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

FILING CAPTION: Update Medicaid Behavioral Health OARs To Reflect Required Program Changes For Personal Care Services.

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RULES:

410-172-0776, 410-172-0796

ADOPT: 410-172-0776

NOTICE FILED DATE: 01/24/2022

RULE SUMMARY: Adds a rule for definitions specific to the Behavioral Health personal care attendant (PCA) program (Rule number in Temporary filing expired and 410-172-0775 changed to 410-172-0776)

CHANGES TO RULE:

410-172-0776

Behavioral Health Personal Care Attendant (BH PCA) Program Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR 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 services, Community Mental Health Programs, or other community supports. Alternative 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 OAR 410-172-0780. Assistance may be in the form of hands-on assistance, supervising, cueing, or redirecting so that the individual performs the task on their own. In cases of cognitive impairments, assistance may include cueing along with supervision to ensure that the individual performs the task properly.¶

(3) "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) "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) "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 monitors the personal 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 knowing when 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.¶

(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://www.dhs.state.or.us/spd/tools/cm/homecare/index.htm>). 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 representative, if 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.¶

(11) "Cost Effective" means being responsible and accountable with Authority resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of all available service options, the utilization of assistive devices or assistive supports, natural supports, architectural modifications, and alternative service resources. Less costly alternatives may include resources not paid for by the Authority.¶

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

(13) "Direct Contact" means services provided by a PCA Service Coordinator through direct communication with an individual or their legal representative via phone, email or face-to-face contact, as directed by the individual, for the purposes of care coordination and service-plan monitoring.¶

(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.¶

(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 personal care services including alcohol, inhalants, prescription drugs, or other drugs, illicit or legal, including over-the-counter medications, while responsible for the care of an individual, while 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.¶

(16) "Electronic Visit Verification (EVV)" means a technological solution used to electronically verify whether 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;¶

(f) Name of individual receiving services.¶

(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.¶

(19) "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) "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 OAR 411-020-0002(1)(e);¶

(B) Borrowing money, property, or belongings from an individual;¶

(C) Taking an individual's property or money;¶

(D) Accepting or receiving items or services purchased for the personal care attendant by the individual;¶

(E) Forging an individual's signature;¶

(F) Falsifying payment records which includes but is not limited to:¶

(i) Submitting incorrect start and end times of work; or¶

(ii) Submitting payment for days that were not worked.¶

(G) Claiming to deliver services to an individual during a time also claimed for travel between worksites;¶

(H) On one or more occasions, working or claiming to work hours not prior authorized on a consumer-employer's service plan or working or claiming to work hours over the maximum authorized weekly number of hours allowed for the personal care attendant as permitted under the Collective Bargaining Agreement;¶

(I) Claiming hours worked for an individual while taking time off or when a relief care worker, as described in the CBA, is paid for providing services;¶

(J) 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) One or more intentional acts of dishonesty for purposes of unearned financial gain; or¶

(L) 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 407, division 045, 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) "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 connecting the individual with medical, social, and educational providers or other programs and services that can provide needed services to address identified needs of the individual.¶

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

(24) "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 an individual requires for continued well-being.¶

(26) "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 home. A PCA can be hired by the individual, a parent of a child, or the individual's legal representative.¶

(27) "Provider" or "Qualified Provider" means a personal support worker, including personal care attendants, that 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.¶

(29) "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 identifies:¶

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

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

(c) The maximum hours per service period of personal care authorized by the Authority or the Authority's designee.¶

(31) "Service Coordination" means the functions performed by a PCA Service Coordinator and includes determining annual service eligibility and developing a plan of authorized services.¶

(32) "Service Need" means the personal care and supportive services needed by an individual receiving Authority

services.[¶]

(33) "Service Period" means, two consecutive work weeks for a total of 14 days beginning on a Sunday and ending on a Saturday.[¶]

(34) "Skills, Knowledge, and Ability to Adequately or Safely Perform the Required Work" means a PCA 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.[¶]

(35) "Termination" means a sanction prohibiting a provider's participation in the Division's programs by canceling the provider's Authority-assigned billing number and agreement. No payments, Title XIX, or state funds will be made for services provided after the date of termination.[¶]

(36) "Unwelcome Nuisance to the Workplace" includes, but is not limited to, unwelcome guests or pets invited by a PCA into an individual's home, unwelcome behaviors, or unwelcome items resulting in the individual's dissatisfaction or a PCA's inattention to the individual's required service needs.

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: 410-172-0796

NOTICE FILED DATE: 01/24/2022

RULE SUMMARY: Adds a rule to clarify where a person should apply for state plan personal care services (Rule number in Temporary filing expired and 410-172-0795 changed to 410-172-0796)

CHANGES TO RULE:

410-172-0796

Applying for State Plan Personal Care Services

(1) Individuals of any age who are eligible for behavioral health personal care attendant (BH PCA) services as described OAR 410-172-0790(1) may apply through the Independent Qualified Agent (IQA) contracted with the Authority. Individuals applying for State Plan Personal Care (SPPC) services that are not eligible for, or are currently receiving services through the Division, may be referred to the Department's Office of Developmental Disabilities Services (ODDS) or Department's Office of Aging and People 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 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) may apply for SPPC 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, 430.640

Statutes/Other Implemented: ORS 413.042, 430.640, 414.025, 414.065, 430.705, 430.715