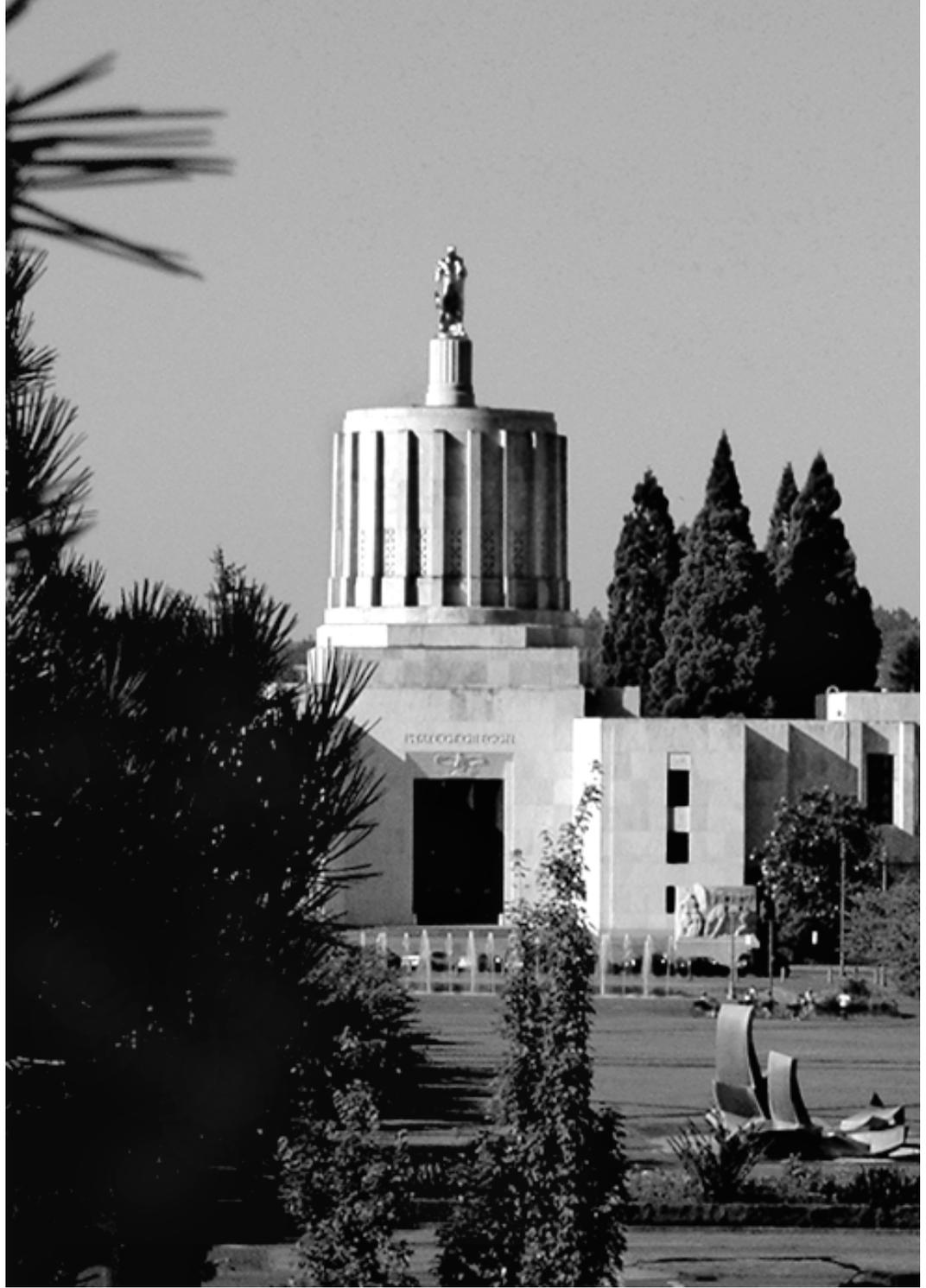


SECTION FIVE
OREGON ADMINISTRATIVE RULE and
OREGON REVISED STATUTES



SECTION FIVE

OREGON REVISED STATUTE 410.070

Duties of Department of Human Services; elderly and disabled persons

- (1) The Department of Human Services shall:
 - (a) Serve as the central state agency with primary responsibility for the planning, coordination, development and evaluation of policy, programs and services for elderly persons and disabled persons in Oregon.
 - (b) Function as the designated state unit on aging, as defined in the Older Americans Act of 1965.
 - (c) With the advice of the Governor's Commission on Senior Services and the Oregon Disabilities Commission, develop long-range state plans for programs, services and activities for elderly persons and disabled persons. State plans should be revised biennially and should be based on area agency plans, statewide priorities and state and federal requirements.
 - (d) Have the authority to transfer state and federal funds, except Title III of the Older Americans Act funds, from one area agency to another area agency or from one program or service to another program or service after consultation with the area agencies involved in the transfer. However, no area agency shall suffer a reduction in state or federal funds due to increased local funds.
 - (e) Receive and disburse all federal and state funds allocated to the department and solicit, accept and administer grants, including federal grants or gifts made to the department or to the state and enter into contracts with private entities for the purpose of providing or contracting for case management services for long term care insurance for the benefit of elderly persons and disabled persons in this state.
 - (f) Provide technical, training and program assistance to area agencies

and assist them to provide such assistance to public and private agencies and organizations.

- (g) Assist area agencies to stimulate more effective use of existing resources and services for elderly persons and develop programs, opportunities and services which are not otherwise provided for elderly persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to elderly persons.
- (h) Assist local department offices and area agencies which have assumed responsibility for disabled services to stimulate more effective use of existing resources and to develop programs, opportunities and services which are not otherwise provided for disabled persons, with the aim of developing a comprehensive and coordinated system for the delivery of social services to disabled persons.
- (i) Serve within government and in the state at large as an advocate for elderly persons and disabled persons by holding hearings and conducting studies or investigations concerning matters affecting the health, safety and welfare of elderly persons and disabled persons and by assisting elderly persons and disabled persons to assure their rights to apply for and receive services and to be given fair hearings when such services are denied.
- (j) Process fiscal and client data for all area agencies.
- (k) Conduct regulatory functions with regard to program operation, by adopting rules for providing social services, including protective services, to elderly persons and disabled persons who need services that the department or area agencies are authorized to provide and rules for standard rate setting and quality assurance.
- (l) Provide information and technical assistance to the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the Medicaid Long Term Care Quality and Reimbursement Advisory Council and keep the commissions and the council continually informed of the activities of the department.
- (m) Make recommendations for legislative action to the Governor and to

the Legislative Assembly, after consultation with the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the Medicaid Long Term Care Quality and Reimbursement Advisory Council.

- (n) Conduct research and other appropriate activities to determine the needs of elderly persons and disabled persons in this state, including, but not limited to, their needs for social and health services, and to determine what existing services and facilities, private and public, are available to elderly persons and disabled persons to meet those needs.
 - (o) Maintain a clearinghouse for information related to the needs and interests of elderly persons and disabled persons.
 - (p) Provide area agencies with assistance in applying for federal, state and private grants and identifying new funding sources.
- (2) In addition to the requirements of subsection (1) of this section, the department shall:
- (a) Determine type A and type B area agencies annual budget levels for Oregon Project Independence and Title III of the Older Americans Act expenditures.
 - (b) For type B area agencies:
 - (A) Determine annual budget levels for planning Title XIX reimbursed services. In determining the budget levels, the department shall retain contingency reserves against overruns and transfers in use of Title XIX funds.
 - (B) Provide timely management information so the area agencies and the department's disability services units can manage Title XIX reimbursements within budgeted levels.
 - (C) Determine annual budget levels for planning and administering programs relating to social, health, independent living and protective services for disabled persons for the department's disability services units and type B area agencies which have assumed local responsibility for the programs and clients transferred under section 2 (2), chapter

787, Oregon Laws 1989.

(c) Make payments for services within a central processing system for:

(A) A type A area agency, at the request of the agency, for Oregon Project Independence or Title III of the Older Americans Act expenditures, or both.

(B) A type B area agency, for Title XIX and Oregon Project Independence expenditures, and at the request of the agency, for Title III of the Older Americans Act expenditures.

(d) Assume program responsibility for Title XIX programs in areas served by type A area agencies and in areas where no area agency is designated.

(e) Assume planning and program responsibilities for disabled persons in areas served by type A area agencies, in areas served by type B agencies that serve only elderly persons and in areas where no area agency exists.

(3) When developing programs affecting elderly persons, the department shall consult with the Governor's Commission on Senior Services.

(4) When developing programs affecting disabled persons, the department shall consult with the Oregon Disabilities Commission.

[1981 c.784 §3; 1989 c.224 §75; 1989 c.787 §1; 1991 c.122 §12; 1993 c.116 §4; 1995 c.667 §4; 2001 c.900 §77]

OREGON ADMINISTRATIVE RULE 411-002-0100

Designation Of Planning And Service Areas

(Effective 11/01/1999)

- (1) "Area Agency on Aging" means the designated entity with which the Division contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to the elderly or elderly and disabled population for a designated Planning and Service Area.
- (2) "Division" means the Seniors and People with Disabilities Division of the Department of Human Services.
- (3) "Planning and Service Area" means the geographical area, consisting of one or more counties, for which one Area Agency on Aging is designated by the Division to plan for and provide services under the Older Americans Act and Oregon Revised Statute (ORS) Chapter 410.
- (4) (a) "Type A Area Agency on Aging" means a designated entity that administers the Older Americans Act and Oregon Project Independence programs for a Planning and Service Area. A Type A Area Agency on Aging may be:
 - (A) An office or agency of a unit of general purpose local government which is selected by the chief elected official of the unit to serve as an Area Agency on Aging; or
 - (B) Any office or agency designated by the appropriate chief elected officials of any combination of units of general or general and special purpose local government formed in accordance with ORS Chapter 190; or
 - (C) A private non-profit organization.
- (b) In Planning and Service Areas served by a Type A Area Agency on Aging, Medicaid, financial and adult protective services, and regulatory programs for the elderly and disabled are administered by a Multi-Service Office of the Division.
- (5) "Type B Area Agency on Aging" means a designated entity that meets the definition of an area agency on aging, and is administered by a unit or combination of units of general purpose local government, and administers the Medicaid, financial and adult protective services, and regulatory programs for elderly or the elderly and disabled.
 - (a) Type B Area Agency on Aging may contract with the Division for services of state employees; or

- (b) Type B Area Agency on Aging may have such employees transferred to employment by the Area Agency by transfer agreement.
- (6) Type B1 Area Agency on Aging" means a designated entity that meets the definition of a Type B area agency on aging, and administers the Medicaid, financial and adult protective services, and regulatory programs for the elderly. In a Planning and Service Area served by a Type B1 Area Agency on Aging, the Medicaid and financial assistance program for the Disabled is administered by a Disability Service Office of the Division.
- (7) "Type B2 Area Agency on Aging" means a designated entity that meets the definition of a Type B1 area agency on aging and administers the Medicaid, financial, adult protective services and regulatory programs for the elderly and disabled.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0105

Basis for Planning and Service Area Designation

(Effective 11/01/1999)

- (1) Boundaries for Planning and Service Areas will be designated by the Division Administrator and indicated in the current State Plan on Aging.
- (2) Designation of additional Planning and Service Areas shall be in compliance with the Older Americans Act, appropriate federal regulations, and Division administrative rules.
- (3) The official decision-making body for any unit of general-purpose local government, a region recognized for area-wide planning, metropolitan area or Indian reservation may make application to the Division to be designated as a Planning and Service Area. The Division will notify the applicant of its approval or disapproval within 60 days of either the date the application is received by the Division, or any closing date for applications, whichever is later.
- (4) An Indian reservation must have at least 250 residents age 60 or over to be designated as a Planning and Service Area. Services on Indian reservations so designated shall be available to all persons 60 years of age or older who reside on the reservation.
- (5) During its review of any application for Planning and Service Area designation, the Division will consider:
 - (a) The distribution in the state of persons age 60 and older, including those who have greatest economic and social need, particularly low-income minority elderly;
 - (b) The views of public officials of the units of general-purpose local governments;
 - (c) The incidence of need for services provided under the Older Americans Act and ORS Chapter 410 and the resources to meet these needs;
 - (d) The boundaries of existing areas within the State, which were drawn for the planning or administration of Older Americans Act programs;
 - (e) The location of units of general purpose local government within the State; and
 - (f) Any other relevant factors, including those listed in sections (8), (9) and (10) of this rule.
- (6) Prior to making a decision, the Division will conduct hearings in the county or counties requesting designation, the locality of the Area Agency on Aging currently designated for the existing Planning and Service Area and in one or more other sites designated by the Administrator of the Division.

The Governor's Commission on Senior Services, and where applicable, the Oregon Disabilities Commission, shall be notified and invited to participate in these hearings.

- (7) In the event the Administrator of the Division shall consider designating a new Planning and Service Area, the Governor's Commission on Senior Services, and where applicable, the Oregon Disabilities Commission, shall participate in one or more public hearings, normally separate from those described in section (6) of this rule, prior to a final decision and prior to submission to the Governor for signature as a change to the State Plan on Aging.
- (8) It is the responsibility of the applicant to submit sufficient information and supporting documentation, which will allow the Division to make a decision on designation. All information submitted by the applicant must specifically address section (5) of this rule and provide responses to the following questions:
 - (a) How has the distribution of persons age 60 and older in the current Planning and Service Area changed since its original designation?
 - (b) How has this change affected the delivery of services in the current Planning and Service Area(s)?
 - (c) How would the proposed designation improve the delivery of services?
 - (d) Why is this designation the best method to improve service delivery? Indicate which other alternatives have been considered
 - (e) Will this designation have any negative effects, directly or indirectly, on the current Planning and Service Area and programs being administered in that area? Indicate and describe;
 - (f) Will this designation have an impact on resources under the area plan within the existing Planning and Service Area? Describe for both the proposed Planning and Service Area and the areas not covered by the proposed designation which are in the current Planning and Service Area;
 - (g) What are the views of public officials of units of general-purpose local government within the current Planning and Service Area? Submit documentation.
- (9) The Division will request comments from the existing Area Agencies and consider the overall impact within the State of Oregon.

- (10) Upon receipt of a request for designation of a new Planning and Service Area, and prior to the Division conducting hearings as required by section (6) of this rule, the impact of creating a new Planning and Service Area will be calculated by the Division, distributed to Area Agencies on Aging and made available to interested parties upon request.
- (11) If an application is disapproved by the Division, the applicant may appeal for an Administrative Review to the Division. Such an appeal must be made in writing within 30 days of notice of disapproval. The Division will initiate an Administrative Review within 30 days of receipt of an appeal. A written decision will be issued within 30 days of completing the review.
- (12) An applicant, as specified in section (3) of this rule, may appeal to the Assistant Secretary on Aging if the Division denies designation. The applicant must appeal in writing within 30 days after receipt of the Division's Administrative Review decision, or 30 days following the initial decision, if the applicant does not request an Administrative Review.

Stat. Auth.: ORS 410 & 45 CFR 1321 Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0110

Designation of Area Agencies on Aging

(Effective 11/01/1999)

- (1) Each Planning and Service Area shall have only one designated Area Agency on Aging.
- (2) The Administrator of the Division shall designate Area Agencies on Aging.
- (3) The designation shall comply with the Older Americans Act by giving right of first refusal in designating new Area Agencies on Aging to a unit of general-purpose local government, of which the boundaries, and the boundaries of the proposed Planning and Service Area, are reasonably contiguous. If a unit of local government does not exercise this right, the Division shall give preference to an established office on aging.
- (4) A designated Area Agency on Aging shall be:
 - (a) An office or agency of a unit of general purpose local government, which is selected by the chief elected official of the unit to serve as an Area Agency; or
 - (b) Any office or agency designated by the appropriate chief elected officials of any combination of units of general or general and special purpose local government formed in accordance with ORS Chapter 190; or
 - (c) A private nonprofit organization.
- (5) Unless otherwise requested by the applicant and approved by the Division, designation of new Area Agencies on Aging become effective at the beginning of the state fiscal year, July 1.
- (6) Prior to making a decision on designation of a new Area Agency on Aging, the Division shall conduct an on-site review to determine the capacity of the applicant to perform the functions of an Area Agency on Aging.
- (7) Denial of an application for designation as an Area Agency on Aging may be appealed to the Division for an Administrative Review. Such an appeal must be made in writing and received by the Division within 30 days of the notice of denial. The Division will conduct an Administrative Review and a written decision will be issued by the Division within 30 days of the completion of the Administrative Review.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0120

Area Agency on Aging Applicant Requirements

(Effective 11/01/1999)

- (1) An applicant requesting to replace an existing Area Agency on Aging must clearly establish the need for such a change.
- (2) It is the responsibility of the applicant to submit sufficient information and supporting documentation which will allow the Division to make a decision on designation.
- (3) Mandatory Functions -- All information submitted by the applicant must specifically address mandatory functions required of an Area Agency on Aging. These functions are outlined as follows:
 - (a) Staffing Functions -- An Area Agency on Aging must have a qualified director and an adequate number of qualified staff (including full or part-time bookkeeper and clerical support) to operate the program. The applicant shall submit the following:
 - (A) Staff plan identifying number and types of positions, position descriptions with minimum qualifications and pay scales;
 - (B) Draft personnel policy establishing organizational rules, standards, and compliance actions with civil rights laws, affirmative action, and hiring preference policy, and fringe benefit package, if any; and
 - (C) Organizational chart depicting lines of authority and internal functions and responsibilities.
 - (b) Planning Functions -- An Area Agency is required to develop and administer an Area Plan on aging for a comprehensive and coordinated service delivery system in the Planning and Service area. The applicant shall submit the following documentation:
 - (A) Detailed statement covering the manner in which the new agency would prepare and administer the Area Plan, and maintain continuity of existing services;
 - (B) Description of anticipated services;
 - (C) Time table for preparing and submitting the Area Plan to the Division for review and approval, including one or more public hearings on the proposed plan, conducted within the service delivery area;
 - (D) A narrative describing how the new agency intends to:
 - (i) Assess the kinds and levels of services needed by older persons in the area, and how these findings will be integrated into the planning process;

- (ii) Develop and publish methods for establishing priorities for services;
 - (iii) Assure that older persons in the area have reasonably convenient access to information and referral services; and
 - (iv) Indicate how preference in the delivery of services will be provided to older persons with the greatest social and economic need; i.e., low income, minorities, socially isolated, and persons at risk of institutionalization; and
 - (E) Include any necessary interagency agreements that affect the operation of the Area Agency on Aging, including an agreement with any Division offices located within the local service delivery area.
- (c) Advocacy Functions -- An Area Agency on Aging must serve as the advocate and focal point for older persons in the area. The applicant shall explain how the following matters will be accomplished:
- (A) Monitoring, evaluating, and commenting on policies, program, hearings, levies, and community actions affecting older persons;
 - (B) Conduct public hearings on the needs of older persons;
 - (C) Represent the interests of older persons to public officials, public and private agencies or organizations;
 - (D) Carry out activities in support of the State-Administered Long-Term Care Ombudsman Program; and
 - (E) Coordinate planning with other agencies and organizations to promote new or expanded benefits and opportunities for older persons. Type A Area Agencies on Aging will coordinate with the local Multi Service Office in the Planning and Service Area to insure there is coordination of programs administered by each entity.
- (d) Fiscal Functions -- As recipients of state and federal funds, Area Agencies on Aging must establish adequate financial management systems and comply with acceptable accounting practices and procedures. Specifically, the applicant shall provide the following evidence:
- (A) A plan for funding start-up costs;
 - (B) A detailed first-year budget of projected revenue and expenses;
 - (C) A general ledger that sets forth accounting of all grant income, in-kind income, program income, other cash income, and related expenses by categorical grant; and

- (D) Written financial policies that cover, as a minimum:
 - (i) Method for allocating direct and indirect expenses to grants; and
 - (ii) A check approval procedure to provide sufficient control over transactions.
- (e) Board Functions -- To carry out its overall responsibilities and conduct business, an Area Agency on Aging must have a board of directors (or equivalent policymaking body in a governmental entity). In documenting this action, the following shall be submitted for review:
 - (A) Articles of incorporation, if applicable;
 - (B) Bylaws, if applicable, which include a description of how members are selected, and terms of service;
 - (C) Policy statement for monitoring and supervising activities of staff;
 - (D) Method by which recommendations of the advisory council will be considered in policy and decision-making processes; and
 - (E) Method of providing opportunities for older persons representing the general public to express their views on matters of policy and program.
- (f) Advisory Council Functions -- An Advisory Council shall be established to provide a way of obtaining formal opinions and recommendations from the senior population in the area. Toward ensuring that this step will be taken, the applicant shall prepare preliminary materials on the following:
 - (A) Intended composition of the Advisory Council and timetable for making the initial appointments;
 - (B) Frequency of Advisory Council meetings;
 - (C) Expectations for staff support to the Advisory Council; and
 - (D) Copy of the bylaws of the Advisory Council as drafted by the applicant agency, specifying roles and functions of the Council.
- (g) Basic Service Delivery Requirements -- Area Agencies on Aging are required to meet basic service delivery requirements. The applicant must document capability to perform or provide for services, target specific populations, and provide assurances required by the Older Americans Act.
- (h) Management Control Functions -- An Area Agency on Aging must establish policies and procedures to accomplish program goals. Toward this end, the applicant shall submit a plan explaining the

following:

- (A) Methods by which the administration of the Area Plan will be coordinated with federal programs in the community that affect older persons;
- (B) Procedures for informing older persons of the availability of services under the Area Plan;
- (C) Tentative schedule seeking applicants to provide services under the Area Plan and entering into and monitoring contracts to provide these services. When it is necessary for the Area Agency to provide any of the services directly to assure an adequate level, it must be documented that no adequate contract provider is available;
- (D) Intention to contract with an independent auditor to conduct an annual financial and compliance audit;
- (E) The Area Agency on Aging must assure that any contractual providers also have an annual audit if required by federal law or rule; and
- (F) How local resources (cash and in-kind) will be developed to support program activities.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0130

Designation of a Type B1 Area Agency on Aging

(Effective 11/01/1999)

- (1) A designated Type B1 Area Agency on Aging shall meet the requirements of OAR 411-002-0110.
- (2) Notwithstanding OAR 411-002-0110(4), a designated Type B1 Area Agency on Aging shall be:
 - (a) An office or agency of a unit of general purpose local government which is designated by the Chief elected official of the unit to serve as an Area Agency; or
 - (b) Any office or agency designated by the appropriate chief elected officials of any combination of units of general or general and special purpose local government formed in accordance with ORS Chapter 190.
- (3) Designation as any category of Type B1 area agency on aging requires written notice to the Division at least six months prior to the proposed implementation of change of status. The Division will notify the Governor's Commission on Senior Services and the Oregon Disabilities Commission.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0140

Type B1 Area Agency on Aging Applicant Requirements

(Effective 11/01/1999)

- (1) It is the responsibility of the applicant to submit sufficient information and supporting documentation to allow the Division to make a decision on a type B1 designation.
- (2) Type B1 Area Agency on Aging applicant shall meet the requirements of OAR 411-002-0120 and the following additional requirements: Mandatory Functions-- An applicant must submit information that specifically addresses the mandatory functions required of a Type B1 Area Agency on Aging. These functions are outlined as follows:
 - (a) Staffing Functions -- A Type B1 area agency on aging must have an adequate number of qualified staff, including case management capability, to operate the Medicaid program for the elderly. Staffing patterns must be clearly identified for personnel who are assigned Medicaid program responsibility. Staffing must adhere to standards established by the Division.
 - (b) Planning Functions -- Type B1 Area Agencies on Aging are required to provide a plan describing how the agency intends to:
 - (A) Administer the Medicaid programs for the elderly in the PSA and how the Medicaid programs will be integrated into the overall service delivery system; and
 - (B) Assure that elderly Medicaid recipients in the area have reasonable access to information and services; and
 - (C) Include any necessary interagency agreements that affect the operation of the B1 Area Agency on Aging. The Type B1 Area Agency on Aging will coordinate with the local Disability Services Office(s) in its area to insure services that affect both the elderly and disabled occur in a timely and effective manner.
 - (D) Basic Service Delivery Requirements - B1 area agencies on aging are required to meet basic Medicaid service delivery requirements as required by the Division.
 - (E) Management Control Functions - B1 area agencies on aging must establish policies and procedures to accomplish Medicaid program goals as required by the Division.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0150

Designation and Requirements of Type B2

(Effective 11/01/1999)

A Type B2 Area Agency on Aging must meet the requirements of OAR 411-002-0110, 411-002-0120, 411-002-0130 and the following additional requirements: Mandatory Functions - All information submitted by the applicant must specifically address mandatory functions required of a B2 Area Agency on Aging. These functions are outlined as follows:

- (1) Staffing Functions -- B2 Area Agencies on Aging must have an adequate number of qualified staff, including case management, to operate the program for disabled Medicaid recipients.
- (2) Planning Functions -- B2 Area Agencies on Aging are required to develop and administer an Area Plan for a comprehensive and coordinated service delivery system in the Planning and Service Area. The applicant shall submit the following documentation:
 - (a) A plan describing how the new agency intends to:
 - (A) Assure the kinds and levels of services needed by disabled Medicaid recipients in the area, and how these findings will be integrated into the planning process; and
 - (B) Assure that disabled Medicaid recipients in the area have reasonable access to information and services; and
 - (b) Include any necessary interagency agreements that affect the operation of the Area Agency on Aging.
- (3) Disability Services Advisory Council Functions -- A disability Services Advisory Council will be established to provide a way of obtaining formal opinions and recommendations from the disabled population in the area. Toward ensuring that this step will be taken, the applicant shall prepare preliminary materials on the following:
 - (a) Intended composition of the Advisory Council and timetable for making the initial appointments;
 - (b) Frequency of Advisory Council meetings;
 - (c) Expectations for staff support to the Advisory Council;
 - (d) Copy of the bylaws of the Disability Services Advisory Council specifying roles and functions of the Council.
- (4) Basic Delivery Requirements -- B2 Area Agencies on Aging are required to meet basic service delivery requirements as required by the Division.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0155

State Employee Supervision in a Type B1 or Type B2 Contract

(Effective 06/06/2005)

GENERAL REQUIREMENTS

- (1) The Department of Human Services (the Department) and the AAA Contracted local government entities, in the best interest of the affected State employees, must collaborate and cooperate in the administration of state human resource policies. Communication regarding changes in the Department of Administrative Services (DAS) and the Department's human resource policies and procedures relating to State employee supervision as well as communication regarding the day-to-day supervision and management of State employees will be encouraged.
- (2) Both parties must comply with externally imposed Employment Relations Board (ERB) decisions, arbitration decisions, Equal Employment Opportunity Commission (EEOC), Workers' Compensation (WC), Americans with Disabilities Act (ADA), and other settlement decisions or agreements.
- (3) The Department will be the sole negotiator for employment related settlements for State employees.
 - (a) Type B1 or Type B2 Contract AAAs, which contract with the Department of Human Services for services of State employers, are required to manage employees in accordance with the Collective Bargaining Agreement between the SEIU, Local 503, Oregon Public Employees Union and Department of Administrative Services, and the Department.
 - (A) The Collective Bargaining Agreement, State and Federal laws, the Department of Administrative Services, and Department rules and policies relating to supervision of State employees must take precedent over Type B1 and Type B2 Contract AAA rules, policies or procedures.
 - (B) The Department must review any county or local government policies that will be applied to State employees to ensure compliances with State, Federal, DAS, and DHS policies for regulations.
 - (b) Type B1 or Type B2 Contract AAAs will be collaborative and must comply with the Department policies and decisions on matters of recruitment and retention of State employees. The Department is responsible for recruitment of all State employees, represented and management, and must jointly participate in the selection of all State

- supervisory and managerial employees. The Department maintains the final approval of the selection of State supervisory and managerial employees.
- (c) With the exception of the State Program Managers (see section f), all State employees must be managed, directed, supervised, and evaluated by State managers. The term supervision includes hiring, firing, disciplining, and setting performance expectations. State management employees must supervise only State employees.
 - (d) State employees working in a Type B1 or Type B2 Contract AAA are not considered employees of the AAA and are not entitled to any benefits from the AAA employee benefit packages. This includes vacation, holiday and sick leave, other leaves with pay, medical and dental coverage, life and disability insurance, overtime, Social Security, workers' compensation, unemployment compensation, and retirement funding. State employee benefit packages are determined by the Collective Bargaining Agreement, as referred to in (a) of this rule.
 - (e) State managers and State represented employees in a Type B1 or Type B2 Contract AAA are required to attend applicable Department program and management training and designated curriculum pertinent to the individual position. Such training is available to the local government Contract AAA Director.
 - (f) The State Program Manager in a Type B1 or Type B2 Contract AAA will report directly to both the AAA Director and the designated Field Services Manager in the Department as follows:
 - (A) The Department must sign as the reviewer for the performance appraisal of the Program Manager and direct subordinates. The Contract AAA Director must seek input from the designated Field Services Manager in the Department when preparing the State Program Manager's performance evaluation.
 - (B) The Contract AAA Director will prepare the State Program Manager's evaluation. Prior to discussion with the State Program Manager, the Contract AAA Director will have the Field Services Manager as reviewer. By signing as reviewer, the Field Services Manager concurs with the content of the performance appraisal. A performance appraisal will not be valid without both the Field Services Manager's signature and the Contract AAA Director's signature. If there is disagreement and consensus cannot be reached, the Assistant Director for Seniors and People with Disabilities at the Department will make a final determination on the content of the performance appraisal. The evaluation must

- reflect both the Contract AAA Director's and the Field Services Manager's assessment of the Program Manager's performance.
- (C) The State Program Manager must seek and incorporate input from both the Field Services Manager and the Contract AAA Director when preparing the performance evaluations of subordinate staff managers/supervisors. The Contract AAA Director and the Field Services Manager must both review the evaluation and both sign as reviewer.
- (g) The Department has final approval for all personnel actions taken related to State employees.
- (A) The Department is the appointing authority and has final approval for all personnel recommendations regarding State employees for the Type B1 or Type B2 Contract AAA. Approval will be granted when the Type B1 or Type B2 Contract AAA personnel recommendations are in compliance with all applicable statutes, rules, agency or department agreements and policies.
- (B) The Type B1 or B2 Contract AAA is to use only Department issued forms in conjunction with Department human resource policies for all administrative business with State employees.
- (h) All State employees working in a Type B1 or Type B2 Contract AAA are prohibited from participating professionally in a case involving a relative connected by blood relation, marriage, adoption, or part of an extended family. State employees are responsible for notifying the State Program Manager if a relative is receiving Medicaid, OAA, and/or OPI services from the Contract AAA. The State employee's Program Manager in such a situation will assure that the case is assigned to another employee, in another office if possible, who is not a relative and who will not be unduly influenced by the State employee who is a relative. The State Program Manager must provide the Department's Human Resource unit with a written statement that outlines the safeguards put in place to assure no undue influence will be asserted by the affected employee. The Department's Human Resource unit will be the final decision maker as to whether the safeguards are sufficient.
- (i) The Contract AAA Director and the Field Services Manager or designee must participate jointly in the selection of the State Program Manager.
- (A) The Department maintains the final approval of the selection of the State Program Manager.

- (B) The Contract AAA Director will be the State Program Manager's direct-report supervisor.
- (C) The State Program Manager is responsible for ensuring the Contract AAA complies with all state program and administrative policy rules and required procedures. It is the responsibility of the State Program Manager to first advise the Contract AAA Director and then the Field Services Manager if the State Program Manager believes he or she is being given work directions that are in violation of such policy or rules and required procedures. If the Field Services Manager and the Contract AAA Director cannot resolve the conflict, it will be referred to the Assistant Director for Seniors and People with Disabilities at the Department for a final determination as to which specific state policy interpretation will apply to the present situation.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.210 – 410.300

OREGON ADMINISTRATIVE RULE 411-002-0160

Changing from a Type A or Type B1 AAA to a Type B2 AAA

(Effective 11/01/1999)

- (1) Type A or Type B1 Area Agencies on Aging may request to change their model of service delivery to a Type B2 Area Agency on Aging. The process for requesting the change is as follows:
 - (a) The AAA notifies the Division in writing of its interest in changing to a Type B2 AAA.
 - (b) The Division will inform the Governor's Commission on Senior Services, the Oregon Disabilities Commission and the local Disability Services Advisory Council and Senior Advisory Council and provide opportunity for local input.
 - (c) The AAA will provide notice to affected populations and constituencies at the local level of its intent to pursue a Type B2 model of service delivery.
 - (d) The AAA will involve affected stakeholders in the development of a process that includes identifying any issues of concern, a process to address these concerns, and the development of a service delivery plan.
 - (e) The AAA will hold public hearings within the local area during the planning process to receive comments and recommendations on the issues of concern and the service plan.
 - (f) The Senior Advisory Council and Disability Services Advisory Council will certify in writing that they have been involved in developing the plan.
 - (g) Once the plan has been approved by the Division, the operating level (office, division, or department of local jurisdiction) of the AAA will amend its name to reflect the inclusion of services to people with disabilities.
- (2) If the request for a change to an Area Agency on Aging designation is denied by the Division, the Area Agency on Aging may appeal the decision by following the procedures outlined in OAR 411-002-0110(7).

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0170

Withdrawal of Area Agency on Aging Designation

(Effective 11/01/1999)

- (1) In carrying out provisions of the Older Americans Act and ORS 410.100, the Division must withdraw the agency designation whenever it, after reasonable notice and opportunity for an Administrative Review and efforts at problem resolution have been exhausted, finds that:
 - (a) An area agency does not meet the requirements of 45 CFR 1321; or
 - (b) There is evidence of non-compliance with provisions of the Area Plan contract.
- (2) If the Division withdraws an Area Agency's designation under section (1) of this rule, it shall:
 - (a) Provide a plan for the continuity of services in the affected
 - (b) Planning and Service Area; and
 - (c) Designate a new Area Agency in the Planning and Service Area in a timely manner.
- (3) After its final decision to withdraw designation of an Area Agency and if necessary to ensure continuity of services in a Planning and Service Area, the Division may, for a period up to 180 days, and with approval of the Commissioner on Aging, an added 180 days:
 - (a) Perform the responsibilities of the Area Agency; or
 - (b) Assign the responsibilities of the Area Agency to another agency in the Planning and Service Area.

Stat. Auth.: ORS 410 & 45 CFR 1321

Stats. Implemented: ORS 410.210 - ORS 410.300

OREGON ADMINISTRATIVE RULE 411-002-0175

Methodology To Determine Budget Levels for Type B Area Agencies on Aging That Have Elected To Have Employment Transfer

(Effective 12/30/2004)

(1) Definitions:

- (a) A "Type B Transfer AAA" means a Type B Area Agency on Aging that has elected to have employees transferred to employment by the Area Agency by transfer agreement.
- (b) A "Title XIX funded position" means a position that is funded, in part, by Federal funds through Title XIX of the Social Security Act.
- (c) "SPD Allocated Positions" means the position categories allocated to SPD field offices. These are the categories of positions to be included for the Equity comparison.
- (d) "Annual OPE" means the benefit rate as calculated by DHS. The resulting rate is used to calculate the amount of OPE per type of position.
- (e) "Indirect Cost Rate" means the percentage rate used to calculate costs allocated to Type B Transfer AAA offices for indirect costs, including State Government Service Charges and Infrastructure Charges. An established indirect cost rate will not be amended in the middle of the biennium. The initial indirect cost rate is set at 17.78% of the sum of Salary and OPE expenses. The indirect cost rate will be re-based to be effective the first day of the first biennium after the Department of Administrative Services (DAS) changes rates that it publishes in its Price List.

(2) Each Type B Transfer AAA shall provide an updated staff report to DHS not later than January 31 each year. The Type B Transfer AAA shall provide the information that DHS requests in the form that DHS prescribes.

(3) The following steps will be used to calculate the annual budget for the Type B Transfer AAAs:

- (a) The updated staff report will be sorted to separate Title XIX funded positions from others. Positions that are not Title XIX funded are not included in the calculation.
- (b) SPD will publish a list of Title XIX funded job categories not later than January 15 each year.
- (c) The Title XIX funded positions are sorted by job category. Levels within a single job category are combined.
- (d) Average step in the salary range and average salary are calculated for

- each job category.
- (e) Management staffing will be added in the same ratio and at the same salary ranges that DHS would staff an SPD field office.
 - (f) Each Type B Transfer AAA will be afforded an opportunity to review the information derived in steps (a) through (d) above. Revisions may be made to the information as a result of that review.
 - (g) Reviewed information from steps (a) through (e) will be used to determine calculate average step in the salary range for each job category for each Type B Transfer AAA.
 - (h) An adjustment is made to equate the number of salary steps in the Type B Transfer AAA salary range for each job category to the DHS salary range for each job category.
 - (i) The adjusted average step in the salary range is used to determine the average DHS salary for each job category.
 - (j) The monthly salary is multiplied by 12 and converted to an average annual salary for each job category.
 - (k) The Annual OPE rate is multiplied by the average annual salary for each job category to produce the average annual OPE for each job category.
 - (l) The sum of the average annual salary and the average annual OPE for each job category is multiplied by the number of FTE determined in steps (a) through (e) above. The product is the Total Annual Salary Plus OPE to be used in determination of the budget level.
 - (m) The Total Annual Salary Plus OPE is multiplied by the Indirect Cost Rate to determine aggregate annual indirect costs.
 - (n) The DHS standard Services and Supplies costs for field office employees is multiplied by the number of FTE to determine aggregate Services and Supplies (S&S) costs.
 - (o) The total annual Type B Transfer AAA annual budget level is the sum of (Total Annual Salary Plus OPE) + (aggregate annual indirect costs) + (aggregate S&S costs).
- (4) The total annual Type B Transfer AAA annual budget level determined above will be reduced by 5%.
- (5) DHS will use the methodology outlined in Sections (3) and (4) above when determining funding levels to recommend to the Governor for the Type B Transfer AAAs.
- (6) Notwithstanding Section (5), in determining the funding levels of Type B Transfer AAAs to recommend to the Governor for the 2005-2007 biennium, DHS shall reduce the total annual Type B Transfer AAA annual budget level by 8%.

OREGON REVISED STATUTE 182.162 – 182.168

Relationship of State Agencies with Indian Tribes

Definitions

As used in ORS 182.162 to 182.168:

- (1) “State agency” has the meaning given that term in ORS 358.635.
- (2) “Tribe” means a federally recognized Indian tribe in Oregon. [2001 c.177 §1]

OREGON REVISED STATUTE 182.164

State agencies to develop and implement policy on relationship with tribes; cooperation with tribes

- (1) A state agency shall develop and implement a policy that:
 - (a) Identifies individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.
 - (b) Establishes a process to identify the programs of the state agency that affect tribes.
 - (c) Promotes communication between the state agency and tribes.
 - (d) Promotes positive government-to-government relations between the state and tribes.
 - (e) Establishes a method for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under this section.
- (2) In the process of identifying and developing the programs of the state agency that affect tribes, a state agency shall include representatives designated by the tribes.
- (3) A state agency shall make a reasonable effort to cooperate with tribes in the development and implementation of programs of the state agency that affect tribes, including the use of agreements authorized by ORS 190.110.

[2001 c.177 §2]

Note: See note under 182.162.

OREGON REVISED STATUTE 182.166

Training of state agency managers and employees who communicate with tribes; annual meetings of representatives of agencies and tribes; annual reports by state agencies

(1) At least once a year, the Oregon Department of Administrative Services, in consultation with the Commission on Indian Services, shall provide training to state agency managers and employees who have regular communication with tribes on the legal status of tribes, the legal rights of members of tribes and issues of concern to tribes.

(2) Once a year, the Governor shall convene a meeting at which representatives of state agencies and tribes may work together to achieve mutual goals.

(3) No later than December 15 of every year, a state agency shall submit a report to the Governor and to the Commission on Indian Services on the activities of the state agency under ORS 182.162 to 182.168. The report shall include:

(a) The policy the state agency adopted under ORS 182.164.

(b) The names of the individuals in the state agency who are responsible for developing and implementing programs of the state agency that affect tribes.

(c) The process the state agency established to identify the programs of the state agency that affect tribes.

(d) The efforts of the state agency to promote communication between the state agency and tribes and government-to-government relations between the state and tribes.

(e) A description of the training required by subsection (1) of this section.

- (f) The method the state agency established for notifying employees of the state agency of the provisions of ORS 182.162 to 182.168 and the policy the state agency adopts under ORS 182.164.

[2001 c.177 §3]

Note: 182.162 to 182.168 were enacted into law by the Legislative Assembly but were not added to or made a part of ORS chapter 182 or any series therein by legislative action. See Preface to Oregon Revised Statutes for further explanation.

OREGON ADMINISTRATIVE RULE 411-032-000

OREGON PROJECT INDEPENDENCE

Definitions

For purposes of these rules:

(1) "Activities of Daily Living" (ADL) means those personal functional activities required by an individual for continued well-being, health and safety. This includes eating, dressing/grooming, bathing/personal hygiene, mobility, bowel and bladder management, and cognition.

(2) "Administrative Costs" means those expenses associated with the overall operation of the Oregon Project Independence (OPI) Program that are not directly attributed to a service. These costs can include, but are not limited to, costs associated with accounting services, indirect program costs, facility expenses, etc.

(3) "Adult Day Care" means a structured comprehensive program designed to meet the needs of functionally and/or cognitively impaired adults. Adult day care provides individually planned care, supervision, social and related support services, and health monitoring in a protective setting during any part of a day, but less than 24-hour care.

(4) "Advisory Council" means an advisory council of the authorized agencies.

(5) "Alzheimer's Disease and Other Related Disorders" means a progressive and degenerative neurological disease that is characterized by dementia including the insidious onset of symptoms of short-term memory loss, confusion, behavior changes and personality changes. It includes dementia caused from any one of the following disorders:

(a) Multi-Infarct Dementia (MID);

(b) Normal Pressure Hydrocephalus (NPH);

(c) Inoperable Tumors of the Brain;

(d) Parkinson's Disease;

(e) Creutzfeldt-Jakob Disease;

(f) Huntington's Disease;

(g) Multiple Sclerosis;

(h) Uncommon Dementia such as Pick's Disease, Wilson's Disease, and Progressive Supranuclear Palsy; or

- (i) All other related disorders recognized by the National Alzheimer's Association.
- (6) "Area Agency" means the agency designated by the Department as an Area Agency on Aging that is charged with the responsibility to provide a comprehensive and coordinated system of services to the elderly and possibly the disabled in a planning and service area. For purposes of these rules, the term "Area Agency" (AAA) is inclusive of both Type A and B Area Agencies on Aging as defined in ORS 410.040 to 410.350.
- (7) "Area Plan" means the approved plan for providing authorized services under Oregon Project Independence.
- (8) "Assisted Transportation" means escort services that provide assistance to a person who has difficulties (physical or cognitive) using regular vehicular transportation.
- (9) "Authorized Service" means any service designated by the Department and these rules to be eligible for Oregon Project Independence funding.
- (10) "Case Management" means a service designed to individualize and integrate social and health care options for or with a person being served. Its goal is to provide access to an array of service options to assure appropriate levels of service and to maximize coordination in the service delivery system. Case management must include four general components: entry, assessment, service implementation, and evaluation. Case management services will be provided in accordance with OAR 411-030-0050.
- (11) "Case Management Costs" means those expenses associated with individualizing and integrating social and health care options for or with a person receiving a service. Cost elements should include time spent with the client, travel to and from a client's home, mandated training time, case recording, reporting, time spent arranging for and coordinating services for the client, supervision and staffing time related to a client, and time spent in the initial assessment of a person who does not become an OPI client.
- (12) "Case Manager" means a person who ensures client entry, assessment, authorization of service, service planning, service implementation, and evaluation of the effectiveness of the services.
- (13) "Chore Service" means assistance with heavy housework, yard work or sidewalk maintenance for persons who need assistance with these activities to assure safety.
- (14) "Client" means the individual eligible for Oregon Project Independence services.

(15) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides hourly services. In some aspects of the employer/employee relationship, the Department of Human Services acts as an agent for the client-employer. These functions are clearly described in OAR chapter 411, division 031.

(16) "Client's Adjusted Income" means the income for all household members after deductions for household medical expenses as defined in OAR 411-032-0020(5).

(17) "Contracted In-Home Care" means a service provided through a contractor, that consists of minimal or substantial assistance with activities of daily living and self-management tasks. Clients that require full assistance with eating may also utilize contracted in-home care.

(18) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR 333-536-0000 through 333-536-0095 that provides hourly contracted in-home care to clients of the Department or Area Agency on Aging.

(19) "Contracted In-Home Care Specialist" means an employee of the contract agency who has recognized capability to provide the in-home care service tasks authorized for clients they serve.

(20) "Department of Administrative Services" means the Department of Administrative Services for the State of Oregon.

(21) "Department" means the Oregon Department of Human Services, Seniors and People with Disabilities, unless otherwise specifically defined.

(22) "Department of Revenue" means the Oregon Department of Revenue.

(23) "Diagnosed" means, for purposes of these rules, that the client's physician has reason to believe and indicates that the client has Alzheimer's Disease or a Related Disorder.

(24) "Direct Service Costs" means those expenses for direct labor that are attributable to a client-related service. For example, the direct service cost of home care is the cost of time actually spent providing home care services in the home. Other direct service costs are those that are directly attributable to a client-related function.

(25) "Eligibility Determination" means the process of deciding if a prospective client meets the requirements necessary to receive authorized services under Oregon Project Independence.

(26) "Exception or Variances" means that an agency or individual contractor or subcontractor is not required to meet one or more specific requirements of these rules.

(27) "Fiscal Records and Data" means all information pertaining to the financial operation of an agency or program.

(28) "Gross Income" means household income from salaries, interest and dividends, pensions, Social Security, railroad retirement benefits, and any other income prior to any deductions.

(29) "Health Services" means the Department of Human Services, Health Services.

(30) "Home Care or Homemaker Services" means all those ADL or IADL in-home services, requiring minimal to substantial assistance, necessary to help clients achieve the greatest degree of independent functioning.

(31) "Homecare Worker" means a provider, as described in OAR 411-030-0020 and OAR 411-031-0040, who is directly employed by the client via the Client Employed Provider Program, and who provides hourly services to eligible clients.

(32) "Home Delivered Meal" means a meal paid from OPI funds and delivered to a client who is receiving at least one additional OPI service, excluding Case Management.

(33) "Home Health Agency" means a licensed (in accordance with OAR 333-027-0000 through 0170), public or private agency providing coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services in at least one of the following therapeutic services: Physical therapy; Occupational therapy; Speech Therapy; or Home health aid services.

(34) "Home Health Service" means items and services furnished to an individual by a home health agency, or by others under arrangement with such agency, on a visiting basis in a place of temporary or permanent residence used as the individual's home for the purpose of maintaining that individual at home.

(35) "Household" means the client, spouse and any dependents as defined by the Internal Revenue Service.

(36) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times. None of these hours are exempt from federal or state minimum wage or overtime laws.

(37) "In-Direct Cost" means

(a) Incurred for a common or joint purpose benefiting more than one cost objective, and

(b) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect cost," as used herein, applies to costs of this type originating in the grantee department, as well as those incurred by other departments in supplying goods, services, and facilities. To facilitate equitable distribution of indirect expenses, to the cost objectives served, it may be necessary to establish a number of pools of indirect costs. Indirect cost pools should be distributed to benefited cost objectives on bases that will produce an equitable result in consideration of relative benefits derived.

(38) "In-Home Services" means those services that assist a client to stay in his/her own home.

(39) "Institutions" means any state, community or private hospital and any nursing facility.

(40) "Instrumental Activities of Daily Living (IADL)" means those self-management activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen assistance (except for administering medications, making judgments regarding dosage of prescription medications, and adjusting oxygen levels), providing transportation, preparing meals, shopping, housekeeping, paying bills and performing banking functions.

(41) "Personal Care Service" means in-home services provided to maintain, strengthen, or restore an elderly individual's functioning in their own home when an individual is dependent in one or more ADLs, or when an individual requires substantial assistance, and one or more of the following conditions exist:

(a) Medical instability;

(b) Potential for skin breakdown or pressure ulcers;

(c) Multiple health problems or frailty with a strong possibility of deterioration; or

(d) Potential for increased self-care, but client instruction and support are needed to reach goals.

(42) "Program Records and Data" means any information of a non-fiscal nature.

(43) "Program Support Costs" means those expenses associated with managing the services provided either through contract or directly by the Area Agency on Aging, that are attributable to a specific service.

- (44) "Provider" means the individual who actually renders the service.
- (45) "Provider Enrollment" means a Homecare Worker's authorization to work as a provider employed by the client, for the purposes of receiving payment for authorized services provided to the Department clients. Provider enrollment includes issuance of a provider number.
- (46) "Provider Number" means an identifying number, issued to each Homecare Worker or Contract In-Home Service Agency, who is enrolled as a provider through the Department.
- (47) "Provider Payments Unit" means the Seniors and People with Disabilities unit responsible for processing provider number requests.
- (48) "Registered Nurse Services" mean services provided by a registered nurse on a short-term or intermittent basis that include but are not limited to: interviewing the client and, when appropriate, other relevant parties; assessing the client's ability to perform tasks; preparing a care plan that includes treatment needed by the client; monitoring medication; training and educating care providers; and setting realistic goals and outcomes for the client.
- (49) "Respite" means paid temporary services to provide relief for families or other caregivers. In-home and out-of-home respite care may be provided on an hourly or daily basis, including 24-hour care for several consecutive days. Range of tasks to be provided may include: supervision, companionship and personal care services usually provided by the primary caregiver of the disabled adult. Services appropriate to the needs of individuals with dementing illnesses are also provided.
- (50) "Self Management" means those activities, other than activities of daily living, as described under Instrumental Activities of Daily Living in 411-032-0000(40).
- (51) "Seniors and People with Disabilities" means Seniors and People with Disabilities of the Department of Human Services.
- (52) "Service Provider" means any agency or program that provides one or more authorized services under Oregon Project Independence.
- (53) "Service Determination" means the process of determining the proper authorized service for each client.
- (54) "Service Need" means those functions or activities with which the client requires the Department or Area Agency on Aging support.
- (55) "Service Priority" means the order in which the Department clients are found eligible for the Oregon Project Independence program.
- (56) "Substitute Care" means services provided by adult foster homes, residential

care facilities and specialized living facilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.410

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

411-032-0001

Goals

The goals of Oregon Project Independence are to:

- (1) Promote quality of life and independent living among older persons;
- (2) Provide preventive and long-term care services to eligible individuals to reduce the risk for institutionalization and promote self-determination;
- (3) Provide services to frail and vulnerable older adults who are lacking or have limited access to other long-term care services; and
- (4) Optimize older individuals' personal and community support resources.

Stat. Auth.: ORS 410

Stats. Implemented: ORS 410.420

Hist.: SSD 12-1988, f. & cert. ef. 12-2-89; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

411-032-0005

Administration

- (1) Advisory Council: Each area agency will show evidence that the advisory council of the area agency, and the community were involved in the identification of need, selection of services to be offered, and the development of the Area Plan.
- (2) Area Plan:
 - (a) Each area agency will submit an Area Plan by a date specified and on forms provided by the Department.
 - (b) The Area Plan must, at a minimum, contain:
 - (A) The types and amounts of authorized services to be offered;

- (B) The costs of these services;
- (C) How the agency will ensure timely response to inquiries for service;
- (D) How clients will receive initial and ongoing periodic screening for other community services, including Medicaid;
- (E) How eligibility will be determined;
- (F) How the services will be provided;
- (G) The agency policy for prioritizing OPI service delivery;
- (H) The agency policy for denial, reduction or termination of services;
- (I) The agency policy for informing clients of their right to grieve adverse eligibility, service determination decisions, and consumer complaints;
- (J) How fees for services will be developed, billed, collected and utilized;
- (K) The agency policy for addressing client non-payment of fees, including when exceptions will be made for repayment and when fees will be waived; and
- (L) How service providers will be monitored and evaluated.

(3) Contracts:

(a) Contracts between the Department and Area Agencies on Aging for Oregon Project Independence will be effective each year on July 1, unless otherwise agreed to by the Department. These contracts will be based on the Area Plan and must, at a minimum, contain:

- (A) A budget showing the amounts of Oregon Project Independence funds;
- (B) The types of authorized services to be offered;
- (C) The stipulation that contracted authorized services will be in accordance with the standards and requirements provided in these rules, and in accordance with the In-Home Services Rules (OAR chapter 411, divisions 030 and 031 and OAR 411 division 015), and, if applicable, in accordance with the In-Home Care Agencies Rules (OAR chapter 333, division 027);
- (D) The stipulation that required data will be gathered, reported and monitored in accordance with these rules and the Department;
- (E) A section pertaining to general provisions as required by the Department of Administrative Services;
- (F) A provision that area agencies will submit service provider contracts and amendments to the department upon request from the Department; and

(G) Fee for service schedules developed in accordance with these rules.

(b) Contracts between Area Agencies on Aging and service providers will be signed and kept on file by the area agencies for not less than three years for all services funded through Oregon Project Independence. The contracts must, at a minimum, contain:

(A) A budget or a maximum amount of Oregon Project Independence funds, as well as all other resources devoted to Oregon Project Independence under the contract;

(B) The types and amounts of authorized services to be offered and the rate per unit for each authorized service;

(C) The stipulation that authorized services will be offered in accordance with the standards and requirements provided in these rules, and in accordance with the In-Home Services Rules, OAR chapter 411, divisions-030 and 31 and OAR chapter 411 division 015, and, if applicable, in accordance with the In-Home Care Agencies Rules, OAR chapter 333, division 027;

(D) The stipulation that required data will be gathered and reported in accordance with these rules and the Department; and

(E) A section pertaining to general provisions as required by the Department of Administrative Services.

(c) All contracts as described in this rule can be amended with the consent of both parties.

(d) All contracts as described in this rule will contain provisions for cancellation of the contract for non-performance and violation of the terms of the contract.

(4) Personnel Practices and Procedures:

(a) Each area agency and service provider will maintain written personnel policies.

(b) The personnel policies will contain all items required by state and federal laws and regulations, including such items as:

(A) An affirmative action plan; and

(B) Evidence that the area agency and service provider are equal opportunity employers.

(C) Each area agency and service provider will maintain a personnel record on each employee.

(5) Non-Compliance:

(a) Non-compliance to these rules, except in those cases where an exception or variance has been granted by the Department may result in a reduction or termination of Oregon Project Independence funding;

(b) The determination of the amount of reduced funding will be made by the administrator of the Department;

(c) Any funds that are either reduced or terminated from a funding grant will be reserved by the Department for redistribution at its discretion. At the end of the biennium, unexpended funds will be returned to the State General Fund.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.420, ORS 410.450 & ORS 410.460

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

411-032-0010

Authorized Services and Allowable Costs

(1) Authorized Services:

(a) Oregon Project Independence funds will only be expended for administration and direct service for the following authorized services:

(A) Homemaker (Home Care);

(B) Chore;

(C) Assisted Transportation (Escort);

(D) Home Health;

(E) Personal Care;

(F) Adult Day Care;

(G) Respite;

(H) Case Management;

(I) Registered Nurses;

(J) Home Delivered Meals, only when an individual also receives other OPI funded services, excluding case management; and

(K) Other services authorized by the administrator of the Department or his/her designee.

(b) Home health services will meet the standards and requirements of the Home Health Agencies Rules (OAR chapter 333, division 027) and can only be offered through a home health agency licensed by the Department of Human Services, Health Services.

(c) Services provided by an In-Home care agency will meet the standards and requirements of In-Home Care Agencies under ORS 443.305 to 443.350 and OAR chapter 333 division 536, and can only be offered through a home care agency licensed by the Department of Human Services, Health Services.

(d) Services provided by a Homecare Worker will meet the standards and requirements of the Home Care Commission under ORS 410.600 to 410.614 and OAR chapter 411, division 031.

(e) Services provided using the Client Employed Provider Program should meet the standards and requirements of chapter 411, division 030.

(f) Area Agencies on Aging will not directly provide authorized services to clients, unless they are providing such services on the effective date of these rules, or unless direct provision is required to assure an adequate supply of service. Those area agencies already providing direct services will not be required to seek a variance or exception as defined in these rules. Those providers who are direct providers of services are required to meet any regulatory and licensing requirements in accordance with applicable law and rules. The provision of authorized services will be contracted to service providers by area agencies.

(2) Computation of Allowable Costs -- Allowable costs by area agencies are those associated with the direct provision of services to clients and such administrative costs as may be required to assure adequate services and to provide information to the Department.

(3) Administrative Costs -- Administrative costs will not exceed ten percent of Oregon Project Independence funds.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.420 & 410.460

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 9-2002(Temp), f. & cert. ef. SPD 11-2003, f. & cert. ef. 5-2-03 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

411-032-0015

Data Collection, Records, and Reporting

(1) Data Collection:

(a) The collection of required program and fiscal data associated with Oregon Project Independence will be on forms and data systems as approved by the Department.

(b) Each area agency and service provider will collect data as required by the Department on eligible clients receiving authorized service.

(c) All authorized service data collected on individual clients, supported by Oregon Project Independence, will contain the client's Social Security Number and date of birth.

(d) For clients under the age of 60, documentation will be placed in the client's file that the client has been diagnosed as having Alzheimer's Disease or other related disorder. Documentation must come verbally or in writing from the client's physician. The type of "other related disorder" will also be specified in this documentation.

(2) Records:

(a) Each area agency and service provider will maintain all books, records, documents and accounting procedures that reflect all administrative costs, program support costs, direct service costs, and case management costs expended on Oregon Project Independence. These records will be retained for not less than three years.

(b) These records will be made available upon request to representatives from the Department, or to those duly authorized by them.

(3) Fiscal and Program Reporting:

(a) Fiscal and program reports will be completed on forms provided by the Department.

(b) Fiscal and program reports will be submitted to the Department by the specified due dates.

(c) Fiscal/Program reports must, at a minimum, include:

(A) Current cumulative expenditures;

(B) Cost per unit of authorized service;

(C) Administrative costs;

- (D) Program support costs;
 - (E) Case management costs;
 - (F) Direct service costs;
 - (G) The amount of fee for service assessed, billed, expended and collected and other funds received;
 - (H) Number of unduplicated clients year to date served for each authorized service year to date, and unduplicated case count year to date;
 - (I) Number of units of service for each authorized service; and
 - (J) Demographic, social, medical, physical, functional, and financial data, including a breakdown of the income levels of OPI clients, on individual clients as required by the Department on the SPD Client Assessment/Planning System (CA/PS) and in Oregon ACCESS database.
- (4) Confidentiality The use or disclosure by any party of any information concerning a recipient or client of authorized services described in these rules, for any purpose not directly connected with the administration of the responsibilities of the Department, area agency or service provider is prohibited except with written consent of the recipient, or their legal representative. Disclosure of client or recipient information will meet Department requirements.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.470 & ORS 410.480

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 6-1987, f. & ef. 7-1-87; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSA 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

411-032-0020

Eligibility and Determination of Services

(1) Eligibility:

(a) In order to qualify for services from an area agency or service provider, each client or recipient must:

(A) Be 60 years old or older; or be under 60 years of age and be diagnosed as having Alzheimer's Disease or a related disorder;

(B) Not be receiving financial assistance or Medicaid, except Food Stamps, Qualified Medicare Beneficiary or Supplemental Low Income Medicare

Beneficiary Programs; and

(C) Meet the requirements of the Long-Term Care Services Priority Rule, OAR 411, division 015.

(b) Eligibility determination will be required before any client may receive services from an area agency or service provider. The documentation required by OAR 411-032-0015(1)(d) must be obtained before a client under the age of 60 may be determined to be eligible.

(c) Eligibility determination will be the responsibility of the area agency. In those instances when eligibility determination is performed by an agency other than the area agency, the area agency will have in place a system for evaluating the eligibility determination process, including an independent review by the area agency of a representative sample of cases.

(d) Any person residing in a nursing facility, assisted living facility, residential care facility, or adult foster care setting will not be eligible for authorized services. This will not restrict the ability to move a client from such institutions to their home to receive care, when judged more appropriate, based on medical, financial, physical, functional, and social considerations.

(e) The Department will determine the factors that constitute a client being at risk of institutionalization. These factors are currently defined in the Long-Term Care Services Priority Rules, OAR Chapter 411, division 015. These factors will be utilized by each area agency and service provider.

(f) Applicants will receive written notification of eligibility determination.

(2) Determination of Services:

(a) Determination of services will rest with the area agency. In those instances when determination of services is performed by an agency other than the area agency, the area agency will have in place a system for evaluating the determination of service process, including an independent review by the area agency of a representative sample of cases.

(b) The determination of services will be based on each client's financial, physical, functional, medical, and social need for such services and in accordance with OAR chapter 411 division 015.

(c) Determination of services provided under Oregon Project Independence will be limited to the authorized services allowed by these rules.

(d) The determination of services will be made:

(A) After eligibility determination; and

(B) At regular intervals but not less than once every twelve months.

(e) Clients will receive written notification of determination of services:

(A) Notice will include the maximum monthly hours of service authorized, the hourly and maximum monthly client fee, the service rate, and provider contact information.

(B) Written service notification will be provided to the client upon initial determination of services, at annual reassessment and when there are changes to the determination of services.

(3) Priority of Services:

(a) Eligible clients will receive authorized services on a priority basis, with highest priorities receiving services first.

(b) Area Agencies on Aging may establish local priorities for service authorization. This rule will take precedence over local priorities. Local priorities will not conflict with this rule.

(c) Priority for authorized services will be:

(A) Maintaining clients already receiving authorized service as long as their condition indicates the service is needed.

(B) Clients who will immediately be placed in an institution if needed authorized services are not provided and meet the Long-Term Care Services Priority Rules, OAR chapter 411, division 015.

(C) Clients who are probably to be placed in an institution if needed authorized services are not provided.

(4) Appeals: Persons for whom services are denied, disallowed, or reduced through eligibility determination or service determination will be entitled to request review of the decision through the Area Agency on Aging grievance review procedure, set forth in agency policy.

(a) Clients will continue to receive services until the disposition of the local agency grievance review.

(b) The Area Agency will provide the applicant with written notification of the grievance review determination decision.

(c) Applicants that disagree with the results of the Area Agency grievance review have a right to an Administrative Review with the Department of Human Services, Seniors and People with Disabilities, pursuant to ORS Chapter 183. This information will be provided to the applicant in a written notification at the time of

the grievance review decision.

(d) Applicants requesting an Administrative Review from the Department will not be eligible for continued services through Oregon Project Independence.

(e) All persons, including those who may have previously been terminated from Oregon Project Independence, have the right to apply for OPI services at any time.

(5) Fee for Services:

(a) The Department will establish a fee for service schedule. The schedule will be applied to each client for all OPI services except Home Delivered Meals and Case Management.

(b) A recommended donation will be established for OPI-funded Home Delivered Meals and implemented in the same manner as for the Older Americans Act meal programs.

(c) A minimum income level and fee for service schedule will be established and reviewed annually by the Department after consulting with the Governor's Commission on Senior Services.

(d) Fees for service will be charged based on a sliding fee schedule to all clients whose annual income exceeds the minimum, as established by the Department.

(e) Area agencies will develop procedures for assessing, billing, collecting, and expending fees.

(f) The fee for service schedule will be applied to the local rate specific to the service and the type of provider for the client.

(g) For purposes of these rules, a client's gross annual income will include:

(A) Salaries from the household;

(B) Interest and dividends from the household;

(C) Pensions, annuities, Social Security, and railroad retirement benefits from the household; and

(D) Any other income from the household.

(h) All medical costs including prescription drugs that are the responsibility of the household, may be deducted from the client's gross annual income.

(i) Fees for service will be used to expand services under Oregon Project Independence. Expansion of services will be limited to services authorized in OAR 411-032-0010(1)(a) as identified in the agency's area plan.

(j) A record of all fees for service will be kept by each area agency and reported monthly to the Department.

(A) Fee for service determination forms will be a part of each client case record.

(B) Fee for service determination forms will meet minimum requirements for documentation, as defined by the Department.

(C) The maximum monthly authorized fee will be recorded on each client's Oregon ACCESS record upon initial service determination and at least annually thereafter, at time of reassessment.

(D) Clients will receive written notification of the hourly and maximum monthly authorized fee upon initial service determination and whenever there is a change.

(k) Nothing in these rules will prevent any client of Oregon Project Independence, or client's family, from making a donation or contribution. Such donations will also be used to expand services under Oregon Project Independence. Expansion of services will be limited to services authorized in OAR 411-032-0010(1)(a) as identified in the agency's area plan.

(1) The decision to terminate Oregon Project Independence services for non-payment of assessed fees for service will be the responsibility of the local area agency.

(A) The Area Agency will establish a written policy addressing client non-payment of fees to be reviewed and approved in the agency area plan.

(B) Clients will be given a copy of the agency policy pertaining to client non-payment of fees upon initial eligibility determination.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.430 & ORS 410.450

Hist.: SSD 11-1984, f. 11-30-84, ef. 12-1-84; SSD 12-1988, f. & cert. ef. 12-2-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 7-1999, f. 6-30-99, cert. ef. 7-1-99; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04

411-032-0044

Fee for Service Schedule

(1) Fees start at the federal poverty level net monthly income and increase by approximately \$25 income increments up to 200% of the federal poverty level. Families with net monthly incomes over 200% of the federal poverty level will pay

the full hourly rate of services provided. The Department, after consultation with the Governor's Commission on Senior Services, will develop and publish a fee schedule for services based on the federal poverty level and distribute the schedule to the area agencies once a year.

(2) Maximum monthly fees will not be greater than 30% of net monthly income for a family of one, and 40% of net monthly income for families of two or more.

(3) Area agencies and providers will not be required to make a second attempt to collect Oregon Project Independence fees for service of less than \$5.00 per month.

Stat. Auth.: ORS 410.470

Stats. Implemented: ORS 410.470

Hist.: SSD 15-1985, f. 12-31-85, ef. 1-1-86; SSD 9-1988, f. & cert. ef. 8-1-88; SSD 13-1989, f. & cert. ef. 9-1-89; SSD 19-1989(Temp), f. 12-29-89, cert. ef. 1-1-90; SSD 5-1990, f. & cert. ef. 2-1-90; SSD-11-1990(Temp), f. & cert. ef. 4-27-90; SSD 17-1990, f. & cert. ef. 8-20-90; SSD 11-1991, f. & cert. ef. 6-14-91; SSD 11-1993, f. 12-30-93, cert. ef. 1-1-94; SSD 3-1997, f. 11-28-97, cert. ef. 12-1-97; SDSD 9-2002(Temp), f. & cert. ef. 11-1-02 thru 4-29-03; SPD 11-2003, f. & cert. ef. 5-2-03; SPD 18-2004, f. & cert. ef. 5-28-04