

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 455**

**STATE PLAN PERSONAL CARE SERVICES FOR INDIVIDUALS WITH
INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

EFFECTIVE JANUARY 8, 2019

411-455-0000 Statement of Purpose

(Temporary Effective 1/8/2019 - 7/5/2019)

(1) The rules in OAR chapter 411, division 455 prescribe standards, responsibilities, and procedures for the delivery of State Plan personal care (SPPC) services to individuals who are eligible for services through Community Developmental Disabilities Programs, Brokerages, or Children's Intensive In-Home Services.

(2) SPPC services are intended to supplement an individual's personal abilities and available alternative resources, including the individual's natural support system, for the individual to live independently at home and in the community.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670

411-455-0010 Definitions and Acronyms

(Temporary Effective 1/8/2019 - 7/5/2019)

In addition to the following definitions, OAR 411-317-0000 includes general definitions for words and terms frequently used in OAR chapter 411, division 455. If a word or term is defined differently in OAR 411-317-0000, the definition in this rule applies.

(1) "ADL" means "activities of daily living".

(2) "Assistance" means the help an individual requires to complete the ADL and IADL tasks described in OAR 411-455-0050.

(a) The assistance types may include hands-on, cueing, or redirection.

(A) "Hands-on" means a provider physically performs all or parts of an activity because an individual is unable to do so.

(B) "Cueing" means giving verbal, audio, or visual clues during an activity to help an individual complete the activity without hands-on assistance.

(C) "Redirection" means to divert an individual to another more appropriate activity.

(b) For an individual with intellectual or developmental disabilities, assistance may include supervision along with cueing or verbal reminding to help the individual know when or how to carry out the task. Supervision may be in the form of monitoring, set-up, reassurance, or stand-by to ensure the individual completes the task.

(A) "Monitoring" means a provider observes an individual to determine if assistance is needed.

(B) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so an individual may perform an activity.

(C) "Reassurance" means to offer an individual encouragement and support.

(D) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.

(3) "Assistive Devices" means any category of devices, aids, controls, supplies, or appliances necessary to enable an individual to increase the ability of the individual to perform personal care at home and in the community.

(4) "Assistive Technology" means any category of devices, aids, controls, supplies, or appliances necessary to provide support for an individual and replace the need for direct interventions or to increase independence.

(5) "CHIP" means the "Children's Health Insurance Program".

(6) "Delegated Nursing Task" means a registered nurse (RN) authorizes an unlicensed person (defined in OAR 851-047-0010) to provide a nursing task normally requiring the education and license of an RN. In accordance with OAR 851-047-0000, OAR 851-047-0010, and OAR 851-047-0030, the RN's written authorization of a delegated nursing task includes assessing a specific eligible individual, evaluating an unlicensed person's ability to perform a specific nursing task, teaching the nursing task, and supervising and re-evaluating the individual and the unlicensed person at regular intervals.

(7) "IADL" means "instrumental activities of daily living".

(8) "Legal Representative" means:

(a) For an individual under the age of 18, the parent, unless a court appoints another person or agency to act as the individual's guardian.

(b) For an individual 18 years of age or older:

(A) A spouse.

(B) A family member who has legal custody or guardianship according to ORS 125.005, 125.300, 125.310, and 125.315.

(C) An attorney at law who has been retained by or for the individual.

(D) A person or agency authorized by a court to make decisions about services for the individual.

(9) "Medical Assistance Benefit Package" means the Oregon Health Plan (OHP) benefit packages provided under OAR 410-120-1210(4)(a) and (b). This includes individuals receiving Title XXI benefits.

- (10) "OCCS" means "Office of Client and Community Services".
- (11) "ODDS" means "Office of Developmental Disabilities Services".
- (12) "OSIPM" means "Oregon Supplemental Income Program-Medical".
- (13) "Personal Care" means the basic everyday functional activities described as ADL and IADL tasks in OAR 411-455-0050 required by an individual for continued well-being and essential for health and safety.
- (14) "Relative" means a person who is related to an individual by blood, marriage, or adoption, and who is not the individual's legal representative as defined in this rule.
- (15) "Respite" means the services provided on a periodic or intermittent basis for the short-term relief of an individual's primary caregiver.
- (16) "SPPC" means State Plan personal care.
- (17) "SPPC Needs Assessment (form 2796)" means the assessment completed by a case manager as described in OAR 411-455-0030 to determine an individual's eligibility for SPPC services, the individual's level of assistance for SPPC, and available resources meeting any of the individual's support needs, including assistive devices or assistive technology.
- (18) "SPPC Service Authorization Plan (form 2796)" means the prior authorized written service plan completed by a case manager as described in OAR 411-455-0030, based on an individual's SPPC Needs Assessment.
- (19) "SPPC Services" means a range of assistance for personal care, funded through the Medicaid State Plan, provided to an individual with a disability or chronic condition to enable the individual to accomplish personal care.
- (20) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to an individual with a condition that does not require acute hospital care but prevents the individual from being discharged to their home.

(21) "Support Needs" means the assistance with personal care needed by an individual receiving ODDS services.

(22) "These Rules" mean the rules in OAR chapter 411, division 455.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670

411-455-0020 Eligibility

(Temporary Effective 1/8/2019 - 7/5/2019)

(1) An individual may not be denied SPPC services or otherwise discriminated against on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, marital status, age, disability, source of income, duration of Oregon residence, or other protected classes under federal and Oregon Civil Rights laws.

(2) To be eligible for SPPC services under these rules, an individual must meet the following requirements:

(a) Be receiving case management services through a Community Developmental Disabilities Program, a Brokerage, or Children's Intensive In-Home Services.

(b) Be a current recipient of a medical assistance benefit package through OSIPM or the OCCS Medical Program, including CHIP, except for Cover All Kids as defined in OAR 410-200-0015.

(c) Require assistance from a qualified provider with one or more ADL and IADL tasks described in OAR 411-455-0050 that are not met by alternative resources or the individual's natural support system.

(3) An individual is not eligible to receive SPPC services under these rules if the individual:

(a) Is receiving assistance with personal care from a residential program or residential setting as defined in OAR 411-317-0000.

(b) Is in a hospital, sub-acute care facility, nursing facility, other medical institution, a local correctional facility (as defined in ORS 169.005), a Department of Corrections institution (as defined in ORS 421.005), or a youth correction facility (as defined in ORS 162.135).

(c) Has assessed personal care needs that are met through alternative resources or natural supports, as defined in OAR 411-317-0000, available to the individual.

(d) Has assessed personal care needs that are being met under other Medicaid-funded home and community-based service options of the individual's choosing.

(e) Is receiving benefits through the Department's Self-Sufficiency Programs (SSP), Aging and People with Disabilities (APD) or Area Agency on Aging (AAA), and not case management services through a Brokerage, Community Developmental Disabilities Program, or Children's Intensive In-Home Services.

(f) Is eligible for behavioral health personal care attendant services through the Oregon Health Authority's Community Mental Health Programs as described in OAR 410-172-0780.

(g) Is eligible for personal care services through the Department's Child Welfare programs as described in OAR 413-090-0130.

(4) SPPC services are not intended to:

(a) Replace natural supports as defined in OAR 411-317-0000 that are available to an individual.

(b) Replace supports that are typical for a parent or guardian to provide to a child of the same age.

(c) Benefit an individual's family members or the individual's household in general.

(5) SPPC services must not duplicate other Medicaid services.

(6) The Department or case management entity has the authority to terminate an individual's eligibility for SPPC services provided under these rules when any of the following occurs:

(a) The individual is no longer eligible for SPPC services for any reason described in sections (2) through (4) of this rule.

(b) The individual is exited from case management as described in OAR 411-415-0030.

(c) The individual fails to employ a provider that meets the requirements in OAR 411-455-0060.

(7) When SPPC services are denied, reduced, suspended, or terminated, a written Notification of Planned Action (form 0947) must be provided as described in OAR 411-318-0020, and other options of developmental disabilities services, as described in OAR 411-415-0070(9), must be offered to the individual.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670

411-455-0030 Needs Assessment, Service Authorization, and Monitoring

(Temporary Effective 1/8/2019 - 7/5/2019)

(1) A case manager must provide case management services as defined in OAR 411-317-0000 consistent with the standards described in OAR 411-415-0050. Documentation for SPPC services must be in accordance with OAR 411-415-0110.

(2) **NEEDS ASSESSMENT.** A case manager must meet in-person with an individual initially and at least every 12 months to determine the individual's eligibility for SPPC services or other developmental disabilities services, assess the individual's level of assistance for SPPC, and identify resources meeting any of the individual's personal care needs, including assistive devices or assistive technology.

(a) The assessment to determine the individual's needs for SPPC services must be conducted by a case manager using the SPPC Needs Assessment prior to the individual receiving SPPC services.

(b) The individual, or their designated representative as applicable, may invite others to participate in the assessment.

(c) When authorizing SPPC services along with other developmental disabilities services as described in OAR 411-415-0070(9), except for family support services, a functional needs assessment is required and must be conducted in accordance with OAR 411-415-0060.

(3) SERVICE AUTHORIZATION. A case manager may authorize SPPC services on an ISP or SPPC Service Authorization Plan (form 2796).

(a) Authorization must be:

(A) Based on an individual's SPPC Needs Assessment described in section (2) of this rule.

(B) For a maximum of 20 hours per month when an individual is determined eligible unless an exception is authorized in accordance with OAR 411-455-0040.

(C) Consistent with the service planning standards described in OAR 411-415-0070.

(b) Authorized SPPC services:

(A) May be scheduled throughout the month to meet the support needs of an individual.

(B) Are reimbursed after services are delivered by a provider meeting the standards in OAR 411-455-0060 as identified in an individual's ISP or a SPPC Service Authorization Plan (form 2796) and included in a Service Agreement (form 4606).

(c) When using an ISP to authorize SPPC services, a case manager must follow the standards for the development and implementation of an ISP in accordance with OAR 411-415-0070.

(d) When using a SPPC Service Authorization Plan, a case manager must provide documentation of the following:

(A) Name and provider number of the individual's qualified provider who is to deliver the authorized SPPC services.

(B) Date when the provision of SPPC services is to begin, which is:

(i) The date when the individual has been determined eligible for SPPC services in accordance with OAR 411-455-0020, and through the needs assessment process as described in section (2) of this rule; and

(ii) When a provider has been determined qualified and is enrolled in accordance with OAR 411-455-0060 to start providing authorized SPPC services.

(C) Date when the SPPC Service Authorization Plan is to end, which must be within 12 months of the assessment date.

(D) Maximum hours and types of SPPC services authorized per month to meet the individual's unmet support needs.

(E) Signature of the case manager authorizing the SPPC Service Authorization Plan and the date signed.

(F) Signature of the individual, or their designated representative as applicable, acknowledging the SPPC Service Authorization Plan and the date signed.

(4) MONITORING. A case manager must provide ongoing case management services as defined in OAR 411-317-0000 consistent with the standards described in OAR 411-415-0050.

(a) The case manager must provide assistance to an individual, or their legal or designated representative as applicable, with monitoring and improving the quality of supports to assure:

(A) There is no change in the individual's eligibility for SPPC services as described in OAR 411-455-0020.

(B) SPPC services are effectively implemented and adequately meeting the assessed support needs of the individual.

(b) When there is an indication that an individual's level of assistance has changed, the case manager must review the current SPPC service authorization and conduct an in-person reassessment in accordance with section (2) of this rule.

(c) Following an annual reassessment and a reassessment conducted after a change of an individual's level of assistance, the case manager:

(A) May adjust the hours or SPPC services;

(B) Must authorize the adjusted hours or services on an ISP or SPPC Service Authorization Plan (form 2796) based on the individual's current assessed level of assistance, if appropriate, as described in section (3) of this rule; and

(C) Must provide a Notification of Planned Action (form 0947) in accordance with OAR 411-455-0020(7) and OAR 411-318-0020 if SPPC services are reduced, suspended, or terminated.

(d) To meet extraordinary support needs, an individual, or their legal or designated representative as applicable, may request an exception to the maximum monthly hour limitation in accordance with OAR 411-455-0040.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670

411-455-0040 Exceptions

(Temporary Effective 1/8/2019 - 7/5/2019)

(1) An individual, or their legal or designated representative as applicable, may request an exception either orally or in writing if they believe the

maximum monthly hour limitation is not meeting, or will not meet, the individual's support needs.

(2) The case manager must assist the individual, or their legal or designated representative as applicable, with the exception request including completing the Funding Review and Exceptions Request (form 0514DD) and gathering required supporting documents. The Funding Review and Exceptions Request must:

(a) Include an explanation of any change in the individual's level of assistance, available resources, and relevant documentation to support the reasons for why the maximum monthly hour limitation is not meeting, or will not meet, the individual's support needs.

(b) Provide a clear description of how the individual's support needs are being met throughout a day, including available alternative resources and natural supports as defined in OAR 411-317-0000.

(3) Prior to submitting the Funding Review and Exceptions Request to ODDS, the case manager must review the individual's current needs assessment for any change in the individual's level of assistance and available resources to meet those needs documented in the individual's ISP or Annual Plan, SPPC Service Authorization Plan, and any other documentation in the individual's service record as described in OAR 411-415-0110.

(a) If the assessment was conducted less than six months from the date of the exception request, the case manager must conduct a reassessment when requested by the individual, or their legal or designated representative as applicable, to determine the individual's current level of assistance and proceed with service authorization in accordance with OAR 411-455-0030.

(b) If the assessment was conducted at least six months from the date of the exception request, the case manager must conduct a reassessment to determine the individual's current level of assistance and proceed with service authorization in accordance with OAR 411-455-0030.

(4) ODDS has up to 30 calendar days upon receipt of a Funding Review and Exceptions Request and relevant supporting documentation identified in section (2) of this rule to approve or deny the exception request.

(5) ODDS may approve or deny the exception request based on review of the individual's assessed support needs and available resources to meet those needs.

(a) APPROVALS. ODDS may approve an exception for the individual's documented support needs that may be met by qualified providers within the exception limits described in section (6) of this rule.

(b) DENIALS.

(A) ODDS may deny an exception when:

(i) The request is not within the exception limits described in section (6) of this rule.

(ii) The individual's assessed level of assistance may not be met by qualified providers within the exception limits described in section (6) of this rule.

(iii) The requested assistance is not an allowable ADL or IADL task as described in OAR 411-455-0050, or an assistance type as described in OAR 411-455-0010.

(iv) The exceptional support needs may be met through alternative resources or natural supports, as defined in OAR 411-317-0000, available to the individual.

(B) When an exception request is denied, ODDS must provide a written Notification of Planned Action (form 0947) to the individual as described in OAR 411-318-0020 and offer other options of developmental disabilities services to the individual as described in OAR 411-415-0070(9).

(6) EXCEPTION LIMITS.

(a) Approval for additional SPPC service hours shall be based on the frequency of the support needs and the amount of support required for each ADL or IADL task to ensure the health and safety of the individual. Assistance types must be:

(A) Hands-on assistance as described in OAR 411-455-0010.

(B) On-going supervision as described in OAR 411-455-0010.

(b) Up to two additional hours for each task per month may be granted for hands-on assistance.

(c) Up to five additional hours for each task per month may be granted for on-going supervision.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670

411-455-0050 Services

(Temporary Effective 1/8/2019 - 7/5/2019)

(1) SPPC services must be delivered by a qualified provider who meets the standards described in OAR 411-455-0060 and in accordance with an individual's ISP or Annual Plan and included in the Service Agreement (form 4606).

(2) SPPC services include assistance with the following ADL, IADL, and delegated nursing tasks:

(a) ADL tasks:

(A) Bathing – assisting an individual cleanse the body (in bathtub, bed bath, shower), wash hair, shave, care for nails, and use assistive devices when necessary to get in and out of the bathtub or shower.

(B) Dressing – assisting an individual put on, fasten, and take off all clothing items, braces, and artificial limbs. Dressing includes getting and replacing items from an individual's storage area in the immediate environment.

(C) Toileting and maintaining continence – assisting an individual to and from the bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for urinary and bowel elimination. Toileting includes cleansing after elimination and adjusting clothing as necessary. Maintaining continence includes cleansing urinary catheter, emptying catheter drainage bag, maintaining bowel care, and changing and replacing incontinence products, including ostomy care or ileostomy bags.

(D) Mobility, transfers, and repositioning -- assisting an individual with ambulation, transfers, and repositioning with or without assistive devices. Mobility, transfers, and repositioning includes turning or adjusting padding for physical comfort or pressure relief and encouraging or assisting with range-of-motion exercises.

(E) Eating – assisting an individual with feeding or fluid intake by any means from a device into the body. Eating includes monitoring to prevent choking or aspiration.

(b) IADL tasks:

(A) Personal hygiene – doing or assisting an individual do activities such as securing clothing, combing or brushing hair, shaving, nail care, foot care, skin care, mouth care, and oral hygiene.

(B) Light housekeeping and laundry – doing or helping an individual do housekeeping tasks related to the individual's needs and necessary to maintain the individual in a healthy and safe living environment. Task examples include cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, and dusting. Laundry means doing or helping to do laundry or clean the individual's clothing, bedding, and other linens.

(C) Grocery shopping – planning and shopping for basic needs and necessary household items or assisting an individual with those tasks.

(D) Meal preparation -- providing or assisting an individual with healthy meal planning and preparation, and ensuring the individual follows a special diet, as needed.

(E) Transportation – assisting an individual get to and from necessary appointments and community activities through available means of transportation. Transportation does not include mileage reimbursement.

(F) Using the telephone – performing or assisting an individual use the telephone to arrange for necessary appointments and to make desired phone calls.

(G) Medication management – assisting with medications that are ordinarily self-administered. Assistance includes administering medication, observing to ensure the individual takes medication as ordered, documenting and monitoring any notable side effects, and refilling prescription in a timely manner. Medication management also includes assisting with the use, maintaining and cleaning of in-home equipment such as oxygen equipment, as well as administering oxygen, monitoring the individual's condition, and ordering and maintaining necessary supplies.

(H) Money management – performing or assisting an individual with budgeting, making payments for monthly expenses, and using personal funds for desired items and activities.

(c) Delegated nursing tasks as defined in these rules and as described in OAR chapter 411, division 048 and in accordance with the Expenditure Guidelines as defined in OAR 411-317-0000. For individuals less than 21 years of age, services shall be provided as determined medically necessary as defined in OAR 410-120-0000, and prior authorized by the Department.

(3) Payment may not be made for any of the following excluded services:

- (a) Mileage reimbursement;
- (b) Social companionship;
- (c) Child care (described in OAR chapter 414, division 300, 350, and 205), adult day services (described in OAR chapter 411, division 066), respite, or baby-sitting services;
- (d) Medicaid home delivered meals (described in OAR chapter 411, division 040);
- (e) Care, grooming, or feeding of pets or other animals; or
- (f) Yard work, gardening, or home repair.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670

411-455-0060 Standards for Providers

(Temporary Effective 1/8/2019 - 7/5/2019)

(1) SPPC services must be provided by one of the following provider types:

(a) A personal support worker who meets the standards described in OAR 411-375-0020.

(b) An in-home care agency with a current license by the Public Health Division in accordance with OAR chapter 333, division 536.

(2) A qualified provider paid by the Department must not be an individual's legal representative.

(3) Personal support workers must meet the provider enrollment and other requirements described in OAR chapter 411, division 375 for service payments.

(4) In-home care agencies must meet provider enrollment and other requirements described in OAR chapter 411, division 370 and OAR 411-323-0065 for service payments.

(5) Rates for SPPC services are the same as for attendant care in the home or community established in the Expenditure Guidelines.

Stat. Auth.: ORS 409.050, 427.104, 430.662

Stats. Implemented: ORS 427.007, 430.610, 430.620, 430.662-430.670