

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

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

**RULE CAPTION**

**Rewrite Rule to Implement House Bill 2306 (2015 Regular Session) for a Pharmacy Management Program**

December 15, 2015	10:30 a.m.	500 Summer St. NE, Salem, OR 97301 Room 137C	Sandy Cafourek
Hearing Date	Time	Location	Hearings Officer

*Auxiliary aids for persons with disabilities are available upon advance request.*

**RULEMAKING ACTION**

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

**ADOPT:**

**AMEND:** OAR 410-121-0135

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth. : ORS 413.042, 414.065

Other Auth.:

Stats. Implemented: ORS 414.065, OL 2013 Ch. 467 Sec. 2

**RULE SUMMARY**

The Authority is rewriting OAR 410-121-0135 to align the Pharmacy Management Program with legislative intent, as contained in Oregon Laws 2015, chapter 467, section 2 (HB 2306). The program avoids overutilization of pharmaceutical services by restricting certain fee-for-service medical assistance recipients' pharmacy choices. Amendment of the existing rule will align the program with the statute.

The agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

December 17, 2015 by 5 p.m.                      Send written comments to: [dmap.rules@state.or.us](mailto:dmap.rules@state.or.us)

**Last Day for Public Comment** (Last day to submit written comments to the Rules Coordinator)

  
Signature

Rhonda Busek  
Printed name

11/5/15  
Date

**Note:** Hearing Notices must be submitted by the 15th day of the month to be published in the next month's *Oregon Bulletin*.

**STATEMENT OF NEED AND FISCAL IMPACT**

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division)

410

Agency and Division

Administrative Rules Chapter Number

**Rewrite Rule to Implement House Bill 2306 (2015 Regular Session) for a Pharmacy Management Program**

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

In the Matter of: The amendment of OAR 410-121-0135

Statutory Authority: ORS 413.042, 414.065

Other Authority:

Stats. Implemented: ORS 414.065, OL 2013 Ch. 467 Sec. 2

Need for the Rule(s): The rule needs to be rewritten to align the Pharmacy Management Program with a new Oregon statute, Oregon Laws 2015, chapter 467, section 2 (HB 2306).

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

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Small businesses will not be affected by this rule.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: There is no anticipated increase.

c. Equipment, supplies, labor and increased administration required for compliance: There is no anticipated increase.

How were small businesses involved in the development of this rule? Small businesses were not involved in the development of this rule as it will not affect them.

Administrative Rule Advisory Committee consulted?: Yes. A RAC was held on October 21, 2015. Only one individual attended, representing OHP client interests. The RAC invitation was sent to 128 individuals who previously expressed interest in OHP policy changes. If not, why?:



Signature

Rhonda Busek

Printed Name

11/5/15

Date

410-121-0135

### Pharmacy Management Program

(1) Pursuant to 42 CFR 431.54, the Pharmacy Management Program limits some fee-for-service clients to receiving their prescription drugs through the following sources:

(a) A single retail pharmacy to pick up prescriptions;

(b) The Division of Medical Assistance Program (Division) mail order pharmacy contractor; and

(c) A specialty pharmacy.

(2) The Division will not include the following clients in the Pharmacy Management Program:

(a) Prepaid Health Plan (PHP) Division members;

(b) Clients with Medicare drug coverage in addition to OHP fee for service and no other third party pharmacy insurance coverage;

(c) Children in the care and custody of the Department of Human Services;

(d) Inpatients or residents in a hospital, nursing facility, or other medical institution.

(3) The Division will consider referrals of potential Pharmacy Management Program clients from the following sources:

(a) Providers;

(b) Retro Drug Utilization Review (DUR) staff;

(c) Authority staff; and

(d) Authority contractors.

(4) Reasons for referring a client to the Division for review and enrollment in the Pharmacy Management Program include, but are not limited to concern for patient safety or risk of drug misuse, where the client:

(a) Used 3 or more pharmacies during the prior 6 months;

(b) Uses multiple prescribers to obtain prescriptions of the same or comparable medications;

~~(c) Has altered a prescription; or~~

~~(d) Exhibits patterns of prescription drug use involving the drug use review factors listed in ORS 414.361(c)(A) through (H), as those terms are defined in ORS 414.351.~~

~~(5) When the Division identifies a client meeting the criteria in subsection (4) that is appropriate for the Pharmacy Management Program, the Division will send the client a notice that provides the following information:~~

~~(a) The Division plans to require that the client use a designated pharmacy for an 18-month period and the date when that requirement will begin;~~

~~(b) The client's right to request the following, within 45 days of the date of the notice:~~

~~(A) A different designated pharmacy;~~

~~(B) An administrative hearing to appeal the Division's decision to enter the client into the Pharmacy Management Program.~~

~~(6) Changing the Pharmacy Management Program client's enrolled pharmacy:~~

~~(a) Clients may change their enrolled pharmacy if they:~~

~~(A) Move out of area;~~

~~(B) Are reapplying for OHP benefits; or~~

~~(C) Are denied access to pharmacy services by their selected pharmacy for reasons other than the Pharmacy Management Program factors identified by the Division;~~

~~(b) Clients cannot change their choice of pharmacy more than once every 3 months.~~

~~(7) Pharmacy Management Program clients may receive drugs from a different pharmacy if the client urgently needs to fill a prescription and the enrolled pharmacy:~~

~~(a) Is not available;~~

~~(b) Does not have the prescribed drug in stock; or~~

~~(c) Is more than 50 miles away from the client's location at the time the prescription needs to be filled. However, DMAP may deny coverage if the client frequently fills prescriptions out of the area of the enrolled pharmacy.~~

~~(8) Call the Oregon Pharmacy Help Desk for authorization to fill a prescription in the situations described in (7)(a)-(c) above.~~

~~(9) The client's appeal rights and the process for appealing a Division decision to lock a client into use of a single pharmacy is found in OAR 410-120-1860.~~

~~Stat. Auth.: ORS 413.042 & 414.065~~

~~Stats. Implemented: ORS 414.065~~

410-121-0135

REWRITTEN

### Pharmacy Management Program

(1) The Pharmacy Management Program promotes the appropriate use of quality pharmaceutical services by identifying and correcting overutilization of services.

(2) The Pharmacy Management Program limits some fee-for-service clients to receiving their prescription drugs through the following sources:

(a) A single retail pharmacy to pick up prescriptions;

(b) The Division of Medical Assistance Program (Division) mail order pharmacy contractor; and

(c) A specialty pharmacy.

(3) The Division will not include the following clients in the Pharmacy Management Program:

(a) Members enrolled in a Coordinated Care Organization;

(b) Clients with Medicare drug coverage in addition to OHP;

(c) Children in the care and custody of the Department of Human Services; or

(d) Inpatients or residents in a hospital, nursing facility, other medical institution or long term care facility.

(4) The Division will consider referrals of potential Pharmacy Management Program clients from the following sources:

(a) Providers;

(b) Division staff; and

(c) Division contractors.

(5) Reasons for referring a client to the Division for potential enrollment in the Pharmacy Management Program shall be limited to factors that indicate possible overutilization or drug misuse, or that raise concern for patient safety. Those factors are:

- (a) Use of three or more pharmacies during the prior six months;
- (b) Fills prescriptions from more than one prescriber for the same or comparable medications; or
- (c) Evidence that the client altered a prescription; or
- (d) Exhibits behaviors or patterns of behavior that the Pharmacy and Therapeutics Committee has identified as indicative of intentional overutilization or misuse.

(6) Clients referred to the Division for potential enrollment in the Pharmacy Management Program shall be enrolled in the program only when a licensed pharmacist appointed by the Division conducts a review and concludes the individual utilized pharmaceutical items or services at a frequency or amount that is not medically necessary based on factors including, but not limited to, those described in subsection (5) of this rule.

(7) When the Division concludes enrollment in the Pharmacy Management Program is appropriate as described in subsection (6), the Division shall send the client a notice that provides the following information:

(a) The Division plans to require that the client use a designated pharmacy for a 12-month period;

(b) The specific date when the requirement will begin;

(c) An explanation of the reason for enrollment in the Pharmacy Management Program, and the benefits of enrollment in the Pharmacy Management Program; and

(d) The client's right to request the following, within 45 days of the date of the notice:

(A) A different designated pharmacy; and

(B) An administrative hearing to appeal the Division's decision to enroll the client into the Pharmacy Management Program.

(8) Changing the Pharmacy Management Program client's enrolled pharmacy:

(a) Clients may change their enrolled pharmacy if they:

(A) Move out of area;

(B) Are reapplying for OHP benefits; or

(C) Are denied access to pharmacy services by their selected pharmacy for reasons other than the Pharmacy Management Program factors identified by the Division;

(b) Clients cannot change their choice of pharmacy more than once every 3 months.

(9) Pharmacy Management Program clients may receive drugs from a different pharmacy if the client urgently needs to fill a prescription and the enrolled pharmacy:

(a) Is not available;

(b) Does not have the prescribed drug in stock; or

(c) Is more than 50 miles away from the client's location at the time the prescription needs to be filled. However, DMAP may deny coverage if the client frequently fills prescriptions out of the area of the enrolled pharmacy.

(10) Call the Oregon Pharmacy Help Desk for authorization to fill a prescription in the situations described in (9)(a)–(c) above.

(11) The client's appeal rights and the process for appealing a Division decision to enroll a client in the Pharmacy Management Program are found in OAR 410-120-1860. If the client requests an administrative hearing before the effective date of the client notice and requests that the services be continued, the Authority shall continue the services pursuant to OAR 410-120-1865.

Stat. Auth.: ORS 413.042 & 414.065

Stats. Implemented: ORS 414.065, OL 2013 Ch. 467 Sec. 2