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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 40-2021

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

FILED
09/15/2021 3:47 PM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Requiring OHP Enrolled Providers Review The Prescription Drug Monitoring Program (PDMP) Before Prescribing Controlled Substances.

EFFECTIVE DATE: 10/01/2021 THROUGH 03/13/2022

AGENCY APPROVED DATE: 09/15/2021

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Filed By:
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NEED FOR THE RULE(S):

Conformation with requirements in 42 U.S.C. 1396w-3a that are effective October 1, 2021. State Medicaid programs must ensure all prescribing providers check the prescription drug history of a covered individual being treated by the provider through the Oregon Prescription Drug Monitoring Program (PDMP) before prescribing to such individual a controlled substance.

JUSTIFICATION OF TEMPORARY FILING:

As a requirement under Federal law, the Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Documents Relied Upon, and where they are available: 42 U.S.C. 1396w-3a viewable at; https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title42-section1396w-3a&num=0&edition=prelim

AMEND: 410-120-1260

SUSPEND: Temporary 410-120-1260 from DMAP 39-2021

RULE SUMMARY: The changes to this rule are to become effective October 1, 2021 to conform with requirements in 42 U.S.C. 1396w-3a that are effective October 1, 2021. A previously filed temporary rule making was suspended because the effective date was September 15, 2021, and this temporary rule is being filed to become effective October 1, 2021.

CHANGES TO RULE:

410-120-1260
Provider Enrollment ¶

(1) This rule applies to providers enrolled with or seeking to enroll with the Oregon Health Authority (Authority), Health Systems Division (Division).¶
(2) Providers signing the Provider Enrollment Agreement constitute agreement to comply with all applicable Division provider rules and federal and state laws and regulations.¶
(3) Providers enrolled by the Division include:¶
(a) A non-payable provider, meaning a provider who is issued a provider number for purposes of data collection or non-claims-use such as, but not limited to:¶
(A) Ordering or referring providers whose only relationship with the Division is to order, refer, or prescribe services for Division clients;¶
(B) A billing agent or billing service submitting claims or providing other business services on behalf of a provider but not receiving payment in the name of or on behalf of the provider;¶
(C) An encounter only provider contracted with a PHP or CCO.¶
(b) A payable provider, meaning a provider who is issued a provider number for submitting health care claims for reimbursement from the Division. A payable provider may be:¶
(A) The rendering provider;¶
(B) An individual, agent, business, corporation, clinic, group, institution, or other entity that in connection with the submission of claims receives or directs the payment on behalf of a rendering provider.¶
(4) When an entity is receiving or directing payment on behalf of the rendering provider, the billing provider ~~must~~ shall:¶
(a) Meet one of the following standards, as applicable:¶
(A) Have a relationship with the rendering provider described in 42 CFR 447.10(g) and have the authority to submit the rendering provider enrollment application and supporting documentation on behalf of the rendering provider;¶
(B) Is a contracted billing agent or billing service enrolled with the Division to provide services with the submission of claims and to receive or direct payment in the name of the rendering provider pursuant to 42 CFR 447.10(f).¶
(b) Maintain and make available to the Division upon request records indicating the billing provider's relationship with the rendering provider. This includes:¶
(A) Identifying all rendering providers for whom they bill or receive or direct payments at the time of enrollment;¶
(B) Notifying the Division within 30 days of a change to the rendering provider's name, date of birth, address, Division provider numbers, NPIs, Social Security Number (SSN), or the Employer Identification Number (EIN).¶
(c) Prior to submission of any claims or receipt or direction of any payment from the Division, obtain signed confirmation from the rendering provider that the billing entity or provider is authorized by the rendering provider to submit claims or receive or direct payment on behalf of the rendering provider. This authorization, and any limitations or termination of such authorization, ~~must~~shall be maintained in the provider's files for at least five years following the submission of claims or receipt or direction of funds from the Division.¶
(5) In order to facilitate timely claims processing and claims payment consistent with applicable privacy and security requirements for providers:¶
(a) The Division requires non-payable and payable providers to be enrolled consistent with the provider enrollment process described in this rule;¶
(b) If the rendering provider uses electronic media to conduct transactions with the Division or authorizes a non-payable provider, e.g. billing service or billing agent, to conduct such electronic transactions, the rendering provider ~~must~~shall comply with the Authority Electronic Data Interchange (EDI) rules, OAR 943-120-0100 through 943-120-0200. Enrollment as a payable or non-payable provider is a necessary requirement for submitting electronic claims, but the provider ~~must~~shall also register as an EDI trading partner and identify the EDI submitter ~~in order~~ to submit electronic claims.¶
(6) To be enrolled and able to bill as a provider, an individual or organization ~~must~~shall:¶
(a) Meet applicable licensing and regulatory requirements set forth by federal and state statutes, regulations, and rules;¶

(b) Comply with all Oregon statutes and regulations for provision of Medicaid and CHIP services;¶
(c) If providing services within the State of Oregon, have a valid Oregon business license if such a license is a requirement of the state, federal, county, or city government to operate a business or to provide services.¶
(7) An Indian Health Service facility meeting enrollment requirements shall be accepted on the same basis as any other qualified provider. However, when state licensure is normally required, the facility need not obtain a license but ~~must~~shall meet all applicable standards for licensure.¶
(8) An individual or organization that is currently subject to sanction by the Division, another state's Medicaid program, or the federal government is not eligible for enrollment (see OAR 410-120-1400, 943-120-0360, Provider Sanctions).¶
(9) All providers ~~must~~shall meet the following requirements before the Division may issue or renew a provider number and ~~must~~shall provide documentation at any time upon written request by the Division:¶
(a) The provider ~~must~~shall disclose to the Division:¶
(A) The identity of any person employed by the provider who has been convicted of a criminal offense related to that person's involvement in any program under Medicare, Medicaid, or the CHIP program in the last ten years;¶
(B) If the provider is an entity other than an individual practitioner or group of practitioners, disclose the following:¶
(i) The name, date of birth, address, and tax identification number of each person with an ownership or controlling interest in the provider or in any subcontractor in which the provider has a direct or indirect ownership interest of 5 percent or more. When disclosing tax identification numbers:¶
(I) For corporations, use the federal Tax Identification Number;¶
(II) For individuals in a solo practice or billing as an individual practitioner, use the Social Security Number (SSN);¶
(III) All other providers use the Employer Identification Number (EIN);¶
(IV) The SSN or EIN of the rendering provider may not be the same as the Tax Identification Number of the billing provider;¶
(V) Pursuant to 42 CFR 433.37, including federal tax laws at 26 USC 6041, SSN's and EIN's provided are used for the administration of federal, state, and local tax laws and the administration of this program for internal verification and administrative purposes including but not limited to identifying the provider for payment and collection activities.¶
(ii) Whether any of the persons so named:¶
(I) Is related to another as spouse, parent, child, sibling, or other family members by marriage or otherwise; and¶
(II) Has an ownership or controlling interest in any other entity.¶
(C) A provider ~~must~~shall submit within 35 days of the date of a request, full and complete information about the ownership of any subcontractor with whom the provider has had business transactions totaling more than $25,000 during the 12-month period ending on the date of the request ~~and~~. This includes any significant business transactions between the provider ~~and~~, any wholly owned supplier, or between the provider and any subcontractor during the five-year period ending on the date of the request.¶
(b) The provider ~~must~~shall submit the following information to the Division:¶
(A) For non-payable providers, a complete Non-Paid Provider Enrollment Request;¶
(B) For payable providers, a complete Provider Enrollment Request, Provider Enrollment Attachment, Disclosure Statement, and Provider Enrollment Agreement;¶
(C) Application fee if required under 42 CFR 455.460;¶
(D) Consent to criminal background check when required;¶
(E) To fulfill federal provider screening requirements pursuant to 42 CFR 455.436 and upon request, the name, date of birth, address, Division provider numbers, NPIs, and Social Security Number (SSN) of any provider who is enrolled or seeking enrollment with the Division.¶
(c) Loss of the appropriate licensure or certification shall result in immediate disenrollment of the provider and recovery of payments made subsequent to the loss of licensure or certification;¶
(d) Enrolled providers ~~must~~shall notify the Division in writing of material changes in any status or condition that relates to their qualifications or eligibility to provide medical assistance services including, but not limited to,

those listed in this subsection:¶
(A) Failure to notify the Division of a change of Federal Tax Identification Number for entities or a Social Security Number or Employer Identification Number for individual rendering providers may result in the imposition of a $50 fine:¶
(i) If the Division notifies a provider about an error in their Federal Tax Identification, including Social Security Numbers or Employer Identification Numbers for individual rendering providers, the provider ~~must~~shall supply the appropriate valid Federal Tax Identification Number within 30 calendar days of the date of the Division's notice.¶
(ii) Failure to comply with this requirement may result in the Division imposing a fine of $50 for each such notice. Federal Tax Identification requirements described in this rule refer to any such requirements established by the Internal Revenue Service.¶
(B) Changes in business affiliation, ownership, NPI and Federal Tax Identification Number, ownership and controlling information, or criminal convictions may require the submission of a provider enrollment form, provider enrollment agreement, provider certification, or other related documentation;¶
(C) In the event of bankruptcy proceedings, the provider shall notify immediately the Division administrator in writing;¶
(D) Claims submitted by or payments made to providers who have not furnished the notification required by this rule or to a provider that fails to submit a new application as required by the Division under this rule may be denied or recovered.¶
(10) Rendering providers may be enrolled retroactive to the date services are provided to a~~n~~ Division client only if:¶
(a) The provider is appropriately licensed, certified, and otherwise meets all Division requirements for providers at the time services are provided;¶
(b) Services are provided fewer than 12 months prior to the date the application for provider status is received by the Division as evidenced by the first date stamped on the paper claim submitted with the application materials for those services, either manually or electronically.¶
(11) The Division reserves the right to retroactively enroll the provider prior to the 12-month period based upon extenuating circumstances outside the control of the provider, consistent with federal Medicaid regulations, and with approval of the Division's Provider Enrollment Unit Manager.¶
(12) There are two types of provider numbers:¶
(a) The Division issues Oregon Medicaid provider numbers to establish an individual or organization's enrollment as an Oregon Medicaid provider:¶
(A) This number designates specific categories of services covered by the Division Provider Enrollment Attachment. For example, a pharmacy provider number applies to pharmacy services but not to durable medical equipment, which requires a separate provider application attachment and establishes a separate Oregon Medicaid provider number;¶
(B) For providers not subject to NPI requirements, this number is the provider identifier for billing the Division.¶
(b) The Division requires compliance with NPI requirements in 45 CFR Part 162. For providers subject to NPI requirements:¶
(A) The NPI and taxonomy codes are the provider identifier for billing the Division;¶
(B) Currently enrolled providers that obtain a new NPI are required to update their records with the Division's Provider Enrollment Unit;¶
(C) Provider applicants ~~must~~shall obtain an NPI and include it in their provider enrollment request to the Division.¶
(13) Enrolled providers are required to check the Prescription Drug Monitoring Program (PDMP), as defined in ORS 431A.655, before prescribing a schedule II controlled substance pursuant to 42 USC 1396w-3a.¶
(a) Providers shall maintain documentation of the prescription drug history of the individual being treated; and¶
(b) In the case that an enrolled provider is not able to conduct the PDMP check, the providers shall maintain documentation of efforts, including reasons why the provider was unable to conduct the check.¶

(c) The PDMP check does not apply to clients in exempt populations:¶
(A) Individuals receiving hospice care;¶
(B) Individuals receiving palliative care;¶
(C) Individuals receiving cancer treatment;¶
(D) Individuals with sickle cell disease; and¶
(E) Residents of long-term care facilities described in 42 USC 1396a(oo)(3)(A)(ii).¶
(d) PDMP requirements are in accordance with OAR 333-023-0800 to 333-023-0830.¶
(14) Providers of services outside the State of Oregon shall be enrolled as a provider if they comply with the requirements in OAR 410-120-1260 and under the following conditions:¶
(a) The provider is appropriately licensed or certified and meets standards for participation in the Medicaid program. Disenrollment or sanction from other states' Medicaid programs or exclusion from any other federal or state health care program is a basis for disenrollment, termination, or suspension from participation as a provider in Oregon's medical assistance programs;¶
(b) The Division shall enroll ~~only~~ an out-of-state non-contiguous pharmacy as a provider when enrollment is necessary to meet a need that cannot be met by an in-state pharmacy. The pharmacy is required to be licensed in the state they are doing business where the client filled the prescription and ~~must~~shall be enrolled with the Division in order to submit claims. Identified needs include but are not limited to the following:¶
(A) Enrollment is necessary to reimburse an out-of-state pharmacy for services rendered to a client that travels out of Oregon and is unable to use a pharmacy licensed in Oregon. The out-of-state pharmacy ~~must~~shall be licensed in the state where the services are rendered;¶
(B) Enrollment is necessary to ensure the Division is the payer of last resort, such as when a client's TPL payer requires use of an out-of-state mail order pharmacy;¶
~~¶~~
(C) Enrollment is necessary to ensure access to covered pharmacy services that are not otherwise generally available either through the Division's contracted mail order pharmacy or through enrolled in-state pharmacies;~~¶~~
~~¶~~
(D) Enrollment is necessary to ensure access to covered pharmacy services provided to clients residing in a licensed in-state facility, such as a long-term care facility. The out-of-state pharmacy and the enrollment is limited to services provided to residents of the in-state facility.¶
(c) The provider bills only for services provided within the provider's scope of licensure or certification;¶
(d) For noncontiguous out-of-state providers, the services provided ~~must~~shall be authorized in the manner required under these rules for out-of-state services (OAR 410-120-1180) or other applicable Division rules:¶
(A) The services provided are for a specific Oregon Medicaid client who is temporarily outside Oregon or the contiguous area of Oregon; or¶
(B) Services provided are for foster care or subsidized adoption children placed out of state; or¶
(C) The provider is seeking Medicare deductible or coinsurance coverage for Oregon Qualified Medicare Beneficiaries (QMB) clients;¶
(D) The services for which the provider bills are covered services under the Oregon Health Plan (OHP).¶
(e) Facilities including but not restricted to hospitals, rehabilitative facilities, institutions for care of individuals with mental retardation, psychiatric hospitals, and residential care facilities shall be enrolled as providers only if the facility is enrolled as a Medicaid provider in the state in which the facility is located or is licensed as a facility provider of services by the State of Oregon;¶
(f) Out-of-state providers may provide contracted services per OAR 410-120-1880;¶
(g) Out-of-state billing providers may need to register with the Secretary of State and the Department of Revenue to transact business in Oregon pursuant to OAR 943-120-0320(15)(f).¶
(145) When a substitute physician is retained to take over another physician's professional practice while he or she is absent or unavailable, the following shall apply:¶
(a) The Division recognizes that absentee physicians may retain substitute physicians as a locum tenens or as part of a reciprocal billing arrangement. For purposes of this rule:¶

(A) A "locum tenens" means a substitute physician retained to take over another physician's professional practice while he or she is absent (i.e., absentee physician) for reasons such as illness, vacation, continuing medical education, pregnancy, etc.;¶
(B) A locum tenens may not be retained to take over a deceased physician's professional practice without becoming enrolled with the Division;¶
(C) A "reciprocal billing arrangement" means a substitute physician retained on an occasional basis.¶
(b) Substitute physicians are not required to enroll with the Division; however, the Division may enroll such providers at the discretion of the Division's provider enrollment manager if the provider submits all information required for provider enrollment as described in this rule;¶
(c) In no instance may an enrolled absentee physician utilize a substitute physician who is, at that time, excluded from participation in or under sanction by Medicaid or federally funded or federally assisted health programs;¶
(d) The absentee physician ~~must~~shall be an enrolled Division provider and ~~must~~shall bill with their individual Division assigned provider number and receive payment for covered services provided by the substitute physician:¶
(A) Services provided by the locum tenens ~~must~~shall be billed with a modifier Q6;¶
(B) Services provided in a reciprocal billing arrangement by the substitute physician ~~must~~shall be billed with a modifier Q5;¶
(C) In entering the Q5 or Q6 modifier, the absentee physician is certifying that the services are provided by a substitute physician identified in a record of the absentee physician that is available for inspection and are services for which the absentee physician is authorized to submit a claim;¶
(D) A physician or other person who falsely certifies that the requirements of this section are met may be subject to possible civil and criminal penalties for fraud, and the enrolled provider's right to receive payment or to submit claims may be revoked.¶
(e) These requirements do not apply to substitute arrangements among physicians in the same medical practice when claims are submitted in the name of the practice or group name;¶
(f) Nothing in this rule prohibits physicians sharing call responsibilities from opting out of the substitute provider arrangement described in this rule and submitting their own claims for services provided, as long as all such physicians are themselves enrolled rendering providers and as long as duplicate claims for services are not submitted.¶
(1~~5~~6) Provider termination:¶
(a) The provider may terminate enrollment at any time. The request ~~must~~shall be in writing and signed by the provider. The notice shall specify the Division assigned provider number to be terminated and the effective date of termination. Termination of the provider enrollment does not terminate any obligations of the provider for dates of services during which the enrollment was in effect;¶
(b) The Division may terminate or suspend providers when a provider fails to meet one or more of the requirements governing a provider's participation in Oregon's medical assistance programs such as, but not limited to:¶
(A) Breach~~es~~ of provider agreement;¶
(B) Failure to submit timely and accurate information as requested by the Division;¶
(C) Failure to submit fingerprints in a form determined by the Division within 30 days of request;¶
(D) Failure to permit access to provider locations for site visits;¶
(E) Failure to comply with federal or state statutes and regulations or policies of the Division that are applicable to the provider;¶
(F) No claims have been submitted in an 18-month period. The provider ~~must~~shall reapply for enrollment;¶
(G) Any person who has an ownership or controlling interest in the provider or who is an agent or managing employee of the provider and has been convicted of a criminal offense related to that person's involvement in any program established under Medicare, Medicaid CHIP, or the Title XX services program in the last ten years;¶
(H) Failure to fully and accurately make any disclosure required under this section (9) of this rule.¶
(1~~6~~7) If a provider's enrollment in the OHP program is denied, suspended, or terminated or a sanction is imposed

under this rule, the providers may request a contested case hearing pursuant to OAR 410-120-1600 and 410-120-1860.¶
(1~~7~~8) The provision of health care services or items to Division clients is a voluntary action on the part of the provider. Providers are not required to serve all Division clients seeking service.¶
[NOTE: Publications referenced are available from the agency.]
Statutory/Other Authority: ORS 413.042, 414.615, 414.625, 414.635, 414.651
Statutes/Other Implemented: ORS 414.~~025~~,610 - 414.~~06~~85