

**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