

Secretary of State
NOTICE OF PROPOSED RULEMAKING*
A Statement of Need and Fiscal Impact accompanies this form

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|---|-------------------------------------|
| <u>Oregon Health Authority, Division of Medical Assistance Programs</u> | 410 |
| Agency and Division | Administrative Rules Chapter Number |
| <u>Sandy Cafourek</u> | (503) 945-6430 |
| Rules Coordinator | Telephone |
| <u>Oregon Health Authority, Division of Medical Assistance Programs, 500 Summer St. NE, Salem, OR 97301</u> | |
| Address | |

RULE CAPTION

Repeal of Health Insurers' Tax Rules

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of rule numbers with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:

REPEAL:

410-050-0100 through 410-050-0250

RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

AMEND AND RENUMBER: Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

Statutory Authority:

ORS 413.042

Other Authority:

Statutes Implemented:

ORS 413.042

RULE SUMMARY

The Oregon Health Authority (Authority), Division of Medical Assistance Programs is repealing the Health Insurers' Tax rules (OAR 410-050-0100 through 410-050-0250) because their sunset date was October 1, 2013 and they are no longer in effect.

Proposed rules are available on the following website: <http://www.oregon.gov/DHS/admin/Pages/dwssrules/index.aspx>. For hardcopy requests, call: (503) 947-5250.

A public rulemaking hearing may be requested in writing by 10 or more people, or by an association 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 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.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing negative

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|--|------------------------|-------------------------------|
| <u>03-21-2014 5:00 p.m.</u> | <u>Sandy Cafourek</u> | <u>dmap.rules@state.or.us</u> |
| Last Day (m/d/yyyy) and Time for public comment | Rules Coordinator Name | Email Address |

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|---|
| FILED |
| 2-14-14 4:37 PM |
| ARCHIVES DIVISION SECRETARY OF STATE |

*The Oregon Bulletin is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation.

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority, Division of Medical Assistance Programs

410

Agency and Division

Administrative Rules Chapter Number

Repeal of Health Insurers' Tax Rules

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The proposed repeal of OAR 410-050-0100 through 410-050-0250.

Statutory Authority:

ORS 413.042

Other Authority:

Statutes Implemented:

ORS 413.042

Need for the Rule(s):

The Oregon Health Authority (Authority), Division of Medical Assistance Programs is repealing the Health Insurers' Tax rules (OAR 410-050-0100 through 410-050-0250) because their sunset date was October 1, 2013 and they are no longer in effect.

Documents Relied Upon, and where they are available:

None.

Fiscal and Economic Impact:

None.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

None.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small business and types of businesses and industries with small businesses subject to the rule:

None.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

None.

c. Equipment, supplies, labor and increased administration required for compliance:

None.

How were small businesses involved in the development of this rule?

N/A

Administrative Rule Advisory Committee consulted?:No

If not, why?:

Not applicable. This is a housekeeping filing only.

03-21-2014 5:00 p.m.

Sandy Cafourek

dmap.rules@state.or.us

Last Day (m/d/yyyy) and Time

Printed Name

Email Address

for public comment

FILED

2-14-14 4:37 PM

ARCHIVES DIVISION
SECRETARY OF STATE

CHAPTER 410
OREGON HEALTH AUTHORITY, DIVISION OF MEDICAL ASSISTANCE PROGRAMS

DIVISION 50
TAX RULES

Health Insurers' Tax

410-050-0100

Definitions

In addition to the definitions in OAR 410-141-0000 and 410-120-0000, the following definitions apply to these rules (OAR 410-050-0100 to 410-050-0250):

(1) "Coordinated Care Organization (CCO) premium payments" means the gross amount of payments from the Authority to the CCO for providing health services as defined in OAR 410-141-0000.

(2) "Deficiency" means the amount by which the tax as correctly computed exceeds the tax, if any, reported by the prepaid health plans (PHPs). If, after the original deficiency has been assessed, subsequent information shows the correct amount of tax to be greater than previously determined, an additional deficiency arises.

(3) "Delinquency" means the PHP failed to file a report when due as required under these rules or to pay the tax as correctly computed when the tax was due.

(4) "Managed care premiums" means all premium payments paid to a PHP including the capitation payments as defined in OAR 410-141-0000. Managed care premiums do not include Medicare premiums.

(5) "Premium payments" means all capitation payments received by the PHPs on a per enrollee per month basis for the provision of health services specified by contract. "Premium" does not include any form of payment by Oregon Health Plan (OHP) enrollees.

(6) "Prepaid Health Plan (PHP)" means a fully capitated health plan, a physician care organization, a mental health organization, or a coordinated care organization for the purpose of these rules.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 37, 2009 HB 2116

410-050-0110

General Administration

(1) The purpose of these rules is to implement the health insurers' tax on PHPs and CCOs.

(2) The Authority shall administer, enforce, and collect the health insurers' tax. The Authority may assign employees, auditors, and other agents as the Oregon Health Authority Director may designate to assist in the administration, enforcement, and collection of the taxes.

(3) The Authority may make rules and regulations, not inconsistent with legislative enactments, that it considers necessary to administer, enforce, and collect the taxes.

(4) The Authority may adopt forms and reporting requirements and change the forms and reporting requirements, as necessary to administer, enforce, and collect the taxes.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 38

410-050-0120

Disclosure of Information

(1) Except as otherwise required by law, the Department must not publicly divulge or disclose the amount of income, expense, or other particulars set forth or disclosed in any report or return required in the administration of the taxes. Particulars include but are not limited to social security numbers, employer numbers, or other organization identification numbers, and any business records required to be submitted to or inspected by the Department or its designee to allow it to determine the amount of any assessments, delinquencies, or deficiencies payable or paid, or otherwise administer, enforce, or collect a health care assessment to the extent that such information would be exempt from disclosure under ORS 192.501(5).

(2) The Department may:

(a) Upon request, furnish any PHP or its authorized representative with a copy of the PHP's report filed with the Department for any quarter, or with a copy of any other information filed by the PHP in connection with the report, or as the Department considers necessary;

(b) Publish information or statistics so classified as to prevent the identification of income or any particulars contained in any report or return; and

(c) Disclose and give access to an officer or employee of the Department or its designee, or to the authorized representatives of the U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, the Controller General of the United States, the Oregon Secretary of State, the Oregon Department of Justice, the Oregon Department of Justice Medicaid Fraud Control Unit, and other employees of the state or federal government to the extent the Department deems disclosure or access necessary or appropriate for the performance of official duties in the Department's administration, enforcement, or collection of these taxes.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 37-51

410-050-0130

The Medicaid Managed Care Tax: Calculation, Report, Due Date, Verification of Report

(1) The tax assessed on the managed care premiums paid to a PHP on or after January 1, 2004, is based on calendar quarters. The first calendar quarter begins on January 1; the second calendar quarter begins on April 1; the third calendar quarter begins on July 1; and the fourth quarter begins on October 1. For purposes of this rule, managed care premiums shall be taxed as of the calendar quarter in which the managed care premium payment is received by the PHP.

(2) Adjustments to the managed care premium subject to tax shall be determined as follows:

(a) Managed care premiums attributable to periods prior to January 1, 2004 are not subject to the tax and shall be deducted from the taxable managed care premiums when calculating the tax due. Managed care premiums attributable to the period between January 1, 2004 and April 31, 2004 are taxed at the rate of 0%. This deduction includes maternity payments, adjustments due to changes in client status, and other managed care premium adjustments resulting in additional payments received by the PHP on or after May 1, 2004;

~~(b) If managed care premiums received after May 1, 2004 are reduced by a recoupment by the Department for an overpayment paid prior to May 1, 2004, then the taxable managed care premiums shall be deemed to include the recouped amount;~~

~~(c) If both the overpayment and recoupment occur after May 1, 2004, the PHP shall be subject to the tax on the managed care premiums received in the calendar quarter in which the managed care premium payment is received by the PHP; and~~

~~(d) Sub-capitation payments made to a PHP by another PHP are not included in the total managed care premiums subject to tax if the payor PHP certifies to the payee PHP in writing that the payor PHP is already responsible for the managed care tax on the originating managed care premiums.~~

~~(3) The rate of the assessment on and after May 1, 2004 shall be determined in accordance with OAR 410-050-0240.~~

~~(4) The tax becomes operative on May 1, 2004. The first calendar quarter for which a tax is due is a partial quarter. First quarter taxes shall be due on managed care premiums received between May 1, 2004 and June 30, 2004.~~

~~(5) The PHP must pay the tax and file the report on a form approved by the Department on or before the 45th day following the end of the calendar quarter for which a tax is due unless the Department permits a later payment date. If a PHP requests an extension, the Department, in its sole discretion, shall determine whether to grant an extension. The PHP must provide all required information on the report.~~

~~(6) Any report, statement, or other document required to be filed under any provision of these rules shall be certified by the chief financial officer of the PHP or an individual with delegated authority to sign for the PHP's chief financial officer. The certification must attest, based on best knowledge, information, and belief to the accuracy, completeness, and truthfulness of the document.~~

~~(7) Payments may be made electronically or by paper check. If the PHP pays electronically, the accompanying report may either be faxed to the Department at the fax number provided on the report form or mailed to the Department at the address provided on the report form. If the PHP pays by paper check, the accompanying report must be mailed with the check to the address provided on the report form.~~

~~(8) The Department may charge the PHP a fee of \$100 if for any reason the check, draft, order, or electronic funds transfer request is dishonored. This charge is in addition to any penalty for nonpayment of the taxes that may also be due.~~

Stat. Auth.: ORS 413.042, 410.070 & 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 38, 39, 45 & 2009 HB 2116

410-050-0140

Filing an Amended Report

(1) The claims for refunds or payments of additional tax must be submitted by the PHP on a form approved by the Department. The PHP must provide all information required on the report. The Department may audit the PHP, request additional information, or request an informal conference prior to granting a refund or as part of its review of a payment of a deficiency.

(2) Claim for refund:

(a) If the amount of the tax imposed by these rules is less than the amount paid by the PHP and the PHP does not then owe a tax for any other calendar period, the overpayment may be refunded by the

Department to the PHP. In no event will a refund applicable to a particular calendar quarter exceed the tax amount actually paid by the PHP.

(b) The PHP may file a claim for refund on a form approved by the Department within 180 days after the end of the calendar quarter to which the claim for refund applies.

(c) If there is an amount due from the PHP to the Department for any past due taxes or penalties, any refund otherwise allowable will first be applied to the unpaid taxes and penalties and the PHP so notified.

(3) Payment of deficiency.

(a) If the amount of the tax imposed by these rules is more than the amount paid by the PHP, the PHP may file a corrected report on a form approved by the Department and pay the deficiency at any time. The penalty under OAR 410-050-0180 will stop accruing after the Department receives full payment of the total deficiency for the calendar quarter.

(b) If there is an error in the determination of the tax due, the PHP may describe the circumstances of the late additional payment with the late filing of the amended report. The Department, in its sole discretion, may determine that such a late additional payment does not constitute a failure to file a report or pay an assessment giving rise to the imposition of a penalty. In making this determination, the Department will consider the circumstances, including but not limited to: nature and extent of the error, PHP explanation of the circumstances related to the error, evidence of prior errors, and evidence of prior penalties (including evidence of informal dispositions or settlement agreements). This provision only applies if the PHP has filed a timely original return and paid the assessment identified in the return.

(4) If the Department discovers or identifies information in the administration of these managed care tax rules that it determines could give rise to the issuance of a notice of proposed action, or the issuance of a refund, the Department will issue notification pursuant to OAR 410-050-0190.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 38, 40, 41 & 48

410-050-0150

Determining the Date Filed

For the purposes of OAR 410-050-0100 through 410-050-0250, any reports, requests, appeals, payments, or other response by the PHP must be received by the Department either:

(1) Before the close of business on the date due; or

(2) If mailed, postmarked before midnight of the due date. When the due date falls on a Saturday, Sunday, or legal holiday, the response is due on the next business day following such Saturday, Sunday, or legal holiday.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 38

410-050-0160

Departmental Authority to Audit Records

(1) The PHP must maintain financial records necessary and adequate to determine the amount of managed care premiums for any calendar period for which a tax may be due.

(2) The Department or its designee may audit the PHP's records at any time for a period of five years following the date the tax is due to verify or determine the managed care premiums for the PHP.

(3) Any audit, finding, or position may be reopened if there is evidence of fraud, malfeasance, concealment, misrepresentation of material fact, omission of income, or collusion either by the PHP or by the PHP and a representative of the Department.

(4) The Department may notify the PHP of a potential deficiency or issue a refund based upon its findings during the audit.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 42

410-050-0170

Assessing Tax on Failure to File

(1) The law places an affirmative duty on the PHP to file a timely and correct report.

(2) In the case of a failure by the PHP to file a report or to maintain necessary and adequate records, the Department will determine the tax liability of the PHP according to the best of its information and belief. Best of its information and belief means the Department will use evidence available to the Department at the time of the determination on which a reasonable person would rely in determining the tax. The Department's determination of tax liability will be the basis for the assessment due in any notice of proposed action.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 38

410-050-0180

Financial Penalty for Failure to File a Report or Failure to Pay Tax When Due

(1) A PHP that fails to file a report or pay a tax when due under OAR 410-050-0130 is subject to a penalty of up to \$500 per day of delinquency. The Department, in its sole discretion, shall determine the penalty for failure to pay the tax or file a report. In making this determination, the Department shall consider evidence such as prior late payments, prior penalties, and circumstances related to delinquency. The penalty accrues from the date of delinquency, notwithstanding the date of any notice under these rules.

(2) The total amount of penalty imposed under this section for each reporting period may not exceed five percent of the assessment for the reporting period for which the penalty is being imposed.

(3) The Department shall collect any penalties imposed under this section and deposit the funds in the Department account established under ORS 409.060.

(4) Penalties paid under this section are in addition to the Medicaid managed care tax.

(5) If the Department determines that a PHP is subject to a penalty under this section, the Department shall issue a notice of proposed action as described in OAR 410-050-0190.

(6) If a PHP requests a contested case hearing pursuant to OAR 410-050-0210, the Director, at the Director's sole discretion, may waive or reduce the amount of penalty assessed.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736, 40, 2009 HB 2116

410-050-0190

Notice of Proposed Action

(1) Prior to issuing a notice of proposed action, the Department will notify the PHP of a potential deficiency or failure to report that could give rise to the imposition of a penalty. The Department shall issue a 30 day notification letter within 30 calendar days of the report or payment due date. The PHP shall have 30 calendar days from the date of the notice to respond to the notice. The Department may consider the response, if any, and any amended report under OAR 410-050-0150 in its notice of proposed action. In all cases that the Department has determined that a PHP has a tax deficiency or failure to report, the Department shall issue a notice of proposed action. The Department will not issue a notice of proposed action if the issue is resolved satisfactorily within 59 days from the date of mailing the 30 day notification letter.

(2) The Department shall issue a notice of proposed action within 60 calendar days from the date of mailing the 30 day notification letter.

(3) Contents of the notice of proposed action must include:

(a) The applicable calendar quarter;

(b) The basis for determining the corrected amount of tax for the quarter;

(c) The corrected tax due for the quarter as determined by the Department;

(d) The amount of tax paid for the quarter by the PHP;

(e) The resulting deficiency, which is the difference between the amount received by the Department for the calendar quarter and the corrected amount due as determined by the Department;

(f) Statutory basis for the penalty;

(g) Amount of penalty per day of delinquency;

(h) Date upon which the penalty began to accrue;

(i) Date the penalty stopped accruing or circumstances under which the penalty will stop accruing;

(j) The total penalty accrued up to the date of the notice;

(k) Instructions for responding to the notice; and

(l) A statement of the PHP's right to a hearing.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750 & OL 2003 Ch. 736 Sec. 50

410-050-0200

Required Notice

(1) Any notice required to be sent under these rules to the PHP will be sent to the person and address identified as the point of contact for the PHP in its contract with the Department under ORS 414.725.

(2) Any notice required to be sent to the Department under these rules shall be sent to the contact point identified on the communication from the Department to the PHP.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 50

410-050-0210

Hearing Process

(1) Any PHP that receives a notice of proposed action may request a contested case hearing under ORS 183.310 through 183.550.

(2) The PHP may request a hearing by submitting a written request within 20 days of the date of the notice of proposed action.

(3) Prior to the hearing, the PHP shall meet with the Department for an informal conference.

(a) The informal conference may be used to negotiate a written settlement agreement.

(b) If the settlement agreement includes a reduction or waiver of penalties, the agreement must be approved and signed by the Director.

(4) Except as provided in section (5) of this rule, if the case proceeds to a hearing, the administrative law judge will issue a proposed order with respect to the notice of proposed action. The Department will issue a final order.

(5) Nothing in this section will preclude the Department and the PHP from agreeing to informal disposition of the contested case at any time, consistent with ORS 183.415(5).

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 50

410-050-0220

Final Order of Payment

The Department will issue a final order of payment for deficiencies or penalties when:

(1) Any part of the deficiency or penalty was upheld after a hearing;

(2) The PHP did not make a timely request for a hearing; or

(3) Upon agreement of the PHP and the Department.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 37-51

410-050-0230

Remedies Available after Final Order of Payment

Any amounts due and owing under the final order of payment and any interest thereon may be recovered by Oregon as a debt to the state, using any available legal and equitable remedies. These remedies include but are not limited to:

(1) Collection activities including but not limited to deducting the amount of the final deficiency or penalty from any sum then or later owed to the PHP by the Department.

(2) Every payment obligation shall bear interest at the statutory rate of interest in ORS 82.010 accruing from the date of the final order of payment and continuing until the payment obligation, including interest, has been discharged.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 37-51

410-050-0240

Director Determines the Tax Rate

(1) The Director determines the tax rate.

(a) The tax rate for the period beginning January 1, 2004 through April 30, 2004 is 0 percent.

(b) The tax rate for the period beginning May 1, 2004 and ending December 31, 2007 is 5.8 percent.

(c) The tax rate beginning January 1, 2008 and ending September 30, 2009 is 5.5 percent.

(d) The tax rate beginning October 1, 2009 is 1.0 percent.

(3) The rate may not exceed 5.5 percent of managed care premiums paid to a PHP.

(4) The Director may reduce the rate of assessment to the maximum rate allowed under federal law if the reduction is required to comply with federal law. If the rate is reduced pursuant to this section, the Director shall notify the PHP's of the effective date of the rate reduction.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 38 & 39, 2009 HB 2116

410-050-0250

Sunset Provisions

The Medicaid managed care tax applies to managed care premiums received by PHP's on or after May 1, 2004 and before October 1, 2013.

Stat. Auth.: ORS 413.042, 410.070, 411.060

Stats. Implemented: ORS 409.750, OL 2003, Ch. 736 § 50, 2009 HB 2116