

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**

Precluded Payment for Out-of-Hospital Birth in High Risk Pregnancies  
(Not more than 15 words that reasonably identify the subject matter of the agency's intended action.)

|                   |            |                                              |                  |
|-------------------|------------|----------------------------------------------|------------------|
| November 18, 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:** OAR 410-130-0240

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth. : ORS 413.042

Other Auth.:

Stats. Implemented: ORS 414.025 & 414.065

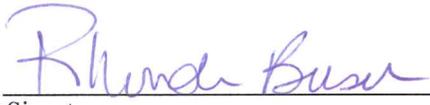
**RULE SUMMARY**

Add risk criteria requirement for determining when OHP will pay for a home birth. OHP will only pay for labor and delivery services in a home setting for women experiencing a low risk pregnancy. Risk criteria will match what is already in place for births in a birthing center. Additionally, the age limitation (seven or under) for applying dental varnish in a medical setting is being removed opening this service up to older children. This service is already available in dental settings. The change only applies to medical settings.

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.

November 20, 2014 by 5 p.m. Send written comments to: [dmap.rules@state.or.us](mailto:dmap.rules@state.or.us)

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

|                                                                                    |                                                                                      |         |
|------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------|---------|
|  |  | 10-3-14 |
| Signature                                                                          | Printed name                                                                         | Date    |

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

**STATEMENT OF NEED AND FISCAL IMPACT**

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

Oregon Health Authority, Division of Medical Assistance Programs (Division)

410

Agency and Division

Administrative Rules Chapter Number

Precluded Payment for Out-of-Hospital Birth in High Risk Pregnancies

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 410-130-0240

Statutory Authority: ORS 413.042

Other Authority:

Stats. Implemented: ORS 414.025 & 414.065

Need for the Rule(s): OHA leadership has accepted recommendations from a work group organized to review issues regarding Licensed Direct Entry Midwives. Among other things the work group recommended adding risk criteria for home births. This change is in response to that recommendation.

Documents Relied Upon, and where they are available:

Licensed Direct Entry Midwife (LDM) Staff Advisory Workgroup Final Report to the Director [http://www.oregon.gov/oha/docs/LDM%20Staff%20Advisory%20Workgroup%20Report\\_Final\\_April%202014.pdf](http://www.oregon.gov/oha/docs/LDM%20Staff%20Advisory%20Workgroup%20Report_Final_April%202014.pdf); letter dated July 24, 2014 from Suzanne Hoffman, interim director of OHA, directing OHA that states "I accept these [the LDM advisory workgroup's] recommendations and will implement those that are within our agency's authority."

Fiscal and Economic Impact: No significant fiscal impact is anticipated with this rule change. No change is anticipated to the total number of births that OHP pays for. Home births are generally paid for fee-for-service (FFS) and not from CCO budgets. It is unknown if FFS will gain a few more low risk, less costly births leaving a few more high risk, high cost births to be paid for by CCOs. It is anticipated that if there is a shift in numbers between FFS and CCO, it will be very slight and will not have a significant fiscal impact.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Anticipated need for one additional FTE in MAP's medical unit to verify risk criteria on a case by case basis. Estimated biannual total cost of \$216,150

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: medical providers doing home births that are also small businesses will be subject to this change if they are billing OHP.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None anticipated. Medical records that these providers are already keeping will be used.

c. Equipment, supplies, labor and increased administration required for compliance: None anticipated.

How were small businesses involved in the development of this rule? Some professionals that provide home birth services are self-employed or associated with small businesses. We reached out to as many of these professionals as we could through their licensing agency. They were invited to participate in our Rule Advisory Committee.

Administrative Rule Advisory Committee consulted?: Yes, on 9/9/14.

If not, why?:



Rhonda Busell 10-3-14

Signature

Printed name

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

## 410-130-0240

### Medical Services

(1) Coverage of medical and surgical services is subject to the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List). Medical and surgical services requiring prior authorization (PA) are listed in Oregon Administrative Rule (OAR or rule) 410-130-0200, PA Table 130-0200-1, and medical and surgical services that are Not Covered/Bundled services are listed in OAR 410-130-0220, Table 130-0220-1.

(2) Coverage for acupuncture services by an enrolled acupuncture provider are subject to the HERC Prioritized List and the client's benefit plan.

(3) Coverage for medically appropriate chiropractic services provided by an enrolled chiropractor is subject to the HERC Prioritized List and benefit plan for:

(a) Diagnostic visits, including evaluation and management services;

(b) Chiropractic manipulative treatment;

(c) Laboratory and radiology services.

(4) Maternity care and delivery:

(a) The Division may consider payment for delivery within a hospital, clinic, birthing center, or home setting;

(b) For out-of-hospital births, the Division may only consider payment for labor and delivery care of women experiencing low risk pregnancy. The Division will determine whether a pregnancy can be considered low risk and if an out-of-hospital birth is eligible for payment.

(c) The Division adopts Table I from OAR 333-076-0650 to outline the absolute risk factors that, if present, would preclude payment for initiation or continuation of any out-of-hospital labor and delivery care. For a planned out-of-hospital birth, the Division requires that a contingency for an in-hospital birth, should it become medically necessary, be included in the medical record. The Division considers all conditions listed in Table I of OAR 333-076-0650 to necessitate an in-hospital birth if present or anticipated to be present at the onset of labor. The Division may deny payment for labor and delivery services in an out-of-hospital setting if it determines that an in-hospital birth was necessary and appropriate steps to facilitate an in-hospital birth were not pursued. When an in-hospital birth becomes necessary for a client that was seeking a planned out-of-hospital birth and care is transferred from one provider to another, the Division will consider payment for both providers for the portion of care provided. Bill using appropriate CPT and HCPCS codes.

(d) When a provider is practicing within the authorization of his or her license, the Division may consider payment for administration of drugs and devices that are used in pregnancy, birth,

postpartum care, newborn care, or resuscitation and that are deemed integral to providing safe care.

(e) For out-of-hospital births, drugs authorized in subsection (d) or this section are limited:

(A) For out-of-hospital births, the Division will make no payment for general, spinal, caudal, or epidural anesthesia administered for care associated with labor and delivery;

(B) For out-of-hospital births, the Division will make no payment for inducing, stimulating, or using chemical agents to augment labor during the first or second stages of labor;

(C) For out-of-hospital births, the Division will consider payment for chemical agents administered to inhibit labor only as a temporary measure until referral/transfer of the client to a higher level of care is complete;

(f) Within the home setting, the Division may consider payment for appropriate supplies in addition to delivery payment. The additional payment for supplies includes all supplies, equipment, staff assistance, and newborn screening cards, and local or anesthetics;

~~(e) The Division may consider payment for physician-administered medications associated with delivery except for local or topical anesthetics;~~

(g)(~~d~~) During labor in an out-of-hospital setting, should any of the risk factors outlined in Table II of OAR 333-076-0650 develop, the Division requires that the client will be transferred to a hospital, and the Division may deny payment for labor and delivery services if it determines that appropriate steps to facilitate the transfer were not pursued. Appropriate transfer of care shall be in accordance with the practitioner's licensure requirements. When labor management conducted by a LDEM does not result in a delivery and the client is appropriately transferred to a higher level of care, the provider shall code for labor management only. Bill code 59899 and attach a report;

(h) For births in an out-of-hospital setting, should any of the risk factors outlined in Table III of OAR 333-076-0650 develop during the postpartum period in the mother or infant, the Division requires that the client will be transferred to a hospital, and the Division may deny payment for labor and delivery services if it determines that appropriate steps to facilitate the transfer were not pursued. Appropriate transfer of care shall be in accordance with the practitioner's licensure requirements.

(i)(e) For multiple births, use the appropriate CPT code for the first vaginal or cesarean delivery that includes antepartum and postpartum care, and the subsequent births under the respective delivery only code. For example, for total obstetrical care with cesarean delivery of twins, bill code 59510 for the first delivery and code 59514 for the second delivery.

(5) Neonatal Intensive Care Unit (NICU) procedures:

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians ~~must~~ shall use other CPT codes when billing for services provided to neonates and infants;

(b) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use appropriate CPT ECMO codes.

(6) Neurology/Neuromuscular — Payment for polysomnograms and multiple sleep latency tests (MSLT) are each limited to two in a 12-month period.

(7) Oral health services provided by medical practitioners may include an oral assessment and application of topical fluoride varnish during a medical visit ~~to~~ for children ~~under the age of seven years~~. Refer to OAR 410-123-1260 Dental Services Program rule.

Stat. Auth.: ORS 413.042

Stats. Implemented: ORS 414.025 & 414.065