

**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	
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Filing Contact	Address/Email	Telephone

**FILING CAPTION**  
*(Must be 15 words or fewer)*

*APD: Long-Term Care Capital Improvement and Emergency Preparedness Program*

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**Last Date and Time for Public Comment:** Written comments may be submitted via email to [apd.rules@dhsoha.state.or.us](mailto:apd.rules@dhsoha.state.or.us) or mailed to Kristina Krause at 500 Summer Street NE, E-02, Salem, OR 97301 until **January 21, 2022 at 5 p.m.**

<b>TELECONFERENCE ONLY</b>		
+1 971-277-2343		
12/22/2021	11:00 – 11:30 a.m.	Conference ID: 816058702#
Hearing Date	Time	Address
		Staff Hearings Officer

**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](mailto: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:**

411-062-0000; 411-062-0010; 411-062-0020; 411-062-0030; 411-062-0040  
411-062-0050; 411-062-0060; 411-062-0070; 411-062-0080

### **RULE SUMMARY:**

*Include a summary for each rule included in this filing.*

The Oregon Department of Human Services (Department) is proposing to permanently adopt rules in chapter 411, division 062. The following is a summary of the proposed new rules:

**411-062-0000 Purpose** – Created to state the purpose and scope of these rules.

**411-062-0010 Definitions** - Created to list the applicable definitions for the Long-Term Care Capital Improvement Program.

**411-062-0020 Long-Term Care Capital Improvement and Emergency Preparedness Program** – Created to establish the LTCCIEP program and describes overview of program.

**411-062-0030 Application and Prior Authorization** – Created to outline the application process and requirements for pre-authorization.

**411-062-0040 Long Term Care Facility Prioritization** – Created to outline applicant prioritization.

**411-062-0050 Funding Phases** – Created to establish timelines for prior authorization phases.

**411-062-0060 Maximum Reimbursement Amounts** – Created to establish maximum reimbursement amounts for each phase.

**411-062-0070 Approval and Payment** – Created to outline approval and payment process.

**411-062-0080 Oversight** – Created to outline audit and the process if overpayments are identified.

Other changes may be made to OAR chapter 411, division 062 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 AND FISCAL IMPACT

**Need for Rule(s):** The Oregon Department of Human Services is directed by the Legislature to adopt rules for the administration of the Long-Term Care Capital Improvement and Emergency Preparedness Program, including requirements and criteria for the application, approval, distribution, and oversight of the program. In making grant award decisions, the department is directed to consider and prioritize high Medicaid-census buildings, aging buildings, and upgrades; and, to ensure equitable access across the State. Eligible expenditures include emergency power sources, air quality and HVAC improvements, infectious disease prevention strategies and equipment, technology to facilitate virtual visits and telehealth for residents, and room reconfigurations that reduce the risk of transmitting infectious diseases.

Other changes may be made to OAR chapter 411, division 062 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.

#### **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 Department estimates that no state agencies will be impacted.

Units of Local Government: The Department estimates that no units of local governments will be impacted.

Consumers: The Department estimates that no consumers will be impacted.

Providers: The Department estimates that no providers will be negatively impacted.

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);**

Approximately 572 community-based care facilities and 131 nursing facilities may be subject to this rule if they apply for reimbursement of certain capital improvements and emergency preparedness projects.

**(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.

The Department was directed to present information to the Human Services Subcommittee of the Joint Committee on Ways and Means during the 2022 legislative session on the status of program implementation, the number of applications received, and total awards made by type of facility.

**(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:**

[Senate Bill 5529 \(2021 Regular Session\)](#)

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB5529/A-Engrossed>

**Was an Administrative Rule Advisory Committee consulted? Yes.**

**If not, why not?**

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

Signature

11/29/2021

Date

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

**CHAPTER 411  
DIVISION 62**

**LONG-TERM CARE CAPITAL IMPROVEMENT AND EMERGENCY  
PREPAREDNESS PROGRAM**

**411-062-0000 Purpose**

The purpose of this rule is to establish requirements and criteria for the application, approval, distribution, and oversight of the Long-Term Care Capital Improvement and Emergency Preparedness Program (LTCCIEP). This Program provides financial assistance to long term-care providers that are preparing for, responding to, or recovering from a public health emergency.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

**411-062-0010 Definitions**

(1) "Air Quality and HVAC Improvement" means systems, system improvements, or equipment that reduce air pollutants, prevent or control the spread of infectious disease, and regulate temperature in indoor spaces including air conditioning.

(2) "Emergency System Sources" mean for the purposes of this rule, a backup power source, which need not be installed or integrated into a facility's infrastructure, that the provider may use during a power outage for the purpose of operating critical systems and appliances including refrigeration, portable heating and cooling devices necessary to preserve medications, supplies, or other equipment critical to a resident's care or immediate safety on a temporary basis. Upgrading fire suppression

systems is included in this rule. Licensed facilities are subject to all applicable state and federal licensing standards, i.e., Centers for Medicare and Medicaid.

(3) “Long-Term Care Facility” 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 Nursing Facility licensed by the Department pursuant to Oregon Administrative Rule chapter 411, divisions 085 to 089.

(4) “Infectious Disease Prevention Strategies” means infection control devices or equipment, including technological upgrades that support infection prevention and control.

(5) “Room configurations” means development of negative pressure isolation rooms that prevent the spread of viruses. This may include site-level construction or remodel of resident rooms to reduce per room bed capacity and reduce the spread of infectious diseases.

(6) “Technology and Telehealth” means electronic or virtual means or methods, including but not limited to computer technology, web or internet access, social media, videoconferencing or other technological means or methods to improve resident social isolation and allow for the provision of virtual health care.

(7) “Project” means an effort to promote emergency preparedness, air quality, heating, ventilation, air conditioning, infectious disease prevention, and technology to support virtual visitation for which a grant is sought pursuant to these rules.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

## **411-062-0020 Long-Term Care Capital Improvement and Emergency Preparedness Program**

(1) The Oregon Department of Human Services establishes the Long-Term Care Capital Improvement and Emergency Preparedness Program (LTCCIEP).

(2) The purpose of the LTCCIEP program is to provide grants to eligible long-term care facilities to improve emergency preparedness, air quality, heating, ventilation, air conditioning, infectious disease prevention strategies, and technology to support virtual visitation.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

## **411-062-0030 Application and Prior Authorization**

(1) Interested Long-Term Care Facilities must submit a prior authorization request for a grant on a form mandated by the Oregon Department of Human Services (ODHS).

(2) The Department will reimburse facilities only when a prior authorization request was approved, in writing, by the Department.

(3) The Department will consider each prior authorization request in the order of submission. A facility may submit only one request in each phase, as these phases are described in OAR 411-062-0050. Each prior authorization request may include more than one project.

(4) The Department will consider prior authorization requests for any project initiated on or after July 1, 2021. Initiated means any substantive planning or initiation activities to start a project.

(5) A prior authorization request must include information on how the project will mitigate the spread of viruses, avoid emergency evacuations, improve overall emergency preparedness, or increase resident's health,

safety, or ability to communicate during a public health emergency. The prior authorization request must demonstrate an unmet need that will be met through the project.

(6) In accordance with the appropriation authorized by the Oregon legislature, the Department will cease prior authorization of all projects, regardless of phase, once \$30 million in prior authorizations have been approved by the Department.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

### **411-062-0040 Long Term Care Facility Prioritization**

(1) Priority 1 applicants include a long-term care facility, constructed prior to 1996, with the following Medicaid census percentages:

(a) Nursing Facility Medicaid occupied census level of 50% or higher on June 30, 2021.

(b) Community-Based Care Facility occupied census level of 40% or higher on June 30, 2021.

(2) Priority 2 applicants include all long-term care facilities not meeting the criteria in (1). Priority within the Priority 2 group will be given to applicants who were enrolled as a Medicaid provider on June 30, 2021.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

### **411-062-0050 Funding Phases**

(1) The Department will prior authorize projects in four phases.

(2) Phase 1 consists of Priority 1 applicants requesting grants for Projects including improvements to emergency power sources, air quality, and

HVAC systems. Applicants for Phase 1 must submit prior authorization requests between September 13, 2021 and February 28, 2022.

(3) Phase 2 consists of Priority 2 applicants requesting grants for Projects including improvements to emergency power sources, air quality and HVAC system. Applicants for Phase 2 must submit prior authorization requests between January 1, 2022 and June 30, 2022.

(4) Phase 3 consists of Priority 1 applicants requesting grants for Projects including infectious disease prevention, room configuration strategies, technology, and telehealth. Applicants for phase 3 must submit prior authorization requests between March 1, 2022 and August 31, 2022.

(5) Phase 4 consists of Priority 2 applicants requesting grants for Projects including infectious disease prevention, room configuration strategies, technology, and telehealth. Applicants for phase 4 must submit prior authorization requests between May 1, 2022 and October 31, 2022.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

#### **411-062-0060 Maximum Reimbursement Amounts**

(1) The maximum reimbursement amount for Phase 1 is \$1,500 per licensed bed per facility, up to a maximum of \$100,000.

(2) The maximum reimbursement amount for Phase 2 is \$1,500 per licensed bed per facility, up to a maximum of \$100,000.

(3) The maximum reimbursement amount for Phase 3 is \$20,000.

(4) The maximum reimbursement amount for Phase 4 is \$20,000.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

#### **411-062-0070 Approval and Payment**

(1) All prior authorization requests must be approved by the Department in writing to be eligible for reimbursement. The Department will notify facilities in writing if their Project is not approved.

(2) Once work on a Project is completed, the facility must submit a request for reimbursement for the actual cost paid to complete the Project. A request for reimbursement submitted pursuant to this paragraph shall include receipts for actual costs.

(3) The Department will reimburse actual costs, up to 110% of the prior authorized amount, subject to the maximum reimbursement amount described in OAR 411-062-0060. The Department will issue payment within thirty (30) days of receipt of a request for reimbursement submitted pursuant to this rule.

(4) All requests for reimbursement must be received no later than July 31, 2023.

Stat. Auth.: 410.070

Stats. Implemented: 410.070

### **411-062-0080 Oversight**

(1) All written prior authorization requests and requests for reimbursement are subject to audit at the discretion of the Department.

(2) The Facility shall be notified in writing of any identified overpayment and of any adjustments to the request for payment.

(3) Payment of any amounts due to the Department must be made within 60 business days of the date of notification to the Facility.

Stat. Auth.: 410.070

Stats. Implemented: 410.070