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I certify that the attached copies are true, full and correct copies of the PERMANENT Rule(s) adopted on Upon filing, by the

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities	411
Agency and Division Kimberly Colkitt-Hallman	Administrative Rules Chapter Number (503) 945-6398
Rules Coordinator 500 Summer St. NE, E48, Salem, OR 97301	Telephone
Address	

To become effective 12/28/2016 Rulemaking Notice was published in the November 2016 Oregon Bulletin.

RULE CAPTION

In-Home Services

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

411-030-0033, 411-030-0068, 411-030-0070

REPEAL:

RENUMBER:

AMEND AND RENUMBER:

Statutory Authority:

ORS 410.070

Other Authority:

Statutes Implemented:

ORS 410.070

RULE SUMMARY

The Department of Human Services (Department) is permanently updating OAR 411-030 to make permanent temporary changes that became effective July 1, 2016 to:

- Limit live-in services to individuals currently receiving the service.
- Add qualifications to receive a differential rate for homecare workers.
- Modify the amount of hours a homecare worker may work in the in-home hourly service program.
- Update rule to clarify in-home service settings in which an individual may reside.
- Remove rules regarding exceptions for live-in services.
- Fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.

Kimberly Colkitt-Hallman

kimberly.colkitt-hallman@state.or.us

Rules Coordinator Name

Email Address

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PERMANENT ADMINISTRATIVE RULES

Department of Human Services, Aging and People with
Disabilities and Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

Kimberly Colkitt-Hallman

kimberly.colkitt-hallman@state.or

Rules Coordinator

Email Address

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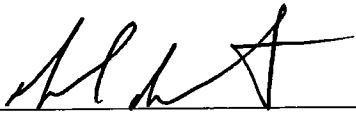
Stats. Implemented: ORS 410.070

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Michael DeLormick

12/19/16

Authorized Signer

Printed Name

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.

**DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
CHAPTER 411, DIVISION 30, IN-HOME SERVICES**

411-030-0033

In-Home Service Living Arrangements

(1) The following terms are used in this rule:

- (a) "Informal arrangement" means a paid or unpaid arrangement for shelter or utility costs that does not include the elements of a property manager's rental agreement.
 - (b) "Property manager's rental agreement" means a payment arrangement for shelter or utility costs with a property owner, property manager, or landlord that includes all of the following elements:
 - (A) The name and contact information for the property manager, landlord, or leaser.
 - (B) The period or term of the agreement and method for terminating the agreement.
 - (C) The number of tenants or occupants.
 - (D) The rental fee and any other charges (such as security deposits).
 - (E) The frequency of payments (such as monthly).
 - (F) What costs are covered by the amount of rent charged (such as shelter, utilities, or other expenses).
 - (G) The duties and responsibilities of the property manager and the tenant, such as:
 - (i) The person responsible for maintenance;
 - (ii) If the property is furnished or unfurnished; and
 - (iii) Advance notice requirements prior to an increase in rent.
 - (c) "Provider-owned dwelling" means a dwelling that is owned by a provider or the provider's spouse, when the provider is proposing to be paid for providing Medicaid home and community-based services, and the provider or the provider's spouse is not related to an individual by blood, marriage, or adoption. Provider-owned dwellings include, but are not limited to:
 - (A) Houses, apartments, and condominiums.
 - (B) A portion of a house such as basement or a garage even when remodeled to be used as a separate dwelling.
 - (C) Trailers and mobile homes.
 - (D) Duplexes, unless the structure displays a separate address from the other residential unit and was originally built as a duplex.
 - (d) "Provider-rented dwelling" means a dwelling that is rented or leased by a provider or the provider's spouse, when the provider is proposing to be paid for providing Medicaid home and community-based services, and the provider or the provider's spouse is not related to an individual by blood, marriage, or adoption.
- (2) An individual is eligible for Medicaid in-home services if the individual resides in a:
- (a) Dwelling the individual owns or rents;
 - (b) Provider-owned dwelling and the individual's name is on the property deed, mortgage, or title;
 - (c) Provider-rented dwelling and the individual's name is on the property manager's rental agreement;
 - (d) Dwelling, either through an informal arrangement or property manager's rental agreement, owned or rented by a relative as defined in OAR 411-030-0020.
- (3) An individual is not eligible for Medicaid in-home services if the individual resides in a provider-owned or rented dwelling through an informal or formal arrangement. A provider-owned or rented dwelling may meet the requirements for a limited adult foster home as described in OAR 411-050-0605.

Stat. Auth.: ORS 409.050, 410.070, 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070

411-030-0068

Live-in Services and Shift Services

- (1) As of July 1, 2016, no individual may be approved to receive live-in services who did not receive live-in services on June 30, 2016.
- (2) An individual is only eligible for live-in services or shift services if the assessment determines the individual meets the criteria described in section (3) of this rule.
- (3) Individuals with service plans that meet the definition of live-in services or shift services must meet subsections (a) and either (b) or (c) of this section of the rule.
 - (a) The provision of assistance with at least one ADL or IADL task must be required sometime during each hour the individual is awake in order to ensure the safety and well-being of the individual.

- (b) The individual is assessed as full assist in mobility or elimination as defined in OAR 411-015-0006, and has at least one of the following conditions:
- (A) A debilitating medical condition that includes, but is not limited to, any of the following symptoms:
- (i) Cachexia;
 - (ii) Severe neuropathy;
 - (iii) Coma;
 - (iv) Persistent or reoccurring stage 3 or 4 wounds;
 - (v) Late stage cancer;
 - (vi) Frequent and unpredictable seizures; or
 - (vii) Debilitating muscle spasms.
- (B) A spinal cord injury or similar disability with permanent impairment.
- (C) An acute care or hospice need that is expected to last no more than six months.
- (c) The individual is assessed as full assist in cognition as defined in OAR 411-015-0006 and meets all of the following criteria:
- (A) A diagnosis of traumatic brain injury, dementia or a related disorder, or a debilitating mental health disorder that meets the criteria described in OAR 411-015-0015(2); and
- (B) Has one of the following assessed needs as defined in OAR 411-015-0006:
- (i) Full assist in danger to self or others.
 - (ii) Full assist in wandering.
 - (iii) Full assist in awareness.
 - (iv) Full assist in judgment.
- (4) The following limitations apply:
- (a) A homecare worker providing live-in services must be available to address the service needs of an eligible individual as they arise throughout an entire 24-hour period. A homecare worker is not providing live-in services if the homecare worker is outside the individual's home or building during the homecare worker's on-duty hours and the homecare worker engages in activities that are unrelated to the provision of the individual's ADL or IADL services and supports. A homecare worker is not providing live-in services if they are offsite and are not performing direct ADL or IADL services.
- (b) Hourly services by another homecare worker or contracted in-home agency may be authorized in addition to live-in services for any task that requires more than one homecare worker to simultaneously perform the task, or to allow a live-in homecare worker to sleep for at least five continuous hours during a 24-hour work period.
- (c) A homecare worker who is providing live-in services for an individual may not also provide hourly services for the same individual.
- (5) Individuals who received live-in services on June 30, 2016 may continue receiving live-in services until one of the following occurs:
- (a) The individual moves from an in-home setting that does not meet the requirements of OAR 411-030-0033 for more than 30 days and later moves to an in-home setting that meets the requirements of OAR 411-030-0033.
 - (b) The individual ends his or her live-in services for more than 30 days.
 - (c) An assessment determines the individual does not meet the criteria described in section (3) of this rule unless an exception was previously granted.
 - (d) Exceptions previously granted for live-in services must end when the primary homecare worker or the primary provider under the Independent Choices Program providing live-in services at the time the exception was granted is no longer employed by the individual.
- (6) Effective November 1, 2016, an exception to section (3) of this rule may no longer be granted.
- (7) An individual may employ homecare workers with a differential rate in accordance with the terms of the ratified collective bargaining agreement described in OAR 411-031-0020, if the following applies:
- (a) The individual is diagnosed with quadriplegia or a condition that is substantially similar;
 - (b) The individual is dependent on a ventilator;
 - (c) The individual is eligible for and receives shift services;
 - (d) The individual requires 24-hour awake care, of which, at least 16 hours must be paid shift care; and
 - (e) The plan is approved by the Department.
- Stat. Auth.: ORS 409.050, 410.070, 410.090
 Stats. Implemented: ORS 410.010, 410.020, 410.070

411-030-0070

Maximum Hours of Service

(1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.

(a) "Minimal Assistance" means an individual is able to perform the majority of an activity but requires some assistance from another person.

(b) "Substantial Assistance" means an individual is able to perform only a small portion of the tasks that comprise an activity without assistance from another person.

(c) "Full Assistance" means an individual needs assistance from another person through all phases of an activity every time the activity is attempted.

(2) MAXIMUM MONTHLY HOURS FOR ADL.

(a) The planning process uses the following limitations for time allotments for ADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Eating:

(i) Minimal assistance, 5 hours;

(ii) Substantial assistance, 20 hours;

(iii) Full assistance, 30 hours.

(B) Dressing and Grooming:

(i) Minimal assistance, 5 hours;

(ii) Substantial assistance, 15 hours;

(iii) Full assistance, 20 hours.

(C) Bathing and Personal Hygiene:

(i) Minimal assistance, 10 hours;

(ii) Substantial assistance, 15 hours;

(iii) Full assistance, 25 hours.

(D) Mobility:

(i) Minimal assistance, 10 hours;

(ii) Substantial assistance, 15 hours;

(iii) Full assistance, 25 hours.

(E) Elimination (Toileting, Bowel, and Bladder):

(i) Minimal assistance, 10 hours;

(ii) Substantial assistance, 20 hours;

(iii) Full assistance, 25 hours.

(F) Cognition and Behaviors:

(i) Minimal assistance, 5 hours;

(ii) Substantial assistance, 10 hours;

(iii) Full assistance, 20 hours.

(b) Service plan hours for ADL may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. In accordance with section (3)(c) of this rule, authorization of IADL hours is limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

(3) MAXIMUM MONTHLY HOURS FOR IADL.

(a) The planning process uses the following limitations for time allotments for IADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Medication and Oxygen Management:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 4 hours;

(iii) Full assistance, 6 hours.

(B) Transportation or Escort Assistance:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 3 hours;

(iii) Full assistance, 5 hours.

(C) Meal Preparation:

(i) Minimal assistance:

(I) Breakfast, 4 hours;

(II) Lunch, 4 hours;

(III) Supper, 8 hours.

(ii) Substantial assistance:

(I) Breakfast, 8 hours;

(II) Lunch, 8 hours;

(III) Supper, 16 hours.

(iii) Full assistance:

(I) Breakfast, 12 hours;

(II) Lunch, 12 hours;

(III) Supper, 24 hours.

(D) Shopping:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 4 hours;

(iii) Full assistance, 6 hours.

(E) Housecleaning:

(i) Minimal assistance, 5 hours.

(ii) Substantial assistance, 10 hours.

(iii) Full assistance, 20 hours.

(b) Hours authorized for IADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for IADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

(c) When two or more individuals eligible for IADL task hours live in the same household, the assessed IADL need of each individual must be calculated. Payment is made for the highest of the allotments and a total of four additional IADL hours per month for each additional individual to allow for the specific IADL needs of the other individuals.

(d) Service plan hours for IADL tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that IADL task as determined by a service assessment applying the parameters in OAR 411-015-0007.

(4) PAYMENT FOR LIVE-IN SERVICES.

(a) Payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068.

(b) Effective January 1, 2016, payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068.

Individuals that meet these criteria will be authorized to receive at least 16 hours per day (496 hours per month).

Additional hours may be authorized by the Department to meet the needs of the individual during the hours of the homecare worker's scheduled sleep period if the homecare worker's scheduled sleep period is routinely disrupted.

(c) Rates for live-in services are paid in accordance with the rate schedule.

(d) When a live-in homecare worker is employed less than seven days per week, the total service hours must be prorated.

(5) When one or more eligible individuals in the same household is eligible for and receiving in-home services, the amount of hours authorized is subject to the following maximums:

(a) If any eligible individual in a specific household is receiving live-in services, the combined authorized hours for all eligible individuals in the same household may not exceed 19 hours within any 24-hour period or 589 hours per month.

(b) Hourly and shift service plans may not exceed 24 hours within any 24-hour period or 744 hours per month in the same household.

(6) For the creation of a new service plan (resulting from an assessment) beginning September 1, 2016, and for all service plans beginning July 1, 2017, subsection (a) and either subsection (b) or (c) of this rule will apply to a homecare worker:

(a) Hourly or shift services provided are limited to 16 hours of awake care during a 24-hour work period.

(b) Hourly services provided are limited to 220 hours per month, and may not exceed 50 hours per workweek if the homecare worker's average paid workweek hours in the months of March, April, and May 2016 equals or exceeds 40

hours per workweek. Under this subsection, homecare workers that provide live-in and hourly services within the same workweek may not exceed 50 hours per workweek.

(c) Hourly services provided are limited to 176 hours per month, and may not exceed 40 hours per workweek if the homecare worker's average paid workweek hours in the months of March, April, and May 2016 is less than 40 hours per workweek or if the homecare worker became an enrolled provider after May 2016. Under this subsection, homecare workers that provide live-in and hourly services within the same workweek may not exceed 40 hours per workweek.

(7) A provider may not receive payment from the Department for more than the total amount authorized by the Department on the service plan authorization form under any circumstances. All service payments must be prior-authorized by a case manager.

(8) Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) that may reduce the need for paid assistance.

(9) The Department may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within an individual's natural supports system.

(10) Payment by the Department for Medicaid home and community-based services are only made for the tasks described in this rule as ADL, IADL tasks, and live-in services. Services must be authorized to meet the needs of an eligible individual and may not be provided to benefit an entire household.

(11) EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for ADL may exceed the full assistance hours (described in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by the Department when the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050 is met.

(c) As long as the total number of IADL task hours in the service plan does not exceed 85 hours per month and the service need is documented, the hours authorized for IADL tasks may exceed the hours for full assistance (as described in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that jeopardize the health of an individual; or

(C) Extraordinary IADL needs in medication management or service-related transportation.

(d) Monthly service plans that exceed 85 hours per month in IADL tasks may be approved by the Department when an individual meets the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050.

(e) One or more individuals in the same household may exceed the maximums in section (5) of this rule in the following circumstances:

(A) The service plan authorizes payment that requires the assistance of more than one homecare worker to simultaneously perform a specific task.

(B) The service plan authorizes an additional hourly provider when the individual requires care throughout a 24 hour period and the live-in homecare worker is not able to receive five continuous hours of sleep.

(C) The ADLs of two or more individuals in the same household require a homecare worker for each individual at the same time.

(f) A homecare worker may be authorized to provide services totaling more than the hours established by section (6) of this rule if they are prior authorized by the Department. In emergency situations, when the Department is not available, a homecare worker may work critical hours, but must notify the Department within two business days.

(g) A homecare worker may be authorized by the Department to work more than 16 hours of hourly services during a 24-hour work period if an unanticipated need arises that requires the homecare worker to remain awake in order to provide the necessary care.

Stat. Auth.: ORS 409.050, 410.070, 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070