirements:** A CCO shall submit a copy of the Model Depository Agreement at the time of application for certification. If a CCO requests and receives written authorization from the Director of the Medical Assistance Programs of OHA or his/her designee to make a change to their existing Restricted Reserve Account, the CCO shall submit a Model Depository Agreement reflecting the changes to OHA within 15 days of the date of the change.

d. **Eligible Deposits:** The following instruments are considered eligible deposits for the purposes of OHA's Primary and Secondary Restricted Reserves:

i. Cash,

ii. Certificates of Deposit, or

iii. Amply secured obligations of the United States, a state or a political subdivision thereof as determined by OHA.

iv. Additionally, the Primary Restricted Reserve amount may be satisfied by a Surety Bond provided it meets the requirements listed below:

1. Such a bond is prepaid at the beginning of the Contract year for 18 months;

2. Evidence of prepayment is provided to OHA;

3. The Surety Bond is purchased by a surety bond company approved by the Oregon Insurance Division;

4. The Surety Bond Agreement contains a clause stating the payment of the bond will be made to the third party entity holding the Restricted Reserve Account on behalf of the contracting company for deposit into the Restricted Reserve Account;

5. The Surety Bond Agreement contains a clause that no changes to the Surety Bond Agreement will occur until approved by the OHA Administrator or his/her designee; and

6. OHA approves the terms of the Surety Bond Agreement.

(4) **Primary and Secondary Restricted Reserves:** A CCO's Primary and Secondary Reserve balances are determined by calculating the average monthly medical expense incurred. A CCO that has submitted quarterly financial statements under this Contract for the current quarter and the prior 3 quarters, the average monthly medical expense incurred is derived by adding together the "total hospital and medical" expense (NAIC Statement of Revenue and Expenses) for the prior four quarters and dividing by 12. A newly formed CCO will use an average of hospital and medical expense projected for the first 4 quarters of operation. Each quarter the average expense liability will be recalculated using historical quarter data available. A CCO shall deposit into the Restricted Reserve Account the amount required by Paragraph (1) and (2), of this subsection.

(1) Determine Primary Reserve: If a CCO's average monthly medical expense incurred is less than or equal to $250,000, the CCO shall deposit into the Restricted Reserve Account an amount equal to the average monthly medical expense incurred. This amount will be referred to as the the CCO's Primary Reserve and the CCO shall have no Secondary Reserve, until such time as the average monthly medical expense exceeds $250,000.

(2) Determine Secondary Reserve: If a CCO's average monthly medical expense is greater than $250,000, the CCO is required to deposit into the Restricted Reserve Account funds equaling 50 percent of the difference between the average monthly medical expense and the Primary Reserve balance of $250,000.

(3) A CCO shall calculate its average monthly medical expense each quarter and adjust its Restricted Reserves accordingly.

B. . Minimum capital and surplus

(1) Except as provided in Working Capital, CCOs shall possess and thereafter maintain capital or surplus, or any combination thereof, equal to the greater of $2.5 million or the amount required from the application of the risk-based capital standards in OAR 410-141-3355.

(2) A CCO that possesses the amount required in subsection (1) as of the effective date of this rule must thereafter maintain that capital and surplus.

(3) Except as provided in Working Capital, if a CCO does not possess the minimum capital and surplus as of the effective date of these rules as specified in subsection (1) of this section, the CCO shall possess and thereafter maintain capital or surplus, or any combination thereof as provided in this subsection. “Net healthcare revenue” is defined as direct healthcare premium less the following: amounts paid for reinsurance ceded, HRA and GME payments (if any received by a CCO), and MCO taxes. Net healthcare revenue includes all healthcare related revenue and fee-for-service revenue adjusted for the change in unearned premium reserves.

(a) 5% of annualized total net healthcare revenue as of August 1, 2012. The CCO shall calculate its authorized control level and file the RBC report in accordance with these rules.

(b) The greater of 5% annualized total net healthcare revenue or its authorized control level risk-based capital as of January 1, 2014.

(c) The greater of 6% of annualized total net healthcare revenue or 125% of its authorized control level risk-based capital as of January 1, 2015.

(c) The greater of 7% of annualized total net healthcare revenue or 150% of its authorized control level risk-based capital as of January 1, 2016.

(d) The greater of 8% of annualized total net healthcare revenue or 175% of its authorized control level risk-based capital as of January 1, 2017.

(e) The greater of 9% of annualized total net healthcare revenue or 200% of its authorized control level risk-based capital as of January 1, 2018.

(f) The greater of 10% of annualized total net healthcare revenue or 200% of its authorized control level risk-based capital as of January 1, 2019.

(4) Insurers that possess a certificate of authority issued by DCBS are exempt from this standard and shall follow the standards set forth in the Insurance Code.

(5) A CCO may use a subordinated surplus note to meet its minimum capital and surplus requirement provided it meets the standards in Statements of Statutory Accounting Principles #41 and DCBS has given prior approval of the form and content of the surplus note.

(6) If a CCO formerly was an MCO that has converted to a CCO, the CCO will initially be subject to financial responsibility and solvency standards applicable to prepaid managed health care organizations formerly applicable to the MCO prior to converting to a CCO ("converting CCO" for purposes of this rule). Effective January 1, 2014, the converting CCO shall comply with the minimum capital and surplus set forth in paragraphs (1) – (3) of this section.

(7) The converting CCO shall calculate its authorized control level and file the RBC report in accordance with this rule.

C. Investment of minimum capital and surplus

(1) Funds of a CCO at least equal to its required capital and surplus shall be invested and kept invested as follows:

(a) In amply secured obligations of the United States, a state or a political subdivision of this state.

(b) In loans secured by first liens upon improved, unencumbered real property (other than leaseholds) in this state where:

(A) The lien does not exceed 50 percent of the appraised value of the property and the loan is for a term of five years or less;

(B) The lien does not exceed 66-2/3 percent of the appraised value of the property provided there is an amortization plan mortgage, deed of trust or other instrument under the terms of which the installment payments are sufficient to repay the loan within a period of not more than 25 years; or

(C) The investment is insured or guaranteed by the Federal Housing Administration, the United States Department of Veterans Affairs, or under Title I of the Housing Act of 1949 (providing for slum clearance and redevelopment projects) enacted by Congress on July 15, 1949.

(c) In deposits, certificates of deposit, accounts or savings or certificate shares or accounts of or in banks, trust companies, savings and loan associations or building and loan associations to the extent such investments are insured by the Federal Deposit Insurance Corporation.

(2) Investments made pursuant to this section shall be kept free of any lien or pledge.

D. Working Capital

A CCO that is not a converting CCO shall possess $500,000 working capital above the minimum capital and surplus requirement upon the contract date sufficient to pay initial expenses without causing the CCO to fall below the minimum capital and surplus required by these rules.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3355 Risk-based capital

A. For the purpose of determining the reasonableness and adequacy of a CCO's capital and surplus, DCBS must consider at least the following factors, as applicable:

(a) The size of the CCO, as measured by its assets, capital and surplus, reserves, premium writings, insurance in force and other appropriate criteria.

(b) The number of lives insured.

(c) The extent of the geographical dispersion of the lives insured by the CCO.

(d) The nature and extent of the reinsurance program of the CCO.

(e) The quality, diversification and liquidity of the investment portfolio of the CCO.

(f) The recent past and projected future trend in the size of the investment portfolio of the CCO.

(g) The combined capital and surplus maintained by comparable CCOs.

(h) The adequacy of the reserves of the CCO.

(i) The quality and liquidity of investments in affiliates. DCBS may treat any such investment as a disallowed asset for purposes of determining the adequacy of combined capital and surplus whenever in the judgment of DCBS the investment so warrants.

(j) The quality of the earnings of the CCO and the extent to which the reported earnings include extraordinary items.

B. As used in OAR 410-141-3355 and these financial solvency and monitoring rules:

(5) "NAIC" means the National Association of Insurance Commissioners.

(6) "RBC instructions" means the RBC report including risk-based capital instructions adopted by the NAIC, as the RBC instructions may be amended by the NAIC from time to time in accordance with the procedures adopted by the NAIC.

(7) "RBC level" means a CCO's Company Action Level RBC, Regulatory Action Level RBC, Authorized Control Level RBC or Mandatory Control Level RBC, defined as follows:

(a) "Company Action Level RBC" means, with respect to any CCO, the product of 2.0 and its Authorized Control Level RBC;

(b) "Regulatory Action Level RBC" means the product of 1.5 and its Authorized Control Level RBC;

(c) "Authorized Control Level RBC" means the number determined under the risk-based capital formula in accordance with the RBC Instructions;

(d) "Mandatory Control Level RBC" means the product of .70 and the Authorized Control Level RBC.

(8) "RBC plan" means a comprehensive financial plan containing the elements specified in OAR 410-141-3355 D(2). If DCBS rejects the RBC plan and it is revised by the CCO with or without DCBS's recommendation, the plan shall be called the "revised RBC plan."

(9) "RBC report" means the report required in OAR 410-141-3355 C.

(10) "Total adjusted capital" means the sum of:

(a) A CCO’s capital and surplus (i.e. net worth) as determined in accordance with the statutory accounting applicable to the annual financial statements required to be filed under these rules; and

(b) Such other items, if any, as the RBC instructions may provide.

C. (1) A CCO shall, on or prior to each March 1 (the "filing date"), prepare and submit to DCBS a report of its RBC levels as of the end of the calendar year just ended, in a form and containing such information as is required by the RBC instructions. In addition, a CCO shall file its RBC report with the NAIC in accordance with the RBC instructions. The CCO shall report in its annual financial statement the authorized control level calculated using its RBC report. However, its RBC report will be considered confidential under OAR 410-141-3385.

(2) A CCO’s RBC shall be determined in accordance with the formula set forth in the RBC instructions. The formula shall take the following into account (and may adjust for the covariance between) determined in each case by applying the factors in the manner set forth in the RBC instructions:

(a) Asset risk;

(b) Credit risk;

(c) Underwriting risk; and

(d) All other business risks and such other relevant risks as are set forth in the RBC instructions.

(3) An excess of capital (i.e. net worth) over the amount produced by the risk-based capital requirements contained in OAR 410-141-3355 A to I and the formulas, schedules and instructions referenced in OAR 410-141-3355 A to I is desirable in the business of a CCO. Accordingly, CCOs should seek to maintain capital above the RBC levels required by OAR 410-141-3355 A to I. Additional capital is used and useful in the business of a risk-bearing entity and helps to secure a CCO against various risks inherent in, or affecting, the business of a CCO and not accounted for or only partially measured by the risk-based capital requirements contained in OAR 410-141-3355 A to I.

(4) If a CCO files an RBC report that in the judgment of DCBS is inaccurate, then DCBS shall adjust the RBC report to correct the inaccuracy and shall notify the CCO of the adjustment. The notice shall contain a statement of the reason for the adjustment. An RBC report as so adjusted is referred to as an "adjusted RBC report."

D. (1) "Company Action Level Event" means any of the following events:

(a)(A) The filing of an RBC report by a CCO that indicates that the CCO’s total adjusted capital is greater than or equal to its Regulatory Action Level RBC but less than its Company Action Level RBC; or

(B) If a CCO has total adjusted capital that is greater than or equal to its Company Action Level RBC but less than the product of its Authorized Control Level RBC and 3.0 and triggers the trend test determined in accordance with the trend test calculation included in the Health RBC instructions;

(b) Notification by DCBS to the CCO of an adjusted RBC report that indicates an event in subsection (a) of this subsection, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 H; or

(c) If, pursuant to OAR 410-141-3355 H, a CCO challenges an adjusted RBC report that indicates the event in subsection (a) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO’s challenge.

(2) In the event of a Company Action Level Event, the CCO shall prepare and submit to DCBS an RBC plan that shall:

(a) Identify the conditions that contribute to the Company Action Level Event;

(b) Contain proposals of corrective actions that the CCO intends to take and that would be expected to result in the elimination of the Company Action Level Event;

(c) Provide projections of the CCO’s financial results in the current year and at least the two succeeding years, both in the absence of proposed corrective actions and giving effect to the proposed corrective actions, including projections of statutory balance sheets, operating income, net income, capital and surplus, and RBC levels. The

projections for both new and renewal business might include separate projections for each major line of business and separately identify each significant inc me, expense and benefit component;

(d) Identify the key assumptions impacting the CCO's projections and the sensitivity of the projections to the assumptions; and

(e) Identify the quality of, and problems associated with, the CCO's business, including but not limited to its assets, anticipated business growth and associated surplus strain, extraordinary exposure to risk, mix of business and use of reinsurance, if any, in each case.

(3) The RBC plan shall be submitted

(a) Within 45 days of the Company Action Level Event; or

(b) If the CCO challenges an adjusted RBC report pursuant to OAR 410-141-3355 H, within 45 days after notification to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.

(4) Within 60 days after the submission by a CCO of an RBC plan to DCBS, DCBS shall notify the CCO whether the RBC plan shall be implemented or is, in the judgment of DCBS, unsatisfactory. If DCBS determines the RBC plan is unsatisfactory, the notification to the CCO shall set forth the reasons for the determination and may set forth proposed revisions that will render the RBC plan satisfactory, in the judgment of DCBS. Upon notification from DCBS, the CCO shall prepare a revised RBC plan, which may incorporate by reference any revisions proposed by DCBS, and shall submit the revised RBC plan to DCBS:

(a) Within 45 days after the notification from DCBS; or

(b) If the CCO challenges the notification from DCBS under OAR 410-141-3355 H, within 45 days after a notification to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.

(5) In the event of a notification by DCBS to a CCO that the CCO's RBC plan or revised RBC plan is unsatisfactory, DCBS may at DCBS's discretion, subject to the CCO's right to a hearing under OAR 410-141-3355 H, specify in the notification that the notification constitutes a Regulatory Action Level Event.

E. (1) "Regulatory Action Level Event" means, with respect to a CCO, any of the following events:

(a) The filing of an RBC report by the CCO that indicates that the CCO's total adjusted capital is greater than or equal to its Authorized Control Level RBC but less than its Regulatory Action Level RBC;

(b) Notification by DCBS to a CCO of an adjusted RBC report that indicates the event in subsection (a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 H;

(c) If, pursuant to OAR 410-141-3355 H, the CCO challenges an adjusted RBC report that indicates the event in subsection (a) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO's challenge;

(d) The failure of the CCO to file an RBC report by the filing date, unless the CCO has provided an explanation for the failure that is satisfactory to DCBS and has cured the failure within ten days after the filing date;

(e) The failure of the CCO to submit an RBC plan to DCBS within the time period set forth in OAR 410-141-3355 D;

(f) Notification by DCBS to the CCO that:

(A) The RBC plan or revised RBC plan submitted by the CCO is, in the judgment of DCBS, unsatisfactory; and

(B) Notification constitutes a Regulatory Action Level Event with respect to the CCO, if the CCO has not challenged the determination under OAR 410-141-3355 H;

(g) If, pursuant to OAR 410-141-3355 H, the CCO challenges a determination by DCBS under subsection (f) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the challenge;

(h) Notification by DCBS to the CCO that the CCO has failed to adhere to its RBC plan or revised RBC plan, but only if the failure has a substantial adverse effect on the ability of the CCO to eliminate the Company Action Level Event in accordance with its RBC plan or revised RBC plan and DCBS has so stated in the notification, if the CCO has not challenged the determination under OAR 410-141-3355 H; or

(i) If, pursuant to OAR 410-141-3355 H, the CCO challenges a determination by DCBS under subsection (h) of this section, the notification by DCBS to the CCO that DCBS has, after a hearing, rejected the challenge.

(2) In the event of a Regulatory Action Level Event DCBS shall:

(a) Require the CCO to prepare and submit an RBC plan or, if applicable, a revised RBC plan;

(b) Perform such examination or analysis as DCBS deems necessary of the assets, liabilities and operations of the CCO including a review of its RBC plan or revised RBC plan; and

(c) Subsequent to the examination or analysis, issue an order specifying such corrective actions as DCBS shall determine are required (a "corrective order").

(3) In determining corrective actions, DCBS may take into account factors DCBS deems relevant with respect to the CCO based upon DCBS's examination or analysis of the assets, liabilities and operations of the CCO, including, but not limited to, the results of any sensitivity tests undertaken pursuant to the RBC instructions. The RBC plan or revised RBC plan shall be submitted:

(a) Within 45 days after the occurrence of the Regulatory Action Level Event;

(b) If the CCO challenges an adjusted RBC report pursuant to OAR 410-141-3355 H and the challenge is not frivolous in the judgment of DCBS within 45 days after the notification to the CCO that DCBS has, after a hearing, rejected the CCO's challenge; or

(c) If the CCO challenges a revised RBC plan pursuant to OAR 410-141-3355 H and the challenge is not frivolous in the judgment of DCBS, within 45 days after the notification to the CCO that the care service CCO has, after a hearing, rejected the CCO's challenge.

(4) DCBS may retain actuaries and investment experts and other consultants as may be necessary in the judgment of DCBS to review the CCO's RBC plan or revised RBC plan, examine or analyze the assets, liabilities and operations (including contractual relationships) of the CCO and formulate the corrective order with respect to the CCO. The fees, costs and expenses relating to consultants shall be borne by the affected CCO or such other party as directed by DCBS.

F. (1) "Authorized Control Level Event" means any of the following events:

(a) The filing of an RBC report by the CCO that indicates that the CCO's total adjusted capital is greater than or equal to its Mandatory Control Level RBC but less than its Authorized Control Level RBC;

(b) The notification by DCBS to the CCO of an adjusted RBC report that indicates the event in subsection (a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 H;

(c) If, pursuant to OAR 410-141-3355 H, the CCO challenges an adjusted RBC report that indicates the event in subsection (a) of this section, notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO's challenge;

(d) The failure of the CCO to respond, in a manner satisfactory to DCBS, to a corrective order (if the CCO has not challenged the corrective order under OAR 410-141-3355 H); or (e) If the CCO has challenged a corrective order under OAR 410-141-3355 H and DCBS has, after a hearing, rejected the challenge or modified the corrective order, the

failure of the CCO to respond, in a manner satisfactory to DCBS, to the corrective order subsequent to rejection or modification by DCBS.

(2) In the event of an Authorized Control Level Event with respect to a CCO, DCBS shall:

(a) Take such actions as are required under OAR 410-141-3355 E regarding a CCO with respect to which an Regulatory Action Level Event has occurred; or

(b) If DCBS deems it to be in the best interests of the members and creditors of the CCO and of the public, take such actions as are necessary to work with the Authority, which may terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals.

G. (1) "Mandatory Control Level Event" means any of the following events:

(a) The filing of an RBC report that indicates that the CCO's total adjusted capital is less than its Mandatory Control Level RBC;

(b) Notification by DCBS to the CCO of an adjusted RBC report that indicates the event in subsection (a) of this section, if the CCO does not challenge the adjusted RBC report under OAR 410-141-3355 H; or

(c) If, pursuant to OAR 410-141-3355 H, the CCO challenges an adjusted RBC report that indicates the event in subsection (a) of this section, notification by DCBS to the CCO that DCBS has, after a hearing, rejected the CCO's challenge.

(2) In the event of a Mandatory Control Level Event, DCBS shall take such actions as are necessary to work with the Authority, which may to terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals. Notwithstanding the provisions of this rule, DCBS may forego action for up to 90 days after the Mandatory Control Level Event if DCBS finds there is a reasonable expectation that the Mandatory Control Level Event may be eliminated within the 90 day period.

H. Upon the occurrence of any of the following events, a CCO may request a hearing for the purpose of challenging any determination or action by DCBS in connection with any event described in this rule. The CCO shall notify DCBS of its request for a hearing not later than the fifth day after notification by DCBS under any of the events described in this rule. Upon receipt of the CCO's request for a hearing, DCBS shall set a date for the hearing. The date shall be not less than 10 nor more than 30 days after the date of the CCO's request. The events to which the opportunity for a hearing under this rule relates are as follows:

(1) Notification to a CCO by DCBS of an adjusted RBC report;

(2) Notification to a CCO by DCBS that:

(a) The CCO's RBC plan or revised RBC plan is unsatisfactory; and

(b) Notification constitutes a Regulatory Action Level Event with respect to the CCO;

(3) Notification to a CCO by DCBS that the CCO has failed to adhere to its RBC plan or revised RBC plan and that the failure has a substantial adverse effect on the ability of the CCO to eliminate the Company Action Level Event with respect to the CCO in accordance with its RBC plan or revised RBC plan; or

(4) Notification to a CCO by DCBS of a corrective order with respect to the CCO.

I. DCBS may keep a CCO's RBC plan or the results or report of any examination or analysis conducted under 410-141-3355 if DCBS determines that disclosure of such information would jeopardize the CCO's corrective action plan.

J. OAR 410-141-3355 A to I shall not preclude or limit any other powers or duties of OHA or DCBS under other laws and rules.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3360 Financial Reporting

A. Annual, quarterly and monthly financial statements

(1) Every CCO shall file with DCBS, on or before March 1 of each year, a financial statement for the year ending December 31 immediately preceding. The CCO shall also file with DCBS, on or before May 15, August 15, and November 15 of each year, quarterly financial statements for the quarter ending March 31, June 30 and September 30, respectively. All financial statements shall be completed in accordance with NAIC annual statement instructions. OHA or DCBS may also require additional filings as OHA or DCBS determines necessary.

(2) The financial statement filed by a CCO under subsection (1) of this section shall be verified by the oaths of the president and secretary of the CCO or, in their absence, by two other principal officers.

B. Audited Financial Statements

Each CCO shall have an annual audit conducted by an independent certified public accountant and shall file an audited financial report annually with DCBS. The annual audited financial report shall be in the form required of insurers by the Insurance Code, specifically ORS 731.488 and Oregon Administrative Rules OAR 836-011-0100 through 836-011-0220.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3365 Solvency Monitoring/Corrective Actions

A. Examinations

DCBS shall examine every authorized CCO, including an audit of the financial affairs of such CCO, as often as DCBS determines an examination to be necessary but at least once each five years. An examination shall be conducted for the purpose of determining the financial condition of the CCO, its ability to fulfill its obligations and its manner of fulfillment, the nature of its operations and its compliance with these rules.

B. Appointment of examiners; retaining of appraisers, actuaries and others; evidentiary status of facts and conclusions.

(1) When DCBS determines that an examination should be conducted, DCBS shall appoint one or more examiners to perform the examination and instruct them as to the scope of the examination. In conducting the examination, each examiner shall consider the guidelines and procedures in the examiner handbook, or its successor publication, adopted by the National Association of Insurance Commissioners. DCBS may prescribe the examiner handbook or its successor publication and employ other guidelines and procedures that DCBS determines to be appropriate.

(2) When making an examination, DCBS may retain appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as needed. The cost of retaining such professionals and specialists shall be borne by the CCO that is the subject of the examination.

(3) At any time during the course of an examination, OHA or DCBS may take other action pursuant to these rules.

(4) Facts determined and conclusions made pursuant to an examination shall be presumptive evidence of the relevant facts and conclusions in any judicial or administrative action.

C. (1) Upon an examination or investigation DCBS may examine under oath all persons who may have material information regarding the property or business of the person being examined or investigated.

(2) Every person being examined or investigated shall produce all books, records, accounts, papers, documents and computer and other recordings in its possession or control relating to the matter under examination or investigation, including, in the case of an examination, the property, assets, business and affairs of the person.

(3) With regard to an examination, the officers, directors and agents of the person being examined shall provide timely, convenient and free access at all reasonable hours at the offices of the person being examined to all books, records, accounts, papers,

documents and computer and other recordings. The officers, directors, employees and agents of the person must facilitate the examination.

D. (1) Not later than the 60th day after completion of an examination, the examiner in charge of the examination shall submit to DCBS a full and true report of the examination, verified by the oath of the examiner. The report shall comprise only facts appearing upon the books, papers, records, accounts, documents or computer and other recordings of the person, its agents or other persons being examined or facts ascertained from testimony of individuals concerning the affairs of such person, together with such conclusions and recommendations as reasonably may be warranted from such facts.

(2) DCBS shall make a copy of the report submitted under subsection (1) of this section available to the person who is the subject of the examination and shall give the person an opportunity to review and comment on the report. DCBS may request additional information or meet with the person for the purpose of resolving questions or obtaining additional information, and may direct the examiner to consider the additional information for inclusion in the report.

(3) Before DCBS files the examination report as a final examination report or makes the report or any matters relating thereto public, the person being examined shall have an opportunity for a hearing. A copy of the report must be mailed by certified mail to the person being examined. The person may request a hearing not later than the 30th day after the date on which the report was mailed. This subsection does not limit the authority of DCBS to disclose a preliminary or final examination report as otherwise provided in this section.

(4) DCBS shall consider comments presented at a hearing requested under subsection (3) of this section and may direct the examiner to consider the comments or direct that the comments be included in documentation relating to the report, although not as part of the report itself. DCBS may file the report as a final examination report at any time after consideration of the comments or at any time after the period for requesting a hearing has passed if a hearing is not requested.

(5) A report filed as a final examination report is subject to public inspection. DCBS, after filing any report, if DCBS considers it for the interest of the public to do so, may publish any report or the result of any examination as contained therein in one or more newspapers of the state without expense to the person examined.

(6) DCBS may disclose the content of an examination report that has not yet otherwise been disclosed or may disclose any of the materials described in subsection (6) of this section as provided in OAR 410-141-3385.

E. (1) No cause of action may arise and no liability may be imposed against OHA or DCBS, an authorized representative of OHA or DCBS or any examiner appointed by

OHA or DCBS for any statements made or conduct performed in good faith pursuant to an examination or investigation.

(2) No cause of action may arise and no liability may be imposed against any person for communicating or delivering information or data to OHA or DCBS or an authorized representative of OHA or DCBS or examiner pursuant to an examination or investigation if the communication or delivery was performed in good faith and without fraudulent intent or an intent to deceive.

(3) This section does not abrogate or modify in any way any common law or statutory privilege or immunity otherwise enjoyed by any person to which subsection (1) or (2) of this section applies.

F. Any CCO or applicant for CCO certification examined under ORS 731.300 shall pay to DCBS the just and legitimate costs of the examination as determined by DCBS, including actual necessary transportation and traveling expenses.

G. (1) In addition to other powers of OHA or DCBS under these rules relating to the examination and investigation of CCOs, OHA or DCBS may also order any CCO to produce such books, records, accounts, papers, documents and computer and other recordings in the possession of the CCO or its affiliates as are necessary to ascertain the financial condition of the CCO or to determine compliance with these rules. If the CCO fails to comply with such an order, OHA or DCBS may examine the affiliates to obtain such information.

(2) A CCO shall pay the costs of an examination of the CCO under this section as provided in OAR 410-141-3365 F.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3370 Hazardous Operations

A. (1) Based upon standards established by these rules, if DCBS determines that the continued operation of a CCO is hazardous to patients or to the public in general, DCBS may order the CCO to take one or more of the following actions:

(a) Reduce the total amount of present and potential liability for policy benefits by reinsurance.

(b) Reduce, suspend or limit the volume of business being accepted or renewed.

(c) Reduce general insurance and commission expenses by methods specified by DCBS.

(d) Increase the capital and surplus of the CCO.

(e) Suspend or limit the declaration and payment of dividends by the CCO to its stockholders or members.

(f) Limit or withdraw from certain investments or discontinue certain investment practices to the extent DCBS determines such action to be necessary.

(2) DCBS may exercise authority under subsection (1) of this section in addition to or instead of any other authority that OHA or DCBS may exercise under these rules.

(3) DCBS may issue an order under this section with or without a hearing. A CCO subject to an order issued without a hearing may file a written request for a hearing to review the order. Such a request shall not stay the effect of the order. The hearing shall be held within 30 days after the filing of the request. DCBS shall complete the review within 30 days after the record for the hearing is closed, and shall discontinue the action taken under subsection (1) of this section if DCBS determines that none of the conditions giving rise to the action exists.

B. DCBS may consider the following standards, either singly or in combination of two or more, to determine whether the continued operation of any CCO transacting insurance in this state might be determined to be hazardous to OHA or DCBS, the members, its creditors or the general public:

(1) Adverse findings reported in financial condition examination reports, audit reports, and actuarial opinions, reports or summaries.

(2) Whether the CCO has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the CCO, when considered in light of the assets held by the CCO with respect to such reserves and related actuarial items including but

not limited the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.

(4) The ability of an assuming reinsurer to perform and whether the CCO's reinsurance program provides sufficient protection for the CCO's remaining capital and surplus after taking into account the CCO's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

(5) Whether the CCO's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets and cash dividends paid to shareholders, is greater than 50 percent of the CCO's remaining capital and surplus in excess of the minimum required.

(6) Whether the CCO’s operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the CCO’s remaining surplus in excess of the minimum required.

(7) Whether a reinsurer or obligor, or any entity within the CCO’s insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations and which, in the opinion of DCBS may affect the solvency of the CCO.

(8) Contingent liabilities, pledges or guaranties that either individually or collectively involve a total amount that in the opinion of DCBS may affect the solvency of the CCO.

(9) Whether any "controlling person" of a CCO is delinquent in the transmitting to, or payment of, net premiums to the CCO.

(10) The age and collectibility of receivables.

(11) Whether the management of a CCO, including officers, directors or any other person who directly or indirectly controls the operation of the CCO, fails to possess and demonstrate the competence, fitness and reputation determined by DCBS to be necessary to serve the CCO in such position.

(12) Whether management of a CCO has failed to respond to inquiries relating to the condition of the CCO or has furnished false and misleading information concerning an inquiry.

(13) Whether the CCO has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to DCBS.

(14) Whether management of a CCO either has filed a false or misleading sworn financial statement or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the CCO.

(15) Whether the CCO has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

(16) Whether the CCO has experienced or will experience in the foreseeable future cash flow or liquidity problems, or both.

(17) Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice.

(18) Whether management persistently engages in material under reserving that results in adverse development.

(19) Whether transactions among affiliates, subsidiaries or controlling persons for which the CCO receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the CCO's ability to meet its outstanding obligations as they mature.

(20) Any other finding determined by DCBS to be hazardous to OHA or DCBS, the CCO's members, creditors or general public.

C. (1) For the purposes of making a determination of the financial condition of a CCO under OAR 836-013-0100 to 836-013-0120, DCBS may do one or more of the following:

(a) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

(b) Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates;

(c) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or

(d) Increase the CCO's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the CCO will be called upon to meet the obligation undertaken within the next 12-month period.

(2) In addition to the requirements DCBS may impose under OAR 410-141-3370 A, if DCBS determines that the continued operation of the CCO licensed to transact business in this state may be hazardous to DCBS, the members or the general public, DCBS may require the CCO to:

(a) File reports in a form acceptable to DCBS concerning the market value of the CCO's assets;

(b) In addition to regular annual statements, file interim financial reports on the form specified by DCBS;

(c) Correct corporate governance practice deficiencies, and adopt and utilize the governance practices acceptable to DCBS; or

(d) Provide a business plan to DCBS demonstrating corrective action the CCO will take to improve its financial condition.

D. No domestic CCO shall reduce its combined capital and surplus by partial distribution of its assets, by payment in the form of a dividend to stockholders or otherwise, below:

(1) Its required capitalization; or

(2) A greater amount which DCBS, by rule or by order after hearing upon the motion of OHA or DCBS or the petition of any interested person, finds necessary to avoid injury or prejudice to the interest of OHA or DCBS, members or creditors.

E. (1) Whenever DCBS determines from any showing or statement made to DCBS or from any examination made by DCBS that the assets of a domestic CCO are less than its liabilities plus required capitalization, OHA may proceed immediately to terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals, or OHA may allow the CCO a period of time, not to exceed 90 days, in which to make good the amount of the impairment with cash or authorized investments.

(2) If the amount of any such impairment is not made good within the time prescribed by OHA under subsection (1) of this section, OHA shall proceed immediately to terminate the Contract and three-way contract of the CCO and revoke or suspend its certification as a CCO and its certification for duals.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3375 Disallowance of Transactions

(1) DCBS shall disallow as an asset or as a credit against liabilities any reinsurance found by DCBS after a hearing thereon to have been arranged for the purpose principally of deception as to the ceding CCO's financial condition as of the date of any financial statement of the CCO. Without limiting the general purport of the foregoing provision, reinsurance of any substantial part of the CCO's outstanding risks contracted for in fact within four months prior to the date of any such financial statement and canceled in fact within four months after the date of such statement, or reinsurance under which the reinsurer bears no substantial insurance risk or substantial risk of net loss to itself, shall prima facie be deemed to have been arranged for the purpose principally of deception.

(2) DCBS shall disallow as an asset any deposit, funds or other assets of the CCO found by DCBS after a hearing thereon:

(a) Not to be in good faith the property of the CCO;

(b) Not freely subject to withdrawal or liquidation by the CCO at any time for the payment or discharge of claims or other obligations arising under its policies; and

(c) To be resulting from arrangements made principally for the purpose of deception as to the CCO's financial condition as of the date of any financial statement of the CCO.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3380 Holding Company

A. Every CCO that is a member of a holding company system shall be subject to ORS 732.551 to 732.572, except 732.554. For purposes of this rule, “holding company system” as it applies to a CCO means two or more affiliated persons, one or more of which is a CCO, and includes a financial holding company as referred to in section 103 of the federal Gramm-Leach-Bliley Act (P.L. 106-102). Such CCO shall also be subject to OAR 836-027-0001 through 836-027-0050 to the extent those rules relate to the filing of a registration statement (Form B filing).

B. A transaction within a holding company system to which a CCO subject to registration is a party is subject to the following standards:

(a) The terms must be fair and reasonable.

(b) Charges or fees for services performed must be reasonable.

(c) Expenses incurred and payment received must be allocated to the CCO in conformity with customary insurance accounting practices consistently applied.

(d) The books, accounts and records of each party to the transaction must be so maintained as to disclose clearly and accurately the nature and details of the transaction, including accounting information necessary to support the reasonableness of the charges or fees to the respective parties.

(e) The combined capital and surplus of the CCO following any transaction with an affiliate or any shareholder dividend must be reasonable in relation to the CCO’s outstanding liabilities and adequate to its financial needs.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3385 Transparency

A. Pursuant to ORS 414.018(3)(g), interactions between OHA or DCBS and CCOs shall be done in a transparent and public manner. Without limitation of the preceding sentence, OHA or DCBS shall publicly disclose all information pertaining to CCOs of a character that DCBS publicly discloses pertaining to insurers or health care service CCOs.

B. Certain documents pertaining to a CCO's financial condition may be considered confidential, when so described in these rules. Financial Analysis Solvency Tools and analytical reports developed by the National Association of Insurance Commissioners are confidential. In addition, any work papers, recorded information, documents and copies thereof that are produced or obtained by or disclosed to DCBS or any other person in the course of an examination or in the course of analysis by DCBS of the financial condition or market conduct of a CCO may be considered confidential, if the CCO, OHA, or DCBS specifically designates the confidential portions and cites an exemption from public disclosure under the Oregon Public Records Law, ORS 192.410 to 192.505. If DCBS, in its sole discretion, determines that the cited exemption does not apply or disclosure is necessary to protect the public interest, DCBS may make available work papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to DCBS or any other person in the course of the examination.

C.(1) The DCBS may use a confidential document, material or other information in administering these rules and in furthering a regulatory or legal action brought as a part of the OHA or DCBS's duties.

(2) In order to assist in the performance of DCBS's duties, DCBS may:

(a) Authorize sharing a confidential document, material or other information as appropriate among the administrative divisions and staff offices of the OHA or DCBS for the purpose of administering and enforcing the statutes within the authority of OHA or DCBS, in order to enable the administrative divisions and staff offices to carry out the functions and responsibilities of the administrative divisions and staff offices.

(b) Share a document, material or other information, including a confidential document, material or other information that is subject to subsection (1) of this section or that is otherwise exempt from disclosure under ORS 192.501 or 192.502, with other state, federal, foreign and international regulatory and law enforcement agencies and with the National Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners, if the recipient agrees to maintain the confidentiality of the document, material or other information.

(c) Receive a document, material or other information, including an otherwise confidential document, material or other information, from state, federal, foreign and international regulatory and law enforcement agencies and from the National

Association of Insurance Commissioners and affiliates or subsidiaries of the National Association of Insurance Commissioners. As provided in this section, the DCBS shall maintain the confidentiality of documents, materials or other information received upon notice or with an understanding that the document, material or other information is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information.

(4) Disclosing a document, material or other information to the OHA or DCBS under this section or sharing a document, material or other information as authorized in subsection (3) of this section does not waive an applicable privilege or claim of confidentiality in the document, material or other information.

(5) OHA or DCBS may release a final, adjudicated action, including a suspension or revocation of a CCO's certification, if the action is otherwise open to public inspection, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners or affiliates or subsidiaries of the National Association of Insurance Commissioners.

(6) All information, documents and copies thereof obtained by or disclosed to DCBS or any other person in the course of an examination or investigation made pursuant to OAR 410-141-3365 G. are subject to the provisions of ORS 731.312.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3390 Insolvency of CCO

A. Offer of replacement coverage upon order of liquidation; procedure.

(1) In the event of a finding of impairment by DCBS or of a termination of certification or of the Contract with a CCO, members of the CCO shall be offered replacement coverage as provided in this section.

(2) All other CCOs and prepaid health plans in operating in the service area of the insolvent CCO shall offer members of the insolvent CCO enrollment, as ordered by OHA.

(3) If the other insurers and CCOs lack sufficient health care delivery resources to assure that health services will be available and accessible to all of the members of the insolvent CCO, OHA shall equitably allocate the members among all CCOs that operate within a portion of the service area of the insolvent CCO. OHA shall take into consideration the health care delivery resources of each CCO or prepaid health plan.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580

410-141-3395 Hold harmless provisions

(1) For the purpose of this section only, and only in the event of a finding of impairment by DCBS or of a termination of certification or of the Contract with a CCO, any covered health care service furnished within the state by a provider to a member of a CCO shall be considered to have been furnished pursuant to a contract between the provider and the CCO with whom the member was enrolled when the services were furnished.

(2) Each contract between a CCO and a provider of health services shall provide that if the CCO fails to pay for covered health services as set forth in the contract, the member is not liable to the provider for any amounts owed by the CCO.

(3) If the contract between the contracting provider and the CCO has not been reduced to writing or fails to contain the provisions required by subsection (2) of this section, the member is not liable to the contracting provider for any amounts owed by the CCO.

(4) No contracting provider or agent, trustee or assignee of the contracting provider may maintain a civil action against a member to collect any amounts owed by the CCO for which the member is not liable to the contracting provider under this section.

(5) Nothing in this section impairs the right of a provider to charge, collect from, attempt to collect from or maintain a civil action against a member for any of the following:

(a) Deductible, copayment or coinsurance amounts.

(b) Health services not covered by the CCO.

(c) Health services rendered after the termination of the contract between the CCO and the provider, unless the health services were rendered during the confinement in an inpatient facility and the confinement began prior to the date of termination or unless the provider has assumed post-termination treatment obligations under the contract.

(6) Nothing in this section prohibits a member from seeking noncovered health services from a provider and accepting financial responsibility for these services, subject to requirements of the Authority about how those arrangements may be made under appropriate waiver.

(7) No CCO shall limit the right of a provider of health services to contract with the patient for payment of services not within the scope of the coverage offered by the CCO, subject to requirements of the Authority about how those arrangements may be made under appropriate waiver.

Stat. Auth.: ORS 414.032

Stats. Implemented: 2011 HB 3650, Chapter 602, Oregon Laws 2011, 2012 SB 1580