

**CHAPTER 411
DIVISION 27**

PAYMENT LIMITATIONS IN COMMUNITY-BASED CARE SERVICES

411-027-0000 *(Renumbered to OAR 411-027-0020 6/1/2008)*

411-027-0005 Definitions

(Adopted 6/1/2008)

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

(2) "Area Agency on Aging (AAA)" means the Department of Human Services designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to seniors or people with disabilities in a planning and service area. For purposes of these rules, 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 through ORS 410.300.

(3) "Assessment" means the process of evaluating the functional impairment levels for service eligibility including the individual's requirements for assistance or independence in performing activities of daily living, instrumental activities of daily living and determining nursing facility care. The Seniors and People with Disabilities Division requires use of the Client Assessment and Planning System (CA/PS) as the tool used to determine service eligibility and planning.

(4) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any

activity of daily living. This definition includes the use of service animals, general household items or furniture to assist the individual.

(5) "Case Manager" means a Department of Human Services or Area Agency on Aging employee, who assesses the service needs of an applicant, determines eligibility and offers service choices to the eligible individual. The Case Manager authorizes and implements the service plan and monitors the services delivered.

(6) "Client Assessment and Planning System (CA/PS)" is a single entry data system used for completing a comprehensive and holistic assessment, surveying the individual's physical, mental and social functioning, and identifying risk factors, individual choices and preferences, and the status of service needs. The CA/PS documents the level of need and calculates the individual's service priority level in accordance with OAR chapter 411, division 015, calculates the service payment rates, and accommodates individual participation in service planning.

(7) "Client Choice" means that the individual has been informed of alternatives to nursing facility services and has been given the choice of institutional services, waived services or the Independent Choices Program.

(8) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536, that provides hourly contracted in-home services to individuals served by the Department of Human Services or Area Agency on Aging.

(9) "Cost Effective" means being responsible and accountable with Department of Human Services resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of the available services under the Title XIX Home and Community-Based Services Waiver, the utilization of assistive devices, natural supports, architectural modifications and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources for which the Department of Human Services does not pay.

(10) "Department" or "DHS" means the Department of Human Services.

(11) "Exception" means an approval for payment of a service plan granted to a specific individual in their current residence (or in the proposed residence identified in the exception request) that exceeds the CA/PS assessed service payment levels for individuals residing in community-based care facility services or the maximum hours of service as described in OAR 411-030-0070 for individuals residing in their own homes. The approval is based on the service needs of the individual and is contingent upon the service plan meeting the requirements in OAR 411-027-0020, OAR 411-027-0025 and OAR 411-027-0050. The term "exception" is synonymous with "exceptional rate" or "exceptional payment."

(12) "Homecare Worker (HCW)" means a provider, as described in OAR 411-031-0040, that provides either hourly or live-in services to eligible individuals and is employed by the individual. The term Homecare Worker includes Client-Employed Providers in the Spousal Pay and Oregon Project Independence Programs. It also includes Client-Employed Providers that provide state plan personal care services to seniors and people with physical disabilities. The term does not include Independent Choices Program Providers nor Personal Care Attendants enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(13) "Hourly Services" means the in-home services, including activities of daily living and self-management tasks, that are provided at regularly scheduled times.

(14) "Independent Choices Program (ICP)" means the In-Home Services Program wherein the participant is given cash benefits to purchase self-directed personal assistance services or goods and services that are provided pursuant to a written service plan.

(15) "In-Home Services" means those activities of daily living and self-management tasks that assist an individual to stay in his or her own home.

(16) "Live-In Services" means those Client-Employed Provider Program services provided when an individual requires activities of daily living, self-management tasks and twenty-four hour availability. Time spent by any live-in employee doing self-management and twenty-four hour availability are exempt from federal and state minimum wage and overtime requirements. To ensure continuity of service for the individual, live-in

service plans must include at least one Homecare Worker providing twenty-four hour availability for a minimum of five days in a calendar week.

(17) "Natural Supports" or "Natural Support System" means the resources available to an individual from their relatives, friends, significant others, neighbors, roommates and the community. Services provided by natural supports are resources that are not paid for by the Department of Human Services.

(18) "Rate Schedule" means the rate schedule published by the Seniors and People with Disabilities Division at <http://www.oregon.gov/DHS/spd/provtools/rateschedule.pdf>.

(19) "SPD" or "Division" means the Seniors and People with Disabilities Division, within the Department of Human Services.

(20) "Twenty-Four Hour Availability" means the availability and responsibility of an employee to meet activities of daily living and self-management needs of an eligible individual as required by that individual over a 24 hour period.

(21) "Waiver Services" means services provided through Oregon's Medicaid Home and Community-Based Services Waiver under the authority of section 1915 (c) of the Social Security Act, that allows the state to provide home and community-based care services to eligible individuals as an alternative to nursing facility services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0010 (*Repealed 5/1/1991*)

411-027-0015 (*Renumbered to OAR 411-027-0150 1/1/2002*)

411-027-0020 Payment Limitations in Community-Based Care Services

(*Renumbered from OAR 411-027-0000 6/1/2008*)

(1) PAYMENT FOR SERVICES.

(a) SPD service payments under this rule are limited to home and community-based care services provided under Oregon's Title XIX 1915(c) Waiver for Aged and Disabled Persons.

(b) Community-based care services include, but are not limited to:

(A) In-home services (Client-Employed Providers and Contracted In-Home Care Agencies);

(B) Residential Care Facility services;

(C) Assisted Living Facility services;

(D) Adult Foster Home services;

(E) Specialized living services;

(F) Adult day services; and

(G) Home-delivered meals.

(2) PAYMENT BASIS.

(a) Unless otherwise specified, service payment will be based upon each individual's assessed need for services as documented in the SPD CA/PS.

(b) Payments for community-based care services are not intended to replace the resources available to an individual from their natural support system. Payment by SPD may be authorized only when the natural support system is unavailable, insufficient or inadequate to meet the needs of the individual.

(c) Individuals with excess income must contribute to the cost of services pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(d) Service plans will be based upon less costly means of providing adequate services consistent with client choice.

(e) SPD and AAA local office staff will monitor the progress of the individual. When a change occurs in the individual's service needs that may warrant a change in the service payment rate, staff will update the service plan.

(3) PAYMENT LIMITATIONS.

(a) The total continuing cost of waiver services for an individual in a community-based setting will not exceed the comparable nursing facility rate.

(b) Notwithstanding section (3)(a) of this rule, SPD may authorize service payment rates that exceed the comparable nursing facility rate when:

(A) There is a specific rehabilitation plan approved by SPD, with goals and a definite time frame for delivery, that will improve the individual's self-sufficiency; or

(B) SPD determines that intensive convalescent care is required for a limited period of time; or

(C) SPD determines that intensive long-term care or special technology is required, but is otherwise available locally only in an acute care facility (hospital); and

(D) SPD has reviewed the costs of service to be provided and determined their reasonability.

(c) If service payment is authorized under section (3)(b) of this rule:

(A) The service plan shall reflect specific provider responsibilities, the authorization period for services and the total rate authorized.

(B) SPD and AAA local office staff will provide the service plan authorization to the provider.

(C) SPD and AAA local office staff will monitor the individual's service needs and recommend adjustments to the service plan when appropriate.

(4) SERVICE PAYMENTS. All service payments must be prior authorized by SPD or AAA local office staff.

(a) SPD and AAA Case Managers must authorize service payments from the rate schedule based on the individual's service program and assessed need for services documented in the SPD CA/PS.

(b) Any rate that differs from the rate schedule must be pre-authorized by SPD Central Office.

(5) SPOUSAL SERVICES. SPD will not make direct payments to a spouse for providing community-based care services except for in-home services as provided in OAR chapter 411, division 030.

(6) PAYMENTS FOR ADULT DAY SERVICES.

(a) SPD and AAA local office staff may authorize payments to any Medicaid-Contracted Adult Day Services Program, as described in OAR chapter 411, division 066, in accordance with the rate schedule.

(b) Adult day services may be authorized as part of an overall plan of services for service-eligible individuals and may be used in combination with other community-based care services if day services are the appropriate resource to meet a special need.

(c) Adult day services may be authorized for payment as a single service or in combination with other community-based care services. Adult day services will not be authorized nor paid for if another provider has been authorized payment for the same service. Payments authorized for adult day services will be included in computing the total cost of services.

(d) SPD will pay for a half day of program services when four or less hours of services are provided, and will pay for a full day of program services when more than four, but less than 24 hours are provided.

(7) PAYMENT FOR HOME DELIVERED MEALS.

(a) SPD and AAA local office staff may authorize payments to any Medicaid-Contracted Home Delivered Meals Provider, as described in OAR chapter 411, division 040, in accordance with the rate schedule.

(b) Home-delivered meals may be authorized as part of an overall plan of services for service-eligible individuals and may be used in combination with other community-based care services if meals are the appropriate resource to meet a special need.

(8) PAYMENTS TO ASSISTED LIVING FACILITIES.

(a) SPD and AAA local office staff may authorize payments to any Medicaid-Contracted Assisted Living Facility (ALF) as defined in OAR 411-054-0005.

(b) Monthly Service Payment Determination.

(A) Monthly service payment for SPD individuals is based on degree of impairment in each of the six activities of daily living as determined by the SPD CA/PS and the payment levels described in section (8)(b)(C) of this rule. The initial service plan must be developed prior to admission and must be revised if needed within 30 days. The service plan must be reviewed

and updated at least quarterly or more often as needed, as per OAR 411-054-0034.

(B) Activities of daily living are weighted for purposes of determining the monthly service payment as follows:

(i) Critical activities of daily living. Elimination, eating and cognition/behavior.

(ii) Less critical activities of daily living. Mobility, bathing/personal hygiene and dressing/grooming.

(iii) Essential factors. Other essential factors considered are medical problems, structured living, medical management and other needs.

(C) Payment (Impairment) Levels.

(i) Level 1 -- All Title XIX, service priority level 1-13 eligible individuals are qualified for Level 1 or greater.

(ii) Level 2 -- Individual requires assistance in cognition/behavior AND elimination or mobility or eating.

(iii) Level 3 -- Individual requires assistance in four to six activities of daily living OR requires assistance in elimination, eating and cognition/behavior.

(iv) Level 4 -- Individual is full assist in one or two activities of daily living OR requires assistance in four to six activities of daily living plus assistance in cognition/behavior.

(v) Level 5 -- Individual is full assist in three to six activities of daily living OR full assist in cognition/behavior AND one or two other activities of daily living.

(D) The reimbursement rate for SPD individuals will not be more than the rates charged private paying individuals receiving the same type and quality of services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0025 Payment for Residential Care Facility and Adult Foster Home Services

(Amended 6/1/2008)

SPD will reimburse for services provided to individuals residing in a Residential Care Facility or an Adult Foster Home according to the following:

(1) SERVICE PAYMENT. The provider shall agree to accept an amount determined pursuant to OAR 461-155-0270 for room and board, and a service payment determined by SPD pursuant to OAR 411-027-0020 or 411-027-0050 as payment in full for all services rendered to an individual.

(2) SERVICE RATES. Service rates are based on the individual's level of impairment and assessed need for services as documented on the SPD CA/PS. Service eligibility levels are assigned based on the degree of assistance an individual requires with activities of daily living and certain procedures that must be performed by the provider.

(a) A base rate will be paid for all individuals in accordance with the rate schedule.

(b) Additional add-on payments will be made for individuals whose assessed needs meet add-on criteria. Add-on payments will be paid in accordance with the rate schedule.

(A) If an individual is eligible for one add-on payment, an add-on payment will be made in addition to the base payment.

(B) If an individual is eligible for two add-on payments, a total of two add-on payments will be made in addition to the base payment.

(C) If an individual is eligible for three add-on payments, a total of three add-on payments will be made in addition to the base payment.

(c) Eligibility for add-on payments is made based on individual needs as documented on the SPD CA/PS. An individual is eligible for an add-on payment if:

(A) The individual is full assist in mobility or eating or elimination;

(B) The individual demonstrates behaviors that pose a risk to the individual or to others and the provider must consistently intervene to supervise or redirect; or

(C) The individual's medical treatments, as selected and documented on the SPD CA/PS, require daily observation and monitoring with oversight by a licensed healthcare professional, no less than quarterly, and the facility has trained staff to provide such service and does provide the service.

(3) PAYMENT RESPONSIBILITIES.

(a) Individuals are entitled to retain a personal allowance plus any income disregards pursuant to OAR 461-160-0620.

(b) Individuals are responsible for payment of the room and board amount pursuant to OAR 461-155-0270.

(c) Individuals shall contribute any income in excess of the personal allowance, income disregards and room and board payments to the provider toward the service payment pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(d) SPD shall issue payment to the provider for the difference between the service payment and the available income of the individual.

(4) The provider may not charge the individual, or a relative or representative of the individual, for items included in the room and board or service payments for any items for which SPD makes payment.

(5) SPD is not responsible for damages to the provider's home, facility or property, or obligations entered into with the individual.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0050 Exceptions to Payment Limitations in Community-Based Care Services

(Amended 6/1/2008)

(1) Service payment exceptions may only be granted if SPD determines:

(a) The individual has service needs, documented in the service plan, that warrant a service payment exception; and

(b) The provider actually provides the exceptional service.

(2) Service payment exceptions shall be based on the additional hours of services required to meet the individual's service needs. SPD and AAA local office staff will monitor the individual service needs and recommend adjustments to the plan when appropriate.

(3) Service payment exceptions in Adult Foster Homes and Residential Care Facilities may be authorized only for individual service needs that are not paid for by the base rate or any of the three available add-on payments.

(4) Additional hours for Adult Foster Homes and Residential Care Facilities will be paid at the hourly rate in the rate schedule. SPD does not authorize additional payment exceptions for building, utilities, food or regular maintenance.

(5) No service rate exceptions are allowed in Assisted Living Facilities.

(6) Exceptions above the maximum monthly hours of service in OAR 411-030-0070 for in-home services may only be granted when it is determined

the placement is the most appropriate for the resident, special services are necessary to meet individual needs and the provider has the capability to meet those needs.

(7) All individual exceptions to the assessed service need determination in Adult Foster Homes, Residential Care Facilities, or in-home settings, and renewals of exceptions, must be pre-authorized by SPD Central Office.

(a) SPD and AAA local office staff shall approve requests for payment exception before they are transmitted to SPD.

(b) Locally approved requests for payment exception must be sent to SPD Central Office. The request must include:

(A) A statement of individual needs that exceed the assessed rate or the maximum monthly hours of services; and

(B) A statement of how the individual's needs will be met and the cost involved in meeting the individual's needs.

(c) SPD Central Office Exceptions Committee will review and approve or deny exception requests and transmit the decision and effective date to SPD and AAA local office staff.

(d) Rate exceptions expire one year from the effective date or on the date determined by the Exceptions Committee.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0075 Special Payment Contracts

(Amended 6/1/2008)

(1) SPD may authorize three different types of special payment contract arrangements.

(a) **Supplemented Program Contract.** A supplemented program contract pays a rate in excess of the rate schedule to providers in return for additional services delivered to target populations.

(b) Consistent Revenue Contract. A consistent revenue contract allows a payment rate based on average facility casemix. The contracted rate is in the range allowed by the rate schedule and is based on individual needs.

(c) Specific Needs Setting Contract. A specific needs setting contract pays a rate in excess of the rate schedule to providers who care for a group of individuals all of whose service needs exceed the service needs encompassed in the base payment and all add-ons.

(2) SUPPLEMENTED PROGRAM CONTRACTS.

(a) SPD may authorize a service payment rate not included in the rate schedule for Residential Care Facilities, Assisted Living Facilities and Adult Foster Homes providing additional services to a targeted population, pursuant to a written contract with SPD. To qualify, the facility must demonstrate to SPD that:

(A) There is a documented need for additional services to the target population.

(B) The administrative and care staff have sufficient program knowledge and skills to achieve program goals and provide the additional services.

(C) The facility provides substantial additional services beyond those covered under the rate schedule.

(D) There is a comprehensive ongoing staff training program targeted to the population's needs.

(E) The facility has made any modifications necessary to provide the additional services.

(F) The Medicaid individuals served in the facility demonstrate increasing need for assistance with activities of daily living and cognitive abilities due to Alzheimer's Disease or other dementia.

(i) "Alzheimer's Disease" means a chronic, progressive disease of unknown cause that attacks brain cells or tissues.

(ii) "Dementia" means a clinical syndrome characterized by a decline in mental function of long duration in an alert individual. Symptoms of dementia include memory loss and the loss or diminution of other cognitive abilities such as learning ability, judgment, comprehension, attention and orientation to time and place and to oneself.

(G) The facility has provided the additional service for at least six months prior to the date on which the supplemented program contract will take effect. Additionally, SPD may approve supplemented program contracts to be effective prior to the date on which the facility will have provided the additional service for six months based on:

(i) SPD experience of provider ability to provide the additional service;

(ii) The recommendation of the SPD and AAA local office staff; or

(iii) Unmet community need for the additional services to be offered under the contract.

(H) The facility can identify, at the time of application for the supplemented program contract, the additional costs that the facility will incur to deliver the additional services. The facility shall include, at a minimum, the additional staffing and training costs it will incur as a result of delivery of the additional services.

(b) SPD will evaluate the information submitted by the facility, and may authorize a contracted payment amount.

(c) A contract may be renewed at the appropriate payment rate on an annual basis for a facility that continues to meet the criteria stated in section (1)(a) of this rule.

(A) At the time of the request for renewal, or at any other time SPD requests, the facility shall provide SPD with information on actual costs incurred in delivery of the additional services. Information provided by the facility shall be in the format prescribed by SPD and shall, at a minimum, include the costs of staffing the additional services and of training for direct care staff.

(B) SPD will evaluate the information submitted by the facility, and may re-authorize a contracted payment amount.

(d) The supplemented program contract rate may be increased only if the Legislative Assembly authorizes SPD to do so and appropriates to SPD the funds needed to pay the increase.

(3) CONSISTENT REVENUE CONTRACTS. SPD may authorize a service payment rate not included in the rate schedule for Residential Care Facilities, Assisted Living Facilities and Adult Foster Homes that request a consistent revenue rate pursuant to a written contract with SPD.

(a) In a consistent revenue contract, SPD establishes a uniform service payment rate for all individuals. The uniform service payment rate is equivalent to the average service payment rate that SPD would pay under the rate schedule. In no case will the consistent revenue contract payment exceed the average amount that SPD would have paid to the facility under the rate schedule.

(b) A provider must request a consistent revenue contract in writing. The request must include the suggested payment amount and justify the calculation of that amount by attaching copies of the most recent three full calendar months Provider Individual Summary Form.

(A) If a request for a consistent revenue contract and the required justification are received by SPD on or before the 15th of the month, the consistent revenue contract payment amount will be effective for payment for services rendered on or after the first day of the month immediately following receipt of the request.

(B) If a request for a consistent revenue contract and the required justification are received by SPD after the 15th of the month, the consistent revenue contract payment amount will be effective for payment for services rendered on or after the first day of the second month following receipt of the request.

(c) A consistent revenue contract may be terminated by the facility by providing 30 days written notice to SPD. If a consistent revenue contract is terminated, service payments for individuals will be made in accordance with the rate schedule.

(d) SPD may terminate a consistent revenue contract by providing 30 days written notice to the facility. If a consistent revenue contract is terminated, service payments for individuals will be made in accordance with the rate schedule.

(e) Payment rates under consistent revenue contracts may be adjusted due to changes in facility casemix.

(A) SPD will review facility casemix annually at contract renewal. The determination of average facility casemix will be based on the average service payment level to which SPD would have assigned individuals over the three calendar months that precede the determination.

(B) Notwithstanding section (3)(e)(A) of this rule, in the first year during which a facility is paid under a consistent revenue contract, the facility may request that the consistent revenue contract payment be recalculated after six months. The request must include the recommended payment amount and justification of that amount.

(f) Service payment rate amounts paid under a consistent revenue contract will be increased as a result of legislatively approved increases at the same time and in the same way as are other facilities of the same licensure.

(4) SPECIFIC NEEDS SETTING CONTRACTS.

(a) Specific needs settings are found in Adult Foster Homes, Residential Care Facilities and Assisted Living Facilities. These settings provide community-based care services for individuals whose needs are not met by the rate schedule.

(b) Determination of facility eligibility for a specific needs setting contract is at the discretion of SPD. In making its determination, SPD will consider:

(A) The needs of the individuals being provided care;

(B) The availability of other community long-term care options to meet individual needs; and

(C) The proportion of facility individuals demonstrating the specific needs setting care need and other factors as SPD may determine.

(c) The provider shall submit information to SPD in the form and at the time requested in order to determine the Medicaid rate to be paid.

(d) The total rate for specific needs setting contracts shall be approved by SPD. The approved rate is a single rate paid for all Title XIX individuals with the specific needs setting care need that live in the eligible facility.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0100 (*Renumbered to OAR 411-027-0025 1/1/2002*)

411-027-0150 Repayment of Premium Deposits for Workers' Compensation

(Amended 6/1/2008)

Those providers on whose behalf SPD made a Workers' Compensation premium deposit in accordance with OAR 411-027-0010 (suspended 2-8-91 and repealed 5-1-91) shall repay the deposit amount to SPD at such

time that the need for the deposit no longer exists. SPD shall consider the need for the deposit no longer exists when certain conditions occur. Such conditions include, but are not limited to:

- (1) The provider sells, transfers, or otherwise goes out of business;
- (2) The provider enters into bankruptcy;
- (3) The provider's Workers' Compensation insurer no longer requires the deposit; or
- (4) SPD owes monies to a nursing facility at the time of each annual settlement. Such monies shall be applied against the premium deposit amount until such time the total deposit is recovered.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-027-0200 Personal Incidental Funds in Residential Care Facilities and Assisted Living Facilities *(Repealed 6/1/2008 See OAR 411-054)*