



NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 410

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED: 10/27/2026 1:04 PM

ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Amending rule to include nondiscrimination language from SB 729 (2025).

LAST DAY AND TIME TO OFFER COMMENT TO AGENCY: 11/21/2026 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:

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HEARING(S)

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

DATE: 11/17/2026

TIME: 9:00 AM - 9:45 AM

OFFICER: Kelsey Gleeson

REMOTE HEARING DETAILS

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

PHONE NUMBER: 669-254-5252

CONFERENCE ID: 1658671365

SPECIAL INSTRUCTIONS:

Meeting ID: 165 867 1365

Passcode: 215425

NEED FOR THE RULE(S):

Passage of SB 729 in 2025 prohibits providers from denying any individual access to mental health assessment, treatment, or services on the basis that the individual has an intellectual or developmental disability.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

SB 729 (2025) Enrolled

<https://olis.oregonlegislature.gov/liz/2025R1/Downloads/MeasureDocument/SB729/Enrolled>

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

The nature of this rulemaking is to strengthen non-discrimination language. The Oregon Health Authority anticipates a positive impact on racial equity as a result.

FISCAL AND ECONOMIC IMPACT:

The Oregon Legislative Fiscal Office and Oregon Health Authority anticipate minimal fiscal impact.

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).

None.

(2) Effect on Small Businesses:

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

None.

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

None.

(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):

None.

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

Result of state legislation; community engagement that did not meet RAC requirements was completed by the Oregon Health Authority, RAC exception approved.

AMEND: 410-120-1380

RULE SUMMARY: Add subparagraphs (1)(c)(A)(viii) and (1)(c)(A)(xii) to include citations of ORS Chapter 659A and SB 729 (2025).

CHANGES TO RULE:

(1) When a Provider submits a claim for ~~an~~ Medical ~~services~~ or supplies provided to a Division of Medical Assistance Programs (Division) ~~client~~ Member, Division shall deem the submission as a representation by the medical Provider to the Medical Assistance Program of the medical Provider's compliance with the applicable sections of the federal and state statutes referenced in this rule:¶¶

(a) 45 CFR Part 84 which implements Title V, Section 504 of the Rehabilitation Act of 1973;¶¶

(b) 42 CFR Part 493 Laboratory Requirements and ORS 438 (Clinical Laboratories).¶¶

(c) Unless exempt under 45CFR Part 87 for Faith-Based Organizations (Federal Register, July 16, 2004, Volume 69, #136), or other federal provisions, the Provider must comply and, as indicated, cause all sub-contractors to comply with the following federal and state requirements to the extent that they are applicable to the goods and services governed by these rules. For purposes of these rules, all references to federal and state laws are references to federal and state laws as they may be amended from time to time:¶¶

(A) The Provider must comply and cause all subcontractors to comply with all federal and state laws, regulations, executive orders applicable to the goods and services provided under these rules. Without limiting the generality of the foregoing, the Provider expressly agrees to comply and cause all subcontractors to comply with the following laws, regulations and executive orders to the extent they are applicable to the goods and services provided under these rules:¶¶

(i) Title VI and VII of the Civil Rights Act of 1964, as amended;¶¶

(ii) Sections 503 and 504 of the Rehabilitation Act of 1973, as amended;¶¶

(iii) The Americans with Disabilities Act of 1990, as amended;¶¶

(iv) Executive Order 11246, as amended;¶¶

(v) The Health Insurance Portability and Accountability Act of 1996;¶¶

(vi) The Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended;¶¶

(vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended, ~~(viii);~~¶¶

(viii) Oregon Revised Statutes (ORS) Chapter 659A - Unlawful Discrimination in Employment, Public Accommodations and Real Property Transactions, Administrative and Civil Enforcement;¶¶

~~(ix)~~ All regulations and administrative rules established pursuant to the foregoing laws;¶¶

~~(viii)~~ All other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations;¶¶

~~(ix)~~ All federal and state law governing operation of Community Mental Health Programs, including without limitation, all federal laws requiring reporting of ~~client~~ abuse. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the goods and services governed by these rules and required by law to be so incorporated. No federal funds may be used to provide services in violation of 42 USC 14402; and¶¶

(xii) SB 729 (2025), which prohibits Providers from denying any individual access to mental health assessment, treatment, or services on the basis that the individual has an intellectual or developmental disability;¶¶

(B) Any Provider that receives or makes annual payments under the Title XIX State Plan of at least \$5,000,000, as a condition of receiving such payments, shall:¶¶

(i) Establish written policies for all employees of the entity (including management), and of any contractor, subcontractor, or ~~a~~ Agent of the entity, that provide detailed information about the False Claims Act established under sections 3729 through 3733 of title 31, United States Code, administrative remedies for false claims and statements established under chapter 38 of title 31, United States Code, any Oregon State laws pertaining to civil or criminal penalties for false claims and statements, and whistleblowing protections under such laws, with respect to the role of such laws in preventing and detecting fraud, waste, and abuse in Federal health care programs (as defined in section 1128B(f));¶¶

(ii) Include as part of written policies, detailed provisions regarding the entity's policies and procedures for detecting and preventing fraud, waste and abuse; and¶¶

(iii) Include in any employee handbook for the entity, a specific discussion of the laws described in (i), the rights of the employees to be protected as whistleblowers, and the entity's policies and procedures for detecting and preventing fraud, waste, and abuse.¶¶

(C) If the goods and services governed under these rules exceed \$10,000, the Provider must comply and cause all subcontractors to comply with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60);¶¶

(D) If the goods and services governed under these rules exceed \$100,000, the Provider must comply and cause all subcontractors to comply with all applicable standards, orders, or requirements issued under Section 306 of the Clean Air Act (42 U.S.C. 7606), the Federal Water Pollution Control Act as amended (commonly known as the

Clean Water Act-33 U.S.C. 1251 to 1387), specifically including, but not limited to, Section 508 (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 32), which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. Violations must be reported to the Authority, the federal Department of Health and Human Services (DHHS) and the appropriate Regional Office of the Environmental Protection Agency. The Provider must include and cause all subcontractors to include in all contracts with subcontractors receiving more than \$100,000, language requiring the subcontractor to comply with the federal laws identified in this section;¶

(E) The Provider must comply and cause all subcontractors to comply with applicable mandatory standards and policies relating to energy efficiency that are contained in the Oregon energy conservation plan issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. 6201 et seq. (Pub. L. 94-163);¶

(F) The Provider certifies, to the best of the Provider's knowledge and belief, that:¶

(i) No federal appropriated funds have been paid or shall be paid, by or on behalf of the Provider, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative agreement;¶

(ii) If any funds other than federal appropriated funds have been paid or shall be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Provider must complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying" in accordance with its instructions;¶

(iii) The Provider must require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, sub-grants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients and subcontractors must certify and disclose accordingly;¶

(iv) This certification is a material representation of fact upon which reliance was placed when this Provider agreement was made or entered into. Submission of this certification is a prerequisite for making or entering into this Provider agreement imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.¶

(G) If the goods and services funded in whole or in part with financial assistance provided under these rules are covered by the Health Insurance Portability and Accountability Act or the federal regulations implementing the Act (collectively referred to as HIPAA), the Provider agrees to deliver the goods and services in compliance with HIPAA. Without limiting the generality of the foregoing, goods and services funded in whole or in part with financial assistance provided under these rules are covered by HIPAA. The Provider must comply and cause all subcontractors to comply with the following:¶

(i) Individually identifiable ~~H~~health ~~i~~nformation about specific individuals is confidential. Individually identifiable ~~H~~health ~~i~~nformation relating to specific individuals may be exchanged between the Provider and the Authority, for purposes directly related to the provision to ~~clients~~Members, of services that are funded in whole or in part under these rules. However, the Provider must not use or disclose any ~~i~~ndividually ~~i~~dentifiable ~~H~~health ~~i~~nformation about specific individuals in a manner that would violate Authority ~~P~~privacy ~~R~~ules, or Authority ~~N~~notice of ~~P~~privacy ~~P~~actices, if done by the Authority. A copy of the most recent Authority ~~N~~notice of ~~P~~privacy ~~P~~actices is posted on the Authority ~~W~~web-site or may be obtained from the Authority;¶

(ii) If the Provider intends to engage in Electronic Data Interchange (EDI) transactions with the Authority in connection with claims or encounter data, eligibility or enrollment information, authorizations or other electronic transactions, the Provider must execute an EDI Trading Partner Agreement with the Authority and must comply with the Authority EDI rules;¶

(iii) If a Provider reasonably believes that the Provider's or the Authority's data transactions system or other application of HIPAA privacy or security compliance policy may result in a violation of HIPAA requirements, the Provider must promptly consult the Authority Privacy Officer. The Provider or Authority may initiate a request to test HIPAA transactions, subject to available resources and the Authority testing schedule.¶

(H) The Provider must comply and cause all subcontractors to comply with all mandatory standards and policies that relate to resource conservation and recovery pursuant to the Resource Conservation and Recovery Act (codified at 42 USC 6901 et. seq.). Section 6002 of that Act (codified at 42 USC 6962) requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency. Current guidelines are set forth in 40 CFR Parts 247;¶

(I) The Provider must comply and, if applicable, cause a subcontractor to comply, with the applicable audit requirements and responsibilities set forth in the Office of Management and Budget Circular A-133 entitled

"Audits of States, Local Governments and Non-Profit Organizations;"¶

(J) The Provider must not permit any person or entity to be a subcontractor if the person or entity is listed on the non-procurement portion of the General Service Administration's "List of Parties Excluded from Federal Procurement or Non-procurement Programs" in accordance with Executive Orders No. 12,549 and No. 12,689, "Debarment and Suspension". (See 45 CFR part 76). This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and Providers and subcontractors declared ineligible under statutory authority other than Executive Order No. 12549. Subcontractors with awards that exceed the simplified acquisition threshold must provide the required certification regarding their exclusion status and that of their principals prior to award;¶

(K) The Provider must comply and cause all subcontractors to comply with the following provisions to maintain a drug-free workplace:¶

(i) The Provider certifies that it shall provide a drug-free workplace by publishing a statement notifying its employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance, except as may be present in lawfully prescribed or over-the-counter medications, is prohibited in the Provider's workplace or while providing services to Authority clientMembers. The Provider's notice must specify the actions that shall be taken by the Provider against its employees for violation of such prohibitions;¶

(ii) Establish a drug-free awareness program to inform its employees about the dangers of drug abuse in the workplace, the Provider's policy of maintaining a drug-free workplace, any available drug counseling, rehabilitation, and employee assistance programs, and the penalties that may be imposed upon employees for drug abuse violations;¶

(iii) Provide each employee to be engaged in the performance of services under these rules a copy of the statement mentioned in subparagraph (J)(i) above in this section;¶

(iv) Notify each employee in the statement required by subparagraph (J)(i) of this section that, as a condition of employment to provide services under these rules, the employee shall abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;¶

(v) Notify the Authority within ten (10) days after receiving notice under subparagraph (J)(iv) of this section from an employee or otherwise receiving actual notice of such conviction;¶

(vi) Impose a sanction on, or require the satisfactory participation in a drug abuse assistance or rehabilitation program by any employee who is so convicted as required by Section 5154 of the Drug-Free Workplace Act of 1988;¶

(vii) Make a good-faith effort to continue a drug-free workplace through implementation of subparagraphs (J)(i) through (J)(vi) of this section;¶

(viii) Require any subcontractor to comply with subparagraphs (J)(i) through (J)(vii) of this section;¶

(ix) Neither the Provider, nor any of the Provider's employees, officers, Agents or subcontractors may provide any service required under these rules while under the influence of drugs. For purposes of this provision, "under the influence" means observed abnormal behavior or impairments in mental or physical performance leading a reasonable person to believe the Provider or Provider's employee, officer, Agent or subcontractor has used a controlled substance, prescription or non-prescription medication that impairs the Provider or Provider's employee, officer, Agent or subcontractor's performance of essential job function or creates a direct threat to Authority clientMembers or others. Examples of abnormal behavior include, but are not limited to hallucinations, paranoia or violent outbursts. Examples of impairments in physical or mental performance include, but are not limited to slurred speech, difficulty walking or performing job activities;¶

(x) Violation of any provision of this subsection may result in termination of the Provider agreement under these rules.¶

(L) The Provider must comply and cause all sub-contractors to comply with the Pro-Children Act of 1994 (codified at 20 USC section 6081 et. seq.);¶

(M) The Provider must comply with all applicable federal and state laws and regulations pertaining to the provision of Medicaid Services under the Medicaid Act, Title XIX, 42 USC Section 1396 et. Seq., and CHIP benefits established by Title XXI of the Social Security Act, including without limitation:¶

(i) Keep such records as are necessary to fully disclose the extent of the services provided to individuals receiving Medicaid assistance and must furnish such information to any state or federal agency responsible for administering the Medicaid program regarding any payments claimed by such person or institution for providing Medicaid Services as the state or federal agency may from time to time request. 42 USC Section 1396a(a)(27); 42 CFR 431.107(b)(1) & (2); 42 CFR 457.950(a)(3);¶

(ii) Comply with all disclosure requirements of 42 CFR 1002.3(a) and 42 CFR 455 Subpart (B); 42 CFR 457.950(a)(3);¶

(iii) Maintain written notices and procedures respecting advance directives in compliance with 42 USC Section 1396a(a)(57) and (w), 42 CFR 431.107(b)(4), and 42 CFR 489 subpart I;¶

(iv) Certify when submitting any claim for the provision of Medicaid Services that the information submitted is true, accurate and complete. The Provider must acknowledge Provider's understanding that payment of the claim shall be from federal and state funds and that any falsification or concealment of a material fact may be prosecuted under federal and state laws.¶

(2) Hospitals, Nursing Facilities, Home Health Agencies (including those providing personal care), Hospices and Health Maintenance Organizations shall comply with the Patient Self-Determination Act as set forth in Section 4751 of OBRA 1991. To comply with the obligation under the above listed laws to deliver information on the rights of the individual under Oregon law to make health care decisions, the named Providers and organizations shall give capable individuals over the age of 18 a copy of "Your Right to Make Health Care Decisions in Oregon," copyright 1993, by the Oregon State Bar Health Law Section. Out-of-State Providers of these services should comply with Medicare, Medicaid and CHIP regulations in their state. Submittal to the Division of the appropriate billing form requesting payment for ~~non~~Medical sServices provided to a Medicaid/CHIP eligible ~~client~~Member shall be deemed representation to the Division of the medical Provider's compliance with the above-listed laws.¶

(3) Providers described in ORS chapter 419B are required to report suspected child abuse to their local Authority Children, Adults and Families office or police, in the manner described in ORS 419.¶

(4) The Clinical Laboratory Improvement Act (CLIA), requires all entities that perform even one laboratory test, including waived tests on, "materials derived from the human body for the purpose of providing information for the diagnosis, prevention or treatment of any disease or impairment of, or the assessment of the health of, human beings" to meet certain federal requirements. If an entity performs tests for these purposes, it is considered, under CLIA to be a laboratory.¶

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

Statutory/Other Authority: ORS 413.042

Statutes/Other Implemented: ORS 414.025, 414.065