

Secretary of State  
Certificate and Order for Filing  
**TEMPORARY ADMINISTRATIVE RULES**  
&  
**STATEMENT OF NEED AND JUSTIFICATION**

I certify that the attached copies\* are true, full and correct copies of the TEMPORARY Rule(s) adopted on [upon filing] by the  
Date prior to or same as filing date

Department of Human Services, Aging and People with Disabilities 411

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Agency and Division	Administrative Rules Chapter Number	
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Rules Coordinator	Address	Telephone
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to become effective [July 1, 2016] through [December 27, 2016].  
Date upon filing or later A maximum of 180 days including the effective date.

**RULE CAPTION**

**In-Home Services**

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

**IN THE MATTER OF**

The temporary amendment of OAR 411-030-0068 and OAR 411-030-0070 relating to in-home services.

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**RULEMAKING ACTION**

**AMEND:**  
411-030-0068; 411-030-0070

Stat. Auth.: **ORS 410.070**

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Other Auth.:

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Stats. Implemented: **ORS 410.070**

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**RULE SUMMARY**

The Department of Human Services (Department) is immediately amending OAR 411-030 to:

- Limit live-in services to individuals currently receiving the service.
- Add qualifications to receive a differential rate for homecare workers.
- Fix minor grammar, formatting, punctuation, and housekeeping issues in the rules.

These changes are effective July 1, 2016.

**Documents Relied Upon, and where they are available:**

U.S. Department of Labor Final Rules found at:

<http://www.dol.gov/whd/homecare/finalrule.htm>

**Need for the Temporary Rule(s):**

OAR 411-030 was previously amended to better align with the U.S. Department of Labor regulations in regards to live-in services. After this alignment, the Department determined additional changes were necessary for the sustainability of the in-home services program. Also, during the February 2016 legislative session, a budget note directed, Aging and People with Disabilities (APD) to provide policy and budget options for decision making for the future sustainability of APD programs. The process included looking at viable options and reaching out to legislators, stakeholders, and partners. The Department provided an update to various policy and budget options during the May 2016 legislative days, and after further discussion, it was determined the Department needed to end allowing new individuals into the live-in services program.

In order to achieve sustainability, the Department needs to amend the rules to limit the live-in services program to individuals that are receiving the service prior to July 1, 2016. The Department is amending OAR 411-030-0068 and OAR 411-030-0070 to align the rules with the changes noted above.

The Department also needs to amend the rules to add in requirements for homecare workers to receive a differential rate per the collective bargaining agreement with SEIU. The Department is adding in a new rule subsection to 411-030-0068 to lay out the requirements for how a homecare worker may receive a differential rate.

The rules will also be amended to fix minor grammar, formatting, punctuation, and housekeeping issues.

**Justification of Temporary Rule(s):**

Failure to act promptly and immediately to amend OAR 411-030 will result in serious prejudice to the public interest, the Department, homecare workers, and individuals receiving services. If the rules are not changed promptly, the sustainability of the in-home services program will be at risk. In order to ensure sustainability, the Department must immediately amend the rules to ensure the Department is only paying for the services the Department is authorized to provide.

OAR 411-030 needs to be amended promptly because the Department may not be able to continue the program if the sustainability issues are not addressed. Addressing the sustainability issues will allow the Department to continue providing the services the Department is authorized to provide. The Department also needs to address issues in terms of rule consistency with the collective bargaining agreement. In order to reduce confusion surrounding differential rates, the Department added terminology to make it clear when homecare worker may receive a differential rate.

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

6/23/2016

Signature

Date

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

**CHAPTER 411  
DIVISION 30**

**IN-HOME SERVICES**

**411-030-0068 Live-in Services and Shift Services**

(1) As of July 1, 2016, no individual may be approved to receive live-in services who did not receive live-in services on June 30, 2016.

(2) An individual is only eligible for shift services if the assessment determines the individual meets the criteria described in section (3) of this rule.

(43) Individuals with service plans that meet the definition of live-in services or shift services must meet subsections (a) and either (b) or (c) of this section of the rule.

(a) The provision of assistance with at least one ADL or IADL task must be required sometime during each hour the individual is awake in order to ensure the safety and well-being of the individual.

(b) The individual is assessed as full assist in mobility or elimination as defined in OAR 411-015-0006, and has at least one of the following conditions:

(A) A debilitating medical condition that includes, but is not limited to, any of the following symptoms:

- (i) Cachexia;
- (ii) Severe neuropathy;
- (iii) Coma;

(iv) Persistent or reoccurring stage 3 or 4 wounds;

(v) Late stage cancer;

(vii) Frequent and unpredictable seizures; or

(viii) Debilitating muscle spasms.

(B) A spinal cord injury or similar disability with permanent impairment.

(C) An acute care or hospice need that is expected to last no more than six months.

(c) The individual is assessed as full assist in cognition as defined in OAR 411-015-0006 and meets all of the following criteria:

(A) A diagnosis of traumatic brain injury, dementia or a related disorder, or a debilitating mental health disorder that meets the criteria described in OAR 411-015-0015(2); and

(B) Has one of the following assessed needs as defined in OAR 411-015-0006:

(i) Full assist in danger to self or others.

(ii) Full assist in wandering.

(iii) Full assist in awareness.

(iv) Full assist in judgment.

(24) The following limitations apply:

(a) A homecare worker providing live-in services must be available to address the service needs of an eligible individual as they arise throughout an entire 24-hour period. A homecare worker is not providing live-in services if the homecare worker is outside the individual's home or building during the homecare worker's on-duty hours and the homecare worker engages in activities that are

unrelated to the provision of the individual's ADL or IADL services and supports. A homecare worker is not providing live-in services if they are offsite and are not performing direct ADL or IADL services.

(b) Hourly services by another homecare worker or contracted in-home agency may be authorized in addition to live-in services for any task that requires more than one homecare worker to simultaneously perform the task, or to allow a live-in homecare worker to sleep for at least five continuous hours during a 24-hour work period.

(c) A homecare worker who is providing live-in services for an individual may not also provide hourly services for the same individual.

~~(35) Individuals who are receiving live-in services on June 30, 2016 with assessments that were created prior to August 31, 2015 may continue receiving live-in services or shift services until one of the following occurs:~~

~~(a) The individual moves from an in-home setting that does not meet the requirements of OAR 411-030-0033 for more than 30 days and later moves to an in-home setting that meets the requirements of OAR 411-030-0033. A new assessment and service plan must be completed to evaluate and determine if the individual meets the criteria described in section (1) of this rule.~~

~~(b) The individual ends his or her live-in services or shift services for more than 30 days. A new assessment must be completed to evaluate and determine if the individual meets the criteria described in section (1) of this rule.~~

~~(c) An assessment determines the individual does not meet the criteria described in section (3) of this rule. A reassessment is created on or after August 31, 2015 that requires a new service plan~~

~~(4) If the individual chooses to receive live-in or shift services, and the individual resides in an in-home setting that meets the requirements of OAR 411-030-0033 on or after August 31, 2015, a reassessment must be completed to evaluate and determine if the individual meets the criteria described in section (1) of this rule.~~

(56) Individuals who currently receive live-in services for at least four days a week, or are receiving hours under live-in services in the Independent Choices Program, and who have been determined not to meet the criteria for live-in services per section (1) of this rule after an assessment created on or after August 31, 2015, may be granted an exception by central office under the following circumstances:

(a) The individual must be eligible for 159 hours of live-in services on the most recent assessment prior to August 31, 2015, and be assessed as meeting one of the following as defined in OAR 415-015-0006:

(A) Full assist in mobility and at least a substantial assist in ambulation or an assist in transfers.

(B) Full assist in cognition.

(C) Full assist in at least two ADLs under elimination.

(b) Exceptions granted under subsection (a) of this rule must end when the identified homecare worker per subsection (a) of this rule or the primary provider under the Independent Choices Program is no longer employed by the individual.

~~(6) An exception may be granted by central office to authorize a live-in plan if an individual does not meet section (1) of this rule to meet the exceptional needs of the individual as defined by the Department.~~

(7) An individual may employ homecare workers with a differential rate in accordance with the terms of the ratified collective bargaining agreement described in OAR 411-031-0020, if the following applies:

(a) The individual is diagnosed with quadriplegia or a condition that is substantially similar;

(b) The individual is dependent on a ventilator;

(c) The individual is eligible for and receives shift services;

(d) Within a 24-hour work period, the individual requires at least 16 hours of paid shift care and up to 8 hours of unpaid care; and

(e) The plan is approved by the Department.

Stat. Auth.: ORS 409.050, 410.070, 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070

## **411-030-0070 Maximum Hours of Service**

### **(1) LEVELS OF ASSISTANCE FOR DETERMINING SERVICE PLAN HOURS.**

(a) "Minimal Assistance" means an individual is able to perform the majority of an activity but requires some assistance from another person.

(b) "Substantial Assistance" means an individual is able to perform only a small portion of the tasks that comprise an activity without assistance from another person.

(c) "Full Assistance" means an individual needs assistance from another person through all phases of an activity every time the activity is attempted.

### **(2) MAXIMUM MONTHLY HOURS FOR ADL.**

(a) The planning process uses the following limitations for time allotments for ADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

#### **(A) Eating:**

(i) Minimal assistance, 5 hours;

(ii) Substantial assistance, 20 hours;

(iii) Full assistance, 30 hours.

(B) Dressing and Grooming:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 20 hours.

(C) Bathing and Personal Hygiene:

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.

(D) Mobility:

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 15 hours;
- (iii) Full assistance, 25 hours.

(E) Elimination (Toileting, Bowel, and Bladder):

- (i) Minimal assistance, 10 hours;
- (ii) Substantial assistance, 20 hours;
- (iii) Full assistance, 25 hours.

(F) Cognition and Behaviors:

- (i) Minimal assistance, 5 hours;
- (ii) Substantial assistance, 10 hours;
- (iii) Full assistance, 20 hours.

(b) Service plan hours for ADL may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that activity of daily living as determined by a service assessment applying the parameters in OAR 411-015-0006.

(c) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. In accordance with section (3)(c) of this rule, authorization of IADL hours is limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

### (3) MAXIMUM MONTHLY HOURS FOR IADL.

(a) The planning process uses the following limitations for time allotments for IADL tasks. Hours authorized must be based on the service needs of an individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

#### (A) Medication and Oxygen Management:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 4 hours;

(iii) Full assistance, 6 hours.

#### (B) Transportation or Escort Assistance:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 3 hours;

(iii) Full assistance, 5 hours.

(C) Meal Preparation:

(i) Minimal assistance:

(I) Breakfast, 4 hours;

(II) Lunch, 4 hours;

(III) Supper, 8 hours.

(ii) Substantial assistance:

(I) Breakfast, 8 hours;

(II) Lunch, 8 hours;

(III) Supper, 16 hours.

(iii) Full assistance:

(I) Breakfast, 12 hours;

(II) Lunch, 12 hours;

(III) Supper, 24 hours.

(D) Shopping:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 4 hours;

(iii) Full assistance, 6 hours.

(E) Housecleaning:

- (i) Minimal assistance, 5 hours.
- (ii) Substantial assistance, 10 hours.
- (iii) Full assistance, 20 hours.

(b) Hours authorized for IADL are paid at the rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for IADLs paid at the rates in accordance with the rate schedule. Participants of the Independent Choices Program may determine their own employee provider pay rates, but must follow all applicable wage and hour rules and regulations.

(c) When two or more individuals eligible for IADL task hours live in the same household, the assessed IADL need of each individual must be calculated. Payment is made for the highest of the allotments and a total of four additional IADL hours per month for each additional individual to allow for the specific IADL needs of the other individuals.

(d) Service plan hours for IADL tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that IADL task as determined by a service assessment applying the parameters in OAR 411-015-0007.

#### (4) PAYMENT FOR LIVE-IN SERVICES.

(a) Payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068. ~~Individuals who meet these criteria may be authorized 159 hours a month for the provision of this service until December 31, 2015.~~

(b) Effective January 1, 2016, payment for live-in services is authorized only when an individual employs a live-in homecare worker or enrolls in the Independent Choices Program and meets the requirements of OAR 411-030-0068. Individuals that meet these criteria will be authorized to receive at least 16 hours per day (496 hours per month). Additional hours may be authorized by the Department to meet the needs of the individual during the hours of

the homecare worker's scheduled sleep period if the homecare worker's scheduled sleep period is routinely disrupted.

(c) Rates for live-in services are paid in accordance with the rate schedule.

(d) When a live-in homecare worker is employed less than seven days per week, the total service hours must be prorated.

(5) When one or more eligible individuals in the same household is eligible for and receiving in-home services, the amount of hours authorized is subject to the following maximums:

(a) If any eligible individual in a specific household is receiving live-in services, the combined authorized hours for all eligible individuals in the same household may not exceed 19 hours within any 24-hour period or 589 hours per month.

(b) Hourly and shift service plans may not exceed 24 hours within any 24-hour period or 744 hours per month in the same household.

(6) Beginning ~~August 31, 2015~~ July 1, 2016, ~~at the creation of a new service plan resulting from an assessment or~~ when a homecare worker begins employment with an individual, the following limitations to the authorized hours a homecare worker may work will apply:

(a) Hourly or shift service plans of no more than 220 hours per month, not to exceed 50 hours per workweek per individual.

(b) Hourly or shift services plan of no more than 16 hours of awake care during a 24-hour work period.

(7) A provider may not receive payment from the Department for more than the total amount authorized by the Department on the service plan authorization form under any circumstances. All service payments must be prior-authorized by a case manager.

(8) Case managers must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment,

housing accommodations, and alternative service resources (as defined in OAR 411-015-0005) that may reduce the need for paid assistance.

(9) The Department may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within an individual's natural supports system.

(10) Payment by the Department for Medicaid home and community-based services are only made for the tasks described in this rule as ADL, IADL tasks, and live-in services. Services must be authorized to meet the needs of an eligible individual and may not be provided to benefit an entire household.

#### (11) EXCEPTIONS TO MAXIMUM HOURS OF SERVICE.

(a) To meet an extraordinary ADL service need that has been documented, the hours authorized for ADL may exceed the full assistance hours (described in section (2) of this rule) as long as the total number of ADL hours in the service plan does not exceed 145 hours per month.

(b) Monthly service payments that exceed 145 ADL hours per month may be approved by the Department when the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050 is met.

(c) As long as the total number of IADL task hours in the service plan does not exceed 85 hours per month and the service need is documented, the hours authorized for IADL tasks may exceed the hours for full assistance (as described in section (3) of this rule) for the following tasks and circumstances:

(A) Housekeeping based on medical need (such as immune deficiency);

(B) Short-term extraordinary housekeeping services necessary to reverse unsanitary conditions that jeopardize the health of an individual; or

(C) Extraordinary IADL needs in medication management or service-related transportation.

(d) Monthly service plans that exceed 85 hours per month in IADL tasks may be approved by the Department when an individual meets the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050.

(e) One or more individuals in the same household may exceed the maximums in section (5) of this rule in the following circumstances:

(A) The service plan authorizes payment that requires the assistance of more than one homecare worker to simultaneously perform a specific task.

(B) The service plan authorizes an additional hourly provider when the individual requires care throughout a 24 hour period and the live-in homecare worker is not able to receive five continuous hours of sleep.

(C) The ADLs of two or more individuals in the same household require a homecare worker for each individual at the same time.

(f) A homecare worker may be authorized to provide services totaling more than 176 hours per month or 40 hours per workweek if they are prior authorized by the Department. In emergency situations, when the Department is not available, a homecare worker may work critical hours, but must notify the Department within two business days.

(g) A homecare worker may be authorized by the Department to work more than 16 hours of hourly services during a 24-hour work period if an unanticipated need arises that requires the homecare worker to remain awake in order to provide the necessary care.

Stat. Auth.: ORS 409.050, 410.070, 410.090

Stats. Implemented: ORS 410.010, 410.020, 410.070