

**TEMPORARY FILING**  
**INCLUDING STATEMENT OF NEED & JUSTIFICATION**  
*For internal agency use only.*

|   |   |                                     |
|---|---|-------------------------------------|
| <u>Department of Human Services, Aging and People with Disabilities (APD)</u> |   | <u>411</u>                          |
| Agency and Division Name  |   | Administrative Rules Chapter Number |
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**FILING CAPTION**  
*(Must be 15 words or fewer)*

*APD: Establishing Community-Based Care Distressed Provider Relief Fund*

Agency Approved Date: [ 08/18/2022 ]

Effective Date: [ 08/19/2022 ] through [ 11/10/2022 ]

**RULEMAKING ACTION**

*List each rule number separately (000-000-0000). Attach clean 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 immediately amending temporary rules in OAR chapter 411, division 029 that became effective May 15, 2022, for the Community-Based Care Disaster Relief Fund. The following is a summary of the proposed new rules:

**411-029-0000 Purpose** – Created to state the purpose and scope of these rules.

**411-029-0005 Definitions** – Created to list the applicable definitions for Community-Based Care Distressed Provider Relief Fund.

**411-029-0010 Community-Based Care Distressed Provider Relief Fund** – Created to outline the Community-Based Care Distressed Provider Relief Fund.

**411-029-0020 Criteria** – Created to outline the criteria for applying to the Community-Based Care Distressed Provider Relief Fund. **This updated filing clarifies the Department will accept completed applications from those who have a valid Medicaid provider number.**

**411-029-0025 Prioritization of Applications** – Created to outline the prioritization of applications. **This updated filing adds the words, “Facilities with,” to the beginning of section (2) to correct the format of the rule and adds section (6) which indicates 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.**

**411-029-0030 Facility Statement of Need** - Created to outline the Statement of Need process.

**411-029-0040 Application** - Created to outline the application process and requirements.

**411-029-0050 Approval and Payment** - Created to outline approval and payment process.

**411-029-0060 Oversight** – Created to outline an audit, if identified.

#### STATEMENT OF NEED AND JUSTIFICATION

Need for the 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.

Justification of Temporary Filing:

The COVID 19 pandemic that started in March 2020 and the devastating wildfires in the fall of 2020 significantly affected and increased facilities' operating expenses. To assist facilities, the Oregon Legislature directed ODHS to adopt rules to grant funds to the facilities who are experiencing or facing insolvency or significant cash flow problems and may be at risk of closure in the next six months.

Failure to act promptly and immediately adopt OAR chapter 411, division 029 will result in reduced access to services due to facility closures. The purpose of these funds is to ensure facilities at risk of closure are offered and issued funds to ensure solvency. Individuals living in community-based care facilities that are risk of closure would suffer consequences of needing to find alternative homes.

Documents Relied Upon, and where they are available:

None.

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

08/18/2022

Signature

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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

(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**  
(Temporary effective 08/19/2022 through 11/10/2022)

(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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

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**  
*(Temporary effective 08/19/2022 through 11/10/2022)*

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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

(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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

(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**

*(Temporary effective 08/19/2022 through 11/10/2022)*

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