

Secretary of State
NOTICE OF PROPOSED RULEMAKING HEARING*
&
STATEMENT OF NEED AND FISCAL IMPACT

Department of Human Services, Aging and People with Disabilities 411

Agency and Division	Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	411
500 Summer Street NE, E-48	(503) 945-6398
Salem, OR 97301-1074	

Rules Coordinator	Address	Telephone
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RULE CAPTION

K-State Plan language and purpose statement clarifications

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

PUBLIC RULEMAKING HEARING

Date:	September 19, 2016	Time: 9:00 am
Location:	Human Services Building 500 Summer Street NE, ROOM 160 Salem, Oregon 97301	Hearings Officer: Staff

This location is accessible for individuals with mobility impairments and auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

AMEND:
411-035-0000; 411-035-0010; 411-035-0075

Stat. Auth.: ORS 410.070

Other Auth.:

RULE SUMMARY

The Department of Human Services (Department) is proposing to amend the rules in OAR chapter 411, division 035 to add language to clarify the State's intent to limit K-State Plan payments to the lowest possible cost. The Department is also adding to 411-035-0000 to clarify what services are described in the rule division. The Department is amending the definitions rule to add in definitions that apply to changes being made to other parts of chapter 411, division 035. The Department is adding in language to 411-035-0075 to add in requirements to the types of K-Plan transition services that require preauthorization by the Department. Minor grammar, formatting, and housekeeping changes were done to align the rules with current program rule and definition changes from other rule divisions.

The Agency requests public comment on whether other options should be considered for achieving the rule's substantive goals while reducing the negative economic impact of the rule on business.

Written comments may be submitted via e-mail to Kimberly.Colkitt-Hallman@state.or.us or mailed to 500 Summer Street NE, E48 Salem, Oregon, 97301-1064. All comments received will be given equal consideration before the Department proceeds with the permanent rulemaking.

Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator):
September 21, 2016 at 5 p.m.

In the Matter of:

The amendment of OAR 411-035-000; 411-035-0010; and 411-035-0075 relating to K-State Plan Ancillary Services.

Documents Relied Upon, and where they are available:

K State Plan located at: 411-035 K-State Plan
http://www.dhs.state.or.us/policy/spd/rules/411_035.pdf

411-030 In-Home Services located at:
http://www.dhs.state.or.us/policy/spd/rules/411_030.pdf

Need for the Rule(s):

The Department needs to amend the rules in OAR 411-035 to needs to add language to include a comprehensive statement of purpose that indicates what services are provided under the rules and that limits payment for K-State Plan ancillary services to the lowest possible cost that will adequately meet and individual's minimum necessary needs. The proposed rules add in the necessary language to correctly state current Department practices in the purpose and definitions rules to address those need.

In addition, the Department needs to add in language to the rules on preauthorization for transition services. The proposed rules add in the necessary language to include transportation costs for individuals transitioning from the nursing facility or state hospital care to a home or community-based care setting.

Minor grammar, formatting, and housekeeping changes were needed and done in the rules to align the rules with current program rule and definition changes from other rule divisions.

Fiscal and Economic Impact:

Statement of Cost of Compliance:

1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):

The Department estimates that amending OAR 411-035 will have the following fiscal and economic impact:

State Agencies: The Department estimates there will be no fiscal or economic impact on State Agencies.

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

Consumers: The Department estimates there will be no fiscal or economic impact on consumers as this is the current application of the rule, the words are changing to clarify what is currently being done in practice.

Providers: The Department estimates there will be no fiscal or economic impact on providers.

Public: The Department estimates there will be no fiscal or economic impact on the public.

2. Cost of compliance effect on small business (ORS 183.336):

a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

The K-State Plan Services rules incorporate multiple provider types and services. It is impossible to estimate the number of potential providers or small businesses. However, there is not expected to be any fiscal impact on providers due to these changes. These changes remove limitations on who can receive these services and do not add requirements on providers.

b. Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services:

The impact is described above in the Department's statement of cost of compliance.

c. Equipment, supplies, labor and increased administration required for compliance:

The impact is described above in the Department's statement of cost of compliance.

How were small businesses involved in the development of this rule?

These rules were focused on service eligibility definitions, so no small businesses were included in the RAC. Provider organizations representing long term care providers, which may represent small businesses, were included in the RAC process. Small businesses as defined in ORS 183.310 will be included in the public review and comment period.

Administrative Rule Advisory Committee consulted?:

Yes. The Administrative Rule Advisory Committee included representation from the Department, Leading Age Oregon, Long Term Care (LTC) Ombudsman, American Association of Retired Persons (AARP), Oregon Law Center, Disability Rights Oregon, Service Employees International Union (SEIU), Independent Adult Care Provider Association, Aging Veteran Services, Medicaid LTC Quality Reimbursement Advisory Council, Alzheimer's Association, Oregon Home Care Commission, Oregon Association for Homecare, Oregon Association of Area Agencies on Aging & Disabilities, Oregon Disabilities Commission, Governor's Commission on Senior Services, Vocational Rehabilitation Services, and State Independent Living Council.

Signed Michael R. McCormick, Deputy Director, Aging and People with Disabilities

8/2/2016

Signature

Date

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

**CHAPTER 411
DIVISION 35**

K-State Plan Ancillary Services

411-035-0000 Purpose

(1) These rules ensure individuals served by the Department of Human Services, Aging and People with Disabilities **have access to required and optional through the K-State Plan services that are not defined in other rules in this Chapter. The services in these rules are intended to assist the individual are able** to maximize **their** independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services.

(2) Services described in these rules include:

(a) Backup Systems and Assistive Technology.

(b) Chore Services.

(c) Environmental Modification Services.

(d) Transition Services.

(e) Voluntary Consumer Training.

(3) To ensure equal access to individuals who are eligible for the services provided through this program.

(4) Payments for the services in these rules are limited to the lowest possible cost which will adequately meet the individual's minimum necessary needs.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 ~~to~~ 410.300, 441.520

411-035-0010 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 035:

(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, but are not limited to, eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior.

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

(4) "Alert Systems" means a unit that is worn by the individual or is located in the individual's home for the purpose of generating notification that an emergency has or may occur.

(5) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults or individuals with disabilities 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.

(6) "Assistive Technology" means equipment that provides additional security and support to an individual and replaces the need for human interventions. Assistive technologies enable an individual to self-direct their care and maximize their independence.

(7) "Back-up systems", for the purpose of these rules, mean devices or electronic systems, which secure help in emergencies, safety in the community, or are other reminders that help an individual with activities,

including, but not limited to, medication management, eating, or other types of monitoring.

(8) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of an individual, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements an individual's service plan, and monitors the services delivered as described in OAR chapter 411, division 028.

(9) "Chore Services" means specific services intended to ensure the individual's home is safe and allows for independent living.

(10) "Consumer" or "Consumer-Employer" means the person applying for or eligible for Medicaid home or community-based services.

(11) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Less costly alternatives may include other programs available from the Department, 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 not paid for by the Department.

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

(13) "Durable Medical Equipment", is an apparatus, such as a walker, which is primarily used to serve a medical purpose and is appropriate to use in the individual's home.

(14) "Environmental Modifications" means the changes made to adapt living spaces to meet specific service needs of eligible individuals with physical limitations to maintain their health, safety, and independence.

(15) "Exception" means the individual has service needs above the limits described in this rule, and documented in the assessment and service plan that warrant an exception for payment.

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

(17) "Individual" means the person applying for or eligible for services.

(18) "In-Home Services" 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.

(19) "Instrumental Activities of Daily Living (IADL)" means those activities that include, but are not limited to, activities other than the activities of daily living, required by an individual to continue independent living. Activities include, but are not limited to, housekeeping, laundry, meal preparation, medication management, shopping, and transportation.

(20) "Long-Term Care" means the Medicaid system through which the Department provides nursing facility, community-based, and in-home services to eligible adults who are aged, blind, or have physical disabilities.

(21) "Medication Reminders" are devices used for the purpose of prompting an individual to take their medication.

(22) "Natural Supports" 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.

(23) "Person-centered Assessment and Service Plans" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(24) "Personal Emergency Response Systems" mean a type of electronic back-up system that:

(a) Secures help for individuals in an emergency;

(b) Ensures a consumer's safety in the community; and

(c) Includes other reminders that help an individual with their activities of daily living and instrumental activities of daily living.

(25) "Rate Schedule" means the rate schedule maintained by the Department at

<http://www.dhs.state.or.us/spd/tools/program/osip/rateschedule.pdf>. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(26) "Representative" means a person with longstanding involvement in assuring the individual's health, safety, and welfare that is appointed by an individual to participate in service planning on the individual's behalf. In all cases, unless the individual is incapable, the individual's consent is obtained before designating a representative on the individual's behalf. When feasible, the individual's authorization of a representative is made in writing or by another method that clearly indicates the individual's free choice. An individual's representative is not a paid provider to an individual receiving services and supports.

(27) "Service Need" means the assistance an individual requires from another person, or equipment that replaces the need for another person, for those functions or activities.

(28) "These Rules" mean the rules in OAR chapter 411, division 035.

(~~298~~) "Transition Services" means those services and supports necessary for an individual to transition from a nursing facility or the Oregon State Hospital to a community-based care or in-home setting.

(~~2930~~) "Voluntary Consumer Training Services" means activities to empower and inform individuals receiving in-home services regarding their rights, role, and responsibilities as employers of care providers.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 - ~~410~~.300, 441.520

411-035-0075 Eligible Transition Services

(1) Approval for services and supports must:

(a) Be based on an assessed need determined during the person-centered service planning process.

(b) Support the desires and goals of the consumer receiving services and supports.

(2) Total expenses for transition services and supports covered under this rule may be approved from the date of authorization up to ~~thirty (30)~~ days after a consumer discharges from a nursing facility or the Oregon State Hospital on a permanent basis and may include more than one item.

(3) Total purchases for basic household goods and furnishings are limited to one time per year within the first ~~thirty (30)~~ days a consumer discharges from a nursing facility on a permanent basis.

(4) Total purchases for transition services and supports, other than basic household goods and furnishings, are limited to no more than twice annually. To access transition services and supports a second time within a year, the consumer must be transitioning from a nursing facility or the Oregon State Hospital.

(5) Funds must not be used to retroactively reimburse a consumer, natural supports, or community-based care providers for transition service expenses.

(6) Unless indicated in this rule, allowable moving and move-in costs are limited to an in-home setting and include:

(a) Transportation for touring community-based care facilities and in-home service settings.

(b) Housing application fees.

(c) Payment for background and credit checks related to housing.

(d) Cleaning deposits.

(e) Security deposits.

(f) Initial deposits for heating, lighting, and land line phone service.

(g) Payment of previous utility bills that prevent a consumer from receiving utility services.

(h) Cleaning before move-in, is limited to consumers returning to a previous in-home setting and the service is needed to mitigate a health or safety risk.

(i) Basic household goods.

(A) Including, but not limited to:

(i) Cookware;

(ii) Tableware;

(iii) Garbage cans;

(iv) Trash bags;

(v) Toilet paper;

(vi) Bedding;

(vii) Linens; ~~and~~or

(viii) Basic cleaning supplies.

(B) The purchase of basic household goods is not intended to replace useable items already available to the consumer.

(C) Purchases are limited to:

(i) The amount necessary to adequately meet the needs of the consumer, but may not exceed \$500.

(ii) The Department may approve additional household goods if the consumer's functional needs assessment indicates the need for additional household goods beyond the standard limit.

(j) Basic household furnishings;;

(A) Including, but not limited to:

(i) Beds;

(ii) Mattresses;

(iii) Dressers;

(iv) Couches;

(v) Tables; ~~and~~or

(vi) Chairs required in an in-home or community-based service setting.

(B) The purchase of basic household goods is not intended to replace useable items already available to the consumer.

(C) Purchases are limited to:

(i) The amount necessary to adequately meet the needs of the consumer and may not exceed \$1,000.

(ii) The Department may approve additional household furnishings if the consumer's functional needs assessment indicates the need for additional household furnishings beyond the standard limit.

(k) Basic food stocking.:

(A) Including, but not limited to:

(i) Pantry staples;

(ii) Perishable food items; and/or

(iii) Canned or boxed foods that meet the basic nutritional needs of a consumer.

(B) The purchase of food items is not intended to replace non-perishable items already available to the consumer.

(i) The purchase of food items must be limited to the amount necessary to adequately meet basic nutritional needs within the transition period and may not exceed \$200.

(ii) The Department may approve additional food stocking if the consumer's functional needs assessment indicates the need for additional food stocking beyond the standard limit.

(C) A consumer's available income and benefits may be used before approving expenses for basic food stocking.

(D) Consumers transitioning to a community-based care setting are not eligible to use funds for basic food stocking.

(l) Clothing that meets the basic needs of a consumer transitioning to a community-based care or in-home service setting.:

(A) The purchase of clothing items are not intended to replace useable items already available to the consumer.

(B) A consumer's available income may be used before approving expenses.

(m) Movers and moving expenses, required to transition a consumer to a community-based care or in-home service setting, are limited to \$1,000.

(n) Delivery costs associated with moving a consumer's property from an off-site location to a community-based or in-home setting during the transition.

(o) Extra locks, for security purposes, in a community-based care or in-home service setting.

(p) Duplicate keys in a community-based care or in-home service setting.

(7) The following services and expenses must be pre-authorized by the Department's Central Office:

(a) Purchases that exceed the monetary limits described in this rule.

(b) Approval for expenses that occur greater than ~~thirty (30)~~ days after the transition period.

(c) Items required to re-establish a home not identified in this rule.

(d) Other necessities not identified in this rule that are required for a consumer to transition from a nursing facility or the Oregon State Hospital.

(e) Transportation for community-based service setting tours that require overnight travel.

(f) Payment of past rent or utility bills in which a consumer was more than one month behind.

(g) Transportation costs for the individual to transition from a nursing facility or the state hospital to a home or community-based care setting. This may include attendant services and transportation out of state.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 409.050, 410.040, 410.090, 410.210 ~~to~~ 410.300, 441.520