

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

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Rules Coordinator Address Telephone

RULE CAPTION

Add Arbitration Language for HCE and CCO Contracting Disputes

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

April 16, 2014 10:30 a.m. 500 Summer St. NE, Salem, OR 97301 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: 410-141-3268

REPEAL: 410-141-3268(T)

RENUMBER:

AMEND & RENUMBER:

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

Other Auth.:

Stats. Implemented: ORS 414.610 through 414.685

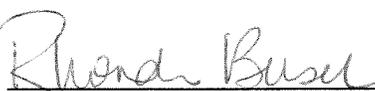
RULE SUMMARY

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

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.

April 18, 2014 by 5:00 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

Rhonda Busell
Printed name

3-13-14
Date

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

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

Add Arbitration Language for HCE and CCO Contracting Disputes

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

In the Matter of: Amending 410-141-3268 and repealing 410-141-3268(T)

Statutory Authority: ORS 414.042, 414.615, 414.625, 414.635, 414.651

Other Authority:

Stats. Implemented: ORS 414.610 through 414.685

Documents Relied Upon, and where they are available: ORS 414.635

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): The Division does not anticipate fiscal impacts on other state agencies, units of local government or the 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: The types of small businesses include doctor's offices, specialty groups, small clinics and community based providers, however, the Division's system does not flag which providers are part of a larger clinic or corporation, therefore the Division is unable to estimate the number of small businesses that are subject to the rules but the Division does not anticipate a direct or indirect impact on small businesses.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None anticipated

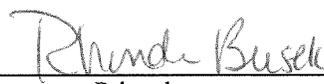
c. Equipment, supplies, labor and increased administration required for compliance: None anticipated

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

Administrative Rule Advisory Committee consulted?: No

If not, why?: As this rule changes are not substantive policy changes, only to clarify process, it was determined that a Rule Advisory Committee was not necessary.


Signature

 Rhonda Busek
Printed name

3-13-14
Date

410-141-3268

Process for Resolving Disputes on Formation of CCOs

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

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

(b) A Hhealth Ccare Entity (HCE) and the applicant (together, the “parties” for purposes of this rule) have failed to agree upon terms for a contract; and

(c) One or more of the following occurs:

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

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

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

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

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

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

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

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

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

(b) The applicant or HCE may request the Authority to provide technical assistance. The Authority also may offer technical assistance, with or without a request. The Authority's technical assistance is limited to clarifying the CCO certification process, criteria, and other program requirements.

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

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

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

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

(a) Their most reasonable contract offer; or

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

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

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

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

(b) An HCE may reasonably refuse to contract if that refusal is justified in fact or by circumstances, taking into consideration the Health Services Transformation (HST) legislative policies. Facts or circumstances outlining what is a reasonable or unreasonable refusal to contract include, but are not limited to:

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Be a knowledgeable and experienced arbitrator;

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

(c) Be familiar with HST; and

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

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

Stats. Implemented: ORS 414.610 – 414.685

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