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Summary of New In-Home Care Agency Administrative Rules

The Oregon Health Authority (OHA) has engaged in a significant rulemaking effort to adopt rules implementing SB 669 (2019) and changes identified through a general review of the in-home care rules. OHA issued the final rules on June 29, 2021, and with exceptions noted below, go into effect **July 1, 2021**.

The following discussion summarizes key provisions in these rules that bring a significant new compliance obligation or change. Members are urged to read through the rules in their entirety to see all changes made; please find the entire text of the new rules [here](#).

Key Steps to Take Now:

- Quantify your orientation and medication training hours to ensure they meet the four-hour requirements.
- Review and adapt your ongoing caregiver training protocols and processes to the new initial training requirement.
- Review new training topics and incorporate into training. Note, in particular, the cultural competency and abdominal thrust training requirements.
- Evaluate any prior substantiated violations of employment law or OHA training requirements to determine if your agency has a pattern of such violations that may present an issue upon license renewal.
- Develop procedure and requirement for caregivers to report arrests/convictions and any licensing board actions that may preclude providing services to clients.
- Double check that your agency has an infection control program that includes the required elements and is included in your quality improvement program.
- Review the new client documentation requirements and make any necessary changes to your data input systems.

Summary of New Rules

Training; OAR 333-536-0070:

No later than January 1, 2022, in-home care agencies must provide at least the following orientation and training hours:

- Four hours orientation that may be online or in person;
- Eight hours initial training, of which six may be performed within 120 days of hire; and
- Four hours of medication training.

The six hours of initial training performed after hire may be done through on the job training or other methodology. A maximum of one hour of competency evaluation may be counted toward satisfying the eight hours of minimum training. The rules do not specify that this initial training may be counted toward the annual six hour training requirement so we must assume it is in addition.

The rules require that training be performed by a qualified individual or entity. Who is a qualified individual for training purposes remains the same and includes an LIP, registered nurse, licensed practical nurse, physician assistant, or pharmacist or another health care professional who has been approved by OHA. "Qualified entity" requires approval by OHA pursuant to a process that seemingly is not yet developed. OHCA has inquired of OHA regarding the required process for an entity to be qualified and will follow up with members when this process is identified.

The new rules also add to the existing required training topics. OHCA recommends members review the new rules for an entire list of training topics, but, notably, all agencies will be required to include abdominal thrust and first aid as part of the caregiver training requirements as well as cultural competence. Oregon Care Partners offers training in cultural competency that may help fill this requirement. View them [here](#).

Caregivers who have completed training previously and are current with training requirements, and have documentation of that training, shall have their competency evaluated by the administrator, administrator's designee or administrator's delegate, and any potential training may be limited to areas requiring improvement after the evaluation.

Consideration of employment law/training requirements in denial, suspension or revocation of license; OAR 333-536-0033

Pursuant to SB 669, OHA may now consider a demonstrated pattern, over the previous five years, of significant and substantiated violations of employment or wage laws or of caregiver training requirements when granting or renewing an in-home care license or when considering a license suspension or revocation. Employment or wage laws OHA may consider include unpaid wages under ORS 653.010 to 653.261 or unlawful employment practices under ORS chapter 659. The rules define a "pattern" of violations to be three or more occurrences of the same substantiated violation in the previous five years. OHCA notes that the statute (ORS 443.325) requires that the violations constituting a pattern also be "significant."

Survey; OAR 333-536-0041

OHA will now survey an agency every two years, instead of the previous every three years, as a requirement of licensing.

OHA must notify an agency owner and administrator no less than 72 hours prior to the date of an initial or biennial licensing survey.

Surveyors must conduct an exit conference following the survey. Prior rules made the exit conference discretionary.

Agency Operation; OAR 333-536-0050

This rule clarifies that agency subunits may utilize a parent agency's administrative systems to support such functions as billing and scheduling.

Administrator requirements; OAR 333-536-0052

Adds requirement to develop a process whereby employees that have direct contact with clients report if they have any new arrests, charges or convictions.

Caregivers must report any health care licensing board action to the in-home care agency that would prevent the caregiver from providing services to the agency.

Initial visit and monitoring; OAR 333-536-0066

Clarifies that the initial client visit must occur within 30 days of the start of care to evaluate compliance by the caregiver with the service plan and assess the client's satisfaction.

Infection control; OAR 333-536-0082

In-home care agencies are required to develop an infection control program with specified elements. This requirement is similar to the existing OSHA infection control requirement.

Client records; OAR 333-536-0085

New rules, **effective January 1, 2022**, require the client record to include documentation of all services provided, including daily caregiver notes recording a summary of the tasks completed, observation of the client and observed or reported concerns.

Quality assessment and performance improvement; OAR 333-536-0090

An in-home care agency's quality assessment and performance improvement program must now include a method to identify, analyze and correct issues with infection control and other aspects of performance relating to care and services, and a preventive strategy to ensure staff are trained in and familiar with these strategies.

Background checks; OAR 333-536-0093

The new rules prescribe that an owner or administrator subject to a nationwide criminal background check must pay the cost of that background check, which currently is \$60.40.

An in-home care agency may employ a person pending the outcome of a criminal records check if the agency ensures the person has no direct contact with a client prior to making a final fitness determination.

The rules specify elements of a fitness determination.

Requires an in-home care agency providing Medicaid services to Oregon Department of Human Services (ODHS) clients to submit criminal records check request on any subject individual working with an ODHS client to the BCU.

The rules allow the portability of a background check for agencies that provide Medicaid services to ODHS clients. A duplicate background check for a person approved through the BCU will not be necessary if the agency is compliant with OAR 411-033 and so long as a background check through the BCU is done every three years.