

**CHAPTER 411  
DIVISION 30**

**IN-HOME SERVICES**

**411-030-0001**

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

**411-030-0002 Purpose**

*(Amended 6/7/2004)*

These Administrative Rules are established to ensure that in-home support 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**

*(Temporary Effective 12/21/2005 – 6/1/2006)*

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 include eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel and bladder management), and cognition/behavior as defined in OAR chapter 411, division 015.

(2) "Architectural Modifications" means any service leading to the alteration 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) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any activity of daily living (ADL). This definition includes the use of service animals, general household items or furniture to assist the individual in performing an ADL.

(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 support 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 411-031-0040.

(8) "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.

(9) "Cost Effective" means being mindful of resources when providing choices to adequately meet a client's service needs. Those choices consist of the available services published on the Fiscal and Policy Analysis (FPA) rate schedule for SPD programs and the utilization of assistive devices.

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

(11) "Exception" means an approval for a monthly payment or rate granted to a specific client in their current residence (or in the proposed residence identified in the exception request) that exceeds the rates on the SPD published rate schedule. The approval is based on the exceptional service needs of the client and is contingent upon meeting the requirements in OAR 411-027-0000 and OAR 411-027-0050. The term "exception" is synonymous with "exceptional rate" or "exceptional payment."

(12) "Full Assistance" as used in OAR 411-030-0070 means the client is unable to do any part of an activity of daily living or task and that task must be done entirely by someone else.

(13) "Homecare Worker (HCW)" means a provider, as described in OAR chapter 411, division 031, who is directly employed by the client and provides either hourly or live-in services to eligible clients. Homecare Workers also include providers in the Spousal Pay Program.

(14) "Hourly Services" means the in-home support services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(15) "In-home support services" means those services that assist a client to stay in his or her own home.

(16) "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 any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. To ensure continuity of care for the client, live-in service plans must include at least one HCW providing 24-hour availability for a minimum of five (5) days in a calendar week.

(17) "Minimal Assistance" as used in OAR 411-030-0070 means the client is able to perform the majority of a task, but requires some assistance.

(18) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others,

neighbors, roommates and the community. Services provided by Natural Supports are resources that are not paid for by the Department.

(19) "Oregon Project Independence" (OPI) means the program of in-home support services defined in OAR chapter 411, division 032.

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

(21) "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.

(22) "Respite", as used in OAR 411-030-0080, means securing a paid temporary replacement worker to perform the authorized duties normally performed by the Spousal Pay Program provider, in order to allow the Spousal Pay Program provider interim relief from providing care to the client.

(23) "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.

(24) "Service Need" means those functions or activities that the client requires assistance with, as identified in OAR chapter 411, division 015.

(25) "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.

(26) "Substantial Assistance" as used in OAR 411-030-0070 means a client can perform only a small portion of a task and requires assistance with the majority of a task.

(27) "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 & 410.090  
Stats. Implemented: ORS 410.010, 410.020 & 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**

*(Temporary Effective 12/21/2005 – 6/1/2006)*

(1) In-Home Support Services are designed to provide essential supportive services that enable an individual to remain in his or her own home. Services may be provided through the Home and Community-Based Services waiver, the Independent Choices Program or through the State-funded Spousal Pay Program. The services range from assistance with 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. Live-in services may be an option depending on the program.

(2) In-home support services may be provided through the Home and Community-Based Services waived In-Home Services Program, Spousal Pay Program, Independent Choices Program, or Oregon Project Independence Program.

(3) A client residing in any of the following living arrangements may not be considered for the Home and Community-Based Services waived In-Home Services Program:

(a) The client resides in the home of the provider who is proposed to be paid by the Department. The provider has their name on the official lease, mortgage, deed or property manager's rental agreement.

(b) The client has an informal arrangement to rent a dwelling, or a portion of a dwelling, from relatives, and the intent of the client moving in was for the purpose of receiving care services.

(4) In the event the client's name is officially added to the property or the property manager's rental or lease agreement, the client may be considered for waived in-home services.

(5) A residential setting must be licensed as a relative adult foster home, as described in OAR 411-050-0405, when a client moves in with or rents property from a relative for the purpose of receiving care services; and

(a) A relative or their spouse is the owner/lesser/renter of the home; and

(b) A relative or their spouse is proposed to be paid by the Department as the client's care provider; and

(c) The client is determined eligible for waived services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

#### **411-030-0040 Eligibility Criteria**

*(Temporary Effective 1/13/2006 – 6/1/2006)*

(1) In-home support 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 support 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 individual. An individual whose care needs are met by their natural supports will not be eligible for in-home support services. Service plans will be based upon the least costly means of providing adequate care.

(2) Clients served under the Home and Community Based Services waived In-Home Services Program must meet the established priorities for service as described in OAR chapter 411, division 015 and be included in one of the following groups:

(a) Current recipients of OSIPM who reside in a living arrangement in which in-home services may be provided, as described in OAR 411-030-0033 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.

(3) To be eligible for the Home and Community-Based Services waived In-Home Services Program, a client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency to provide those services authorized and paid by the Department.

(a) If, for any reason, the employment relationship between the client and provider is discontinued, an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within thirty calendar days for the client to remain eligible for the program.

(b) Following discharge from a temporary stay in any facility or medical institution, the client must employ an enrolled Homecare Worker or Contracted In-Home Care Agency within thirty calendar days.

(4) Separate eligibility for in-home support services exists for persons 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; or

(c) Spousal Pay Program as defined in OAR 411-030-0080.

(5) Residents of licensed community-based care facilities, nursing facilities, prisons, hospitals and other institutions that provide activities of daily living are not eligible for in-home support services.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

#### **411-030-0050 Case Management**

*(Temporary Effective 12/21/2005 – 6/1/2006)*

##### (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 the Department.

##### (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 Homecare Worker; and

(D) Delegation of special tasks of nursing care to a Homecare Worker.

(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 assistive devices, architectural modifications, 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.

(d) The Service Plan 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 Title XIX-covered services from the client or any other source. Additional payment to Homecare Workers for the same services covered by Oregon's Title XIX Home and Community Based services Waiver or Spousal Pay Programs is prohibited.

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

(f) The Department may authorize a hardship shelter allowance for a Home and Community Based Services waiver client having a live-in provider on or after September 1, 1995, if one of the following conditions is met:

(A) The client will be forced to move from their current dwelling and his or 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

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

(g) The Department must not authorize a hardship shelter allowance for a waiver-eligible individual if that person is receiving a shelter exception under Medicaid Special Needs as defined in OAR 461-155-0660.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

#### **411-030-0055 Service Plan-Related Transportation**

*(Temporary Effective 12/21/2005 – 6/1/2006)*

(1) Service plan-related transportation (non-medical) may be prior-authorized for reasons related to an eligible individual's safety or health in accordance with a plan of care. Such services will be offered through local transportation authorities or by Homecare workers.

(2) Natural supports, volunteer transportation, and other transportation services available to the client will be considered a prior resource and must not be replaced with transportation paid by the Department.

(a) OMAP is a prior-resource for medical transportation to a physician, hospital, clinic or other medical service provider.

(b) The Department will not provide service plan-related transportation to obtain items that can be delivered by a supplier or sent by mail-order.

(3) Transportation must be prior authorized by the Case Manager and documented in the case record. Under no circumstances will any provider receive payment from the Department for more than the total number of hours or miles authorized by the Department in the Service Plan.

(a) Local transportation authorities will be reimbursed in accordance with their contract with DHS. Service transportation services provided by through local transportation authorities must be authorized by the Case Manager based on an estimate of a total count of one-way trips per month.

(b) Homecare Workers will be reimbursed according to the terms defined in their collective bargaining agreement when they use their own personal vehicle for service plan-related transportation. Transportation provided by HCWs must be based on an estimate of the monthly maximum miles required to drive to and from the destination(s) authorized in the service plan.

(c) It is prohibited to authorize reimbursement for travel to or from the Homecare Workers' place of work. The home of the eligible individual is considered the Homecare Worker's place of work.

(4) DHS is not responsible for any vehicle damage or personal injury sustained while using a personal motor vehicle for service plan-related transportation.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070

**411-030-0060 Client Employed Provider Program**

*(Repealed 6/7/2004 – Moved to OAR chapter 411, division 031)*

**411-030-065 Administrative Review and Hearing Rights**  
(Repealed 6/7/2004 – Moved to OAR chapter 411, division 031)

**411-030-0070 Maximum Hours of Service**  
(Temporary Effective 12/21/2005 – 6/1/2006)

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

(a) The planning process will use the following limitations for time allotments for ADL tasks. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full). Hours authorized are based on the service needs of the individual.

(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.

(e) Hours for activities of daily living may only be authorized for an individual if that individual is assessed as needing assistance (assist, minimal assist, substantial assist or full assist) in that activity of daily living as defined in OAR chapter 411, division 015.

(2) Maximum Hours for Self-Management Tasks:

(a) The planning process will use the following limitations for time allotments for all services. Case Managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial or full). Hours authorized are based on the service needs of the individual.

(A) Medication and Oxygen 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 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 self-management hours per month to allow for the second client's specific needs.

(3) Twenty-Four Hour Availability:

(a) Payment for twenty-four hour availability will be considered only when the client employs a live-in Homecare Worker and requires this availability due to the following:

(A) The client requires minimal, substantial, or full assistance with ambulation and requires assistance with transfer (as defined in OAR chapter 411, division 015); or

(B) The client requires full assistance in Transfer or Elimination as defined in OAR chapter 411, division 015; or

(C) The client requires full assist in at least three of the eight components of Cognition (as defined in OAR chapter 411, division 015); and

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

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

(A) Minimal assistance -- 60 hours;

(B) Substantial assistance -- 110 hours;

(C) Full assistance -- 159 hours.

(c) Service plans that include full-time live-in Homecare Workers will include a minimum of sixty (60) hours per month of 24-hour availability. When a live-in Homecare Worker is employed less than full time, the minimum hours will be pro-rated. Full-time means the live-in Homecare Worker is providing services to the client-employer seven (7) days per week throughout a calendar month.

(d) Rates for this availability will be established and published by the Department and paid at less than minimum wage according to the Fair Labor Standards Act and ORS 653.020 (2). 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 Service Plan 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, natural supports, cost-effective assistive devices, durable medical equipment and 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 support 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 6/7/2004)*

(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 support 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 section (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, Homecare Workers 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