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**NOTICE OF PROPOSED RULEMAKING**  
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

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

**FILED**  
08/03/2020 11:01 AM  
ARCHIVES DIVISION  
SECRETARY OF STATE

FILING CAPTION: Adopt Medical Services Rule with updated risk tables for Planned Out of Hospital Birth requests

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 09/21/2020 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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Filed By:  
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**NEED FOR THE RULE(S):**

This rule is necessary in order to ensure appropriate, safe and timely access to out of hospital birth services and qualified health care providers for Oregon Health Plan (OHP) covered individuals. The rule authorizes the Division to operationalize intended coverage of planned out of hospital birth services (OOHB) as described in the Health Evidence Review Commission's (HERC) guideline notes and coverage guidance documents.

**DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:**

Current Health Evidence Review Commission's (HERC) prioritized list and guidelines at:

<https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Prioritized-List.aspx>

Current HERC coverage guidance and reports at: <https://www.oregon.gov/oha/HPA/DSI-HERC/Pages/Evidence-based-Reports.aspx>

**FISCAL AND ECONOMIC IMPACT:**

None

**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 with updated risk tables has no impact or additional work for the Authority to permanently adopt this OAR.  
2a-c) None

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

There was not a formal process to engage small businesses; however, comments were considered based upon public testimony and input at HERC meetings. The HERC's Evidence-based Guidelines Subcommittee (EbGS) and Value-based Benefits Subcommittee (VbBS) review scientific evidence and include public comment as part of their public meetings in the development of the OOH coverage guidance.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

Adoption of this rule as permanent to maintain access to appropriate out of hospital birth for low risk pregnancies is considered necessary and does not rise to the level of requiring a rules advisory committee. This permanent rule is necessary in order to continue operationalization of the temporary rule which will expire on September 27, 2020. A RAC exception was granted for these reasons.

AMEND: 410-130-0240

RULE SUMMARY: This rule describes coverage of medical services for individuals enrolled with the Oregon Health Plan (OHP). The rule includes maternity care and delivery for individuals experiencing low risk pregnancy who desire a planned delivery outside a hospital setting. The rule references pregnancy risk criteria tables and coverage guidance developed by the Health Evidence Review Commission (HERC).

CHANGES TO RULE:

410-130-0240

Medical Services ¶¶

- (1) Coverage of medical and surgical services is subject to the Health Evidence Review Commission's (HERC) Prioritized List of Health Services (Prioritized List). Medical and surgical services requiring prior authorization (PA) are listed in Oregon administrative rule (OAR or rule) 410-130-0200, PA Table 130-0200-1, and medical and surgical services that are Not Covered/Bundled services are listed in OAR 410-130-0220, Table 130-0220-1.¶¶
- (2) Coverage for acupuncture services by an enrolled acupuncture provider are subject to the HERC Prioritized List and the client's benefit plan.¶¶
- (3) Coverage for medically appropriate chiropractic services provided by an enrolled chiropractor is subject to the HERC Prioritized List and benefit plan for:¶¶
  - (a) Diagnostic visits including evaluation and management services;¶¶
  - (b) Chiropractic care including manipulative treatment;¶¶
  - (c) Laboratory and radiology services.¶¶
- (4) Maternity care and delivery:¶¶
  - (a) The Division may consider payment for delivery within a hospital, clinic, birthing center, or home setting;¶¶
  - (b) For out-of-hospital births, the Division may only consider payment for labor and delivery care of women experiencing low risk pregnancy. The Division will determine whether a pregnancy can be considered low risk and an out-of-hospital birth is eligible for payment;¶¶
  - (c) The DDuring the Coronavirus (COVID-19) outbreak state of emergency initiated under governor Kate Brown's executive order 20-03 and any subsequent executive order extending the state of emergency, the division adopts ¶table ¶from OAR 333-076-0650s 410-130-0240-1, 410-130-0240-2, 410-130-0240-3 and 410-130-0240-4, superseding the requirements in the Prioritized List of Health Services Guideline Note 153 for the purposes described below.¶¶
  - (d) During the Coronavirus (COVID-19) outbreak state of emergency initiated under governor Kate Brown's executive order 20-03 and any subsequent executive order extending the state of emergency, the division adopts Table 410-130-0240-1 and Table 410-130-0240-3 to outline the absolute risk factors that, if present, would preclude payment for initiation or continuation of any out-of-hospital labor and delivery care. For a planned out-

of-hospital birth, the Division requires that a contingency for an in-hospital birth be included in the medical record. The division considers all conditions listed in ~~Table I of OAR 333-076-0650s~~ 410-130-0240-1 and 410-130-0240-3 to necessitate an in-hospital birth if present or anticipated to be present at the onset of labor. The Division may deny payment for labor and delivery services in an out-of-hospital setting if it determines that an in-hospital birth was necessary and appropriate steps to facilitate an in-hospital birth were not pursued. The Division may also deny payment for services if appropriate risk assessments were not performed at initiation of care and throughout pregnancy, or when the appropriate consultation policies described in subsection (e) were not followed. When an in-hospital birth becomes necessary for a client that was seeking a planned out-of-hospital birth and care is transferred from one provider to another, the Division will consider payment for both providers for the portion of care provided. Bill using appropriate CPT and HCPCS codes.¶

~~(de)~~ During the Coronavirus (COVID-19) outbreak state of emergency initiated under governor Kate Brown's executive order 20-03 and any subsequent executive order extending the state of emergency, the division adopts Table 410-130-0240-2 and Table 410-130-0240-4, which contain criteria requiring consultation regarding the management of risk factors during pregnancy and birth for patients receiving out-of-hospital birth care. The division may deny payment if any of the high-risk conditions in tables 410-130-0240-2 or 410-130-0240-4 arise during pregnancy, labor, delivery or the immediate postpartum period and no consultation with an appropriate provider occurs, or if the recommendations of the consulting provider are not adhered to by the out-of-hospital birth attendant in the out-of-hospital setting. For the purposes of consultation under this subsection, an appropriate consulting provider is one of the following:¶

(A) A provider (MD/DO or CNM) who has active admitting privileges to manage pregnancy in a hospital, or; ¶

(B) An appropriate specialty consultant (e.g., maternal-fetal medicine, hepatologist, hematologist, psychiatrist).¶

(f) When a provider is practicing within the authorization of his or her license, the division may consider payment for administration of drugs and devices that are used in pregnancy, birth, postpartum care, newborn care, or resuscitation and that are deemed integral to providing safe care.¶

(eg) For out-of-hospital births, drugs authorized in subsection ~~(ef)~~ or this section are limited:¶

(A) For out-of-hospital births, the Division will make no payment for general, spinal, caudal, or epidural anesthesia administered for care associated with labor and delivery;¶

(B) For out-of-hospital births, the Division will make no payment for inducing, stimulating, or using chemical agents to augment labor during the first or second stages of labor;¶

(C) For out-of-hospital births, the Division will consider payment for chemical agents administered to inhibit labor only as a temporary measure until referral or transfer of the client to a higher level of care is complete.¶

(fh) Within the home setting, the Division may consider payment for appropriate supplies in addition to delivery payment. The additional payment for supplies includes all supplies, equipment, staff assistance, and newborn screening cards;¶

(gi) During labor in an out-of-hospital setting, should any of the risk factors outlined in ~~Table II of OAR 333-076-0650~~ 410-130-0240-3 develop, the Division requires that the client will be transferred to a hospital, and the Division may deny payment for labor and delivery services if it determines that appropriate steps to facilitate the transfer were not pursued. Appropriate transfer of care must be in accordance with the practitioner's licensure requirements. When labor management does not result in a delivery, and the client is appropriately transferred to a higher level of care, the provider shall code for labor management only. Bill code 59899 and attach appropriate clinical documentation of services performed with respect to labor management. The Division may also deny payment for services if appropriate risk assessments were not performed during labor, or when the appropriate consultation policies described in subsection (e) were not followed;¶

(hj) For births in an out-of-hospital setting, should any of the risk factors outlined in ~~Table III of OAR 333-076-0650~~ 410-130-0240-3 develop during the postpartum period in the mother ~~or infant~~, the Division requires that the ~~client~~ mother will be transferred to a hospital, and the Division may deny payment for labor and delivery services if it determines that appropriate steps to facilitate the transfer were not pursued. Appropriate transfer of care must be in accordance with the practitioner's licensure requirements. The Division will consider payment for both providers for the portion of care provided when appropriate. The Division may also deny payment for

services if appropriate risk assessments were not performed at initiation of care and throughout pregnancy, or when the appropriate consultation policies described in subsection (e) were not followed;¶

(ik) For multiple vaginal births, use the appropriate CPT code for the first delivery. Use the delivery-only code for the subsequent deliveries. The Division will reimburse the first delivery at 100 percent and the subsequent deliveries at 50 percent of the delivery-only code's maximum allowance. For multiple babies delivered via cesarean section, the Division pays for the cesarean section only once.¶

(L) The division may deny payment or authorization for planned out-of-hospital birth when conditions arise which in the Division's judgment create a situation in which a planned out-of-hospital birth is not medically appropriate. For example, having multiple risk conditions requiring consultation may increase the risk sufficiently to indicate the need for transfer of care. ¶

(5) Neonatal Intensive Care Unit (NICU) procedures:¶

(a) Are reimbursed only to neonatologists and pediatric intensivists for services provided to infants when admitted to a Neonatal or Pediatric Intensive Care Unit (NICU/PICU). All other pediatricians must use other CPT codes when billing for services provided to neonates and infants;¶

(b) Neonatal intensive care codes are not payable for infants on Extracorporeal Membrane Oxygenation (ECMO). Use appropriate CPT ECMO codes.¶

(6) Neurology or Neuromuscular payment for polysomnograms and multiple sleep latency tests (MSLT) are each limited to two in a 12-month period.¶

(7) Oral health services provided by medical practitioners may include an oral assessment and application of topical fluoride varnish during a medical visit for children. Refer to OAR 410-123-1260 Dental Services program rule.

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.025, 414.065

RULE ATTACHMENTS DO NOT SHOW CHANGES. PLEASE CONTACT AGENCY REGARDING CHANGES.

<b>Table 130-0240-1: MEDICAL HISTORY OR OBSTETRIC HISTORY (TRANSFER CRITERIA)</b>	
Cancer	<ul style="list-style-type: none"> <li>• Active gynecologic cancer</li> </ul>
Cardiovascular Disease	<ul style="list-style-type: none"> <li>• Cardiovascular disease causing functional impairment</li> </ul>
Delivery History	<ul style="list-style-type: none"> <li>• Prior cesarean section</li> </ul>
Diabetes Mellitus	<ul style="list-style-type: none"> <li>• Type 1 diabetes</li> <li>• Type 2 diabetes</li> </ul>
Hematologic Disorders	<ul style="list-style-type: none"> <li>• Maternal bleeding disorder</li> </ul>
Hypertensive Disorders	<ul style="list-style-type: none"> <li>• Eclampsia</li> <li>• Pre-eclampsia requiring preterm birth</li> <li>• HELLP syndrome (hemolysis, elevated liver enzymes, low platelets)</li> <li>• Pre-existing or chronic hypertension</li> </ul>
Infectious Diseases	<ul style="list-style-type: none"> <li>• HIV positive</li> </ul>
Neurological Disorders	<ul style="list-style-type: none"> <li>• Neurological disorders or active seizure disorders that would impact maternal or neonatal health (e.g. epilepsy, myasthenia gravis, previous cerebrovascular accident)</li> </ul>
Placental Conditions	<ul style="list-style-type: none"> <li>• History of retained placenta requiring surgical removal</li> </ul>
Renal Disease	<ul style="list-style-type: none"> <li>• Renal disease requiring supervision by a renal specialist</li> <li>• Renal failure</li> </ul> <p><i>(Preeclampsia and related conditions are listed separately)</i></p>
Uterine Conditions	<ul style="list-style-type: none"> <li>• Prior hysterotomy</li> </ul>

<b>Table 130-0240-2: MEDICAL HISTORY OR OBSTETRIC HISTORY (CONSULTATION CRITERIA)</b>	
Connective Tissue Disorders	<ul style="list-style-type: none"> <li>• Systemic lupus erythematosus</li> <li>• Scleroderma</li> <li>• Rheumatoid arthritis</li> <li>• Any collagen-vascular disease</li> </ul>
Endocrine Conditions	<ul style="list-style-type: none"> <li>• Significant endocrine conditions other than diabetes (e.g. hyperthyroidism)</li> </ul>
Fetal Demise or Stillbirth	<ul style="list-style-type: none"> <li>• Prior stillbirth/neonatal death</li> </ul>

<b>Table 130-0240-2: MEDICAL HISTORY OR OBSTETRIC HISTORY (CONSULTATION CRITERIA)</b>	
Hematologic Disorders	<ul style="list-style-type: none"> <li>• Hemoglobinopathies</li> <li>• History of thrombosis or thromboembolism</li> <li>• History of postpartum hemorrhage requiring transfusion or other advanced treatment (e.g. Bakri balloon)</li> </ul>
Isoimmunization	<ul style="list-style-type: none"> <li>• Blood group incompatibility and/or Rh sensitization in a prior pregnancy</li> </ul>
Neonatal Encephalopathy in Prior Pregnancy	<ul style="list-style-type: none"> <li>• Neonatal encephalopathy in prior pregnancy</li> </ul>
Psychiatric Conditions	<ul style="list-style-type: none"> <li>• History of postpartum mood disorder with high risk to the infant (e.g. psychosis)</li> <li>• Schizophrenia, other psychotic disorders, bipolar I disorder or schizotypal disorders</li> </ul>
Pulmonary Disease	<ul style="list-style-type: none"> <li>• Chronic pulmonary disease (e.g. cystic fibrosis)</li> </ul>
Shoulder Dystocia	<ul style="list-style-type: none"> <li>• History of, with or without fetal clavicular fracture</li> </ul>
Uterine Conditions	<ul style="list-style-type: none"> <li>• Prior myomectomy</li> </ul>

<b>Table 130-0240-3: CONDITIONS OF CURRENT PREGNANCY (TRANSFER CRITERIA)</b>	
Abnormal Bleeding in Pregnancy	<ul style="list-style-type: none"> <li>• Antepartum hemorrhage, recurrent</li> <li>• Hemorrhage (hypovolemia, shock, need for transfusion, vital sign instability)</li> </ul>
Amniotic Membrane Rupture	<ul style="list-style-type: none"> <li>• Before 37 weeks 0 days</li> </ul>
Diabetes, Gestational	<ul style="list-style-type: none"> <li>• Requiring medication or uncontrolled</li> </ul>
Fetal Growth	<ul style="list-style-type: none"> <li>• Uteroplacental insufficiency</li> <li>• IUGR (defined as fetal weight less than fifth percentile using ethnically-appropriate growth tables, or concerning reduced growth velocity on ultrasound)</li> </ul>
Fetal Presentation	<ul style="list-style-type: none"> <li>• Breech or noncephalic presentation</li> </ul>
Gestational Age	<ul style="list-style-type: none"> <li>• &lt; 37 weeks 0 days</li> <li>• ≥42 weeks 0 days (unless already in active labor at 41 weeks 6 days)</li> </ul>
Hematologic Conditions	<ul style="list-style-type: none"> <li>• Anemia with hemoglobin &lt; 8.5 g/dL (current pregnancy)</li> <li>• Suspected or diagnosed thrombosis or thromboembolism</li> <li>• Thrombocytopenia (platelets &lt; 100,000)</li> </ul>
Hypertensive Disorders	<ul style="list-style-type: none"> <li>• Elevated blood pressure on two occasions 30 minutes apart (e.g. gestational hypertension or pregnancy-induced hypertension) <ul style="list-style-type: none"> <li>○ Systolic ≥ 140 or diastolic ≥ 90</li> </ul> </li> <li>• Elevated blood pressure on one occasion <ul style="list-style-type: none"> <li>○ Systolic ≥ 160 or diastolic ≥ 110, or</li> <li>○ Systolic ≥ 140 or diastolic ≥ 90, with severe pre-eclampsia features</li> </ul> </li> <li>• Pre-eclampsia</li> <li>• Eclampsia</li> <li>• HELLP syndrome</li> </ul>
Infectious Conditions	<ul style="list-style-type: none"> <li>• HIV, Hepatitis B or syphilis positive</li> <li>• Chorioamnionitis</li> <li>• Maternal temperature ≥ 38.0 C in labor/postpartum</li> <li>• Genital herpes at time of labor</li> <li>• Maternal infection postpartum (e.g., endometritis, sepsis, wound) requiring hospital treatment</li> <li>• Rubella</li> <li>• Tuberculosis (other than latent)</li> <li>• Toxoplasmosis</li> <li>• Varicella (active at labor)</li> </ul>

Isoimmunization	<ul style="list-style-type: none"> <li>• Blood group incompatibility and/or Rh sensitization in current pregnancy</li> </ul>
Labor Management	<ul style="list-style-type: none"> <li>• Induction</li> <li>• Failure to progress/failure of head to engage in active labor</li> <li>• Lack of adequate progress in 2<sup>nd</sup> stage with cephalic presentation</li> </ul>
Miscarriage/Non-Viable Pregnancy	<ul style="list-style-type: none"> <li>• Molar</li> </ul>
Multiple Gestations	<ul style="list-style-type: none"> <li>• Multiple gestations</li> </ul>
Oligohydramnios or Polyhydramnios	<ul style="list-style-type: none"> <li>• Oligohydramnios</li> <li>• Polyhydramnios</li> </ul>
Perineal Laceration or Obstetric Anal Sphincter Injury	<ul style="list-style-type: none"> <li>• 3<sup>rd</sup> degree requiring hospital repair or beyond expertise of attendant</li> <li>• 4<sup>th</sup> degree</li> <li>• Enlarging hematoma</li> </ul>
Placental Conditions	<ul style="list-style-type: none"> <li>• Low lying placenta within 2 cm or less of cervical os at 38 weeks 0 days or later</li> <li>• Placenta previa</li> <li>• Vasa previa</li> <li>• Abruptio</li> <li>• Retained placenta &gt; 60 minutes</li> </ul>
Substance Use	<ul style="list-style-type: none"> <li>• Drug or alcohol misuse with high risk for adverse effects to fetal or maternal health</li> </ul>
Umbilical Cord	<ul style="list-style-type: none"> <li>• Prolapse</li> </ul>
Uterine Condition	<ul style="list-style-type: none"> <li>• Uterine rupture, inversion</li> </ul>

<b>Table 130-0240-4: CONDITIONS OF CURRENT PREGNANCY (CONSULTATION CRITERIA)</b>	
Amniotic Membrane Rupture	<ul style="list-style-type: none"> <li>• Pre-labor rupture &gt; 24 hours</li> </ul>
Congenital or Hereditary Anomaly of the Fetus	<ul style="list-style-type: none"> <li>• Evidence of congenital anomalies requiring immediate assessment and/or management by a neonatal specialist</li> </ul>
Fetal Growth	<ul style="list-style-type: none"> <li>• Inappropriate uterine growth (size-date discrepancy). (An ultrasound read by a qualified physician constitutes a consultation)</li> </ul>
Gestational Age	<ul style="list-style-type: none"> <li>• Expected date of delivery (EDD) uncertain</li> </ul>
Hematologic Conditions	<ul style="list-style-type: none"> <li>• Hemoglobin &lt; 10 g/dL, unresponsive to treatment</li> </ul>
Hepatic Disorders	<ul style="list-style-type: none"> <li>• Disorders including uncontrolled intrahepatic cholestasis of pregnancy and/or abnormal liver function tests</li> </ul>
Hyperemesis Gravidarum	<ul style="list-style-type: none"> <li>• Refractory</li> </ul>
Psychiatric Conditions	<ul style="list-style-type: none"> <li>• Maternal mental illness requiring psychological or psychiatric intervention</li> <li>• Patient currently taking psychotropic medications</li> </ul>
Renal	<ul style="list-style-type: none"> <li>• Acute pyelonephritis</li> </ul>
Uterine condition	<ul style="list-style-type: none"> <li>• Anatomic anomaly (e.g. bicornuate, large fibroid impacting delivery)</li> <li>• Uterine prolapse</li> </ul>