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LAVONNE GRIFFIN-VALADE
SECRETARY OF STATE

CHERYL MYERS
DEPUTY SECRETARY OF STATE
AND TRIBAL LIAISON



ARCHIVES DIVISION

STEPHANIE CLARK
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

03/13/2024 10:00 AM
ARCHIVES DIVISION
SECRETARY OF STATE

FILING CAPTION:

Amend Language to Comply with Federal Regulation Regarding Primary Payer of Oral Formula.

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 04/21/2024 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.

CONTACT: Martha Martinez-Camacho
503-559-0830
martha.martinez-camacho2@oha.oregon.gov

500 Summer Street NE
Salem, OR 97301

Filed By:
Martha Martinez-Camacho
Rules Coordinator

NEED FOR THE RULE(S)

To amend this rule by clarifying the primary payer of oral formula covered by the Oregon Health Plan. This rule will clarify that the Oregon Health Plan will be primary payer (not WIC) for all oral formula covered by the Oregon Health Plan for those infants and children who are enrolled in both OHP and participating in the WIC program.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE

CFR: 7CFR246.10(e)(3)(vi) available at:

[https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-246/subpart-D/section-246.10#p-246.10\(e\)\(3\)\(vi\)](https://www.ecfr.gov/current/title-7/subtitle-B/chapter-II/subchapter-A/part-246/subpart-D/section-246.10#p-246.10(e)(3)(vi))

WIC Policy Memorandum FNS Document #2015-07, EO Guidance Document # FNS-GD-2015-0044 available at:

<https://www.fns.usda.gov/wic/medicaid-primary-payer-exempt-infant-formulas-and-medical-foods#:~:text=The%20Medicaid%20program%20is%20the,of%20mutual%20participants%20are%20met.>

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

We do not anticipate any positive or negative affects on racial equity.

FISCAL AND ECONOMIC IMPACT:

This amendment to rule will not have a fiscal impact for the Oregon Health Plan. Oral formula is included in the budget

for OHP. We anticipate no change or possibly less of a financial burden for the WIC program. We anticipate some possible shifting in DME vendors for these services. For OHP recipients, there will be no change in financial impact or cost for oral formula.

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) The Oregon Health Plan will be primary payer (not WIC) for all oral formula covered by the Oregon Health Plan for those infants and children who are enrolled in both OHP and participating in the WIC program. This amendment will impact FFS, CCO's, WIC program, the member's enrolled in OHP FFS/CCO's who also participate in the WIC program, DME Providers, DME Suppliers, oral formula manufacturers, and prescribing provider networks.

(2)

(a) We are not aware of any small businesses; however, it may be possible that there may be some small businesses effected. The administrative burden is no more or less. We do anticipate this will clarify the issue of who is the first payer between WIC and OHP and will reduce confusion.

(b) For small businesses, this amendment does not change any of these activities required. After this rule is filed, these records and activities are the same.

(c) Small businesses will not have to purchase any new supplies or equipment because of this amendment.

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

None

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

No – received a RAC exception.

AMEND: 410-148-0100

RULE SUMMARY: Oregon Health Plan, Home Enteral/Parenteral Nutrition and IV Services Reimbursement Rule. This amendment is for adding language, per federal regulation, to clarify the Oregon Health Plan is the primary payer (not WIC) for oral formula that is covered by the Oregon Health Plan for those infants and children who are enrolled in OHP and participating in the WIC program.

CHANGES TO RULE:

410-148-0100
Reimbursement ¶¶

(1) Drug ingredients (medications) shall be reimbursed as defined in the Division of Medical Assistance Programs (Division) Pharmaceutical Services administrative rules (chapter 410, division 121).¶¶

(2) The following service/goods ~~wi~~shall be reimbursed on a fee-for-service basis according to the Division EPIV Fee Schedule found in the Home Enteral/Parenteral Nutrition and IV Services on the Division website:¶¶

(a) Enteral formula;¶¶

(b) Oral nutritional supplements which are medically appropriate and meet the criteria specified in OAR 410-148-

0260;¶

(c) Parenteral nutrition solutions;¶

(3) Reimbursement for services wishall be based on the lesser of the amount billed, or the Division maximum allowable rate. When the service is covered by Medicare, reimbursement wishall be based on the lesser of the amount billed, Medicare's allowed amount, or the Division maximum allowable rate.¶

(4) Reimbursement for supplies that require authorization or services/supplies that are listed as Not Otherwise Classified (NOC) or By Report (BR) must be billed to the Division at the providers' acquisition cost, and wishall be reimbursed at such rate.¶

(a) For purposes of this rule, Acquisition Cost is defined as the actual dollar amount paid by the provider to purchase the item directly from the manufacturer (or supplier) plus any shipping and/or postage for the item. Submit documentation identifying acquisition cost with your authorization request;¶

(b) Per diem, as it relates to reimbursement, represents each day that a given patient is provided access to a prescribed therapy. This definition is valid for per diem therapies of up to and including every 72 hours.¶

(c) Per diem reimbursement includes, but is not limited to:¶

(A) Professional pharmacy services:¶

(i) Initial and ongoing assessment/clinical monitoring;¶

(ii) Coordination with medical professionals, family and other caregivers;¶

(iii) Sterile procedures, including IV admixtures, clean room upkeep and all biomedical procedures necessary for a safe environment;¶

(iv) Compounding of medication/medication set-up.¶

(B) Infusion therapy related supplies:¶

(i) Durable, reusable or elastomeric disposable infusion pumps;¶

(ii) All infusion or other administration devices;¶

(iii) Short peripheral vascular access devices;¶

(iv) Needles, gauze, sterile tubing, catheters, dressing kits, and other supplies necessary for the safe and effective administration of infusion therapy.¶

(C) Comprehensive, 24-hour per day, seven (7) days per week delivery and pickup services (includes mileage).¶

(5) Reimbursement wishall not be made for the following:¶

(a) Central catheter insertion or transfusion of blood/blood products in the client's home;¶

(b) Central catheter insertion in the nursing facility;¶

(c) Intradialytic parenteral nutrition in the client's home or Nursing Facility;¶

(d) Oral infant formula that is available through the Formula and nutrition supplements that are not covered by the Oregon Health Plan (OHP) and available through the Special Supplemental Nutrition Program for Women's, Infants and Children (WIC) program. For covered formulas and nutrition supplements, OHP is the first payer before WIC;¶

(e) Oral nutritional supplements that are in addition to consumption of food items or meals.¶

(f) Tocolytic pumps for pre-term labor management;¶

(g) Home enteral/parenteral nutrition or IV services outside of the client's place of residence (i.e. home, nursing facility or AIS).

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.065