

1-13-06

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form.

I certify that the attached copies* are true, full and correct copies of the TEMPORARY Rule(s) adopted on 1/13/2006 by the
Date prior to or same as filing date

DHS, Seniors and People with Disabilities 411
Agency and Division Administrative Rules Chapter Number

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Rules Coordinator Address Telephone

to become effective 1/13/2006 through 6/1/2006
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

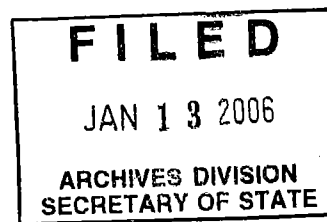
Amended to clarify excluded living arrangements
Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION
List each rule number separately, 000-000-0000.

ADOPT:

AMEND: 411-030-0040

SUSPEND:



ORS 410.070
Stat. Auth. Other Authority

ORS 410.070
Stats. Implemented

RULE SUMMARY

In OAR 411-030-0040 a reference to an eligible living arrangement as described in OAR 411-030-0040 was amended. Additional language was added to clarify that residents of prisons, hospitals, and institutions are not eligible for in-home support services.

Catherine A Cooper
Authorized Signer

Catherine A Cooper
Printed name

1/13/06
Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

SPD 1-2006 (Temp)

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

DHS, Seniors and People with Disabilities
Agency and Division

411
Administrative Rules Chapter Number

In the Matter of: OAR 411-030-0040

Rule Caption: *Amended to clarify excluded living arrangements. LR*

Statutory Authority: ORS 410.070

Other Authority:

Stats. Implemented: ORS 410.070

Need for the Temporary Rule(s):

OAR 411-030-0040 is being changed to clarify that a client whose needs are met through their natural support system will not be eligible for in-home services. This rule change is needed to help local SPD/AA offices to make cost-effective decisions in authorizing services to clients. It will also assist in clarifying that natural supports is both an eligibility factor as well as a service planning issue for administrative law judges who conduct contested case hearings.

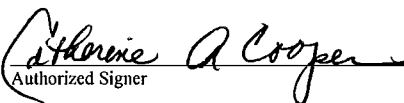
In OAR 411-030-0040 a reference to OAR 411-030-0033 was changed to clarify eligible living arrangements for in-home supports. This clarification is needed to support the intent that in-home services are provided to enable an individual to remain in their own home. Changes were needed to clarify excluded living arrangements so that residents of prisons, hospitals and institutions providing ADL services are not determined eligible in error and in violation of our waiver.

Documents Relied Upon, and where they are available:

- OAR 411, division 031 http://arcweb.sos.state.or.us/rules/OARS_400/OAR_411/411_031.html and OAR 411, division 015 http://arcweb.sos.state.or.us/rules/OARS_400/OAR_411/411_015.html
- The Home Care Commission's 2005-2007 collective bargaining agreement with SEIU Local 503, OPEU (representing Homecare Workers). <http://www.seiu503.org/docUploads/2005-2007%20State%20Homecare%20Contract.pdf>
- Oregon's 1915 (c) Home and Community Based Services Waiver for seniors and persons with physical disabilities
- OAR 461-155-0660 http://arcweb.sos.state.or.us/rules/OARS_400/OAR_461/461_155.html
- Various final orders issued by the Office of Administrative Hearings (which cannot be inspected by the public because they contain confidential client information).
- Code of Federal Regulations Title 42, Volume 3, Part 441 (42CFR441) <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>

Justification of Temporary Rule(s):

Failure to change OAR 411-030-0040(2) would result in an invalid rule because the rule if not amended would conflict with the changes to eligible living arrangements described in OAR 411-030-0033. Failure to clarify OAR 411-030-0040(3) and (5) could result in non-compliance with SPD's federal nursing facility waiver if residents of excluded living arrangements were determined eligible for in-home support services.


Authorized Signer

Catherine A Cooper 1/13/06
Printed name Date

DEPARTMENT OF HUMAN SERVICES
Seniors and People with Disabilities

Oregon Administrative Rules
Chapter 411, Division 030

IN-HOME SUPPORT SERVICES

411-030-0040

Eligibility Criteria

(1) In-home support services may be provided to those individuals who meet the established priorities for service as described in OAR chapter 411, division 015 and have been assessed to be in need of a service provided in OAR chapter 411, division 030. Payments for in-home support services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the individual. An individual whose care needs are met by their natural supports will not be eligible for in-home support services. Service plans will be based upon the least costly means of providing adequate care.

(2) Clients served under the Home and Community Based Services waived In-Home Services Program must meet the established priorities for service as described in OAR chapter 411, division 015 and be included in one of the following groups:

(a) Current recipients of OSIPM who reside in a living arrangement in which in-home services may be provided, as described in OAR 411-030-0033 and who are eighteen years of age or older;

(b) Eligible adults, eighteen and older, receiving TANF with MAA, MAF or Extended Medical benefits only when service is necessary to prevent nursing facility placement.

(3) To be eligible for the Home and Community-Based Services waived In-Home Services Program, a client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency to provide those services authorized and paid by the Department.

(a) If, for any reason, the employment relationship between the client and provider is discontinued, an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within thirty calendar days for the client to remain eligible for the program.

(b) Following discharge from a temporary stay in any facility or medical institution, the client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency within thirty calendar days.

(4) Separate eligibility for in-home support services exists for persons eligible for:

(a) Oregon Project Independence as defined in OAR chapter 411, division 032;

(b) Independent Choices as defined in OAR chapter 411, division 036; or

(c) Spousal Pay Program as defined in OAR 411-030-0080.

(5) Residents of licensed community-based care facilities, nursing facilities, prisons, hospitals and other institutions that provide activities of daily living are not eligible for in-home support services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070