

**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
(Must be 15 words or fewer)

APD: Rule change allowing payment of no-show fee to support consultative examiner retention

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.**

		Teleconference Only +1 971-277-2343	
2/25/2022	10 a.m. – 10:30 a.m.	Meeting ID: 748562293#	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.

AMEND: 411-200-0010
411-200-0020
411-200-0035
411-200-0040

RULE SUMMARY:

Include a summary for each rule included in this filing.

The Oregon Department of Human Services (Department) is proposing to permanently amend rules in chapter 411, division 200.

411-200-0010 General Policy: Adds “Oregon” to “Department of Human Services” when referring to “Department”; deletes incorrect comma placement in first sentence.

411-200-0020 Definitions: Adds “Oregon” to “Department of Human Services” when defining “Department”.

411-200-0035 Consultative Examination (CE) and Related Charges for Consultants: Inserts the word “tests” in Section 3 in reference to treadmill tests.

411-200-0040 Limitations of Payments: Provides for reimbursement of consultative examination service providers in some circumstances of appointment cancellation on short notice or missed appointments.

Other changes may be made to OAR 411, division 200 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?

The individuals affected by the proposed rule change are providers of consultative examination services for Disability Determination Services

(DDS). They are neither State of Oregon nor Federal contractors. The DDS does not request nor retain information about providers' race, ethnicity or other protected class factors. The rule amendment will apply equally to all providers who meet the specific criteria described in 411-200-035(3) and 411-200-0040(3). Examiners will realize a small economic benefit from the proposed change, which will be particularly helpful to those who provide services in rural communities.

b. How or in what specific ways are racially/ethnically specific communities affected by this rule? Claimants, who allege disability by virtue of applying to the program for benefits, will not be directly affected by the proposed amendment. If a claimant fails to attend an appointment, a provider who has received a partial reimbursement for the missed consultation is more likely to reschedule that individual than otherwise. Thus, claimants may indirectly benefit.

c. What data are you using to validate your assessment? As noted in 1a, the DDS does not collect protected class information about consultative examination providers. RAC respondents expressed strong support for the rule amendment and raised no concerns.

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? DDS has not identified any potential direct or indirect effect on Oregon Tribes resulting from this rule amendment. Consultative examinations are not performed in Tribal facilities or on Tribal land. The DDS has no knowledge of whether any examination providers are Tribal members.

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? Five individual providers, and the managers of two large physicians' groups specializing in disability examinations, were sent a solicitation for comments on the proposed change in December 2021 and had 15 days to respond.

b. If community engagement is not one of your strategies, please provide a rationale for not doing this. As noted in 2a, this engagement was accomplished in accordance with instructions from the ODHS Rules Coordinator.

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? No formal RAC was held for the temporary rule. An RAC involving the affected parties was conducted in e-mail format, as described in 2a, for the permanent rule.

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). The affected parties were advised of the changes by fax and e-mail after October 16, 2021, when the temporary rule became effective. DDS will follow up with another notice after the permanent rule becomes effective if that action is necessary or recommended.

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. No potential negative impacts to racial equity or racially/ethnically specific communities were identified in Section 1.

STATEMENT OF NEED AND FISCAL IMPACT

Need for Rule(s):

For several years, Oregon Disability Determination Services (DDS) has not paid a “no show” fee in consideration of providers’ preparation time and review of medical records prior to a consultative examination. Oregon reimburses examination services in accordance with the United States Department of Health and Human Services physician fee schedule, which fluctuates annually. The cumulative amount of revenue lost due to missed or cancelled appointments has made it untenable for several consultative examiners to continue serving the Oregon DDS, resulting in much longer wait times for claimants. Allowing a fixed reimbursement under some circumstances will help retain the engagement of professionals whose services are necessary to the timely processing of Social Security disability claims in Oregon.

Other changes may be made to OAR 411, division 200 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 the only agency affected is Oregon Department of Human Services (ODHS), Adults and People with Disabilities, DDS program. The DDS is 100% federally funded, so there will be no direct impact upon the ODHS budget.

Units of Local Government: The Department estimates will be no fiscal or economic impact on local government.

Consumers: The Department estimates will be no fiscal or economic impact on consumers.

Providers: The Department estimates 137 providers of consultative examination services will potentially benefit from this Administrative Rule change.

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);

137 individuals who are self-employed or who work as a physical medicine or mental health professional in a small business can potentially benefit from this rule change.

(b) Describe the expected reporting, recordkeeping and administrative activities and cost required to comply with the rule(s);

Little additional recordkeeping will be expected of providers, who are currently reporting missed appointments but have not been able to bill for the medical record review preparatory time. They will now need to bill for this service but would need to have billed for a kept appointment as well.

Thus, there will be no new reporting requirement or cost to be borne by the providers.

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).

Negligible if any; refer to letter (b) above.

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)?

Representatives of small businesses, 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:

The DDS relied upon data compiled from internal case processing system reports to determine the overall percentage of missed appointments from all appointments scheduled. This data is not stored in a system available to the public. There is also precedent, prior to 2014, for the DDS reimbursing providers for missed appointments in some circumstances.

Was an Administrative Rule Advisory Committee consulted? Yes or No?

Yes.

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

Signature

1/17/2022

Date

**OREGON DEPARTMENT OF HUMAN SERVICES
DISABILITY DETERMINATION SERVICES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 200**

RATES OF PAYMENT -- MEDICAL

411-200-0010 General Policy

(1) The Oregon Department of Human Services (Department) reimburses a vendor or consultant, for the costs of goods and services only if the Department has authorized payment before the provision of goods and services. The Department rejects all invoices for goods and services without the required prior authorization.

(2) Except as provided in OAR 411-200-0030 and OAR 411-200-0035, the amount that the Department pays the vendor or consultant for previously authorized goods and services is:

(a) For a vendor: The rates set forth in OAR 411-200-0030; and

(b) For a consultant: No more than the maximum fee for the service prescribed in the United States Department of Health and Human Services' fee schedule.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-200-0020 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 200.

(1) "Brief Narrative" means a document that summarizes claimant treatment to date and current status, briefly addresses three to five specific topics posed by the Department, if any, and is usually one or two pages.

(2) "Comprehensive Narrative" means a document that describes an extended claimant history, addresses six or more specific topics, and is usually three or more pages.

(3) "Consultant" means an individual whose professional credentials per the policy of the Social Security Administration identify the individual either as an acceptable medical source or qualified medical source.

(4) "Department" means the Oregon Department of Human Services.

(5) "DDS" means the Disability Determination Services program within the Department funded by, and subject to, the disability rating rules of the Social Security Administration.

(6) "Fee Schedule" means a complete listing of fees used by the United States Department of Health and Human Services to pay for goods and services. The fee schedule is maintained at:
<https://www.cms.gov/apps/physician-fee-schedule/license-agreement.aspx>.
Printed copies may be obtained by contacting the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244.

(7) "HHS" means the United States Department of Health and Human Services.

(8) "These Rules" mean the rules in OAR chapter 411, division 200.

(9) "Vendor" means an individual or entity (such as hospitals, clinics, private practices) that provide medical evidence of record or other services at the Department's request and may, at the Department's request and with the Department's prior authorization, provide a brief or comprehensive narrative of medical treatment for the Department's review.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-200-0035 Consultative Examination (CE) and Related Charges for Consultants

(1) Except as provided in section (2) of this rule, the Department pays the lesser of the following fees for examinations and lab work when requested and pre-authorized by the Department:

(a) The lowest fee for services that the consultant charges the general public or other state or federal agencies; or

(b) The rate prescribed by HHS in the fee schedule.

(2) With prior written approval by a DDS manager, the Department may exceed the fee described in section (1) of this rule when financial or human considerations outweigh the difference in cost. Such considerations may include examinations in a remote geographic area or logistical concerns.

(3) No additional fees are reimbursed for certain scheduled services (e.g., blood work only, x-rays, lab tests, PFT's, treadmill tests) where no preparation time is required.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-200-0040 Limitations of Payments

(1) A vendor or consultant who has entered into a price agreement or contract with one part of the Department to provide identified services must provide the same services at the same price to the Department if requested.

(2) The vendor must accept the fees prescribed by these rules as payment in full. If a vendor's usual and customary fee for a service exceeds the fee prescribed by these rules, a client or the client's family may not be liable to the vendor for any portion of a vendor's usual and customary fee unless the client or the client's family agrees in writing to assume the additional charges. Without such explicit agreement, the vendor must accept the Department's payment as payment in full.

~~(3) No fee is paid to a consultant if DDS cancels an appointment more than 24 hours in advance of the appointed time.~~

(3) A consultant may be reimbursed a fee of \$56.46 for a missed appointment, or those cancelled by the DDS with less than 48 hours/two (2) business days' notice. A consultant may consider an appointment missed if a claimant is more than 15 minutes late following the appointed time and, consequently, the examination cannot be performed.

(4) A consultant is not reimbursed for the time to travel to or from an authorized consultative examination.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070