

Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on (upon filing) by the _____
Date prior to or same as filing date.

Oregon Health Authority (Authority) , Division of Medical Assistance Programs (Division) _____ 410
Agency and Division Administrative Rules Chapter Number

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to become effective 2/1/12 through 7/4/2012
Date upon filing or later A maximum of 180 days including the effective date.

RULEMAKING ACTION

Rule Filing Caption: Adopts Attorney General's model rules with the exception to the postmark date

AMEND: OAR 410-120-1860, Contested Case Hearing Procedures

Statutory Authority: ORS 183.341, 413.042

Other Authority:

Statutes Implemented: ORS 183.411 - 183.470, 414.025, 414.065

Subject Matter:

The General Rules program administrative rules govern Division payments for services to clients. The Division needs to amend OAR 410-120-1860 because basing timeliness of a hearing request on the date of a postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Authority receives it, not the date of the postmark.

Authorized Signers: _____
Judy Mohr Peterson, Jean Phillips or Sandy Wood

Secretary of State

Statement of Need and Justification

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Oregon Health Authority (Authority), Division of Medical Assistance Programs (Division) 410

Agency and Division

Administrative Rule Chapter Number

In the Matter of: The Division's temporary amendment of OAR 410-120-1860.

Rule Filing Caption: Adopts Attorney General's model rules with the exception to the postmark date

Statutory Authority: ORS 183.341, 413.042

Other Authority:

Statutes Implemented: ORS 183.411 - 183.470, 414.025, 414.065

Need for Rule(s): The Division needs to amend this rule so the Division may continue to base timeliness of a hearing request on the date the request is received, rather than the date of a postmark. Using the date of postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Division receives it, not the date of the postmark. .

Justification of Temporary Rule(s): The Authority finds that failure to act promptly by amending OAR 410-120-1860 will result in serious prejudice to the public interest, the Authority, and claimants in contested cases. This rule needs to be amended because basing timeliness of a hearing request on the date of a postmark would create operational conflicts due to the number of client documents received, the number of staff opening mail, and the expense of changing procedures about saving envelopes. This amendment avoids these conflicts by continuing current contested case procedures under which the timeliness of a hearing request is based on the date the Division receives it, not the date of the postmark. This amendment cannot wait to be adopted as permanent rules because new statewide rules in Division 137-003 are scheduled to be filed on January 31, 2012 and the Authority has a large volume of hearing requests filed each day. The Authority intends to permanently amend this rule.

Documents Relied Upon, and where these can be viewed or obtained: Statewide rules in Division 137-003 are scheduled to be filed on January 31, 2012 available at http://www.doj.state.or.us/help/pdf/amended_proposed_rules_71411.pdf

Other Agencies affected: None

Authorized Signers: _____

Judy Mohr Peterson, Jean S. Donovan or Sandy Wood

Date

410-120-1860 - Contested Case Hearing Procedures

(1) These rules apply to all contested case hearings provided by the Division of Medical Assistance Programs (Division) involving a client's medical or dental benefits, except as otherwise provided in OAR 410-141-0263. The hearings are conducted in accordance with the Attorney General's model rules at OAR 137-003-0501 and following. When the term "agency" is used in the Attorney General's model rules, it shall refer to the Division for purposes of this rule Except for OAR 137-003-0528(1)(a), the method described in OAR 137-003-0520(8)-(10) is used in computing any period of time prescribed in this division of rules (OAR 410 division 120) applicable to timely filing of client requests for hearing. Due to operational conflicts, the procedures needing revision and the expense of doing so, OAR 137-003-0528(1)(a), which allows hearing requests to be treated as timely based on the date of postmark, does not apply to Division contested cases.

(2) Medical provider appeals and administrative reviews involving the Division are governed by OAR 410-120-1560 through 410-120-1700.

(3) Complaints and appeals for clients requesting or receiving medical assistance from a Prepaid Health Plan (PHP) shall be governed exclusively by the procedures in OAR 410-141-0260. This rule describes the procedures applicable when those clients request and are eligible for a Division contested case hearing.

(4) Contested Case Hearing Requests:

(a) A client has the right to a contested case hearing in the following situations upon the timely completion of a request for a hearing:

(A) The Authority acts to deny client services, payment of a claim, or to terminate, discontinue or reduce a course of treatment, or issues related to disenrollment in a Fully Capitated Health Plan (FCHP), Physician Care Organization (PCO), Dental Care Organization (DCO) or Chemical Dependency Organization (CDO); or

(B) The right of a client to request a contested case hearing is otherwise provided by statute or rule, including OAR 410-141-0264(10) describing when a client of a PHP may request a state hearing.

(b) To be timely, a request for a hearing is complete when the Division receives the Authority's Administrative Hearing request form (DMAP 443) not later than the 45th day following the date of the decision notice;

(c) In the event a request for hearing is not timely, the Division will determine whether the failure to timely file the hearing request was caused by circumstances beyond the control of the client and enter an order accordingly. In determining whether to accept a late hearing request, the Division requires the request to be supported by a written statement that explains why the request for hearing is late. The Division may conduct such further inquiry as the Division deems appropriate. In determining timeliness of filing a hearing request, the amount of time that the Division determines accounts for circumstances beyond the control of the client is not counted. The Division may refer an untimely request to the Office of Administrative Hearings for a hearing on the question of timeliness;

(d) In the event the claimant has no right to a contested case hearing on an issue, the Division may enter an order accordingly. The Division may refer a hearing request to the Office of Administrative Hearings for a hearing on the question of whether the claimant has a right to a contested case hearing;

(e) A client who requests a hearing shall be referred to as a claimant. The parties to a contested case hearing are the claimant and, if the claimant has requested a hearing about a decision of a PHP, the claimant's PHP;

(f) A client may be represented by any of the persons identified in ORS 183.458. A PHP that is a corporation may be represented by any of the persons identified in ORS 410.190.

(5) Expedited hearings:

(a) A claimant who feels his or her medical or dental problem cannot wait for the normal review process may be entitled to an expedited hearing;

(b) Expedited hearings are requested using Authority Form 443;

(c) Division staff will request all relevant medical documentation and present the documentation obtained in response to that request to the Division Medical Director or the Medical Director's designee for review. The Division Medical Director or the Medical Director's designee will decide if the claimant is entitled to an expedited hearing within, as nearly as possible, two working days from the date of receiving the documentation applicable to the request;

(d) An expedited hearing will be allowed, if the Division Medical Director or the Medical Director's designee, determines that the claimant has a medical condition which is an immediate, serious threat to claimant's life or health and claimant has been denied a medical service.

(6) Informal conference:

(a) The Division hearing representative and the claimant, and their legal representative if any, may have an informal conference, without the presence of the Administrative law Judge (ALJ), to discuss any of the matters listed in OAR 137-003-0575. The informal conference may also be used to:

(A) Provide an opportunity for the Division and the claimant to settle the matter;

(B) Provide an opportunity to make sure the claimant understands the reason for the action that is subject of the hearing request;

(C) Give the claimant and the Division an opportunity to review the information that is the basis for that action;

(D) Inform the claimant of the rules that serve as the basis for the contested action;

(E) Give the claimant and the Division the chance to correct any misunderstanding of the facts;

(F) Determine if the claimant wishes to have any witness subpoenas issued for the hearing; and

(G) Give the Division an opportunity to review its action.

(b) The claimant may, at any time prior to the hearing date, request an additional informal conference with the Authority representative, which may be granted if the Authority representative finds, in his or her sole discretion, that the additional informal discussion will facilitate the hearing process or resolution of disputed issues;

(c) The Division may provide to the claimant the relief sought at any time before the Final Order is served;

(d) Any agreement reached in an informal conference shall be submitted to the ALJ in writing or presented orally on the record at the hearing.

(7) A claimant may withdraw a hearing request at any time. The withdrawal is effective on the date it is received by the Division or the ALJ, whichever is first. The ALJ will send a Final Order confirming the withdrawal to the claimant's last known address. The claimant may cancel the withdrawal up to the tenth calendar day following the date such an order is effective.

(8) Contested case hearings are closed to non-participants in the hearing.

(9) Proposed and Final Orders:

(a) In a contested case, an ALJ assigned by the Office of Administrative Hearings will serve a proposed order on all parties and the Division, unless, prior to the hearing, the Division notifies the ALJ that a final order may be served. The proposed order issued by the ALJ will become a final order if no exceptions are filed within the time specified in subsection (b) unless the Division notifies the parties and the ALJ that the Division will issue the final order;

(b) If the ALJ issues a proposed order, and a party adversely affected by the proposed order may file exceptions to the proposed order or present argument for the Division's consideration:

(A) The exceptions must be in writing and reach the Division not later than 10 working days after date the proposed order is issued by the ALJ;

(B) After receiving the exceptions, if any, - the Division may adopt the proposed order as the final order or may prepare a new order. Prior to issuing the final order, the Authority will issue an amended proposed order.

(10) A hearing request is dismissed by order when neither the party nor the party's legal representative, if any, appears at the time and place specified for the hearing. The order is effective on the date scheduled for the hearing. The Division will cancel the dismissal order on request of the party on a showing that the party was unable to attend the hearing and unable to request a postponement for reasons beyond his or her control.

(11) The final order is effective immediately upon being signed or as otherwise provided in the order. A final order resulting from the claimant's withdrawal of the hearing request ~~is~~ **are** effective the date the claimant withdraws. When claimant fails to appear for the hearing and the hearing request is dismissed by final order, the effective date of the order is the date of the scheduled hearing.

(12) All contested case hearing decisions are subject to judicial review under ORS 183.482 in the Court of Appeals.

[ED. NOTE: Forms referenced are available from the agency.]

Stat. Auth.: ORS 183.341, 413.042

Stats. Implemented: ORS 183.411 - 183.470, 414.025, 414.055 & 414.065