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Authorized Signature

Number: SPD-PT-06-034
Issue Date: 07/11/2006

Topic: Long Term Care

Transmitting (check the box that best applies):

- New Policy
 Policy Change
 Policy Clarification
 Executive Letter
 Administrative Rule
 Manual Update
 Other: _____

Applies to (check all that apply):

- | | |
|--|--|
| <input type="checkbox"/> All DHS employees | <input type="checkbox"/> County Mental Health Directors |
| <input checked="" type="checkbox"/> Area Agencies on Aging | <input type="checkbox"/> Health Services |
| <input type="checkbox"/> Children, Adults and Families | <input checked="" type="checkbox"/> Seniors and People with Disabilities |
| <input type="checkbox"/> County DD Program Managers | <input type="checkbox"/> Other (please specify): |

Policy/Rule Title:	In-Home Support Services rule changes effective 06/01/2006		
Policy/Rule Number(s):	Chapter OAR, division 030	Release No:	
Effective Date:	06/01/2006	Expiration:	
References:	OAR 411-030-0020 through 411-030-0090 HCWs OAR 411-031-0020 through OAR 411-030-0050		
Web Address:	http://www.dhs.state.or.us/policy/spd/rules/411_030.pdf		

Discussion/Interpretation: New In-Home Support Services rules were filed following review and comment by a rule advisory workgroup. Changes were made to the following Oregon Administrative Rules as described below:

OAR 411-030-0020 Definitions

New definitions were added for:

- Business Days
- Natural Supports or Natural Support System
- Waivered Services

Several definitions were removed since they were no longer used within the text of the In-Home Support Services OARS. Full Assistance, Minimal Assistance and Substantial Assistance definitions were moved to the rule they reference - OAR 411-030-0070.

Several definitions were revised to include updated terms such as “individual” in place of “client” or “seniors” and “people with disabilities” rather than “elderly” or “disabled.”

The following definitions were significantly revised in content as described in parentheses:

- *Cost-effective (Includes “being responsible and accountable with Department resources” and mentions “natural supports” and “alternative service resources.”)*
- *Exception (Based on recommendation from the Exceptions Workgroup, clarifies that exception is an exception to a monthly service payment, not an hourly rate.)*
- *Self-Management (Same meaning as IADL and refers to OAR 411- 015-0007 Service Priority Rules which will define specific tasks.)*
- *Case Manager (new definition better describes functions including determining eligibility, offering service choices, and authorizing, implementing and monitoring the service plan.)*

OAR 411-030-0033 Program Scope

Section (3) has been completely re-written to define “Permissible Living Arrangements for the In-Home Services Program.” In-Home Support Services are intended to enable an individual to remain living in his or her own home. Although services can be provided while an individual is participating in the community, services are intended for individuals residing in their own homes. When an individual eligible for waived services resides in the home of a friend or relative, and that friend or relative is the proposed provider, the setting should be licensed as a relative adult foster home or limited licensed adult foster home.

New terms “provider-owned dwelling,” “provider-rented dwelling” and “informal arrangement” are introduced in this rule revision. When the individual is living in the provider’s home, or there is an informal arrangement for shelter or utility costs, the individual is not eligible for In-Home Services. In the rule, an “Informal arrangement” is distinguished from a formal “property manager’s rental agreement.”

Rented Property

To be considered eligible for In-Home Services, the client must be identified as a party to the formal property manager’s rental agreement for the dwelling to be considered the client’s home. A client cannot be eligible to receive waived In-Home Services from a provider who rents the dwelling the client resides in. The required components of a formal property manager’s rental agreement are identified in the rule.

Owned Property

In order to be eligible for In-Home Services, the client must be identified as an owner on a deed, mortgage or title of property. If the client is identified as a property owner, the dwelling is considered the client's home.

A client who resides in a "provider-owned dwelling" is not eligible to receive In-Home Services from the property owner or his or her spouse. A client cannot rent or lease a portion of a "provider-owned dwelling" and be eligible for In-Home Services if the provider is the property owner or his or her spouse. Even when remodeled to function as a separate residence, a garage or basement included on the provider's property deed or mortgage is not considered the client's home for the purposes of In-Home Services program eligibility.

OAR 411-030-0040 Eligibility Criteria

A clarifying sentence was added that states: "An individual whose service needs are met by their natural supports will not be eligible for in-home support services." Services paid by the Department can only be made for needs that are unmet by the natural support system. Paid services cannot be provided for an individual if all of his or her service needs are being addressed by their natural support system.

In-Home Support Services eligibility for individuals on the General Assistance Program was removed since this program is no longer offered. This change will not impact any current clients.

A separate policy transmittal is being issued to address eligibility changes under these rules for individuals receiving TANF, MAA, MAF, or Extended Medical benefits.

Eligibility start dates for In-Home Support Services were clarified. OAR 461-180-0040 (2) (a) - "Effective Dates; Changes in Special or Service Need" - states: "The effective date for long-term care is the date the service plan is implemented. A service plan is considered implemented when: "The client employs a Homecare worker (see OAR 411-031-0020 and 411-031-0040) or a contracted in-home agency (see OAR 411-030-0090), and the Homecare worker or agency is an enrolled Medicaid provider." New language added to OAR 411-030-0040 expands upon when a service plan is considered implemented. Implementation includes the authorization of a Service Plan that identifies the provider who will deliver the authorized services, the date when the provision of services will begin and the maximum number of hours authorized.

Also concerning eligibility dates, a revision was made that an enrolled Homecare Worker or Contracted In-Home Care Agency must be employed within fourteen business days (rather than 30 calendar days) for the client to remain eligible for the

program. Likewise, section (c) was revised to reflect that following discharge from a temporary stay in a nursing facility or medical institution, the client must employ a provider within fourteen business days to remain eligible. These rule changes to fourteen from thirty days were made based on a clarification provided by the Centers for Medicare and Medicaid Services (CMS).

OAR 411-030-0050 Case Management

Case Manager responsibilities in developing the service plan were revised to include “identifying risks.” “Assuring” was changed to “assessing the cost effectiveness of the plan” to better reflect the analysis the Case Manager performs in balancing cost effectiveness and client choice.

Client responsibilities in developing the service plan were revised to indicate the expectation that the individual assists in the development of the plan and in developing less costly service alternatives.

A separate policy transmittal is being issued to address changes to eligibility for the hardship shelter allowance under these rules.

OAR 411-030-0055 Service-Related Transportation

A new rule concerning Service-related transportation was filed through the permanent rulemaking process. An additional rule from the temporary rules filed previously clarifies that Service-related transportation to and from work can be authorized as part of the service plan for a client eligible for the Employed Persons with Disabilities Program.

OAR 411-030-0070 Maximum Hours of Service

In the sections concerning Activities of Daily Living, Self-Management Tasks, and 24-hour Availability, language was added to clarify hours authorized are based on the service needs of the individual. Case Managers may authorize up to the amount of allotted hours identified in the rule for service plan assistance levels. For example, substantial assistance in eating is 20 hours, but an individual needing substantial assistance could be authorized any amount up to 20 hours based on the individual's assistance need.

Also in the ADL and IADL sections, a paragraph was added that Service Plan hours may only be authorized for an individual if the individual requires assistance from another person in that activity as determined by the Case Manager's service assessment. This means that if the Case Manager, using the CA/PS assessment tool, does not assess an individual as needing assistance in Grooming, as that activity is defined in the Service Priority rules (OAR 411-015-0006) that the individual cannot be authorized to receive service plan hours for Grooming.

"Medication Management" was changed to "Medication and Oxygen Management."

Self-management was revised to reflect that if two or more individuals receiving In-Home Services live in the same household, each additional individual would receive a total of four hours in self-management.

Eligibility for 24-hour availability based on assistance needs in activities of daily living was clarified. These ADL needs are more specific than previous rule language and match the calculations currently coded into the CA/PS assessment tool. Clarifying language was added to reflect what service needs correspond to minimal, substantial or full assistance hours in 24-hour availability.

In the 24-hour availability section, minimum hours were changed from 50 to 60. A paragraph was added that plans with full-time live-in service authorizations will include a minimum of 60 hours of 24-hour availability, which is prorated if the provided by multiple HCWs each working less than full time. The changes were made based on the 2005-2007 Home Care Commission's collective bargaining agreement with the Homecare Workers' Union.

A paragraph was added to clarify the intent of 24-hour availability and that a Homecare Worker authorized 24-hour availability must not be employed outside the client's home or building during the times that they are on duty. This paragraph was added in response to concerns raised by the Secretary of State in auditing Medicaid provider payments.

Another paragraph was added to clarify payment can only be made for the activities described as ADL, self-management and 24-hour availability. No other services are

covered and services must be provided to the client and cannot be provided to benefit the entire household. This means that activities like housecleaning and meals would not be provided for non-service eligible individuals that may be in the same household.

All language that addressed rate or payment exceptions was moved to a new subsection, "Exceptions to Maximum Hours." In that section, the criteria for exceeding 145 ADL hours or 85 self-management hours are defined. Criteria for exceeding a total of 389 service plan hours for a live-in plan or the equivalent cost for an hourly service plan is defined. These numbers come from the total combined full assistance hours defined in this rule for ADL (145), self-management (85) and a live-in plan using all ADL/Self-management and 24-hour availability hours (389). The local office approval amount listed on the SPD published rate schedule is based upon 389 full assistance hours in the three categories (ADL, self-management and 24-hour availability).

OAR 411-030-0080 Spousal Pay Program

A sentence was added to clarify that although Spousal Pay Providers cannot receive "respite" that eligible Spousal Pay Providers may receive live-in paid leave. Live-in paid leave for Homecare Workers is a benefit described in OAR 411-031-0040. Under the Home Care Commission's collective bargaining agreement with the Homecare Workers' Union, Spousal Pay Providers are recognized as live-in Homecare Workers, and entitled to the same benefits unless otherwise described in the contract. The fact that the Department does not pay for respite means DHS will not make additional service payments to providers who fill-in while the Spousal Pay provider is attending to personal business or errands. The Spousal Pay Provider has to use their service payment to cover those times. However, the Department will pay a relief care provider when the Spousal Pay provider is using their paid leave benefit to take time off.

OAR 411-030-0090 Contracted In-Home Care Agency Services

A clarification was added that Contracted In-Home Care Agencies hourly services (activities of daily living and self-management tasks) and does not include live-in services (such as 24-hour availability along with ADL and self-management tasks). This is not a change in practice as DHS' contracts with In-Home Care agencies do not cover live-in services and 24-hour rates have not been negotiated in any contract.

Training/Communication Plan:

Rule changes will be incorporated into training covered in Case Management Basics, and Regional Technical Training. Netlink training on In-Home Support Services and Long-term Care Service Priorities (OAR 411, division 015) rule changes were scheduled 06/27/06 and 06/28/06.

Local/Branch Action Required:

At the time of the service eligibility assessment or re-assessment, assure that the client meets the policy criteria as an owner or renter of the property in which they are residing. This forms the basis of eligibility for services through the In-Home Services program. For those who do not meet the requirements, provide the client with an explanation of the In-Home Services criteria and the opportunity to transition to receiving services from another provider, including limited license or relative adult foster , if appropriate, or to other available service settings. Service planning should be transitioned without an interruption in authorized services whenever possible.

See separate policy transmittals concerning changes to eligibility for TANF, MAA, MAF and EXT recipients and regarding eligibility for the hardship shelter allowance.

Central Office Action Required:

Provide data to local offices about clients no longer eligible for in-home support services. Provide technical assistance as needed, including review of eligible living arrangements to assist the local offices in setting up appropriate plans. Conduct Netlink and regional technical training on rule changes.

Field/Stakeholder review: Yes No

If yes, reviewed by: Rule Advisory Workgroup, SPD Policy Workgroup, SPD Operations Committee

Filing Instructions: OARs will be posted on the SPD Staff Tools, SPD Case Management Tools and Secretary of State’s Oregon Administrative Rules websites.

If you have any questions about this policy, contact:

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