

Enrolled
House Bill 2910

Sponsored by Representative NOSSE; Representatives DEXTER, HAYDEN, MORGAN, PRUSAK, WALLAN (Presession filed.)

CHAPTER

AN ACT

Relating to emergency medical services providers; creating new provisions; amending ORS 413.234 and 682.047; and declaring an emergency.

Whereas emergency medical services providers play an essential role in serving this state’s medical assistance recipients; and

Whereas in 2016, the Centers for Medicare and Medicaid Services denied a request by the state to approve Medicaid supplemental reimbursement for private and contracted emergency medical services providers; and

Whereas private and contracted emergency medical services providers must be ensured equal access to funding for service that is available from the federal government; and

Whereas it is the intent of the Legislative Assembly that the Oregon Health Authority seek approval from the Centers for Medicare and Medicaid Services for supplemental funding for non-federal, nonpublic emergency medical services entities only after approval is fully granted for the Ground Emergency Medical Transportation program for public emergency medical services entities; now, therefore,

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) As used in this section:

(a) “Emergency medical services” means the services provided by an emergency medical services provider to an individual experiencing a medical emergency in order to:

(A) Assess, treat and stabilize the individual’s medical condition; or

(B) Prepare and transport the individual to a medical facility.

(b) “Emergency medical services provider” means a nonfederal or nonpublic entity that:

(A) Employs individuals who are licensed by the Oregon Health Authority under ORS chapter 682 to provide emergency medical services; and

(B) Contracts with a local government pursuant to a plan described in ORS 682.062.

(c) “Emergency medical services transport” means an emergency medical services provider’s evaluation of an individual experiencing a medical emergency and the transportation of the individual to the nearest medical facility capable of meeting the needs of the individual.

(d) “Federal financial participation” has the meaning given that term in ORS 413.234.

(e)(A) “Gross receipts” means gross payments received as patient care revenue for emergency medical services transports, determined on a cash basis of accounting.

(B) “Gross receipts” does not include Medicaid supplemental reimbursement pursuant to ORS 413.234.

(f) "Local government" has the meaning given that term in ORS 174.116.

(2) The Oregon Health Authority may request approval from the Centers for Medicare and Medicaid Services to administer the program described in this section. Upon receipt of approval, the authority shall:

(a) Annually assess a quality assurance fee on each emergency medical services transport provided by an emergency medical services provider licensed in this state in an amount equal to the lesser of the amount permitted by federal law and five percent of the projected total gross receipts for the following 12-month period, divided by the projected number of emergency medical services transports in the same 12-month period. The projections must be based on the data reported under paragraph (h) of this subsection.

(b) Prescribe the manner and due dates for the assessment and collection of quality assurance fees under this section.

(c) Modify or make adjustments to any methodology, fee amount or other provision specified in this section to the extent necessary to meet the requirements of federal law or to ensure federal financial participation in the costs of emergency medical services transports reimbursed by the authority.

(d) Assess interest on quality assurance fees not paid by the date due at 10 percent per annum, beginning on the day after the date the payment was due.

(e) Assess a penalty equal to the interest charged under paragraph (d) of this subsection for each month for which the payment is more than 60 days overdue.

(f) Deduct the amount of any unpaid fee, interest or penalty assessed under this section from any fee-for-service medical assistance reimbursement owed to the emergency medical services provider until the full amount of the fee, interest or penalty is recovered. The authority may not make a deduction pursuant to this paragraph until after the authority gives the emergency medical services provider written notification. The authority may permit the amount owed to be deducted over a period of time that takes into account the financial condition of the emergency medical services provider.

(g) Establish the reimbursement to be paid to an emergency medical services provider for an emergency medical services transport in an amount that is equal to the amount of quality assurance fees, interest and penalties assessed by the authority under this section and the associated federal financial participation less any costs incurred by the authority to administer this section. An emergency medical services provider shall use a portion of the funds to increase wages and benefits for employees. The reimbursement established under this paragraph:

(A) May not exceed the costs for the emergency medical services transport, determined in accordance with standards established by the authority, less the amount of reimbursement that the emergency medical services provider is eligible to receive from all public and private sources.

(B) Shall be paid only from federal financial participation in the costs of emergency medical services transports and the Emergency Medical Services Fund established under section 2 of this 2021 Act.

(C) May not be used to supplant existing funding for emergency medical services transports and the Emergency Medical Services Fund established under section 2 of this 2021 Act.

(D) Shall be required and payable only for periods in which emergency medical services providers are required to pay quality assurance fees.

(E) May be reduced by the authority to provide grants to emergency medical services providers for innovative ambulance programs.

(h) Prescribe the form and manner for an emergency medical services provider to report the data necessary to administer this section, including information about the portion of funds that the emergency medical services provider used to increase wages and benefits for employees, and may require a certification by each emergency medical services provider under penalty of perjury of the truth of the data reported under this paragraph.

(i) Require a medical services provider to report to the authority the number of emergency medical services transports it provided in each 12-month period, by payer type.

(j) Require an emergency medical services provider to report to the authority its gross receipts for each 12-month period.

(k) Require an emergency medical services provider to report to the authority the provider's costs for emergency medical services transports.

(3) All quality assurance fees and interest collected under this section shall be deposited into the Emergency Medical Services Fund established in section 2 of this 2021 Act.

(4) The authority may waive a portion or all of the interest or penalties, or both, assessed under subsection (2) of this section if the authority determines that the imposition of the full amount of the quality assurance fee in accordance with the due dates established under subsection (2) of this section is likely to impose an undue financial hardship on the emergency medical services provider. The waiver must be conditioned on the emergency medical services provider's agreement to pay the quality assurance fees on an alternative schedule developed by the authority.

(5) In the event of a merger, acquisition or similar transaction involving an emergency medical services provider that has outstanding quality assurance fees, interest or penalties due, the successor emergency medical services provider is responsible for paying to the authority the full amount of outstanding quality assurance fees, interest and penalties that are due on the effective date of the merger, acquisition or transaction.

(6) The authority shall modify the method for calculating or paying the reimbursement under subsection (2) of this section if the modification is necessary to ensure that the expenditures for emergency medical services transports qualify for federal financial participation.

(7) The authority shall administer this section in a manner that is consistent with:

(a) ORS 413.234 and 413.235; and

(b) Federal law, including the terms and conditions of agreements with the Centers for Medicare and Medicaid Services.

(8) An emergency medical services provider shall report the data required by subsection (2)(h) of this section within five days after the date upon which the report is due. After sending written notice to an emergency medical services provider, the authority may impose a penalty of \$100 per day against an emergency medical services provider for every day that the report is overdue. Any funds resulting from a penalty imposed under this subsection shall be deposited in the General Fund to be available for general governmental purposes.

SECTION 2. (1) The Emergency Medical Services Fund is established in the State Treasury, separate and distinct from the General Fund. The Emergency Medical Services Fund consists of moneys collected by the Oregon Health Authority under section 1 (3) of this 2021 Act. Moneys in the fund are continuously appropriated to the authority for the purposes of:

(a) Providing grants to emergency medical services providers for innovative ambulance programs;

(b) Funding the state medical assistance program, including but not limited to increasing reimbursement rates for emergency medical services transports; and

(c) Administering section 1 of this 2021 Act.

(2) Interest earned by the fund shall be credited to the fund.

SECTION 3. (1) Section 1 of this 2021 Act is in addition to and not in lieu of the provisions of ORS 413.234 and 413.235.

(2) The reimbursement established under section 1 of this 2021 Act also applies to the reimbursement of emergency medical services providers, as defined in section 1 of this 2021 Act, by coordinated care organizations, as defined in ORS 414.025, as permitted by the Centers for Medicare and Medicaid Services.

SECTION 4. ORS 413.234 is amended to read:

413.234. (1) As used in ORS 413.234 and 413.235:

(a) "Emergency medical services" means the services provided by emergency medical services providers to an individual experiencing a medical emergency in order to:

- (A) Assess, treat and stabilize the individual's medical condition; or
- (B) Prepare and transport the individual by ground to a medical facility.

(b) "Emergency medical services provider" or "provider" means an entity that[.:]

[(A)] employs individuals who are licensed by the Oregon Health Authority under ORS chapter 682 to provide emergency medical services[.]; and

[(B)(i)] **that** is owned or operated by a local government, a state agency or a federally recognized Indian tribe[.]; or]

[(ii)] *Contracts with a local government pursuant to a plan described in ORS 682.062.*]

(c) "Federal financial participation" means the portion of medical assistance expenditures for emergency medical services that are paid or reimbursed by the Centers for Medicare and Medicaid Services in accordance with the state plan for medical assistance.

(d) "Local government" has the meaning given that term in ORS 174.116.

(2) Upon request, an emergency medical services provider that has entered into a provider agreement with the authority **or a contract with a coordinated care organization** is eligible to receive Medicaid supplemental reimbursement from the authority **or coordinated care organization** for the cost of providing emergency medical services to a medical assistance recipient. The Medicaid supplemental reimbursement shall be added to the payment **by the authority or coordinated care organization** for the emergency medical services *[established by the authority in accordance with ORS 414.065]* **as permitted by the Centers for Medicare and Medicaid Services.**

(3)(a) Except as provided in paragraph (b) of this subsection, the Medicaid supplemental reimbursement paid to an emergency medical services provider shall be equal to the amount of federal financial participation received by the authority for the provider's cost for the emergency medical services.

(b) The Medicaid supplemental reimbursement paid to a provider under this section may not exceed the provider's actual costs for the emergency medical services, determined in accordance with standards established by the authority, less the amount of reimbursement that the provider is eligible to receive from all **public and private** sources¹, *including the payment amount for emergency medical services established by the authority in accordance with ORS 414.065*].

(4) An emergency medical services provider shall make readily available to the authority documentation, data and certifications, as prescribed by the authority, necessary to establish that the emergency medical services expenditures qualify for federal financial participation and to calculate the amount of Medicaid supplemental reimbursement that is due.

(5)(a) Except as provided in paragraph (b) of this subsection, the authority shall modify the method for calculating or paying the Medicaid supplemental reimbursement if modification is necessary to ensure that emergency medical services expenditures qualify for federal financial participation.

(b) This section does not authorize the payment of Medicaid supplemental reimbursement to an emergency medical services provider if the provider has not entered into a provider agreement[,] with the authority, **or a contract with a coordinated care organization**, to serve medical assistance recipients.

(c) If the Centers for Medicare and Medicaid Services approves the implementation of this section and later revokes its approval or expresses its intent to revoke or refuse to renew its approval, the authority shall report the fact at the next convening of the interim or regular session committees of the Legislative Assembly related to health care.

(6) General Fund moneys may not be used to implement this section. As a condition of receiving Medicaid supplemental reimbursement, an emergency medical services provider must enter into and comply with an agreement with the authority to reimburse the authority for the costs of administering this section.

[(7)] *This section applies only to emergency medical services providers that are reimbursed by the authority on a fee-for-service basis.*]

SECTION 5. ORS 682.047 is amended to read:

682.047. (1) *[When applications have been made as required under ORS 682.045,]* The Oregon Health Authority shall issue *[licenses to the owner]* **a license to the owner of an ambulance service, or the owner of an ambulance, that applies for a license under ORS 682.045** if *[it is found]* **the authority finds** that the ambulance service *[and]* **or** ambulance *[comply]* **complies** with the requirements of ORS 820.350 to 820.380 and this chapter and the rules adopted *[thereunder]* **under ORS 820.350 to 820.380 and this chapter.**

(2) *[Each license unless sooner suspended or revoked shall expire on the next June 30 or on such date as may be specified by authority rule.]* **An ambulance service license or ambulance license expires on the next June 30 after the license is issued or on another date specified by the authority by rule.**

(3) The authority may initially issue a license for less than a 12-month period or for more than a 12-month period not to exceed 15 months.

(4) *[Licenses shall be issued only to the owner of the ambulance service and only for the ambulance named in the application and shall not be]* **A license issued under this section is not** transferable to any other person, governmental unit, ambulance service or ambulance.

(5) Licenses *[shall]* **must** be displayed as prescribed by the rules of the authority.

(6) The authority shall provide for the replacement of any current license that becomes lost, damaged or destroyed. *[A replacement fee of \$10 shall be charged for each replacement license.]*

(7) Nonrefundable fees in the following amounts *[shall]* **must** accompany each initial and each subsequent annual application to obtain a license to operate an ambulance service and ambulance:

(a) *[\$75]* **\$190** for an ambulance service having a maximum of four full-time paid positions;

(b) *[\$250]* **\$625** for an ambulance service having five or more full-time paid positions;

(c) *[\$45]* **\$115** for each ambulance license if the ambulance is owned and operated by an ambulance service that has a maximum of four full-time paid positions; and

(d) *[\$80]* **\$200** for each ambulance license if the ambulance is owned and operated by an ambulance service having five or more full-time paid positions.

(8) The fees established under subsection (7) of this section do not apply to an ambulance or vehicle described under ORS 682.035.

SECTION 6. The amendments to ORS 682.047 by section 5 of this 2021 Act apply to licenses issued or renewed on or after the operative date specified in section 7 of this 2021 Act.

SECTION 7. (1) The amendments to ORS 682.047 by section 5 of this 2021 Act become operative on January 1, 2022.

(2) The Oregon Health Authority may take any action before the operative date specified in subsection (1) of this section that is necessary to enable the authority to exercise, on and after the operative date specified in subsection (1) of this section, all of the duties, functions and powers conferred on the authority by the amendments to ORS 682.047 by section 5 of this 2021 Act.

SECTION 8. The Oregon Health Authority shall immediately notify the Legislative Counsel if the Centers for Medicare and Medicaid Services approves or disapproves, in whole or in part, a request for approval to administer the program described in section 1 of this 2021 Act.

SECTION 9. Notwithstanding any other law limiting expenditures, the amount of \$30,366,152 is established for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses by the Oregon Health Authority from the Emergency Medical Services Fund established by section 2 of this 2021 Act.

SECTION 10. Notwithstanding any other law limiting expenditures, the limitation on expenditures established by section 5 (1), chapter _____, Oregon Laws 2021 (Enrolled House Bill 5024), for the biennium beginning July 1, 2021, as the maximum limit for payment of expenses from federal funds, excluding federal funds described in section 2, chapter _____, Oregon Laws 2021 (Enrolled House Bill 5024), collected or received by the Oregon

Health Authority for the Health Systems, Health Policy and Analytics, and Public Health, is increased by \$45,366,152, for the purpose of carrying out the provisions of this 2021 Act.

SECTION 11. This 2021 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2021 Act takes effect on its passage.

Passed by House June 24, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 26, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State