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Oregon Department of Human Services, Public Health Division

333

Agency and Division

Administrative Rules Chapter Number

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to become effective January 1, 2008. Rulemaking Notice was published in the November 2007 *Oregon Bulletin*.**
Date upon filing or later Month and Year

RULE CAPTION

In-Home Care Agencies

RULEMAKING ACTION

ADOPT: 333-536-0105, 333-536-0115

AMEND: 333-536-0005, 333-536-0010, 333-536-0015, 333-536-0020, 333-536-0030, 333-536-0040, 333-536-0050, 333-536-0070, 333-536-0075, 333-536-0080, 333-536-0085, 333-536-0090, 333-536-0095

REPEAL: 333-536-0100

RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

AMEND & RENUMBER: Secure approval of rule numbers with the Administrative Rules Unit prior to filing.

FILED

DEC 19 2007

**ARCHIVES DIVISION
 SECRETARY OF STATE**

ORS 443.340

Stat. Auth.

Other Authority

ORS 443.305 – 443.350; ORS 443.425; SB 958 (Chapter 897, 2007 Laws)

Stats. Implemented

RULE SUMMARY

The Oregon Department of Human Services, Public Health Division is adopting rules 333-536-0105 and 333-536-0115 to implement Senate Bill 958 (Chapter 897, 2007 Laws, ef. January 1, 2008). Amendments to rules in Division 536 include fee changes and authorize DHS to issue civil penalties. Other amendments will clarify requirements regarding in-home care agencies and make housekeeping changes.

William J. Coulombe

Authorized Signer

Date

William J. Coulombe, Deputy Public Health Director

Printed name

*With this original, file one photocopy of certificate, one paper copy of rules listed in Rulemaking Actions, and electronic copy of rules.

**The *Oregon Bulletin* is published on the 1st of each month and updates the rule text found in the Oregon Administrative Rules Compilation. Notice forms must be submitted to the Administrative Rules Unit, Oregon State Archives, 800 Summer Street NE, Salem, Oregon 97310 by 5:00 pm on the 15th day of the preceding month unless this deadline falls on a Saturday, Sunday or legal holiday when Notice forms are accepted until 5:00 pm on the preceding workday.

ARC 930-2005

PH 14-2007

Oregon Administrative Rules
DEPARTMENT OF HUMAN SERVICES, PUBLIC HEALTH
CHAPTER 333

DIVISION 536
IN-HOME CARE AGENCIES

333-536-0005

Definitions

As used in 333-536-0000 through 333-536-0095, the following definitions apply:

(1) Abuse.

(A) As it applies to an adult, includes but is not limited to:

(i) Any physical injury caused by other than accidental means, or that appears to be at variance with the explanation given of the injury.

(ii) Neglect that leads to physical harm through withholding of services necessary to maintain health and well-being.

(iii) Abandonment, including desertion or willful forsaking of a person or the withdrawal or neglect of duties and obligations owed a person.

(iv) Willful infliction of physical pain or injury.

(v) Use of derogatory or inappropriate names, phrases or profanity, ridicule, harassment, coercion, threats, cursing, intimidation or inappropriate sexual comments or conduct of such a nature as to threaten significant physical or emotional harm to a person.

(vi) Wrongfully taking or appropriating money or property, of knowingly subjecting a person to harm by conveying a threat to wrongfully take or appropriate money or property, which threat reasonably would be expected to cause the person to believe that the threat will be carried out.

(vii) Sexual contact with a non-consenting person or with a person considered incapable of consenting to a sexual act as described in ORS 163.315. As used in this paragraph, "sexual contact" has the meaning given that term in ORS 163.305.

(B) As it applies to a child, has the same meaning as "abuse" as that term is defined in ORS 419B.005.

(2) "Activities of Daily Living" means self-care activities that must be accomplished by an individual to meet his or her daily needs.

(3) "Agency" means In-Home Care Agency.

(4) "Authentication" means verification by the author that an entry in the client record is genuine.

(5) "Branch office" means a location or site from which an in-home care agency provides services within a portion of the total geographic area served by the parent agency. The site of the branch office generally does not exceed one hour of travel time from the parent agency. The branch office is part of the in-home care agency and is located sufficiently close to share administration, supervision, and services in a manner that renders it unnecessary for the branch to independently meet the requirements of an in-home care agency.

(6) "Caregiver" means a person providing assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by these rules.

- (7) "Client Representative" means:
- (a) A parent, stepparent, foster parent, or other adult with primary caregiving responsibility for the client when the client is a child; or
 - (b) An individual, paid or unpaid, related or unrelated, who acts on behalf of, or cares for the client when the client is an adult.
- (8) "Department" means the Department of Human Services.
- (9) "Governing Body" means the owner or designee legally responsible for the direction and control of the operation of the in-home care agency.
- (10) "Home health agency" means a public or private agency that provides coordinated home health services on a home visiting basis. Home health agencies provide skilled nursing services and at least one of the following therapeutic services:
- (a) Physical therapy;
 - (b) Occupational therapy;
 - (c) Speech therapy;
 - (d) Home health aide services.
- (11) "In-home care agency" means an agency primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services as defined in ORS 443.005.
- (12) "In-home care services" means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.
- (13) "Licensed" means that the person or agency for which the term applies is currently licensed, certified, or registered by the proper authority within the State of Oregon.
- (14) "Medication assistance" means self-administration of non-injectable medication which the client is not physically able to administer to him or herself, but fully self directs its administration.
- (15) "Medication administration" means agency staff administering medications to a client or directly supervising the client who is not able or not willing to self-direct, but may be physically able to perform the tasks.
- (16) "Medication set up" means taking the client's medications from original containers and putting the medications into closed secondary containers designed and manufactured for this purpose.
- (17) "Parent agency" means the in-home care agency that develops and maintains administrative controls of subunits or branch offices.
- (18) "Personal care services" means the provision of or assistance with tasks intended to supplement a client's own personal abilities which are necessary to accomplish the client's activities of daily living and other activities as described in OAR 333-536-0045(1), and are preventive and maintaining in nature.
- (19) "Registered Nurse" (RN) means a person licensed under ORS Chapter 678.
- (20) "Schedule caregivers" means to plan appointments for caregivers to deliver specific in-home care services to clients; the times and dates of these appointments are set by the in-home care agency.
- (21) "Skilled nursing services" means the patient care services pertaining to the curative, rehabilitative, and/or preventive aspects of nursing performed by, or under the

supervision of, registered nurse pursuant to the plan of treatment established by a physician or nurse practitioner.

(22) "Stable and predictable condition" means a situation where the client's clinical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation.

(23) "Subunit" means an in-home care agency that provides for a parent agency in a geographic area different from that of the parent agency and generally exceeding one hour of travel time from the location of the parent agency.

(24) "Written "pro re nata (prn) parameters" means directions that are so specific that the unlicensed caregivers uses no discretion when administering prn (as needed) medications or treatments.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0010

Licensure

(1) An agency that establishes, conducts, or represents itself to the public as providing in-home care services must be licensed by the Department and must comply with ORS 443.305 through 443.350 and these rules. The provisions of ORS 443.305 through 443.350 do not apply to organizations licensed, registered or certified under ORS 101.030, 410.495, 443.410, 443.485, 443.725, 443.860, or 443.886. The provisions of ORS 443.305 through 443.350 do not apply to independent individuals, volunteers, family, neighbors, or to agencies offering only housekeeping or on-call staffing for facilities, or to support services provided and funded by the Department. Entities that provide referral or matching services that link in-home care services with clients are not required to be licensed under these rules, unless they do one or more of the following:

- (a) Schedule caregivers (as defined in OAR 333-536-0005(17));
- (b) Assign work;
- (c) Assign compensation rates;
- (d) Define working conditions;
- (e) Negotiate for a caregiver or client for the provision of services; or
- (f) Place a caregiver with a client.

(2) Application for a license to operate an in-home care agency shall be in writing on a form provided by the Department and shall include demographic, ownership and administrative information about the agency.

(3) If any of the information delineated in the agency's most recent application changes at a time other than the annual renewal date, the agency shall notify the Department in writing within 30 days of the change.

(4) No entity shall provide in-home care services or use the term "in-home care agency" in its advertising, publicity, or any other form of communication unless it holds a current valid license as an in-home care agency in accordance with the provisions within.

(5) An agency that submits a completed application for licensure must demonstrate to the Department substantial compliance with these administrative rules through the survey process.

(6) The Department may reissue an agency license that has been suspended or revoked after the Department determines that compliance with these rules has been achieved.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0015

Initial Licensure

(1) Upon receipt of a completed initial application and the required fee, the Department may conduct a survey of the agency or any subunit(s) to determine if the agency or subunit is in compliance with these rules, and has the intent to provide in-home care services. If an agency or subunit is in compliance and intends to provide in-home care services to individuals, a license may be issued for the operation of the agency or subunit.

(2) Each license shall be issued only for the agency or subunit named in the application and shall not be transferable or assignable. If the ownership of the agency or subunit changes, the new owner shall apply for a license.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0020

Licensure Fees

(1) The fee for an initial in-home care agency license shall be \$1500. If the agency has subunits, the fee for an initial license shall be \$1500 for the parent agency, plus an additional \$750 for each subunit.

(2) The fee for a renewed in-home care agency license shall be \$750. If the agency has subunits, the fee for a renewed license shall be \$750 for the parent agency, plus an additional \$750 for each subunit.

(3) If the ownership of an agency changes other than at the time of the annual renewal, the new owner's agency licensure fee shall be \$350. If the new owner's agency has one or more subunits, this fee shall be \$350 for the parent agency, plus an additional \$350 for each subunit. Licenses are not transferable.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0030

Civil Penalties; Denial, Suspension, or Revocation of License

(1) The Department may impose civil penalties in the manner provided in ORS 183.745 for a violation of any provision of ORS 443.305 to 443.350 or with rules adopted thereunder, not to exceed \$2500 per violation. Failure to comply with ORS 443.305 to 443.350 includes but is not limited to:

- (a) Failure to provide a written disclosure statement to the client or the client's representative prior to in-home care services being rendered;
- (b) Failure to provide the contracted in-home care services; or
- (c) Failure to correct deficiencies identified during a Department inspection or complaint investigation.

(2) A notice of civil penalty shall include a statement of appeal rights as provided in ORS 183.745.

(3) The Department shall maintain for public inspection, records of any civil penalties imposed on in-home care agencies under this rule.

(4) A license for an in-home care agency may be denied, suspended or revoked by the Department when the an in-home care agency has failed to comply with ORS 443.305 through 443.350 or with OAR 333-536-0000 through 333-536-0095, including but not limited to an owner or manager of the in-home care agency permitting, aiding or abetting any illegal act affecting the welfare of the client. Actions taken under this section shall comply with ORS 183.413 to 183.470.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0040

Department Procedures

Complaint Investigations and Inspections:

(1) Complaint Investigations:

(a) Any person may make a complaint to the Department regarding violations of in-home care agency laws or regulations. An unannounced complaint investigation will be carried out within 45 calendar days of the receipt of the complaint and may include, but is not limited to: Interview of the complainant, client(s), witnesses, and agency management and staff; observations of the client(s), staff performance, client environment; and review of documents and records. Should the complaint allegations represent an immediate threat to the health or safety of a client, the Department will notify appropriate authorities to ensure a client's safety, and an investigation will be commenced within two working days.

(b) Copies of all complaint investigation reports and statements of deficiencies, which are not exempt from disclosure, will be available from the Department provided that the identity of any complainant or client referred to in an investigation will not be disclosed without legal authorization.

(2) Abuse and Protective Services Investigations:

(a) The in-home care agency shall cooperate with investigations of allegations of client abuse and protective service activities conducted by, or according to procedures established by, the Department.

(3) Inspections:

(a) The Department shall, in addition to any inspections conducted pursuant to complaint investigations, conduct an on-site inspection of each in-home care agency prior to services being rendered and once every three years thereafter as a requirement of licensing.

(b) Inspections may include but not be limited to those procedures stated in subsection (1)(a) of this rule.

(c) When documents and records are requested under section (1) or (2) of this rule, the agency shall make the requested materials available to the investigator for review and copying.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0050

Organization, Administration, and Personnel

- (1) An agency shall clearly set forth in writing the organization, services provided, administrative control, and lines of authority and responsibility from the owner to the client-care level.
 - (a) An agency shall not assign administrative and supervisory functions to another agency or organization.
 - (b) The agency shall control and be responsible for all services provided, including those provided through contractual agreements between the agency and caregivers or licensed nurses.
 - (c) An in-home care agency shall be required to maintain administrative and professional oversight to ensure the quality of services provided.
- (2) Geographic service area:
 - (a) The agency shall identify in writing the geographic area in which it generally intends to provide services.
 - (b) The geographic service area shall be within a distance from the parent agency which ensures appropriate and timely delivery and supervision of services.
- (3) If the agency operates a branch office:
 - (a) The branch office shall be located within the parent agency's geographic service area at a distance from the parent agency that generally does not exceed one hour's travel time.
 - (b) The branch office shall be operated under the management and supervision of the parent agency. Administrative and personnel functions must be retained at the parent agency. The branch office must not function as an independent agency.
 - (c) Services must not be provided from the branch office until the branch office has been added to the license of the parent agency in accordance with Department procedures.
- (4) If the agency provides services from an office located outside of the parent agency's geographic service area, that office will constitute a subunit of the agency. If the agency has subunits:
 - (a) The subunit shall have its own staff, separate from parent agency staff, and shall operate independently of the parent agency.
 - (b) The subunit shall independently meet all licensing requirements, be separately licensed from the parent agency, and pay a separate licensure fee.
- (5) An agency's owner or designee shall:
 - (a) Assume full legal, financial, and overall responsibility for the agency's operation; and
 - (b) Serve as, or employ, a qualified manager.
- (6) The manager hired on or after the effective date of these rules shall meet the following qualifications:
 - (a) Possess a high school diploma or equivalent; and
 - (b) Have at least two years of professional or management experience in a health-related field or program.
- (7) The manager or designee shall be accessible and available during all hours in which services are being provided to clients. The manager shall designate, in writing, a qualified individual to act as manager in his or her absence.
- (8) The manager or designee shall be responsible for:
 - (a) Organizing and directing the agency's ongoing functions;
 - (b) Developing and implementing written and current policies and procedures necessary to direct the administrative, personnel, and client care operations of the agency, including but not limited to the requirements in these rules;

- (c) Ensuring the completeness and accuracy of all information provided to the public regarding the agency and its services;
- (d) Ensuring the provision of safe and appropriate services in accordance with written service plans;
- (e) Ensuring that all individuals providing services for the agency meet the qualification, orientation, competency, training, and education requirements in the rules;
- (f) Ensuring that personnel and client care practices are consistent with the agency's written policies and procedures.
- (g) Ensuring that client care assignments are based on the caregiver's abilities, skills, and competence;
- (h) Ensuring that agency does not accept or retain clients for whom it does not have the capabilities or resources to provide services;
- (i) Ensuring the timely internal investigation of complaints, grievances, accidents, incidents, medication or treatment errors, and allegations of abuse or neglect involving individuals providing services for the agency. The agency shall maintain in its records documentation of the complaint or event, the investigation, the results, and actions taken;
- (j) Ensuring the timely reporting of allegations of abuse or neglect to the appropriate authority that includes but is not limited to Department or local law enforcement agency.
- (9) Personnel records for all caregiver and nursing staff, both employees and contracted staff, shall include at a minimum the following:
 - (a) Evidence of pre-employment screening;
 - (b) Evidence that the in-home care agency ensures that a criminal background check has been conducted on all individuals employed by or contracting with the agency as in-home caregivers.
 - (A) The in-home care agency must insure that a criminal background check has been conducted on all new employees hired after the effective date of these rules.
 - (B) The in-home care agency must insure that a criminal background check has been conducted on all current employees within six months of the effective date of these rules. If the screening indicates that the employee has been convicted for crimes against an individual or property, the agency shall make a determination of the employee's fitness to provide care to clients.
 - (c) Evidence that all position qualifications have been met, including required licensure;
 - (d) Current position job description(s) signed by the individual(s);
 - (e) Evidence of orientation, training, competency, and ongoing education;
 - (f) Evidence of annual performance evaluations;
 - (g) Evidence of compliance with agency employee health policies.
 - (h) Evidence of a current Driver's License with current auto insurance for each individual whose duties include transporting clients in motor vehicles; and
 - (i) Current signed contract(s), if applicable, as specified in paragraph (10) of these rules.
- (10) An agency contracting with individuals, or with another agency or organization, to provide personal care services to its clients shall enter into a written contract with each party under which services to the agency clients are provided. The written contract shall clearly stipulate:
 - (a) The services to be provided by the contractor;
 - (b) That the clients are the clients of the agency and not the contractor;

- (c) The requirement that the contractor conform to all of the agency's client care and personnel policies; and
- (d) The terms of the agreement and basis for renewal or termination.
- (11) The agency shall comply with all applicable state and local laws, statutes, rules, and ordinances.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0070

Caregiver Qualifications and Requirements

The personal care provided by the agency shall be rendered by qualified and trained employees or contracted caregivers under the supervision of the manager or designee. The services shall be provided as requested by the client or client's representatives in accordance with these rules and the service plan.

- (1) The manager shall ensure that the agency has qualified and trained employees or contracted caregivers sufficient in number to meet the needs of the clients receiving services.
- (2) Caregivers must be at least 18 years of age and shall have sufficient communication and language skills to enable them to perform their duties and interact effectively with clients and other agency staff.
- (3) Caregivers shall complete an agency-specific orientation, conducted by the agency manager or designee, before independently providing services to clients.
 - (a) The orientation shall include, but not be limited to, the following subject areas:
 - (A) Caregivers' duties and responsibilities;
 - (B) Clients' rights;
 - (C) Ethics, including confidentiality of client information;
 - (D) The agency's infection control policies;
 - (E) A description of the services provided by the agency;
 - (F) Assignment and supervision of services;
 - (G) Documentation of client needs and services provided;
 - (H) The agency's policies related to medical and non-medical emergency response;
 - (I) The roles of, and coordination with, other community service providers; and
 - (J) Other appropriate subject matter based on the needs of the special populations served by the agency.
 - (b) The content of the orientation, the date(s) and length, and the name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.
- (4) Caregivers shall complete appropriate training before independently providing services to clients.
 - (a) Caregiver training shall be based on the services provided by the in-home care agency, including, as applicable, the following topics:
 - (A) Caregivers' duties and responsibilities;
 - (B) Recognizing and responding to medical emergencies;
 - (C) Dealing with adverse behaviors;
 - (D) Nutrition and hydration, including special diets and meal preparation and service;
 - (E) Appropriate and safe techniques in personal care tasks;

- (F) Methods and techniques to prevent skin breakdown, contractures, and falls;
 - (G) Handwashing and infection control;
 - (H) Body mechanics;
 - (I) Maintenance of a clean and safe environment;
 - (J) Fire safety and non-medical emergency procedures; and
 - (K) Assisting clients with self-directed or client's representative-directed non-injectable medication administration.
- (b) The content of the training, the date(s) and length, and name(s) and signature(s) of the instructor(s) shall be clearly documented for each caregiver and maintained in personnel records.
- (c) Caregivers with proof of current or previous Oregon health-care related licensure or certification are exempt from in-home caregiver training.
- (d) Caregivers moving from one office to another in the same in-home care agency are not subject to additional training requirements, provided previous training is documented.
- (e) Caregivers who have completed training previously, and have documentation of that training, shall have their competency evaluated by an agency representative, and any potential training may be limited to areas requiring improvement after the evaluation.
- (f) Documentation of training and competency evaluations shall be included in the caregiver's personnel record.
- (5) Caregiver Selection and Review of Service Plan.
- (a) The skills of the caregiver must be matched with the care needs of the client. The manager or designee must assign caregivers to specific clients based on the care needs of the clients and the skills of the caregivers. The caregivers must receive additional training as appropriate to meet the individual needs of assigned clients.
- (b) The client's service plan must be reviewed with each caregiver before the initial delivery of client care. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.
- (c) The updated client's service plan must be reviewed with each caregiver when changes to the plan are made. The date of the review(s), the signature of the agency supervisor or designee and the list of assigned caregivers must be documented.
- (d) Caregivers must provide services to clients in accordance with the service plans.
- (6) Caregiver supervision.
- (a) The manager or designee must conduct supervisory visits to the client's residence:
- (A) Within two weeks of the initiation of the services while a caregiver is providing services, and
 - (B) Quarterly monitoring thereafter. The first quarterly visit must be in person. Subsequent visits may occur by phone or by other electronic means at the discretion of the manager or designee under the following circumstances: impending discharge from services; relocation to a facility; when minimal services--such as one shift a month--would cause the client to incur undue financial burden; or, due to other circumstances that are justified in chart note(s) by the manager. In no case shall the time between supervisory in-person monitoring visits exceed a six-month period.
- (b) Each supervisory visit to observe and report on the client's status must be documented, dated, and signed by the supervisor. The caregiver may be present during the supervisory visit.
- (c) The manager or designee must, during a supervisory visit, document:

- (A) Whether appropriate and safe techniques have been used in the provision of care;
- (B) Whether the service plan has been followed as written or needs to be updated;
- (C) Whether the service plan is meeting the client's needs;
- (D) Whether the caregiver has received sufficient training for this client; and
- (E) Whether appropriate follow-up of any service or service plan issues or problems identified as a result of the supervisory visit will be necessary.
- (d) If services are provided in a non-residential setting in accordance with the service plan, supervisory visits which conform to the requirements in paragraphs (a) and (b) of this section must also be conducted at the non-residential location.
- (e) When the caregiver is not present, the supervisor shall contact the caregiver, observe the client and the environment, document the assessment of the client/caregiver relationship and determine whether the goals of the service plan are being met.
- (7) Caregivers shall receive a minimum of six (6) hours of education related to caregiver duties annually.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0075

Medication Services

If the agency provides non-injectable medication services as described in OAR 333-536-0045 (2)(a), the services shall be rendered to persons who meet the requirements of (8) of this rule. The services shall be provided as requested by the client or client's representatives in accordance with these rules, accepted standards of medication practice, and the service plan.

- (1) If the agency provides medication administration or medication set-up, the services shall be rendered by qualified and trained employees or contracted caregivers. The services shall be provided as requested by the client or client's representative in accordance with these rules, accepted standards of medication practice and the service plan.
- (2) If medication set up is done by a client representative or family member and not the agency caregiver, then the client representative or family member shall:
 - (a) Sign a medication set up consent form that spells out the representative's or family member's obligations which includes;
 - (A) Providing a list of the client's medication and a physical description of each with any special instructions, updating as appropriate;
 - (B) Keeping the original labeled medication containers in the home for verification should the caregiver have questions about medication set up; and
 - (C) Providing instructions for setting up medications in closed secondary containers designed and manufactured for this purpose.
- (3) The agency record shall include either physician orders, or a copy of the client's prescription and medication administration record.
- (4) The agency manager shall be responsible for developing and implementing safe and appropriate medication administration delivery systems that ensure each client receives the right medication, in the right amount, by the right route, and at the right time.
 - (a) The agency's medication practices must be consistent with the agency's current written policies and procedures that include, but are not limited to:

- (A) Provisions to ensure that prescribed changes in each client's medication regimen are documented and implemented;
- (B) Provisions to ensure that the caregivers are informed about the potential adverse reactions, side effects, drug-to-drug interactions and food-to-drug interactions, and contraindications associated with each client's medication regimen;
- (C) Provisions to ensure that the caregivers promptly report problems or discrepancies related to each client's medication regimen to the caregivers' supervisor.
- (5) The client's service plan must specify the medication tasks to be performed. All agency record(s) shall have complete medication instructions that include the name of each medication, the dosage to be administered, the route of administration, the frequency of administration, the name of the agency staff who filled the container, and any special instructions necessary for safe and appropriate administration.
- (6) Packaging and labeling:
 - (a) Prescription medications shall be in the original pharmacy containers and clearly labeled with the pharmacists' labels.
 - (b) Samples of medications received from the physician or practitioner shall be in the original containers and have the original manufacturers' labels.
 - (c) Over-the-counter medications shall be in the original containers and have the original manufacturers' labels.
 - (d) Secondary containers and all removable compartments must be labeled with the client's name, the date and time of the set-up, and the specific time the medications in that compartment are to be administered.
 - (e) Liquid and non-pill medications that cannot be put in secondary containers shall be appropriately labeled.
- (7) The provision of medication tasks as described in this section shall be documented by the individuals performing the tasks. The documentation shall include the tasks completed, the date and signature of the individual(s) performing the task(s), and shall be maintained in the client's agency record.
- (8) Visits by a registered nurse to provide periodic observation and inspection shall be conducted at least every 90 days.
- (9) Agency caregivers assigned to provide medication services must be given basic non-injectable medication training before providing the services. The medication training must include successful return demonstrations of non-injectable medications tasks by the caregivers.
 - (a) The medication training shall include at least the following areas:
 - (A) Medication abbreviations;
 - (B) Reading medication orders and directions;
 - (C) Reading medication labels and packages;
 - (D) Setting up medication labels and packages;
 - (E) Administering non-injectable medications:
 - (i) Pill forms, including identification of pills that cannot be crushed;
 - (ii) Non-injectable liquid forms, including those administered by syringe or dropper and eye and ear drops;
 - (iii) Suppository forms; and
 - (iv) Topical forms.

(F) Identifying and reporting adverse medication reactions, interactions, contraindications and side effects; and

(G) Infection control and safety related to medication administration.

(b) Prior to providing medication services, the caregivers shall demonstrate appropriate and safe techniques in the provision of medication tasks described in this section.

(c) The content of the medication training, the dates and length of training, the identity of the instructor, evidence of successful return demonstrations, and the instructor's statement that the caregiver has been evaluated to be competent to provide the medication services described in this section shall be clearly documented for each caregiver and maintained in the agency's personnel records.

(d) An individual with a current Oregon State Board of Nursing medication assistant (CMA) certification who has worked as a CMA continuously for a one-year period within the two years before employment by the agency is exempt from the training requirements in this rule.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0080

Nursing Services

If the agency provides nursing services as described in OAR 333-536-0045(2)(b), the services must be provided by an Oregon-licensed registered nurse employed by or contracted with the agency and provided only to a client whose medical condition and health status is stable and predictable. The services shall be provided as requested by the client or the client's representative and shall be in accordance with the administrative rules of the Oregon State Board of Nursing (OAR chapter 851), accepted standards of nursing practice, and the service plan:

(1) Nursing services shall consist of: assessment, monitoring, provision of intermittent nursing care, and delegation of special tasks of nursing care to unlicensed persons, for clients with stable, predictable, or chronic health conditions.

(2) Delegation to the agency caregivers of special tasks of nursing care, including the administration of subcutaneous injectable medications, for clients whose conditions are stable and predictable shall be in accordance with the Oregon State Board of Nursing Administrative Rules for Registered Nurse Delegation and Assignment of Nursing Care Tasks to Unlicensed Person (OAR 851-047-0000 through 851-047-0040).

(3) The registered nurse must conduct and document a nursing assessment of the client to identify the client's nursing needs before provision of nursing services as described in this section. The assessment must be dated and signed and maintained in the client's in-home care record.

(4) The registered nurse shall participate in the development and updates of the service plan when nursing services, as described in this section, have been requested.

(a) The service plan shall include the aspects of assessment and monitoring, the specific tasks of nursing care, and the delegation of special tasks of nursing care to be conducted by the registered nurse. The service plan shall also include measurable client goals or desired outcomes specific to the nursing services being provided.

(b) When special tasks of nursing care have been delegated, the service plan shall clearly identify all delegated special tasks of nursing, the name of each caregiver to whom these

tasks have been delegated, and the name of the registered nurse responsible for the delegation. The service plan shall include the date of delegation, the date the special task of nursing is to begin, and the frequency of supervision by the registered nurse.

(5) The registered nurse shall obtain written or telephone orders from the physician or other legally recognized practitioner for all medications and medical treatments managed or administered by the agency under this section. Written orders shall be signed and dated by the physician or practitioner. Agencies may send a cover sheet to accompany the medication orders and service plans. A single physician's or practitioner's signature will be sufficient on the coversheet if it contains a written list of accompanying documents.

(a) Telephone orders shall be immediately recorded, dated, and signed by the registered nurse, and transmitted to the physician or practitioner for countersignature within 72 hours. The orders that have been signed by the physician or practitioner shall be incorporated into the client's record within 30 days.

(b) Changes in medications and medical treatments managed or administered by the agency shall not be made without written or telephone orders from the physician or practitioner as described in this rule.

(c) Medications and medical treatments shall be managed or administered as ordered by the physician or practitioner.

(d) Adjustment to a drug regimen within the written parameters shall not be considered new orders that require a physician's or nurse practitioner's signature.

(6) Signed and dated documentation of nursing assessments, ongoing monitoring, problem identification, appropriate follow-up, progress towards goals or outcomes, the provision of nursing care, and the delegation of special tasks of nursing care by the registered nurse must be maintained in the client's agency record.

(7) The registered nurse shall conduct and document supervisory visits to the client's residence when special tasks of nursing care have been delegated in accordance with the Oregon State Board of Nursing Administrative Rules (OAR 851-047-0000 through 851-047-0040).

(8) A licensed practical nurse may perform certain tasks of nursing as allowed by the Oregon State Board of Nursing Administrative Rules (OAR 851-045-0000 through 851-045-0025).

(9) An agency must not accept or retain a client for service who requires special tasks of nursing care unless the agency employs or contracts with nursing staff or unless appropriate delegation of the task by a registered nurse can occur.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0085

Client Records

(1) A client record shall be maintained for every client served by the agency.

(2) A legible, reproducible client record shall include at least the following:

(a) Identification data;

(b) Referral and intake information;

(c) Start-of-service date;

(d) Screening and disclosure documents and documentation required by these rules;

(e) Clients' rights documentation required by these rules;

- (f) All client evaluation and assessment documentation;
 - (g) Client service plan and updates;
 - (h) All personal care, medication, and nursing services documentation required by these rules;
 - (i) Documentation of all services rendered, coordinated with the service plan.
 - (j) Service and financial agreement signed by the client or the client's representative before the initiation of services that specifies the services to be provided in accordance with the service plan, and the costs for those services.
 - (k) End-of-services date;
 - (l) End-of-service summary, including the dates of service and the disposition of the client.
- (3) All entries and documents in the record must be recorded in ink, typescript, or computer-generated.
 - (4) All entries in a client's record must be dated and signed, or otherwise authenticated by the person making the entry.
 - (5) The client records shall be filed in a manner that renders them easily retrievable.
 - (6) Precautions must be taken to protect the records from unauthorized access, fire, water, and theft.
 - (7) Precautions must be taken to protect client information and record confidentiality.
 - (8) Authorized employees of the Department shall be permitted to review client records upon request. Photocopies of the records shall be made upon request.
 - (9) All clients' records shall be kept for a period of at least seven (7) years after the date of last end-of-service.
 - (10) Clients' records are the property of the agency.
 - (11) If an agency changes ownership, all clients' records shall remain in the agency, and it shall be the responsibility of the new owner to protect and maintain these records.
 - (12) Before an agency terminates its business, the agency shall notify the Department where the clients' records will be stored.
- Stat. Auth.: ORS 443.340
Stats. Implemented: ORS 443.305 through 443.350

333-536-0090

Quality Improvement

In accordance with accepted quality improvement principles, the agency shall develop and implement written policies and procedures for an ongoing quality improvement program that monitors and evaluates the quality and appropriateness of the personal care, medication, and nursing services provided by the agency, including those services provided by contracted individuals.

- (1) Quality improvement activities shall be conducted and documented at least quarterly.
- (2) The quality improvement activities shall be conducted by a committee comprised of, at a minimum, an agency owner representative, agency administrative staff, and agency direct care staff.
- (3) Corrective actions that address problems identified as a result of quality improvement activities shall be planned, implemented, and evaluated.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0095

Exceptions to Rules

- (1) While all agencies are required to maintain continuous compliance with the Department's rules, these requirements do not prohibit the use of alternative concepts, methods, procedures, techniques, equipment, facilities, personnel qualifications or the conducting of pilot projects or research. Requests for exceptions to the rules must:
 - (a) Be submitted to the Department in writing;
 - (b) Identify the specific rule for which an exception is requested;
 - (c) Indicate the special circumstances relied upon to justify the exception;
 - (d) Identify what alternatives were considered, if any, and why alternatives (including compliance) were not selected;
 - (e) Demonstrate that the proposed exception is desirable to maintain or improve the health and safety of the clients, and will not jeopardize client health and safety; and
 - (f) Identify the proposed duration of the exception.
- (2) Upon finding that the agency has satisfied the condition of this rule, the Department may grant an exception.
- (3) The agency may implement the exception only after receipt of written approval from the Department.

Stat. Auth.: ORS 443.340

Stats. Implemented: ORS 443.305 through 443.350

333-536-0105

Operating Without a License

- (2) If an in-home care agency is found to be operating without a valid license, the agency must, within fourteen (14) days of the receipt of an injunction obtained by the Department pursuant to Oregon Laws 2007, chapter 897, § 4:
 - (a) Informing its clients that the in-home care agency can no longer provide services;
 - (b) Refund all fees collected from the clients for services not rendered; and
 - (c) Cease providing services to clients.

Stat. Auth.: ORS 443.340

Stat. Implemented: OR Laws 2007, ch 897, §4

333-536-0115

Dispute Resolution and Formal Hearings

- (1) Informal Dispute Resolution. Upon receipt of a Statement of Deficiencies, an in-home care agency shall be provided an opportunity to dispute the Department's survey findings.
 - (a) If an agency wishes an informal conference to dispute the Department's survey findings, the facility shall advise the Department in writing within ten calendar days after receipt of the Statement of Deficiencies.
 - (b) The agency may not seek a delay of any enforcement action against it on the grounds the informal dispute resolution has not been completed.

(c) If an agency is successful in demonstrating the deficiencies should not have been cited, the Division shall reissue the Statement of Deficiencies, removing such deficiencies and rescinding or modifying any remedies issued for such deficiencies. The reissued Statement of Deficiencies shall state that it supersedes the previous Statement of Deficiencies, and shall clearly identify the date of the superseded Statement of Deficiencies.

(2) Formal Hearing.

(a) An agency subjected to a remedy pursuant to OAR 333-536-0115 shall be entitled to a contested case hearing in accordance with ORS Chapter 183 and OAR Chapter 137.

(b) If an agency wishes a formal hearing, a written request must be received by the Department within 10 calendar days of the informal dispute resolution decision (if applicable) or within 60 days of the notice of remedy or notice of intent to impose a civil money penalty, whichever is later.

Stat Auth.: ORS 443.425

Stats. Implemented: 443.305 through ORS 433.350