NOTICE OF PROPOSED RULEMAKING HEARING*
A Statement of Need and Fiscal Impact accompanies this form.

Department of Human Services, Aging and People with Disabilities 411

Agency and Division  Administrative Rules Chapter Number
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RULE CAPTION
Behavior Support Services
Not more than 15 words that reasonably identifies the subject matter of the agency’s intended action.

April 18, 2014  2:30 pm  Human Services Building  Staff
500 Summer Street NE, ROOM 160
Salem, Oregon 97301

Hearing Date  Time  Location  Hearing Date  Time  Location
Auxiliary aids for persons with disabilities are available upon advance request.

RULEMAKING ACTION
Secure approval of new rule numbers (Adopted or Renumbered rules) with the Administrative Rules Unit prior to filing.

ADOPT:
The rules in chapter 411, division 046

AMEND:

REPEAL:

RENUMBER:

AMEND & RENUMBER:

Stat. Auth.: ORS 410.070

Other Auth.:

Stats. Implemented: ORS 410.070
RULE SUMMARY

The Department of Human Services (Department) is proposing to adopt rules for Behavior Support Services in OAR chapter 411, division 046 to: Establish standards to provide Behavior Support Services to individuals who receive Medicaid funded home and community-based services.

The Agency requests public comment on whether other options should be considered for achieving the rule’s substantive goals while reducing the negative economic impact of the rule on business.

April 22, 2014 at 5 p.m.
Last Day for Public Comment (Last day to submit written comments to the Rules Coordinator)

Signed Michael R. McCormick, Director, Aging and People with Disabilities 03/06/2014
Signature Date

Statutory Authority: ORS 410.070

Other Authority:

Stats. Implemented: ORS 410.070

Need for the Rule(s):
The Department needs to adopt rules in chapter 411, division 046 to establish standards for Behavior Support Services. Individuals who receive Medicaid funded home and community-based services that exhibit challenging behaviors are at risk of being evicted if their providers cannot manage their behaviors. The proposed rules describe eligibility criteria and establish standards for Behavior Support Services.

Documents Relied Upon, and where they are available:
Oregon Medicaid State Plan, K Option

Fiscal and Economic Impact:
Statement of Cost of Compliance:
1. Impact on state agencies, units of local government and the public (ORS 183.335(2)(b)(E)):
The Department estimates that adopting the rules in OAR chapter 411, division 046 will have the following fiscal and economic impact:

State Agencies: These services are funded under the Medicaid State Plan. There is no fiscal impact beyond the direct service costs. The Department expects the fiscal and economic impact not to exceed $10 million dollars. The Department is not expecting any fiscal and economic impact on other state agencies.

Units of Local Government: The Department is no additional fiscal and economic impact on units of local government.
Individuals receiving services: There is no economic impact on individuals receiving these services

Providers: There is no additional fiscal impact to providers. Providers will be reimbursed for all services they provide.

Public: The Department is not expecting any fiscal or economic impact on the public at large because the proposed rules are specific to individuals who receive Medicaid funded home and community-based services.

2. Cost of compliance effect on small business (ORS 183.336):
   a. Estimate the number of small businesses and types of business and industries with small businesses subject to the rule:

   The proposed rules do not impact small businesses as defined by ORS 183.310. There are over 1800 APD licensed Adult Foster Home small businesses that could benefit from this service. Approximately 10 %, of our total 477, Assisted Living Facilities, Residential Care Facilities, and Memory Care settings are small businesses, and would also benefit from this service.

   Projected reporting, recordkeeping and other administrative activities required for compliance, including costs of professional services: None.

   c. Equipment, supplies, labor and increased administration required for compliance: None.

   How were small businesses involved in the development of this rule?

   Small Businesses such as residential care facilities and memory care facilities were invited to participate in the Rule Advisory Committee. A small business as defined in ORS 183.310 participated on the Administrative Rule Advisory Committee. We also consulted with them during the planning process. Small businesses will also be included in the public review and comment period.

   Administrative Rule Advisory Committee consulted?

   Yes. The Administrative Rule Advisory Committee included representation from providers, Area Agencies on Aging, the Oregon Health Care Association, Leading Age Oregon, Alzheimer's Association, Alzheimer’s Network, Services Employees International Union, Oregon Technical Assistance Corporation, Center for Human Development, Governor's Commission on Senior Services, Home Care Commission, Oregon Disabilities Commission, Office of the Long Term Care Ombudsman, and the Department.

Signed Michael R. McCormick, Director, Aging and People with Disabilities 03/06/2014

Signature Date
411-046-0100 Purpose

(1) The rules in OAR chapter 411, division 046 establish standards and procedures for Medicaid Behavior Support Services. Behavior Support Services are provided to support a wide range of individuals who receive Medicaid funded home and community-based care services. The scope of these rules cover:

(a) Department contractors of Behavior Support Services;

(b) Licensed assisted living, residential, and adult foster home providers who provide services to individuals on Medicaid who are eligible for Behavior Support Services;

(c) In-home agencies, specialized living, or home-care workers who provide services to individuals eligible for Behavior Support Services.

(2) Behavior Support Services are provided by a behavior consultant who provides the eligible individuals and their caregivers with:

(a) A Behavior Support Plan;

(b) Ideas and strategies to support an individualized Activity Plan; and

(c) Coaching for designated caregivers on these behavior and activity strategies.

(3) The goals of Behavior Support Services are to:

(a) Ensure that all individuals who are eligible for State Plan K Community First Choice or Independent Choice receive behavior
interventions in a manner that is person-centered and follows the behavior support standards described in these rules;

(b) Ensure individuals who have diagnoses that place them ‘at risk’ of negative behaviors, such as acquired brain injury or dementia, receive proactive environmental strategies and activities which promote: Placement stability, quality of life, autonomy and satisfaction with the individuals' caregivers; and

(c) Provide caregivers with the environmental strategies and communication skills they need to revise and implement a Behavior Support Plan.

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

411-046-0110 Definitions

(1) "Abuse" means Abuse of an adult or elderly person as defined in ORS 124.050-095 and ORS 430.735-765; and as defined in OAR 411-020-0002 for older adults and individuals with a physical disability who are 18 years of age or older.

(2) "Acquired brain injury or traumatic brain injury" means eligible individuals who have or who are at risk of developing challenging behaviors as a result of a recent or longstanding brain injury diagnosis and who can benefit from Behavior Support Services. Acquired brain injury could include individuals with cognitive and behavioral disorders related to stroke, spinal cord injuries or other neurological diseases who can benefit from Behavior Support Services.

(3) "Activation date" means service activation date as defined in these rules.

(4) "Activity evaluation" is part of the person-centered evaluation to determine what activities an individual enjoy doing. This information helps the behavior consultant develop the Behavior Support Plan.

(5) "Activity Plan" is part of the Behavior Support Plan and includes an activity list of the specific, private, group and community person-centered
activities that the individual finds meaningful or enjoys. The plan also includes strategies to help caregivers make sure these activities become part of the individual’s daily routine.

(6) "Adult foster home" means a licensed home providing services to a person who is eligible for or who is receiving Behavior Support Services per OAR chapter 411, division 050.

(7) "Behavior consultants" are the Medicaid providers who have a contract with the Department to provide the services in this rule. When Behavior Support Services are provided as part of a supplemental or specific needs contract per chapter 411, division 27 then the behavior consultant is a designated employee who meets the qualifications of a behavior consultant and who has a job description to provide the services noted in these rules.

(8) "Behavior interventions" mean any planned or repeated pattern of interventions or social interactions that are intended to modify an individual’s environment or behavior.

(9) "Behavioral support" means the theories and evidenced-based practices supporting a proactive approach to behavioral intervention and that:

(a) Emphasize the development of functional alternative behavior;

(b) Prevent the need for or minimize the use of intrusive or restrictive interventions;

(c) Ensure that abusive or demeaning interventions are never used; and

(d) Evaluate the effectiveness of behavior interventions based on objective data.

(10) "Behavior Support Plan" means the written document that describes individualized support strategies designed to make the individual’s challenging behaviors irrelevant, inefficient or ineffective while reinforcing alternative behavior that achieves and satisfies the same need as the challenging behavior. Further, the Behavior Support Plan will identify caregiver interventions to help them deescalate, reduce, or tolerate the
challenging behavior when it does occur. The strategies focus on environmental, social, and physical factors that affect the behavior, while including supports for communication, personal choice and specific preferences throughout the plan.

(11) "Behavior Support Services" mean a set of Medicaid funded services that include:

(a) Person-centered evaluation;

(b) A Behavior Support Plan;

(c) Coaching for designated caregivers on how to implement the plan;

(d) Monitoring to evaluate the plan’s impact;

(e) Revision of the plan;

(f) Updating coaching and activities; and

(g) May include consultation to the care provider on how to mitigate behavior that places an individual’s health and safety at risk and prevent institutionalization.

(12) "Business day" means the days the "local office" is open.

(13) "Caregiver" means any person responsible for providing services to an eligible individual in a home and community-based care setting. Caregivers are the people designated by their employer to receive coaching from the behavior consultant.

(14) "Case manager" means a person employed by the Department or Area Agency on Aging who:

(a) Assesses the service needs of an applicant;

(b) Determines eligibility;

(c) Offers service choices to the eligible individual; and
(d) Authorizes referrals for a Behavior Support Service consultation or placement in a program where Behavior Support Services are provided as part of the Medicaid supplemental or specific needs contracted service rate.

(15) "Coaching" means the direction provided by the behavior consultant to caregivers or designated caregivers on the Behavior Support and Activity Plans. Coaching includes:

(a) Demonstrations by the consultant;

(b) Observation or role play by the caregivers on providing a specified intervention; and

(c) Feedback from caregivers on the specified interventions.

(16) "Crisis management" means an individual:

(a) Has a medical or physical health need;

(b) Is exhibiting psychiatric symptoms or behaviors that necessitate emergency medical attention;

(c) Needs an immediate mental health intervention; or

(d) Needs hospitalization for physical health or psychiatric health reasons.

(17) "Dementia" means major neurocognitive disorders listed in Diagnostic and Statistical Manual of Mental Disorders (DSMV) which result in the loss of cognitive function that interferes with an individual's daily functioning and which may affect an individual's language, memory, speech, movement, perception and ability to think, learn, reason or follow social norms. Symptoms may also include changes in personality, mood, and behavior.

(18) "Department" means the Department of Human Services or the Department's designee.

(19) "Designated caregivers" means the employees of a home or community-based care contractor, who have been assigned to assist the
behavior consultant with gathering information, review of the Behavior Plans, and who are the recipients of coaching activities. The person responsible for coordination of services provided to an individual residing in their own home under OAR chapter 411, division 030 is considered either the ‘designated caregiver’ or the person who assigns designated caregivers.

(20) "Enhanced care services" means a selected licensed adult foster home, nursing, or residential care facility where long term care supports are provided under a specific needs contract and mental health rehabilitation services are provided on site five to seven days a week.

(21) "Exception payment" means a payment to the provider per OAR 411-027-0050.

(22) "Healthcare provider" means a licensed provider providing services to an eligible individual including, but not limited to: Home health, hospice, mental health, primary care, specialty care, pharmacy, or hospitalization.

(23) "Home and community-based care contractor" means a Department contractor who is providing Medicaid funded residential or in-home services to an individual eligible for or receiving services under these rules. Residential or in-home services include:

(a) Adult foster homes;

(b) Assisted Living Facilities;

(c) In-home agencies,

(d) Residential care facilities;

(e) Specialized living; and

(f) In-home services.

(23) "Home and community-based care services" mean services approved by the Centers for Medicare and Medicaid Services for eligible individuals who are aged and physically disabled in accordance with State Plan K Community First Choice requirements.
(24) "Individual" means a person eligible for and receiving Behavior Support Services under these rules.

(25) "In-home care agency" means a licensed agency as described in OAR chapter 333, division 536 or a "home health agency" as defined in ORS 443.005, which has a contract with the Department to provide services for State Plan K Community First Choice or Independent Choice.

(26) "In-home services" means the Medicaid Program provided under chapter 411, division 030, using caregivers who are either employees of in-home care agencies or who are employed by the Individual.

(27) "Initial person-centered evaluation" means the person-centered evaluation that the behavior consultant begins at the first visit to determine what behavior supports are needed to for the individual's service needs.

(28) "Local office" means the Department office or Area Agency on Aging, responsible for Medicaid services including: Case management, referral, authorization, and oversight of the Behavior Support Services provided to an eligible individual.

(29) "Mandatory Department forms" means the forms required to document the services in these rules. Mandatory forms are posted on Department website.

(30) "Memory care communities" means the programs that include Behavior Support Services per OAR Chapter 411, Division 57.

(31) "Person-centered" means a planning process, either formal or informal, for gathering and organizing information that helps an individual:

(a) Determine and describe choices about personal goals, activities, and lifestyle preferences;

(b) Design strategies and networks of support to achieve goals and a preferred lifestyle using individual strengths, relationships, and resources; and
(c) Identify, use, and strengthen naturally occurring opportunities for support at home and in the community.

(32) "Person-centered evaluation" means the information gathered by the behavior consultant to create a Behavior Support Plan and includes an activity evaluation. The behavior consultant process includes observation of the individual, interviews with the individual, their caregivers, interviews with members of the individual's service planning team, case manager and social supports.

(33) "Provider" means an entity that has a contract with the Department to provide Behavior Support Services and who is an enrolled Medicaid provider who meets:

(a) The requirements in these rules;

(b) The requirements in OAR 407-120-0300 Medicaid provider enrollment and claiming; and

(c) As applicable, the requirements under OAR 410-120 Medicaid General Rules.

A provider hires employees or subcontractors who meet the behavior consultant qualifications in 411-046-0180.

(34) "Residential care and assisted living facilities" means the licensed entity providing services per OAR chapter 411, division 054 to an individual who is eligible for or receiving Behavior Support Services.

(35) "Service activation date" means the date from which all timeframes begin. Either the date the referral for Behavior Support Services is the accepted date or a later date may be used if approved by local office management.

(36) "Service plan" means the service plan or care plan provided to the Medicaid eligible individual who is also determined to need or is receiving Behavior Support Services required under:

(a) Adult Foster Homes, OAR chapter 411, division 050;
(b) Residential Care and Assisted Living Facilities, chapter 411, division 054;

(c) Specialized Living Services, chapter 411, division 065;

(d) In-Home Services, chapter 411, division 030.

(37) "Specialized living services" means the Department contractor performing services provided per OAR Chapter 411, Division 065 for an individual who is living in a designated home-based location.

(38) "Specific needs or supplemental contract" means the services which are covered under payment limitations in community based care services 411-027-0075.

(39) "Service notes" means the documentation required on the Department’s mandatory form which documents the coaching, monitoring, and other services provided by the behavior consultant to implement the Behavior Support Plan.

(40) "These rules" mean the rules in OAR chapter 411, division 046.

(41) "Written approval" means the Department’s certification of a provider to be a behavior consultant.

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

411-046-0120 Eligibility

(1) Individuals must meet the following requirements to receive Behavior Support Services:

   (a) Be eligible for home and community-based care services provided through APD; and

   (b) Be receiving services through either State Plan K Community First Choice or Independent Choices.
(2) Behavior Support Services should be provided to any eligible individual noted in (1) above who can benefit from the service or who has caregivers who can benefit from the service based on their functional needs assessment performed by the case manager. Individuals who are eligible include, but are not limited to:

(a) The individual is at risk of requiring behavior interventions;

(b) The individual’s caregiver requests assistance in developing person-centered interventions;

(c) The individual has had a placement failure related to their behavior;

(d) The individual is at risk of an involuntary move out or has received an eviction notice;

(e) The individual is receiving Medicaid service payment to support behavior interventions such as a behavior add-on or an exception; or

(f) If the provider receives a payment for costs associated with interventions needed to address the individual’s challenging behaviors.

(3) All Behavior Support Services must be pre-authorized by the eligible individual’s case manager or by a Department authorized placement in a home and community-based care setting where the Medicaid service payment includes Behavior Support Services.

(4) Eligible individuals or their designated representative may request Behavior Support Services or may refuse to participate in Behavior Support Services. Consultation may still be provided to the care provider.

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

411-046-0130 Limitations

(1) Behavior Support Services may not be provided to:
(a) Individuals who are receiving:

(A) Specific needs setting contracted rate for "enhanced care services"; or

(B) Services through Developmental Disabilities per OAR chapter 411, division 308, OAR chapter 411, division 330, or OAR chapter 411, division 325.

(b) Individuals who are receiving services in a nursing facility or hospital;

(2) Behavior consultation services may not be provided solely to:

(a) Assist in protective service investigations or licensing inspections;

(b) Assist in an administrative function such as: pre-admission screenings, eligibility determinations, or case manager assessments; or

(c) Replace or support interventions for adult protective services, crisis management, law enforcement, or 911 emergency services that are required when the behavior of concern is causing an immediate danger to the client, other residents, or caregivers.

(3) Behavior Support Services are separate from interventions addressing behavior symptoms as part of:

(a) Mental health therapy or counseling;

(b) Health or mental health plan coverage; or

(c) Vocational or educational services.

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

411-046-0140 Behavior Support Services
(1) Behavior Support Services assist individuals with behavioral challenges due to their disability that prevent them from accomplishing activities of daily living, instrumental activities of daily living, and health-related tasks.

(2) Behavior Support Services may include consultation to the care provider on how to mitigate behavior that may place the individual's health and safety at risk and prevent institutionalization.

(3) Behavior Support Service providers and their employees or subcontractors acting as behavior consultants must provide the following services to individuals who they accept for services:

(a) Review of Referral.

   (A) All services must be authorized by the individual's case manager on the Department's mandatory form, which is sent to the Behavior Support Service provider.

   (B) The Behavior Support Service provider must provide a documented decision regarding denial or acceptance of the referral within 2 business days.

   (C) Service activation dates that are later than the referral acceptance date must be approved by local office management.

   (D) Providers must ensure adequate numbers of behavior consultants are available to meet the service needs of all individuals who are accepted for service.

   (E) The following entities must be informed of the accepted referral by the case manager:

      (i) The individual or their legal representative; and

      (ii) The person in charge of the individual's Medicaid residential or home-based service plan.

(b) Person-Centered Evaluations.
(A) An initial person-centered evaluation shall be started within 5 business days of service activation date. The evaluation may be updated at the discretion of the behavior consultant based on information gathered from coaching activities.

(B) Person-centered evaluation activities must include at a minimum the content noted on the Department’s mandatory form and must support the Behavior Support Plan interventions and the scope of services provided.

(C) The evaluation must be documented on the Department’s mandatory form and provided to the case manager upon request.

(D) As part of the person-centered evaluation, the behavior consultant must conduct an activity evaluation.

(c) Behavior Support Plan

(A) The Behavior Support Plan shall be documented on the Department’s mandatory form and completed within 20 business days of the initial person-centered evaluation or updated within 5 business days of any new evaluation activity. The plan must support the interventions and scope of the services provided.

(B) The behavior consultant is responsible for developing a Behavior Support Plan that considers the resources available at the individual’s home.

(C) All strategies in the Behavior Support Plan align with the individual’s residential service or care plan and activity program required under licensing or Medicaid Program rules.

(D) The Behavior Support Plan must be explained to the individual in a manner the individual can understand.

(E) The plan must include:
(i) An Activity Plan that is developed following an activity evaluation. The activity evaluation must examine, but is not limited to examining, the individuals:

(I) Past and current interests;

(II) Current abilities and skills as it relates to activities of daily living, instrumental activities of daily living, and health-related tasks;

(III) Emotional and social needs and patterns;

(IV) Physical abilities and limitations;

(V) Adaptations necessary for the resident to participate in their activities of choice;

(ii) A list of person-centered activities must be identified based on the evaluation and included as a distinct part of the Behavior Support Plan. The list must include structured and non-structured activities that meet the individual's current preferences. Activities include, but are not limited to:

(I) Occupation or chore related tasks;

(II) Scheduled and planned events (e.g. entertainment, outings);

(III) Spontaneous activities for enjoyment or that may help diffuse a behavior;

(IV) One to one activities that encourage positive relationships between residents and staff (e.g. life story, reminiscing, music);

(V) Spiritual, creative, and intellectual activities;

(VI) Sensory stimulation activities;
(VII) Physical activities that enhance or maintain a resident’s ability to ambulate or move;

(VIII) Outdoor activities; and

(IX) Night time activities.

(F) Identification of strategies to help caregivers provide activities and address emergent behaviors.

(G) Completed Behavior Support Plans, and any subsequent updates, must be reviewed with, and provided to, the people responsible for the individual's residential or home-based service plan and the case manager.

(H) The behavior consultant must document a minimum of one review of the Behavior Support Plan with a designated caregiver on the Department’s mandatory form.

(I) Behavior Support and Activity Plans must be modified based on feedback from coaching activities, to ensure caregiver participation and to evaluate the proposed strategies.

(d) Coaching Caregivers.

(A) The behavior consultant must develop a coaching plan describing how they will coach each caregiver to implement the Behavior Support Plan. The coaching plan may be included in the Behavior Support Plan.

(B) The behavior consultant must schedule and initiate onsite coaching to the designated caregivers within 30 business days of service activation.

(C) The behavior consultant should review information with the caregiver's employer and include, at a minimum the following content:

   (i) Review of the Behavior Support Plan;
(ii) Discussion on how activities can be incorporated into the individual’s daily routine;

(iii) Demonstration of desired interventions by the behavior consultant;

(iv) Observation or role play of the caregiver implementing portions of the Behavior Plan; and

(v) Gathering of feedback from caregiver(s) on how to modify the plan or activities.

(vi) The review may be conducted as part of a coaching activity.

(vii) Behavior consultant will advise caregiver to contact primary health care provider or long term care nurse as a part of coaching when it relates to an individual possibly experiencing a medical issue that could be impacting their behaviors, or if medication interaction may be a concern related to behaviors.

(D) Documentation of all coaching activity, including dates and participants, must be provided on the Department’s mandatory form and provided, upon request, to the employers or supervisors of the designated caregivers who received coaching.

(e) Monitoring.

(A) The behavior consultant must provide at least two onsite monitoring visits to:

(i) Conduct observations;

(ii) Gather information;

(iii) Evaluate caregiver and individual responses to the Behavior Support Plan and the Activity Plan; and
(iv) Carry out coaching activities.

(B) Monitoring can be provided by phone or through secured video conferencing, if all parties agree, after the Behavior Support Plan is completed and a minimum of two on-site coaching visits have occurred.

(C) Documentation of all monitoring must be provided on the Department’s mandatory form.

(f) Service Plan Coordination.

(A) Completed Behavior Support Plans are considered part of the individual’s activity, service or care plan required by the home and community-based care license or Medicaid Program.

(i) Home and community-based care contractors must assign enough designated caregivers to ensure that the Behavior Support Plan can be implemented in accordance with their respective licensing or Medicaid Program standards.

(ii) Home and community-based care contractors must identify charting protocols for the behavior consultant to document any onsite activity provided to the eligible individual or their caregiver.

(iii) If the behavior consultant identifies any barriers that prevent the implementation of the Behavior Plan, they must notify the home and community-based care contractor within 2 business days.

(iv) Home and community-based care contractors must report to case managers, within 5 business days, if the Behavior Support Plan cannot be implemented or if the behavior consultant is not utilizing input from caregivers or the service planning team.

(B) Behavior consultants who are not providing the services as part of a supplemental or specific needs setting contract may
participate on the individual’s service planning team or mental health treatment team only to review the individual’s Behavior Support Plan.

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

411-046-0150 Authorizations

(1) Behavior Support Services must be prior-authorized by the eligible individual’s case manager using the referral process noted in 411-046-0140(3)(a). The Case manager is responsible for ensuring that the individual is eligible for an initial referral and ongoing Behavior Support Services.

(a) Service hours for person-centered evaluation and development of the Behavior Support Plan are authorized by the individual’s case manager effective on the date that the behavior consultant accepts and signs the Department approved referral form.

(b) Case managers can authorize up to 40 hours based on the complexity of the individual’s initial Behavior Support Plan and the number of caregivers who will be receiving coaching. The Department may approve additional hours as defined in OAR 411-046-0220 if the individual’s functional needs assessment indicates the need for additional hours.

(c) Services noted in 411-046-0140(3)(a) to (3)(f), lasting more than 120 days from service activation date, will require new referral and authorization.

(d) Authorizations for service hours must be completed by the local office within 5 business days of receiving notification of referral acceptance.

(e) Prior authorizations are in effect for a 12 month period from the initial service activation date. After 12 months, a new authorization must be requested and approved.
(f) Requests for more than 80 hours of service must be reviewed and approved by the Department.

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

411-046-0160 Communication

(1) Required Reporting.

Behavior consultants must report suspected or known neglect or abuse of all adults and elderly individuals as required by ORS 124.050 to 095, ORS 430.735 to 765 and ORS 419B to 419B.045.

(2) Confidentiality.

(a) Behavior consultants must adhere to the confidentiality standards as described in the Department contract as well as the Federal HIPAA privacy rules.

(b) Any written, verbal, digital, video, and electronic information regarding an individual must adhere to the Department’s confidentiality standards as described in OAR chapter 407, division 014 and Federal HIPAA standards.

(3) Notification.

(a) Behavior consultants must notify the home and community-based care contractor of the following:

(A) Life threatening health and safety concerns must be reported immediately. This communication can occur in person or by phone.

(B) Concerns regarding caregivers response to coaching activity must be reported as soon as possible. This communication can occur in person, by phone, or by email.

(C) Any permanent reassignment of a behavior consultant must be reported within 5 business days or prior to onsite service.
delivery. This communication can occur in person, by phone, or by email.

(b) Behavior consultants must notify the case manager or local office designee of the following:

(A) Life threatening health and safety concerns of an individual must be reported immediately, by phone or in person.

(B) Concerns regarding the individual’s placement must be reported within one business day. This communication can occur by email or phone.

(C) Any permanent reassignment of a behavior consultant, must be reported within 5 business days or prior to onsite service delivery. This communication can occur by email or phone.

(D) An administrator, licensee or designated caregiver who is unwilling or unable to implement the Behavior Support Plan, after completion of coaching plans and service coordination activities. This communication can occur by email or phone.

(c) Case managers and behavior consultant are required to exchange information regarding changes in the individual’s eligibility status, service location or service needs during the duration of the Behavior Support Service.

(d) Behavior consultants must report suspected abuse immediately to the local Departmental office or designee office or by calling the Department’s toll-free abuse reporting hotline.

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

411-046-0170 Documentation

(1) Compliance with the documentation standards in this rule and completion of mandatory Department forms is intended to ensure
communication between case managers and home and community-based care providers.

(2) The documentation requirements in this rule and on mandatory Department forms do not replace or substitute for the documentation requirements in the:

(a) Medicaid Provider Rules governing provider requirements as described in OAR chapter 407, division 120, Provider Rules, MMIS Provider Enrollment and Claiming; Contractor Audits, Appeals and Post Payment Recoveries;

(b) Medicaid General Rules under OAR chapter 410, division 120 as applicable; and

(c) Licensing or Medicaid Program rules governing the home and community-based care provider, as applicable.

(3) Behavior consultants are expected to complete mandatory Department forms to support services provided under 411-046-0140.

(4) Use of alternative, but equivalent forms, may be approved by the Department using the exceptions process under 411-046-0220 or as defined in supplemental or specific needs setting contracts or individuals who receive Behavior Support Services as part of their monthly service rate.

(5) Mandatory forms must be sent to the case manager before or at the time of submission of invoices or before receipt of the monthly Medicaid service rate.

(a) Documentation must support the services billed and adhere to the timeframes noted in this rule and on the mandatory forms.

(b) Claims will not be paid until the mandatory forms are submitted to the individual’s case manager and the documentation noted in 411-046-0170(2) is completed.
(6) Behavior Support Service providers are expected to maintain a written record of all services provided to, and for, an individual and an individual's caregiver.

   (a) The record must include copies of all documentation provided to the:

      (A) Case manager;

      (B) Home and community-based care contractor; and

      (C) Behavior consultant or provider maintained to meet 411-046-0170 (2) (a)-(c).

   (b) The record must be retained until the behavior consultant no longer provides services to the individual, at which time the behavior consultant or the agency must provide a copy of any part of the record that was not previously provided to the case manager.

   (c) The behavior consultant or agency must retain the original record following HIPAA practices for a period of seven years.

   (d) All documentation must be provided in HIPAA secure format.

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

411-046-0180 Qualifications for Providers and Behavior Consultants

(1) The Department shall select qualified providers according to standards:

   (a) In these rules,

   (b) In OAR 407-120-0320; and

   (c) In OAR chapter 410, division 120, as applicable.

Providers must be enrolled as a Medicaid provider.
Behavior consultants must complete the background check process described in OAR 407-007-0200 to 407-007-0370 with an outcome of approved or approved with restrictions.

(2) Behavior Support Service Medicaid providers must have a Department contract to provide:

(a) Home or community-based care services defined under a specific needs setting, and which includes Behavior Support Services as part of the contracted rate; or

(b) Behavior Support Services with qualified employees or subcontractors who provide time limited consultation, at a range of settings, where the referred individual lives.

(3) A Behavior Support Service Medicaid provider must employ or subcontract with behavior consultants who meet all of the following requirements:

(a) Pass the Department required criminal record check processes per OAR 407-007-0210 and meet one of the following:

   (A) Pass the Behavior Consultant Competency Evaluation administered by a Department approved contractor;

   (B) Possess and maintain certification from a Department approved program noted on the Department website; or

   (C) Have written approval to perform behavior consultant work from the Department based upon review of resume, certification, or education. Requests for this approval must follow 411-046-0220 exceptions to rules.

(b) Maintain compliance with continuing education requirements under these rules (411-046-0210).

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

411-046-0190 Disenrollment /Termination
(1) Medicaid providers of Behavior Support Services or their behavior consultant employees or subcontractors may be terminated or prohibited from providing services for any of the following:

(a) Violation of any part of these rules;

(b) Violation of the protective service and abuse rules in OAR chapter 411, division 020 and OAR chapter 407, division 045;

(c) A demonstrated pattern of repeated unsubstantiated complaints of neglect and abuse per OAR chapter 411, division 020 and OAR chapter 407, division 045;

(d) Failure to meet behavior consultant qualifications or continuing education requirements;

(e) Failure to provide copies of the records described in these rules to designated Department or Oregon Health Authority entities;

(f) Repeated failure to participate in Behavior Support Plan review or service planning meetings when requested by an individual's case manager;

(g) Failure to provide the services noted in these rules; or

(h) Fraud or misrepresentation in the provision of services under these rules.

(2) Medicaid providers have rights to appeal a termination based on OAR 407-120-0360(8) (g) and, as applicable, OAR chapter 410, division 120.

(3) Medicaid providers of these services must provide 30 day written notice, or more if specified in contract, to the Department of the decision to cease services.

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

411-046-0200 Compensation and Billing
(1) All billing and claims must comply with OAR 407-120-0330; OAR 407-120-0340; and OAR chapter 410, division 120, as applicable.

(2) Compensation for Behavior Support Services in supplemental or specific needs setting contracts shall be defined through the Department contract.

(3) The Department may adjust rates in underserved areas to ensure that individuals have access to services.

(4) Failure to comply with standards in this rule may result in determination of overpayment for which restitution may be sought.

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

411-046-0210 Continuing Education Requirements

(1) Behavior consultants must maintain a record verifying completion of at least 12 hours of continuing education per year of person-centered care or behavior support training that is provided by a Department approved trainer or training organization noted on the Department website.

(2) Requests for documentation verifying compliance with this requirement must be provided upon request to the Department.

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

411-046-0220 Exceptions to Rules

(1) Exceptions to these rules may be made by the Department central office and must be granted by the Department in writing. Implementation of an exception may not occur without written approval.

(2) The following exceptions may be granted by local office managers on a case specific basis to:

(a) Change timeframes for service activation,
(b) Initiate person-centered evaluation,

(c) Complete the Behavior Plan; or

(d) Initiate coaching.

(3) Requests for exceptions to the rules must include, but are not limited to, the following:

(a) A written request is provided to central office management for prior approval. Documentation must include:

(A) Local office management support for the exception request;

(B) Description of the benefit to the individual or program served by the Department that will occur as result of the exception;

(C) Details regarding the specific rule for which:

   (i) The exception will be granted;

   (ii) Rationale for why exception is needed;

   (iii) Proposed duration of the exception;

   (iv) Identification of alternatives (including rule compliance); and

   (v) Costs, if any, of the exception.

(4) The exception will not impact compliance, and will not result in non-compliance, with any OAR other than chapter 411, division 046.

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