

DHS Report for HB 4106 – OAR 461 Temporary Rules in 2017

Rule Number	Rule Action	Date Filed	Statement of Need – Reason for Action	Findings of Need to Act Promptly and Why A Temporary Rule was Appropriate
411-360-0140(T)	Amend	2/15/2017	<p>OAR 411-360-0140 needs to be amended to -- Remove the limitation of 40 total hours per week of direct nursing services for a Medicaid-enrolled direct nurse provider in an AFH-DD; and specify an AFH-DD provider is not authorized to deliver private duty nursing services.</p> <p>OAR 411-360-0140 is being amended to -- Remove the language limiting a Medicaid-enrolled direct nurse provider in an AFH-DD from delivering no more than 40 total hours per week of direct nursing services; and Specify that under OAR 410-132-0080, an AFH-DD provider is not authorized to deliver private duty nursing services.</p>	<p>Failure to act promptly and immediately amend OAR 411-360-0140 will result in serious prejudice to providers, individuals receiving private duty nursing services and direct nursing services, and the Department.</p> <p>OAR 411-360-0140 needs to be amended promptly to -- Remove language limiting a Medicaid-enrolled direct nurse provider in an AFH-DD from delivering no more than 40 total hours per week of direct nursing services; and Specify that under OAR 410-132-0080, an AFH-DD provider is not authorized to deliver private duty nursing services.</p> <p>Failure to immediately update OAR 411-360-0140 prevents -- A provider in a licensed AFH-DD from delivering emergent nursing coverage to an individual with a medically complex condition and may subject the individual to subsequent health and safety risks; and The Department from complying with the limitations for private duty nursing services in OAR 410-132-0080.</p>

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411-317-0000(t)	Amend	5/1/2017	OAR 411-317-0000 needs to be amended to update the definition of the In-Home Expenditure Guidelines. OAR 411-317-0000 is being amended to incorporate Version 6.0 of the In-Home Expenditure Guidelines effective May 1, 2017.	<p>Failure to act promptly and immediately amend OAR 411-317-0000 to incorporate Version 6.0 of the In-Home Expenditure Guidelines will result in serious prejudice to individuals receiving developmental disabilities services and their families, case management entities, providers, and the Department. The In-Home Expenditure Guidelines are used to support decisions by the Department to take action related to family support services with respect to individuals who request or are accessing them.</p> <p>Failure to immediately amend OAR 411-317-0000 would result in family support services that are improperly or inappropriately authorized and delivered. Such occurrences may result in unnecessary expenditures of Department funds.</p> <p>OAR 411-317-0000 needs to be amended promptly to incorporate Version 6.0 of the In-Home Expenditure Guidelines effective May 1, 2017.</p>
411-050-0615(t)	Amend	5/1/2017	The Department needs to immediately amend the rules to eliminate the 10-day review period that allows the licensee and the complainant the right to review a preliminary Adult Protective Service (APS) complaint report and provide additional information because the Department is stopping this process effective May 1, 2017 in order for the Department to better comply with statutory deadlines. The Department will do this by removing the 10-day review period from the rules. The amendment of the rules, will make it so the Department can comply with statutory time limits for completion of reports and corrective action.	<p>Failure to act promptly and immediately amend OAR chapter 411, division 050 will result in serious prejudice to the public interest, the Department, providers, and individuals living in APD adult foster homes. These rules need to be adopted promptly so the Department is able to meet statutory timelines in regards to completion of APS complaint investigations.</p> <p>OAR 411-050 needs to be amended promptly because the Department is going to stop doing the 10-day reviews effective May 1, 2017 as the process in</p>
411-050-0650(t)	Amend	5/1/2017		

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411-050-0665(t)	Amend	5/1/2017	The Department will also make minor housekeeping changes to correct references to other rules and codes that are currently incorrect, improve grammar and punctuation, and to clarify text.	the rule is redundant as the Department already has other processes in place that allow providers to respond to reports. OAR 411-050-0665 already provides the facility, complainant and any person reported to have committed wrongdoing 15 calendar days in which to submit additional or different information.
411-054-0105(t)	Amend	5/1/2017	<p>The Department needs to amend the rules in 411-054-0105 to remove the section of the rule that allows the complainant to be provided with a 10-day review of the draft APS facility investigation report before the report is closed and sent to the SOQ Unit for abuse determination and apportionment. The Department has found that the process creates extra work and is duplicative of other processes that are in place. The extra review is also putting the Department out of compliance with statutory timeframes for completion of reports and corrective action. The Department also needs to make minor grammar, punctuation, language, and other housekeeping changes to the rule in order to reflect current Department terminology.</p> <p>The Department will remove the section of the rule that allows for the 10-day review to create a more efficient and streamlined process. The Department is also making housekeeping changes to reflect current Department terminology.</p>	<p>Failure to act promptly and immediately amend OAR 411-054-0150 will result in serious prejudice to the public interest, the Department, providers, and individuals living in assisted living and residential care facilities. These rules need to be adopted promptly so that the Department is able to meet statutory timelines in regards to completion of APS investigations.</p> <p>OAR 411-054-0150 needs to be amended promptly because the Department is going to stop doing the 10-day reviews effective May 1, 2017 as the process in the rule is redundant as the Department already has other processes in place that allow providers to respond to reports. Keeping 411-054-0150 in place, also hinders the Department's ability to meet the statutory timelines set for report completion. Removal of the 10-day review will allow the Department to be more efficient and meet statutory guidelines.</p>
411-032-0050	Amend	7/1/2017	The Department needs to amend the rule and extend the date of the pilot program in order to continue serving individuals currently receiving services under the program. The pilot program is set to expire on June 30, 2017. The Department is amending the date of the rules to expand the expiration date to December 31, 2017 in order to allow the pilot	Failure to act promptly and immediately amend OAR 411-032-0050 will result in serious prejudice to the public interest, the Department, and adults with physical disabilities receiving services under the pilot program. These rules need to be adopted promptly so the rule does not

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			<p>to continue until the Department receives notification on the future of the pilot program from the legislature. The Department also needed to fix a statutory reference in the statutes implemented. This was done to the rule in order to reflect proper formatting.</p>	<p>expire. If the rule expires, it would cause a disruption in services for individuals receiving services under the pilot program.</p> <p>OAR 411-032-0050 is being amended promptly because the rules are set to expire on June 30, 2017. The Department would like to continue providing services to individuals currently receiving services under the pilot program until the Department has legislative direction in regards to the future of the program. The Department is therefore expanding the expiration date of the pilot program rule to allow more time for legislative direction in regards to the future of the program.</p>
411-030-0020(T)	Amend	8/1/2017	<p>OAR 411-030 was previously amended to not permit new individuals to receive live-in services, which was based upon budget to sustainability comply with the U.S. Department of Labor Final Rules. After this amendment, the Department determined additional changes were necessary for the sustainability of the in-home services program. The February 2017 legislative session budget directs, in part, for Aging and People with Disabilities to end the live-in service program by October 1, 2017. Spousal Pay services currently use OAR 411-030-0068 (live-in and shift services) to define some of the eligibility criteria. This portion of the rule needs to be amended by moving the eligibility criteria to the Spousal Pay rules. OAR 411-030-0068 and OAR 411-030-0070 are being amended to align the rules with the changes noted above. OAR 411-030-0020; OAR 411-030-0068; OAR 411-030-0070; OAR 411-030-0080 also need to be amended to fix minor grammar, formatting, punctuation, and housekeeping issues, so the Department is making these changes at this time as well.</p>	<p>Failure to act promptly and immediately to amend OAR chapter 411, division 030 would result in serious prejudice to the public interest, the Department, homecare workers, and individuals receiving in-home services. If the rules are not changed promptly, the sustainability of the in-home services program will be at risk. In order to ensure sustainability, the Department must immediately amend the rules to ensure the Department is only paying for the services the Department is authorized to provide. OAR 411-030 needs to be amended promptly because the Department may not be able to continue the program if the sustainability issues are not addressed. Addressing the sustainability issues will allow the Department to continue providing the services the Department is authorized to provide.</p>
411-030-0068(T)	Amend	8/1/2017		
411-030-0070(T)	Amend	8/1/2017		
411-030-0080(T)	Amend	8/1/2017		

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411-054-0005(T)	Amend	8/1/2017	The rules in OAR chapter 411, division 054 need to be amended immediately to implement the regulations and expectations of CMS in regards to restraints and individually-based limitations. The	Failure to act promptly and immediately amend and adopt a new rule OAR 411-054 will result in serious prejudice to the Department, the public, residential care and assisted living facility providers, and those residing in residential care and assisted living facilities. These rules need to be amended as soon as possible, so that the rules in 411-054 comply with the amendments to OAR chapter 411, division 004 that became effective on July 1, 2017.
411-054-0027(T)	Amend	8/1/2017	overarching HCBS rules in OAR chapter 411, division 004 were amended and went into effect on July 1, 2017. Therefore the rules in OAR chapter 411, division 054, need to be amended as soon as possible in order to properly align with the requirements of CMS and the rules in OAR chapter 411, division 004. The rules are being updated to align with OAR chapter 411, division 004 by:	
411-054-0038(T)	Amend	8/1/2017	<ul style="list-style-type: none"> • Defining the term restraints as is appropriate for use in RCFs and ALFs. • Updating the date in which all requirements of the individually-based limitations rule must be implemented. • Describing supporting documentation that must be in place before a restraint and individually-based limitation may be applied. 	411-054 needs to be amended promptly to align rules in the division with the updated standards in OAR 411-004 relating to restraints and individually-based limitations. Failing to align the rules may lead to confusion among the program as there would be differing requirements in different divisions. Also, if the Department, does not implement rules that comply with the regulations and expectations of CMS, Oregon risks losing federal funding, which covers approximately 70 percent of the cost of HCBS. Without this federal funding, Oregon could not fund the current HCB system, resulting in a significant impact to the state.
411-054-0060(T)	Amend	8/1/2017	<ul style="list-style-type: none"> • Defining the term restraints as is appropriate for use in RCFs and ALFs. • Updating the date in which all requirements of the individually-based limitations rule must be implemented. • Describing supporting documentation that must be in place before a restraint and individually-based limitation may be applied. <p>Minor grammar, punctuation, spelling, housekeeping, and formatting issues were made to all of the rules to be consistent with current Department terminology and practice.</p>	
411-030-0020(T)	Amend	10/1/2017	OAR chapter 411, division 030 was amended on August 1, 2017 to begin the process to close the live-in service program for those receiving live-in services on October 1, 2017. After this amendment, the Department determined that additional language pertaining to live-in services must be removed.	Failure to act promptly and immediately to amend OAR chapter 411, division 030 would result in serious prejudice to the public interest, the Department, homecare workers, and individuals receiving in-home services. The Department needs to make these changes by October 1 in order to comply with legislative direction in regards to the in-home
411-030-0040(T)	Amend	10/1/2017	As stated in the Oregon 2017-2019 Budget	

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411-030-0050(T)	Amend	10/1/2017	Report and Measure Summary, Aging and People with Disabilities, in part, is required to make the following changes:	services program. If the rules are not changed promptly, the sustainability of the in-home services program will be at risk. In order to ensure sustainability, the Department must immediately amend the rules to ensure the Department is only paying for the services the Department is authorized to provide.
411-030-0055(T)	Amend	10/1/2017	<ul style="list-style-type: none"> Eliminate the live in program effective October 1, 2017. The program has been phasing out over the last biennium due to high costs resulting from federal overtime rule changes. This action reduces the budget by \$4.5 million General Fund (\$14.8 million total funds). 	OAR 411-030 needs to be amended promptly because the Department may not be able to continue the program if the sustainability issues are not addressed. Addressing the sustainability issues will allow the Department to continue providing the services the Department is authorized to provide.
411-030-0068(T)	Amend	10/1/2017	<ul style="list-style-type: none"> Adjusting the maximum number of hours authorized in the activities of daily living and instrumental activities of daily living based on research funded by and conducted by the Department. This will ultimately result in a net reduction of hours and a net savings of \$12.5 million General Fund (\$40.5 million total funds) being eliminated. 	
411-030-0070(T)	Amend	10/1/2017	Aging and People with Disabilities is moving from a monthly service authorization to a two-week service period authorization in order to streamline service planning and prepare for upcoming IT system changes.	
411-030-0080(T)	Amend	10/1/2017	Remove Hardship Shelter Allowance rule as it pertains to live-in services and the actual payments are authorized in OAR chapter 461.	
411-030-0100(T)	Amend	10/1/2017	OAR 411-030-0020, OAR 411-030-0050, 411-030-0055, 411-030-0068, OAR 411-030-0070, OAR 411-030-0080, and 411-030-0100 are being amended to align the rules with the changes noted above. These rules also are being amended to fix minor grammar, formatting, punctuation, and housekeeping issues, so the Department is making these changes at this time as well.	
411-030-0020(T)	Suspend	10/1/2017		
411-030-0068(T)	Suspend	10/1/2017		

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411-030-0070(T)	Suspend	10/1/2017			
411-030-0080(T)	Suspend	10/1/2017			
411-034-0010(T)	Amend	10/1/2017	<p>OAR chapter 411, division 034 needs to be amended to align with changes being made in other APD divisions of OAR Chapter 411 that become effective October 1, 2017. The Department is changing all in-home service plans to authorize services in two week periods. This will help consumers better manage their service plans and prepare consumers, workers and the state for future IT systems. All systems impacted by these changes are going live on October 1, 2017, so the rules need to be consistent with the changes being made. The Department needs to make all the changes at once in order to ensure consistency. Specifically these rules need to be updated to align with two-week service authorizations. The Department is also updating the maximum hours per service period to 10. This ensures that consumers will not receive a reduction in service hours. The Department is also updating the rules to fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.</p>	<p>Failure to act promptly and immediately to amend OAR chapter 411, division 034 would result in serious prejudice to the public interest, the Department, individuals receiving services, and providers. The Department needs to adopt these rules promptly, so that the Department can stay within the legislatively allocated budget for 2017 - 2019. The rules also need to be changed immediately in order for the Department to minimize the impact of changes to the field, as systems will be updated on October 1, 2017 and the rules need to be consistent with the changes to the varying systems used to assess ADLs.</p> <p>OAR 411-034 needs to be amended promptly because of collective bargaining changes and IT system changes that require the rule changes to take effect on October 1, 2017.</p>	
411-034-0020(T)	Amend	10/1/2017			
411-034-0040(T)	Amend	10/1/2017			
411-034-0070(T)	Amend	10/1/2017			
411-034-0090(T)	Amend	10/1/2017			
411-037-0010(T)	Adopt	10/1/2017	<p>The Department needs to adopt language in OAR Chapter 411, division 037 to implement new changes to APD waiver that allows APD to serve individuals who wish to transition to an in-home service setting from a</p>	<p>Failure to act promptly and immediately to amend OAR chapter 411, division 037 would result in serious prejudice to the public interest, the Department, individuals receiving</p>	

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411-037-0020(T)	Adopt	10/1/2017	community-based facility. The Department is doing this by: - Setting out eligibility requirements to receive community transition services. - Explaining the types of services provided as community transition services. - Explaining the types of services that are not considered community transition services.	services, and providers. These rules need to be adopted promptly so the Department can comply with the new APD waiver and transition individuals to less restrictive and more appropriate care settings. OAR chapter 411, division 037 needs to be adopted promptly because this is a new service available to consumers that may lose other services and require transition assistance.
411-037-0030(T)	Adopt	10/1/2017		
411-037-0040(T)	Adopt	10/1/2017		
411-037-0050(T)	Adopt	10/1/2017		
411-015-0005(T)	Amend	10/1/2017	The Department needs to immediately amend OAR 411-015-0005 and 411-015-0006 on October 1, 2017 to comply with the newly adopted Departmental budget that is based on case load decreases beginning in October. All systems impacted by these changes are going live on October 1, 2017, so the rules need to be consistent with the changes being made. The Department needs to make all the changes at once in order to minimize the impact system-wide. 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 also needs to add in new language to implement the new waiver that allows APD to serve individuals who no longer meet Service Priority Levels, but would be at significant risk of homelessness, inadequate housing, or abuse if APD did not continue to serve these individuals. The Department is doing this by amending OAR 411-015-0005 and 411-015-0006 to	Failure to act promptly and immediately amend OAR chapter 411, division 015 will result in serious prejudice to the public interest, the Department, local offices, and consumers. These rules need to be adopted promptly so that the Department can stay within the legislatively allocated budget for 2017 - 2019. The rules also need to be changed immediately in order for the Department to minimize the impact of changes to the field, as systems will be updated on October 1, 2017 and the rules need to be consistent with the changes to the varying systems used to assess ADLs. OAR 411-015-0005 and 411-015-0006 needs to be amended promptly because currently there is lack of clarity around the intent of the administrative rules. The new changes
411-015-0006(T)	Amend	10/1/2017		
411-015-0030(T)	Adopt	10/1/2017		

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411-027-0005(t)	Amend	10/1/2017	<p>OAR chapter 411, division 027 needs to be amended to align with changes being made in OAR Chapter 411, divisions 015 and 030 that become effective October 1, 2017. The rules are being changed in order to comply with the newly adopted Departmental budget that</p>	<p>Failure to act promptly and immediately to amend OAR chapter 411, division 027 would result in serious prejudice to the public interest, the Department, individuals receiving services, and providers. The Department needs to adopt these rules promptly, so that the Department can stay within the legislatively allocated budget for 2017 - 2019. The rules also need to be changed immediately in order for the Department to minimize the impact of changes to the field, as systems will be updated on October 1, 2017 and the rules need to be consistent with the changes to the varying systems used to assess ADLs. If the rules are not changed promptly, appropriate rate authorizations will not be properly defined and put service programs at</p>
411-027-0020(t)	Amend	10/1/2017	<p>is based on caseload decreases beginning in October. All systems impacted by these changes are going live on October 1, 2017, so the rules need to be consistent with the changes being made. The Department needs to make all the changes at once in order to minimize the impact system-wide. The rules also need to be amended to reflect the current payments rates that are currently in effect.</p>	
411-027-0025(t)	Amend	10/1/2017	<p>The Department is amending OAR chapter 411, division 027 to make these changes by:</p>	
411-027-0050(t)	Amend	10/1/2017	<p>- Aligning the definitions in 411-027-0005 with definitional changes being made to OAR chapter 411, divisions 015 and 030.</p>	

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411-027-0170(t)	Amend	10/1/2017	<p>- Adding in language to better explain when individuals are eligible for add-on payments and the rate level if assessed at and SPL 14-17.</p> <p>-Amending language to make the exception process more clear.</p> <p>-Updating the rate table to reflect the current rates being paid to providers.</p> <p>The department is also updating the rules to fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.</p>	<p>risk. In order to ensure sustainability, the Department must immediately amend the rules to ensure the Department is only paying the correct rates the Department is authorized to provide.</p>
411-015-0030(t)	Adopt	11/29/2017	<p>The Department needs to immediately amend OAR 411-015-0030 to clarify that an individual must be assessed as requiring a physical care need and therefore meet Service Priority Level 14 through 17. The intent was to limit this benefit to SPL 14-17</p>	<p>Failure to act promptly and immediately amend OAR chapter 411-015-00030 will result in serious prejudice to the public interest, the Department, local offices, and consumers.</p>
411-015-0030(T)	Suspend	11/29/2017	<p>was discussed in the Rule Advisory Committee, but was missed in the filed temporary rules. The Department is fixing this by adding in the applicable language to a section of the rule. A minor formatting issue was also addressed.</p>	<p>The Department needs to immediately adopt changes OAR 411-015-0030 to apply the criteria agreed to with CMS and in order to manage the budget and to make sure what was discussed as the intent of the benefit is actually occurring.</p>