

**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 CAPTION

*APD: Adopting rules establishing the Essential Workforce Health Care Program
(SB 800, 2021 Regular Session)*

Last Date and Time for Public Comment: Written comments are accepted until **5:00 p.m. on March 9, 2023**. Please email comments to apd.rules@odhsoha.oregon.gov.

Hearing Date and Time: **February 22, 2023, at 10 a.m.**

Zoom (virtual)

Register in advance for this meeting:

https://www.zoomgov.com/meeting/register/vJlSf-GgrDwpEr5FkLeuEznTyjc2_6g1EfY

Join by phone: 1-669-254-5252, 161 888 2738#

HEARING NOTES: After registering, you will receive a confirmation email containing information about joining the rule hearing. If you need help signing up, please call the APD Rules Coordinator, Kristina Krause: (503) 339-6104 or send an email directly to Kristina.R.Krause@odhs.oregon.gov.

Please join the rule hearing no later than 15 minutes after the start time if you wish to testify (provide comments) on the proposed rules.

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 call or email the APD Rules Coordinator. If you need accommodations to participate in the hearing, please request accommodations by February 15, 2023.

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:

411-074-0000, 411-074-0005, 411-074-0010, 411-074-0020,
411-074-0025, 411-074-0030, 411-074-0040, 411-074-0050,
411-074-0060

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 074 to establish the Essential Workforce Health Care Program. The following is a summary of the proposed new rules.

Adopt: 411-074-0000

Rule Title: Purpose

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

Adopt: 411-074-0005

Rule Title: Definitions

Rule Summary: Created to list the applicable definitions for the Essential Workforce Health Care Program.

Adopt: 411-074-0010

Rule Title: Eligibility

Rule Summary: Created to outline the eligibility requirements for the Essential Workforce Health Care Program.

Adopt: 411-074-0020

Rule Title: Memorandum of Understanding

Rule Summary: Documents the requirements and responsibilities for using the supplemental payments of the Essential Workforce Health Care Program.

Adopt: 411-074-0025

Rule Title: Use of Supplemental Payments

Rule Summary: Created to outline the supplemental payments.

Adopt: 411-074-0030

Rule Title: Evidence-based Workforce and Quality of Care Improvements

Rule Summary: Created to outline participating employer's agreement to participate in evidence-based workforce and quality of care improvement.

Adopt: 411-074-0040

Rule Title: Annual Reporting of Quality Metrics

Rule Summary: Created to outline the annual reporting of quality metrics.

Adopt: 411-074-0050

Rule Title: Supplemental Payments Methodology

Rule Summary: Created to outline the supplemental payment methodology.

Adopt: 411-074-0060

Rule Title: Oversight

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

Other changes may be made to OAR chapter 411, division 074 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 Health Authority to establish requirements and funding methodology for the Essential Workforce Health Care Program. This Program will provide supplemental payments to participating facilities to support the funding of Essential Workforce Health Care Fund.

Other changes may be made to OAR chapter 411, division 074 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:

Senate Bill 800 (2021 Regular Session)

<https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB0800/B-Engrossed>

Oregon Law 2021 Chapter 595

https://www.oregonlegislature.gov/bills_laws/lawsstatutes/2021orlaw0595.pdf

EQUITY IMPACT STATEMENT

Required by HB 2993 (2021 Regular Session)

Adoption of the proposed rule changes will advance racial equity in Oregon through increased access to health care coverage by implementing the Essential Workforce Health Care Fund. This fund is for all workers of Medicaid funded nursing and community-based facilities.

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. The Legislature has allocated \$30M general funds to Oregon Health Authority to establish the trust.

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 Oregon Health Authority will receive \$30M in general fund to establish the trust approved by the 2021-2023. The initial \$30M will be eligible for federal matching funds to expand the amount available to the trust.

Units of Local Government: The Department estimates no financial impact to units of local government.

Consumers: The Department estimates no financial impact.

Providers: The Department estimates no financial impact.

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);

This rule will affect nursing facilities who choose to participate in the program. 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.

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

Yes. For the Enhanced Wage Add-on rate increase for nursing facility providers, 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/ Nakeshia Knight-Coyle, Director, Aging and People with Disabilities
Signature

01/10/2023
Date

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

**CHAPTER 411
DIVISION 74**

Essential Workforce Health Care Program

411-074-0000 Purpose

(Temporary effective 10/13/2022 through 04/10/2023)

These rules establish the requirements for participation in the Essential Workforce Health Care Program (EWHP). The EWHP is established for participating employers to provide health care benefits to the employees of their facilities. Oregon Health Authority (OHA) will provide supplemental payments to support the funding of these benefits.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0005 Definitions

(Temporary effective 10/13/2022 through 04/10/2023)

(1) “Employee Retirement Income Security Act of 1974 (ERISA)” means the federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

(2) “Essential Workforce Health Care Fund (EWHF)” means a jointly administered employee welfare benefit plan governed by ERISA and applicable law that has been established for the purpose of providing health and related benefits to employees of participating employers and their beneficiaries and under the conditions as specified in the EWHF Plan.

(3) “Facility” means a facility that is:

- (a) A long-term care facility licensed under ORS 441.020;
- (b) A residential facility as defined in ORS 443.400; and
- (c) An in-home care agency licensed under ORS 443.315.

(4) “OHA” means Oregon Health Authority

(5) “Participating employer” means an operator of a facility that:

- (a) Is a participating provider in the state medical assistance program (defined in OAR 410-120-0000);
- (b) Elects to participate in the Oregon Essential Workforce Health Care Program; and
- (c) Meets requirements prescribed by the Oregon Health Authority in this rule.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0010 Eligibility

(Temporary effective 10/13/2022 through 04/10/2023)

To participate in the program, an eligible employer shall:

- (1) Sign a memorandum of understanding with the OHA that specifies how the supplemental payments will be used;
- (2) Agree to participate in evidence-based workforce and quality of care improvements; and
- (3) Annually report quality and other metrics.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0020 Memorandum of Understanding

(Temporary effective 10/13/2022 through 04/10/2023)

All participating employers that receive a supplemental payment must sign a Memorandum of Understanding with OHA. The Memorandum of Understanding will document the requirements and responsibilities for using the supplemental payments to provide health care benefits to their employees.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0025 Use of Supplemental Payments

(Temporary effective 10/13/2022 through 04/10/2023)

Participating employers who receive supplemental payments under this program will use the payments to participate in the Essential Workforce Health Care Program.

(1) Payments under this program will be used to provide health care benefits to employees of the participating facilities through the Essential Workforce Health Care Fund (EWHF).

(2) Participating employers use of the supplemental payments are subject to the requirements established by the Essential Workforce Health Care Fund (EWHF).

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0030 Evidence-based Workforce and Quality of Care Improvements

(Temporary effective 10/13/2022 through 04/10/2023)

Participating employers agree to participate in evidence-based workforce and quality of care improvements, including all of the following:

- (1) Workforce input into benefit design;
- (2) Quantitative and qualitative reporting on impact of health care benefit on workforce;
- (3) Retention strategies for workforce; and
- (4) Others as mutually agreed upon by OHA and participating employers.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0040 Annual Reporting of Quality Metrics

(Temporary effective 10/13/2022 through 04/10/2023)

(1) EWHF will annually provide reports on all of the following metrics related to quality health benefits:

- (a) Health benefits design, including total premium, employer/employee premium split, deductible, out-of-pocket maximum, co-pays, co-insurance;
- (b) Services covered by benefit;
- (c) Number of employees and their dependents enrolled in the health benefit;
- (d) Network adequacy;
- (e) Waiting times for select services;
- (f) Other measures of employee health and wellness as mutually agreed upon between OHA and participating employers;
- (g) Narrative description of significant changes from the past year or anticipated future changes;

(h) Workforce retention metrics; and

(i) Equity metrics.

(2) The report shall be due to OHA January 31 of each year.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0050 Supplemental Payments Methodology

(Temporary effective 10/13/2022 through 04/10/2023)

Supplemental payments are determined using the following methods:

(1) The aggregate available supplemental payment amount for privately-owned Nursing Facilities (NFs) is calculated for each aggregate Medicaid supplemental payment limit calculation period by taking the difference between the aggregate upper payment limit (UPL) from paragraph (a) of this subsection and the aggregate Medicaid payment from paragraph (b) of this subsection.

(a) The aggregate upper payment limit for privately-owned NFs, as presented in the most recently completed Medicaid NF UPL calculation submitted to CMS, will be calculated in accordance with the Medicaid UPL provisions codified at Title 42 CFR § 447.272 as follows:

(A) Determine aggregate costs under Medicare cost principles using the most recently filed or settled CMS 2540 skilled nursing facility cost reports for privately-owned NFs.

(B) Determine the per diem cost by dividing the aggregate costs from subparagraph (A) of this paragraph by total days of service associated with the same cost reports.

(C) Extract Medicaid days of service for privately-owned NFs from the state's Medicaid Management Information System

(MMIS) for the cost reporting periods associated with the cost reports described in clause (A) of this subparagraph.

(D) Determine aggregate Medicaid costs by multiplying the per diem Medicaid cost from subparagraph (B) of this paragraph by Medicaid days of service from subparagraph (C) of this paragraph.

(b) The aggregate Medicaid payment is equal to sum of Medicaid payments for privately-owned NFs from the aggregate Medicaid supplemental payment limit calculation period. Payment data includes Medicaid regular per diem payments, per diem drug payments, and per diem client contributions.

(2) The aggregate available supplemental payment amount is not to exceed the lower of 95 percent of the aggregate available supplemental payment amount for privately owned NFs from subsection (1) of this section and the general fund revenue allocated to the program plus associated federal matching funds. For the state biennium 2021 – 2023, total general revenue appropriated is \$30,000,000.

(3) The state may further reduce the aggregate available supplement payment amount from paragraph (2) of this subsection if the aggregate upper payment limit for privately-owned NFs from paragraph (1)(a) of this subsection is projected to decrease between the aggregate Medicaid supplemental payment limit calculation period and the federal fiscal year within which the applicable NF-level Medicaid supplemental payment limit calculation period falls.

(4) Methodology to calculate NF-specific supplemental payment amounts.

(a) Divide the aggregate available supplemental payment amount from subsection (2) of this section by four.

(b) Extract Medicaid days of service for privately-owned NFs that have qualified for a supplemental payment from the state's MMIS for the NF-level Medicaid supplemental payment limit calculation period.

(c) The allocation percentage for each qualifying NF will be determined by dividing the individual NF's total Medicaid days from subsection (2) of this section by the aggregate sum of all qualifying NFs' Medicaid days from the same subsection.

(d) The NF-specific supplemental payment for the NF-level Medicaid supplemental payment limit calculation period will equal the aggregate available supplemental payment amount from subsection (a) of this section multiplied by the NF's allocation percentage from subsection (c) of this section.

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595

411-074-0060 Oversight

(Temporary effective 10/13/2022 through 04/10/2023)

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

Stat. Auth.: ORS 410.070, 413.042

Stats. Implemented: ORS 410.070, 414.033, OL 2021 ch. 595