

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

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

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| | 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 | Email | Telephone |

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

FILING CAPTION
(Must be 15 words or fewer)

APD: Nursing Facility Employee Retention Payment Reimbursement Program Eligibility and Reimbursement Process

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 **March 16, 2022 at 5 p.m.**

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| | | TELECONFERENCE ONLY +1 971-277-2343 | |
| 2/23/2022 | 10:00 a.m. – 10:30 a.m. | Conference ID: 641775443# | Staff |
| Hearing Date | Time | Address | 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 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:

411-070-0436

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 070 to create the Employee Retention Payment Reimbursement Program. The Program is designed to support nursing facilities with employee retention. The adopted rule will do the following:

411-070-0436 - Employee Retention Payment Reimbursement Program
– Created to outline eligibility criteria and reimbursement process for nursing facility providers who paid a workforce retention bonus to all eligible nursing facility staff.

Other changes may be made to OAR 411-070-0436 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.

EQUITY IMPACT STATEMENT HB 2993 (2021 Regular Session)

Section 1 - Identify Affected Communities, including Tribal Governments

a. Which populations are affected or most harmed from a racial equity perspective?

Per the Provider Alerts (NF-21-061 & NF-21-065), participation in the Nursing Facility Employee Retention Payment Reimbursement Program (Program) is voluntary, but highly encouraged. If a nursing facility chooses to participate, staff who meet the criteria are eligible. There are three criteria that applies to all staff (on facility payroll, not contracted), regardless of job position or PT/FT status. The criteria are: staff are directly employed by the nursing facility, staff work physically in the facility, staff are employed continuously by the facility between Oct. 8 through Nov. 15, 2021, and the nursing facility has paid at least a \$500 retention payment to the eligible staff.

b. How or in what specific ways are racially/ethnically specific communities affected by this rule? The criteria applied to all nursing facility staff (see Section 1a), regardless of race/ethnic, job position or PT/FT status.

c. What data are you using to validate your assessment? The only data provided is whether the eligible staff was administration, direct staff or other staff. Since the Program was for nursing facilities.

d. From your review and discussion with Tribal Affairs has this rule been identified as a critical event per the tribal consultation policy? Was a Dear Tribal Leader Letter sent? Was the RAC invite included in the letter or done as follow-up? Was a consultation meeting with tribal partners scheduled and held with outcome reported? Why or why not? Tribal Affairs is notified if there is a change to a nursing facility rate. This Program was a one-time reimbursement to nursing facilities who chose to participate. No letter was sent or was a meeting scheduled with Tribal Affairs as this Program is not a Medicaid rate change and there currently are no facilities located on tribal reservations.

Section 2 - Community Engagement and Communication Strategy

a. How have/will you engage the populations you described in Section (1) that are impacted by the rules, so they are aware of the proposed changes and know how to provide feedback and suggestions?

As described in Section 1, no racial/ethnic communities were negatively impacted by this rule change.

b. If community engagement is not one of your strategies, please provide a rationale for not doing this. Two Provider Alerts (NF-21-061 & NF-21-065) were distributed statewide with contact information.

c. Did you hold a RAC as statute requires? That includes populations affected by the rule. What have you done in lieu of a formal RAC? Nursing facility stakeholders were contacted by Executive staff with draft rule prior to filing a Temporary Rule for OAR 411-070-0436. No formal RAC was formed for the Temp. Rule. For the Permanent Rule, an email RAC was conducted, as the Program was for the month of December only and the Program has ended. The populations affected by the rule were only nursing facility providers. Oregon Healthcare Alliance (OHCA), LeadingAge of Oregon, Oregon Ombudsman, and SEIU local 503 were included in the email RAC.

Section 3 - Communication Plan, Address feedback

Describe your plan for communicating the permanent rule change language with partners and impacted communities. (See Section 2 for consideration of language and alternative formats). As mentioned in Section 1a., two Provider Alerts were distributed statewide with information on OAR 411-070-0436 and contact information was provided in both alerts. Also mentioned in Section 2c., an email RAC was conducted inviting Oregon Healthcare Alliance (OHCA), LeadingAge of Oregon, Oregon Ombudsman, and SEIU local 503.

Section 4 - Remediation Plan

Considering the impacts described in Section 1, describe your plan for mitigating any potential negative impacts to racial equity or racially/ethnically specific communities. There were no potential negative impacts to racial equity or racially/ethnically specific communities identified in Section

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

Due to ongoing and extraordinary issues surrounding employee retention with the COVID-19 crisis, the Department has received funding to provide a one-time payment of \$500 per eligible staff member to participating nursing facilities licensed by the Office of Aging and People with Disabilities (APD). The retention reimbursement payment will be paid for staff members who were employed continuously by the facility from October 8, 2021 through November 15, 2021. This bonus is intended to improve the availability of nursing facility level of care to Oregonians during the current direct-care workforce shortage. Therefore, the Department is adopting rules to implement the Employee Retention Payment Reimbursement Program.

Other changes may be made to OAR 411-070-0436 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 cost to the Department is \$4.4M, which was paid out of the CRF allotment.

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 Department is unable to estimate the cost to providers, but feels the impact is minimal. Costs to the provider could be administrative or accounting fees associated with checks being written to the employees.

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 approximately 123 nursing facilities impacted by the proposed rule changes. There are 18 nursing facilities (less than 50 licensed beds) that may be considered a small business as defined in 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 Nursing Facility Employee Retention Payment Reimbursement Program, 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

01/11/2022

Signature

Date

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

CHAPTER 411
DIVISION 70

NURSING FACILITIES/MEDICAID – GENERALLY AND
REIMBURSEMENT

Nursing Facilities/Medicaid – Generally

411-070-0436 Employee Retention Payment Reimbursement Program

(1) ESTABLISHMENT. The Department establishes the Employee Retention Payment Reimbursement Program (Program). The Program is designed to promote the availability of nursing home level of care to Oregonians through the current direct-care workforce shortage.

(2) FACILITY ELIGIBILITY. All licensed nursing facilities are eligible for participation in the Program, regardless of whether the facility is enrolled as a Medicaid provider.

(3) VOLUNTARY. Participation in this program is highly encouraged by the Department but is not mandatory.

(4) EMPLOYEE. For the purposes of this Program, an employee includes any employee whose regular worksite is at the location of the facility, regardless of whether the employee is part-time or full-time, hourly or salaried. Employee does not include contracted staff.

(5) The Department will provide a one-time reimbursement to facilities that have issued a retention payment of \$500 or more per employee and have properly submitted an approved claim form in the timeline provided. The maximum reimbursement will be \$500 per employee, regardless of whether the facility has paid a higher retention payment, incurred additional administrative expenses, or incurred additional payroll-related expenses.

(6) The reimbursement payment will be limited to employees who were employed continuously by the nursing facility from October 8, 2021 through

November 15, 2021. The payment, from the nursing facility, will be provided to eligible employees after November 15, 2021, to ensure employees continued to be employed during the duration of the Program period.

(7) CLAIM FORM. In order to receive reimbursement, nursing facilities must submit one claim form for the Program on a form adopted by the Department. The Department's form will require the nursing facility to attest that all onsite employees were paid a minimum \$500 retention payment, regardless of job classification.

(8) TIMELINESS. Forms for the Employee Retention Payment Reimbursement Program must be submitted to the Department no earlier than December 1, 2021 and no later than December 31, 2021 in order to be eligible for reimbursement. Nursing facilities may only submit one claim form for reimbursement.

(9) AUDIT. The Department may conduct audits and require verification of payment to qualifying employees at its discretion.

(10) OVERPAYMENT. Nursing facilities are liable for refunding any overpayments to the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070