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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 291
DEPARTMENT OF CORRECTIONS

FILED
06/21/2024 9:43 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: Health Services (Durable Medical Equipment)

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 08/09/2024 5:00 PM

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

A public rulemaking hearing may be requested in writing by 10 or more people, or by a group 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 the 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.

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NEED FOR THE RULE(S)

The purpose of these rules is to specify the level of healthcare services to be provided to adults in custody (AIC) under the custody of the Department of Corrections and establish department policies and procedures for reimbursement to those hospitals and community-based healthcare professionals providing inpatient and outpatient services to AICs. These revisions include changes to how and when the department will pay for the acquisition, maintenance, and repair of certain types of durable medical equipment (DME), including eyeglasses and hearing aids, when that type of DME is necessary for an adult in custody (AIC) to access department programs, services, or activities (PSAs). The proposed changes include reorganization of some of the Health Services rules for clarity and ease of use.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

STATEMENT IDENTIFYING HOW ADOPTION OF RULE(S) WILL AFFECT RACIAL EQUITY IN THIS STATE

Adoption of the proposed rules will have a positive impact on racial equity. The proposed rules expand the circumstances in which an adult in custody may be able to obtain, at state expense, certain types of “durable medical equipment” (as defined in the rule), eyeglasses, and hearing aids, including when necessary to participate in Department of Corrections programs, services, and activities. Ensuring access to Department programs, services, and activities increase an adult in custody’s ability to engage in programmatic activities and to have reduced barriers to reentry into the community. Because adults in custody are disproportionately represented with respect to race, as compared to communities within the state, rules that promote and ensure access to Department programs, services, and activities will have a positive impact on racial equity.

FISCAL AND ECONOMIC IMPACT:

These OAR 291-124 amendments change how and when the department is required to pay for the acquisition, maintenance, and repair of certain types of durable medical equipment (DME), including eyeglasses and hearing aids, when that type of DME is necessary for an adult in custody (AIC) to access department programs, services, or activities (PSAs).

The proposed rule changes are anticipated to result in increases in state General Fund expenditures to the department now that these services or equipment are required to be provided to AICs. This could also result is less cost for AICs who otherwise may have requested elective procedures or equipment purchases at an AICs expense. Various factors make estimating the fiscal impact to AICs or DOC difficult to determine such as 1) the varying number of elective equipment or exams requested during a biennium, 2) the varying price of the equipment and 3) decisions of need made by the Therapeutic Levels of Care Committee. In some cases, under current policy, an AIC may have chosen a less costly equipment option than they would if DOC paid for the equipment under the new policy. In other cases, an AIC may have chosen a more expensive equipment option if they could afford it, but under the new rule DOC may choose the less costly option. Due to these highly variable factors, DOC concludes the rule change will have an indeterminate fiscal impact on both the AIC and the department.

The rule change is not anticipated to require additional costs or staffing fiscal impacts on the other state agencies, local governments (the counties), or the general public.

COST OF COMPLIANCE:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s). (2) Effect on Small Businesses: (a) Estimate the number and type of small businesses subject to the rule(s); (b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s); (c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

None.

DESCRIBE HOW SMALL BUSINESSES WERE INVOLVED IN THE DEVELOPMENT OF THESE RULE(S):

Small businesses were not involved in the development of these rules as they will not be impacted by these rules.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? NO IF NOT, WHY NOT?

The department has determined that use of an advisory committee would have not provided any substantive assistance in drafting these rule revisions because the changes are minor and of a technical nature.

RULES PROPOSED:

291-124-0030, 291-124-0041, 291-124-0047, 291-124-0048, 291-124-0049, 291-124-0085, 291-124-0110

AMEND: 291-124-0030

RULE SUMMARY: Amends rule to clarify health screening at intake and reorganize health screening at transfer.

CHANGES TO RULE:

291-124-0030
Health Evaluation and Screening ¶

(1) Health Screening at Intake: During the admission process each AIC shall receive a baseline medical, dental, and mental health evaluation.¶
(a) The medical evaluation shall consist of a physical examination and medical history including a review of available information and verification of any medication, care, or treatment requirements. The evaluation should

include consideration of an AIC's potential need for eyeglasses, hearing aids, or other devices that may be necessary to perform activities of daily living or to participate in Department programs, services, or activities. The evaluation should occur within seven days of admission.¶
(b) A dental screening will be performed by authorized Health Services staff within seven days of admission that includes visual examination of the teeth and gums with any obvious abnormalities or AIC complaints noted.¶
(A) A baseline dental intake examination shall be completed by a fully licensed dentist within 30 days of admission to include review of the dental and medical history, charting of the teeth including identification of decayed, missing, or filled teeth, examination of the oral cavity, diagnostic X-rays (as indicated), oral hygiene instructions, access to care instructions, inquiry regarding emergent or urgent dental problems, and documentation of procedures performed in the dental record by the dentist. If there is documented evidence of an examination of the AIC's dental condition within the previous year, a dental exam is not required unless determined to be clinically necessary by the treating dentist.¶
(B) Access-to-care instructions are given such that AICs are aware of how to follow up with dental care at the receiving institution. Formal treatment plans are not provided as part of the intake examination. They are performed at the receiving institution per AIC request.¶
(c) The mental health evaluation will include a screening for the presence of mental illness and suicide history. AICs who have a history of mental illness, or suicide attempts, or who report current suicidal ideations will be referred for further evaluation by a mental health treatment provider. AICs with mental illness will be housed in a facility with services appropriate for their treatment needs.¶
(d) A clinical record will be initiated at the time of initial admission into the Department of Corrections.¶
(e) If the AIC has a documented baseline evaluation from the department within the previous 90 days, the prior evaluation and health record is reviewed and updated as clinically necessary.¶
(f) AICs will be informed of relevant recommendations based on the baseline health evaluations and will be provided with self-care instruction.¶
(2) Health Screening at Transfer: ¶
~~(a)~~ A brief health screening shall be completed on all AICs received on intra-department transfers by Health Services staff at the receiving facility. This shall include review of medical, dental, and mental health records information transferred with the AIC and verification of any care or treatment requirements prearranged by the sending facility Medical Services manager. ¶
~~(b)~~ This information will be used to determine disposition of the AIC.
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

AMEND: 291-124-0041

RULE SUMMARY: Amends rule to clarify rule for understanding and ease of use; to update rule references resulting from these revisions; and to move rule on MOUD to a separate rule.

CHANGES TO RULE:

291-124-0041
Healthcare and Treatment ¶

(1) Health care procedures will be conducted in a clinically appropriate manner by appropriately credentialed personnel in an appropriate setting.¶
(2) Health care and treatment is authorized and provided according to priorities established by the Health Services Chief of Medicine and is subject to peer review. The department is not obligated to carry out any recommendations or treatment plans formulated by any outside providers if ongoing care is required. Medical care and treatment is generally prioritized into ~~four levels. ¶~~
~~(3) Level 1 C~~the following four levels of care and ~~T~~treatment:¶
(a) Level 1 ~~c~~Care and ~~t~~Treatment (~~or m~~Medically ~~m~~Mandatory Care and Treatment): Level 1 care and treatment~~)~~ is defined as care and treatment that is essential to life and health, without which rapid deterioration may be an expected outcome and where medical or surgical intervention makes a very significant difference or has a very high cost-effectiveness.¶
(A) Level 1 care and treatment may include, but is not limited to:¶
(~~A~~i) Acute problems, potentially fatal, where treatment prevents death and allows full recovery, (for example, appendectomy for appendicitis, repair of deep open wound in neck, myocarditis, myocardial infarction);¶
(~~B~~ii) Acute problems, potentially fatal, where treatment prevents death but does not necessarily allow for full recovery (for example, burn treatment, treatment for severe head injuries, myocardial infarction); ~~¶~~
or¶
~~¶~~
(~~C~~iii) Maternity care (for example, monitoring, delivery, hypertension in pregnancy)~~.~~¶
(~~b~~B) Level 1 care and treatment is generally provided to all AICs by the department. A treating provider may authorize Level 1 care and treatment. In emergency situations, any qualified licensed DOC health professional may authorize Level 1 care and treatment.¶
(4b) Level 2 Care and Treatment~~:~~¶
~~(a) Level 2 care and treatment (or p~~ (Presently ~~m~~Medically ~~n~~Necessary Care and Treatment): Level 2 care and treatment~~)~~ is defined as care and treatment without which an AIC could not be maintained without significant risk of either further serious deterioration of the condition or significant reduction in the chance of possible repair after release or without significant pain or discomfort.¶
(A) Level 2 care and treatment may include, but is not limited to:¶
(~~A~~i) Chronic, usually fatal conditions where treatment improves life span and quality of life, (for example, medical management of insulin dependent diabetes mellitus, surgical treatment for treatable cancer of the uterus, medical management of asthma, hypertension, etc.);¶
(~~B~~ii) Immunizations;¶
(~~C~~iii) Comfort care such as pain management and hospice type care for the end stages of diseases such as cancer and acquired immunodeficiency syndrome (AIDS);¶
(~~D~~iv) Proven effective preventive care for adults ~~(for example~~, e.g., preventive dental care, mammograms, ~~P~~pap smears, blood pressure screenings~~)~~;¶
(~~E~~v) Acute but non-fatal conditions where treatment causes a return to previous state of health, (for example, fillings for dental cavities, medical treatment of various infectious disorders); or¶
(~~F~~vi) Acute non-fatal conditions where treatment allows the best approximation of return to previous health (for example, reduction of dislocated elbow, repair of corneal laceration).¶
(~~b~~B) Level 2 care and treatment may be provided to AICs and, when not of an emergency nature, subject to periodic utilization review and appropriateness by the Health Services Chief of Medicine. A treating practitioner may authorize Level 2 care or treatment.¶
(5c) Level 3 Care and Treatment~~:~~¶
~~(a) Level 3 care and treatment (or m~~ (Medically ~~a~~Acceptable ~~b~~or Appropriate But ~~n~~Not ~~m~~Medically ~~n~~Necessary): Level 3 care and treatment~~)~~ is defined as care and treatment for non-fatal conditions where treatment or intervention may improve the quality of life for the AIC.¶
(A) Level 3 care and treatment may include but is not limited to routine hernia repair, treatment of non-cancerous skin lesions, corneal transplant for cataract, and hip replacement~~, etc~~.¶
(~~b~~B) Level 3 care and treatment may be authorized on an individual-by-individual basis or on a case-by-case basis

as follows:¶
(~~A~~i) Medical or surgical care and treatment that can be appropriately done on premises in a routine clinic and that is within the skills of the attending provider may be offered at the discretion of the treating provider~~. Any such care and treatment~~, or may be referred by an attending provider to the Health Services Chief of Medicine for clinical review ~~as provided in OAR 291-124-0041(9)~~under this rule to determine whether to authorize the medical or surgical care and treatment.¶
(~~B~~ii) Other medical or surgical care and treatment, including offsite procedures and therapies for chronic diseases may be referred to the Health Services Chief of Medicine for clinical review ~~as provided in OAR 291-124-0041(9)~~under this rule to determine whether to authorize the medical or surgical care and treatment.¶
~~(6) Level 4~~iii) Care and ~~T~~treatment~~:~~ ¶
~~(a) Level 4 care and treatment (or c~~ described in OAR 291-124-0043 (eyeglasses),OAR 291- 124-0044 (hearing aids, and OAR 291-124-0045 (durable medical equipment) may be authorized as provided in those rules.¶
(d) Level 4 Care and ~~t~~Treatment ~~o~~(Of ~~l~~Limited ~~m~~Medical ~~v~~Value): Level 4 care and treatment is defined as care and treatment that may be valuable to a certain individual but is significantly less likely to be cost-effective or to produce substantial long-term gain or improvement.~~-~~¶
(A) Level 4 care and treatment may include~~s~~ care and treatment of minor conditions where treatment merely speeds recovery, where treatment gives little improvement in quality of life, offers minimal palliation of symptoms, or is exclusively for the convenience of the individual. ¶
~~(B)~~Examples of Level 4 care and treatment ~~may~~ include but is not limited to tattoo removal, minor nasal reconstruction, oral aphthous ulcers, elective circumcision, care or treatment for the common cold~~,~~ or infectious mononucleosis, surgery for gynecomastia.¶
(~~b~~B) Level 4 care and treatment will not be routinely provided. AICs may ~~obtain~~be eligible to pay for Level 4 care and treatment as provided in OAR 291-124-0085.¶
(~~7~~3) ~~The department is not obligated to carry out any recommendations or treatment plans formulated by any outside providers if ongoing care is required.¶~~
~~(8) Exceptions: ¶~~
~~(a) The four defined l~~Exceptions to Levels of Care and Treatment: The four Levels of ~~c~~Care and Treatment are general categories of diagnoses, therapies, or procedures. Depending on the individual circumstances, the department may consider additional factors in deciding whether to provide particular care and treatment. ¶
~~(b) T~~Also, there may be ~~an occasio~~circumstances in wh~~en~~ich the level of care o~~f~~r treatment for a certain condition or disorder ~~is~~may be unclear, or ~~when~~in which it ~~is~~may not be appropriate to apply ~~the levels of care to an individual AIC (for example, when it may not seem appropriate to provide L~~a specific level ~~2~~of care and treatment ~~or when it may seem appropriate to provide Level 4 care and treatment). ¶~~
~~(c) Any~~. In any case, a provider may refer an individual case ~~may be referred~~ to the Health Services Chief of Medicine for clinical review ~~as provided in OAR 291-124-0041(9)~~under this rule to determine whether to authorize ~~or not authorize medical or surgical care and~~care or treatment.¶
(~~9~~4) Clinical Review~~¶~~
~~(a)~~: Under appropriate circumstances, individual cases may be referred to the Health Services Chief of Medicine for clinical review. The Health Services Chief of Medicine may form a review committee ~~comprised of~~(sometimes referred to as a "Therapeutic Levels of Care Committee" or "TLC Committee",) which may include one or more department providers ~~and~~, the Medical Services ~~m~~Manager ~~to~~, and other appropriate Department staff. The TLC Committee review care and treatment requests on a case-by-case basis~~. The final authority in any review is~~, with the Health Services Chief of Medicine (or designee~~. ¶~~
~~(b) Factors that the Health Services Chief of Medic~~) as the final authority in~~e~~ and ~~d ay~~ review ~~committee may consider, either singularly or in combination, when deciding whether specified care and treatment should be provided, may~~. Factors that the TLC Committee may consider include, but are not limited to:¶
(~~A~~a) The urgency of the care and treatment, and the length of the AIC's remaining sentenced stay. Whether the care and treatment could be or could not be reasonably delayed without causing a significant progression, complication, or deterioration of the condition and would not otherwise be in clear violation of sound medical principles.¶
(~~B~~b) The necessity of the care or treatment, including:¶
(~~i~~A) Any relevant functional disability and the degree of functional improvement to be gained;¶
(~~ii~~B) Medical necessity, or the overall morbidity and mortality of the condition if left untreated;¶
(~~iii~~C) Pre-existing conditions, whether the condition existed prior to the AIC's incarceration and, if treatment was not obtained previously, the reasons for not obtaining earlier treatment;~~-~~¶
(~~iv~~D) The probability the procedure or therapy will have a successful outcome along with relevant risks;~~-~~¶
(~~v~~E) Alternative therapy or procedures that may be appropriate;¶
(~~vi~~F) The AIC's desire for the procedure and the likelihood of the AIC's cooperation in the treatment efforts;~~-~~¶
(~~vii~~G) Any known risks or benefits relative to those risks;~~-~~¶

(~~viii~~H) Any known costs or benefits relative to those costs;~~.~~¶
(~~ix~~I) Pain complaints or pain behaviors; and¶
(~~x~~J) Any other factors that are relevant or pertinent in light of the circumstances presented.¶
(~~10)~~c) When considering whether to provide devices described in OAR 291-124-0043 (eyeglasses), OAR 291-124-0044 (hearing aids), or OAR 291-124-0045 (durable medical equipment), the TLC Committee shall consider the AIC's ability to engage in activities of daily living and ability to access programs, services, and activities of the institution.¶
(5) Therapeutic Diets: Therapeutic diets may be ordered by a treating provider for an AIC with a medical condition requiring nutritional adjustment that is not obtainable from the regular food services menu. Diets to achieve weight loss are the responsibility of the individual AIC.¶
(~~11)~~6) Work Limitations: Health Services will screen AICs for work limitations at the assignment supervisor's request. Ongoing daily review of AIC workers for symptoms of illness that would interfere with the work assignment is the responsibility of the on-site work supervisor.¶
~~(12) Medication for Opioid Use Disorder: Health Services may provide a form of medication for opioid use disorder (MOUD) to an AIC diagnosed with opioid-use disorder.¶~~
~~(a) Health Services may continue MOUD for an AIC who has been recently admitted to DOC and who has a release date within six to 13 months. A review committee established under this rule may consider whether to continue a form of MOUD for an AIC with a release date longer than 13 months.¶~~
~~(b) Health Services may operate a program in which a form of MOUD may be continued or induced for an AIC who has a release date within 13 months. As a part of that program, a review committee established under this rule, consisting of the Chief of Medicine, the Chief of Psychiatry, and the Behavioral Health Services Administrator or their designees, may consider whether to approve a form of MOUD for continuation or induction for an AIC with a release date longer than 13 months.~~
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075~~, Ch. 486 OL 1987~~

ADOPT: 291-124-0047

RULE SUMMARY: Adopts rule to create a separate rule for healthcare provisions related to eye examinations and eyeglasses.

CHANGES TO RULE:

291-124-0047
Refractive Eye Examinations and Eyeglasses
(1) Eye Examinations: Health Services shall approve a refractive eye examination at least once every two years. Health Services may authorize refractive eye examinations or eyeglass purchases on a different schedule or frequency on a case-by-case basis. In making any variation or authorization, Health Services may consider the AIC's release date, past optical information, current visual acuity, and the AIC's effort and compliance with a correctional case management plan.¶
(2) Eyeglasses: Health Services shall authorize and provide one pair of eyeglasses when clinically indicated, at state expense, at least once every two years.¶
(a) AICs are responsible for routine or daily maintenance of eyeglasses provided under this rule. Health Services will provide for necessary repairs or replacement of eyeglasses. In the event an AIC misuses, alters, abuses, damages (ordinary wear and tear excepted,) or destroys a pair of eyeglasses provided under this rule, Health Services may require the AIC to incur debt or pre-pay to provide for necessary repairs or replacement. Any decision pursuant to this subsection shall be made after consulting with Behavioral Health Services, and the institution or statewide ADA coordinator, where appropriate, prior to declining to pay for a repair or replacement.¶
(b) An AIC may purchase additional elective care under OAR 291-124-0085, including, eyeglasses, eyewear, eyewear accessories, or optional features for eyeglasses provided under this rule.¶
(3) Contact Lenses: Health Services does not provide contact lens examinations. AICs may purchase contact lenses and lens solution as elective care under OAR 291-124-0085.¶
(4) All healthcare provided under this rule remains subject to OAR 291-124-0041, including clinical review.
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

ADOPT: 291-124-0048

RULE SUMMARY: Adopts rule to create a separate rule for healthcare provisions related to hearing tests and hearing aids.

CHANGES TO RULE:

291-124-0048
Audiogram Examinations and Hearing Aids
(1) Audiogram Examination: Health Services, after conducting a medical evaluation to identify possible medically or surgically correctable causes of the reported hearing loss, shall refer an AIC who reports subjective hearing loss for an audiogram evaluation. Health Services shall authorize an audiogram examination and hearing aid or hearing aids for an AIC who reports subjective hearing loss that meets the requirements of Level 3 Care or Treatment under OAR 291-124-0041.¶
(2) Hearing Aids: Health Services shall authorize and provide a monoaural hearing aid or binaural hearing aids, when clinically indicated, at least once every five years.¶
(a) Health Services will provide an authorized hearing aid within sixty (60) days of that determination (subject to the availability and scheduling of any outside vendors or suppliers.) Necessary repairs or recalibration of a hearing will occur within sixty (60) days of delivery to an audiologist for repair or recalibration (subject to the availability and scheduling of any outside vendors or suppliers). ¶
(b) Any AIC provided hearing aids will receive at least one follow-up appointment with an audiologist within six (6) months of receiving their hearing aids (subject to audiologist availability and scheduling), and as many subsequent as are necessary to ensure the hearing aids are properly balanced.¶
(c) An AIC with an authorized hearing aid shall have annual evaluations to ensure the hearing aids remain effective. If there is a threshold shift of 10dB or more across any tested frequency, the AIC will be referred to an audiologist.¶
(d) Health Services shall authorize and provide the repair or replacement of a hearing aid provided under this rule, as clinically indicated and appropriate. If an AIC's hearing aids are sent out for repairs, if practicable, the AIC will be provided with any available hearing aid substitutes, and referred to institution ADA Coordinator to ensure the AIC has necessary accommodations for effective communication. ¶
(e) Health Services shall authorize and provide for replacement batteries at state expense and at no cost to the adult in custody, on a schedule that is consistent with ordinary use of the hearing aid.¶
(f) Health Services may decline to provide a hearing aid, repair, replacement, or battery under this rule, in the event an AIC misuses, alters, abuses, damages (ordinary wear and tear excepted,) or intentionally destroys another previously issued or approved hearing aid or hearing aid battery. Any decision pursuant to this subsection shall be made after consulting with Behavioral Health Services, and the institution or statewide ADA coordinator, where appropriate, prior to declining to pay for a repair or replacement.¶
(3) All healthcare provided under this rule remains subject to OAR 291-124-0041, including clinical review.
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

ADOPT: 291-124-0049

RULE SUMMARY: Adopts rule to create a separate rule for healthcare provisions related to durable medical equipment.

CHANGES TO RULE:

291-124-0049
Durable Medical Equipment
(1) The following definitions apply in this rule:¶
(a) "Activities of Daily Living" (or "ADLs") means activities related to personal care (including, but not limited to, tasks such as eating, toileting, grooming, dressing, and bathing,) which are necessary to maintain or improve the AIC's health.¶
(b) "Durable Medical Equipment" (or "DME") means equipment that is:¶
(A) Furnished by a durable medical equipment, prosthetics, orthotics and supplies provider;¶
(B) Primarily and customarily used to serve a medical purpose;¶
(C) Generally is not useful to a patient in the absence of a medical disability, illness, or injury;¶
(D) Can withstand repeated use;¶
(E) Can be reusable or removable; ¶
(F) Is appropriate for use in any non-institutional setting in which normal life activities take place; ¶
(G) May include prosthetic and orthotic devices, orthopedic footwear, a fitted wheelchair, or a power wheelchair that meets the criteria in this definition; ¶
(F) Includes supplies and accessories that are necessary for the effective use of the associated durable medical equipment; and ¶
(G) Excludes dental equipment or devices described in the Dental Treatment and Care rule, OAR 291-124-0042.¶
(c) "Orthopedic footwear" means shoes, shoe modifications, or shoe additions which are used to correct, accommodate or prevent a physical deformity or range of motion malfunction in a diseased or injured part of the ankle or foot; or to support a weak or deformed structure of the ankle or foot.¶
(d) "Medically Appropriate" means that health services, items, or medical supplies that are:¶
(A) Recommended by a licensed health provider practicing within the scope of their license;¶
(B) Safe, effective, and appropriate for the AIC based on standards of good health practice and generally recognized by the relevant scientific or professional community based on the best available evidence;¶
(C) Not solely for the convenience or preference of an AIC; and¶
(D) The most cost-effective of the alternative levels or types of health services, items, or medical supplies that can be safely and effectively provided to an AIC;¶
(e) "Prosthetic and orthotic devices" means devices that replace or augment all or part of an internal body organ, including ostomy bags and supplies directly related to ostomy care and replacement of such devices and supplies. Prosthetic and orthotic devices also include leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the client's physical condition. This term excludes devices or items described in the Dental Care and Treatment rule, OAR 291-124-0042.¶
(2) Health Services shall authorize and provide DME when clinically indicated because of a substantial functional deficit, when there is a demonstrable and substantial inability to perform activities of daily living (ADLs), or when provision of the DME may be necessary to provide access to one or more Department programs, services, or activities. ¶
(a) When assessing whether the provision of DME is necessary to access Department programs, services, or activities, any such assessment shall consider the disability related accessibility and functional needs of the individual requesting the DME, and shall be based on documented assessments by persons trained in disability-related functional and accessibility needs of the AIC.¶
(b) Health Services may consider the following when determining whether to authorize DME:¶
(A) Urgency of need;¶
(B) Time left on sentence;¶
(C) Overall necessity;¶
(D) Morbidity;¶
(E) Mortality;¶
(F) Functional disability;¶
(G) Expected improvement;¶
(H) Alternatives;¶
(I) Risks and benefits;¶
(J) Ability to engage in ADL and access programs, services, and activities;¶
(K) Costs and benefits; and¶
(L) Security concerns.¶

(c) A recommendation to provide DME will be based upon the AIC's ability to function in the correctional environment with or without a proposed medical prosthesis, and as necessary to access programs, services, or activities.¶
(d) The Department shall pay for DME if it meets all the criteria in this rule, including all of the following conditions:¶
(A) The item is approved for marketing and registered or listed as a medical device by the Food and Drug Administration (FDA) and is otherwise generally considered to be safe and effective for the intended purpose;¶
(B) The item is reasonable and medically appropriate for the client;¶
(C) The item is primarily and customarily used to serve a medical purpose;¶
(D) The item is clinically indicated because of a substantial functional deficit, or because of a demonstrable and substantial inability to perform ADLs, or, because the Department has determined, after consultation between Health Services and the institution and statewide ADA coordinators, that the item is necessary or appropriate to provide to an otherwise qualified AIC to access Department programs, services, or activities;¶
(E) The item is generally not useful to an individual in the absence of medical disability, illness, or injury;¶
(F) The item is suitable for use in any non-institutional setting in which normal life activities take place;¶
(G) The item can withstand repeated use and can be reusable or removable;¶
(H) The item is the least costly, medically appropriate item that meets the medical needs of the client; and¶
(I) The item is not otherwise excluded under this rule.¶
(e) The Department may not pay for durable medical equipment when the item, or the use of the item:¶
(A) Is not primarily medical in nature;¶
(B) Is for personal comfort or convenience of the client or caregiver;¶
(C) Is a self-help device;¶
(D) Is not therapeutic or diagnostic in nature;¶
(E) Is not expected to significantly improve the basic health status of the AIC;¶
(F) Is inappropriate for client use in a non-institutional setting;¶
(G) Is for a purpose where the medical effectiveness is not supported by evidence- based clinical practice guidelines; or¶
(H) Presents a legitimate risk to the safety and security of Department facilities.¶
(f) Restriction or confiscation of a medical prosthesis for any non-emergent reason (other than a medical reason) should occur with prior consultation with Health Services and the institution or statewide ADA coordinators, and when appropriate, Behavioral Health Services. Any restriction or confiscation for any emergent reason should occur, when practicable, with prior consultation with Health Services and the institution or statewide ADA coordinators, and when appropriate, Behavioral Health Services. No DME shall be restricted or confiscated for any non-emergent reason without an individualized assessment of the AIC by the appropriate medical professional and a face-to-face discussion with the AIC to determine whether the AIC can access programs, services, and activities without the DME. This process shall be documented with the reasons why the DME was removed, and an explanation of the how the AIC will access programs, services, and activities without the DME. ¶
(3) The frequency of monitoring of DMEs will be determined by Health Services. Monitoring shall include review for any alterations, natural wear, destruction, or disrepair.¶
(4) Health Services shall authorize and provide the repair or replacement of a DME provided under this rule, as clinically indicated and appropriate.¶
(5) Health Services may decline to authorize or pay for DME, or repair or replacement of DME provided under this rule, in the event an AIC misuses, alters, abuses, damages (ordinary wear and tear excepted,) or intentionally destroys any previously issued or approved DME. Health Services will consult with Behavioral Health Services and the institution or statewide ADA coordinators where appropriate prior to declining to pay for DME or repairs or replacement. ¶
(6) The authorization and provision of DME under this rule is subject to clinical review as provided under OAR 291-124-0041.
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

AMEND: 291-124-0085

RULE SUMMARY: Amends rule to clarify process to request approval to purchase elective care or treatment and responsibility for costs; and to move rules for refractive eye examinations and eyeglasses, audiogram examinations and hearing aids, and durable medical equipment to separate rules for each.

CHANGES TO RULE:

291-124-0085
Charges for Elective Care or Treatment ¶

(1) An AIC may request approval to purchase elective care or treatment, including a request to purchase a healthcare service from a healthcare provider in the community. The department will only approve those requests that in the department's judgment are medically appropriate and are otherwise consistent with the department's concerns for institution security and order, public safety, and sound correctional practice.¶
(a) The AIC's trust account must have sufficient funds to pay for the purchase of the elective care before the ~~treatment is scheduled~~quested service is scheduled or before the requested item is ordered, unless other financial arrangements have been made. ~~C~~The cost of elective care includes expenses associated with providing the treatment, including follow-up care, as well as all costs associated with transport and security.¶
~~(b) For medical requests, the chief medical off~~ To obtain an elective service~~r of the facility must review and approve follow-up care and treatment recommended by community providers. Any requests to purchase elective dental care from community providers must be reviewed and approved by~~r item under this rule, an AIC must sign a withdrawal request form for their trust account before the ~~d~~Department~~'s dental director.~~¶
~~(2) Orthoses, Prosthetics Devices, Mechanical Aids, and Self Care I~~ will provide the service or items. ~~Orthoses, prosthetic devices, and mechanical aids are specialized mechanical devices used chronically to support or supplement joints or limbs or are artificial devices to replace missing body parts.¶~~
~~(a) Except as provided in OAR 291-124-0086, an AIC is generally required to~~ The AIC's trust account will be charged for the estimated or actual cost of the service or item. If an AIC must pre-pay before~~ elective orthoses, prostheses de~~e obtaining the services~~,~~ or ~~other mechanical aids that become the personal property of the AIC. An AIC is not generally required to pay for medical aids provided for acute treatment of a limited medical condition (casts, splints, ace wraps,) for short-term use (canes, crutches, or braces), or for a medically necessary procedure (heart valves, cardiac stent, inter-ocular lens implants).¶~~
~~(b) Health Ser~~item, the AIC must sign a withdrawal request form with sufficient funds available and debited before the service or item is provided. Upon delivery of the devices~~,~~ a~~llows appropriate but elective orthoses, prostheses, or other mechanical aids that are not essential to prevent significant~~ny variance from the actual cost will be indebt~~erioration in the health of the AIC but are nevertheless reasonably expected to significantly improve the quality of life of the AIC as it relates to a proven chronic or ongoing medical condition. Examples of such items include dentures; dental prosthetics; glasses; contact lenses; artificial eyes; artificial limbs; knee or ankle or foot braces; hearing aids; support hose; transcutaneous electrical nerve stimulation (TENS) units; non-institution issued shoes; suspenders; batteries for hearing aids or other devices; maintenance or repair of any such item.¶~~
~~(c) Health Services may decline to authorize elective orthoses, prostheses, or other mechanical aids that are of minimal proven medical value, and authorization decisions must be weighed against safety and security concerns. Examples of items that are not generally authorized include but are not limited to high-top tennis shoes, soft pillows, heating pads, and knee sleeves for sports~~d or credited to the AIC's trust account accordingly.¶
(b) For medical requests, the chief medical officer of the facility must review and approve follow-up care and treatment recommended by community providers. Any requests to purchase elective dental care from community providers must be reviewed and approved by the department's dental director.¶
(~~d~~c) Health Services may consider the following when determining whether to a~~llow elective orthoses, prosthetic devices, and mechanical aids and~~uthorize an AIC to purchase a service or item, or whether ~~the~~an AIC must pre-pay ~~for the item prior to ordering or delivery, or whether the AIC~~ may incur indebtedness to obtain the service or item:¶
(A) Urgency of need;¶
(B) Time left on sentence;¶
(C) Overall necessity;¶
(D) Morbidity;¶
(E) Mortality;¶
(F) Functional disability;¶
(G) Expected improvement;¶
(H) Alternatives;¶

(I) Risks and benefits;¶
(J) Costs and benefits; and¶
(K) Security concerns.¶
(ed) Refractive Eye Examinations and Eyeglasses: Health Services may approve a refractive eye examination once every two years.¶
(A) An AIC may purchase Except as provided in OAR 291-124-0041, OAR 291-124-0043 (eyeglasses), eyewear, and eyewear accessories from the department.¶
(B) The Health Services Eyeglasses Review Committee may approve an AIC to incur debt to obtain an eye examination or purchase eyeglasses on a case-by-case basis. The Eyeglasses Review Committee will make that approval based on a review of the AIC's release date, past optical information, current visual acuity, and a six-month review of the AIC's trust fund activities, and the AIC's effort and compliance with a correctional case management plan.¶
(C) Health Services does not provide contact lens examinations. AICs may purchase contact lenses and lens solution.¶
(f) Audiogram examination and hearing aids: Health Services, afterOAR 291-124-0044 (hearing aids) and OAR 291-124-0045 (durable medical equipment), an AIC is generally required to pay for elective devices that become the personal property of the AIC. An AIC is not generally required to pay for medical items that are provided for limited-term medical conducting a medical evaluation to identify possible medically or surgically correctable causes of the reported hearing loss, may refer an AIC who reports subjective hearing loss for an audiogram evaluation. Health Services may authorize an audiogram examination and hearing aid or hearing aids for an AIC who reports subjective hearing loss that meets the requirements of Level 3 Care or Treatment under OAR 291-124-0041. Health Services may authorize a monoaural hearing aid or binaural hearing aids, when clinically indicated, once every five years, subject to OAR 291-124-0086. ¶
(g) Footwear:ition (casts, splints, ace wraps,) for short-term use (canes, crutches, or braces), or for a medically necessary procedure (heart valves, cardiac stent, inter-ocular lens implants.) ¶
(e) Footwear: Health Services may approve footwear that is not subject to OAR 291-124-0045, on a case-by-case basis. ¶
(f) Health Services may approve special footwear if that footwear is a recognized and appropriate pdecline to authorize elective devices that arte of a medical treatment plan or may be medically necessary (for example, peripheral vascular disorders, diabetic complications, amputation, clubfoot) if there would be serious deterioration or significant risk to the AIC's basic health without the special footwear, and if no reasonable treatment alternative exists. An AIC may incur indebtedness to obtain special footwear approved by the department.¶
(h) The AIC must sign a withdrawal request form before the service or item is provided. The AIC's trust account will be charged for the estimated or actual cost of the device. If an AIC must pre-pay before obtaining a service or item, the AIC must sign a withdrawal request form with sufficient funds available and debited before the service or item is provided.¶
(i) Upon delivery of the device, any variance from the actual cost will be indebted or credited to the AIC's trust account accordingly.¶
(j) An AIC shall not be denied prostheses or other devices that are medically necessary because of lack of funds. However, the AIC may incur debt if the AIC's trust account does not have sufficient funds to cover the cost of the deviceminimal proven medical value, and authorization decisions must be weighed against safety and security concerns. Examples of items that are not generally authorized include, but are not limited to, high-top tennis shoes, soft pillows, heating pads, and knee sleeves for sports.¶
(kg) Items for self-care are available on the commissary list. An AIC may be advised to purchase a particular self-care item by Health Services employees. Such advice is intended as education in self-care and is not a directive that the item is considered medically necessary.¶
(32) Expenses for Medical Care for AICs on Escape, Short-Term Transitional Leave, Non-Prison Leave, Parole, Post-Prison Supervision, or Emergency Leave:¶
(a) Expenses incurred for healthcare of offenders on parole or post-prison supervision are the responsibility of the offender.¶
(b) Expenses incurred for healthcare of AICs on escape status are not the responsibility of the department.¶
(c) Expenses incurred for healthcare of AICs on short-term transition leave and non-_prison leave are the responsibility of the AIC.¶
(4) Refusal of Medical Appointments:¶
(a) Any AIC who willfully refuses to keep a prearranged medical appointment in the community may have their trust account charged or indebted.¶
(b) A decision under this section to charge or indebt an AIC's trust account is subject to the administrative review process in the rules on Trust Accounts (AIC) (OAR 291-158).¶

~~(5) Destruction of Property: Any AIC who willfully destroys or misuses Health Services equipment or supplies is subject to disciplinary action in accordance with the rules on Prohibited AIC Conduct and Processing Disciplinary Actions (OAR 291-105).~~
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075

ADOPT: 291-124-0110

RULE SUMMARY: Adopts rule to create a separate rule for healthcare provisions related to medication assisted treatment.

CHANGES TO RULE:

291-124-0110
Medication-Assisted Treatment
(1) Health Services may provide a form of medication-assisted treatment (MAT) to an AIC diagnosed with opioid use disorder.¶
(2) Health Services may continue MAT for an AIC who has been recently admitted to DOC and who has a release date within six to thirteen months. A review committee established under this rule may consider whether to continue a form of MAT for an AIC with a release date longer than thirteen months.¶
(3) Health Services may operate a program in which a form of MAT may be continued or induced for an AIC who has a release date within thirteen months. As a part of that program, a review committee established under this rule, consisting of the Chief of Medicine, the Chief of Psychiatry, and the Behavioral Health Services Administrator or their designees, may consider whether to approve a form of MAT for continuation or induction for an AIC with a release date longer than thirteen months.
Statutory/Other Authority: ORS 179.040, 423.020, 423.030, 423.075
Statutes/Other Implemented: ORS 179.040, 423.020, 423.030, 423.075