

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

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@odhsoha.oregon.gov	503-339-6104
Rules Coordinator	Email	Telephone
Regan Sheeley	Regan.Sheeley@dhsoha.state.or.us	503-383-5482
Filing Contact	Email	Telephone

FILING CAPTION
(Must be 15 words or fewer)

APD: Establishing Community-Based Care Distressed Provider Relief Fund

Last Date and Time for Public Comment: Written comments are accepted until **5:00 PM on 10/14/2022** and should be sent to apd.rules@dhsoha.state.or.us.

		Teleconference +1 971-277-2343	
09/27/2022	11:00 a.m. to 11:30 a.m.	Conference ID: 359332762#	Staff
Hearing Date	Time	Address	Hearings Officer

HEARING NOTES: To provide oral testimony during this hearing, please contact apd.rules@odhsoha.oregon.gov to sign-up ahead of time. 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 ODHS programs and services. ODHS provides free help. Some examples of the free help ODHS 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@odhsoha.oregon.gov 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:

411-029-0000; 411-029-0005; 411-029-0010; 411-029-0020;
411-029-0025; 411-029-0030; 411-029-0040; 411-029-0050;
411-029-0060

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities Program (APD) is proposing to permanently adopt rules in chapter 411, division 029. The following is a summary of the proposed new rules:

Adopt: 411-029-0000

Rule Title: Purpose

Rule Summary: Created to state the purpose and scope of these rules.

Adopt: 411-029-0005

Rule Title: Definitions

Rule Summary: Created to list the applicable definitions for Community-Based Care Distressed Provider Relief Fund.

Adopt: 411-029-0010

Rule Title: Community-Based Care Distressed Provider Relief Fund

Rule Summary: Created to outline the Community-Based Care Distressed Provider Relief Fund.

Adopt: 411-029-0020

Rule Title: Criteria

Rule Summary: Created to outline the criteria for applying to the Community-Based Care Distressed Provider Relief Fund.

Adopt: 411-029-0025

Rule Title: Prioritization of Applications

Rule Summary: Created to outline the prioritization of applications.

Adopt: 411-029-0030

Rule Title: Facility Statement of Need

Rule Summary: Created to outline the Statement of Need process.

Adopt: 411-029-0040

Rule Title: Application

Rule Summary: Created to outline the application process and requirements.

Adopt: 411-029-0050

Rule Title: Approval and Payment

Rule Summary: Created to outline approval and payment process.

Adopt: 411-029-0060

Rule Title: Oversight

Rule Summary: Created to outline an audit, if identified.

Other changes may be made to OAR chapter 411, division 029 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure and clarity of the rule.

STATEMENT OF NEED

Need for Rule(s):

The Oregon Legislature directed the Oregon Department of Human Services to establish requirements for the application, approval, distribution, and oversight of the Community-Based Care (CBC) Distressed Provider Relief Fund. This Fund provides a financial assistance grant to CBCs who are experiencing financial hardships and contemplating closure.

Other changes may be made to OAR chapter 411, division 029 to correct grammatical errors, ensure consistent terminology, address issues identified during the public comment period, and to improve the accuracy, structure and clarity of the rule.

Documents Relied Upon, and where they are available:

None.

EQUITY IMPACT STATEMENT
Required by HB 2993 (2021 Regular Session)

The Department estimates the adoption of changes to OAR chapter 411, division 029 will not affect racial equity in this state. The purpose of this division is to establish requirements for the application, approval, distribution, and oversight of the Community-Based Care (CBC) Distressed Provider Relief Fund (Fund). This Fund provides a financial assistance grant to CBCs who are experiencing financial hardships and contemplating closure.

FISCAL AND ECONOMIC IMPACT

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 division is \$2.5M. Increases may be 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 positive fiscal impact of this division, amongst all providers who applied, is up to \$2.5M.

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 310 Assisted Living Facilities, Residential Care

Facilities, Memory Care Facility settings with a capacity of 50 or less, or 295 with a capacity of 49 or less. These 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.

**Was an Administrative Rule Advisory Committee consulted? Yes or No? Yes.
If not, why not?**

/s/ Nakeshia Knight-Coyle, Interim Director, Aging and People with Disabilities

Signature

08/18/2022

Date

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

**CHAPTER 411
DIVISION 29**

COMMUNITY-BASED CARE DISTRESSED PROVIDER RELIEF FUND

411-029-0000 Purpose

The purpose of this division is to establish requirements for the application, approval, distribution, and oversight of the Community-Based Care (CBC) Distressed Provider Relief Fund (Fund). This Fund provides a financial assistance grant to CBCs who are experiencing financial hardships and contemplating closure.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-029-0005 Definitions

(1) "Community-Based Care (CBC)" means:

(a) An Assisted Living Facility licensed under rules contained in Oregon Administrative Rule chapter 411, division 054; or

(b) A Residential Care Facility licensed under rules contained in Oregon Administrative Rule chapter 411, division 054; or

(c) A Memory Care Facility (Endorsed Units only) licensed under rules contained in Oregon Administrative Rule chapter 411, division 057.

(2) "Department" means the Oregon Department of Human Services (ODHS).

(3) “Essential Facility” means a facility that serves:

(a) Predominantly rural or frontier communities as designated by the Oregon [Office of Rural Health](#); or

(b) Serves low-income communities; or

(c) Has a high Medicaid Occupancy.

(4) “[Financial Hardship](#)” means a facility needs substantially all current and anticipated income and liquid assets to meet current and anticipated ordinary and necessary facility expenses. This means the facility is experiencing or facing insolvency or significant cash flow problems and may be at risk of closure in the next six months.

(5) “Medicaid Occupancy” means the number of Medicaid individuals divided by the number of total individuals residing in the facility.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-029-0010 Community-Based Care Distressed Provider Relief Fund

(1) ESTABLISHMENT. The Oregon Department of Human Services (Department) establishes the CBC Distressed Provider Relief Fund. The Fund will prioritize financial assistance grants to CBC facilities who meet the criteria described in OAR 411-029-0020.

(2) TIMELINESS. Initial applications for the CBC Distressed Provider Relief Fund must be submitted to the Department during the open application submission timeframe as announced by the Department. The Department may announce subsequent application periods through policy guidance or provider alert if funding remains after the initial application.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-029-0020 Criteria

The Department will accept completed applications from CBCs that are able to confirm a Financial Hardship and whom have a valid Medicaid provider number. Prioritization will be given to facilities as described in OAR 411-029-0025.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-029-0025 Prioritization of Applications

The Department will prioritize funding based on following criteria:

- (1) Facilities who meet the definition of Essential Facility;
- (2) Facilities with high Medicaid Occupancy on a date specified by the Department;
- (3) Facilities who are actively in the process of closing or are at a significant risk of closing their facility due to a Financial Hardship;
- (4) Facilities that can demonstrate the potential for viability with a cash assistance grant; and
- (5) Facilities with demonstrated regulatory record of ensuring patient safety.
- (6) The Department retains the right to approve or deny any application within available funding based on the Department's determination of the most at risk facilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-029-0030 Facility Statement of Need

Sufficient information and financial records shall be submitted to the Department, in addition to the application form referenced in OAR 411-029-0040, and shall include each of the following:

(1) A written Facility Statement of Need that includes each of the following:

(a) Written statement of how a potential closure of the facility would create a lack of access to care, particularly for low income and Medicaid beneficiaries in the area;

(b) Written statement of steps taken to address current financial hardships, such as accessing reserve funds, being approved for the Enhanced Wage Add-on Program (OAR 411-027-0160), employed strategies to increase facility census, and recruiting and retaining permanent staff;

(c) Written statement demonstrating how the facility plans to be financially sustainable in the future; and

(d) Written statement of an amount that the facility is requesting to assist the facility out of financial hardship. This amount may not reflect the approved amount by the Department.

(2) A copy of the following records from the facility and the parent corporation, if applicable:

(a) Federal income tax return for the previous two years;

(b) A current Working Trial Balance;

(c) A current Income Statement; and

(d) A current Cash Flow Statement.

(3) Any other information or records that the Department may request to support a Facility's Statement of Need.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070

411-029-0040 Application

(1) Interested Community-Based Care Facilities must submit a completed application form designated by the Department, in addition to the information and records supporting the Facility's Statement of Need, described in OAR 411-029-0030.

(2) These documents can be combined in the application form or submitted as separate documents, at the time of submission.

(3) Complete applications will be accepted by the due date set by the Department.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070

411-029-0050 Approval and Payment

(1) The Department will notify all facilities, in writing, whether approved or not approved.

(2) Once approved, the Department will process the payment within ten (10) business days of written approval.

(3) The Department will only authorize funds to the extent of the appropriation authorized by the Oregon legislature.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070

411-029-0060 Oversight

All payments authorized for this Program are subject to audit at the discretion of the Department.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070