

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

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

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Rules Coordinator Address Telephone

RULE CAPTION

Final Orders, Dismissals, and Withdrawals; Contested Case Appeals

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

RULEMAKING ACTION

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

AMEND: OAR 410-200-0145 and OAR 410-200-0146

REPEAL: OAR 410-200-0145(T) and OAR 410-200-0146(T)

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 183.452, 411.060, 411.404, 411.816, 412.014, 412.049

Other Auth.:

Stats. Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014, 412.049

RULE SUMMARY

OAR 410-200-0146 about final orders, dismissals, and withdrawals in the Division of Medical Assistance programs' medical program hearings is being amended to state that an untimely request for hearing is referred to the Office of Administrative Hearings to determine whether the claimant received the notice. The term "appeal" is changed to "hearing." This amendment reflects Oregon Health Authority's actual process and makes it consistent with ORS 413.038(3).

OAR 410-200-0145 about contested case appeals is being amended to change the term "appeal" to "hearing" in order to make it consistent with state statutes, Department of Justice model rules, and OAR 410-200-0146.

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.

September 18, 2014 by 5:00 p.m. Sandy Cafourek dmap.rules@state.or.us

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

Signature

Karen House

Date

Note: Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*. A Rulemaking Hearing may be requested in writing by 10 or more people, or by an association with 10 or more members, within 21 days following notice publication or 28 days from the date notice was sent to people on the agency's interested party mailing list, whichever is later. In such cases a Hearing Notice must be published in the *Oregon Bulletin* at least 14 days before the hearing.

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, Division of Medical Assistance Programs (Division)
Agency and Division

410

Administrative Rules Chapter Number

Final Orders, Dismissals, and Withdrawals; Contested Case Appeals

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

In the Matter of: The amendment of OAR 410-200-0145 and OAR 410-200-0146 and the repeal of OAR 410-200-0145(T) and OAR 410-200-0146(T).

Statutory Authority: ORS 183.452, 411.404, 411.816, 412.014, 412.049, 413.042

Other Authority:

Stats. Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014, 412.049

Need for the Rule(s): OAR 410-200-0146 about final orders, dismissals, and withdrawals in DMAP OCCS medical program hearings needs to be amended because the current rule is inconsistent with ORS 413.038(3) and does not reflect the Authority's current process.

OAR 410-200-0145 about contested case appeals in DMAP OCCS medical program hearings needs to be amended to make it consistent with DOJ model rules and OAR 410-200-0146.

Documents Relied Upon, and where they are available: None

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)): None.

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: None.

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? Small businesses were not involved.

Administrative Rule Advisory Committee consulted?: No.

If not, why?: An exception was granted.


Signature

Karen House


Date

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

410-200-0145

Contested Case Appeals Hearings

(1) For the purposes of this rule, timely means within 90 days of the date the notice of adverse action is received.

(2) This rule applies to contested case appealshearings for programs described in OAR chapter 410 division 200. Contested case appealshearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 and following ~~and~~ ORS Ch. 183 except to the extent that Authority rules provide for different procedures.

(3) The Authority's contested case appealshearings governed by this rule are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.

(4) A claimant may request a contested case appealhearing upon the timely completion of an appealhearing request in medical assistance programs in the following situations:

(a) The Authority has not approved or denied an application within 45 days of the date of rrequest for benefits or the extended time the Authority has allowed for processing;

(b) The Authority acts to deny, reduce, close, or suspend medical assistance, including the denial of continued benefits pending the outcome of a contested case appealhearing;

(c) The Authority claims that an earlier medical assistance payment was an overpayment;

(d) A claimant claims that the Authority previously under issued medical assistance;

(e) A claimant disputes the current level of benefits.

(5) ~~The claimant has the burden of proof.~~

(6) ~~An officer or employee of the Authority or the Department of Human Services may appear on behalf of the Authority in medical assistance appealshearings described in this rule. The Authority's lay representative may not make legal argument on behalf of the Authority.~~

(~~6~~7) The Authority representative is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. An Authority representative appearing under this rule must read and be familiar with it.

(78) When an Authority representative is used, requests for admission and written interrogatories are not permitted.

(89) The Authority representative and the claimant may have an informal conference in order to:

(a) Provide an opportunity to settle the matter;

(b) Review the basis for the eligibility determination, including reviewing the rules and facts that serve as the basis for the decision;

(c) Exchange additional information that may correct any misunderstandings of the facts relevant to the eligibility determination; or

(d) Consider any other matters that may expedite the orderly disposition of the appealhearing.

(409) A client-claimant who is receiving medical assistance benefits and who is entitled to a continuing benefit decision notice may, at the option of the clientclaimant, receive continuing benefits in the same manner and amount until a final order resolves the contested case. In order to receive continuing benefits, a client-claimant must request an appeala hearing not later than the later of:

(a) The tenth day following the date the notice is received; and

(b) The effective date of the action proposed in the notice.

(104) The continuing benefits are subject to modification based on additional changes affecting the client's-claimant's eligibility or level of benefits.

(112) When a claimant contests the denial of continuing benefits, the claimant shall receive an expedited appealhearing.

(123) In computing timeliness under sections (1) and (409) of this rule:

(a) Delay caused by circumstances meeting the good cause criteria described in OAR 137-003-0501(7) shall may not be counted; and

(b) The notice is considered to be received on the fifth day after the notice is sent unless the claimant shows the notice was received later or was not received.

Stat. Auth.: ORS 411.404, 411.816, 412.014, 412.049₁ & 413.042

Stats. Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014₁ & 412.049

410-200-0146

Final Orders, Dismissals and Withdrawals

(1) When the Authority refers a contested case under chapter 410 division 200 to the Office of Administrative Hearings (OAH), the Authority must indicate on the referral:

(a) Whether the Authority is authorizing a proposed order, a proposed and final order, or a final order; and

(b) If the Authority establishes an earlier deadline for written exceptions and argument because the contested case is being referred for an expedited appealhearing.

(2) When the Authority authorizes either a proposed order or a proposed and final order:

(a) The claimant may file written exceptions and written argument to be considered by the Authority. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless subsection (1)(b) of this rule applies;

~~(b) The Authority shall issue the final order after OAH issues a proposed order, unless the Authority requests that OAH issue the final order pursuant to OAR 137-003-0655. Proposed Orders. After OAH issues a proposed order, the Authority shall issue the final order, unless the Authority requests that OAH issue the final order pursuant to OAR 137-003-0655;~~

~~(c) The Proposed and final order becomes a final order on the 21st day after the service the proposed and final order, if the claimant does not submit timely exceptions or arguments following a proposed and final order, unless:~~

~~Proposed and Final Orders. If the claimant does not submit timely exceptions or arguments following a proposed and final order, the proposed and final order becomes a final order on the 21st day after service of the proposed and final order unless:~~

~~(A) The Authority has issued a revised order; or~~

~~(B) The Authority hHas notified the claimant and OAH that the Authority shall issue the final order.~~

~~(d) The Authority shall issue the final order when the Authority receives timely exceptions or argument, unless the Authority requests that OAH issue the final order. When the Authority receives timely exceptions or argument, the Authority shall issue the final order, unless the Authority requests that OAH issue the final order.~~

(3) In a contested case appealhearing, if the OAH is authorized to issue a final order on behalf of the Authority, the Authority may issue the final order in the case of default.

(4) A petition by a claimant for reconsideration or rehearing must be filed with the individual who signed the final order, unless stated otherwise on the final order.

(5) A final order is effective immediately upon being signed or as otherwise provided in the order. Delay due to a postponement or continuance granted at the claimant's request shall may not be counted in computing time limits for a final order. A final order shall be issued or the case otherwise shall be resolved no later than:

(a) Ninety ~~(90)~~ days following the date of the appeal hearing for the standard appeal hearing time frame.

(b) Three ~~(3)~~ working days after the date the OAH hears an expedited appeal hearing.

(6) In the event a request for a appeal hearing is not timely or the claimant has no right to a contested case appeal hearing on an issue, and there are no factual disputes about whether this division of rules provides a right to an appeal hearing, the Authority may issue an order accordingly. The Authority may refer an untimely request to the OAH for an appeal hearing on timeliness or on the question of whether the claimant has the right to a contested case appeal hearing.

(7) If the Authority serves a decision notice on the claimant by regular or electronic mail and When the Authority receives an untimely hearing request n appeal request that is not filed within 90 days of the date of the decision notice but is filed from the claimant within 75 days after afrom the date the decision notice has becomebecame a final order, then one of the following shall occur:

(a) ~~The Authority may refer the appeal request to the OAH for a contested case appeal on the merits of the Authority's action described in the notice:~~

~~(A) If the Authority finds that the claimant and claimant's representative did not receive the decision notice and did not have actual knowledge of the notice,; or the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or~~

~~(B) If the Authority finds that the claimant did not meet the timeframe required by OAR 410-200-0145(5) due to excusable mistake or neglect, which may be due to significant cognitive or health issues, reasonable reliance on the statement of an Agency employee relating to procedural requirements or due to misrepresentation or other misconduct of the Agency.~~

~~(b) The Authority may dismiss an appeal request if it is untimely and if the claimant does not qualify for an appeal under subsection (7)(a).~~

(b) If there is a factual dispute regarding the claimant's receipt or knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing to determine whether the claimant received or had actual knowledge of the

notice. The Authority has the burden to prove by a preponderance of the evidence that the claimant had actual knowledge of the notice or that the Authority mailed the notice to the claimant's correct mailing address or sent an electronic notice to the claimant's correct electronic mail address according to the information the claimant provided to the Authority.

(8) If the Authority receives an untimely hearing request from the claimant, regardless of the manner in which the Authority served the decision notice on the claimant, then:

(a) If the Authority finds that the claimant's hearing request was untimely for good cause as defined in OAR 137-003-0501(7), the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or

~~(c) The Authority may refer an appeal request to the OAH on the issue of a factual dispute about timely receipt of a notice or a factual dispute about whether a late request was caused by circumstances meeting the good cause criteria described in OAR 137-003-0501(7).~~

(b) If there is a factual dispute regarding the existence of good cause, the Authority shall refer a hearing request to the OAH for a contested case hearing to determine whether there was good cause as defined in OAR 137-003-0501(7) for the claimant's delay in submitting the hearing request to the Authority.

~~(8) When the Authority receives an appeal request more than 75 days after a decision notice became a final order:~~

~~(a) For an overpayment notice:~~

~~(A) The Authority shall verify whether its records indicate that the liable adult requesting the appeal was sent the overpayment notice to the address known to the Agency;~~

~~(B) If no overpayment notice was sent to the liable adult, the overpayment appeal request is timely. The Authority shall send the claimant a decision notice or a contested case notice;~~

~~(C) If the Authority determines that an overpayment notice was sent to the liable adult at the last address known to the Agency, there is no appeal right based on the issue of whether or not the appeal request was received timely.~~

~~(cb) Any appealhearing request is treated as timely when required under the Servicemembers Civil Relief Act.~~

~~(ed) The Authority may dismiss an appealhearing request as untimely if the claimant does not qualify for an appealhearing under subsections 8(a), and (b), or (c).~~

(9) A claimant may withdraw an appealhearing request at any time before a final order has been issued on the contested case. When a claimant withdraws an appealhearing request:

(a) The Authority shall send an order confirming the withdrawal to the claimant's last known address.

(b) The claimant may cancel the withdrawal in writing. The withdrawal must be received by the Authority hearing representative no later than the tenth working day following the date the Authority sent the order confirming the withdrawal.

(10) An appealhearing request is dismissed by order by default when neither the claimant nor the claimant's representative appears at the time and place specified for the appealhearing. The order is effective on the date scheduled for the appealhearing. The Authority shall cancel the dismissal order on request of the claimant on a showing that the claimant was unable to attend the appealhearing and unable to request a postponement due to circumstances meeting the good cause criteria described in OAR 137-003-0501(7).

Stat. Auth.: ORS 183.341, 413.042, 411.060, 411.404, 411.408, 411.816, 412.014 & 412.049

Stats. Implemented: ORS 183.341, 411.060, 411.404, 411.408, 411.816, 412.014 & 412.049