# In Lieu of Services (ILOS)

## Frequently Asked Questions

May 2024

Oregon Health Authority

# Contents

## Document purpose

This document provides answers to frequently asked questions about in lieu of services (ILOS) and is primarily intended for coordinated care organization (CCO) staff. Additional guidance and technical assistance can be found on Oregon Health Authority's (OHA's) ILOS webpage, the current year's CCO contract, and 42 CFR 438.3(e)(2). This FAQ will be updated as additional questions are addressed. Please email questions to the OHA ILOS team at ILOS.info@odhsoha.oregon.gov.

## Accessibility

You can get this document in other languages, large print, braille or a format you prefer. Contact the OHA ILOS team at ILOS.info@odhsoha.oregon.gov.

## Summary of changes in the May 2024 version

- Updated organization and formatting of the document to improve navigation and readability.
- Moved the list of Oregon's currently approved ILOS to the ILOS Program Overview guidance document.
- Replaced outdated questions and answers with guidance applicable year-to-year.
- Added historical and updated programmatic detail to the Overview section.
- Added questions and answers around: the different types of ILOS and its uses; Oregon's typical process for developing new ILOS; member eligibility; provider and member access; and cost and risk of ILOS.

## ILOS overview

In 2021, Oregon adopted **in lieu of services (ILOS)** through Oregon's Medicaid 1115 Demonstration Waiver. ILOS are medically appropriate and cost-effective substitutes for covered benefits under Oregon's Medicaid state plan, the Oregon Health Plan (OHP).

Oregon's CCOs can use ILOS to provide CCO members with immediate or longer-substitutes to OHP-covered benefits, or to reduce or prevent a member's need for OHP-covered benefits in the future. ILOS can strengthen access to care by offering services in community-centered ways or in non-clinical settings.

ILOS are reviewed by OHA and Centers for Medicare & Medicaid Services (CMS) annually. Approved ILOS are included in CCO contracts with OHA and available to CCOs to offer. In 2023, the first seven ILOS were included in CCO contracts and made available for CCOs to offer to members. CCOs are not required to offer ILOS, and members are never required to use ILOS. Federal requirements for ILOS are outlined in 42 CFR 438.3(e)(2).

Learn more about ILOS on the OHA ILOS webpage.

# Frequently asked questions

## Criteria and coverage

### 1. What are ILOS?

ILOS are medically appropriate and cost-effective substitutes for covered benefits under the Oregon Health Plan (OHP). ILOS are reviewed by OHA and CMS annually. Approved ILOS are included in CCO contracts and available for CCOs to offer to members. Learn about current ILOS available for CCO implementation in the ILOS Program Overview guidance document.

### 2. What are the requirements for ILOS?

ILOS must follow CMS requirements outlined in 42 CFR 438.3(e)(2). Some key requirements include:

- The state must determine the ILOS is a medically appropriate and cost-effective substitute for the covered benefit.
- Approved ILOS must be included in CCO contracts with OHA.
- CCOs cannot be required to offer ILOS.
- Members cannot be required to use ILOS.
- The use and actual cost of ILOS are considered in developing the component of the CCO's capitation rates that represents the covered services.

Further state requirements are outlined in Exhibit B Part 2 Section 11 of CCO contracts. Further federal requirements for ILOS are outlined in CMS guidance released in January 2023.

### 3. How can ILOS act as a substitute for covered benefits?

ILOS are medically appropriate and cost-effective substitutes to OHP-covered benefits. ILOS can be a substitute in a few ways. ILOS often takes the form of an alternative service, alternative setting, or alternative provider (as shown in the table below).

| OHP-covered benefit | ILOS |
|---|---|
| Service | Medically appropriate and cost-effective **alternative service** |
| Service offered in a clinical setting | Medically appropriate and cost-effective service offered in an **alternative setting**, usually non-clinical or community-based spaces where the service isn't already covered under OHP |
| Service offered by a clinician or clinic staff | Medically appropriate and cost-effective service offered by an **alternative provider**, i.e. a community-based provider or a culturally specific provider |

### 4. What is an example of an immediate vs. a longer-term substitute in ILOS?

ILOS can be an immediate or longer-term substitute for covered OHP benefits, per federal guidance released in early 2023. An immediate substitute refers to a member immediately receiving an ILOS instead of the covered benefit. See the table below for an example of an immediate substitute:

| OHP-covered benefit | ILOS | Explanation |
|---|---|---|
| A member participates in a diabetes self-management program in-person in a **clinical setting** | A member participates in a diabetes self-management program in an **online (alternative) setting** | This is an example of ILOS as an **immediate substitute** for a covered benefit: A member is eligible for diabetes self-management classes. The member can receive the in-person service (the covered benefit) or the online service (the ILOS). |

A longer-term substitute refers to a member receiving an ILOS to prevent or delay their potential future need for covered benefits. CMS provided one example of this in 2023 guidance: offering medically tailored meals through ILOS for certain populations may result in better health outcomes and access to care in communities, which could prevent or delay a person's need for care in nursing facilities.

### 5. Does the ILOS have to be the same quantity or duration as the state plan covered service or setting? For example, if the OHP covered benefit includes ten sessions, would the ILOS also have the ten-session limitation?

Not necessarily. ILOS must be a medically appropriate substitute for an OHP covered benefit, but that doesn't mean it needs to have the exact same limitations. ILOS is also not always a 1:1 substitute; ILOS can be a longer-term substitute where the ILOS provided is expected to reduce or prevent the need for costly state plan services down the line. If the quantity or duration of the ILOS is not already defined in the service description, the CCO needs to determine the appropriate quantity of visits, sessions or services of the ILOS that would be an equal substitute for the covered benefit, or for the service the ILOS is meant to prevent or delay. The value is up to the discretion of the CCO.

### 6. What are the benefits of ILOS?

ILOS can strengthen access to care by expanding the places or settings where members can receive services (like in community-based settings or in their homes) and the providers they can receive services from (like community-based or culturally specific providers). Other benefits of ILOS include:

- Helps address many of the unmet physical, behavioral, developmental, long-term care and other social determinants of health of members (SMD#:23-001)
- Provides a path for CCOs to reduce health disparities and healthcare costs
- Connects to CCO 2.0 and the larger vision of health for all Oregonians

### 7. How can additional services be added to the list of approved ILOS?

Oregon can propose specific ILOS to Centers for Medicare & Medicaid Services (CMS) for approval on an annual basis. CCOs, community partners and OHA staff are invited to propose and collaborate in developing new ILOS through a process called ILOS design. The ILOS design process involves:

- CCOs, OHA and community partners propose ideas
- OHA ILOS policy team reviews initial list of ideas for eligibility, feasibility and alignment with CMS requirements
- OHA and partners refine specifications for new ILOS (i.e. billing and coding guidance, eligible population(s) and other details)
- OHA submits ideas to CMS for approval

ILOS submitted to and approved by CMS are then included in the following year's CCO contracts and become available for CCOs to offer to members. Find more information about engaging in ILOS design on the OHA ILOS webpage.

### 8. How are ILOS different than health-related services (HRS)?

ILOS are determined by OHA and CMS to be a medically appropriate and cost-effective **substitute** for a covered benefit under Oregon's Health plan, while HRS are non-covered services that are offered as a **complement** to covered benefits. Like ILOS, CCO participation in HRS is optional.

HRS may be able to be used in conjunction with covered benefits or ILOS. For example, HRS could be used to fund a gym membership or physical activity classes to support a member participating in a diabetes self-management program offered online through ILOS. Additional guidance on HRS can be found on the OHA HRS webpage, including a Supporting Health for All through REinvestment (SHARE), HRS and ILOS comparison document.

## CCO implementation

### 9. What does a CCO need to do to offer ILOS?

In order to offer ILOS to members, a CCO must follow implementation requirements outlined in CCO contracts (Exhibit B, Part 2, Sec. 11):

- Include the specific ILOS(s) it offers in member handbooks,
- Ensure the ILOS are available to all members who qualify,
- Include ILOS providers in its provider directory as described in Ex. B, Part 3, Sec. 6,
- Ensure its contracted ILOS providers have sufficient capacity to receive referrals for all members who have been authorized to receive the approved ILOS,
- Reimburse contracted ILOS providers for the provisions of approved ILOS to members, and
- Create ILOS policies and procedures for ILOS provider referrals.

### 10. Can a CCO begin offering an approved ILOS at any time?

To offer an ILOS, it must first be included in the CCO's member handbook.

After meeting all other requirements referenced in the question above and outlined in Exhibit B Part 2 Section 11 of the CCO contract, a CCO can choose to offer any of the approved ILOS in contract at any point in the contract year.

### 11. Do the same network adequacy standards for covered benefits apply to ILOS?

Currently there are no network adequacy standards specific to ILOS. Availability of ILOS could support CCOs in meeting network capacity requirements for covered benefits. If a CCO offers an ILOS, it must be made available to all eligible members across a CCO's service area.

## Billing and reporting

The following questions refer to ILOS billing and reporting. CCOs should reference the ILOS Billing and Reporting Guide located on the OHA ILOS webpage for additional guidance.

### 12. How is billing for ILOS different than billing for covered benefits?

If an ILOS provider contracted with a CCO can submit a Medicaid claim, ILOS billing is no different than billing for covered benefits, except for the inclusion of modifier "V4" if the CCO requires its inclusion in claims.

If an ILOS provider contracted with a CCO is unable to submit a claim, the CCO may collect a limited dataset from the provider and add any data needed to create and submit valid encounter data to OHA. CCOs may collect information from providers electronically or through paper. CCOs are encouraged to work with their providers to reduce the administrative burden of ILOS billing. Regardless of the billing pathway used with ILOS providers, the CCO must send ILOS encounter data to OHA and include the ILOS-specific modifier "V4" for tracking purposes. Additional details about the limited dataset and ILOS billing can be found in the ILOS Billing and Reporting Guide.

### 13. Is ILOS a way to solve Medicaid billing issues for covered benefits?

No, ILOS is not a workaround for billing issues of covered benefits, nor is it a solution to the technical complexities of Medicaid billing. ILOS often expands

services to non-clinical settings where the provider may not have Medicaid claims capabilities. For those providers, the CCO can collect a limited billing dataset from the provider instead of a claim.

ILOS was previously thought of as a way to solve billing issues related to provider types in standard Medicaid billing for certain services, but this was incorrect. If a service is a covered benefit, it should be paid for through standard Medicaid claims and not through ILOS.

### 14. Can CCOs use third party payment module to collect a limited billing dataset from ILOS providers?

If the provider cannot submit a claim for the ILOS provided, CCOs can use a third-party payment module to collect a limited billing dataset from ILOS providers. CCOs are not required to work with third party vendors; this is only an option. CCOs can collect billing information from their providers electronically, paper records or other methods. CCOs are encouraged to work with their ILOS providers to reduce the administrative burden of ILOS billing.

### 15. Is there a required or recommended ILOS fee schedule?

CCOs must reimburse contracted ILOS providers for approved ILOS provisions to members. A CCO and their ILOS provider could negotiate rates of service, so long as the total cost for the ILOS is **not more** than the rate the CCO pays for the covered benefit it is in lieu of. Agreed-upon rates should be documented in the payment agreement between the CCO and ILOS provider. Additionally, CCOs' annual spending on ILOS must not exceed five percent per program, as calculated in the ILOS cost percentage.

### 16. What is the ILOS cost percentage?

The ILOS cost percentage calculates the percentage of a managed care program's ILOS spending out of the managed care program's total costs and is submitted to CMS as part of their review process. The ILOS cost percentage of each program should not exceed five percent. This limit aims to reduce inequities across the different systems of Medicaid recipients (CCO members, open card, fee-for-service). Learn more about the ILOS cost percentage in the SMD #: 23-001.

### 17. Are CCOs required to submit ILOS encounter data?

Yes, CCOs are required to submit ILOS encounter data. If a CCO chooses to receive a limited dataset from their ILOS provider for services provided, the CCO would need to supplement data to create a compliant 837 file that meets the national standard X12 transactions and code set requirements. ILOS encounter data must include the ILOS-specific modifier "V4" for tracking purposes.

### 18. What are the reporting requirements for ILOS?

CCOs are required to report on ILOS through encounter data submission to OHA via MMIS using the modifier "V4." CCOs are expected to report aggregate information to OHA annually through the Exhibit L Financial Report. Specific ILOS reporting requirements within Exhibit L include:

→ **Exhibit L, Report L6, Line Item 15:** CCOs are expected to report the total dollar amount incurred for ILOS provided in any of the categories listed in the CCO contract.

→ **Exhibit L, Reports L18 and L18.1:** CCOs are expected to provide the total payments by ILOS category, separated by OHP vs. Non-Medicaid spending.

### 19. How does ILOS affect rate development?

The use and actual cost of ILOS are considered in developing the component of a CCO's capitation rates that represents the covered benefits.

### 20. What is ILOS' impact on the Medical Loss Ratio (MLR)?

ILOS is currently listed in Oregon's MLR template as a category of Medical Costs included in the MLR numerator.

## Service providers

### 21. What are the eligibility and supervisory requirements for ILOS providers?

In certain cases, ILOS offers more provider type options and supervision options for services. Eligible provider types and supervisory requirements for each ILOS are outlined in the ILOS Program Overview. If an ILOS does not specifically state

provider eligibility and supervisory requirements, standard provider eligibility and supervisory standards apply. CCOs may be more prescriptive than the eligibility and supervisory requirements outlined in the ILOS descriptions.

### 22. Do ILOS providers need to have a National Provider Identifier (NPI)?

ILOS providers must have a valid and enrolled NPI, with the exception of atypical providers. Atypical providers are not required to have an NPI.

### 23. Do ILOS providers need to have an Oregon Medicaid provider identification number?

Yes, every provider on a claim, including the rendering and billing providers, must have an Oregon Medicaid provider identification number.

### 24. Is a Certificate of Approval (COA) required for organizations providing the peer services ILOS?

Yes, an organization contracted with a CCO to provide ILOS would need to obtain a COA from OHA to employ any unlicensed behavioral health providers, including peers.

### 25. What is an atypical provider?

If the provider of the service is not covered under the NPI Rule, the CCO can enroll the provider as an "atypical" provider. OHA would then provide a Medicaid Provider ID number that the CCO would use when submitting encounter data.

Only providers not covered under the NPI rule can be enrolled as atypical. If the provider is covered under the definition of the providers who must have an NPI, they cannot be enrolled as atypical. It is uncommon for providers to be classified as atypical.

### 26. Are CCOs required to have contracts with ILOS providers?

Yes, CCOs must hold contracts, whether that be a formal agreement, memorandum of understanding, or other commonly accepted agreement type with any community-based or clinical partner that provides ILOS.

### 27. Are CCOs required to accept ILOS billing claims from any provider, even if they are out of network?

No, CCOs are not required to accept ILOS claims from an uncontracted provider. ILOS should be thought of in the same way as covered benefits in the sense that a CCO wouldn't have an individual member served by an out-of-network provider without an arrangement for that member. ILOS providers should be included in the provider directory to provide guidance to members.

### 28. How can providers find out if their CCO offers ILOS?

CCOs offering ILOS must have the ILOS listed in their member handbook. Reference their handbook to see if the CCO is offering ILOS(s). Community partners and providers interested in providing ILOS are encouraged to contact the CCO directly. Find the CCO serving your community and their contact information on the OHA CCO webpage.

### 29. Can a provider request that their CCO begin offering an ILOS?

Yes, providers are encouraged to contact and make the request directly to their local CCO. CCOs are not required to offer ILOS; CCOs are encouraged to work with their community and clinical partners to identify and implement ILOS that meet their members' needs.

## Member access

### 30. Who is eligible to receive an ILOS?

ILOS is only available to CCO members whose CCO offers the ILOS.

If a CCO offers an ILOS, it becomes available to all CCO members eligible for the ILOS; each ILOS has a defined, clinically-oriented member population eligible to receive the ILOS.

### 31. Can ILOS be offered to open card or fee-for-service Medicaid members?

No, ILOS is not available to open card or fee-for-service members. ILOS is only available to CCO members whose CCO chooses to offer ILOS.

### 32. Can ILOS be offered to Healthier Oregon Program (HOP) members?

Yes, HOP members can access and be offered ILOS. However, ILOS for HOP

members cannot be paid through Medicaid dollars, per Section 1903(v) of the Social Security Act.

### 33. How do CCO members know if their CCO offers an ILOS?

CCOs are required to include information about the ILOS they offer in member handbooks. Members interested in an ILOS are encouraged to contact their CCO's member services directly. Find your CCO's contact information on OHA's CCO webpage.

### 34. Can a member request that their CCO begin offering an ILOS?

Members interested in receiving an ILOS their CCO does not currently offer should contact the CCO's member services. CCOs are not required to offer ILOS to their members.

### 35. If a member receives an ILOS, can they still access the covered benefit it's in lieu of?

Yes, if a member receives an ILOS, they can still access the covered OHP benefit(s). ILOS does not remove a member's ability to access any of their OHP-covered benefits. CCOs cannot deny a member a medically appropriate, OHP-covered benefit because the member has been offered an ILOS, is currently receiving ILOS or has received an ILOS in the past. CCOs offering an ILOS must continue to offer the covered benefit it is in lieu of. ILOS does not remove a member's ability to access any of their OHP-covered benefits.

### 36. If a member transfers from one CCO to another, will the member be able to receive the same ILOS?

There are varying time periods for extended coverage, dependent upon service type, after transferring from one CCO to another. After that point, the member will not necessarily be able to receive the same ILOS after a transfer to a new CCO. Since CCOs are not required to offer ILOS, the member's new CCO might not offer the same service.

### 37. Do CCOs have the right to deny ILOS to members? Do members have the right to appeal?

CCOs have the right to deny services- such as ILOS in particular settings not

listed in the CCO's policy, or if the ILOS is not medically appropriate or cost-effective substitute for the member, or the member is not eligible for the service-so long as it aligns with how the benefit is defined in a CCO's policy. Members have the right to appeal; the rights and protections guaranteed to CCO members under federal regulations remain in full effect when a CCO member is eligible to be offered or chooses to receive any ILOS.

## Other

### 38. Can CCOs still offer the National Diabetes Prevention Program (DPP) ILOS?

Yes, technically CCOs could offer National DPP ILOS, since it is included in 2024 CCO contracts as an approved ILOS. However, National DPP is a covered benefit in clinical and community settings. CCOs are required to pay for National DPP for eligible members and can do so through traditional Medicaid claims.

Oregon's DPP ILOS was originally conceived as a solution to solve commonly experienced barriers to billing and being paid for National DPP service provision. Though ILOS offers some flexibility in Medicaid billing, ILOS is not a solution to Medicaid billing challenges.

### 39. Who are eligible providers for the lactation consultation ILOS?

Eligible providers of the lactation consultation ILOS include:

- A registered nurse with additional training in lactation and is certified by an accredited body, such as a Certified Lactation Education Counselor or Certified Breastfeeding Specialist.
- A certified traditional health worker with additional training in lactation and is certified by an accredited body, such as a Certified Lactation Education Counselor or Certified Breastfeeding Specialist.

CCOs implementing this ILOS must determine appropriate and compliant provider credentials within these contractual definitions; CCOs may impose more prescriptive provider eligibility requirements than the contractual definitions.

## Contact

- **To learn more about ILOS, see the OHA ILOS webpage.**
- **For CCOs with questions about implementing ILOS, please contact the OHA ILOS team at ILOS.info@odhsoha.oregon.gov.**
- Providers, community organizations and members interested in providing or receiving an ILOS are encouraged to contact their CCO. Find the CCO serving your community and their contact information on the OHA CCO webpage.
- To propose a new ILOS, please see the "ILOS Design Season" section of the OHA ILOS webpage.