

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING
&
STATEMENT OF NEED AND FISCAL IMPACT

Department of Human Services, Aging and People with Disabilities 411

Agency and Division	Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	411
500 Summer Street NE, E-48 Salem, OR 97301-1074	(503) 945-6398

Rules Coordinator	Address	Telephone

RULE CAPTION

Eligibility and activities of daily living criteria for long-term care services

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

PUBLIC RULEMAKING HEARING

Date: March 15, 2017 **Time:** 9:00 a.m.

Location: Human Services Building **Hearings Officer:** Staff
500 Summer Street NE, ROOM 160
Salem, Oregon 97301

This location is accessible for individuals with mobility impairments and auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND:
411-015-0005; 411-015-0006

Stat. Auth.: ORS 410.070

Other Auth.:

Stats. Implemented: ORS 410.060, 410.070, 414.065

RULE SUMMARY

The Department of Human Services (Department) is proposing to amend OAR 411-015-0005 and 411-015-0006 to more clearly define the threshold of need for a nursing

facility level of care. The Department is also amending the rules to more clearly define frequency of need thresholds and the definition of tasks associated with the activities of daily living (ADL) portion of the rule. Minor grammar, formatting, punctuation, and housekeeping issues are also being addressed.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator):
March 21, 2017 at 5 p.m.

In the Matter of:

The amendment of OAR 411-015-0005 and 411-015-0006 relating to long-term care service priorities for individual's served.

Documents Relied Upon, and where they are available:

Need for the Rule(s):

The Department needs to amend OAR 411-015-0005 and 411-015-0006 to more clearly define the threshold need for nursing facility level of care and clean-up language that was unclear as identified through the administrative hearing process and the Quality Assurance reviews.

The Department also needs to amend the rules as the rules are not consistent with regards to the frequency of need thresholds in activities of daily living (ADLs).

The Department is doing this by changing the rules to clearly define the frequency of need in each ADL as at least one day each week totaling four days per month. The Department added in definitions to clarify tasks that comprise the activities of daily living to provide better clarity and consistency within the rules.

Minor grammar, formatting, punctuation, and housekeeping issues are also being addressed.

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR chapter 411, division 015 will have the following fiscal and economic impact:

State Agencies: The Department estimates that 5-10 % of consumers currently receiving services will no longer be eligible with will reduce the cost curve. These changes will likely have a positive impact on the Department fiscally as reduction in the number of consumers eligible leads to cost savings.

Units of Local Government: The Department estimates that 5-10 % of consumers currently receiving services will no longer be eligible this will reduce the cost curve. These changes will likely have a positive impact on the Department fiscally as reduction in the number of consumers eligible leads to cost savings.

Consumers: The Department estimates that 5-10 % of consumers currently receiving services will no longer be eligible with will reduce the cost curve. This will have a negative impact to those consumers who will no longer be receiving services. The Department is unable to predict the number of consumers who will no longer be eligible at this time as we do not have exact data on what impact the proposed changes to the SPLs could have.

Providers: The Department estimates that 5-10% of consumers will no longer be eligible for services, this will have an effect on their providers because there will be less consumers eligible therefore reducing demand for provider services. The Department is unable to predict the exact impact on providers as data is not available as to provider groups that serve consumers impacted by the changes.

Public: The Department estimates there will be no fiscal or economic impact on the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

There are approximately 2,658 adult foster homes subject to this rule, most of which are considered a small business as defined by ORS 183.310.

There are currently 509 assisted living or residential care settings. Of these, approximately 31 may be considered a small business as defined by ORS 183.310.

There are currently 139 licensed nursing facilities. Of these, 18 may be considered a small business as defined by ORS 183.310.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The proposed changes impact providers as described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. Small businesses will also be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from the Department, LeadingAge Oregon, Disability Services Advisory Committee, SEIU 503, Oregon Resource Association, Oregon Law Center, Oregon Health Care Association, Providence Elderplace, Office of the Long-Term Care Ombudsman, AARP, State Independent Living Council, Legal Aid Services of Oregon, Portland Adventist Medical Center, Governor's Commission on Senior Services, Northwest Senior and Disability Services, Oregon Health Authority, Oregon Disabilities Commission.

**DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 15**

LONG-TERM CARE SERVICE PRIORITIES FOR INDIVIDUALS SERVED

411-015-0005 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 015:

- (1) "AAA" means "Area Agency on Aging" as defined in this rule.
- (2) "Adult" means any person at least 18 years of age.
- (3) "All Phases" means each part of an activity.
- (4) "Alternative Service Resources" means other possible resources for the provision of services to meet an individual's needs. Alternative service resources includes, but is not limited to, natural supports, risk intervention services, Older Americans Act programs, or other community supports. Alternative service resources are not paid by Medicaid.
- (5) "Architectural Modifications" means any service leading to the alteration of the structure of a dwelling to meet the specific service needs of an eligible individual.
- (6) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The term Area Agency on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 to 410.300.

(7) "Assistance Types" needed for activities of daily living and instrumental activities of daily living include, but are not limited to the following terms:

(a) "Cueing" means giving verbal or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(b) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(c) "Monitoring" means a provider must observe an individual to determine if intervention is needed.

(d) "Reassurance" means to offer an individual encouragement and support.

(e) "Redirection" means to divert an individual to another more appropriate activity.

(f) "Set-up" means getting personal effects, supplies, or equipment ready so that an individual may perform an activity.

(g) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(h) "Support" means to enhance the environment to enable an individual to be as independent as possible.

(8) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, instrument of technology, service animals, general household items, or furniture used to assist and enhance an individual's independence in performing any activity of daily living.

(9) "Behavioral Care Plan" means a documented set of procedures, reviewed by the Department or AAA representative, which describes

interventions for use by a provider to prevent, mitigate, or respond to behavioral symptoms that negatively impact the health and safety of an individual or others in a home or community-based services setting. The preferences of an individual are included in developing a Behavioral Care Plan.

(10) "Business Days and Hours" means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays. Hours are from 8:00 AM to 5:00 PM.

(11) "CA/PS" means "Client Assessment and Planning System" as defined in this rule.

(12) "Care Setting" means a Medicaid contracted facility ~~at which~~where a Medicaid eligible individual resides and receives services. Care settings include adult foster homes, residential care facilities, assisted living facilities, specialized living contracted residences, and nursing facilities.

(13) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The case manager authorizes and implements an individual's service plan and monitors the services delivered as described in OAR chapter 411, division 028.

~~(14) "Client" means "individual" as defined in this rule.~~

(14~~5~~) "Client Assessment and Planning System (CA/PS)":

(a) Is the single entry data system used for --

(A) Completing a comprehensive and holistic assessment;

(B) Surveying an individual's physical, mental, and social functioning; and

(C) Identifying risk factors, individual choices and preferences, and the status of service needs.

(b) The CA/PS documents the level of need and calculates the individual's service priority level in accordance with these rules, calculates the service payment rates, and accommodates individual participation in service planning.

(~~156~~) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of all available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources not paid for by the Department.

(~~167~~) "Department" means the Department of Human Services (DHS).

(~~178~~) "Disability" means a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006.

(~~189~~) "Extraordinary Circumstances" means:

(a) An individual being assessed is working full time during business hours; or

(b) A family member, whose presence is requested by an individual being assessed, is traveling from outside the area, and is available for only a limited period of time that does not include business days and hours.

(~~2019~~) "Functional Impairment" means an individual's pattern of mental and physical limitations that restricts the individual's ability to perform activities of daily living and instrumental activities of daily living without the assistance of another person.

(20) "Home" means a setting that exhibits the characteristics described in OAR 411-030-0033(2)(a) - (d) and is not a care setting as defined in this rule.

(21) "Independent" means an individual does not meet the definition of "assist" or "full assist" when assessing an activity of daily living as described in OAR 411-015-0006 or when assessing an instrumental activity of daily living as described in OAR 411-015-0007.

(22) "Individual" means an older adult or an adult with a disability applying for or eligible for services. The term "individual" is synonymous with "consumer" or "client".

(23) "Medicaid Home and Community-Based Services" means the services approved and funded by the Centers for Medicare and Medicaid Services for eligible individuals in accordance with Title XIX of the Social Security Act.

(24) "Medicaid OHP Plus Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(25) "Mental or Emotional Disorder" means:

(a) A schizophrenic, mood, paranoid, panic, or other anxiety disorder;

(b) Somatoform, personality, dissociative, factitious, eating, sleeping, impulse control, or adjustment disorder; or

(c) Other psychotic disorder as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual.

(26) "Natural Support" means resources and supports (e.g. relatives, friends, significant others, neighbors, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in

collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(27) "Older Adult" means any person at least 65 years of age.

(28) "OSIPM" means Oregon Supplemental Income Program-Medical as defined in OAR 461-101-0010. OSIPM is Oregon Medicaid insurance coverage for individuals who meet eligibility criteria as described in OAR chapter 461.

(29) "Service Priority Level (SPL)" means the order in which Department and Area Agency on Aging staff identify individuals eligible for a nursing facility level of care, Oregon Project Independence, or Medicaid home and community-based services. A lower service priority level number indicates greater or more severe functional impairment. The number is synonymous with the service priority level.

(30) "Soiled" means the individual has urinated or defecated in their incontinence supplies or clothing to the degree that the individual's health and well-being is at risk.

~~(30) "SPL" means "service priority level" as defined in this rule.~~

(31) "Substance Abuse Related Disorders" means disorders related to the taking of a drug or toxin of abuse (including alcohol).

(a) Substance abuse related disorders include:

(A) Substance dependency and substance abuse;

(B) Alcohol dependency and alcohol abuse; and

(C) Substance induced disorders and alcohol induced disorders as defined by the American Psychiatric Association in the Diagnostic and Statistical Manual.

(b) Substance abuse related disorders are not considered physical disabilities. Dementia or other long term physical or health impairments resulting from substance abuse may be considered physical disabilities.

(32) Tasks means part of an activity of daily living.

(332) "These Rules" means the rules in OAR chapter 411, division 015.

(343) "Without Supports" means an individual lacks the assistance of another person, a care setting and staff, or an alternative service resource as defined in this rule.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.060, 410.070, & ~~414.065~~

411-015-0006 Activities of Daily Living (ADL)

(1) "Activities of Daily Living (ADL)" mean those personal functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition, and behavior.

(2) Evaluation of the individual's need for assistance in Aactivities of dDaily Living is based on:

(a) The individual's abilitiesability to complete activities and tasks rather than the services provided;

(b) How the individual functioned during the 30 days prior to the assessment date, with consideration of how the person is likely to function in the 30 days following the assessment date; and

(c) Evidence of the actual or predicted need for assistance of another person within the assessment time frame and it must not be based on possible or preventative needs.

~~(3) "Independent" means the individual does not meet the definition of "Assist" or "Full Assist" for each Activity of Daily Living as defined in this rule.~~

(43) Bathing and personal hygiene. Bathing and personal hygiene are comprised of two ~~components~~activities which are bathing and personal hygiene. To be considered Assist, the individual must require assistance in bathing or full assistance in hygiene. To be considered Full Assist, the individual must require full assistance in bathing.

(a) Bathing means the ~~activities of bathing~~tasks of washing the body, and washing hair, and using assistive devices if needed or. Bathing ~~includes the act of~~ getting in and out of the bathtub, ~~or~~ shower. For individuals who are confined to a bed, bathing is assessed without considering the need to get in or out of the bathtub or shower.

(A) Assist: Even with assistive devices, the individual requires assistance of another person for a task of bathing at least one day each week totaling four days per month~~is unable to accomplish some tasks of bathing without the assistance of another person~~. This means hands-on assistance for part of the task, cueing ~~during the activity~~, or stand-by presence during the activity.

(B) Full Assist: Even with assistive devices, the individual is unable to accomplish any task of bathing without the assistance of another person. This means the individual needs hands-on assistance of another person through all ~~phases~~tasks of the activity, every time the activity is attempted.

(b) Personal hygiene means the ~~activities~~tasks of shaving, ~~or~~ caring for the mouth, or assistance with the tasks of menstruation care.

(A) Assist: Even with assistive devices, the individual requires the hands-on assistance of another person for a task of personal hygiene at least one time each week totaling four days per month~~is unable to accomplish at least one task of personal hygiene without the assistance of another person~~. This means hands-on assistance ~~for part of the task~~, cueing ~~during the activity~~, or stand-by presence during the activity.

(B) Full Assist: Even with assistive devices, the individual is unable to accomplish at least two personal hygiene tasks, without the assistance of another person. This means the individual needs hands-on assistance of another person through all ~~phases of the activity~~tasks, every time the activity is attempted.

(54) Cognition and behavior refers to how the brain functions in the areas of adaptation, awareness, judgment, memory, and orientation. Cognition includes three components of behavioral symptoms, which are demands on others, danger to self or others, and wandering.

(a) The individual's ability to manage each component of cognition and behavior is assessed by how the person functions without supports, meaning the assistance of another person, a care setting, or an alternative service resource as defined in OAR 411-015-0005. Lack of medication or lack of medication management is not considered when evaluating cognition or behavior.

(b) The assessment time frame in OAR 411-015-0008 of 30 days prior to the date of the assessment may be expanded when assessing cognition and behavior without supports. History or incidents in the past, more than 30 days prior to the assessment date, may be considered if they negatively impacted health and safety and are currently a concern that needs to be addressed.

(c) An individual under age 65, with cognition or behavior assistance or full assistance needs based on a mental or emotional disorder,

does not meet the criteria for service eligibility per OAR 411-015-0015.

(d) An individual must require assistance in at least three of the eight components of cognition and behaviors to meet the criteria for assist in cognition and behaviors. An individual must require full assistance in three of the eight components to meet the criteria for full assistance in cognition and behaviors.

(A) Adaptation is the ability to respond, cope, and adjust to major life changes such as a change in living situation or a loss (such as health, close relationship, pet, divorce, or a death).

(i) Assist: The individual requires reassurance from another person to cope with or adjust to change. Assistance involves multiple occurrences, less than daily.

(ii) Full Assist: The individual requires constant emotional support and reassurance or is unable to adapt to change. These are daily, ongoing occurrences.

(B) Awareness means the ability to understand basic health and safety needs (such as the need for food, shelter, and clothing).

(i) Assist: The individual requires assistance of another person to understand basic health and safety needs.

(ii) Full Assist: The individual does not have the ability to understand basic health and safety needs and requires daily, ongoing intervention by another person.

(C) Judgment means decision-making. It is the ability to identify choices and understand the benefits, risks, and consequences of those choices. Individuals who lack the ability to understand choices, or the potential risks and consequences of choices,

need assistance in decision-making. Judgment does not include what others might deem a poor choice.

(i) Assist: At least weekly, the individual needs protection, monitoring, and guidance from another person to make decisions.

(ii) Full Assist: The individual's decisions require daily intervention by another person.

(D) Memory means the ability to remember and appropriately use current information impacting the health and safety of the individual.

(i) Assist: The individual has difficulty remembering and using current information and requires reminding from another person.

(ii) Full Assist: The individual is unable to remember or use information and requires assistance beyond reminding.

(E) Orientation means the ability to accurately understand or recognize person, place, or time in order to maintain health and safety.

(i) Assist: The individual is disoriented to person, place, or time and requires the assistance of another person. These occurrences are episodic during the week, but less than daily.

(ii) Full Assist: The individual is disoriented daily to person, place, or time and requires the assistance of another person.

(F) Danger to self or others means behavioral symptoms, other than wandering, that are hazardous to the individual (including

self-injury), or harmful or disruptive to those around the individual.

(i) Assist: At least monthly, the individual is disruptive or aggressive in a non-physical way, agitated, or sexually inappropriate and needs the assistance of another person. These behavioral symptoms are challenging, but the individual can be verbally redirected.

(ii) Full Assist: The individual has had more than one episode of aggressive, disruptive, agitated, dangerous, or physically abusive or sexually aggressive behavioral symptoms directed at self or others. These behavioral symptoms are extreme, may be unpredictable, and necessitate intervention beyond verbal redirection, requiring an individualized behavioral care plan (as defined in OAR 411-015-0005) that all staff are trained to deliver.

(G) Demands on others means behavioral symptoms, other than wandering, that negatively impact and affect living arrangements, providers, or other residents.

(i) Assist: The individual's habits and emotional states limit the types of living arrangements and companions, but can be modified with individualized routines, changes to the environment (such as roommates or noise reduction), or general training for the provider that is not specific to the individual.

(ii) Full Assist: The individual's habits and emotional states can be modified only with a 24-hour specialized care setting or an individualized behavioral care plan (as defined in OAR 411-015-0005) that all staff are trained to deliver.

(H) Wandering means moving about aimlessly, or elopement, without relationship to needs or safety.

(i) Assist: The individual wanders within the home or facility, but does not jeopardize safety.

(ii) Full Assist: The individual wanders inside or outside and jeopardizes safety.

(56) Dressing and Grooming is comprised of two elements/activities which are dressing and grooming. To be considered Assist, the individual must require assistance in dressing or full assistance in grooming. To be considered Full Assist the individual must require full assistance in dressing:

(a) Dressing means the activities/tasks of dressing-putting on, taking off clothing or shoes and socks and/or undressing.

(A) Assist: Even with assistive devices, the individual is unable to accomplish some tasks of dressing without the assistance of another person at least one time each week totaling four days per month. This means hands-on assistance for part of the task, cueing ~~during the activity~~, or stand-by presence during the activity.

(B) Full Assist: Even with assistive devices, the individual is unable to accomplish any tasks of dressing without the assistance of another person. This means the individual needs hands-on assistance through all phases/tasks of the activity, every time the activity is attempted.

(b) Grooming means tasks of nail and hair care.

(A) Assist: Even with assistive devices, the individual is unable to accomplish tasks of grooming, without the assistance of another person at least one time each week totaling four days per month. This means hands-on assistance for part of the

~~task, cueing during the activity,~~ or stand-by presence during the activity.

(B) Full Assist: Even with assistive devices, the individual is unable to perform any tasks of grooming without the assistance of another person. This means the individual needs hands-on assistance of another person through all ~~phases~~ tasks of the activity, every time the activity is attempted.

(67) Eating means the tasks of activity of eating, feeding, or nutritional IV or feeding tube set-up by another person ~~and eating~~ and may include using assistive devices.

(a) Assist: When eating, the individual requires another person to be within sight and immediately available to actively provide hands-on assistance with feeding, special utensils, or immediate hands-on assistance to address choking, or cueing during the act of eating at least one time each week totaling four days per month during the assessment timeframe. ~~Assistance requires hands-on feeding, hands-on assistance with special utensils, cueing during the act of eating, or monitoring to prevent choking or aspiration. Assistance with eating is a daily need or may vary if an individual's medical condition fluctuates significantly during a one-month period.~~

(b) Full Assist: When eating, the individual always requires one-on-one assistance through all phases/tasks of the activity for direct feeding, constant cueing, or to prevent choking or aspiration every time the activity is attempted. ~~This includes nutritional IV or feeding tube set-up by another person. This means the individual needs the assistance of another person through all phases of the activity, every time the activity is attempted.~~

(78) Elimination is comprised of three ~~components~~ activities which are Bladder, Bowel and Toileting. To be considered Assist, the individual must require assistance in at least one of the three ~~components~~ activities. To be considered Full Assist the individual must require full assistance in any of

the three ~~components~~activities. Dialysis care needs are not assessed as part of elimination.

(a) Bladder means the tasks of managing bladder care. This includes ~~tasks such as~~ catheter care, ~~toileting schedule~~, monitoring for infection, and ostomy care, ~~and changing incontinence supplies~~.

(A) Assist: Even with assistive devices ~~or supplies~~, the individual requires hands-on assistance with ~~is unable to accomplish some of the~~ a tasks of bladder care inside the home or care setting at least one day each week totaling four days per month during the assessment timeframe ~~without at least monthly assistance from another person~~.

(B) Full Assist: The individual requires hands-on assistance of another person to complete all tasks of bladder care every time the task is attempted even with assistive devices ~~The individual is unable to manage any part of bladder or catheter care without the assistance of another person. This means the individual needs the assistance of another person through all phases of the activity, every time the activity is attempted.~~

(b) Bowel means the tasks of managing bowel care. This includes ~~tasks such as~~ digital stimulation, ~~toileting schedule~~, suppository insertion, ostomy care, and enemas, ~~and changing incontinence supplies~~.

(A) Assist: Even with assistive devices, the individual requires hands-on assistance with a task of bowel care inside the home or care setting at least one day each week totaling four days per month during the assessment timeframe ~~is unable to accomplish some tasks of bowel care without at least monthly assistance of another person~~.

(B) Full Assist: The individual requires hands-on assistance of another person to complete all tasks of bowel care every time the task is attempted, even with assistive devices~~The individual is unable to accomplish any part of bowel care without the assistance of another person. This means the individual needs the assistance of another person through all phases of the activity, every time the activity is attempted.~~

(c) Toileting means the activity/tasks requiring the hands-on assistance of another person inside the care setting to get to and from, and on and off the toilet (including bedpan, commode, or urinal), cleansing/cleanse after elimination or adjusting clothing, change soiled incontinence supplies or soiled clothing, removing/clothing to enable elimination, or cue to prevent incontinence~~cleaning and maintaining assistive devices, or cleaning the toileting area after elimination because of unsanitary conditions that pose a health risk. This does not include routine bathroom cleaning.~~

(A) Assist: Even with assistive devices, the individual requires hands-on assistance with a task of toileting inside the home or care setting at least one day each week totaling four days per month during the assessment timeframe~~is unable to accomplish some tasks of toileting without hands-on assistance of another person at least monthly. Hands-on assistance is required for all tasks, except tasks associated with cleaning devices or the toileting area.~~

(B) Full Assist: The individual is unable to accomplish any part task of toileting without the hands-on assistance of another person. This means the individual needs hands-on assistance of another person through all phases/tasks of the activity, every time the activity is attempted. ~~Hands-on assistance is required for all tasks, except tasks associated with cleaning devices or the toileting area.~~

(89) Mobility is comprised of two ~~components~~activities, which are ambulation and transfer. In the mobility cluster only, assistance is categorized into three levels. To be considered Minimal Assist, the individual must require minimal assistance in ambulation. To be considered Substantial Assist, the individual must require substantial assistance with ambulation or an assist with transfer. To be considered Full Assist, the individual must require full assistance with ambulation or transfer.

(a) Mobility does not include getting in and out of a motor vehicle, or getting in or out of a bathtub or shower, ~~moving on or off the toilet, or moving to and from the toilet.~~

(b) Mobility, for the purposes of this rule, inside the home or care setting, means inside the entrance to the client's home or apartment unit or inside the care setting (as defined in OAR 411-015-0005). Courtyards, balconies, stairs or hallways exterior to the doorway of the home or apartment unit are not considered inside.

(c) A history of falls with an inability to rise without the assistance of another person, or with negative physical health consequences, may be considered in assessing ambulation or transfer if they occur within the assessment time frame. Falls prior to the assessment time frame, or the need for prevention of falls alone, even if recommended by medical personnel, is not sufficient to qualify for assistance in ambulation or transfer.

(d) Ambulation means the activity of moving around both inside and outside the home or care setting, ~~during the assessment time frame, while using assistive devices, if needed.~~ This includes assessing the individual's needs after taking into consideration their level of independence while using assistive devices such as walkers, canes, crutches, manual and electric wheelchairs, and motorized scooters. Ambulation does not include exercise or physical therapy.

(A) Minimal Assist: Even with assistive devices, ~~if needed,~~ the individual requires hands-on assistance from another person to ambulate outside the home or care setting at least once each

month, but less than four days per month. The individual can get around/ambulate inside his or her/their home or care setting without the assistance of another person. ~~Outside of the individual's home or care setting, the individual requires hands-on assistance of another person.~~

(B) Substantial Assist: Even with assistive devices the individual requires hands-on assistance from another person to ambulate inside their home or care setting at least one day each week totaling four days per month~~is unable to ambulate during the assessment time frame without hands-on assistance of another person inside his or her home or care setting. Even with assistive devices, this assistance may also be needed outside.~~

(C) Full Assist: Even with assistive devices, the individual requires hands-on assistance~~is unable to ambulate without assistance~~ from another person to ambulate every time the activity is attempted. ~~This means the individual needs the hands-on assistance of another person through all phases of the activity, every time the activity is attempted~~Individuals who are confined to bed are a full assist in ambulation.

(e) Transfer means the activity/tasks of moving to or from a chair, bed, or wheelchair using assistive devices, if needed. This includes repositioning for individuals confined to bed. This assistance must be required because of the individual's physical limitations, not their physical location~~needed inside the individual's home or care setting.~~

(A) Assist: Even with assistive devices, the individual requires hands-on assistance with a task of transferring inside the home or care setting at least one day each week totaling at least four days per month~~is unable to accomplish a transfer without hands-on assistance of another person at least four days during a month.~~

(B) Full Assist: The individual requires hands-on assistance from another person every time the activity is attempted, even with assistive devices~~Even with assistive devices, the individual is unable to transfer and is dependent on at least one other person to perform the transfer. This means the individual needs hands-on assistance of another person through all phases of the activity, every time the activity is attempted.~~

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070