Oregon Administrative Rules Interpretive Guidelines

For

In-Home Care Agencies

Division 536

2008

333-536-0070 – Caregiver Qualifications and Requirements

(5) Caregiver Selection and Review of Service Plan.

(b) …The date of the review(s), the signature of the agency supervisor or designee…

(c) …The date of the review(s), the signature of the agency supervisor or designee…

Interpretation: *Signatures can include unique identifiers, such as an individual's log in and password into a computer program or an electronic stamp.*

(6) – Caregiver supervision.

(a) The manager or designee must conduct supervisory visits to the client's residence:

(A) Within two weeks of the initiation of the services while a caregiver is providing services, and

Interpretation: *The initial supervisory visit must occur anytime within the first and 14th day, that includes the first day and the 14th day,* ***unless*** *the client cancels services on or before the 14th day, or* ***unless*** *the client is residing in a nursing facility or a hospital, in which case a supervisory visit is not required.*

(B) Quarterly monitoring thereafter. The first quarterly visit must be in person. Subsequent visits may occur by phone or by other electronic means at the discretion of the manager or designee under the following circumstances: impending discharge from services; relocation to a facility; when minimal services—such as one shift a month – would cause the client to incur undue financial burden; or, due to other circumstances that are justified in chart note(s) by the manager. In no case shall the time between supervisory in-person monitoring visits exceed a six-month period.

Interpretation: *The caregiver is not required to be present during supervisory visits.*

"Quarterly" means for three months from the date of the initial supervisory visit. Quarterly visits thereafter must be in-person, unless:

1. *There's an impending discharge from services;*
2. *The client will be relocated to a facility;*
3. *When minimal services (such as one shift/month) would cause the client to incur undue financial burden;*

4. *Due to other reasonable circumstances that are justified in the chart note(s) by the manager; or*
5. *The client refuses to allow an onsite supervisory visit and the refusal is documented.*

The key here is whether or not there is a trend or a systemic problem across multiple clients. If supervisory visits occur rarely for a client as a result of 1-5 above, and ***appropriate documentation*** *is provided for the missed supervisory visits, then it will not be considered a problem, this is true for both the in-person visits and for the time between visits.*

Further Interpretation: *Continuing under subsection (6) there is a question as to whether every caregiver providing care for a client must receive a supervisory visit. There must be a supervisory visit for each client, but not for every caregiver who provides services to one client. So, for a client who has five caregivers, the supervisor only needs to make one "supervisory visit," and does not have to visit each caregiver who provides care to that one client.*

Waiver of Rule Needed

333-53600055 – Disclosure, Screening, and Acceptance of Clients

(1) When an individual is accepted for agency service a written disclosure statement shall be signed by the potential client or the client's representative and a copy shall be incorporated into the client record.

(3)The disclosure statement must include the following:

(l) Clients' Bill of Rights including: …

333-536-0060 – Clients' Rights

(2) The agency shall provide each client with a written notice of the client's rights, as specified in paragraph (1) of this section, prior to furnishing care to the client. Evidence that each client has received this notice shall be maintained in the client's agency record.

Interpretation: *Only evidence that the Clients' Bill of Rights and disclosure statement was provided to the client, must be kept in the client's agency record. Evidence would include, but not be limited to a check off list or acknowledgment form signed by the client.*

333-536-0065 – Service Plan

(3) The completed service plan shall include at least the following:

(a) The schedule for the provision of services, specifying days and times;

Interpretation: *It was agreed that this rule is unreasonable since the days and times can change fairly quickly and often depending on the requests of the client. The key here is the intent of the rule, which is to make sure the in-home care/services are provided based on client's needs, not the convenience of the*

agency. Blanket waiver of this portion of the rule will be instated with alternative language that includes: A reasonable range of frequency of services to be provided. If there are consistent patterns of change over time, then a new service plan is needed. Review of the service plan should be conducted whenever there are significant changes or events that occur requiring such a re-evaluation and at least every 90 days during review of the care plan as well. The key is to document changes in schedule, etc. If there is a complaint, the agency will need to be able to show documentation that the service plan was reasonably met and that it was changed as a result of the client's request/refusal/etc. not for the agency's benefit or convenience. ***Ensure agency policy and procedure reflects agency practice.***

Use of the term, "Non-Medical": *The rules are silent on this, and therefore not regulated.*

333-536-0050 – Organization, Administration, and Personnel

(11) The agency shall comply with all applicable state and local laws, statutes, rules, and ordinances.

Interpretation: *If violations obviously appear to be occurring of other laws, rules and statues, etc., the surveyor will refer the matter to the appropriate agency for investigation and indicate such to the agency.*

OAR 333-536-0080(5)(a) states that, "Telephone order shall be immediately recorded, dated, and signed by the registered nurse, and transmitted to the physician or practitioner for counter signature within 72 hours. The orders that have been signed by the physician or practitioner shall be incorporated into the client's record within 30 days."

Verbal orders vs. faxed orders can verbal orders of a physician etc. warrant a change in the plan of care?

Interpretation: *Orders need to be incorporated into the client's record and attached as an addendum to the plan of care.*

OAR 333-536-0005 (14) & (15) state the following:

"Medication assistance" means self-administration of non-injectable medication which the client is not physically able to administer to him or herself, but fully self directs its administration.

“Medication administration” means agency staff administering medications to a client or directly supervising the client who is not able or not willing to self-direct, but may be physically able to perform he tasks.

Also, OAR 333-536-0045 (2) (a) states that the agency may also provide Medication Services, in accordance with OAR 333-536-0075, which includes:

(A) Assistance with self-administration of non-injectable medication; or

(B) Medication administration; or

(C) Medication management.

Interpretation: *Each agency must assess a client to determine if the client can or cannot tell what medications s/he is taking, when s/he needs to take them and for what s/he is taking the medications before determining if medication assistance is applicable or if medication administration or management is needed, in which case a nurse is required to provide oversight as per OAR 333-536-0075(8) “Visits by a registered nurse to provide periodic observation and inspection shall be conducted at least every 90 days.”*

Clarification of Drafting Error

OAR 333-536-0075 states, “If the agency provides non-injectable medication services as described in OAR 333-536-0045 (2)(a), the services shall be rendered *by* persons who meet the requirements of (8) *(9)* of this rule.” *The items in italics, “by” and “(9)” need to be included and the number “(8)” needs to be deleted. Upon review of a previous document used to make the changes that are currently incorporated in the rule, the language was supposed to state “(9)” instead of “(8),” which makes a big difference. Subsection (8) states, “Visits by a registered nurse to provide periodic observation and inspection shall be conducted at least every 90 days.” And subsection (9) states, “Agency caregivers assigned to provide medication services must be given basic non-injectable medications tasks by the caregivers.” The rule was intended to require that IHC employees providing medication management be trained and qualified. This has been noted and will be changed during the next revision of the rules.*