

SPOUSAL PAY PROGRAM GUIDE AND FAQ

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Spousal Pay Program overview

The Spousal Pay (SP) Program is one of the Consumer-Employed Provider (CEP) in-home service options described in OAR 411-030. The SP Program and the Independent Choices Program (ICP) are the only in-home service options allowing for payment to a spouse provider (OAR 411-027-0020(5)). SP providers are homecare workers (HCW) who are legally married to eligible individuals as defined in OAR 461-001-0000(41). The eligible SP individual must meet their consumer-employer responsibilities, or if unable to do so, must designate a Consumer-Employer Representative (CE Rep., [SDS 0737](#)) to do so (OAR 411-030-0040(4)(5)). The spousal provider **cannot** be the individual's CE Rep (OAR 411-030-0080(2)(h)).

Links to Oregon Administrative Rules (OARs) indicated throughout this guide:

- OAR [411-015](#) Long-Term Care Service Priorities for Individuals Served
- OAR [411-027](#) Payment Limitations In-Home and Community-Based Services
- OAR [411-030](#) In-Home Services
- OAR [461-001](#) Definitions for Chapter 461

Eligibility criteria for SP Program

Initial and on-going SP Program service eligibility is determined through a Client Assessment and Planning System (CA/PS) assessment and on the existence of an ongoing debilitating medical condition. Eligibility criteria described in OAR 411-030-0080(2) must be met for the individual to be eligible for SP Program services.

Full Assist in four of six ADLs:

- To be eligible for the SP Program, an individual must meet the functional needs requirements listed in OAR 411-030-0080(2) based upon their assessment in the CA/PS.
- The individual requires full assistance in at least four of the six activities of daily living (ADL) described in OAR 411-015-0006 as determined by the assessment described in OAR chapter 411, division 015.
- The CM should use the "SPL Summary" radio button on the CA/PS Full Benefit Results screen to review the SP assist level when determining ADLs that are full assist. (See *Eligibility Screen Shots* ([Eligible](#), [Not Eligible](#)) on the CM Tools page under Programs/Spousal Pay (SP)).

Debilitating medical condition described:

To be eligible for the SP Program, an individual must demonstrate they have a progressive incapacitating condition (i.e., a spinal cord injury, late-stage cancer, or other condition with permanent impairment).

- A "Debilitating Medical Condition" is a severe, serious, and ongoing medical condition that significantly and negatively affects an individual's ability to function and participate in most ADLs (OAR 411-030-0020(18)).
- A debilitating medical condition must be identified to determine if an incapacitating condition exists (a severe condition which is not expected to go away or resolve itself). Central Office (CO) will determine if the condition described meets the definition of a debilitating medical condition from the information provided.
- The medical conditions cited in OAR 411-030-0080(2)(c) to determine SP eligibility are not a complete list of the types of conditions that could constitute a debilitating medical condition. This list provides examples of persistent incapacitating conditions that are considered with other SP eligibility criteria.
- Having a medical diagnosis is not required but can help to determine if an individual's condition and needs constitute a debilitating medical condition.

Scope of SP Program services:

To be eligible for SP, it must be determined that the individual's service needs exceed the usual and customary services rendered by one spouse to another in both extent and duration, and that without Medicaid in-home services, the individual would otherwise require nursing facility services.

Marital status:

The individual and the provider must be legally married (OAR 461-001-0000(41)) as defined in OAR 461-001-0000(39)(65). HCWs who marry their CE are *not* considered SP spouse providers and are not paid under the SP Program (OAR 411-030-0080(3)(d)).

Spouse provider requirements:

The spouse meets all requirements for enrollment as a HCW in the CEP Program (OAR 411-031-0040(h)).

Consumer-Employer Representative (CE Rep.):

SP individuals with cognitive impairments that limit their ability to manage their service plan as required (OAR 411-030-0040(4)), must have a CE Rep to manage their service plan.

- An individual chosen to serve as the eligible individual's CE Rep. must be approved by the Department prior to taking on this role (OAR 411-030-0040(d)(e)).
- The spouse provider may *not* be designated and may *not* function as a CE Rep. (i.e. be involved in making decisions related to the individual's services), as described in OAR 411-030-0040(4)(5).
- Representative Choice Form (APD 0737) should be documented in Oregon ACCESS (OA).

Required Central Office review and approval:

CO must review and approve individuals for SP Program eligibility at initial program enrollment and annual re-assessments (OAR 411-030-0080(2)(i)). The [Spousal Pay Program Eligibility Determination Tool](#) (“Spousal Pay” section of CM Tools site), can be used to record SP service plan information and to attached to an email for CO review and approval. When submitting initial and ongoing SP Program eligibility to CO, the service plan should be put in pending status. Send a request for approval to apd.medicaidpolicy@odhsoha.oregon.gov (put “Spousal Pay Case Review” in subject line).

Eligibility review process and service planning in Oregon ACCESS**Client Details information:**

Indicate any available diagnosis provided by a medical professional or any pertinent information that supports a debilitating medical condition in the ‘Diagnosis’ section of Client Details (OAR 411-030-0020(18), OAR 411-030-0080(2)(c)). Please also document the individual’s debilitating medical condition in the Assessment Summary in the CA/PS Assessment section. Information describing an individual’s functional needs, medical diagnosis and overall condition helps CO determine if a debilitating medical condition exists when reviewing a pending SP service plan.

Setting-up a SP Service Plan:

- The service category/benefit should show APD-SPH or KPS-SPH (MAGI).
- Choose the “In-Home Care (HCW) Hourly Spousal Pay SP112” option.
- If additional hourly providers are brought in to assist in addition to the spouse provider, CMs should select “In-Home Care (HCW) Hourly” for these HCWs.
- Ensure that the assigned hours meet (or exceed) the maximum hour rule.

SDS 546N Form (In-Home Service Plan):

In the “View/Assign Hours” screen, all the assessed IADL hours are displayed. The system automatically reduces these hours by half (rounds up if needed) when a SDS 546N is created (which is not reflected on the actual “View/Assign Hours” screen in OA, which shows all assessed IADL hours). Once pushed to complete the CM can print the SDS 546N to ensure the spouse provider’s IADL hours are halved by the system and any other HCWs hours on the plan are not reduced.

Common errors:

- The “In-Home Care (HCW) Spousal Pay” service plan is “OBSOLETE”. If this option is selected, the system will not allow hours to be displayed in the Provide Time Capture (PTC) system when creating vouchers for the spouse provider. If mistakenly chosen, the CM will need to invalidate that line and add the correct “In-Home Care (HCW) Hourly Spousal Pay SP112” option.
- If the SP service plan is set up correctly, OA automatically reduces the IADL hours assigned to the spouse provider in half (the CM should *not* reduce hours manually). CMs should enter all assessed IADL hours. ADL hours are

not reduced. If the IADL hours do not reduce when printing the SDS 546N, the “In-Home Care (HCW) Hourly OC111” was selected instead of “In-Home Care (HCW) Spousal SP112” for the spouse provider. If this occurs, CMs will need to redo the HCW section of the plan. Any additional providers added to the plan should be selected as “In-Home Care (HCW) Hourly OC111”.

Service Plan and Notice (SPAN) Form (DHS 2780N):

The hours recorded on the SPAN are the maximum hours determined to be available, based on the functional needs of the individual. CMs should complete the SPAN and put in the full hours authorized during the service planning process and mark “Yes” for Spousal Pay on the SPAN which informs the individual of the IADL reduction to the spouse provider.

The actual IADL service hours can vary depending on *how* the hours are assigned (to the spouse provider and to any other providers identified in the service plan). The SPAN shows *all* IADL hours when creating the Service Plan in OA. Example: A SP eligible individual has 40 ADL hours and 20 IADL hours (60 hours per pay period) reported on the SPAN. However, the record of available hours in OA does not consider how the hours are assigned to a provider, including the spouse provider. If all 60 hours are assigned to the spouse provider, then by rule, the spouse gets a total of 50 hours a pay period (40 ADL hours plus 10 IADL hours). When set up correctly in OA, the system will adjust the hours automatically on the SDS 546N form.

There are situations where the CM can reduce IADL hours for individual tasks in the service plan. Example: an individual is assessed as a full assist in meal prep but doesn’t eat breakfast. The CM should assess the need and determine full assist but would not assign the hours for breakfast since they do not eat breakfast. When the SPAN is generated, the CM would choose the reason that supports why those hours were not assigned.

Assigning IADL hours when additional providers are needed:

Most SP eligible individuals have one provider, their spouse. Some may require multiple caregivers. OAR 411-030-0080(3)(b) states, “The hours authorized to the *spousal pay provider* in an individual's service plan must consist of one-half of the assessed hours for IADLs and all of the hours for specific ADLs based on the service needs of the individual.” The intent in rule for reducing the IADL hours for the spouse provider is because the spouse provider and others in the household, likely share the same meals, loads of laundry, housekeeping needs, shop from similar foods/items, etc.

When hours are divided between the spouse provider and an employed HCW/IHCA provider, best practice is to have *all* IADL hours assigned to the spouse provider. It is allowed, however, for CMs to assign some IADL hours to other HCWs when service planning to meet the individual's needs. Yet, the rationale for assigning IADL hours to another provider, other than the spouse provider, should be clearly explained and documented in the service plan.

Principal ADL services by spouse provider (51% Requirement in Rule), OAR 411-030-0080(3)(b)):

"The Spousal Pay provider actually provides the principal care for which payment has been authorized" (OAR 411-030-0080(2)). Even in situations where there may be an additional provider in the service plan, the spouse must be providing at least 51% of the care provided. The care the spousal provider is delivering must be "hands-on" (direct) care. Being the "principal provider" does not include the spouse only arranging the individual's care through other providers.

Addressing IADL needs is often just as important to an individual's overall health, safety, and wellbeing as their ADL needs. IADL needs should be understood as part of the "principal services" that a spouse provider is required to provide. Examples: For Medication Management, most spouses, even if all IADL hours are not assigned to them, probably prefer to be more involved with this task than having it delegated to another HCW (support can range from simple med management to needing injections, wound care, O2 administration, etc.). For the Transportation IADL, another HCW may be assigned the hours, but it's likely when shopping needs, etc. are the focus of the ride, the spouse would be driving/accompanying the individual.

- Exceptions to the 51% requirement for spouse providers would only be considered in limited/unique situations where extraordinary needs exist, and that are approved on a case-by-case basis by the CM.
- If the 51% rule for spouse providers puts them over the HCW cap, a *short-term* exception may be requested while the individual hires additional HCWs.

Authorizing hourly services for SP Program Providers

Since SP is an hourly in-home service, a single HCW, including spouse providers, may not work more than 16 hours within a 24-hour work period (OAR 411-030-0070(6)).

- If the case requires mainframe coding (anything over 108 In-Home care hours) the local office manager is required to send the approval to CO via the template.
- The SP Program falls under OAR 411-030 which govern the HCW hours and limits HCWs to 40 hours a week. These requirements apply to spouse providers.
- The cap of 50 hours per week (100+ hours per 14-day service period) applies to spousal providers who provide hourly or Shift Service plans.

- Shift Service plans consist of 224 hours a pay period. SP plans can also be considered for Shift Services following OAR 411-030-0068(2)(a), and by submitting a SDS 514i exception application form.
- An individual may be eligible for a differential rate if certain criteria apply and if approved by CO as described in OAR 411-030-0068(6).
- Delegation for the spouse provider by a LTCCN is not required but may be requested. According to the Board of Nursing, family members may perform tasks of nursing care without specific delegation from an RN.
- Delegation for an additional HCW by a LTCCN may be required and this service is provided by the IHCA for their providers.

Exceptions for SP Program individuals

Eligible SP Program individuals may request an exception based on an individual's documented service needs for:

- Maximum hours (OAR 411-027-0050, OAR 411-030-0071); and
- Shift services (OAR 411-027-0050, OAR 411-030-0068); and
- The 40 and 50-hourly cap (OAR 411-027-0050, OAR 411-030-0070(1)).

HCW who marries a SP Program eligible individual

HCWs who marry their CE who meets SP Program eligibility (OAR 411-030-0080(2)(a-e)), are not paid under the SP Program and do not have IADL hours reduced. The service plan is considered a standard In-Home plan, not a SP Program service plan. Hours authorized in CA/PS are completed in the same manner as other in-home service plans. The HCW who marries an individual (who meets SP Program criteria at the time of the marriage), does not need to meet spousal provider criteria (OAR 411-030-0080(3)(d)) to provide in-home services to their spouse.

- If the HCW provided services for the individual before they were married, the individual still needs to meet the SP physical eligibility criteria for their spouse to continue as their HCW.
- If an individual does not meet SP eligibility criteria but marries their HCW, they must select another HCW for in-home services or, if they qualify, they can choose to pursue services through the Independent Choices Program (ICP).

Screens and codes

- CA/PS: Full Benefits Results screen – 'SPL Summary' radio button indicates if the consumer meets full assistance in four of six ADLs. A CA/PS must be completed.
- CA/PS Benefit Eligibility and service planning:
 1. Benefit Plan segment: APD/SPH or KPS/SPH (MAGI).
 2. Service Plan segment: In-Home Care (HCW) Hourly Spousal Pay. Please do not select "In-Home Care (HCW) Spousal Pay" as it is now OBSOLETE.

- SELQ Prime # - shows service eligibility begin and end dates.
- Procedure Code SP112 shows an assessment create date of 8/31/2015 or later.

Frequently Asked Questions

Eligibility:

Q- Is the SP Program available to and utilized by individuals under the age of 65?

Yes, SP as part of the CEP program is open to individuals who meet all in-home service criteria (OAR 411-030-0040). However, the SP Program eligibility is contingent upon an individual's higher functional care needs and medical condition as described in OAR 411-030-0080(2).

Q- Where do I sent pending SP cases for CO review?

Send all initial and ongoing SP Program cases to CO for review and approval to apd.medicaidpolicy@odhsoha.oregon.gov. Put in the subject line, "Spousal Pay Plan Review" and the individual's name and prime # in the body of the email.

Q- Are SP individuals required to have a CE Rep? Can the spouse provider be the individual's CE Rep.?

The same requirements for CE Reps for regular In-Home service individuals also applies to SP individuals (OAR 411-030-0020(48), OAR 411-030-0040(4)(a)(b)(d)(e), 0040(5)).

No. The spouse provider cannot be appointed as the individual's CE Rep (OAR 411-030-0080(2)(h)) and cannot manage the CE duties or act as a decision-maker related to the individual's service plan.

Q- Can an existing SP individual be made ineligible if they don't have a CE Rep?

Yes, individuals who lack the cognitive ability to manage their service plan (i.e., full assist in cognition), *must* have a CE Rep to manage the individual's service plan. The CE Rep must be actively involved in the life of the individual and overseeing their services and supports.

Q- I serve an individual with a diagnosis of Parkinson's, and who wants their spouse to be their HCW. The individual is an assist in mobility, toileting and cognition but is not a full assist in 4 out of 6 ADLs. Can this individual be approved for SP?

Since the individual is not a full assist in 4 of 6 ADLs, they are not eligible for the SP Program. The individual can pursue ICP (for their spouse to be their provider) or an IHCA may hire the spouse and allow the spouse to be a care provider (based on their program rules).

SP Plan approvals:

Q- Can we change an individual's service plan in the middle of an assessment year to SP? The spouse is just finishing up the HCW application process.

Yes, the existing APD In-home plan can be ended, and a SP Program plan can be set up in pending status and sent to CO to review.

Q- Should CMs include medical diagnosis information in Client Details or the Assessment Synopsis in OA for SP cases? Some local offices use the diagnoses section, but most do not because of the outdated ICD codes.

A key part in determining SP eligibility is the existence of a debilitating medical condition (OAR 411-030-0020(18), (OAR 411-030-0080(2)(c))). Documenting a diagnosis or a serious and persistent medical condition helps CO to determine if an individual has a debilitating medical condition. It is recommended that information on the individual's medical condition be recorded in Client Details *and* in the Assessment Synopsis (only include a relevant medical diagnosis but do not include any HIV/AIDs diagnoses in the Synopsis).

Q- Can a CM approve a SP service plan? I thought that CMs can approve a SP plan in OA, but others say CO must approve all SP Program plan benefits.

Per rule, CO must approve all initial and annual recertifications of SP Program service plans for SP eligible individuals (OAR 411-030-0080(2)(i)). Once a CM has set-up a SP benefit plan in OA, it should be put in "pending status" and emailed to APD Medicaid Policy to review. Plans that would require exception hours should be sent to spd.exceptions@odhsoha.oregon.gov.

IADL system reductions in OA:

Q- Should the CM reduce the IADL hours in half for the spouse provider? Why are IADL hours cut in half for SP individuals?

A CM should not reduce IADL hours manually. OA reduces IADL hours automatically. The IADL reduction for SP Program service plans is intended to provide for the individual's IADL needs and not for the IADL needs of the spouse provider or others living in the home. Thus, the IADL hours are cut in half.

Q- A pending service plan was set up in OA, but I was not sure about the IADL hours. I reduced for NS that the spouse provider provides for housekeeping and breakfast prep. Am I supposed to reduce the IADL hours in half?

If the SP service plan is set up correctly, the system will automatically reduce IADL hours in half. When the CM prints the SDS 546N (comparing hours entered in OA to the hours on the SDS 546N) the IADLs are halved. When setting up the plan the CM should enter all IADL hours. ADL hours are not reduced

automatically in OA, yet the CM can reduce these hours if there are legitimate reasons to do so.

There may be other reasons to reduce hours in housekeeping and breakfast for NS that is not related to the spouse provider. For example, there could be other individuals in the home, and this would be an appropriate reason to reduce hours. But if a CM is reducing hours because of the spouse alone, they should *not* do so manually but let OA reduce these hours automatically.

Q- Do all IADL hours need to be assigned to the spouse provider or can they be assigned to other HCWs on the service plan?

- The IADL hours are *only* halved by the system when they are assigned to the spouse provider not when all are assigned to other employed providers.
- All the IADL hours should *not* be assigned to another provider for the purpose of avoiding the reduction in hours for the spouse provider.
- The CM needs to complete service planning which considering the shared duties/benefits to the household. The CM should determine if the spouse provider and the individual:
 - Share meals?
 - Share living space and laundry (housekeeping tasks)?
 - Shop for/use the same household items?

Answering “yes” to any of these questions means the CM should either not assign all the IADL hours to another HCW and/or not assign all IADL hours if it’s likely the spouse is providing some of the IADL tasks as a NS in the home.

- There are scenarios where it would make sense to allocate significant IADL hours to another HCW and not to the spouse provider. However, that decision should be rare and justified in case narration (i.e., “Individual has increased incontinent episodes requiring significant cleanup and laundry. Most housekeeping hours can go to the HCW to meet that need. Spouse provider is completing other shared duties as NS.”).

Q- If an individual has 82 ADL and 21 IADL hours (103 total hours), how would that look as far as the hours assigned to the spouse provider?

The individual will receive the full 82 ADL hours and the 21 IADL hours (rounded to 22) are halved, resulting in 93 hours per service period ($82+11=93$ hours). How the CM chooses to assign hours will impact what hours are available to the spouse provider and what hours are assigned to another HCW/IHCA caregiver. For example, a CM, could technically assign only ADL hours to the spouse provider. If this were done, the IADL hours would not be halved automatically by the system since they are not assigned to the spouse provider. Another paid provider would receive a total of 23 hours (2 ADL + 21 IADL hours).

Note: This is *not* how CO recommends that CMs approach service planning for SP cases, because the spouse provider and possibly others in the home share in some of the individual's IADL benefits (meals, housekeeping, laundry, shopping, etc.). This is the reason why the system was set up to halve IADL hours for SP cases.

The more appropriate service plan would have *all* the IADLs assigned to the spouse provider (unless there is a very compelling reason why another HCW/IHCA caregiver should be employed). In this case, 22 IADL hours (rounded up), for the spouse provider would be reduced automatically to 11 hours. Then 69 ADL hours would be given to the spouse provider to bring them to 80 hours per pay period (69 ADL + 11 IADL hours). The remaining 13 ADL hours would be given to another employed HCW/IHCA caregiver.

Q- The CM was unable to generate a SPAN using OA forms that included the correct authorized IADL hours for a SP Plan. The hours are coded correctly. Can we print the SPAN with the total CA/PS eligible hours of 96 (pg. 1) and then select “Yes” in the SP option that states that IADL hours will be reduced by half to give sufficient notice of the IADL hour reduction to the spouse provider? What is needed to get the SPAN to correctly capture what the individual is approved for based on Spousal Pay?

The SPAN is working as intended for Spousal Pay. CMs should *not* reduce the IADL hours on the SPAN. We must always notify the individual of the total hours available. Halving the IADL hours for the spouse provider is not a loss of hours to the individual but a reduction of hours to the spouse provider based on the type of in-home plan the individual is eligible for and has chosen.

The halved IADL hours are available to the individual should they change benefits and go to a traditional IHC plan. The reduction of the hours for the spouse provider is communicated to them with the 546n/598n. If a CM, for example, puts 35 IADL, all those hours would show up on the SPAN, but the provider's forms would show 18 hours.

Principal provider; additional HCWs and the 51% rule:

Q- When a second HCW is hired is the spouse provider still required to work at least 51% of the hours? Is the spouse provider capped at 50 hours or 40?

The information in OAR 411-030-0070(6) regarding HCW hour limits applies to SP provider hourly caps since they are HCWs. Unless the spouse provider is on the HCW 50-hour cap list, they are required to stay within the 40-hour cap.

Q- When 51% of the hours are assigned to the spouse provider, does this include receiving only ADL hours or some or all the IADL hours?

The spouse provider should be assigned at least 51% of the hours in the service plan, not the hours left over after the IADL hours have been reduced. Ex.: In a service plan with 98 hours per pay period, 51% of the authorized 98 hours means the spouse provider should have at least 50 hours assigned to them. Other HCWs can be assigned the remaining 48 hours.

Exceptions:

Q- Is it possible to get an exception to the HCW hourly cap?

An exception can be given in some circumstances (i.e., short term urgent need) to the spouse provider's HCW cap, but normally the spouse provider would stay within their authorized hours and other HCWs/NS would cover additional hours.

Q- In some cases, to work 51% of the total hours would mean the spouse provider would be over the cap (increased plan hours makes it impossible for the spouse to be the principal provider and remain under the HCW hours cap). Should an exception be requested? Is the individual required to employ another HCW?

When it is felt that an individual requires more provider hours to meet high-level care needs, an exception should be requested for CO to review (spd.exceptions@odhsoha.oregon.gov). Since exceptions are granted per the Department's discretion to address urgent, short-term needs, additional providers or NS help may be needed for hours not covered by an approved exception.

Q- If approved for an HCW cap exception, can a spouse provider work more than 50 hours a week?

Potentially yes, on a case-by-case basis, but normally for a short term until other HCWs are hired. HCWs are no longer added to the 50-hour cap list. All approvals for HCWs to work over their cap is limited to a maximum of 90 days and is not intended to be a long-term solution. Remember, individuals and/or their CE Reps are responsible for developing the least costly plan and that includes limiting overtime as much as possible.

Q- For example, can a spouse provider work more than 50 hours if approved for Shift Services (224 hours per pay period)?

The spouse provider must provide the principal care (51% or more of the authorized hours). If approved, CO could grant an exception to the 51% rule, depending on what other providers and supports are available. However, the spouse provider should still be required to work most hours, or the individual could apply for ICP so that the spouse may provide the care needed.

Miscellaneous questions:

Q- What about when an existing SP individual is divorced. Can the ex-spouse provider continue to provide in-home services? If they can, should the CM convert the plan over to a regular in-home plan when the CM was notified?

- The ex-spouse can be hired by the individual to provide services like any other HCW or IHCA caregiver (since the ex-spouse is no longer a relative to the individual per rule [OAR 411-030-0020(47)]).
- The individual would no longer qualify for SP since they are no longer legally married.
- If the ex-spouse is the sole owner of the home, the individual's name would need to be added to the home's deed, mortgage or title or rental agreement (OAR 411-030-0033(2)) to continue living in the home of a provider.
- If the ex-spouse is not continuing to provide services for the individual, the individual will need to hire other HCWs or IHCA caregivers to do so.

Q- The issue we are having is OA will not allow Tier 1 and 2 users to approve plans when a spouse provider has over 100 hours (103 in this case) in a pay period assigned to them.

Only CO can approve these plans. This case includes a technicality because while 103 total hours are assigned, once the system automatically reduces the IADL hours for the spouse provider, the total will be under the 100 hours.