

**TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION**

For internal agency use only.

Oregon Department of Human Services, Developmental Disabilities 411

Agency and Division Name

Administrative Rules Chapter Number

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FILING CAPTION

(15 words or less)

ODDS: Authorization of Attendant Care in an Acute Care Hospital (COVID-19)

Agency Approved Date: [September 3, 2020]

Effective Date: [September 8, 2020] through [March 6, 2021]

RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

AMEND:

411-325-0490, 411-360-0200, 411-450-0050

RULE SUMMARY:

Include a summary for each rule included in this filing.

Due to the Coronavirus (COVID-19) state of emergency, the Oregon Department of Human Services, Office of Developmental Disabilities Services (ODDS) has been granted temporary permission from the Centers for Medicare and Medicaid Services to allow developmental disabilities service providers to deliver attendant care while an individual is hospitalized under certain circumstances.

ODDS is temporarily amending the following rules to allow for attendant care in an acute care hospital when authorized in an Individual Support Plan:

- OAR 411-325-0490 about Provider Eligibility for Medicaid Service Payment for 24-Hour Residential Programs and Settings for Children and Adults with Intellectual or Developmental Disabilities.
- OAR 411-360-0200 about Adjustment, Suspension, or Termination of Payment for Adult Foster Homes for Individuals with Intellectual or Developmental Disabilities.
- OAR 411-450-0050 about Minimum Standards for Community Living Supports.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

ODDS needs to immediately amend OARs 411-325-0490, 411-360-0200, and 411-450-0050 to allow for attendant care in an acute care hospital when authorized in an Individual Support Plan. ODDS needs to proceed by filing temporary rule changes to provide immediate protection to individuals receiving services during the COVID-19 state of emergency.

Justification of Temporary Filing:

Failure to act promptly and immediately amend OARs 411-325-0490, 411-360-0200, and 411-450-0050 will result in serious prejudice to the public interest, ODDS, providers, and individuals receiving developmental disabilities services.

Failure to act promptly and immediately amend OARs 411-325-0490, 411-360-0200, and 411-450-0050 will prevent ODDS from allowing for attendant care in an acute care hospital when authorized in an Individual Support Plan.

OARs 411-325-0490, 411-360-0200, and 411-450-0050 need to be immediately amended to allow for attendant care in an acute care hospital when authorized in an Individual Support Plan.

Documents Relied Upon, and where they are available:

Governor's Executive Order 20-03, Declaration of Emergency Due to Coronavirus
Available at: https://www.oregon.gov/gov/Documents/executive_orders/eo_20-03.pdf

**OREGON DEPARTMENT OF HUMAN SERVICES
OFFICE OF DEVELOPMENTAL DISABILITIES SERVICES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 325**

**24-HOUR RESIDENTIAL PROGRAMS AND SETTINGS FOR CHILDREN
AND ADULTS WITH INTELLECTUAL OR DEVELOPMENTAL
DISABILITIES**

411-325-0490 Provider Eligibility for Medicaid Service Payment
(Temporary Effective 09/08/2020 - 03/06/2021)

(1) In addition to meeting the licensing standards and conditions set forth in these rules, a provider must have an approved prior authorization through the Department payment system for individuals receiving Medicaid-funded services before the provider is eligible to claim for delivering Medicaid-funded services. The prior authorization includes dates of authorized services and the funding amount allocated.

(2) A provider may only claim for a day of service when:

(a) An individual sleeps in the home overnight; or

(b) An individual does not sleep in the home overnight, but intends to return to the home, and the provider was responsible for an accumulated period of eight hours for the primary care, support, safety, and well-being of the individual, including any of the following:

(A) Providing intermittent physical support or care.

(B) Providing stand-by support with the ability to respond in person within the response times as outlined in the individual's ISP.

(C) Being responsible to communicate reciprocally within the response times agreed upon by the individual's ISP team and documented in the individual's ISP, based on the individual's

identified support needs.

(3) A day of service does not apply when an individual:

(a) Has been admitted ~~overnight~~ to an acute care hospital unless the individual's ISP authorizes attendant care for the individual in an acute care hospital and the day of service criteria in section (2)(b) of this rule is met. An ISP may only authorize attendant care for an individual who has been admitted to an acute care hospital when the individual has one of the following;

(A) Challenging behavior that interferes with getting medical care. The challenging behavior must require specific training or experience to support and must be able to be mitigated by a developmental disability service provider to an extent that medical care is improved.

(B) An inability to independently communicate with hospital staff that interferes with getting medical care. This must not be solely due to limited or emerging English proficiency.

(C) Support with one or more activities of daily living that may only be adequately met by someone familiar with the individual.

(b) Has been admitted to a nursing facility;

(c) Has been admitted to a mental health facility;

(de) Is held in detention or jail; or

(ed) Is outside of the United States.

(4) A provider may only claim for a day of service under section (2)(b) of this rule when an individual is away from the home, accompanied by a provider or staff, for up to 30 consecutive days or 45 calendar days in an ISP year.

(a) The provider is not paid for the 31st and following consecutive days when an individual is away from the home.

(b) A provider is not paid for the 46th and following non-consecutive days an individual is not at the licensed home overnight.

(c) Days not paid do not count in the 45-calendar day total.

Stat. Auth.: ORS 409.050, 441.715, 443.450, 443.455

Stats. Implemented: ORS [409.010](#), 441.705-441.720, 441.740, 441.745, 443.384, 443.392, 443.400-443.445, 443.450, 443.455, 443.880, 443.881, 443.991

**OREGON DEPARTMENT OF HUMAN SERVICES
OFFICE OF DEVELOPMENTAL DISABILITIES SERVICES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 360**

**ADULT FOSTER HOMES FOR INDIVIDUALS WITH INTELLECTUAL OR
DEVELOPMENTAL DISABILITIES**

411-360-0200 Adjustment, Suspension, or Termination of Payment
(Temporary Effective 09/08/2020 - 03/06/2021)

(1) The Department may adjust, suspend, or terminate payment to a provider when any of the following conditions occur:

(a) The license for the AFH-DD is revoked, suspended, or terminated.

(b) Upon finding that the provider is failing to deliver any care or service as agreed to in an ISP or Service Agreement.

(c) When funding, laws, regulations, or the priorities of the Department change such that funding is no longer available, redirected to other purposes, or reduced.

(d) The care and service needs of an individual change.

(e) An individual is determined to be ineligible for services.

(f) An individual moves, with or without notice, from the AFH-DD. The provider is paid only through the last night the individual slept in the AFH-DD.

(g) An individual is away from the licensed AFH-DD, accompanied by the provider or staff paid by the provider, for 30 consecutive days or 45 days in an ISP year.

(A) The provider is not paid for the 31st and following consecutive days an individual is not at the AFH-DD.

(B) The provider is not paid for the 46th and following non-consecutive days an individual is not at the AFH-DD.

(C) Days not paid do not count in the 45-day total.

(2) A provider may only claim for a day of service when:

(a) An individual sleeps in the AFH-DD overnight; or

(b) An individual does not sleep in the AFH-DD overnight, but intends to return to the AFH-DD, and the provider was responsible for an accumulated period of eight hours for the primary care, support, safety, and well-being of the individual including any of the following:

(A) Providing intermittent physical support or care.

(B) Providing stand-by support with the ability to respond in person within the response times as outlined in the individual's ISP.

(C) Being responsible to communicate reciprocally within the response times agreed upon by the individual's ISP team and documented in the individual's ISP, based on the individual's identified support needs.

(3) A day of service does not apply when an individual:

(a) Has been admitted overnight to a hospital; to an acute care hospital unless the individual's ISP authorizes attendant care for the individual in an acute care hospital and the day of service criteria in section (2)(b) of this rule is met. An ISP may only authorize attendant care for an individual who has been admitted to an acute care hospital when the individual has one of the following:

(A) Challenging behavior that interferes with getting medical care. The challenging behavior must require specific training or experience to support and must be able to be mitigated by a developmental disability service provider to an extent that

medical care is improved.

(B) An inability to independently communicate with hospital staff that interferes with getting medical care. This must not be solely due to limited or emerging English proficiency.

(C) Support with one or more activities of daily living that may only be adequately met by someone familiar with the individual.

(b) Has been admitted to a nursing facility;

(c) Has been admitted to a mental health facility;

(de) Is held in detention or jail; or

(ed) Is outside the United States.

(4) The Department is under no obligation to maintain the AFH-DD at its licensed capacity or to provide payments to potential providers.

Stat. Auth.: ORS 409.050, 427.104, 443.001, 443.004, 443.725, 443.730, 443.735, 443.738, 443.742, 443.760, 443.765, 443.767, 443.775, 443.790
Stats. Implemented: ORS 409.010, 427.104, 443.001-443.004, 443.705-443.825, 443.875, 443.991

**OREGON DEPARTMENT OF HUMAN SERVICES
OFFICE OF DEVELOPMENTAL DISABILITIES SERVICES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 450**

COMMUNITY LIVING SUPPORTS

411-450-0050 Minimum Standards for Community Living Supports
(Temporary Effective 09/08/2020 - 03/06/2021)

- (1) ABUSE PROHIBITED. No adult or child shall be abused and abuse shall not be tolerated by any employee, staff, or volunteer of an individual, agency, or case management entity.
- (2) Community living supports, purchased with Department funds, must be provided only as a social benefit.
- (3) Community living supports must be delivered in a manner consistent with positive behavioral theory and practice, and where behavior intervention is not undertaken unless the behavior:
 - (a) Represents a risk to health and safety of the individual or others;
 - (b) Is likely to continue and become more serious over time;
 - (c) Interferes with community participation;
 - (d) Results in damage to property; or
 - (e) Interferes with learning, socializing, or vocation.
- (4) Community living supports must be delivered in accordance with applicable state and federal wage and hour regulations.
- (5) For a child, community living supports are considered to be for supports that are not typical for a parent or guardian to provide to a child of the same age.

(6) Community living supports may only be reimbursed when they are consistent with the Expenditure Guidelines.

(7) Community living supports shall only be reimbursed after community living supports are delivered as identified in an ISP or Service Agreement.

(8) Department funds may not be used for:

(a) A reimbursement to an individual, legal or designated representative, or family member of the individual, for expenses related to services.

(b) An advancement of funds to an individual, legal or designated representative, or family member of the individual, to obtain services.

(c) Services or activities that are carried out in a manner that constitutes abuse as defined in OAR 407-045-0260 or OAR chapter 411, division 317.

(d) Services that restrict the freedom of movement of an individual by seclusion in a locked room under any condition.

(e) Vacation costs that are normally incurred by a person on vacation, regardless of disability, and are not strictly required by the need of the individual for ADL, IADL, or health related tasks in all home and community-based settings.

(f) Rate enhancements to existing employment services under OAR chapter 411, division 345.

(g) Services or supports that are not necessary as determined by a functional needs assessment or are not cost-effective.

(h) Services that do not meet the description of community living supports as described in these rules, or that do not meet the definition of social benefits as defined in OAR 411-317-0000.

(i) DSA when an individual does not have a goal related to community

participation as described in OAR 411-450-0060(2)(b)(D).

(j) Educational services for school-age individuals, including professional instruction, formal training, and tutoring in communication, socialization, and academic skills.

(k) Services, activities, materials, or equipment that may be obtained by the individual through other available means, such as private or public insurance, philanthropic organizations, or other governmental or public services.

(l) Services or activities for which the legislative or executive branch of Oregon government has prohibited use of public funds.

(m) Services in circumstances where the case management entity determines there is sufficient evidence to believe that the individual, the legal or designated representative of the individual (as applicable), legal representative, or provider has engaged in fraud or misrepresentation, failed to use resources as agreed upon in the ISP, refused to cooperate with record keeping required to document use of Department funds, or otherwise knowingly misused public funds associated with community living supports.

(n) Services provided in a nursing facility, correctional institution, or mental health facility. Behavioral Rehabilitation Services facility, Psychiatric Residential Treatment Services facility, or hospital.

(o) Services provided in an acute care hospital unless an individual's ISP authorizes attendant care for the individual in an acute care hospital. An ISP may only authorize attendant care for an individual who has been admitted to an acute care hospital when the individual has one of the following:

(A) Challenging behavior that interferes with getting medical care. The challenging behavior must require specific training or experience to support and must be able to be mitigated by a developmental disability service provider to an extent that medical care is improved.

(B) An inability to independently communicate with hospital staff that interferes with getting medical care. This must not be solely due to limited or emerging English proficiency.

(C) Support with one or more ADL that may only be adequately met by someone familiar with the individual.

(~~ep~~) Unless under certain conditions and limits specified in Department guidelines, employee wages or provider agency charges for time or services when the individual is not present or available to receive services, including, but not limited to hourly "no show" charge, and provider travel and preparation hours.

(~~pg~~) Costs associated with training a PSW, other independent provider, or provider agency staff to deliver services.

(~~qr~~) After September 1, 2018, services that are not delivered in a home and community-based setting.

(~~rs~~) Services available to an individual under Vocational Rehabilitation and Other Rehabilitation Services, 29 U.S.C. § 701-796l, as amended.

(~~st~~) Services available to an individual under the Individuals with Disabilities Education Act, 20 U.S.C §1400, as amended.

(~~tu~~) Notwithstanding abuse as defined in ORS 419B.005, services that the case management entity determines are characterized by failure to act or neglect that leads to, or is in imminent danger of causing, physical injury through negligent omission, treatment, or maltreatment of an individual.

(~~uv~~) Support generally provided for a child of similar age without disabilities by the parent or guardian or other family members.

(~~vw~~) Supports and services that are funded by child welfare in the family home.

(~~wx~~) Educational and supportive services provided by schools as part

of a free and appropriate public education for children and young adults under the Individuals with Disabilities Education Act.

(~~y~~) Home schooling.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS [409.010](#), 427.005, 427.007, 427.104, 430.610, 430.620, 430.662-430.670