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

Change Title of Rule to Better Reflect the Intent of the Rule

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

March 17, 2015	10:30 a.m.	500 Summer St. NE, Salem, OR 97301 Room 160	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: 410-141-3268

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth. : ORS 414.042, 414.615, 414.625, 414.635, 414.651

Other Auth.:

Stats. Implemented: ORS 414.610 through 414.685

RULE SUMMARY

The Division of Medical Assistance Programs needs to amend this rule to incorporate arbitration language for when a dispute involves a Health Care Entity (HCE) who chooses not to contract with a Coordinated Care Organization (CCO). Only the title has been changed on this rule to narrow the scope and better define the scope and actual intent of the rule. The new title is as follows: Process for Resolving Disputes on Formation, Certification, and Recertification of CCOs.

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.

March 19, 2015 by 5:00 p.m. Send written comments to: dmap.rules@state.or.us

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

Rhonda Busek	Rhonda Busek	
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.*

Secretary of State

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

Change Title of Rule to Better Reflect the Intent of the Rule

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

In the Matter of: The amending OAR 410-141-3268

Statutory Authority: ORS 414.042, 414.615, 414.625, 414.635, 414.651

Other Authority:

Stats. Implemented: ORS 414.610 through 414.685

Documents Relied Upon, and where they are available: ORS 414.635

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)): 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 doctors' offices, specialty groups, small clinics, and community based providers; however, the Division's system does not flag which providers are part of a larger clinic or 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

c. Equipment, supplies, labor and increased administration required for compliance: None anticipated

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

Administrative Rule Advisory Committee consulted?: No. If not, why?: As these rule changes are not substantive policy changes, only to clarify process, it was determined that a Rulemaking Advisory Committee was not necessary.

Rhonda Busek Rhonda Busek

Signature Printed name Date

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

410-141-3268

Process for Resolving Disputes on Formation, Certification, and Recertification of CCOs

(1) The dispute resolution process described in this rule applies only when, under ORS 414.635:

(a) An entity is applying to the Authority for certification as a CCO (applicant);

(b) A Health Care Entity (HCE) and the applicant (together, the "parties" for purposes of this rule) have failed to agree upon terms for a contract; and

(c) One or more of the following occurs:

(A) The applicant states that the HCE is necessary for the applicant to qualify as a CCO;

(B) An HCE states that its inclusion is necessary for the applicant to be certified as a CCO; or

(C) In reviewing the applicant's information, the Authority identifies the HCE as necessary for the applicant to qualify as a CCO.

(2) If an applicant and HCE disagree about whether the HCE is necessary for the applicant's certification as a CCO, the applicant or HCE may request the Authority to review the issue.

(3) If the Authority determines the HCE is not necessary for the applicant's certification, the process described in this rule does not apply.

(4) If the Authority determines or the parties agree the HCE is necessary for the applicant's certification, the following applies:

(a) The HCE and the applicant shall participate in good faith contract negotiations. The parties ~~must~~ shall take the following actions in an attempt to reach a good faith resolution:

(A) The applicant ~~must~~ shall provide a written offer of terms and conditions to the HCE. The HCE ~~must~~ shall explain the area of disagreement to the applicant;

(B) The applicant's or HCE's chief financial officer, chief executive officer, or an individual authorized to make decisions on behalf of the HCE or applicant ~~must~~ shall have at least one face-to-face meeting in a good faith effort to resolve the disagreement.

(b) The applicant or HCE may request the Authority to provide technical assistance. The Authority also may offer technical assistance, with or without a request. The Authority's technical assistance is limited to clarifying the CCO certification process, criteria, and other program requirements.

(5) Pursuant to 2013 Engrossed SB 568 and 2013 Oregon Laws chapter 27, if the applicant and HCE cannot reach agreement on contract terms within ten ~~(10)~~ calendar days of the face-to-face

meeting, either party may request arbitration. The requesting party ~~must~~ shall notify the other party in writing to initiate a referral to an independent third party arbitrator~~;~~ for an HCE's refusal to contract with the CCO or the termination, extension, or renewal of a HCE's contract with a CCO. The party initiating the referral ~~must~~ shall provide a copy of the notification to the Authority.

(6) After notification that one party initiated arbitration, the parties shall attempt to agree upon the selection of the arbitrator and complete the paperwork required to secure the arbitrator's services. If the parties are unable to agree, each party shall appoint an arbitrator, and these arbitrators shall select the final arbitrator.

(7) The parties shall pay for all arbitration costs. In consideration of potentially varied financial resources between the parties, which may pose a barrier to the use of this process, the parties may ask the arbitrator to allocate costs between the parties based on ability to pay.

(8) Within ten ~~(10)~~ calendar days of a referral to an arbitrator, the applicant and HCE ~~must~~ shall submit to each other and to the arbitrator the following:

(a) The most reasonable contract offer; or

(b) The HCE's statement that a contract is not desirable and an explanation of why this is reasonable.

(9) Within ten ~~(10)~~ calendar days of receiving the other party's offer or the HCE's statement that a contract is not desirable, each party ~~must~~ shall submit to the arbitrator and the other party the advocacy briefs regarding whether the HCE is reasonably or unreasonably refusing to contract with the applicant.

(10) The arbitrator shall apply the following standards when making a determination about whether an HCE reasonably or unreasonably refused to contract with the applicant:

(a) An HCE may reasonably refuse to contract when an applicant's reimbursement to an HCE for a health service is below the reasonable cost to provide the service. The arbitrator shall apply federal or state statutes or regulations that establish specific reimbursements, such as payments to federally qualified health centers, rural health centers, and tribal health centers; and

(b) An HCE may reasonably refuse to contract if that refusal is justified in fact or by circumstances, taking into consideration the Health Services Transformation (HST) legislative policies. Facts or circumstances outlining what is a reasonable or unreasonable refusal to contract include, but are not limited to:

(A) Whether contracting with the applicant would impose demands that the HCE~~, taking into consideration the legislative policies described in the HST laws,~~ cannot reasonably meet without significant negative impact on HCE costs, obligations, or structure~~, in the context of~~ while considering the proposed reimbursement arrangement or other CCO requirements~~, including, but not limited to, the~~. Some of the requirements include:

(i) ~~u~~Use of electronic health records;~~,~~

(ii) S~~s~~ervice delivery requirements, or

(iii) Q~~q~~uality or performance requirements;

(B) Whether the HCE's refusal affects access to covered services in the applicant's community. This factor alone cannot result in a finding that the refusal to contract is unreasonable; however, the HCE and applicant ~~should~~ shall make a good faith effort to work out differences in order to achieve beneficial community objectives and HST policy objectives;

(C) Whether the HCE has entered into a binding obligation to participate in the network of a different CCO or applicant~~,~~ and that participation significantly reduces the HCE's capacity to contract with the applicant.

(11) The following outlines the arbitrator determination and the parties' final opportunity to settle:

(a) The arbitrator ~~must~~ shall evaluate the final offers or statement of refusal to contract and the advocacy briefs from each party and issue a determination within 15 calendar days of the receipt of the parties' information;

(b) The arbitrator shall provide the determination to the parties. The arbitrator and the parties may not disclose the determination to the Authority for ten ~~(10)~~ calendar days to allow the parties an opportunity to resolve the issue themselves. If the parties resolve the issue no later than the end of the tenth day, the arbitrator may not release the determination to the Authority;

(c) If the parties have not reached an agreement after ten ~~(10)~~ calendar days, the arbitrator ~~must~~ shall provide its decision to the Authority. After submission to the Authority, the arbitrator's determination becomes a public record, subject to protection of trade secret information if identified by one of the parties prior to the arbitrator's submission of the determination.

(12) If the parties cannot agree, the Authority shall evaluate the arbitrator's determination and may take the following actions:

(a) The Authority may certify an applicant if the arbitrator determined the applicant made a reasonable attempt to contract with the HCE or the HCE's refusal to contract was unreasonable;

(b) The Authority may refuse to certify, recertify, or continue to certify an applicant when the arbitrator determined the applicant did not reasonably attempt to contract with the HCE or the HCE's refusal to contract was reasonable, and the Authority determines that participation from the HCE remains necessary for certification of applicant as a CCO;

(c) The Authority may not pay fee-for-service reimbursements to an HCE if the arbitrator determined the HCE unreasonably refused to contract with the applicant. T~~; t~~his applies to health services available through a CCO;

(d) In any circumstance within the scope of this rule when the parties have failed to agree, the current statutes regarding reimbursement to non-participating providers shall apply to certified CCOs and the HCE, consistent with ORS 414.743 for hospitals~~,~~ and consistent with Authority rules for other providers.

(13) To be qualified to resolve disputes under this rule, the arbitrator ~~must~~shall:

(a) Be a knowledgeable and experienced arbitrator;

(b) Be familiar with health care provider contracting matters;

(c) Be familiar with HST; and

(d) Follow the terms and conditions specified in this rule for the arbitration process.

Stat. Auth.: ORS 413.042, 414.615, 414.625, 414.635 & 414.651

Stats. Implemented: ORS 414.610 - 414.685