Secretary of State

NOTICE OF PROPOSED RULEMAKING HEARING*

A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Aging and People with Disabilities	411
Agency and Division	Administrative Rules Chapter Number

Kimberly Colkitt-Hallman	500 Summer Street NE, E-48 Salem, OR 97301-1074	(503) 945-6398
Rules Coordinator	Address	Telephone

RULE CAPTION

K-Plan Services

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

February 19, 2015	2:00 p.m.	Human Services Building 500 Summer Street NE, ROOM 160 Salem, Oregon 97301	Staff
Hearing Date	Time	Location	Hearings Officer

Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION

Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

411-035-0010

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 410.070

Other Auth.:

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

RULE SUMMARY

The Department of Human Services (Department) is proposing to amend the rules for the K-State Plan in OAR chapter 411, division 035 to make permanent temporary changes that became effective on November 10, 2014. The Department needs to amend OAR 411-035-0010 to be less restrictive in the definitions for Activities of Daily Living (ADL), Instrumental Activities of Daily Living (IADL), and any other related definitions. This needs to be done because the K-State Plan approved by the Center for Medicare and Medicaid Services (CMS) did not apply the limitations from OAR 411-015-0006 and 411-015-0007 to the ADL and IADL definitions and services provided for in this rule. This will be accomplished by removing the references to OAR 411-015-0006 and 411-015-0007 in the definitions for ADL, IADL, and any other related definitions in this rule.

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.

February 24, 2015 at 5 p.m.
Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signed Michael R. McCormick, Director, Aging and People with Disabilities 12/23/2014

Signature Date

Secretary of State

STATEMENT OF NEED AND FISCAL IMPACT

A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Department of Human Services, Aging and People with Disabilities 411

Agency and Division Administrative Rules Chapter Number

K-Plan Services

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

In the Matter of: The amendment of OAR 411-035-0010 relating to the K-State Plan.

Statutory Authority: ORS 410.070

Other Authority:

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

Need for the Rule(s):

The Department needs to amend OAR 411-035-0010 to eliminate limitations in the ADL and IADL definitions and clarify requirements of the state K-Plan that is approved by the Center for Medicare and Medicaid Services (CMS). The proposed rules do this by removing the references to OAR 411-015-0006 and 411-015-0007 in the definitions for ADL, IADL, and any other related definitions in OAR 411-035-0010.

Documents Relied Upon, and where they are available:

K Option State Plan Amendment (Oregon's Community First Choice Option Plan) Document available at: *http://www.oregon.gov/dhs/k-plan/Documents/K%20Option%20State%20Plan%20Amendment.pdf*

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 amending OAR 411-035-0010 will have no fiscal and economic impact, as this revision to the rule is the current application of the rule.

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

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,

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?

Since these rules were focused on service eligibility definitions, no small businesses were included. Provider organizations representing long term care providers were included. 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 invited and provided information via email to representation from the AARP, Brain Injury Association of Oregon, Disability Rights Oregon, Disability Services Advisory Council, Governor's Commission on Senior Services, Home Care Commission, Long Term Care Ombudsman, Oregon Health Care Association, Oregon Law Center, Oregon Legal Aid, Service Employees International Union (SEIU), and State Independent Living Council.

Signed Michael R. McCormick, Director, Aging and People with Disabilities 12/23/2014

Signature Date

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

CHAPTER 411
DIVISION 35

K-State Plan

411-035-0010 Definitions

(Temporary Effective 11-10-2014 to 05-08-2015)

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 ~~as defined in OAR 411-015-0006~~.

(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. ~~The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.~~

(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. ~~identified in OAR 411-015-0006 and OAR 411-015-0007.~~

(28) "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.

(29) "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 to 410.300, 441.520