

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 (503) 945-6430  
Rules Coordinator Address Telephone

**RULE CAPTION**

Add Non-Emergent Medical Transportation (NEMT) Language for Integration into Coordinated Care Organization Benefit Package

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

June 17, 2014 10:30 a.m. 500 Summer St. NE, Salem, OR 97301 Room 137B 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:** 410-141-3435, 410-141-3440, 410-141-3445, 410-141-3450, 410-141-3455, 410-141-3460, 410-141-3465, 410-141-3470, 410-141-3475, and 410-141-3480 , 410-141-3485 SC 5/14/14

**AMEND:**

**REPEAL:**

**RENUMBER:**

**AMEND & RENUMBER:**

Stat. Auth.: ORS 413.042 and 414.625

Other Auth.:

Stats. Implemented: ORS 414.625

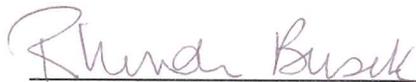
**RULE SUMMARY**

These rules include, but are not limited to: the requirement to implement the NEMT program within the CCO set of covered services, effective July 1, 2014; the definition of terms related to this program; and designation of who can receive services, under what circumstances and how. Additional rule parameters include: equipment requirements, insurance requirements, what constitutes out-of-state requirements, rules applicable for children younger than 12 years old, rules relating to young adults with special physical or developmental needs ( regardless of age), and secured transport for those in danger of harming themselves or others. Lastly included are ambulance transport when a medical facility or provider states the member's medical condition requires the presence of a health care professional during the emergency or non-emergency transport, modifications based on member circumstance, member rights and confidentiality, reports and documentation, audit requirements, and client reimbursed mileage, meals, and lodging.

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.

June 20, 2014 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

Printed name

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, division of Medical Assistance Programs (Division)	410
Agency and Division	Administrative Rules Chapter Number

Add Non-Emergent Medical Transportation (NEMT) Language for Integration into Coordinated Care Organization Benefit Package.

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

In the Matter of: The adoption of 410-141-3435, 410-141-3440, 410-141-3445, 410-141-3450, 410-141-3455, 410-141-3460, 410-141-3465, 410-141-3470, 410-141-3475, and 410-141-3480, *410-141-3485 sc 5/14/14*

Statutory Authority: ORS 413.042 and 414.625

Other Authority:

Stats. Implemented: ORS 414.625

Need for the Rule(s): The Division needs to create these rules to incorporate language related to "ORS 414.067-Coordinated care organization assumption of costs; reports to Legislative Assembly. (1) If the Oregon Health Authority or the Department of Human Services requires a coordinated care organization to provide a service paid for out of the organization's global budget that was previously reimbursed by the authority or the department on a fee-for-service basis . . ."

These rules include, but are not limited to: the requirement to implement the NEMT program within the CCO set of covered services, effective July 1, 2014; the definition of terms related to this program; and designation of who can receive services, under what circumstances and how. Additional rule parameters include: equipment requirements, insurance requirements, what constitutes out-of-state requirements, rules applicable for children younger than 12 years old, rules relating to young adults with special physical or developmental needs (regardless of age), and secured transport for those in danger of harming themselves or others. Lastly included are ambulance transport when a medical facility or provider states the member's medical condition requires the presence of a health care professional during the emergency or non-emergency transport, modifications based on Member circumstance, member rights and confidentiality, reports and documentation, audit requirements, and client reimbursed mileage, meals, and lodging.

Documents Relied Upon, and where they are available: Centers for Medicaid and Medicare Services Amended Waiver List and Expenditure Authority NUMBER: 21-W-00013/10 and 11-W-00160/10 (Attachment F)

Fiscal and Economic Impact: The funding source for these services will shift from OHP fee-for-service funds to OHP CCO global budget funds allowing for CCO budgetary requirements to be imposed on these program elements. It is expected that a cost savings will be derived through the CCO management of these program elements.

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): The Division does not anticipate fiscal impacts on other state agencies, units of local government, or the public.
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: The types of small businesses include specialty groups and community based providers; however, the Division's system does not flag which providers are part of a larger corporation. Therefore, the Division is unable to estimate the number of small businesses that are subject to the rules, but the Division does not anticipate a direct or indirect impact on small businesses.
  - b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None anticipated. These are activities that the small businesses are engaged in for these subcontracted activities.
  - c. Equipment, supplies, labor, and increased administration required for compliance: None anticipated. These are expenses that the small businesses are already incurring for these subcontracted activities.

How were small businesses involved in the development of this rule? The small businesses were invited to participate in the RAC.

Administrative Rule Advisory Committee consulted?: Yes, 3/10/14, 3/19/14, 3/31/14, and 4/10/14.

If not, why?:

*Rhonda Busek*

Signature

*Rhonda Busek*

Printed name

*5-9-14*

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310.

## **410-141-3435**

### **NEMT General Requirements**

- (1) A Coordinated Care Organization shall provide all NEMT services for its members. The Authority shall provide NEMT services in CCO's service area only to members not enrolled in a CCO.
- (2) A CCO shall provide a toll-free call center for members to request rides.
- (3) A CCO and its contracted transportation provider may not bill a member for any transport to and from medical services that are covered and where the CCO or its contracted transportation provider denied reimbursement.
- (4) CCOs shall require NEMT providers to obtain and maintain insurance at limits no less than is required under OAR 410-136-3060.
- (5) Transportation providers shall be considered "participating providers" for the purposes of OAR 410-141-3180 (Record Keeping and Use of Health Information Technology).

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

## **410-141-3440**

### **Vehicle Equipment and Driver Standards**

- (1) This rule does not apply to ambulance providers, ambulance vehicles, or ambulance personnel that are licensed and regulated by ORS chapter 682 and OAR Chapter 333, divisions 250, 255, 260 and 265, whether providing ambulance or stretcher transports.
- (2) The CCO shall require all vehicles used for NEMT services to meet the following requirements for the comfort and safety of the members:
  - (a) The interior of the vehicle shall be clean and free from any debris impeding a member's ability to ride comfortably;
  - (b) Smoking is prohibited in the vehicle at all times in accordance with ORS 433.835 to 433.990 and OAR 333-015-0025 to 333-015-0090; and
  - (c) The transportation provider shall comply with appropriate local, state, and federal transportation safety standards regarding passenger safety and comfort. The vehicle shall include, but is not limited to, the following safety equipment:
    - (A) Safety belts for all passengers if the vehicle is legally required to provide safety belts;

- (B) First aid kit;
- (C) Fire extinguisher;
- (D) Roadside reflective or warning devices;
- (E) Flashlight;
- (F) Tire traction devices when appropriate;
- (G) Disposable gloves; and
- (H) All equipment necessary to transport members using wheelchairs or stretchers, if the member is using a wheelchair or stretcher.

(3) A preventative maintenance schedule shall be followed for each vehicle that incorporates at least all of the maintenance recommended by the vehicle manufacturer. The vehicle must be in good operating condition and shall include, but is not limited to, the following equipment:

- (a) Side and rear view mirrors;
- (b) Horn; and
- (c) Working turn signals, headlights, taillights, and windshield wipers.

(4) Prior to hiring an NEMT driver, the CCO shall require the following:

(a) The driver must have a valid driver license. The license must be the class of license with any required endorsements that permits the driver to legally operate the vehicle for which they are hired to drive pursuant to ORS chapter 807 and OAR chapter 735, division 062, or the applicable statutes of other states; and

(b) The driver must pass a criminal background check in accordance with ORS 181.534, ORS 181.537, and OAR chapter 257, division 10. If the driver is employed by a mass transit district formed under ORS chapter 267, the driver must pass a criminal background check in accordance with ORS 267.237 as well as the mass transit district's background check policies. A CCO shall have an exception process to the criminal background check requirement that may allow approval of a driver with a criminal background under certain circumstances. The exception process must include review and consideration of when the crime occurred, the nature of the offense, and any other circumstances to ensure that the member is not at risk of harm from the driver. Any approvals made through the exception process must be documented and maintained for three calendar years, even if the CCO is no longer a Medicaid enrolled provider before the end of the three years. The Authority may request this information at any time during the three year retention period.

(5) Drivers authorized to provide NEMT services must receive training on their job duties and responsibilities including:

(a) Understanding NEMT services in general, reporting forms, vehicle operation, requirements for fraud and abuse reporting, and the geographic area in which drivers will provide service;

(b) Completing the National Safety Council Defensive Driving course or equivalent within six months of the date of hire and at least every three years thereafter;

(c) Completing Red Cross-approved First Aid, Cardiopulmonary Resuscitation and blood spill procedures courses or equivalent within six months of the date of hire and maintain the certification;

(d) Completing the Passenger Service and Safety course or equivalent course within six months of the date of hire and at least every three years thereafter; and

(e) Understanding the CCO's established procedures for responding to a member's needs for emergency care should they arise during the ride.

(6) For authorized out-of-state NEMT services in which the transportation provider solely performs work in the other state and for which the CCO has no oversight authority, the CCO is not responsible for requiring that the subcontractor's vehicle and standards meet the requirements set forth in this rule.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3445**

#### **Out-of-Service-Area and Out-of-State Transportation**

(1) A CCO shall provide NEMT services outside the CCO's service area under the following circumstances:

(a) The member is receiving an OHP-covered health care service that is not available in the service area but is available in another area of the state;

(b) The member is receiving an OHP-covered service where the service location is no more than 75 miles from the Oregon border and contiguous to the CCO's service area;

(c) The CCO determines that no local medical provider or facility as outlined in OAR 410-141-3220 will provide OHP-covered medical services for the member; or,

(d) The member is receiving an OHP-covered service outside of Oregon that is not available in Oregon.

(2) Nothing in this rule prohibits a CCO from providing and paying for NEMT services to allow a client to access other services the CCO authorizes.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3450**

##### **Attendants for Child and Special Needs Transports**

(1) This rule applies to NEMT for children under 12 years of age who are eligible for NEMT services to and from OHP-covered medical services. The rule also applies to children and young adults with special physical or developmental needs regardless of age.

(2) Parents or guardians must provide an attendant to accompany these members while traveling to and from medical appointments except when:

(a) The driver is a Department of Human Services (Department) volunteer or employee or an Authority employee;

(b) The member requires secured transport pursuant to OAR 410-141-3437 (Secured Transports); or

(c) An ambulance provider transports the member for non-emergent services, and the CCO reimburses the ambulance provider at the ambulance transport rate, per CCO contract or non-contracted rate policy.

(3) NEMT ambulance transports shall have an attendant when the CCO uses an ambulance to provide wheelchair or stretcher car or van rides.

(4) The Department shall establish and administer written guidelines for members in the Department's custody including written guidelines for volunteer drivers. If the Department's requirements or administrative rules differ from this rule, the Department's requirements or administrative rules take precedence.

(5) An attendant may be the member's mother, father, stepmother, stepfather, grandparent, or guardian. The attendant may also be any adult the parent or guardian authorizes. An attendant may also be the member's brother, sister, stepbrother, or stepsister if the attendant is at least 18 years of age, and the parent or guardian authorizes it.

(6) CCOs may require the member's parent or guardian to provide written authorization for an attendant other than the parent or guardian to accompany the member.

(7) The CCO may not bill additional charges for a member's attendant.

(8) The attendant must accompany the member from the pick-up location to the destination and the return trip. The attendant must also remain with the member during their appointment.

(9) The member's parent, guardian, or adult caregiver shall provide and install safety seats as required by ORS 811.210 - 811.225. An NEMT driver may not transport a member if a parent or guardian fails to provide a safety seat that complies with state law.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3455**

#### **Secured Transports**

(1) "Secured transport" means NEMT services for the involuntary transport of members who are in danger of harming themselves or others. Secured transports may be used when:

(a) The CCO verified that the secured transporter has met the requirements of the secured transport protocol pursuant to OAR 309-033-0200 through OAR 309-033-0970, and the secured transporter is able to transport the member who is in crisis or at immediate risk of harming themselves or others due to mental or emotional problems or substance abuse; and

(b) The transport is to a Medicaid enrolled facility that the Authority recognizes as being able to treat the immediate medical or behavioral health care needs of the member in crisis.

(2) One additional attendant may accompany the member at no additional charge when medically appropriate, such as to administer medications in-route or to satisfy legal requirements including, but not limited to, when a parent, legal guardian, or escort is required during transport.

(3) The CCO shall authorize transports to and from OHP covered medical services for an eligible member for court ordered medical services with the following exceptions:

(a) The member is in the custody of or under the legal jurisdiction of any law enforcement agency;

(b) The member is an inmate of a public institution as defined in OAR 461-135-0950 (Eligibility for Inmates); or

(c) The Authority has suspended the member's OHP eligibility pursuant to ORS 411.443 or ORS 411.439.

(4) The CCO shall assume that a member returning to their place of residence is no longer in crisis or at immediate risk of harming themselves or others, and is, therefore, able to use non-secured transportation. In the event that a secured transport is medically appropriate to return a member to their place of residence, the CCO shall obtain written documentation signed by the

treating medical professional stating the circumstances that required secured transport. The CCO shall retain the documentation and a copy of the order in their record for the Authority to review.

(5) The CCO may approve and pay for secured medical transport provided to a person going to or from a court hearing or to or from a commitment hearing if there is no other source of funding for this transport.

(6) This rule does not apply to ambulance providers, ambulance vehicles, or ambulance personnel that are licensed and regulated by ORS chapter 682 and OAR chapter 333, divisions 250, 255, 260 and 265, whether providing ambulance or stretcher transports.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3460**

##### **Ground and Air Ambulance Transports**

(1) Transporting a member via ambulance is required when a medical facility or provider states the member's medical condition requires the presence of a health care professional during the emergency or non-emergency transport. This includes neonatal transports.

(2) For NEMT services, the CCOs shall authorize the transport.

(3) CCOs shall provide ambulance transports with a medical technician when:

(a) A member's medical condition requires a stretcher;

(b) The length of transport would require a personal care attendant; and

(c) The member does not have an attendant who can assist with personal care during the ride.

(4) When a member's medical condition is an emergency as defined in OAR 410-120-0000, emergency ambulance transportation must be used. The ambulance must transport the member to the nearest appropriate facility able to meet the member's medical needs.

(5) CCOs shall verify that the Authority has licensed providers of ground or air ambulance services to operate ground or air ambulances. If the ambulance service provider is located in a contiguous state and regularly provides rides to OHP members, the CCO must ensure that both the Authority and the contiguous state have licensed the ambulance service provider.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3465**

## **Modifications for Individuals with Disabilities**

(1) For the purposes of this rule, “direct threat” means a significant risk to the health or safety of others. A direct threat is one that:

(a) Cannot be eliminated or reduced to an acceptable level through the provision of auxiliary aids and services or through reasonably modifying policies, practices, or processes.

(b) Is identified through an individual assessment that relies on current medical evidence or the best available objective evidence that shows:

(A) The nature, duration, and severity of the risk;

(B) The probability that a potential injury will actually occur; and

(C) Whether reasonable modification of policies, practices, or processes will lower or eliminate the risk.

(2) CCO’s may not apply criteria, standards, or practices that screen out or tend to screen out individuals in a protected class from fully and equally enjoying any goods, services, programs, or activities unless:

(a) The criteria can be shown to be necessary for providing those goods and services; or

(b) The CCO determines the screening or exclusion identifies a direct threat to the health and safety of others.

(3) CCOs and their subcontractors shall comply with the Authority’s non-discrimination and modification rules found at OAR 943-005-0000 to 943-005-0070.

(4) CCO members may use the processes and rights specified in OAR 410-141-3260 through 3264 (Grievance System and Contested Case Hearings Rules).

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

### **410-141-3470**

#### **Service Modifications**

(1) CCOs shall draft policies and procedures describing passenger rights and responsibilities including the right to file a complaint and request reconsideration and provide this information in all general information materials such as handbooks.

(2) CCOs shall draft policies and procedures that ensure the safety of all passengers in NEMT vehicles and provide the information to contractors, subcontractors, and members receiving NEMT services.

(3) A CCO may modify or a member may request modification of NEMT services when the member:

(a) Threatens harm to the driver or others in the vehicle.

(b) Has a health condition that creates a health or safety concern to the driver, others in the vehicle, or the member as described in OAR 410-141-3439.

(c) Engages in behaviors or circumstances that place the driver or others in the vehicle at risk of harm.

(d) Engages in behavior that, in the CCO's judgment, causes local medical providers or facilities to refuse to provide further services without modifying NEMT services.

(e) Frequently does not show up for scheduled rides.

(f) Frequently cancels the ride on the day of the scheduled ride time.

(4) Reasonable modifications include, but are not limited to, requiring members to:

(a) Use a specific transportation provider;

(b) Travel with an attendant;

(c) Use public transportation where available;

(d) Drive or locate someone to drive the member and receive mileage reimbursement;

(e) Confirm the ride with the NEMT provider on the day of or the day before the scheduled ride.

(5) Before modifying services, the NEMT provider, a CCO representative, and the member shall:

(a) Communicate about the reason for imposing a modification;

(b) Explore options that are appropriate to the member's needs;

(c) Address health and safety concerns;

(d) The CCO or member may include the member's care team in the discussion;

(e) The member may include another individual of their choosing in the discussion.

(6) Responses to requests for modification or auxiliary aids based on disability or other protected class status under state or federal rule or law must comply with the Americans with Disabilities Act and all other applicable state and federal laws and rules.

(7) A CCO may not modify NEMT services under this rule due solely to a request for modification or auxiliary aid based on disability or other protected class status.

(8) A CCO may not modify NEMT services to result in a denial of NEMT services to a member.

(9) A CCO shall make all reasonable efforts to offer an appropriate alternative to meet a member's needs under the circumstances.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3475**

##### **Contested Case Hearings**

As required by 42 CFR 431, the CCO shall comply with OAR 410-141-3264 pertaining to contested case hearings when it denies a ride with the following exceptions:

(1) Prior to mailing a notice of action to a member, the CCO must provide a secondary review by another employee when the initial screener denies a ride.

(2) The CCO shall mail a notice of action to a member denied a ride within 72 hours of denial.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3480**

##### **Member Reimbursed Mileage, Meals, and Lodging**

(1) A CCO may prior authorize a member's mileage, meals, and lodging to covered medical service in order for the member to qualify for reimbursement.

(2) A CCO may disallow a client reimbursement request received more than 45 days after the travel.

(3) A CCO shall reimburse a member for mileage, meals, and lodging at rates not less than the Authority's allowable rates. See the Division's fee schedule, available at:

<http://www.oregon.gov/oha/healthplan/pages/feeschedule.aspx>.

(4) The member must return any documentation a CCO requires before receiving reimbursement.

(5) A CCO may hold reimbursements under the amount of \$10 until the member's reimbursement reaches \$10.

(6) A CCO shall reimburse members for meals when a member travels:

(a) Out of their local area as outlined in OAR 410-141-3220 (4) (a) and (b); and

(b) For a minimum of four hours round-trip.

(7) A CCO's brokerage or other transportation subcontractor shall reimburse members for lodging when:

(a) A member would otherwise be required to begin travel before 5 a.m. in order to reach a scheduled appointment;

(b) Travel from a scheduled appointment would end after 9 p.m.; or

(c) The member's health care provider documents a medical need.

(8) A CCO may reimburse members for lodging under additional circumstances at the CCO's discretion.

(9) A CCO shall reimburse for meals or lodging for one attendant, which may be a parent, to accompany the member if medically necessary, if:

(a) The member is a minor child and unable to travel without an attendant;

(b) The member's attending physician provides a signed statement indicating the reason an attendant must travel with the member;

(c) The member is mentally or physically unable to reach his or her medical appointment without assistance; or

(d) The member is or would be unable to return home without assistance after the treatment or service.

(10) A CCO may reimburse members for meals or lodging for additional attendants or under additional circumstances at the CCOs discretion.

(11) A CCO may recover overpayments made to a member. Overpayments occur when a CCO's brokerage or other transportation subcontractor paid the member:

(a) For mileage, meals, and lodging, and another resource also paid:

(A) The member; or

(B) The ride, meal, or lodging provider directly;

(b) Directly to travel to medical appointments, and the member did not use the money for that purpose, did not attend the appointment, or shared the ride with another member whom the brokerage also paid directly;

(c) For common carrier or public transportation tickets or passes, and the member sold or otherwise transferred the tickets or passes to another individual.

(12) If an individual or entity other than the member or the minor member's parent or guardian provides the ride, a CCO's brokerage or other transportation subcontractor may reimburse the individual or entity that provided the ride.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625

#### **410-141-3485**

#### **Reports and Documentation**

(1) CCOs shall maintain documentation of rides denied and rides provided to members.

(2) For NEMT services provided to members, this documentation shall include:

(a) All encounter data required in the current CCO contract;

(b) Names of the company and driver transporting the member.

(3) For NEMT services denied to members, this documentation shall include:

(a) The name of the member and the individual requesting the ride on behalf of the member, if applicable;

(b) The member's OHP medical care identification number;

(c) The date and time of the request for transportation;

(d) The name of the employee who denied a ride;

(e) The name of the employee who performed the secondary review before denying the ride;

(f) The reason for the denial and the applicable OAR supporting the denial;

(g) The date on the notice of action the brokerage mailed to the member;

(h) Documentation on the review, resolution, or disposition of the matter, if applicable, including the reason for the decision and the date of the resolution or disposition; and

(i) Notations of oral and written communications with the member.

(4) The CCO shall retain the documentation on NEMT service denials for three calendar years, even if the CCO, its brokerage, or subcontractor that denied the service is no longer a Medicaid enrolled provider before the end of the three years. The Authority may request this information at any time during the three year retention period.

(5) The Authority may request and the CCO shall provide other reports or information not specified in sections (1-4) of this rule.

Stat. Auth.: ORS 413.042 and 414.625

Stats. Implemented: ORS 414.625