

**CHAPTER 411
DIVISION 30**

IN-HOME SERVICES

411-030-0001

(Renumbered to OAR 411-030-0040 6/1/1993)

411-030-0002 Purpose

(Adopted 6/1/1993)

These Administrative Rules are established to ensure that in-home services will maximize independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to each eligible client. Such services fill the role of complementing and supplementing the client's own personal abilities to continue to live in his/her own home.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-030-0020 Definitions

(Amended 7/31/2003)

As used in these rules:

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

(2) "Architectural Resources" means any service leading to the modification of the structure of a dwelling to meet a specific service need of the client.

(3) "Area Agency on Aging" (AAA) means the Department of Human Services (DHS) designated agency 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 on Aging (AAA) is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 through 410.300.

(4) "Case Management " means the service provided by a Department or Area Agency on Aging employee, which ensures the effective provision of services to the client.

(5) "Case Manager" means a person who ensures client entry, assessment, service planning, service implementation, and evaluation of the effectiveness of the services.

(6) "Client" means the individual eligible for in-home services.

(7) "Client-Employed Provider Program" (CEP) refers to the program wherein the provider is directly employed by the client and provides either hourly or live-in 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 411-030-0060.

(8) "Cognition" means functions of the brain, which assist in orientation to person, place and time, decision-making, learning, and memory.

(9) "Companionship Services" means those services which are designated by the Department of Labor as meeting the personal needs of a client and which are exempt from federal and state minimum wage laws. These exemptions apply only to Live-In Services providers as defined in this rule.

(10) "Contracted In-Home Care" means a service provided through a contractor which 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.

(11) "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.

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

(13) "Cost Effective" means that a specific service meets the client's service needs while costing less over the long- or short-term than other service options considered.

(14) "Department" means the Department of Human Services, Seniors and People with Disabilities.

(15) "Exception" means a granting of the unusual use of or payment for a service that is expressly or implicitly prohibited within the In-Home Services rules, OAR Chapter 411, Division 030.

(16) "Full Assistance" means the client is unable to do any part of an activity of daily living or task; i.e., it must be done entirely by someone else.

(17) "General Household Work" means, according to federal law, housecleaning, chore services, and other tasks provided by an employee that benefits non-client members of the household.

(18) "Health and Safety Emergencies" means the occurrence of a sudden change in a medical condition or an event of an accidental nature that requires evacuation from the premises, administration of prescription medication or first aid, or immediate treatment by medical personnel.

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

(20) "Independent" means the client can perform the task without help.

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

(22) "Live-In Services" means those Client-Employed Provider Program Services provided when a client requires ADL, self-management tasks, and

twenty-four hour availability. Time spent by the live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements under the Companionship Services definition outlined in this rule. Such an exemption only exists when the employee actually resides in the home of the client for five calendar days in a calendar week.

(23) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(24) "Oregon Project Independence" (OPI) means the program of in-home services defined in OAR Chapter 411, Division 032.

(25) "Provider" means the individual who actually renders the service.

(26) "Recognized Capability" means observed ability to competently perform an authorized task.

(27) "Registered Nurse Plan of Care" means a document completed by an RN identifying the tasks which must be provided to meet the client's assessed needs.

(28) "Respite" means securing a paid temporary replacement worker to allow the live-in provider interim relief from providing care to the client. Wages paid the respite worker are exempt from federal and state minimum wage and overtime requirements.

(29) "Self-Management" means those activities, other than activities of daily living, required by an individual to continue independent living; i.e., medication and oxygen management, transportation, meal preparation, shopping, and client-focused housekeeping.

(30) "Seniors and People With Disabilities (SPD)" means the part of the Department of Human Services responsible for rules and policy for programs associated with seniors and persons with disabilities.

(31) "Service Need" means those functions or activities with which the client requires the Department or Area Agency on Aging support.

(32) "Service Priority" means the order in which Department clients are

found eligible for nursing home care, Home and Community-Based Services waiver programs, the Spousal Pay Program, and Oregon Project Independence.

(33) "Substantial Assistance" means a client can perform only a small portion of a task and requires assistance with a majority of a task.

(34) "Technological Resources" means those commodities or equipment considered likely to meet a client's service need.

(35) "Twenty-Four Hour Availability" means the availability and responsibility of an employee to meet Activities of Daily Living and self-management needs of a client as required by that client over a twenty-four hour period. These services are provided by a live-in employee and are exempt from federal and state minimum wage and overtime requirements.

Stat. Auth.: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070

411-030-0022

(Renumbered to OAR 411-030-0050 6/1/1993)

411-030-0027

(Renumbered to OAR 411-030-0080 6/1/1993)

411-030-0033 Program Scope

(Amended 7/31/2003)

(1) The In-Home Services Program is designed to provide essential supportive services that enable an individual to remain in his/her own home. The services range from assistance with general household tasks to assistance with activities of daily living. The extent of the services may vary from a few hours per week to full-time.

(2) In-home services may be provided either through the Client-Employed Provider Program or a Contracted In-Home Care Agency. A description of these program options is contained in the OAR Chapter 411, Division 030,

In-Home Services rules.

(3) A client residing in any of the following living arrangements may be considered for in-home services:

(a) A home, apartment, duplex, or condominium the client owns, leases, or rents.

(b) Both the client and the relative care provider have their names on the lease, mortgage, or property manager's rental agreement.

(c) The client lives with relatives or others, but receives paid hourly in-home services from someone who resides outside the home.

(d) The client moved in with a relative who:

(A) Owns, leases, or rents the home in which the client lives, and

(B) Is providing paid care services, and

(C) Is sharing a portion of shelter costs according to a rental or lease agreement with the client, and

(D) The intent of the client moving in was for reasons other than receiving paid care services.

Stat. Auth.: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070

411-030-0040 Eligibility Criteria

(Amended 7/31/2003)

(1) In-home services may be provided to those individuals who meet the established priorities for service as described in OAR Chapter 411, Division 015 and have been assessed to be in need of a service provided in OAR Chapter 411, Division 030. Payments for in-home services are not intended to replace the resources available to a client from their natural support system of relatives, friends, and neighbors. Payment by the Department

can be considered or authorized only when such resources are not available, not sufficient, or cannot be developed to adequately meet the needs of the client.. Care plans will be based upon the least costly means of providing adequate care.

(2) Clients must be included in one of the following groups:

(a) Current recipients of OSIPM who reside in one of the living arrangements described in OAR 411-030-0033(3) and who are eighteen years of age or older;

(b) Eligible adults, eighteen and older, receiving TANF with MAA, MAF or Extended Medical benefits only when service is necessary to prevent nursing facility placement; or

(c) Persons who are eligible for:

(A) Oregon Project Independence as defined in OAR Chapter 411, Division 032;

(B) Independent Choices as defined in OAR Chapter 411, Division 036;

(C) Spousal Pay Program as defined in OAR 411-030-0080; or

(D) Contracted In-Home Care Agency services as defined in OAR 411-030-0090.

(3) Residents of licensed community-based care facilities are not eligible for the In-Home Services Program.

Stat. Auth.: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070

411-030-0050 Case Management

(Amended 7/31/2003)

(1) Assessment

(a) The assessment process will identify the client's ability to perform activities of daily living, self-management tasks, and determine the client's ability to address health and safety concerns. The case manager will conduct this assessment in accordance with standards of practices established by the Department.

(b) The assessment will be conducted by a case manager or other qualified Department or Area Agency on Aging representative in the client's home, no less than annually, with a standardized assessment tool approved by Seniors and People With Disabilities.

(2) Contract RN Assessment

(a) Contract RN services are prior authorized by a Department or Area Agency on Aging case manager to provide:

(A) Nursing assessment and reassessment as appropriate;

(B) Medication review;

(C) Assignment of basic care tasks to a Client-Employed Provider; and

(D) Delegation of special tasks of nursing care to a Client-Employed Provider.

(b) Indicators of the need for RN assessment and monitoring include:

(A) Full assistance in cognition;

(B) Medical instability;

(C) Potential for skin breakdown or decubitus ulcer;

(D) Multiple health problems or frailty with a strong probability of deterioration; and

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

(c) Maximum hours for each contracted RN service will be established by the Department.

(3) Service Plan

(a) The client and case manager, with the assistance of other involved individuals, will consider in-home service options as well as architectural, technological, and other community-based care resources to meet the service needs identified in the assessment process.

(b) The case manager has responsibility for determining client eligibility for specific services, presenting alternatives to the client, and assuring the cost effectiveness of the plan. The case manager will monitor the plan and make adjustments as needed.

(c) The client has the primary responsibility for choosing and, whenever possible, developing the most cost-effective service options, including the Client-Employed Provider Program and Contracted In-Home Care Agency services.

Stat. Auth.: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070

411-030-0060 Client-Employed Provider Program

(Amended 7/31/2003)

The Client-Employed Provider Program contains systems and payment structures to employ both hourly and live-in providers. The live-in structure assumes that the provider will be required for activities of daily living and self-management tasks and twenty-four hour availability. The hourly structure assumes that the provider will be required for activities of daily living and self-management tasks during specific substantial periods. Except as indicated, all of the following materials apply to both structures:

(1) Employment Relationship: The relationship between the provider and the client is that of employee and employer.

(2) Job Descriptions: Each client/employer, in cooperation with the case

manager, or if present, contracted Registered Nurse, will create a job description for the potential employee. Such descriptions will make it clear that general household work will comprise less than 20% of the live-in employee's time.

(3) Employee's Liabilities: Employees bear sole responsibility for state and federal income taxes due on earnings as an employee of the client/employer. Both the employer and the Department explicitly deny any responsibility for deducting personal income tax withholdings from the employee's check. The employee is not covered by Workers' Compensation under Oregon Law. Additionally, under Oregon law the employee is not covered by any other state-defined benefit as a state employee. This exclusion includes but is not limited to the Public Employees Retirement System.

(4) Interruption of Services

(a) When a client is absent from the home due to an illness or medical treatment and is expected to return to the home, a live-in provider may be retained to ensure his/her presence upon the client's return or to maintain the client's home for up to 30 days at a rate established by the Department. An exception to this rate may be granted by a local office manager, if the physician providing treatment in a hospital or rehabilitation setting requests the presence of the provider for special services such as interpreting, briefing, or training. In this circumstance, service plan expenditures will continue as though the client was in the home.

(b) The required meals and lodging expenses of the provider, while providing these services fifty miles or more from the client's residence, will be covered. Such expenses, including mileage allowed under Section (11) of this rule, will be covered by the Office of Medical Assistance Programs, whenever possible.

(5) Selection of Employee: The client carries primary responsibility for locating, interviewing, screening, and hiring his/her own employees. The right to employ the individual of his/her choice stands without regard to any limitations established by the legislature or federal government, except for Immigration and Naturalization Service Rules.

(6) Employment Agreement: The client/employer retains the full right to establish the employer/employee relationship at any time after Immigration and Naturalization Service papers have been completed and identification photocopied. No guarantee of payment for those services will be made by the Department until all acceptable employee standards have been verified and both the employer and employee have been formally notified in writing that payment by the Department is authorized.

(7) Termination of Employment: Terms of dismissal or resignation notice are the sole responsibility of the employer to establish at the time of employment.

(8) Payment by the Department

(a) Payment Authorization: Payment for Client-Employed Provider services will be authorized by the Department dependent on the presence of certain employee standards, including:

(A) Maintaining a drug-free work place

(B) An acceptable criminal record as defined in OAR Chapter 411, Division 009; and

(C) The skills, knowledge, and ability to perform the required work.

(b) Termination of Payment: The Department reserves the right to suspend or terminate payment when:

(A) Violations of protective service and abuse laws occur;

(B) Fiscal improprieties occur;

(C) Services are not provided as required;

(D) Employee does not have the skills to adequately or safely provide services;

(E) The employer requests termination; or

(F) New criminal convictions come to the attention of the Department.

(9) Respite

(a) Eligibility: When a live-in employee is the only employee during the course of a month, or if that employee is the only employee for the beginning or end of a month due to termination or initiation of employment with that employer, the Department will authorize one twenty-four hour period of respite for non-spouse providers each month. For any part of a month worked, the employee will receive a proportional share of that twenty-four hour period of respite authorization.

(b) Accumulation and Usage: A provider may not accumulate more than 144 hours of respite allowance. The employer, employee, and case manager will coordinate the timely use of these hours. Usage will be in minimum of twenty-four hour blocks. Respite will be provided in multiples of twenty-four hour blocks, except when the balance is less than twenty-four hours, in which case the remnant may be used in a block.

(c) Transferability of Earned Respite Hours: The employee retains the right to earned respite time when terminating employment with one employer, so long as the employee is employed with another employer as a live-in within ninety days of termination. Without the re-institution of such employment, the employee will lose all right to these respite hours on the ninety-first day.

(10) Department Fiscal and Accounting Responsibility.

(a) Direct Service Payments: The Department will make payment to the provider on behalf of the client for all client-employed in-home services, whether authorized by a Department or Area Agency on Aging local Office. This payment will be considered full payment for the services rendered under Title XIX. Under no circumstances is the employee to demand or receive additional payment for these services from the client or any other source.

(b) Ancillary Contributions:

(A) Acting on behalf of the Client/Employer, the Department will apply any applicable FICA (Federal Insurance Contributions Act) regulations and will:

(i) Withhold the provider/employee contribution from payments;

(ii) Refund previously withheld amounts when it is determined the provider/employee is not subject to withholdings; and

(iii) Submit the Client/Employer contribution and the amounts withheld from the provider/employee to the Social Security Administration.

(B) The Department will pay the employer's share of the Unemployment Tax.

(C) The Department will not pay the client for food and shelter expenses associated with employing a live-in provider.

(D) A hardship shelter allowance may be authorized for a client having a live-in provider on or after September 1, 1995, if one of the following conditions is met:

(i) The client will be forced to move from their current dwelling and his/her current average monthly rent or mortgage costs exceed current OSIP and OSIPM standards for a one-person need group as outlined in OAR 461-155-0250; or

(ii) Service costs would significantly increase as a result of the client being unable to provide living quarters for a necessary live-in provider.

(c) Ancillary Withholdings. For purposes of Section (10) (c) of this rule, "labor organization" means any organization that has, as one of its purposes, representing employees in their employment relations.

(A) When authorized by the client/employer and requested by the provider, the Department may deduct from the provider's monthly salary or wages the specified amount for payment to a labor organization designated by the provider to receive payment.

(B) In order to receive this payment, the labor organization must enter into a written agreement with the Department to pay the actual administrative costs of the deductions.

(C) The Department will pay the deducted amount monthly to the designated labor organization.

(D) Upon receipt of a written request from the client/employer, provider, or labor organization, or upon termination of the written agreement with the labor organization, the Department will stop making such deductions and payments.

(11) Employee Expenses Secondary to Performance of Duties

(a) Providers may be reimbursed at the current appropriate state mileage rate when they use their own car for care plan related transportation, if prior authorized by the case manager. If unscheduled transportation needs arise during non-office hours, an explanation as to the need for the transportation must be provided and approved prior to reimbursement.

(b) Volunteer transportation and other transportation services included in the care plan will be considered a prior resource.

Stat. Auth.: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070

411-030-0070 Maximum Hours of Service

(Amended 7/31/2003)

(1) Maximum Monthly Hours for Activities of Daily Living:

(a) The planning process will use the following parameters for time

allotments for ADL tasks:

(A) Eating: Minimal assistance -- 5 hours; substantial assistance -- 20 hours; full assistance -- 30 hours;

(B) Dressing: Minimal assistance -- 5 hours; substantial assistance -- 15 hours; full assistance -- 20 hours;

(C) Bathing and Personal Hygiene: Minimal assistance -- 10 hours; substantial assistance -- 15 hours; full assistance -- 25 hours;

(D) Mobility: Minimal assistance -- 10 hours; substantial assistance -- 15 hours; full assistance -- 25 hours;

(E) Bowel and Bladder: Minimal assistance -- 10 hours; substantial assistance -- 20 hours; full assistance -- 25 hours;

(F) Cognition: Minimal assistance -- 5 hours; substantial assistance -- 10 hours; full assistance -- 20 hours.

(b) If an individual requires full assistance in mobility and does not need the maximum hours for cognition, the unused cognition hours may be used to supplement the ADL total, if such hours are needed to meet detailed ADL service needs.

(c) For two-client households, each person's service needs are considered separately.

(d) Hours authorized for activities of daily living are paid at a rate established and published by the Department. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(2) Maximum Hours for Self-Management Tasks:

(a) The planning process will use the following parameters for time allotments for all services:

(A) Medication Management: Minimal assistance -- 2 hours;

substantial assistance -- 4 hours; full assistance -- 6 hours;

(B) Transportation or Escort Services: Minimal assistance -- 2 hours; substantial assistance -- 3 hours; full assistance -- 5 hours;

(C) Meal Preparation: Minimal assistance -- Breakfast -- 4 hours, lunch -- 4 hours, supper -- 8 hours; substantial assistance -- breakfast -- 8 hours, lunch -- 8 hours, supper -- 16 hours; full assistance -- breakfast -- 12 hours, lunch -- 12 hours, supper -- 24 hours;

(D) Shopping: Minimal assistance -- 2 hours; substantial assistance -- 4 hours; full assistance -- 6 hours;

(E) Housecleaning: Minimal assistance -- 5 hours; substantial assistance -- 10 hours; full assistance -- 20 hours.

(b) Rates paid will be established and published by the Department. When a live-in employee is present, these hours may be paid at less than minimum wage according to the companionship definition in the Fair Labor Standards Act. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(c) When two clients eligible for self management task hours live in the same household, the assessed self-management need of each client will be calculated. Payment will be made for the higher of the two allotments and a total of four additional hours per month to allow for the second client's specific needs.

(3) Twenty-Four Hour Availability:

(a) Payment for twenty-four availability will be considered only when the client uses a client-employed provider and requires this availability due to both of the following:

(A) The client requires minimal, substantial, or full assistance with meeting health or safety emergencies; and

(B) The client requires assistance with activities of daily living and/or self-management tasks at unpredictable times throughout most twenty-four hour periods.

(b) The number of hours allowed per month will be negotiable, but have the following maximums:

(A) Minimal assistance -- 50 hours;

(B) Substantial assistance -- 110 hours;

(C) Full assistance -- 159 hours.

(c) Rates for this availability will be established and published by the Department and be considered eligible for "companionship" designation under state and federal laws. Exceptions may be granted by the Department when conditions are met as established in OAR 411-027-0000.

(4) Under no circumstances will any provider receive payment from the Department for more than the total amount authorized by the Department on the In-Home Services Authorization Form.

(5) Authorized hours are subject to the extent of client need and the availability of funds. Case managers must assess and utilize as appropriate, available friends and family members, cost-effective assistive devices, durable medical equipment and/or housing accommodations, which could reduce the client's reliance on paid in-home service hours.

(6) It is the intent of the Department to authorize paid in-home services only to the extent necessary to supplement potential or existing resources within the client's personal support system.

Stat. Authority: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070

411-030-0080 Spousal Pay Program

(Amended 7/31/2003)

(1) Spousal Pay Program Eligibility: In-home care provided by the spouse of an OSIPM client is compensable by the Department under ORS 411.803 only when the following conditions are met:

(a) The client requires full assistance in at least four of the six activities of daily living, as determined by the assessment, and would require nursing facility placement without in-home services;

(b) The client has a medically diagnosed progressive debilitating condition which will limit additional activities of daily living, or has experienced a spinal cord injury or similar disability with permanent impairment of the ability to perform activities of daily living;

(c) The spouse demonstrates the capability and health to provide the services and actually provides the principal care for which payment has been authorized; and

(d) The client's service needs exceed in both extent and duration the usual and customary services rendered by one spouse to another.

(2) Establishment and maintenance of a centralized waiting list for eligible clients requesting services compensated through the Spousal Pay Program.

(a) The Department's Central Office staff will establish and maintain a list of eligible clients based on referrals from local offices.

(b) The Department has established funding to serve a biennial limit on the number of Spousal Pay clients in the program each month.

(c) When the biennial limit is reached, clients requesting services through the Spousal Pay Program, whose eligibility determination process has been finalized, will be placed on a waiting list. Names on the waiting list will be entered according to the date submitted by the local office.

(d) Prior to submission of name, applicants must have completed:

(A) The financial application process; and

(B) Had an assessment of service needs completed by the appropriate local office staff.

(e) As vacancies occur, eligible waiting list clients will be selected in order of submission, as defined in subsection 2(c) of this rule,.

(f) Clients on the waiting list may receive services through other appropriate Department programs for which they are eligible.

(3) Payments:

(a) All payments will be prior authorized by the Department or it's designee.

(b) Payments will be based on the equivalent of one-half of the 24-hour availability and self-management task hours, plus the time required for specific documented activities of daily living.

(c) Payment of any respite care will be the responsibility of the spouse and not be paid by the Department.

(d) Payment to a spouse is not considered as a need item to establish initial eligibility or continuing eligibility for OSIPM.

(e) Under ORS 411.802, client-employed providers who become the spouse of their employer will retain the same level of pay as described in OAR 411-030-0070 if their employer meets the spousal pay eligibility criteria as described in subsection (1) (a) of this rule.

Stat. Auth.: ORS 409.050, 410.070 and 410. 090

Stats. Implemented: ORS 410.010, 410.020, 410.070, 411.802 and 411.803

411-030-0090 Contracted In-Home Care Agency Services

(Amended 7/31/2003)

Limitations in Scope and Duration: Contracted in-home care agency services will be used when the service proves to be the most cost efficient in meeting the needs of the client or necessary to meet interim or

emergency service needs while more cost-effective solutions are sought and procured. In-Home Care Agencies must be licensed in accordance with OAR 333-536-0000 through 333-536-0095. The specific services provided will be described in each contract's statement of work.

Stat. Auth.: ORS 409.050, 410.070 and 410.090

Stats. Implemented: ORS 410.010, 410.020 and 410.070