



NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

FILED
05/10/2023 2:36 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Essential Workforce Healthcare Program

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/21/2023 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.

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group with 10 or more members, within 21 days following the publication of the Notice of Proposed Rulemaking in the Oregon Bulletin or 28 days from the date the Notice was sent to people on the agency mailing list, whichever is later. If sufficient hearing requests are received, the notice of the date and time of the rulemaking hearing must be published in the Oregon Bulletin at least 14 days before the hearing.

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NEED FOR THE RULE(S)

The Oregon Legislature directed the Oregon Health Authority to establish requirements and funding methodology for the Essential Workforce Health Care Program. This Program will provide supplemental payments to participating facilities to support the funding of Essential Workforce Health Care Fund.

Other changes may be made to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

Senate Bill 800 (2021 Regular Session)

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0800/B-Engrossed>

Oregon Law 2021 Chapter 595

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2021orlaw0595.pdf

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

Adoption of the proposed rule changes will advance racial equity in Oregon through increased access to health care coverage by implementing the Essential Workforce Health Care Fund. This fund is for all workers of Medicaid funded nursing and community-based facilities.

FISCAL AND ECONOMIC IMPACT:

Major impact on providers.

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) The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance. The Legislature has allocated \$30M general funds to Oregon Health Authority to establish the trust.

State Agencies: The Department estimates that Oregon Health Authority will receive \$30M in general fund to establish the trust approved by the 2021-2023. The initial \$30M will be eligible for federal matching funds to expand the amount available to the trust.

Units of Local Government: The Department estimates no financial impact to units of local government.

Consumers: The Department estimates no financial impact.

Providers: The Department estimates no financial impact.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2)

(a) This rule will affect nursing facilities who choose to participate in the program. There are approximately 123 nursing facilities impacted by the proposed rule changes. There are 18 nursing facilities (less than 50 licensed beds) that may be considered a small business as defined in ORS 183.310.

(b) The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) The proposed changes impact providers as described above in the Department's statement of cost of compliance.

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

A small business, or representative of a small business, as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

410-144-0000, 410-144-0005, 410-144-0010, 410-144-0020, 410-144-0025, 410-144-0030, 410-144-0040, 410-144-0050, 410-144-0060

ADOPT: 410-144-0000

RULE SUMMARY: Created to state the purpose and scope of these rules.

CHANGES TO RULE:

410-144-0000

Purpose

These rules establish the requirements for participation in the Essential Workforce Health Care Program (EWHP). The EWHP is established for participating employers to provide health care benefits to the employees of their facilities. Oregon Health Authority (Authority) shall provide supplemental payments to support the funding of these benefits.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0005

RULE SUMMARY: Created to list the applicable definitions for the Essential Workforce Health Care Program.

CHANGES TO RULE:

410-144-0005

Definitions

(1) "Employee Retirement Income Security Act of 1974 (ERISA)" means the federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.¶

(2) "Essential Workforce Health Care Fund (EWHF)" means a jointly administered employee welfare benefit plan governed by ERISA and applicable law that has been established for the purpose of providing health and related benefits to employees of participating employers and their beneficiaries and under the conditions specified in the EWHF Plan.¶

(3) "Facility" means a facility that is:¶

(a) A long-term care facility licensed under ORS 441.020;¶

(b) A residential facility as defined in ORS 443.400; and¶

(c) An in-home care agency licensed under ORS 443.315.¶

(4) "Authority" means Oregon Health Authority.¶

(5) "Participating employer" means an operator of a facility that:¶

(a) Is a participating provider in the state medical assistance program (defined in OAR 410-120-0000);¶

(b) Elects to participate in the Oregon Essential Workforce Health Care Program; and¶

(c) Meets requirements prescribed by the Oregon Health Authority in this rule.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0010

RULE SUMMARY: Created to outline the eligibility requirements for the Essential Workforce Health Care Program.

CHANGES TO RULE:

410-144-0010

Eligibility

Requirements for an eligible employer to participate in the program.

(1) Sign a memorandum of understanding with the Oregon Health Authority that specifies how the supplemental payments shall be used;

(2) Agree to participate in evidence-based workforce and quality of care improvements; and

(3) Annually report quality and other metrics.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0020

RULE SUMMARY: Documents the requirements and responsibilities for using the supplemental payments of the Essential Workforce Health Care Program.

CHANGES TO RULE:

410-144-0020

Memorandum of Understanding

All participating employers that receive a supplemental payment shall sign a Memorandum of Understanding with the Authority. The Memorandum of Understanding shall document the requirements and responsibilities for using the supplemental payments to provide health care benefits to their employees.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0025

RULE SUMMARY: Created to outline the supplemental payments.

CHANGES TO RULE:

410-144-0025

Use of Supplemental Payments

Participating employers who receive supplemental payments under this program shall use the payments to participate in the Essential Workforce Health Care Program.¶

(1) Payments under Essential Workforce Health Care Program shall be used to provide health care benefits to employees of the participating facilities through the Essential Workforce Health Care Fund (EWHF).¶

(2) Participating employers use of the supplemental payments are subject to the requirements established by the Essential Workforce Health Care Fund (EWHF).

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0030

RULE SUMMARY: Created to outline participating employer's agreement to participate in evidence-based workforce and quality of care improvement.

CHANGES TO RULE:

410-144-0030

Evidence-based Workforce and Quality of Care Improvements

Participating employers agree to participate in evidence-based workforce and quality of care improvements, including all of the requirements in this rule.

(1) Workforce input into benefit design;

(2) Quantitative and qualitative reporting on impact of health care benefit on workforce;

(3) Retention strategies for workforce; and

(4) Others as mutually agreed upon by the Authority and participating employers.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0040

RULE SUMMARY: Created to outline the annual reporting of quality metrics.

CHANGES TO RULE:

410-144-0040

Annual Reporting of Quality Metrics

(1) EWHF shall annually provide reports on all of the following metrics related to quality health benefits:¶

(a) Health benefits design, including total premium, employer/employee premium split, deductible, out-of-pocket maximum, co-pays, co-insurance;¶

(b) Services covered by benefit;¶

(c) Number of employees and their dependents enrolled in the health benefit;¶

(d) Network adequacy;¶

(e) Waiting times for select services;¶

(f) Other measures of employee health and wellness as mutually agreed upon between the Authority and participating employers;¶

(g) Narrative description of significant changes from the past year or anticipated future changes;¶

(h) Workforce retention metrics; and¶

(i) Equity metrics.¶

(2) The report shall be due to the Authority January 31 of each year.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

RULE SUMMARY: Created to outline the supplemental payment methodology.

CHANGES TO RULE:

410-144-0050

Supplemental Payments Methodology

(1) The aggregate available supplemental payment amount for privately-owned Nursing Facilities (NFs) is calculated for each aggregate Medicaid supplemental payment limit calculation period by taking the difference between the aggregate upper payment limit (UPL) from paragraph (a) of this subsection and the aggregate Medicaid payment from paragraph (b) of this subsection.¶

(a) The aggregate upper payment limit for privately-owned NFs, as presented in the most recently completed Medicaid NF UPL calculation submitted to CMS, shall be calculated in accordance with the Medicaid UPL provisions codified at Title 42 CFR § 447.272 as follows:¶

(A) Determine aggregate costs under Medicare cost principles using the most recently filed or settled CMS 2540 skilled nursing facility cost reports for privately-owned NFs:¶

(B) Determine the per diem cost by dividing the aggregate costs from subparagraph (A) of this paragraph by total days of service associated with the same cost reports:¶

(C) Extract Medicaid days of service for privately-owned NFs from the state's Medicaid Management Information System (MMIS) for the cost reporting periods associated with the cost reports described in clause (A) of this subparagraph:¶

(D) Determine aggregate Medicaid costs by multiplying the per diem Medicaid cost from subparagraph (B) of this paragraph by Medicaid days of service from subparagraph (C) of this paragraph.¶

(b) The aggregate Medicaid payment is equal to sum of Medicaid payments for privately-owned NFs from the aggregate Medicaid supplemental payment limit calculation period. Payment data includes Medicaid regular per diem payments, per diem drug payments, and per diem client contributions.¶

(2) The aggregate available supplemental payment amount is not to exceed the lower of 95 percent of the aggregate available supplemental payment amount for privately owned NFs from section (1) of this rule and the general fund revenue allocated to the program plus associated federal matching funds. For the state biennium 2021 - 2023, total general revenue appropriated is \$30,000,000.¶

(3) The state may further reduce the aggregate available supplement payment amount from section (2) of this rule if the aggregate upper payment limit for privately-owned NFs from section (1)(a) of this rule is projected to decrease between the aggregate Medicaid supplemental payment limit calculation period and the federal fiscal year within which the applicable NF-level Medicaid supplemental payment limit calculation period falls.¶

(4) Methodology to calculate NF-specific supplemental payment amounts.¶

(a) Divide the aggregate available supplemental payment amount from section (2) of this rule by four:¶

(b) Extract Medicaid days of service for privately-owned NFs that have qualified for a supplemental payment from the state's MMIS for the NF-level Medicaid supplemental payment limit calculation period:¶

(c) The allocation percentage for each qualifying NF shall be determined by dividing the individual NF's total Medicaid days from section (2) of this rule by the aggregate sum of all qualifying NFs' Medicaid days from the same section:¶

(d) The NF-specific supplemental payment for the NF-level Medicaid supplemental payment limit calculation period shall equal the aggregate available supplemental payment amount from subsection (a) of this rule multiplied by the NF's allocation percentage from subsection (c) of this rule.

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

ADOPT: 410-144-0060

RULE SUMMARY: Created to outline an audit, if identified.

CHANGES TO RULE:

410-144-0060

Oversight

All payments authorized for this Program are subject to audit at the discretion of the Oregon Health Authority (Authority).

Statutory/Other Authority: ORS 410.070, 413.042

Statutes/Other Implemented: ORS 410.070, 414.033, OL 2021 ch. 595