

**NOTICE OF PROPOSED RULEMAKING FILING
INCLUDING STATEMENT OF NEED & FISCAL IMPACT**

For internal agency use only.

Department of Human Services, Aging and People with Disabilities (APD)	411
Agency and Division Name	Administrative Rules Chapter Number

	ODHS, Aging and People with Disabilities 500 Summer Street NE, E-02 Salem, OR 97301	
Kristina Krause	apd.rules@dhsoha.state.or.us	503-339-6104
Rules Coordinator	Address/Email	Telephone

	ODHS, Aging and People with Disabilities 500 Summer Street NE, E-02 Salem, OR 97301	
Cynthia Susee	cynthia.susee@dhsoha.state.or.us	971-345-1168
Filing Contact	Address/Email	Telephone

FILING CAPTION

APD: Enhanced Wage Add-on Program to support employee retention

Last Date and Time for Public Comment: Written comments may be submitted via email to apd.rules@dhsoha.state.or.us or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **February 3, 2022 at 5 p.m.**

	TELECONFERENCE ONLY +1 (971) 277-2343	
1/24/2022	10 – 10:30 a.m.	Staff
Hearing Date	Time	Hearings Officer
	Conference ID: 779184845#	
	Address	

HEARING NOTES: If you wish to provide comment, please call in to the teleconference number no later than 15 minutes after the start time listed.

Everyone has a right to know about and use DHS|OHA programs and services. DHS|OHA provides free help. Some examples of the free help DHS|OHA can provide are: sign language and spoken language interpreters, written materials in other languages, braille, large print, audio or other formats. If you need help or have questions, please contact Kristina Krause at 503-339-6104, apd.rules@dhsoha.state.or.us or 711 TTY at least five business days before the hearing.

RULEMAKING ACTION

List each rule number separately (000-000-0000) below. Attach proposed, tracked changed text for each rule at the end of the filing.

ADOPT:

411-027-0160

AMEND:

411-027-0005

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services, Aging and People with Disabilities Program is proposing to permanently adopt and amend rules in OAR chapter 411, division 27 to include the Enhanced Wage Add-on Program. The Program is designed to support Home and Community-Based Services providers with employee retention. The changes are summarized below:

411-027-0005 – Adds in definition for “Enhanced Wage Add-on Program.”

411-027-0160 – Adds in a new rule for the Enhanced Wage Add-on Program effective October 1, 2021 thru June 30, 2023.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

Due to ongoing and extraordinary issues around employee retention with the COVID-19 crisis, the Legislature and the Executive Branch authorized an Enhanced Wage Add-on Program. This Program gives a ten percent rate increase for Home and Community-Based Services providers who meet the wage criteria for all caregivers. The Program is effective October 1, 2021 through June 30, 2023. The Department is adopting and amending OAR chapter 411, division 027 to assist providers with employee retention through these unprecedented times.

Fiscal and Economic Impact:

The fiscal and economic impact is stated below in the Department's statement of cost of compliance.

Statement of Cost of Compliance:

(1) Identify any state agencies, units of local government, and members of the public likely to be economically affected by the rule(s).

State Agencies: The fiscal impact of this rate change is approximately \$19.1M. The Department estimates increased costs for Medicaid-funded services for the monthly rates of Residential Care Facilities, Assisted Living Facilities, Memory Care Facilities (Endorsed units-only), and Contracted In-Home Care Agencies. Increases were granted by the Oregon Legislature.

Units of Local Government: The Department estimates there will be no fiscal or economic impact on units of local government.

Consumers: The Department estimates there will be no fiscal or economic impact on consumers.

Providers: The fiscal impact of this rate change, amongst all providers, is approximately \$43.6M.

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

(2) Effect on Small Businesses:

(a) Estimate the number and type of small businesses subject to the rule(s);

There are currently over 554 Assisted Living Facilities, Residential Care Facilities, Memory Care Facility settings and 38 Home Delivered Meal and 80 In-home Agency providers most of which may be considered small businesses as defined by ORS 183.310.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

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

(c) Estimate the cost of professional services, equipment supplies, labor and increased administration required to comply with the rule(s).

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

Describe how small businesses were involved in the development of these rule(s)?

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

Documents Relied Upon, and where they are available:

None.

Was an Administrative Rule Advisory Committee consulted? Yes or No?

If not, why not?

Yes. For the Enhanced Wage Add-on rate increase for Assisted Living, Residential Care, Memory Care and In-Home Care Agency providers, an email Rules Advisory Committee was formed. Oregon Health Care Association, LeadingAge and SEIU local 503 were involved with the approval of this change.

/s/ Mike McCormick, Interim Director, Aging and People with Disabilities

Signature

12/7/2021

Date

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

**CHAPTER 411
DIVISION 27**

**PAYMENT LIMITATIONS IN HOME AND COMMUNITY-BASED
SERVICES**

411-027-0005 Definitions

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

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

(3) "Aging and People with Disabilities (APD)" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(4) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults and adults with disabilities in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210-300.

(5) "Assessment" or "Reassessment" means an assessment as defined in OAR 411-015-0008.

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

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

(8) "Case Manager" means an employee of the Department or Area Agency on Aging, who assesses the service needs of an applicant, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements the service plan and monitors the services delivered.

(9) "Central Office" means the unit within the Department responsible for program and policy development and oversight.

(10) "Client Assessment and Planning System (CA/PS)":

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

(A) Completing a comprehensive and holistic assessment;

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

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

(b) The CA/PS documents the level of need and calculates the individual's service priority level in accordance with the rules in OAR chapter 411, division 015, calculates the service payment rates, and accommodates individual participation in service planning.

(11) "Consumer Choice" means an individual has been informed of alternatives to nursing facility services and has been given the choice of institutional services, Medicaid home and community-based service options, or the Independent Choices Program.

(12) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536, that provides hourly contracted in-home services to individuals served by the Department or Area Agency on Aging.

(13) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of the available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005) not paid for by the Department.

(14) "Department" means the Department of Human Services (DHS).

(15) "Enhanced Wage Add-on Program" means the program described in OAR 411-027-0160 designed to provide additional compensation to providers who meet the criteria.

(165) "Exception" means an approval for:

(a) Payment of a service plan granted to a specific individual in his or her current residence or in the proposed residence identified in the exception request that exceeds the CA/PS assessed service payment levels for individuals residing in community-based care facilities or the maximum hours of service as described in OAR 411-030-0070 for individuals residing in his or her own home or the home of a relative.

(b) A service plan granted to a specific individual and a homecare worker to exceed the limitations as described in OAR 411-030-0070 (5) based upon the service needs of the individual as determined by the Department.

(c) An "exceptional rate" or "exceptional payment." The approval of an exception is based on the service needs of the individual and is contingent upon the individual's service plan meeting the requirements in OAR 411-027-0020, OAR 411-027-0025, and OAR 411-027-0050.

(176) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide hourly services to the eligible consumer.

(a) The term homecare worker includes consumer-employed providers in the Spousal Pay and Oregon Project Independence Programs. The term homecare worker also includes consumer-employed providers that provide state plan personal care services to older adults and adults with physical disabilities. Relatives providing Medicaid in-home services to an individual living in the relative's home are considered homecare workers.

(b) The term homecare worker does not include Independent Choices Program providers or personal care attendants enrolled through the Office of Developmental Disability Services or the Addictions and Mental Health Division.

(187) "Hourly Services" mean the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times.

(198) "Independent Choices Program (ICP)" means the self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services identified in a service plan and prior approved by the Department or Area Agency on Aging.

(2049) "Individual" means the person applying for, or eligible for, services. The term "individual" is synonymous with "client", "participant", "consumer", and "consumer-employer."

(210) "In-Home Services" mean those services that meet an individual's assessed need related to activities of daily living and instrumental activities of daily living provided in the individual's home or family's home.

(224) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

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

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

(~~243~~) "Rate Schedule" means the rate schedule maintained by the Department in OAR 411-027-0170 and posted at <http://www.dhs.state.or.us/spd/tools/program/osip/rateschedule.pdf>.

(~~254~~) "These Rules" mean the rules in OAR chapter 411, division 027.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0160 Enhanced Wage Add-on Program

(1) For the purposes of this rule, Home and Community Based Services (HCBS) providers refer to Assisted Living Facilities, Residential Care Facilities, Memory Care (Endorsed Units Only) and In-Home Agencies.

(2) ESTABLISHMENT. The Department establishes the Enhanced Wage Add-on Program (Program). The Program is designed to support Home and Community Based Services (HCBS) providers with retention of caregivers by paying a starting wage of \$15 per hour for all caregivers, with an increase to \$15.50 per hour by the second year of the 2021-2023 biennium (July 1, 2022).

(3) The Department will provide additional compensation to HCBS providers who meet the criteria contained in paragraph (4). Such compensation shall be an add-on of 10% of the Medicaid rate, as authorized in OAR 411-027-0170, during the effective dates of the Program. A HCBS provider may be eligible to apply between October 1, 2021 and June 30, 2023.

(4) CRITERIA. Criteria must be met in order for a HCBS provider to be eligible for the Enhanced Wage Add-on Program. The HCBS provider shall submit documentation supporting that it provides a starting wage of \$15 per hour or more for all caregivers, escalating up to \$15.50 per hour or more by the second year of the 2021-2023 biennium (July 1, 2022). Sufficient documentation shall be submitted to the Department with the required form referenced in paragraph (6) and shall include at least one of the following:

(a) A copy of a collective bargaining agreement or addendums with such provisions;

(b) Amended policies that includes the wages for direct caregivers during the period of the Program;

(c) Notification to caregivers of wages during the period of the Program;

(d) Payroll records demonstrating rates of pay for caregivers equal to or higher than \$15.50 per hour; or

(e) Written communication to staff with wage criteria that includes reference to the Legislature establishing a wage add-on to Medicaid rates for the purpose of supporting caregiver wages in partnership with the Oregon Department of Human Services, the Oregon Health Care Association, SEIU Local 503, and other senior care advocates.

(5) PAYMENT. The Department will provide the Enhanced Wage Add-on equal to 10% of the Medicaid rate, as authorized in OAR 411-027-0170, between October 1, 2021 and June 30, 2023, for providers who meet the criteria contained in paragraph (4). The documentation of the criteria being met shall be submitted with the form by the 15th of the month for which the provider is requesting to be approved. The wage add-on rate will not be effective until the Department provides written approval to the provider.

(6) FORM. HCBS providers shall submit a claim for the Enhanced Wage Add-on Program on the form created by the Department. The documentation of the criteria being met shall be submitted with the form by the 15th of the month for which the provider is requesting to be approved.

(7) APPLICABILITY. The Department will only provide the Enhanced Wage Add-on rate for services provided during the period of October 1, 2021 to June 30, 2023, in which the provider was in compliance with the criteria contained in paragraph (4).

(8) TIMELINESS. Forms for the Enhanced Wage Add-on rate may be submitted during the effective dates of the Program. The documentation of the criteria being met shall be submitted with the form by the 15th of the month for which the provider is requesting to be approved.

Stat. Auth.: 410.070

Stats. Implemented: 410.070