

Administrative Rules Five-Year Review Report

Due Date: January 1, 2020

Rule Number: OAR 150-317-0250

Rule Name: Long Term Enterprise Zone Distributions

1. Was an Administrative Rule Advisory Committee used for prior rulemaking?

Yes No

If yes, identify members.

2. Has the rule achieved its intended effect? Yes No

a. What was the intended effect?

The intended effect of the rule was to provide guidance regarding how the department handles Long Term Enterprise Zone distributions after a change in underlying corporate tax liability. It also provides a procedure regarding how the department may recover erroneous distributions.

b. How did the rule succeed or fail in achieving this effect?

The rule has achieved its intended effect. It succeeded by providing guidance regarding how the department handles Long Term Enterprise Zone distributions after a change in underlying corporate tax liability. It also provides a procedure regarding how the department may recover erroneous distributions.

3. Use the fiscal impact statement information shown in the original adoption of the rule

a. What was the estimated fiscal impact?

According to the Statement of Need and Fiscal Impact, there was no fiscal or economic impact for the rule.

b. What was the actual fiscal impact?

To the best of the department's knowledge, there was no fiscal impact.

c. Was the fiscal impact statement:

- Underestimated
 Overestimated
 Just about right
 Unknown? If you check this, briefly explain why it is unknown:

3. Have subsequent changes in the law required the rule to be repealed or amended?

Yes No

If 'yes' please explain:

4. Is the rule still needed? Yes No

Explain:

The department continues to make Long Term Enterprise Zone (LTEZ) distributions in accordance with ORS 317.131. Therefore, there is a continued need for this rule.

5. What impacts does the rule have on small businesses?

Explain:

To the best of the department's knowledge, this rule does not have any impact on small businesses.

Date completed and approved by Division Policy Group: 8-13-2019

ORS 183.405(1) requires a report within 5 years of the adoption of a new administrative rule. This form is to be completed and approved by the Division Policy Group responsible for administration of the program.

The analysis and form need to be completed within five years of the date a new rule was adopted by the agency. The adoption date is shown on the Certificate of Permanent Rule Filing and may also be found in the history statement of a rule.

If the rule has been amended since its original adoption, use the information contained in the most recent fiscal impact estimate to complete this section.

Email the completed form to the Agency Rules Coordinator on or before the due date shown on page 1.

Department of Public Safety Standards and Training

OAR 5-Year Review

(ORS 183.405)

| | |
|--|--|
| Rule Number: | OAR 259-009-0015 |
| Date Adopted: | 12/29/2014 |
| Date Review Due: | 12/29/2019 |
| Advisory Committee Members: | Fire Policy Committee (FPC) Board on Public Safety Standards & Training (Board) |
| Date Review Information Provided to Advisory Committee Members: | FPC 2/27/2019 Board 4/25/2019 |

1. Did the rule achieve its intended effect? **YES**

a. What was the intended effect?

OAR 259-009-0015 was adopted to provide a consistent standard regarding background investigations for individuals considered for employment or utilization as fire service professionals.

b. How did the rule succeed or fail in achieving this effect?

The rule established the requirement to complete a background investigation prior to employment/utilization and established a standard set of criteria to be included in the background investigation. The rule had to be amended shortly after adoption to clarify that the background investigation requirement applied to all fire service professionals whether they are career or volunteer.

2. Was the fiscal impact underestimated, overestimated, appropriate or unknown?

UNKNOWN

a. What was the estimated fiscal impact?

No fiscal impact was identified when the rule was adopted.

b. What was the actual fiscal impact?

No fiscal impact was identified when the rule was adopted.

c. If the answer to question 2 is unknown, briefly explain why.

No fiscal impact was identified when the rule was adopted.

3. Have subsequent changes in the law required the rule to be repealed or amended? **NO**

If yes, explain.

4. Is the rule still needed? **YES**

Explain.

This rule continues to outline the minimum standards for conducting background investigations for individuals considered for employment or utilization as fire service professionals.

Department of Public Safety Standards and Training

OAR 5-Year Review

(ORS 183.405)

Rule Number: **OAR 259-061-0300**
Date Adopted: **5/5/2014**
Date Review Due: **5/5/2019**
Advisory Committee Members: **Private Investigator Subcommittee
Private Security and Investigator
Policy Committee (PSIPC)
Board on Public Safety Standards
& Training (Board)**
Date Review Information Provided **PSIPC 2/19/2019**
to Advisory Committee Members: **Board 4/25/2019**

1. Did the rule achieve its intended effect? **YES**

a. What was the intended effect?

OAR 259-061-0300 was adopted to relocate the denial and revocation processes that were contained within OAR 259-061-0040.

b. How did the rule succeed or fail in achieving this effect?

The adoption of OAR 259-061-0300 succeeded in splitting the minimum standards for PI licensure contained in OAR 259-061-0040 and the denial and revocation processes. This rule reorganization helped to simplify the rules contained in OAR 259-061-0040 as minimum standards for licensure. At the same time, the rules for denial and revocation were revised to update the PI moral fitness standards for licensure.

2. Was the fiscal impact underestimated, overestimated, appropriate or unknown?

UNKNOWN

a. What was the estimated fiscal impact?

No fiscal impact was identified when the rule was adopted.

b. What was the actual fiscal impact?

No fiscal impact was identified when the rule was adopted.

c. If the answer to question 2 is unknown, briefly explain why.

No fiscal impact was identified when the rule was adopted.

3. Have subsequent changes in the law required the rule to be repealed or amended? **YES**

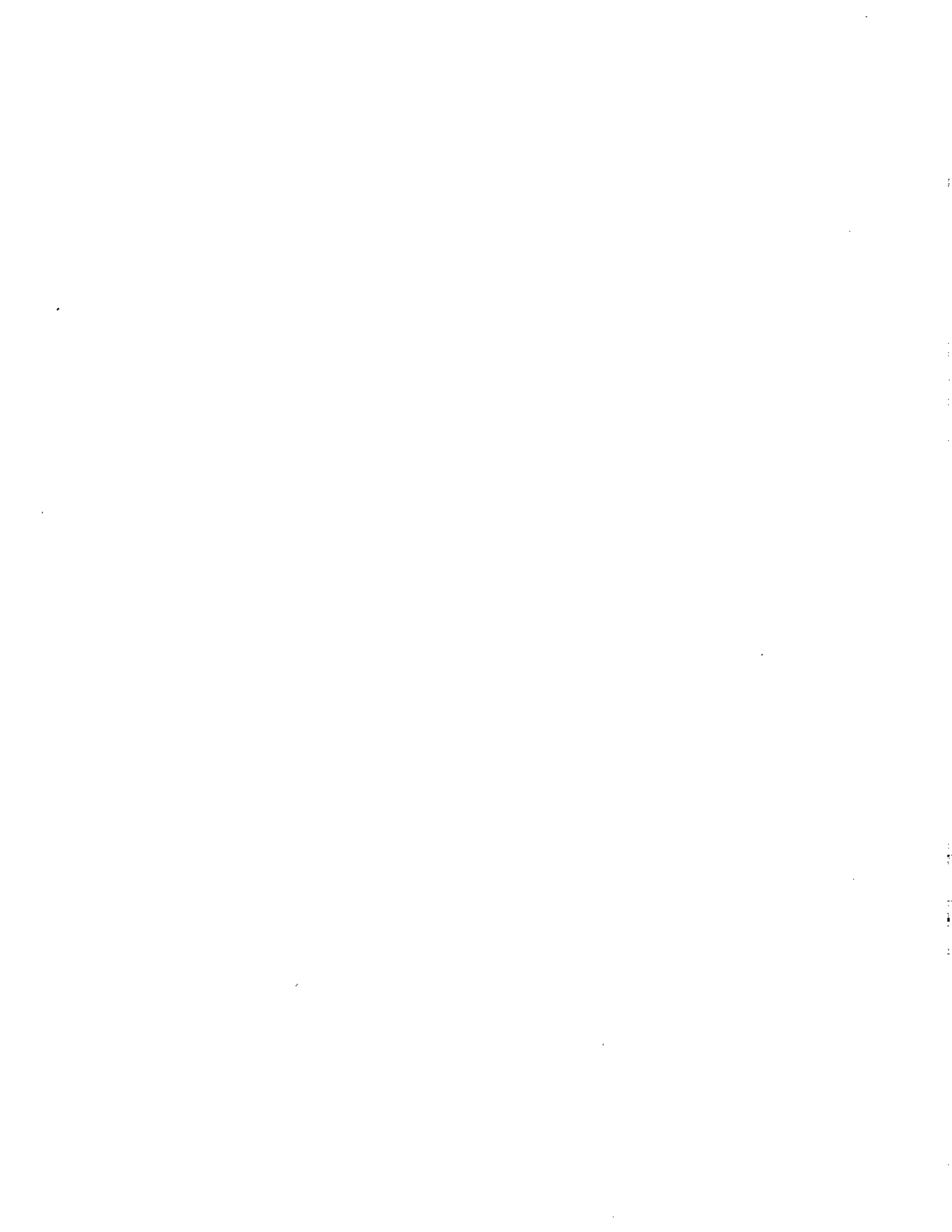
If yes, explain.

This rule references the Criminal Justice Commission definition for person felonies (OAR 213-003-0001), as mandatory disqualifiers for denial and revocation of licensure. OAR 259-061-0300 was amended in 2015 to update the cited reference effective date of the Criminal Justice Commission's definition.

4. Is the rule still needed? **YES**

Explain.

This rule is still used to define PI licensure disqualifiers and provide necessary process rules for denial and revocation of PI licensure.



**Review of Agency Rules
Adopted Since 1/1/06**

Rule Number(s): 291-041-0018

Date Adopted: 03/04/14

Date Review Due: 03/01/2019

Completed by and Date Completed: Michelle Mooney, 08/21/19

Advisory Committee Used? yes no

If yes, identify members. Members must be provided a copy of this completed form.

1. Did the rule achieve its intended effect? yes no

a. What was the intended effect? Ensure compliance with the national PREA Standards.

b. How did the rule succeed or fail in achieving this effect? Adopts administrative rules on how DOC will train staff and conduct cross-gender searches and searches of transgender and intersex inmates.

2. Was the fiscal impact statement (check one)

under estimated

overestimated

just about right

unknown

a. What was the estimated fiscal impact? None

b. What was the actual fiscal impact? None

c. If the answer to question 2 is unknown, briefly explain why.

3. Have subsequent changes in the law required the rule be repealed or amended? No

If yes, explain

4. Is the rule still needed? yes no

Explain

The Prison Rape Elimination Act (PREA) was passed unanimously by Congress and signed into law by President Bush in 2003. The U. S Department of Justice finalized and published national PREA standards (28 C.F.R. Part 115) for all prisons, jails, lockups, and detention facilities in the United States in 2012. The final rule adopts national standards to prevent, detect, and respond to incidents of sexual violence, sexual coercion, and sexual solicitation. These rule modifications are necessary to ensure ODOC administrative rules for conducting cross gender searches and searches of transgender and intersex inmates align with the national PREA standards.

**Review of Agency Rules
Adopted Since 1/1/06**

Rule Number(s): 291-097-0231

Date Adopted: May 5, 2014

Date Review Due: 5/5/19

Completed by and Date Completed: Dianne Erickson, 06/20/19

Advisory Committee Used? yes no

If yes, identify members. Members must be provided a copy of this completed form.

1. Did the rule achieve its intended effect? yes no

a. What was the intended effect? Rule updated because of the 2010 legislation (SB 1007) that made changes to ORS 421.121 and the percentage of sentence reduction an inmate could earn if their crime was on or after July 1, 2013.

b. How did the rule succeed or fail in achieving this effect? It has succeeded with the added information for inmates and the public to access.

2. Was the fiscal impact statement (check one)

under estimated

overestimated

just about right

unknown

a. What was the estimated fiscal impact? No anticipated fiscal impact

b. What was the actual fiscal impact? No fiscal impacts.

c. If the answer to question 2 is unknown, briefly explain why.

3. Have subsequent changes in the law required the rule be repealed or amended? No

If yes, explain

4. Is the rule still needed? yes no

Explain: This change to ORS 421.121 is still the current law DOC must follow and the rule is still applicable.

**Review of Agency Rules
Adopted Since 1/1/06**

Rule Number(s): 291-109-0175

Date Adopted: 3/3/2014

Date Review Due: March 2019

Completed by and Date Completed: Jacob Humphreys - 6/10/2019

Advisory Committee Used? yes no

If yes, identify members. Members must be provided a copy of this completed form.

1. Did the rule achieve its intended effect? yes no

- a. **What was the intended effect?** To ensure that ODOC rules for processing inmate grievances regarding allegations of sexual abuse align with the national PREA standards.
- b. **How did the rule succeed or fail in achieving this effect?** The intended effect was achieved. Inmates regularly utilize the grievance review system to report PREA related allegations.

2. Was the fiscal impact statement (check one)

- under estimated
- overestimated
- just about right
- unknown

- a. **What was the estimated fiscal impact?** No impact.
- b. **What was the actual fiscal impact?** No impact.
- c. **If the answer to question 2 is unknown, briefly explain why.**

3. Have subsequent changes in the law required the rule be repealed or amended? No

If yes, explain

4. Is the rule still needed? yes no

Explain: The rule is still needed to comply with federal PREA standards for reporting PREA allegations in addition to the rule/program being utilized as the primary administrative review process afforded to inmates in ODOC custody.

**Review of Agency Rules
Adopted Since 1/1/06**

Rule Number(s): 291-210-0010, 291-210-0020, 291-210-0030

Date Adopted: 10/13/14

Date Review Due: 10/01/19

Completed by and Date Completed: Jamie Breyman, 8/19/19

Advisory Committee Used? yes no

If yes, identify members. Members must be provided a copy of this completed form.

1. Did the rule achieve its intended effect? yes no

a. What was the intended effect? Appropriate management of our transgender and intersex population.

b. How did the rule succeed or fail in achieving this effect? It provided clear direction and guidance as to how we house and manage our transgender and intersex population.

2. Was the fiscal impact statement (check one) NA – no fiscal impact

- under estimated
- overestimated
- just about right
- unknown

a. What was the estimated fiscal impact?

The proposed rulemaking had no anticipated effect on state agencies, local government, or the public.

b. What was the actual fiscal impact?

None

c. If the answer to question 2 is unknown, briefly explain why.

3. Have subsequent changes in the law required the rule be repealed or amended? No

If yes, explain

4. Is the rule still needed? yes no

Explain: To be able to appropriately manage our transgender and intersex population.



Department of Human Services

Five Year Rule Review

ORS 183.405



Rule Name: Oregon Project Independence Pilot for Adults with Disabilities

Rule Number(s): 411-032-0050

Program Area: Aging and People with Disabilities

Adoption Date: 12/16/2014

| | | |
|---|--|--|
|  Review Due Date: 12/16/2019 |  Review Date: 2/26/2019 | Reviewer's Name: Kristi Murphy  |
|---|--|--|

- *Advisory Committee Used**
 Advisory Committee Not Used

***Committee Members:**

Contact Information:

| | |
|------------------|--|
| Elaine Young | elaine.young@nwsds.org |
| Barry Fox-Quamme | barry@llr.org |
| John Mullin | jmullin@oregonlawcenter.org |
| Joseph Lowe | JOSEPH.LOWE@dhsosha.state.or.us |
| Judith Richards | judithrichards@gmail.com |
| Keith Putnam | 63764@comcast.net |
| Lee Girard | lee.girard@multco.us |
| Peggy Brey | peggy.brey@multco.us |
| Rodney Schroeder | RODNEY.B.SCHROEDER@dhsosha.state.or.us |
| Sarah Odell | SARAH.D.ODELL@dhsosha.state.or.us |
| Dave Toler | dtolder@rvcog.org |
| Jody Cline | jcline@lcog.org |
| Marcy McMurphy | mcmurphy@capeco-works.org |
| Jeff Hill | jeffrey_hill@co.washington.or.us |
| Ruth McEwen | ruth.577@hotmail.com |
| | |
| | |

What was the intended effect of this rule adoption?

411-032-0050 Pilot for Adults with Disabilities

Establishes the policies that apply to the pilot project, which expands Oregon Project Independence (OPI) services to allow adults with physical disabilities in regionally diverse pilot locations access to OPI services. This rule sets out implementation, eligibility, and services offered through the pilot

Yes
 No

Has this rule adoption had its intended effect?

Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

Yes
 No

Is there a continued need for this rule?

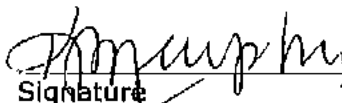
The Department will keep the rule whether or not the pilot continues to be funded this biennium. The Department may sunset the rule if necessary, but would like to keep the language in case of need for the rule in the future.

Additional Comments:

***Date report sent to advisory committee members: _____**

Report approved by:

Kristi Murphy
Printed name


Signature

2.24.19
Date

411-032-0050 Pilot for Adults with Disabilities

(Effective 12/28/2014)

This rule applies only until June 30, 2015.

(1) The purpose of this rule is to set out the policies that apply to the expansion of Oregon Project Independence services to adults with physical disabilities. The pilot allows the Department to study the potential to transition Oregon Project Independence to a statewide, age neutral, program that assesses and serves seniors and persons with physical disabilities based on their functional needs.

(2) "Disability" means, for the purposes of this rule, a physical, cognitive, or emotional impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living defined in OAR 411-015-0006, or in one or more of the instrumental activities of daily living defined in OAR 411-015-0007.

(3) "Adult" means, for purposes of this rule, any person 19 to 59 years of age.

(4) OAR 411-032-0000 to 411-032-0044 apply to this pilot program, except as noted below:

(a) Authorized Services and Allowable Costs. Authorized services may not be available in all service areas. Authorized services for the pilot funds include home care supportive services, service coordination, and other services, including the following:

(A) Home care.

(B) Chore services.

(C) Assistive Technology.

(D) Personal care services.

(E) Adult day services.

(F) Registered nurse services.

(G) Home delivered meals.

(H) Services to support community caregivers and strengthen the natural support system of individuals.

(I) Evidence-based health promotion services.

(J) Options counseling.

(K) Assisted transportation options that allow individuals to live at home and access the full range of community resources.

(b) Eligibility.

(A) In order to qualify for authorized services under this pilot, an individual must:

(i) Be an adult with a disability;

(ii) Be a resident of a designated pilot area and seek services at that location;

(iii) Not be receiving Medicaid;

(iv) Meet the requirements of the long-term care services priority rules in OAR chapter 411, division 015.

(B) The Area Agencies on Aging must determine eligibility prior to an individual receiving authorized services.

(c) The fees described in OAR 411-032-0044(1)(a) do not apply to this pilot program.

Stat Auth.: ORS 409.050, 410.070, 410.435

Stats Implemented: ORS 409.010, 410.410-410.480



Department of Human Services

Five Year Rule Review

ORS 183.405



Rule Division Name: K-State Plan

Rule Number(s): 411-035-0000; 411-035-0010; 411-035-0015; 411-035-0025; 411-035-0030; 411-035-0035; 411-035-0040; 411-035-0045; 411-035-0050; 411-035-0055; 411-035-0060; 411-035-0065; 411-035-0070; 411-035-0075; 411-035-0080; 411-035-0085; 411-035-0090; 411-035-0095

Program Area: Aging and People with Disabilities

Adoption Date: 6/4/2014



Review Due Date:
6/4/2019



Review Date:
3/14/2019

Reviewer's Name:

Margaret May



- *Advisory Committee Used**
 Advisory Committee Not Used

***Committee Members:**

Contact Information:

| | |
|------------------|---------------------------------------|
| Joe Easton | joe.easton@multco.us |
| Mat Rapoza | MATHEW.G.RAPOZA@dhsosha.state.or.us |
| Jeanette Curtis | jeanette.a.curtis@state.or.us |
| Cary Rhoads | CARY.L.RHOADS@dhsosha.state.or.us |
| Charles Richard | gm262salem@outlook.com |
| Ruth McEwen | Ruth.577@hotmail.com |
| Tim Baxter | tbaxter@lclac.org |
| Ruth Gulyas | rgulyas@leadingageoregon.org |
| Barbara Crawford | columblamedalarm@aol.com |
| Suzanne Huffman | SUZANNE.L.HUFFMAN@dhsosha.state.or.us |
| Bob Joondeph | bob@disabilityrightsoregon.org |
| Mary Jaeger | mary.jaeger@state.or.us |
| Heather Hall | HHall@addus.com |
| Meghan Moyer | moyerm@selu503.org |
| Eric Paul | epaul@assuredIndependence.com |
| Rick Bennett | rbennett@aarp.org |
| Linda Kirschbaum | lindak@ohca.com |
| Jenny Cokeley | Jenny.E.COKELEY@dhsosha.state.or.us |

| | |
|--------------------|--|
| Suzy Quinlan | Suzy.QUINLAN@dhsosha.state.or.us |
| Kelsey Weigel | KELSEY.C.WEIGEL@dhsosha.state.or.us |
| Darwin Frankenhoff | Darwin.j.frankenhoff@state.or.us |
| Jane-ellen Weidanz | Jane-Ellen.WEIDANZ@dhsosha.state.or.us |

What was the intended effect of this rule adoption?
411-035-0000 Purpose
Establishes Purpose of K-Plan rules

Yes
 No **Has this rule adoption had its intended effect?**

Yes
 No **Was the anticipated fiscal impact of this rule underestimated?**

Yes
 No **Was the anticipated fiscal impact of this rule overestimated?**

Yes
 No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
10-1-2016 Perm

Yes
 No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-035-0010 Definitions
Establishes Definitions for K-Plan rules

Yes
 No **Has this rule adoption had its intended effect?**

Yes
 No **Was the anticipated fiscal impact of this rule underestimated?**

Yes
 No **Was the anticipated fiscal impact of this rule overestimated?**

Yes
 No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
11-10-2014 Temp; 3/9/2015 Perm

Yes
 No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-035-0015 Eligibility for Supplemental K State Plan Services
States eligibilty requirements for consumers to receive supplemental K-Plan services

Yes
 No **Has this rule adoption had its intended effect?**

Yes
 No **Was the anticipated fiscal impact of this rule underestimated?**

Yes
 No **Was the anticipated fiscal impact of this rule overestimated?**

Yes
 No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
1-1-2015 Temp; 4-3-2015 Perm

Yes
 No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-035-0020 Reserved
No Text

Yes
 No **Has this rule adoption had its intended effect?**

Yes
 No **Was the anticipated fiscal impact of this rule underestimated?**

Yes
 No **Was the anticipated fiscal impact of this rule overestimated?**

Yes
 No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**

Yes
 No **Is there a continued need for this rule?**

| | |
|--|---|
| What was the intended effect of this rule adoption? 411-035-0025 Eligibility for Consumer Electronic Back-up Systems and Assistive Technology Establishes consumer eligibility for K-Plan services electronic back-up systems and assistive technology | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? 1-1-2015 Temp; 4-3-2015 Perm; |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |

| | |
|---|--|
| What was the intended effect of this rule adoption? 411-035-0030 Eligible Electronic Back-up Systems and Assistive Technology Services States type of electronic back-up systems and assistive technology services eligible consumers may receive | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |

| | |
|---|--|
| What was the intended effect of this rule adoption? 411-035-0035 Provider Qualifications for Electronic Back-up Systems and Assistive Technology States provider qualifications to provide electronic back-up systems and assistive technology. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

| | |
|---|--|
| What was the intended effect of this rule adoption? 411-035-0040 Eligibility Criteria for Chore Services States consumer eligibility requirements to receive chore services | |
|---|--|

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? 1-1-2015 Temp; 4-3-2015 Perm; |
|--|---|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
411-035-0046 Eligible Chore Services
States types of Chore services eligible consumers may receive

Yes **Has this rule adoption had its intended effect?**
 No

Yes **Was the anticipated fiscal impact of this rule underestimated?**
 No

Yes **Was the anticipated fiscal impact of this rule overestimated?**
 No

Yes **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
 No

Yes **Is there a continued need for this rule?**
 No

What was the intended effect of this rule adoption?
411-035-0050 Chore Service Provider Qualifications
States qualifications to become a provider of chore services

Yes **Has this rule adoption had its intended effect?**
 No

Yes **Was the anticipated fiscal impact of this rule underestimated?**
 No

Yes **Was the anticipated fiscal impact of this rule overestimated?**
 No

Yes **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
 No

Yes **Is there a continued need for this rule?**
 No

| | |
|---|--|
| What was the intended effect of this rule adoption? 411-035-0055 Eligibility for Consumer Environmental Modifications States consumer eligibility requirements for environmental modifications under K-Plan | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? 1-1-2015 Temp; 4-3-2015 Perm; |
|--|---|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

| | |
|--|--|
| What was the intended effect of this rule adoption? 411-035-0060 Eligible Environmental Modification Services States types of environmental modifications eligible consumers may receive | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
411-035-0065 Environmental Modification Provider Qualifications
States provider qualifications to perform environmental qualifications for eligible consumers

Yes
 No **Has this rule adoption had its intended effect?**

Yes
 No **Was the anticipated fiscal impact of this rule underestimated?**

Yes
 No **Was the anticipated fiscal impact of this rule overestimated?**

Yes
 No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**

Yes
 No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-035-0070 Eligibility for Consumer Transition Services
States consumer eligibility requirements for transition services under k-plan

Yes
 No **Has this rule adoption had its intended effect?**

Yes
 No **Was the anticipated fiscal impact of this rule underestimated?**

Yes
 No **Was the anticipated fiscal impact of this rule overestimated?**

Yes
 No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
1-1-2015 Temp; 4-3-2015 Perm

Yes
 No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-035-0075 Eligible Transition Services
States types of transition services eligible consumers may receive through K-plan

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? 10-1-2016 Perm |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
411-035-0080 Transition Services Provider Qualifications
States provider qualifications to provide transition services to eligible consumers

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?

411-035-0085 Consumer Eligibility Criteria for Voluntary Consumer Training Services
States how consumers are eligible for voluntary consumer training services under K-plan

Yes
 No

Has this rule adoption had its intended effect?

Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

1-1-2015 Temp; 4-3-2015 Perm

Yes
 No

Is there a continued need for this rule?

What was the intended effect of this rule adoption?

411-035-0090 Voluntary Consumer Training Services

States guidelines for consumers and providers for K-Plan voluntary consumer training services

Yes
 No

Has this rule adoption had its intended effect?

Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

Yes
 No

Is there a continued need for this rule?

What was the intended effect of this rule adoption?

411-035-0095 Provider Qualifications for Voluntary Consumer Training Services

States provider qualifications to provide voluntary consumer training services for eligible consumers.

Yes
 No

Has this rule adoption had its intended effect?

Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

Yes
 No

Is there a continued need for this rule?

Additional Comments:

***Date report sent to advisory committee members: _____**

Report approved by:

Mat Repore
Printed name

[Signature]
Signature

3/21/19
Date

411-035-0000 Purpose
(Adopted 06/04/2014)

(1) These rules ensure individuals served by the Department of Human Services, Aging and People with Disabilities through the K-State Plan are able to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services.

(2) To ensure equal access to individuals who are eligible for the services provided through this program.

Stat. Auth.: ORS 410.070

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

411-035-0010 Definitions
(Adopted 06/04/2014)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 046:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include, but are not limited to, eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition/behavior as defined in OAR 411-015-0006.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Alert Systems" means a unit that is worn by the individual or is located in the individual's home for the purpose of generating notification that an emergency has or may occur.

(5) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to older adults or individuals with disabilities in a planning and service area. The term Area Agency on Aging is inclusive

of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(6) "Assistive Technology" means equipment that provides additional security and support to an individual and replaces the need for human interventions. Assistive technologies enable an individual to self-direct their care and maximize their independence.

(7) "Back-up systems", for the purpose of these rules, mean devices or electronic systems, which secure help in emergencies, safety in the community, or are other reminders that help an individual with activities, including, but not limited to, medication management, eating, or other types of monitoring.

(8) "Case Manager" means an employee of the Department or Area Agency on Aging who assesses the service needs of an individual, determines eligibility, and offers service choices to the eligible individual. The case manager authorizes and implements an individual's service plan, and monitors the services delivered as described in OAR chapter 411, division 028.

(9) "Chore Services" means specific services intended to ensure the individual's home is safe and allows for independent living.

(10) "Consumer" or "Consumer-Employer" means the person applying for or eligible for Medicaid home or community-based services.

(11) "Cost Effective" means being responsible and accountable with Department resources by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Less costly alternatives may include other programs available from the Department, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (defined in OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(12) "Department" means the Department of Human Services (DHS).

(13) "Durable Medical Equipment", is an apparatus, such as a walker, which is primarily used to serve a medical purpose and is appropriate to use in the individual's home.

(14) "Environmental Modifications" means the changes made to adapt living spaces to meet specific service needs of eligible individuals with physical limitations to maintain their health, safety, and independence.

(15) "Exception" means the individual has service needs above the limits described in this rule, and documented in the assessment and service plan that warrant an exception for payment.

(16) "IADL" means "instrumental activities of daily living" as defined in this rule.

(17) "Individual" means the person applying for or eligible for services.

(18) "In-Home Services" mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(19) "Instrumental Activities of Daily Living (IADL)" means those activities that include, but are not limited to, activities other than the activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(20) "Long-Term Care" means the Medicaid system through which the Department provides nursing facility, community-based, and in-home services to eligible adults who are aged, blind, or have physical disabilities.

(21) "Medication Reminders" are devices used for the purpose of prompting an individual to take their medication.

(22) "Natural Supports" means resources and supports (e.g. relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(23) "Person-centered Assessment and Service Plans" means:

(a) A process, either formal or informal, for gathering and organizing information that helps an individual:

(A) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(B) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(C) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(b) The methods for gathering information vary, but all are consistent with individual needs and preferences.

(24) "Personal Emergency Response Systems" mean a type of electronic back-up system that:

(a) Secures help for individuals in an emergency;

(b) Ensures a consumer's safety in the community; and

(c) Includes other reminders that help an individual with their activities of daily living and instrumental activities of daily living.

(25) "Rate Schedule" means the rate schedule maintained by the Department at

<http://www.dhs.state.or.us/spd/tools/program/osip/rateschedule.pdf>. Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Aging and People with Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(26) "Representative" means a person with longstanding involvement in assuring the individual's health, safety, and welfare that is appointed by an individual to participate in service planning on the individual's behalf. In all cases, unless the individual is incapable, the individual's consent is obtained before designating a representative on the individual's behalf. When feasible, the individual's authorization of a representative is made in writing or by another method that clearly indicates the individual's free

choice. An individual's representative is not a paid provider to an individual receiving services and supports.

(27) "Service Need" means the assistance an individual requires from another person, or equipment that replaces the need for another person, for those functions or activities identified in OAR 411-015-0006 and OAR 411-015-0007.

(28) "Transition Services" means those services and supports necessary for an individual to transition from a nursing facility or the Oregon State Hospital to a community-based care or in-home setting.

(29) "Voluntary Consumer Training Services" means activities to empower and inform individuals receiving in-home services regarding their rights, role, and responsibilities as employers of care providers.

Stat. Auth.: ORS 410.070

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

411-035-0015 Eligibility for Supplemental K State Plan Services

(Adopted 06/04/2014)

To be eligible for Medicaid Supplemental K State Plan services, consumers must:

(1) Be eligible for Medicaid long term care services and supports as described in OAR 411-015-0010 through 411-015-0015.

(2) Not have natural supports or other services available in the community that would meet the identified need.

(3) Not be eligible for the item through Medicare, other Medicaid programs, or other medical coverage.

(4) Have an identified need in their person-centered service plan that:

(a) Supports the desires and goals of the consumer receiving services and increases a consumer's independence;

(b) Reduces a consumer's need for assistance from another person;
or

(c) Maintains a consumer's health and safety.

(5) Be provided the choice to accept or deny the service being offered.

Stat. Auth.: ORS 410.070

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

411-035-0020 (Reserved)

**411-035-0025 Eligibility for Consumer Electronic Back-up Systems
and Assistive Technology**

(Adopted 06/04/2014)

(1) To be eligible for electronic back-up systems or mechanisms, a
consumer must:

(a) Meet all Medicaid eligibility criteria described in OAR 411-035-
0015; and

(b) Not be receiving community-based care in a licensed care setting.

(2) Electronic back-up systems and assistive technologies must be
appropriate and cost effective to meet the service needs of the consumer
and:

(a) For new equipment:

(A) Are limited to a maximum of \$5000 for purchasing of a
device.

(B) Monthly rentals or lease fee limits are posted on the APD
rate table.

(b) For repairs:

(A) Repair of purchased devices may be done if the repair is more cost effective than purchasing a new device.

(B) Repairs of rented or leased equipment are the responsibility of the provider.

(c) Monthly maintenance, fees or service charges are not included in the maximums described in (a) or (b).

(3) Exceptions to the \$5000 limitation may be granted if the consumer has service needs that warrant an exception for payment and no alternative is available to meet the needs of the consumer.

(4) Expenditures over \$500 must be approved by the Department.

Stat. Auth.: ORS 410.070

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

411-035-0030 Eligible Electronic Back-up Systems and Assistive Technology Services

(Adopted 06/04/2014)

(1) Electronic Back-up Systems and Assistive Technology services must:

(a) Ensure continuity of services and support the health, welfare, and safety of the consumer;

(b) Enable the consumer to function with greater independence; or

(c) Substitute for human assistance.

(2) Electronic Back-up systems and supports may be allowed as long as the system sufficiently meets the need of the consumer being served.

(3) Consumers with an assessed need qualify for electronic back-up systems, including but not limited to:

(a) Personal Emergency Response Systems;

(b) Medication reminders;

(c) Alert systems for ADL and IADL supports that increase an consumer's independence; and

(d) Mechanisms, and any specialized or durable medical equipment, necessary to support the consumer's health or well-being.

(4) Consumers with an assessed need qualify for Assistive Technology, including but not limited to:

(a) Motion sensors;

(b) Sound sensors;

(c) Two-way communication systems;

(d) Automatic faucets;

(e) Soap dispensers;

(f) Toilet flushing sensors;

(g) Incontinent sensors;

(h) Fall sensors;

(i) Wandering alerts; and

(j) Other technology, which may be approved on a case-by-case basis with Central Office approval.

Stat. Auth.: ORS 410.070

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

411-035-0035 Provider Qualifications for Electronic Back-up Systems and Assistive Technology
(Adopted 06/04/2014)

(1) Companies providing back-up support, back-up systems, or assistive technology must have a Medicaid provider number before providing services.

(2) No monetary funds shall be released for installation of electronic back-up systems or assistive technology to the provider until the work is finished and is functioning as expected.

(3) Payment for on-going electronic back-up systems or assistive technology must be paid to providers after the consumer receives the service each month.

Stat. Auth.: ORS 410.070

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

411-035-0040 Eligibility Criteria for Chore Services

(Adopted 06/04/2014)

(1) To be eligible for chore services, a consumer must meet all Medicaid Long Term Care eligibility requirements described in OAR 411-035-0015.

(2) An eligible consumer may receive chore services under any of the following circumstances:

(a) The consumer is the owner, buyer, or renter of premises in which the consumer lives.

(A) If a renter, the consumer must have received an eviction notice, written warning, or deficiency notice from the landlord or a public housing agency related to cleanliness or health issues of the unit; or

(B) If an owner or buyer, the consumer must have received a written notice from a government agency or a lender concerning health, safety, or public nuisance deficiencies or violations.

(b) The consumer needs garbage pick-up and removal, or payment of previous garbage bills, in order to continue or resume receiving services to ensure the home is safe for the consumer and their service providers.

(c) The consumer's premises requires heavy cleaning to remove hazardous debris or dirt in the home to ensure the consumer's home is safe and allows for independent living.

(d) The consumer's premises require the removal of outside debris (for example, trees, leaves, clutter) which is endangering the structure of the home or the ability of the consumer to enter or exit safely.

(e) The services must be completed to enable the consumer to move from one residence to another and to establish services in the new home.

(3) If the service is done in a rental location, the service must be a service that is not required of the landlord under applicable landlord-tenant law.

(4) Chore services are not part of the consumer's on-going service plan. Once the chore service is complete, homecare workers may begin or continue ongoing housekeeping.

(5) Chore services must be appropriate and cost effective to meet the service need of the consumer.

(a) If feasible, three bids are required from companies or vendors who provide chore services. A bid is not comparative pricing through the Internet.

(b) Bids over \$500.00 require a state licensed contractor.

(6) The consumer must sign a written agreement to:

(a) Have a vendor clean their home;

(b) Remove hazardous debris; or

(c) To haul off agreed upon items that may pose a health and safety risk to the consumer or others.

Stat. Auth.: ORS 410.070

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

411-035-0045 Eligible Chore Services

(Adopted 06/04/2014)

(1) Chore services are not housekeeping services and are not to be provided by homecare workers or in-home agencies.

(2) Chore services are intended to ensure the consumer's home is safe and allows for independent living.

(3) In order to ensure the consumer's home is safe, services may be authorized for, but not limited to:

(a) Heavy housecleaning to ensure the consumer and care providers can safely navigate in the home. This may include removal of hazardous debris or dirt from the home.

(b) Removal of yard hazards to ensure the outside of the home is safe for the consumer to enter and exit the home.

Stat. Auth.: ORS 410.070

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

411-035-0050 Chore Service Provider Qualifications

(Adopted 06/04/2014)

(1) Providers of chore services must have a distinct Medicaid provider number before the work begins.

(2) No monetary funds shall be released to the provider until the work is finished and meets the specifications of the chore service agreement.

Stat. Auth.: ORS 410.070

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

411-035-0055 Eligibility for Consumer Environmental Modifications

(Adopted 06/04/2014)

(1) To be eligible for environmental modifications, a consumer must:

(a) Meet all Medicaid eligibility criteria described in OAR 411-035-0015.

(b) Be eligible for Medicaid long-term care services and supports and live in their own home or a rental property.

(c) If in a rental location, the consumer must have a written and signed agreement between the consumer receiving services and the owner or landlord of the rental property.

(A) The agreement must include:

(i) The scope of work provided;

(ii) That the modification is permissible; and

(iii) That the Department shall not restore the rental unit to its former condition.

(B) Environmental modifications in rental locations must not be for services that are required of the landlord under applicable landlord-tenant law.

(2) Environmental modifications are not part of the consumer's on-going service plan. Once the environmental modification is complete, environmental modification services shall cease and a reduction notice must not be issued.

(3) Environmental modifications must be appropriate, cost effective, and meet the service need of the consumer.

(a) Environmental modifications are limited to a maximum of \$5000 per environmental modification.

(b) If feasible, three bids are required from companies or vendors. A bid is not comparative pricing through the Internet.

(4) Exceptions to the \$5000 limitation may be granted if the consumer has service needs that warrant an exception for payment and no alternative is available to meet the needs of the consumer.

Stat. Auth.: ORS 410.070

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

411-035-0060 Eligible Environmental Modification Services

(Adopted 06/04/2014)

(1) Environmental modifications in the consumer's home must be:

(a) To ensure the health, welfare and safety of the consumer.

(b) To enable the consumer to function with greater independence.

(c) To substitute for human assistance.

(2) Environmental modifications must be within the existing square footage of the building structure, and must not add to the square footage of the building, except for external ramps needed to enter or exit the home.

(3) Consumers assessed with limitations in mobility, toileting, or bathing may qualify for installation or modification of items, including but not limited to:

(a) Ramps to enhance their ability to traverse within the home or to enter or exit the exterior of their home;

(b) Grab-bars;

(c) Hand rails;

- (d) Electric door openers;
- (e) Widening of doorways when the door is too narrow for the consumer to enter or exit through the doorway with or without a wheelchair;
- (f) Door and cabinet handles for consumers having difficulty due to dexterity;
- (g) Bathroom facilities, such as a raised toilet;
- (h) Kitchen cabinets or sinks, such as lowering counters and sinks for wheelchair accessibility;
- (i) Non-skid surfaces; and
- (j) Overhead track systems to assist with lifting or transferring a consumer.

Stat. Auth.: ORS 410.070

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

411-035-0065 Environmental Modification Provider Qualifications

(Adopted 06/04/2014)

- (1) Providers of the environmental modification must have a distinct Medicaid provider number before the work begins.
- (2) Modifications over \$500 must be completed by a state licensed contractor.
- (3) Modifications requiring a permit must be inspected and certified, by an inspector, to ensure compliance with local codes.
- (4) No material upgrades or supplemental payments to the provider are allowed by landlords or informal supports.
- (5) No monetary funds shall be released to the provider until the work is finished and meets the specifications of the modification agreement.

Stat. Auth.: ORS 410.070

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

411-035-0070 Eligibility for Consumer Transition Services

(Adopted 06/04/2014)

(1) Eligibility for transition services covered through the K-State Plan are restricted to consumers transitioning from a nursing facility or the Oregon State Hospital, as defined in OAR 309-091-0005(16), into a community-based or in-home program, and who meet the level of care criteria described in OAR 411-015-0015.

(2) Consumers transitioning from an acute care hospital directly to a community-based or in-home program are not eligible for transition services under this rule.

Stat. Auth.: ORS 410.070

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

411-035-0075 Eligible Transition Services

(Adopted 06/04/2014)

(1) Approval for services and supports must:

(a) Be based on an assessed need determined during the person-centered service planning process.

(b) Support the desires and goals of the consumer receiving services and supports.

(2) Total expenses for transition services and supports covered under this rule may be approved from the date of authorization up to thirty (30) days after a consumer discharges from a nursing facility or the Oregon State Hospital on a permanent basis and may include more than one item.

(3) Total purchases for basic household goods and furnishings are limited to one time per year within the first thirty (30) days a consumer discharges from a nursing facility on a permanent basis.

(4) Total purchases for transition services and supports, other than basic household goods and furnishings, are limited to no more than twice annually. To access transition

services and supports a second time within a year, the consumer must be transitioning from a nursing facility or the Oregon State Hospital.

(5) Funds must not be used to retroactively reimburse a consumer, natural supports, or community-based care providers for transition service expenses.

(6) Unless indicated in this rule, allowable moving and move-in costs are limited to an in-home setting and include:

(a) Transportation for touring community-based care facilities and in-home service settings;

(b) Housing application fees;

(c) Payment for background and credit checks related to housing;

(d) Cleaning deposits;

(e) Security deposits;

(f) Initial deposits for heating, lighting, and land line phone service;

(g) Payment of previous utility bills that prevent a consumer from receiving utility services;

(h) Cleaning before move-in, is limited to consumers returning to a previous in-home setting and the service is needed to mitigate a health or safety risk;

(i) Basic household goods;

(A) Including, but not limited to:

(i) Cookware;

(ii) Tableware;

(iii) Garbage cans;

(iv) Trash bags;

(v) Toilet paper;

(vi) Bedding;

(vii) Linens; and

(viii) Basic cleaning supplies.

(B) The purchase of basic household goods is not intended to replace useable items already available to the consumer.

(C) Purchases are limited to:

(i) The amount necessary to adequately meet the needs of the consumer, but may not exceed \$500.

(ii) The Department may approve additional household goods if the consumer's functional needs assessment indicates the need for additional household goods beyond the standard limit.

(j) Basic household furnishings;

(A) Including, but not limited to:

(i) Beds;

(ii) Mattresses;

(iii) Dressers;

(iv) Couches;

(v) Tables; and

(vi) Chairs required in an in-home or community-based service setting.

(B) The purchase of basic household goods is not intended to replace useable items already available to the consumer.

(C) Purchases are limited to:

(i) The amount necessary to adequately meet the needs of the consumer and may not exceed \$1,000.

(ii) The Department may approve additional household furnishings if the consumer's functional needs assessment indicates the need for additional household furnishings beyond the standard limit.

(k) Basic food stocking;

(A) Including, but not limited to:

(i) Pantry staples;

(ii) Perishable food items; and

(iii) Canned or boxed foods that meet the basic nutritional needs of a consumer.

(B) The purchase of food items is not intended to replace non-perishable items already available to the consumer.

(i) The purchase of food items must be limited to the amount necessary to adequately meet basic nutritional needs within the transition period and may not exceed \$200.

(ii) The Department may approve additional food stocking if the consumer's functional needs assessment indicates the need for additional food stocking beyond the standard limit.

(C) A consumer's available income and benefits may be used before approving expenses for basic food stocking.

(D) Consumers transitioning to a community-based care setting are not eligible to use funds for basic food stocking.

(l) Clothing that meets the basic needs of a consumer transitioning to a community-based care or in-home service setting;

(A) The purchase of clothing items are not intended to replace useable items already available to the consumer.

(B) A consumer's available income may be used before approving expenses.

(m) Movers and moving expenses, required to transition a consumer to a community-based care or in-home service setting, are limited to \$1,000;

(n) Delivery costs associated with moving a consumer's property from an off-site location to a community-based or in-home setting during the transition;

(o) Extra locks, for security purposes, in a community-based care or in-home service setting; and

(p) Duplicate keys in a community-based care or in-home service setting.

(7) The following services and expenses must be pre-authorized by the Department's Central Office:

- (a) Purchases that exceed the monetary limits described in this rule.
- (b) Approval for expenses that occur greater than thirty (30) days after the transition period.
- (c) Items required to re-establish a home not identified in this rule.
- (d) Other necessities not identified in this rule that are required for a consumer to transition from a nursing facility or the Oregon State Hospital.
- (e) Transportation for community-based service setting tours that require overnight travel.
- (f) Payment of past rent or utility bills in which a consumer was more than one month behind.

Stat. Auth.: ORS 410.070

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

411-035-0080 Transition Services Provider Qualifications

(Adopted 06/04/2014)

- (1) Providers of cleaning or moving services must have a distinct Medicaid provider number before providing services.
- (2) Movers must have a certificate of authority or a permit from the Oregon Department of Transportation.
- (3) No monetary funds shall be released to the provider until the work has been completed.

Stat. Auth.: ORS 410.070

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

411-035-0085 Consumer Eligibility Criteria for Voluntary Consumer Training Services

(Adopted 06/04/2014)

- (1) To be eligible for K-State Plan Voluntary Consumer Training Services, consumers must:

(a) Be eligible for Medicaid long-term care services and supports as described in OAR 411-015-0010 through 411-015-0015; and

(b) Be, or be expected to, receive services in a setting described in OAR 411-030-0033, In-Home Service Living Arrangement.

(2) Services are voluntary in nature.

(3) Services may be provided to designated representatives performing the duties of a consumer-employer on behalf of the consumer.

(4) Natural supports and designated representatives may receive services in addition to the eligible consumer.

(5) All in-home consumers participating in the Consumer-Employed Provider Program must be offered the voluntary training during the in-home service planning process. Case managers must make a referral to an approved training provider.

Stat. Auth.: ORS 410.070

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

411-035-0090 Voluntary Consumer Training Services

(Adopted 06/04/2014)

(1) GENERAL GUIDELINES.

(a) State K-Plan voluntary training services are offered on how to select; manage; and dismiss homecare workers.

(b) The training must meet the needs of consumers in regards to selecting, managing, and dismissing attendants.

(c) The training must be provided in a culturally competent manner.

(2) TRAINING PLAN.

(a) The provider must meet with the consumer to discuss:

(A) The consumer's goals;

(B) Expected outcomes of the training; and

(C) The consumer's on-going in-home service plan.

(b) The provider must develop a training plan with the consumer or the consumer's designated representative using the principles of person-centered planning which addresses the consumer's specific needs, goals, and desired outcomes. A small group option may be offered, if available.

(c) The provider must provide a copy of the training plan to the consumer or the consumer's designated representative and the consumer's case manager.

(d) The provider must inform the case manager if, after receiving services, a consumer or consumer's designated representative appears unable to assume employer responsibilities as defined in OAR 411-030-0040. The provider must inform the case manager of any issues related to the health and safety of the consumer including, but not limited to, unsafe conditions in the home and suspected abuse.

(3) TRAINING CONTENT.

(a) The training must offer a continuum of services based on a consumer's needs and preferences.

(b) The training must include, at minimum, the following:

(A) Understanding the service plan and task list;

(B) Creating job descriptions, locating employees, interviewing, completing reference checks, and hiring a homecare worker;

(C) Creating an employment agreement;

(D) Training, supervising, and communicating effectively with employees;

(E) Ensuring work is performed satisfactorily;

(F) Correcting unsatisfactory work performance and discharging unsatisfactory workers;

(G) Scheduling and tracking hours worked and maintaining employment records;

(H) Developing a backup plan for coverage of services; and

(I) Fraud prevention.

(4) TIMEFRAMES.

(a) Providers must contact the consumer within 5 working days of receiving a referral from the Department, a designee, or a request from a consumer for services, and offer the choice of a telephone or in-person planning interview.

(b) The provider must perform a planning interview within 10 business days following the acceptance of the consumer's referral unless the consumer requests a later date.

(c) The provider must initiate the individualized training plan within 10 business days of conducting a planning interview.

(d) The provider may offer additional information and support within the parameters of the training plan, but may not assume the role of designated representative by performing tasks that are the responsibility of a consumer-employer.

(e) The provider may periodically contact the consumer or designated representative to determine if additional information and assistance is required.

Stat. Auth.: ORS 410.070

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

411-035-0095 Provider Qualifications for Voluntary Consumer Training Services
(Adopted 06/04/2014)

(1) To ensure these services are consistent with the provision of the state's comprehensive voluntary consumer training services, providers must be approved by, or have a contract with, the Oregon Home Care Commission.

(2) Services must be provided by providers who have experience providing direct or educational services to seniors and people with physical disabilities and who:

(a) Demonstrate knowledge of DHS rules pertaining to in-home services;

(b) Demonstrate skills in communication, person-centered planning, and in providing individual supports, which are needed to provide the services described in this rule;

(c) Have fulfilled background check requirements for the programs in which the provider is providing services; and

(d) Participate in ongoing technical assistance and conferences provided by the Oregon Home Care Commission.

Stat. Auth.: ORS 410.070

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



Department of Human Services

Five Year Rule Review

ORS 183.405



Rule Name: Behavior Support Services

Rule Number(s): 411-046-0100; 411-046-0110; 411-046-0120; 411-046-0130; 411-046-0140; 411-046-0150; 411-046-0160; 411-046-0170; 411-046-0180; 411-046-0190; 411-046-0200; 411-046-0210; 411-046-0220

Program Area: Aging and People with Disabilities

Adoption Date: 6/23/2014



Review Due Date:

6/23/2019



Review Date:

3/14/2019

Reviewer's Name:

Sandra Yoro



***Advisory Committee Used**

Advisory Committee Not Used

***Committee Members:**

Contact Information:

| | |
|-------------------|---------------------------|
| Linda Kirschbaum | llindak@ohca.com |
| Ruth Gulyas | rgulyas@oashs.org |
| Shelly Edwards | sedwards@alz.org |
| Lynda Crandall | lgcrandall@comcast.net |
| Todd Woollard | toddwoollard@msn.com |
| Lori Ireland | llireland@hwcg.com |
| Wes Carson | wcarson@hwcg.com |
| Jerome Grzybowski | grzybowski@selu503.org |
| Krisan Pendleton | pendletk@co.yamhill.or.us |
| Kathy Yonkers | yonkerk@co.yamhill.or.us |
| Beverly Herrin | bherrin@otac.org |
| Dwight Dill | ddill@chdInc.org |
| Judy Strand | judys@metfamily.org |
| Joan Medlen | joan.e.medlen@state.or.us |
| Sherry Stock | sherry@biaoregon.org |
| Mary Jaeger | Mary.jaeger@oregon.gov |

| | |
|--------------------|---|
| Rodica Malos | Malos76@yahoo.com |
| Mary Ellen Sprague | LitHarly1@aol.com |
| Teresa Oliverl, RN | tollverl@roxyann.org |
| Megan Hornby | megan.hornby@state.or.us |
| Nathan Singer | nathan.m.singer@state.or.us |
| Jane-ellen Weidanz | jane-ellen.weidanz@state.or.us |
| Linda Woelke | Linda.j.woelke@state.or.us |
| Kathy McNamara | KATHERINE.S.MCNAMARA@dhsoha.state.or.us |
| | |

What was the intended effect of this rule adoption?
411-046-0100 Purpose
States purpose of the rule division

Yes No **Has this rule adoption had its intended effect?**

Yes No **Was the anticipated fiscal impact of this rule underestimated?**

Yes No **Was the anticipated fiscal impact of this rule overestimated?**

Yes No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**

Yes No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-046-0110 Definitions
Establishes Definitions for the rule chapter

Yes No **Has this rule adoption had its intended effect?**

Yes No **Was the anticipated fiscal impact of this rule underestimated?**

Yes No **Was the anticipated fiscal impact of this rule overestimated?**

Yes No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**

Yes No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?

411-046-0120 Eligibility

Describes requirements for an individual to be eligible for behavior support services.

- Yes
 No

Has this rule adoption had its intended effect?

- Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

- Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

- Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

- Yes
 No

Is there a continued need for this rule?

What was the intended effect of this rule adoption?

411-046-0130 Limitations

States who may not receive behavior support services and instances when they may not be provided

- Yes
 No

Has this rule adoption had its intended effect?

- Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

- Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

- Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

- Yes
 No

Is there a continued need for this rule?

What was the intended effect of this rule adoption?
411-046-0140 Behavior Support Services
Describes the services that must be provided and what the services do.

Yes No **Has this rule adoption had its intended effect?**

Yes No **Was the anticipated fiscal impact of this rule underestimated?**

Yes No **Was the anticipated fiscal impact of this rule overestimated?**

Yes No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**

Yes No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?
411-046-0150 Authorizations
States required authorization and amount of hours an individual may receive along with timelines.

Yes No **Has this rule adoption had its intended effect?**

Yes No **Was the anticipated fiscal impact of this rule underestimated?**

Yes No **Was the anticipated fiscal impact of this rule overestimated?**

Yes No **Have subsequent changes in the law required this rule to be/can be amended or repealed?**

Yes No **Is there a continued need for this rule?**

What was the intended effect of this rule adoption?

411-046-0160 Communication

States reporting, confidentiality, and notification requirements

- Yes
- No

Has this rule adoption had its intended effect?

- Yes
- No

Was the anticipated fiscal impact of this rule underestimated?

- Yes
- No

Was the anticipated fiscal impact of this rule overestimated?

- Yes
- No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

- Yes
- No

Is there a continued need for this rule?

What was the intended effect of this rule adoption?

411-046-0170 Documentation

States documentation requirements for providers, mandatory forms, and record requirements.

- Yes
- No

Has this rule adoption had its intended effect?

- Yes
- No

Was the anticipated fiscal impact of this rule underestimated?

- Yes
- No

Was the anticipated fiscal impact of this rule overestimated?

- Yes
- No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

- Yes
- No

Is there a continued need for this rule?

| | |
|--|--|
| What was the intended effect of this rule adoption? 411-046-0180 Qualifications for Providers and Behavior Consultants Lays out provider and behavior consultant qualification requirements. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
| What was the intended effect of this rule adoption? 411-046-0190 Disenrollment or Termination Lays out reasons a provider may be disenrolled or terminated from providing services. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |

What was the intended effect of this rule adoption?
411-046-0200 Compensation and Billing
States what providers need to do in order to be compensated for providing services

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
411-046-0210 Continuing Education Requirements
States continuing education requirements for providers.

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
411-046-0220 Exceptions to Rules
States when exceptions may be granted and how to go about asking for an exception

Yes **Has this rule adoption had its intended effect?**
 No

Yes **Was the anticipated fiscal impact of this rule underestimated?**
 No

Yes **Was the anticipated fiscal impact of this rule overestimated?**
 No

Yes **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
 No

Yes **Is there a continued need for this rule?**
 No

Additional Comments:

***Date report sent to advisory committee members: _____**

Report approved by: Sanata J. York 3/14/19
Printed name Signature Date

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

**CHAPTER 411
DIVISION 46**

BEHAVIOR SUPPORT SERVICES

411-046-0100 Purpose
(Adopted 6/23/2014)

(1) The rules in OAR chapter 411, division 046 establish standards and procedures for Medicaid Behavior Support Services. Behavior Support Services are provided to support a wide range of individuals who receive Medicaid funded home and community-based care services. The scope of these rules cover:

- (a) Department contractors of Behavior Support Services;
- (b) Licensed assisted living, residential, and adult foster home providers who provide Behavior Support interventions Services to eligible individuals who receive Behavior Support Services;
- (c) In-home agencies, specialized living, or homecare workers who provide Behavior Support interventions to eligible individuals who receive Behavior Support Services.

(2) Behavior Support Services are provided by a behavior consultant who provides eligible individuals and their caregivers with:

- (a) A Behavior Support Plan;
- (b) Ideas and strategies to support an individualized Activity Plan; and
- (c) Coaching for designated caregivers on behavior and activity strategies.

(3) The goals of Behavior Support Services are to:

(a) Ensure all individuals eligible for State Plan K Community First Choice or Independent Choices receive behavior interventions in a person-centered manner that follows the behavior support standards described in these rules.

(b) Ensure individuals who have diagnoses that place them 'at risk' of negative behaviors receive proactive environmental strategies and activities which promote:

(A) Placement stability;

(B) Quality of life; and

(C) Autonomy and satisfaction with the individuals' caregivers.

(c) Provide caregivers with the environmental strategies and communication skills to revise and implement a Behavior Support Plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0110 Definitions

(Adopted 6/23/2014)

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 046:

(1) "Abuse" means Abuse of an adult or elderly person as defined in ORS 124.050-095 and ORS 430.735-765; and as defined in OAR 411-020-0002 for older adults and individuals with a physical disability who are 18 years of age or older.

(2) "Acquired brain injury or traumatic brain injury" means individuals who have or who are at risk of developing challenging behaviors as a result of a recent or longstanding brain injury diagnosis and who can benefit from Behavior Support Services. Acquired brain injury may include individuals with cognitive and behavioral disorders related to stroke, spinal cord injuries, or other neurological diseases that may benefit from Behavior Support Services.

(3) "Activation date" means service activation date as defined in these rules.

(4) "Activity evaluation" is part of the person-centered evaluation to determine what activities an individual enjoys doing.

(5) "Activity Plan" is part of the Behavior Support Plan and includes an activity list of the specific, private, group and community person-centered activities the individual finds meaningful or enjoys. The plan includes strategies to help caregivers ensure these activities become part of the individual's daily routine.

(6) "Adult foster home" means a licensed home providing services to a person who is eligible for or is receiving Behavior Support Services per OAR chapter 411, division 050.

(7) "Behavior consultants" are Medicaid providers who have a contract with the Department to provide Behavior Support Services. When Behavior Support Services are provided as part of a supplemental or specific needs contract, per OAR chapter 411, division 027, the behavior consultant is a designated employee, who meets the qualifications of a behavior consultant, and has a job description to provide Behavior Support Services.

(8) "Behavior interventions" mean any planned or repeated pattern of interventions or social interactions intended to modify an individual's environment or behavior.

(9) "Behavioral support" means the theories and evidenced-based practices supporting a proactive approach to behavioral intervention and that:

(a) Emphasize the development of functional alternative behavior;

(b) Prevent the need for, or minimize the use of, intrusive or restrictive interventions;

(c) Ensure abusive or demeaning interventions are never used; and

(d) Evaluate the effectiveness of behavior interventions based on objective data.

(10) "Behavior Support Interventions" means the caregiver's implementation of the Behavior Support Plan.

(11) "Behavior Support Plan" means the written document that describes individualized support strategies designed to make the individual's challenging behaviors irrelevant, inefficient or ineffective while reinforcing alternative behavior that achieves and satisfies the same need as the challenging behavior. The Behavior Support Plan will identify caregiver interventions to help caregivers deescalate, reduce, or tolerate challenging behavior when it occurs. The strategies focus on environmental, social, and physical factors that affect the behavior, while including supports for communication, personal choice, and specific preferences.

(12) "Behavior Support Services" mean a set of Medicaid funded services that include:

- (a) Person-centered evaluation;
- (b) A Behavior Support Plan;
- (c) Coaching for designated caregivers on plan implementation;
- (d) Monitoring to evaluate the plan's impact;
- (e) Revision of the plan;
- (f) Updating coaching and activities; and
- (g) May include consultation with the caregiver on mitigating behaviors that place an individual's health and safety at risk and to prevent institutionalization.

(13) "Business day" means the days the "local office" is open.

(14) "Caregiver" means any person providing services to an eligible individual in a home and community-based care setting. Caregivers are designated by their employer to receive coaching from the behavior consultant.

(15) "Case manager" means a person employed by the Department or Area Agency on Aging who:

- (a) Assesses the service needs of an applicant;

(b) Determines eligibility;

(c) Offers service choices to eligible individuals; and

(d) Authorizes referrals for a Behavior Support Service consultation, or placement in a program where Behavior Support interventions are provided, as part of the Medicaid supplemental or specific needs contracted service rate.

(16) "Coaching" means the direction provided by the behavior consultant to caregivers or designated caregivers on the Behavior Support and Activity Plans. Coaching includes:

(a) Demonstrations by the consultant;

(b) Observation or role play by caregivers on providing a specified intervention; and

(c) Feedback from caregivers on specified interventions.

(17) "Crisis management" means an individual:

(a) Has a medical or physical health need;

(b) Is exhibiting psychiatric symptoms or behaviors that necessitate emergency medical attention;

(c) Needs an immediate mental health intervention; or

(d) Needs hospitalization for physical health or psychiatric health reasons.

(18) "Dementia" means major neurocognitive disorders, listed in the Diagnostic and Statistical Manual of Mental Disorders (DSMV), which result in loss of cognitive function, interfere with an individual's daily functioning; and may affect an individual's language; memory; speech; movement; perception; and ability to think, learn, reason or follow social norms. Symptoms may include changes in personality, mood, and behavior.

(19) "Department" means the Department of Human Services or the Department's designee.

(20) "Designated caregivers" means the employees of a home or community-based care contractor, who are assigned to assist the behavior consultant with gathering information, review of the Behavior Plans, and are the recipients of coaching activities. The person responsible for coordination of services provided to an individual residing in their own home, under OAR chapter 411, division 030, is considered either the 'designated caregiver' or the person who assigns designated caregivers.

(21) "Enhanced care services" means a selected licensed adult foster home, nursing, or residential care facility where long term care supports are provided under a specific needs contract and mental health rehabilitation services are provided on site five to seven days a week.

(22) "Exception payment" means a payment to the provider per OAR 411-027-0050.

(23) "Healthcare provider" means a licensed provider providing services to an eligible individual including, but not limited to:

- (a) Home health,
- (b) Hospice,
- (c) Mental health,
- (d) Primary care,
- (e) Specialty care,
- (f) Pharmacy, or
- (g) Hospitalization.

(24) "Home and community-based care contractor" means a Department contractor who is providing Medicaid funded residential or in-home services to an individual eligible for or receiving services under these rules. Residential or in-home services include:

- (a) Adult foster homes;

- (b) Assisted Living Facilities;
- (c) In-home agencies;
- (d) Residential care facilities;
- (e) Specialized living; and
- (f) In-home services.

(25) "Home and community-based care services" mean services approved by the Centers for Medicare and Medicaid Services for eligible individuals who are aged and physically disabled in accordance with State Plan K Community First Choice requirements.

(26) "Individual" means a person eligible for and receiving Behavior Support Services.

(27) "In-home care agency" means a licensed agency as described in OAR chapter 333, division 536 or a "home health agency" as defined in ORS 443.005, which has a contract with the Department to provide services for State Plan K Community First Choice or Independent Choice.

(28) "In-home services" means the Medicaid Program provided under OAR chapter 411, division 030, using caregivers who are either employees of in-home care agencies or who are employed by the Individual.

(29) "Initial person-centered evaluation" means the person-centered evaluation the behavior consultant begins at the first visit to determine what behavior supports the individual needs.

(30) "Local office" means the Department office or Area Agency on Aging, responsible for Medicaid services including case management, referral, authorization, and oversight of Behavior Support Services provided to an individual.

(31) "Mandatory Department forms" mean the forms required to document the services in these rules. Mandatory forms are posted on the Department website.

(32) "Memory care communities" means the programs that include Behavior Support Services per OAR Chapter 411, Division 57.

(33) "Person-centered" means a formal or informal planning process for gathering and organizing information to help an individual:

(a) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and

(c) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(34) "Person-centered evaluation" means the information gathered by the behavior consultant to create a Behavior Support Plan, which includes an activity evaluation. The person-centered evaluation process includes observation of the individual and interviews with the individual, their caregivers, members of the individual's service planning team, the case manager, and social supports.

(35) "Provider" means an entity that hires employees or subcontractors who meet the behavior consultant qualifications in OAR 411-046-0180, have a contract with the Department to provide Behavior Support Services, and is an enrolled Medicaid provider who meets:

(a) The requirements in these rules;

(b) The requirements in OAR 407-120-0300 Medicaid provider enrollment and claiming; and

(c) As applicable, the requirements under OAR 410-120, Medicaid General Rules.

(36) "Residential care and assisted living facilities" means the licensed entity providing services per OAR chapter 411, division 054 to an individual eligible for or receiving Behavior Support Services.

(37) "Service activation date" means the date which all timeframes begin. This date is either the date of the referral for Behavior Support Services, or a later date that is approved by local office management.

(38) "Service plan" means the service or care plan provided to the Medicaid eligible individual who is determined to need or is receiving Behavior Support Services required under:

(a) Adult Foster Homes, OAR chapter 411, division 050;

(b) Residential Care and Assisted Living Facilities, OAR chapter 411, division 054;

(c) Specialized Living Services, OAR chapter 411, division 065;

(d) In-Home Services, OAR chapter 411, division 030.

(39) "Specialized living services" means the Department contractor performing services provided per OAR Chapter 411, Division 065 for an individual living in a designated home-based location.

(40) "Specific needs or supplemental contract" means the services which are covered under OAR 411-027-0075, payment limitations in community-based care services.

(41) "Service notes" means the documentation which documents the coaching, monitoring, and other services provided by the behavior consultant to implement the Behavior Support Plan on the Department's mandatory form.

(42) "These rules" mean the rules in OAR chapter 411, division 046.

(43) "Written approval" means the Department's certification of a provider to be a behavior consultant.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0120 Eligibility

(Adopted 6/23/2014)

(1) Individuals must meet the following requirements to receive Behavior Support Services:

- (a) Be eligible for home and community-based care services provided through APD; and**
- (b) Be receiving services through either State Plan K Community First Choice or Independent Choices.**

(2) Behavior Support Services may be provided to eligible individuals noted in (1) above who may benefit from the service or have caregivers who may benefit from the service based on the individual's functional needs assessment that is performed by the case manager. An eligible individual includes, but is not limited to:

- (a) An individual at risk of requiring behavior interventions;**
- (b) An individual whose caregiver requests assistance in developing person-centered interventions;**
- (c) An individual with a placement failure related to their behavior;**
- (d) An individual at risk of involuntary move out or who has received an eviction notice;**
- (e) An individual receiving Medicaid service payments to support behavior interventions, such as a behavior add-on or an exception; or**
- (f) An individual whose provider receives a payment for costs associated with interventions needed to address the individual's challenging behaviors.**

(3) All Behavior Support Services must be pre-authorized by:

- (a) The eligible individual's case manager; or**
- (b) A Department authorized placement in a home or community-based care setting where the Medicaid service payment includes Behavior Support Services.**

(4) Eligible individuals, or their designated representative, may request or refuse to participate in Behavior Support Services. Consultation may still be provided to the care provider.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0130 Limitations

(Adopted 6/23/2014)

(1) Behavior Support Services, defined in this rule, may not be provided to:

(a) Individuals who are receiving:

(A) Specific needs setting contracted rate for "enhanced care services"; or

(B) Services through Developmental Disabilities per OAR chapter 411, division 308, OAR chapter 411, division 330, or OAR chapter 411, division 325.

(b) Individuals receiving services in a nursing facility or hospital;

(2) Behavior consultation services may not be provided solely to:

(a) Assist in protective service investigations or licensing inspections;

(b) Assist in administrative functions such as, pre-admission screenings, eligibility determinations, or case manager assessments; or

(c) Replace or support interventions for adult protective services, crisis management, law enforcement, or 911 emergency services that are required when the behavior of concern is causing an immediate danger to the client, other residents, or caregivers.

(3) Behavior Support Services are separate from interventions addressing behavior symptoms as part of:

(a) Mental health therapy or counseling;

(b) Health or mental health plan coverage; or

(c) Vocational or educational services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0140 Behavior Support Services

(Adopted 6/23/2014)

(1) Behavior Support Services assist individuals with behavioral challenges, due to their disability, in accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks.

(2) Behavior Support Services include consultation to the caregiver on mitigating behavior that may place the individual's health and safety at risk and to prevent institutionalization.

(3) All referrals must be made by the individual's case manager, on the Department's mandatory form, which is sent to the Behavior Support Service provider.

(4) Behavior Support Service providers, their employees, or subcontractors acting as behavior consultants, must provide the following services to individuals they accept for services:

(a) Review of Referral.

(A) The Behavior Support Service consultant or provider must provide a documented decision regarding denial or acceptance of the referral within 2 business days.

(B) Service activation dates that are more than 7 days past the referral acceptance date must be approved by the referring Case Manager.

(C) Providers must ensure adequate numbers of behavior consultants are available to meet the service needs of all individuals accepted for service.

(D) The following entities must be informed of accepted referrals by the case manager:

(i) The individual or their legal representative; and

(ii) The person in charge of the individual's Medicaid residential or home-based service plan.

(b) Person-Centered Evaluations.

(A) An initial person-centered evaluation shall be started within 5 business days of the service activation date. The evaluation may be updated at the discretion of the behavior consultant, based on information gathered from coaching activities.

(B) Person-centered evaluation activities must support the Behavior Support Plan interventions, the scope of services provided, and include, at a minimum the content noted on the Department's mandatory form.

(C) The evaluation must be documented on the Department's mandatory form and provided to the case manager upon request.

(D) As part of the person-centered evaluation, the behavior consultant must conduct an activity evaluation.

(c) Behavior Support Plan.

(A) The Behavior Support Plan shall be documented on the Department's mandatory form and completed within 20 business days of the initial person-centered evaluation or updated within 5 business days of any new evaluation activity. The plan must support the interventions and scope of the services provided.

(B) The behavior consultant is responsible for developing a Behavior Support Plan that considers the resources available at the individual's home.

(C) All strategies in the Behavior Support Plan must align with the individual's residential service or care plan and activity program required under licensing or Medicaid Program rules.

(D) The Behavior Support Plan must be explained to the individual in a manner the individual can understand.

(E) The plan must include:

(i) An Activity Plan that is developed following an activity evaluation. The activity evaluation must examine, but is not limited to examining, the individuals:

(I) Past and current interests;

(II) Current abilities and skills as they relate to activities of daily living, instrumental activities of daily living, and health-related tasks;

(III) Emotional and social needs and patterns;

(IV) Physical abilities and limitations;

(V) Adaptations necessary for the resident to participate in their activities of choice;

(ii) A list of person-centered activities must be identified based on the evaluation and included as a distinct part of the Behavior Support Plan. The list must include structured and non-structured activities that meet the individual's current preferences. Activities include, but are not limited to:

(I) Occupation or chore related tasks;

(II) Scheduled and planned events (e.g. entertainment, outings);

(III) Spontaneous activities for enjoyment or that may help diffuse a behavior;

(IV) One to one activities that encourage positive relationships between residents and staff (e.g. life story, reminiscing, music);

(V) Spiritual, creative, and intellectual activities;

(VI) Sensory stimulation activities;

(VII) Physical activities that enhance or maintain a resident's ability to ambulate or move;

(VIII) Outdoor activities; and

(IX) Night time activities.

(F) Identification of strategies to help caregivers provide activities and address emergent behaviors.

(G) Completed Behavior Support Plans, and any subsequent updates, must be reviewed with, and provided to, the people responsible for the individual's residential or home-based service plan and provided to the case manager.

(H) The behavior consultant must document a minimum of one review of the Behavior Support Plan with a designated caregiver on the Department's mandatory form.

(I) Behavior Support and Activity Plans must be modified based on feedback from coaching activities, to ensure caregiver participation and to evaluate the proposed strategies.

(d) Coaching Caregivers.

(A) The behavior consultant must develop a coaching plan describing how they will coach each caregiver to implement the Behavior Support Plan. The coaching plan may be included in the Behavior Support Plan.

(B) The behavior consultant must schedule and initiate onsite coaching to the designated caregivers within 30 business days of service activation.

(C) The behavior consultant should review information with the caregiver's employer and include, at a minimum the following content:

(i) Review of the Behavior Support Plan;

(ii) Discussion on how activities can be incorporated into the individual's daily routine;

(iii) Demonstration of desired interventions by the behavior consultant;

(iv) Observation or role play by the caregiver on implementing portions of the Behavior Plan; and

(v) Gathering of feedback from caregivers on how to modify the plan or activities.

(vi) The review may be conducted as part of a coaching activity.

(vii) The Behavior consultant will advise caregivers to contact primary the health care provider or long term care nurse, as a part of coaching, when it relates to an individual possibly experiencing a medical issue that may be impacting their behaviors, or if medication interaction may be a concern related to behaviors.

(D) Documentation of all coaching activity, including dates and participants, must be provided on the Department's mandatory form and, upon request, provided to the employers or supervisors of the designated caregivers who received coaching.

(e) Monitoring.

(A) The behavior consultant must provide at least two onsite monitoring visits to:

- (i) Conduct observations;
- (ii) Gather information;
- (iii) Evaluate caregiver and individual responses to the Behavior Support and the Activity Plans; and
- (iv) Carry out coaching activities.

(B) After the Behavior Support Plan is completed and a minimum of two on-site coaching visits are conducted, monitoring can be provided by phone or through secure video conferencing, if all parties agree.

(C) Documentation of all monitoring must be provided on the Department's mandatory form.

(f) Service Plan Coordination.

(A) Completed Behavior Support Plans are considered part of the individual's activity, service, or care plan required by the home and community-based care license or Medicaid Program.

(i) Home and community-based care contractors must assign enough designated caregivers to ensure the interventions described in the Behavior Support Plan, including the Behavior Support Interventions, can be implemented in accordance with licensing or Medicaid Program standards.

(ii) Home and community-based care contractors must identify charting protocols for the behavior consultant to document any onsite activity provided to the eligible individual or their caregiver.

(iii) If the behavior consultant identifies any barriers that prevent the implementation of the Behavior Plan, they must notify the home and community-based care contractor within 2 business days.

(iv) Home and community-based care contractors must report to case managers, within 5 business days, if the Behavior

Support Plan cannot be implemented or if the behavior consultant is not utilizing input from caregivers or the service planning team.

(B) Behavior consultants who are not providing services as part of a supplemental or specific needs setting contract may participate on the individual's service planning team or mental health treatment team only to review the individual's Behavior Support Plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0150 Authorizations

(Adopted 6/23/2014)

(1) Behavior Support Services must be prior-authorized by the eligible individual's case manager using the referral process noted in OAR 411-046-0140(4)(a). The Case manager is responsible for ensuring the individual is eligible for an initial referral and ongoing Behavior Support Services.

(2) Service hours for person-centered evaluation and development of the Behavior Support Plan are authorized by the individual's case manager effective on the date the behavior consultant accepts and signs the Department approved referral form.

(3) Case managers can authorize up to 40 hours for the initial assessment, service planning, and follow up. An additional 40 hours may be approved by the local office management for ongoing service delivery. The Department may approve additional hours as defined in OAR 411-046-0220 if the individual's functional needs assessment indicates the need for additional hours.

(4) For services noted in OAR 411-046-0140(4)(a) to (4)(f), the provider should make every effort to complete them within 120 days from the service activation date. However, prior authorizations are effective for a full 12 month period from the initial service activation date. After 12 months, a new authorization must be requested and approved.

(5) Authorizations for service hours must be completed by the local office within 5 business days of receiving notification of referral acceptance.

(6) Prior authorizations are in effect for a 12 month period from the initial service activation date. After 12 months, a new authorization must be requested and approved.

(7) Requests for more than 80 hours of service must be reviewed and approved by the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0160 Communication

(Adopted 6/23/2014)

(1) Required Reporting.

Behavior consultants must report suspected or known neglect or abuse of all adults and elderly individuals as required by ORS 124.050 to 095, ORS 430.735 to 765 and ORS 419B to 419B.045.

(2) Confidentiality.

(a) Behavior consultants must adhere to the confidentiality standards as described in the Department contract as well as the Federal HIPAA privacy rules.

(b) Any written, verbal, digital, video, and electronic information regarding an individual must adhere to the Department's confidentiality standards as described in OAR chapter 407, division 014 and Federal HIPAA standards.

(3) Notification.

(a) Behavior consultants must notify the home and community-based care contractor of the following:

(A) Life threatening health and safety concerns must be reported immediately. This communication may occur in person or by phone.

(B) Concerns regarding a caregiver's response to coaching activity must be reported as soon as possible. This communication may occur in person, by phone, or by email.

(C) Any permanent reassignment of a behavior consultant must be reported within 5 business days or prior to onsite service delivery. This communication may occur in person, by phone, or by email.

(b) Behavior consultants must notify the case manager or local office designee of the following:

(A) Life threatening health and safety concerns of an individual must be reported immediately, by phone or in person.

(B) Concerns regarding the individual's placement must be reported within one business day. This communication may occur by email or phone.

(C) Any permanent reassignment of a behavior consultant, must be reported within 5 business days or prior to onsite service delivery. This communication may occur by email or phone.

(D) An administrator, licensee, or designated caregiver who is unwilling or unable to implement the Behavior Support Plan, after completion of coaching plans and service coordination activities. This communication may occur by email or phone.

(c) Case managers and behavior consultants are required to exchange information regarding changes in the individual's eligibility status, service location, or service needs during the duration of the Behavior Support Service.

(d) Behavior consultants must report suspected abuse immediately to the local Departmental office, designee office, or by calling the Department's toll-free abuse reporting hotline.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0170 Documentation

(Adopted 6/23/2014)

(1) Compliance with documentation standards in this rule and completion of mandatory Department forms is intended to ensure communication between case managers and home and community-based care providers.

(2) The documentation requirements in this rule do not replace or substitute for the documentation requirements in the:

(a) Medicaid Provider Rules governing provider requirements as described in OAR chapter 407, division 120, Provider Rules, MMIS Provider Enrollment and Claiming; Contractor Audits, Appeals and Post Payment Recoveries;

(b) Medicaid General Rules under OAR chapter 410, division 120 as applicable; and

(c) Licensing or Medicaid Program rules governing the home and community-based care provider, as applicable.

(3) Behavior consultants are expected to complete mandatory Department forms for support services provided under 411-046-0140.

(4) Use of alternative, but equivalent forms, may be approved by the Department using the exceptions process under 411-046-0220 or as defined in supplemental or specific needs setting contracts or individuals who receive Behavior Support Services as part of their monthly service rate.

(5) Mandatory forms must be sent to the case manager before or at the time of submission of invoices or before receipt of the monthly Medicaid service rate.

(a) Documentation must support the services billed and adhere to the timeframes noted in this rule and on the mandatory forms.

(b) Claims will not be paid until the mandatory forms are submitted to the individual's case manager and the documentation noted in 411-046-0170(2) is completed.

(6) Behavior Support Service providers are expected to maintain a written record of all services provided to, and for, an individual and an individual's caregiver.

(a) The record must include copies of all documentation provided to the:

- (A) Case manager;
- (B) Home and community-based care contractor; and
- (C) Behavior consultant or provider maintained to meet 411-046-0170(2)(a)-(c).

(b) The record must be retained until the behavior consultant no longer provides services to the individual, at which time, the behavior consultant or the agency must provide a copy of any part of the record that was not previously provided to the case manager.

(c) The behavior consultant or agency must retain the original record, following HIPAA practices, for a period of seven years.

(d) All documentation must be provided in HIPAA secure format.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0180 Qualifications for Providers and Behavior Consultants
(Adopted 6/23/2014)

(1) The Department shall select qualified providers according to standards:

(a) In these rules;

(b) In OAR 407-120-0320; and

(c) In OAR chapter 410, division 120, as applicable.

(2) Providers must be enrolled as a Medicaid provider.

(3) Behavior consultants must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions.

(4) Behavior Support Service Medicaid providers must have a Department contract to provide:

(a) Home or community-based care services defined under a specific needs setting, and which includes Behavior Support Services as part of the contracted rate; or

(b) Behavior Support Services with qualified employees or subcontractors who provide time limited consultation, at a range of settings, where the referred individual lives.

(5) A Behavior Support Service Medicaid provider must employ or subcontract with behavior consultants who meet all of the following requirements:

(a) Pass the Department required criminal record check processes per OAR 407-007-0200 to 407-007-0370 and meet one of the following:

(A) Pass the Behavior Consultant Competency Evaluation administered by a Department approved contractor;

(B) Possess and maintain certification from a Department approved program noted on the Department website; or

(C) Have written approval to perform behavior consultant work from the Department based upon review of resume, certification, or education. Requests for this approval must follow 411-046-0220, exceptions to rules.

(b) Maintain compliance with continuing education requirements under 411-046-0210.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0190 Disenrollment or Termination

(Adopted 6/23/2014)

(1) Medicaid providers of Behavior Support Services, their behavior consultant employees, or subcontractors may be terminated or prohibited from providing services for any of the following:

(a) Violation of any part of these rules;

(b) Violation of the protective service and abuse rules in OAR chapter 411, division 020 and OAR chapter 407, division 045;

(c) A demonstrated pattern of repeated unsubstantiated complaints of neglect and abuse per OAR chapter 411, division 020 and OAR chapter 407, division 045;

(d) Failure to meet behavior consultant qualifications or continuing education requirements;

(e) Failure to provide copies of records to designated Department or Oregon Health Authority entities;

(f) Repeated failure to participate in Behavior Support Plan review or service planning meetings when requested by an individual's case manager;

(g) Failure to provide the services noted in these rules; or

(h) Fraud or misrepresentation in the provision of services under these rules.

(2) Medicaid providers have rights to appeal a termination based on OAR 407-120-0360(8)(g) and, as applicable, OAR chapter 410, division 120.

(3) Medicaid providers of these services must provide 30 day written notice, or more if specified in contract, to the Department of the decision to cease services.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0200 Compensation and Billing

(Adopted 6/23/2014)

(1) All billing and claims must comply with OAR 407-120-0330; OAR 407-120-0340; and OAR chapter 410, division 120, as applicable.

(2) Compensation for Behavior Support Services in supplemental or specific needs setting contracts shall be defined through the Department contract.

(3) The Department may adjust rates in underserved areas to ensure individuals have access to services.

(4) Failure to comply with standards in this rule may result in determination of overpayment for which restitution may be sought.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0210 Continuing Education Requirements

(Adopted 6/23/2014)

(1) Behavior consultants must maintain a record verifying completion of at least 12 hours of continuing education per year in person-centered care or behavior support training that is provided by a Department approved trainer or training organization noted on the Department website.

(2) Requests for documentation verifying compliance with this requirement must be provided upon request to the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

411-046-0220 Exceptions to Rules

(Adopted 6/23/2014)

(1) Exceptions to these rules may be made by the Department central office and must be granted by the Department in writing. Implementation of an exception may not occur without written approval.

(2) On a case specific basis, the following exceptions may be granted by local office managers:

(a) Changing the timeframes for service activation,

(b) Initiating the person-centered evaluation,

(c) Completing the Behavior Plan; or

(d) Initiating coaching.

(3) Requests for exceptions to the rules must include, but are not limited to, a written request provided to central office management for prior approval.

Documentation must include:

- (a) Local office management support for the exception request;
- (b) Description of the benefit to the individual or program served by the Department as result of the exception;
- (c) Details regarding the specific rule for which:
 - (A) The exception will be granted;
 - (B) Rationale for why the exception is needed;
 - (C) Proposed duration of the exception;
 - (D) Identification of alternatives (including rule compliance); and
 - (E) Costs, if any, of the exception.

(4) Exceptions will not impact compliance, and will not result in non-compliance, with any OAR other than chapter 411, division 046.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070



**Department of Human Services
Five Year Rule Review
ORS 183.405**

Rule Name: Employment Services for Adults with Intellectual or Developmental Disabilities

Rule Number(s): 411-345-0027, 411-345-0085

Program Area: Office of Developmental Disabilities Services

Adoption Date: 12/28/2014



Review Due Date:
12/28/2019



Review Date:
12/6/2019

Reviewer's Name:
Christina Hartman



- * Advisory Committee Used
 Advisory Committee Not Used

*** Committee Members:**

Contact Information:

| | |
|---------------------|--|
| Ann Balzell | Ann.BALZELL@dhsosha.state.or.us |
| Josiah Barber | jbarberocdd@gmail.com |
| Ava Bartley | AVA.BARTLEY@dhsosha.state.or.us |
| Jennifer Bickett | jbickett@communitypath.org |
| Chris Burnett | cburnett@oregonrehabilitation.org |
| Katie Coombes | coombesk@seiu503.org |
| Jaimé Daignault | Jaimé.DAIGNAULT@dhsosha.state.or.us |
| John Dunbar | johndunbar@mhgm.com |
| Robert Dunn | roberta@factoregon.org |
| Allison Enriquez | ALLISON.ENRIQUEZ@dhsosha.state.or.us |
| Maria Forrest | Mariah.FORREST@dhsosha.state.or.us |
| Julia Greenfield | jgreenfield@disabilityrightsoregon.org |
| Jereme Grzybowski | jereme@seiu503.org |
| Christina Hartman | Christina.HARTMAN@dhsosha.state.or.us |
| Julie Huber | JULIE.L.HUBER@dhsosha.state.or.us |
| Anna Keenan-Mudrick | anna@cas-dd.org |
| Chelas Kronenberg | CHELAS.A.KRONENBERG@dhsosha.state.or.us |
| Heather Lindsey | heather.lindsey@state.or.us |
| Mike Maley | Mike.J.MALEY@dhsosha.state.or.us |
| Corissa Neufeldt | Corissa.NEUFELDT@dhsosha.state.or.us |
| Mike Oliver | moliver@danserv.com |
| Sarah Jane Owens | sjowens@aocweb.org |

| | |
|---------------------|---------------------------------------|
| Mike Parr | Mike.R.PARR@dhsosha.state.or.us |
| Joli Schroader | JOLI.R.SCHROADER@dhsosha.state.or.us |
| Laura Spurell | dandylicon7pdx@gmail.com |
| LeaAnn Stutheit | Leaann.STUTHEIT@dhsosha.state.or.us |
| Stephaine Taylor | Stephaine.TAYLOR@dhsosha.state.or.us |
| Jeff Wahl | Jeff.Wahl@dhsosha.state.or.us |
| Tina Beatty Walters | Tina.BEATTYWALTERS@state.or.us |
| Kathryn Weit | KathrynWeit@oregonsupportservices.org |

What was the intended effect of this rule adoption?

The Department adopted:

- OAR 411-345-0027 about Qualification for Services to describe who is eligible to receive services and assure employment services are only available to individuals who are eligible for OSIPM.
- OAR 411-345-0085 about Reports and Recordkeeping to assure adequate documentation of services is kept by providers.

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/ can be amended or repealed? OAR 411-345-0027 Last Amended 12/28/2018 OAR 411-345-0085 Last Amended 12/28/2018 |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
| Additional Comments: | |

Report approved by: Allison Enriquez

December 23, 2019

Date report sent to advisory committee members:

December 23, 2019



**Department of Human Services
Five Year Rule Review
ORS 183.405**

Rule Name: Standards for Employers

Rule Number(s): 411-340-0135

Program Area: Office of Developmental Disabilities Services

Adoption Date: 12/28/2014



Review Due Date:
12/28/2019



Review Date:
12/6/2019

Reviewer's Name:
Christina Hartman



- * Advisory Committee Used
 Advisory Committee Not Used

*** Committee Members:**

Contact Information:

| | |
|-------------------|--|
| Mohammad Bader | mohammad.bader@multco.us |
| Bruce Baker | BRUCE.M.BAKER@dhsosha.state.or.us |
| Patricia Baxter | Patricia.E.BAXTER@dhsosha.state.or.us |
| Marilee Bell | Marilee.BELL@dhsosha.state.or.us |
| Matt Bighouse | Matt.L.BIGHOUSE@dhsosha.state.or.us |
| Chris Burnett | cburnett@oregonrehabilitation.org |
| Aura Carr | acarr@fullaccess.org |
| Jaime Daignault | Jaime.DAIGNAULT@dhsosha.state.or.us |
| Roberta Dunn | roberta@factoregon.org |
| Heather Ferris | HEATHER.M.FERRIS@dhsosha.state.or.us |
| Mariah Forrest | Mariah.FORREST@dhsosha.state.or.us |
| Chrissy Fuchs | CHRISSY.FUCHS@dhsosha.state.or.us |
| Joanne Fuhrman | jfuhrman@pclpartnership.org |
| Lois Gailer | loisg@albertinakerr.org |
| Toi Gibson | toinae.gibson@multco.us |
| Julia Greenfield | jgreenfield@disabilityrightsoregon.org |
| Rachel Hansen | hansenr@seiu503.org |
| Jane Hart | jane.hart@co.lane.or.us |
| Christina Hartman | Christina.HARTMAN@dhsosha.state.or.us |
| Dana Hittle | Dana.HITTLE@dhsosha.state.or.us |

| | |
|-------------------------|---|
| Suzanne Huffman | SUZANNE.L.HUFFMAN@dhsoha.state.or.us |
| Michelle Kemry | kemrys@hughes.net |
| Mark King | seahawkfan001@comcast.net |
| Debbi Kraus-Dorn | Debbi.KRAUS-DORN@dhsoha.state.or.us |
| Chelas Kronenberg | CHELAS.A.KRONENBERG@dhsoha.state.or.us |
| Jessie Martin | Jessie.M.MARTIN@dhsoha.state.or.us |
| Acacia Mcguire Anderson | ACACIA.MCGUIREANDERSON@dhsoha.state.or.us |
| Marilyn McManus | mcmanusm@seiu503.org |
| Cheryl Miller | Cheryl.M.MILLER@dhsoha.state.or.us |
| Mike Oliver | moliver@danserv.com |
| Sarah Jane Owens | sowens@aocweb.org |
| Mike Parr | Mike.R.PARR@dhsoha.state.or.us |
| Christy Reese | christy@factoregon.org |
| Jill Sorenson | jsorensen@goisn.org |
| Barbara Southard | BARBARA.L.SOUTHARD@dhsoha.state.or.us |
| LeaAnn Stutheit | Leaann.STUTHEIT@dhsoha.state.or.us |
| Leslie Sutton | LESLIE.J.SUTTON@dhsoha.state.or.us |
| Lindsay Terrett | LINDSAY.R.TERRETT@dhsoha.state.or.us |
| Julie VanNette | JULIE.L.VANNETTE@dhsoha.state.or.us |
| Kathryn Weit | KathrynWeit@oregonsupportservices.org |
| Jim Wrigley | jwrigley@disabilityrightsoregon.org |
| Shiela Zerngast | shiela@tfcc.org |

| | |
|--|--|
| What was the Intended effect of this rule adoption? | |
| The Department adopted OAR 411-340-0135 to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect an individual or an employee from misuse. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/ can be amended or repealed? OAR 411-340-0135 was repealed on 06/29/2016 because the standards for employers were adopted as OAR 411-375-0055. |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Is there a continued need for this rule? OAR 411-340-0135 was repealed on 06/29/2016 because the standards for employers were adopted as OAR 411-375-0055. |

Additional Comments:

Report approved by: Mike Parr

December 23, 2019

Date report sent to advisory committee members:

December 23, 2019



**Department of Human Services
Five Year Rule Review
ORS 183.405**

Rule Name: Definitions, Individual Rights, Complaints, Notification of Planned Action, and Contested Case Hearings

Rule Number(s): 411-317-0000, 411-318-0000, 411-318-0005, 411-318-0010, 411-318-0015, 411-318-0020, 411-318-0025, 411-318-0030

Program Area: Office of Developmental Disabilities Services

Adoption Date: 12/28/2014



Review Due Date:
12/28/2019



Review Date:
12/6/2019

Reviewer's Name:
Christina Hartman



- * Advisory Committee Used
 Advisory Committee Not Used

*** Committee Members:**

Contact Information:

| | |
|------------------|--|
| Mohammad Bader | mohammad.bader@multco.us |
| Bruce Baker | BRUCE.M.BAKER@dhsosha.state.or.us |
| Patricia Baxter | Patricia.E.BAXTER@dhsosha.state.or.us |
| Marilee Bell | Marilee.BELL@dhsosha.state.or.us |
| Matt Bighouse | Matt.L.BIGHOUSE@dhsosha.state.or.us |
| Chris Burnett | cburnett@oregonrehabilitation.org |
| Aura Carr | acarr@fullaccess.org |
| Jaime Daignault | Jaime.DAIGNAULT@dhsosha.state.or.us |
| Roberta Dunn | roberta@factoregon.org |
| Heather Ferris | HEATHER.M.FERRIS@dhsosha.state.or.us |
| Mariah Forrest | Mariah.FORREST@dhsosha.state.or.us |
| Chrissy Fuchs | CHRISSY.FUCHS@dhsosha.state.or.us |
| Joanne Fuhrman | jfuhrman@pclpartnership.org |
| Lois Gailer | loisg@albertinakerr.org |
| Toi Gibson | toinae.gibson@multco.us |
| Julia Greenfield | jgreenfield@disabilityrightsoregon.org |
| Rachel Hansen | hansenr@seiu503.org |
| Jane Hart | jane.hart@co.lane.or.us |

| | |
|-------------------------|--|
| Christina Hartman | Christina.HARTMAN@dhsoba.state.or.us |
| Dana Hittle | Dana.HITTLE@dhsoba.state.or.us |
| Suzanne Huffman | SUZANNE.L.HUFFMAN@dhsoba.state.or.us |
| Michelle Kemry | kemrys@hughes.net |
| Mark King | seahawkfan001@comcast.net |
| Debbi Kraus-Dorn | Debbi.KRAUS-DORN@dhsoba.state.or.us |
| Chelas Kronenberg | CHELAS.A.KRONENBERG@dhsoba.state.or.us |
| Jessie Martin | Jessie.M.MARTIN@dhsoba.state.or.us |
| Acacia Mcguire Anderson | ACACIA.MCGUIREANDERSON@dhsoba.state.or.us |
| Marilyn McManus | mcmanusm@seiu503.org |
| Cheryl Miller | Cheryl.M.MILLER@dhsoba.state.or.us |
| Mike Oliver | moliver@danserv.com |
| Sarah Jane Owens | sjowens@aocweb.org |
| Mike Parr | Mike.R.PARR@dhsoba.state.or.us |
| Christy Reese | christy@factoregon.org |
| Jill Sorenson | jsorensen@goisn.org |
| Barbara Southard | BARBARA.L.SOUTHARD@dhsoba.state.or.us |
| LeaAnn Stutheit | Leaann.STUTHEIT@dhsoba.state.or.us |
| Leslie Sutton | LESLIE.J.SUTTON@dhsoba.state.or.us |
| Lindsay Terrett | LINDSAY.R.TERRETT@dhsoba.state.or.us |
| Julie VanNette | JULIE.L.VANNETTE@dhsoba.state.or.us |
| Kathryn Weit | KathrynWeit@oregonsupportservices.org |
| Jim Wrigley | jwrigley@disabilityrightsoregon.org |
| Shiela Zerngast | shiela@tfcc.org |

What was the intended effect of this rule adoption?

The Department adopted OAR 411-317-0000 to create a general rule for definitions and rules in OAR chapter 411, division 318 to prescribe:

- The rights of individuals receiving developmental disability services in accordance with Senate Bill 22 (2013 Regular Session);
- The process for reporting and investigating a complaint regarding dissatisfaction with a developmental disability service or provider;
- The requirements for a Notification of Planned Action in the event a developmental disability service is denied, reduced, suspended, or terminated;
- The contested case hearing process for challenging a denial, reduction, suspension, or termination of a developmental disability service; and
- The contested case hearing processing for challenging a provider notice of involuntary reduction, transfer, or exit.

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/ can be amended or repealed? 411-317-0000 Last Amended 11/01/2019 411-318-0000 Last Amended 06/29/2016 411-318-0005 Last Amended 11/01/2019 411-318-0010 Last Amended 06/29/2016 411-318-0020 Last Amended 12/28/2018 411-318-0025 Last Amended 11/01/2019 411-318-0030 Last Amended 11/01/2019 |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
| Additional Comments: | |

Report approved by: Mike Parr

December 23, 2019

Date report sent to advisory committee members:

December 23, 2019



**Department of Human Services
Five Year Rule Review
ORS 183.405**

Rule Name: Standards for Employers

Rule Number(s): 411-308-0135

Program Area: Office of Developmental Disabilities Services

Adoption Date: 12/28/2014



Review Due Date:
12/28/2019



Review Date:
12/6/2019

Reviewer's Name:
Christina Hartman



- * Advisory Committee Used
 Advisory Committee Not Used

*** Committee Members:**

Contact Information:

| | |
|-------------------|--|
| Mohammad Bader | mohammad.bader@multco.us |
| Bruce Baker | BRUCE.M.BAKER@dhsosha.state.or.us |
| Patricia Baxter | Patricia.E.BAXTER@dhsosha.state.or.us |
| Marilee Bell | Marilee.BELL@dhsosha.state.or.us |
| Matt Bighouse | Matt.L.BIGHOUSE@dhsosha.state.or.us |
| Chris Burnett | cburnett@oregonrehabilitation.org |
| Aura Carr | acarr@fullaccess.org |
| Jaime Daignault | Jaime.DAIGNAULT@dhsosha.state.or.us |
| Roberta Dunn | roberta@factoregon.org |
| Heather Ferris | HEATHER.M.FERRIS@dhsosha.state.or.us |
| Mariah Forrest | Mariah.FORREST@dhsosha.state.or.us |
| Chrissy Fuchs | CHRISSY.FUCHS@dhsosha.state.or.us |
| Joanne Fuhrman | jfuhrman@pclpartnership.org |
| Lois Gailer | loisg@albertinakerr.org |
| Toi Gibson | toinae.gibson@multco.us |
| Julia Greenfield | jgreenfield@disabilityrightsoregon.org |
| Rachel Hansen | hansenr@seiu503.org |
| Jane Hart | jane.hart@co.lane.or.us |
| Christina Hartman | Christina.HARTMAN@dhsosha.state.or.us |
| Dana Hittle | Dana.HITTLE@dhsosha.state.or.us |

| | |
|-------------------------|---|
| Suzanne Huffman | SUZANNE.L.HUFFMAN@dhsoha.state.or.us |
| Michelle Kemry | kemrys@hughes.net |
| Mark King | seahawkfan001@comcast.net |
| Debbi Kraus-Dorn | Debbi.KRAUS-DORN@dhsoha.state.or.us |
| Chelas Kronenberg | CHELAS.A.KRONENBERG@dhsoha.state.or.us |
| Jessie Martin | Jessie.M.MARTIN@dhsoha.state.or.us |
| Acacia Mcguire Anderson | ACACIA.MCGUIREANDERSON@dhsoha.state.or.us |
| Marilyn McManus | mcmanusm@seiu503.org |
| Cheryl Miller | Cheryl.M.MILLER@dhsoha.state.or.us |
| Mike Oliver | moliver@danserv.com |
| Sarah Jane Owens | sjowens@aocweb.org |
| Mike Parr | Mike.R.PARR@dhsoha.state.or.us |
| Christy Reese | christy@factoregon.org |
| Jill Sorenson | jsorensen@goisn.org |
| Barbara Southard | BARBARA.L.SOUTHARD@dhsoha.state.or.us |
| LeaAnn Stutheit | Leaann.STUTHEIT@dhsoha.state.or.us |
| Leslie Sutton | LESLIE.J.SUTTON@dhsoha.state.or.us |
| Lindsay Terrett | LINDSAY.R.TERRETT@dhsoha.state.or.us |
| Julie VanNette | JULIE.L.VANNETTE@dhsoha.state.or.us |
| Kathryn Weit | KathrynWeit@oregonsupportservices.org |
| Jim Wrigley | jwrigley@disabilityrightsoregon.org |
| Shiela Zerngast | shiela@tfcc.org |

| | |
|---|--|
| What was the intended effect of this rule adoption? | |
| The Department adopted OAR 411-308-0135 to assure the proper authority exists to withdraw employer authority in cases where it is necessary to protect a child, parent, or an employee from misuse. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/ can be amended or repealed? OAR 411-308-0135 was repealed on 06/29/2016 because the standards for employers were adopted as OAR 411-375-0055. |
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Is there a continued need for this rule? OAR 411-308-0135 was repealed on 06/29/2016 because the standards for employers were adopted as OAR 411-375-0055. |

Additional Comments:

Report approved by: Mike Parr

December 23, 2019

Date report sent to advisory committee members:

December 23, 2019



Department of Human Services
Office of Child Welfare Programs

Five Year Rule Review - OAR Chapter 413
ORS 183.405

Rules under review:

- 413-015-0404, Receipt of New Information on an Open CPS Assessment (adopted 5/27/14, amended 4/8/19)
- 413-015-0422, Gather Safety Related Information through Interview and Observation (adopted 5/27/14, amended 6/29/19)
- 413-015-0428, Identify How the Impending Danger Safety Threat is Occurring (adopted 5/27/14, amended 6/29/19)
- 413-015-0432, Develop Safety Plans (adopted 5/27/14, amended 4/8/19)
- 413-015-0437, Develop an Initial Safety Plan (adopted 5/27/14)

(Original rule text is available [here](#) and the current rule text is available [here](#).)

- Advisory Committee Used Prior to Initial Adoption of Permanent Rule
 Advisory Committee Not Used Prior to Initial Adoption of Permanent Rule

| Individual (Name) | Presented | Contact Info | Organization |
|-------------------|-----------|--|--|
| Julie Taylor | No | julietaylor@ctuir.org | Confederated Tribes of the Umatilla Indian Reservation |
| Dana Ainam | Yes | dana.lenno@grandronde.org | Confederated Tribes of Grand Ronde |
| Dr. Alvin Ellerby | Yes | alvin.ellerby@yahoo.com | Greater New Hope Family Services |
| Shary Mason | Yes | shary.k.mason@oid.state.or.us | Oregon Judicial Department |
| Jennifer Kelly | No | jennifer.kelly@morrisonkids.org | Parent |
| Emily Hutchinson | By phone | emily.hutchinson@actionchildprotection.org | National Resource Center for Child Protective Services |
| Ruth Taylor | No | ruth.taylor@morrisonkids.org | Provider |
| Marty Lowrey | No | marty.lowrey@state.or.us | PSU Partnership |
| Michelle Warden | By phone | vmwarden@pdx.edu | PSU Partnership |
| Michael Ware | Yes | hapware@netzero.net | Clearview & Associates |
| Nan Silver | Yes | nan.silver@state.or.us | D8 program manager |
| Miriam Green | Yes | miriam.b.green@state.or.us | D2 hotline/screening staff |
| Alex Jackson | Yes | alex.jackson@state.or.us | D4 CPS worker |
| Maria Walberg | Yes | maria.c.walberg@state.or.us | D10 in-home worker |

What was the intended effect of this rule adoption?

The rules on "CPS Assessment," OAR 413-015-0400 to 413-015-0485, were amended to update and more thoroughly describe the activities required when the Department responds to reports of child abuse or neglect, when the CPS worker makes initial contact, and when the CPS worker completes a CPS assessment, consistent with the Oregon Safety Model; to add a rule for when a CPS worker receives new information on an open CPS assessment; to update the requirements to report to, contact, or work with other agencies in certain cases, including providing the Teacher Standards and Practices Commission a completed CPS assessment when a teacher or school administrator is identified as an alleged perpetrator, and to report to community mental health and developmental disabilities programs and local adult protective services in certain cases; to provide guidance for determining if a safety threat is present by applying the safety threshold criteria, for determining the type of safety threat and how it is occurring, and for making decisions about child safety; to provide requirements for developing safety plans and protective action plans; to provide direction for determining whether a family has moderate to high needs; and to put the rules into a more logical sequence.

- Yes
 No

Has this rule adoption had its intended effect?

- Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

The Department has not received information that the adoption of these rules in and of themselves created a fiscal impact inconsistent with the estimate provided at the time of adoption.

- Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

See above.

- Yes
 No

Have there been any subsequent changes in the law that require this rule to be amended or repealed?

See above for amendment dates for these rules.

Some of the rules adopted 5/27/14 were repealed:

- 413-015-9000 (adopted 5/27/14, repealed 1/29/18)
- 413-015-9010 (adopted 5/27/14, repealed 1/29/18)
- 413-015-9020 (adopted 5/27/14, repealed 1/29/18)
- 413-015-9030 (adopted 5/27/14, repealed 1/29/18)
- 413-015-9040 (adopted 5/27/14, repealed 1/29/18)

- Yes
 No

Is there a continued need for these rules?

Yes.

- Yes
 No

Has this rule had an impact on small businesses?

No.

Report prepared on: 4/9/19

Report prepared by: Anne King, Child Welfare Rules Coordinator

Report approved by: Deborah Carnaghi, CPS program manager

Report sent to Rule Advisory Committee participants on: 6/5/19



Department of Human Services
Office of Child Welfare Programs

Five Year Rule Review - OAR Chapter 413
ORS 183.405

Rules under review:

- 413-100-0432 (adopted 6/12/14)
- 413-100-0435 (adopted 6/12/14, amended 12/21/15)
- 413-100-0451 (adopted 6/12/14)
- 413-100-0457 (adopted 6/12/14, repealed 12/21/15)

(Original rule text is available [here](#) and the current rule text is available [here](#).)

- Advisory Committee Used Prior to Initial Adoption of Permanent Rule**
 Advisory Committee Not Used Prior to Initial Adoption of Permanent Rule

What was the intended effect of these rules being adopted?

These rules about medical eligibility for Child Welfare children were adopted to ensure compliance with federal standards, Oregon's Medicaid State Plan, and Oregon's 1115 Demonstration Waiver; and to clarify the rules. The Department applies these rules to determine eligibility for: medical assistance under Title XIX of the Social Security Act for children and young adults in substitute care or under an adoption assistance or guardianship assistance agreement; General Assistance medical for children and young adults not eligible for Title XIX Medicaid; the Former Foster Care Youth Medical Program; and children entering Oregon under an interstate compact agreement.

- Yes
 No
- Have these rule adoptions had their intended effect?**

- Yes
 No
- Was the anticipated fiscal impact of these rules underestimated?**
 The Department has not received information that the adoption of these rules in and of themselves created a fiscal impact inconsistent with the estimate provided at the time of adoption.

- Yes
 No
- Was the anticipated fiscal impact of these rules overestimated?**
 See above.

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have there been any subsequent changes in the law that require these rules to be amended or repealed? <ul style="list-style-type: none">• 413-100-0435 was amended 12/21/15 to add a clarification regarding Title XIX Medicaid eligibility for a child or young adult who is subject of a guardianship assistance agreement.• 413-100-0457 was repealed 12/21/15.• 413-100-0432 and 0451 remain unaltered. |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for these rules? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have these rules had an impact on small businesses? |
|--|--|

Report prepared on: 6/5/19

Report prepared by: Anne King, Child Welfare Rules Coordinator

Report approved by: Kathy Steiner, Federal Policy and Resources program manager

Report sent to Rule Advisory Committee participants on: N/A



Department of Human Services

Five Year Rule Review

ORS 183.405



Rule Name: Purpose and Rulemaking

Rule Number(s): 418-010-0010; 418-010-0020; 418-010-0030; 418-010-0040

Program Area: Oregon Home Care Commission

Adoption Date: 11/26/2014



Review Due Date:
11/26/2019



Review Date:
2/15/2019

Reviewer's Name:
Jenny Cokeley



***Advisory Committee Used**

Advisory Committee Not Used

*Committee Members:

Contact Information:

| | |
|----------------------------|---|
| Jereme Grzybowski | jereme@selu503.org |
| Chris Ellis | CHRISTOPHER.M.ELLIS@dhsaha.state.or.us |
| Cynthla Owens | cowensocdd@gmail.com |
| Noel J. Suarez | Noel.J.SUAREZ@dhsoshs.state.or.us |
| Bruce Baker | BRUCE.M.BAKER@dhsaha.state.or.us |
| Tracy Anderson | TRACY.A.ANDERSON@dhsaha.state.or.us |
| Roxle Mayfield | Roxle_Mayfield@yahoo.com |
| Joseph Lowe | Joseph.lowe@dhsaha.state.or.us |
| Mark King | seahawkfan001@comcast.net |
| Lyla Swafford | 51lmsgsm@gmail.com |
| Angela Munkers | ANGELA.P.MUNKERS@dhsaha.state.or.us |
| Barry Fox-Quamme | barry@lfr.org |
| Ashley B Carson-Cottingham | ASHLEY.B.CARSON-COTTINGHAM@dhsaha.state.or.us |
| Nathan Deeks | NATHAN.A.DEEKS@dhsaha.state.or.us |
| Jenny Cokeley | Jenny.E.COKELEY@dhsaha.state.or.us |
| Shelly Emery | Shelly.EMERY@dhsaha.state.or.us |
| Katie Coombes | coombesk@selu503.org |
| Marilyn McManus | mcmamusm@selu503.org |
| Mike Parr | Mfke.R.PARR@dhsaha.state.or.us |
| Rebecca Sandoval | rsandoval.SEIUmll@gmail.com |
| Sarah Jane Owens | sjowens@aocmhp.org |

| | |
|--------------------|--|
| Fred Steele | Fred.steele@oregon.gov |
| Jane-ellen Weidanz | Jane-Ellen.WEIDANZ@dhsosha.state.or.us |
| Bob Welr | Bob.welr@dhsosha.state.or.us |
| Bobble Sotin | bsotin@gmail.com |
| Rick Bennett | rbennett@aarp.org |
| Rodney Schroeder | Rodney.b.schroeder@dhsosha.state.or.us |

| | |
|--|--|
| What was the intended effect of this rule adoption? | |
| 418-010-0010 Purpose States purpose of chapter 418, generally. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

| | |
|---|--|
| What was the intended effect of this rule adoption? | |
| 418-010-0020 Rulemaking States model rules adopted by Home Care Commission | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
418-010-0030 Notice of Proposed Rulemaking and Adoption of Temporary Rules
States procedures and rules for administrative rulemaking for Home Care Commission

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
418-010-0040 Delegation of Rulemaking Authority
States who has rulemaking authority to sign off on Home Care Commission Rules.

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

Additional Comments:

***Date report sent to advisory committee members:** _____

Report approved by:

Cheryl Miller
Printed name

Cheryl Miller
Signature

2/15/19
Date

**OREGON HOME CARE COMMISSION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 418
DIVISION 10**

PURPOSE AND RULEMAKING

418-010-0010 Purpose
(Adopted 12/01/2014)

(1) In accordance with Article XV, Section 11 of the Oregon State Constitution, the Commission ensures the high quality of homecare services by working cooperatively with area agencies and state and local agencies to accomplish the following:

(a) Establish qualifications for homecare and personal support workers with the advice and consent of the Department of Human Services (DHS) and Oregon Health Authority (OHA);

(b) Provide training opportunities for homecare and personal support workers; and seniors and individuals experiencing disabilities who employ homecare or personal support workers;

(c) Maintain a Registry of qualified homecare and personal support workers;

(d) Provide routine, emergency, and substitute referrals of homecare and personal support workers;

(e) Enter into contracts with public and private organizations and individuals for the purpose to obtain or develop training materials and curriculum or other services as may be needed by the Commission;

(f) Serve as employer of record for collective bargaining with homecare and personal support workers;

(g) Select workers' compensation coverage on behalf of a senior or individual experiencing disability who hires a homecare or personal support worker through a publicly funded program; and

(h) Train and certify homecare or personal support workers who desire to become certified community health workers or personal health navigators and meet eligibility criteria and ensure Coordinated Care Organizations honor employment terms and

conditions of Community Health Workers and Personal Health Navigator established by the Commission.

(2) The rules in Oregon Administrative Rules (OAR) Chapter 418 establish procedures for the Commission to fulfill its mission to ensure high quality, comprehensive homecare services are provided for seniors and individuals with disabilities who receive services from homecare and personal support workers who they hire and are paid with public funds.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.602

418-010-0020 Rulemaking
(Adopted 12/01/2014)

The Commission adopts the Attorney General Model Rules applicable to rulemaking, effective on November 1, 2014, with the exception of 137-001-0080.

Stat. Auth.: ORS 183.341, 410.602
Stats. Implemented: ORS 183.341, 410.602

418-010-0030 Notice of Proposed Rulemaking and Adoption of Temporary Rules
(Adopted 12/01/2014)

(1) Except as provided in ORS 183.335(7), (12), or 183.341, before permanently adopting, amending, or repealing an administrative rule, the Commission shall give notice of the intended action:

(a) To legislators specified in ORS 183.335(15) at least 49 days before the effective date of the rule;

(b) To Individuals in the interested parties lists described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter at least 28 days before the effective date of the rule;

(c) In the Secretary of State's Bulletin referred to in ORS 183.360 at least 21 days before the effective date of the rule;

(d) To other individuals, agencies, or organizations the Commission is required to provide an opportunity to comment pursuant to state statute or federal law or as a requirement of receiving federal funding, at least 28 days before the effective date of the rule;

(e) To the Associated Press and the Capitol Press Room at least 28 days before the effective date of the rule; and

(f) In addition to the above, the Commission may send notice of intended action to other individuals, agencies, or organizations the Commission, in its discretion, believes to have an interest in the subject matter of the proposed rule at least 28 days before the effective date of the rule.

(2) Pursuant to ORS 183.335(8), the Commission shall maintain an interested parties list for each OAR chapter of rules for which the Commission has administrative responsibility, and an interested parties list for subtopics or programs within those chapters. An individual, group, or entity that desires to be placed on such a list to receive notices regarding proposed permanent adoption, amendment, or repeal of a rule must make such a request in writing or by electronic mail to the rules coordinator for the chapter. The request must include either a mailing address or an electronic mail address to which notices may be sent, if requested.

(3) Notices under this rule may be sent by use of hand delivery, state shuttle, postal mail, electronic mail, or facsimile. The Commission recognizes state shuttle as mail and may use this means to notify other state agencies. An email notification under section (1) of this rule may consist of any of the following:

(a) An email that attaches the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(b) An email that includes a link within the body of the email, allowing direct access online to the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(c) An email with specific instructions within the body of the email, usually including an electronic Universal Resource Locator (URL) address, to find the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact.

(d) The Commission may use facsimile as an added means of notification, if necessary. Notification by facsimile under section (1) of this rule shall include the Notice of Proposed Rulemaking or Notice of Proposed Rulemaking Hearing and Statement of Need and Fiscal Impact; or specific instructions to locate these documents online.

(e) The Commission shall honor all written requests that notification be sent by postal mail instead of electronically if a mailing address is provided.

(4) If the Commission adopts or suspends a temporary rule, the Commission shall notify:

(a) Legislators specified in ORS 183.335(15);

(b) Individuals on the interested parties list described in section (2) of this rule for the pertinent OAR chapter or pertinent subtopics or programs within an OAR chapter;

(c) Other individuals, agencies, or organizations the Commission is required to notify pursuant to state statute or federal law or as a requirement of receiving federal funding;

(d) The Associated Press and the Capitol Press Room;

(e) In addition to the above, the Commission may send notice to other persons, agencies, or organizations the Commission, in its discretion, believes to have an interest in the subject matter of the temporary rulemaking; and

(f) In lieu of providing a copy of the rule or rules as proposed with the notice of intended action or notice concerning the adoption of a temporary rule, the Commission may state how and where a copy may be obtained on paper, by electronic mail, or from a specified web site.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 183.330, 183.335, 183.341, 410.602

418-010-0040 Delegation of Rulemaking Authority

(Adopted 12/01/2014)

Any member or employee of the Commission who is identified on a completed Delegation of Authority form signed by the Executive Director or Chair of the Commission and filed with the Secretary of State, Administrative Rules Unit, is vested with the authority to adopt, amend, repeal, or suspend administrative rules as provided on that form until such delegation is revoked by the Executive Director or Chair of the Commission, or the person leaves employment with the Commission.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 183.325, 410.602



Department of Human Services

Five Year Rule Review

ORS 183.405



Rule Name: Oregon Home Care Commission Functions

Rule Number(s): 418-020-0010; 418-020-0020; 418-020-0030; 418-020-0040; 418-020-0050; 418-020-0060

Program Area: Oregon Home Care Commission

Adoption Date: 11/26/2014



Review Due Date:
11/26/2019



Review Date:
2/15/2019

Reviewer's Name:
Jenny Cokeley



***Advisory Committee Used**

Advisory Committee Not Used

***Committee Members:**

Contact Information:

| | |
|----------------------------|--|
| Jereme Grzybowski | jereme@seiu503.org |
| Chris Ellis | CHRISTOPHER.M.ELLIS@dhsosha.state.or.us |
| Cynthia Owens | cowensocdd@gmail.com |
| Noel J. Suarez | Noel.J.SUAREZ@dhsoshs.state.or.us |
| Bruce Baker | BRUCE.M.BAKER@dhsosha.state.or.us |
| Tracy Anderson | TRACY.A.ANDERSON@dhsosha.state.or.us |
| Roxie Mayfield | Roxie_Mayfield@yahoo.com |
| Joseph Lowe | Joseph.lowe@dhsosha.state.or.us |
| Mark King | seahawkfan001@comcast.net |
| Lyla Swafford | 51lmsgsm@gmail.com |
| Angela Munkers | ANGELA.P.MUNKERS@dhsosha.state.or.us |
| Barry Fox-Quamme | barry@ilr.org |
| Ashley B Carson-Cottingham | ASHLEY.B.CARSON-COTTINGHAM@dhsosha.state.or.us |
| Nathan Deeks | NATHAN.A.DEEKS@dhsosha.state.or.us |
| Jenny Cokeley | Jenny.E.COKELEY@dhsosha.state.or.us |
| Shelly Emery | Shelly.EMERY@dhsosha.state.or.us |
| Katie Coombes | coombesk@seiu503.org |
| Marilyn McManus | mcmamusm@seiu503.org |
| Mike Parr | Mike.R.PARR@dhsosha.state.or.us |
| Rebecca Sandoval | rsandoval.SEIUmil@gmail.com |

| | |
|--------------------|--|
| Sarah Jane Owens | sjowens@aocmhp.org |
| Fred Steele | Fred.steele@oregon.gov |
| Jane-ellen Weidanz | Jane-Ellen.WEIDANZ@dhsosha.state.or.us |
| Bob Weir | Bob.weir@dhsosha.state.or.us |
| Bobble Sotin | bsotin@gmail.com |
| Rick Bennett | rbennett@aarp.org |
| Rodney Schroeder | Rodney.b.schroeder@dhsosha.state.or.us |

What was the intended effect of this rule adoption?
 418-020-0010 Definitions
 Established Rules Definitions for OAR chapter 418.

Yes **Has this rule adoption had its intended effect?**
 No

Yes **Was the anticipated fiscal impact of this rule underestimated?**
 No

Yes **Was the anticipated fiscal impact of this rule overestimated?**
 No

Yes **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
 No

Yes **Is there a continued need for this rule?**
 No

What was the intended effect of this rule adoption?
 418-020-0020 Qualifications for Homecare and Personal Support Workers
 States qualifications to become a homecare or personal support worker.

Yes **Has this rule adoption had its intended effect?**
 No

Yes **Was the anticipated fiscal impact of this rule underestimated?**
 No

Yes **Was the anticipated fiscal impact of this rule overestimated?**
 No

Yes **Have subsequent changes in the law required this rule to be/can be amended or repealed?**
 No
 SB 1534 has imposed new requirements on the Commission. The Commission is currently in the process of updating the rule to encompass those changes.

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
418-020-0030 Homecare and Personal Support Worker Training
States Training requirements for homecare and personal support workers.

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? SB 1534 has imposed new requirements on the Commission. The Commission is currently in the process of updating the rule to encompass those changes |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
418-020-0040 Consumer-Employer Training Services
States services Commission provides to consumer-employers.

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?

418-020-0050 Registry

States responsibilities and requirements of Commission for online registry of homecare and personal support workers. Talks about appropriate use of registry and violations of that.

- Yes
 No

Has this rule adoption had its intended effect?

- Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

- Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

- Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

- Yes
 No

Is there a continued need for this rule?

What was the intended effect of this rule adoption?

418-020-0060 Worker's Compensation

States worker's compensation coverage and process for homecare and personal support workers.

- Yes
 No

Has this rule adoption had its intended effect?

- Yes
 No

Was the anticipated fiscal impact of this rule underestimated?

- Yes
 No

Was the anticipated fiscal impact of this rule overestimated?

- Yes
 No

Have subsequent changes in the law required this rule to be/can be amended or repealed?

- Yes
 No

Is there a continued need for this rule?

Additional Comments:

***Date report sent to advisory committee members: _____**

Report approved by:

Cheryl Miller
Printed name

Cheryl Miller
Signature

3.15.19
Date

**OREGON HOME CARE COMMISSION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 418
DIVISION 20**

OREGON HOME CARE COMMISSION FUNCTIONS

418-020-0010 Definitions

(Adopted 12/01/2014)

(1) "Active" means an active homecare or personal support worker who has a current provider number; has worked and been paid with public funds in any of the past 12 months as a homecare or personal support worker; has a current credential and has met orientation requirements of program for which the worker is enrolled.

(2) "Area Agency on Aging" means the designated entity with which DHS contracts to meet the requirements of the Older Americans Act and ORS Chapter 410 in planning and providing services to seniors and individuals with a disability for a designated planning and service area.

(3) "Background Check" means a criminal records check and appropriate abuse check conducted in accordance with OAR Chapter 407, Division 7.

(4) "Case Manager" means an employee of a service delivery office who is responsible for determining service eligibility, offering services choices to eligible individuals, developing a plan of authorized services, and monitoring the effectiveness of services and supports. This term includes services coordinator and personal agent.

(5) "Collective Bargaining Agreement" or "CBA" means the Collective Bargaining Agreement between the Oregon Home Care Commission and the Service Employees International Union, Local 503.

(6) "Commission" means the Oregon Home Care Commission established and operated pursuant to Article XV, Section 11, of the Oregon Constitution, and ORS 410.595 to 410.625.

(7) "Commissioner" means one of the nine members of the Home Care Commission appointed by the Governor and confirmed by the Senate as provided in ORS 171.562 and 171.565. Five members are either seniors or individuals with disabilities who are receiving or who have received homecare services. One member is appointed to represent each of the following entities, or a successor entity, for as long as a comparable entity exists:

(a) Governor's Commission on Senior Services;

(b) Department of Human Services;

(c) Oregon Disabilities Commission; and

(d) Oregon Association of Area Agencies on Aging and Disabilities.

(8) "Community Health Worker" means an individual, as defined in ORS 414.025, who assists members of the community to improve their health and increases the capacity of the community to meet the health care needs of its residents and achieve wellness.

(9) "Consumer" or "Consumer-Employer" means an individual eligible for in-home and community based services.

(10) "Consumer-Employer Training Services" means activities to empower and inform consumer-employers or representatives of consumer-employers regarding their rights, role, and responsibilities as employers of homecare or personal support workers, as described in OAR Chapter 411, Division 35. The consumer-employer training services programs are known as STEPS to Success with Homecare Workers and STEPS to Success with Personal Support Workers.

(11) "Consumer Representative" means an individual assigned by a consumer or designated by a consumer's legal representative to act as the consumer's decision maker in matters pertaining to planning and implementing an in-home service plan or individual support plan.

(12) "Continuing Education" means specific minimum education requirements, defined by the Commission, which workers must complete to be referred on the Registry.

(13) "Credential" means time-limited approval by DHS or OHA for an individual to provide services as a homecare or personal support worker, which includes a begin date, designated by a service delivery office, no earlier than the individual's most recent background check and an end date no later than 24 months from the homecare or personal support worker's most recent background check.

(14) "Cultural Competence" is a set of congruent behaviors, attitudes, and policies that come together in a system, agency, or among professionals to enable effective work in cross-cultural situations.

(15) "DHS" means the Oregon Department of Human Services.

(16) "Enrollment and Application Packet" means the program-specific documents an individual must complete to be approved to provide services as a homecare worker or personal support worker.

(17) "Employment Agreement" means an agreement between a consumer-employer or consumer representative and a homecare or personal support worker, which defines workplace rules and expectations.

(18) "Enhanced Homecare Worker" means a homecare worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require medically driven services and supports as defined and assessed by DHS.

(19) "Enhanced Personal Support Worker" means a personal support worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require advanced medical- or behavioral-driven services and supports as defined and assessed by DHS by a functional needs assessment tool.

(20) "Exceptional Personal Support Worker" means a personal support worker, as defined in this rule, who is certified by the Commission to provide services for consumers who require extensive medical- or behavioral-driven services and supports, beyond the enhanced services provided by an enhanced personal support worker, as assessed by a functional needs assessment tool; and whose service needs also require staff to be awake more than twenty hours in a twenty-four hour period.

(21) "Functional Needs Assessment" means a comprehensive assessment tool that documents physical, mental and social functioning and risk factors; choices and preferences; service and support needs; and strengths and goals.

(22) "Grievance" means a formal allegation of acts, omissions, applications, or interpretations that are believed to be violations of the terms or conditions of the Collective Bargaining Agreement.

(23) "Homecare Worker" means a provider, as described in OAR Chapter 411, Division 31, who is directly employed by a consumer to provide either hourly or live-in services for the consumer. The term homecare worker includes:

(a) Providers in the:

(A) Consumer-Employed Provider Program;

(B) Spousal Pay Program;

(C) State Plan Personal Care Program for seniors and individuals with physical disabilities; and

(D) The Oregon Project Independence Program.

(b) The term "homecare worker" does not include workers employed by an in-home agency.

(24) "Independent Choices Program" means the program described in OAR Chapter 411, Division 30, which is a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services, which are identified in the participant's service plan and prior approved by DHS or an Area Agency on Aging.

(25) "Individual" means an older adult or an adult with a disability applying for or eligible for services. The term "individual" is synonymous with "client" and "consumer".

(26) "Individual Support Plan" or "ISP" means the plan defined in OAR Chapter 411, Division 375, which includes written details of the supports, activities, and resources required for an individual with intellectual or developmental disabilities to achieve and maintain personal goals and health and safety.

(27) "Live-In Services" means those services, as defined in OAR Chapter 411, Division 030, which are provided for a senior or an individual with a physical disability who requires 24-hour availability for activities of daily living and self-management tasks.

(28) "OHA" means the Oregon Health Authority.

(29) "Oregon Intervention System" or "OIS" means a system of training to people who work with designated individuals to provide elements of positive behavioral support and non-aversive behavioral intervention.

(30) "Orientation" means an introduction to in-home programs and basic expectations for homecare or personal support workers, which is arranged through a service delivery office, in accordance with these rules.

(31) "Personal Health Navigator" means an individual, as defined in ORS 414.025, who provides information, assistance, tools and support to enable a consumer to make the best

health care decisions in the consumer's particular circumstances and in light of the consumer's needs, lifestyle, combination of conditions, and desired outcomes.

(32) "Personal Support Worker" means a person, as defined in ORS 410.600:

(a) Who is hired by an individual with a developmental disability or mental illness or a parent or guardian of an individual with a developmental disability or mental illness;

(b) Who receives monies from DHS or OHA for the purpose of providing services for the individual with a developmental disability or mental illness; or

(c) Who provides services through the Independent Choices Program for a senior or an individual with a physical disability; and

(d) Whose compensation is provided in whole or in part through DHS or OHA, a support services brokerage or other public agency; and who provides services in the home or community.

(e) All other personal support workers, including provider organizations and supervisors, and those who perform solely volunteer personal services-related tasks are excluded from this definition.

(33) "Professional Development Recognition" means the recognition by the Commission of homecare and personal support workers who are continuing their education and have met Commission training requirements for recognition.

(34) "Program" means a program governed by Oregon Administrative Rules and administered by DHS or OHA, which authorizes home and community services to be provided through public funding.

(35) "Provider" means a homecare or personal support worker who is eligible to be hired by a consumer-employer or a consumer representative to provide in-home or community services authorized in the consumer's service plan.

(36) "Provider Number" means an identifying number issued to each homecare and personal support worker who is enrolled as a provider through DHS or OHA.

(37) "Registry" means the Commission's online listing of homecare and personal support workers who are available for work. The primary function of the Registry is to provide consumer choice by generating a list of homecare or personal support workers whose

qualifications most closely match requirements entered in an individual consumer-employer profile.

(38) "Relief Worker" means a homecare or personal support worker who provides services in place of a homecare or personal support worker who is unavailable. This term is synonymous with "substitute worker".

(39) "Respite Worker" means a homecare or personal support worker who provides services in place of a family caregiver or other member of a consumer's natural support system who typically provides unpaid services. The term respite may also refer to a substitute for a live-in homecare worker.

(40) "Restricted Provider Number" means a number assigned by DHS to a homecare or personal support worker who is only approved to provide services for a specific consumer.

(41) "Service Delivery Office" means a DHS or OHA office, Area Agency on Aging, Community Developmental Disability Program, Support Services Brokerage or Community Mental Health Program office that is responsible for case management and authorization of publicly funded services provided by homecare or personal support workers.

(42) "Service Plan" means a written plan of authorized in-home and community services, developed in accordance with DHS or OHA rules and policies or an Individual Support Plan.

(43) "State Plan Personal Care Services" means the assistance with personal care and supportive services described in OAR Chapter 411, Division 34, provided for an individual by a homecare or personal support worker.

(44) "Stipend" means a predetermined amount of money granted to a homecare or personal support worker to attend Commission training, in accordance with Commission requirements.

(45) "Substitute Worker" means "Relief Worker".

(46) "Worker" means a "Homecare Worker" or "Personal Support Worker".

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.600, 410.603, 410.605, 410.606, 410.608, 410.612

418-020-0020 Qualifications for Homecare and Personal Support Workers

(Adopted 12/01/2014)

(1) Homecare Worker Minimum Qualifications:

- (a) Submit completed application and enrollment packet to a service delivery office;
- (b) Pass a DHS background check and cooperate with a recheck every two years or when requested;
- (c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;
- (d) Meet in-home program specific guidelines;
- (e) Be 18 years of age or older. Age exceptions may be made by DHS on a case-by-case basis for family members at least 16 years of age; and
- (f) Within 30 days of receiving a provider number, attend an orientation that utilizes materials provided or approved by the Commission.

(A) When completion of an orientation is not available at a local service delivery office within 30 days, orientation must be completed within 90 days of enrollment.

(B) If a homecare worker fails to complete an orientation within 90 days of provider enrollment, the homecare worker's provider number will be inactivated and any authorization for service payment will be discontinued, in accordance with OAR Division 411, Chapter 031.

(C) Homecare workers must attend a live-in service orientation before being hired to provide live-in services.

(2) Personal Support Worker Minimum Qualifications:

- (a) Submit completed application and enrollment packet;
- (b) Pass a DHS or OHA background check and cooperate with a recheck when requested;
- (c) Be capable of performing essential functions to safely provide necessary services or be capable of learning essential functions to safely provide necessary services;
- (d) Be 18 years of age or older; and

(e) Meet program specific guidelines; including attending an orientation within 90 days of receiving a provider number.

(3) Homecare and Personal Support Worker Orientation. Service delivery offices providing homecare or personal support worker orientation must:

(a) Offer orientation frequently enough that new homecare or personal support workers meet program timelines for completing orientation; and

(b) Use presentation and materials created by or approved by the Commission and DHS or OHA.

(c) Make every attempt to provide orientation in a culturally-appropriate manner, including:

(A) Attempt to convey the availability of translation and interpreter services in the six languages, besides English, most commonly spoken by consumers in the office's service delivery area.

(B) Attempt to provide written materials and an interpreter fluent in the workers' primary language if three or more speakers of that language will be in attendance; and

(C) Attempt to provide an interpreter fluent in the workers' primary language if one or two speakers of that language will be in attendance.

(d) Provide reasonable accommodations for homecare or personal support workers who experience disability, in accordance with Title II of the Americans with Disabilities Act.

(e) Allow the Union to make presentations to potential members at orientations, at a mutually agreeable time, in accordance with the current collective bargaining agreement.

(4) Workplace Substance Abuse Policy:

The Commission encourages homecare and personal support workers and consumer-employers to voluntarily seek help with drug and alcohol dependence and provides information and referral on request.

(a) The Commission is committed to protecting the safety, health, and well-being of consumers of in-home services and homecare and personal support workers, through establishing a workplace substance abuse policy.

(b) This policy recognizes that substance abuse by homecare or personal support workers, consumers, family members or others in consumers' homes is disruptive, adversely affect the quality of in-home services, and pose serious health risks to users and others.

(c) This policy recognizes that workers' abuse of alcohol and other drugs during non-working hours may affect their ability to provide quality in-home services.

(d) Workers are expected to report to work unimpaired and fit for duty.

(A) If the use of a prescribed or over-the-counter medication may compromise the safety of a worker, a consumer-employer, or the public, it is the worker's responsibility to use appropriate personnel procedures such as calling in sick and notifying the consumer-employer and case manager to avoid unsafe workplace practices.

(B) It is a violation of the Commission's substance abuse policy for a worker to intentionally misuse or abuse prescription or over-the-counter medications. Appropriate action will be taken if job performance declines or if accidents occur, in accordance with DHS or OHA rules.

(e) It is a violation of the Commission's substance abuse policy for a worker to use, possess, sell, trade, manufacture, or offer for sale illegal drugs or intoxicants in the workplace.

(f) A worker who is convicted of any criminal drug or alcohol violation in the workplace or during non-working hours must notify the service delivery office in writing within five calendar days of the conviction. The service delivery office will take appropriate action in accordance with DHS or OHA rules.

(g) DHS case managers authorize services in settings that do not jeopardize the health and safety of providers, in accordance with OAR Chapter 411, Division 30.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604

418-020-0030 Homecare and Personal Support Worker Training

(Adopted 12/01/2014)

(1) Training is offered by the Commission to homecare and personal support workers statewide to enhance worker skills and the quality of in-home and community services provided for consumer-employers.

(a) Training is provided without charge to homecare and personal support workers, consumer-employers, consumer-representatives, and appropriate service delivery staff.

(b) Stipends for actual hours in attendance at Commission-sponsored classes may be available to homecare and personal support workers who have provided publicly funded services in any of the three months before training or during the month of the training.

(A) The Commission determines the amount of a stipend and may provide a stipend for each eligible class only once per year.

(B) The Commission determines which classes are approved for stipends for homecare and personal support workers.

(2) Public Availability of Training. When classes are not filled, members of the public may attend, after registering and paying training fees determined by the Commission. Members of the public will not be eligible for stipends.

(3) Certifications for Homecare and Personal Support Workers.

(a) Cardio Pulmonary Resuscitation (CPR) and First Aid Certification:

(A) The Commission pays for active homecare and personal support workers, who meet the qualifications established by the Commission, to take First Aid training and adult CPR; and, if providing services to children, child CPR.

(B) Homecare and personal support workers must request payment in writing to the Commission before taking CPR and First Aid training.

(C) The Commission does not reimburse homecare or personal support workers who have paid for CPR and First Aid classes.

(b) Professional Development Recognition. The Commission awards Professional Development Recognition to homecare and personal support workers who have:

(A) Completed 20 hours of core, safety and skills training classes;

(B) Current CPR and First Aid certification; and

(C) An acceptable attendance record is one in which an individual homecare does not have a no show rate greater than 30 percent at Commission classes. This is defined by the Commission and published in monthly training newsletters and on the Professional Development Recognition web page. The application is located at: <http://www.oregon.gov/dhs/spd/adv/hcc/docs/pro-dev.pdf>.

(c) Enhanced Homecare Worker Certification.

(A) To be certified as an enhanced homecare worker, a homecare worker must:

(i) Have an active, unrestricted provider number;

(ii) Have current CPR and First Aid Certification;

(iii) Complete a written application;

(iv) Demonstrate knowledge of core concepts as measured by a readiness assessment; and

(v) If accepted, successfully complete enhanced homecare worker coursework and assessments.

(B) Enhanced homecare workers are eligible for an enhanced hourly or enhanced live-in service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C) For ongoing enhanced homecare worker certification, a homecare worker must:

(i) Maintain an active homecare worker credential, CPR and First Aid certification.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(d) Enhanced Personal Support Worker Certification.

(A) To be certified as an enhanced personal support worker, a personal support worker must:

- (i) Have an active unrestricted provider number;
- (ii) Have current CPR and First Aid Certification;
- (iii) Complete a written application;
- (iv) Demonstrate knowledge of core concepts as measured by a readiness assessment; and
- (v) If accepted, successfully complete Enhanced Personal Support Worker coursework and assessments.

(B) Enhanced personal support workers are eligible for an enhanced hourly or enhanced live-in service payment rate only when providing services for a consumer-employer assessed by DHS as having enhanced needs.

(C) For ongoing enhanced personal support worker certification, a personal support worker must:

- (i) Maintain an active personal support worker credential, CPR and First Aid certification.
- (ii) Complete requirements for recertification before the end of each two-year credential period.

(e) Exceptional Personal Support Worker Certification:

(A) To be certified as an exceptional personal support worker, a personal support worker must complete:

- (i) Enhanced personal support worker certification;
- (ii) A written application;

(iii) Oregon Intervention System general or parent level certification as appropriate; and

(iv) If accepted, 10 - 12 hours of coursework and pass course assessments.

(B) For ongoing exceptional personal support worker certification a personal support worker must:

(i) Maintain an active personal support worker credential; CPR and First Aid; and Oregon Intervention System certifications.

(ii) Complete requirements for recertification before the end of each two-year credential period.

(C) Exceptional personal support workers are eligible for an exceptional service payment rate only when providing services for a consumer-employer assessed by DHS as having exceptional needs.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.604, 410.625

418-020-0040 Consumer-Employer Training Services

(Adopted 12/01/2014)

The Commission offers voluntary training services to consumer-employers and consumer representatives on how to select, manage, and dismiss homecare and personal support workers. These services may be referred to as STEPS to Success with Homecare Workers, STEPS to Success with Personal Support Workers, or generically as STEPS services.

(1) Providers of STEPS services are approved by or under contract with the Commission.

(2) Services are designed to meet consumer-employer needs and are provided in a culturally competent manner. Providers offer a continuum of services based on individual needs and preferences, on topics including but not limited to:

(a) Understanding the service plan and specific tasks authorized by the consumer's case manager;

(b) Creating job descriptions, locating workers, interviewing, completing reference checks, and hiring a homecare or personal support worker;

- (c) Creating an employment agreement;
- (d) Training, supervising and communicating effectively with workers;
- (e) Ensuring work is performed satisfactorily;
- (f) Correcting unsatisfactory work performance and discharging unsatisfactory workers;
- (g) Scheduling and tracking hours worked and maintaining employment records;
- (h) Developing a backup plan for coverage of services; and
- (i) Preventing and reporting fraud and abuse.

(3) STEPS services must be provided in a timely manner.

- (a) Consumers must be contacted within five working days of referral.
- (b) A planning interview for STEPS services must be conducted with consumers or representatives within 10 business days of referral, unless a consumer requests a later date.
- (c) Individualized consumer services must begin within 10 business days of the planning interview, unless a consumer or consumer representative requests a later date.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604

418-020-0050 Registry

(Adopted 12/01/2014)

The Commission maintains an online Registry of qualified homecare and personal support workers to provide routine, emergency, and substitute referrals to consumer-employers.

(1) DHS and OHA responsibilities:

- (a) DHS and OHA shall collect for each homecare worker or personal support worker:
 - (A) Name, address, and phone number or numbers and where available, email address;

(B) The program or programs under which the worker is approved to provide services;

(C) The provider number;

(D) Begin and end dates of credential period;

(E) Date of most recent background check;

(F) Restricted or unrestricted status; and

(G) Other information as requested.

(b) In accordance with interagency agreements, DHS and OHA will:

(A) Provide continuing technical support, including electronic system changes needed by the Commission to ensure:

(i) Receipt of information from state electronic provider data management systems and any fiscal intermediaries providing consumer and provider information necessary for Registry matching functions; and

(ii) Accuracy of data downloaded real-time or on a daily basis.

(B) Provide technical support, including system changes to ensure security rights information transferred to the Commission's Registry from current or future electronic systems are accurate and maintained.

(C) Continue to provide information needed by the Commission's Registry when any updates and changes to current electronic servers and systems are implemented.

(2) Service Delivery Office Responsibilities. Staff must enter into the Registry within five business days of the information becoming available:

(a) The date and location of each completed homecare worker or personal support worker orientation.

(b) The expiration dates of CPR and First Aid certification for homecare or personal support workers who present original documents at the service delivery office.

(3) Service Delivery Staff Use of Registry. DHS and OHA Service Delivery office staff will use the Registry exclusively to refer homecare or personal support workers to consumer-employers:

(a) When a consumer-employer or consumer representative requests names of homecare or personal support workers, an individual employer profile must be created and used for generating a Registry list of homecare or personal support workers who best match the consumer's profile.

(A) Service delivery staff must not create generic lists for distribution to multiple consumer-employers.

(B) Service delivery staff must not recommend specific homecare or personal support workers to consumer-employers or serve as employment references for such workers.

(b) Service delivery staff must refer consumer-employers or consumer representatives needing assistance with the Registry or those otherwise needing assistance locating homecare or personal support workers to the Commission Registry support or to the STEPS consumer training services program.

(4) Referral Requirements. For a homecare or personal support worker's name to appear on a Registry referral list, a homecare or personal support worker must:

(a) Have an active, unrestricted provider number;

(b) Be seeking employment;

(c) Authorize release of information by selecting this option on the Registry or in writing to the appropriate service delivery office;

(d) Maintain a complete, accurate profile;

(e) Have a valid telephone number and email address, if available. If a homecare or personal support worker does not have a working telephone number in the Registry, he or she will not be available for referral in the Registry and will be notified by the Commission via U.S. Mail or email;

(f) Update profile information at least every 30 days;

(g) Update changes including availability, telephone number, or other profile information when such changes occur; and

(h) Meet Commission annual continuing education requirements.

(5) Appropriate Use. The purpose of the Registry is for individual consumer-employers, persons authorized to act on behalf of consumers, or individuals hiring in-home workers privately, to find qualified homecare or personal support workers.

(6) Inappropriate Employer Use. Employer profiles or help wanted advertisements placed for purposes other than for individual searches as described in this rule are not authorized.

(7) Inappropriate Use by Homecare and Personal Support Workers. Homecare and personal support workers may not use the Registry for purposes other than its intended use. Homecare and personal support workers may not:

(a) Use the Registry to refer other homecare or personal support workers or contact other homecare or personal support workers;

(b) Use the Commission's name on business cards or other promotional materials;

(c) Represent themselves in print, electronic or social media as employees of the Commission, DHS, OHA, or any service delivery office.

(8) Violations of OAR 418-020-0050 by homecare or personal support workers will be investigated by the Commission.

(a) Sanctions may be imposed for non-compliance with these rules. Depending on severity and recurrence of violation, a sanction may include one or more of the following actions:

(A) Written warning;

(B) Suspension of availability for Registry referral for a prescribed period;

(C) Suspension of availability for Registry referral until conditions for suspension are corrected; or

(D) Training requirements.

(b) Depending on the severity of allegations of misconduct or inappropriate use, the Commission may suspend availability for referral during investigation.

(c) Notice of Sanction. If the Commission imposes a sanction, the Commission shall attempt to serve a notice of sanction upon the homecare or personal support worker by regular mail based on the last contact information provided by the worker, or, if requested by the recipient of the notice, by electronic mail. The Notice of Sanction will comply with OAR Chapter 137, Division 3 and OAR Chapter 411, Division 1, as applicable.

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.603, 410.604, 410.606

418-020-0060 Workers' Compensation

(Adopted 12/01/2014)

(1) The Commission elects workers' compensation coverage on behalf of consumer-employers who employ homecare and personal support workers.

(2) Consumer-employers and consumer representatives must:

(a) Sign required documents for homecare or personal support worker to receive workers' compensation coverage;

(b) Report homecare or personal support worker injuries to the Commission as soon as becoming aware of worker injury; and

(c) Provide information to the Commission and workers' compensation carrier when workers report injury.

(3) Service delivery office staff will:

(a) Collect from each consumer-employer, at time of eligibility for services, appropriate signed workers' compensation documents;

(b) Report injuries immediately to the Commission; and

(c) Respond to requests for information from the Commission and workers' compensation carrier when workers report injuries and when claims are filed.

(4) The Commission will:

(a) Assist homecare and personal support workers who are injured while performing service plan authorized tasks with filing claims; and

(b) Work as the agent of consumer-employers while providing information to the insurance carrier's claims adjusters, attorneys, return-to-work specialists, and vocational rehabilitation administrators.

(5) Homecare or personal support workers injured while providing authorized services must:

(a) Report work injuries as soon as becoming aware of injuries to the:

(A) Consumer-employer or consumer-representative;

(B) Case manager; and

(C) Commission;

(b) Cooperate with the Commission and workers' compensation carrier by providing all required documents and returning phone calls timely; and

(c) Keep the consumer-employer or consumer-representative informed regarding work restrictions resulting from injuries at work, medical appointments, and return to work dates.

Stat. Auth.: ORS 410.602

Stats. Implemented ORS 410.606, 410.625, 656.039



Department of Human Services

Five Year Rule Review

ORS 183.405



Rule Name: Public Contracting and Procurement

Rule Number(s): 418-030-0000; 418-030-0010; 418-030-0020

Program Area: Oregon Home Care Commission

Adoption Date: 11/26/2014



Review Due Date:

11/26/2019



Review Date:

2/15/2019

Reviewer's Name:

Jenny Cokeley



***Advisory Committee Used**

Advisory Committee Not Used

*Committee Members:

Contact Information:

| | |
|----------------------------|--|
| Jereme Grzybowski | jereme@seiu503.org |
| Chris Ellis | CHRISTOPHER.M.ELLIS@dhsosha.state.or.us |
| Cynthia Owens | cowensocdd@gmail.com |
| Noel J. Suarez | Noel.J.SUAREZ@dhsosha.state.or.us |
| Bruce Baker | BRUCE.M.BAKER@dhsosha.state.or.us |
| Tracy Anderson | TRACY.A.ANDERSON@dhsosha.state.or.us |
| Roxie Mayfield | Roxie_Mayfield@yahoo.com |
| Joseph Lowe | Joseph.lowe@dhsosha.state.or.us |
| Mark King | seahawkfan001@comcast.net |
| Lyla Swafford | 51lmsgsm@gmail.com |
| Angela Munkers | ANGELA.P.MUNKERS@dhsosha.state.or.us |
| Barry Fox-Quamme | barry@ilr.org |
| Ashley B Carson-Cottingham | ASHLEY.B.CARSON-COTTINGHAM@dhsosha.state.or.us |
| Nathan Deeks | NATHAN.A.DEEKS@dhsosha.state.or.us |
| Jenny Cokeley | Jenny.E.COKELEY@dhsosha.state.or.us |
| Shelly Emery | Shelly.EMERY@dhsosha.state.or.us |
| Katie Coombes | coombesk@seiu503.org |
| Marilyn McManus | mcmanusm@seiu503.org |
| Mike Parr | Mike.R.PARR@dhsosha.state.or.us |
| Rebecca Sandoval | rsandoval.SEIUmil@gmail.com |
| Sarah Jane Owens | sjowens@aocmhp.org |

| | |
|--------------------|--|
| Fred Steele | Fred.steele@oregon.gov |
| Jane-ellen Weidanz | Jane-Ellen.WEIDANZ@dhsosha.state.or.us |
| Bob Weir | Bob.weir@dhsosha.state.or.us |
| Bobbie Sotin | bsotin@gmail.com |
| Rick Bennett | rbennett@aarp.org |
| Rodney Schroeder | Rodney.b.schroeder@dhsosha.state.or.us |

| | |
|--|--|
| What was the intended effect of this rule adoption? | |
| 418-030-0000 Application Talks about what the division applies to. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

| | |
|--|--|
| What was the intended effect of this rule adoption? | |
| 418-030-0010 Procurement Authority States the procurement authority for the Commission. | |
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

What was the intended effect of this rule adoption?
418-030-0020 Adoption of Oregon Health Authority Rules
Talks about the rules that apply to the Commission in regards to procurement

| | |
|--|--|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Has this rule adoption had its intended effect? |
|--|--|

| | |
|--|---|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule underestimated? |
|--|---|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Was the anticipated fiscal impact of this rule overestimated? |
|--|--|

| | |
|--|--|
| <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No | Have subsequent changes in the law required this rule to be/can be amended or repealed? |
|--|--|

| | |
|--|---|
| <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No | Is there a continued need for this rule? |
|--|---|

Additional Comments:

***Date report sent to advisory committee members:** _____

Report approved by:

Cheryl Miller
Printed name

Cheryl Miller
Signature

2/15/19
Date

**OREGON HOME CARE COMMISSION
OREGON ADMINISTRATIVE RULES**

**CHAPTER 418
DIVISION 30**

PUBLIC CONTRACTING AND PROCUREMENT

418-030-0000 Application
(Adopted 12/01/2014)

The rules contained in OAR Chapter 418, Division 30 govern the public contracting of the Oregon Home Care Commission. In addition to these rules, the Commission is subject to ORS Chapters 279A, 279B and 279C.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 410.604, 410.625

418-030-0010 Procurement Authority
(Adopted 12/01/2014)

(1) The Commission may:

(a) Enter into contracts with public and private organizations and individuals for the purpose of obtaining or developing training materials and curriculum or other services as may be needed by the Commission;

(b) Contract for services, lease, acquire, hold, own, encumber, insure, sell, replace, deal in and with, and dispose of real and personal property in its own name; and

(c) Enter into an interagency agreement or contract with any state agency for the performance of the Commission's duties or the leasing of office space.

(2) The Commission delegates to the executive director the authority to act on behalf of the Commission to carry out its duties and responsibilities, including but not limited to, entering into contracts or agreements.

Stat. Auth.: ORS 410.602
Stats. Implemented: ORS 279A.065, 279A.070, 410.604, 410.625

418-030-0020 Adoption of Oregon Health Authority Rules
(Adopted 12/01/2014)

The Oregon Home Care Commission adopts the rules in OAR Chapter 943, Division 060, except for rules and definitions which are not applicable to the work of the Commission authorized in ORS 410-595-625 as follows:

(1) Each instance of "Oregon Health Authority" or "Authority" means "Oregon Home Care Commission" or "Commission."

(2) The following rules, and subparts thereof, are not applicable:

(a) 943-060-0010, definitions (2) (a) and (c), (3) (a) through (o), and (8);

(b) 943-060-0020;

(c) In 943-060-0050, omit agreements under ORS 190.485, ORS 190.112 and ORS 660.342 (as renumbered to ORS 660.334);

(d) 943-0060-0080;

(e) 943-060-0090; and

(f) 943-060-0110(1), (11), and (12).

Stat. Auth.: ORS 410.602

Stats. Implemented: ORS 410.604, 410.625

Department of Consumer and Business Services
Workers' Compensation Division

Five-year Administrative Rule Review

Rule division name and rule numbers:

OAR chapter 436, division 008, Electronic Medical Billing:

| | |
|--------------|--|
| 436-008-0001 | Authority, Applicability, Purpose, and Administration of these Rules |
| 436-008-0004 | Adoption of Standards |
| 436-008-0005 | Definitions |
| 436-008-0010 | Electronic Medical Bills |
| 436-008-0015 | Electronic Medical Bill Attachments or Documentation |
| 436-008-0020 | Electronic Medical Bill Acknowledgements |
| 436-008-0025 | Electronic Medical Bill Payments |
| 436-008-0030 | Electronic Remittance Advice; Explanation of Benefits |
| 436-008-0040 | Assessment of Civil Penalties |

Date adopted: 7/14/2014

Date effective: 1/1/2015

Date reviewed: April 29, 2019

Advisory Committee Used: Yes

The rulemaking advisory committee met on 10/17/2011, 2/13/2012, 5/24/2012, 8/27/2012, 11/26/2012, 1/30/2013, 5/20/2013, 1/23/2014, and 2/27/2014.

1. **Did the rule achieve its intended effect?** Yes, at least in part.

a. **What was the intended effect?**

The intended effect was best expressed by the statement of need filed with proposed adoption of these rules:

“Adoption of these rules is needed to establish uniform standards for electronic medical billing in the workers’ compensation system, standards that are consistent with those used in general health care. These standards should reduce health care providers’ and insurers’ administrative costs over time, and also avert development of multiple, incompatible standards that could discourage the wider use of electronic billing.”

b. **How did the rule succeed or fail in achieving this effect?**

Adoption of division 008 did establish uniform standards for electronic medical billing. The agency doesn’t have record of health care providers or insurers using

other standards for electronic billing. Although it may be reasonable to assume that electronic billing has reduced health care providers' and insurers' administrative costs, the agency does not have data regarding those costs. However, providers and insurers are invited to respond to this report with information about their administrative costs related to electronic billing versus paper billing methods.

2. Was the fiscal impact statement:

- Underestimated
- Overestimated
- Just about right
- Unknown

a. What was the estimated fiscal impact?

In its "Statement of Cost of Compliance," filed with proposed adoption of these rules, the agency projected "that adoption of the electronic medical billing standards would have a significant, one-time fiscal impact on health care providers that create data programs to support the standards. For providers that are already using compatible standards for general health care, Medicare, etc., the initial investment to use the workers' compensation standards should be much smaller. For providers that hire vendors to facilitate electronic billing, the initial investment may be smaller. These proposed rules do not require that health care providers submit bills electronically, and the agency projects that participation will be based on a provider's perceived economic interest."

The agency also projected "that adoption of electronic medical billing standards would have a significant, one-time fiscal impact on insurers that must create data programs to support the standards. For insurers that are already receiving bills using compatible standards for general health care or that are receiving electronic workers' compensation medical bills in other states, the initial investment to use the workers' compensation standards should be much smaller. For insurers that hire vendors to facilitate electronic billing, the initial investment may be smaller. These proposed rules provide that an insurer may request a waiver of electronic billing requirements if the insurer finds that participation presents an unreasonable financial hardship."

b. What was the actual fiscal impact?

Health care providers and insurers (insurers, self-insured employers, and service companies) do not report their administrative costs for billing to the agency. One indicator of fiscal impact may be application for waiver of electronic billing requirements based on assertion of unreasonable financial burden. Since adoption of the rules, only three insurers have requested waivers (and the agency approved them). One of the companies no longer does business in Oregon, another has just a few legacy claims, and the third has a very small volume of claims.

For health care providers, electronic medical billing is optional, so a provider's participation is likely based on its perceived economic interest.

c. If the answer to question 2 is unknown, briefly explain why.

As noted under item 2. b., providers and insurers do not report their administrative costs for billing and bill processing to the agency, and the agency does not have record of complaints regarding those costs. However, providers and insurers are invited to respond to this report with information about their administrative costs before and after adoption of electronic billing standards.

3. Have subsequent changes in the law required the rule be repealed or amended?

No. These rules have not been amended since they were adopted. The agency will amend the rules as needed to remain in alignment with electronic billing standards referenced in OAR 436-008-0004.

4. Is the rule still needed? Yes.

These rules are needed for the reasons they were adopted: then to establish, and now to maintain, uniform standards for electronic medical billing in the workers' compensation system, standards that are consistent with those used in general health care.

5. What impacts has the rule had on small businesses?

Affected small businesses are primarily health care providers, and electronic medical billing is optional for providers. The agency has not received comments that the electronic medical billing standards are costly or otherwise burdensome to small businesses. However, the agency invites input on any significant impacts of the standards on small businesses.

The department must review each administrative rule not later than five years after its adoption. Under ORS 183.405, the agency must determine:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended;
- (d) Whether there is continued need for the rule; and
- (e) What impacts the rule has on small businesses.

The department must report its findings to any advisory committee appointed under ORS 183.333, to the Secretary of State, and to the Small Business Advisory Committee.

Subject: Five-year report regarding adoption of OAR 436-008, Electronic Medical Billing
Date: Friday, May 3, 2019 at 9:29:38 AM Pacific Daylight Time
From: BRUYNS Fred H * DCBS
To: BRUYNS Fred H * DCBS, Archives Admin Rules * SOS, MABRY Steven A * SOS
CC: BERTELS Jennifer * DCBS, KARMA Daneka A * DCBS, GRAHAM Lori L * DCBS
Attachments: Five-year-review-008.pdf, image001.gif

To:
Rulemaking advisory committee members
Copy to – Oregon Secretary of State and the Small Business Rules Advisory Committee

Good morning,

I have attached a report on some rules adopted in July of 2014, and effective Jan. 1, 2015. The standards for electronic medical billing in OAR 436-008 were developed with your assistance at one or more of the rulemaking advisory committee meetings in 2011 through 2014. The purpose of this report is to assess whether the rules have had the intended effects, if the estimated fiscal impacts were accurate, if there is a continued need for the rules, and what impacts the rules have had on small businesses.

If you are no longer involved with electronic medical billing, feel free to share this report with others who may have an interest in the subject matter.

Although medical billing data is reported to the Oregon Workers' Compensation Division, that data doesn't indicate whether billing was done electronically or on paper. The division relies on stakeholder input to understand the effectiveness of billing standards. So, please contact me if you have concerns about the standards or recommendations for improvements.

Thank you!

Fred Bruyns, policy analyst/rules coordinator
Department of Consumer and Business Services
Workers' Compensation Division
503-947-7717; fax 503-947-7514
Email: fred.h.bruyns@oregon.gov

community
Workers' Compensation
How Is Our Service? Take a Short [Survey](#)

**Department of Consumer and Business Services
Workers' Compensation Division**

Five-year Administrative Rule Review

Rule division name and rule numbers: OAR chapter 436, division 035, "Disability Rating Standards," rule 0006, "Determination of Benefits for Disability Caused by the Compensable Injury."

Date adopted: Jan. 29, 2015 (effective March 1, 2015)

Date reviewed: Jan. 3, 2020

Advisory Committee Used: Yes

The committee met on Aug. 27, 2014, Sept. 29, 2014, and on Oct. 29, 2014.

1. **Did the rule achieve its intended effect?** Yes.

a. **What was the intended effect?**

Rule 0006 was adopted along with numerous amendments to rules that reflected the decision of the Oregon Supreme Court, in *Schleiss v. SAIF* (364 Or. 637 (2013)) and the decision of the Oregon Court of Appeals, in *Brown v. SAIF* (262 Or. App. 640 (2014)). Rule 0006 was intended to explain the application of *Brown* to the determination of permanent disability in injury claims, new or omitted condition claims, aggravation claims, and occupational disease claims.

b. **How did the rule succeed or fail in achieving this effect?**

Rule 0006 provisions and related amendments to other rules were consistent with the Court of Appeal's decision in *Brown*. The Court found that the legislative history established that an insurer's obligation to specify the accepted conditions was not intended to have a negative impact on the injured worker's right to benefits resulting from the compensable injury and, specifically, the legislature did not mean to equate a "compensable injury" with an "accepted condition." Rule 0006 therefore specified when permanent disability may arise from the accepted conditions and when it may arise from the work injury or occupational disease.

2. Was the fiscal impact statement:

- Underestimated
- Overestimated
- Just about right
- Unknown

a. What was the estimated fiscal impact?

In its “Statement of Need and Fiscal Impact,” filed with the Oregon Secretary of State on Nov. 12, 2014, the division stated: “There is no reliable basis to estimate a specific fiscal impact of recognizing a compensable injury versus the accepted conditions in the claim, because the agency has no data to show how often and to what extent addressing the compensable injury will entitle workers to more benefits. However, increased costs to insurers and employers and increased benefits to workers due to the court decisions and this related rulemaking could be significant.” The range of possible system cost increases was given as \$4.24 million to \$21.39 million.

h. What was the actual fiscal impact?

We are unable to measure actual impacts of the rule changes in response to the Court’s decision in *Brown*. However, there are some system indicators suggesting that the impacts were less than projected, probably at or below the low range estimate of \$4.24 million. Average claims costs – the combined costs of indemnity and medical services – have not increased. Oregon average pure premium rates have continued to decline: by 5.3% in 2015, 5.3% in 2016, 6.6% in 2017, 14% in 2018, and 9.7% in 2019.

In 2017, the Oregon Supreme Court in *Brown v. SAIF Corporation*, 361 Or 241 (2017), reversed the decision of the Court of Appeals in part. In the Statement of Need and Fiscal filed with the Oregon Secretary of State on 6/15/2017, the agency’s estimated cost of compliance included, “The agency does not have sufficient data to determine the impact of prior rulemaking to reflect the Court of Appeals decision or with which to project an impact of rulemaking to reflect the Supreme Court decision. However, proposed rule changes should largely reverse any *Brown v. SAIF*-related impacts of the 2015 changes.”

c. If the answer to question 2 is unknown, briefly explain why.

Please see the explanation under part b.

3. Have subsequent changes in the law required the rule be repealed or amended?

Yes. This rule and some related rules were amended by temporary rulemaking effective April 11, 2017, and by permanent rulemaking effective Oct. 8, 2017, to reflect changes in interpretation of workers' compensation statutes by the Oregon Supreme Court in *Brown v. SAIF Corporation*, 361 Or 241 (2017), primarily the court's determination that "otherwise compensable injury" in ORS 656.005(7)(a)(B), refers to a medical condition and not to an injury incident.

4. Is the rule still needed? Yes

Rule 0006 continues to provide useful directions regarding permanent disability in initial injury claims, new or omitted condition claims, aggravation claims, and occupational disease claims. However, the agency invites stakeholder input regarding the continued value of this rule.

5. What impacts has the rule had on small businesses?

As explained above, the actual dollar impacts due to the adoption of this rule in 2015 are unknown, though the subsequent change to the rule following the Supreme Court's decision regarding *Brown* should have ended those impacts. However, the agency requests stakeholder input regarding any continuing impacts, including impacts on small businesses.

The department must review each administrative rule not later than five years after its adoption. Under ORS 183.405, the agency must determine:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended;
- (d) Whether there is continued need for the rule; and
- (e) What impacts the rule has on small businesses.

The department must report its findings to any advisory committee appointed under ORS 183.333, to the Secretary of State, and to the Small Business Advisory Committee.

Department of Consumer and Business Services
Workers' Compensation Division

Five-year Administrative Rule Review

Rule division name and rule numbers:

- OAR chapter 436, division 162, "Electronic Data Interchange; Proof of Coverage," rules
 - 436-162-0035 General Filing Information
 - 436-162-0380 Cancellation of Coverage by the Employer
 - 436-162-0400 Monitoring and Auditing Insurers
 - 436-162-0440 Assessment of Civil Penalties

Date adopted: Nov. 13, 2014

Date reviewed: June 5, 2019

Advisory Committee Used: Yes

The rulemaking advisory committee met on Aug. 10, 2012 and July 29, 2014.

1. **Did the rule achieve its intended effect?** Yes

a. **What was the intended effect?**

These four rules were adopted at the same time as the amendment or repeal of other rules in division 162. The "Need for the Rule(s)" included on the Statement of Need and Fiscal Impact filed with the Secretary of State on Sept. 11, 2014, and applicable to all of the proposed changes, was:

"The current rules do not adequately describe the reporting standard insurers are currently using to submit workers' compensation coverage data to the agency. Revision of these rules is needed to bring them into alignment with electronic data interchange standards for reporting coverage data to the agency. This will facilitate appropriate enforcement of timeliness and accuracy standards."

Proposed rule changes included objectives to:

"... describe consequences for failure to meet the standards – possible sanctions or revocation of EDI transmission approval;..." and
"Distinguish employer cancellations of coverage under ORS 656.423 from insurer terminations of coverage under ORS 656.427, and explain associated record-keeping responsibilities for insurers."

b. **How did the rule succeed or fail in achieving this effect?**

Rule adoptions and amendments brought the rules into alignment with the *IAIABC EDI Implementation Guide for Proof of Coverage*, Release 2.1, dated July 1, 2010, described procedures for insurer terminations of coverage and employer cancellations of coverage, and explained agency oversight authority and the potential for civil penalties.

2. Was the fiscal impact statement:

- Underestimated
- Overestimated
- Just about right
- Unknown

a. What was the estimated fiscal impact?

The agency estimated that there would be a small impact on the public, specifically on workers' compensation insurance companies that were not currently reporting some data elements, such as the North American Industry Classification System (NAICS) codes. The agency added that there might also be a small initial impact on the vendors that process reports for insurers, as these companies apply standards to determine which transactions are forwarded to the agency.

b. What was the actual fiscal impact?

The actual costs to reporters is unknown.

c. If the answer to question 2 is unknown, briefly explain why.

The agency cannot quantify reporters' costs for sending additional data elements, and staff members are not aware that related programming has been burdensome. The agency invites input from affected companies and vendors regarding actual fiscal impacts.

3. Have subsequent changes in the law required the rule be repealed or amended?

No

4. Is the rule still needed? Yes

The rules are still needed for the reasons they were adopted. Complete and timely workers' compensation policy data is essential to the agency's monitoring of compliance with coverage laws.

5. What impacts has the rule had on small businesses?

No impact on small businesses was projected when the fiscal impact estimate was filed with the Secretary of State in 2014. The agency explained that: "Workers' compensation insurers are not small businesses as defined by ORS 183.310. The vendors currently facilitating reporting on behalf of insurers are not small business as defined by ORS 183.310." However, the agency requests information from stakeholders, including small businesses, regarding any costs to small businesses resulting from adoption of these rule changes.

The department must review each administrative rule not later than five years after its adoption. Under ORS 183.405, the agency must determine:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended;
- (d) Whether there is continued need for the rule; and
- (e) What impacts the rule has on small businesses.

The department must report its findings to any advisory committee appointed under ORS 183.333, to the Secretary of State, and to the Small Business Advisory Committee.

Subject: 5 year Rule Review Filing- Oregon OSHA
Date: Tuesday, October 29, 2019 at 9:19:23 AM Pacific Daylight Time
From: CASE Heather * DCBS
To: YAMAKA Julie A * SOS
CC: MABRY Steven A * SOS, Archives Admin Rules * SOS
Attachments: image001.png, 5-year review 437-002-2253.docx, 5-year review 437-002-2101.docx

Hello,

Attached are our five year rule reviews for newly adopted rules, completed as per ORS 183.405. This is in regards to two rules that were adopted with our rulemaking under Administrative Order 6-2014, adopted October 28, 2014.

Under ORS 183.405(3), this email constitutes Oregon OSHA's filing of our 5 year review with both the Secretary of State, and the Small Business Advisory Committee. We have also provided copies of these final reports to the advisory committee appointed for the original consideration of this rule.

I apologize for the delay in filing. The due date for this review was October 28, 2019. However I was ill and unable to file on that date.

Thank you,

Heather Case
Policy Analyst/Administrative Rules Coordinator
Oregon OSHA
503-947-7449
heather.case@oregon.gov
osha.oregon.gov



Department of Consumer and Business Services
Oregon OSHA

Five-year Administrative Rule Review

Rule division name and rule numbers: Division 2 General Occupational Safety and Health, Oxygen-fuel gas welding and cutting, 437-002-2253

Date adopted: October 28, 2014

Date reviewed: October 22, 2019

Advisory Committee Used: Welding and Cutting Advisory Committee

This review document was provided for comment to the original committee members who helped develop this rule.

1. Did the rule achieve its intended effect? YES

a. What was the intended effect?

This rule was meant to provide three main benefits to the public.

1. Update the industry standards referenced in the rule to provide consistency with current industry practices and standards.
2. Enhance consistency within Oregon OSHA rules by aligning Division 2 (General Industry) and Division 3 (Construction) requirements.
3. Use plain language to ease understanding of the rule and enable it to be used as a training tool

b. How did the rule succeed or fail in achieving this effect?

1. The rules that this one replaced referenced Compressed Gas Association (CGA) standards adopted in the 1960's. This rule updated standards by adopting the newest CGA guidance available to the committee.
2. Division 2 and Division 3 employers now use the same guidance for affected activities. 12 separate rules were repealed or amended in the creation of this rule. This makes it easier for employers and employees to determine which rules they need to follow during operations.
3. The rule is written in plain language that anyone with a knowledge of the industry should readily understand. The rules are written in a linear way that reflects typical operations. This makes it suitable as a step by step training tool for many tasks.

2. Was the fiscal impact statement:

- Underestimated
- Overestimated
- Just about right
- Unknown

a. What was the estimated fiscal impact?

There was only one fiscal impact statement provided by the Advisory Committee during the rulemaking. This statement posited that the training requirement would cost up to \$3,100.00 per employee. This statement was largely discounted due to the fact that there had always been a training requirement in OAR 437-001-0760(1). The training requirement in this rule didn't create a new burden but simply provided specific guidance for an existing requirement.

b. What was the actual fiscal impact?

Unknown

c. If the answer to question 2 is unknown, briefly explain why.

The fiscal and economic impact statement filed when the rule was adopted makes no claims about specific costs or savings. There are some generalizations about potential costs and savings but the author indicated that they would largely offset each other. The conclusion was that "...this rule should have a minimal fiscal impact."

3. Have subsequent changes in the law required the rule be repealed or amended?

No

4. Is the rule still needed? YES

The hazardous nature of operations affected by this rule has not abated. Oregon employees still need effective safety regulations in place to help assure a safe and healthful workplace while performing affected tasks.

5. What impacts has the rule had on small businesses?

Specific impacts on small businesses are unknown. It's presumed that any impacts have been positive due to the rule achieving it's intended effects. This belief stems from the fact that small businesses helped promulgate the rule and would have helped ensure that small businesses wouldn't be harmed by the rule.

The department must review each administrative rule not later than five years after its adoption. Under ORS 183.405, the agency must determine:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended;
- (d) Whether there is continued need for the rule; and
- (e) What impacts the rule has on small businesses.

The department must report its findings to any advisory committee appointed under ORS 183.333, to the Secretary of State, and to the Small Business Advisory Committee.

Department of Consumer and Business Services
Oregon OSHA

Five-year Administrative Rule Review

Rule division name and rule numbers: Division 2 General Occupational Safety and Health, Compressed Gases (General Requirements), 437-002-2101

Date adopted: October 28, 2014

Date reviewed: October 22, 2019

Advisory Committee Used: Welding and Cutting Advisory Committee

This review document was provided for comment to the original committee members who helped develop this rule.

1. Did the rule achieve its intended effect? YES

a. What was the intended effect?

This rule was meant to update Compressed Gasses, General Requirements in response to the rules adopted by the welding and cutting rulemaking. It replaces CFR 1910.101 which was last amended in March of 1996. CFR 1910.101 references Compressed Gas Association (CGA) standards from 1962, 1963, 1965, and 1968.

b. How did the rule succeed or fail in achieving this effect?

The rule succeeded in providing modernized guidance. It did so through the adoption of standards that were 10-4 years old in lieu of relying on standards that were up to 52 years old. This eliminated potential dissonance in the rules wherein the welding and cutting rules would reference much more modern standards than CFR 1910.101 did.

2. Was the fiscal impact statement:

- Underestimated
- Overestimated
- Just about right
- Unknown

a. What was the estimated fiscal impact?

No specific amount was calculated as a fiscal impact for OAR 437-002-2101

b. What was the actual fiscal impact?

There is likely no actual fiscal impact due to the nature of the rulemaking.

c. If the answer to question 2 is unknown, briefly explain why.

The Statement of Need and Fiscal impact doesn't have any specific costs associated with OAR 437-002-2101. The document does list some potential costs with the related welding and cutting rulemaking but makes no mention of this rule. It's unlikely that there is any cost associated. This is because the rule simply modernized the CGA standards referenced. Equipment and processes were likely modernized through the years despite the rule. It is unlikely that much compressed gas equipment from the 1960s was still in regular use by industry professionals when this rule was adopted in 2015.

3. Have subsequent changes in the law required the rule be repealed or amended?

No, CFR 1910.101 has not changed so OAR 437-002-2101 is still more effective.

4. Is the rule still needed? YES

Transporting, storing, and using compressed gases is still hazardous and still necessary. This general rule is needed to help provide a safe and healthful workplace when compressed gases are transported, stored, or used in the workplace.

5. What impacts has the rule had on small businesses?

It's likely that this rule has had a positive influence on small businesses due to simplified language and modern references. The language is plain and easier to interpret than CFR 1910.101. This would aid compliance efforts and reduce costs associated with noncompliance. The modernized references provide guidance that reflects the technological and process changes made by the industry since the 1960's. This means that Oregon OSHA rules are now much more in tune with manufacturer guidance which naturally aids employer compliance efforts.

The department must review each administrative rule not later than five years after its adoption. Under ORS 183.405, the agency must determine:

- (a) Whether the rule has had the intended effect;
- (b) Whether the anticipated fiscal impact of the rule was underestimated or overestimated;
- (c) Whether subsequent changes in the law require that the rule be repealed or amended;
- (d) Whether there is continued need for the rule; and
- (e) What impacts the rule has on small businesses.

The department must report its findings to any advisory committee appointed under ORS 183.333, to the Secretary of State, and to the Small Business Advisory Committee.

5-Year Rule Review Report

Rule number: OAR 438-011-0055 (Third Party Election Letter)

Date adopted: December 3, 2013

Advisory committee used? Yes No

If yes, identify members. After completing its review, the agency must provide advisory committee members a copy of its report. ORS 183.405(3).

Advisory committee members: Nelson Hall, William Replogle, Jennifer Flood, Steven Schoenfeld, Barbara Woodford. Roger Pearson served as facilitator.

1. Did the rule achieve its intended effect? Yes No

a. What was the intended effect?

OAR 438-011-0055 was promulgated to clarify the parties' respective responsibilities in the Third Party "election/assignment" process, and to better explain the consequences of the events described in ORS 656.593.

Section (1) of the rule requires a carrier ("paying agency") to serve a written demand ("third party election" letter) on the claimant/beneficiaries/legal representative ("the claimant") if the paying agency intends to require the claimant to exercise the right of election in ORS 656.578 to recover damages from a noncomplying employer or third person ("third party"). Section (2) requires the "paying agency" to include with this "third party election" letter a separate enclosure prescribed by Board bulletin that explains the "third party election/assignment" process. If the claimant does not read or understand English, or is otherwise unable to understand written language, the paying agency shall provide this information in a language or other manner that ensures the claimant's understanding. *Id.* Section (3) provides that the "third party election" letter must: (a) contain the information prescribed in ORS 656.583; and (b) include a statement that the claimant has been provided with the informational enclosure prescribed by Board bulletin in section (2).

b. How did the rule succeed or fail in achieving this effect?

OAR 438-011-0055 has provided a vehicle for consistent and accurate communication of Third Party election rights and responsibilities between the paying agency and the claimant. The Board is unaware of any problems associated with the implementation and practice of this rule among the stakeholders. No Third Party disputes have come to the Board in which the requirements of the rule have been an issue.

2. Was the fiscal impact statement ___ underestimated or ___ overestimated or X just about right or ___ unknown? (Check one).
- a. What was the estimated fiscal impact? The Board Members did not identify any significant fiscal impact as a result of the rule.
- b. What was the actual fiscal impact? Precise fiscal impact is not determinable, but there is no reason to believe the estimated fiscal impact was under or over estimated.
- c. If the answer to question 2 is unknown, briefly explain why.
3. Have subsequent changes in the law required the rule be repealed or amended? ___ Yes X No If yes, explain.

The Board received one comment concerning this question from a claims administrator, which pertained to supplemental disability benefits distributed from the Workers' Benefit Fund under ORS 656.210(2)(b) and OAR 436-060-0035(12). This rule only addresses the Third Party Election Letter process, and does not expressly pertain to a paying agency's reimbursement or lien. Furthermore, pursuant to ORS 656.593(4), the Workers' Benefit Fund is included as a "paying agency." Nonetheless, in the future, the Board plans to examine its bulletin (which carriers are required under the rule to include in their "election" notices) to determine whether supplementation/clarification of the bulletin is necessary to address this particular comment.

4. Is the rule still needed? X Yes ___ No Explain.

OAR 438-011-0055 assists the parties in implementing ORS 656.593 by providing clarity and consistency in Third Party election assignments. Based on the absence of "election-related" disputes submitted for Board resolution since the adoption of the rule, the Members believe that the rule is still needed.

Dated this 1st day of April, 2019.

Workers' Compensation Board

by: Constance L. Wold
Constance L. Wold, Board Chair

Steve Lanning
Steve Lanning, Board Member

Roger Dusey
Roger Dusey, Board Member

Sally Anne Curey
Sally Anne Curey, Board Member

Barbara Woodford
Barbara Woodford, Board Member

