DHS Oregon Department of Human Services

Aging and People with Disabilities

Policy Transmittal

Mike McCormick
Authorized Signature

Number: **APD-PT-15-025**
Issue date: 7/28/2015

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*):

☐ All DHS employees
☒ Area Agencies on Aging
☒ Aging and People with Disabilities
☐ Self Sufficiency Programs
☐ County DD Program Managers
☐ ODDS Children's Residential Services
☐ Child Welfare Programs
☐ County Mental Health Directors
☐ Health Services
☐ Office of Developmental Disabilities Services(ODDS)
☐ ODDS Children's Intensive In Home Services
☐ Stabilization and Crisis Unit (SACU)
☐ Other *(please specify)*:

Policy/rule title:	New Authorization Criteria for Live-in/Shift Services under the In-Home Services Program, Including the Independent Choices Program and Spousal Pay Program		
Policy/rule number(s):	OAR 411-030	Release no:	
Effective date:	08/31/15	Expiration:	
References:			
Web address:	OAR 411-030		

Discussion/interpretation: The In-Home Services Oregon Administrative Rules (OAR), chapter 411, division 030 is being revised effective August 31, 2015. The purpose of this revision is to establish new criteria and definition for eligible individuals to receive live-in or shift services (these terms are further defined in this transmittal). Beginning August 31, 2015, any assessment that determines eligibility for services under OAR 411-015 with an accompanying service plan must meet the new criteria. These criteria will also affect Independent Choices Program (ICP) and Spousal Pay recipients.

This change is being made to ensure that individuals needing live-in or shift care have access to those services to remain in the community. This change is intended to better define and describe eligibility for these services, improve consistency, and provide for cost effective management of in-home services. These changes are also being driven by new regulations from the U.S. Department of Labor.

For easy reference, the following topics are covered in this transmittal:

- Live-in Services
- Shift Services
- Live-in/Shift Services Criteria
- New Service Plan Authorization
- Current Service Plans Authorization
- Independent Choices Program
- Spousal Pay Program
- Exception Process
- Oregon Access and 514 Form Update

Live-in Services

Live-in Services mean services provided by at least one live-in HCW when an individual requires ADL, IADL, and live-in services in the individual's home for a twenty-four hour work period. Live-in services hours are only assigned to HCWs that reside in the home for a minimum twenty-four hour work period.

Shift Services

Shift Services are hourly service plans that authorize at least 16 hours a day of ADL/IADL care (496 hours per month) by using multiple HCWs and/or a contracted in-home care agency.

Live-in/Shift Services Criteria

In order for an individual to be eligible for live-in or shift services, the following criteria must be met:

1. **At least one ADL or IADL task** must be performed sometime **during each hour** the individual is awake in order to ensure the safety and well-being of the individual, and;

2. One of the following criteria:

- The individual is a Full Assist based on an assessed need as defined in OAR 411-015-0006 in at least one of the following 2 areas:
  - Mobility
  - Elimination
- The individual has at least one of the following conditions:
  - A medically diagnosed, debilitating condition; such as, but not limited to: Cachexia, severe neuropathy, frequent and unpredictable seizures, coma, persistent or reoccurring stage 3 or 4 wounds, late stage cancer, or debilitating muscle spasms.
  - A spinal cord injury or similar disability with permanent impairment.
  - An acute care or hospice need that is expected to last no more than six months.

OR

- The individual is a Full Assist based on an assessed need as defined in OAR 411-015-0006 in the following area:
  - Cognition
- The individual has one of the following conditions:
  - Traumatic Brain Injury, Dementia or a related disorder, or a debilitating mental health disorder.
- The individual is a Full Assist in at least one of the following areas as defined in OAR 411-015-0006
  - Danger to Self or Others
  - Wandering
  - Awareness
  - Judgment

New Service Plan Authorization

Live-in Services:

- An individual authorized for live-in services under these new criteria will be allowed 159 hours per month under the live-in services category (which is replacing the term 24 hour availability). The hours are prorated for homecare workers (HCWs) that are working less than 7 days a week. The amount of hours authorized under live-in services may change in the future.
- A supplemental hourly HCW may also be authorized in the event that the individual's service needs require the assistance of two or more HCWs or the live-in HCW is unable to get five hours of continuous sleep in a 24 hour period.
- A live-in HCW is not permitted to provide both hourly and live-in services for the same individual.
- All service plans that propose live-in services will need Central Office approval through the exception process.
- A live-in HCW may not be authorized more than 19 hours within a 24 hour work period between 1 or more individuals.

Hourly or Shift Services:

- A single HCW may not work more than 16 hours within a 24 hour work period between 1 or more individuals.
- Per PT 015-023, the cap of 50 hours per week (220 hours per month) for hourly or shift services plans still applies.
- Plans that have at least 496 hours per month will be specifically evaluated by Central Office through the exception process to ensure that the new criteria are met.

Live-in/Hourly or Shift Services:

- Under no circumstances may a HCW claim payment for hours worked for more than one individual at the same date and time.
- Plans may not exceed 24 hours per day between one or more individuals in the same home. This amount may only be exceeded if there is a demonstrated need for two or more person tasks or when the plan requires separate HCWs for each individual.
- Nothing in these rules or policy prevent HCWs from living with the individual.

Current Service Plan Authorization

If an individual that has not been determined eligible for live-in or shift services moves into a setting that does not meet the in-home requirements found in OAR 411-030-0033, and then later returns home, a new assessment will be required if there is a need to determine eligibility (which includes Central Office approval) for live-in or shift services.

Live-in Services:

- Live-in service plans will need to be evaluated and approved by Central Office (email spd.exceptions@state.or.us for all requests) under the new live-in criteria at any time a new assessment and resulting service plan is created on August 31, 2015 or later.
    - Service plans will need to be reduced to an hourly plan if the new criteria are not met unless an exception is granted.
    - Service plans that meet the criteria must allow 159 hours of live-in services per month.

Hourly or Shift Services:

- Existing hourly plans that have at least 496 hours per month will need to be evaluated and approved by Central Office under these new criteria at any time a new assessment and resulting service plan is created on August 31, 2015 or later.

Independent Choices Program

- Individuals currently receiving 24 hour availability hours or at least 496 ADL/IADL hours per month will need to be evaluated under these new criteria at any time a new assessment and resulting service plan is created on August 31, 2015 or later.
    - If the plan does **not** meet new eligibility criteria:
        - Hours cannot be authorized under live-in services.
        - Service plans must be under 496 ADL/IADL hours per month.
    - If the plan does meet new eligibility criteria:
        - Service plans must authorize 159 hours of live-in services.
        - Service plan hours are based upon the assessed need of the individual.

- The other ICP requirements will remain the same. See OAR 411-030-0100 for current requirements.

Spousal Pay Program

- Spouses will no longer be considered live-in HCWs with the implementation of this policy. Individuals who are eligible and continue to choose to receive this service will be transitioned into hourly plans at any time a new assessment and resulting service plan is created on August 31, 2015 or later. There will be no exceptions granted for this change.
- Most of the other spousal pay requirements will remain the same. See OAR 411-030-0080 for the current requirements. However, as of August 31, 2015, there will no longer be a requirement to have a secondary PAS assessment to determine the initial eligibility of the individual.
- Hourly plans that are assessed at 496 hours or more per month will be considered a Shift Services plan.
- Spousal Pay cases will continue needing approval by Central Office for authorization.

Exception Process

Existing cases:

- If an individual becomes ineligible for live-in services (or is no longer eligible for 24-hour availability hours in the Independent Choices Program) after a new assessment and service plan is completed, an exception may be considered by Central Office if specific criteria are met. The individual must be eligible for 159 hours of 24 hour availability from the most recent assessment prior to August 31, 2015, must employ a live-in homecare worker for at least 4 days a week, and one of the following criteria as defined in OAR 411-015-0006 is met:
    - Full Assist in Mobility and at least an Assist in Ambulation or Transfers; or
    - Full Assist in Cognition; or

    - Full Assist in at least two ADL's under Elimination.
- Exceptions that are granted under these criteria will end when their live-in homecare worker who is working at least 4 days a week ends their employment for any reason. For the Independent Choices Program, the exception ends once the primary provider ends their employment for any reason.

New cases:

- If the Case Manager believes that an hourly plan will cause harm to the individual, an exception may be granted by Central Office to allow a plan to have a live-in homecare worker. The process is as follows:
    - The Case Manager believes the individual is in need of a live-in plan even though eligibility criteria are not met.
    - The Case Manager explains on the exception request why this individual needs to have a live-in plan and submits the request to their manager.
    - If the manager agrees, the request is sent to Central Office.
    - Central Office staff will contact the Case Manager to go over the reasons for the exceptions request, exploring all other available options.
    - Central Office will make the final decision on granting or denying the request.

****As a reminder, in all situations where the plan hours are being reduced, appropriate notices must be provided to the affected HCW(s) (using APD 4105), as well as a decision notice for the individual (using APD 540).**

Oregon Access and 514 Form Update

- Oregon Access is scheduled for an update to implement this change on August 31, 2015. Additional information will be provided on the changes with Oregon Access in during the webinar training.
- The APD 514 form will be updated to reflect the different reasons for submitting an exceptions request.

Implementation/transition instructions: Assessments and service plans that are created on August 31, 2015 or later must meet the new rule requirements.

Training/communication plan: Further training on this policy will be provided at the mandatory webinar on July 30, 2015, at 1:30 PM. Please follow the directions in APD-IM-15-055 to sign up. If you are not able to attend the webinar, the training information will be provided under "Training and Events" under the CM APD Tools page.

Local/branch action required: Implement policy as directed.

Central office action required: Review cases through the in-home exceptions process to determine if service plans meet the new rule requirement.

Field/stakeholder review: ☒ Yes ☐ No

If yes, reviewed by: APD Policy, APD Operations Committee, and APD Stakeholders

Filing instructions:

If you have any questions about this policy, contact:

Contact(s):	Mat Rapoza, In-Home Policy Analyst		
Phone:	503-945-6985	**Fax:**	503-947-4245
Email:	Mathew.G.Rapoza@state.or.us		