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NOTICE OF PROPOSED RULEMAKING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 411
DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES AND DEVELOPMENTAL DISABILITIES

FILED

04/18/2024 1:13 PM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION: APD: Amending 411-070 to align with OHA Medicaid swing bed rules

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 06/18/2024 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.

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Filed By:
Kristina Krause
Rules Coordinator

HEARING(S)

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

DATE: 05/23/2024

TIME: 2:00 PM - 2:30 PM

OFFICER: Staff

REMOTE HEARING DETAILS

MEETING URL: [Click here to join the meeting](#)

PHONE NUMBER: 1-669-254-5252

CONFERENCE ID: 1605097541

SPECIAL INSTRUCTIONS:

If you wish to provide comments about the proposed rules, please register in advance at the following link:

https://www.zoomgov.com/meeting/register/vJltcumhqT4uG-6MliFo1nNBBVxd-Uou9_s

After registering, you will receive a confirmation email containing information about joining the rule hearing. If you need help signing up, please call the APD Rules Coordinator, Kristina Krause, at 503-339-6104 or send an email directly to Kristina.R.Krause@odhs.oregon.gov.

Please join the rule hearing no later than 15 minutes after the start time if you wish to testify (provide comments) on the proposed rules.

Everyone has a right to know about and use ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS can provide are sign language and spoken language interpreters, written materials in other languages, braille, large print, audio, or other formats. If you need help or have questions, please email Cindy Susee at cynthia.susee@odhs.oregon.gov or call 971-345-1168 at least five business days before the hearing. We accept all relay calls.

NEED FOR THE RULE(S)

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities (APD) program has recognized a need to modify hospital swing bed criteria to align with federal regulations and OHA OAR 410-125-0101, which was permanently amended effective January 1, 2024.

Hospitals currently have two provider agreements within ODHS and OHA. Hospitals will continue to qualify as a Critical Access Hospital (CAH) through Centers for Medicare and Medicaid Services (CMS) and then receive a provider agreement as a hospital through OHA, HSD. Hospitals will be positively impacted by avoiding duplicative work by having only one provider agreement with OHA. Nursing services will remain accessible to swing bed patients in a CAH.

Other changes may be made to OAR 411-070-0130 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

None.

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

Hospitals serve all communities in their service area. This will continue. This rule change is anticipated to have a neutral impact on racial equity in this state.

FISCAL AND ECONOMIC IMPACT:

The Fiscal and Economic Impact is stated below in the Department's statement of Cost of Compliance.

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) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The Department estimates there will be no fiscal or economic impact on state agencies.

Units of Local Government: The Department estimates there will be no fiscal or economic impact on units of local government.

Consumers: The Department estimates there will be no fiscal or economic impact on consumers.

Providers: The Department estimates there will be no fiscal or economic impact on providers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

As defined by ORS 183.310, a small business means a corporation, partnership, sole proprietorship or other legal entity that has 50 or fewer employees. Critical Access Hospitals do not define as a small business.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

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

Small businesses will be included in the public review and comment period.

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

A Rule Advisory Committee (RAC) was not convened. APD was granted an exception to the RAC process by the ODHS|OHA Shared Services Administrative Rules and Policy Manager due to this being a process improvement with no negative impact to any communities or providers.

AMEND: 411-070-0130

RULE SUMMARY: Amending rule to reflect that Medicaid payments in hospitals are an Oregon Health Authority (OHA), Health Systems Division (HSD) benefit and agreement. Hospitals receiving Medicaid payment for swing-bed services must comply with state and federal rules and statutes that affect long-term care facilities as outlined in the facility's provider agreement with OHA/HSD. This rule change aligns with the hospital swing bed guide.

Other changes may be made to OAR 411-070-0130 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure, and clarity of the rule.

CHANGES TO RULE:

411-070-0130

Medicaid Payment in Hospitals ¶¶

(1) SWING BED ELIGIBILITY. To be eligible to receive a Medicaid payment under this rule, a hospital must:¶¶

(a) Have approval from the Centers for Medicare and Medicaid Services (CMS) to furnish skilled nursing facility services as a Medicare swing-bed hospital;¶¶

(b) Have a Medicare provider agreement for acute care; and¶¶

(c) Have a current signed provider agreement with SPD to receive Medicaid payment for swing-bed services.¶¶

~~(2) NUMBER OF BEDS.¶¶~~

~~(a) A critical access hospital (CAH) not located within a 30 mile geographic radius of a licensed nursing facility as of March 13, 2007 may receive Medicaid payment for up to 20 residents at one time. The CAH must maintain at least five beds or twice the average acute care daily census, whichever is greater, for exclusive acute care use.¶¶~~

~~(b) Other hospitals receiving payment for Medicaid services under this rule may not receive Medicaid payment for more than a total of five residents at one time. In addition, the residents must have a documented need for and receive services that meet the complex medical add-on requirements outlined in OAR 411-070-0091.¶¶~~

~~(c) If circumstances change so that a CAH receiving payment for Medicaid services pursuant to section (2)(b) of~~

~~this rule meets the criteria set out in section (2)(a) of this rule after March 13, 2007, the CAH may petition SPD for authorization to receive such payment pursuant to section (2)(a) of this rule. SPD shall evaluate all available long-term care resources within a 30-mile geographic radius of the CAH and the amount of unmet long-term care need in the same area and determine if the CAH shall be authorized to receive payment pursuant to section (2)(a) of this rule.~~Health Services Division (HSD) provider agreement to receive Medicaid payment for swing-bed services.¶

(32) SERVICES PROVIDED. The daily Medicaid rate shall be for the services outlined in OAR 411-070-0085 (Bundled Rate).¶

(43) COMPLIANCE WITH MEDICAID REQUIREMENTS. Hospitals receiving Medicaid payment for swing-bed services must comply with state and federal and SPD rules and statutes that affect long-term care facilities as outlined in the facility's provider agreement with HSPD.¶

(54) ~~ADMISSION OF INDIVIDUALS~~MEDICAID ELIGIBLE INDIVIDUALS TO INTERMEDIATE CARE FACILITY (ICF). Prior to determination of Medicaid ~~payment~~ eligibility in the ICF swing bed, the APD case manager must ~~determine there is no nursing facility bed available to the individual within a 30-mile geographic radius of the hospital. For the purpose of this rule, "available bed" means a bed in a nursing facility that is available to the individual at the time the placement decision is made.~~coordinate with the hospital for continued Medicaid services and payment.

Statutory/Other Authority: ORS 410.070

Statutes/Other Implemented: ORS 410.070, 414.065