OFFICE OF THE SECRETARY OF STATE

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ARCHIVES DIVISION

MARY BETH HERKERT DIRECTOR

800 SUMMER STREET NE SALEM, OR 97310 503-373-0701

NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 410
OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED

11/17/2017 3:39 PM ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Amending, Repealing Home Health Care Services Rules; Adding Rule to Meet Medicaid Regulations 42CFR440.70

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 12/19/2017 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.

CONTACT: Sandy Cafourek 500 Summer St. NE Filed By:

503-945-6430 Salem,OR 97301 Sandy Cafourek sandy.c.cafourek@dhsoha.state.or.us Rules Coordinator

HEARING(S)

Auxilary aids for persons with disabilities are available upon advance request. Notify the contact listed above.

DATE: 12/15/2017

TIME: 10:30 AM - 11:30 AM OFFICER: Sandy Cafourek ADDRESS: HSB Building

500 Summer St. NE, Room 137B

Salem, OR 97301

SPECIAL INSTRUCTIONS:

Send Comments to:

hsd.rules@dhsoha.state.or.us

NEED FOR THE RULE(S):

The rule revisions and new rule are intended to meet current federal Medicaid regulations at 42 CFR 440.70 that require a face-to-face examination prior to ordering initial home health services. Repealing OAR 410-127-0050 as copayments are no longer needed.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Federal Register at CMS 2348-F, Federal Register Vol. 81, No. 21, dated February 2, 2016, 42. CFR 440.70

FISCAL AND ECONOMIC IMPACT:

No fiscal impact to the Division is anticipated as providers already routinely conduct face-to-face examinations prior to ordering home health services. Providers will not receive additional reimbursement for the face-to-face examinations.

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).
- 1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)): Amending these rules will have no fiscal impact on the Authority, other state agencies, units of local government, the public, or businesses, including small businesses.
- 2. Cost of compliance effect on small business (ORS 183.336):
- a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule: Although there are over 17,000 Medicaid enrolled physicians, 3200 ARNPs, 46 Physician Assistants, and 64 enrolled Home Health agencies, we only receive approximately 30 prior authorization requests per month for these services. So while all of these enrolled providers are subject to the new rules, it will only directly affect those ordering and providing these services.
- b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: Working as a Medicaid provider includes reporting, recordkeeping, and administrative activities. These rules require stringent documentation by all physicians and non-physician practitioners (NPP) conducting the face-to-face examinations and all home health agencies collecting this information to maintain in their records. Home Health providers are required to submit this documentation with their requests for prior authorization.
- c. Equipment, supplies, labor and increased administration required for compliance: None

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

Home health agencies, physicians, and other providers were solicited to participate in the Rule Advisory Committee process.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:

410-127-0020, 410-127-0040, 410-127-0045, 410-127-0050, 410-127-0060, 410-127-0065, 410-127-0080, 410-127-0200

AMEND: 410-127-0020

RULE SUMMARY: Medicaid regulations at 42 CFR 440.70 were revised consistent with section 6407 of the Affordable Care Act of 2010 and section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 to add requirements that, for home health services and certain medical equipment, a face-to-face encounter with the OHP fee-for-service client must be conducted within established timeframes. This aligns timeframes with similar regulatory requirements for Medicare home health services. Repealing OAR 410-127-0050 as copayments are no longer required.

CHANGES TO RULE:

410-127-0020

Definitions ¶

- (1) <u>"</u>Acquisition Cost <u>- T" means the net invoice price of the item, supply, or equipment plus shipping and/or postage for the item.-¶</u>
- (2) "Assessment P" means procedures by which a client's health strengths, weaknesses, problems, and needs are identified. \P
- (3) <u>"Custodial Care P" means provision of services and supplies that can safely be provided by non-medical or unlicensed personnel.</u>¶
- (4) Evaluation A"Division (Division)" means the Health Systems Division within the Oregon Health Authority (Authority). The Division is responsible for coordinating medical assistance programs within the State of Oregon including the Oregon Health Plan (OHP), the State Children's Health Insurance Program (SCHIP-Title XXI), and several other programs.¶
- (5) "Evaluation" means a systematic objective assessment of the client for the purpose of forming a plan of treatment; and, a judgment of the effectiveness of care and measurement of treatment progress. The evaluation of direct care and effectiveness of care plans and interventions is an ongoing activity.¶
- (56) "Home—A" means a place of temporary or permanent residence used as a personn individual's home. This does not include a hospital, nursing facility, or intermediate care facility, but does include assisted living facilities, residential care facilities, and adult foster care homes.-¶
- (67) "Home Health Agency-A" means a public or private agency or organization which that has been certified by Medicare as a Medicare home health agency and which that is licensed by the Authority as a home health agency in Oregon, and meets the capitalization requirements as outlined in the Balanced Budget Act (BBA) of 1997. Home health agency does not include:-¶
- (a) Any visiting nurse service or home health service conducted by and for those who rely upon spiritual means through prayer alone for healing in accordance with tenets and practices of a recognized church or religious denomination;-¶
- (b) Health services offered by county health departments that are not formally designated and funded as home health agencies within the individual departments;-¶
- (c) Personal care services that do not pertain to the curative, rehabilitative, or preventive aspect of nursing.-¶ (78) "Home Health Aide A person" means an individual who meets the criteria for Home Health Aide defined in the Medicare Conditions of Participation 42 CFR 484.36, 42 CFR 484.80, and certified by the Oregon Board of Nursing.-¶
- (89) "Home Health Aide Services—S" means services of a Hhome Hhealth Aaide must be provided under the direction and supervision of a registered nurse or licensed therapist familiar with the client, the client's plan of care, and the written care instructions. The focus of care shall be to provide personal care and/or other services under the plan of care which that supports curative, rehabilitative, or preventive aspects of nursing. These services are provided only in support of skilled nursing, physical therapy, occupational therapy, or speech therapy services. These services do not include custodial care.¶
- (910) "Home Health Services O" means only the services described in the Division of Medical Assistance Programs (Division)'s Home Health Services provider guide. ¶

provided by the Hhome Hhealth Aagency.-¶

- (101) "Medicaid Home Health Provider—A H" means a home Hhealth Aagency licensed by Health Services, Health Care Licensure and Certification certified for Medicare and enrolled with the Division as a Medicaid provider. \P (142) "Medical Supplies—S" means supplies prescribed by a physician as a necessary part of the plan of care being
- (123) "OASIS (Outcome and Assessment Information Set) —" means a client specific comprehensive assessment that identifies the client's need for home care and that meets the client's medical, nursing, rehabilitative, social, and discharge planning needs.-¶
- (134) "Occupational Therapy Services S" means services provided by a registered occupational therapist or

certified occupational therapy assistant supervised by a registered occupational therapist, due to the complexity of the service and client's condition. The focus of these services shall be curative, rehabilitative, or preventive and must be considered specific and effective treatments for a client's condition under accepted standards of medical practice. Teaching the client, family, and/or caregiver task-roiented therapeutic activities designed to restore function and/or independence in the activities of daily living is included in this skilled service. Occupational Therapy Licensing Board ORS 675.210-675.340 and the Uniform Terminology for Occupational Therapy established by the American Occupational Therapy Association, Inc. govern the practice of occupational therapy.

 \P

(14<u>5</u>) "Physical Therapy Services—S" means services provided by a licensed physical therapist or licensed physical therapy assistant under the supervision of a licensed physical therapist, due to the inherent complexity of the service and the client's condition. The focus of these services shall be curative, rehabilitative, or preventive and must be considered specific and effective treatments for a patient's condition under accepted standards of medical practice. Teaching the client, family, and/or caregiver the necessary techniques, exercises, or precautions for treatment and/or prevention of illness or injury is included in this skilled service. Physical Therapy Licensing Board ORS 688.010 to 688.235 and Standards for Physical Therapy as well as the Standards of Ethical Conduct for the Physical Therapy Assistant established by the American Physical Therapy Association govern the practice of physical therapy. Physical <u>Therapy</u> shall not include radiology or electrosurgery.-¶

(156) "Plan of Care—W" means written instructions describing how care is to be provided. The plan is initiated by the admitting registered nurse, physical therapist, occupational therapist, or speech therapist and certified by the

the admitting registered nurse, physical therapist, occupation<u>al</u> therapist, or speech therapist and certified by the prescribing physician. The plan of care must include the client's condition, rationale for the care plan; including justification for the skill level of care, and the summary of care for additional certification periods. This includes, but is not limited to:-¶

- (a) All pertinent diagnoses;-¶
- (b) Mental status;-¶
- (c) Types of services;-¶
- (d) Specific therapy services;-¶
- (e) Frequency, and duration of service delivery;-¶
- (f) Supplies and equipment needed;-¶
- (g) Prognosis;-¶
- (h) Rehabilitation potential;-¶
- (i) Functional limitations;-¶
- (j) Activities permitted;-¶
- (k) Nutritional requirements;-¶
- (IL) Medications and treatments;-¶
- (m) Safety measures;-¶
- (n) Discharge plans;-¶
- (o) Teaching requirements;-¶
- (p) Individualized, measurably objective short-term and /orlong-term functional goals;-¶
- (q) Other items as indicated.-¶
- (167) "Practitioner—A person" means an individual licensed pursuant to Ffederal and Sstate law to engage in the provision of health care services within the scope of the practitioner's license and certification. ¶
 (178) "Responsible Unit—T" means the agency responsible for approving or denying payment authorization. ¶
 (189) "Skilled Nursing Services —T" means the client care services pertaining to the curative restorative or

(18<u>9</u>) "Skilled Nursing Services—T" means the client care services pertaining to the curative, restorative, or preventive aspects of nursing performed by a registered nurse or under the supervision of a registered nurse, pursuant to the plan of care established by the prescribing practitioner hysician in consultation with the Hhome Hhealth Aagency staff. Skilled nursing emphasizes a high level of nursing direction, observation, and skill. The focus of these services shall be the use of the nursing process to diagnose and treat human responses to actual or potential health care problems, health teaching, and health counseling. Skilled nursing services include the provision of direct client care and the teaching, delegation, and supervision of others who provide tasks of nursing

care to clients, as well as phlebotomy services. Such services will comply with the Nurse Practice Act and administrative rules of the Oregon State Board of Nursing and Health Division—, chapter 410 division 27—, Home Health Agencies, which rules are by this reference made a part hereof. \P (19. \P

(20) "Speech-and-Language Pathology Services—S" means services provided by a licensed speech-language pathologist due to the inherent complexity of the service and the patient's condition. The focus of these services shall be curative, rehabilitative, or preventive and must be considered specific and effective treatment for a patient's condition under accepted standards of medical practice. Teaching the client, family, and/or caregiver task-coriented therapeutic activities designed to restore function, and/or compensatory techniques to improve the level of functional communication ability is included in this skilled service. Speech-Language Pathology and Audiologist Licensing Board ORS 681.205 to 681.991 and the Standards of Ethics established by the American Speech and Hearing Association, govern the practice of speech-and-language pathology.-¶

(201) "Title XVIII (Medicare) - means Title XVIII of the Social Security Act.-¶

(242) "Title XIX (Medicaid) - "means Title XIX of the Social Security Act. ¶

[Note: Publications referenced are available from the agency.]

RULE SUMMARY: Medicaid regulations at 42 CFR 440.70 were revised consistent with section 6407 of the Affordable Care Act of 2010 and section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 to add requirements that, for home health services and certain medical equipment, a face-to-face encounter with the OHP fee-for-service client must be conducted within established timeframes. This aligns timeframes with similar regulatory requirements for Medicare home health services. Repealing OAR 410-127-0050 as copayments are no longer required.

CHANGES TO RULE:

410-127-0040

Coverage ¶

- (1) <u>HMedically appropriate home health services are made available may be covered</u> on a visiting basis to eligible clients in their homes as part of a written "plan of care." ¶
- (2) <u>Home health services require a face-to-face encounter as described in OAR 410-127-0045 consistent with federal Medicaid regulations at 42 CFR 440.70.¶</u>
- (3) Home health services must be prescribed by a physician, and the signed order must be on file at the home health agency. The prescription must include the ICD-10-CM diagnosis code indicating the reason the home health services are requested. The orders on the plan of care must specify the type of services to be provided to the client; with respect to the professional who will provide them, the nature of the individual services, specific frequency, and specific duration. The orders must clearly indicate how many times per day, each week and/or each month the services are to be provided. The plan of care must include the client's condition, the rationale for the care plan including justification for the required skill level of care, and the summary of care for additional certification periods.-¶
- (34) The plan of care must be reviewed and signed by the physician every two months to continue services.-¶
- (45) The following services or items are covered, if diagnoses are on the portion of the prioritized list above the line funded by the $\frac{1}{2}$ legislature: ¶
- (a) Skilled nursing services;-¶
- (b) Skilled nursing evaluation (includes Outcome and Assessment Information Set (OASIS) assessment);-¶
- (c) Home Hhealth aide services;-¶
- (d) Occupational therapy services;-¶
- (e) Occupational therapy evaluation, which (may include OASIS Aassessment); ¶
- (f) Physical therapy services;-¶
- (g) Physical therapy evaluation, which (may include OASIS Aassessment);¶
- (h) Speech-and-language pathology services, which (may include OASIS Aassessment;-¶
- (i) Speech-and-language pathology evaluation, which (may include OASIS assessment);:¶
- (j) Medical <u>and</u> surgical supplies.

ADOPT: 410-127-0045

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CHANGES TO RULE:

410-127-0045

<u>Face-to-Face Encounter Requirements for Home Health Services ¶</u>

- (1) The Division requires that for the initial ordering of home health services, an in-person face-to-face encounter that is related to the primary reason the client requires the home health services must occur within not more than 90 days before or 30 days after the start of services.¶
- (2) The face-to-face encounter shall be conducted by:¶
- (a) The certifying physician (MD or DO); or ¶
- (b) An authorized non-physician practitioner (NPP); or ¶
- (c) An attending or post-acute physician for clients admitted to home health immediately after an acute or post-acute stay.¶
- (3) Authorized NPP's for home health services are nurse practitioners, a clinical nurse specialist working in collaboration with the physician, or a physician assistant under the supervision of a physician. ¶
- (4) If an authorized NPP performs the face-to-face encounter, they shall communicate the clinical findings to the certifying physician. Those clinical findings must be incorporated into a written or electronic document included in the client's medical record. ¶
- (5) The certifying physician shall document that the client was evaluated or treated for a condition that supports the need for the home health services ordered within no more than 90 days before or 30 days after the start of services. The certifying physician shall also document the name of the practitioner who conducted the encounter and the date of the encounter.¶
- (6) The documentation of the face-to-face encounter must be a separate and distinct section of or an addendum to the certification and must be clearly titled, dated, and signed by the certifying physician.¶
- (7) A face-to-face encounter must occur for certification any time a new start of care assessment is completed to initiate care for the home health services. \P
- (8) If a dually eligible client begins home health under Medicare and transitions to Medicaid, the Medicare face-to-face encounter documentation shall meet the Medicaid face-to-face requirement.¶
- (9) The home health agency shall maintain documentation of the qualifying face-to-face encounter and provide this documentation to the Division with the prior authorization request for services.

Statutory/Other Authority: 411.404, 414.065

Statutes/Other Implemented: 414.065

REPEAL: 410-127-0050

RULE SUMMARY: Repealing OAR 410-127-0050 as copayments are no longer needed.

CHANGES TO RULE:

410-127-0050

Client Copayments ¶

Copayments may be required for certain services. See OAR 410-120-1230 for specific details.

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CHANGES TO RULE:

410-127-0060

Reimbursement and Limitations-¶

- (1) Reimbursement. The Division of Medical Assistance Programs (Division) The Division reimburses home health services on a fee schedule by type of visit (see home health rates and copayment chart on the Oregon Healthon the Authority (OHA) W's web-site at: http://www.dhs.state.or.us/policyoregon.gov/OHA/healthplan/guidpag es/home_health/main.html._aspx).¶
- (2) The Division recalculates its home health services rates every other year. The Division wishall reimburse home health services at a level of 74% percent of Medicare costs reported on the audited, most recently accepted or submitted Medicare Cost Reports prior to the rebase date and pending approval from the Centers for Medicare and Medicaid Services (CMS), and, if indicated, Llegislative funding authority. ¶
- (3) The Division wishall request the Medicare Cost Reports from home health agencies with a due date; and wishall recalculate potential rates based on the Medicare Cost Reports received by the requested due date. It is the responsibility of the home health agency to shall submit requested cost reports by the date requested. ¶
- (4) The Division reimburses only for service which that is medically appropriate.-¶
- (5) Limitations:-¶
- (a) Limits of covered services:-¶
- (A) Skilled nursing visits are limited to two visits per day with payment authorization;-¶
- (B) All therapy services are limited to one visit or evaluation per day for physical therapy, occupational therapy, or speech-and-language pathology services. Therapy visits require payment authorization;-¶
- (C) The Division wishall authorize home health visits for clients with uterine monitoring only for medical problems, which that could adversely affect the pregnancy and are not related to the uterine monitoring;-¶
- (D) Medical supplies must be billed at acquisition cost, and the total of all medical supply revenue codes may not exceed \$50 per day. Only supplies that are used during the visit or the specified additional supplies used for current client/caregiver teaching or training purposes as medically necessary appropriate are billable. Client visit notes must include documentation of supplies used during the visit or supplies provided according to the current plan of care: ¶
- (E) Durable medical equipment must be obtained by the client by prescription through a durable medical equipment provider.-¶
- (b) Not covered service:-¶
- (A) Service not medically appropriate;-¶
- (B) A service whose for a diagnosis that does not appear on a line of the Prioritized List of Health Services which that has been funded by the Oregon Legislature (OAR 410-141-0520);-¶
- (C) Medical Social Wworker service;-¶
- (D) Registered dietician counseling or instruction;-¶
- (E) Drug and or-biological;-¶
- (F) Fetal non-stress testing;-¶
- (G) Respiratory therapist service;-¶
- (H) Flu shot;-¶
- (I) Psychiatric nursing service.

Statutory/Other Authority: ORS 413.042-

Statutes/Other Implemented: ORS 414.065

RULE SUMMARY: Medicaid regulations at 42 CFR 440.70 were revised consistent with section 6407 of the Affordable Care Act of 2010 and section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 to add requirements that, for home health services and certain medical equipment, a face-to-face encounter with the OHP fee-for-service client must be conducted within established timeframes. This aligns timeframes with similar regulatory requirements for Medicare home health services. Repealing OAR 410-127-0050 as copayments are no longer required.

CHANGES TO RULE:

410-127-0065
Signature Requirements ¶

- (1) The Division of Medical Assistance Programs (Division) requires practitioners to Physicians shall sign for services they order. This signature shall be handwritten or electronic, and it must be in the client's medical record.
- (2) The ordering practitioner is responsible for hysician shall ensure the authenticity of the signature. Statutory/Other Authority: ORS 413.042 Statutes/Other Implemented: ORS 414.065

RULE SUMMARY: Medicaid regulations at 42 CFR 440.70 were revised consistent with section 6407 of the Affordable Care Act of 2010 and section 504 of the Medicare Access and CHIP Reauthorization Act of 2015 to add requirements that, for home health services and certain medical equipment, a face-to-face encounter with the OHP fee-for-service client must be conducted within established timeframes. This aligns timeframes with similar regulatory requirements for Medicare home health services. Repealing OAR 410-127-0050 as copayments are no longer required.

CHANGES TO RULE:

410-127-0080

Prior Authorization ¶

- (1) Home health providers must obtain prior authorization (PA) for services as specified in rule.-¶
- (2) Providers must request PA as follows (see the Home Health Supplemental Information booklet for contact information) and include the documentation requirements from the <u>Ssupplemental</u> (e.g., <u>face-to-face encounter</u>, plan of care, primary diagnosis, initial assessment, evaluation, etc.):-¶
- (a) For clients enrolled in a Coordinated Care Organization (CCO) or a Prepaid Health Plan (PHP), from the CCO or the PHP:-¶
- (b) For all other clients, from the Division of Medical Assistance Programs (Division). 1
- (3) For services requiring authorization, providers must contact the responsible unit for authorization within five working days following initiation or continuation of services. The FAX or postmark date on the request wishall be honored as the request date. It is t_The provider's responsibility to shall obtain payment authorization. Authorization wishall be given based on medical appropriateness and appropriate level of care, cost, and/or effectiveness as supported by submitted documentation. The plan of care submitted must include the client's condition, the rationale for the care plan; including justification for the required skill level of care, and the summary of care for additional certification periods.¶
- (4) Payment authorization does not guarantee reimbursement (e.g., eligibility changes, incorrect identification number, provider contract ends).-¶
- (5) For rules related to authorization of payment, including retroactive eligibility, see General Rules, OAR 410-120-1320.

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CHANGES TO RULE:

410-127-0200

Home Health Revenue Center Codes ¶

Payment authorization is required for those services indicated by the Code PA. Following are the procedure codes to be used for billing:¶

- (1) Medical/surgical supplies and devices: ¶
- (a) 270 -- General classification; ¶
- (b) $271 Non sterile supply; \P$
- (c) 272 -- Sterile supply.¶
- (2) Physical Therapy:¶
- (a) 421 -- Visit charge -- PA;¶
- (b) 424 -- Evaluation (includes Outcome and Assessment Information Set, OASIS assessment) or re-evaluation.
- (3) Occupational Therapy:¶
- (a) 431 -- Visit charge -- PA;¶
- (b) 434 -- Evaluation or re-evaluation.¶
- (4) Speech-language pathology:¶
- (a) 441 -- Visit charge -- PA;¶
- (b) 444 Evaluation (includes OASIS assessment) or re-evaluation.¶
- (5) Skilled nursing:¶
- (a) 551 -- Visit charge -- PA;¶
- (b) 559 -- Other skilled nursing -- evaluation (includes OASIS assessment).¶
- (6) Home health aid-<u>e -</u>- 571 -- Visit charge -- PA.¶
- (7) Total charge -- 001 -- Total Charge.