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NOTICE OF PROPOSED RULEMAKING

INCLUDING STATEMENT OF NEED & FISCAL IMPACT

CHAPTER 409
OREGON HEALTH AUTHORITY
HEALTH POLICY AND ANALYTICS

FILED: 10/16/2026 12:54 PM
ARCHIVES DIVISION SECRETARY OF STATE

FILING CAPTION: Modifies public comment procedures, deadlines, and adds designated topics to the ongoing agenda.

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.

CONTACT:
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Filed By:
Melanie White
Rules Coordinator

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

DATE: 11/16/2026
TIME: 2:00 PM - 3:00 PM
OFFICER: Mel White

REMOTE HEARING DETAILS
MEETING URL: Click here to join the meeting
PHONE NUMBER: 971-277-2343
CONFERENCE ID: 407507804
SPECIAL INSTRUCTIONS:
Attendees will need to join the meeting by Microsoft Teams or phone. If you wish to provide comment, please be signed in or call in by no later than 15 minutes after the start time. Join by Microsoft Teams: https://teams.microsoft.com/meet/274035215436806?p=CLUGaQs1bi9EcbTQIC, Meeting ID: 274 035 215 436 806, Passcode: pQ6TE6Et, or call in: +1-971-277-2343 Phone Conference ID: 407 507 804#.

Everyone has a right to know about and use OHA's programs and services. OHA provides assistance such as sign

language and spoken language interpreters, written materials in other languages, braille, large print, audio and other formats. If you need assistance or have questions, please contact HPA-Rules@oha.oregon.gov at least 5 days before the meeting.

NEED FOR THE RULE(S):

The Health Evidence Review Commission (HERC) evaluates clinical evidence to inform the Oregon Health Authority's benefit determination processes for its health plans. Amendments to the Oregon Administrative Rules (OAR) will incorporate provisions approved in House Bill 4040 during the 2026 legislative session. HB 4040 modifies the public comment procedures and deadlines for the Value-based Subcommittee (VbBS) as detailed in ORS 414-690, Section 6, and adds designated topics to the ongoing agenda. Additionally, the rule amendments will standardize the process for all HERC public meetings and will revise references from subcommittee names to the term "subcommittees," limiting future rule modifications solely to corrections of subcommittee nomenclature. The division title is modified from Value-Based Benefits Subcommittee to PUBLIC NOTICES AND MEETING MATERIALS RELATED TO THE HEALTH EVIDENCE REVIEW COMMISSION, AND PRIORITIZED LIST to provide clarity and align with the rule modifications.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

https://www.oregonlegislature.gov/bills_laws/ors/ors414.html
https://olis.oregonlegislature.gov/liz/2026R1/Downloads/MeasureDocument/HB4040/Enrolled
https://apps.oregonlegislature.gov/liz/2026R1/Downloads/MeasureAnalysisDocument/95482
https://www.oregon.gov/ogec/public-meetings-law/pages/default.aspx
https://secure.sos.state.or.us/oard/displayDivisionRules.action?selectedDivision=1681

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

The Health Evidence Review Commission is committed to promoting fairness and equal opportunity for all people. This means recognizing and addressing policies or practices that create unequal outcomes, increasing access to resources for communities that have historically faced barriers, and ensuring that decisions are made openly and inclusively. Our goal is to create systems where everyone can participate, be heard, and benefit equally, regardless of their racial background. This rule change supports equity by giving more time for communities—and especially those historically excluded from policymaking—to review final materials and agendas, prepare comments, and participate meaningfully in meetings.

FISCAL AND ECONOMIC IMPACT:

The Authority does not anticipate there will be a fiscal impact from these rule changes.

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).

None.

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

None.

WAS AN ADMINISTRATIVE RULE ADVISORY COMMITTEE CONSULTED? YES

RULES PROPOSED:
409-062-0100, 409-062-0110, 409-062-0120

AMEND: 409-062-0100

RULE SUMMARY: The rule amendment updates the wording to allow for advance public comment prior to HERC or its subcommittees taking action. This process ensures community input contributes to informed and equitable coverage decisions.

CHANGES TO RULE:

409-062-0100
Purpose
These rules establish a public notice for advance meeting materials regarding changes to the Prioritized List of Health Services (ORS 414.690) and for recommendations related to Oregon Health Plan (OHP) benefit changes, which must be posted for an advance comment period~~,~~ before being considered by the ~~Value-based Benefits Subcommittee (VbBS) of the~~ Health Evidence Review Commission (HERC) or one of its subcommittees. Public comments ~~help HERC learn~~inform HERC about community needs and perspectives to inform its deliberations about coverage recommendations and prioritization of health services. An accessible public comment policy supports HERC's goals to eliminate health inequities and ensure that covered services are appropriate for the populations affected by its decisions and recommendations.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 414.688

AMEND: 409-062-0110

RULE SUMMARY: The rule amendment introduces definitions to enhance clarity. The rule title is modified from VbBS Meeting Material Requirements changing to Definitions to align with the rule modifications.

CHANGES TO RULE:

409-062-0110
~~VbBS Meeting Material Requirement~~Definitions
(1) "Advance meeting materials" include draft materials developed by Health Evidence Review Commission (HERC) staff in preparation for a scheduled ~~Value-based Benef~~meeting of HERC or one of its ~~S~~subcommittee~~(VbBS) meeting~~s. These materials include recommendations for changes to the Prioritized List. Each item includes, but is not limited to, an issue summary document which may include staff description of the issue, staff analysis, research, draft recommendations, and~~/or~~ supporting literature.~~.~~¶
(2) "Advance comment period" means a period, lasting no fewer than 14~~-~~ calendar~~-~~ day~~ period of time~~s, for members of the public to review advance meeting materials and to allow time to provide written feedback.¶
(3) "Final meeting materials" include materials that will be presented to ~~the VbBS~~HERC or one of its subcommittee~~member~~s at ~~the~~a public meeting.~~.~~¶
(4) "Exempt topics~~.~~" The following topics are exempt from this advance meeting material notice and comment process:¶
(a) Topics for which there is no recommendation to change the Prioritized List or bylaws.¶
(b) Recommendations related to:¶
(A) Topics placed on a consent agenda related to topics that do not require discussion.¶
(B) Placement or disposition of new medical codes issued by federal authorities fewer than 60 calendar days prior to the meeting.¶
(C) A public health emergency as declared by the state's Public Health Director or to align with state or federal law.¶
(D) An emergency use authorization by the ~~United States~~ Food and Drug Administration (FDA).¶
(E) Coverage change recommendations that require immediate attention as determined by the HERC Director~~in~~, or de~~r~~signee, to ensure timely access to health care services.¶
(c) Topics for which advance meeting materials were previously posted but for which related recommendations were ~~considered but not approved by VbBS~~not referred to HERC, either as recommended by staff or in revised form.¶
(d) Topics for which advance meeting materials were previously posted and ~~approved by VbBS and which HERC discussed but~~recommended by one of HERC's subcommittees which HERC did not approve, either as recommended by ~~VbBS~~the subcommittee or in revised form.¶
(e) A coverage guidance, evidence-based report, evidence-based guideline or medical technology assessment as defined in OAR 409-060-0110 which has previously been posted for a 30-day comment period prior to approval by a HERC subcommittee.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 414.688

AMEND: 409-062-0120

RULE SUMMARY: Modifies the public comment procedures and deadlines for HERC and its subcommittees as detailed in ORS 414-690, Section 6, and adds designated topics to the ongoing agenda. Additionally, the rule amendments will standardize the process for all HERC public meetings and will revise references from subcommittee names to the term "subcommittees," limiting future rule modifications solely to corrections of subcommittee nomenclature.

CHANGES TO RULE:

409-062-0120
Notice and Comment Process
(1) Prior to each ~~Value-based Benefits Subcommittee (VbBS) meeting, Health Evidence Review Commission (HERC) staff must develop advance meeting materials, comprised of materials and draft recommendations related to all topics planned for discussion, excluding exempt topics.¶~~
~~(2) HERC~~Health Evidence Review Commission (HERC) or one of its subcommittee meetings, staff must post on its website a list of topics ~~planned for VbBS discussion as well as~~to be discussed along with advance meeting materials for a public comment period ~~on the HERC website and~~, except for exempt topics.¶
(2) Staff shall provide notice of the posting by electronic means, ~~(~~including by but not limited to HERC's listserv~~)~~.¶
(~~a~~3) The requirements of this section do not apply for meetings where no changes to the Prioritized List are recommended and where the only agenda topics are coverage guidance, evidence-based guidelines, evidence-based reports or medical technology assessments as defined in ORS 409-060-0110. ¶
(4) The list of topics planned for ~~VbBS~~ discussion may include exempt topics for which meeting materials are prepared.¶
(~~b~~5) ~~HERC s~~Staff must post advance meeting materials by close of business 42 calendar days in advance of a public meeting of ~~the VbBS~~HERC or a subcommittee, unless there is an unexpected state office closure due to weather events, infrastructure ~~technology~~failures, or other emergency ~~situation, in which case~~conditions. In such cases, advance meeting materials ~~must~~shall be posted ~~no later than 38 days in advance of a public VbBS meeting~~as soon as possible once access to necessary technology and infrastructure is restored.¶
(~~c~~a) The advance comment period for each publication of advance meeting materials must be specified on the first page and must end no sooner than 8:00 a.m., Pacific time, 15 calendar days after the posting of advance meeting materials.¶
(~~3~~b) ~~After publication of advance meeting materials, the HERC staff may revise these draft~~Within two business days after the end of the comment period, staff must post a copy of all comments received to the HERC website, unless more than 50 comments are received, in which case staff shall post the comments on the HERC website prior to the meeting. Posted comments will be limited to 1,000 words (not including references) and may be redacted if they include personal health information, or if they include abusive, threatening, harassing, or obscene content as determined by the HERC Director, or designee. Articles or attachments received with public comments will be reviewed by staff but will not be posted to the website.¶
(6) After publication of advance meeting materials, staff may revise materials based on comments received and other new information they encounter. Staff may also include additional information~~, research or supporting information.¶~~
~~(4) HERC~~ in the meeting materials.¶
(7) For the final meeting materials, staff must create an advance public comment table for each topic that received written comment.¶
(a) The advance public comment table may include but is not limited to:¶
(A) The name of the commenter, unless redacted because of personal health information, and any professional credentials provided.¶
(B) The date the comment was received.¶
(C) Any conflicts of interest or affiliations provided by the commenter.¶
(D) The ~~written~~public comment verbatim, up to the first 1,000 words. ~~Comments may~~Public comments submitted will be redacted if they include personal health information, ~~of another person or excluded if they include hostile, obscene, or other inappropriat~~r if they include abusive, threatening, harassing, or obscene content as determined by the HERC Director, or designee.¶
(E) Any citations included with the public comment.¶
(F) For each comment, ~~HERC~~ staff may provide any additional context that may be pertinent for ~~VbBS~~ decision-making by the HERC or one of its subcommittees, including responding to any substantive or technical information provided in the comment.¶
(b) If more than ~~10~~five comments are received for any given topic, ~~HERC~~instead of responding to each comment

individually, staff may instead summarize major themes ~~derived~~ from the submitted comments and include additional evidence, policy context, rationale for ~~its~~ recommendations or other information as necessary to support ~~the Commission~~HERC in informed decision-making. ~~This summary table is included in addition to the public comment table that contains written comments verbatim.¶~~
~~(c) For each comment received, HERC s~~¶
(c) Staff must acknowledge receipt of ~~the written~~each advance public comment to each individual submitting written comment.¶
(~~5) HERC staff must post~~ 8) Staff must post the agenda for HERC or one of its subcommittee meetings, staff recommendations, and all other final meeting materials on the HERC website and provide notice by electronic means (including but not limited to HERC's listserv).~~.~~¶
(a) Final meeting materials must include any ~~meeting materials related to~~ non-exempt topics planned for discussion.¶
(b) Final meeting materials must be published ~~by close of business seven days in advance of a VbBS~~at least 14 calendar days prior to a subcommittee meeting, unless ~~there is~~ an unexpected state office closure occurs due to weather events, infrastructure ~~technology~~failures, or other emergency ~~situation, in which case materials must be posted no later than 4 days in advance of a public VbBS meeting~~conditions. In such cases, meeting materials shall be posted as soon as possible once access to necessary technology and infrastructure is restored.¶
(c) Supplemental meeting materials may be posted after the final meeting materials and may include revised recommendations based on new information received by staff after the materials are finalized for posting.¶
(d) The agenda may not be modified except under the following circumstances:¶
(A) To change the planned discussion times for topics due to the need to accommodate public testimony or schedules of meeting participants, including staff, invited experts, and subcommittee or HERC members.¶
(B) To add an additional topic which is an exempt topic as specified in OAR 409-062-0110.¶
(C) To correct a clerical error or omission.¶
(D) To update the meeting location or to add or update the meeting link to join the meeting online.¶
(E) To remove a topic from an agenda.
Statutory/Other Authority: ORS 413.042
Statutes/Other Implemented: ORS 414.688