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DEPARTMENT OF HUMAN SERVICES
AGING AND PEOPLE WITH DISABILITIES
OREGON ADMINISTRATIVE RULES

CHAPTER 411
DIVISION 33

IN-HOME CARE AGENICES PROVIDING MEDICAID IN-HOME SERVICES

411-033-0000 Purpose and Scope

The rules in OAR chapter 411, division 033 ensure that in-home care agencies, as one of the Medicaid in-home services provider options, provide services to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and suitable services. In-home services fill the role of complementing and supplementing an individual's own personal abilities to continue to live in their own home.

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

411-033-0010 Definitions

Unless the context indicates otherwise, the following definitions apply to the rules in OAR chapter 411, division 033:

(1) "AAA" means "Area Agency on Aging" as defined in this rule.

(2) "Activities of Daily Living (ADL)" mean those personal, functional activities required by an individual for continued well-being, which are essential for health and safety. Activities include eating, dressing, grooming, bathing, personal hygiene, mobility (ambulation and transfer), elimination (toileting, bowel, and bladder management), and cognition, and behavior as defined in OAR 411-015-0006.

(3) "ADL" means "activities of daily living" as defined in this rule.

(4) "Aging and People with Disabilities" means the program area of Aging and People with Disabilities, within the Department of Human Services.

(5) "APD" means "Aging and People with Disabilities".

(6) "Area Agency on Aging (AAA)" means the Department designated agency charged with the responsibility to provide a comprehensive and coordinated system of services to individuals in a planning and service area. The term Area Agency on Aging is inclusive of both Type A and Type B Area Agencies on Aging as defined in ORS 410.040 and described in ORS 410.210 to 410.300.

(7) "Assessment" means an assessment as defined in OAR 411-015-0008.

(8) "Background Check" means a criminal records check and an abuse check under OAR chapter 407, division 007.

(9) "Business Days" means Monday through Friday and excludes Saturdays, Sundays, and state or federal holidays.

(10) "CA/PS" means the "Client Assessment and Planning System" as defined in OAR 411-030-0020.

(11) "Caregiver" means a person employed by an In-Home Care Agency who provides assistance with activities of daily living or assistance with personal care tasks, household and supportive services, or medication services as authorized by OAR chapter 333 division 536.

(12) "Case Manager" or "CM" a Department employee or an employee of the Department's designee that meets the minimum qualifications in OAR 411-028-0040 who is responsible for service eligibility, assessment of need, offering service choices to eligible individuals, service planning, service authorization and implementation, and evaluation of the effectiveness of Medicaid home and community-based services.

(13) "Comprehensive" means a licensing classification that describes an agency that provides personal care services, which may include medication reminding, medication assistance, medication administration and nursing services (see OAR 333-536-0007).

(14) "Consumer" means an individual eligible for in-home services.

(15) "Contracted In-Home Care Agency" means an incorporated entity or equivalent, licensed in accordance with OAR chapter 333, division 536 that provides hourly contracted in-home services to individuals receiving services through the Department or the Area Agency on Aging.

(16) "Cost Effective" means being responsible and accountable with Department resources. This is accomplished by offering less costly alternatives when providing choices that adequately meet an individual's service needs. Those choices consist of all available services under the Medicaid home and community-based service options, the utilization of assistive devices, natural supports, architectural modifications, and alternative service resources (see OAR 411-015-0005). Less costly alternatives may include resources not paid for by the Department.

(17) "Department" means the Department of Human Services (DHS).

(18) "Emergent Need" means a consumer has no supports in the home and the passage of time could seriously jeopardize the consumer's health and safety as determined by the DHS or AAA office.

(19) "Exception" means a service plan that is granted to a specific individual to exceed the limitations as described in OAR 411-030-0070, based upon the service needs of the individual as determined by the Department.

(20) "Exceptional Rate" or "Exceptional Payment" means the amount paid to a provider based on the approval of an exception. The approval of an exception is based on the service needs of the individual and is contingent upon the individual's service plan meeting the requirements in OAR 411-027-0020, OAR 411-027-0025, and OAR 411-027-0050.

(21) "Homecare Worker" means a provider, as described in OAR 411-031-0040, that is directly employed by a consumer to provide either hourly or live-in services to the eligible consumer. The term homecare worker does not include an employee of an in-home care agency who is providing in-home services.

(22) "Hourly Services" means the in-home services, including activities of daily living and instrumental activities of daily living, that are provided at regularly scheduled times, not including live-in services.

(23) "IADL" means "instrumental activities of daily living" as defined in this rule.

(24) "ICP" means "Independent Choices Program" as defined in this rule.

(25) "Independent Choices Program (ICP)" means a self-directed in-home services program in which a participant is given a cash benefit to purchase goods and services identified in the participant's service plan and prior approved by the Department or the Area Agency on Aging.

(26) "Individual" means a person age 65 or older, or an adult with a physical disability, applying for or eligible for services.

(27) "In-Home Care Agency" or "IHCA" means an agency as defined in OAR 333-536-0005 that is primarily engaged in providing in-home care services for compensation to an individual in that individual's place of residence. "In-home care agency" does not include a home health agency or portion of an agency providing home health services.

(28) "In-Home Services" as defined in OAR 411-030-0002 mean the activities of daily living and instrumental activities of daily living that assist an individual to stay in his or her own home or the home of a relative.

(29) "In-home care services" as defined in OAR 333-536-0005-means personal care services furnished by an in-home care agency, or an individual under an arrangement or contract with an in-home care agency, that are necessary to assist an individual in meeting the individual's daily needs, but do not include curative or rehabilitative services.

(30) "Initial Screening" means a screening required by the in-home care agency licensing rules OAR 333-536-0055 that is conducted to evaluate a prospective client's service requests and needs prior to accepting the individual for service. The extent of the screening shall be sufficient to determine the ability of the agency to meet those requests and needs based on the agency's overall service capability.

(31) "Instrumental Activities of Daily Living (IADL)" mean those activities, other than activities of daily living, required by an individual to continue independent living. The definitions and parameters for assessing needs in IADL are identified in OAR 411-015-0007.

(32) "Liability" means the dollar amount an individual with excess income contributes to the cost of service pursuant to OAR 461-160-0610 and OAR 461-160-0620.

(33) "Licensed" means an agency as defined in OAR 333-536-0005 that is currently licensed, certified, or registered by the proper authority within the State of Oregon.

(34) "Mandatory Reporter" means an individual who is required under ORS 124.050 - 124.060 to report the abuse or suspected abuse of a child, an older adult, or the resident of a nursing facility, to the Department or to a law enforcement agency.

(35) "Medicaid OHP Plus Benefit Package" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b). This excludes individuals receiving Title XXI benefits.

(36) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department, following enrollment to deliver Medicaid funded services as described in these rules. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(37) "Natural Supports" or "Natural Support System" means resources and supports (e.g. relatives, friends, neighbors, significant others, roommates, or the community) who are willing to voluntarily provide services to an individual without the expectation of compensation. Natural supports are identified in collaboration with the individual and the potential "natural support". The natural support is required to have the skills, knowledge, and ability to provide the needed services and supports.

(38) "Nursing Services" means the provision of services that are defined in OAR 333-536-0005, that are deemed to be the practice of nursing as defined by ORS 678.010. These services include but are not limited to the

delegation of specific tasks of nursing care to unlicensed persons in accordance with the Oregon State Board of Nursing administrative rules, chapter 851, division 047. Nursing services are not rehabilitative or curative, but are maintenance in nature.

(39) "OHA" means the Oregon Health Authority.

(40) "Provider Enrollment Application and Agreement" (PEA) refers to the conditions and agreements for being enrolled as a provider with the State of Oregon, Department of Human Services, Aging and People with Disabilities (APD) or Office of Developmental Disability Services (ODDS), and to receive a provider number.

(41) "Rate Schedule" means the rate schedule maintained by the Department in OAR 411-027-0170 and posted at http://www.oregon.gov/DHS/PROVIDERS-PARTNERS/LICENSING/NFLU/Documents/rateschedule.pdf. Printed copies may be obtained by contacting the Department of Human Services, Aging and People with Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, E-48, Salem, Oregon 97301.

(42) "Relative" means a person, excluding an individual's spouse, who is related to the individual by blood, marriage, or adoption.

(43) "Representative" is a person either appointed by an individual to participate in service planning on the individual's behalf or an individual's natural support with longstanding involvement in assuring the individual's health, safety, and welfare. A representative cannot be a paid employee or homecare worker.

(44) "Service Need" means the assistance an individual requires from another person for those functions or activities identified in OAR 411-015-0006 and OAR 411-015-0007.

(45) "Spouse" means a person that is legally married to an individual as defined in OAR 461-001-0000.

(46) "These Rules" mean the rules in OAR chapter 411, division 033.

(47) "Urgent Need" means a consumer currently has support in the home, and the consumer’s care needs are able to be met for the next three days as determined by the DHS or AAA office.

(48) "Work week" is defined as 12:00 a.m. on Sunday through 11:59 p.m. on Saturday.

Stat. Auth.: ORS 409.050, 410.070, 410.090
Stats. Implemented: ORS 410.010, 410.020, 410.070

411-033-0020 Contracted In-Home Care Agency Services
(Renumbered from 411-030-0090)

(1) In-home care agency (IHCA) services are one of the in-home service options available for individuals eligible for Medicaid in-home services. The in-home care agency must be licensed in accordance with OAR chapter 333, division 536 or as a licensed home health agency that has obtained the in-home care service designation from the Oregon Health Authority according to ORS 443.305 - 443.355.

(2) Medicaid-funded in-home services are not available to consumers who reside in a licensed or certified CBC setting as defined in OAR 411-030.

(a) The IHCA and case manager must review the consumer's service plan to assure understanding of the consumer's service plan. The CM must provide a copy of the "in-home service plan" or "task list" to the IHCA for review and signature.

(b) The IHCA shall complete a written service plan for review, and signature, indicating acceptance on the part of all participants involved in development of the plan as defined in OAR 333-536-0065.

(c) The IHCA shall begin services within five calendar days from the date of acceptance of the consumer unless the need for services is defined as emergent or urgent as determined by the DHS or AAA office.

(3) Services Provided.

(a) The services provided by the IHCA, in accordance with OAR 333-536-0045, must be based on the case manager's assessment and the service plan of the individual.

(b) Services must include the safe provision of:

(A) All assessed ADL supports;

(B) All assessed IADL supports; and

(C) Nursing services as required in the comprehensive certification in accordance with OAR chapter 333, division 536. The IHCA must ensure the services provided include medication reminding, medication assistance, medication administration, and nursing services in accordance with OAR chapter 333, division 536.

(c) The IHCA must conduct nursing assessment, monitoring, intermittent nursing care, and teaching and delegation of specific tasks. Nursing services must be provided by an Oregon-licensed registered nurse in accordance with the Oregon State Board of Nursing Administrative Rules in OAR chapter 851, divisions 045, 047, and 048, and OHA, Public Health Administrative Rules in OAR chapter 333, division 536.

(d) For consumers accessing both IHCA and other in-home service options, the IHCA is only responsible for teaching and delegation to the IHCA care staff. If other caregivers are providing services and supports that require nurse delegation, the IHCA must coordinate delegation activities with other Department assigned nurses to ensure continuity of care. In no circumstances may the IHCA rely on delegation from other Department assigned nurses.

(e) IHCA employees, caregivers, nursing staff, and administrators, must carry identification indicating their name and the name of the IHCA for which they work.

(f) The IHCA will ensure the consumer is notified of any changes in the services, care, and the frequency and time of services according to 333-536-0060 Clients' Rights.

(4) Complaints.

(a) In accordance to OAR 333-536-0042, any person may make a complaint verbally or in writing to the OHA Public Health Division regarding an allegation as to the care or services provided by an in-home care agency or violations of in-home care agency laws or regulations.

(b) Mandatory reporting. All employees of an in-home health service, which does include IHCA are required by statute (ORS 124.050 - 124.095) to report suspected abuse or neglect of a child, an older adult, a person with a physical disability or the resident of a licensed care facility, to the Department or to a law enforcement agency as required by OAR 411-020-0002.

(5) Disclosure Statements.

(a) As defined in OAR 333-536-0055, a written disclosure statement shall be signed by the consumer or the consumer's representative. The disclosure statement will be specific to the services provided to the Medicaid service consumer.

(b) The disclosure statement must include the requirements of OAR 333-536-0055, in addition to all of the following:

(A) Medicaid rates for the services provided by the IHCA and a description of billing and payment systems. The Medicaid service plan payment is considered full payment for Medicaid home and community-based services rendered.

(B) A description of the initial assessment and service planning process.

(C) A description of the services to be provided and how those services will be provided, including a discussion regarding staffing availability and coordination.

(D) IHCA and consumer's rights and responsibilities.

(E) Consumer's rights pertaining to notification of termination of services.

(F) The IHCA may not include any provision in the disclosure statement that effect consumer's rights or the IHCA's liability for negligence.

(G) For consumers receiving IHCA services, as described in OAR 333-536-0045, the services provided must be in accordance with the IHCA's written service plan developed in conjunction with a consumer or consumer's representative, based on the consumer's or consumer's representative's request, and an evaluation of the consumer's physical, mental, and emotional needs.

(c) The disclosure statement for Medicaid recipients must not include language referring to "buy outs" and "finder's fees", or include language preventing consumers from full access to other in-home services.

(6) BACKGROUND CHECKS. As indicated in OAR 333-536-0093, the IHCA must:

(a) Ensure a criminal records check has been conducted on all individuals employed by, or volunteering for, an agency who may have "direct contact" through a business relationship with the consumer.

(b) IHCAs receiving Medicaid reimbursement must conduct their background checks through the DHS Background Check Unit and comply with the DHS criminal records and abuse check rules found in OAR 407-007-0000 through OAR 407-007-0100.

(c) A background check approval is effective for three years, ending the last day of the month the expiration falls.

(A) Unless, based on possible criminal activity or other allegations against an IHCA employee, a new fitness determination is conducted resulting in a change in approval status; or

(B) The Department or AAA may request a recheck more frequently based on additional information discovered about an IHCA employee or volunteer, such as possible criminal activity or other allegations.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085
Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085

411-033-0030 Medicaid In-Home Care Agency Provider Enrollment, Requirements, and Payment

(1) PROVIDER ENROLLMENT.

(a) Application and Agreement. Per OAR 411-370-0030, being an enrolled Medicaid provider is a condition of eligibility for a Department payment for claims in community services programs.

(b) The criteria for enrollment found in OAR 411-370-0030 includes, but is not limited to:

(A) Meeting all program-specific requirements;

(B) Providing a copy of the IHCA agency's current OHA Pubic Health issued comprehensive classified license; and

(C) Obtaining a Medicaid Agency Identification Number and applicable Medicaid Performing Provider Number.

(2) Staffing Requirements. According to OAR 333-536-0070, the agency owner or administrator shall ensure the agency has qualified and trained employees sufficient in number to meet the needs of the clients receiving services.

(3) On-site Monitoring and Assessment.

The IHCA must provide to DHS/AAA a monthly report for each Medicaid consumer which includes documentation of client needs and services delivered. These records will be maintained by the IHCA to provide records necessary to 'fully disclose the extent of the services,' care, and supplies furnished to beneficiaries,
According to OAR 333-536-0085 A client record shall be maintained for every client served by an agency

(ba) The IHCA ~~must~~ will also provide a copy of all information and documents as requested by DHS or the AAA. This requested information may include, but is not limited to:

(A) Consumer records (OAR 333-536-0085).

(B) Consumer nursing services (OAR 333-536-0080).

(C) Quality improvement records (OAR 333-536-0090).

(D) Protective service investigation findings (OAR 333-536-0043).

(E) Organization, administration, and personnel records (OAR 333-536-0050).

(F) Consumer audits of services and payments (OAR 333-536-0041).

(G) The requested information shall be submitted to DHS or the AAA within five business days of the request. However, if the requesting DHS or AAA office indicates the request involves consumer safety, well-being, or a protective service investigation, the information must be submitted within 24 hours of the request.

(b) The IHCA shall cooperate with any DHS quality assurance visits regarding monitoring of any provision of IHCA services.

(c) The IHCA shall participate in consumer conferences with DHS or AAA case managers, as requested.

(4) Insurance Requirements.

(a) Dollar requirements and limitations on insurance claims against the Department are set forth by the Oregon Legislature under the Oregon Tort Claims Act (ORS 30.269).

(b) The IHCA must obtain, at the expense of the IHCA, the following types of insurance coverage with appropriate limits:

(A) Workers compensation as required by ORS 656.023.

(B) Professional liability, ORS 30.273(3), covering any damages caused by an error, omission or any negligent acts related to the services to be provided under this contract by the Contractor and Contractor's subcontractors, agents, officers and employees in an amount of not less than $_____________ per occurrence, incident or claim. Annual aggregate limit shall not be less than $ _______. If coverage is on a claims made basis, then either an extended reporting period of not less than 24 months shall be included in the Professional Liability insurance coverage, or the Contractor shall maintain either tail coverage or continuous claims made liability coverage, provided the effective date of the continuous claims made coverage is on or before the effective date of this Contract, for a minimum of 24 months following the later of (i) Contractor's completion and Agency's acceptance of all Services required under this Contract, or, (ii) Agency or Contractor termination of contract, or, iii) The expiration of all warranty periods provided under this Contract.

(C) Commercial General Liability Insurance covering bodily injury and death and property damage in a form and with coverages that are satisfactory to the State. This insurance

shall include personal and advertising injury liability, products and completed operations and contractual liability coverage for the indemnity provided under this contract. Coverage shall be written on an occurrence basis in an amount not be less than $ _______ per occurrence. Annual aggregate limit shall not be less than $ _______.

(D) Automobile liability insurance covering business use including coverage for all owned, non-owned, or hired vehicles with a combined single limit of not less than $___________ for bodily injury and property damage.

(5) Payment and Financial Reporting.

(a) The case manager shall authorize reimbursement for the service hours identified in the consumer's Medicaid Management Information System (MMIS) plan of care.

(b) The IHCA must use MMIS to submit claims for reimbursement of Medicaid authorized services. All claims must be submitted no later than 12 months from date of service.

(c) The IHCA shall be reimbursed:

(A) Only for services delivered to a consumer.

(B) Only at the approved hourly rate for ADL and IADL services.

(C) For up to three hours at the ADL care rate, for the required, completed initial assessment.

(D) For community transportation mileage related to an assessed ADL or IADL need (e.g. shopping). Reimbursement for community transportation must not include mileage for an employee commuting to and from the consumer's home. **The IHCA employee must maintain valid driver's license and necessary auto insurance if transporting the Medicaid consumer.**

(d) The Medicaid reimbursed rates for IHCAs are located in the payment limitation rule in OAR 411-027-0170.

(e) The service plan payment must be considered full payment for the services rendered under Medicaid Title XIX. Under no circumstances is the IHCA employee to demand or receive additional payment for Medicaid Title XIX-covered services from the consumer or any other source.

Stat. Auth.: ORS 409.050, 410.070, 410.090, 413.085
Stats. Implemented: ORS 410.010, 410.020, 410.070, 413.085