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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 36-2026

CHAPTER 410
OREGON HEALTH AUTHORITY
HEALTH SYSTEMS DIVISION: MEDICAL ASSISTANCE PROGRAMS

FILED: 08/20/2026 1:56 PM
ARCHIVES DIVISION SECRETARY OF STATE & LEGISLATIVE COUNSEL

FILING CAPTION: Implement Agency with Choice requirements for mental in-home personal care services

EFFECTIVE DATE: 08/20/2026 THROUGH 02/15/2027

AGENCY APPROVED DATE: 08/18/2026

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NEED FOR THE RULE(S):

House Bill 4129 (2024) requires OHA and ODHS to implement the Agency with Choice (AwC) model by contracting with up to two agencies to provide in-home personal care services. AwC expands service delivery by allowing an agency to serve as the co-employer of direct support workers, while individuals retain the right to select, direct, and dismiss their workers. Temporary rule amendments are needed to implement the AwC service option, establish program requirements, and allow services to begin on September 1, 2026. The new option expands service delivery choices for individuals with mental health conditions who need assistance with in-home personal care services and face barriers related to workforce shortages and access to services.

JUSTIFICATION OF TEMPORARY FILING:

(1) Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s):

Failure to adopt the temporary rules would delay implementation of Agency with Choice (AwC) services scheduled to begin on September 1, 2026.

(2) Who would suffer these consequences:

Individuals eligible for in-home personal care services, the contracted Agency with Choice provider, and referring mental health partners would experience the negative consequences of delaying implementation of the new service option. Eligible individuals would have delayed access to an additional option for receiving medically necessary in-home personal care services, including expanded workforce supports and increased access to direct support workers.

(3) Why or how failure to immediately take rulemaking action would cause these consequences:

Without temporary rules, OHA would not have the program rules needed to implement the Agency with Choice service option by September 1, 2026. As a result, the contracted Agency with Choice provider would be unable to begin delivering services, referring mental health partners would be unable to refer individuals to the new option, and eligible individuals would experience delayed access to services.

(4) How the temporary action will avoid or mitigate those consequences:

The temporary rules establish the program requirements needed to implement the Agency with Choice service option on September 1, 2026. This allows the contracted provider to begin delivering services as planned and avoids delays in referrals and access to services for eligible individuals.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

House Bill 4129 (2024)

OAR Chapter 309, Division 45 – Agency with Choice licensing rules

Applicable federal Medicaid requirements regarding legally responsible individuals providing personal care services

OHA Mental Health Personal Care program forms, policies, and assessment tools, including PCAPS

Applicable Oregon Administrative Rules referenced by these rules, including Medicaid provider enrollment, eligibility and provider requirements.

RULES:
410-172-0600, 410-172-0774, 410-172-0776, 410-172-0780, 410-172-0790, 410-172-0796, 410-172-0800, 410-172-0805, 410-172-0820, 410-172-0830, 410-172-0835, 410-172-0840, 410-172-0845, 410-173-0005, 410-173-0105

AMEND: 410-172-0600

RULE SUMMARY: Updates definitions and terminology to improve consistency, clarify program requirements, and support implementation of the Agency with Choice (AWC) service delivery model.

CHANGES TO RULE:

410-172-0600
Acronyms and Definitions ¶

The acronyms and definitions listed in this rule apply to all of the administrative rules included in this chapter 410, division 172 Medicaid Payment for Behavioral Health Services. However, there may be additional acronyms and

definitions included in and apply to other specific rules within the division 172 Rules. ¶
(1) "Activity~~y~~ies of Daily Living (ADLs)" means th~~ose personal and~~e functional activities required by an individual for continued well-being, that are essential for health and safety. ADLs ~~include eating, b~~relate to the following functional categories: eat~~h~~ing, dressing~~, toileting~~ and grooming, bathing and personal hygiene, transferring (including mobility and ambulation)~~ and maintaining continence.~~, and toileting (including elimination and maintaining continence). Specific ADLs within these categories are outlined in other rules in this division. ¶
(2) "Adult" means an individual 18 years of age or older or an emancipated minor. An individual with Medicaid eligibility who needs services specific to children, adolescents, or young adults in transition shall be considered a child until age 21 for the purposes of these rules. Adults who are between the ages of 18 and 21 who are considered children for purposes of these rules shall have all rights afforded to adults as specified in these rules. ¶
(3) "ASAM PPC" means the most current publication of the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance-related Disorders, which is a clinical guide used in matching individuals to appropriate levels of care. ¶
(4) "Authority" means the Oregon Health Authority, the agency established in ORS 413 that administers the funds for Titles XIX and XXI of the Social Security Act, or its designee. It is the single state agency for the administration of the medical assistance program under ORS 414. For purposes of these rules, the agencies under the authority of the Oregon Health Authority are the Public Health Division, Health Systems Division, External Relations, Health Policy and Analytics, Fiscal and Operations, Office of Equity and Inclusion, and the Oregon State Hospital. ¶
(5) "Authorized Representative" means~~ any adult with longstanding involvement in assur~~, for purposes of the division 172 Rules only, unless expressly defined otherwise in another specific rule in~~g~~ the ~~in~~divi~~dual's health and safety, appo~~sion 172 Rules, one of the following: ¶
(a) A minor child's parent or, as defin~~t~~ed ~~to participate in the service planning process, and is:~~below in this rule, if applicable, a minor child's legal representative; ¶
(b) An individual's legal representative as defined in this rule; or ¶
(~~a~~c) ~~Chosen and~~A person appointed by the individual, or ~~their legal representative, if applicable;~~if applicable, appointed by the individual's legal representative, who is: ¶
(A) Age 18 or older; ¶
(~~b~~B) ~~Not a paid provider of Home and Community Based Services (HCBS) and supports or personal care services;¶~~
~~(c) Authorized, in writing or other method that clearly indicate~~Is not incapacitated; ¶
(C) Not a provider paid to provide any health services the individual receives or may receive through Oregon Health Plan, including without limitation personal care services or other home and community- based services, except as permitted under ORS 127.635(3); and ¶
(D) Appointed to act on behalf of the individual in making decisions ~~con~~~~senting choice, by the individual or legal representative, if applicable, to serve as the individual's representative in connection with the provision of funded supports; and¶~~
~~(d) Responsible to act~~ matters pertaining to the provision of planning and implementation of health care services and supports including, without limitation, personal care services. Appointment by the individual must be made in writing or another method that clearly indicates the individual has freely chosen the identified person as their authorized representative~~ until~~. A person appointed by the individual or the individual's legal representative~~, if applicable, modifies the authorization or notifies the agency that the authorized~~ may include, without limitation: ¶
(i) A person designated by the individual as having power of attorney under ORS 127.002 through 127.045; or ¶
(ii) a person designated as a health care representative ~~i~~as ~~no longer authoriz~~defined in 127.505 and appointed ~~to~~in ac~~t on their behalf.~~cordance with ORS 127.510. ¶
(6) "Behavioral Health" means mental health, mental illness, addiction disorders and substance use disorders. ¶
(7) "Behavioral Health Services" means medically appropriate services rendered or made available to a recipient for treatment of a behavioral health diagnosis. ¶
(8) "Child" means an individual under the age of 18. An individual with Medicaid eligibility who needs services specific to children, adolescents, or young adults in transition shall be considered a child until age 21 for purposes of these rules. ¶
(9) "Community Mental Health Program (CMHP)" means an entity that is responsible for planning and delivery of services for persons with substance use disorders or a mental health diagnosis, operated in a specific geographic area of the state under an intergovernmental agreement or direct contract with the Division as defined in OAR 309-019-0105. ¶
(10) "Cueing" means giving verbal direction or visual clues and encouragement during the activity to help the individual complete activities without hands-on assistance and may include redirection. ¶
(11) "Delegated Nursing Task" means a registered nurse (RN) authorizes a person as described in OAR 851-047-0000 who is not licensed to provide or perform a nursing task. In accordance to OAR chapter 851 division 047, the RN shall, prior to issuing written authorization of a delegated nursing task, assess a specific eligible individual's care needs, evaluate the person's ability to perform the specific nursing task, provide the person with education and

training to perform the nursing task, and supervise and re-evaluate the individual and the person performing the task. ¶
(12) "Department" means the Oregon Department of Human Services (ODHS). ¶
(13) "Designee" means an organization with which the Authority contracts or has an interagency agreement. ¶
(14) "Disability" means a physical, cognitive, or ~~emotional~~mental health impairment which, for an individual, constitutes or results in a functional limitation in one or more of the activities of daily living described in OAR 410-172-0780. ¶
(15) "Division" means the Health Systems Division of the Oregon Health Authority, or its designee. ¶
(16) "Family Home" means a dwelling, either through an informal arrangement or property manager's rental agreement, owned or rented by a relative of the Individual, where the Individuals name is not on the agreement. ¶
(17) "Face to Face" means a personal interaction where both words can be heard and facial expressions can be seen in person or through telehealth services where there is a live streaming audio and video, if medically appropriate. ¶
(1~~7~~8) "Guardian" means a~~n individual~~ person who has been appointed by a court ~~of law to act as guardian of a minor~~to promote and protect the well-being o~~r~~f a ~~legally incapacitated individual. Guardian may also mean legal representative.~~n individual in keeping with ORS 125.305. ¶
(1~~8~~9) "Hands-on" means a provider physically performs all or part of an activity because the individual is unable to do so. ¶
(20) "Home" means a dwelling the Individual owns or rents with a formal written arrangement (mortgage, deed, rental agreement, etc.) that includes the Individual's name and a legally enforceable agreement offering protections against unlawful eviction, substantially similar to the Oregon's landlord tenant laws. ¶
(2~~1~~9) "Immediate Family" means spouses of ~~recipient~~individuals and parents of minor ~~recipient~~individuals, including stepparents who are legally responsible for minor children.~~¶~~
~~(20) "Individual" means any person being considered for or receiving services and supports regulated by these rules.~~ Immediate family members of an individual are prohibited from working as a provider for that individual. ¶
(2~~1~~2) "In-Person" means meeting with someone in the same physical location rather than talking on the phone, e-mailing, or writing to the person. ¶
(2~~2~~3) "Instrumental Activities of Daily Living (IADLs)" means ~~those~~ self-management activities performed by an individual on a day-to-day basis that are ~~not essential to basic self-care and independent living. IADLs individual include, but are not limited to, housekeeping, including laundry, shopping, transportation, medication management, and meal preparat~~more complex than Activities of Daily Living and support an individual's health, safety, well-being, and ability to live independently in the community. Instrumental Activities of Daily Living include, but are not limited to meal preparation, light housework, laundry, medication management, transportation, shopping, and money management. Specific IADLs within these categories are described in other rules in this division. ¶
(2~~3~~4) "Independent and Qualified Agent (IQA)" means an entity meeting the provider qualification requirements identified in 42 CFR §441.730 and under contract with the ~~Division~~Authority to make eligibility determinations, perform functional needs assessments, develop service plans, and complete independent psychiatric reviews. ¶
(2~~4~~5) "Home and Community Based Services (HCBS)" means services and supports that assist eligible individuals to remain in their home and community in accordance with the Code of Federal Regulations, approved Medicaid State Plan authorities, and Oregon Administrative Rules. ¶
(2~~5~~6) "Legal Representative" means a person who has been l~~ega~~awfully designated by court order to make financial ~~or,~~ health care, or other decisions for another individual. ~~The~~ ¶
(a) A legal representative ~~only has authority to act within the scope and limits of their authority as designated by the court or other agreement. Legal representatives acting outside of their authority or scope shall meet the definition of authorized representative. For a child, this includes the parent or step-parent unless a court appoints another person or agency to act as the guardian.~~may be a: ¶
(A) Guardian as defined in section (18) of this rule; or ¶
(B) A Health Care Representative as defined in and appointed in accordance with ORS 127.505(13)(c). ¶
(b) A legal representative only has authority to act within the scope and limits of their authority as designated by the court order or other agreement authorized by the court. ¶
(2~~6~~7) "Medicaid OHP Plus Benefit Package" means: ¶
(a) Modified Adjusted Gross Income (MAGI) Medicaid/CHIP as defined at OAR 410-200-0015(58); ¶
(b) Oregon Supplemental Income Program Medical (OSIPM) as defined at OAR 410-200-0015(60). ¶
(c) Any other Oregon Health Plan (OHP) Plus eligibility category authorized by the Authority that includes coverage for State Plan Personal Care services. ¶
(2~~7~~8) "Level of Care" means the type, frequency, and duration of medically appropriate services provided to a recipient of behavioral health services. ¶
(2~~8~~9) "Level of Care Determination" means the standardized process implemented to establish the type, frequency, and duration of medically appropriate services required to treat a diagnosed behavioral health condition. ¶

(~~29~~30) "Licensed Medical Practitioner (LMP)" means program staff who meet the following minimum qualifications: ¶
(a) Physician licensed to practice in the State of Oregon; or ¶
(b) Nurse practitioner licensed to practice in the State of Oregon; or ¶
(c) Physician's associate licensed to practice in the State of Oregon; and ¶
(d) Whose training, experience, and competence demonstrate the ability to conduct a mental health assessment and provide medication management. ¶
(3~~0~~1) "Medicaid" means the federal grant-in-aid program to state governments to provide medical assistance to eligible individuals under Title XIX of the Social Security Act. ¶
(3~~1~~2) "Natural Support" means resources and supports (e.g., relatives, friends, significant others, neighbors, roommates, or the community associates) who voluntarily provide services and supports to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support." The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports and shall be identified within the individual's service plan. ¶
(3~~2~~3) "~~Personal Care Services" means medically appropriate services provided to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility or institution that are:¶~~
~~(a) Authorized for the eligible individual by a physician in accordance with the individual's assessment and a plan of treatment or otherwise authorized for the individual in accordance with a service plan approved by the Authority or designee;¶~~
~~(b) Provided by an individual who is an enrolled provider and is qualified by to provide such services and who is not a member of the individual's immediate family;¶~~
~~(c) Provided~~Oregon Health Plan (OHP)" means the services included in the Authority's medical assistance programs, including without limitation, Medicaid and Healthier Oregon. ¶
(34) "Personal Care Services" means the IADLs and ADLS provided by a personal care attendant or a direct support worker to an individual in their home or other non-institutional community location~~s~~ outside the ~~home; and¶~~
~~(d) Include a range of assistance, as developmentally appropriate, provided to persons with disabilities and chronic conditions of all ages, which enables them to accomplish tasks, which they would normally do for themselves if they did not have a disability or chronic condition. Assistance may be in the form of hands-on assistance or cueing so that th~~individual's home. Individuals receiving inpatient services or who are residents of a hospital, nursing facility, intermediate care facility or institution are not eligible to receive personal care ~~p~~ser~~son performs the task by themselves.~~vices under this Division 172 Rule Set. ¶
(3~~3~~5) "Recovery Assistant" means a provider who provides a flexible range of services. Recovery assistants provide face-to-face services in accordance with a service plan that enables a participant to maintain a home or apartment, encourages the use of existing natural supports, and fosters involvement in treatment, social, and community activities. A recovery assistant shall: ¶
(a) Be at least 18 years old; ¶
(b) Meet the background check requirements described in OAR 950-060-0070; ¶
(c) Conform to the standards of conduct as described in OAR 950-060-0080. ¶
(3~~4~~6) "Redirection" means to divert the individual from one activity to another activity. ¶
(3~~5~~7) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption. ¶
(3~~6~~8) "Service Plan" means a comprehensive plan for services and supports provided to or coordinated for an individual and their family, as applicable, that is reflective of the assessment and the intended outcomes of service. ¶
(3~~7~~9) "Spouse" means an individual who is legally married to another individual. ¶
(~~38~~40) "State Medicaid Plan" means the written agreement between the state of Oregon and the federal government that details how the Authority will administer the state's Medicaid program in compliance with federal law. The State Medicaid Plan serves as the basis for the Authority's administration of its other medical assistance program. The State Medicaid Plan may also be referred to as the "State Plan" ¶
(41) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to an individual with a condition that does not require acute hospital care but prevents the individual from being discharged to their home. ¶
(~~39~~42) "Supervision" means, ~~a provider is physically present and observing the individual to determine if the task is being completed properly and providing intervention if needed~~long with cueing, helping the individual know when or how to carry out the task. Supervision may be in the form of monitoring, set-up, reassurance, or stand-by to ensure the individual completes the task. Need for assistance may not be based on possible or preventative measures: ¶
(a) "Monitoring" means a provider observes an individual to determine if assistance is needed; ¶
(b) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or

equipment so an individual may perform an activity; ¶
(c) "Reassurance" means to offer encouragement and support to an individual; ¶
(d) "Stand-by" means a provider is at the side of an individual ready to step in and take over the task if the individual is unable to complete the task independently.
Statutory/Other Authority: ORS 413.042~~, 430.640~~
Statutes/Other Implemented: ORS~~ 413.042, 430.640,~~ 414.025, 414.065, 430.705, 430.715

ADOPT: 410-172-0774

RULE SUMMARY: Establishes the purpose and scope of the SPPC program, recognizes the PCA and AWC service delivery models, and clarifies when rule provisions apply to both models or only one model.

CHANGES TO RULE:

410-172-0774
State Plan Personal Care Program: Purpose and Scope
(1) The State Plan Personal Care (SPPC) program provides state plan personal care services support to individuals in accordance with the State Medicaid Plan. The SPPC program is intended to enhance an individual's independence, empowerment, dignity and human potential through the provision of flexible, efficient and suitable personal care services to eligible adults and children. The SPPC program is not intended to replace an individual's own personal abilities or natural and other supports. ¶
(2) The rules applicable to the SPPC program are set out in OARs 410-172-0774 through 410-172-0845. ¶
(3) There are two types of providers authorized to provide services directly to individuals who have been approved to receive services through the SPPC program: ¶
(a) Direct support worker (DSW), who is employed by an Agency with Choice (AWC) and is defined in 410-172-0776. ¶
(b) Personal care attendant (PCA) who is not employed by an Agency with Choice (AWC) as defined in OAR 410-172-0776. ¶
(c) Unless a rule or a specific section in a rule expressly states that the rule or section applies to one type of authorized provider only, the rule or section must be interpreted to apply to both DSWs and PCAs. ¶
(4) When a provision in OARs 410-172-0600, 410-172-0774 through 410-172-0845 references another rule in a different OAR chapter and division or in a different division within OAR chapter 410, the rule that must be given effect is the version that is or was in effect as of August 10, 2026. ¶
(5) These rules are not intended to conflict with or supersede any applicable collective bargaining agreement governing homecare workers, personal support workers, or personal care attendants. In the event of a conflict, applicable state or federal law and the terms of the collective bargaining agreement shall control.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065, ORS 414.025

AMEND: 410-172-0776

RULE SUMMARY: Adds AWC-related definitions and updates program terminology to distinguish responsibilities of individuals, PCAs, DSWs, and Agencies with Choice.

CHANGES TO RULE:

410-172-0776
~~Behavioral Health Personal Care Attendant (BH PCA)~~State Plan Personal Care Program Definitions
~~Unless the context indicates otherwise, the following~~In addition to the defined words in OAR 410-172-0600, the definitions ~~apply to~~in the~~is~~ rule~~s in~~ apply to OAR~~s~~ 410-172-0775 through OAR 410-172-0840~~Personal Care Attendant Program:¶~~
~~(1) "Alternative Service Resources" means other possible resources for the provision of services to meet an individual's needs. Alternative service resources include, but are not limited to, natural supports, risk intervention ser~~, which apply to SPPC Program. If a word defined in this rule conflicts with a word defined in 410-172-0600, the word defined in this rule will apply. ¶
(1) "Agency with Choice" means an organization licensed by the Oregon Health Authority in accordance with OAR chapter 309, division 045 that provi~~c~~des~~, Community Mental Health Programs, or other community supports. Alternativ~~ the Agency with Choice services. ¶
(2) "Agency with Choice ~~s~~Service ~~resources are not paid by Medicaid.¶~~
~~(2) "Assistance" means an individual requires developmentally appropriate help from another person with the personal care described in~~s" means personal care and other related services provided to an individual by an Agency with Choice in accordance with OAR~~s~~ 410-172-07~~80. Assistance may be in the form of hands-on assistance, supervising, cueing, or redirecting so that the~~76 through 410-172-0845 and OAR chapter 309, division 45. ¶
(3) "Assistance" means help needed by and provided to an individual in perform~~s the task on their own . In cases of cognitive impairments~~ing Activities of Daily Living (ADLs) or Instrumental Activities of Daily Living (IADLs). When provided to an individual, assistance ~~may~~ include~~s~~ hands-on assistance, cueing~~,~~ a~~long with supervision to ensure that the individual performs the task properl~~nd supervision. Supervision includes monitoring, set-up, reassurance, and stand-by. ¶
(~~3~~4) "Assistive Devices" means any category of durable medical equipment, mechanical apparatus, electrical appliance, or instrument of technology used to assist and enhance an individual's independence in performing any task described in OAR 410-172-0780. ¶
(4~~5~~) "Assistive Supports" means the aid of service animals, general household items, or furniture used to assist and enhance an individual's independence in performing any task described in OAR 410-172-0780./ ¶
(~~5~~6) "Background Check" means a criminal history check and abuse check as described in OAR chapter 407 division~~,~~ 007.~~¶~~
~~(6) "Personal Care Attendant Service Coordinator" or "PCA Service Coordinator" means an employee of the Authority or the Authority's IQA designee, who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. A PCA Service Coordinator authorizes and implements an individual's person-centered service plan and monitor~~, including criminal records as adopted in OAR chapter 943, division 007. ¶
(7) "Care Coordinator" mean~~s~~ the person~~al care services delivered. The PCA Service Coordinator will meet the qualifications set forth by the Authority and IQA as per the current contract.¶~~
~~(7) "Cognitive Impairments" means an individual may be physically capable of performing ADLs or IADLs, but may have limitations in performing these activities because of a behavioral health condition or disability which impacts the individual's cognitive abilities. Personal care services may be required because a cognitive impairment prevents an individual from know~~ responsible for referring individuals to qualified providers that can provide authorized personal care services and coordinating ~~w~~the~~n or how to carry out the task. In such cases, personal assistance may include cueing along with supervision to ensure that the individual performs the task properly.~~ care an individual receives. ¶
(8) "Collective Bargaining Agreement (CBA)" means the ratified Collective Bargaining Agreement between the Home Care Commission and the Service Employees International Union, Local 503. The Collective Bargaining Agreement is maintained on the Department's website: ~~(~~http~~s~~://www.~~dhs.state.or.us/spd/tools/cm/homecare/index.htm~~oregon.gov/odhs/providers-partners/homecare-workforce/Pages/default.aspx). Printed copies may be obtained by writing the Oregon Department of Human Services, Aging and People with Disabilities, ATTN: Rules Coordinator, 500 Summer Street NE, E-2, Salem, Oregon 97301. ¶
(9) "Consumer-Employer" means an individual ~~eligible for and receiving in-home services through the Behavioral~~

~~Health Personal Care Attendant program.¶~~
~~(10) "Consumer-Employer Representative" means any adult with longstanding involvement in assuring the individual's health and safety, appointed to participate in service planning process, and is:¶~~
~~(a) Chosen and appointed by the individual or their legal representative, if applicable;¶~~
~~(b) Not a paid provider of individual's Behavioral Health Personal Care Attendant services;¶~~
~~(c) Authorized, in writing or other method that clearly indicates consenting choice, by the individual or legal representat~~, or the individual's authorized representative, who employs a personal care attendant and performs employer responsibilities under these rules. Individuals who rece~~ive, i~~~~f applicable, to serve as the individual's representative in connection with the provision of funded supports until the individual or legal representative modifies the authorization or notifies the agency that the representative is no longer authorized to act on their behalf; and¶~~
~~(d) Responsible for performing consumer-employer duties described in OAR 410-172-0800.~~n-home services from a direct support worker through an Agency with Choice are not consumer-employers. ¶
(1~~1~~0) "Cost Effective" means being responsible and accountable with Authority resources. This is accomplished by offering less costly alternatives whil~~en~~ providing choices that adequately meet an individual's service needs. Those choices consist of all available service options, the utilization of assistive devices or assistive supports, natural supports, architectural modifications, and alternative service resources. Less costly alternatives may include resources not paid for by the Authority. ¶
(1~~2~~1) "Developmental Disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080. ¶
(1~~3~~2) "Direct Contact" means services provided by a ~~PCA S~~service ~~C~~coordinator through direct communication with an individual or their ~~legal~~authorized representative via phone, email or face-to-face contact, as directed by the individual, for the purposes of care coordination and service-plan monitoring. ¶
(143) "D~~uty to Maintain Consumer-Employer Confidentiality" means a personal care attendant will not disclose personally identifiable information about a consumer- employer unless otherwise authorized by law.¶~~
~~(15) "Duty to Maintain a Drug-Free Workplace" means:¶~~
~~(a) Providers shall be free of the influence of substances that will inhibit their ability to provide~~irect Support Worker (DSW)" means a person employed by an Agency with Choice who assists individuals with ADLs and IADLs and health related tasks identified in the individual's person~~al ca~~-centered service~~s including alcohol, inhalants, prescription drugs, or other drugs, illicit or legal, including over-the-counter medications, while responsible for the care of an individual,~~ plan. A direct support worker is different than "personal care attendant," whi~~le in the individual's home or care setting, or while transporting the individual; and¶~~
~~(b) Provider must not manufacture, possess, sell, offer to sell, trade, or use illegal drugs while providing authorized services to an individual or while in the individual's home or care setting.~~ch is defined in OAR 309-045-0310. ¶
(14) "Duty to Maintain Consumer-Employer Confidentiality" means a personal care attendant will not disclose personally identifiable information about a consumer-employer unless otherwise authorized by law. ¶
(1~~6~~5) "Electronic Visit Verification (EVV)" means a ~~technological solution used to electronically verify whether~~system that verifies, in accordance with 42 U.S.C 1396b(I), personal care ~~providers and, later, home health providers delivered or rendered services as billed. The federal requirement for the data to be collected for each visit includes:¶~~
~~(a) Date of service;¶~~
~~(b) Start and end time;¶~~
~~(c) Type of service;¶~~
~~(d) Location of service;¶~~
~~(e) Name of service provider;~~services provided to an individual under the state plan personal care program, as follows: ¶
(a) Type of services; ¶
(~~f~~b) ~~Name of~~The individual who receiv~~ing~~ed the service~~s.¶~~
~~(17) "Established Work Schedule" means the work schedule established by the consumer-employer to best meet the consumer-employer's assessed needs and agreed to by the personal care attendant employed by the consumer-employer. A personal care attendant adheres to the established work schedule by arriving to work on time, requesting absence from work in a timely manner, and notifying the consumer-employer of unscheduled absences in a timely manner.¶~~
~~(18) "Evidence" means testimony, writings, material objects, or other tangible items presented to the senses that are offered to prove the existence or nonexistence of a fact.;~~ ¶
(c) The date of service; ¶
(d) The location of service delivery; ¶
(e) The name of the personal care attendant providing the service; and ¶
(f) The time the services began and ended. ¶
(1~~9~~6) "Exerts Undue Influence" means a personal care attendant assumes or attempts to assume control of an

individual's decision-making, finances, home, property, medication, social interaction or ability to communicate, through coercion or other non-persuasive, threatening means. Exertion of undue influence may exist whether or not an individual willfully allows the personal care attendant to assume such control. ¶
(~~20~~17) "Fiscal Improprieties" means a personal care attendant committed financial misconduct involving an individual's money, property, or benefits. ¶
(a) Fiscal improprieties include, but are not limited to: ¶
(A) Financial exploitation, as defined in O~~AR 411-020-0002(1)(e);¶~~
~~(B) Borrowing~~RS 430.735 and described in OAR 411-020-0002, including: ¶
(i) Wrongfully taking, by means including, but not limited to, deceit, trickery, subterfuge, coercion, harassment, duress, fraud, or undue influence, the assets, funds, property, or medications belonging to or intended for the use of an adult; ¶
(ii) Alarming an adult by conveying a threat to wrongfully take or appropriate money~~,~~ or property~~, or belongings from an individual;~~f the adult if the adult reasonably believes the threat conveyed may be carried out; ¶
(iii) Misappropriating or misusing any money from any account held jointly or singly by an adult; ¶
(iv) Failing to use income or assets of an adult for the benefit, support, and maintenance of the adult; or ¶
(~~C~~v) The taking ~~an individual's property or money;¶~~
~~(D~~, borrowing, or accepting of assets, funds, property, or medications from an adult residing in a facility by an employee of the facility, unless the adult and employee are related and the action described in this paragraph does not constitute a wrongful taking as described in (i). ¶
(B) Improper financial transactions with an individual, including but not limited to: ¶
(i) Borrowing money, property, or belongings from an individual; ¶
(ii) Accepting or receiving ~~items~~funds, or services purchased for the personal care attendant by the individual~~;¶~~
~~(E~~. ¶
(C) Fraudulent or improper billing or payment practices, including but not limited to: ¶
(i) Forging an individual's signature; ¶
(~~F~~ii) Falsifying payment records ~~which,~~ include~~s but is not limited to:¶~~
~~(i) S~~ing submitting incorrect start and end times of work; ~~or~~¶
(iii) Submitting payment for days that were not worked.~~¶~~
~~(G~~; or ¶
(iv) Claiming to deliver services to an individual during a time also claimed for travel between worksites; ¶
(~~H~~v) ~~On one or more occasions, w~~Working or claiming to work hours not ~~prior~~ authorized on a consumer-employer's person-centered service plan or working or claiming ~~to work~~ hours over the maximum ~~authorized weekly number of hours allowed for the personal care attendant a~~weekly hours permitted under the Collective Bargaining Agreement; ¶
(~~I~~vi) Claiming hours worked for an individual while taking time off or when a relief care ~~work~~provider, as described in the CBA, is paid for providing services; ¶
(~~J~~vii) Requesting or demanding payment for services from either the Authority or the individual in excess of the amount paid following the submission and processing of a properly completed claim; ¶
(~~K~~viii) One or more intentional acts of dishonesty for purposes of unearned financial gain; or ¶
(~~L~~ix) Creating an overpayment whether intentionally or unintentionally and not paying it back within six months. ¶
(b) Fiscal Improprieties do not include the exchange of money, gifts, or property between a personal care attendant and an individual with whom the personal care attendant is related unless an allegation of financial exploitation, as defined in OAR chapter 4~~07, division 04~~11-020-0002 or ORS 430.735, has been substantiated based on an adult protective services investigation.~~¶~~
~~(21) "Independent and Qualified Agent (IQA)" means an entity meeting the provider qualification requirements identified in 42 CFR §441.730 and is under contract with the Division.¶~~
~~(22~~ ¶
(18) "Information and Referral" means providing referral and related activities, such as assisting the individual to schedule appointments, ~~to help the individual~~ obtain needed services, and connect~~ing~~ the individual with medical, social, and educational providers or other programs and services that can provide ~~needed~~ services to address the identified needs of the individual. ¶
~~(23) "Intellectual Disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.¶~~
(~~2~~419) "Mandatory Abuse Reporter" means any public or private official, including personal care attendants~~,~~ who are required ~~per ORS 419B.005(dd),~~ by state abuse statutes, to report alleged abuse.~~¶~~
~~(25) "Personal Care" means the functional activities described in OAR 410-172-0780~~ Rules related to Mandatory Reporter for Agencies with Choice, and direct support workers are referenced in OAR chapter 309 division 045. ¶
(20) "Notice of Action" means a written document that is sent by the Authority or its designee to the individual and as applicable, the individual's referring provider or Authorized Representative, that outlines why an individual's requ~~ir~~est for ~~continued well-being.~~personal care services has been denied in full or in part and complies with the

requirements set out in OAR 410-120-1865. ¶
(2~~6~~1) "Personal Care Attendant (PCA)" means a type of personal support worker, as defined in ORS 410.600, who is hired to provide personal care services to an individual with a behavioral health condition or disability who resides in their own ~~h~~Home, Family Home or community setting. A PCA can be hired by the individual, a parent of a child, or the individual's legal or authorized representative. ¶
(2~~7~~2) "Provider" or "Qualified Provider" ~~means a personal support worker, including~~for the purposes of these rules means: ¶
(a) A personal care attendant~~s, that~~ who is an enrolled provider with the Authority, meets the training and education and qualifications in OAR Chapter 418 Division 020, and ~~that~~ performs personal care services for individuals not residing in a facility~~.¶~~
~~(28) "Provider Number" means an identifying number issued to each PCA who is enrolled as a Medicaid provider through the Authority.~~; or ¶
(b) An Agency with Choice that is an enrolled provider with the Authority, meets the qualifications in OAR chapter 309 division 045 and employs direct support workers who perform personal care services for individuals not residing in a facility. An Agency with Choice assumes co-employer responsibilities with the individual receiving personal care services. The co-employer responsibilities include worker training, payroll, and compliance with Electronic Visit Verification requirements as described in chapter 309 division 045. ¶
(2~~9~~3) "~~Respite" means services for the relief of a person normally providing supports to an individual unable to care for themself.¶~~
~~(30) "Service Authorization" means an individual's written plan for services that~~Person-Centered Service Plan" means the written document prepared by the IQA service coordinator that details the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 410-173-0025. ¶
(24) "Provider Number" means a unique identifying number issued to an Agency with Choice and each personal care attendant who is enrolled with the Authority as a Medicaid provider. ¶
(25) "Service Authorization" means the written documentation issued by the Authority to the individual informing them of the services approved in the individuals' service plan. Sometimes, a service authorization may also be a Notice of Action as defined in this rule. A service authorization identifies: ¶
(a) The ~~individual's~~ qualified provider who is ~~to deliver the authorized services;~~authorized to provide personal care services to the individual; ¶
(b) The date ~~w~~then~~n the provision of~~ individual is authorized to begin receiving personal care services from the qualified provider; and ¶
(c) The specific personal care services ~~is to begin~~the individual is authorized to receive from the qualified provider; and ¶
(~~c~~d) The maximum hours ~~per service period of personal care authorized by the Authority or the Authority's designee.¶~~
~~(31~~an individual is authorized to receive personal care services during a service period. ¶
(26) "Service Coordination" means the functions performed by a service coordinator and includes determining service eligibility for home and community-based services, including personal care services, based on program criteria, conducting a needs-based assessment for services and developing a person-centered service plan. ¶
(27) "Service Coordinat~~ion~~or" means ~~the functions performed by a PCA Service Coordinator and includes determining annual service eligibility and developing a plan~~a qualified mental health practitioner employed by the Authority's IQA who: ¶
(a) Determines eligibility for services in accordance with program requirements; ¶
(b) Conducts needs-based assessment to identify individual's functional needs for services; ¶
(b) Develops person-centered service plan with individuals based on their assessed needs; ¶
(c) Informs individuals of available service options and assists individuals in identifying appropriate services and supports based on assessed needs and the person-centered service plan, including potential qualified providers, coordinating with the individual's care coordinator or community mental health program when applicable; and ¶
(d) Monitors the delivery of authorized services.~~¶~~
~~(32~~ ¶
(28) "Service Need" means the amount, scope, and duration of personal care and supportive services ~~needed by an individual receiving Authority services.¶~~
~~(33~~that are medically necessary and appropriate for an individual as determined through a personal care services' needs-based assessment and documented with specificity in the individual's person-centered service plan. ¶
(29) "Service Period" means~~,~~ two consecutive work weeks for a total of 14 days ~~beginning on a Sunday and ending on a Saturday.~~/ ¶
(3~~4~~0) "Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a ~~PCA~~personal care attendant or direct support worker possesses and demonstrates the physical, mental, organizational, and

emotional skills or abilities necessary to perform services which safely and adequately meet the service needs of individuals. ¶
(3~~5~~1) "Termination" means a sanction prohibiting a provider's participation in the ~~Division~~Authority's programs by cancelling the ~~provider's~~ Authority-assigned billing number and agreement for a personal care attendant or Agency with Choice. No payments, Title XIX, or state funds will be made for services provided on and after the date of termination. An Agency with Choice may also have their license denied, suspended, or revoked as outlined in OAR 309-045-0320. ¶
(3~~6~~2) "Unwelcome Nuisance to the Workplace" includes, but is not limited to, unwelcome guests or pets invited by a ~~PCA~~personal care attendant or a direct support worker into an individual's home, unwelcome behaviors, or unwelcome items resulting in the individual's dissatisfaction or a ~~PCA~~personal care attendant's or a direct support worker's inattention to the individual's required service needs.
Statutory/Other Authority: ORS 413.042, ~~430.640~~ORS 414.065, Oregon Laws 2024, Ch. 37
Statutes/Other Implemented: ORS 41~~3~~4.04~~2~~65, 430.~~640, 414.025, 414.065, 430.705, 430.715~~731, Oregon Laws 2024, Ch. 37

AMEND: 410-172-0780

RULE SUMMARY: Revises covered personal care services, service limitations, and exception requirements to incorporate the Agency with Choice (AWC) model and clarify covered services.

CHANGES TO RULE:

410-172-0780
~~Behavioral Health Personal Care Attendant Program~~State Plan Personal Care Services and Limitations ¶

(1) The ~~Behavioral Health~~State Plan Personal Care ~~Attendant (BH (~~SPPC~~A~~) program ~~ensures state plan~~provides essential personal care services ~~support and augment independence, empowerment, dignity and hu~~that enable an individual to move into or remain ~~potential through the provision of flexible, efficient and suitable services to adults and children eligible for State Plan personal care services. The BH~~ in their own home, family home, another private residence or temporary living arrangement. ¶
(a) Personal care services available through the SPPC~~A~~ program ~~is not intended to supplement an individual's own personal abilities and resources, including natural resources.¶~~
~~(2) The BH PCA program provides essential p~~are provided directly to an individual who is determined to be eligible in accordance with OAR 410-172-0790. ¶
(b) Personal care services ~~that enable an individual to move into or remain in their own home. Personal care services are provided in accordance with an~~are not intended to provide respite and they are not intended to substitute for the individual's ~~authorized person-centered service plan.¶~~
~~(a) Personal care services through the BH PCA program are provided directly to an eligible individual and are not meant to provide respite~~natural or other support systems that are available to them. Personal care services must be medically necessary and appropriate and must not be provided for the purpose of benefiting an individual's family members or ~~o~~the~~r services to an~~ individual's household. ¶
(2) Eligible individual~~'~~s ~~natural support system. P~~who are authorized by the Authority to receive personal care services may ~~not be implemented for the purpose of benefit~~be approved to receive up to 270 hours of personal care services in~~g~~ a~~n individual's family members or the individual's household;¶~~
~~(b) Personal care services through the BH PCA program may not exceed 270 hours in a person-centered service plan year from the date they were determined eligible wi~~ twelve-month period, unless an exception request is approved by the Authority. ¶
(a) The actual number of hours of personal care services that an individual is authorized to receive are identified in the individual's person-centered service plan (PCSP). An individual's PCSP is developed as outlined in OAR 410-172-0790. The twelve-month period (PCS plan year) begins on the date the individual is determined eligible for the SPPC program unless otherwise modified throu~~t~~gh an exception request ~~approval from~~by the Authority~~:~~. ¶
(~~c~~b) When an individual's personal care service needs are assessed as exceeding the annual maximum of 270 hours ~~a year, an e~~in a PCSP year, an individual or their authorized representative, has the right to request an exception. Exception requests m~~ay~~ust be submitted in writing ~~by the PCA S~~on behalf of the individual by the service ~~C~~coordinator and must identify all of the following: ¶
(A) The exceptional personal care needs the individual is experiencing; ¶
(B) ~~-~~The tasks that require hands~~-~~-on assistance or direct supervision and cueing every time they occur; and ¶
(C) The ~~date~~start date and duration of the additional personal care services~~start and length of time to complete the tasks.~~ ¶
(~~d~~c) The ~~Division~~Authority has up to 45 days upon receipt of an exception request to determine whether an individual's assessed personal care needs warrant exceeding the 270-hour per ~~person-centered service~~PCS plan year limitation and issue written notice to the individual ~~and the requesting provider;¶~~
~~(c) The PCA Service Coordinator will inform the individual, through written notice, within 10 days of the Division's decision including the individual's right to a hearing; ¶~~
(d) The individual id provided a written notice of action or service authorization within 10 days after the Authority's decision. ¶
(3) Personal care services include: ¶
(a) Activities of Daily Living (ADLs): ¶
(A) Eating includes assisting the individual in feeding or fluid intake by any means from a receptacle into the body. Includes monitoring to prevent choking or aspiration~~.~~; ¶
(B) Bathing includes assisting the individual with cleansing the body, washing hair, shaving, nail care, and using assistive devices when necessary to get in and out of the bathtub or shower~~.~~; ¶
(C) Dressing includes assisting the individual with putting on, fastening, and taking off all items of clothing, braces, and artificial limbs, including obtaining and replacing items from their storage area in the immediate environment~~.~~;

¶
(D) Toileting includes assisting the individual in getting to and from, on and off~~,~~ the toilet, commode or bedpan for elimination of feces and urine. This includes cleansing after elimination and adjusting clothing as necessary~~.~~; ¶
(E) Maintaining Continence includes assisting the individual with external cleansing of Foley catheter, emptying catheter drainage bag, maintenance bowel care, changing and replacing incontinence products, including colostomy or ileostomy bags~~.~~; and ¶
(F) Transferring includes assisting the individual with ~~mobility, transfers~~transfers between positions, ambulation (walking) and repositioning by any means including use of an assistive device and includes turning or adjusting padding for physical comfort or pressure relief and encouraging or assisting with range of motion exercises. ¶
(b) Instrumental Activities of Daily Living (IADLs) includes: ¶
(A) Personal Hygiene includes performing or assisting the individual with activities required to keep one's desired appearance~~,~~ including secure or fasten clothing, comb/brush hair, nail care, foot care, skin care, and mouth care and oral hygiene~~, etc.~~; ¶
(B) Light Housework includes performing or assisting the individual with housekeeping tasks necessary to maintain the individual in a healthy and safe living environment~~.~~; ¶
(C) Laundry includes performing or assisting the individual with laundering or cleaning of clothing, bedding and other linens~~.~~; ¶
(D) Meal preparation includes performing or assisting the individual with healthy meal planning and preparation, ensuring special diets are followed~~.~~; ¶
(E) ~~Transportation includes assisting the individual in getting to and from medically appropriate and necessary appointments and community activities through available means of transportation in accordance with the individual's authorized service plan, which~~Shopping includes performing or assisting the individual in planning for and purchasing of essential items including clothing, groceries, prescribed medication, hygiene products and basic household necessities; ¶
(F) Using the Telephone or other Electronic Communication Devices include performing or assisting the individual in arranging necessary appointments and making desired phone calls using a telephone, smart phone, tablet or other similar electronic device for communication purposes; ¶
(G) Medication assistance includes helping individuals with oral medications prescribed for the individual by a licensed medical professional, which are ordinarily self-administered described below: ¶
(i) Administering medication; ¶
(ii) Supervision or cueing to ensure the individual is taking medication as prescribed; ¶
(iii) Documenting and monitoring any notable side effects; ¶
(iv) Refilling prescriptions; and ¶
(v) Assisting with use, maintenance, and cleaning of in-home medical equipment authorized by a licensed medical professional, monitoring the individual's condition, ordering and maintaining necessary supplies. Use, maintenance and cleaning of in-home medical equipment must be performed by PCA in compliance with manufacturers guidelines or the PCA must have received prior training and education from an RN, when applicable, in how to correctly perform these tasks. Providing assistance with insulin injections and other similar medical tasks requires prior training and education from an RN, which is a delegated nursing task. ¶
(H) Money Management includes performing or assisting the individual with budgeting, making payments for monthly expenses and use of personal funds for desired items and activities; and ¶
(I) Transportation includes assisting the individual, due to a functional limitation, in getting to and from medically appropriate and necessary appointments and community activities, consistent with the individual's authorized PCSP and personal care needs, and does not duplicate services otherwise available through non-Medicaid transportation benefits. Transportation benefits may include: ¶
(i) Scheduling non-emergent medical transportation (NEMT) for their OHP-~~-~~covered medical service appointments; ¶
(ii) Scheduling non-medical rides through public transportation or other modes of transportation; ¶
(iii) Accompanying the individual to and from appointments or community activities; ¶
(iv) Transporting the individual in the ~~personal care attendant's personal vehicle:~~PCA's or DSW's personal vehicle in accordance with section (4) below of this rule. ¶
(4) PCAs and DSWs may use their personal vehicles to transport individuals as outlined in this section. ¶
(~~I~~a) ~~The PCA Provider is required to~~Both PCAs and DSWs must: ¶
(A) Prior to transporting the individual, submit proof of current vehicle registration and insurance for the personal vehicle used to transport the individual and a current valid driver's license to~~t~~: ¶
(i) The individual's ~~PCA S~~service ~~C~~coordinator ~~prior to transporting client in the PCA's personal vehicle.¶~~
~~(II) Mileage is only reimbursed by the Authority when~~for PCAs; or ¶
(ii) Agency with Choice (AWC) for DSWs; and ¶
(B) Claim mileage and request reimbursement only when the transportation provided is authorized in the

individual's current ~~person-centered service plan and documentation requirements in OAR chapter 410 division 120 for billing and payment are met.¶~~
~~(III) Mileage reimbursement rate for a PCA is describ~~PCSP. ¶
(i) PCAs must submit their claims for mileage reimbursement to the Authority, which will be paid at the rate identified in the current ~~C~~collective ~~B~~bargaining ~~A~~agreement ~~(CBA).¶~~
~~(IV.~~ ¶
(ii) DSWs must submit their claims for reimbursement to the AWC that employs them. ¶
(b) Mileage ~~is only~~may be reimbursed by the Authority for OHP covered medical appointments when ~~there is~~: ¶
(A) One or more providers have document~~ation~~ed in the individual's medical record~~, on the date of service, by the IQA of the barriers preventing~~ that the individual~~'s use of~~ will need non-emergent~~t~~cy medical transportation for ~~public transit.¶~~
~~(F) Shopping includes performing or assisting the individual in planning for and purchasing of essential items including clothing, groceries, prescribed medication, hygiene products and basic household necessities.~~future, specific dates of service using the PCA's or DSW's vehicle; ¶
(~~G~~B) ~~Using the Telephone or other Electronic Communication Devices includes performing or assisting the individual in arranging necessary appointments and making desired phone calls using a telephone, smart phone, tablet or o~~The need for non-emergency medical transportation is included in the individual's PCSP or made a part of the PCSP after receipt of the documentation provided under (A) but before the~~r~~ s~~imilar electronic device for communication purposes.¶~~
~~(H) Medication assistance includes helping individual with oral medications prescribed for the individual by a licensed medical professional, which are ordinarily self-administered described below:~~pecified date(s) of services; and ¶
(C) As determined by OHA in its reasonable discretion after a review of all the circumstances, including whether the denial by NEMT was reasonable. ¶
(~~i~~c) ~~Administering medication;¶~~
~~(ii) Supervision or cueing to ensure the individual is taking medication as prescribed;¶~~
~~(iii) Documenting and monitoring any notable side effects;¶~~
~~(iv) Refilling prescriptions; and¶~~
~~(v) Assist~~PCAs will be paid for travel time between individual's homes or initial service-related sites (e.g., pharmacy, grocery store) occurring ~~with use, maintenance, and cleaning of in-home medical equipment authorized by a licensed medical professional, monitoring client's the individual's condition, ordering and maintaining necessary supplies. Use, maintenance and cleaning of in-home medical equipment mus~~on the same day. Travel time will be calculated based on the most direct route possible. PCAs using public transportation, the posted time between stops will be used to calculate and validate travel time. Travel time will be paid at base p~~erformed by PCA in compliance with manufacturers gui~~ay for Providers as de~~l~~fine~~s and PCA must have r~~d in Appendix A of the collec~~t~~ive~~d prior training and education from an RN, when applicable, in how to correctly perform these tasks.¶~~
~~(I) Money Management includes performing or assisting the individual with budgeting, making payments for monthly expenses and use of personal funds for desired items and activities.~~ bargaining agreement. Travel time pay is not subject to Oregon Home Care Commission (OHCC) certification pay differentials. This subsection (c) does not apply to DSWs. ¶
(5) Personal Care Services include other services as follows: ¶
(~~c~~a) Delegated nursing includes nursing tasks that are delegated by a Registered Nurse currently licensed and in good standing with the Oregon Board of Nursing, to a licensed provider or other non-licensed persons in accordance with OAR chapter 851, division 47.~~/~~Skilled services delegated by a Registered Nurse (RN) under Oregon's Nurse Practice Act may be considered personal care services when the RN provides appropriate training and delegation of the listed nursing tasks in accordance with the Oregon Nurse Practice Act~~.~~; and ¶
(~~d~~b) Personal care services may be required ~~due to cognitive impairments that prevent an~~when an individual has the physical capability to perform ADL or IADL tasks but due to mental health conditions the individual ~~from knowing when or how~~does not know how or when to carry out ~~ADL/IADL~~those tasks. In such ~~case~~situations, personal assistance may include cueing along with supervision to ensure the individual performs the task ~~properly.¶~~
~~(4) Services outside the ADL/IADL~~safely. An individual may also have co-occurring physical disabilities that contribute to the need for assistance. ¶
(6)/Services that are not outlined in sections (3) through (5) above are not eligible for payment. ~~Paymen~~/The Authority will not ~~m~~pay ~~not be made by the Authority to a PCA for~~a PCA or an AWC when the PCA or the DSW provides any of the following excluded services: ¶
(a) Shopping for entertainment purposes or non-essential items; ¶
(b) Social companionship; ¶
(c) Day care, partial hospitalization, respite or baby-sitting services; ¶

(d) Care, grooming, or feeding of pets or other animals except those incidental to other authorized ADL or IADL tasks; or ¶
(e) Yard work, gardening or home repair.
Statutory/Other Authority: ORS 413.042, 430.640 14.065
Statutes/Other Implemented: ORS 413.042, 414.025, 414.065, 430.640, 430.705, 430.715

AMEND: 410-172-0790

RULE SUMMARY: Updates eligibility requirements, incorporates AWC where applicable, clarifies medical necessity and consumer-employer requirements, and revises service authorization and discontinuation provisions.

CHANGES TO RULE:

410-172-0790
Eligibility for ~~Behavioral Health~~State Plan Personal Care ~~Attendant~~Program Services ¶

(1) ~~To be eligible for p~~In order to be authorized by the Authority to receive State Plan Personal ~~c~~Care (SPCC) services ~~through~~, individuals must: ¶
(a) Apply for the ~~BH~~ SPPC~~A~~ program~~, a~~n individual shall:s outlined in OAR 410-172-0796; ¶
(b) Meet the initial eligibility criteria identified in section (2) of this rule; ¶
(c) Meet with the Authority's designated IQA or the IQA's Service Coordinator to administer a needs-based assessment outlined in OAR 410-172-0830; ¶
(~~a~~d) ~~Demonstrate the need for assistance with personal care services from a qualified provider due to a disabling behavioral health condition and require medically appropriate services and meet the eligibility criteria described in this rule;~~Be able to demonstrate as determined through the needs-based assessment, the skills necessary to: ¶
(A) Have the knowledge, skills and capacity necessary for meeting the obligations of an employer of a personal care attendant (PCA) as outlined in OAR 410-172-0800; or ¶
(B) Having the knowledge, skills and capacity necessary for meeting the obligations of a co-employer of a direct support worker (DSW) as outlined in OAR 410-172-0845. ¶
(e) Participate in the development of a Person-Centered Service Plan led by the Authority's designated IQA or the IQA's Service Coordinator; and ¶
(f) Provide, when available and as reasonably requested by the Authority, the necessary information and documentation to assist the IQA in assessing the functional needs, including medical records and other provider documentation. ¶
(2) An individual of any age is eligible for personal care services through the SPPC program if they meet all of the other criteria as follows: ¶
(a) Be enrolled in a Medicaid OHP Plus benefit package; ¶
(b) Not be in foster care; ¶
(c) Demonstrates, through the Authority's needs-based assessment the following: ¶
(A) The presence of mental health symptoms or a mental health condition; and ¶
(~~b~~B) ~~Be enrolled in the Medicaid OHP Plus benefit package.~~A medically necessary need for assistance with at least one ADL or IADL due to a functional limitation that, without assistance, would adversely affect the individual's health, safety or welfare, as determined through the Authority's needs based-assessment. ¶
(3) Subject to the individual meeting the criteria of sections (1) and (2) of this rule, the Authority will prior authorize the individual's person-centered service plan (PCSP) before they can participate in the SPPC program. ¶
(~~2~~4) An individual is not eligible to receive personal care services through the ~~BH~~ SPPC~~A~~ program and will not participate in a needs-based assessment if: ¶
(a) The individual is receiving personal care services from a licensed 24-hour residential services program that includes but is not limited to a foster home, residential treatment home, or residential treatment facility; ¶
(b) The individual is in ~~a~~jail, prison, or other detention facility; hospital, sub-acute care facility~~;~~; nursing facility; Institution for Mental Disease (IMD); Intermediate Care Facility for Individuals with Intellectual or Developmental Disabilities (ICF/IDD); or other medical institution; ¶
(c) The individual's assessed service needs are being met under other Medicaid-funded home and community-based service options of the individual's choosing; ¶
(d) The individual's assessed service needs are met through the individual's natural support system as defined in these rules; or ¶
(e) The individual meets any criteria under excluded services and limitations as described in OAR 410-120-1200. ¶
(~~3~~5) ~~Behavioral health personal care attendant~~SPPC services are not intended to replace routine care commonly needed by an infant or child that is typically provided by the infant's or child's parent. ¶
(~~4~~6) ~~Behavioral health personal care attendant~~SPPC services m~~ay~~ust not be used to ~~replace other non-Medicaid governmental:~~ ¶
(a) Replace or duplicate services available from other non-Medicaid governmental programs; or ¶
(b) Duplicate other Medicaid services. ¶
(~~5~~7) The Authority may ~~close the eligibility and~~withdraw an individual's eligibility determination or service

authorization~~ for BH PCA services~~, or both, for SPPC services as outlined below in this rule: ¶
(a) An individual's eligibility determination or service authorization may be withdrawn by the Authority if an individual fails to: ¶
(~~a~~A) Employ a qualified provider either as a PCA as described in OAR chapter 418 division 020~~;~~ or signs an agreement with the Agency with Choice to initiate services as described in OAR chapter 309 division 045 within 45 days of service authorization; or ¶
(~~b~~B) Receive personal care from a qualified provider paid by the Authority ~~for~~at any time for a period of 30 continuous calendar days or longer. ¶
(~~6~~b) ~~S~~If an individual's eligibility determination or service~~s through the BH PCA program shall not duplicat~~ authorization is withdrawn by the Authority, the Authority will provide ~~o~~the~~r Medicaid services.¶~~
~~(7) To be eligible for personal care services through the BH PCA program, an assessment, service plan, any required prior authorization, and all Authority and DHS required forms must be current, complete, signed by a PCA Service Coordinator and placed in the individual medical record~~ individual and as applicable, the individual's Authorized Representative, a notice of action that complies with OAR 410-120-1865; or ¶
(c) If an individual's eligibility determination or service authorization is withdrawn by the Authority, the individual has the right to be reauthorized for SPPC services, or reapply to the SPPC program, as set out in OARs 410-172-0774 through 410-172-0840.
Statutory/Other Authority: ORS 413.042, 4~~30.640~~14.065
Statutes/Other Implemented: ORS~~ 413.042,~~ 414.025, 414.065~~, 430.640, 430.705, 430.715~~

AMEND: 410-172-0796

RULE SUMMARY: Clarifies the application process, referral pathways, and enrollment procedures, including provisions applicable to the AWC model.

CHANGES TO RULE:

410-172-0796
Applying for State Plan Personal Care Program Services-
(1) Individuals of any age ~~who are eligible for behavioral health personal care attendant (BH PCA) services as~~may apply for the SPPC program services through the Authority. Eligibility is determined based on the criteria described in OAR 410-172-0790(1)~~ may apply through the Independent Qualified Agent (IQA) contracted with the Authority. Individuals applying for State Plan Personal Care (~~. ¶
(a) If the Authority determines an individual is eligible for the SPPC program as described in 410-172-0790(1), the individual must: ¶
(A) Participate in a needs-based assessment performed by the Authority's IQA as outlined in 410-172-0830; and ¶
(B) Be approved to receive SPCC services based on the needs-based assessment. ¶
(b) Individuals applying for SPPC~~)~~ services ~~that~~who are not eligible for~~, or are currently receiv~~ SPPC through the Authority but meet or may meet one or more of the eligibility requirements in~~g~~ se~~rvices through the Division~~ction (2) or (3) below of this rule, may be referred to the Department's Office of Developmental Disabilities Services (ODDS) or Department's Office of Aging and People ~~W~~with Disabilities (APD). ¶
(2) An individual with an intellectual or developmental disability eligible for or receiving services through ODDS, a Community Developmental Disability Program (CDDP), or Support Services Brokerage ~~may apply for State Plan personal care~~as described in OAR 411-034-0035 may apply for SPCC services through the local CDDP or the local support services brokerage. ¶
(3) An older adult or an adult with a disability eligible for~~,~~ or receiving case management services from APD or Area Agency on Aging (AAA) ~~may apply for SPPC services through the local APD or AAA office.¶~~
~~(4) Individuals receiving benefits through the Department's Self-Sufficiency Programs (SSP)~~as described in OAR 411-034-0035 may apply for SP~~C~~PC services through the local APD or AAA office.~~ APD or the AAA is responsible for service assessment and for any planning and payment authorization for SPPC services if the applicant is determined eligible.¶~~
~~(5) Children eligible for or receiving SPPC in a foster care setting shall apply through the Department's Child Welfare program.~~
Statutory/Other Authority: ORS 413.042, 4~~30.640~~14.065
Statutes/Other Implemented: ORS 41~~3.042, 430.640, 414.025, 414.065, 430.705, 430.71~~4.025, 414.065

AMEND: 410-172-0800

RULE SUMMARY: Clarifies employer and co-employer responsibilities for individuals receiving services through the PCA and AWC service delivery models.

CHANGES TO RULE:

410-172-0800
~~Personal Care Attendant~~ Employer and Co-Employe~~e~~r Re~~lationship~~sponsibilities ¶

(1) T~~o be eligible for the BH PCA program, the individu~~he individual or the individual's authorized representative retains employer responsibilities for workers providing personal care services, including personal care attendants (PCA) and direct support workers (DSW). For purposes of OARs 410-172-0774 through 410-172-0845, an authorized representative who fulfills consumer-employer responsibilities described in this rule on behalf ~~o~~f the individual~~'s c~~ is sometimes referred to as a "Consumer~~-e~~ Employer ~~r~~Representative ~~shall demonstrate the ability to perform the following consumer-employer responsibilities:¶~~
~~(a) Locate, screen and hire a qualified PCA provider;~~(CER)." ¶
(2) If an individual is authorized to receive personal care services and elects to employ a PCA or co-employ a DSW, the individual or the individual's authorized representative will be required to perform the following: ¶
(a) Identify, screen, and hire a PCA or identify, screen and choose a DSW employed by the Agency with Choice (AWC); ¶
(b) Supervise and train a PCA ~~provider;~~or DSW; ¶
(c) Schedule work hours, leave and coverage; ¶
(d) ~~d~~Direct the PCA ~~provider~~or DSW in the provision of personal care services; ¶
(e) Verify the authorized hours completed by a PCA ~~provider~~or DSW through an Authority approved electronic visit verification (EVV) method ~~if~~when required~~;¶~~
~~(f) Recognize, discuss, and attempt to correct any performance deficiencies with the provider and provide appropriate, progressive disciplinary~~ by state or federal law; ¶
(f) Recognize PCA or DSW performance deficiencies. Upon recognition of performance deficiencies, the individual or the authorized representative must be able to: ¶
(A) Discuss the performance deficiencies with the PCA or DSW; ¶
(B) Work with the PCA or DSW to correct the performance deficiencies; and ¶
(C) Take appropriate corrective action as needed~~;~~. ¶
(g) Discharge a ~~provider~~PCA or DSW who does not perform ~~PCA~~ tasks in ~~compli~~accordance with these rules or to the reasonable satisfaction of the individual; and ¶
(h) Comply with all federal and state laws related to employer responsibilities, including ensuring a safe work environment. ¶
(~~2~~3) An individual ~~may designate a consumer-employer representative to act on their behalf to meet the employer responsibilities~~or their authorized representative and the PCA or DSW may, at their election, enter into a written agreement that describes their respective responsibilities and obligations as outlined in section (1) above of this rule~~. An individual's legal representative may be designated as the individual's consumer-employer representative.¶~~
~~(3) The division may deny an individual's designation of a consumer-employer representative if the representative has:¶~~
~~(a) A history of a substantiated abuse of an adult as described in OAR chapter 411, division 20, OAR chapter 407, division 45, or OAR chapter 943 division 45;¶~~
~~(b) A history of founded abuse of a child as described in ORS 419 B.005;~~, and other terms and conditions so long as those terms and conditions of the working relationship, does not conflict with or violate state and federal laws, the administrative rules governing the State Plan Personal Care (SPPC) program, and any applicable collective bargaining agreement or, in the case of a DSW, any policies or procedures required by the AWC. ¶
(a) A written agreement is optional and does not limit the individual's authority to discharge a PCA or DSW in accordance with section (4) of this rule. ¶
(~~c~~b) ~~Participated in excessive billing, outside of services approved in the individual's service plan, or fraudulent charges; or~~Other terms and conditions that may be incorporated in the individual agreement include but are not limited to: ¶
(~~d~~A) ~~Failed to meet the consumer-employer responsibilities, including prev~~Requiring a notice of resignation to be submitted by the PCA or DSW; ¶
(B) Identifying general expectatio~~u~~ns ~~termination for failure to meet the employer responsibilities in section (1) of this rule.~~regarding performance; and ¶

(C) Providing procedures on how to inform the individual of the need to stay home due to illness or otherwise miss a scheduled workday. ¶
(4) ~~An~~The individual ~~may select another consumer-employer~~or the individual's authorized representative ~~if the division suspends, terminates or denies an individual's designation of consumer-employer representative.¶~~
~~(5) Termination and the grounds for termination of employment~~retains the right to select, supervise, and discharge a PCA or DSW, consistent with applicable law The grounds for discharging a PCA or DSW are determined by ~~an~~the individual or the individual's authorized representative.~~¶~~
~~(a) An individual may terminate an employment relationship~~ but may include without limitation: ¶
(a) Circumstances identified in an individual writ~~h a provider at any time and for any reason.¶~~
~~(b) An individual shall must establish an employment agreem~~ten agreement that was signed by the PCA or as applicable, the DSW, and the individual or their authorized represent-at~~ the time of hire.~~ive; or ¶
(~~c~~b) ~~The employment agreement may include grounds for dismissal, notice of resignation, work~~Other reasons identified by the individual or authorized representative, provided su~~ch eduling and absence reporting.~~ discharge does not violate applicable laws and any applicable collective bargaining agreement. ¶
(~~6~~5) ~~A~~When an individual ~~who is unable to meet~~elects to receive services through an AWC: ¶
(a) The individual retains the employer responsibilities ~~in section (1) of this rule may be determined ineligible for the BH PCA program. If this occurs the PCA service coordinator is responsible for assessing for other appropriate program eligibility and referrals to o~~described in this rule, consistent with the co-employer role defined in applicable AWC rules as described in chapter 309 division 045; and ¶
(b) The AWC provider carries out agency and employer-of-record responsibilities in accordance with applicable rules and contracts. ¶
(6) An individual may designate an authorized representative to act on their ~~community resources.~~behalf to meet the co-employer responsibilities described in this rule: ¶
(~~7~~a) ~~A~~If an individual ~~with~~has a legal representative ~~shall have a~~, the legal representative ~~for person-centered service planning purposes. A legal representative may designate themselves the individual's consumer-employer representative or another to act in their stead~~may designate themselves or another individual as the individual's authorized representative; and ¶
(b) The Authority has the right to deny the designation of an authorized representative as outlined in OAR 410-172-0805. ¶
(7) An individual who is unable to meet the employer or co-employer responsibilities in this rule may be determined ineligible for personal care services.
Statutory/Other Authority: ORS 413.042, ~~430.640~~ORS 414.065, Oregon Laws 2024, Ch. 37
Statutes/Other Implemented: ORS 41~~3.042, 414.025, 414.065, 430.640, 430.705, 430.715~~4.065, 430.731, Oregon Laws 2024, Ch. 37

ADOPT: 410-172-0805

RULE SUMMARY: Clarifies the circumstances under which an authorized representative may be denied, suspended, or terminated and the individual's ability to designate a replacement authorized representative.

CHANGES TO RULE:

410-172-0805
Authorized Representative Disqualification
(1) The Authority has the right to deny the designation of an authorized representative if the authorized representative has: ¶
(a) A history of a substantiated abuse of an adult as described in OAR chapter 411, division 20, OAR chapter 419 division 110 or OAR chapter 943 division 45; ¶
(b) A history of founded abuse of a child as described in ORS 419B.005; ¶
(c) Participated in excessive billing, outside of services approved in the individual's service plan, or fraudulent charges; or ¶
(d) Has failed to meet, or has, in the past, had their authorized representative designation terminated for failing to meet the employer responsibilities described in section (1) of this rule. ¶
(2) An individual may select another authorized representative if the Authority suspends, terminates or denies an individual's designation of authorized representative.
Statutory/Other Authority: ORS 413.042, ORS 414.065
Statutes/Other Implemented: ORS 414.065

AMEND: 410-172-0820

RULE SUMMARY: Clarifies personal care attendant eligibility requirements, application procedures, and the Authority's authority to deny, suspend, terminate, or sanction provider enrollment by referencing existing Medicaid provider enrollment and sanction rules.

CHANGES TO RULE:

410-172-0820
P~~rovider Enrollment~~ersonal Care Attendant Eligibility, Sanctions and Termination ¶

(1) ~~The Authority may take action, including denial, suspension or termination, on a personal care attendant's~~A personal care attendant (PCA) must meet qualifications in OAR Chapter 418, Division 020, including being at least 18 years of age, and must not be: ¶
(a) The individual's spouse; ¶
(b) The parent or legal representative of a minor individual; or ¶
(c) The authorized representative or legal representative of an individual. ¶
(2) A person can submit an application to become a PCA to the Authority's IQA and complete required training as described in OAR chapter 418, division 020. ¶
(3) The Authority may deny, suspend, or terminate a PCA's s provider enrollment or re-enrollment~~,~~ and their assigned provider number or impose another sanction on the PCA, as described in OAR ~~C~~chapter 410 ~~D~~division 120. ~~The termination, suspension, and appeal~~ ¶
(4) In addition to the Authority's rights ~~for Personal Care Attendants are described in OAR 410-120-1560 through 410-120-1600.~~ ¶
~~(2) Immediate termination of a PCA will be determined by the Division based on reasonable cause to believe there is an imminent danger to current or future consumers. If there is good cause to believe that an individual's life, physical, emotional, or financial well-being is at risk, the Division~~under section (5) below of this rule and OAR chapter 410, division 120, the Authority has the right to immediately suspend a PCA's provider enrollment and assigned billing number when the Authority has reasonable cause to believe there is an imminent danger or risk of imminent danger to an individual's life, physical, emotional, or financial well-being. ¶
(5) If the Authority determines if it's necessary to immediately suspend a PCA's provider enrollment and assigned billing number: ¶
(a) The Authority will issue to the PCA a ~~N~~notif~~ication of Immediate Sanction to the PCA that may result in termination and prepare any necessary documents to support the decision should the PCA requests a hearing.~~ ¶
~~(3) The Authority may deny~~ce that the PCA's provider enrollment is immediately suspended in accordance with 410-120-1460(5); and ¶
(b) The PCA may appeal the immediate suspension as outlined in OAR 410-120-1460(7) and 410-120-1560 through 410-120-1600; and ¶
(c) The immediate suspension may remain in effect during any appeal as outlined in 410-120-1460(4). ¶
(6) In addition to exercising its right to immediately suspend a PCA's provider enrollment and assigned provider number as outlined in section (2) this rule, the Authority may also deny, suspend, or terminate a PCA's provider enrollment and assigned provider number or impose another sanction when the PCA: ¶
(a) Has been appointed the authorized representative or legal representative of an individual ~~they are employed by or found to be a spouse~~, is the individual's spouse, or is the parent or legal representative of ~~the~~a minor individual ~~they are employed by~~; ¶
(b) Fails to obtain a background check ~~as requested~~in accordance with OAR chapter 943, division 007, as required in writing by the Authority or has a background check ~~at any time~~ that results in an adverse fitness determination ~~pursuant to OAR chapter 943, division 007~~; ¶
(c) Lacks the skills, knowledge, or ability to perform the required work as described in these rules and OAR chapter 418, division~~,~~ 020; ¶
(d) Forged or otherwise falsified one or more credentials, education or training documentation, or other records submitted to the Authority to obtain approval as a ~~qualified provider~~PCA ; ¶
(e) Violates the protective service and abuse rules described in OAR Chapter 413, division 15, OAR chapter 411, division 20, ~~and~~or OAR chapter 4~~07~~19, division 4~~5~~110; ¶
(f) Commits one or m~~any~~ore Fiscal Improprieties as defined in OAR 410-172-0776~~, one time or as a pattern of behavior~~; ¶
(g) Fails to provide the authorized personal care services~~.~~; ¶
(h) Coerces or colludes with the individual to sign or approve false, blank or inaccurate time~~sheet~~ entries or documents false or inaccurate information in the EVV system; ¶

(~~h~~i) Fails to arrive and depart work at a date and time documented in the work schedule authorized by the individual; ¶
(~~i~~j) Fails to maintain a drug-free workplace~~; ¶~~
~~(j~~ which requires: ¶
(A) Refraining from manufacturing, possessing, selling, offering to sell, trading, or using illegal drugs while providing personal care services to an individual; and ¶
(B) Not being under the influence of substances that inhibit a PCA's ability to provide personal care services when responsible for the care of an individual. Substances that inhibit a PCA's ability to perform personal care services include without limitation, any one or more of the following: ¶
(i) Alcohol, inhalants, marijuana, marijuana edibles, marijuana tinctures; and ¶
(ii) Illicit drugs, legal drugs, and other drugs including prescription drugs, over-the-counter medications, or other similar substances that may inhibit a PCA's ability to provide personal care services, while responsible for the care of an individual. ¶
(k) Has been or is currently excluded as a provider by the U.S. Department of Health and Human Services, Office of Inspector General from participation in Medicaid, Medicare, or any other state or federal health care programs; ¶
(~~k~~l) Has been sanctioned or convicted of a felony or misdemeanor related to a crime, or violation of Title XVIII, XIX, or XX of the Social Security Act, or related state laws; ¶
(~~l~~m) Fails to maintain confidentiality, security and privacy of protected health information, as required by HIPAA and State privacy laws; ¶
(~~m~~n) Exerts undue influence, including coercion, over an individual or their ~~consumer-employer~~authorized representative; ¶
(~~n~~o) Introduces or creates an unwelcome nuisance to the workplace as determined by the individual; ¶
(~~o~~p) Fails to perform the duties of a mandatory reporter defined in ORS 419B.010 and ORS 430.765; ¶
(~~p~~q) Fails to inform the ~~Division~~Authority and their consumer-employer within 14 days of being arrested, cited for, or convicted of any potentially disqualifying crime listed in OAR 125-007-0270; ¶
(~~q~~r) ~~f~~Fails to meet one or more of the mandatory training and competency evaluation requirements described in OAR 418-020-0035; ¶
(~~r~~s) Is an employee ~~/~~of the Oregon Health Authority's ~~(The Authority) Health Systems~~Medicaid or Behavioral Health Divisions, OHA's Independent and Qualified Agent, the Oregon Department of Human Services (ODHS), the Oregon Home Care Commission (OHCC), or any other entity with the ability to assess for or authorize personal care services for the ~~BH~~ State Plan Personal Care (SPPC~~A~~) program; ¶
(~~s~~t) Fails to adhere to the hourly cap described in the CBA or to the service limitations in the ~~BH PCA~~service authorization~~,~~ or service plan ~~and State Plan Amendment~~; ¶
(~~t~~u) Knowingly engages in activities that may pose risks to the health and safety of an eligible individual, or others in the community, including exposure to an infectious disease; ¶
(~~u~~v) Engages in discrimination of others based on race, national origin, color, sex, gender identity, sexual orientation, age, religion, physical, intellectual, developmental, or mental disability, military status, or marital or family status and as described in OAR 410-120-1380(1)(c)(A); ¶
(~~v~~w) Offers ~~medically unnecessary services or mo~~or provides services that are not authorized, including using authorized service time for non-covered services ~~than necessary to the eligible individual;~~, or charging an individual for services outside the service plan; or ¶
(~~w~~x) Knowingly submits or causes to be submitted information or documents that contain inaccurate, misleading, or omitted information and such inaccurate, misleading, or omitted information would result, or has resulted, in an overpayment. ¶
(~~4~~7) The Authority may suspend a ~~provider and provider~~PCA and PCA payments in the event it has determined there is suspected fraud or abuse or a credible allegation of fraud as described in OAR 410-120-1510. ¶
(~~5~~8) If the Authority intends to suspend or terminate a PCA's provider enrollment and assigned provider number or impose one or more other sanctions under sections (4) or (5) of this rule and that misconduct does not pose an imminent risk to the individual: ¶
(a) The Authority will notify the PCA via certified mail, personal delivery, or other traceable delivery services, such as email, as outlined in OAR 410-120-1460(5)-(6); and ¶
(b) The PCA may appeal the suspension, termination, or sanction as outlined in OAR 410-120-1460 (7) and 410-120-1560 through 410-120-1600 so long as the appeal is not prohibited under section (6) of this rule. ¶
(9) The Authority also has the right to take other actions as set forth in OAR 410-120-1460(8). ¶
(10) The following situations are excluded from the provider appeal process described in this rule: ¶
(a) Terminations or renewal denials based on a background check required prior to enrollment and every two years while enrolled. A PCA who receives a denial notice from the background check unit has the right to a hearing in accordance with OAR 407-007-0200 to 407-007-0370. PCAs will not receive a separate notice from the ~~Division~~Authority when terminations or denials are issued as a result of a background check; ¶

(b) Termination due to inactivity or no proof of participation for a period of 18 months or more; ¶
(c) ~~Personal Care attend~~Denial of provider enrollment or reenrollment based on an applicant's ~~who~~or a PCA's failure to provide required and accurate information or information requested by the ~~Division~~Authority for a provider enrollment number within the time limits identified in Authority's letter with initial application or revalidation of the provider enrollment.~~¶~~
~~(6) A PCA may appeal the Authority's decision to deny or terminate the provider enrollment and provider number by filing a written request for a hearing with the Authority. PCA provider appeal rights and the provider appeal process are described in OAR 410-120-1560. Appeals involving providers are conducted by Authority in accordance with OAR 410-120-1560 to 410-120-1700 (7) When a provider, representative, or PCA Service Coordinator has reason to believe a PCA has committed one or more of the violations listed in section (2) of this rule, they must refer the alleged violation to the Division and any other appropriate state or federal entity./~~
Statutory/Other Authority: ORS 413.042, ~~430.640~~ORS 414.065
Statutes/Other Implemented: ORS 41~~3.042, 414.025, 414.065, 430.640, 430.70~~4.065, 430.735, 4~~3~~10.~~715~~600

AMEND: 410-172-0830

RULE SUMMARY: Updates assessment, service planning, authorization, and reassessment requirements, including procedures applicable to both the PCA and AWC models.

CHANGES TO RULE:

410-172-0830
~~Personal Care Attendant~~ Service Assessment, Authorization and ~~Monitoring~~Reassessment ¶

(1) The ~~Division~~Authority is responsible for administer~~s~~ing the ~~p~~State Plan Personal ~~c~~Care ~~services~~(SPPC) program and may ~~use~~contract with a designee ~~also~~, known as the Independent and Qualified Agent (IQA)~~. The IQA is responsible for:¶~~
~~(a) Receiving and processing requests for personal care attendant services from any source; ¶~~
~~(b) Conducting a BH PCA assessments of eligible individuals using Agency-provided assessment tools, prior to initiating services through the BH PCA program and at least every 12 months following initial authorization to determine program eligibility and level of service need, and when the individual's circumstances or needs change. The IQA shall comply with~~ and other qualified contracted parties, to fulfill some of the Authority's administrative obligations with respect to assessment, authorization, and monitoring of SPPC services provided to individuals. ¶
(2) After an individual is referred and applies for SPPC services, the Authority is responsible for the following: ¶
~~(A) Assessment must be performed on all individuals by a PCA Service Coordinator prior to receiving personal care services to determine their level of need. Personal Care Services are available to all eligible individuals, including children who are not in a foster care setting;¶~~
~~(B) In all following reassessments, the PCA Service Coordinator shall review the individuals service eligibility, the cost effectiveness of the individual's service plan, and whether the services provided are medically appropriate and meeting the individual's identified service needs;¶~~
~~(C) The PCA S~~a)/Receiving and processing requests for personal care services from any source; and ¶
(b) Designating a service coordinator who is a qualified mental health professional to conduct needs-based assessments of individuals using Authority approved tools to determine an eligible individual's level of need for personal care services. ¶
(3) The tools used to perform needs-based assessments enable the service ~~C~~coordinator ~~may adjust the number of hours authorized or the types of BH PCA services included in the~~to: ¶
(a) Determine the ability of individual~~'~~s ~~service plan and shall authorize a new or revised service plan base~~to perform the ADL, IADL, and o~~n~~ the ~~individual's current service needs. All adjustments must be documented in individual's medical record and be authorized in EVV system.¶~~
~~(c) Facilitating the PCA enrollment process; ¶~~
~~(d) Providing ongoing Service Coordination; and¶~~
~~(e) Provide notice of action, including:¶~~
~~(A) Notice of adverse benefit determination (NOABD) with Medicaid contested case hearing rights to~~r personal care activities and tasks; and ¶
(b) Assess an individual's service needs, identify the resources required to meet the individual's needs and determine if the individual~~s denied services through the BH PCA program in whole or in part; or ¶~~
~~(B) Notice of determination describing increases in services hours~~ is eligible for other approved programs or other services. ¶
(4) Needs-based ~~on~~ assess~~ed needs; and¶~~
~~(C) The NOABD must be provided to the individual within the timeframes required by OAR 410-120-1865; and¶~~
~~(D) Notify the requesting provider in accordance with OAR 410-120-1860 to 1865.~~ments are required to be performed when: ¶
(a) The initial request for personal care services is received; ¶
(~~2~~b) ~~The PCA Service Coordinator shall meet in person with an individual to perform a personal care assessment to document the individual's ability to~~At least every 12 months after the individual's first needs-based assessment was perform ~~the ADL, IADL, and personal care tasks listed in Oregon Administrative Rule (OAR) 410-172-0780:¶~~
~~(a) An individual's natural supports may participate in the assessment if~~ed if that first assessment resulted in an authorization of personal care services; ¶
(c) When requested by the individual or their authorized representative~~, if applicable;¶~~
~~(b) The PCA Service Coordinator shall assess an individual's servic~~ after they have ~~n~~bee~~ds, identify the resources required to meet the individual's needs and determine if the individual is eligible for the BH PCA program or other services;¶~~
~~(c) The PCA Service Coordinator shall meet wi~~n authorized and started receiving personal care services even if

there has been less th-an ~~individual in person at~~12 months since the least ~~once every 365 days to reassess the individual'~~needs-based assessment was ~~s~~per~~vice needs; or~~formed; and ¶
(d) When the individual~~ or their legal representative, requests reassessment; or~~'s circumstances or needs change. ¶
(~~e~~5) When ~~there is documented evidence indicating the~~an individual~~'s needs or circumstances have changed.¶~~
~~(3) The PCA Service Coordinator shall prepare a person-centered service plan identifying the tasks for which an individual requires assistance and the number of monthly authorized service hours. The PCA S~~ is reassessed for service need (needs-based reassessment) as required under section (2) above of this rule, the Authority will designate a service coordinator to perform the reassessment. ¶
(a) The service ~~C~~coordinator ~~shall document an individual's natural supports that currently meet some or all the i~~must determine whether: ¶
(A) Individual meets all service eligibility criteria;¶
(B) Individual's ~~s~~per~~vice needs:¶~~
~~(a) The~~son-centered service plan ~~shall describe the tasks to be performed by a qualified provider and shall authorize the maximum hours that may be reimbursed for those services during a 14-day pay period;~~(PCSP), as described in OAR 410-172-0776, is cost effective; ¶
(C) Personal care services provided to the individual are medically necessary and appropriate; and ¶
(~~b~~D) ~~The PCA Service Coordinator shall consider the cost effectiveness of services that adequately~~Personal care services provided meet the individual's identified service needs~~ when developing person-centered service plans;¶~~
~~(c) Payment for services authorized through~~. ¶
(b) If the individual remains eligible for the ~~BH~~ SPPC~~A~~ program ~~shall be prior authorized as described in OAR 410-172-0650 PCA Service Coordinator and based on the service needs of an individual as documented in the individual's written~~the service coordinator must: ¶
(A) If needed, revise the PCSP as outlined in OAR 410-172-0776; ¶
(B) If needed, adjust the number of hours authorized, the types of person~~-cente~~al care~~d~~ service~~ plan.¶~~
~~(4) The PCA Service Coordinator shall provide ongoing coordination of services through the BH PCA program, including authorizing changes in providers and service hours, add~~s included in the individual's service plan, or both; ¶
(C) Document all personal care needs-based rea~~ass~~s~~ing risks and monitoring and providing information and referral to a~~essment activities and tasks in individual~~ when indicated.~~'s medical record; and ¶
(~~5~~D) ~~Monitoring is necessary to ensure the service plan is effectively implemented and adequately addresses the needs of the individual and includes documentation of:¶~~
~~(a) Quarterly, or more frequent, in-person, face-to-face asynchronous audio/video telehealth, or telephone interviews with the individual or their legal representative were completed by~~Provide the individual's approved tasks and hours to the designated OHA staff member to process for submission to the applicable EVV system. ¶
(6) Each individual who participates in a SPPC needs-based assessment and reassessment will be provided with a notice of action advising whether they have been approved for or denied SPPC services. ¶
(a) If the ~~PCA Service Coordinator, as directed by the individual;¶~~
~~(A) Monit~~SPPC services are approved in full or in~~g~~ p~~references shall be determined by the individual or their legal representative and identified in the person-centered service plan; and~~art, the notice will identify the scope, amount, and duration of the services approved. ¶
(~~B~~b) ~~An in-person monitoring visit shall be completed annually,~~If the SPPC services are denied in full or ~~mo~~are ~~often, as determined by the individual or their legal representative.¶~~
~~(b) Services delivered in accordance with the individual's service plan and applicable Oregon Administrative Rules; ¶~~
~~(c) How the person-centered service plan adequately meets the individual's assessed needs and identified goals; ¶~~
~~(d) Changes in the needs or status of the individual;~~approved but in an amount, scope, and duration that is less than requested, the individual's notice, called a notice of adverse benefit determination (NOABD), will provide the individual with information regarding their right to a contested case hearing as outlined in OARs 410-120-1855, 410-120-1860, and 410-120-1865. ¶
(~~e~~c) ~~Follow-up activities identified to ensure the service plan is adjusted to meet the individual's need~~All notices will be provided to the individual within the timeframes outlined in OAR 410-120-1865. ¶
(~~6~~d) ~~The Authority may not authorize services within an eligible individual's home when:¶~~
~~(a) The individual's home has dangerous conditions that jeopardize the health or safety of the individual or the provider and necessary safeguards cannot be taken to improve the setting;~~Providers requesting the SPPC services on behalf of an individual will receive the same notice the individual receives as outlined in OARs 410-120-1860 and 410-120-1865. ¶
(~~b~~7) The service~~s cannot be provided safely by the PCA, in the individual's home;¶~~
~~(c) The individual does not have the ability~~ oordinator shall meet with the individual when performing the needs-based assessment. The individual and the service coordinato~~r~~ ma~~ke an informed decision, does not have a~~

~~designated representative to make decisions on their behalf, and necessary safeguards cannot be provided to protect the individual's safety, health, and welfare.¶~~
~~(7) The PCA S~~y meet in person or using, telehealth technology. The individual has the right to choose whether to meet with the service ~~C~~coordinator ~~shall give an individual or the individual's representative information on service~~in person or via telehealth. ¶
(a) An individual's natural supports may ~~a~~lt~~te~~rnatives and provide assistance to assess other choices when a provider or service setting selec~~t~~nd, and if needed participate in, the needs-based assessment if requested by the individual or the ~~individual's~~ir authorized representative, ~~is not authorized. Eligible~~f applicable; ¶
(b) An individual's ~~have free choice of providers~~authorized representative may also attend, and if needed participate in, the needs-based assessment.
Statutory/Other Authority: ORS 413.042, 4~~30.640~~14.065
Statutes/Other Implemented: ORS~~ 413.042,~~ 414.025, 414.065~~, 430.640, 430.705, 430.715~~

ADOPT: 410-172-0835

RULE SUMMARY: Clarifies requirements for developing, updating, and monitoring the person-centered service plan, including service coordination responsibilities, ongoing monitoring, and coordination with Personal Care Attendants and Agency with Choice providers.

CHANGES TO RULE:

410-172-0835
Person-centered Service Planning, Coordinating and Monitoring
(1) When the needs-based assessment demonstrates that personal care services are medically necessary and appropriate, the service coordinator will develop a person-centered service plan (PCSP). The individual has the right, but is not required to, participate in the development of the PCSP. ¶
(2) A completed PCSP must identify the tasks for which an individual requires assistance and the number of authorized service hours, and individual's natural supports who currently meet some or all the individual's service needs. ¶
(a) The PCSP must describe: ¶
(A) The tasks the personal care attendant (PCA) or the Agency with Choice (AWC), including the direct support worker (DSW), will perform; ¶
(B) The maximum authorized hours that the individual may receive personal care services during each 14-day pay period; and ¶
(C) The individual's monitoring preferences as described in section (4) below of this rule. ¶
(b) The service coordinator must consider the cost effectiveness of medically necessary and appropriate services when developing the individual's PCSP. ¶
(3) The service coordinator will provide ongoing coordination of services, including: ¶
(a) Authorizing changes in PCAs, DSWs, and other providers and service hours; ¶
(b) Addressing risks; ¶
(c) Monitoring services; ¶
(d) Providing information to the individual; and ¶
(e) Making referrals to other providers for the individual when indicated. ¶
(4) The service coordinator will monitor the personal care services provided to the individual to ensure the PCSP is effectively implemented and continues to meet the needs of the individual. Monitoring will occur at least every quarter of the service plan year and more frequently if requested by the individual, the individual's authorized representative or legal representative (or both if different), or if determined necessary by the service coordinator. ¶
(a) Monitoring requires: ¶
(A) The individual and the service coordinator to meet in-person, face-to-face using telehealth, or telephone interviews. The meeting may include the individual's authorized representative or legal representative (of both if different); ¶
(B) Monitoring preferences shall be determined by the individual or their authorized representative; and ¶
(C) The service coordinator must meet with the individual for in-person or face-to-face telehealth monitoring at least once annually, or more often, as determined by the individual or their authorized representative or legal representative (or both if different), or the service coordinator. ¶
(b) The service coordinator must document all monitoring activities in the individual's record, which must identify, at minimum, the following: ¶
(A) Identification of the personal care services delivered in accordance with the individual's PCSP and applicable Oregon Administrative Rules; ¶
(B) Whether and how the PCSP adequately meets the individual's assessed needs and goals; ¶
(C) Any changes in the needs or status of the individual; ¶
(D) Any follow-up actions needed to be performed and by whom to ensure the PCSP is adjusted to meet the individual's needs. ¶
(5) The Authority may not authorize the delivery of personal care services in an individual's home or family home when: ¶
(a) The individual's home or family home presents conditions that jeopardize the health or safety of the individual, their PCA, or their DSW and cannot be mitigated through reasonable safeguards; ¶
(b) The services cannot be provided safely by the PCA or DSW in the individual's home or family home; ¶
(c) The individual is unable to make informed decisions, and, as applicable, does not have an authorized representative to make decisions on their behalf, and necessary safeguards cannot be implemented to protect the individual's safety, health, and welfare; or ¶

(d) The individual is unable to fulfill employer or co-employer responsibilities, as applicable, and does not have an authorized representative to perform those responsibilities. ¶
(6) The service coordinator shall provide the individual or the individual's representative with information on service alternatives and assist with exploring other options when a PCA or a DSW employed by an AWC is not authorized. Eligible individuals have free choice of qualified providers of in-home care services.
Statutory/Other Authority: ORS 413.042, 414.065
Statutes/Other Implemented: ORS 413.042, 414.065

AMEND: 410-172-0840

RULE SUMMARY: Clarifies payment limitations, prior authorization, provider enrollment, documentation, Electronic Visit Verification (EVV), and payment requirements for Personal Care Attendants and Agency with Choice providers, including the 270-hour annual service limitation.

CHANGES TO RULE:

410-172-0840
State Plan Personal Care ~~Attendant~~ Payment Limitations ¶

(1) The number of personal care service hours authorized through the ~~BH~~ State Plan Personal Care (SPPC~~A~~) program for an individual per 14-day service period is based on projected ~~amounts of time~~time needed to perform specific personal care services ~~to the eligible individual.~~and is subject to the following: ¶
(a) Authorization of hours does not guarantee ~~hours or payment;~~the personal care attendant (PCA) or the direct support worker (DSW) will work all authorized hours; ¶
(b) The total of these hours is limited to 270 hours per individual per ~~calendar year;¶~~
~~(c) The hour cap identified in the CBA~~service plan year unless an exception has been granted in writing by the Authority; and ¶
(~~d~~c) ~~Individuals whose assessed service needs exceed the 270-hour limit may receive approval from the Division for additional hours.~~PCA work hours are subject to limitations established in the applicable collective bargaining agreement. ¶
(2) The Authority will pay for medically necessary and appropriate ~~personal care~~SPPC services only when provider enrollment standards in OAR 410-120-1260, OAR ~~C~~chapter 418 ~~D~~division 020, and this rule ~~have been verified as fully~~are met, and both the ~~employer~~individual and provider have been ~~formally~~ notified in writing that payment by the Authority is authorized. ~~Documentation submitted when requesting prior authorization shall support the medical appropriateness for the service. Prior authorization requests for personal care services must meet the requirements in OAR 410-172-0650.¶~~
~~(3) The Division~~ ¶
(3) The Authority shall make payment for personal care services through the ~~BH PCA~~approved program to the ~~PCA~~ provider on an eligible individual's behalf. Payment for services is not guaranteed. ¶
(a) To ~~request and~~ receive payment the ~~PCA~~provider must be an enrolled ~~p~~Provider as required by OAR 410-120-1260, ~~be a qualified provider,~~ meet all requirements of this rule and the ~~Division~~Authority must verify that an individual's ~~PCA~~ provider meets the qualifications set forth in OAR chapter 418, division 020. ¶
(b) The Authority will only make payment to a ~~PCA~~provider for personal care services when those personal care services are fully documented as required by ~~this rule~~OAR 410-120-1360 and 410-172-0620, comply with all State and Federal EVV requirements, and Authority rules for Medicaid payment and recordkeeping OAR 410-120-1280, OAR 410-120-1340, and OAR 410-120-1360. ¶
(c) Only valid, complete and error-free claims are paid to ~~PCA~~ providers. T~~o request and receive payment the PCA~~he PCA or DSW must use an Authority-approved EVV method to verify all personal care services. ¶
(d) The EVV ~~solution~~ and all personal care services records are subject to Authority pre-payment and post-payment review. The Authority will review billings, EVV ~~or~~, provider documentation, and other medical information for accuracy, medical appropriateness, level of service, correct coding, or for other reasons subsequent to payment of the claim. ¶
(e) Payment ~~to PCA~~ may be denied ~~or subject to,~~ adjust~~ment~~ed, or recover~~y~~ed if ~~billing~~ errors or improper payment are identified by a pre-payment or post-payment review, consistent with OAR 410-120-1396 and OAR 410-120-1397. ¶
(4) Provider claims for payment must meet the following requirements: ¶
(a) In accordance with OAR 410-120-1300, all provider claims for payment ~~shall~~must be submitted within 12 months of the date of service~~. For personal care services~~; ¶
(b) For SPPC delivered by a PCA the Authority will pay the standardized rate as described in the CBA in effect on the date of service~~. PCA p~~; and ¶
(c) Providers must submit accurate and complete claims and ~~/~~adequately document services via ~~the Division~~a Authority approved EVV method and as required by OAR 410-120-1260 to receive payment from the ~~Division.~~Authority. ¶
(5) Payment may not be claimed ~~by a provider~~ until the hours authorized for the payment period have been completed~~, as directed by an eligible individual or the individual's representative~~. ¶

(6) Payments made to a provider are calculated to a single attendant and a single eligible individual~~. A PCA provider~~ as follows: ¶
(a) A PCA shall not bill or receive payment for two or more individuals at the same time on the same day of service~~. A PCA provider shall not request or receive payment at the same time, on the same day of service, as more than one Agency enrolled provider.~~; and ¶
(b) An Agency with Choice provider may not bill for overlapping services delivered by its DSWs. ¶
(7) Payments will not be made ~~to a PCA provider~~ for personal care services during time periods ~~coinciding with an~~when the individual~~'s facility, or hospital sta~~ is admitted to a hospital or facility. ¶
(8) P~~CA p~~roviders~~'~~ billing for personal care services must ~~meet~~comply with Authority rules for Medicaid payment. ~~PCA p~~/Providers and ~~IQA are required to disclose any billing errors and return any payments received for them. Personal care services must meet the requirements in OAR 410-120-1280 and following~~the IQA must meet the following requirements to be considered valid: ¶
(a) The individual was eligible to receive Medicaid personal care services on the date of service~~.~~; ¶
(b) The service billed was included in the individual's approved service plan~~.~~; ¶
(c) The services were provided and recorded using an Authority-approved EVV method~~.~~; ¶
(d) The services were provided in a community setting and location approved in the individual's service plan~~.~~; and ¶
(e) The ~~PCA~~ provider ~~was qualified to deliver the service.~~met all applicable enrollment, documentation and record-retention requirements, and program integrity obligations, such as disclosing and returning identified overpayments. ¶
(9) All payments to ~~PCA~~providers are subject to pre-payment and post-payment review~~.~~ as follows: ¶
(a) The Authority will review billings, EVV, work schedule records or other medical or financial information for accuracy, medical appropriateness, level of service, or for other reasons subsequent to payment of the claim.~~¶~~
~~(a)~~; ¶
(b) Payment by the ~~Division~~Authority does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit ~~a~~ claims before or after the payment~~.~~; ¶
(~~b~~c) Claim payment may be denied or subject to recovery if medical review, audit, or other post-payment review determines the service was not provided in accordance with applicable rules or does not meet the criteria for quality of care or medical appropriateness of the care or payment~~.~~; and ¶
(~~c~~d) The Authority will conduct post-payment reviews as described in OAR 410-120-1396. ¶
(10) P~~CA p~~roviders and any entity billing the ~~Division~~Authority on behalf of the ~~PCA~~ provider, must submit true, accurate, and complete claims and encounters to the Authority. The Authority treats the submission of a claim or encounter, whether on paper or electronically, as certification ~~by the provider of the following: "This is to certify that the foregoing information is true~~of truth, accura~~te,~~cy and complete~~. I understand that payment of this claim~~ness. Providers that falsify or ~~encounter will be from fed~~conceal a material ~~and state funds, and that any falsificat~~fact in the submission o~~r~~f c~~oncealment of a material fact~~laims and encounters may be prosecuted under federal and state laws.~~"/~~ ¶
(11) P~~CA p~~roviders~~, IQA and PCA Service Coordinators~~ must comply with OAR 410-120-1510, OAR 461-195-0601 and the requirements therein for prompt reporting of fraud, waste and abuse in the Medicaid program. Information on how to report may be found online at all times: https://www.oregon.gov/oha/FOD/PIAU/Pages/Report-Fraud.aspx ¶
(12) A person debarred, excluded, suspended, or terminated from participation in a federal or state medical program, such as Medicare or Medicaid, or whose license or certification to practice is suspended or revoked by a state licensing board ~~may not submit claims for payment, either personally or through claims or encounters submitted by any billing agent/service, billing provider, Managed Care Entity (MCE) or other provider for any services or supplies provided under Oregon's medical assistance programs,~~shall not submit claims for payment in compliance with OAR 410-120-1380. ¶
(13) The Authority may suspend a SPPC~~A~~ provider and provider payments in the event it has determined there is suspected fraud or abuse as described in OAR 410-120-1500. Authority will suspend ~~PCA~~ provider enrollment and any payments, in whole or in part, when a credible allegation of fraud exists pursuant to federal law under 42 CFR 455.23, whether presented to the Authority, Oregon Department of Human Services (ODHS), Department ~~O~~of Justice (DOJ), Medicaid Fraud Control Units (MFCU), or law enforcement entity; unless there is a pending investigation and good cause exists to continue payment.
Statutory/Other Authority: ORS 413.042, ~~430.640~~ORS 414.065
Statutes/Other Implemented: ORS 41~~3.042, 414.025, 414.065, 430.640, 430.705, 430.71~~4.065

ADOPT: 410-172-0845

RULE SUMMARY: Updates requirements governing the AWC service delivery model, including co-employer responsibilities, service delivery, and program administration.

CHANGES TO RULE:

410-172-0845
Agency with Choice Provider Requirements
(1) An Agency with Choice (AWC) is a qualified provider under this rule so long as it meets all applicable standards in OAR chapter 309, division 045 including provider enrollment, service delivery, background checks, critical incident reporting, and co-employer responsibilities. ¶
(2) An AWC must enroll with the Authority as a Medicaid provider in accordance with OAR 410-120-1260. ¶
(3) To remain a qualified provider of SPPC program services, an AWC must maintain a valid license issued under OAR chapter 309, division 045 and comply with all applicable provider and program integrity requirements in OAR 943-120-0300 through 943-120-0350. ¶
(4) An AWC and its direct support workers (DSW) must provide all SPPC program services in accordance with this rule, OARs 410-172-0774 through 410-172-0840, OAR chapter 309, division 045, and all other applicable state and federal laws. ¶
(5) AWC services provided under this rule, inclusive of assistance with ADLs and IADLs provided by DSWs, must be authorized within the individual's person-centered service plan (PCSP) developed by the IQA. ¶
(6) In accordance with ORS 443.360, an AWC serves as the employer of record for DSW. The AWC is responsible for paying the DSWs employed by the AwC, complying with all applicable wage and hour laws, paying all payroll and other applicable taxes, and complying with Electronic Visit Verification (EVV) requirements. In addition, an AWC: ¶
(a) Serves as employer of record for all DSWs providing services under this rule; ¶
(b) Ensures all employees and contractors, including DSWs, meet background check and training requirements prior to service delivery; ¶
(c) Provides or ensures and documents completion of Authority-approved orientation and training for all DSWs prior to the delivery of services; ¶
(d) Implements and maintains an Authority-approved EVV system to record service delivery consistent with OAR 410-120-1360 and 42 U.S.C. 1396b(l); and. ¶
(e) Maintains documentation of all services provided, including EVV records, PCSP authorizations, and payroll records. ¶
(7) An AWC must, in accordance with OAR chapter 309, division 045, use Medicaid payments only for authorized service delivery, wages, benefits, and administrative costs directly related to AWC operations. ¶
(8) An AWC must report to the Authority any critical incidents, abuse or suspected abuse, or neglect in accordance with OAR 410-172-0630 and OAR 309-045-0390. ¶
(9) An AWC shall participate in Authority-led quality assurance activities, including reviews and audits.
Statutory/Other Authority: ORS 413.042, ORS 414.065, Oregon Laws 2024, Ch. 37
Statutes/Other Implemented: ORS 414.065, Oregon Laws 2024, Ch. 37, ORS 430.731

AMEND: 410-173-0005

RULE SUMMARY: Updates definitions and terminology for 1915(i) IHPC services and aligns terminology with Division 172 while incorporating the AWC service delivery model.

CHANGES TO RULE:

410-173-0005
Definitions
The defined terms listed in this rule apply to all of the administrative rules included in chapter 410, division 173, 1915(i) Home and Community Based Services State Plan Option. ¶
(1) "Activities of Daily Living (ADL)" has the meaning provided in OAR 410-172-0600. ¶
(2) "Adult Foster Home (AFH)" means any home licensed by the Division in which residential care is provided to five (5) or fewer Individuals who are not related to the Provider by blood or marriage as described in ORS 443.705 through 443.825. If an adult family member of the provider receives care, they shall be included as one of the Individuals within the total license capacity of the AFH. An AFH or Individual that advertises, including word-of-mouth advertising, to provide room, board, and care and services for adults is considered an AFH. ¶
(3) "Agency with Choice (AWC)" means an organization licensed by the Oregon Health Authority in accordance with OAR chapter 309, division 45 that provides Agency with Choice services. ¶
(4) "Agency with Choice Services" means personal care and other related services provided to an individual by an Agency with Choice in accordance with this division and OAR chapter 309, division 45. ¶
(5) "Aging and People with Disabilities (APD)" has the meaning provided in OAR 410-120-0000. ¶
(~~4~~6) "Alternative Service Resources" means other resources for the provision of services to meet an Individual's needs. Alternative service resources include but are not limited to natural supports or other community supports. Alternative service resources are not paid by Medicaid and shall be identified through the person-centered planning process. When possible, alternative service resources shall be used in lieu of Medicaid paid supports. ¶
(~~5~~7) "Assistance" ~~means the help needed by an Individual to complete Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL). For 1915(i) HCBS, assistance includes only the following activities: ¶~~
~~(a) "Cueing" means giving verbal or visual clues during an activity to help an Individual complete the activity without hands-on assistance; ¶~~
~~(b) "Hands-on" means a provider physically performs all or parts of an activity because an Individual is unable to do so; and ¶~~
~~(c) "Supervision" means, along with cueing, helping the Individual know when or how to carry out the task. Supervision may be in the form of monitoring, set-up, reassurance, or stand-by to ensure the Individual completes the task. Need for assistance may not be based on possible or preventative measures: ¶~~
~~(A) "Monitoring" means a provider observes an Individual to determine if assistance is needed; ¶~~
~~(B) "Set-up" means the preparation, cleaning, and maintenance of personal effects, supplies, assistive devices, or equipment so an Individual may perform an activity; ¶~~
~~(C) "Reassurance" means to offer an Individual encouragement and support; ¶~~
~~(D) "Stand-by" means a provider is at the side of an Individual ready to step in and take over the task if the Individual is unable to complete the task independently~~has the meaning provided in OAR 410-172-0776. ¶
(~~6~~8) "Assisted Living Facility (ALF)" means a building, complex, or distinct part thereof, consisting of fully, self-contained, individual living units where six (6) or more seniors and adult Individuals with disabilities may reside in homelike surroundings. The assisted living facility offers and coordinates a range of supportive services available on a 24-hour basis to meet the activities of daily living, health, and social needs of the residents as described in these rules. A program approach is used to promote resident self-direction and participation in decisions that emphasize choice, dignity, privacy, individuality, and independence. ¶
(~~7~~9) "Authority" has the meaning provided in 410-120-0000. ¶
(~~8~~10) "Authorized Representative" means any adult with longstanding involvement in assuring the Individual's health and safety, appointed by the Individual, or as applicable, the Individual's Guardian or Health Care Representative (as each term defined below in this rule) to participate in service planning process, and is: ¶
(a) Not a paid provider of Home and Community Based Services (HCBS), and supports; ¶
(b) Authorized, in writing or other method that clearly indicates consenting choice, by the Individual or, as applicable, Guardian or Health Care Representative, if applicable, to serve as the Individual's representative in connection with the provision of funded supports; and ¶
(c) Responsible to act as the authorized representative until the Individual, or as applicable, the Individual's Guardian or Health Care, if applicable, modifies the authorization or notifies the authority or authority's contractor that the authorized representative is no longer authorized to act on their behalf. ¶
(~~9~~11) "Behavioral Health Licensed Facility" (BH Licensed) means a community-based treatment facility that meets

the licensing requirements set forth by the Authority as described in chapter 309, division 35 and chapter 309, division 40./ BH licensed facilities for these rules includes Residential Treatment Facilities (RTF), Residential Treatment Homes (RTH), and Adult Foster Homes (AFH). ¶
(10~~2~~) "Chronic Mental Health Illness" means an Individual who is diagnosed by a psychiatrist, a licensed clinical psychologist, a licensed independent Practitioner as defined in ORS 426.005 or a non-medical examiner certified by OHA or ODHS as hav~~en~~ing chronic schizophrenia, a chronic major affective disorder, a chronic paranoid disorder, or another chronic psychotic mental disorder other than those caused by substance abuse. ¶
(11~~3~~) "Cognitive Impairment" means an Individual may be physically capable of performing ADL's or IADL's but may have limitations in performing these tasks due to remembering, learning new things, concentrating, or making decisions that affect their everyday life. Personal care services may be required because a cognitive impairment prevents an Individual from knowing when or how to carry out the task. Assistance may include cueing or supervision to support the Individual while performing the task. This does not include or replace community-based integrated support services that support the Individual to develop the skills needed to complete the task independently. ¶
(12~~4~~) "Community-Based Integrated Supports (CBIS)" means services and supports offered to Individuals who require assistance in the acquisition, retention, or improvement with life management, socialization skills and community engagement and community integration and engagement to maintain their maximum level of functioning and integration within the broader community./ ¶
(13~~5~~) "Court-Imposed Restrictions" means a court order imposing requirements or restrictions on individuals under the jurisdiction of a civil or criminal court, or under the jurisdiction of the Oregon Psychiatric Security Review Board (PRSB) placed on supervision, either in lieu of incarceration or as a condition of release from prison. Individuals who received court-imposed restrictions while on probation or parole accept the court order or the court ordered entity or program as their decision-making authority for the purposes of the rules described in 410-173-0000 through 410-173-00075. ¶
(14~~6~~) "Cueing" has the meaning provided in OAR 410-172-0600. ¶
(17) "Cultural Competence" means the provider of 1915(i) HCBS shall participate in the state's efforts to promote the delivery of services in a culturally competent manner to all enrollees, including those with limited English proficiency, diverse cultural and ethnic backgrounds, carceral histories, disabilities, and regardless of gender, sexual orientation, or gender identity. ¶
(15~~8~~) "Cultural Consideration" means to promote the delivery of services in a culturally competent manner to all enrollees, including those with limited English proficiency and diverse cultural and ethnic backgrounds, carceral histories, disabilities, and regardless of gender, sexual orientation, or gender identity. ¶
(16~~9~~) "Delegated Nursing Task" means a registered nurse (RN) authorizes a person as described in OAR 851-047-0000 who is not licensed to provide or perform a nursing task. In accordance with OAR chapter 851 division 047, the RN shall, prior to issuing written authorization of a delegated nursing task, assess a specific eligible Individual's care needs, evaluate the person's ability to perform the specific nursing task, provide the person with education and training to perform the nursing task, and supervise and re-evaluate the Individual and the person performing the task. ¶
(20) "Direct Support Worker (DSW)" means a person employed by an Agency with Choice who assists individuals with ADLs, IADLs, and health-related tasks identified in the individual's person-centered service plan. A Direct Support Worker is distinct from a Personal Care Attendant (PCA). ¶
(21~~7~~) "Face-to-Face" means a personal interaction where both words can be heard and facial expressions can be seen, either in person or through Telehealth services where there is a live streaming audio and video, if Medically Appropriate and Necessary. Face-to-Face could include communication methods such as Telehealth/Telemedicine, in lieu of in-person visits, in accordance with HIPAA, as directed by OHA and as chosen by the Individual. Medically Appropriate and Necessary accommodations shall be made for Individuals with disabilities including those with hearing or sight impairments. For Telehealth the following conditions must be met: ¶
(a) The Agent performing the assessment is independent and qualified as defined in 42 CFR § 441.730 and meets the provider qualifications defined by the State, including any additional qualifications or training requirements for the operation of required information technology; ¶
(b) The Individual receives appropriate support during the assessment, including the use of any necessary on-site support-staff; ¶
(c) The Individual provides informed consent for this type of assessment. ¶
(~~18~~22) "Family Home" has the meaning provided in OAR 410-172-0600. ¶
(23) "Fiduciary" means a guardian or conservator appointed under the provisions of ORS 125 or any other person appointed by a court to assume duties with respect to a protected person under the provisions of ORS 125. ¶
(~~19~~24) "Functional Needs Assessment" means the comprehensive assessment or reassessment conducted by the Independent Qualified Agent (IQA), that documents an Individual's physical, mental, and social functioning that impacts an Individual's ability to perform everyday tasks, and the Individual's need for 1915(i) Home and

Community-Based Services using Authority-approved assessment tools. ¶
(2~~0~~5) "Guardian" has the meaning assigned to it in ORS 125.300 and appointed in accordance with ORS 125.305. ¶
(2~~1~~6) "Group Home" has the same meaning as Oregon's Department of Human Services (ODHS) 24-hour residential setting and means a residential home, apartment, or duplex, licensed by the Department under ORS 443.410, where home and community-based services are provided to individuals with intellectual or developmental disabilities. A 24-hour residential setting is considered a provider owned, controlled, or operated residential setting. ¶
(2~~2~~7) "Habilitation" means services that support an Individual to develop, maintain,/or improve skills and competencies necessary to function as independently as possible to the extent as they would/if they did not have a disability or chronic condition. ¶
(2~~3~~8) "Hands-on" has the meaning provided in OAR 410-172-0600. ¶
(29) "Home" has the meaning provided in OAR 410-172-0600. ¶
(30) "Home and Community Based Services (HCBS)" means services and supports that assist eligible Individuals to remain in their home and community in accordance with the Code of Federal Regulations, approved Medicaid State Plan authorities, and Oregon Administrative Rules. ¶
(~~24~~31) "Home and Community-Based Settings (HCB Settings)" means a physical location meeting the qualities of 42 CFR §441.710(a)(1) and (2), OAR 410-173-0035, and OAR 411-004-0020 where an Individual receives HCBS. ¶
(32~~5~~) "Home Delivered Meals" means services provided to Individuals who live in their own homes, are home bound, are unable to do meal preparation, and do not have another person available for meal preparation. Provision of the home delivered meal reduces the need for reliance on paid staff during some mealtimes by providing meals in a cost-effective manner. It is an Individuals choice whether they want to receive home delivered meals, or not. ¶
(~~26~~33) "Housing Support Services" means the services determined necessary in the Person-Centered Service plan (PCSP) for an Individual to obtain and reside in an independent community setting that is tailored to the goal of maintaining an Individual's personal health and welcome in a HCBS where the person is directly responsible for their own living expenses. ¶
(~~27~~34) "Individually Based Limitation (IBL)" means any limitation outlined in OAR 410-173-0040 due to health and safety risks. An IBL is based on specific assessed needs and only implemented with informed consent from the Individual or, as applicable, the legal representative or authorized representative of the individual, as described in these rules. ¶
(~~28~~35) "Instrumental Activities of Daily Living (IADL)" has the meaning provided in OAR 410-172-0600. ¶
(~~29~~36) "Independent and Qualified Agent (IQA)" means an entity meeting the provider qualification requirements identified in 42 CFR §441.730 and under contract with the Division who: ¶
(a) Determines 1915(i) program eligibility initially, annually, when an individual's circumstances or needs change significantly, or upon individual request; ¶
(b) Provides education and technical assistance regarding HCBS and settings; ¶
(c) Coordinates and assists the individual in directing the person-centered planning process; ¶
(d) Drafts, documents, regularly reviews and updates person-centered service plans; ¶
(e) Prior authorizes HCBS Residential Services as described in these rules; ¶
(f) Conducts quality assurance and quality improvement activities; ¶
(g) Completes the face-to-face needs-based assessment in person; and ¶
(h) Performs transition management. ¶
(3~~0~~7) "Individual" means the Medicaid-eligible person applying for or receiving 1915(i) program services. ¶
(3~~1~~8) "Informed Consent" means the service options, risks, and benefits have been explained to the Individual, legal representative, or authorized representative, in a manner that they understand, and the Individual legal representative or authorized representative have agreed to the services on or prior to the first date of service. ¶
(3~~2~~9) "interRAI Community Mental Health (CMH)" means the comprehensive standardized functional needs assessment system utilized for the 1915(i) Home and Community-Based State Plan Option that is utilized to determine level of need, continued stay criteria for applicable settings, person-centered planning, strengths and preferences, and acuity-based residential rate decisions. ¶
(~~33~~40) "interRAI Addictions Supplement (AS)" means the additional InterRAI supplement form administered to Individuals who may have a history of or who are currently displaying symptoms or risk-factors for a substance use disorder to aid person-centered planning. ¶
(~~3~~41) "interRAI Forensic Supplement (FS)" means an additional supplement form administered to Individuals being assessed for 1915(i) Home and Community-Based Services State Plan Option who have a history of involvement with the criminal justice system or were referred from a jail or other similar facility-. The interRAI FS provides additional information necessary for person-centered planning for Individual's with a history of having spent time in jail or had involvement with the criminal courts. ¶

(~~35~~42) "Legal Representative" means a person who has been legally designated by court order to make financial or health care decisions for 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. Legal Representatives acting outside of their authority or scope shall meet the definition of Authorized Representative. ¶
(43~~6~~) "Legally Responsible Relative" means an unpaid relative of the Individual receiving 1915(i) services who by law is responsible for the support and care of another person. ¶
(~~37~~44) "Level of Care Utilization System (LOCUS)" means a single assessment instrument that uses quantifiable measures to guide assessment, level of care placement decisions, continued stay criteria for applicable settings, and clinical outcomes in a variety of settings for both mental health and addiction purposes. ¶
(~~38~~45) "Level of Service Inventory (LSI)" has the meaning provided in OAR 410-172-0705. ¶
(~~39~~46) "Local Mental Health Authority (LMHA)" has the same meaning as Community Mental Health Program (CMHP) as described in OAR ~~C~~chapter 309, ~~D~~division 014. ¶
(4~~0~~7) "Medically Appropriate" has the meaning as defined in OAR 410-120-0000 and 410-172-0630. ¶
(4~~1~~8) "Medically Necessary" has the meaning as defined in OAR 410-120-0000. ¶
(4~~2~~9) "Natural Support" means resources and supports (e.g., relatives, friends, significant others, neighbors, roommates, or the community associates) who voluntarily provide services and supports to an Individual without the expectation of compensation. Natural Supports are identified in collaboration with the Individual and the potential Natural Support." The Natural Support is required to have the skills, knowledge, and ability to provide the needed services and supports and shall be identified within the Person-Centered Service Plan (PCSP). ¶
(~~43~~50) "Notice of Planned Action" means a written notice mailed to the Individual as described in OAR 410-120-1865 in the event an Individual's course of treatment or covered services shall be denied, terminated, suspended, or reduced. ¶
(~~44~~51) "ODDS" means the Oregon Department of Human Services, Office of Developmental Disabilities Services. ¶
(~~45~~2) "OHP" means the Oregon Health Plan. ¶
(~~46~~53) "Oregon Department of Human Services (Department)" or "ODHS" means the agency established in ORS ~~C~~chapter 409, including such divisions, programs and offices as may be established therein. ¶
(5~~4~~7) "Peer Support Specialist" means a certified person as defined in ORS 414.025 providing peer delivered services to an Individual or family member with similar life experience. ¶
(~~48~~55) "Person-Centered Service Plan (PCSP)" means the written document prepared by the IQA or the person-centered service plan coordinator that details the supports, desired outcomes, activities, and resources required for an Individual to achieve and maintain personal goals, health, and safety as described in OAR 410-173-0025. The PCSP shall be completed and signed prior to the Individual receiving HCBS. The PCSP is not satisfied by a document primarily prepared by a provider. PSCP must include the following: ¶
(a) The PCSP authorizes the Medicaid services that may be rendered and claimed; ¶
(b) The effective date of the PCSP is upon signature by the Individual, or authorized representative, the providers of services, and the IQA PCSP coordinator; ¶
(c) Billing for services is not authorized prior to the PSCP effective date or for any services not included in the PCSP. ¶
(~~49~~56) "Person-Centered Service Plan Coordinator (PCSP Coordinator)" means the Qualified Mental Health Professional (QMHP) or licensed professional operating within the scope of their license and employed by the Division's contracted IQA who is designated to provide service coordination and person-centered service planning with Individuals, their person-centered services planning team, and legal or authorized representative if applicable. ¶
(5~~0~~7) "Person-Centered Planning Process" means the process required by 42 CFR § 441.720 and used by the IQA to develop and approve a written PCSP jointly with the Individual, their identified person-centered service planning team, and legal or authorized representative if applicable. The person-centered planning process is directed by the Individual to the maximum extent possible. The process and service plan shall meet the requirements of OAR 410-173-0025 and are based on the independent assessment of the Individual's assessed, approved and agreed upon needs. ¶
(5~~1~~8) "Provider Owned, Controlled, or Operated Residential Setting" means: ¶
(a) The residential provider is responsible for delivering HCBS to Individuals in the setting and the provider: ¶
(A) Owns the setting; ¶
(B) Leases or co-leases the residential setting; or ¶
(C) If the provider has a direct or indirect financial relationship with the property owner, the setting is presumed to be provider controlled or operated. ¶
(b) A setting is not provider-owned, controlled, or operated if the Individual leases directly from a third party that has no direct or indirect financial relationship with the provider; ¶
(c) When an Individual receives services in the home of a family member, the home is not considered provider-

owned, controlled, or operated. ¶
(5~~2~~9) "Psychosocial Rehabilitation (PSR) Services~~-~~" means services that are medical or remedial and recommended by a licensed physician or other licensed practitioner to reduce impairment to an Individual's functioning associated with the symptoms of a mental disorder or to restore functioning to the highest degree possible. PSR helps Individuals compensate for or eliminate functional deficits, environmental and interpersonal barriers, and helps Individuals integrate as an active and productive member of their family and community with the least possible professional intervention. ¶
(~~53~~60) "Qualified Mental Health Associate (QMHA)" means an individual delivering services under the direct supervision of a QMHP who meets the minimum qualifications as authorized by the Local Mental Health Authority (LMHA) or designee and specified in OAR 309-019-0125. ¶
(~~54~~61) "Qualified Mental Health Professional (QMHP)" means a Licensed Medical Practitioner (LMP) or any other individual meeting the minimum qualifications as authorized by the LMHA or designee and outlined in OAR 309-019-0125. ¶
(~~55~~62) "Recovery Assistant" means a provider who provides a flexible range of services. Recovery assistants provide face-to-face services in accordance with a service plan that enables a participant to maintain a home or apartment, encourages the use of existing natural supports, and fosters involvement in treatment, social, and community activities. A recovery assistant shall: ¶
(a) Be at least 18 years of age; ¶
(b) Meet the background check requirements described in OAR 950-060-0060; ¶
(c) Conform to the standards of conduct as described in OAR 950-060-0080. ¶
(~~5~~63) "Representative Payee" or "Payee" means an individual designated by the Social Security Administration to receive money payments of aid. ¶
(~~57~~64) "Residential Treatment Facility (RTF)" means a program licensed by the Division to provide services on a 24-hour basis for six (6) to sixteen (16) Individuals as described in ORS 443.400(11). ¶
(65~~8~~) "Residential Treatment Home (RTH)" means a program that is licensed by the Division and operated to provide services on a 24-hour basis for up to five (5) Individuals as defined in ORS 443.400(12). ¶
(~~59~~66) "Serious Mental Illness (SMI)" means an Individual, who has a disorder diagnosable under the current edition of the Diagnostic and Statistical Manual of Mental Disorders, excluding intellectual disabilities, neurocognitive disorders, and substance use disorders that has resulted in functional impairment which substantially interferes with or limits one or more major life activities. Major life activities include: ADLS and IADLS as defined in OAR 410-172-0600 and functioning in social, family, community, and vocational/educational contexts. ¶
(6~~0~~7) "Service Need" means the level or type of support (cueing, hands-on assistance, and supervision) an individual requires from another person or equipment to complete functions or activities as independently as possible. Service need is based on the independent assessment of the Individual's needs. ¶
(6~~1~~8)/"Skilled Services" means services delegated by a Registered Nurse (RN) under Oregon's Nurse Practice Act maybe considered personal care services when the RN provides appropriate training and delegation of the listed nursing tasks in accordance with the Oregon Nurse Practice Act. (OAR ~~C~~chapter 851 ~~D~~division 047). ¶
(6~~2~~9) "Therapeutic Activities" means group and generalized activity therapy as determined in the person-centered service plan, related to the care and treatment of the Individual and administered by a qualified provider to Individuals diagnosed with a behavioral health condition that result in the improvement or reduction of symptoms and are not for recreation. ¶
(~~63~~70) "Serious and Persistent Mental Illness (SPMI)" means the current DSM diagnostic criteria for at least one (1) of the following conditions, as a primary diagnosis for an adult 18 years of age or older: ¶
(a) Schizophrenia spectrum and other psychotic disorders; ¶
(b) Depressive disorders; ¶
(c) Bipolar and related disorders; ¶
(d) Obsessive Compulsive Disorder (OCD); ¶
(e) Post Traumatic Stress Disorder (PTSD) and Other Specified Trauma- and Stressor-Related Disorder due to cultural syndromes; or ¶
(f) Borderline personality disorder. ¶
(~~64~~71) "Supervision" has the meaning provided in OAR 410-172-0600. ¶
(72) "Transition Management" means the services and supports offered to an Individual to assist them transition from a residential setting to an independent living setting of their choice.
Statutory/Other Authority: ORS 4~~09.050, 412.001, 413.042, 413.085, 414.025, 443.738, 427.104, 430.662~~13.042, 414.065
Statutes/Other Implemented: ORS 4~~09.050, 413.042, 413.085, 414.025, 410.600, 427.007, 430.610, 430.620, 430.662 - 430.670~~14.025, 414.065

AMEND: 410-173-0105

RULE SUMMARY: Clarifies the relationship between Divisions 172 and 173, incorporates the AWC service delivery model into 1915(i) IHPC services, and identifies requirements that are specific to the 1915(i) authority.

CHANGES TO RULE:

410-173-0105
~~HCBS-~~1915(i) In-Home Personal Care/
(1) ~~HCBS In-Home Personal Care (IHPC) are direct services that are authorized using a person-centered planning process that allow an eligible individual the opportunity to direct their services and supports. The direct services assist an individual to accomplish ADL/IADL tasks,~~ Except as otherwise provided in this division, OARs 410-172-0774 through 410-172-0845 apply to 1915(i) In-Home Personal Care (IHPC) services authorized under this division to ensure services are administered in a consistent and equitable manner, except where this division provides otherwise. ¶
(a) For purposes of applying OARs 410-172-0776 and 410-172-0800 through 410-172-0845 to 1915(i) IHPC services: ¶
(A) References to a person-centered service plan (PCSP) apply only to the portions of an individual's 1915(i) PCSP authorizes 1915(i) IHPC services. ¶
(B) References to a service coordinator include the Authority's Independent Qualified Agent (IQA) responsible for assessment, service authorization, person-centered service planning, monitoring, or related 1915 (i)IHPC functions under this division. ¶
(C) References to the State Plan Personal Care (SPPC) program means 1915(i) IHPC services authorized under this division. ¶
(b) Eligibility determination, assessment, service authorization, and person-centered service planning for 1915(i) IHPC services are governed by this division. ¶
(c) In the event of a conflict between OAR chapter 410, division 172 and this division, this division controls. ¶
(d) Nothing in this rule is intended to conflict with or supersede any applicable collective bargaining agreement ("CBA") governing homecare workers (as defined in ORS 410.600(9)), personal support workers (as defined in ORS 410.600(12)), personal care attendants (as defined in OAR 41~~0-173-0005, in home settings and the broader community to the same degree as individuals who do not require services and supports to remain in their home and community. IHPC do not include services that a~~8-020-0010), or direct support workers (as defined in ORS 443.360). In the event of a conflict, applicable state or federal law controls. To the extent permitted by law, the terms of the applicable CBA also control over this rule. ¶
(2) 1915(i) IHPC services support eligible individuals to meet their assessed personal care needs and live in the community, and: ¶
(a) Are authorized for eligible individuals who have received a functional needs assessment and PCSP from the Authority's Independent and Qualified Agent (IQA) that identifies the 1915(i) IHPC necessary to the individual's assessed needs; ¶
(b) Are provided in a manner that allows an eligible individual to direct their services and supports; ¶
(c) Assist ~~an~~ individuals with Activities of Daily Living (ADL) or Instrumental Activities of Daily Living (IADL) tasks, as defined in OAR 410-173-0005; and ¶
(d) Exclude services whose primary purpose is the acquisition, retention, and improvement of the skills needed to accomplish ADL/IADL tasks.////¶
(~~2)~~ I3) The Authority has established task-specific maximum service period hours for HCBS 1915(i) IHPC services based on an individual's ~~exercise Employer Authority in HCBS IHPC services/~~assessed need for assistance with ADLs and IADLs. ¶
(4) Individuals who receive HCBS 1915(i) IHPC services may receive their services through one of two service delivery models: ¶
(a) PCA model with consumer-employer responsibilities as described in OAR 410-172-0800; or ¶
(b) Agency with Choice model with co-employer responsibilities as described in OAR chapter 309, division 45. ¶
(5) Regardless of the service delivery model, individuals receiving 1915(i) IHPC services retain authority to direct their services by: ¶
(a) Identifying ~~their own~~ candidates for employment; ¶
(b) Screening otherwise qualified candidates ~~for~~to determine their ability to meet the individual's assessed needs; ~~and~~ ¶
(c) ~~H~~Dir~~ing, supervising, directing, and discharging employees enrolled as Personal Care Attendants as per these rul~~ecting day-to-day services consistent with the individual's person-centered service plan; and ¶
(d) Participating in the selection and dismissal of workers in accordance with the applicable service delivery model.

¶
(6) Employer responsibilities vary by service delivery model as follows: ¶
(a) Under the PCA model, the individual serves as the consumer-employer and hires, supervises, and dismisses PCAs in accordance with OAR 410-172-0800./ ¶
(3b) ~~The Authority may terminate a IHPC provider per these rules and OAR 410-172-0820.//Grounds for termination include, but are not limited to, violations of provider standards, failure to meet performance expecta~~Under the Agency with Choice (AwC) model, the Agency with Choice serves as the common-law employer including answering questions and providing support for DSW hiring, supervision and conduct. The individual retains authority to direct day-to-day services and participates in the selection~~s,~~ and ~~breaches of contractual obligations.~~dismissal of DSWs. ¶
(7) The Authority may terminate a PCA provider as described in OAR 410-172-0820./ ¶
(48) ADLs include eating, bathing, dressing, toileting, maintaining continence, mobility and transferring:/ ¶
(a) Eating includes assisting the individual in feeding or fluid intake by any means from a receptacle into the body, including gastrostomy tubes, including monitoring to prevent choking or aspiration; ¶
(b) Bathing includes assisting the individual with cleansing the body, washing hair, and using assistive devices when necessary to get in and out of the bathtub or shower;/ ¶
(c) Dressing includes assisting the individual with putting on, fastening, and taking off all items of clothing, braces, and artificial limbs, including obtaining and replacing items from their storage area in the immediate environment; ¶
(d) Toileting includes assisting the individual in getting to and from, on and off, the toilet, commode, or bedpan for elimination of feces and urine. This includes cleansing after elimination and adjusting clothing as necessary or requested; ¶
(e) Maintaining Continence includes reminders to use the toilet or commode, developing a continence schedule, assisting the individual with external cleansing of Foley catheter, emptying urinals, emptying bedside commode, emptying catheter drainage bag, maintenance bowel care, changing and replacing incontinence products, including colostomy or ileostomy bags;/ ¶
(f) Transferring includes assisting the individual with mobility, transfers, ambulation, and repositioning by any means, including use of an assistive device and turning or adjusting padding for physical comfort or pressure relief and encouraging or assisting with range of motion exercises./ ¶
(59) IADLs capture more complex life activities and include personal hygiene, light housework, laundry, meal preparation, shopping, using electronic communication devices, medication management and money management:/ ¶
(a) Personal hygiene includes performing or assisting the individual with activities required to keep one's desired appearance, secure or fasten clothing, comb/brush hair, nail care, foot care, skin care, menstrual care, mouth care and oral hygiene, etc.;/ ¶
(b) Light housework includes performing or assisting the individual with housekeeping tasks necessary to maintain the individual in a healthy and safe living environment;/ ¶
(c) Laundry includes performing or assisting the individual with laundering or cleaning of clothing, bedding, and other linens;/ ¶
(d) Meal preparation includes performing or assisting the individual with healthy meal planning and preparation, ensuring special diets are followed;/ ¶
(e) Shopping includes performing or assisting the individual in planning for and purchasing of essential items including clothing, groceries, prescribed medication, hygiene products and basic household necessities;/ ¶
(f) Using the telephone or other electronic communication devices includes performing or assisting the individual in arranging necessary appointments and making desired phone calls using a telephone, smart phone, tablet or other similar electronic device for communication purposes, including entering the phone number and connecting to secure telecommunication platforms;/ ¶
(g) Medication assistance includes helping the individual with oral medications prescribed for the individual by a licensed medical professional, which are ordinarily self-administered described below:/ ¶
(A) ~~Administe~~Organizing and preparing medication;/ ¶
(B) Supervision or cueing to ensure the individual is taking medication as prescribed;/ ¶
(C) Documenting and monitoring any notable side effects;/ ¶
(D) Refilling prescriptions; and/ ¶
(E) Assisting with use, maintenance, and cleaning of in-home medical equipment authorized by a licensed medical professional, including: ¶
(i) Monitoring the individual's condition; ¶
(ii) Ordering and maintaining necessary supplies; ¶
(iii) Use, maintenance, and cleaning of in-home medical equipment must be performed by PCA in compliance with manufacturers guidelines; and ¶

(iv) PCA must have received prior training and education from an RN, when applicable, in how to correctly perform these tasks~~;~~./ ¶
(h) Money Management includes performing or assisting the individual with budgeting, making payments for monthly expenses and use of personal funds for desired items and activities./ ¶
(~~6~~10) Personal care services may be required due to cognitive impairments that prevent an individual from knowing when or how to carry out ADL/IADL tasks. In such cases, personal assistance may include cueing along with supervision to ensure the individual performs the task properly./ ¶
(~~7~~11)/Services outside the ADL~~/~~s in section (8) and the IADLs in section (~~5~~9) above are not eligible for payment./Payment may not be made by the Authority ~~to a PCA or an IHCA~~ for any of the following excluded services:/ ¶
(a) Shopping for entertainment purposes or non-essential items;/ ¶
(b) Social companionship;/ ¶
(c) Day care, partial hospitalization, respite or baby-sitting services;/~~or~~ ¶
(d) ~~Y~~Card~~ work, gardening, or home repair./ ¶~~
~~(8) Limited assistance with a consumer's in-home animals is permitted only when directly related to an assessed ADL or IADL need and documented in the task list or service agreement.~~e, grooming, or feeding of pets or other animals except incidental assistance directly related to an assessed ADL or IADL need; or/ ¶
(~~9~~e) ~~Personal care services can be provided on a continuing basis or on episodic occasions~~Yard work, gardening, or home repair./~~/~~ ¶
(1~~0~~2) Delegated nursing tasks by a Registered Nurse (RN) under Oregon's Nurse Practice Act may be considered personal care services when the RN provides appropriate training and delegation of the listed nursing tasks in accordance with the ~~Oregon Nurse Practice Act (~~OAR ~~C~~chapter 851~~ Division 047)./ ¶~~
~~(11) IHPC services shall be provided in the following settings, as identified within the PCSP:/ ¶~~
~~(a) Community/ ¶~~
~~(b) Individual's own home, defined as a private residence where the individual resides independently, with a roommate, or in a shared housing arrangement;// ¶~~
~~(c) Individual's family home, defined as a private residence where the individual resides with family members;/ ¶~~
~~(12) IHPC services must be captured using an Electronic Visit Verification (EVV) system to meet the 21st Century Cures Act./ ¶~~
~~(13) IHPC shall be provided by the following provider types: ¶~~
~~(a) Personal care attendant as described in OAR 410-172-0776 through 410-172-0840; or/ ¶~~
~~(b) In-home care agency who:/ ¶~~
~~(A) Meet licensing standards as described in OAR Chapter 333, Division 536; and/ ¶~~
~~(B) Are classified as comprehensive as described in OAR 333-536-0007(1)(d)~~, division 047./ ¶
(1~~4~~3) Levels of assistance for determining IHPC service plan hours:/ ¶
(a) "Minimal Assistance" means an individual can perform the majority of an activity but requires some assistance from another person. Even with assistive devices, the individual requires assistance of another person for a task at least once ~~day each week totaling four (4) days per month~~in a 30-day period. The assistance needed shall be related to ADL and IADL needs documented in the PCSP. This means hands-on assistance, cueing, or stand-by presence during the activity;/ ¶
(b) "Substantial Assistance" means an individual can perform only a small portion of the tasks that comprise an activity without assistance from another person. The individual requires assistance with a task at least ~~daily~~once in a 30-day period;/ ¶
(c) "Full Assistance" means an individual needs assistance from another person through all tasks of an activity every time the activity is attempted. Even with assistive devices, the individual is unable to accomplish any tasks without the assistance of another person. This means the individual needs hands-on assistance of another person through all tasks of the activity, every time the activity is attempted./ ¶
(1~~5~~4) Maximum service period hours for ADL services:/ ¶
(a) The person-centered planning process uses the following maximum hours limitations for each two-week service period for ADL tasks. Maximum hours in each assistance level are not guaranteed. Hours authorized must be based on the service needs of an individual as determined by the IQA during the person-centered service planning process;/ ¶
(b) For in-home benefit plans the following maximums apply:/ ¶
(A) Eating:/ ¶
(i) Minimal assistance, up to three (3) hours;/ ¶
(ii) Substantial assistance, up to nine (9) hours;/ ¶
(iii) Full assistance, up to fourteen (14) hours;/ ¶
(B) Dressing ~~(including~~and grooming~~)~~:/ ¶
(i) Minimal assistance, up to two (2) hours;/ ¶

(ii) Substantial assistance, up to seven (7) hours;/ ¶
(iii) Full assistance, up to nine (9) hours;/ ¶
(C) Bathing and personal hygiene:// ¶
(i) Minimal assistance, up to five (5) hours;/ ¶
(ii) Substantial assistance, up to seven (7) hours;/ ¶
(iii) Full assistance, up to twelve (12) hours;/ ¶
(D) Mobility and transferring:/ ¶
(i) Minimal assistance, up to five (5) hours;/ ¶
(ii) Substantial assistance, up to seven (7) hours;/ ¶
(iii) Full assistance, up to twelve (12) hours;/ ¶
(E) Toileting and maintaining continence (bowel, and bladder):/ ¶
(i) Minimal assistance, up to five (5) hours;/ ¶
(ii) Substantial assistance, up to nine (9) hours;/ ¶
(iii) Full assistance, up to fourteen (14) hours;/ ¶
(F) Cognition:/ ¶
(i) Minimal assistance, up to three (3) hours;/ ¶
(ii) Substantial assistance, up to six (6) hours;/ ¶
(iii) Full assistance, up to twelve (12) hours. ¶
(c) PCSP hours for ADLs may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in the tasks associated with the activity of daily living as determined by a service assessment applying the parameters in this rule./ ¶
(d) The IQA may authorize fewer hours than the maximum number of hours in any or all ADL tasks based on their assessment of the individual's unmet need. ¶
(e) The IQA must document the reason for authorizing fewer hours than the maximum number of hours allowed. The IQA may authorize fewer hours than the maximum for any of the following ~~defined~~ reasons:/ ¶
(A) Reduced frequency or duration of an ADL need;/ ¶
(B) Durable medical equipment or home modification reduces need for assistance;/ ¶
(C) Individual preference;/ ¶
(D) Natural supports as defined in OAR 410-173-0005;/ ¶
(E) Provided or funded by another agency./ ¶
(~~e~~f) For households with two or more eligible individuals, each individual's ADL service needs must be considered separately. ¶
(1~~6~~5) Maximum service period hours for IADL services:/ ¶
(a) The person-centered planning process uses the following limitations for time allotments for IADL tasks. Maximum hours in each assistance level are not guaranteed. Hours authorized must be based on the unmet service needs of an individual as determined by the IQA during the person-centered service planning process:/ ¶
(A) Medication ~~Services~~management:/ ¶
(i) Minimal assistance, up to one (1) hour;/ ¶
(ii) Substantial assistance, up to two (2) hours;/ ¶
(iii) Full assistance, up to five (5) hours;/ ¶
(B) Personal Hygiene:/ ¶
(i) Minimal assistance, up to five (5) hours;/ ¶
(ii) Substantial assistance, up to seven (7) hours;/ ¶
(iii) Full assistance, up to twelve (12) hours;/ ¶
(C) Meal Preparation:/ ¶
(i) Minimal assistance:/ ¶
(I) Breakfast, up to one (1) hour;/ ¶
(II) Lunch, up to one (1) hour;/ ¶
(III) Supper, up to two (2) hours;/ ¶
(ii) Substantial assistance:/ ¶
(I) Breakfast, up to two (2) hours;/ ¶
(II) Lunch, up to two (2) hours;/ ¶
(III) Supper, up to three (3) hours; ¶
(iii) Full assistance:/ ¶
(I) Breakfast, up to five (5) hours;/ ¶
(II) Lunch, up to five (5) hours;/ ¶
(III) Supper, up to six (6) hours;/ ¶
(D) Shopping:/ ¶
(i) Minimal assistance, up to one (1) hour;/ ¶

(ii) Substantial assistance, up to two (2) hours;/ ¶
(iii) Full assistance, up to three (3) hours;/ ¶
(E) Housekeeping and Laundry:/ ¶
(i) Minimal assistance, up to two (2) hours;/ ¶
(ii) Substantial assistance, up to five (5) hours;/ ¶
(iii) Full assistance, up to nine (9) hours;/ ¶
(~~b~~F) ~~When two or more individuals eligible for IADL task hours live in the same household, the assessed need in medication management and transportation must be authorized separately. Payment is made for the individual with the high~~Money Management: ¶
(i) Minimal assistance, up to one (1) hours;/ ¶
(ii) Substantial assistance, up to (two 2) hours:/ ¶
(iii) Full assistance, up to three (3) hours;/ ¶
(G) Use of Electronic Communication Devices~~t~~ o~~f~~r t~~he allotments in meal preparation, shopping, and housekeeping and laundry and a total of two (2) additional IADL hours per service period for each additional individual to allow for the specific IADL needs of the other Individuals.~~elephone: ¶
(i) Minimal assistance, up to one (1) hours;/ ¶
(ii) Substantial assistance, up to two (2) hours;/ ¶
(iii) Full assistance, up to three (3) hours;/ ¶
(~~c~~b) Service plan hours for IADL tasks may only be authorized for an individual if the individual requires assistance (minimal, substantial, or full assist) from another person in that IADL task as determined by a service assessment applying the parameters in these rules. Hours authorized must incorporate the frequency and the duration of the tasks within each ~~instrumental activity of daily living~~IADL. For housekeeping, the size of the home may be used to reduce the hours. For meal preparation, hours must be reduced if an individual is receiving Medicaid home delivered meals./ ¶
(~~d~~c) The IQA may authorize fewer hours than the maximum number of hours in any or all IADLs based on their assessment of the individual's unmet need. ¶
(d) The IQA must document the reason for authorizing fewer hours than the maximum hours. The IQA may reduce hours for any of the following reasons:/ ¶
(A) Reduced frequency or duration of an IADL need;/ ¶
(B) Durable medical equipment or home modification reduces need for assistance;/ ¶
(C) Individual preference;/ ¶
(D) Natural supports;/ ¶
(E) Provided by or funded by another agency;/ ¶
(F) Small living space./ ¶
(~~17~~e) When two or more individuals eligible for IADL task hours live in the same household: ¶
(A) Medication management and transportation shall be authorized separately for each eligible individual. ¶
(B) For shared IADL tasks, payment is made for the individual with the highest of the allotments in meal preparation, shopping, and housekeeping and laundry and a total of two (2) additional IADL hours per service period for each additional individual to allow for the specific IADL needs of the additional individual's specific IADL needs./ ¶
(16) When one or more eligible individuals are living in the same household and receiving in-home services, the total number of hours authorized for ADLs and IADLs may not exceed 24 hours within any 24-hour period in the same household unless an exception is granted as described in th~~ese rules./~~is rule./ ¶
(17) The Authority may approve an exception to the maximum service period hours when an individual's assessed needs cannot be adequately met within the standard assessed service limitations. ¶
(a) The determination to authorize additional hours may be based on: ¶
(~~18~~A) A~~ single~~n initial assessment or reassessment; ¶
(B) Information identified through the person-centered service planning process; or ¶
(C) Information provided by the individual or the individual's authorized representative and those who participated in the assessment and person- centered service planning process. ¶
(b) Additional hours authorized under this section must be necessary to maintain the individual's health, safety, and welfare and be documented in the individual's PCSP. ¶
(18) A PCA is limited to 16 hours of awake care during a 24-hour work period./ ¶
(19) All PCAs are limited to 60 hours per week unless the individual has received a~~ "Weekly Cap" exception~~n exception described in (17)./ ¶
(20) In an emergency or unanticipated situation where the PCA must provide critical care to ensure the health or safety of the individual and the IQA is unavailable to provide prior authorization, the following shall be permitted if the PCA or individual notifies the IQA within two (2) business days of the date the additional hours were first:/ ¶
(a) Worked t~~o meet an ADL need totaling more than the hours established by section (17) of this rule;/ ¶~~

~~(b) Worked to meet an ADL nc~~hat exceed the hours authorized on the individual's PCSP;/ ¶
(b) Work~~s~~ed that exceed~~s~~ the ~~total amount~~maximum service period hours authorized by ~~the IQA on the service plan authorization~~sections (14) and (15) of this rule; or/ ¶
(c) ~~Totaling more than the hours established by~~Worked that exceed the awake care limitation in section (1~~7~~)(a8) of this rule ~~if an unanticipated need arises that requires~~when the PCA must~~o~~ remain awake to provide necessary ADL care./ ¶
(21) A provider may not receive payment from the Authority for more than the total amount authorized by the Authority on the service plan authorization form ~~under any circumstances~~. All service payments must receive prior authorization by the IQA. This section shall be waived ~~if the criteria~~unless the emergency provisions in section (~~18~~20) of this rule are met./ ¶
(22) The IQA must assess and utilize as appropriate, natural supports, cost-effective assistive devices, durable medical equipment, housing accommodations, and alternative service resources as described in this rule that may reduce the need for paid assistance./ ¶
(23) The Authority may authorize paid in-home services only to the extent necessary to supplement potential or existing resources within an individual's natural supports system./ ¶
(24) Payment by the Authority for Medicaid IHPC services are only made for the tasks described in this rule as ADL or IADL tasks. Services must be authorized to meet the needs of an eligible individual and may not be provided to benefit an entire household./
Statutory/Other Authority: ORS ~~409.050,~~ 413.042, 41~~3.085, 414.025, 426.495, 427.104, 430.662~~4.065
Statutes/Other Implemented: ORS 4~~09.050, 413.042,~~ 413~~14~~.08~~2~~5, 414.0~~25, 426.495, 427.007, 430.610, 430.620, 430.662 - 430.670~~65