

# Consumer-Employer Responsibilities & Indicators for Intervention

(Revised 01/31/2022)

Individuals in the Consumer-Employer Provider (CEP) program who receive in-home services provided by a Home Care Worker (HCW) must be able to manage their employer responsibilities or designate a consumer-employer responsibility to manage those responsibilities. Many individuals have never been responsible to recruit, hire, and supervise others and need support and guidance to successfully manage these responsibilities. Others may not wish or be able to manage the consumer employer responsibilities and may need guidance and support in identifying a non-Medicaid paid individual to serve in this role.

This document lays out the required duties and skills that individuals in the CEP program are responsible to manage along with supportive interventions that staff can use when issues are identified related to the supervision and management of their homecare workers (HCWs).

However, the information below does not present an exhaustive list of tasks, warning signs, and case management interventions for every possible case management scenario. Every consumer is unique, and every employment situation may present different challenges, concerns and warning signs that may require a case manager to intervene with actions or strategies not listed below.

In addition, not all employer duties, skills and tasks should be weighted to the same degree when determining if a consumer or a consumer-employer representative is managing his or her employer responsibilities. As an example, many consumers may not have the ability or resources to use the Registry. However, that would not mean that the consumer or their representative is not eligible to be in the CEP program. On the other hand, if a consumer is sexually harassing their HCWs and he or she is unable or unwilling to change, that would mean that he or she is not eligible to continue in the CEP program. After receiving significant guidance and support, a consumer who is unable or unwilling to manage his or her service plan is ineligible to continue receiving assistance from a homecare worker in the CEP program and would need to find another service program option. Options include in-home services through an in-home agency or residential settings such as Adult Foster Homes, Residential Care/Assisted Living (including memory care) and Nursing Facilities,

## **(A) Locate, Screen and Hire HCWs ([OAR 411-030-0040\(a\)\(A\)](#), [OAR 411-031-0040\(2\)\(5\)\(6\)](#))**

### **Responsibilities/Skills:**

- Use the Registry to identify workers.
- Write and post ads.

- Create questions and conduct interviews.
- Screen applicants and check references (ensure they have an active provider number).
- Verify driver's license and insurance.
- Determine that the HCW has the skills, knowledge, and ability to perform, or to learn to perform, the required work.
- Notify the case manager about who the consumer plans to hire. The case manager must authorize the HCW to work for the consumer.
- Create a job description for the HCW to follow. Inform the HCW about the consumer's goals and what care priorities are important to him/her.
- Hire a homecare worker (notify case manager when a HCW is hired).
- Review the Task List with the HCW.
- Develop an employment agreement and have the employee sign (if desired).
- Let the HCW know the consumer's expectations and house rules.

### **Concerns/Warning Signs Indicating Possible Need for Support or for a CE Representative:**

- Service Plan has been approved but the consumer has not hired a HCW and other supports are not in place to meet care needs.
- Consumer (CE Representative) relies on Case Manager to find workers.
- Consumer is confused or unable to use the Registry to find, interview, and hire workers.
- Consumer is unable to create an employment agreement or review Task List with the HCW.
- When loss of worker there are long gaps in finding a replacement.
- Complex needs consumer hires just enough workers to meet the need but has no emergency or standby workers for back-up.
- Consumer needs exceed weekly cap due to not hiring enough workers.

### **CM Supportive Interventions:**

- Offer referral to Employer Resource Connection (ERC) to receive assistance with managing their service plan.
- Assist consumer with accessing the Registry & Referral System information ([Registry](#)) and creating an account as well as receiving practical information on hiring a HCW (DHS 2820 HCW PSW Registry Quick Guide, DHS 2929 A Quick Guide to the Registry for Consumer- Employers).
- If consumer does not have access to the internet, provide a list generated by the Registry by entering specific information about the consumer's service needs.
- Follow-up with the consumer after the information has been given to ask about progress and whether additional information is needed (ask whether he/she had any difficulty using the Registry; if specific information was entered to find the best match; any difficulty reaching HCWs; difficulty finding an available HCW; whether a new list is needed, etc.).

- Help consumer access the “[Registry and Referral Frequently Asked Questions – Employers](#) –” information on the Registry webpage.
- Help the consumer email the Registry (Registry.OHCC@dhsosha.state.or.us) or call 877-867-0077 during regular business hours if they need assistance.
- Help consumer identify natural supports who could assist him/her with the process of finding and hiring a HCW.
- Help the consumer review the HCW’s duties listed on their Task List.
- Remind the consumer that use of an In-Home Care Agency may be an option, if available in local area, until a HCW is hired.
- Complete regular waived case management contacts even in no HCW has been hired.

**(B) Schedule, Supervise and Train the HCW ([OAR 411-030-0040\(a\)\(B\)](#))**

**Responsibilities/Skills:**

- Review Weekly Schedule and communication expectations with the HCW.
- Show and instruct the employee about how the consumer likes to receive specific services to promote person-centered care (i.e. personal preferences, cultural practices, etc.), and to ensure the work is performing tasks to the consumer’s satisfaction.
- Ensure the worker maintains the agreed-upon work schedule.
- Ensure that the worker completes the assigned service duties listed on his or her Task List.
- Provide feedback to the HCW on their job performance.
- Maintaining employment records.
- Cooperate with processing any workers’ compensation claims.
- Considering ADA-related allowance requests from a worker (it is the consumer’s choice to make or not make allowance for an ADA request for a worker).
- Track hours worked and do not allow a worker to exceed service period cap limits.
- Provide feedback to the HCW about his/her job performance.
- Worker allowed to exceed weekly cap limits.
- Maintain professional boundaries with a worker.
- Discharge any unsatisfactory HCW and let the case manager know why the worker was let go.
- Find a new HCW from the Registry and consider using a training consultant to run a list or post an ad.

**Concerns/Warning Signs (Regarding Supervision) Indicating Possible Need for Support or for a CE Representative:**

- The HCW acts as if he or she were appointed as the consumer employer and makes service-related decisions to manage the consumer’s care needs ([OAR 411-031-0040\(1\)](#)).

- Consumer frequently complains about HCWs coming to work late; having frequent absences; doing poor quality of work (may indicate that performance deficiencies/issues are not being addressed adequately by the consumer-employer).
- HCW frequently calls Case Manager with complaints/concerns about how the HCW should safely and adequately meet the consumer's service needs, particularly if there are difficult transfers; complex medical needs; special diets; use of medical equipment (oxygen; ventilators; nebulizers); ostomy care; use of durable medical equipment (sliding boards; Hoyer lifts, etc.).
- Continual turn-over of HCWs, either because they are quitting or are being fired.
- HCW informs the Case Manager that the consumer regularly asks him/her to do things not authorized on the task list.
- The CM cannot get ahold of the consumer and contact can only be made through the HCW. This may indicate the consumer is not managing the plan or that the worker may be exercising undue influence over the consumer to keep the consumer from communicating with others ([OAR 411-031-0020\(21\)](#)).
- The consumer's representative (if applicable) does not live close by and is not able to regularly check on the consumer or manage HCWs.
- The HCW acts as if he or she were appointed as the consumer employer and makes service-related decisions to manage the consumer's care needs ([OAR 411-031-0040\(1\)](#)).
- Having multiple or frequent Workers Compensation claims.

### **CM Supportive Interventions:**

- Offer consumer a referral to the Employee Resource Connection to get assistance for managing his or her service plan.
- Refer for a Community RN to assist consumer with educating and training HCW with delegated tasks.
- Refer to Behavioral Support Specialist (if deemed appropriate) to assist consumer and/or homecare workers.
- Suggest the HCW attend trainings available through the OHCC (Examples: Bathing & Grooming; Blindness & Low Vision; Challenging Behaviors; Dementia & Alzheimer's; Keeping it Professional; Preventing Disease Transmission; Protect Against Sprains and Strains; Respiratory Care: Oxygen to Ventilators).
- Suggest HCW develops more skills through the Professional Development, Enhanced and Exceptional Care Certification programs.
- Follow-up with the consumer to see if he/she gave the HCW a copy of the Task List that provides guidance on service needs to be provided.
- Help the consumer identify natural supports or appoint a qualified consumer-employer representative to assist with managing the service plan/task list.

- Monitor consumers with exceptional needs (by visits and phone calls as often as needed), more frequently to resolve immediate, urgent issues and identified risks. This may range from daily checks (for brief periods of time), to weekly, monthly, or quarterly contacts for stable consumers.
- Monitor and mitigate risk concerns for consumers assessed with high risk(s).

**(C) Schedule Work, Leave, and Coverage ([OAR 411-30-0040\(4\)\(a\)\(C\)](#), [OAR 411-031-0040\(7\)](#))**

**Responsibilities/Skills:**

- Develop and maintain a set work schedule.
- Find a relief and/or back-up worker.
- Verify time worked via the OR PTC DCI (Electronic Visit Verification System – “EVV”).
- Manage worker leave and paid time off.
- Request temporary exceptions to the HCW cap if needed.

**Concerns/Warning Signs Indicating Possible Need for Support or for a CE Representative:**

- Schedule blocks of times, during which, there are periods when there are no needs or tasks to address (Ex: Consumer has scheduled two 8-hour days when their need is 2 hours daily, leaving needs on other days frequently unmet).
- Service needs are not being provided on a consistent basis due to the consumer’s failure to schedule work and, as a result, the consumer’s health and physical abilities are declining (Examples: medical condition becomes unstable because not receiving medications as scheduled; skin breakdown because assistance with bathing or incontinence is not being provided as needed; weight loss because meals are not being provided as needed).
- Repeatedly, CM receives phone calls from consumer’s HCW because, on multiple occasions, he/she has postponed using paid leave because the consumer has not arranged for coverage and/or will not authorize absence.
- CM notified by the consumer or someone in the community that the consumer has gone without assistance on multiple occasions due to HCW’s absence and the consumer’s failure to find a replacement.
- Consumer requires emergency medical assistance due to a HCW’s absence during scheduled working hours.
- HCW is not claiming all authorized hours because a consistent schedule is not in place.
- Consumer or worker is calling frequently to change hours between providers and the hours have not been prior authorized (may signal that either the consumer or the HCWs are not following a consistent schedule).



### **CM Supportive Interventions:**

- Offer referral to Employee Resource Connection.
- Discuss with the consumer the risks of not receiving services on a regular and consistent basis and share your observations.
- Help the consumer identify natural supports or a CE representative who may be able to assist with provider scheduling and management.
- Help the consumer to identify a relief worker or back-up worker if scheduled HCW is suddenly unavailable.
- Assist a consumer who is having difficulty using the EVV process or related technology.
- Offer other service program options for the consumer who is having difficulty with managing workers.
- Make APS referral if any form of abuse is suspected.
- See CM Supportive Interventions under A. Locating, Screening, & Hiring (above).

### **(D) Track the Hours Worked and Verify the Authorized Hours Completed by the HCW ([OAR 411-30-0040\(4\)\(a\)\(D\)](#)).**

#### **Responsibilities/Skills:**

- Use one of the tracking options in the OR PTC DCI (EVV) to record the hours worked electronically.
- Provide electronic signature/verification to validate hours worked and recorded electronically through the CEP payment system.
- Use a checklist or other method to verify all tasks recorded on the Task List are completed each shift.

#### **Concerns/Warning Signs Indicating Possible Need for Support or for a CE Representative:**

- The HCW does not have a working smart phone, touchtone landline phone or reliable internet or is unable to use the OR PTC DCI program's FOB device (consumer misplaces or loses the FOB, FOB is broken) to electronically verify worker's hours.
- Consumer frequently forgets to sign off on the HCW's time entry or forgets their required username, password, PIN, 6-digit FOB code, etc., to use the OR PTC DCI electronic visit verification system (or gives this information to the HCW to enter into the system for the consumer).
- Consumer is unable (forgets PIN) or unwilling to sign-off on historical time entries with the EVV system. Landline phone used by the consumer is not on file with ODHS/OHA for the consumer.
- Multiple HCWs for the same consumer use EVV reporting but the record shows different hours than what were authorized for the consumer due to unauthorized schedule changes, overlapping schedules, duplication of workers, etc.

- HCW is logging hours through the EVV system but is not actively working the entire time of their shift that they are logged on through the system.
- HCW takes the consumer's FOB offsite, making it impossible to assure the HCW was with the consumer at the time of the reported time entry.
- HCW does not verify their location during the reported shift.

### **CM Supportive Interventions:**

- Contact a Provider Time Capture analyst for assistance with specific questions/issues needing resolution ([PTC.Support@dhsosha.state.or.us](mailto:PTC.Support@dhsosha.state.or.us), [Oregon Provider Time Capture](#)), or the DCI Help Center (1-855-565-0155).
- Offer referral to Employee Resource Connection to assist with EVV orientation.
- Provide copy of current *Employer's Guide* available to local offices through the FBOS and given to all new consumers.
- Encourage consumer to use a Task List checklist to track the services provided.
- Help the consumer identify natural supports or appoint a CE Representative, if needed, to assist with provider scheduling and management and EVV concerns.
- Monitor situations where multiple HCWs are employed at the same time, have overlapping schedules, or regularly seek to change schedules not authorized by the consumer.
- Consider submitting the [HCW Referral of Alleged Violation and Request for Termination](#) (Form DHS 2680) for Central Office to investigate an potential misconduct by a HCW.

### **(E) Recognize, Discuss, and Attempt to Correct, any Performance Deficiencies with the HCW ([OAR 411-30-0040\(4\)\(a\)\(E\)](#))**

#### **Responsibilities/Skills:**

- Discuss expectations and personal preferences related to authorized services on the Task List.
- Conduct performance evaluations (informal or formal).
- Give positive feedback as well as explaining areas that could be improved.
- Maintain a professional employer-employee relationship with the worker to be able to address and correct performance deficiencies.

#### **Concerns/Warning Signs Indicating Possible Need for Support or for a CE Representative:**

- Consumer's condition is declining. May indicate that services are not being provided as required or that there is neglect, but HCW is still employed despite deficiencies.
- HCW refuses to provide services based on the consumer's preferences and desires.

- HCW is unwilling or unable to perform some or all the duties on the Task List.
- Frequent complaints voiced by consumer to the CM about the services being provided, but consumer does not want to discuss issues with the HCW.
- Consumer's family, friends, or someone in the community voices complaints to CM or APS about the quality of services HCW is providing.
- Consumer continues to employ HCW despite deficiencies voiced by CM, family, friend, or someone in the community and the situation does not improve (may worsen).
- After concerns are shared with the consumer about the quality of services being provided, the consumer is still unable to recognize deficiencies.
- Consumer expresses fear of or excessive concern for personal circumstances of the HCW (*the consumer may be more hesitant to address performance deficiencies or even consider discharging the HCW because the consumer feels bad for the worker*).
- The worker is exercising undue influence over the consumer to the extent that the consumer is fearful of correcting the worker ([OAR 411-031-0020\(21\)](#)).
- Consumer or HCW does not maintain a drug-free workplace.

### **CM Supportive Interventions:**

- Frankly discuss consumer's decline, share observations and concerns.
- Offer referral to Employee Resource Connection.
- Encourage the consumer to consider appointing a CE representative to assist with managing workers and service plan.
- Review the Task List with the consumer as a way of discussing how well each task is being provided.
- Encourage the consumer to review Task List with the HCW(s).
- Offer to be present during a HCW's performance evaluation (but not participate in the evaluation).
- Remind the consumer of the program's intent, to assist and provide in-home services for the consumer, not to meet the needs of the HCW.
- Remind the consumer that he or she can fire the HCW at any time and for any reason.
- Stay alert for APS concerns or if HCW is exerting undue influence over the consumer or making service plan decisions

### **(F) Discharge Unsatisfactory Workers ([OAR 411-30-0040\(4\)\(a\)\(F\)](#), [OAR 411-031-0040\(7\)](#))**

#### **Responsibilities/Skills:**

- Develop grounds/criteria for termination.
- Communicate with the worker the consumer's decision to end their employment
- Arrange a final work date with the HCW.
- Report terminations timely to the case manager or local office.



- Hire a replacement worker.

### **Concerns/Warning Signs Indicating Possible Need for Support or for the Assistance of a CE Representative:**

- See section E (above).
- Consumer asks the CM to fire the HCW.
- Natural supports or collateral contacts report the need to fire the HCW.
- The deficient worker appears to be exercising undue influence over the consumer to keep from being fired (stops the consumer from taking action).

### **CM Supportive Interventions**

- Offer referral to Employee Resource Connection.
- Offer to be present when consumer is discharging HCW.
- Help consumer identify natural supports or representative who may be able to assist with the task of discharging HCW.
- Remind the consumer of their right to hire and fire a worker at any time for any reason.
- Assist the consumer with accessing Registry to find new HCW prior to termination.
- Make APS or Medicaid Fraud reports as appropriate as a mandatory reporter..

### **(G) Follow All Employer Responsibilities Required by Law to Ensure the Workplace is Safe and Free from Harassment ([OAR 411-30-0040\(4\)\(a\)\(G\)](#)).**

#### **Responsibilities/Skills:**

- Consumer treats workers with respect and creates a welcoming work environment (establishing a professional employer/employee relationship).
- Consumer addresses health and safety concerns and safely manages their service plan.
- Consumer is aware of and seeks to mitigate identified risks (including risks present in and around the workplace, dangerous conditions in the home, dangerous animals, others living in/visiting the home that may cause a risk to others, etc.).
- Consumers must interact with their employees in a professional manner and may not abuse and may not physically or sexually assault or harass their HCWs. The [Oregon Bureau of Labor and Industries](#) serves to protect workers if their employers are abusing, harassing or acting inappropriately toward their employees. All suspected abuse or harassment should be investigated.

### **Concerns/Warning Signs Indicating Possible Need for Support or for a CE Representative:**

- Consumer is unable or unwilling to address health and safety concerns or manage his or her service plan.

- Consumer cognitive limitations negatively impact their informed decision-making, or he or she is unable to mitigate potential risks, abusive or harassing behavior.
- HCWs or others describe incidents where the consumer physically or sexually abused or harassed them or others.

### **CM Supportive Interventions**

- Explain the specific concerns to the consumer.
- Recommend an ERC referral to address specific concerns.
- Encourage the individual to appoint a CE Representative to manage the consumer-employer responsibilities.
- If deemed necessary and after staffing the case with Central Office, pursue due process procedures that may result in making a consumer ineligible for Medicaid in-home services from a HCW (CEP Program) ([APD-PT-17-058](#)).
- Report any instances of alleged abuse of older adults and persons with physical disabilities. Staff are “mandatory abuse reporters” if they suspect ([OAR 411-020-0002\(28\)](#), [OAR 411-020-0020](#)). Mandatory reporters must immediately report instances of alleged elder abuse to the Department, local office, or a local law enforcement agency.

### **Examples of Other Warning Signs that may Indicate the Need for Supportive Interventions or the Need to Appoint a CE Representative**

- With cognitive decline, consumer cannot manage their employee responsibilities or service plan.
- Consumer exhibits behavior changes or chronic anxiety that may indicate a mental or emotional disorder and assistance to manage employer duties is needed.
- CM receives repeated complaints from the HCW regarding personality conflicts; consumer being too bossy; communication difficulties; unrealistic expectations, being asked repeatedly to perform tasks not on the Task List; unrealistic expectations, etc.
- HCW’s are frequently ending employment relationship with consumer due to difficulty working with consumer (safety issues – i.e., loaded guns in the home that are not safely secured; refusal to use a Hoyer lift for difficult transfers; sexually inappropriate remarks or actions; verbal or physical abuse towards the HCW; other hazards in the home).
- Even after an Employee Resource Connection consult/training regarding the consumer’s employment responsibilities, the consumer is relying on or asking others to manage those responsibilities.
- Even after Employee Resource Connection consult/training, the consumer continues to demonstrate some of the same warning signs mentioned above.

- Consumer is frequently late or forgets to pay bills or receives repeated utility shut-off notices, un-opened mail, etc. (May indicate declining cognition and memory or a problem with tracking and organizational skills).
- Frequent turn-over of CE representatives.
- Consumer refuses to participate in an annual service assessment or demonstrates difficulty or is unable to provide information for a service assessment.
- Consumer fails to participate in Waivered Case Management Service contacts because of cognitive decline or a debilitating medical condition.

### **CM Consideration of CE Representatives**

- The CE representative is responsible to manage the consumer's service plan, including employment duties with HCWs ([OAR 411-030-0040\(4\)\(5\)](#), Representative Choice Form ([0737](#))).
- Consumer is reliably managing the service plan (ability to follow-through; supervise workers, respond to concerns; timeliness; consistency, etc.).
- Maintains a healthy relationship with the consumer (strained? advocate?).
- Declining ability of consumer (any concerns about cognitive abilities? Unable to train the worker based on own physical limitations?).
- Representative lives in close proximity and availability to the consumer (unable to supervise, train, and track hours if living too far away).
- Is a paid provider for the consumer.
- There is a conflict-of-interest present.
- Substantiated APS complaint.
- Appears to be a barrier to reaching consumer directly (exercising undue influence).
- Appears to be a conflict of interest by the individual representing the consumer in this program (CMS Rules: [42 CFR 441.555\(C\)](#)).

### **Documentation Expectations**

- Case narration must demonstrate that there is an ongoing pattern of inability to manage the consumer's service plan and not an isolated incidence (chronic versus acute).
- Case Manager must:
  - Document observations, interactions and interventions attempted.
  - Document consumer's response to suggestions (e.g., the consumer is agreeable to/refusing interventions, the consumer has agreed to participate in Employee Resource Connection; the consumer has agreed to a Behavioral Support Specialist consult, etc.).
  - Document the outcome of interventions (i.e. there is improvement after the intervention (be specific)).
- Continued monitoring and ongoing conversations with the consumer are critical. Increased contact beyond monthly is likely needed.
- Staff with Central Office when additional support is needed.

## **Oregon Home Care Commission Resources**

- [Consumer/Employer Information](#) Page
- [Employer Resource Connection](#) Page
- [Employer Resource Connection Older Adults and People with Physical Disabilities Contacts](#) Page
- [OHCC.ERC@state.or.us](mailto:OHCC.ERC@state.or.us)