

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
A Statement of Need and Fiscal Impact accompanies this form.

Oregon Health Authority (OHA), Division of Medical Assistance Programs (Division)	410	
Agency and Division	Administrative Rules Chapter Number	
Sandy Cafourek	500 Summer St NE, Salem, OR 97301	(503) 945-6430
Rules Coordinator	Address	Telephone

RULE CAPTION

Amend Rule to Clarify Review Process for Items Not Already Identified as Covered by DMAP

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

December 16, 2014	10:30 a.m.	500 Summer St. NE, Salem, OR 97301, Room 137C	Sandy Cafourek
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

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

ADOPT:

AMEND: 410-122-0080

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 414.065

Other Auth.:

Stats. Implemented: ORS 414.065

RULE SUMMARY

The Division needs to amend the rule listed above to clarify the review process for items not already identified in rules as covered by DMAP and to meet requirements from CMS guidance letter to Medicaid states.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

December 18, 2014, by 5 p.m. Send written comments to: dmap.rules@state.or.us

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)


Signature


Printed name

11-12-14
Date

Note: Hearing Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*.

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

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

Amend Rule to Clarify Review Process for Items Not Already Identified as Covered by DMAP
Rule Caption (Not more than 15 words that reasonably identify the subject matter of the agency's intended action.)

In the Matter of: The amendment of OAR 410-122-0080.

Statutory Authority: ORS 414.065

Other Authority:

Stats. Implemented: ORS 414.065

Need for the Rule(s): The Division needs to amend the rule listed above to clarify the review process for items not already identified in rules as covered by DMAP and to meet requirements from CMS guidance letter to Medicaid states.

Documents Relied Upon and where they are available: CMS Guidance letter dated September 4, 1998, Federal Register – Volume 76, No. 133, dated July 12, 2011.

Fiscal and Economic Impact: \$0

Statement of Cost of Compliance:

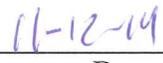
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): No fiscal or economic impact is anticipated for other state agencies, units of local government, or the general public.
2. Cost of compliance effect on small business (ORS 183.336):
 - a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Less than 100 small businesses
 - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None
 - c. Equipment, supplies, labor and increased administration required for compliance: None

How were small businesses involved in the development of this rule?

Rule changes were discussed at the quarterly stakeholder meetings on 6/5/14. Those invited to the stakeholders meetings include individuals from both large and small provider groups and associations.

Administrative Rule Advisory Committee consulted? Yes, a RAC meeting was held June 6, 2014.

If not, why?

  
Signature Rhonda Busek Date

410-122-0080

Conditions of Coverage, Limitations, Restrictions and Exclusions

(1) The Division of Medical Assistance Programs (Division) may pay for durable medical equipment, prosthetics, orthotics and medical supplies (DMEPOS) when the item meets all the criteria in this rule, including all of the following conditions. The item:

(a) Has been approved for marketing and registered or listed as a medical device by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the purpose intended. In the event of delay in FDA approval and registration, the Division will review purchase options on a case by case basis;

(b) Is reasonable and medically appropriate for the individual client;

(c) Is primarily and customarily used to serve a medical purpose;

(d) Is generally not useful to a person in the absence of illness or injury;

(e) Is appropriate for use in a client's home;

(f) Specifically, for durable medical equipment, can withstand repeated use; i.e., could normally be rented, and used by successive clients;

(g) Meets the coverage criteria as specified in this division and subject to service limitations of the Division rules;

(h) Is requested in relation to a diagnosis and treatment pair that is above the funding line on the ~~Oregon Health Services~~ Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List of Health Services or List) found in OAR 410-141-0520, consistent with treatment guidelines for the Prioritized List of Health Services, and not otherwise excluded under OAR 410-141-0500 ~~141-0500~~; and

(i) Is included in the Oregon Health Plan (OHP) client's benefit package of covered services; and

(j) Is the least costly, medically appropriate item that will meet the medical needs of the client.

(2) Conditions for Medicare-Medicaid Services:

(a) If Medicare is the primary payer and Medicare denies payment, an appeal to Medicare must be filed timely prior to submitting the claim to the Division for payment. If Medicare denies payment based on failure to submit a timely appeal, the Division may reduce any amount the Division determines could have been paid by Medicare;

(b) If Medicare denies payment on appeal, the Division will apply DMEPOS coverage criteria in this rule to determine whether the item or service is covered under the OHP.

(3) The Division will not cover DMEPOS items when the item or the use of the item is:

(a) Not primarily medical in nature;

(b) For personal comfort or convenience of the client or caregiver;

(c) A self-help device;

(d) Not therapeutic or diagnostic in nature;

(e) Used for precautionary reasons (e.g., pressure-reducing support surface for prevention of decubitus ulcers);

(f) Inappropriate for client use in the home (e.g., institutional equipment like an oscillating bed);

(g) For a purpose where the medical effectiveness is not supported by evidence-based clinical practice guidelines; or

(h) Reimbursed as part of the ~~all-inclusive~~ bundled rate in a nursing facility as described in OAR 411-070-0085, or as part of a home and community based care waiver service, or by any other public, community or third party resource.

~~(4) In addition to the particular requirements in this rule, particular coverage criteria, limitations and restrictions for durable medical equipment, prosthetics, orthotics and supplies are specified in the appropriate rule. To the extent that C-codes that are identified in these rules or in fee schedules, the codes are provided as a mechanism to facilitate payment for covered items and supplies consistent with OAR 410-122-0186, but codes do not determine coverage. If prior authorization is required, the request for reimbursement must document that prior authorization was obtained in compliance with the rules in this division.~~

(5) DMEPOS providers must have documentation on file that supports coverage criteria are met.

(6) Billing records must demonstrate that the provider has not exceeded any limitations and restrictions in the DMEPOS rules. The Division may require additional claim information from the provider consistent with program integrity review processes.

(7) Documentation described in (4), (5) and (6) above must be made available to the Division upon request.

(8) To identify non-covered items at a code level, providers can refer to the Division fee schedule, subject to the limitation that fee schedules and codes do not determine coverage, and are solely provided as a mechanism to facilitate payment for covered services and supplies consistent with OAR 410-122-0186. If an item or supply is not covered for an OHP client in accordance with these rules, there is no basis for payment regardless of whether there is a code for the item or supply on the fee schedule.

(9) Some benefit packages do not cover equipment and supplies (see OAR 410-120-1210 Medical Assistance Benefit Packages and Delivery System).

(10) Buy-ups are prohibited. Advanced Beneficiary Notices (ABN) constitutes a buy-up and are is prohibited. Refer to the Division General Rules (chapter 410, division 120) for specific language on buy-ups.

(11) Equipment purchased by the Division for a client is the property of the client.

(12) Rental charges, starting with the initial date of service, regardless of payer, apply to the purchase price.

(13) A provider who supplies rented equipment is to continue furnishing the same item throughout the entire rental period, except under documented reasonable circumstances.

(14) Before renting, providers should consider purchase for long-term requirements.

(15) The Division will not pay DMEPOS providers for medical supplies separately while a client is under a home health plan of care and covered home health care services.

(16) The Division will not pay DMEPOS providers for medical supplies separately while a client is under a hospice plan of care where the supplies are included as part of the written plan of care and for which payment may otherwise be made by Medicare, the Division, or other carrier.

(17) Separate payment will not be made to DMEPOS providers for equipment and medical supplies provided to a client in their home when the cost of such items is already included in the capitated (per diem) rate paid to a facility or organization.

(18) Non-contiguous out-of-state DMEPOS providers may seek Medicaid payment only under the following circumstances:

(a) Medicare/Medicaid clients:

(A) For Medicare covered services and then only Medicaid payment of a client's Medicare cost sharing expenses for DMEPOS services when all of the following criteria are met:

(i) Client is a qualified Medicare beneficiary (QMB);

(ii) Service is covered by Medicare;

(iii) Medicare has paid on the specific code. -Prior authorization is not required;

(B) Services not covered by Medicare:

(i) Only when the service or item is not available in the State of Oregon, and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(ii) Some examples of services not reimbursable to a non-contiguous out of-state provider are incontinence supplies, grab bars, etc. This list is not all-inclusive;

(iii) Services billed must be covered under the OHP;

(iv) Services provided and billed to the Division must be in accordance with all applicable Division rules;

(b) Medicaid-only clients:

(A) For a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous borders of Oregon and only when the prescribing practitioner has documented that a delay in service may cause client harm;

(B) For foster care or subsidized adoption children placed out of state;

(C) Only when the service or item is not available in the State of Oregon, and this is clearly substantiated by supporting documentation from the prescribing practitioner and maintained in the DMEPOS provider's records;

(D) Services billed must be covered under the OHP;

(E) Services provided and billed to the Division must be in accordance with all applicable Division rules.

(19) The items listed in Table 122-0080 generally do not meet the requirements under DMEPOS rules for purchase, rent or repair of equipment or items. ~~A request for equipment or an item on this list will not be granted.~~

(20) A request for an individual medical review may be made on DMEPOS services or items that are not already identified as covered by the Division. The request must be submitted by the prescribing practitioner with supporting medical documentation. The Division will review the request and make a good faith effort to obtain information needed to allow a decision within 30 days. In no case will a requested service or item be

approved unless it is medically appropriate as defined in OAR 410-120-0000 and 410-141-0000 and meets the requirements of this rule.

(2021) See General Rules OAR 410-120-1200 Excluded Services and Limitations for more information on general scope of coverage and limitations.

(2422) Table 122-0080, Exclusions.

Statutory Authority: ORS 413.042 & 414.065

Statutes Implemented: 413.042 & 414.065

Table 122-0080 Exclusions

Air conditioners, air cleaners, air purifiers
Ankle-foot orthoses, graphite, spiral
Appliances, household, small electrics
Assistive devices for activities of daily living
Balls, therapy
Bandages, adhesive (i.e., Band-aids)
Bed cradle, any type
Bedding, any kind
Beds, age-specific, enclosed bed systems, metal-caged, total electric, water, youth
Bedwetting prevention devices
Bladder stimulators (pacemakers)
Bracelets, medical alert
Car seats, any type, standard, customized or custom-made
Chairs, geriatric, positioning
Cleanser, incontinent, perineal, wound
Clothing, except some orthopedic shoes & support hose
Cribs, any type, including hospital cribs, rail padding
Deodorizers, room
Dilators, esophageal
Elevators
Exercise equipment
Feminine hygiene products
Furnishings, household, any kind
Generators
Hand controls for vehicles
High frequency chest wall oscillation air-pulse generator system
Humidifiers, room
Hot tubs/spas
Identification tags
Incubators/Isolates
Jacuzzis
Lifts, barrier-free ceiling track, chair, mechanism, stairs, van
Light box for SAD
Linens, any type
Mattresses, egg crate
Medicine cups, paper or plastic
Mobility monitor
Mucus trap (included in laboratory fee)
Nipple shields
Oscillatory positive expiratory pressure device
Overbed tables
Passive motion exercise device (CPM device)
Positioning seats, any type, standard, customized or custom-made

Ramps, van, wheelchair
Reachers
Restraints
Safety enclosures frame/canopy for use with hospital bed, any type
Scales, bath, diet
Sharps containers
Sheets, cloth draw, rubber
Showerheads, hand held
Sports equipment
Strollers
Supplemental Breast Feeding Nutrition System
Supplies used in the management of incontinence, including but not limited to creams, salves, lotions, barriers (liquid, spray, wipes, powder, paste) or other skin care products (does not include covered ostomy and incontinent supplies listed in Chapter 410 Division 122)
Swamp coolers
Telephone alert systems
Telephones
Therapeutic Electrical Stimulator
Thermometers
Tie-downs for wheelchairs in vans
Tissue, facial, toilet
Tocolytic Pumps
Towelettes, any type
Utensils, eating
Typewriters
Vans Vehicles
Washcloths, any type
Waterpiks® (and similar oral irrigation appliances)
Whirlpool