

**TEMPORARY FILING
INCLUDING STATEMENT OF NEED & JUSTIFICATION**

For internal agency use only.

Oregon Department of Human Services (ODHS)
Aging and People with Disabilities (APD)
Office of Developmental Disabilities Services (ODDS)

411

Agency and Division Name

Administrative Rules Chapter Number

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FILING CAPTION

(15 words or less)

APD-ODDS: Long Term Care Community Nursing

Agency Approved Date: [February 24, 2021]

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RULEMAKING ACTION

List each rule number separately (000-000-0000). Attach clean text for each rule at the end of the filing

AMEND:

411-048-0150, 411-048-0160, 411-048-0170

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (ODHS), Aging and People with Disabilities (APD) and Office of Developmental Disabilities Services (ODDS) is temporarily amending OARs 411-048-0150, 411-048-0160, and 411-048-0170 to allow long term care community nursing services for adults in employment settings and settings for day support activities on the effective date of the Centers for Medicare and Medicaid Services' (CMS) approval of Oregon's 1915(k) State Plan amendment.

In addition, other changes have been made to improve the accuracy, structure, and clarity of the rules. These changes do not affect program operations or introduce additional requirements or processes.

STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

ODHS needs to temporarily amend OARs 411-048-0150, 411-048-0160, and 411-048-0170 to allow long term care community nursing services for adults in employment settings and settings for day support activities on the effective date of CMS' approval of Oregon's 1915(k) State Plan amendment.

In addition, other changes have been made to improve the accuracy, structure, and clarity of the rules. These changes do not affect program operations or introduce additional requirements or processes.

Proceeding with temporary rule changes is appropriate because ODHS needs to immediately align with amendments to the 1915(k) State Plan.

Justification of Temporary Filing:

Failure to act promptly and temporarily amend OARs 411-048-0150, 411-048-0160, and 411-048-0170 will result in serious prejudice to ODHS and adults receiving developmental disabilities services in employment settings and settings for day support activities.

Failure to act promptly and temporarily amend OARs 411-048-0150, 411-048-0160, and 411-048-0170 will prevent ODHS from immediately aligning with amendments to the 1915(k) State Plan.

OARs 411-048-0150, 411-048-0160, and 411-048-0170 need to be temporarily amended to allow long term care community nursing services for adults in employment settings and settings for day support activities on the effective date of CMS' approval of Oregon's 1915(k) State Plan amendment.

In addition, other changes have been made to improve the accuracy, structure, and clarity of the rules. These changes do not affect program operations or introduce additional requirements or processes.

Documents Relied Upon, and where they are available:

Proposed 1915(k) State Plan amendment

<https://www.oregon.gov/dhs/SENIORS-DISABILITIES/DD/Compass/20-xxx-K-plan-draft.pdf>

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

2-24-2021

Signature

Date

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

**CHAPTER 411
DIVISION 48**

LONG TERM CARE COMMUNITY NURSING

411-048-0150 Purpose

(Temporary Effective 03/01/2021 - 08/27/2021)

(1) The rules in OAR chapter 411, division 048 establish standards and procedures for Medicaid enrolled providers who provide long term care community nursing services. Long term care community nursing services provide ongoing registered nurse (RN) services to eligible individuals who are receiving ~~Medicaid home and community-based~~ services in a Medicaid-funded home and community-based setting ~~home-based or foster home setting~~.

(2) Long term care community nursing services provide:

(a) Evaluation and identification of supports that help an individual maintain maximum functioning and minimize health risks, while promoting the individual's autonomy and self-management of healthcare;

(b) Teaching an individual's caregiver or family that is necessary to assure the individual's health and safety in ~~a home-based or foster home setting~~; Medicaid-funded home and community-based settings;

(c) Delegation of nursing tasks to an individual's caregiver; and

(d) Case managers and health professionals with the information needed to maintain the individual's health, safety, and community living situation while honoring the individual's autonomy and choices.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 409.010, 410.070

411-048-0160 Definitions

(Temporary Effective 03/01/2021 - 08/27/2021)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 048:

(1) "AAA" means the Area Agency on Aging designated by the Department that is responsible for providing a comprehensive and coordinated system of services to older adults and adults with disabilities in a designated planning and service area.

(2) "Abuse" means:

(a) Abuse of a child:

(A) As defined in ORS 419B.005; and

(B) As defined in OAR 407-045-0260, when a child resides in a foster home licensed by the Department to provide residential services to a child with intellectual or developmental disabilities.

(b) Abuse of an adult or older adult:

(A) As defined in ORS 124.050- through 124.095 and ORS 430.735- through 430.765; and

(B) As defined in OAR 407-045-0260 for individuals 18 years or older with intellectual or developmental disabilities that reside in a Department licensed adult foster home; or

(C) As defined in OAR 411-020-0002 for older adults and adults with a physical disability who are 18 years of age or older that reside in a Department licensed adult foster home.

(3) "Acute Care Nursing" means nursing services provided on an intermittent or time limited basis such as those provided by a hospice agency program as defined in ORS 443.850, or a home health agency as

defined in ORS 443.~~0050~~14. Acute care nursing may include direct service and is designed to address a specific task of nursing or a short term health condition.

(4) "Business Day" means the day that the "Local Office" is open for business.

(5) "Care Coordination" means the email, faxes, phone calls, meetings and other types of information exchange, consultation, and advocacy provided by a registered nurse on behalf of an individual that is necessary for the registered nurse to conduct assessments, complete medication reviews, provide for individual safety needs, and implement an individual's Nursing Service Plan.

(6) "Caregiver" means any person responsible for providing services to an eligible individual in a ~~home-based or foster home setting~~Medicaid-funded home and community-based setting. A caregiver may include an unlicensed person defined as a designated caregiver in OAR chapter 851, division 048 ~~(Standards for Provision of Nursing Care by a Designated Caregiver)~~.

(7) "Case Manager" means a person employed by the Department, Community Developmental Disability Program, Support Services Brokerage, 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 an individual's plan for services and monitors the services delivered.

(8) "CDDP" means the Community Developmental Disability Program responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(9) "Community Nursing Services" means "long term care community nursing services" as defined in this rule.

(10) "Day Support Activities" as defined in OAR 411-317-0000.

~~(4011)~~ "Delegation" means the standards and processes described in OAR

chapter 851, division 047 ~~(Standards for Community Based Care Registered Nurse Delegation)~~.

(~~14~~12) "Department" means the Oregon Department of Human Services or the Department's designee.

(~~12~~13) "Department Approved Form" means forms used by registered nurses and case managers to support these rules. The Department maintains these documents on the Department's website (<https://www.oregon.gov/dhs/SENIORS-DISABILITIES/PROVIDERS-PARTNERS/LTCCN/Pages/forms.aspx>~~http://www.oregon.gov/dhs/spd/pages/provtools/nursing/forms.aspx~~). Printed copies may be obtained by contacting the Oregon Department of Human Services, ATTN: Rule Coordinator, 500 Summer Street NE, ~~E48~~E-02, Salem, OR 97301.

(~~13~~14) "Direct Hands-on Nursing" means a registered nurse ~~providing~~ing treatment or therapies directly to an individual instead of teaching or delegating the tasks of nursing to the individual's caregiver. Payment for direct hands-on nursing services is not reimbursed unless an exception has been granted by the Department as described in OAR 411-048-0170.

(~~14~~15) "Documentation" means a written record of all services provided to, and for, an individual and an individual's caregiver that is maintained by the registered nurse as described in OAR 411-048-0200.

(16) "Employment Services" as defined in OAR 411-317-0000.

(~~15~~17) "Enrolled Medicaid Provider" means an entity or individual that meets and completes all the requirements in these rules, OAR 407-120-0300 to 0400 ~~(Medicaid Provider Enrollment and Claiming)~~, and OAR chapter 410, division 120, ~~(Medicaid General Rules)~~ as applicable.

(~~16~~18) "Foster Home" means any Department licensed or certified family home in which residential services are provided as described in:

(a) OAR chapter 411, divisions ~~050-049~~ through 052 for adult foster homes for older adults and adults with physical disabilities;

(b) OAR chapter 411, division 346 for foster homes for children with

intellectual or developmental disabilities; and

(c) OAR chapter 411, division 360 for adult foster homes for individuals with intellectual or developmental disabilities.

(~~17~~19) "Healthcare Provider" means a licensed provider providing services such as but not limited to home health, hospice, mental health, primary care, specialty care, durable medical equipment, pharmacy, or hospitalization to an eligible individual.

(~~18~~20) "Home" means a non-licensed setting where an individual is receiving Medicaid home and community-based services.

(~~19~~21) "Home and Community-Based Services" mean the services approved and funded by the Centers for Medicare and Medicaid Services for eligible individuals who are aged and physically disabled and for eligible individuals with intellectual disabilities and developmental disabilities in accordance with Title XIX of the Social Security Act.

(~~20~~22) "Home Health Agency" has the meaning given that term in ORS ~~443.005~~443.014.

(~~21~~23) "Individual" means a person eligible for community nursing services under these rules.

(~~22~~24) "In-Home Care Agency" has the meaning given that term in ORS 443.305.

(~~23~~25) "Local Office" means the Department office, Area Agency on Aging, Community Developmental Disability Program, or Support Services Brokerage, responsible for Medicaid services including case management, referral, authorization, and oversight of long term care community nursing services in the region where the individual lives and where the community nursing services are delivered.

(~~24~~26) "Long Term Care Community Nursing Services" mean ~~the nursing services provided under these rules to individuals living in a home-based or foster home setting where the monthly Medicaid home and community-based services rate does not include nursing services. Long term care~~

~~community nursing services are~~ a distinct set of services that focus on an individual's chronic and ongoing health and activity of daily living needs. Long term care community nursing services include an assessment, monitoring, delegation, teaching, and coordination of services that addresses an individual's health and safety needs in a Nursing Service Plan that supports individual choice and autonomy. The requirements in these rules are provided in addition to any nursing related requirements stipulated in the licensing rules governing the individual's place of residence.

(~~2527~~) "Medication Review" means a review focused on an individual's medication regime that includes examination of the prescriber's orders and related administration records, consultation with a pharmacist or the prescriber, clarification of PRN (as needed) parameters, and the development of a teaching plan based upon the needs of the individual or the individual's caregiver. In an unlicensed setting, the medication review may include observation and teaching related to administration methods and storage systems.

(~~2628~~) "Nursing Assessment" means one of the following assessments selected by the registered nurse based on an individual's need and situation:

(a) A "nursing assessment" as defined in OAR 851-047-0010-~~(Standards for Community Based Care Registered Nurse Delegation)~~; or

(b) A "comprehensive assessment" or "focused assessment" as defined in OAR 851-045-0030-~~(Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse)~~.

(~~2729~~) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an individual's initial nursing assessment, reassessment, or updates made to a nursing assessment as a result of monitoring visits.

(a) The Nursing Service Plan is specific to the individual and identifies the individual's diagnoses and health needs, the caregiver's teaching needs, and any care coordination, teaching, or delegation activities.

(b) The Nursing Service Plan is separate from the case manager's service plan, the foster home provider's service plan, and any service plans developed by other health professionals.

(c) Nursing service plans must meet the standards in OAR chapter 851, division 045 (~~Standards and Scope of Practice for the Licensed Practical Nurse and Registered Nurse~~).

(~~2830~~) "OSBN" means the Oregon State Board of Nursing. OSBN is the agency responsible for regulating nursing practice and education for the purpose of protecting the public's health, safety, and well-being.

(~~2931~~) "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>. ~~means the communication tool issued by the Department to transmit rate changes to partners, subcontractors, and stakeholders. The Department maintains this document on the Department's website (<http://www.oregon.gov/dhs/spd/provtools/rateschedule.pdf>). Printed copies may be obtained by contacting the Department of Human Services, ATTN: Rule Coordinator, 500 Summer Street NE, E48, Salem, OR 97301.~~

(~~3032~~) "RN" means a registered nurse licensed by the Oregon State Board of Nursing. An RN providing long term care community nursing services under these rules is either an independent contractor who is an enrolled Medicaid provider or an employee of an organization that is an enrolled Medicaid provider.

(~~3133~~) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of ~~support~~ services for individuals with intellectual or developmental disabilities.

(~~3234~~) "These Rules" mean the rules in OAR chapter 411, division 048.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 409.010, 410.070

411-048-0170 Eligibility and Limitations
(Temporary Effective 03/01/2021 - 08/27/2021)

(1) ELIGIBILITY. Community nursing services may be provided by an RN to an individual if the individual meets the following requirements:

(a) The individual must be determined eligible for Medicaid home and community-based services provided through the Department;

(b) The individual must be receiving services through one of the following:

(A) A child who lives in the family home and receives children's intensive in-home services as described in OAR chapter 411, division 300~~In-home supports for children with intellectual or developmental disabilities as described in OAR chapter 411, division 308.~~

(B) Adult foster homes for:

(i) Individuals with intellectual or developmental disabilities as described in OAR chapter 411, division 360; or

(ii) Individuals found eligible for service in OAR chapter 411, division 015 residing in a Medicaid enrolled adult foster home as described in OAR chapter 411, divisions 049 through 052.

(C) Foster homes for children with intellectual or developmental disabilities as described in OAR chapter 411, division 346.

(D) An adult or child who live in their own or family home as described in OAR chapter 411, division 030 or division 450.~~Comprehensive in-home support for adults with intellectual or developmental disabilities as described in OAR chapter 411, division 330;~~

~~(E) Adult foster homes for older adults and adults with physical disabilities as described in OAR chapter 411, division 050;~~

(FE) Independent Choices Program participants as described in OAR chapter 411, division 030;

(GF) State Plan personal care participants as described in OAR chapter 411, division 034 or division 455;

(HG) An individual enrolled in a Support Services ~~or~~ Brokerage as described in OAR chapter 411, division 340;

(H) On the effective date of the Centers for Medicare and Medicaid Services' approval of Oregon's 1915(k) State Plan amendment to include the following:

(i) An adult who receives day support activities as described in OAR chapter 411, division 450.

(ii) An adult who receives employment services as described in OAR chapter 411, division 345.

~~(I) 1915C Nursing Facility Waiver; or~~

~~(J) State Plan K Community First Choice;~~

~~(c) The individual must live in a home or a foster home as defined in OAR 411-048-0160;~~

(dc) The individual must be referred by their case manager for long term care community nursing services. Individuals may request long term community nursing services through their case manager.

(2) LIMITATIONS.

(a) Long term care community nursing services may not be provided to:

(A) A resident of a nursing facility, assisted living facility, or

~~residential care facility, 24-hour developmental disability group home, or intermediate care facility for individuals with intellectual or developmental disabilities; or~~

~~(B) An individual enrolled in a program or residing in a setting where nursing services are provided as part of their contract with the Department. Community nursing services may be provided for individuals while receiving services in settings for employment services or day support activities regardless of their residential home and community-based setting. under a monthly service rate.~~

(b) Case managers may not prior authorize long term care community nursing services that duplicate nursing services provided by Medicare or other Medicaid programs.

(c) Long term care community nursing services do not include nursing activities used for administrative functions such as protective service investigations, pre-admission screenings, eligibility determinations, licensing inspections, case manager assessments, or corrective action activities. This limitation does not include authorized care coordination as defined in OAR 411-048-0160.

(d) Long term care community nursing services do not include reimbursement for direct hands-on nursing as defined in OAR 411-048-0160.

(3) EXCEPTIONS. An exception to sections (2)(c) and (2)(d) of this rule may be requested as described in OAR 411-048-0250.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 409.010, 410.070