

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

*For internal agency use only.*

Department of Human Services, Aging and People with Disabilities (APD)		411
Agency and Division Name		Administrative Rules Chapter Number
Kristina Krause	<a href="mailto:apd.rules@dhs.ohio.gov">apd.rules@dhs.ohio.gov</a>	503-339-6104
Rules Coordinator	Email	Telephone
Lynelle Littke	<a href="mailto:Lynelle.littke@dhs.ohio.gov">Lynelle.littke@dhs.ohio.gov</a>	503-986-4810
Filing Contact	Email	Telephone

**FILING CAPTION**

*(Must be 15 words or fewer)*

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

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Agency Approved Date: [ 10/13/2021 ]

Effective Date: [ 10/15/2021 ] through [ 04/12/2022 ]

**RULEMAKING ACTION**

*List each rule number separately (000-000-0000). Attach clean 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 (ODHS), Aging and People with Disabilities Program (APD) is immediately amending rules in chapter 411, division 200 that outline allowable services and payment rates for the Disability Determination Services (DDS) program. The amendments include the following:

**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 Limitation of Payments:** Allows payment of a fixed “no show” fee to providers when claimants fail to present to confirmed consultative examination appointments, or when appointments are cancelled by Disability Determination Services on short notice.

#### STATEMENT OF NEED AND JUSTIFICATION

Need for the Rule(s):

Oregon Disability Determination Services (DDS) is one of the last in the nation which does not currently pay a “no show” fee in consideration of providers’ preparation time and review of medical records prior to a consultative examination. Oregon reimburses these examination services in accordance with the United States Department of Health and Human Services physician fee schedule, which fluctuates from year to year. The cumulative amount of revenue lost due to missed or cancelled appointments has made it untenable for a number of 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 this State.

Justification of Temporary Filing:

Failure to act promptly and immediately amend OAR chapter 411, division 200 will result in serious prejudice to the public interest and applicants for Social Security disability benefits in Oregon. OAR chapter 411, division 200

needs to be amended promptly so that DDS can maintain an adequate consultative examiner panel statewide to allow for timely exam scheduling, medical report receipt and prompt claim adjudication for needy applicants. Twelve providers discontinued their services in 2021 due to low reimbursement rates and the lack of a no-show fee, and several others are considering the same action. Immediate authorization of this reimbursement will mitigate some financial strain and encourage continued professional relations with the DDS.

Documents Relied Upon, and where they are available:

None

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/s/ Mike McCormick, Interim Director, Aging and People with Disabilities	10/13/2021
Signature	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**

*(Temporary effective 10/15/2021 through 04/12/2022)*

(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**

*(Temporary effective 10/15/2021 through 04/12/2022)*

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**

*(Temporary effective 10/15/2021 through 04/12/2022)*

(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**

*(Temporary effective 10/15/2021 through 04/12/2022)*

(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