PUBLIC HEALTH DIVISION
Office of Health Care Regulation and Quality Improvement
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In-Home Care Qualified Entity/Qualified Individual Rule Advisory Committee
August 1, 2023
1:00 p.m. – 4:00 p.m.

RAC MEMBER ATTENDEES	
Alice Miller	SEIU 503
Angela Neal	Oregon Care Partners
Barbara Ju	Oregon State Board of Nursing
Eugenia Liu	Oregon Health Care Association
Jonathan Mack	Home Instead
Kristin Milligan	LeadingAge Oregon
Laurie Barber	Ally In-Home Services by Terwilliger Plaza
Rachael White	Sinai In-Home Care
Sabrina Riggs	Oregon Association for Home Care
Other Interested Parties	
Libby Batlan	Oregon Health Care Association
Meredith Coba	Oregon Health Care Association
Oregon Health Authority / Oregon Dept. of Human Services Staff	
Andrea Garcia	OHA-Health Care Regulation & Quality Improvement (HCRQI), Facility Planning & Safety (FPS)
Courtney Rakach	OHA-HCRQI, FPS
Lisa Finkle	OHA-HCRQI, FPS
Matt Gilman	OHA-HCRQI, FPS
Mellony Bernal	OHA-HCRQI
Sanya Rusynyk	OHA-HCRQI, FPS
Stacey Spellman	ODHS, Aging & People with Disabilities (APD)

Welcome, Housekeeping and Agenda Review

Mellony Bernal introduced herself and welcomed attendees to the Rule Advisory Committee (RAC), the purpose of which is to consider the requirements necessary for a qualified individual or qualified entity to conduct training for caregivers, changes to definitions, clarifying requirements for medication services and nurses acting upon orders issued by a practitioner licensed outside the state of Oregon.

Instructions for RAC members participation in the meeting were reviewed as well as information for public attendees.

- It was noted that the RAC meeting will be recorded and all correspondence in the Chat is subject to disclosure and may be released in a public records request.

- Meeting notes will be drafted and shared with RAC members and will also be posted on the HCRQI Rulemaking Activity page: www.healthoregon.org/hcrqirules, under Rulemaking Advisory Committees in Progress.
- RAC members participating by Zoom were instructed to type the word “Comment” in the Chat to indicate they want to speak to a particular issue or ask questions. Members were instructed that persons would be called upon by staff. RAC members not wanting to speak but wishing to share information for consideration were asked to type into the Chat “For Your Information” or “For the Record” and type the information they wanted to share for consideration.
- Members of the public were reminded that the RAC is not a public meeting and therefore not subject to the public meeting laws. Members of the public were instructed that they may attend but may not participate or offer public comment. It was noted that the public may provide comments or information to staff members at the conclusion of the meeting and email addresses were shared via Chat.
- It was further noted that after the RAC process has concluded, there will be an opportunity to provide oral public comments at a public hearing or to send written public comments during the public comment period. Information about the notice of proposed rulemaking and public hearing will be shared by email through the In-Home Care listserv and will posted on the HCRQI Rulemaking Activity webpage. Persons interested in being added to the listserv can contact M. Bernal.
- M. Bernal conducted roll call of RAC members and RAC members introduced themselves.
- OHA and ODHS staff introduced themselves as well.
- M. Bernal reviewed the meeting agenda.

Rulemaking Process & RAC Scope

M. Bernal reviewed the rulemaking process in general and provided information on the scope of work for this RAC.

- State agencies convene RACs for a variety of reasons, including when the legislature passes laws that require rules be adopted, clarifying intent of legislation or rules, requests from community partners, etc.
- RAC members include persons and communities that are most likely to be affected by the proposed rules including representation from licensed facilities, special interest groups and associations.
- The program drafts the rule text and convenes the RAC to seek input and suggestions on the rule text and consider possible changes, concerns, issues, etc. Additionally, the RAC will review the Statement of Need and Fiscal Impact (SNFI) which also includes a statement on how the proposed rules may affect racial equity in Oregon.
- The RACs role is advisory only and consensus is not necessary.
- Considering information provided by the RAC, the program will finalize proposed rule text and submit notice of proposed rulemaking to the Secretary of State along with the SNFI.
- A public hearing will be scheduled where the public can present oral testimony or submit written comments. The public hearing's officer that presides over the public hearing will generate a report summarizing the comments.
- The program will review and consider all of the testimony and comments received and determine whether additional changes to the rule are necessary based on those comments. The program will provide a response to the testimony and comments received.
- The program will finalize rule text and determine effective date and file permanent rulemaking notice with the Secretary of State's office.

- The goal is to submit final rule text to the Public Health Division's administrative rule coordinator by August 21, 2023 and have the public hearing notice posted in the September 1, 2023 Oregon Bulletin. The public hearing would be tentatively scheduled on or after September 15th.

Rule Review

Matt Gilman opened the discussion on the proposed changes to the administrative rules:

OAR 333-536-0005: Definitions

"Management experience" has been revised to specify that a person's experience in a health-related field must be within the previous five years from application. Discussion:

- RAC member asked what the intent is behind the change. While they appreciate the importance of management experience, someone who may have left the workforce and is returning after a period of five years, doesn't mean that their leadership or management experience is any less (examples give for taking time off to care for a child or a loved one). It was further noted that rules should not create unreasonable barriers for someone being a leader or administrator of an agency.
- RAC member echoed concerns noted above and indicated five years is a short period of time especially for women leaving the workforce to take care of children.

The terms "medication," "medication administration" and "medication assistance" have been amended to add additional specificity to each term:

- The term "Medication" has been added to the definitions and states "Medication" means a drug as defined in ORS 689.005.
- "Medication administration" has been amended to state that it is the direct application of prescribed medication, whether by injection, inhalation, ingestion or other means, to the body of a client by an individual authorized to do so.
- "Medication assistance" means assistance with self-administration of medication rendered by a non-practitioner to a client receiving in-home care services from an IHCA and the client is able to self-direct.
  - RAC member asked whether medication was defined to include only prescribed medications and not over the counter (OTC), as many clients may be taking OTC medication as well.
  - RAC member echoed comment and stated previously that the rules appear to limit 'medication administration' to only prescribed medication but many clients of IHCAs take over the counter medications as well. The rules should not be overly restrictive on the definition of medication administration.
  - RAC member asked for the definition under ORS 689.005 and assumed that the definition would include OTC medication and asked staff to consider cleaning up the language in section (22).
    - The following definition was noted and added to the Chat:
      ORS 689.005
      (11) "Drug" means:
      (a) Articles recognized as drugs in the official United States Pharmacopoeia, official National Formulary, official Homeopathic Pharmacopoeia, other drug compendium or any supplement to any of them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in a human or other animal;
(c) Articles, other than food, intended to affect the structure or any function of the body of humans or other animals; and
(d) Articles intended for use as a component of any articles specified in paragraph (a), (b) or (c) of this subsection.

The definition for “Professional experience” was modified to make it clear that a health-related license held by an individual must be current and in good standing to qualify for purposes of professional experience.

- RAC member asked if a medication tech would be included or would the medication aide be inclusive of the medication tech. Sanya Rusynyk responded that when rules were initially adopted, medication techs were not licensed. RAC member indicated they still were not. RAC member indicated if the intent is to refer to certified nursing assistants and certified nursing aides then the term “certified” should be placed in front of each title.
- RAC member asked OHA to consider adding “certified medical assistant” which is a certification required to work in a doctor’s office and should also be considered for purposes of professional experience. **FOLLOW-UP – Medical assistants are not required to have Oregon specific licensure or certification, although many employers may prefer to hire medical assistants who have achieved their certification through a national exam. Current rule language is broad enough for the Authority to consider a medical assistant with national certification for purposes of professional experience.**

A definition has been added for "qualified trainee" which includes reference to two years of specified experience. If the “qualified trainee” is a caregiver, they must be current on all caregiver training requirements. This position would be designated by the agency to conduct caregiver training. The purpose is to add another category for caregiving training in addition to a qualified individual or qualified entity.

- RAC member noted that the definition references 'trainee' but the rest of the rules reference 'trainer' and should be aligned accordingly. RAC member further indicated that the definition for 'qualified individual' includes someone who has taken an authority approved training program, and the language also appears under the 'qualified trainee.' It is unclear if the intent is to have someone who has taken an authority approved training program be both a qualified individual and a qualified trainer, or if the language should be moved to one or the other. It was further noted that the 'qualified individual' has always been interpreted to be someone who holds a license, for example, RN, PA, or pharmacist. This could be redundant and should be considered. The qualified individual could be limited to only the licensed individuals.
- RAC member asked if a qualified individual also falls under the qualified entity. For example, a qualified entity that has trainers who provide the training. Do they fall under separate definitions? S. Rusynyk noted that the intent of the rule is to have three categories of trainers for caregiving training – 1) internal qualified trainer; 2) qualified entity that has been approved by the OHA; and 3) the qualified individual who has a specific Oregon license. The completed 'authority approved training' would be a training program that is specific for the purposes of becoming a qualified trainer, qualified entity, or qualified individual. It was noted that no agency has sought approval for these types of training programs.

- In follow-up to initial question, M.Bernal asked staff whether the trainers who may fall under the qualified entity, are considered part of the qualified entity, or would they be considered a qualified trainer or qualified individual? S. Rusynyk responded that a qualified entity as a whole is approved, which would include trainers. Part of the process for approving an entity includes obtaining information on who is providing the training, who developed the training, who is signing off on the training, etc. If a business has been approved as a qualified entity to provide training, their trainers are also approved as part of that entity. No additional approval is needed. Most approved qualified entities are on-line and generally do not include a live training component.
- RAC member stated that prior to the 2021 SB 669 RAC, agencies could conduct their own training, but after the amended rules became effective that was no longer the case. Agencies with long-standing trainings that meet the requirements of the new OARs submitted their training material for review but have not heard back. Is there an opportunity for a licensed agency to be approved as a qualified entity? M. Bernal noted that the rules were amended based on a written request received by community partners. S. Rusynyk noted that the amendments being proposed today would return the rules back to how trainings were conducted previously, with some minor modifications, such as ensuring the trainer has appropriate qualifications. The purpose of qualified entities is to allow third party vendors to provide training to caregivers without having an 'in-house' trainer. There was never a process for OHA to approve agencies as qualified entities. Medication training has never been allowed by an in-house trainer unless the person meets the definition of qualified individual or qualified entity. RAC member agreed and wanted to be sure that with these revisions an agency may delegate a trainer to conduct appropriate trainings and questioned whether the rule as proposed allows this. Staff noted that as we continue to review the additional changes, if it is still not clear RAC members should provide the OHA with suggested language.

OAR 333-536-0065: Service Plan

This rule has been amended to clarify that each caregiver who provides care to a client must confirm that they have reviewed the client's service plan prior to providing services to the client and the date of this review as well as the caregivers signature or other identifier or stamp must be documented in the client record.

- RAC member asked if the intent is whether the caregiver must review and document review prior to each contact with the client or will it tie into changes in the service plan. M. Gilman noted it is tied to the initial delivery of care and not every time. S. Rusynyk concurred.

OAR 333-536-0070: Caregiver Qualifications and Requirements

Section (6) is amended to add for purposes of caregiver training that a qualified trainer (as newly defined) can provide training. The reference to qualified trainer has also been added under documentation requirements, section (9), and annual caregiver training requirements, under section (13). Section (13) also amends the term 'medication administration' to 'medication services.' Section (15) was removed as it is outdated.

- RAC member questioned the addition of the term 'instructor' and whether it was needed or if it should be defined. S. Rusynyk noted the intent is for the person providing orientation because the person providing the orientation can be anyone delegated by the agency. The intent is to capture appropriate terms for any person who can provide the different types of training.
- RAC member questioned subsection (9)(d) and the requirement that each caregiver's personnel file include sufficient information to determine that the person that trained

them was qualified to provide the training. It was suggested that to include such information in every caregiver file (example – copy of a trainer's license, resume, etc.) could be overly burdensome and possibly impact privacy rights. It was suggested that the OHA consider allowing supporting documentation around trainer qualifications to be kept separate from the caregiver's personnel record. RAC member indicated they could propose alternative language for consideration. M.Gilman noted that for purposes of an investigation or survey, documentation must be easily found and clearly identifiable that training requirements have been met, including that the trainer is qualified. S. Rusynyk noted that the more places documentation is kept the harder it is for an agency to produce during a survey. This often leads to a deficiency citation.

- RAC member asked if the term medication services is defined. The term is defined, and the definition was added to the Chat.

OAR 333-536-0075: Medication Services

New section (6) added in response to passage of SB 226 (2023 Oregon Laws, chapter 275) and specifies that an agency's registered nurse may act upon the orders of an out-of-state licensed independent practitioner for no more than 90 days from the time the client was added to the agency's clientele.

- RAC member stated via Chat this is a beneficial addition for someone who does not have a local primary care provider.
- L.Finkle stated that an agency may not have an RN on contract rather, they must employ the RN. She questioned the use of the term 'contract.' RAC member noted that the intent with term 'contract' was because many licensed settings are using temporary staffing agencies.
- Stacey Spellman from the Oregon Department of Human Services (ODHS) asked if the statute limits the provision of services to 90 days because consumers, especially along the border, often have primary care providers that are not located in Oregon but may be in Idaho and would not be switching providers.
- M. Bernal noted that the legislation appears to modify Oregon Board of Nursing Statutes and will follow-up with the Oregon State Board of Nursing.
- RAC member from the Oregon Health Care Association provided additional context regarding the purpose of SB 226 and noted that there was no pathway for a nurse to honor an out-of-state practitioner's order prior to passage of this legislation. The language that was adopted aligns with other statutes around school nurses. Prior to this legislation, an order from an out-of-state practitioner could not be acted upon and created issues with long term care residents and gave them time to find an in-state provider.
- RAC member stated that there may be persons that travel from out-of-state to spend a significant amount of time in Oregon or who are receiving specialized treatment in Oregon but whose primary care would continue to be overseen by an out-of-state practitioner. It was questioned whether a new order could be written, and the 90 days would start over. Discussion ensued around whether services are canceled for a client that may come in and out of state over time.
- Staff noted that additional research will need to take place and be considered.
- Board of Nursing RAC member indicated that currently for a nurse to act on a practitioner's orders, the practitioner must be licensed in Oregon. The legislation will allow a client up to 90 days to find a primary care provider in Oregon. Dual residency was discussed, and it was noted that past 90 days, an Oregon practitioner would be needed.

- RAC member asked about physician's orders coming from a physician through the Veteran's Administration (VA). M. Bernal noted that she will do some follow-up on this topic as it is believed that physicians from the VA may have special carve outs.

Follow-up: Staff contacted the Oregon State Board of Nursing for further clarification. ORS chapter 678 are the statutes pertaining to the practice of nursing which specify that the practice of nursing includes executing medical orders prescribed by practitioners licensed in Oregon. A registered nurse licensed in Oregon therefore may only execute orders from a licensed Oregon practitioner with the exceptions identified in ORS 678.010 (school nurses) and 2023 Oregon Law, Chapter 275 (nurses in IHCAs or long-term care facilities) for the 90-day time period. The allowance of executing orders for the 90-day time period is limited to orders prescribed by a physician.

> **ORS 678.010 (7)specifies -**
> **(7)(a) "Practice of nursing" means autonomous and collaborative care of persons of all ages, families, groups and communities, sick and well, and in all settings to promote health and safety, including prevention and treatment of illness and management of changes throughout a person's life.**
> **(b) "Practice of nursing" includes:**
> **(A) Executing medical orders prescribed by a physician, dentist, clinical nurse specialist, nurse practitioner, certified registered nurse anesthetist or other licensed health care provider licensed or certified by this state and authorized by the board by rule to issue orders for medical treatment;**

In follow-up to question about physicians that work for the Veterans Administration, while the practice of medicine, codified under ORS chapter 678, specifies that ORS chapter 678 do not affect or prevent the practice of medicine by any medical or podiatric officer on duty with the United States Department of Veterans Affairs, these provisions do not apply to a registered nurse executing orders and as such a registered nurse is still limited to executing orders from a practitioner licensed in Oregon (with the exceptions specified earlier.)

Table 1: IHC License Classification
Table 1 was modified based on the changes proposed for the qualified trainer and language updated for clarification.

- RAC members had no comments on the revised table.

Statement of Need and Fiscal Impact

M. Gilman reviewed the statement of need for these rules, the fiscal and economic impact, and the impact on racial equity in Oregon. M. Gilman asked RAC members to carefully consider the impact on racial equity and as agencies are providing services directly to clients. Additional suggested changes to how equity is impacted was encouraged. It was noted that by enabling agencies to identify a qualified trainer within the agency, clients may receive more timely care and assistance.

RAC members had no comments on the draft Statement of Need and Fiscal Impact.

Next Steps
M. Bernal provided an overview of the next steps: • Staff will consider the comments provided and asked RAC members to submit any final suggested language changes by Wednesday, August 9, 2023; • Meeting notes will be drafted for this meeting and sent out via email and posted on the HCRQI Rulemaking Activity web page; • Staff will consider further the SB 226 legislation and whether any additional changes can be considered; • The goal is to submit final language to the Public Health Division's administrative rule coordinator by August 21st; post the public hearing notice in the September 1st Oregon Bulletin; notify interested parties about the rulemaking; hold a public hearing on or after September 15th, respond to comments via the Hearing's Officer report and have final rules in effect sometime between October 1st and the 15th.

Meeting adjourned at 2:30 p.m.