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TEMPORARY ADMINISTRATIVE ORDER

INCLUDING STATEMENT OF NEED & JUSTIFICATION

BHS 23-2025

CHAPTER 309

OREGON HEALTH AUTHORITY

HEALTH SYSTEMS DIVISION: BEHAVIORAL HEALTH SERVICES

FILED

10/09/2025 8:59 AM
ARCHIVES DIVISION
SECRETARY OF STATE
& LEGISLATIVE COUNSEL

FILING CAPTION: Adopting rules to create the Agency with Choice program per House Bill 4129 (2024)

EFFECTIVE DATE: 10/09/2025 THROUGH 04/06/2026

AGENCY APPROVED DATE: 10/08/2025

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Filed By:
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NEED FOR THE RULE(S):

The Oregon Health Authority (OHA), Behavioral Health Division (BHD) is creating new rules in OAR chapter 309, division 045 to implement the Agency with Choice program as directed by the Oregon Legislature under House Bill 4129 passed in 2024. The Agency with Choice program provides individuals a new option for obtaining services in their own home. The Agency with Choice program supports self-directed care and independence providing individuals more control over their services while reducing paperwork and administrative tasks.

JUSTIFICATION OF TEMPORARY FILING:

1. Describe the specific consequences that result from the failure to immediately adopt, amend or suspend the rule(s).

a. Failure to implement these rules would prevent ODHS and OHA from completing the contractual process with potential Agency with Choice vendors and would delay individuals from being able to use these benefits forcing some to go without their needs being met and others to seek services from residential settings rather than their own home.

2. Who would suffer these consequences.

a. Potential vendors of Agency with Choice services and Oregonians with mental health or substance use disorders.

3. Why or how failure to immediately take rulemaking action would cause these consequences.

b. Without implementation of the rules, contracts cannot be completed with potential Agency with Choice vendors. This would require the agencies to re-post the Request For Proposal (RFP) delaying the selection of Agency with Choice vendors and delaying vendors from providing services to Oregonians.

(4) How the temporary action will avoid or mitigate those consequences.

a. Implementation of these rules will allow the agencies to proceed with RFP selection and ensure roll-out of services occurs by January 1, 2026.

DOCUMENTS RELIED UPON, AND WHERE THEY ARE AVAILABLE:

82nd Oregon Legislative Assembly – 2024 Regular Session – House Bill 4129 - https://olis.oregonlegislature.gov/liz/2024R1/Downloads/MeasureDocument/HB4129/Enrolled

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RULES:
309-045-0300, 309-045-0310, 309-045-0320, 309-045-0330, 309-045-0340, 309-045-0350, 309-045-0360, 309-045-0370, 309-045-0380, 309-045-0390, 309-045-0400, 309-045-0410, 309-045-0420, 309-045-0430, 309-045-0440, 309-045-0450, 309-045-0460, 309-045-0470, 309-045-0480, 309-045-0490, 309-045-0500, 309-045-0510, 309-045-0520, 309-045-0530, 309-045-0540, 309-045-0550, 309-045-0560, 309-045-0570, 309-045-0580, 309-045-0590, 309-045-0600

ADOPT: 309-045-0300

RULE TITLE: Agency with Choice Program

RULE SUMMARY: Purpose and scope of the new rules for a new division 045 for chapter 309.

RULE TEXT:
Purpose and Scope: The purpose of these rules is to establish minimum standards and procedures for an Agency with Choice to perform administrative employer functions and support individuals in self-directed care and services in their home for adults with behavioral health conditions. These rules ensure Agencies with Choice provide self-directed services to maximize independence, empowerment, dignity, and human potential through the provision of flexible, efficient, and person-centered services enabling the individual to move into or continue to live in their own home.

STATUTORY/OTHER AUTHORITY: Oregon Law 2024, Chapter 37, ORS 413.042, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0310

RULE TITLE: Definitions

RULE SUMMARY: Definitions for the terms outlined for chapter 309 Division 045

RULE TEXT:

(1) “Abuse” means abuse as defined in ORS 430.735 and ORS 419B.005.
(2) “Activities of Daily Living (ADLs)” means those functional activities required by an individual for continued well-being that are essential for health and safety. ADLs including eating, dressing/grooming, bathing/personal hygiene, mobility (ambulation and transferring), and elimination/toileting bowel, and maintaining continence as defined in OAR 410-173-0005.
(3) “Administrator” means the person designated by the licensee through an employment agreement to be responsible for the daily operations and maintenance of the Agency with Choice.
(4) “Agency with Choice (AWC)” means an organization licensed by the Oregon Health Authority that provides self-directed Agency with Choice Services for compensation to individuals primarily at the individual’s home and their community.
(5) “Agency with Choice Services” means services provided to individuals by an Agency with Choice operating within a self-directed service delivery model and include the services specified in these rules. Agency with Choice services do not include nursing procedures or tasks that require nursing delegation or teaching as defined in OAR Chapter 851, Division 047.
(6) “Applicant” means the person, entity, or governmental organization applies for an Agency with Choice license.
(7) “Assessment” means a comprehensive and holistic determination of an individual’s physical, mental, and social functioning including identification of risk factors, individual choices and preferences, and the status of service needs, established by a medical or behavioral health professional.
(8) “Assistance” means developmentally appropriate help from another person to complete Activities of Daily Living (ADL) and Instrumental Activities of Daily Living (IADL) as described in OAR 410-173-0005.
(9) “Authority” means the Oregon Health Authority.
(10) “Authorized Representative” for the purpose of these rules means:
(a) A person designated by court order to make financial or health care decisions on behalf of another individual. The legal representative only has authority to act within the scope and limits of their authority as designated by the court or other agreement; or
(b) A legal representative as defined in these rules; or
(c) A person designated by an individual or the individual’s legal representative to act on behalf of the individual in making decisions on matters pertaining to the planning and implementation of an in-home person-centered service plan; and
(d) An authorized representative cannot be a Direct Support Worker or other provider type offering home and community-based services (HCBS) and supports to an individual for whom they provide services.
(11) “Background Check” means a criminal records check and abuse check as defined in OAR 407-007, as adopted and incorporated by OAR 943-007, that includes a final fitness determination that the subject individual is fit to hold a position and have direct access to or otherwise provide care and services necessary for the health, welfare, maintenance, or protection of an individual.
(12) “Back-up Plan” means a plan developed by the individual or the individual’s authorized representative in coordination with the Agency with Choice to ensure uninterrupted services and supports in the event of planned or unplanned absences of the direct support work or in case of an emergency. The back-up plan should include the name and contact information and the specific ways in which the back-up direct support worker will support the individual.
(13) “Behavioral Health” means mental health, mental illness, addiction disorders, and substance use disorders.
(14) “Behavioral Health Assessment” means a qualified mental health professional’s determination of an individual’s need for behavioral health services.

(15) “Behavioral Health Division (Division)” means the section within the Oregon Health Authority responsible for program and policy development and oversight of behavioral health facilities and services.
(16) “Behavioral Health Services” means medically appropriate and medically necessary services rendered or made available to a recipient for treatment of a behavioral health diagnosis.
(17) “Behavioral Interventions” mean those interventions that modify an individual’s behavior or environment.
(18) “Care” means the provision of services including, but not limited to, assistance with activities of daily living, instrumental activities of daily living, and supervision to promote maximum independence and enhance quality of life.
(19) "Change of Ownership " means adding or removing one or more owners or a change of more than five percent interest in Agency with Choice ownership.
(20) “Community Mental Health Program (CMHP)” means an entity that is responsible for planning and delivery of safety net services for persons with mental or emotional disturbances, drug abuse problems, and alcoholism and alcohol abuse in a specific geographic area of the state under a contract with the Division or Local Mental Health Authority pursuant to OAR chapter 309 division 014.
(21) “Complaint” means an allegation of abuse, a violation of these rules, or an expression of dissatisfaction relating to an Agency with Choice.
(22) “Critical Incident” means an actual or alleged event that creates a risk of serious harm to the health or welfare of an individual receiving services and may endanger or negatively impact the mental or physical well-being of an individual. Critical incidents include:
(a) Verbal abuse;
(b) Physical abuse;
(c) Sexual abuse;
(d) Psychological or emotional abuse;
(e) Neglect;
(f) Exploitation, including financial exploitation or theft of money or property;
(g) Misuse or unauthorized use of seclusion or restraint;
(h) A medication error resulting in:
(A) A telephone call to or a consultation with a poison control center or emergency department;
(B) A visit to an urgent care, emergency room or hospital; or
(C) Death.
(i) Missing person;
(j) Criminal activity;
(k) Unsafe living conditions or inability to respond to an alarm or emergent situation without additional cues and reach a point of safety without assistance;
(l) Self-injurious behaviors, substance abuse, or suicidal ideation;
(m) An injury or illness leading to a non-routine visit to a health care provider
(n) An unexplained injury; or
(o) An unexplained or unanticipated death, including, but not limited to, suicide or death caused by abuse or neglect.
(23) “Critical Incident Report” means a formal written document detailing key information of the events related to the critical incident that occurred, the interventions used or attempted, and the outcome to those involved.
(24) “Cultural Competence” means the ability to interact effectively with people, including those with limited English proficiency, diverse cultural and ethnic backgrounds, carceral histories, disabilities and regardless of gender, sexual orientation or gender identify.
(25) “Direct Support Worker” means a person employed by an Agency with Choice, to assist individuals with activities of daily living, instrumental activities of daily living and health related tasks identified in the individual’s person-centered service plan. Direct support worker does not mean a homecare worker or personal support worker as defined in ORS 410.600, or personal care attendant as defined in OAR 410-172-0776.
(26) “Division” means the Behavioral Health Division of the Oregon Health Authority (OHA).

(27) “Drug-Free Workplace” means the Agency with Choice ensures direct support workers:
(a) Are prohibited from using or being under the influence of alcohol, inhalants, prescription drugs, over-the-counter medications, or other substances that prevents duties from being performed; and
(b) Are prohibited from manufacturing, possessing, selling, using or offering to make, sell, trade, or use illegal drugs while providing services to an individual or while in the individual’s home.
(28) “Electronic Visit Verification (EVV)” means a system under which visits conducted as part of the person-centered service plan are electronically verified at the time of service and meets the requirements specified in 42 U.S.C. 1396b(l).
(29) “Grievance” means a written dissatisfaction submitted by and individual or authorized representative regarding the failure of an Agency with Choice to provide services in alignment with the person-centered service plan or the agencies policies, or to follow these rules.
(30) “Home and Community-Based Services (HCBS)” means services and supports that assist eligible individuals to remain in their home and community in accordance with the Code of Federal Regulations, approved Medicaid State Plan authorities, and Oregon Administrative Rules.
(31) “Incident” means an actual or alleged event that creates a risk of harm to the health or welfare of an individual receiving care and services and may negatively impact the mental and/or physical well-being of an individual and does not meet the definition of critical incident. Incident includes but is not limited to:
(a) Injury or illness requiring first aid or medical attention;
(b) Missing or damaged property; or
(c) A medication error that does not result in consultation with a poison control center, visit to urgent care, emergency room or hospital, or death.
(32) “Incident Report” means a formal written document detailing the events of any incident that occurred, the interventions used or attempted, and the outcome to those involved.
(33) “Independent Qualified Agent (IQA)” means an entity meeting the qualification requirements identified in 42 CFR §441.730 and under contract with the Authority.
(34) “Individual” means a person who receives Agency with Choice services and supports and who has a behavioral health disability.
(35) “Instrumental Activities of Daily Living (IADLs)” means those self-management activities performed by an individual on a day-to-day basis that are essential to basic self-care and independent living. IADLs include, but are not limited to, housekeeping, laundry, shopping, transportation, medication management, and meal preparation.
(36) "Investigative Authority" means the Office of Training, Investigations, and Safety (OTIS), or local Community Mental Health Programs that contracts with the Authority to receive and investigate alleged abuse and assess protective services under OAR Chapter 943, Division 45.
(37) “Legal Representative” means a person who has been legally designated by court order to make financial or health care decisions on behalf of another individual. The legal representative only has authority to act within the scope and limits of their authority as designated by the court or other agreement. For the purpose of these rules, authorized presentative and legal representative are synonymous.
(38) “Licensed Medical Professional (LMP)” means program staff who meet the following minimum qualifications:
(a) Physician licensed to practice in the State or Oregon; or
(b) Nurse Practitioner licensed to practice in the State of Oregon; or
(c) Physician’s assistant licensed to practice in the State or Oregon; and
(d) Whose training, experience, and competence demonstrate the ability to conduct a mental health assessment and provide medication management.
(39) “Licensee” means the person or entity who has been issue an Agency with Choice license.
(40) “Management experience”, means verifiable experience in the administration, supervision, or management in a health-related or long-term services, and supports fields including at a minimum, hiring, assigning, evaluating, promoting and responsibility for implementing disciplinary actions.
(41) “Mandatory Reporter” means any public or private official who is required by Oregon Revised Statute (ORS) to

report suspected abuse to the Authority or law enforcement agency as it applies to a:
(a) "Child" defined in ORS 419B.005;
(b) "Child in care" as defined in ORS 418.257; or
(c) "Adult" with developmental disabilities or mental illness as defined in ORS 430.735.
(42) "Medication" means a drug as defined in ORS 689.005.
(43) “Medication Administration” means the direct application of a medication, whether by injection, inhalation, ingestion, or other means, by a Direct Support Worker to the body of an individual receiving Agency with Choice Services from an Agency with Choice licensed under these rules. Medication administration includes but is not limited to taking the individual’s medications from the original containers and putting the medications into closed secondary containers designed and manufactured for this purpose.
(44) “Medication Assistance” means assistance with self-administration of medication rendered by a Direct Support Worker to an individual receiving Agency with Choice Services from an Agency with Choice licensed under these rules when the individual is able to self-direct through documented demonstration of understanding:
(a) The reason why each medication is taken;
(b) The amount or dose of each medication that needs to be taken;
(c) The route the medication needs to be taken; and
(d) The time of day each mediation needs to be taken.
(45) "Medication Management" means the ability to order, organize and administer prescribed medications. Administering prescribed medications includes pills, drops, ointments, creams, injections, inhalers, and suppositories unrelated to bowel care. Administering as a paid service means set-up, reminding, cueing, checking for effect and monitoring for choking while taking medications. Oxygen management is included in medication management. Oxygen management means assisting with the administration of oxygen, monitoring the equipment, and assuring adequate oxygen supply.
(46) "Medication Reminding" means providing an individual with an audio, visual or oral reminder to take medication when an individual is able to self-direct.
(47) "Medication Services" means medication assistance, medication administration and medication management.
(48) “Oregon Administrative Rules (OAR)” means any agency directive, standard, regulation, or statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of any agency.
(49) “Person-Centered Service Plan (PCSP)” means the written document prepared by the IQA service coordinator that details the supports, desired outcomes, activities, and resources required for an individual to achieve and maintain personal goals, health, and safety as described in OAR 410-173-0025. The PCSP must be completed and signed prior to the individual receiving HCBS. The PCSP is not satisfied by a document primarily prepared by a provider.
(50) “Personal Care Services” means a range of assistance provided to individuals with a physical behavioral health disability to enable them to accomplish activities of daily living and instrumental activities of daily living that are essential for self-care, safety, and independent living.
(51) "Professional Experience" means having verifiable work experience as a licensed or certified nurse, nursing assistant, medication aide, physician, or physical or occupational therapist. The license or certificate must be current and in good standing.
(52) "Provider Enrollment Agreement" refers to the agreement between the Medicaid Division of the Oregon Health Authority and a qualified Medicaid provider to receive a provider number and deliver services for compensation.
(53) "Qualified Trainer" means a person who:
(a) Has professional experience providing training to direct support workers, homecare workers, certified nursing assistants or other relevant caregivers with the necessary skills, knowledge and information to deliver competent, quality care, and is approved by the Authority;
(b) Is designated by an Agency with Choice to conduct direct support worker training on behalf of the Agency with Choice, including, but not limited to, orientation, mandatory reporter training and continuing education training

required by these rules.
(54) "Self-directed Care" means the ability of an adult who is prevented by a functional or behavioral health disability from independently completing an ADL or IADL, chooses to direct and supervise a direct support worker to perform those tasks as authorized in the person-centered service plan.
(55) “Self-directed Plan” means the personalized plan created by the Agency with Choice in partnership with the individual or the authorized representative. The plan documents details of the supports, preferences, desired outcomes, activities, and backup resources needed for the individual to achieve and maintain personal goals, health, and safety aligned with the “person-centered service plan.”
(56) “Self-directed Service Delivery Model” for the purpose of these rules means a model in which an individual is supported by an Agency with Choice that functions as the employer of direct support workers recruited by the individual or the Agency with Choice and provides financial management services and tasks in place of the individual. The individual directs the direct support workers and is considered a co-employer with the Agency with Choice.

(57) “Service Coordinator” means an employee of the IQA with whom the Authority contracts, who assesses the service needs of individuals, determines eligibility, and offers service choices to eligible individuals. The Service Coordinator authorizes and implements an individual's person-centered service plan and monitors the personal care services delivered.
(58) “Services and Supports” means those services defined as habilitation services and psychosocial rehabilitation services under OAR Chapter 410, Division 173 or personal care services under OAR 410-172-0776.
(59) "Stable and Predictable" means a situation where the individual’s physical and behavioral state is known, not characterized by rapid changes, and does not require continuous reassessment and evaluation. Stable and predictable must include individuals with intermittent needs that are a predictable symptom or component of their underlying health condition.
(60) "Subject Individual (SI)” means a person for whom an agency must conduct a background check and BCU may conduct a criminal records check, an abuse check or both, and from whom BCU may require fingerprints for the purpose of conducting a national criminal records check. An SI includes all staff and volunteers working for or with an Agency with Choice.
(61) "Survey" means an inspection, investigation or monitoring visit of an applicant for an Agency with Choice license or a licensed Agency with Choice to determine the extent to which the applicant or Agency with Choice is in compliance with state statutes and Agency with Choice rules.

STATUTORY/OTHER AUTHORITY: Oregon Law 2024, Chapter 37, ORS 413.042, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0320

RULE TITLE: Application for Licensure

RULE SUMMARY: Outlines the guidelines for application for licensure

RULE TEXT:

(1) A person, entity or organization that establishes, conducts, or represents itself to the public as an Agency with Choice or as providing a self-directed service delivery model to “individuals” defined in these rules, must be licensed by the Authority.

(2) No entity or organization acting may establish, represent, maintain, or operate an Agency with Choice, or provide or agree to provide Agency with Choice services without being duly licensed as such.

(3) No entity or person may provide Agency with Choice services or use the term "Agency with Choice" in its advertising, publicity, or any other form of communication unless it holds a current valid license or licenses as an Agency with Choice issued by the Authority.

(4) Each applicant must submit an application for a license to operate an Agency with Choice to the Authority, in writing, using the forms required by the Authority. The application is not complete until all information is received by the Authority. Incomplete applications are void 60 days after initial receipt by the Authority.

(5) The application must include all required information and documentation as specified by the Authority including, but not limited to:

(a) Completed application form in its entirety, with all fields filled out unless the form explicitly indicates a field is optional;

(b) Description of the Agency with Choice, all services offered and supports delivered, administrative control, and lines of authority and responsibility from the licensee to the individual level;

(c) Identification of any person, including owners and partners, with a financial interest representing 5 percent or more ownership in the applicant. Identification includes the person’s name, role, date of birth, and, where applicable, social security number. For the purposes of this rule, any person with 5 percent or more ownership is presumed to influence the operation of the Agency with Choice, particularly regarding factors affecting care or training, unless they can demonstrate no involvement in the agency’s operations;

(d) Identification of any persons with 5 percent or more incident of ownership that has ever been convicted of a crime associated with the operation of a long-term, community-based, or health care facility or agency under federal law or the laws of any state;

(e) For an Agency with Choice managed by a Board of Directors, the Authority is required under 42 USC §405(c)(2)(C)(i) (United States Code), 42 CFR §455.104 (United States Code of Federal Regulation) and 26 CFR §301-6109-1 to obtain a social security number and date of birth for each board member.

(f) Completed background check request forms for the applicant(s), administrator, and for each person with 5 percent or more incident of ownership, regardless of the person's effect on the operation of the agency;

(g) Proof of fiscal responsibility and capacity to prevent fraud, waste and abuse by including an auditor's certified financial statement, and other verifiable documentary evidence of fiscal solvency documenting that the prospective licensee has sufficient resources to operate the agency for 90 days. Proof of fiscal responsibility must include liquid assets sufficient to operate the agency for 45 days. Anticipated Medicaid income is not considered "liquid assets," but may be considered "financial resources." Liquid assets may be demonstrated by:

(A) An available line of credit;

(B) A performance bond; or

(C) Any other method satisfactory to the Division.

(h) Completed Tax Compliance Certification issued by the Oregon Department of Revenue;

(i) Current certificate of insurance meeting the minimum requirements outlined in ORS 279A.015(2);

(j) Comprehensive plan of operation for the Agency with Choice including emergency and continuity of operations plan;

(k) All written policies and procedures, that conform with OAR Chapter 410, Division 172 and 173, including, but not

limited to:
(A) Agency with Choice operations including an outlined structure of the lines of authority and responsibility from the licensee to the individual, administrative control processes, detailed description of the services provided and how operations and services are designed to empower individuals;
(B) Personnel operations including a well-defined process for hiring, training, evaluating, retraining, terminating and managing all Agency with Choice staff;
(C) Established guidelines for conducting background checks and verifying the qualifications of potential employees;
(D) Individual notification requirements including a detailed procedure for the provision of information to individuals and their authorized representatives of their rights, services provided, and any changes affecting their services;
(E) Management of individual records including details for controlling access and providing secure storage;
(F) Infection control protocols for preventing and managing infections, including hygiene standards and response to outbreaks;
(G) Medical and non-medical emergency response including details on staff responsibilities, communication and documentation;
(H) Medication assistance, medication reminding, medication administration and medication management procedures with the guidance of the individual or the individual's authorized representative and oversight of medication;
(I) Emergency preparedness including a comprehensive emergency preparedness plan which includes response strategies for both natural and man-made disasters and emergencies.
(l) Copy of the Agency with Choice's written disclosure statement;
(m) Copy of the Agency with Choice's nondiscrimination notice;
(n) A signed labor peace agreement;
(o) Proof of worker's compensation insurance coverage;
(p) Proof of minimum liability insurance coverage; and
(q) Application form signed and dated by the applicant's legally authorized representative.
(6) Applicants must be free of incident of ownership history in any agency, facility, or business that failed to reimburse any state for Medicaid overpayments or civil penalties within the past five years.
(7) Applicants must be free of incident of ownership history in any agency, facility, or business that failed to compensate employees or pay worker's compensation, utilities, or other costs necessary for agency operation within the past five years.
(8) Applicants must be free of incident of ownership history in any agency, facility or home in any state that had its license or certification involuntarily suspended or terminated or voluntarily terminated during any state or federal sanction process within the past five years.
(9) Applicants must be free of any incident of Medicaid fraud in any state, United States territory or the District of Columbia within the past 25 years.
(10) Applicants must not be on the US Office of Inspector General's or the US General Services Administration System for Award Management exclusion lists.
(11) Applicants must not have unlawfully discriminated against an employee in the payment of wages.

STATUTORY/OTHER AUTHORITY: Oregon Law 2024, Chapter 37, ORS 413.042, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0330

RULE TITLE: Standards for Initial Licensure

RULE SUMMARY: Outlines the standards for initial licensure

RULE TEXT:
(1) The Division must conduct an evaluation of each Agency with Choice application and issue a license to successful applicants prior to services being rendered.
(2) Prior to issuance of a license, the applicant must demonstrate to the satisfaction of the Division that the applicant:
(a) Possesses sufficient experience, skills and knowledge to operate an Agency with Choice;
(b) Has the ability to meet the needs and provide appropriate care to individuals in their own homes; and
(c) Can provide services in a manner consistent with the requirements of these rules.
(d) Is in substantial compliance with these rules;
(3) The Division must evaluate the background, performance, and operational history of each applicant and each person with a controlling ownership interest, including repeat sanctions and rule violations, when determining whether to issue a license.
(4) When an application for initial licensure is made by an applicant who owns or operates other licensed agencies, facilities or homes in Oregon, the Division may deny the license if the applicant's existing agency, facility or home is not currently, or has not been, in substantial compliance with the Oregon Administrative Rules.
(5) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, the Division may deny the license.
(6) Any applicant or person with a controlling interest in an Agency with Choice is considered responsible for acts occurring during, and relating to, the operation of such Agency with Choice for the purpose of licensing.
(7) The Division must notify an applicant in writing if a license application is approved.
(8) A license will be issued only for an Agency with Choice and owner or entity in the application.
(9) A license is not transferable and does not apply to any location, person, or agency other than the location, person, and agency indicated on the license.
(10) A license is valid for two years unless revoked or suspended by the Division.
(11) The license must be prominently displayed in an area that is visible to the public.
(12) An Agency with Choice that plans to change of ownership at any time other than biennial renewal must submit the information in writing on a form approved by the Division as specified in Oregon Law 2024, Chapter 37, prior to the change of ownership.
(13) No Agency with Choice may use the term “in-home care agency” in its advertising, publicity, or any other form of communication unless it holds a current valid license under OAR chapter 333 division 536 as an in-home care agency issued by the Authority.

STATUTORY/OTHER AUTHORITY: Oregon Law 2024, Chapter 37, ORS 413.042, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0340

RULE TITLE: Standards for License Renewal

RULE SUMMARY: Outlines the standards for license renewal

RULE TEXT:

(1) A full and complete application for license renewal must be submitted to the Division at least 90 days prior to the expiration date of the existing license. Filing of an application for renewal before the date of expiration extends the effective date of expiration until the Authority act upon such application.

(2) An application for a renewed license to operate an Agency with Choice must be submitted to the Division using the forms required by the Division. The application is not complete until all information is received by the Division. Incomplete applications are void 60 days after initial receipt by the Division.

(3) The application form must be signed and dated by the applicant's legally authorized representative and contain all information requested by the Division.

(4) If the renewal application is not submitted prior to the expiration date of a license, the Agency with Choice is unlicensed and subject to the civil penalties described in in these rules and must immediately cease providing services to individuals.

(5) The Division will conduct an inspection of an Agency with Choice prior to the renewal of a license. This inspection must be conducted 60-90 days prior to expiration of the license to assess compliance with these rules.

(6) Prior to issuance of a license renewal, the applicant must demonstrate to the satisfaction of the Division the applicant has met compliance and continues to have the ability to meet the needs and provide appropriate care to individuals in their own homes and can provide services in a manner consistent with the requirements of these rules.

(7) The Division must evaluate the background, performance, and operating history of each applicant and each person with a controlling ownership interest, including repeat sanctions and rule violations, when determining whether to issue a license.

(8) When an application for license renewal is made by an applicant who owns or operates other licensed agencies, homes, or facilities in Oregon, the Division may deny the license if the applicant's existing agency, home, or facility is not currently, or has not been, in substantial compliance with the Oregon Administrative Rules.

(9) If an applicant fails to provide complete, accurate, and truthful information during the application and licensing process, or during any planned or unplanned surveys, the Division may deny or place conditions on the license.

(10) The Division will not renew a license if the Agency with Choice is not in substantial compliance with these rules.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0350

RULE TITLE: Provider Enrollment

RULE SUMMARY: Describes the provider enrollment process

RULE TEXT:
(1) An Agency with Choice must be enrolled with the Authority as a Medicaid provider to be eligible to receive Medicaid payment. Medicaid providers of behavioral health services must possess a current and valid license to provide services.
(2) An Agency with Choice must provide services within the scope of professional standards and practice defined by these rules.
(3) An Agency with Choice must meet all requirements in OAR 410-120-1260 (Medical Assistance Programs Provider Enrollment), OAR 943-120-0310 (Provider Requirements), and OAR 943-120-0320 (Provider Enrollment).
(4) Agency with Choice applicants, licensees, and owners must not be included on the United States Office of Inspector General or System for Award Management exclusion lists.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0360

RULE TITLE: Reporting and Billing Requirements

RULE SUMMARY: Describes the reporting and billing requirements

RULE TEXT:
(1) To receive Medicaid reimbursement for service, the Agency with Choice must utilize an Authority approved electronic visit verification (EVV) system as specified in OAR 410-172-0776 to verify the following details at the time of service for visits conducted as part of personal care services:
(a) Date of service;
(b) Start and end time;
(c) Type of service;
(d) Location of service;
(e) Name of Direct Support Worker providing the service;
(f) Name of the individual receiving services.
(2) Information contained in the record must be appropriate in quality and quantity to meet the professional standards applicable to the provider and any other standards for documentation including, but not limited to, OAR 410-120-1360, OAR 410-172-0620 and OAR 410-173-0045.
(3) The IQA must authorize reimbursement to the Agency with Choice for the service hours provided based on the individual's approved person-centered service plan for all individuals requiring behavioral health services.
(4) All Agency with Choice providers must use the Medicaid Management Information System (MMIS) to submit claims for reimbursement of Medicaid authorized services. All claims must be submitted no later than 12 months from the date of service. Claims submitted after 12 months from the date of service will not be eligible for reimbursement in accordance with 42 CFR §424.44.
(5) The Agency with Choice must withhold, file and pay income taxes and all employment-related taxes, including but not limited to, workers' compensation premiums and unemployment taxes. The Agency with Choice must also verify the qualifications of each Direct Support Worker as required by Oregon and Federal laws.
(6) The Agency with Choice must comply with OAR 410-120-1510, OAR 461-195-0601 and the requirements therein for prompt reporting of fraud, waste and abuse in the Medicaid program. Information on how to report can be found online at all times: https://www.oregon.gov/oha/FOD/PIAU/Pages/Report-Fraud.aspx.
(7) The Agency with Choice must provide a copy of all information and documents as requested by the Authority.
(8) The Agency with Choice must cooperate with all review activities required by the Authority including, but not limited to, providing access to records, staff and service documentation related to the delivery of Agency with Choice services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0370

RULE TITLE: Financial Transparency and Reporting Requirements

RULE SUMMARY: Outlines the financial transparency and reporting requirements

RULE TEXT:

(1) The Agency with Choice must ensure that:

(a) No less than 85 percent of the rate paid to the Agency with Choice is spent on total compensation for direct support workers who furnish those services. For the purpose of these rules, total compensation includes wages and benefits including, but not limited to, health insurance, retirement plans, life and disability insurance, paid time off, mileage, employer employment taxes, employee employment taxes, employee initial and ongoing training requirements, background check costs and workers compensation; and

(b) The amount for administration, supervision and overhead may not exceed 15 percent of the rate paid to the Agency with Choice by the Authority.

(2) Any rate increase provided by the Authority requires the Agency with Choice to maintain the 85 percent direct support worker compensation and benefits threshold.

(3) The Agency with Choice must ensure that any rate increase intended to improve direct support workers' compensation must be fully passed on to direct support worker compensation and benefits.

(4) The Agency with Choice must file detailed cost reports annually with the Authority based on the Agency with Choice's reporting period for the period ending each June 30th. The Agency with Choice must submit the cost report no later than October 31st of each year.

(5) The required cost report details include the following Agency with Choice expenditures:

(a) Average hourly wage provided to direct support workers;

(b) Total costs of direct support worker wages and the hours provided to Individuals;

(c) Total costs of direct support worker benefits including the types of benefits offered;

(d) Total costs for overtime of direct support workers, the percentage of direct support workers receiving overtime, and the average number of overtime hours worked per week;

(e) Total costs for mileage reimbursement to direct support workers;

(f) Supervisor and trainer wages, benefits and other expenses;

(g) Administrative costs and hours including CEO compensation; and

(h) Other overhead including, but not limited to, details on building, information technology and corporate costs.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0380

RULE TITLE: Operational Standards

RULE SUMMARY: Defines the operational standards

RULE TEXT:

(1) An Agency with Choice's licensee assumes full legal, financial, and overall responsibility for the Agency with Choice's operation and contractual obligations. Any violations by Agency with Choice licensees, owners, staff, or representatives are attributable to the Agency with Choice and against the Agency with Choice's license.

(2) An Agency with Choice must comply with all applicable federal, state, and local laws and the rules adopted thereunder.

(3) An Agency with Choice must not assign or contract administrative or supervisory functions to another entity or organization.

(4) When Medicaid is the source of payment for the services provided by the Agency with Choice, the Medicaid service payment is considered payment in full for all services provided by the Agency with Choice.

(5) All Agency with Choice records must be kept separate and distinct from other business entities.

(6) An Agency with Choice must ensure services are made available to any Individual who chooses this service option, in alignment with the Medicaid statewide operations requirement outlined in Section 1902 (a)(1) of the Social Security Act and 42 CFR Part 431. Agency with Choice must have the capacity to meet the needs of individuals through responsive communication, proactive recruitment, staffing, and retention of Direct Support Workers and must be able to serve individuals statewide.

(7) An Agency with Choice is responsible for ensuring that all services are provided based on the individual's needs and preferences, while prioritizing their choices and active participation in service delivery, provided appropriately, delivered timely and properly supervised.

(8) An Agency with Choice must assist the individual with administrative and professional oversight to ensure that the services are delivered with a focus on self-direction, quality and meeting the needs of each individual.

(9) Agency with Choice employees, direct support workers, and administrators, must carry identification indicating their name and the Agency with Choice employer.

(10) An Agency with Choice direct support worker may accompany an individual outside the state if all the following conditions are met:

(a) An individual has requested an Agency with Choice direct support worker to accompany the individual; and

(b) The travel plans are described and documented in an individual's person-centered service plan

(A) An Agency with Choice must require a direct support worker who accompanies an individual outside the state to:

(i) Document all services and care provided to the individual on a daily basis;

(ii) Report to the Agency with Choice administrator or administrator's designee either by phone or electronic mail the status of the individual before leaving the state and immediately upon return; and

(iii) Check-in with the Agency with Choice administrator or administrator's designee no less than once per week if the travel results in the individual and direct support worker being gone for more than one week.

(B) If the individual experiences a change in condition while traveling, the direct support worker must contact the Agency with Choice administrator or administrator's designee immediately.

(11) Travel out of the United States or its territories is not permitted and payment to direct support workers is prohibited as defined in ORS 410-120-1180 and 42 CFR § 431.52.

(12) An Agency with Choice must:

(a) Maintain a drug-free workplace that prohibits direct support workers from being under the influence of alcohol, inhalants, or drugs, including prescription and over-the-counter medications that prevents duties from being performed, and prohibits the manufacture, possession, selling or trading of illegal drugs when providing services to an individual or while in the individual's home;

(b) Immediately report all allegations of abuse, neglect, or fiscal improprieties involving an individual or a direct support

worker to the local CMHP and taking immediate action in response to the allegation(s);
(c) Immediately report of all critical incidents, alleged critical incidents or any violations of individual's rights to the Division;
(d) Conduct internal investigations of any complaint, grievance, incident, critical incident, provision of personal care, medication or treatment and allegation of abuse upon receiving prior authorization from the Authority;
(e) Notify the individual's service coordinator of any change in the individual's health, behavior, environment and related incidents or allegations of abuse;
(f) Provide equitable and non-discriminatory services to all individuals, regardless of race, color, religion, national origin, age, sex, sexual orientation, gender identity, disability, or any other protected status under state and federal law.
(g) Ensure direct support workers are provided personal care services in accordance with an individual's person-centered service plan;
(h) Provide standardized training to direct support workers and ensure that direct support workers complete and are current with all training prescribed by these rules;
(i) Involve direct support workers employed by the Agency with Choice and individuals served by the Agency with Choice in the development of and decision-making about work processes, performance standards, quality improvement strategies, training, technology use, and workplace safety;
(j) Minimize the impact of the loss of pay and work hours for direct support workers resulting from the hospitalization or death of an individual or the dismissal of the direct support worker by the individual;
(k) Provide other administrative and employment-related supports;
(l) Engage and work closely with individuals to design and implement Agency with Choice services by appointing individuals to an advisory board, using focus groups of individuals or employing other methods, approved by the Authority, for working with individuals effectively;
(m) Enhance the role of direct support workers as members of the individual's service team, as desired and approved by the individual, or their authorized representative; and
(n) Meet with individuals at least every three months, with at least one in-home visit with the individual every 12 months; and
(o) Comply with other requirements as prescribed by the Authority, and by rule.
(13) An Agency with Choice is responsible for hiring and terminating direct support workers who are employed by the Agency with Choice.
(14) The Agency with Choice must submit their training plan and curriculum for approval by the Division including who will be providing the training.
(a) The training plan must substantially meet the training required by the Oregon Home Care Commission in both content and length of training as defined OAR 418-020-0035; and
(b) The training plan must include how direct support workers will receive orientation and competency-based training and how the Agency with Choice will engage with the Individual to determine what Individual Specific Training is necessary.
(15) An Agency with Choice must support each individual's self-direction and choice while maximizing their autonomy and control over the decisions related to their daily service needs, including, Using a person-centered approach so that the individual is at the center of the decision-making process regarding:
(a) Which personal care services are needed to assist the individual in activities of daily living, instrumental activities of daily living and health-related tasks, as defined by the Authority by rule;
(b) Which services are consistent with the individual's personal and cultural values and preferences;
(c) Where and how the services are delivered;
(d) When the services are delivered; and
(e) Who provides the services.
(16) An Agency with Choice must develop and implement written policies and procedures to direct the operation of the program and the provision of services to individuals as specified within these rules.

(17) An Agency with Choice must have a disclosure statement which must be signed by the individual or the individual's authorized representative when the individual is accepted to receive services. The disclosure statement must include:
(a) A description of the services to be provided and how they will be provided, including a discussion regarding staffing availability, coordination and a back-up plan.
(b) A statement the Agency with Choice will not bill the individual for any additional services;
(c) A description of the individual's or the individual's authorized representative regarding their role as co-employer;
(d) A description of Agency with Choice and individual's rights and responsibilities;
(e) A description of the qualifications and training requirements necessary for direct support workers providing services and supports;
(f) Procedures for contacting the Agency with Choice administrator or administrator's designee during all of the hours during which services are provided;
(g) A clear statement indicating the disclosure statement must be made available to the individual or the individual's authorized representative in an alternate format at the individual's or the individual's authorized representative's request; and
(h) A copy of the individual's rights;
(i) The policy for reimbursement for stolen, broken or misappropriated property or funds to the individual;
(j) A description of billing methods, payment systems, and due dates, if applicable;
(k) The criteria, circumstances, and conditions which may result in termination of services by the Agency with Choice and description of notification that will be provided to the individual or the individual's authorized representative; and
(l) The notice: "(Name of Agency with Choice) does not discriminate and does not permit discrimination, including, but not limited to, bullying, abuse or harassment, based on an individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an individual's association with another individual on account of the other individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a complaint with the Oregon Health Authority at BHD.MH.ComplaintsTA@ohs.oregon.gov
(18) An Agency with Choice's disclosure statement must not include:
(a) Any provision in the disclosure statement that affect individual's rights or the Agency with Choice's liability for negligence; and
(b) Language referencing "buy outs" or "finder's fees" or language preventing individuals from full access to other Medicaid services;
(19) An Agency with Choice must provide each individual and the individual's authorized representative, if applicable, with a written notice of the individual's rights as a part of the disclosure statement, prior to furnishing care to an individual. The individual's rights notice must also include:
(a) Procedures for filing a grievance or complaint with the Agency with Choice;
(b) Procedures for filing a grievance or complaint with the Authority, along with the telephone number and contact information of the Authority; and
(c) Notice of the individual's rights and responsibilities as co-employer of the direct support worker as outlined in these rules.
(20) An Agency with Choice must provide each individual with copies of the current policies and procedures including, but not limited to:
(a) Policy on individual or Agency with Choice cancellation of services
(b) The policy for individual reimbursement for stolen, broken or misappropriated property or funds.
(21) An Agency with Choice must assist an individual in planning for direct support worker planned and unplanned absences or similar situations which call for replacement workers, consistent with the individual's choice of direct support workers to provide the services.
(22) An Agency with Choice must have in place a process to access and respond to a grievance or complaint submitted by an individual about the services provided to the individual by a direct support worker. An internal investigation must

start no later than five business days from the date of the grievance or complaint and must finalize the response within 30 days.
(a) For allegations that could reasonably be expected to result in harm to the individual, investigations must start within 24 hours. Investigations must be completed no later than 15 days from the date the investigation started. Findings and mitigation strategies must be reported to the Division.
(b) The Agency with Choice must notify the Division of all complaints within 45 days of receiving the complaint, regardless of the outcome of the internal investigation.
(23) An Agency with Choice must have in place a quality assurance system and a performance improvement plan to evaluate and monitor the quality, safety and appropriateness of the services provided by direct support workers.
(24) The licensee is responsible for the supervision, training, and overall conduct of all Agency with Choice staff when acting within the scope of their employment or duties.
(25) The Agency with Choice must authorize all staff to permit access to the Agency with Choice and agency, personnel and individual records to the Authority, the investigative authority, and CMS staff, for the purpose of inspection, investigation, and other duties within the scope of the agency's authority.
(26) Agency with Choice employees, agents and the licensee must not permit, aid or engage in abuse of individuals served by the Agency with Choice.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0390

RULE TITLE: Policies and Procedures

RULE SUMMARY: Outlines the policies and procedures

RULE TEXT:

(1) An Agency with Choice must develop, implement and enforce written policies and procedures to direct the operation of the program and the provision of services to individuals that address at a minimum:

(a) Mandatory reporting of all allegations of abuse, neglect, or fiscal improprieties to the local CMHP and Division, and actions to be taken in response to the allegation(s);

(b) Identifying, analyzing and correcting incidents and critical incidents;

(c) Reporting of all critical incidents, alleged critical incidents or any violations of individual's rights to the Division;

(d) Initiating internal investigations of all complaints, grievances, incidents, and critical incidents, and allegations of abuse upon receipt of the protective services investigation report. Internal investigation includes:

(A) Conducting interviews of the alleged victim, witnesses, the accused person, or any other person who may have knowledge of the facts of the abuse allegation or related circumstances;

(B) Reviewing evidence relevant to the abuse allegation, other than the initial report; or

(C) Any other actions beyond the initial actions of determining if there is reasonable cause to believe that abuse has occurred, if there is reason to believe that a crime has been committed, or any immediate personnel actions necessary to ensure individual safety.

(e) Reimbursement for stolen, broken, or misappropriated property or funds;

(f) Notifying the individual's service coordinator of any change in the individual's health, behavior, environment and related incidents or allegations of abuse;

(g) Provision of standardized training to direct support workers and ensuring that direct support workers complete and are current with all training prescribed by theses rule; and

(h) Obtaining an approved background check for all staff;

(i) Ensuring direct support workers maintain confidentiality of personally identifiable information of the individual and addressing allegations of release of confidential information;

(j) Ensuring direct support workers are providing personal care services in accordance with an individual's person-centered service plan;

(k) Requirements for traveling with an individual;

(l) Ensuring direct support workers are compliant with electronic visit verification requirements.

(m) Individual notification requirements including, but not limited to:

(A) Disclosure statement; and

(B) Termination of services.

(n) Management of individual records including, but not limited to, access, storage, retention, and destruction;

(o) Non-discrimination which must include the notice: "(Name of AWC) does not discriminate and does not permit discrimination, including, but not limited to, bullying, Abuse or harassment, based on an Individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status, or based on an Individual's association with another Individual on account of the other Individual's actual or perceived sexual orientation, gender identity, gender expression or human immunodeficiency virus status. If you believe you have experienced this kind of discrimination, you may file a Complaint with the Oregon Health Authority at BHD.MH.ComplaintsTA@ohs.oregon.gov."

(p) Infection control;

(q) Medical and non-medical emergency response;

(r) Medication services including medication reminding, medication assistance, and medication administration;

(s) Emergencies and disasters;

(t) Nursing services, if applicable; and

(u) Quality assessment and performance improvement activities.
(2) Agency with Choice personnel policies and practices must comply with all applicable state and federal statutes, rules, and regulations regarding non-discrimination.
(3) All policies and procedures must be readily available in the Agency with Choice to all Agency with Choice staff, individuals, individual's authorized representatives, service coordinators, the Authority and the Centers for Medicare and Medicaid Services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0400

RULE TITLE: Complaints, Grievance and Incidents

RULE SUMMARY: Outlines complaints, grievance and incidents

RULE TEXT:
(1) The licensee, administrator and employees are mandatory reporters and must immediately report known or suspected abuse, including physical injury of unknown cause or events overheard or witnessed by observation, to the ODHS SAFE line (1-855-503-SAFE (7233)), IQA service coordinator or local law enforcement.
(2) The licensee, administrator and employees must call the local law enforcement agency first when the suspected abuse is believed to be a crime (e.g., rape, murder, assault, burglary, kidnapping, theft of controlled substances).
(3) The Agency with Choice must immediately report all critical incidents and violations of individual's rights to the Division.
(4) The Agency with Choice must maintain documentation of all complaints, grievances, incident, critical incident and abuse allegations received.
(5) The Agency with Choice must conduct and internal investigation of all complaints, grievances, incidents and critical incidents, and allegations of abuse upon receipt of the protective services investigation report.
(6) The Agency with Choice must document all internal investigations related to complaints, grievance, incidents, critical incidents and abuse allegations.
(7) Complaint, grievance, incidents and abuse allegations documentation must be maintained in a separate file from the individual and personnel records and must include:
(a) Description of the allegation or complaint;
(b) Who was interviewed, and the information provided;
(c) Results of the investigation; and
(d) Actions taken, including ongoing monitoring if applicable.
(8) The licensee must provide a quarterly report of grievances, complaints and critical incidents to the contract administration.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0410

RULE TITLE: Emergency and Continuity of Operations Planning

RULE SUMMARY: Defines the emergency and continuity of operations planning

RULE TEXT:

(1) Each Agency with Choice must establish and maintain, as part of their application, an emergency and continuity of operations plan to ensure the stability of its administrative functions and continuity of essential business operations during emergent events or disasters.

(2) The plan must prioritize:

(a) Securing a location to perform business functions, if necessary;

(b) Ensuring availability of personnel;

(c) Emergency procedures;

(d) Preserving information technology systems, including EVV systems, essential for uninterrupted service delivery; and

(e) Individual safety planning, which is managed by service coordinators for each individual receiving Medicaid benefits.

(3) The Agency with Choice is responsible for ensuring the continuity of its business and administrative functions. Safety planning specific to individuals, including emergency preparedness and health-related needs, must be coordinated by the assigned service coordinator as part of the individual's person-centered service plan.

(a) The Agency with Choice must ensure service coordinators have current contact information for direct support workers and Agency with Choice management; and

(b) The Agency with Choice must always have access to relevant emergency information for effective coordination with administrative staff during emergencies.

(4) The emergency and continuity of operations plan must be reviewed and updated when significant changes occur, such as updates in technology, staffing, or business location. All updates must be:

(a) Documented in writing and available to staff in an easily accessible location; and

(b) Distributed to all staff to ensure awareness and familiarity with current protocols.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0420

RULE TITLE: Background Checks

RULE SUMMARY: Outlines background checks

RULE TEXT:

(1) An Agency with Choice must submit a background check request for each subject individual to the Background Check Unit (BCU) prior to allowing the subject individual to work. A subject individual must not begin work until a final determination has been issued by BCU. Preliminary approvals are not permitted under these rules.

(2) The Agency with Choice must comply with OAR Chapter 943, Division 007 and OAR 407-007-0200 to 407-007-0370 for all subject individuals, as applicable

(3) The Agency with Choice must maintain documentation of the fitness determination in the subject individual's personnel record.

(4) An Agency with Choice must perform and document a query of the U.S. Department of Health & Human Services Office of Inspector General List of Excluded Individuals and Entities.

(5) An Agency with Choice must ensure that a background check is performed on all subject individuals every two years from the date of the subject individual's last background check in accordance with OAR 407-007-0220.

(6) Any cost for a nationwide background check shall be the responsibility of the Agency with Choice and must not exceed the cost charged to the Department.

(7) All subject individuals must notify the Agency with Choice within 24 hours of any potentially disqualifying crime under OAR 407-007-0281 or potentially disqualifying condition under OAR 407-007-0290.

(8) Upon notification of a potentially disqualifying crime or condition, the Agency with Choice must submit a new background check for the subject individual to BCU with the new information.

(9) An Agency with Choice must not use public funds to support a subject individual convicted of a disqualifying crime.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0430

RULE TITLE: Administrator Qualifications and Requirements

RULE SUMMARY: Reviews the administrator qualifications

RULE TEXT:
(1) The administrator must have at least two years of professional or management experience in health sciences or behavioral health.
(2) Unless completed by the licensee, the administrator must ensure the Agency with Choice has qualified and trained employees sufficient in number to meet the needs of individuals receiving services 365 days per year, including holidays.
(3) The administrator may assign, in writing, a designee to act as the administrator when the administrator is temporarily unavailable. The designee must satisfy all the qualifications of an administrator described in these rules.
(4) The administrator or administrator's designee must be accessible and available during all hours in which services are being provided to individuals.
(5) The administrator or administrator's designee must be responsible for:
(a) Organizing and directing the Agency with Choice's operations including on premises supervision and direct observation a minimum of four days per week, direct observation and administrative responsibilities including:
(A) Scheduling direct support workers and other agency staff; and
(B) Ensuring back-up coverage.
(b) Ensuring the completeness and accuracy of all information provided to the public regarding the Agency with Choice and its services;
(c) Ensuring the provision of safe and appropriate services in accordance with written person-centered service plans;
(d) Ensuring all direct support workers and other personnel providing services for the Agency with Choice meet the qualification, orientation, competency, training, and education requirements in the rules;
(e) Ensuring services are person-centered by aligning personnel and care practices with the Agency with Choice's written policies and procedures.
(f) Ensuring direct support worker are trained on the individual's specific care need, have the knowledge, skills and abilities necessary to meet the unique needs of the individuals they serve and that it aligns with the care assignments.
(g) Ensuring the Agency with Choice does not accept or retain individuals for whom it does not have the capabilities or resources to provide services;
(h) Ensuring the timely internal investigation of any complaint, grievance, incident, critical incident, provision of personal care, and medication or treatment error.
(i) Ensuring the timely reporting of any allegation of abuse or neglect to the appropriate authority that includes, but is not limited to, the ODHS SAFE line (1-855-503-SAFE(7233)), IQA service coordinator, or local law enforcement agency; and
(j) Ensuring direct support workers report any decline or change in an individual's health, behavior, or environment.
(6) The Agency with Choice administrator must require:
(a) Employees that have direct contact with individuals to report any new arrests, charges, or convictions after hire to determine if any personnel action is necessary, including, but not limited to, a new background check, to ensure compliance; and
(b) Direct support workers who have proof of a current Oregon health-care related license or certificate to report any licensing board action to the Agency with Choice that would prevent the direct support worker from providing services to individuals.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0440

RULE TITLE: Direct Support Worker Qualifications

RULE SUMMARY: Reviews direct support worker qualifications

RULE TEXT:

(1) The services provided by an Agency with Choice must be rendered by qualified and trained employees under the supervision of the licensee, administrator, or administrator's designee.

(2) Direct support workers must receive all required training and additional training necessary to ensure the direct support worker can competently provide the level of care they will be assigned. The services must be provided as requested by the individual or individual’s authorized representative in accordance with these rules and the person-centered service plan.

(3) The Agency with Choice must ensure that it has qualified and trained employees sufficient in number to meet the needs of all individuals receiving services.

(4) Direct support workers must be at least 18 years of age and must have sufficient communication and language skills to enable them to perform their duties and interact effectively with individuals and other Agency with Choice staff.

(5) Direct support workers who have been substantiated for abuse or Medicaid fraud as a provider from any care setting in the United States may not be hired, nor retained as an employee of the Agency with Choice as prescribed as Medicaid regulations.

(6) A direct support worker cannot be an authorized representative for an individual for whom they provide services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0450

RULE TITLE: Direct Support Worker Training Requirements

RULE SUMMARY: Outlines the direct support worker training

RULE TEXT:

(1) Direct support workers must complete an Agency with Choice-specific orientation before providing services to individuals. The orientation must be a minimum of four hours, obtained online or in person, and include, but not be limited to, the following subject areas:

(a) Direct support workers' job description and requirements highlighting the importance of supporting individual self-direction;

(b) Abuse and mandatory reporting;

(c) Confidentiality;

(d) Individuals' rights;

(e) Medication safety;

(f) Preventing Medicaid fraud;

(g) Providing person-centered services;

(h) Universal precautions and infection control;

(i) An overview of the Agency with Choice's policies and procedures as required in in thee rules;

(j) A description of the supports provided by the Agency with Choice to the Direct Support Worker;

(k) Use of the Agency with Choice’s Electronic Visit Verification system; and

(l) The documentation requirements outlined in OAR 410-120-1360, OAR 410-172-0620 and OAR 410-173-0045.

(2) Direct support workers must complete a minimum eight house of competency-based training intended to improve the direct support worker’s ability to better serve individuals from a qualified training entity or qualified trainer. Competency-based training must be completed within 120 days of the direct support worker beginning work with individuals. Training must include, but is not limited to:

(a) Recognizing and responding to medical emergencies;

(b) Understanding and recognizing mental and emotional conditions;

(c) Appropriate and safe techniques in ADL and IADL tasks, especially related to Critical Incident prevention;

(d) Methods and techniques to prevent skin breakdown, tightening of skin, muscles, or tendons limiting movements, and falls;

(e) Proper body movement, posture, alignment, and positioning to prevent injury of the Individual and the Direct Support Worker; and

(f) Behavioral interventions;

(g) Culturally responsive training;

(h) Mandatory abuse reporting;

(i) Ethics training, including confidentiality of individual information;

(j) An overview of the Agency with Choice's policies and procedures;

(k) Documentation of individuals' needs and services provided in compliance with OAR 410-120-1360, OAR 410-172-0620, and OAR 410-173-0045; and

(l) Information about what constitutes medication reminding and its specific limitations.

(3) Direct support workers must complete a competency-based evaluation, conducted by a qualified training entity or qualified trainer, that must include a combination of both direct observation and written testing.

(4) Direct support workers who do not complete the required training with 120 days of hire, or who fail to competency-based evaluation, must immediately cease providing services to any individuals to whom they were assigned.

(5) Direct support workers assigned to provide medication services must obtain a minimum of four hours of basic non-injectable medication training before providing the services. Medication training must include, but is not limited to, the following areas:

(a) Medication terminology and abbreviations;
(b) Reading medication orders and directions;
(c) Reading medication labels and packages, including pill packs provided by a pharmacy;
(d) Administering non-injectable medications:
(i) Pill forms, including identification of pills that cannot be crushed;
(ii) Non-injectable liquid forms, including those administered by syringe or dropper and eye and ear drops;
(iii) Suppository forms; and
(iv) Topical forms.
(e) Identifying and reporting adverse medication reactions, interactions, contraindications and side effects;
(f) Infection control related to medication administration; and
(g) Techniques and methods to ensure safe and accurate medication administration.
(6) Prior to providing medication services, direct support workers must demonstrate appropriate and safe techniques in the provision of medication tasks described in this rule and that must be evaluated by a qualified trainer through a successful return demonstration that includes:
(a) The reason why each medication is taken;
(b) The amount or dose of each medication that needs to be taken;
(c) the route the medication needs to be taken; and
(d) The time of day each medication needs to be taken.
(7) Direct support workers providing medication services must receive a minimum of one hour of continuing education from a qualified trainer or qualified training entity related to direct support worker duties annually.
(8) The training required in this rule must be clearly documented and maintained in each direct support worker's personnel record and must include the following information, if applicable:
(a) Title and content of the training for each topic.
(b) The date(s), times(s) and training topics covered.
(c) The name(s) and signature(s) of the Agency with Choice-specific orientation instructor, qualified training entity or qualified trainer who conducted the training.
(d) Medication services training must clearly document:
(A) Evidence of successful return demonstrations; and
(B) A statement from the qualified trainer that the direct support worker has been evaluated to be competent to provide the medication services described in this rule.
(9) Direct support workers who have previously served as a homecare worker, personal support worker, personal care attendant, direct support worker at another Agency with Choice or staff at an in-home care agency are not subject to additional competency-based training requirements if the previous training is not expired and is documented in the hiring Agency with Choice personnel records. Direct support worker orientation is still required.
(10) Direct support workers with proof of a current Oregon health-care related license or certificate such as a nursing license or certified nursing assistant, is exempt from competency-based training. A direct support worker must provide annual proof of this license or certificate to remain exempt. Direct support worker orientation is still required.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0460

RULE TITLE: Personnel Records

RULE SUMMARY: Details the required personnel

RULE TEXT:

(1) The Agency with Choice must maintain a personnel record for each direct support worker and employee.

(2) Each record at minimum must include the following:

(a) Current position description signed by the direct support worker or employee. The position description must clearly identify the job duties;

(b) Documentation verifying if the employee has been found to have committed abuse;

(c) Evidence of an approved fitness determination;

(d) Evidence of orientation, training, competency evaluations, and continuing education;

(e) An Agency with Choice must maintain sufficient information and documentation to demonstrate that the person(s) or entity providing the training under this rule is a qualified training entity or qualified trainer.

(f) If the direct support worker or employee has a health-care related license or certificate from Oregon or any other state, evidence the license or certificate is current and the person has not been the subject of any action that would prevent the individual from providing Agency with Choice services;

(g) Evidence if the direct support worker is trained on all personal care services they will perform by the Agency with Choice;

(h) Evidence of any evaluations of a direct support worker including evaluations involving the individual or individual's authorized representative; and

(i) Evidence of a valid driver's license with current auto insurance for all personnel whose duties include transporting individuals in a motor vehicle.

(3) Personnel records must be safely and securely stored and readily available.

(4) Personnel records must be maintained for a minimum of seven years from end of employment.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0470

RULE TITLE: Admissions

RULE SUMMARY: Outlines the admissions

RULE TEXT:
(1) An Agency with Choice must not deny services or otherwise discriminate against an individual on the basis of race, color, religion, sex, gender identity, sexual orientation, national origin, marital status, age, disability, source of income, duration of Oregon residence, or other protected classes under Federal and Oregon Civil Rights laws.
(2) Agency with Choice services must be provided in accordance with the individual's authorized person-centered service plan.
(3) Services described in this rule must be primarily provided at the individual's residence. Services may be rendered at non-residence locations, such as out of state. as specified in the individual's person-centered service plan.
(4) An Agency with Choice must evaluate whether an individual can continue to self-direct at a minimum of every 90 days. If it is determined that an individual can no longer self-direct, the Agency with Choice must contact the individual's service coordinator for assessment and placement services without delay.
(5) When an individual is accepted to receive services, a written disclosure statement must be signed by the individual or the individual's authorized representative. Evidence that the disclosure statement was given to the individual or the individual's authorized representative must be incorporated into the individual's record.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024),

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0480

RULE TITLE: Individual Records

RULE SUMMARY: Outlines the required individual records

RULE TEXT:

(1) An individual record must be developed and maintained for every individual served by an Agency with Choice and must be located in the Agency with Choice's office.

(2) A legible, reproducible individual record which is easily accessible and readily available, must include at least the following:

(a) Identification data;

(b) Referral information;

(c) Start-of-service date;

(d) Signed disclosure documents and documentation required by these rules;

(e) Signed individuals' rights documentation required by these rules;

(f) All individual evaluation and assessment documents;

(g) All signed self-directed plans, person-centered service plans and updates;

(h) An agreement signed by the individual or the individual's authorized representative specifying the services to be provided in accordance with the person-centered service plan. The agreement must be signed prior to the start of services;

(i) Documentation of all services provided by the direct support worker and observed or reported concerns;

(j) Documentation of any decline or change in an individual's health, behavior, or environment. Documentation must include an evaluation of the individual's condition as stable and predictable and when the information was reported to the individual's service coordinator.

(k) Service and financial agreement signed by the individual or the individual's legal representative before the initiation of services that specifies the services to be provided in accordance with the self-directed plan, and the costs for those services;

(l) End-of-services date; and

(m) End-of-service summary, including the dates of service and the disposition of the individual.

(3) All entries and documents in the record must be recorded in ink, typescript, or computer-generated.

(4) All entries in the individual's record must be dated and signed, or otherwise authenticated, by the person making the entry. For purposes of this rule, authenticated means verification by the author that an entry in the individual record is genuine. Electronic authentication is acceptable only if there is a process for reconstruction of the information and there are safeguards to prevent unauthorized access to the records.

(5) A list of Agency with Choice direct support workers providing services to the individual must be documented in the individual's record.

(6) The individual's record must identify back-up coverage during planned or unplanned absences or emergent circumstances where the primary direct support worker is, or workers are, unavailable.

(7) An individual record must be maintained in a manner that renders it easily retrievable.

(8) Reasonable precautions must be taken to protect an individual's record and information from unauthorized access, fire, water, theft, damage or destruction.

(9) All individuals' records must be kept for a period of at least seven years after the date of last end-of-service.

(10) Authorized employees of the Authority must be permitted to review individual records upon request. Photocopies of the records must be made upon request.

(11) If there is a change in the business entity operating the Agency with Choice, all individuals' records must remain in the Agency with Choice. It is the responsibility of the licensee to protect and maintain these records until the new licensee has assumed control.

(12) Before an Agency with Choice terminates its business, the Agency with Choice must notify the Authority at least 60

days in advance where the individuals' records will be stored. Copies of all records must be transferred to the Authority prior to the closure of the Agency with Choice.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0490

RULE TITLE: Individual Rights

RULE SUMMARY: Outlines the individual rights

RULE TEXT:

(1) The licensee, administrator, or administrator's designee must ensure that the Agency with Choice recognizes and protects the rights of each individual.

(2) The Agency with Choice must provide each individual with a written notice of the individual's rights as a part of the disclosure statement, prior to providing services to the individual. The individual's rights notice must include:

(a) The right to be treated with dignity and respect;

(b) The right to be free from theft, damage, or misuse of one's personal property;

(c) The right to be given the informed choice and opportunity to select or refuse service and to accept responsibility for the consequences;

(d) The right to be free from neglect of care, verbal, mental, emotional, physical, or sexual abuse;

(e) The right to be free from financial exploitation;

(f) The right to be free from physical and chemical restraints;

(g) The right to be free from coercion and seclusion;

(h) The right to privacy;

(i) The right to voice grievances or complaints regarding services or any other issue without discrimination or reprisal for exercising such rights;

(j) The right to be free from discrimination as to race, ethnicity, color, national origin, gender identification, sexual orientation, gender identify, disability, religion or any other protected status under state or federal law;

(k) The right and responsibility to participate to the greatest extent possible in planning of the services to be furnished, the frequency of services, any changes in services, the direct support workers schedule, and cessation of services;

(l) The right to select or otherwise approve the direct support workers who provide services to the individual before the direct support workers begin providing the services;

(m) The right to train direct support workers in the individual's specific service needs and in the provision of services to the individual;

(n) The right to direct the individual's own services that are provided by direct support workers;

(o) The right to require an Agency with Choice to remove a direct support worker from the individual's services and supports team;

(p) The right to schedule a direct support worker's time in accordance with the individual's desires, needs and authorized hours;

(q) The right to have access to their own records;

(r) The right to have individual information and records confidentially maintained by the Agency with Choice;

(s) The right to a written 30-day notice of termination of services by the Agency with Choice that specifies the reason(s) for the termination. The Agency with Choice must provide information, resources or other assistance to the individual or the individual's authorized representative on transferring services to ensure the health and safety of the individual while they transition to another service option;

(t) Procedures for filing a grievance or complaint with the Agency with Choice;

(u) Procedures for filing a grievance or complaint with the Division, along with the telephone number and contact information of the Division; and

(v) The right to receive prior written notice at least 30-day before a change in the business entity operating the Agency with Choice.

(3) The Agency with Choice must give a copy of the signed notice of individual rights to the individual and the individual's authorized representative, if applicable, and must retain the original signed individual rights document in the individual's records.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0500

RULE TITLE: Standards of Services Provided

RULE SUMMARY: Outlines the standards of services provided

RULE TEXT:
(1) Agency with Choice services must be provided in accordance with the Authority's approved person-centered service plan and implemented as directed by the individual or the individual's authorized representative.
(2) The Agency with Choice licensee, administrator, or administrator's designee, in collaboration with the individual or the individual's authorized representative, must develop a plan that includes:
(a) The schedule for the provision of services specifying the total number of hours to be provided per month based on the Authority's authorized hours;
(b) The days of the week services will be provided;
(c) The services to be provided, specifying the tasks to be conducted; and
(d) Other pertinent information about the individual's needs in relation to the services to be provided to ensure the provision of safe and appropriate service delivery.
(3) The Agency with Choice plan must include a list of individuals participating in the development of the plan and must be signed and dated when it is complete.
(4) The licensee, administrator, or administrator's designee must review the individual's self-directed plan with each direct support worker before the initial delivery of individual services.
(a) Each direct support worker providing Agency with Choice services to the individual must confirm the plan was reviewed prior to providing individual services.
(b) The date of the review, the signature or a unique electronic identifier such as an individual's log-in and password into a computer program or an electronic stamp of the licensee, administrator, or administrator's designee, and each direct support worker must be documented in the individual's record.
(5) An individual or an individual's authorized representative may request changes provided the changes do not require modifications to the individual's person-centered service plan that would result in a change of authorized hours. All requested changes must be reviewed and approved by the individual or the individual's authorized representative and the Agency with Choice. All changes must be communicated to the assigned direct support workers, either by phone or electronic means. All communications must be documented in the appropriate individual and personnel records.
(6) If an individual experiences a significant change of condition, the Agency with Choice must notify the service coordinator, direct support workers and the individual's authorized representative if applicable. The change of condition and all communications must be documented in the appropriate individual and personnel records.
(7) An Agency with Choice must maintain the original and all updated plans in the individual's record. Complete and legible copies of the plans must be provided to the service coordinator and the individual or individual's authorized representative.
(8) The Agency with Choice must ensure the individual or the individual's authorized representative is notified of any changes in the delivery of the Agency with Choice Services, as applicable, such as if the direct support worker is unavailable to cover scheduled hours or shifts. Documentation of such notification must be maintained in the individual's record.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0510

RULE TITLE: Medication Services and Treatments

RULE SUMMARY: Details the medication services and treatments

RULE TEXT:
(1) Medication services include those supports provided as part of the Instrumental Activities of Daily Living as outlined in OAR 410-172-0780 including:
(a) Shopping for prescribed medication
(b) Medication assistance including helping an individual with oral medications prescribed for the individual by a licensed medical professional, which are ordinarily self-administered as described below:
(A) Administering medication;
(B) Supervision or cueing to ensure the individual is taking medication as prescribed;
(C) Documenting and monitoring any notable side effects;
(D) Refilling prescriptions; and
(E) Assisting with use, maintenance and cleaning of in-home medical equipment authorized by a licensed medical professional, monitoring the individual's condition, ordering and maintaining necessary supplies. Use, maintenance and cleaning of in-home medical equipment must be performed by the direct support worker in compliance with manufacturer's guidelines. The direct support work must have received training, and when applicable education from an RN, in how to correctly perform these tasks, prior to performing these tasks.
(2) Taks requiring nursing judgment or intervention must follow delegated nursing requirements as specified in OAR 851-047.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0520

RULE TITLE: Initial Visit and Monitoring

RULE SUMMARY: Outlines the initial visit and monitoring

RULE TEXT:

(1) The Agency with Choice must conduct a review of the individuals plan with the individual or the individual's authorized representative at least every six months to ensure it continues to meet the individual's needs. Monitoring contacts may occur by phone or by other electronic means determined jointly with the Individual, or their Authorized Representative. Monitoring contacts may not be conducted by a direct support worker.

(2) The Agency with Choice must conduct at least one in-home visit with the individual every 12 months, at a time determined jointly with the Individual or the Authorized Representative. Visits must be documented, dated and signed in the individual's record. The annual in-home visit replaces the need for a six-month monitoring visit. The in-home visit may not be conducted by a direct support Worker.

(3) An Agency with Choice that supports individuals with medication reminders or medication assistance must ensure these services are tailored to the individual's needs and delivered in a manner that respects the individual's abilities.

(4) Each contact and visit must be documented, dated, and signed by the Agency with Choice representative who conducted the visit or contact. The contacts and in-home visit should document the Individual's level of satisfaction with their services, any concerns or support they need to continue to self-direct their services.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0530

RULE TITLE: Quality Assurance and Performance Improvement

RULE SUMMARY: Details the quality assurance and performance improvement

RULE TEXT:

(1) An Agency with Choice must establish and maintain an effective quality assurance and performance improvement program that evaluates and monitors the quality, safety, and retention of direct support workers, and appropriateness of services provided by the Agency with Choice, and must include at a minimum:

(a) A method to identify, analyze and correct critical incidents, issues with infection control and other aspects of performance relating to
services provided;

(b) A method to identify, and track quality indicators by high risk, high volume, problem prone areas and by the effect on Individual safety and quality of the services received;

(c) A method to ensure services provided by the Agency with Choice are self-directed by the individual and honor the individual's needs and preferences; and

(d) A method to analyze of workforce trends, proactive responses to identified challenges, address systemic issues, such as like high turnover among direct support workers.

(2) After an analysis of the causes for any issues identified in section (1) of this rule, develop and implement a performance improvement program to ensure staff are trained in and familiar with any identified quality improvement activities.

(3) The improvement activities must be reviewed by a committee comprised of, at a minimum, Agency with Choice administrative staff, direct support workers, and at least one individual receiving Agency with Choice services.

(4) Quality improvement activities must be conducted and documented at least quarterly. All reports of the quality assurance system and performance improvement must be submitted to the Authority.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0540

RULE TITLE: Inspections

RULE SUMMARY: Details the required inspections

RULE TEXT:

(1) The Division must conduct an inspection of each Agency with Choice application and issue a license to successful applicants prior to services being provided.

(2) The Division must conduct an onsite inspection of each Agency with Choice every two-years to verify the Agency with Choice is maintained and operated in substantial compliance with these rules.

(3) The Division may conduct additional inspections:

(a) To determine if cited violations have been corrected;

(b) For the purpose of routine monitoring of individual's care;

(c) If the Division has reason to believe the Agency with Choice has violated a regulation or provision of these rules; or

(d) If the Division has reason to believe the Agency with Choice is operating without a license.

(4) The Division may conduct an inspection or investigation without advance notification.

(5) An inspection may include, but is not limited to:

(a) Review of the application and all supporting documentation and information submitted by the applicant;

(b) Interview with individuals, individual's legal representatives, individual's family members, and Agency with Choice staff;

(c) Review of agency, personnel, and individual records;

(d) On-site observations of individuals and staff; and

(e) Verification of substantial compliance with Federal, State, and local government agencies with jurisdiction.

(6) The Agency with Choice must authorize all staff to permit access to the Agency with Choice and agency, personnel and individual records to the Authority, the CMHP, the investigative authority and CMS staff, for the purpose of inspection, investigation, and other duties within the scope of the agency's authority.

(7) If the Authority, CMHP, investigative authority or CMS staff are not permitted access for inspection, a search warrant may be obtained.

(8) The Agency with Choice must make all requested documents and records available for review and copying.

(9) Following an inspection, Division staff will conduct an exit conference with the Agency with Choice licensee, administrator or administrator's designee. During the exit conference, Division staff must:

(a) Inform the Agency with Choice licensee, administrator or administrator's designee of the preliminary findings of the inspection; and

(b) Provide the Agency with Choice licensee, administrator or administrator's designee an opportunity to submit additional facts or other information in response to the findings.

(10) The Division must issue a written report to the Agency with Choice within 30 days of the inspection. The Division must issue a statement of deficiencies that cites the law or rule alleged to have been violated and the facts supporting the allegation.

(11) When deficiencies result in a referral to another regulatory agency, Division staff must submit the applicable information to that agency for its review and determination of appropriate action.

(12) A copy of the most current inspection report and any conditions placed upon the license must be posted with the Agency with Choice license in public view near the main entrance to the Agency with Choice.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0550

RULE TITLE: Complaints

RULE SUMMARY: Outlines complaints

RULE TEXT:

(1) Any person who believes these rules have been violated may file a complaint verbally or in writing to the Division.
(2) The Agency with Choice must not interfere with a good faith disclosure of information by an employee or volunteer concerning violation(s) of laws or rules.
(3) The licensee and administrator must ensure any complainant, witness, or employee of an Agency with Choice is not subjected to retaliation by any Agency with Choice employee, or any Agency with Choice employee's family or friends, for making a report, being interviewed about a complaint, or being a witness, including, but not limited to, restriction of access to the individual or, if an employee, dismissal or harassment.
(4) The identity of a person making a complaint and any personally identifiable information is confidential and not subject to disclosure. Complainant information can only be disclosed by court order.
(5) The Agency with Choice must cooperate with the Authority in all complaint investigations.
(6) If the complaint allegation represents an immediate threat to the health or safety of an individual, the Division must notify the appropriate agencies and authorities to ensure the health and safety of those involved.
(7) If a complaint involves an allegation of criminal conduct or an allegation that is within the jurisdiction of another local, state, or federal agency, the Division must refer the matter to the agency having jurisdiction.
(8) Upon conclusion of an investigation of a complaint, the Division may publicly release a report of its findings. Publicly released reports must not disclose the identity of the complainant, witness, or any individual associated with an Agency with Choice.
(9) The Authority may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of an Agency with Choice.
(10) Any Agency with Choice employee who becomes aware of a violation of a law or these rules must immediately report it to the Authority.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0560

RULE TITLE: Investigations

RULE SUMMARY: Details the investigations

RULE TEXT:

(1) The Agency with Choice licensee, agents and employees must not permit, aid, or engage in abuse of individuals served by the Agency with Choice.

(2) All Agency with Choice licensees, agents and employees are mandatory reporters and must immediately report known or suspected abuse, or physical injury of unknown cause, to the ODHS SAFE line (1-855-503-SAFE(7233)), IQA service coordinator, or local law enforcement agency.

(3) The local law enforcement agency must be called first when the known or suspected abuse is believed to be a crime.

(4) The Agency with Choice must not interfere with a good faith disclosure of information by an employee or volunteer concerning abuse, neglect, exploitation, seclusion, or coercion of individuals or other action affecting an individual's safety or welfare.

(5) Anyone who, in good faith, reports abuse or suspected abuse has immunity, as approved by law, from any civil liability that might otherwise be incurred or imposed with respect to the making or content of an abuse complaint.

(6) Immunity under this rule does not protect self-reporting licensees from liability for the underlying conduct that is alleged in the complaint.

(7) The identity of a person making a report of abuse and any personally identifiable information is confidential and not subject to disclosure under ORS 192.311 to 192.478.

(8) Immediate protection must be provided for the individual by the agency, in coordination with the investigative authority or OHA, as necessary, regardless of whether the report of alleged abuse is opened for investigation. The licensee or administrator must immediately cease any practice that places an individual at risk of serious harm.

(9) The Agency with Choice must cooperate with abuse and protective services and law enforcement investigations. The Agency with Choice must permit access to the investigative authority and law enforcement and must ensure:

(a) Records are made available upon request including access to all agency, personnel, and individual records;

(b) Allowance for the investigative authority and law enforcement to conduct private interviews with Agency with Choice employees without the Agency with Choice administrator present;

(c) Oregon Health Authority and appropriate Local Public Health Authority are permitted access to the Agency with Choice and agency, personnel, and individual records pertinent to investigation of illness or outbreak, as authorized by law.

(10) An Agency with Choice must immediately terminate employment of a direct support worker who has a substantiated claim of abuse or neglect from serving an individual.

(11) Information obtained by the investigative authority during an investigation of a complaint or reported violation is confidential and not subject to public disclosure under ORS 192.410 through 192.505. Upon the conclusion of the investigation, the Division or Department may publicly release a report of its findings but must not include information in the report prohibited from disclosure under state or federal laws. The Division may use any information obtained during an investigation in an administrative or judicial proceeding concerning the licensing of an Agency with Choice and may report information obtained during an investigation to a health professional regulatory board as defined in ORS 676.160 if that information pertains to a licensee of that board.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0570

RULE TITLE: Enforcement

RULE SUMMARY: Outlines the enforcement of correction plans from investigative

RULE TEXT:
(1) Upon receipt of a statement of deficiencies, an Agency with Choice must be provided an opportunity to dispute the Division's findings but must still comply with sections (2) and (3) of this rule.
(a) If an Agency with Choice desires an informal conference to dispute the Division's findings, the Agency with Choice must advise the Division in writing within 10 business days after receipt of the statement of deficiencies. The written request must include a detailed explanation of why the Agency with Choice believes the statement of deficiencies is incorrect.
(b) An Agency with Choice may not seek a delay of any enforcement action against it on the grounds the informal dispute resolution has not been completed.
(c) If an Agency with Choice is successful in demonstrating the deficiencies should not have been cited, the Division must reissue the statement of deficiencies, removing such deficiencies. The reissued statement of deficiencies must state that it supersedes the previous statement of deficiencies and must clearly identify the date of the superseded statement of deficiencies.
(2) A signed plan of correction must be mailed or emailed to the Division within 30 days from the date the statement of deficiencies was received by the Agency with Choice.
(3) An Agency with Choice must correct all deficiencies within 30 days from the date the statement of deficiencies was received by the Agency with Choice, unless a shorter time is determined by the Division to be necessary due to health or life safety risks, or unless an extension of time is requested from and granted by the Division. A request for such an extension must be submitted in writing and must accompany the plan of correction.
(4) The Division must determine if a written plan of correction is acceptable. If the plan of correction is not acceptable to the Division, the Division must notify the licensee or administrator in writing:
(a) Identifying which provisions in the plan the Division finds unacceptable;
(b) Citing the reasons the Division finds the provisions unacceptable; and
(c) Requesting that the plan of correction be modified and resubmitted no later than 10 business days from the date notification of non-compliance was received by the licensee or administrator.
(5) If the Agency with Choice does not come into compliance by the date of correction reflected on the plan of correction or 30 days from the date the report was received, whichever is sooner, the Division may propose to deny, suspend, or revoke the Agency with Choice license or impose civil penalties.
(6) Failure of an Agency with Choice or it’s Direct Support Workers to comply with required training curriculum, agency policies or service delivery standards established under these rules may be cited as a deficiency and is subject to enforcement action including, but not limited to, plans of correction, civil penalties and suspension and revocation of the Agency with Choice license.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0580

RULE TITLE: Civil Penalties

RULE SUMMARY: Defines the civil penalties

RULE TEXT:

(1) An Agency with Choice that violates Agency with Choice rules, an administrative order, or settlement agreement, is subject to the imposition of a civil penalty not to exceed $1,000 per violation and must not total more than $2,000.

(2) An individual or entity who operates an Agency with Choice without a license is subject to the imposition of a civil penalty not to exceed $1,000 a day per violation.

(3) An Agency with Choice that fails to comply with the Division is subject to the imposition of a civil penalty. Failure to comply includes, but not limited to:

(a) Failure to provide a written disclosure statement to the individual or the individual's authorized representative prior to Agency with Choice services being rendered;

(b) Failure to provide the contracted Agency with Choice services;

(c) Failure to correct deficiencies identified during an inspection or investigation; or

(d) Refusal to allow access and inspection.

(4) In determining the amount of a civil penalty, the Division must consider whether:

(a) The Division made repeated attempts to obtain compliance;

(b) The licensee has a history of non-compliance with Agency with Choice licensing rules;

(c) The violation poses a serious risk to an individual's health; and

(d) There are mitigating factors, such as a licensee's cooperation with an investigation or actions to come into compliance.

(5) The Division must document its consideration of the factors in section (4) of this rule.

(6) Each day a violation continues is an additional violation.

(7) A civil penalty imposed under this rule must comply with ORS 183.746.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0590

RULE TITLE: Conditions

RULE SUMMARY: Details the conditions

RULE TEXT:

(1) Conditions may be attached to a license and take effect immediately upon issuance by the Division. The type of condition attached to a license must directly relate to a risk of harm or potential risk of harm to individuals. Conditions may be attached upon a finding that:

(a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of the individuals.

(b) A threat to the health, safety, or welfare of an individual exists.

(c) There is reliable evidence of abuse, neglect, or exploitation.

(d) The Agency with Choice is not being operated in compliance with these rules.

(2) Examples of conditions that may be imposed on an Agency with Choice license include, but are not limited to:

(a) Restricting the total number of individuals served based upon the ability of the Agency with Choice to meet the health and safety needs of the individuals.

(b) Requiring additional qualifications or training of licensee and staff.

(c) Restricting new admissions when there is a threat to the current individuals and admitting new individuals would compound that threat.

(3) The Division will notify the licensee in writing of any conditions imposed, the reason for the conditions, and be given an opportunity to request a hearing under ORS 183.411 to 183.502. A licensee must request a hearing in writing within 21 calendar days after the date the notice was personally served or mailed. Conditions take effect immediately and are a final order of the Division unless later rescinded through the hearings process.

(4) In addition to, or in-lieu of, a contested case hearing, a licensee may request an informal conference with the Division to discuss conditions imposed. The informal conference does not diminish the licensee's right to a hearing.

(5) Conditions imposed remain in effect until the Division has sufficient cause to believe the situation that warranted the condition has been remedied. If the licensee believes the situation that warranted the condition has been remedied, the licensee may request in writing to the Division that the condition be removed.

(6) Conditions must be posted with the license in a prominent place in the Agency with Choice and be available for inspection at all times.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37

ADOPT: 309-045-0600

RULE TITLE: Denial, Suspension, or Revocation of License

RULE SUMMARY: Details the denial, suspension, or revocation of license

RULE TEXT:

(1) The Division may deny, suspend, or revoke an Agency with Choice license in accordance with ORS 183.413 when an Agency with Choice fails to comply with these rules, including, but not limited to, a licensee or administrator of the Agency with Choice permitting, aiding, or abetting any illegal act affecting the welfare of the individual.

(2) This section does not supersede or limit any other authority of the Division with regard to oversight of contracting entities or the imposition of civil penalties.

(3) The Division may immediately suspend a license for under ORS 183.430(2).

(4) Notice of Suspension of License must be imposed in accordance with ORS 183.411 through 183.470.

STATUTORY/OTHER AUTHORITY: ORS 413.042, Oregon Law 2024, Chapter 37, HB 4129 (2024)

STATUTES/OTHER IMPLEMENTED: Oregon Law 2024, Chapter 37