

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

**CHAPTER 411  
DIVISION 34**

**STATE PLAN PERSONAL CARE SERVICES**

**411-034-0000 Purpose**

*(Amended 12/15/2013)*

The rules in OAR chapter 411, division 034 ensure State Plan personal care services support and augment independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services to individuals eligible for State Plan personal care services. State Plan personal care services are intended to supplement an individual's own personal abilities and resources.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 410.020, 410.070, & 410.710

**411-034-0010 Definitions**

*(Amended 3/29/2018)*

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 034:

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

(2) "Adult" means any person at least 18 years of age.

(3) "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 and adults with disabilities in a planning and service area. The terms AAA and Area Agency on Aging are 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.

(4) "Assistance" means an individual requires help from another person with the personal care or supportive services described in OAR 411-034-0020. Assistance may include cueing, hands-on, monitoring, reassurance, redirection, set-up, standby, or support as defined in OAR 411-015-0005. Assistance may also require verbal reminding to complete one of the tasks described in OAR 411-034-0020.

(5) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any task described in OAR 411-034-0020.

(6) "Assistive Supports" means the aid of service animals, general household items, or furniture used to assist and enhance an individual's independence in performing any task described in OAR 411-034-0020.

(7) "Background Check" means a criminal records check and abuse check as defined in OAR 407-007-0210.

(8) "Case Management" means the functions performed by a case manager, services coordinator, personal agent, or manager. Case management includes determining service eligibility, developing a plan of authorized services, and monitoring the effectiveness of services.

(9) "Case Manager" means a Department employee or an employee of the Department's designee, services coordinator, or personal agent who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. A case manager authorizes and implements an individual's plan for services and monitors the services delivered.

(10) "Central Office" means the unit within the Department responsible for program and policy development and oversight.

(11) "Child" means an individual who is less than 18 years of age.

(12) "Community Developmental Disability Program (CDDP)" means the Department's designee that is responsible for plan authorization, delivery, and monitoring of services for individuals with intellectual or developmental disabilities according to OAR chapter 411, division 320.

(13) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly contracted in-home services to individuals receiving services through the Department or Area Agency on Aging.

(14) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of all available service options, the utilization of assistive devices or assistive supports, 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.

(15) "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.

(16) "Department" means the Department of Human Services.

(17) "Designee" means an organization with which the Department contracts or has an interagency agreement.

(18) "Developmental Disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(19) "Disability" means 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.

(20) "Division" means:

- (a) Oregon Health Authority, Addictions and Mental Health Division (AMHD);
- (b) Department of Human Services, Aging and People with Disabilities Division (APD);
- (c) Area Agencies on Aging (AAA);
- (d) Department of Human Services, Self-Sufficiency Programs (SSP);
- (e) Department of Human Services, Office of Developmental Disability Services (ODDS);
- (f) Community Developmental Disability Programs (CDDP); and
- (g) Support Services Brokerages.

(21) "Fiscal Improprieties" means a homecare or personal support worker committed financial misconduct involving an individual's money, property, or benefits.

(a) Fiscal improprieties include, but are not limited to, financial exploitation, borrowing money from an individual, taking an individual's property or money, having an individual purchase items for the homecare or personal support worker, forging an individual's signature, falsifying payment records, claiming payment for hours not worked, or similar acts intentionally committed for financial gain.

(b) Fiscal improprieties do not include the exchange of money, gifts, or property between a homecare or personal support worker whose employer is a relative unless an allegation of financial exploitation, as defined in OAR 411-020-0002 or OAR 407-045-0260, has been substantiated based on an adult protective services investigation.

(22) "Guardian" means a parent for an individual less than 18 years of age or a person or agency appointed and authorized by the courts to make decisions about services for an individual.

(23) "Homecare Worker" means a provider as described in OAR 411-031-0040, directly employed by an individual to provide hourly in-home services to the eligible consumer.

(a) The term homecare worker includes:

(A) A consumer-employed provider in the Spousal Pay and Oregon Project Independence Programs;

(B) A consumer-employed provider that provides State Plan personal care services; and

(C) A relative providing Medicaid in-home services to an individual living in the relative's home.

(b) The term homecare worker does not include an Independent Choices Program provider or a personal support worker enrolled through Developmental Disability Services or the Addictions and Mental Health Division.

(24) "Individual" means the person applying for or determined eligible for State Plan personal care services.

(25) "Intellectual Disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.

(26) "Lacks the Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a homecare or personal support worker does not possess the skills to perform services needed by individuals receiving services from the Department. The homecare or personal support worker may not be physically, mentally, or emotionally capable of providing services to individuals. The homecare or personal support worker's lack of skills may put individuals at risk because the homecare or personal support worker fails to perform, or learn to perform, the duties needed to adequately meet the needs of the individuals.

(27) "Legal Representative" means:

(a) For a child, the parent or step-parent unless a court appoints another person or agency to act as the guardian; and

(b) For an adult:

(A) A spouse;

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

(C) An attorney at law who has been retained by or for an individual; or

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

(28) "Long Term Care Community Nursing" means the nursing services described in OAR chapter 411, division 048.

(29) "Medicaid OHP Plus Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(30) "Natural Support" means resources and supports (e.g. relatives, friends, significant others, neighbors, 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.

(31) "Older Adult" means any person at least 65 years of age.

(32) "Ostomy" means assistance that an individual needs with a colostomy, urostomy, or ileostomy tube or opening used for elimination.

(33) "Personal Agent" means a person who is a case manager for the provision of case management services, works directly with individuals and the individuals' legal or designated representatives and families to provide or arrange for support services as described in OAR chapter 411, division 340, meets the qualifications set forth in OAR 411-340-0150, and is a

trained employee of a support services brokerage or a person who has been engaged under contract to the brokerage to allow the brokerage to meet responsibilities in geographic areas where personal agent resources are severely limited.

(34) "Personal Care" means the functional activities described in OAR 411-034-0020 that an individual requires for continued well-being.

(35) "Personal Support Worker" means:

(a) A provider:

(A) Who is hired by an individual with an intellectual or developmental disability or the individual's representative;

(B) Who receives money from the Department for the purpose of providing services to the individual in the individual's home or community; and

(C) Whose compensation is provided in whole or in part through the Department or community developmental disability program.

(b) This definition of personal support worker is intended to reflect the term as defined in ORS 410.600.

(36) "Provider" or "Qualified Provider" means a homecare worker or personal support worker that meets the qualifications in OAR 411-034-0050 that performs State Plan personal care services.

(37) "Provider Enrollment" means a homecare worker's or personal support worker's authorization to work as a provider employed by an eligible individual, representative, or legal representative for the purpose of receiving payment for services authorized by the Department. Provider enrollment includes the issuance of a Medicaid provider number.

(38) "Provider Number" means an identifying number issued to each homecare or personal support worker who is enrolled as a provider through the Department.

(39) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(40) "Representative" means:

(a) A person appointed by an individual or legal representative to participate in service planning on the individual's behalf that is either the individual's guardian or natural support with longstanding involvement in assuring the individual's health, safety and welfare; and

(b) For the purpose of obtaining State Plan personal care services through a homecare or personal support worker, the person selected by an individual or the individual's legal representative to act on the individual's behalf to provide the employer responsibilities described in OAR 411-034-0040.

(41) "Respite" means services for the relief of a person normally providing supports to an individual unable to care for him or herself.

(42) "Service Need" means the assistance with personal care and supportive services needed by an individual receiving Department services.

(43) "Service Period" means, for individuals served by --

(a) APD or an AAA, two consecutive workweeks for a total of 14 days.

(b) A CDDP or a Support Services Brokerage, a calendar month.

(44) "Service Plan" or "Service Authorization" means an individual's written plan for services that identifies:

(a) The individual's qualified provider who is to deliver the authorized services;

(b) The date when the provision of services is to begin; and

(c) The maximum hours per service period of personal care and supportive services authorized by the Department or the Department's designee.

(45) "Services Coordinator" means an employee of a community developmental disability program or other agency that contracts with the county or Department, who is selected to plan, procure, coordinate, and monitor an individual's plan for services, and to act as a proponent for individuals with intellectual or developmental disabilities.

(46) "State Plan Personal Care Services" means the assistance with personal care and supportive services described in OAR 411-034-0020 provided to an individual by a homecare worker or personal support worker. The assistance may include cueing, hands-on, monitoring, reassurance, redirection, set-up, standby, or support as defined in OAR 411-015-0005. The assistance may also require verbal reminding to complete one of the personal care tasks described in OAR 411-034-0020.

(47) "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 his or her home.

(48) "Support Services Brokerage" means an entity, or distinct operating unit within an existing entity, that uses the principles of self-determination to perform the functions associated with planning and implementation of support services for individuals with intellectual or developmental disabilities.

(49) "These Rules" mean the rules in OAR chapter 411, division 034.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.710, 411.675

### **411-034-0020 State Plan Personal Care Services**

*(Amended 3/29/2018)*

(1) State Plan personal care services are essential services that enable an individual to move into or remain in their own home. State Plan personal care services are provided in accordance with an individual's authorized

plan for services by a provider meeting the requirements in OAR 411-034-0050.

(a) To receive State Plan personal care services, an individual must demonstrate the need for assistance with personal care and supportive services and meet the eligibility criteria described in OAR 411-034-0030.

(b) State Plan personal care services are provided directly to an eligible individual and are not meant to provide respite or other services to an individual's natural support system. State Plan personal care services may not be implemented for the purpose of benefiting an individual's family members or the individual's household in general.

(c) State Plan personal care services are limited to:

(A) A minimum of 9.18 hours per service period (to equal 20 hours per month as required in the State Plan), per eligible individual for consumers served by APD or an AAA.

(B) 20 hours per service period per eligible individual for consumers served by a CDDP or a Support Services Brokerage.

(d) To meet an extraordinary personal care need, an individual, representative, or legal representative may request an exception to the maximum service period hour limitation. An exception must be requested through the Central Office of the Program serving the individual. The Program has up to 45 days upon receipt of an exception request to determine whether an individual's assessed personal care needs warrant exceeding the service period limitation and the individual shall receive a notice of the Program's decision.

(2) Personal care services include:

(a) Basic personal hygiene -- providing or assisting an individual with such needs as bathing (tub, bed bath, shower), washing hair, grooming, shaving, nail care, foot care, dressing, skin care, mouth care, and oral hygiene;

(b) Toileting, bowel, or bladder care -- assisting to and from bathroom, on and off toilet, commode, bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleansing an individual or adjusting clothing related to toileting, emptying a catheter drainage bag or assistive device, ostomy care, and bowel care;

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

(d) Nutrition -- preparing meals and special diets, assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;

(e) Medication or oxygen management -- assisting with ordering, organizing, and administering oxygen or prescribed medications (including pills, drops, ointments, creams, injections, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administration of oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;

(f) Delegated nursing tasks as defined in OAR 411-034-0010.

(3) When any of the services listed in section (2) of this rule are essential to the health, safety, and welfare of an individual and the individual is receiving personal care paid by the Department, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the eligible individual in a healthy and safe environment, including cleaning surfaces and floors, making the individual's bed, cleaning dishes, taking out the garbage, dusting, and gathering and washing soiled clothing and linens. Only the housekeeping activities related to the eligible individual's needs may be considered in housekeeping;

(b) Arranging for necessary medical appointments including help scheduling appointments and arranging medical transportation services (described in OAR chapter 410, division 136) and assistance with mobility and transfers or cognition in getting to and from appointments or to an office within a medical clinic or center;

(c) Observing the individual's health status and reporting any significant changes to physicians, health care professionals, or other appropriate persons;

(d) First aid and handling of emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements where assistance is needed by another person and responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediate response; and

(e) Cognitive assistance or emotional support provided to an individual by another person due to confusion, dementia, behavioral symptoms, or mental or emotional disorders. Cognitive assistance or emotional support includes helping the individual cope with change and assisting the individual with decision-making, reassurance, orientation, memory, or other cognitive symptoms.

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

(a) Shopping;

(b) Community transportation;

(c) Money management;

(d) Mileage reimbursement;

(e) Social companionship;

(f) Day care, adult day services (described in OAR chapter 411, division 066), respite, or baby-sitting services;

(g) Medicaid home delivered meals (described in OAR chapter 411, division 040);

(h) Care, grooming, or feeding of pets or other animals; or

(i) Yard work, gardening, or home repair.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, 410.608

### **411-034-0030 Eligibility for State Plan Personal Care Services**

*(Amended 10/01/2014)*

(1) To be eligible for State Plan personal care services, an individual must:

(a) Require assistance (defined in OAR 411-034-0010) from a qualified provider with one or more of the personal care tasks described in OAR 411-034-0020; and

(b) Be a current recipient of a Medicaid OHP Plus benefit package.

(2) An individual is not eligible to receive State Plan personal care services if:

(a) The individual is receiving assistance with activities of daily living (as described in OAR 411-015-0006) from a licensed 24-hour residential services program (such as an adult foster home, assisted living facility, group home, or residential care facility);

(b) The individual is in a prison, hospital, sub-acute care facility, nursing facility, or other medical institution;

(c) The individual's service needs are met through the individual's natural support system (defined in OAR 411-034-0010); or

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

(3) Payment for State Plan personal care services is not intended to replace the resources available to an individual from the individual's natural support system (defined in OAR 411-034-0010).

(4) State Plan personal care services are not intended to replace routine care commonly needed by an infant or child typically provided by the infant's or child's parent.

(5) State Plan personal care services may not be used to replace other non-Medicaid governmental services.

(6) The Department, Division, or Designee has the authority to close the eligibility and authorization for State Plan personal care services if an individual fails to:

(a) Employ a provider that meets the requirements in OAR 411-034-0050; or

(b) Receive personal care from a qualified provider paid by the Department for 30 continuous calendar days or longer.

(7) State Plan personal care services must not duplicate other Medicaid services.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, 410.608, & 410.710

### **411-034-0035 Applying for State Plan Personal Care Services**

*(Amended 12/15/2013)*

(1) Individuals eligible for state plan personal care services as described in OAR 410-172-0790(1) must apply through the local community mental health program or agency contracted with AMHD. An individual applying for State Plan personal care services that is not eligible for or receiving services through ODDS or APD is referred to the appropriate AMHD office.

(2) An individual with an intellectual or developmental disability eligible for or receiving services through the Department's Office of Developmental Disabilities Services (ODDS), a Community Developmental Disability Program (CDDP), or Support Services Brokerage must apply for State Plan

personal care services through the local CDDP or the local support services brokerage.

(3) An older adult or an adult with a disability eligible for or receiving case management services from the Department's Aging and People With Disabilities (APD) or Area Agency on Aging (AAA) must apply for State Plan personal care services through the local APD or AAA office.

(4) Individuals receiving benefits through the Department's Self-Sufficiency Programs (SSP) must apply for State Plan personal care services through the local APD or AAA office. APD/AAA is responsible for service assessment and for any planning and payment authorization for State Plan personal care services, if the applicant is determined eligible.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.608, 410.710, & 411.116

#### **411-034-0040 Employer-Employee Relationship**

*(Amended 3/29/2018)*

(1) EMPLOYER - EMPLOYEE RELATIONSHIP. The relationship between a provider and an eligible individual or the individual's representative is that of employee and employer.

(2) JOB DESCRIPTION. As an employer, it is the responsibility of an individual or the individual's representative to create and maintain a job description for a potential provider that is in coordination with the individual's plan for services.

(3) PROVIDER BENEFITS. The only benefits available to homecare and personal support workers are those negotiated in a collective bargaining agreement and as provided in statute. The collective bargaining agreement does not include participation in the Public Employees Retirement System or the Oregon Public Service Retirement Plan. Homecare and personal support workers are not state or Division employees.

(4) EMPLOYER RESPONSIBILITIES. For an individual to be eligible for State Plan personal care services, the individual or the individual's representative must demonstrate the ability to:

(a) Locate, screen, and hire a provider meeting the requirements in OAR 411-034-0050;

(b) Supervise and train a provider;

(c) Schedule work, leave, and coverage;

(d) Track the hours worked and verify the authorized hours completed by a provider;

(e) Recognize, discuss, and attempt to correct any performance deficiencies with the provider and provide appropriate, progressive, disciplinary action as needed; and

(f) Discharge an unsatisfactory provider.

(g) Abide by federal and state laws related to employer responsibilities, including ensuring the employee is not harassed.

(5) An eligible individual exercises control as the employer and directs the provider in the provision of the services.

(6) The Department makes payment for State Plan personal care services to the provider on an individual's behalf. Payment for services is not guaranteed until the Department, Division, or Designee has verified that an individual's provider meets the qualifications in OAR 411-034-0050.

(7) In order to receive State Plan personal care services from a personal support worker or homecare worker, an individual must be able to:

(a) Meet all of the employer responsibilities described in section (4) of this rule; or

(b) Designate a representative to meet the employer responsibilities described in section (4) of this rule.

(8) **TERMINATION OF PROVIDER EMPLOYMENT.** Termination and the grounds for termination of employment are determined by an individual or the individual's representative. An individual has the right to terminate an employment relationship with a provider at any time and for any reason. An

individual or the individual's representative must establish an employment agreement at the time of hire. The employment agreement may include grounds for dismissal, notice of resignation, work scheduling, and absence reporting.

(9) After appropriate intervention, an individual unable to meet the employer responsibilities in section (4) of this rule may be determined ineligible for State Plan personal care services.

(a) Contracted in-home care agency services are offered when an individual is ineligible for State Plan personal care services. Other community-based or nursing facility services are offered to an individual if the individual meets the eligibility criteria for community-based or nursing facility services.

(b) An individual determined ineligible for State Plan personal care services may request State Plan personal care services at the individual's next annual re-assessment. Improvements in health and cognitive functioning may be factors in demonstrating the individual's ability to meet the employer responsibilities described in section (4) of this rule. The waiting period may be shortened if an individual is able to demonstrate the ability to meet the employer responsibilities sooner than the individual's next annual re-assessment.

(10) REPRESENTATIVE:

(a) An individual or an individual's legal representative may designate a representative to act on the individual's behalf to meet the employer responsibilities in section (4) of this rule. An individual's legal representative may be designated as the individual's representative.

(b) The Department, Division, or Designee may deny an individual's request for a representative if the representative has --

(A) A history of a substantiated abuse of an adult as described in OAR chapter 411, division 020, OAR chapter 407, division 045, or OAR chapter 943, division 045;

(B) A history of founded abuse of a child as described in ORS 419B.005;

(C) Participated in billing excessive or fraudulent charges; or

(D) Failed to meet the employer responsibilities in section (4) of this rule, including previous termination as a result of failing to meet the employer responsibilities in section (4) of this rule.

(c) An individual is given the option to select another representative if the Department, Division, or Designee suspends, terminates, or denies an individual's request for a representative for the reasons described in subsection (b) of this section.

(d) An individual with a guardian must have a representative for service planning purposes. A guardian may designate themselves the individual's representative.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.608, 410.710, 411.159

#### **411-034-0050 Provider Qualifications**

*(Amended 12/15/2013)*

(1) A qualified provider is a person who, in the judgment of the Department, Division, or Designee, demonstrates by background, skills, and abilities the skills, knowledge, and ability to perform, or to learn to perform, the required work.

(a) A qualified provider must maintain a drug-free work place.

(b) A qualified provider 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. The Department, Division, or the Designee may allow a provider to work on a preliminary basis in accordance with OAR 407-007-0315 if the provider meets the other qualifications described in this rule.

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

(d) A qualified provider must be authorized to work in the United States in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules.

(e) A qualified provider must be 18 years of age or older. A homecare worker enrolled in the Consumer-Employed Provider Program who is at least 16 years of age may be approved for restricted enrollment as a qualified provider as described in OAR 411-031-0040.

(f) A qualified provider may be employed through a contracted in-home care agency or enrolled as a homecare worker or personal support worker under a provider number. Rates for services are established by the Department.

(g) Providers that provide State Plan personal care services --

(A) Enrolled in the Consumer-Employed Provider Program must meet all of the standards in OAR chapter 411, division 031.

(B) As personal support workers must meet the provider enrollment and termination criteria described in OAR 411-031-0040.

## (2) BACKGROUND RECHECKS:

(a) Background rechecks are conducted at least every other year from the date a provider is enrolled. The Department, Division, or Designee may conduct a recheck more frequently based on additional information discovered about a provider, such as possible criminal activity or other allegations.

(b) Prior background check approval for another Department provider type is inadequate to meet background check requirements for homecare or personal support workers.

(c) Provider enrollment may be inactivated when a provider fails to comply with the background recheck process. Once a provider's enrollment is inactivated, the provider must reapply and meet the standards described in this rule to reactivate his or her provider enrollment.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, & 410.608

### **411-034-0055 Provider Termination**

*(Amended 12/15/2013)*

(1) The Department, Division, or Designee may deny or terminate a homecare worker's provider enrollment and provider number as described in OAR 411-031-0050. The termination, administrative review, and hearings rights for homecare workers is described in OAR 411-031-0050.

(2) The Department, Division, or Designee may deny or terminate a personal support worker's provider enrollment and provider number when the personal support worker --

(a) Has been appointed the legal guardian of an individual;

(b) Has a background check that results in a closed case pursuant to OAR 407-007-0325;

(c) Lacks the skills, knowledge, or ability to perform, or learn to perform, the required work;

(d) Violates the protective service and abuse rules in OAR chapter 411, division 020, OAR chapter 407, division 045, and OAR chapter 943, division 045;

(e) Commits fiscal improprieties;

(f) Fails to provide the authorized services required by an eligible individual;

(g) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by an individual;

(h) Has been intoxicated by alcohol or drugs while providing authorized services to an individual or while in the individual's home;

(i) Has manufactured or distributed drugs while providing authorized services to an individual or while in the individual's home; or

(j) Has been excluded as a provider by the U.S. Department of Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare, or any other federal health care programs.

(3) A personal support worker may contest the Department's, Division's, or Designee's decision to terminate the personal support worker's provider enrollment and provider number.

(a) A designated employee from the Department, Division, or Designee reviews the termination and notifies the personal support worker of his or her decision.

(b) A personal support worker may file a request for a hearing with the Department's, Division's, or Designee's local office if all levels of administrative review have been exhausted and the provider continues to dispute the Department's, Division's, or Designee's decision. The local office files the request for a hearing with the Office of Administrative Hearings as described in OAR chapter 137, division 003. The request for a hearing must be filed within 30 calendar days of the date of the written notice from the Department, Division, or Designee.

(c) When a contested case under these rules is referred to the Office of Administrative Hearings, the referral must indicate whether the Department is authorizing a proposed order, a proposed and final order, or a final order.

(d) No additional hearing rights have been granted to a personal support worker by this rule other than the right to a hearing on the Department's, Division's, or Designee's decision to terminate provider enrollment.

Stat. Auth.: ORS 409.050 & 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070 & 411.675

**411-034-0070 State Plan Personal Care Service Assessment, Authorization, and Monitoring**

*(Amended 3/29/2018)*

(1) CASE MANAGER RESPONSIBILITIES.

(a) ASSESSMENT AND REASSESSMENT.

(A) A case manager must meet in person with an individual to assess the individual's ability to perform the personal care tasks listed in OAR 411-034-0020.

(B) An individual's natural supports may participate in the assessment if requested by the individual.

(C) A case manager must assess an individual's service needs, identify the resources meeting any, some, or all of the individual's needs, and determine if the individual is eligible for State Plan personal care services or other services.

(D) A case manager must meet with an individual in person at least once every 365 days to review the individual's service needs.

(b) SERVICE PLANNING.

(A) A case manager must prepare a service plan identifying the tasks for which an individual requires assistance and the number of authorized service hours per service period. The case manager must document an individual's natural supports that currently meet some or all of the individual's assistance needs.

(B) The service plan must describe the tasks to be performed by a qualified provider and must authorize the maximum hours per service period that may be reimbursed for those services.

(C) When developing service plans, a case manager must consider the cost effectiveness of services that adequately meet the individual's service needs.

(D) Payment for State Plan personal care services must be prior authorized by a case manager and based on the service needs of an individual as documented in the individual's written service plan.

(c) ONGOING MONITORING AND AUTHORIZATION.

(A) When there is an indication that an individual's personal care needs have changed, a case manager must conduct an in person re-assessment with the individual (and any of the individual's natural supports if requested by the individual).

(B) Following annual re-assessments and those conducted after a change in an individual's personal care needs, a case manager must review service eligibility, the cost effectiveness of the individual's service plan, and whether the services provided are meeting the identified service needs of the individual. The case manager may adjust the hours or services in the individual's service plan and must authorize a new service plan, if appropriate, based on the individual's current service needs.

(d) ONGOING CASE MANAGEMENT. A case manager must provide ongoing coordination of State Plan personal care services, including authorizing changes in providers and service hours, addressing risks, and monitoring and providing information and referral to an individual when indicated.

(2) LONG TERM CARE (LTC) COMMUNITY NURSING SERVICES. A LTC community nurse is a licensed, registered nurse (RN) who has been approved under a contract or provider agreement with the Department, Division, or Designee to provide nursing assessment for indicators identified in subsection (a) of this section and may provide on-going nursing services as identified in subsection (b) of this section to certain individuals served by the Department, Division, or Designee. Individuals receiving LTC community nursing services are primarily older adults and adults with disabilities.

(a) A case manager may refer a LTC community nurse where available, for nursing assessment and monitoring when it appears an

individual needs assistance to manage health support needs and may need delegated nursing tasks, nurse assessment and consultation, teaching, or services requiring RN monitoring. Indicators of the need for LTC community nurse assessment and monitoring include:

- (A) Complex health problem or multiple diagnoses resulting in the need for assistance with health care coordination;
- (B) Medical instability, as demonstrated by frequent emergency care, physician visits, or hospitalizations;
- (C) Behavioral symptoms or changes in behavior or cognition;
- (D) Nutrition, weight, or dehydration issues;
- (E) Skin breakdown or risk for skin breakdown;
- (F) Pain issues;
- (G) Medication safety issues or concerns;
- (H) A history of recent, frequent falls; or
- (I) A provider may benefit from teaching or training about the health support needs of an eligible individual.

(b) Following the completion of an initial nursing assessment in an individual's home by a LTC community nurse, the provision of ongoing LTC community nursing services must be prior-authorized by a case manager and may include:

- (A) Ongoing health monitoring and teaching for an eligible individual specific to the individual's identified needs;
- (B) Medication education for an eligible individual and the individual's provider;
- (C) Instructing or training a provider or natural support to address an individual's health needs;

(D) Consultation with other health care professionals serving an individual and advocating for the individual's medical and restorative needs in a non-facility setting; or

(E) Delegation of nursing tasks defined in OAR 411-034-0010 to a non-family provider.

(c) LTC Community nursing services must be provided as described in OAR chapter 411, division 048.

### (3) UNAUTHORIZED SERVICE SETTINGS AND PROVIDERS.

(a) The Department, Division, or Designee may not authorize services within an eligible individual's home when --

(A) The individual's home has dangerous conditions that jeopardize the health or safety of the individual and necessary safeguards cannot be taken to improve the setting;

(B) The services cannot be provided safely or adequately by a provider;

(C) The individual's home has dangerous conditions that jeopardize the health or safety of the provider and necessary safeguards cannot be taken to minimize the dangers; or

(D) The eligible individual does not have the ability to make an informed decision, does not have a designated representative to make decisions on his or her behalf, and necessary safeguards cannot be provided to protect the safety, health, and welfare of the individual.

(b) A case manager must present an individual or the individual's representative with information on service alternatives and provide assistance to assess other choices when a provider or service setting selected by the individual or the individual's representative is not authorized.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 409.010, 410.020, 410.070, 410.608, 410.710

### **411-034-0090 Payment Limitations**

*(Amended 3/29/2018)*

(1) The maximum allowed hours for State Plan personal care services are -

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(a) Capped at 9.18 hours per service period (to equal 20 hours per month as required in the State Plan), for individuals served by APD or an AAA; or

(b) Capped at 20 hours per service period for individuals served by a CDDP or a Support Services Brokerage.

(c) Individuals whose assessed service needs exceed the maximum allowed hours for State Plan personal care services in a service period may request additional hours through the exception process described in OAR 411-034-0020. The Department Central Office may approve or deny the requests based on analysis of the individual's need and criteria for an exception.

(d) State Plan personal care service hours are authorized in accordance with an individual's service plan and may be scheduled throughout the service period to meet the service needs of the individual.

(2) Authorized LTC community nurse assessment and monitoring services are not included in the maximum hours per service period for State Plan personal care services described in section (1) of this rule.

(3) The Department does not guarantee payment for State Plan personal care services until all acceptable provider enrollment standards have been verified and both the employer and provider have been formally notified in writing that payment by the Department is authorized.

(4) In accordance with OAR 410-120-1300, all provider claims for payment must be submitted within 12 months of the date of service.

(5) Payment may not be claimed by a provider until the hours authorized for the payment period have been completed, as directed by an eligible individual or the individual's representative.

Stat. Auth.: ORS 409.050, 410.070

Stats. Implemented: ORS 410.020, 410.070, 410.710, 411.159, 411.675