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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
05/23/2019 11:19 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Updated to Align with Federal Regulations Related to Hearings

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/17/2019 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):

These amendments are needed to conform the rules about expedited hearings to 42 CFR 431.224, DHS Form 0447, and current practices. The amendment to OAR 410-200-0146 is needed to conform the rule to current practices and 42 CFR 431.244(f).

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

42 CFR 431.244, available at: <https://www.ecfr.gov>

FISCAL AND ECONOMIC IMPACT:

No fiscal or economic impact

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) Amending these rules will have no fiscal impact on the Authority, other state agencies, units of local government, the public, or businesses, including small businesses. (2) (a) None (b) None (c) None

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

These revisions are being made to align with federal regulations and current agency operations processes and do not affect small businesses.

RULES PROPOSED:

410-200-0145, 410-200-0146

AMEND: 410-200-0145

RULE SUMMARY: OAR 410-200-0145 addresses contested case hearings. The revision being made is with respect to expedited hearings to indicate when an applicant may receive an expedited hearing challenging the denial of their MAGI medical benefits. In addition, OAR 410-200-0146 addresses final orders, dismissals and withdrawals and is being amended so its timeline for other hearings conforms to 42 CFR 431.244(f). These amendments are needed to conform the rules about expedited hearings to 42 CFR 431.224, DHS Form 0447, and current practices. The amendment to OAR 410-200-0146 is needed to conform the rule to current practices and 42 CFR 431.244(f).

CHANGES TO RULE:

410-200-0145

Contested Case Hearing ¶¶

- (1) For the purposes of this rule, timely means within 90 days of the date the notice of adverse action is received.¶¶
- (2) This rule applies to contested case hearings for programs described in OAR chapter 410 division 200. Contested case hearings are conducted in accordance with the Attorney General's model rules OAR 137-003-0501 and following ORS Ch. 183 except to the extent that Authority rules provide for different procedures.¶¶
- (3) The Authority's contested case hearings governed by this rule are not open to the public and are closed to nonparticipants, except nonparticipants may attend subject to the parties' consent and applicable confidentiality laws.¶¶
- (4) A claimant may request a contested case hearing upon the timely completion of a hearing request in medical assistance programs in the following situations:¶¶
 - (a) The Authority has not approved or denied an application within 45 days of the date of request for benefits or the extended time the Authority has allowed for processing;¶¶
 - (b) The Authority acts to deny, reduce, close, or suspend medical assistance, including the denial of continued benefits pending the outcome of a contested case hearing;¶¶
 - (c) The Authority claims that an earlier medical assistance payment was an overpayment;¶¶
 - (d) A claimant claims that the Authority previously under issued medical assistance;¶¶
 - (e) A claimant disputes the current level of benefits.¶¶
- (5) An officer or employee of the Authority or the Department of Human Services may appear on behalf of the Authority in medical assistance hearings described in this rule. The Authority's lay representative may not make legal argument on behalf of the Authority.¶¶
- (6) The Authority representative is subject to the Code of Conduct for Non-Attorney Representatives at Administrative Hearings, which is maintained by the Oregon Department of Justice and available on its website at <http://www.doj.state.or.us>. An Authority representative appearing under this rule shall read and be familiar with it.¶¶
- (7) When an Authority representative is used, requests for admission and written interrogatories are not permitted.¶¶
- (8) The Authority representative and the claimant may have an informal conference in order to:¶¶
 - (a) Provide an opportunity to settle the matter;¶¶
 - (b) Review the basis for the eligibility determination, including reviewing the rules and facts that serve as the basis for the decision;¶¶
 - (c) Exchange additional information that may correct any misunderstandings of the facts relevant to the eligibility determination; or¶¶
 - (d) Consider any other matters that may expedite the orderly disposition of the hearing.¶¶

(9) A claimant who is receiving medical assistance benefits and who is entitled to a continuing benefit decision notice may, at the option of the claimant, receive continuing benefits in the same manner and amount until a final order resolves the contested case. In order to receive continuing benefits, a claimant must request a hearing not later than:¶

(a) The tenth day following the date the notice is received; and¶

(b) The effective date of the action proposed in the notice.¶

(10) The continuing benefits are subject to modification based on additional changes affecting the claimant's eligibility or level of benefits.¶

(11) ~~When a claimant shall receive an expedited hearing in the following situations:¶~~

(a) When the claimant contests the denial of continuing benefits, the claimant shall receive an expedited hearing; or¶

(b) When following the final order timelines in OAR 410-200-0146 could jeopardize the individual's life, health, or ability to attain, maintain, or regain maximum function.¶

(12) In computing timeliness under sections (1) and (9) of this rule:¶

(a) Delay caused by circumstances meeting the good cause criteria described in OAR 137-003-0501(7) may not be counted; and¶

(b) The notice is considered to be received on the fifth day after the notice is sent unless the claimant shows the notice was received later or was not received.

Statutory/Other Authority: ORS 411.404, 411.816, 412.014, 412.049, 413.042

Statutes/Other Implemented: ORS 183.452, 411.060, 411.404, 411.816, 412.014, 412.049

AMEND: 410-200-0146

RULE SUMMARY: OAR 410-200-0145 addresses contested case hearings. The revision being made is with respect to expedited hearings to indicate when an applicant may receive an expedited hearing challenging the denial of their MAGI medical benefits. In addition, OAR 410-200-0146 addresses final orders, dismissals and withdrawals and is being amended so its timeline for other hearings conforms to 42 CFR 431.244(f). These amendments are needed to conform the rules about expedited hearings to 42 CFR 431.224, DHS Form 0447, and current practices. The amendment to OAR 410-200-0146 is needed to conform the rule to current practices and 42 CFR 431.244(f).

CHANGES TO RULE:

410-200-0146

Final Orders, Dismissals and Withdrawals ¶¶

(1) When the Authority refers a contested case under chapter 410 division 200 to the Office of Administrative Hearings (OAH), the Authority must indicate on the referral:¶¶

(a) Whether the Authority is authorizing a proposed order, a proposed and final order, or a final order; and¶¶

(b) If the Authority establishes an earlier deadline for written exceptions and argument because the contested case is being referred for an expedited hearing.¶¶

(2) When the Authority authorizes either a proposed order or a proposed and final order:¶¶

(a) The claimant may file written exceptions and written argument to be considered by the Authority. The exceptions and argument must be received at the location indicated in the OAH order not later than the 20th day after service of the proposed order or proposed and final order, unless section (1)(b) of this rule applies;¶¶

(b) The Authority shall issue the final order after OAH issues a proposed order unless the Authority requests that OAH issue the final order pursuant to OAR 137-003-0655.¶¶

(c) The proposed and final order becomes a final order on the 21st day after the service of the proposed and final order, if the claimant does not submit timely exceptions or arguments following a proposed and final order, unless:¶¶

(A) The Authority has issued a revised order; or¶¶

(B) The Authority has notified the claimant and OAH that the Authority shall issue the final order.¶¶

(d) The Authority shall issue the final order when the Authority receives timely exceptions or argument unless the Authority requests that OAH issue the final order.¶¶

(3) In a contested case hearing, if the OAH is authorized to issue a final order on behalf of the Authority, the Authority may issue the final order in the case of default.¶¶

(4) A petition by a claimant for reconsideration or rehearing must be filed with the individual who signed the final order unless stated otherwise on the final order.¶¶

(5) A final order is effective immediately upon being signed or as otherwise provided in the order. Delay due to a postponement or continuance granted at the claimant's request may not be counted in computing time limits for a final order. A final order shall be issued or the case otherwise shall be resolved no later than:¶¶

(a) Ninety days following the date of the hearing ~~for the standard hearing time frame~~ request;¶¶

(b) Three working days after the date the OAH hears an expedited hearing.¶¶

(6) In the event a request for a hearing is not timely or the claimant has no right to a contested case hearing on an issue, and there are no factual disputes about whether this division of rules provides a right to a hearing, the Authority may issue an order accordingly. The Authority may refer an untimely request to the OAH for a hearing on timeliness or on the question of whether the claimant has the right to a contested case hearing.¶¶

(7) If the Authority serves a decision notice on the claimant by postal or electronic mail and the Authority receives an untimely hearing request from the claimant within 75 days from the date the decision notice became a final order, then one of the following shall occur:¶¶

(a) If the Authority finds that the claimant did not receive the decision notice and did not have actual knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of

the Authority's action described in the notice; or¶¶

(b) If there is a factual dispute regarding the claimant's receipt or knowledge of the notice, the Authority shall refer the hearing request to the OAH for a contested case hearing to determine whether the claimant received or had actual knowledge of the notice. The Authority has the burden to prove by a preponderance of the evidence that the claimant had actual knowledge of the notice or that the Authority mailed the notice to the claimant's correct mailing address or sent an electronic notice to the claimant's correct electronic mail address according to the information the claimant provided to the Authority.¶¶

(8) If the Authority receives an untimely hearing request from the claimant, regardless of the manner in which the Authority served the decision notice on the claimant, then:¶¶

(a) If the Authority finds that the claimant's hearing request was untimely for good cause as defined in OAR 137-003-0501(7), the Authority shall refer the hearing request to the OAH for a contested case hearing on the merits of the Authority's action described in the notice; or¶¶

(b) If there is a factual dispute regarding the existence of good cause, the Authority shall refer a hearing request to the OAH for a contested case hearing to determine whether there was good cause as defined in OAR 137-003-0501(7) for the claimant's delay in submitting the hearing request to the Authority.¶¶

(c) Any hearing request is treated as timely when required under the Servicemembers Civil Relief Act.¶¶

(d) The Authority may dismiss a hearing request as untimely if the claimant does not qualify for a hearing under sections (8)(a), (b), or (c).¶¶

(9) A claimant may withdraw a hearing request at any time before a final order has been issued on the contested case. When a claimant withdraws a hearing request:¶¶

(a) The Authority shall send an order confirming the withdrawal to the claimant's last known address;¶¶

(b) The claimant may cancel the withdrawal in writing. The withdrawal must be received by the Authority hearing representative no later than the tenth working day following the date the Authority sent the order confirming the withdrawal.¶¶

(10) A hearing request is dismissed by order by default when neither the claimant nor the claimant's representative appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Authority shall cancel the dismissal order on request of the claimant on a showing that the claimant was unable to attend the hearing and unable to request a postponement due to circumstances meeting the good cause criteria described in OAR 137-003-0501(7).

Statutory/Other Authority: ORS 183.341, 413.042, 411.060, 411.404, 411.408, 411.816, 412.014, 412.049

Statutes/Other Implemented: ORS 183.341, 411.060, 411.404, 411.408, 411.816, 412.014, 412.049