Oregon Department of Human Services
Office of Aging and People with Disabilities
Oregon Administrative Rules

Chapter 411
Division 039

Agency with Choice

411-039-0000 Purpose
(Adopted 12/15/2025)

The purpose of these rules is to establish minimum standards and procedures for an Agency with Choice to perform administrative employer functions and support Individuals in self-directed care and services in their home, including older adults and adults with physical disabilities. These rules ensure Agencies with Choice provide self-directed services to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and person-centered services enabling the Individual to move into or continue to live in their own home.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0010 Definitions
(Adopted 12/15/2025)

(1) "Abuse" means "abuse" as defined in OAR 411-020-0002 (Adult Protective Services).

(2) "Activities of Daily Living (ADL)" means those personal, functional activities as defined in OAR 411-015-0006.

(3) “Administrator” means the person designated by the Licensee through an employment agreement to be responsible for the daily operations and maintenance of the Agency with Choice.

(4) “Agency with Choice” means an organization licensed by the Department that provides self-directed Agency with Choice Services for compensation to Individuals primarily at the Individual’s home and their community.

(5) “Agency with Choice Services” means services provided to Individuals by an Agency with Choice operating within a Self-Directed Service Delivery Model and include those services as specified in these rules. Agency with Choice services do not include nursing procedures or tasks that require nursing delegation or teaching as defined in OAR chapter 851, division 047.

(6) "Applicant" means the person, entity, or governmental organization who applies for an Agency with Choice (license).

(7) "Area Agency on Aging (AAA)" means the Department designated agency responsible for providing a comprehensive and coordinated system of services to Individuals in a planning and service area. The term Area Agency on Aging is 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.

(8) “Authorized Representative” may include one of the following for the purpose of these rules:

(a) “Legal Representative” means a person who has been legally designated by court order to make financial or health care decisions on behalf of

another Individual. The Legal Representative only has authority to act within the scope and limits of their authority as designated by the court or other agreement. For the purpose of these rules, and Authorized Representatives and Legal Representatives are synonymous unless otherwise indicated.

(b) A person designated by an Individual or the Individual's legal representative to act on behalf of the Individual in making decisions on matters pertaining to the planning and implementation of an in-home Service Plan.

(c) In no instance may an "Authorized Representative" be a paid Direct Support Worker of Home and Community Based Services (HCBS) nor an employee of the Agency with Choice for an Individual for whom they provide services. The Department shall verify the Authorized Representative is not providing paid services as contained within this section.

(9) "Back Up Plan" means a plan developed by the Individual or Individual's Authorized Representative in coordination with the Agency with Choice to ensure uninterrupted Services and Supports in the event of planned or unplanned absences of the Direct Support Worker or in case of an emergency. The Back Up Plan should include the name and contact information and the specific ways in which the backup will support the Individual.

(10) "Background Check" means a background records check as defined in OAR 407-007-0010, ORS 409.025, and 409.027 that includes a final fitness determination that the Subject Individual is fit to hold a position and have direct access to or otherwise provide care and services necessary for the health, welfare, maintenance, or protection of an Individual.

(11) "Case Manager" or "CM" means a Department employee or an employee of the Department's designee that meets the minimum qualifications in OAR 411-028-0040 who is responsible for service eligibility, assessment of need, offering

service choices to eligible Individuals, Person-Centered Service Planning, service authorization and implementation, and evaluation of the effectiveness of Medicaid home and community-based services.

(12) “Change of Condition” means an Individual’s care needs, health or functioning have changed to the point that additional or different supports may be necessary.

(13) "Change of Ownership" means adding or removing one or more owners which constitutes a change of more than five percent interest in Agency with Choice ownership.

(14) “Complaint” means dissatisfaction relating to an Agency with Choice expressed by the Individual or their Authorized Representative.

(15) “Cultural Competence” means the ability to interact effectively with people from different cultures, languages, races and other backgrounds.

(16) "Department" means the Oregon Department of Human Services (ODHS), The Office of Aging and People with Disabilities.

(17) “Direct Support Worker (DSW)” means a person employed by an Agency with Choice, to assist Individuals with activities of daily living, Instrumental Activities of Daily Living and health related tasks as defined in the Individual’s Service Plan and further denoted in the DSW’s job description as required by Section 411-039-0130 (3) of these rules. Direct support worker does not mean a homecare worker, or a personal support worker as defined in ORS 410.600.

(18) “Drug-Free Workplace” means the Agency with Choice ensures Direct Support Workers:

(a) Are prohibited from using or being under the influence of alcohol, inhalants, or drugs, including prescription and over-the-counter medications that prevents duties from being performed; or

(b) Are prohibited from manufacturing, possessing, selling, offering to sell, trade, or use illegal drugs while providing services to an Individual, or while in the Individual's home.

(19) "Electronic Visit Verification (EVV)" means a system under which visits conducted as part of the Service Plan are electronically verified at the time of service, and meets the requirements specified the 21st Century Cures Act enacted as Public Law 114-225, United States Code 42 U.S.C 241(d)(4).

(20) "Formal Complaint" means a formal filing with the Department that alleges the Agency with Choice Agency has not adhered to a material aspect of the Agency with Choice statute or administrative rules.

(21) "Grievance" means a formal, written dissatisfaction submitted by an Individual or Authorized Representative regarding the failure of an Agency with Choice to follow required rules, policies, or services.

(22) "Individual" means a person receiving Agency with Choice Services and supports who is approved for home and community-based services by the Department as defined in OAR 411-015-0005.

(23) "Instrumental Activities of Daily Living (IADL)" means those activities defined in OAR 411-15-0007.

(24) "Investigative Authority" means the local APD office, or local AAA office that contracts with the Department to receive and investigate alleged Abuse and assess protective services under OAR chapter 411, division 20.

(25) "Licensee" means the person or entity who has been issued an Agency with Choice license.

(26) "Management Experience", means verifiable experience, history in the administration, supervision, or management in a health-related or long-term

services, and supports field. This includes, at a minimum, hiring, assigning, evaluating, promoting and responsibility for implementing disciplinary actions.

(27) “Mandatory Reporter” means any public or private official who is required by state Abuse statutes to report alleged Abuse to the Department, or law enforcement agency as it applies to a:

(a) "Child" defined in ORS 419B.005;

(b) "Child in Care" as defined in ORS 418.257;

(c) "Adult" with developmental disabilities or mental illness as defined in ORS 430.735; or

(d) "Elderly Person" or a "Person with a Disability" as those terms as defined in ORS 124.005.

(28) "The Office of Aging and People with Disabilities (APD)” means the program area of The Office of Aging and People with Disabilities, within the Oregon Department of Human Services.

(29) "Person-Centered Service Plan” or “Service Plan" means the details of the supports, desired outcomes, activities, and resources required for an Individual to achieve and maintain personal goals, health, and safety, as described in OAR 411-004-0030. The Case Manager completes the Person-Centered Service Plan directed and agreed by the Individual, or Individual’s representative.

(30) "Professional Experience" means having verifiable work history as a licensed or certified nurse, nursing assistant, medication aide, physician, physical or occupational therapist or having received the professional development certificate from the Oregon Home Care Commission or other verifiable work experience from other states. The license or certificate must be current and in good standing.

(31) "Provider Enrollment Agreement" refers to the agreements between the Department and a qualified Medicaid provider to receive a provider agency number and deliver services for compensation.

(32) "Qualified Trainer" means a person who:

(a) Has Professional Experience providing Direct Support Workers, homecare workers, certified nursing assistants or other relevant caregivers with the necessary skills and information necessary to provide competent, quality care, and is approved by the Department to Direct Support Worker; and

(b) Is designated by an Agency with Choice to conduct Direct Support Worker training on behalf of the Agency with Choice, including but not limited to orientation, mandatory training and continuing education training required by these rules.

(33) “Self-directed Service Delivery Model” for the purpose of these rules means an Individual is supported by an Agency with Choice that functions as the employer of Direct Support Workers recruited by the Individual and provides financial management services and tasks in place of the Individual. The Individual chooses, trains and directs the tasks and work priorities of the Direct Support Workers who will provide their services and is considered a co-employer with the Agency with Choice.

(34) “Services and Supports” means the ADLs, IADLs, and health-related needs as described in the Individual’s Service Plan.

(35) “Subject Individual (SI)” means an individual whom an Agency with Choice must conduct a Background Check and BCU may conduct a criminal records and Abuse check, and from whom BCU may require fingerprints for the purpose of conducting a criminal records check and an Abuse check. An SI includes all staff and volunteers working for or with the Agency with Choice.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0020 Application for Licensure

(Adopted 12/15/2025)

(1) An entity or organization that establishes, conducts, or represents itself to the public as an Agency with Choice or as providing a Self-Directed Service Delivery Model to "Individuals" defined in OAR 411-039-0010(23), must be licensed as an Agency with Choice by the Department.

(2) Each applicant must submit a written application, provided by the Department for a license to operate an Agency with Choice. The application is not complete until all information required to make a decision is received by the Department. The Department will notify the applicant within 7 days if the application is found to be incomplete. If an applicant does not provide the missing information, the application will be voided 60 days after initial receipt by the Department.

(3) The application must include all required information and documentation as specified by the Department including, but not limited to:

(a) The application form must be signed and dated by the applicant's legally authorized representative.

(b) Comprehensive description of the Agency with Choice, services offered, supports delivered, administrative control, and lines of authority and responsibility from the Licensee to the Individual level;

(c) Identification of any person, including owners and partners, with a financial interest representing more than 5 percent of ownership in the applicant. Identification includes the person's name, role, date of birth, and, where applicable, social security number. The person's date of birth and social security number shall be withheld from public viewing. For an Agency

with Choice managed by a Board of Directors, the Department is required under 42 USC §405(c)(2)(C)(i) (United States Code), 42 CFR §455.104 (United States Code of Federal Regulation) and 26 CFR §301-6109-1 to obtain a social security number and date of birth for each board member.

(d) Completed Background Check request form for the applicant(s), Administrator, and for each person with 5 percent or more incident of ownership, regardless of the person's effect on the operation of the agency.

(e) Proof of fiscal responsibility and capacity to prevent fraud, waste, and Abuse by including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective Licensee has sufficient resources to operate the agency for 90 days, Proof of fiscal responsibility must include liquid assets sufficient to operate the agency for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:

(A) An available line of credit;

(B) A performance bond; or

(C) Any other method satisfactory to the Department.

(f) Completed Tax Compliance Certification issued by the Oregon Department of Revenue;

(g) Comprehensive plan of operation for the Agency with Choice;

(h) All written policies and procedures, including, but not limited to:

(A) Outline, in writing, how the Agency with Choice and services are designed to empower Individuals including detailed descriptions of the services provided, administrative control, and lines of authority and

responsibility from the licensee to the Individual receiving services and support;

(B) Personnel operations including a well-defined process for hiring, terminating, training, evaluating, retaining, and managing the Agency with Choice staff including those Direct Support Workers requested by the Individual;

(C) Established guidelines for conducting Background Checks, as defined in OAR 411-039-0070 and verifying the qualifications of potential employees;

(D) Individual notification requirements including a detailed procedure for the provision of information to Individuals or their Authorized Representatives of their rights, services provided, and any changes affecting their services;

(E) Management of Individual records including details for controlling access and providing secure storage; and

(F) Medical and non-medical emergency response including details on staff responsibilities, communication and documentation.

(i) Copy of the Agency with Choice's written disclosure statement;

(j) Copy of the Agency with Choice's nondiscrimination notice; and

(k) A signed Labor Relations Attestation.

(4) An Agency with Choice must notify the Department in writing of any updates to its information. If any details from the most recent application changes outside of the renewal date, the Agency with Choice is required to submit changes in writing to the Department within 30 calendar days of the change.

(5) Licenses are not transferrable to any other person or entity. If there is a Change of Ownership, the Agency with Choice must submit a new application reflecting the change in the owner or Administrator. The Department will decide to grant or not grant the new applicant a license.

(6) Applicants must be free of incident of ownership history in any agency, facility, or business that failed to reimburse any state for Medicaid overpayments or civil penalties within the past five years.

(7) Applicants must be free of incident of ownership history in any agency, facility, or business that failed to compensate employees or pay worker's compensation, utilities, or other costs necessary for agency operation within the past five years.

(8) Applicants must be free of incident of ownership history in any agency, facility, or home in any state that had its license or certification involuntarily suspended or terminated or voluntarily terminated during any state or federal sanction process within the past five years.

(9) Applicants must be free of any incident of Medicaid fraud in any state, United States territory or the District of Columbia and must not be on the Office Inspector exclusion list within the past 25 years.

(10) Applicants must comply with ORS 652.220 and must not unlawfully discriminate against an employee in the payment of wages or other compensation for work of comparable character based on an employee’s membership in a protected class.

(11) Applicants must comply with ORS 656.017, and provide workers compensation insurance coverage for those workers, unless they meet the requirement for an exemption under ORS 656.126(2).

(12) The Department may deny or not renew the license if an applicant fails to provide complete, accurate, and truthful information during the application, licensing or renewal processes.

(13) The Department must notify an applicant in writing if a license application is denied or approved within 14 days of such determination.

(14) A license is valid for two years unless revoked or suspended by the Department.

(15) No Agency with Choice may use the term “in-home care agency” in its advertising, publicity, or any other form of communication.

(16) A cost report may be required earlier than annually if there is a Change of Ownership or termination of the Agency with Choice’s license.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0030 Standards for License Renewal

(Adopted 12/15/2025)

(1) A full and complete application for license renewal must be submitted to the Department at least 60 days prior to the expiration date of the existing license. Filing an application for renewal before the date of expiration extends the effective date of expiration, until the Department acts upon such application. The application for renewal must meet all the requirements in OAR 411-039-0020.

(2) If the renewal application is not submitted prior to the expiration date of a license, the Agency with Choice is unlicensed and subject to civil penalties defined in OAR 411-039-0240 and must immediately cease providing support to Individuals.

(3) The Department will conduct a compliance review of an Agency with Choice 90 days prior to the renewal of a license and shall assess compliance with these rules.

(4) The Department must not renew a license if the Agency with Choice is not in substantial compliance with these rules.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0040 Reporting and Billing Requirements

(Adopted 12/15/2025)

(1) In order to receive public funds, an Agency with Choice must be licensed as an Agency with Choice and must be enrolled with the Department as a Medicaid provider.

(2) An Agency with Choice must meet all requirements in OAR 411-033-0030 (Provider Enrollment Requirements) for the Department.

(3) To receive payment for services, the Agency with Choice must utilize a Department-approved Electronic Visit Verification system (EVV), as specified in OAR 411-033-0010, to verify the following details at the time of service for visits:

(a) Date of service;

(b) Start and end time;

(c) Type of service;

(d) Location of service;

(e) The name of the Direct Support Worker providing the service; and

(f) The name of Individual receiving services.

(4) Agency with Choice must submit claims for reimbursement to the Department and pay Direct Support Workers for Authorized hours worked and billed in accordance with the Electronic Visit Verification requirements. All claims must be submitted no later than 12 months from the date of service. Per 42 CFR 424.44, time limits for filing claims, any claims submitted after 12 months from the date of service will not be eligible for reimbursement.

(5) The Agency with Choice must withhold, file, and pay income taxes and all employment-related taxes, including but not limited to, workers' compensation premiums and unemployment taxes. The Agency with Choice must also verify the qualifications of each Direct Support workers as required by Oregon and Federal Laws.

(6) The Agency with Choice shall be reimbursed:

(a) Only for approved and authorized hours and services delivered to an Individual based on the Individual's Person-Centered Service Planning.

(b) Only at the Department's approved hourly rate for services.

(c) Request for reimbursement of community transportation must not include mileage for an employee commuting to and from the Individual's home.

(d) To provide community transportation services, the Direct Support Worker must maintain valid driver's license, current vehicle registration and necessary auto insurance. Proof must be available upon the request of the Department. Mileage must be prior authorized in the Person-Centered Service Plan.

(7) The Agency with Choice must comply with OAR 411-020-0100, OAR 411-020-0105, and OAR 410-120-1510 and the requirements therein for prompt reporting of fraud, waste, and Abuse in the Medicaid program. Information on how to

report may always be found online: https://www.oregon.gov/oha/FOD/PIAU/Pages/Report-Fraud.aspx.

(8) The Agency with Choice must provide a copy of all information and documents as requested by the Department.

(9) The Agency with Choice must cooperate with all review activities required by the Department, including but not limited to providing access to records, staff, and service documentation related to the delivery of Agency with Choice Services.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0050 Services Provided

(Adopted 12/15/2025)

(1) The Agency with Choice must ensure that the Individual is supported in ensuring their services are adequate and responsive to their needs with a focus on self-direction.

(2) The services provided by an Agency with Choice must include the provision of or assistance with ADL, IADL and health-related tasks as directed by the Individual or the Authorized Representative and approved in the Individual's Department approved Service Plan. The Agency with Choice is not responsible for Long Term Care Community Nursing Services.

(3) An Agency with Choice must agree in writing to deliver the supports identified in an Individual's Department approved Service Plan which includes the limits and scope of the services to be provided. Agreement may be shown by the Agency with Choice signature on the Service Plan.

(4) The Agency with Choice must assist the Individual with the following responsibilities:

(a) Recruiting, selecting, and retaining Direct Support Workers to assist Individuals with activities of daily living (ADL), Instrumental Activities of Daily Living (IADL) and health related tasks, and changing Direct Support Workers from an Individual's service team when necessary;

(b) Coordinating the schedules of Direct Support Workers prioritizing the Individual's choices, needs, and preferences, ensuring that support is person-centered and self-directed;

(c) Proactively work with the Individual or their Authorized Representative to develop a Back Up Plan to ensure continuity of services, when the regularly scheduled Direct Support Worker is unavailable due to absence or emergent circumstances and ensure that the Individual's service needs are met during these planned and unplanned absences;

(d) Establishing the responsibilities of Direct Support Workers and ensuring Direct Support Workers do not work more than the hours authorized by the Department;

(e) Training Direct Support Workers on best practices and basic requirements and at the request of the Individual, the Individual's specific needs and preferences to ensure Services and Supports are delivered appropriately;

(f) Ensuring a safe and healthy workplace environment as defined in OAR chapter 411, division 030, and in the roles and responsibilities of co-employer; and

(g) Ensuring Direct Support Workers are compliant with Electronic Visit Verification (EVV).

(5) If the Agency with Choice is concerned that the Individual can no longer self-direct or if there is a Change of Condition, the Agency with Choice must contact the Individual's Case Manager within five business days.

(6) All documentation required in sections (2) and (4) of this rule must be kept in the Individual's record.

(7) The Licensee is responsible for the supervision, training, and overall conduct of all Agency with Choice staff when acting within the scope of their employment or duties.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0060 Operational Standards

(Adopted 12/15/2025)

(1) An Agency with Choice's Licensee assumes full legal, financial, and overall responsibility for the Agency with Choice's operation and contractual obligations. Any violations by Agency with Choice owners, Direct Support Workers, other staff, or representatives are attributable to the Agency with Choice and against the Agency with Choice's license.

(2) An Agency with Choice must not assign administrative or supervisory functions of the Agency with Choice to another entity.

(3) When Medicaid is the source of payment for the services provided by the Agency with Choice, the Medicaid service payment is considered payment in full for all services provided by the Agency with Choice.

(4) All Agency with Choice records must be kept separate and distinct from other business entities.

(5) All Direct Support Workers are covered under labor laws, including the Fair Labor Standards Act.

(6) An Agency with Choice must ensure services are made available to any Individual who chooses this service option, in alignment with the Medicaid Statewide operations requirement outlined in Section 1902 (a)(1) of the Social Security Act and 42 CFR Part 431. This requirement mandates that a state's Medicaid program must operate uniformly across the state. Agency with Choice must have the capacity to meet the needs of Individuals through responsive communication, proactive recruitment, staffing, and retention of Direct Support Workers, and must be able to serve statewide.

(7) All Agency with Choice employees, Direct Support Workers, and Administrators must carry identification indicating their name and the Agency with Choice employer.

(8) An Agency with Choice Direct Support Worker may accompany an Individual anywhere if requested by the Individual. The Direct Support Worker must document all Services and Supports provided to the Individual on a daily basis through the EVV system.

(9) Agency with Choice must establish a process for:

(a) Identifying, analyzing, and correcting any of the following events:

(A) Abuse as defined in OAR 411-020-0002;

(B) Serious injury resulting in hospitalization, urgent care or emergency room treatment;

(C) Medication errors or discrepancies;

(D) Missing person when a member's whereabouts are unknown;

(E) Law enforcement contact;

(F) Unexpected death.

(b) Ensuring the immediate reporting of any allegations of events listed in (a) or any other violation of the Individual's rights must be made to the Individuals Case Manager and Adult Protective Services;

(c) Notifying the Individual's Case Manager, as applicable, of any known change in the Individual's health, behavior, environment and related events as defined in (a);

(d) Ensuring Direct Support Workers maintain confidentiality of personally identifiable information of the Individual and addressing allegations of release of confidential information;

(e) Provide standardized training to Direct Support Workers as defined in OAR 411-039-0120;

(f) Retain a personnel record for each Direct Support Worker;

(g) Provide other administrative and employment-related supports; and

(h) An Agency with Choice must provide equitable and non-discriminatory services to all Individuals, regardless of race, color, religion, national origin, age, sex, sexual orientation, gender identity, disability, or any other protected status under state and federal law.

(10) An Agency with Choice must:

(a) Maintain a Drug-Free Workplace;

(b) Report any Abuse, harassment, restrain or hospitalization, emergency room visits and urgent care visits and deaths.

(c) Involve Direct Support Workers employed by the Agency with Choice served by the Agency with Choice in the development of and decision-

making about work processes, performance standards, quality improvement strategies, training, retention, technology use, and workplace safety;

(d) Minimize the impact of the loss of pay and work hours for Direct Support Workers resulting from the hospitalization or death of an Individual or the dismissal of the Direct Support Worker by the Individual;

(e) Engage and work closely with Individuals to design and implement Agency with Choice Services by appointing Individuals to an advisory board, using focus groups of Individuals, or employing other methods approved by the Department to engage with Individuals effectively;

(f) Enhancing the role of Direct Support Workers as members of the Individual's service team, as desired and approved by the Individual, or their Authorized Representative; and

(g) Complying with other requirements as prescribed by the Department, and by rule.

(11) An Agency with Choice must have a disclosure statement which must be signed by the Individual or the Authorized Representative when the Individual is accepted to receive services. The disclosure statement must include:

(a) A statement must be included that the Agency with Choice will not bill the Individual for any additional services;

(b) A description of services provided and how they will be provided, including a discussion regarding staffing availability, coordination, and support for creation of a backup plan;

(c) A description of the Individual's or the Authorized Representative regarding their role as co-employer;

(d) Agency with Choice and Individual's rights and responsibilities;

(e) An Agency with Choice must not include any provision in the disclosure statement that affect Individual's rights or the Agency with Choice liability for negligence. The Individual or Authorized Representative has a duty to supervise the Direct Support Worker consistent with the Service Plan;

(f) A description of the qualifications and training requirements necessary for Direct Support Workers providing Services and Supports as required by OAR 411-039-0130(3) of these rules;

(g) Procedures for contacting the Agency with Choice Administrator or Administrator's designee during all of the hours which services are provided;

(h) A clear statement indicating the disclosure statement must be made available to the Individual or the Authorized Representative in an alternate format at the Individual's or the Authorized Representative’s request;

(i) A copy of the Individual’s rights as defined in OAR 411-039-0160;

(j) The disclosure statement must not include language or referring to "buy outs" or "finder's fees” nor shall it include any language that limits Individuals from their full access to other Medicaid services; and

(k) The policy for Individual reimbursement for stolen, broken or misappropriated property or funds.

(12) An Agency with Choice must provide each Individual with a written notice of the Individual's rights as a part of the disclosure statement, prior to furnishing Services and Supports to an Individual. The Individual’s rights notice must also include:

(a) Procedures for filing a Grievance, Complaint or Formal Complaint with the Agency with Choice;

(b) Procedures for filing a Grievance, Complaint or Formal Complaint with the Department, along with the telephone number and contact information of the Department; and

(c) Notice of the Individual's rights and responsibilities as co-employer of the Direct Support Worker, as outlined in these rules.

(13) An Agency with Choice must incorporate the notice specified in subsection language below into its current nondiscrimination policy and written materials. The notice must also be included wherever the policy or materials are posted. The notice must state:

"(Name of AwC) does not discriminate and does not permit discrimination, including, but not limited to, bullying, Abuse or harassment, based on an Individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an Individual's association with another Individual on account of the other Individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a Complaint with the Oregon Department of Human Services."

(14) An Agency with Choice must assist an Individual in planning for Direct Support Worker unplanned, and planned absences or similar situations which call for replacement workers, consistent with the Individual's choice of Direct Support Workers to provide the services.

(15) An Agency with Choice must have in place a process to receive and respond to a Grievance, Complaint or Formal Complaint, submitted by an Individual about the services provided to the Individual, by a Direct Support Worker. An

investigation must start no later than 5 business days from the date of the Grievance, Complaint or Formal Complaint of the allegation(s) contained therein and must finalize the response within 30 days.

(a) For allegations that could reasonably be expected to result in harm to the Individual, investigations must start within 24 hours. Investigations must be completed no later than 15 days from the date the investigation started. Findings and mitigation strategies must be reported to the Department.

(b) Agency with Choice must notify the Department of all Complaints and Formal Complaints within 45 days of receiving the Complaint, or Formal Complaint.

(16) The Department has authority to examine Individuals' records as part of the Departments regulation and evaluation of the Agency with Choice.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0070 Background Checks For Subject Individuals

(Adopted 12/15/2025)

(1) An Agency with Choice must submit a Background Check request for each Subject Individual to the Background Check Unit (BCU), prior to allowing the Subject Individual to work. A Subject Individual must not begin work on a preliminary basis. Preliminary approval is not permitted under these rules.

(2) The Agency with Choice must comply with OAR 407-007-0200 through 407-007-0370 for all Subject Individuals, as applicable.

(3) The Agency with Choice must maintain documentation of the BCU Background Check approval in the Subject Individual's personnel record.

(4) An Agency with Choice must perform and document a query of the List of Excluded Individuals and Entities (LEIE).

(5) An Agency with Choice must ensure that a Background Check is performed on a Subject Individual every two years from the date of the Subject Individual's last Background Check in accordance with OAR 407-007-0200 to 407-007-0370.

(6) Any cost for a Background Check shall be the responsibility of the Agency with Choice and must not exceed the cost charged to the Department.

(7) The Agency with Choice must notify the BCU, and the Department within 24 hours if any Subject Individual is involved in a potentially disqualifying crime under OAR 407-007-0281 or potentially disqualifying condition under OAR 407-007-0290, ORS 409.025, and 409.027.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0080 Emergency and Continuity of Operations Planning

(Adopted 12/15/2025)

(1) Each Agency with Choice must establish and maintain, as part of their application, an emergency and continuity of operations plan to ensure the stability of its administrative functions and continuity of essential business operations during emergent events or disasters.

(2) The plan must prioritize:

(a) Securing a location to perform business functions, if necessary;

(b) Ensuring availability of personnel;

(c) Preserving information technology (IT) systems, including EVV systems, essential for uninterrupted service delivery; and

(d) Complements Individual safety planning, which is managed by Case Managers for each Individual.

(3) The Agency with Choice is responsible for ensuring the continuity of its business and administrative functions. Safety planning specific to Individuals, including emergency preparedness and health-related needs, must be coordinated by the assigned Case Manager as part of the Individual's Person-Centered Service Plan.

(a) The Agency with Choice must ensure Case Managers have up-to-date contact information for Direct Support Workers and Agency with Choice management; and

(b) Access to relevant emergency information for effective coordination with administrative staff during emergencies.

(4) The Emergency and continuity of operations plan must be reviewed and updated when significant changes occur, such as updates in technology, staffing, or business location. All updates must be:

(a) Documented in writing and available in an easily accessible location; and

(b) Distributed to all staff to ensure awareness and familiarity with current protocols.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0090 Response to Grievances, Complaints, Formal Complaints

(Adopted 12/15/2025)

(1) The Agency with Choice must maintain in its records documentation of all internal investigations of any Grievance, Complaint or Formal Complaint, and any

event described in OAR 411-039-0060(10)(b). Documentation must be maintained in a separate file from the Individual and personnel records and must include:

(a) Who was interviewed, and the information provided;

(b) Results of the investigation; and

(c) Actions taken, including ongoing monitoring if applicable.

(2) The Licensee and employees are Mandatory Reporters and must immediately report known or suspected Abuse, including events overheard or witnessed by observation to the Investigative Authority.

(3) The Licensee and employees must call the local law enforcement agency first when the suspected Abuse is believed to be a crime such as but not limited to rape, murder, assault, burglary, kidnapping, theft of controlled substances.

(4) The Licensee must provide quarterly reports of Grievances, Complaints events listed in OAR 411-039-0060(9)(a) to the Department.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0100 Administrator Qualifications and Requirements

(Adopted 12/15/2025)

(1) The Administrator must have the education and training sufficient to administer the Agency with Choice. At a minimum, the Administrator must have two years of Management, and Professional Experience.

(2) The Administrator must assign, in writing, a designee to act as the Administrator when the Administrator is temporarily unavailable.

(3) The Administrator or Administrator's designee must be accessible and available during all hours in which services are being provided to Individuals to support the Direct Support Worker and address concerns from the Individual.

(4) The Administrator or Administrator's designee is responsible for ensuring the Agency with Choice meets all of the requirements in these rules.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0110 Direct Support Worker Qualifications and Requirements

(Adopted 12/15/2025)

(1) The services provided by an Agency with Choice must be rendered by qualified and trained employees.

(2) Direct support workers who have been substantiated for Abuse or Medicaid fraud as a provider from any care setting in the United States may not be hired, nor retained as an employee of the Agency with Choice as prescribed as Medicaid regulations.

(3) Direct support workers must receive all required training and additional training necessary to ensure the Direct Support Worker can competently provide the level of services they will be assigned to provide. The services must be provided as requested by the Individual or Authorized Representatives in accordance with these rules and the Person-Centered Service Plan.

(4) Direct support workers must:

(a) Be at least 18 years of age;

(b) Must have sufficient communication and language skills to enable them to perform their duties and interact effectively with the Individual for whom they provide Services and Supports and other Agency with Choice staff; and

(c) Accurately document the services provided on a daily basis.

(5) A Direct Support Worker cannot be a representative or Legal Representative for an Individual for whom they provide services.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0120 Direct Support Worker Training Requirements

(Adopted 12/15/2025)

(1) The Agency with Choice must submit their training plan and curriculum for approval by the Department including who will be providing the training.

(a) The training plan must substantially meet the training required by the Oregon Home Care Commission in both content and length of training as defined OAR 418-020-0035; and

(b) The training plan must include how Direct Support Workers will receive Orientation and Competency Based Training and how the Agency with Choice will engage with the Individual to determine what Individual Specific Training is necessary.

(2) Direct support workers must complete an Agency with Choice-specific Orientation. The Orientation must be a minimum of four hours of instruction, obtained online or in person and must be completed prior to serving an Individual. Orientation must include the following topics:

(a) Direct support workers' job description and requirements highlighting the importance of supporting Individual self-direction;

(b) Abuse and mandatory reporting;

(c) Confidentiality;

(d) Individual rights;

(e) Medication safety;

(f) Preventing Medicaid fraud;

(g) Providing person-centered services;

(h) Universal precautions and infection control;

(i) An overview of the Agency with Choice's policies and procedures as required in OAR 411-039-0060;

(j) A description of the supports provided by the Agency with Choice to the Direct Support Worker; and

(k) Use of the Agency with Choice’s Electronic Visit Verification system that accurately documents the services provided on a daily basis as authorized in the Person-Centered Service Plan.

(3) Competency based training is intended to improve the Direct Support Worker’s ability to better serve the Individuals and should be eight hours of training. Competency based training must be completed within 120 days of the Direct Support Worker beginning work with Individuals. Training should include, but is not limited to:

(a) Recognizing and responding to medical emergencies;

(b) Understanding and recognizing mental and emotional conditions;

(c) Appropriate and safe techniques in ADL and IADL tasks, especially related to negative outcome prevention;

(d) Methods and techniques to prevent skin breakdown, tightening of skin, muscles, or tendons limiting movements, and falls;

(e) Proper body movement, posture, alignment, and positioning to prevent injury of the Individual and the Direct Support Worker; and

(f) Providing more details on the topics covered in the Orientation.

(4) Competency evaluations must demonstrate that Direct Support Worker possess the necessary knowledge and skills to perform their assigned duties. Such evaluations may be completed through direct observation, written testing, oral testing, or a combination thereof, as appropriate to the nature of the service provided. Direct observation should be required only when it is determine relevant and necessary by the Agency with Choice.

(5) Individual’s specific training may be required before the Direct Support Worker serves an Individual as requested by the Individual and must be developed in partnership with the Individual. The training must clearly define the Direct Support Workers' duties and responsibilities aligning with the Individual’s self-directed Service Plan, choices and preference.

(6) A Direct Support Worker must receive a minimum of six hours of continuing education each year.

(7) The training required in sections (3) through (10) of this rule must be clearly documented and maintained in each Direct Support Workers personnel record and must include the following information, if applicable:

(a) Content of the training for each topic;

(b) The date(s), times(s) and training topics covered; and

(c) The name(s) and signature(s) of the Agency with Choice-specific orientation instructor, qualified training entity, or Qualified Trainer conducting the training.

(8) An Agency with Choice must maintain sufficient information and documentation to demonstrate that the person(s) or entity providing the training under this rule is a qualified training entity or Qualified Trainer.

(9) Direct Support Workers who have previously served as a homecare worker, personal support worker, personal care attendant, staff at an in-home care agency or as a Direct Support Workers with another Agency with Choice are not subject to additional competency base training requirements if previous training is not expired and documented in the hiring Agency with Choice personnel records. Orientation is still required.

(10) A Direct Support Worker with proof of a current Oregon health-care related license or certificate such as nursing license or certified nursing assistant is exempt from competency base training. A Direct Support Worker must provide annual proof of this license or certificate to remain exempt. Orientation is still required.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0130 Personnel Records

(Adopted 12/15/2025)

(1) The Agency with Choice shall maintain a personnel record for each Direct Support Worker and employee. An Individual may also maintain documentation of their interview and refences and ongoing employee records. The Individual may share that information with the Agency with Choice.

(2) Each record at minimum must include the following:

(a) General position descriptions signed by the Direct Support Worker or employee. The Individual may have a specific job description that is designed to meet their preferences;

(b) Evidence of orientation, training, competency evaluations, and continuing education. All services must be delivered using a self-directed approach, ensuring that Individuals are empowered and have choice for their support and care; and

(c) Evidence of a valid driver's license with current auto insurance for each staff whose duties include community transportation services.

(3) The Direct Support Worker general job description shall be prepared by the Agency with Choice.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0140 Individual Choice to Receive Agency with Choice Services

(Adopted 12/15/2025)

(1) The Case Manager must provide the Individual with neutral, comprehensive information about all available in-home service delivery models, including Agency with Choice. Upon the Individual’s request to receive Agency with Choice services, the Case Manager will refer the Individual to the Agency with Choice and authorize services accordingly.

(2) At the request of the Individual for Agency with Choice Services, the Individual’s Case Manager will refer the Individual to the Agency with Choice and authorize services through the Agency with Choice. After authorizing the services through the Agency with Choice, the Case Manager will provide the Individual’s

Person-Centered Service Plan to the Agency with Choice. The Case Manager will also provide the approved Task List to the Agency with Choice.

(3) If an Individual has a pre-selected Direct Support Worker who is not currently working with the Agency with Choice, the Agency with Choice will assist the potential Direct Support Worker to be evaluated by the Agency with Choice.

(4) Agency with Choice Services must be provided in accordance with the Person-Centered Service Plan and as directed by the Individual or the Individual Authorized Representative.

(5) Nothing in these rules shall limit the Individual's choice to receive home and community based services from any authorized provider allowed by the Department or to receive some services from an Agency with Choice and other in-home service models.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0150 Individual Records

(Adopted 12/15/2025)

(1) An Individual record must be maintained for every Individual and must be maintained in the Agency with Choice's office.

(2) A legible, reproducible Individual record which is easily accessible including:

(a) Identification data;

(b) Signed disclosure documents and documentation required by these rules including the Individuals' rights documentation required by these rules;

(c) An agreement signed by the Individual or the Authorized Representative before the initiation of services that specifies the services to be provided in accordance with the Person-centered Service Plan; and

(d) End-of-service summary, including the dates of service and the disposition of the Individual.

(3) A list of Agency with Choice Direct Support Workers providing services to an Individual must be documented in the Individual's record at the Agency with Choice. The Individual’s record must also identify back-up coverage during planned or unplanned absence or emergent circumstances where the primary Direct Support Worker is, or workers are, unavailable.

(4) Reasonable precautions must be taken to protect an Individual’s record and information from unauthorized access, fire, water, theft, damage or destruction.

(5) All Individuals' records must be kept for a period of at least seven years after the date of last service.

(6) Individual records must be made available upon request to the Individual and or the representative upon request.

(7) If there is a change in the business entity operating as an Agency with Choice, all Individuals' records must remain with the Agency with Choice. Until a new Licensee has assume control of the Individual’s records, it is the responsibility of the outgoing Licensee to protect and maintain these records. This requirement applies when the underlying business entity changes, regardless of whether there is a Change in Ownership.

(8) Before an Agency with Choice terminates its business, the Agency with Choice must notify the Department at least 60 days in advance and must notify the Department where the Individuals' records will be stored. Copies of all records

must be transferred to the Department prior to the closure of the Agency with Choice.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0160 Individual Rights

(Adopted 12/15/2025)

(1) The Agency with Choice owner, Administrator and Administrator's designee as applicable must ensure that the Agency with Choice recognizes and protects the rights of each Individual.

(2) The Agency with Choice must provide each Individual with a written notice of the Individual's rights as a part of the disclosure statement, prior to providing services to the Individual. The Individual’s rights notice must include:

(a) The right to be treated with dignity and respect;

(b) The right to be free from theft, damage, or misuse of one's personal property;

(c) The right to be given the informed choice and to select or refuse service and to accept responsibility for the consequences;

(d) The right to be free from neglect, verbal, mental, emotional, physical, and sexual Abuse;

(e) The right to be free from financial exploitation;

(f) The right to be free from physical and chemical restraints;

(g) The right to be free from coercion and seclusion;

(h) The right to privacy;

(i) The right to voice Grievances or Complaints regarding services or any other issue without discrimination or reprisal for exercising such rights;

(j) The right to be free from discrimination as to race, color, religion, national origin, age, sex, sexual orientation, gender identity, disability, or any other protected status under state and federal law;

(k) The right and responsibility for the planning of the services to be furnished, the frequency of services to be provided, any changes in services, the Direct Support Workers schedule, and cessation of services;

(l) The right to select or otherwise approve the Direct Support Workers who provide services to the Individual before the Direct Support Workers begin providing the services;

(m) The right to train Direct Support Workers in the Individual's specific service needs and in the provision services to the Individual;

(n) The right to direct the Individual's own services that are provided by Direct Support Workers;

(o) The right to require an Agency with Choice to remove a Direct Support Worker from the Individual's Services and Supports team;

(p) The right to schedule a Direct Support Worker's time in accordance with the Individual's desires, needs and authorized hours;

(q) The right to have access to their own records;

(r) The right to have Individual information and records confidentially maintained by the Agency with Choice; and

(s) The right to receive prior written notice before a Change of Ownership or a program closure.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0170 Delivery of Services

(Adopted 12/15/2025)

(1) In order to meet the Individual's needs, the Agency with Choice must work with the Individual or their Authorized Representative to develop:

(a) The schedule for the provision of services specifying the total number of hours to be provided per month based on the Department's authorized hours;

(b) The days of the week services will be provided;

(c) The services to be provided, specifying the tasks to be conducted; and

(d) Other pertinent information about the Individual's needs in relation to the services to be provided to ensure the provision of safe and appropriate service delivery.

(2) An Individual or an Authorized Representative may request changes provided the changes do not require modifications to the Individual's service authorization that would result in a change of authorized hours. All requested changes must be reviewed and approved by the Individual or Authorized Representative. These changes must be communicated to the assigned Direct Support Worker(s) either by phone, or electronic means.

(3) If an Individual experiences a significant Change of Condition that is a major change in the Individual's health or functional abilities, the Agency with Choice must notify the Case Manager, and document the change. The Direct Support Worker must be updated, as needed.

(4) The Agency with Choice must ensure the Individual or the Authorized Representative is notified of any changes in the delivery of the Agency with Choice Services, as applicable, such as if the Agency with Choice becomes aware a Direct Support Worker is unavailable to cover scheduled hours or shifts.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0180 Initial Visit and Monitoring

(Adopted 12/15/2025)

(1) A representative of the Agency with Choice, who is not the Direct Support Worker, must contact the Individual at least every six months. Monitoring contacts may occur by phone or by other electronic means determined jointly with the Individual, or their Authorized Representative. The contact may not be conducted by a Direct Support Worker.

(2) The Agency with Choice, who is not the Direct Support Worker, must conduct at least one in-home visit with the Individual each 12 months, at a time determined jointly with the Individual or the Authorized Representative. The annual in-home visit replaces the need for a six-month monitoring visit. The in-home visit may not be conducted by a Direct Support Worker.

(3) Each contact and visit must be documented, dated, and signed by the Agency with Choice representative who conducted the visit or contact. The contacts and in-home visit should document the Individual's level of satisfaction with their services, any concerns or support they need to continue to self-direct their services.

(4) Documentation of the contacts and visits must be made available to the Department, if requested.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0190 Quality Assurance and Performance Improvement

(Adopted 12/15/2025)

(1) An Agency with Choice must establish and maintain an effective, quality assurance and performance improvement program that evaluates and monitors the quality, safety, retention of Direct Support Workers, and appropriateness of services provided by the Agency with Choice, and must include at a minimum:

(a) A method to identify, analyze and correct events listed in OAR 411-039-0060 (9)(a), issues with infection control and other aspects of performance relating to services provided;

(b) A method to identify, and track quality indicators by high risk, high volume, problem prone areas and by the effect on Individual safety and quality of the services received;

(c) A method to ensure services provided by the Agency with Choice are self-directed by the Individual and honor the Individual's needs and preferences; and

(d) A method to analyze workforce trends, proactive responses to identified challenges, address systemic issues, such as like high turnover among Direct Support Workers.

(2) After an analysis of the causes for any issues identified in section (1) of this rule, develop and implement a performance improvement program to ensure staff are trained in and familiar with any identified quality improvement activities.

(3) The improvement activities must be reviewed by a committee comprised of, at a minimum, Agency with Choice administrative staff, Direct Support Workers, and at least one Individual receiving Agency with Choice Services.

(4) Quality improvement activities must be conducted and documented at least quarterly. All reports of the quality assurance system and performance improvement must be submitted to the Department.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0200 Program Review and Investigations

(Adopted 12/15/2025)

(1) The Department must conduct a program review as defined in OAR 411-039-0030(3).

(2) The Department must conduct and complete an investigation upon receipt of information or allegations an Agency with Choice is not operating in compliance with these rules and complete the investigation within 90 days. For Abuse investigations must occur within the timeframes established in those rules.

(3) Program reviews and investigations may be conducted at other times as the Department deem necessary including:

(a) To determine if cited violations have been corrected;

(b) For the purpose of routine monitoring of Individual's services, or to investigate a Grievance, Complaint or Formal Complaint;

(c) The Department has reason to believe the Agency with Choice has violated a regulation or provision of these rules; or

(d) The Department has reason to believe the Agency with Choice is operating without a license.

(4) The Department may conduct a program review or investigation without advance notification.

(5) An Agency with Choice must permit the Department staff access to any physical Agency with Choice business location from which it is operating its Agency with Choice. Department access to Individual’s homes should be coordinated with the Individual.

(6) Following a program review, the Department will conduct an exit conference with an Agency with Choice owner, Administrator, or Administrator's designee. During the exit conference, Department staff must:

(a) Inform the Agency with Choice owner, administrator, or Administrator's designee of the preliminary findings of the program review; and

(b) Give the owner, Administrator, or Administrator's designee an opportunity to submit additional facts or other information to the Department in response to the findings.

(7) When findings result in a referral to another regulatory agency, the Department staff must submit the applicable information to that agency for its review and determination of appropriate action.

(8) If no deficiencies are found during a program review, the Department must issue a written report to the Agency with Choice owner indicating that fact within 30 days of the exit conference confirming compliance with program rules.

(9) If deficiencies are found, the Department must issue a statement of deficiencies within 15 days of the exit conference citing the rule(s) alleged to be violated, the facts supporting the allegation, and a date by which corrections must be made. The written statement may include specific actions that must be taken for the Agency with Choice to maintain their license.

(10) A copy of the most current program review report and any conditions placed upon the license must be posted with the Agency with Choice license in public view near the main entrance to the Agency with Choice.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0210 Complaints

(Adopted 12/15/2025)

(1) Any person who believes these rules have been violated may file a Complaint verbally or in writing to the Department regarding an allegation as to the services provided by an Agency with Choice or violations of Agency with Choice laws or regulations.

(2) The identity of a person making a Complaint and Formal Complaint and any personally identifiable information of the reporter or someone else, is confidential and not subject to disclosure and can only be disclosed when legally required.

(3) Upon conclusion of an investigation of a Complaint, the Department may publicly release a report of its findings. However, the publicly released report must not disclose the identity of the complainant, witness, or any Individual associated with an Agency with Choice.

(4) The Department may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of an Agency with Choice.

(5) Any Agency with Choice employee who becomes aware of a violation of a law or these rules must immediately report it to the Department.

(6) The Agency with Choice must not interfere with a good faith disclosure of information by an employee or volunteer concerning violation(s) of laws or rules.

(7) The Licensee and Administrator must ensure any complainant, witness, or employee of an Agency with Choice is not subjected to retaliation by any Agency with Choice employee, for making a report, being interviewed about a Complaint,

or being a witness, including, but not limited to, restriction of access to the Individual or, if an employee, dismissal or harassment.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0220 Abuse Reporting and Investigation

(Adopted 12/15/2025)

(1) Agency with Choice employees, agents and Licensee must not permit, aid, or engage in Abuse of Individuals who are served by the Agency with Choice. All Agency with Choice staff are Mandatory Reporters of Abuse.

(a) All Agency with Choice employees are required to immediately report Abuse or suspected Abuse to the ODHS SAFE line (1-855-503-SAFE (7233)), local APD office, local AAA office, or local law enforcement agency;

(b) The Agency with Choice Administrator, or designee, must immediately notify the local APD office, local AAA, or Department of any incident of Abuse or suspected Abuse, including events overheard or witnessed by observation;

(c) The local law enforcement agency must be called first when the suspected Abuse is believed to be a crime, including neglect that rises to a crime, financial exploitation, etc.; and

(d) Physical injury of unknown cause must be reported to the local APD office, local AAA, or Department as suspected Abuse.

(2) Upon any allegation of an event defined in OAR 411-039-0060 (9)(a) or Abuse, the Agency with Choice must promptly investigate, and document the report and take measures necessary to protect the Individual and prevent the reoccurrence of the event or Abuse. The investigation must document:

(a) Time, date, place and Individuals present;

(b) Description of the event as reported;

(c) Response of staff at the time of the event;

(d) Follow-up action; and

(e) Administrator's review.

(3) Upon substantiation of Abuse, the Department must provide written notification of the findings to the Individual involved, and the Agency with Choice as defined in OAR chapter 411, division 020.

(4) The Agency with Choice must not hamper nor impede the Department or law enforcement from investigating Abuse and suspected crimes and must give full access of Agency with Choice records, including but not limited to alleged victim records, and Direct Support Worker training records. The Department must be able to interview all Agency with Choice employees, including Direct Support Workers without an Agency with Choice Administrator present, unless it is requested by them.

(5) An Agency with Choice must immediately terminate employment of a Direct Support Worker who has a substantiated claim of Abuse or neglect of an Individual from serving any Individual. If the Direct Support Worker was involved in other events listed in OAR 411-039-0060 (9)(a), the Agency with Choice will discuss with the Individual if they are comfortable with the Direct Support Worker continuing to provide Services and Supports.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0230 Enforcement

(Adopted 12/15/2025)

(1) Upon receipt of a statement of deficiencies, an Agency with Choice must be provided an opportunity to dispute the Department's program review findings but must still comply with sections (2) and (3) of this rule.

(a) If an Agency with Choice desires an informal conference to dispute the Department's program review findings, the Agency with Choice must notify the Department in writing within 10 business days after receipt of the statement of deficiencies. The written request must include a detailed explanation of why the Agency with Choice believes the statement of deficiencies is incorrect;

(b) An Agency with Choice may not seek a delay of any enforcement action against it on the grounds the informal conference has not been completed; and

(c) If an Agency with Choice is successful in demonstrating the deficiencies should not have been cited, the Department may reissue the statement of deficiencies, removing such deficiencies. The reissued statement of deficiencies must state that it supersedes the previous statement of deficiencies and must clearly identify the date of the superseded statement of deficiencies;

(2) A signed plan of correction must be submitted to the Department within 10 business days from the date the statement of deficiencies was received by the Agency with Choice.

(3) An Agency with Choice must correct all deficiencies within 30 days from the date the statement of deficiencies was received by the Agency with Choice, unless an extension of time is requested from the Department. A request for such an extension must be submitted in writing and must accompany the plan of correction.

(4) The Department must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Department, the Department must notify the Agency with Choice owner or Administrator in writing:

(a) Identifying which provisions in the plan the Department finds unacceptable;

(b) Citing the reasons, the Department finds the provisions unacceptable; and

(c) Requesting that the plan of correction be modified and resubmitted no later than 10 business days from the date notification of non-compliance was received by the Agency with Choice owner or Administrator.

(5) If the Agency with Choice does not come into compliance by the date of correction reflected on the plan of correction or 30 days from the date of the exit conference, whichever is sooner, the Department may propose to deny, suspend or revoke the Agency with Choice license or impose civil penalties.

(6) An Agency with Choice must have an active license to operate. If a person or entity is found to be operating as an Agency with Choice without a valid license, the unlicensed Agency with Choice must, within 14 days of the receipt of an injunction obtained by the Department:

(a) Inform its Individuals receiving services that the Agency with Choice can no longer provide services; and

(b) Cease providing services to Individuals.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0240 Civil Penalties

(Adopted 12/15/2025)

(1) An Agency with Choice that violates applicable laws, rules, or a final order as determined by the Department, may be subject to the imposition of a civil penalty not to exceed $1,000 per violation.

(2) An Individual or entity who operates an AWC without a license is subject to the imposition of a civil penalty not to exceed $1,000 a day per violation.

(3) Violates applicable, but is not limited to:

(a) Failure to provide a written disclosure statement to the Individual or the representative prior to Agency with Choice Services being rendered;

(b) Failure to provide the contracted Agency with Choice Services;

(c) Failure to correct deficiencies identified during a program review or Critical Incident investigation; or

(d) Refusal to allow access and program review.

(4) In determining the amount of a civil penalty, the Department must consider whether:

(a) The Department made repeated attempts to obtain compliance;

(b) The Licensee has a history of non-compliance with licensing laws and rules;

(c) The violation poses a serious risk to the public's health; and

(d) There are mitigating factors, such as a Licensee's cooperation with an investigation or actions to come into compliance.

(5) The Department must document its consideration of the factors in section (4) of this rule.

(6) Each day a violation continues is an additional violation.

(7) A civil penalty imposed under this rule must comply with ORS 183.746.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0250 Conditions

(Adopted 12/15/2025)

(1) Conditions may be attached to a license and take effect immediately upon issuance by the Department. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to Individuals. Conditions may be attached upon a finding that:

(a) Information on the application or initial program review requires a condition to protect the health, safety, or welfare of the Individuals;

(b) A threat to the health, safety, or welfare of an Individual exists;

(c) There is reliable evidence of Abuse, neglect, or exploitation; and

(d) The Agency with Choice is not being operated in compliance with these rules.

(2) Examples of conditions that may be imposed on a Licensee include, but are not limited to:

(a) Restricting the total number of Individuals served based on the Agency with Choice ability to meet the health and safety needs includes restricting new admissions when a threat to the current Individuals exists and adding new Individuals would compound that threat.

(b) Requiring additional qualifications or training of Licensee and staff.

(3) The Department must notify the Licensee in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under Oregon Laws 2024, chapter 37, section 1 (13). A Licensee must request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. Conditions take effect immediately and are a final order of the Department unless later rescinded.

(4) In addition to, or in-lieu of, a contested case hearing, a Licensee may request an informal conference with the Department to discuss conditions imposed. The informal conference does not diminish the Licensee's right to a hearing.

(5) Conditions imposed remain in effect, until the Department has sufficient cause to believe the situation that warranted the condition has been remedied. If the Licensee believes the situation that warranted the condition has been remedied, the Licensee may request in writing to the Department that the condition be removed.

(6) Conditions must be posted with the license in a prominent place in the Agency with Choice and be available for inspection at all times.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0260 Denial, Suspension or Revocation of License

(Adopted 12/15/2025)

(1) The Department may deny, suspend, or revoke the license of an Agency with Choice, in accordance with Oregon Laws 2024, chapter 37, section 1 (13), for the Agency with Choice's failure to comply with these rules or if a Licensee or Administrator of the Agency with Choice permits, aids, or abets any illegal act affecting the welfare of an Individual.

(2) This section does not supersede or limit any other authority of the Department with regarding oversight of contracting entities or the imposition of civil penalties.

(3) If the Department intends to suspend, revoke, or deny an Agency with Choice license, it must do so in accordance with ORS 183.411 through 183.470.

(4) At any time, the Department may issue a Notice of Emergency License Suspension under ORS 183.430(2).

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37

411-039-0270 Financial Transparency and Reporting Requirements

(Adopted 12/15/2025)

(1) The rate paid to the Agency with Choice requires that:

(a) The Agency with Choice will ensure that no less than 85 percent of the total payments to the Agency with Choice is spent on total compensation for Direct Support Workers who furnish those services. For the purpose of these rules, total compensation includes wages and benefits including, but not limited to, health insurance, retirement plans, life and disability insurance, paid time off, mileage, employer employment taxes, employee employment taxes, employee required training, and workers compensation; and

(b) The amount for administration and overhead may not exceed 15 percent of the rate paid to the Agency with Choice by the Department.

(2) Any rate increase provided by the Department requires the Agency with Choice to maintain the 85 percent direct care worker compensation and benefits threshold.

(3) The Agency with Choice must ensure that any increase intended to improve Direct Support Workers' compensation must be fully passed on to Direct Support Worker compensation and benefits.

(4) The Agency with Choice must file annually with the Department detailed cost reports based on the Agency with Choice's reporting period for the period ending each June 30th, and as requested by the Department. The Agency with Choice must submit the cost report no later than October 31st of each year.

(5) The required cost report details include the following Agency with Choice expenditures:

(a) Average hourly wage provided to Direct Support Workers;

(b) Total costs of Direct Support Worker wages and the hours provided to Individuals;

(c) Total costs of Direct Support Worker benefits including the types of benefits offered;

(d) Total costs for overtime of Direct Support Workers, the percentage of Direct Support Workers receiving overtime, and the average number of overtime hours worked per week;

(e) Total costs for mileage reimbursement to Direct Support Workers;

(f) Supervisor and trainer wages, benefits and other expenses;

(g) Administrative costs and hours including CEO compensation; and

(h) Other overhead including, but not limited to, details on building, IT and corporate costs.

(6) The Agency with Choice must provide early cost reports if any of the following is true:

(a) The cost report is requested by the Department;

(b) There is a change of ownership; or

(c) The Agency with Choice's license is terminated or expired.

Statutory/Other Authority: Or Laws 2024, ch 37
Statutes/Other Implemented: ORS 124.050; Or Laws 2024, ch 37