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

CHAPTER 411
DIVISION 33

IN-HOME CARE AGENCIES PROVIDING MEDICAID IN-HOME SERVICES

411-033-0000 Purpose and Scope
(Adopted 05/30/2017)

The rules in OAR chapter 411, division 033 ensure in-home care agencies, as one of the Medicaid in-home service provider options, provide services to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services. In-home services fill the role of complementing and supplementing an individual's personal abilities, so the individual is able to continue to live in their own home.

Stat. Auth.: ORS 410.070
Stats. Implemented: ORS 410.070

411-033-0010 Definitions
(Temporary effective 11/01/2023 through 04/28/2024)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 033:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), cognition, and behavior as defined in OAR 411-015-0006.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(5) "APD" means "Aging and People with Disabilities".

(6) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to individuals in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(7) "Assessment" means an assessment as defined in OAR 411-015-0008.

(8) "Background Check" means a criminal background check and an abuse check under OAR chapter 407, division 007.

(9) "Business Days" means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays.

(10) "CA/PS" means the "Client Assessment and Planning System" as defined in OAR 411-030-0020.

(11) "Case Manager" or "CM" means a Department employee or an employee of the Department's designee that meets the minimum qualifications in OAR 411-028-0040 who is responsible for service eligibility, assessment of need, offering service choices to eligible individuals, person-centered service planning, service authorization and implementation, and evaluation of the effectiveness of Medicaid home and community-based services.

(12) "Comprehensive" means a licensing classification that describes an agency that provides personal care services, which may include medication reminding, medication assistance, medication administration, and nursing services (see OAR 333-536-0007).

(13) "Consumer" means an individual eligible for in-home services.

(14) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of all available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (see OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(15) "Department" means the Department of Human Services (DHS).

(16) "Enrolled In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly enrolled in-home services to individuals receiving services through the Department or the Area Agency on Aging.

(17) "Electronic Visit Verification" means that with respect to personal care services, a system under which visits conducted as part of such services are electronically verified with respect to:

(a) The type of service performed.

(b) The individual receiving services.

(c) The date of the service.

(d) The location of service delivery.

(e) The individual providing the service.

(f) The time the service begins and ends.

(18) "Exception" means an approval for payment of a service plan that is granted to a specific individual that exceeds the assessed maximum hours of service as described in OAR 411-030-0070, for individuals residing in his or her own home.

(19) "Exceptional Rate" or "Exceptional Payment" means the amount paid to a provider based on the approval of an exception. The approval of an exception is based on the service needs of the individual and is contingent

upon the individual's service plan meeting the requirements in OAR 411-027-0020, OAR 411-027-0025, and OAR 411-027-0050.

(20) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by an individual to provide hourly services to the eligible individual. The term homecare worker does not include an employee of an in-home care agency who is providing in-home services.

(21) "Hourly Services" means the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times, not including live-in services.

(22) "IADL" means "instrumental activities of daily living" as defined in this rule.

(23) "ICP" means "Independent Choices Program" as defined in this rule.

(24) "Independent Choices Program" means a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services identified in the participant's service plan and prior approved by the Department or the Area Agency on Aging.

(25) "Individual" means a person age 65 or older, or an adult with a physical disability, applying for or eligible for services.

(26) "In-Home Care Agency" or "IHCA" means an agency as defined in OAR 333-536-0005 that is primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services.

(27) "In-Home Services" as defined in OAR 411-030-0002 mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(28) "In-Home Care Services" as defined in OAR 333-536-0005, means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(29) "Initial Screening" means a screening required by the in-home care agency licensing rules in OAR 333-536-0055 that is conducted to evaluate a prospective client's service requests and needs prior to accepting the individual for service. The extent of the screening shall be sufficient to determine the ability of the agency to meet those requests and needs based on the agency's overall service capability.

(30) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(31) "Liability" means the dollar amount an individual with excess income contributes to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(32) "Licensed" means an in-home care agency as defined in OAR 333-536-0005 that is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(33) "Mandatory Reporter" means all employees of an in-home health service, are required by statute (ORS 124.050 - 124.095) to report suspected abuse or neglect of a child, an older adult, a person with a physical disability or the resident of a licensed care facility, to the Department or to a law enforcement agency as required by OAR 411-020-0002.

(34) "Medicaid OHP Plus Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4) (a) and (b). This excludes individuals receiving Title XXI benefits.

(35) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in these rules. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(36) "Natural Supports" or "Natural Support System" means resources and supports (e.g. relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(37) "Nursing Services" means the provision of services that are defined in OAR 333-536-0005, that are deemed to be the practice of nursing as defined by ORS 678.010. These services include, but are not limited to the delegation of specific tasks of nursing care to unlicensed persons in accordance with the Oregon State Board of Nursing rules in OAR chapter 851, division 047. Nursing services are not rehabilitative or curative, but are maintenance in nature.

(38) "OHA" means the Oregon Health Authority.

(39) "Person-Centered Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030. The case manager completes the person-centered service plan. The person-centered service plan is the Medicaid Plan of Care.

(40) "Personal Care Aid" means a person employed by an in-home care agency who provides assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by OAR chapter 333 division 536.

(41) "Provider Enrollment Application and Agreement" refers to the conditions and agreements for being enrolled as a provider with the Department of Human Services, Aging and People with Disabilities (APD) or Office of Developmental Disability Services (ODDS), and to receive a provider number.

(42) "Rate Schedule" means the Medicaid reimbursement rate schedule maintained by the Department in OAR 411-027-0170.

(43) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, domestic partnership, or adoption.

(44) "Representative" means a person either appointed by an individual to participate in service planning on the individual's behalf or an individual's natural support with longstanding involvement in assuring the individual's health, safety, and welfare. A representative may not be a paid employee or the in-home care agency.

(45) "Service Need" means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and OAR 411-015-0007.

(46) "Service Plan" means a written, individualized plan for the delivery of services by the IHCA, developed by the IHCA in conjunction with the individual or the individual's legal representative, the DHS or AAA case manager reflecting the individual's capabilities, choices, and if applicable, measurable goals, and managed risk issues. The service plan defines the division of responsibility in the implementation of the services. The service plan must incorporate all elements identified in the person-centered service plan for which the IHCA is responsible to deliver.

(47) "Spouse" means a person who is legally married to an individual as defined in OAR 461-001-0000.

(48) "These Rules" mean the rules in OAR chapter 411, division 033.

(49) "Work week" is defined as 12:00 a.m. on Sunday through 11:59 p.m. on Saturday.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085
Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

411-033-0020 In-Home Care Agency Services
(Renumbered from 411-030-0090 05/30/2017)

(1) In-home care agency (IHCA) services are one of the in-home service options available for individuals eligible for Medicaid in-home services. The in-home care agency must be licensed in accordance with OAR chapter

333, division 536 or as a licensed home health agency that has obtained the in-home care service designation from the Oregon Health Authority according to ORS 443.305 - 443.355.

(2) Medicaid-funded in-home care services, provided by the in-home care agency, are not available to individuals who reside in a licensed or certified community based care setting or while inpatient in a hospital or nursing facility setting.

(3) Prior to accepting an individual for in-home care agency services, the IHCA must complete the initial screening to evaluate a prospective client's service requests as defined in OAR 333-536-0055.

(a) The IHCA shall notify the referring AAA or DHS office and individual or individual's representative via email or phone of acceptance for services. The IHCA shall begin services within five business days from the date of acceptance unless the individual's health and safety requires an earlier start date to be determined by the AAA or DHS case manager and communicated to the IHCA prior to acceptance.

(b)The case manager and IHCA must review the individual's person-centered service plan to assure the IHCA’s understanding of the individual’s service plan and assessed needs. Upon completion of case manager and IHCA review, the case manager shall draft a list of tasks based upon the person-centered service plan to be completed by the IHCA. This "task list" must be signed by the IHCA and returned to the CM.

(4) Services Provided.

(a) The services provided by the IHCA, in accordance with OAR 333-536-0045, must be based on the case manager's assessment and the person-centered service plan of the individual.

(b) Services must include the safe provision of:

(A) All assessed ADL supports;

(B) All assessed IADL supports; and

(C) Nursing services as required in the comprehensive certification in accordance with OAR chapter 333, division 536. The IHCA must ensure the services provided include medication reminding, medication assistance, medication administration, and nursing services in accordance with OAR chapter 333, division 536.

(c) If the individual requires nursing services, the IHCA must conduct nursing assessment, monitoring, intermittent nursing care, and teaching and delegation of specific tasks. Nursing services must be provided by an Oregon-licensed registered nurse in accordance with the Oregon State Board of Nursing Administrative Rules in OAR chapter 851, divisions 045, 047, and 048, and OHA, Public Health Administrative Rules in OAR chapter 333, division 536.

(d) For individuals accessing both IHCA and other in-home service options, the IHCA is only responsible for teaching and delegation to the IHCA employees. If other caregivers, who are not IHCA employees, are providing services and supports that require nurse delegation, the IHCA must coordinate delegation activities with other Department assigned nurses to ensure continuity of care.

(e) IHCA employees, caregivers, nursing staff, and administrators, must carry identification indicating their name and the name of the IHCA for which they work.

(f) The IHCA must ensure the individual is notified of any changes in the delivery of the IHCA's service plan, such as a change in the personal care aid who provides the in-home service, the frequency of the service and the day and time when of the services will be provided in accordance with OAR 333-536-0060 Clients' Rights and OAR 333-536-0065 Service Plan.

(5) Complaints.

(a) In accordance to OAR 333-536-0042, any person may make a complaint verbally or in writing to the OHA Public Health Division regarding an allegation as to the care or services provided by an in-

home care agency or violations of in-home care agency laws or regulations.

(b) Mandatory reporting. All employees of an in-home health service, which does include IHCA are required by statute (ORS 124.050 - 124.095) to report suspected abuse or neglect of a child, an older adult, a person with a physical disability or the resident of a licensed care facility, to the Department or to a law enforcement agency as required by OAR 411-020-0020.

(6) Disclosure Statements.

(a) As defined in OAR 333-536-0055, a written disclosure statement shall be signed by the individual or the individual's representative. The disclosure statement must be specific to the services provided to the Medicaid service individual.

(b) The disclosure statement must include the requirements of OAR 333-536-0055, in addition to all of the following:

(A) Medicaid is the source of payment for the services provided by the IHCA. The Medicaid service payment is considered full payment for Medicaid services provided by the IHCA.

(B) A description of the initial assessment and service planning process.

(C) A description of the services to be provided and how those services will be provided, including a discussion regarding staffing availability and coordination.

(D) IHCA and individual's rights and responsibilities.

(E) Individual's rights pertaining to notification of termination of services.

(F) The IHCA may not include any provision in the disclosure statement that effect individual's rights or the IHCA's liability for negligence.

(G) For individuals receiving IHCA services, as described in OAR 333-536-0045, the services provided must be in accordance with the Medicaid assessment and service plan and the IHCA's written service plan developed in conjunction with an individual or individual's representative, based on the individual's or individual's representative's request, and an evaluation of the individual's physical, mental, and emotional needs.

(c) The disclosure statement for Medicaid individual's may not include language referring to "buy outs" and "finder's fees", or include language preventing individuals from full access to other in-home services. IHCAs may not charge any Medicaid individual additional fees or penalties.

(7) BACKGROUND CHECKS. According to OAR 333-536-0093, the IHCA must:

(a) Ensure a criminal background check has been conducted on all individuals employed by, or volunteering for the IHCA who may have direct contact through a business relationship with the consumer.

(b) IHCAs receiving Medicaid reimbursement must conduct their background checks through the DHS Background Check Unit and comply with the DHS criminal records and abuse check rules found in OAR 407-007-0200 through OAR 407-007-0370 and in accordance to the time frame specified in OAR 333-536-0093

(A) Unless, based on possible criminal activity or other allegations against an IHCA employee, a new fitness determination is conducted resulting in a change in approval status; or

(B) The Department or AAA may request a recheck more frequently based on additional information discovered about an IHCA employee or volunteer, such as possible criminal activity or other allegations.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085
Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

411-033-0030 Medicaid In-Home Care Agency Provider Enrollment, Requirements, and Payment
(Temporary effective 11/01/2023 through 04/28/2024)

(1) PROVIDER ENROLLMENT.

(a) Application and Agreement. A provider must be an enrolled Medicaid provider in order to be eligible to receive payment from the Department for claims in connection with services provided by an IHCA.

(b) The criteria for provider enrollment includes, but is not limited to:

(A) Meeting all program-specific requirements;

(B) Providing a copy of the IHCA agency's current OHA Public Health issued comprehensive classified license;

(C) Obtaining a Medicaid Provider Number;

(D) Current Business registration and assumed business name (DBA), if applicable, with the Oregon Secretary of State's Corporations Division; and

(E) Completing a Medicaid Provider Enrollment Agreement.

(2) Staffing Requirements. According to OAR 333-536-0070, the agency owner or administrator shall ensure the agency has qualified and trained employees sufficient in number to meet the needs of the clients receiving services 365 days per year, including holidays.

(3) On-site Monitoring and Assessment.

(a) The IHCA shall provide to DHS or the AAA a quarterly summary report for each Medicaid individual, which includes documentation of client needs and services delivered. These records must be maintained by the IHCA to provide the records necessary to fully disclose the extent of the services, care, and supplies furnished to beneficiaries.

(b) The IHCA shall provide a copy of all information and documents as requested by DHS or the AAA. This requested information may include, but is not limited to:

(A) Individual records (OAR 333-536-0085).

(B) Individual nursing services (OAR 333-536-0080).

(C) Quality improvement records (OAR 333-536-0090).

(D) Complaint investigation findings (OAR 333-536-0043).

(E) Organization, administration, and personnel records (OAR 333-536-0050).

(F) Individual surveys of services and payments (OAR 333-536-0041).

(G) The requested information shall be submitted to DHS or the AAA within five business days of the request. However, if the requesting DHS or AAA office indicates the request involves individual safety, well-being, or a protective service investigation, the information must be submitted within 24 hours of the request.

(c) The IHCA shall cooperate with any DHS quality assurance visits regarding monitoring of any provision of IHCA services.

(d) The IHCA shall participate in individual conferences with DHS or AAA case managers, as requested.

(4) Insurance Requirements. Insurance requirements are defined in the Provider Enrollment Agreement.

(5) Payment and Financial Reporting.

(a) The case manager shall authorize reimbursement for the service hours identified in the individual's Medicaid Management Information System (MMIS) plan of care.

(b) The IHCA shall comply with section 12006(a) of the 21st Century Cures Act by electronically verifying, with respects to visits conducted as part of personal care services, the following:

(A) The type of service performed;

(B) The individual receiving the service;

(C) The date of the service;

(D) The location of the service delivery;

(E) The individual providing the service; and

(F) The time the service begins and ends.

(c) The IHCA must provide the department with a monthly report showing:

(A) The consumer(s) name.

(B) The consumer(s) Medicaid prime number.

(C) The date service(s) were provided.

(D) The location service(s) were provided.

(E) The start and end time of service(s) provided.

(F) The service(s) provided.

(d) The IHCA must use MMIS to submit claims for reimbursement of Medicaid authorized services. All claims must be submitted no later than 12 months from date of service.

(e) The IHCA shall be reimbursed --

(A) Only for services delivered to an individual.

(B) Only at the approved hourly rate for ADL and IADL services.

(C) For up to three hours at the ADL care rate, for the required, completed initial assessment.

(D) For community transportation mileage related to an assessed ADL or IADL need (e.g., shopping). Reimbursement for community transportation may not include mileage for an employee commuting to and from the individual's home. The IHCA employee must maintain valid driver’s license, current vehicle registration and necessary auto insurance, if transporting the Medicaid individual. Proof must be available upon the request of the Department.

(f) IHCA's shall be reimbursed per the rates established in the rate schedule for home and community-based services in OAR 411-027-0170.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085
Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085