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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 409
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS

FILED

09/27/2023 4:18 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Adopts advance notice and comment period for meeting materials of Health Evidence Review
Commission subcommittee

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 10/23/2023 5:00 PM

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

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Filed By:
Pete Edlund
Rules Coordinator

HEARING(S)

Auxiliary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 10/19/2023

TIME: 11:05 AM - 11:30 AM

OFFICER: Pete Edlund

REMOTE MEETING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 669-254-5252

CONFERENCE ID: 1602732920

SPECIAL INSTRUCTIONS:

Meeting ID: 160 273 2920

Passcode: 379805

One tap mobile

+16692545252,,1602732920# US (San Jose)

+16468287666,,1602732920# US (New York)

Dial by your location

• +1 669 254 5252 US (San Jose)

• +1 646 828 7666 US (New York)

Meeting ID: 160 273 2920

Find your local number: <https://www.zoomgov.com/join/1602732920>

Join by SIP

- 1602732920@sip.zoomgov.com

Join by H.323

- 161.199.138.10 (US West)
- 161.199.136.10 (US East)

Meeting ID: 160 273 2920

Passcode: 379805

NEED FOR THE RULE(S)

Public comments help HERC learn about community needs and perspectives to inform its deliberations about coverage recommendations and prioritization of health services. An accessible public comment policy supports HERC's goals to eliminate health inequities and assure that covered services are appropriate for the populations affected by its decisions. This rule establishes a public notice for advance meeting materials, which will be posted for a 14-day comment period, before being considered by the Value-based Benefits Subcommittee (VbBS) of the Health Evidence Review Commission (HERC).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

This rule may have the potential to increase opportunities for participation in the Health Evidence Review Commission process, which may positively impact the communities served by the Oregon Health Plan. In formalizing a 6-week notice and comment process, an accessible public comment policy will likely have a positive impact on health outcomes, as the HERC is aligned with the Authority's goals to eliminate health inequities by 2030. An advance notice and comment process will also increase transparency in the decision-making process of the Commission, which will likely have a positive impact on OHP members, many of whom experience socioeconomic inequities.

FISCAL AND ECONOMIC IMPACT:

The Authority does not anticipate there will be a fiscal impact on community partner groups, the general population, or other interested parties.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost

of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

(1) This rule has no additional cost or administrative burdens for the state agency, local government or public.

(2)(a) The Authority does not anticipate an impact on small businesses subject to this rule.

(b) The Authority does not anticipate an impact on the expected reporting, recordkeeping, or administrative activities and cost required to comply with the rule.

(c) No additional supplies or administrative activities are required or mandated.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

These rules do not affect small businesses.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

409-062-0100, 409-062-0110, 409-062-0120

ADOPT: 409-062-0100

RULE SUMMARY: This rule introduces the purpose and intent of an advance public notice and comment process for the Value-based Benefits Subcommittee

CHANGES TO RULE:

409-062-0100

Purpose

These rules establish a public notice for advance meeting materials, which must be posted for an advance comment period, before being considered by the Value-based Benefits Subcommittee (VbBS) of the Health Evidence Review Commission (HERC). Public comments help HERC learn about community needs and perspectives to inform its deliberations about coverage recommendations and prioritization of health services. An accessible public comment policy supports HERC's goals to eliminate health inequities and ensure that covered services are appropriate for the populations affected by its decisions.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.688

ADOPT: 409-062-0110

RULE SUMMARY: This rule establishes standards for Value-based Benefits Subcommittee meeting materials.

CHANGES TO RULE:

409-062-0110

VbBS Meeting Material Requirements

(1) Advance meeting materials include draft materials developed by Health Evidence Review Commission (HERC) staff in preparation for a scheduled Value-based Benefits Subcommittee (VbBS) meeting. Each item includes, but is not limited to, an issue summary document which may include staff description of the issue, staff analysis, research, draft recommendations, and/or supporting literature. ¶

(2) Advance comment period means a 14-calendar-day period of time for members of the public to review advance meeting materials and to allow time to provide written feedback. ¶

(3) Final meeting materials include materials that will be presented to the VbBS subcommittee members at the public meeting. ¶

(4) Exempt topics. The following topics are exempt from this advance meeting material notice and comment process: ¶

(a) Topics for which there is no recommendation to change the Prioritized List or bylaws. ¶

(b) Recommendations related to: ¶

(A) Topics placed on a consent agenda related to topics that do not require discussion. ¶

(B) Placement or disposition of new medical codes issued by federal authorities fewer than 60 days prior to the meeting. ¶

(C) A public health emergency as declared by the state's Public Health Director or to align with state or federal law. ¶

(D) An emergency use authorization by the United States Food and Drug Administration. ¶

(E) Coverage changes that require immediate attention as determined by the HERC Director in order to ensure timely access to health care services. ¶

(c) Topics for which advance meeting materials were previously posted but for which related recommendations were considered but not approved by VbBS, either as recommended by staff or in revised form. ¶

(d) Topics for which advance meeting materials were previously posted and approved by VbBS and which HERC discussed but did not approve either as recommended by VbBS or in revised form.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.688

ADOPT: 409-062-0120

RULE SUMMARY: This rule introduces the notice and comment process, which specifies the method of materials distribution and timing of such notices.

CHANGES TO RULE:

409-062-0120

Notice and Comment Process

(1) Prior to each Value-based Benefits Subcommittee (VbBS) meeting, Health Evidence Review Commission (HERC) staff must develop advance meeting materials, comprised of materials and draft recommendations related to all topics planned for discussion, excluding exempt topics.¶¶

(2) HERC staff must post a list of topics planned for VbBS discussion as well as advance meeting materials for a comment period on the HERC website and provide notice by electronic means (including but not limited to HERC's listserv).¶¶

(a) The list of topics planned for VbBS discussion may include exempt topics for which meeting materials are prepared.¶¶

(b) HERC staff must post advance meeting materials by close of business 42 days in advance of a public meeting of the VbBS, unless there is an unexpected state office closure due to weather, infrastructure technology, or other emergency situation, in which case materials must be posted no later than 38 days in advance of a public VbBS meeting.¶¶

(c) The advance comment period for each publication of advance meeting materials must be specified on the first page and must end no sooner than 8 a.m., Pacific time, 15 calendar days after the posting of advance meeting materials.¶¶

(3) After publication of advance meeting materials, the HERC staff may revise these draft materials based on comments received and other new information they encounter. Staff may also include additional information, research or supporting information.¶¶

(4) HERC staff must create a public comment table for each topic that received written comment.¶¶

(a) The public comment table may include but is not limited to:¶¶

(A) The name of the commenter and any professional credentials provided.¶¶

(B) The date the comment was received.¶¶

(C) Any conflicts of interest or affiliations provided by the commenter.¶¶

(D) The written comment verbatim, up to the first 1,000 words. Comments may be redacted if they include personal health information of another person or excluded if they include hostile, obscene, or other inappropriate content as determined by the HERC Director.¶¶

(E) Any citations included with the public comment.¶¶

(F) For each comment, HERC staff may provide any additional context that may be pertinent for VbBS decision-making, including responding to any substantive or technical information provided in the comment.¶¶

(b) If more than 10 comments are received for any given topic, HERC staff may summarize major themes derived from the comments and include additional evidence, policy context, rationale for its recommendation or other information as necessary to support the Commission in informed decision-making. This summary table is included in addition to the public comment table that contains written comments verbatim.¶¶

(c) For each comment received, HERC staff must acknowledge receipt of the written comment to each individual submitting written comment.¶¶

(5) HERC staff must post the final meeting materials on the HERC website and provide notice by electronic means (including but not limited to HERC's listserv). ¶¶

(a) Final meeting materials must include any meeting materials related to exempt topics planned for discussion.¶¶

(b) Final meeting materials must be published by close of business seven days in advance of a VbBS meeting unless there is an unexpected state office closure due to weather, infrastructure technology, or other emergency situation, in which case materials must be posted no later than 4 days in advance of a public VbBS meeting.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.688