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TEMPORARY ADMINISTRATIVE ORDER
INCLUDING STATEMENT OF NEED & JUSTIFICATION

DMAP 36-2021

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

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ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

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

EFFECTIVE DATE: 09/14/2021 THROUGH 03/12/2022

AGENCY APPROVED DATE: 09/10/2021

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NEED FOR THE RULE(S):

- Oregon is required by federal law to implement Electronic Visit Verification, eliminating the usage of paper vouchers previously described in rule, to track data for personal care services provided in the home.
- CMS provided clarification indicating mileage re-imbusement is covered under personal care services.
- SB 1534 requires new training standards impacting provider enrollment.
- Requires alignment with current Oregon State Plan.

JUSTIFICATION OF TEMPORARY FILING:

The Authority finds that failure to act promptly will result in serious prejudice to the public interest, the Authority, and recipients of Medicaid benefits. These rules need to be adopted promptly so that the Authority may avoid program non-compliance with state and federal regulations.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

Oregon Provider Time Capture project materials: <https://www.oregon.gov/DHS/APD/ORPTC/pages/index.aspx>
SB 1534: <https://olis.oregonlegislature.gov/liz/2018R1/Downloads/MeasureDocument/SB1534/Enrolled>
Oregon State Plan: <https://www.oregon.gov/oha/hsd/medicaid-policy/pages/state-plans.aspx>

RULES:

410-172-0600, 410-172-0710, 410-172-0775, 410-172-0780, 410-172-0790, 410-172-0795, 410-172-0800, 410-172-0810, 410-172-0820, 410-172-0830, 410-172-0840

AMEND: 410-172-0600

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

Acronyms and Definitions ¶

(1) "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.¶

(2) "Activity of Daily Living (ADLs)" means those personal and functional activities required by an individual for continued well-being, that are essential for health and safety. ADLs include eating, bathing, dressing, toileting, transferring (including mobility and ambulation) and maintaining continence.¶

(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 assuring the individual's health and safety, appointed to participate in the service planning process, and is:¶

(a) Chosen and appointed by the individual or their legal representative, if applicable;¶

(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 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; and¶

(d) Responsible to act as the authorized representative until the individual or legal representative, if applicable, modifies the authorization or notifies the agency that the authorized representative is no longer authorized to act on their behalf.¶

(6) "Behavioral Health" means mental health, mental illness, addiction disorders; and substance use disorders.¶

(37) "Behavioral Health Services" means medically appropriate services rendered or made available to a recipient for treatment of a behavioral health or substance use disorders 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.¶

(49) "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.¶

(510) "Letter" means the document awarded to providers by AMH indicating the provider has complied with specific program requirements or administrative ¶ "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 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) "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.

(17) "Guardian" means an individual appointed by a court of law to act as guardian of a minor or a legally incapacitated individual. Guardian may also mean legal representative.

(18) "Hands-on" means a provider physically performs all or part of an activity because the individual is unable to do so.

(19) "Immediate Family" means spouses of recipients and parents of minor recipients, 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.

(21) "In-Person" means meeting with someone rather than talking on the phone, e-mailing, or writing to the person.

(22) "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 include, but are not limited to, housekeeping, including laundry, shopping, transportation, medication management, and meal preparation.

(23) "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.

(24) "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.

(25) "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 his or her authority as designated by the court or other agreement. Legal representatives acting outside of his or her 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.

(26) "Medicaid OHP Plus Benefit Package" means:

(a) Modified Adjusted Gross Income (MAGI) Medicaid/CHIP as defined at 410-200-0015(58).

(b) Oregon Supplemental Income Program Medical (OSIPM) as defined at 410-200-0015(60).

(27) "Level of Care" means the type, frequency, and duration of medically appropriate services provided to a recipient of behavioral health services.

(28) "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.

(8) "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 410-180-0326;

(c) Conform to the standards of conduct as described in OAR 410-180-0340(29) "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 assistant 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.¶

(30) "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.¶

(31) "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.¶

(32) "Personal Care Services" means medically necessary 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 in the home or other non-institutional community locations 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 the person performs the task by themselves.¶

(33) "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 410-180-0326;¶

(c) Conform to the standards of conduct as described in OAR 410-180-0340.¶

(34) "Redirection" means to divert the individual from one activity to another activity.¶

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

(36) "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.¶

(37) "Spouse" means an individual who is legally married to another individual.¶

(38) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to an individual with a condition that does not require acute hospital care but prevents the individual from being discharged to his or her home.¶

(39) "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.

Statutory/Other Authority: ORS 413.042, 430.640

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

AMEND: 410-172-0710

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0710

Residential Personal Care ¶

(1) Personal care services shall be provided to a resident of a Division licensed residential treatment program include a range of assistances, as developmentally appropriate, and described on the resident's person-centered service plan and residential plans of care.¶

(2) Personal care services are provided to individuals with behavioral health conditions that enable them to accomplish tasks that they would normally do for themselves if they did not have a behavioral health condition. Assistance may be in the form of hands-on assistance (actually performing a personal care task) for the resident, supervising, cueing, or (redirecting) so that the individual performs the task by him or herself. Behavioral health on their own.¶

(3) Personal care ~~attendant~~ services are provided in accordance with an individual's assessment and the authorized plan for services recommended by a provider meeting the qualifications of a QMHP or QMHA as defined in OAR 309-019-0105 Qualified Mental Health Professional (QMHP) or Qualified Mental Health Associate (QMHA) as defined in OAR chapter 309 division 019.¶

(24) Personal care assistance ~~most often~~ relates to performance of activities of daily living (ADLs) and instrumental activities of daily living (IADLs). ~~ADLs include eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management.~~¶

~~(3) P~~ as defined in these rules.¶

(5) Personal care services may be provided on a continuing basis or on episodic occasion (x). For residential personal care services the Authority will pay the standardized rate in the behavioral health fee schedule in effect on the date of service. Residential personal care services may be provided either on a continuing basis or on episodic occasions. the per diem rate standardization described in OAR 410-172-0705. ¶

(46) Paid providers of ~~facility-based~~ residential personal care services shall meet one of the following:¶

(a) ~~Licensed residential facility pursuant to OAR chapter 309, divisions 035 and 040;~~¶

~~(b) Secure Treatment Homes (RTH), Residential Treatment Facilityies (SRTF);~~¶

~~(c), Secure Residential Treatment Facilityies (SRTF);~~¶

~~(d) Residential Treatment Home (RTH); and Crisis-Respite Services programs as described in OAR chapter 309 division 35; or~~¶

~~(eb) Adult Foster Home (AFH) as described in OAR chapter 309 division 40.~~

Statutory/Other Authority: ORS 413.042, 430.640

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

ADOPT: 410-172-0775

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0775

Behavioral Health Personal Care Attendant (BH PCA) Program Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in 410-172-0775 through 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 or cueing so that the person performs the task by him or herself. 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 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, 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)" 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 things 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. 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 two 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 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

AMEND: 410-172-0780

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0780

Behavioral Health Personal Care Attendant Program ¶

(1) The Behavioral health personal care attendant services are essential Health Personal Care Attendant (BH PCA) program ensures state plan personal care services support and augment independence, empowerment, dignity and human potential through the provision of flexible, efficient and suitable services to adults and children eligible for State Plan personal care services. The BH PCA program is not intended to supplement an individual's own personal abilities and resources.¶

(2) The BH PCA program provides essential personal care services that enable an individual to move into or remain in his or her/het/their own home. Behavioral health pPersonal care attendant services are provided in accordance with an individual's authorized plan for services by a QMHA or QMHP as defined in OAR 309-019-0105:¶

(a) Behavioral health personal care attendant serviceserson-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 or other services to an individual's natural support system. Behavioral health pPersonal care attendant services may not be implemented for the purpose of benefiting an individual's family members or the individual's household in general;¶

(b) Behavioral health p:¶

(b) Personal care attendant services are limited to 2services through the BH PCA program may not exceed 270 hours per month per eligible individual;¶

(c) To meet an extraordinaryin a person-centered service plan year from the date they were determined eligible;¶

(c) When an individual's personal care service need,s an individual, representative, or legal representative may request an exception to the 20-hour per month limitation. Anre assessed as exceeding the annual maximum of 270 hours a year, an exception request must be submitted in writing by the PCA Service Coordinator and identify the following:¶

(A) The exception shall be requested through the local community mental health program or agency contracted with the Authority serving the individual.al 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 the additional personal care services start and length of time to complete the tasks.¶

(d) The Division 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 month limitation.person-centered service plan year limitation and issue written notice to the individual and the requesting provider:¶

(e) 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. ¶

(23) Personal care services include:¶

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

¶

(bD) Toileting, bowel, or bladder care, assis includes assisting the individual in getting to and from bathroom, on and off, the toilet, commode, or bedpan, urinal, or other assistive device used for toileting, changing incontinence supplies, following a toileting schedule, cleans for elimination of feces and urine. This includes cleansing after elimination and adjusting clothing as necessary.¶

(E) Maintaining Continence includes assisting anthe individual or adjusting clothing related to toiletingwith external cleansing of Foley catheter, emptying a-catheter drainage bag or assistive device, ostomy care, and bowel care;¶

(c) Mobility, transfers, or repositioning, maintenance bowel care, changing and replacing incontinence products, including colostomy or ileostomy bags.¶

(F) Transferring includes assisting anthe individual with ambulation or transfers with or without assistive devices, turning an individual mobility, transfers 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;¶

(db) Nutrition, preparing meals and special diets, Instrumental Activities of Daily Living (IADLs)¶

(A) Personal Hygiene includes performing or assisting with adequate fluid intake or adequate nutrition, assisting with food intake (feeding), monitoring to prevent choking or aspiration, assisting with special utensils, cutting food, and placing food, dishes, and utensils within reach for eating;the individual with activities required to keep one's desired appearance, secure or fasten clothing, comb/brush hair, nail care, foot care, skin 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.¶

(eD) Medication or oxygen management, assisting with ordering, organizational preparation includes performing or assisting the individual with healthy meal planning, and administering oxygen or prescribed mediepreparation, ensuring special diets are followed.¶

(E) Transportations (including pills, drops, ointments, creams, injeeces assisting the individual in getting to and from medically appropriate and necessary appointments and community activities through available means of transportations, inhalers, and suppositories), monitoring for choking while taking medications, assisting with the administtr accordance with the individual's authorized service plan, which may include:¶

(i) Scheduling non-emergent medical transportation for medical appointments;¶

(ii) Scheduling non-medical rides through public transportation ofr oxygen, maintaining clean oxygen equipment, and monitoring for adequate oxygen supply;¶

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

(3) Whther modes of transportation;¶

(iii) Accompanying the individual to and from appointments or community activities;¶

(iv) Transporting the individual in the personal care atten-dany of the services listed in section (2) of this rule are essential to the health, safety, and welfare of an individual and the individual is receiving personal care paid by the Division, the following support services may also be provided:¶

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

(b) Arranging for necessary medical appointments including help schedulingt's personal vehicle;¶

(I) The PCA Provider is required to submit proof of current vehicle insurance for the personal vehicle used to transport the individual and a current valid driver's license to the individual's PCA Service Coordinator prior to transporting client in the PCA's personal vehicle.¶

(II) Mileage is only reimbursed by the Authority when authorized in the individuals current 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 described in the current Collective Bargaining Agreement (CBA).

(IV) Mileage is only reimbursed by Authority for medical appointments when there is documentation in the individual's medical record, on the date of service, by the IQA of the barriers preventing the individual's use of non-emergent medical transportation or 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.

(G) Using the Telephone or other Electronic Communication Devices includes performing or assisting the individual in arranging necessary appointments and arranging medical transportation services (described in OAR chapter 410, division 136) and assistance with mobility and transfers or cognition in getting to and from appointments or to an office within a medical clinic or center;

(c) Observing the individual's health status and reporting any significant making desired phone calls using a telephone, smart phone, tablet or other similar 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 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 changes to physicians, health care cleaning of in-home medical equipment authorized by a licensed medical professionals, or other appropriate persons;

(d) First aid and handling of emergencies, including responding to medical incidents related to conditions such as seizures, spasms, or uncontrollable movements w monitoring client's 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 and PCA shall have received prior training and education from an RN, when applicable, in how to correctly perform these assistance is needed by anoks.

(I) Money Management includes performing or assisting ther individual and responding to an individual's call for help during an emergent situation or for unscheduled needs requiring immediat with budgeting, making payments for monthly expenses and use of personal funds for desired items and activities.

(c) Delegated nursing includes nursing tasks that are delegated by a Registered Nurse currently licensed and in good standing with the Oresponse; and

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

(d) 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.

(4) Service,s orientation, memory, or other cognitive symptoms.

(4)outside the ADL/IDL in section (3) above are not eligible for payment. Payment mayshall not be made by the Authority to a PCA for any of the following excluded services:

(a) Shopping;

(b) Community transportation;

(c) Money management;

(d) Mileage reimbursement for entertainment purposes or non-essential items;

(eb) Social companionship;

~~(fc) Day care, adult day services (described in OAR chapter 411, division 066), partial hospitalization, respite, or baby-sitting services;¶~~

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

~~(hd) Care, grooming, or feeding of pets or other animals; or¶~~

(ie) Yard work, gardening; or home repair.

Statutory/Other Authority: ORS 413.042, 430.640

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

AMEND: 410-172-0790

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0790

Eligibility for Behavioral Health Personal Care Attendant Services ¶

(1) To be eligible for ~~Behavioral Health personal care attendant services~~personal care services through the BH PCA program, an individual shall:¶

(a) Demonstrate the need for assistance with personal care services from a qualified provider due to a disabling behavioral health condition ~~with personal care services and meet~~and meet medical necessity and the eligibility criteria described in this rule;¶

(b) Be a ~~current recipient of a~~enrolled in the Medicaid OHP ~~full~~Plus benefit package.¶

(2) An individual is not eligible to receive ~~Behavioral Health personal care attendant services~~personal care services through the BH PCA program if:¶

(a) The individual is receiving personal care services from a licensed 24-hour residential services program (~~such as an adult~~that includes but is not limited to a foster home, residential treatment home, or residential treatment facility);¶

(b) The individual is in a prison, hospital, sub-acute care facility, nursing facility, 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 limitation as described in OAR 410-120-1200.¶

(3) Behavioral health personal care attendant 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) Behavioral health personal care attendant services ~~may~~shall not be used to replace other non-Medicaid governmental services.¶

(5) The Authority may close the eligibility and authorization for ~~Behavioral Health personal care attendant~~H PCA services if an individual fails to:¶

(a) Employ a ~~provider that meets the requirements in this rule~~qualified provider as described in OAR chapter 418 division 020;¶

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

(6) ~~Behavioral health personal care attendant services~~Services through the BH PCA program may not duplicate other Medicaid services.¶

(7) ~~Individuals~~To be eligible for Behavioral Health personal care attendantpersonal care services through the BH PCA program, an assessment, services as described shall apply through the local community mental health program or agency contrplan, any required prior authorization, and all Authority and DHS required forms must be current, complete, signed by a PCA Service Coordinator and placed with AMH in the individual medical record.

Statutory/Other Authority: ORS 413.042, 430.640

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

ADOPT: 410-172-0795

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0795

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) shall 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 shall 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) shall apply for SPPC services through the local APD or AAA office.¶

(4) Individuals receiving benefits through the Department's Self-Sufficiency Programs (SSP) shall 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

AMEND: 410-172-0800

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0800

Personal Care Attendant Employer-Employee Relationship ¶

- (1) ~~The relationship between a provider and an eligible individual or the individual's representative is that of employee and employer.¶~~
- (2) ~~As an employer, the individual shall create and maintain a job description for a potential provider that is in coordination with the individual's plan for services.¶~~
- (3) ~~The only benefits available to homecare and personal support attendants are those negotiated in a collective bargaining agreement and as provided in o be eligible for the BH PCA program, the individual or the individual's consumer-employer representative shall demonstratute. The collective bargaining agreement does not include participation in the Public Employees Retirement System e the ability to perform the Oregon Public Service Retirement Plan. Homecare and personal support workers are not state or Division employees.¶~~
- (4) ~~To be eligible for Behavioral Health personal care attendant services, the individual or the individual's representative shall demonstrate the ability to following consumer-employer responsibilities:¶~~
- (a) ~~Locate, screen, and hire a provider meeting the requirements described in this rule qualified PCA provider;¶~~
- (b) ~~Supervise and train a PCA provider;¶~~
- (c) ~~Schedule work hours, leave, and coverage;¶~~
- (d) ~~Track the hours worked and direct the PCA provider in the provision of personal care services;¶~~
- (e) ~~Have the ability to verify the authorized hours completed by a PCA provider through an Authority approved electronic visit verification (EVV) method if required;¶~~
- (ef) ~~Recognize, discuss, and attempt to correct any performance deficiencies with the provider and provide appropriate, progressive, disciplinary action as needed; and¶~~
- (fg) ~~Discharge an unsatisfactory provider.¶~~
- (5) ~~The Authority shall pay for Behavioral Health personal care attendant services to the provider on an individual's behalf. Payment for services is not guaranteed until the Authority has verified that an individual's provider meets the qualifications set forth in this rule.¶~~
- (6) ~~In order to receive Behavioral Health personal care attendant services from a personal support worker or homecare worker, an individual shall be able to meet or designate a representative provider who does not perform PCA tasks in compliance with these rules; and¶~~
- (h) ~~Comply with all federal and state laws related to employer responsibilities, including ensuring a safe work environment.¶~~
- (2) ~~An individual may designate a consumer-employer representative to act on their behalf to meet the employer responsibilities in section (4.1) of this rule.¶~~
- (7) ~~Termination and the grounds for termination of employment are determined by an individual or the individual's representative. An individual may terminate an employment relationship with a provider at any time and for any reason. An individual shall establish an employment agreeem 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 represent-at the timive oif hire. The employment agreement may include grounds for dismissal, notice of resignation, work scheduling, and absence reporting.¶~~
- (8) ~~After appropriate intervention, an individual unable to meet the employer responsibilities in section (4) of this rule may be determined ineligible for Behavioral Health personal care attendant services; 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;¶~~

~~(9c) An individual determined ineligible for Behavioral Health personal Participated in excessive billing, or excessive or fraudulent chare-attendant services may request these services at the individual's next annual re-assessment. Improvements in health and cognitive functioning may be factors in demonstrating the individual's abilityges; or¶~~

~~(d) Failed to meet the consumer-employer responsibilities, including previous termination for failure to meet the employer responsibilities described in section (41) of this rule. The waiting period may be shortened if a¶~~

~~(4) An individual is able to demonstrate the ability to meet the employer responsibilities sooner than may select another consumer-employer representative if the individual's next annual re-assessment.¶~~

~~(10) Asion suspends, terminates or denies an individual may's designate a representative to act on the individual's behalf to meet the employer responsibilities in section (4)ion of consumer-employer representative.¶~~

~~(5) Termination and the grounds for termination of employment are determined by an individual ofr this rule. Ane individual's legal representative may be desig.¶~~

~~(a) An individual may terminated as the individual's representative:¶~~

~~(a) The Authority may deny an individual's designation ofn employment relationship with a provider at any time and for any reason.¶~~

~~(b) An individual shall establish an employment a-grepresement_ative if the representative has: the time of hire.¶~~

~~(Ac) A history of a substantiated abuse of an adult as described in OAR chapter 411, division 20, OAR chapter 407, division 45The employment agreement may include grounds for dismissal, notice of resignation, wor-OAR chapter 943, division 45;¶~~

~~(B) A history of foundek scheduling and abuse of a child as described in ORS 419 B.005;nce reporting.¶~~

~~(C6) Participated in billing excessive or fraudulent charges; or¶~~

~~(D) Failed to meet the employer responsibilities, including previous termination for failurAn individual who is unable to meet the employer responsibilities in section (41) of this rule.¶~~

~~(b) An individual may select another representative if the Authority suspends, terminates, or denies an individu 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 referral's designation of a representative to other community resources.¶~~

~~(117) An individual with a guardianlegal representative shall have a representative for person-centered service planning purposes. A guardianlegal representative may designate themselves the individual's representative consumer-employer representative or another to act in their stead.~~

Statutory/Other Authority: ORS 413.042, 430.640

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

SUSPEND: 410-172-0810

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

~~410-172-0810~~

~~Personal Care Attendant Qualifications~~

~~(1) A qualified provider is an individual who, in the Authority's judgment, demonstrates by background, skills, and abilities knowledge and ability to perform or to learn to perform the required work. A qualified provider shall:~~

~~(a) Maintain a drug-free work place;~~

~~(b) Complete the background check process described in OAR 943, division 007 with an outcome of approved or approved with restrictions;~~

~~(c) May not be an individual's legal representative;~~

~~(d) Be authorized to work in the United States in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules;~~

~~(e) Be 18 years of age or older.~~

~~(2) A qualified provider may be employed through a contracted in-home care agency or enrolled as a homecare worker or personal support worker under a provider number. The Authority shall establish the rates for services.~~

~~(3) Providers that provide Behavioral Health personal care attendant services shall:~~

~~(a) Be enrolled in the Consumer-Employed Provider Program and meet all of the standards in OAR chapter 411, division 31;~~

~~(b) Meet the provider enrollment and termination criteria described in OAR 411-031-0040 for personal support workers.~~

~~(4) The Authority shall conduct background rechecks at least every other year from the date a provider is enrolled. The Authority may conduct a recheck more frequently based on additional information discovered about a provider, such as possible criminal activity or other allegations.~~

~~(5) Prior background check approval for another Authority provider type is inadequate to meet background check requirements for homecare or personal support workers.~~

~~(6) Provider enrollment may be inactivated when a provider fails to comply with the background recheck process. Once a provider's enrollment is inactivated, the provider shall reapply and meet the requirements described in these rules to reactivate provider enrollment.~~

~~Statutory/Other Authority: ORS 413.042, 430.640~~

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

AMEND: 410-172-0820

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0820

Provider Enrollment Termination ¶¶

(1) The Authority may ~~deny~~take action, including denial, suspension or termination, on a personal care attendant's provider enrollment ~~and/or re-enrollment, and the provider number as described in OAR 411-031-0050. The termination, administrative review, and hearings rights for homecare workers are set forth in OAR 411-031-0050~~Chapter 410 Division 120. The termination, suspension, and appeal 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 consumer's if the PCA is not immediately terminated. If there is good cause to believe that an individual's life, physical, emotional, or financial well-being is at risk, the Division will issue a Notification 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.¶

(23) The Authority may deny or terminate a ~~personal support worker's~~PCA provider enrollment and provider number when the ~~personal support worker~~PCA:¶

(a) Has been appointed the legal guardian representative of an individual they are employed by or found to be a spouse or legal representative of anthe individual;¶¶

~~(b) Has a background check they are employed by;~~¶

(b) Fails to obtain a background check as requested by the Authority or has a background check at any time that results in a closed case pursuant to OAR chapter 943, division 007;¶

(c) Lacks the skills, knowledge, or ability to perform or learn to perform the required work as described in these rules and OAR 418 Chapter 020;¶

(d) Forged or otherwise falsified one or more credentials, education or training documentation, or other required work records submitted to Authority to obtain approval as a qualified provider;¶

~~(e)~~Violates the protective service and abuse rules described in OAR Chapter 4143, division 2015, OAR chapter 40711, division 4520, and OAR chapter 943407, division 45;¶

(e) Commits one or many Fiscal improprieties as defined in OAR 410-172-0755, one time or as a pattern of behavior;¶

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

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

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

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

(j) Has been personal care services. Coerces or colludes with the individual to sign or approve false, blank or inaccurate timesheets or document false or inaccurate information in the EVV system;¶

(h) Fails to arrive and depart work at a date and time documented in the work schedule authorized by the individual;¶

(i) Fails to maintain a drug-free workplace;¶

(j) 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;¶

(3k) A personal support worker may contest the Authority's decision to terminate the personal support worker's provider enrollment and provider number;¶

~~(a) A designated employee from the Authority shall review the termination and notify the personal support worker of the decision. Has been sanctioned or convicted of (as that term is defined in 42 CFR 1001.2) 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) Fails to maintain confidentiality, security and privacy of protected health information, as required by HIPAA and State privacy laws;¶~~

~~(m) Exerts undue influence over an individual or their consumer-employer representative;¶~~

~~(n) Introduces or creates an unwelcome nuisance to the workplace as determined by the individual;¶~~

~~(o) Fails to perform the duties of a mandatory reporter in ORS 419B.010 and ORS 430.765;¶~~

~~(p) Fails to inform the Division 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) fails to meet one or more of the mandatory training and competency evaluation requirements described in OAR 418-020-0035;¶~~

~~(r) Is an employee with the State of Oregon;¶~~

~~(s) Fails to adhere to the hourly cap described in the CBA or to the service limitations in the BH PCA authorization, service plan and State Plan Amendment;¶~~

~~(bt) A personal support worker may file a request for a hearing with the Authority's local office if all levels of administrative review have been exhausted and the provider continues to dispute the Authority's decision. The local office shall file the request for a hearing with the Office of Administrative Hearings as described in OAR chapter 137, division 3. The request for a hearing shall be filed within 30 calendar days of the date of the written notice from the Authority;¶~~

~~(c) When 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) Engages in discrimination of others based on race, national origin, color, sex, gender identity, sexual orientation, age, religion, physical or mental disability, military status, or marital or family status and as described in OAR 410-120-1380(1)(c)(A);¶~~

~~(v) Offers medically unnecessary services or more services than necessary to the eligible individual;¶~~

~~(w) Provider 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) The Authority may suspend a provider and provider 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) 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 a contested case is referred to the Office of Administrative Hearings, the referral shall indicate whether the Authority is authorizing a proposed order, a proposed and final order, or a final order;¶~~

~~(d) No additional hearing rights have been granted to a personal support worker by this rule other than the right to a hearing on the Authority's decision to terminate provider enrollment in accordance with OAR 407-007-0200 to 407-007-0370. PCAs will not receive a separate notice from the Division 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 attendants who fail to provide required and accurate information or information requested by the Division 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 will refer the alleged violation to the Division and any other appropriate state or federal entity.

Statutory/Other Authority: ORS 413.042, 430.640

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

AMEND: 410-172-0830

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0830

Personal Care Attendant Service Assessment, Authorization, and Monitoring ¶

~~(1) A behavioral health case manager shall meet in person with an individual to assess the~~The Authority administers the personal care services program and may use 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 the following:¶~~

~~(A) Assessment must be performed on all individual's ability by a PCA Service Coordinator perform the receiving personal care tasks listed services to determine this rule:¶~~

~~(a) An individual's natural supports may participate in the assessment if requested by the individual or 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 individual's service eligibility, the cost effectiveness of the individual's service plan, and whether the services provided are medically necessary and meeting the individual's identified service needs;¶~~

~~(b) A behavioral health case manager shall assess an~~The PCA Service Coordinator may adjust the number of hours authorized or the types of BH PCA services included in the individual's service plan and shall authorize a new or revised service plan based on the individual's current service needs, identify the resources meeting any, some, or all of the individual's. 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 with Medicaid contested case hearing rights to individuals denied services through the BH PCA program in whole or in part; or ¶~~

~~(B) Notice of determination describing increases in services hours based on assessed needs; and determine if the individual is eligible for behavioral health personal care attendant services or o¶~~

~~(C) The Notice of adverse benefit determination 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.¶~~

~~(2) The PCA Service Coordinator shall meet in person with an individual to perform a personal care assessment to document the individual's ability to perform the ADL, IDL, 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 requested by the individual or their services legal representative, if applicable;¶~~

~~(b) A behavioral health case manager~~The PCA Service Coordinator shall assess an individual's service needs, 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 with an individual in person at least once every 365 days to review assess the individual's service needs; or¶~~

- (2d) A behavioral health case manager When the individual or their legal representative, requests reassessment; or¶
- (e) When there is documented evidence indicating the 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 case manager PCA Service Coordinator shall document an individual's natural supports that currently meet some or all of the individual's assistanservice needs.¶
- (a) The service plan shall describe the tasks to be performed by a qualified provider and shall authorize the maximum monthly hours that may be reimbursed for those services;¶
- (b) A case manager during a 14-day pay period;¶
- (b) The PCA Service Coordinator shall consider the cost effectiveness of services that adequately meet the individual's service needs when developing person-centered service plans;¶
- (c) Payment for behavioral health personal care attendant services shall be prior authorized by a behavioral health case manager services authorized through the BH PCA 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 person centered service plan.¶
- (34) When there is an in PCA Service Coordination that an individual's personal care needs have changed, a case manager shall conduct an in-person reassessment with the individual and any of the individual's natural supports if requested by the individual;¶
- (a) Following annual or shall provide ongoing coordination of services through the BH PCA program, including authorizing changes in providers and service hours, addressing risks and monitoring and providing information and referral to an individual when indicated.¶
- (5) Monitoring is necessary to ensure the service plan is effectively implemented and adequately addresses sments and those conducted after a change in an individual's personal care needs, a case manager shall review service eligibility, the cost effectiveness of the individual's service plan, and whether the services provided are meeting the individual's identified service needs;¶
- (b) The case manager may adjust the hours or services in the individual's 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 the PCA Service Coordinator, as directed by the individual;¶
- (A) Monitoring preferences shall be determined by the individual or their legal representative and identified in the person-centered service plan; and shall authorize a new service plan, if appropriate;¶
- (B) An in-person monitoring visit shall be completed annually, or more often, bas determined on by the individual's current service needs.¶
- (4) A behavioral health case manager shall provide ongoing coordination of behavioral health personal care attendant services, including authorizing changes in providers and service hours, addr 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, ing risks, and monitoring and providing information and referral to an individual when indicat the needs or status of the individual;¶
- (e) Follow-up activities identified to ensure the service plan is adjusted to meet the individual's need.¶
- (56) 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;¶
- (b) The services cannot be provided safely or adequately by a provider by the PCA, in the individual's home;¶
- (c) The individual does not have the ability to make an informed decision, does not have a designated

representative to make decisions on ~~his or her~~ their behalf, and necessary safeguards cannot be provided to protect the individual's safety, health, and welfare.¶

~~(67) A behavioral health case manager~~ The PCA Service Coordinator shall ~~present~~ give an individual or the individual's representative ~~with~~ information on service alternatives and provide assistance to assess other choices when a provider or service setting selected by the individual or the individual's representative is not authorized.

Eligible individuals have free choice of providers.

Statutory/Other Authority: ORS 413.042, 430.640

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

AMEND: 410-172-0840

RULE SUMMARY: Update Medicaid behavioral health OARs to reflect program changes for personal care services required by CMS, state legislature, and Medicaid policy.

CHANGES TO RULE:

410-172-0840

Personal Care Attendant Payment Limitations ¶

(1) ~~The number of behavioral health personal care attendant service hours authorized through the BH PCA program for an individual per calendar month~~ 14-day service period is based on projected amounts of time to perform specific personal care ~~and supportive services~~ to the eligible individual. Authorization of hours does not guarantee hours or payment. The total of these hours ~~are~~ is limited to 270 hours per individual per ~~month~~ calendar year and the hour cap identified in the CBA. Individuals whose assessed service needs exceed the ~~20~~ 70-hour limit may receive approval from the Division for additional hours.¶

(2) ~~The Authority shall pay for behavioral health personal care attendant services when all acceptable~~ will pay for medically necessary and appropriate personal care services only when provider enrollment standards in OAR 410-120-1260, OAR Chapter 418 Division 020, and this rule have been verified as fully met, and both the employer 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 justification for the service. Prior authorization requests for personal care services must meet the requirements in OAR 410-172-0650.¶

(3) The Division shall make payment for personal care services through the BH PCA 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 must be an enrolled provider enrollment standards have been verified and both the employer and provider have been formally notified in writing that payment by the Authority is authorized~~ as required by OAR 410-120-1260, be a qualified provider, meet all requirements of this rule and the Division 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 for personal care services when those personal care services are fully documented as required by this rule, 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 billings are paid to PCA providers. To request and receive payment the PCA 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 other medical information for accuracy, medical appropriateness, level of service, correct coding, or for other reasons subsequent to payment of the claim. Payment to PCA may be denied or subject to adjustment or recovery if billing errors or improper payment are identified by a pre-payment or post-payment review OAR 410-120-1396 and OAR 410-120-1397.¶

(34) ~~In accordance with OAR 410-120-1300, all provider claims for payment shall be submitted within 12 months of the date of service. For personal care services delivered by a PCA the Authority will pay the standardized rate as described in the CBA in effect on the date of service. PCA providers must submit accurate and complete claims and adequately document services via the Division approved EVV method and as required by OAR 410-120-1260 to receive payment from the Division.~~¶

(45) ~~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 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.¶

(7) Payments will not be made to a PCA provider for personal care services during time periods coinciding with an individual's facility, or hospital stay.¶

(8) PCA providers' billing for personal care services must valid and meet Authority rules for Medicaid payment. PCA 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 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 EVV method.¶

(d) The services were provided in a community setting and location approved in the individual's service plan.¶

(e) The PCA provider was qualified to deliver the service.¶

(9) All payments to PCA are subject to pre-payment and post-payment review. 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. Payment by the Division does not restrict or limit the Authority or any state or federal oversight entity's right to review or audit a claim before or after the payment. 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. The Authority will conduct post-payment reviews as described in OAR 410-120-1396.¶

(10) PCA providers and any entity billing the Division 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, accurate, and complete. I understand that payment of this claim or encounter will be from federal and state funds, and that any falsification or concealment of a material fact maybe prosecuted under federal and state laws."¶

(11) PCA providers, 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, MCE or other provider for any services or supplies provided under Oregon's medical assistance programs, in compliance with OAR 410-120-1380.¶

(13) The Authority may suspend a PCA 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, DHS, DOJ 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

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