



## Changes to In-Home Care Agency Licensing Rules FACT SHEET

### **Oregon Administrative Rules: OAR 333-536-0000 through OAR 333-536-0125**

The Oregon Health Authority, Public Health Division has amended OAR chapter 333, division 536 administrative rules to address passage of SB 669 ([2019 Oregon Laws, chapter 680](#)), SB 177 ([2019 Oregon Laws, chapter 238](#)), and HB 4304 ([2020 Special Session 2 Oregon Laws, chapter 10, section 47](#)). Additionally, the Authority has made changes to clarify language and definitions previously addressed through interpretive guidance, address concerns raised through cited deficiencies, infection control requirements due to COVID-19 pandemic, amend outdated language, prescribe nationwide background checks for owners and administrators with direct contact with clients and add additional rule categories for clarity.

This document is a summary of the recently amended and adopted rule requirements. This document does not identify the rules where only minor changes to text occurred for purposes of grammatical corrections, updating the term "Division" to "Authority" or when the intent of the rule remains the same but was re-written for clarity.

### **OAR 333-536-0005 – Definitions**

Several definitions were amended for purposes of clarity, removal of duplicative information, alignment with Oregon statutes, and to update statutory references. New definitions have been added for the following terms:

Adverse event	Licensed practical nurse
Administrator's delegate	Naturopathic physician
Applicant	Nurse practitioner
Authority	Nursing procedure
Change of ownership	Pharmacist
Geographic service area	Physician assistant
Licensed independent practitioner	These rules

### **OAR 333-536-0007 – Classification**

Information about who shall provide medication services training was removed and placed under OAR 333-536-0070 which is specific to training requirements.

### **OAR 333-536-0010 – Application for Licensure**

- Duplicative information was removed and grammatical corrections made.
- Due to passage of SB 177 (2019 Oregon Laws, chapter 238), the rule clarifies that a hospice program providing palliative care is not subject to in-home care licensure.
- Owners or administrators that have direct contact with a client and who meet certain criteria are subject to a fingerprint-based, nationwide background check.
  - The cost of the nationwide check is the responsibility of the agency and shall not exceed the cost charged to the Authority. Costs for these nationwide checks are based on the following:
    - [OAR 257-010-0041](#) – Criminal Justice Information Services Division Fee Schedule
    - Department of Justice, FBI Criminal Justice Information Services Division, User Fee Schedule – [Federal Register, Vol. 83, No. 185, September 24, 2018](#)
    - State of Oregon, Department of Administrative Services, Electronic Fingerprint Capture Services Price Agreement 4720 (RFP 102-1075-14)
  - The Health Facility Licensing and Certification program will adopt a policy and identify the criteria which will require an administrator or owner to have a fingerprint-based, nationwide background check. These criteria will be developed taking into consideration existing requirements established by the DHS/OHA – Criminal Background Check unit under [OAR 407-007-0250\(10\)](#).

### **OAR 333-536-0021 – Approval of License Application**

Language was added that clarifies that if a change of ownership occurs at a time other than annual renewal, information must be submitted to the Authority in writing along with the applicable fee.

### **OAR 333-536-0033 – Denial, Suspension or Revocation of License**

- The rule clarifies that the Authority may issue a civil penalty for failure to comply with in-home care regulations.
- A failure to comply with in-home care rules includes demonstrating a violation of rules which was life threatening to the client or posed a risk of hospitalization.
- Pursuant to passage of SB 669 ([2019 Oregon Laws, chapter 680](#)), the Authority has clarified that a licensing action may be taken against an agency that demonstrates a pattern of significant and substantiated violations over the previous five years of:
  - Employment and wage laws including unpaid wages under ORS 653.010 to 653.261 or unlawful employment practices under ORS chapter 659A.
  - Caregiver training requirements specified in OAR 333-536-0070.
- The rule includes definitions of relevant terms.

### **OAR 333-536-0041 – Surveys**

Pursuant to SB 669 ([2019 Oregon Laws, chapter 680](#)), the Authority shall conduct a survey once every two years as a requirement for licensure and the Authority must notify the agency no less than 72 hours prior to the date of an initial or biennial survey.

### **OAR 333-536-0042 – Complaints**

The rule clarifies that the personally identifiable information of a person making a complaint is confidential and defined in ORS 432.005.

### **OAR 333-536-0043 – Investigations**

The requirement that the Authority conduct a complaint investigation within 45 calendar days has been amended to as soon as practicable. Additional clarification was added regarding confidentiality protections of information obtained by the Authority during a complaint investigation and the use of such information including reporting relevant information to a health professional regulatory board.

### **OAR 333-536-0045 – Services Provided**

- The list of services provided by an agency includes a reference to tasks related to the care of the client's physical body, and specifically identifies foot or nail care as an example.
- Language was added specifying that a caregiver who provides "nail technology" as defined in ORS 690.005 may be subject to, and must comply with, certification requirements under ORS 690 and corresponding administrative rules.
- The rule clarifies that medication reminding or medication assistance services may only be provided by an agency that is licensed and classified to provide those services.
- Additional language was added specifying that if an agency determines that a client can no longer self-direct, the agency must arrange to provide appropriate services without delay or transfer the client to an agency with a higher license classification.

### **OAR 333-536-0050 – Organization, Administration, and Personnel**

- Information on the geographic service area has been amended to align with the new definition.
- The requirement that a caregiver be certified in CPR when traveling with a client outside the service area has been removed.
- The policy requirement relating to responsibilities of a caregiver traveling with a client when the client's condition changes has been moved to a new rule specific to policies, OAR 333-536-0051.
- Rule text relating to a branch office and sub-unit have been changed for clarity. Specifically, information that was previously included in the definition of "branch office" has been moved to section (3) of this rule.
- Language previously identified in interpretive guidance for "operating independently" has been added and the Authority has also clarified that a sub-unit may utilize a parent agency's administrative systems and technology to support functions like billing and scheduling.
- Rule text specific to administrator qualifications and responsibilities has been moved to a new rule, OAR 333-536-0052 and rule text specific to personnel records has been moved to new rule, OAR 333-536-0053.

### **OAR 333-536-0051 – Policies and Procedures**

This a new rule that seeks to place all of the required policies and procedures in one location. Amendments to and new policies include:

- Infection control – Specific requirements for an infection control policy have been added as a result of the COVID-19 pandemic including standard precautions, availability of PPE and other equipment, exposure to bloodborne pathogens and other possible infectious agents.
- Client notification requirements including increase in costs to services, termination of services, refunds, and reimbursement for stolen, broken or misappropriated property or funds.
- Management of client records including access, storage, retention and destruction.
- Quality assessment and performance improvement activities.

### **OAR 333-536-0052 – Administrator**

This is a new rule that seeks to place all of the administrator requirements in one location. Additional changes include:

- The administrator is responsible for ensuring timely investigation of adverse events, errors, and allegations of abuse or neglects as well as documentation of all internal investigations must include who was interviewed and the information provided and whether any on-going monitoring will occur. Documentation of internal investigations must be maintained separately from the client or caregiver files.
- The administrator is also responsible for ensuring that a caregiver reports any decline or change in the client's health, behavior or environment.
- Employees who have direct contact with clients must report any new arrests, charges or convictions after hire so the agency may evaluate whether any personnel action is necessary including a new criminal records check to ensure compliance with ORS 443.004.
- Caregivers who are licensed or certified in Oregon in a health-care related field must report to the agency any licensing board action that may prevent the caregiver from providing services.

### **OAR 333-536-0053 – Personnel Records**

This is a new rule that seeks to place all information necessary for a personnel record in one location.

- Documentation of CPR certification has been removed.
- Current position descriptions must clearly identify job duties based on the highest level of service a caregiver is qualified to provide.
- Each caregiver's personnel record must include proof of competency evaluation and the record shall clearly identify the highest level of service the caregiver may provide.

### **OAR 333-536-0055 – Disclosure, Screening and Acceptance of Clients**

- The disclosure statement requirements were changed to include the following requirements:

- The agency's deposit and refund policy, including client or agency cancellation of services.
- The agency's policy for client reimbursement for stolen, broken or misappropriated property or funds.
- The agency must include information indicating that the disclosure statement must be made available to the client in an alternate format at the client's request.
- Initial screening requirements were modified to focus on whether the agency has the capacity and capability to serve the prospective client.
- Information was added to clarify further that a client who is no longer stable and predictable:
  - May only receive housekeeping or other supportive services; and
  - Must be provided information, resources or other assistance on transferring services.

### **OAR 333-536-0060 – Client Rights**

The rule was amended to:

- Allow an administrator's designee to ensure that the agency recognizes and protects clients' rights.
- Include a reference to ethnicity and disability for purposes of discrimination.

### **OAR 333-536-0065 – Service Plan**

- All requirements for the service plan that were located in other rules have been moved to this rule.
- In addition to an administrator's designee who must meet certain education requirements, an administrator's delegate has been added to this rule allowing the delegate to conduct and document an initial client evaluation and complete a written service plan.
- Language was added clarifying that the service plan:
  - Can be kept in an electronic format;
  - Must include a comprehensive list of client information including name, address, phone number; client's medical conditions; types of services being received; name of client's primary care provider; and any special instructions pertinent to providing services;
  - Must be reviewed with each caregiver before the initial delivery of client care and must be signed and dated.
- Information on the initial visit requirements have been moved to OAR 333-536-0066.

### **OAR 333-536-0066 – Initial Visit and Monitoring**

The rule includes information on requirements of the initial visit which were previously under OAR 333-536-0065. Additionally, an administrator, administrator's designee or delegate must determine and document during a monitoring visit any adverse events, complaints or grievances involving the client since the last monitoring visit as well as any changes to the client's health, behavior or environment. The documentation must include

any narrative comments the client makes during the visit about specific aspects of the services, service plan, caregivers or concerns.

### **OAR 333-536-0070 – Caregiver Qualifications and Requirements**

Pursuant to SB 669 ([2019 Oregon Laws, chapter 680](#)), caregiver training requirements have been amended specifying a minimum number of training hours required.

Additionally, the rule has been amended to clarify that all caregivers must receive all training necessary for the level of care assigned to provide.

- 4 hours of orientation which must be provided prior to a caregiver providing in-home services:
  - Orientation may be provided on-line or in-person and must be conducted by the administrator, administrator's designee or a delegate.
  - Additional subject areas include an overview of policy and procedures with a specific emphasis on traveling with a client, client care practices, client notification requirements, infection control, medical and non-medical emergency response and medication reminding, medication assistance and medication administration.
- 8 hours of caregiving training provided by a qualified individual or qualified entity:
  - The terms 'qualified individual' and 'qualified entity' are defined in OAR 333-536-0005 and include training programs and individuals that have been approved by the Authority. The Health Facility Licensing and Certification Program will be working on a process to review requests submitted from agencies to approve qualified individuals and qualified entities. For purposes of cultural competence, the OHA, Office of Equity and Inclusion has a list of [approved cultural competence education training programs](#) which the program has approved for purposes of these rules.
  - A minimum of two hours of initial caregiver training must be obtained prior to a caregiver providing in-home care services;
  - Six hours of initial caregiver training may be obtained prior to providing in-home care services or after initial of services through on-the-job training or other means within 120 days of hire.
  - Additional training topics include cultural competence (defined in rule), abdominal thrust and first aid, and other appropriate subject matter based on the needs of the special populations served such as taking vital signs and proper use of medical devices, like a Hoyer Lift, catheter care, or oxygen use.
  - A competency evaluation must be conducted and must include a combination of direct observation and written or oral testing. Up to one hour of competency evaluation may be counted towards the 8 hours of initial caregiver training.
- 4 hours of basic, non-injectable medication training for caregivers providing medication services must be obtained prior to providing medication services. All elements of the medication training were moved from OAR 333-536-0075 to this rule.
- Pursuant to SB 669, the rule clarifies that a caregiver with proof of a current Oregon health-care related license or certificate is exempt from in-home caregiver training.

- All caregivers must meet the current requirements that were in rule prior to July 1, 2021. Agencies will have until January 1, 2022 to ensure that all caregivers meet the new training requirements. An agency will be required to show compliance with the training requirement for any survey scheduled on or after January 2, 2022.

### **OAR 333-536-0075 – Medication Services**

- Rule clarifies that to provide medication services, an agency must be classified as basic, intermediate or comprehensive and must provide medication assistance or medication administration in accordance with the rule.
- For purposes of a family member or client representative to fill secondary medication containers, a provision was added clarifying that a photograph may be used in lieu of a physical description of the medication.
- Medication administration was further clarified including that registered nurse(s) must be employed in sufficient numbers to meet the needs of services offered to clients and to provide appropriate oversight. Additionally, the medication administration delivery systems and policies must include provisions to ensure that the client receives medication in accordance with a licensed independent practitioner's orders.
- Any problems or discrepancies related to a client's medication routine must be reported and documented in a separate file from the client or caregiver records.
- Language was amended for telephone orders incorporating reference to a licensed independent practitioner and clarifies that electronic signatures are acceptable. Telephone orders must be recorded, dated and signed by the agency's nurse within 72 hours and followed within 30 days by signed orders from the licensed independent practitioner.
- Medication training requirements were removed from this rule and moved to OAR 333-536-0070.

### **OAR 333-536-0080 – Nursing Services**

- Text was added clarifying that an agency providing nursing services must be classified as comprehensive, must employ a registered nurse and may only provide nursing services to a client whose condition is stable and predictable.
- Nursing services must be documented in the client's service plan in accordance with OAR 333-536-0065.
- Information on telephone orders was moved to OAR 333-536-0075.

### **OAR 333-536-0082 – Infection Control**

Given the COVID-19 pandemic, this new rule prescribes that an agency develop an infection control program and prescribes requirements for the program to prevention and control infections and communicable diseases including:

- Active surveillance, identification, prevention, control and investigation of infectious and communicable diseases;
- Appropriate disposal of sharps;
- Development of policies and procedures for standard precautions (hand hygiene, respiratory hygiene, cough etiquette, PPE, etc.); availability of PPE and other



equipment needed to implement the client service plan, and exposure to bloodborne pathogens.

- Education and training on infection control measures.

### **OAR 333-536-0085 – Client Records**

- Client records must be easily accessible and retrievable.
- Documentation of services must include daily caregiver notes recording a summary of the tasks completed, observation of the client, and observed or reported concerns.
- An agency has until January 1, 2022 to comply with the additional documentation requirements.

### **OAR 333-536-0090 – Quality Assessment and Performance Improvement**

The rule was modified to include reference to infection control measures and other aspects of performance relating to the care and services provided to a client for measuring and correcting adverse events. The rule further clarifies that after analysis, an agency must develop and implement a preventive strategy and ensure staff are trained in and familiar with the strategy developed. Quality improvement meetings must be conducted on a quarterly basis and documentation of these meetings must include the meeting date, participants, and meeting minutes. Meetings may not occur via electronic mail.

### **OAR 333-536-0093 – Criminal Records Checks**

- A definition for "fitness determination" was added and the rule clarifies that the agency must make a fitness determination before hiring a subject individual or allowing a subject individual to volunteer.
- Language was added that allows an agency to employ an individual pending the outcome of the criminal records check if the agency:
  - Ensures there is no direct contact with a client prior to making a final fitness determination;
  - Conducts a preliminary fitness determination;
  - Makes sure the individual is actively supervised at all times; and
  - Clearly documents in the personnel record the date of the preliminary fitness determination and documentation that preliminary hire is appropriate, the employee was clearly informed that the employee may not have direct contact with a client until the final fitness determination is completed.
  - An agency working with an Oregon Department of Human Services (ODHS) client must have the preliminary fitness determination completed by the DHS/OHA Background Check Unit (BCU) in accordance with [OAR 407-007-0315](#).
- The rule clarifies that the agency's criminal records check policy must include that any person convicted of a crime described in [ORS 443.004](#) may not be employed and preliminary fitness determination requirements.
- Weigh test requirements language was amended to align with [ORS chapter 181A](#) and [Oregon Department of Administrative Rules, chapter 125, division 007](#).



- An agency providing in-home services to an ODHS client under [OAR chapter 411, division 033](#) must have the criminal records check conducted by the DHS/OHA BCU. The agency must comply with relevant OARs including [chapter 943, division 007](#) and [chapter 407, division 007](#). The BCU shall make the final fitness determination.
- An individual who has had a fitness determination conducted by the BCU may have portability to another agency under [OAR chapter 411, division 033](#) and the individual must be rechecked every three years through the BCU.
- An agency must maintain documentation of the BCU criminal records check in the individual's personnel record.
- If a criminal records check is conducted by the BCU, a criminal records check using the agency's qualified vendor is not necessary.
- Reference to performing a query of the National Practitioner Data Bank has been removed.
- The rule clarifies that the Authority is responsible for conducting the criminal records check of an administrator or owner who has direct contact with a client and further specifies that the agency is responsible for any costs associated with a nationwide, fingerprint based check which shall not exceed the cost to the Authority. (Reference information provided on page 2, under OAR 333-536-0010.) The Authority will make the final fitness determination.