

Secretary of State
Certificate and Order for Filing
TEMPORARY ADMINISTRATIVE RULES
A Statement of Need and Justification accompanies this form..

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, Seniors and People with Disabilities 411

Agency and Division	Address	Administrative Rules Chapter Number
Christina Hartman	500 Summer Street NE, E-10 Salem, OR 97301-1074	(503) 945-6398

to become effective [January 1, 2012] through [June 29, 2012].
Date upon filing or later A maximum of 180 days including the effective date.

RULE CAPTION

In-Home Services, Instrumental Activities of Daily Living (IADL)

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

RULEMAKING ACTION

List each rule number separately, 000-000-0000.
Secure approval of new rule numbers (Adopted rules) with the Administrative Rules Unit prior to filing

ADOPT:

AMEND:
411-030-0070

SUSPEND:

Stat. Auth.: ORS 409.050, 410.070, & 410.090

Other Auth.: ORS 291.261 and Oregon Laws 2009, Chapter 901

Stats. Implemented: ORS 410.010, 410.020, & 410.070

RULE SUMMARY

In response to a budgetary shortfall, the Department of Human Services (Department) is temporarily amending OAR 411-030-0070 to reduce the in-home services maximum monthly hours for instrumental activities of daily living (IADL) by 10 percent. This reduction becomes effective January 1, 2012.

Meal preparation and housekeeping will be the only IADL service hours reduced since the current rule allows the highest allotment of hours in these two areas. This reduction

will minimize the loss of IADL hours in areas the rule currently allows a small allotment (medication and oxygen management, transportation or escort assistance, and shopping). Reducing meal preparation and housekeeping hours will accomplish a total 10 percent reduction of the IADLs.

Signed Patricia E. Baxter, Chief Operations Officer

November 15, 2011

Signature

Date

*With this original and Statement of Need, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules. ARC 940-2005

STATEMENT OF NEED AND JUSTIFICATION

A Certificate and Order for Filing Temporary Administrative Rules accompanies this form.

Department of Human Services, Seniors and People with Disabilities Division 411

Agency and Division

Administrative Rules Chapter Number

In the Matter of: **The temporary amendment of OAR 411-030-0070 relating to in-home services.**

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

In-Home Services, Instrumental Activities of Daily Living (IADL)

Statutory Authority: **ORS 409.050, 410.070, & 410.090**

Other Authority: **ORS 291.261 and Oregon Laws 2009, Chapter 901**

Stats. Implemented: **ORS 410.010, 410.020, & 410.070**

Need for the Temporary Rule(s):

Due to a budgetary shortfall, the Department needs to temporarily amend OAR 411-030-0070 to help the Department meet budget cut targets by reducing the IADL task hours for the waived in-home services program by 10 percent.

Documents Relied Upon, and where they are available:

Justification of Temporary Rule(s):

Failure to act promptly will result in serious prejudice to the Department as the Department would be out of compliance with legislative intent and the 2011-2013 Legislatively Approved Budget. Failure to be in compliance with the Legislatively Approved Budget may result in the Department's inability to properly fund other programs and services to eligible aged and physically disabled individuals. Failure to fund other approved programs and services may result in loss of services for eligible individuals.

By reducing the maximum allowable IADL task hours by January 1, 2012, the Department will have adequate funding to administer the waived in-home services programs.

Signed Patricia E. Baxter, Chief Operations Officer

November 15, 2011

Signature

Date

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

**CHAPTER 411
DIVISION 30**

IN-HOME SERVICES

411-030-0070 Maximum Hours of Service

(Temporary Effective 1/1/2012 – 6/29/2012)

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

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

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

(c) "Full Assistance" means the individual needs assistance from another person through all phases of the 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 the 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/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/Behavior:

(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 ~~self-management~~ADL hours shall be limited for each additional individual in the home.

(d) Hours authorized for ADL are paid at hourly rates in accordance with the rate schedule. The Independent Choices Program cash benefit is based on the hours authorized for ADLs paid at the hourly rates. Participants of the Independent Choices Program may determine their own employee provider pay rates.

(3) MAXIMUM MONTHLY HOURS FOR ADL~~SELF-MANAGEMENT TASKS~~.

(a) The planning process uses the following limitations for time allotments for ~~all services~~ADL tasks. Hours authorized are must be based on the service needs of the 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 prior to January 1, 2012:

(I) Breakfast, 4 hours;

(II) Lunch, 4 hours;

(III) Supper, 8 hours;

(ii) Minimal assistance effective January 1, 2012:

(I) Breakfast, 3 hours;

(II) Lunch, 3 hours;

(III) Supper, 7 hours.

(iii) Substantial assistance prior to January 1, 2012:

(I) Breakfast, 8 hours;

(II) Lunch, 8 hours;

(III) Supper, 16 hours;

(iv) Substantial assistance effective January 1, 2012:

(I) Breakfast, 7 hours;

(II) Lunch, 7 hours;

(III) Supper, 14 hours.

(iii) Full assistance prior to January 1, 2012:

(I) Breakfast, 12 hours;

(II) Lunch, 12 hours;

(III) Supper, 24 hours;

(vi) Full assistance effective January 1, 2012:

(I) Breakfast, 10 hours;

(II) Lunch, 10 hours;

(III) Supper, 21 hours.

(D) Shopping:

(i) Minimal assistance, 2 hours;

(ii) Substantial assistance, 4 hours;

(iii) Full assistance, 6 hours;

(E) Housecleaning:

(i) Minimal assistance:

(I) Prior to January 1, 2012, 5 hours;

(II) Effective January 1, 2012, 4 hours.

(ii) Substantial assistance:

(I) Prior to January 1, 2012, 10 hours;

(II) Effective January 1, 2012, 9 hours.

(iii) Full assistance:

(I) Prior to January 1, 2012, 20 hours.

(II) Effective January 1, 2012, 18 hours.

(b) Rates shall be paid in accordance with the rate schedule. When a live-in employee is present, these hours may be paid at less than minimum wage according to the Fair Labor Standards Act. The Independent Choices Program cash benefit is based on the hours authorized for [self-management/ADL](#) tasks paid at the hourly rates. Participants of the Independent Choices Program may determine their own employee provider pay rates.

(c) When two or more individuals eligible for [self-management/ADL](#) task hours live in the same household, the assessed [self-management/ADL](#) need of each individual must be calculated. Payment shall be made for the highest of the allotments and a total of four additional [self-management/ADL](#) hours per month for each additional individual to allow for the specific [self-management/ADL](#) needs of the other individuals.

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

(e) Notwithstanding any other rule, an individual requesting a contested case hearing on the IADL service plan reductions effective January 1, 2012 resulting from the implementation of this rule are not entitled to continuation of benefits pending the outcome of a contested case hearing.

(4) TWENTY-FOUR HOUR AVAILABILITY.

(a) Payment for twenty-four hour availability shall be authorized only when an individual employs a live-in homecare worker or Independent Choices Program employee provider and requires twenty-four availability due to the following:

(A) The individual requires assistance with ADL or ~~self-management~~ADL tasks at unpredictable times throughout most 24 hour periods; and

(B) The individual requires minimal, substantial, or full assistance with ambulation and requires assistance with transfer (as defined in OAR 411-015-0006); or

(C) The individual requires full assistance in transfer or elimination (as defined in OAR 411-015-0006); or

(D) The individual requires full assist in at least three of the eight components of cognition/behavior (as defined in OAR 411-015-0006).

(b) The number of hours allowed per month shall have the following maximums. Hours authorized are based on the service needs of the individual. Case managers may authorize up to the amount of hours identified in these assistance levels (minimal, substantial, or full assist).

(A) Minimal assistance -- 60 hours. Minimal assistance hours may be authorized when an individual requires one of these assessed needs as defined in OAR 411-015-0006:

(i) Full assist in cognition; or

(ii) Full assist in toileting or bowel or bladder.

(B) Substantial assistance -- 110 hours. Substantial assistance hours may be authorized when an individual requires these assessed needs as defined in OAR 411-015-0006:

(i) Assist in transfer; and

(ii) Assist in ambulation; and

(iii) Full assist in cognition; or

(iv) Full assist in toileting or bowel or bladder.

(C) Full assistance -- 159 hours. Full assistance hours may be authorized when:

(i) The authorized provider cannot get at least five continuous hours of sleep in an eight hour period during a 24-hour work period; and

(ii) The eligible individual requires these assessed needs as defined in OAR 411-015-0006:

(I) Full assist in transfer; and

(II) Assist in mobility; or

(III) Full assist in toileting or bowel or bladder; or

(IV) Full assist in cognition.

(c) Service plans that include full-time live-in homecare workers or Independent Choices Program employee providers must include a minimum of 60 hours per month of twenty-four hour availability. When a live-in homecare worker or Independent Choices Program employee provider is employed less than full time, the hours must be pro-rated. Full-time means the live-in homecare worker is providing services to the client-employer seven days per week throughout a calendar month.

(d) Rates for twenty-four hour availability shall be in accordance with the rate schedule and paid at less than minimum wage according to the Fair Labor Standards Act and ORS 653.020(2).

(e) Twenty-four hour availability assumes the homecare worker is available to address the service needs of an individual as they arise throughout a 24 hour period. A homecare worker who engages in employment outside the eligible individual's home or building during the work periods ~~he or she~~ the homecare worker is on duty ~~as a homecare worker~~, is not considered available to meet the service needs of the individual.

(5) Under no circumstances shall any provider receive payment from [SPD the Department](#) for more than the total amount authorized by [SPD the Department](#) on the service plan authorization form. All service payments must be prior-authorized by [SPD the Department/AAA](#).

(6) AUTHORIZED HOURS ARE SUBJECT TO THE AVAILABILITY OF FUNDS. 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) which could reduce the individual's reliance on paid in-home services hours.

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

(8) Payment by [SPD the Department](#) for waived in-home services shall only be made for those tasks described in this rule as ADL, [self-management](#) ADL tasks, and twenty-four hour availability. Services must be authorized to meet the needs of the eligible individual and may not be provided to benefit the entire household.

(9) 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 (defined 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 [SPD central office the Department](#) when the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050 is met.

(c) Monthly service plans that exceed [389-380](#) hours per month for a live-in homecare worker or Independent Choices Program employee provider, or that exceed the equivalent monthly service payment for an hourly services plan, may be approved by [SPD central office the](#)

[Department](#) when the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050 is met.

(d) As long as the total number of [self-management/ADL](#) task hours in the service plan does not exceed [85-76](#) hours per month and the service need is documented, the hours authorized for [self-management/ADL](#) tasks may exceed the hours for full assistance (as defined 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 the individual; or

(C) Extraordinary [self-management/ADL](#) needs in medication management or service-related transportation.

(e) Monthly service plans that exceed [85-76](#) hours per month in [self-management/ADL](#) tasks may be approved by [SPD-central office](#) [the Department](#) when the individual meets the exceptional payment criteria identified in OAR 411-027-0020 and OAR 411-027-0050.

Stat. Auth.: ORS 409.050, 410.070 & 410.090

Stats. Implemented: ORS 410.010, 410.020 & 410.070