

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 Division      411

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

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Rules Coordinator	Address	Telephone
to become effective <b>[upon filing]</b> through <b>[June 13, 2012]</b> .		
<small>Date upon filing or later</small>	<small>A maximum of 180 days including the effective date.</small>	

**RULE CAPTION**

**Home Delivered Meals**

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**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:**  
411-040-0000  
  
**SUSPEND:**

Stat. Auth.: **ORS 410.070, 411.060, & 411.070**

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Other Auth.:

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Stats. Implemented: **ORS 410.070**

**RULE SUMMARY**

The Department of Human Services (Department) is temporarily amending OAR 411-040-0000 to clarify the eligibility standards for home delivered meals and to clearly define the standards for all Medicaid paid providers of home delivered meals.

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<b>Signed Patricia E. Baxter, Chief Operations Officer</b>	<b>December 16, 2011</b>
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

Secretary of State

**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

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Agency and Division

Administrative Rules Chapter Number

In the Matter of: **The temporary amendment of 411-040-0000 relating to home delivered meals.**

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

**Home Delivered Meals**

Statutory Authority: **ORS 410.070, 411.060, & 411.070**

Other Authority:

Stats. Implemented: **ORS 410.070**

Need for the Temporary Rule(s):

The Department had previously developed standards for home-delivered meals that were incorporated into provider agreements. The Oregon Court of Appeals recently ruled that provider agreements incorporating those standards may not be enforced because the standards had not first been promulgated as rules. The Department disagrees with the Court of Appeals' analysis and is seeking Supreme Court review of the decision. However, the Department has concluded that to ensure the Department's ability to enforce the standards, the Department needs to temporarily amend OAR 411-040-0000 to clarify the eligibility standards for home delivered meals and to clearly define the standards for all Medicaid paid providers of home delivered meals.

Documents Relied Upon, and where they are available:

**2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs**  
*Available at: <http://www.dhs.state.or.us/spd/tools/cm/hdm/standards.pdf>*

Justification of Temporary Rule(s):

Failure to act promptly will result in serious prejudice to the Department, providers of home delivered meals, and vulnerable individuals who are currently receiving or will receive Medicaid funded home delivered meals.

The Department is at risk of being unable to ensure enforcement of nutrition standards providers of home delivered meals must adhere to as described in the Department's 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs. This would pose an immediate risk to the health, safety, and well-being of vulnerable

individuals who are currently receiving or will receive Medicaid funded home delivered meals.

Adopting temporary rules will allow the Department to immediately ensure enforcement of nutrition standards in its home delivered meal program.

These rule changes cannot wait to be implemented after the full 49-day permanent rulemaking procedure because these changes must be implemented immediately.

Signed Patricia E. Baxter, Chief Operations Officer

December 16, 2011

Signature

Date

Administrative Rules Unit, Archives Division, Secretary of State, 800 Summer Street NE, Salem, Oregon 97310. ARC 945-2005

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

**CHAPTER 411  
DIVISION 40**

**HOME DELIVERED MEALS**

**411-040-0000 Home Delivered Meals**

*(Temporary Effective 12/20/2011 – 6/13/2012)*

(1) Medicaid paid Hhome delivered meals, exclusive of those funded through the Older Americans Act or Oregon Project Independence, constitute a service that ~~can~~may be provided as part of a waived services care plan to assist ~~a client~~an individual to remain in ~~his/her~~the individual's own home.

(2) To be eligible for Medicaid paid home delivered meals, an individual must comply with the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs.

(3) Applicants determined ineligible to receive Medicaid paid home delivered meals but who need food assistance shall be directed to the nearest AAA or appropriate food assistance programs.

(4) All Medicaid paid providers of home delivered meals must:

(a) Meet the basic, administrative, and program requirements as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs;

(b) Follow the food service sanitation and safety requirements for Medicaid paid home delivered meals as directed in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs;

(c) Provide nutrition education as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs;

(d) Plan menus that meet the requirements as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs; and

(e) Establish a means of soliciting participant input as described in the Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs.

(5) The Department's October 2008 Nutrition Program Standards for Medicaid Paid Home Delivered Meal Programs may be found anytime at: <http://www.dhs.state.or.us/spd/tools/cm/hdm/standards.pdf> or is available from the Department upon request

(26) Payment for meals delivered to ~~the client~~ an individual at ~~his/her~~ the individual's home may be provided when other plans do not appear feasible and home delivered meals are determined by the Department's ~~local unit or AAA~~ to be more appropriate for the client's needs than nursing facility care. The cost for these meals shall be calculated into the service plan in conjunction with in-home services provided by a client-employed provider or a home care agency.

(37) All requests for home delivered meals ~~will~~ shall be referred to the Department's ~~local unit or AAA~~.

(48) The Department's ~~unit staff are responsible for~~ shall establishing ~~establish~~, ~~authorizing~~ authorize, ~~purchasing~~ purchase, and ~~monitoring a plan~~ monitor the standards for Medicaid paid home delivered meals.

(59) ~~Clients who are~~ Individuals required to make a monthly payment under OAR 461-185-0050 in order to remain eligible for Medicaid waiver services must have their home-delivered meal costs calculated in conjunction with their in-home service provider costs.

(a) To remain eligible for waiver services, pay-in clients are responsible for payment of authorized home-delivered meals received up to their specified monthly pay-in amount. Client pPayments due for meal services ~~are to~~ shall be included as part of the monthly sum ~~sent~~ and the individual must send the payment to

the Department's pay-in unit rather than making any direct payments to the Medicaid paid home delivered meal provider.

(b) The Department ~~is responsible for shall~~ direct payments made to Medicaid paid home delivered meal providers for all authorized home-delivered meals to waiver service eligible clients. Direct payment from the Department ~~includes shall include the~~ meals paid through the client's individual's monthly pay-in and for meals that exceed the client's individual's total monthly liability.

(610) For clients individuals whose meals are delivered through an Older Americans Act (OAA) meal service program, ~~which that~~ also contracts as a Medicaid paid home delivered meals provider:

(a) ~~Clients Individuals~~ receiving home-delivered meals authorized and paid for by the Department shall be officially informed by the ~~case manager Department or AAA~~ that there is no obligation to make any voluntary or suggested donation for this service. However, if the client individual chooses to make a voluntary donation, there is no restriction from doing so.

(b) ~~If the client has a monthly payment to the Department under OAR 461-185-0050 in order to remain eligible for services, t~~The criteria in ~~both subsections (5) section (9) of this rule and subsection (6)-(a) of this rule-section~~ applies ~~to them to individuals that must submit a monthly payment to the Department under OAR 461-185-0050 in order to remain eligible for services.~~

(c) ~~A client who~~An individual who meets the criteria in ~~sub~~sections (26) or (59) of this rule and is age 65 or older, may choose to receive meals through the ~~Older Americans Act (OAA)~~ meal service program and ~~can may~~ make voluntary donations. For clients individuals required to make a monthly payment under OAR 461-185-0050, these donations ~~may not to be are not~~ credited toward the pay-in liability. In turn, OAA meal programs are not mandated to provide home-delivered meals to Medicaid waiver service clients, age 65 and older, unless the agency is a Medicaid-contracted meal provider and the meals are authorized and paid for by the Department.

Stat. Auth.: ORS 410.070, 411.060, & 411.070  
Stats. Implemented: ORS 410.070