

**CHAPTER 411  
DIVISION 34**

**STATE PLAN PERSONAL CARE SERVICES**

**411-034-0000 Purpose**  
*(Amended 12/1/2004)*

(1) These administrative rules (OAR 411-034-0000 through 411-034-0090) are established to ensure personal care services will support and augment independence, empowerment, dignity, and human potential through provision of flexible, efficient, and suitable services to eligible clients. Personal care services are intended to supplement the client's own personal abilities and resources.

(2) Medicaid State Plan services are health care benefits defined by the state. Certain services are required by the Centers for Medicare and Medicaid (CMS) to be included in the state plan and others are optional services selected by states from a menu of options. Each state determines what medical services will be covered. Personal Care is one of the optional services that Oregon selected for its Medicaid State Plan.

Stat. Auth.: ORS 410.070  
Stats. Implemented: ORS 410.070

**411-034-0010 Definitions**  
*(Amended 12/1/2004)*

As used in these rules, unless the context demands otherwise, the following definitions apply:

(1) "Activities of Daily Living" (ADL) means those self-care activities, that must be accomplished by an individual for continued well-being including mobility, dressing and grooming, bathing and personal hygiene, toileting, bowel and bladder care, and eating.

- (2) "Case Management" means those functions, performed by a Case Manager or Service Coordinator that ensure the effective provision of personal care and supportive services to the client.
- (3) "Case Manager" or "Service Coordinator" means a DHS employee or an employee of a designee who ensures client entry, assessment, case planning, service authorization and implementation, and evaluation of the effectiveness of the services.
- (4) "Client" means the individual eligible for personal care services.
- (5) "Contract Agency" means an entity or person contracting with the Seniors and People with Disabilities or its designee to provide personal care services.
- (6) "Cost Effective" means that a specific service meets the client's service needs and costs less than other service options considered.
- (7) "Designee" means Children, Adults and Families (CAF), Mental Health Services, Developmental Disabilities Services, or an Area Agency on Aging, or any organization with whom Seniors and People with Disabilities has an interagency agreement or contract.
- (8) "Department" means the Oregon Department of Human Services.
- (9) "Fiscal Improprieties" means the Personal Care Attendant committed financial misconduct involving the client's money, property or benefits. Improprieties may include financial exploitation, borrowing money from the client, taking the client's property or money, having the client purchase items for the provider, forging the client's signature, falsifying payment records, claiming payment for hours not worked, and similar acts intentionally committed for financial gain.
- (10) "Full Assistance" means the client is unable to do any part of a task listed in OAR 411-034-0020 and that the task must be done entirely by someone else.
- (11) "Homecare Worker" means a provider enrolled through the Department to provide services to seniors and persons with physical disabilities as described in OAR 411, Division 031.

(12) "Lacks the Skills, Knowledge and Ability to adequately or safely perform the required work" means the Personal Care Attendant does not possess the skills to perform services needed by Department clients. The Personal Care Attendant may not be physically, mentally, or emotionally capable of providing services to persons with developmental disabilities or mental health diagnoses. Their lack of skills may put clients at risk, because they fail to perform, or learn to perform, their duties adequately to meet the needs of the client.

(13) "Legally Responsible Relative" means the parent, or step-parent of a minor child, a spouse, or other family member who has legal custody or legal guardianship according to ORS 125.005, 125.300, 125.315, and 125.320.

(14) "Minimal Assistance" means the client is able to perform a majority of a task, but requires some assistance.

(15) "Personal Care Attendant" means a provider with an individual Medicaid provider number who is enrolled through the Department to provide Personal Care Services, as described in these rules, to DHS Developmental Disabilities Services and Mental Health Services clients.

(16) "Personal Care Services" means a task, which helps with the client's activities of daily living and other activities as listed in OAR 411-034-0020.

(17) "Provider" or "Qualified Provider" means the individual who actually performs the service and meets the description cited in OAR 411-034-0050.

(18) "Provider Enrollment" means the authorization to work as a provider employed by the client, for the purpose of receiving payment for authorized services provided to Department clients. Provider enrollment includes the issuance of a Medicaid provider number.

(19) "Service Need" means those functions or activities with which the client requires personal care support.

(20) "Sub-Acute Care Facility" means a care center or facility that provides short-term rehabilitation and complex medical services to a patient with a

condition that prevents the patient from being discharged home yet they do not require acute hospital care.

(21) "Substantial Assistance" means a client can perform only a small portion of a task and requires assistance with a majority of a task.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

### **411-034-0020 Scope of Services**

*(Amended 7/1/2005)*

(1) Personal care services are essential supportive services performed by a qualified provider, which enable an individual to move into or remain in his or her own home.

(2) The extent of the services may vary, but the number of hours is limited to twenty (20) hours of services per client per month. The services include:

(a) Basic personal hygiene - providing or assisting a person with such needs as bathing (tub, bed bath, shower), shampoo, hair grooming, shaving, nail care, foot care, dressing, skin care,

(b) Toileting, bowel and bladder care - assisting to and from bathroom, on and off toilet or commode, managing incontinence, bedpan, external cleansing of perineal area, external cleansing of Foley catheter, emptying catheter drainage bag, changing colostomy or ileostomy bag in stabilized situations, maintenance bowel care,

(c) Mobility, transfers, comfort - assisting with ambulation with or without assistive devices, repositioning of bed-bound or wheelchair-using individuals, encouraging active range-of-motion exercises, assisting with passive range-of-motion exercise, assisting with transfers with or without assistive devices,

(d) Nutrition - preparing nutritious meals, planning and preparing special diets, assuring adequate fluid intake, feeding,

(e) Medications and Oxygen - assisting with administration of medications, assuring medication is taken as ordered by physician, observing for reactions, reminding appropriate persons when prescriptions need to be refilled, maintaining clean oxygen equipment, assuring adequate oxygen supply, and

(f) Delegated nursing tasks.

(3) When any of the services listed in section (2)(a) to (f) of this rule are essential to the health and welfare of the client and the client is receiving a paid personal care service, the following supportive services may also be provided:

(a) Housekeeping tasks necessary to maintain the client in a healthy and safe environment,

(b) Arranging for necessary medical appointments,

(c) Observation of client's status and reporting of any significant changes to physician or other appropriate person,

(d) First aid and handling of emergencies, and

(e) Extra support due to confusion, dementia, mental illness, or other cognitive deficits.

(4) Payment will not be made for any of the following services, which are excluded under these rules:

(a) Shopping

(b) Mileage reimbursement

(c) Social companionship

(d) Pet care

(e) Yard work and gardening

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

**411-034-0030 Eligibility**

*(Amended 7/1/2005)*

(1) To be eligible for state plan personal care services under these rules, a person must require assistance from another person with one or more of the personal care services identified in 411-034-0020, section (2), (a) through (f).

(2) A person eligible for state plan personal care services under these rules must be a current recipient of at least one of the following programs: GA, EXT, MAA, MAF, OHP, OSIPM, TANF, or REF. These terms are defined in OAR 461-101-0010.

(3) Persons receiving services from a licensed residential service program that provides ADL care, such as the services received by residents of a foster home, assisted living facility, group home, or other residential care program are not eligible to receive state plan personal care services under these rules.

(4) Personal care services are not available for persons in a prison, hospital, sub-acute care facility, nursing facility, or other institution.

(5) Payment for personal care services is provided for a person needing the service when authorized by the Department or its designee in accordance with a plan of care.

(6) Care plans will be based upon the least costly means of providing adequate care. Payment for personal care services is not intended to replace the resources available to a client from their relatives, friends, or neighbors. They are not intended to replace routine care commonly needed by an infant or child typically provided by a parent. Additionally, they should not be used to replace other governmental services.

(7) Clients served under the Title XIX 1915 (c) Home and Community-Based Services waiver for the aged and physically disabled are not eligible to receive personal care services under the state plan.

(8) Clients serviced under a Title XIX 1915(c) Home and Community Based Services waiver for persons with mental retardation or developmental disabilities are not eligible to receive personal care services under the state plan.

(9) Clients receiving Children's Intensive In-Home Services as described in OAR 411-300-0100 through 411-300-0220 are not eligible to receive personal care services under the state plan.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-034-0035 Where Clients Are Served**

*(Adopted 12/1/2004)*

(1) A client eligible for or receiving mental health case management services or other services through Mental Health Services will apply for State Plan Personal Care services through the local County Mental Health Services office.

(2) Clients eligible for or receiving developmental disabilities case management services or other services through Developmental Disabilities Services will apply for State Plan Personal Care services through the local County Developmental Disability Services office or through the local support service brokerage.

(3) Clients eligible for or receiving case management services from a Senior and People With Disabilities (SPD)/Area Agency on Aging (AAA) office serving seniors and persons with physical disabilities, will apply for State Plan Personal Care services through the local SPD or AAA office that provides Medicaid programs to seniors or persons with physical disabilities.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-034-0040 Employment Relationship**

*(Adopted 12/1/2004)*

(1) The relationship between the provider and the client is that of employee and employer. The client carries primary responsibility for locating, interviewing, screening, and hiring his or her own employees.

(2) Termination of Employment. It is the responsibility of the employer to establish an employment agreement at the time of hire. The employment agreement may include grounds for dismissal and any requirements to provide advance notice before resigning. The client has the right to terminate their employment relationship with their provider at any time and for any reason.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-034-0050 Qualified Provider**

*(Amended 12/1/2004)*

(1) A qualified provider is an individual who, in the judgment of the Department or its designee, can demonstrate by background, skills, and abilities the capability to safely and adequately provide the services authorized.

(2) A qualified provider must maintain a drug-free work place and must have an acceptable criminal history clearance as described in OAR Chapter 410, Division 007.

(3) A qualified provider paid by the Department must not be the parent, or step-parent of a minor child, the client's spouse or another legally responsible relative.

(4) A qualified provider must be authorized to work in the United States, in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and Immigration rules.

(5) A qualified provider must be 18 years of age or older. A Homecare Worker enrolled in the Client-Employed Provider Program who is at least sixteen years of age may be approved for limited enrollment as a qualified provider, as described in OAR 411-031-0040 (8)(d).

(6) A qualified provider may be employed through a contract agency or as a Homecare Worker or Personal Care Attendant under an individual provider number. Rates for these services are established by the Department.

(7) Homecare Workers enrolled in the Client-Employed Provider Program providing state plan personal care services must meet the standards in OAR Chapter 411, Division 031.

(8) Criminal History Clearance Re-checks:

(a) Criminal history clearance re-checks may be conducted at the discretion of the Department or designee, in accordance with OAR 410-007-0200 through 410-007-0380.

(b) Providers will comply with criminal history clearance re-checks by completing a new criminal history authorization form when requested to do so by the Department.

(c) The provider's failure to complete a new criminal history clearance authorization will result in the inactivation of the provider enrollment. Once inactivated, a provider must reapply and meet all of the standards described in OAR 411-034-0050 to have their provider enrollment reactivated.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

### **411-034-0055 Personal Care Attendant Enrollment Standards**

*(Amended 7/1/2005)*

The Department may deny or terminate a Personal Care Attendant's provider enrollment and provider number if the Personal Care Attendant:

(1) Has an unacceptable criminal history as defined in OAR Chapter 410, Division 007;

(2) Lacks the skills, knowledge, or ability to adequately or safely perform the required work;

- (3) Violates protective service and abuse rules in OAR Chapter 411, Division 020, or OAR 413, Division 015;
- (4) Commits fiscal improprieties;
- (5) Fails to provide the authorized services required by the client;
- (6) Has been repeatedly late in arriving to work or has absences from work not authorized in advance by the client;
- (7) Has been intoxicated by alcohol or drugs while providing authorized services to the client or while in the client's home;
- (8) Has manufactured or distributed drugs while providing authorized services to the client or while in the client's home; or
- (9) Has been excluded as a provider by the Department of Health and Human Services, Office of Inspector General, from participation in Medicaid, Medicare or any other federal health care programs.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

#### **411-034-0070 Quality Assurance, Assessment, Authorization, and Monitoring**

*(Amended 7/1/2005)*

(1) This rule details quality assurance responsibilities in the assessment, case planning, prior authorization of payment for services, and on-going monitoring of a care plan as performed by case managers, registered nurses, or other persons designated by the Department or interagency agreement to perform similar activities.

(2) Case Manager Quality Assurance Responsibilities:

(a) Assessment: The case manager or designated person will assess the service needs of the client by identifying services the client is currently eligible for, services currently being provided, and resources meeting any, some, or all of the person's needs. The case manager

will interview the client and, if appropriate, other interested persons to assess the client's ability to perform the tasks listed in OAR 411-034-0020.

(b) Prior Authorization: Payment for personal care services must be prior authorized by the Department or its designee based on these rules, the service needs of the client as documented in the written care plan, and the cost effectiveness of the proposed services. If a client is served by a Department designee that does not provide, assessment, planning and authorization of personal care services, then the local Seniors and People With Disabilities (SPD) or the Area Agency on Aging (AAA) office will be responsible for case planning and service payment authorization.

(c) Case Planning:

(A) The case manager will prepare a care plan identifying those tasks for which the client requires minimal, substantial or full assistance, the supports that currently address some or all of those assistance needs, and the number of authorized hours of service.

(B) The care plan will describe the tasks to be performed by the qualified provider, authorize the maximum number of hours that can be reimbursed for those services, indicate the expected outcomes and estimate the cost of the care. The case manager will review the plan with the client and, if appropriate, interested parties prior to implementation.

(d) Nursing Referral: The case manager or designee may refer a registered nurse (RN) for nursing assessment and monitoring when it appears the client may need services requiring RN monitoring or delegation under the Oregon State Board of Nursing, Nurse Delegation Rules (OAR Chapter 851 Division 47). Indicators of the need for RN assessment and monitoring include:

(A) Medical instability, as demonstrated by frequent emergency care, physician visits or hospitalizations;

(B) Potential for skin breakdown or pressure ulcers;

(C) Multiple health problems or frailty with a strong probability of deterioration;

(D) Potential for increased self-care, but instruction and support for the client are needed to reach goals; or

(E) Complex medication regimen including PRN prescribed medications, use of psychoactive medications insulin or blood-thinning medication with frequent lab work.

(e) On-going Monitoring and Authorization: The case manager will meet with the client and, when appropriate, interested parties at least once every 365 days to review the client's service needs. The case manager will review the cost effectiveness of the plan, and will authorize a new service plan, if appropriate, based on the client's current service needs.

(2) Registered Nurse Quality Assurance Responsibilities:

(a) Assessment: The registered nurse will assess the need of each client if referred by the case manager, or designee for medically-related services to assist with tasks listed in OAR 411-034-0020,

(b) Nursing Care Plan:

(A) The nursing care plan must comply with the Nurse Practice Act, Oregon Revised Statutes 678.010 to 678.410, and the Oregon State Board of Nursing Administrative Rules Chapter 851, Divisions 045 and 047.

(B) The nursing care plan will be reviewed with the client, the provider and the case manager prior to implementation. The plan will indicate the interventions needed, the expected outcomes of care and the schedule of authorized nursing visits. The frequency of review will be based on the client's need, but the plan will be reviewed at least every 180 days. A copy of the nursing care plan must be included in the referring case manager's case plan file.

(c) Maximum hours and hourly rates for contracted nurse services are established by the Department.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070

**411-034-0090 Payment Limitations**

*(Amended 12/1/2004)*

(1) The number of ADL service hours authorized for each client per calendar month will be based on projected amounts of time to perform specific assistance to the client. The total of these hours must not exceed twenty (20) hours per client per month. These hours may be spread throughout the month or used in large blocks.

(2) The monthly maximum hours for personal care services described in section (1) of this rule do not include authorized nursing assessment and monitoring services provided by a registered nurse.

(3) The Department will not guarantee payment for services until all acceptable provider enrollment standards have been verified and both the employer and provider have been formally notified in writing that payment by the Department is authorized.

(4) In accordance with OAR 410-120-1300, all provider claims for payment must be submitted within 12 months of the date of service.

Stat. Auth.: ORS 410.070

Stats. Implemented: ORS 410.070