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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 18-2020

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

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FILING CAPTION: Effect of COVID-19 Emergency Authorities on Administrative Rules

EFFECTIVE DATE: 04/02/2020 THROUGH 09/28/2020

AGENCY APPROVED DATE: 04/02/2020

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NEED FOR THE RULE(S):

In response to the President's declaration of a national emergency and the Governor of Oregon's Executive Order NO. 20-03, the following are temporary measures located in the Health Services Division (Division) General Rules, related to Oregon's response to the COVID-19 outbreak. The state will temporarily suspend or modify some policy and will revert back to pre-emergency policies as circumstances allow.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, fee-for-service providers, and CCOs. These rules need to be adopted promptly so that the Authority may react quickly to changes related to the COVID-19 epidemic.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

President Trump's declaration: <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>

Governor Brown's executive order: https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf

ADOPT: 410-120-0011

RULE TITLE: Effect of COVID-19 Emergency Authorities on Administrative Rules

RULE SUMMARY: In response to the President's declaration of a national emergency and the Governor of Oregon's Executive Order NO. 20-03, the following are temporary measures located in the Health Services Division (Division) General Rules, related to Oregon's response to the COVID-19 outbreak. The state will temporarily suspend or modify some policy and will revert back to pre-emergency policies as circumstances allow.

RULE TEXT:

(1) Under authority of the President's declaration of a national emergency related to COVID-19:

(a) On March 25, 2020 the Centers for Medicare and Medicaid Services (CMS) approved temporary modifications and waivers requested by the Authority under Section 1135 of the Social Security Act to certain Medicaid, CHIP, and HIPAA requirements

(March 25 State Specific Waiver, posted at <https://govstatus.egov.com/OR-OHA-COVID-19>).

(b) On March 13, 2020, CMS issued a blanket 1135 waiver, applicable to all fifty of the United States, of certain requirements set forth in Titles XVIII, XIX, and XXI of the Social Security Act (March 13 Blanket Waiver, described at <https://www.cms.gov/files/document/covid19-emergency-declaration-health-care-providers-fact-sheet.pdf>).

(c) On March 26, 2020, CMS issued a letter to the Oregon Association of Hospitals and Health Systems, waiving certain federal requirements applicable to hospitals and other providers (March 26 Provider Waiver, posted at <https://static1.squarespace.com/static/5e712c5039792019ff647a40/t/5e7ed359d5037c1157b16618/1585369947488/OR-Oregon+Waiver+Approval+3-26-2020.pdf>).

(d) On or before March 30, 2020, CMS issued a number of COVID-19 Emergency Declaration Blanket Waivers for Health Care Providers (CMS Blanket Provider Waivers, posted at <https://www.cms.gov/about-cms/emergency-preparedness-response-operations/current-emergencies/coronavirus-waivers>).

(2) In this rule, "COVID-19 Emergency Authorities" means the March 25 State Specific Waiver, the March 13 Blanket Waiver, the March 26 Provider Waiver, the CMS Blanket Provider Waivers, and all emergency orders or declarations relating to COVID-19 by the Governor of the State of Oregon (posted at <https://www.oregon.gov/gov/admin/Pages/executive-orders.aspx>) or by the Authority (posted at <https://govstatus.egov.com/OR-OHA-COVID-19>, tab on "OHA Guidance and Emergency Rules"). In the event of termination or withdrawal of any of the COVID-19 Emergency Authorities in effect on the date this rule is adopted, the term "COVID-19 Emergency Authorities" means only those waivers, emergency orders or declarations described in the previous sentence that remain in effect.

(3) The purpose of this rule is to ensure medical assistance programs provide all appropriate and necessary services, providers are able to operate and deliver services effectively and efficiently, and the medical assistance programs are administered effectively and efficiently, all in accordance with the COVID-19 Emergency Authorities with the goal of reducing adverse impacts from COVID-19.

(4) In order to accomplish the purposes identified above, and consistent with the COVID-19 Emergency Authorities, all rules in this chapter inconsistent with the COVID-19 Emergency Authorities are hereby suspended. OHA shall issue guidance concerning any rule in this chapter 410 that is inconsistent with the COVID-19 Emergency Authorities and is deemed to be suspended pursuant to this paragraph.

(5) In addition to issuing the guidance described in section (4) of this rule, the Authority may do any of, or any combination of, the following:

(a) Issue guidance on how an existing rule in this chapter is to be interpreted and applied;

(b) Suspend one or more existing rules in this chapter, in accordance with normal administrative procedures or by the Governor's rule suspension authority; or

(c) Adopt one or more temporary rules in this chapter, in accordance with normal administrative procedures.

(6) OHA shall post any guidance issued under this rule at <https://govstatus.egov.com/OR-OHA-COVID-19>, tab on "OHA Guidance and Emergency Rules."

STATUTORY/OTHER AUTHORITY: ORS 409.050

STATUTES/OTHER IMPLEMENTED: ORS 414.065