



Region 10
2201 Sixth Avenue, MS/RX 43
Seattle, Washington 98121

OCT 29 2010

Bruce Goldberg, MD, Director
Department of Human Services
Human Services Building
500 Summer Street Northeast, E-15
Salem, Oregon 97301-1097

RE: Oregon State Plan Amendment (SPA) Transmittal Number 10-022

Dear Dr. Goldberg:

The Centers for Medicare & Medicaid Services (CMS) has completed its review of the Oregon State Plan Amendment (SPA) Transmittal Number 10-022.

This SPA was submitted to comprehensively detail the coverage and reimbursement for personal care services rendered to children in a foster care setting.

This plan amendment is approved effective October 1, 2010, as requested by the State. However during the review of SPA 10-022, CMS performed an analysis of the reimbursement for personal care services under the SPA. The analysis revealed issues that will require additional information and/or possible revision through a corrective action plan. Under separate cover, CMS will release a letter detailing those issues, and provide guidance on timelines for correction.

If you have any questions concerning this SPA, please contact me, or Wendy Hill Petras of my staff at (206) 615-3814 or wendy.hillpetras@cms.hhs.gov.

Sincerely,

Barbara K. Richards
Associate Regional Administrator
Division of Medicaid and Children's Health
Operations

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL		1. TRANSMITTAL NUMBER: 10-22	2. STATE Oregon
		3. PROGRAM IDENTIFICATION: TITLE XIX OF THE SOCIAL SECURITY ACT (MEDICAID) Medical Assistance	
FOR: HEALTH CARE FINANCING ADMINISTRATION		4. PROPOSED EFFECTIVE DATE 10/1/10	
TO: REGIONAL ADMINISTRATOR HEALTH CARE FINANCING ADMINISTRATION DEPARTMENT OF HEALTH AND HUMAN SERVICES		5. TYPE OF PLAN MATERIAL (Check One): <input type="checkbox"/> NEW STATE PLAN <input type="checkbox"/> AMENDMENT TO BE CONSIDERED AS NEW PLAN <input checked="" type="checkbox"/> AMENDMENT	
COMPLETE BLOCKS 6 THRU 10 IF THIS IS AN AMENDMENT (Separate Transmittal for each amendment)			
6. FEDERAL STATUTE/REGULATION CITATION: 42 CFR part 441		7. FEDERAL BUDGET IMPACT: a. 2010 \$ -0- b. 2011 \$ (5,500,000)	
8. PAGE NUMBER OF THE PLAN SECTION OR ATTACHMENT: Attachment 3.1-A, page 9b thru 9h and Attachment 4.19-B, page 1a		9. PAGE NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT (If Applicable): Attachment 3.1-A, page 9b, 9c, Attachment 4.19-B, page 1a	
10. SUBJECT OF AMENDMENT Revision to personal care services to bring the differing programs and related administrative rules into alignment with the federal guidelines.			
11. GOVERNOR'S REVIEW (Check One): <input type="checkbox"/> GOVERNOR'S OFFICE REPORTED NO COMMENT <input checked="" type="checkbox"/> OTHER, AS SPECIFIED: <input type="checkbox"/> COMMENTS OF GOVERNOR'S OFFICE ENCLOSED <input type="checkbox"/> NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL			
12. SIGNATURE OF STATE AGENCY OFFICIAL:		16. RETURN TO:	
13. TYPED NAME Judy Mohr Peterson <i>JG</i> Bruce Goldberg, MD		Division of Medical Assistance Programs Department of Human Services 500 Summer Street NE E-35 Salem, OR 97301 ATTN: Jesse Anderson, State Plan Manager	
14. TITLE: Administrator, DMAP Director, DHS			
15. DATE SUBMITTED: 9/24/10			
FOR REGIONAL OFFICE USE ONLY			
17. DATE RECEIVED: SEPTEMBER 24 2010		18. DATE APPROVED: OCT 29 2010	
PLAN APPROVED - ONE COPY ATTACHED			
19. EFFECTIVE DATE OF APPROVED MATERIAL: OCT 01 2010		20. SIGNATURE OF REGIONAL OFFICIAL:	
21. TYPED NAME: Barbara K. Richards		22. TITLE: Associate Regional Administrator	
23. REMARKS:		Division of Medicaid & Children's Health	

STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT
Medical Assistance Program

State/Territory: OREGON

AMOUNT, DURATION, AND SCOPE OF MEDICAL AND REMEDIAL
CARE AND SERVICES PROVIDED TO THE CATEGORICALLY NEEDY

LIMITATIONS ON SERVICES

24. f. Personal Care Services (42 CFR 440.167)

“Personal Care Services” means services furnished to an individual who is not an inpatient or resident of a hospital, nursing facility, intermediate care facility for the mentally retarded, or institution for mental disease that are:

- 1) Authorized for the individual by a physician in accordance with a plan of treatment or otherwise authorized for the individual in accordance with a service plan approved by the State;
- 2) Provided by an individual who is qualified to provide such services and who is not a member of the individual’s immediate family (described as spouses of recipients and parents of minor recipients – including stepparents who are legally responsible for minor children – as defined in Oregon law); and
- 3) Furnished in the home or other community locations outside the home.

For purposes of this section, family member means a legally responsible relative.

Scope of Services

Personal Care Services include a range of assistance, as developmentally appropriate, provided to persons with disabilities and chronic conditions of all ages which enables them to accomplish tasks, which they would normally do for themselves if they did not have a disability or chronic condition. Assistance may be in the form of hands-on assistance (actually performing a personal care task for a person) or cueing (redirecting) so that the person performs the task by him or herself.

Personal care assistance most often relates to performance of Activities of Daily Living (ADLs) and Instrumental Activities of Daily Living (IADLs). ADLs include; eating, bathing, dressing, toileting, transferring, and maintaining continence. IADLs capture more complex life activities and include; personal hygiene, light housework, laundry, meal preparation, transportation, grocery shopping, using the telephone, medication management, and money management. Personal care services can be provided on a continuing basis or on episodic occasions.

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24. f. Personal Care Services (42 CFR 440.167)

Scope of Services (cont)

Skilled services delegated by a Registered Nurse (RN) under Oregon's Nurse Practice Act may be considered personal care services when the RN provides appropriate training and delegation of the listed nursing tasks in accordance with the Oregon Nurse Practice Act.

Cognitive Impairments

An individual may be physically capable of performing ADLs or IADLs but may have limitations in performing these activities because of a cognitive impairment. Personal care services may be required because a cognitive impairment prevents an individual from knowing when or how to carry out the task. In such cases, personal assistance may include cueing along with supervision to ensure that the individual performs the task properly.

Freedom of Choice

The State assures that the provision of services will not restrict an individual's free choice of providers in violation of section 1902(a)(23) of the Act.

Personal Care Services Include:

Activities of Daily Living (ADLs)

- Eating - is assisting the individual in feeding or fluid intake by any means from a receptacle into the body. Includes monitoring to prevent choking or aspiration.
- Bathing - is assisting the individual with cleansing the body, washing hair, shaving, nail care, and using assistive devices when necessary to get in and out of the bathtub or shower.
- Dressing - is assisting the individual with putting on, fastening, and taking off all items of clothing, braces, and artificial limbs, including obtaining and replacing items from their storage area in the immediate environment.

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24. f. Personal Care Services (42 CFR 440.167)

Activities of Daily Living (cont)

- Toileting- is assisting the individual in getting to and from, on and off, the toilet, commode or bedpan for elimination of feces and urine. This includes cleansing after elimination, and adjusting clothing as necessary.
- Maintaining Contenance- includes external cleansing of Foley catheter, emptying catheter drainage bag, maintenance bowel care, changing and replacing incontinence products, including colostomy, or ileostomy bags.
- Transferring- is assisting the individual with mobility, transfers and repositioning by any means including use of an assistive device and includes turning or adjusting padding for physical comfort or pressure relief and encouraging or assisting with range of motion exercises.

Instrumental Activities of Daily Living (IADLs)

- Personal Hygiene- perform or assist with activities required to keep one's appearance neat, secure clothing, comb/brush hair, nail care, foot care, skin care, mouth care and oral hygiene, etc.
- Light Housework- perform or assist with housekeeping tasks necessary to maintain the individual in a healthy and safe living environment.
- Laundry- perform or assist with laundering or cleaning of clothing, bedding and other linens.
- Meal preparation- perform or assist with healthy meal planning and preparation, insuring special diets are followed.
- Transportation- assist individual in getting to and from necessary appointments and community activities through available means of transportation.
- Grocery Shopping- perform or assist individual in planning for and purchasing basic needs and household items.
- Using the Telephone- perform or assist individual in arranging necessary appointments and making desired phone calls.

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Instrumental Activities of Daily Living (cont)

- Medication Management- assist with medications which are ordinarily self-administered. Includes administering medication, observation to insure individual is taking medication as ordered, documenting and monitoring any notable side effects, and refilling prescriptions in a timely manner. Assist with use, maintenance, and cleaning of in-home equipment, monitoring client's condition, ordering and maintaining necessary supplies.
- Money Management- perform or assist with budgeting, making payments for monthly expenses and use of personal funds for desired items and activities.

Delegated Nursing Tasks

- Dressing Changes – using sterile technique to prevent possibility of infection. Sterile dressing changes are required for a central line, or an open unhealed surgical site.
- Oxygen Administration - during regular intervals, and with daily unplanned changes. Oxygen administration requires an attending physician's order, which includes oxygen flow and method of administration. Frequently oxygen administration is changed based on oxygen saturation levels and/or physical symptoms (e.g., shortness of breath, breathing difficulties, cyanosis.).
- Pulse Oximeter Placement and Monitoring - monitor oxygen saturation levels and adjust the oxygen as necessary to keep within acceptable parameters established by the attending physician.
- Apnea Monitoring – Apnea monitors are used after oxygen desaturation or episodes of apnea or respiratory distress have occurred. Monitors are frequently used for infants experiencing opiate withdrawal and being dosed with a respiratory suppressant such as Morphine.
- Tracheotomy Care – daily cleansing of stoma, changing dressing, and observing site for signs of irritation, inflammation, or infection. Tracheostomy tubes must be changed periodically as ordered by the attending physician.

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Delegated Nursing Tasks (continued)

- Oral Suctioning – to prevent aspiration due to gastroesophageal reflux and or copious oral secretions.
- Ventilator Care - changing ventilator tubing and connections, monitoring and changing ventilator settings (oxygen level, positive end expiratory pressure, peak flow, and/or intermittent mandatory ventilation, as ordered by the attending physician.
- Continuous Positive Airway Pressure (CPAP) - placement and monitoring of CPAP or canula and ensuring the mask is maintained during sleeping hours.
- Injections (subcutaneous) – given in the subcutaneous tissue to deliver medications such as Insulin, Growth Hormone, Epinephrine (for allergic reactions) and Glucagon (for hypoglycemic episodes in diabetics).
- Blood Glucose Testing – using lancet to prick the finger (or other area such as the forearm) to obtain a blood sample to determine the blood glucose level (using a Blood Glucose Monitor).

The services described in this section are not intrinsic elements of Title IV-E foster care maintenance payments.

For individuals under 21 years of age, services will be provided in accordance with EPSDT requirements at 1905(r), subject to determination of medical necessity and any prior authorization by the Department.

Personal Care Assessments

Assessments are performed on all clients prior to receiving personal care services to determine their level of need. Those clients receiving services that require nurse delegation are assessed by a Registered Nurse (OAR 411-034-0070). For children receiving personal care services in a foster care setting, all personal care assessments are performed by a Registered Nurse (OAR 413-090-0133). Personal Care Services are available to all qualifying Medicaid-eligible individuals, including children who are not in a foster care setting.

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Qualified Provider

Personal care services provided to qualifying Medicaid-eligible children not served in a foster care setting, seniors, and people with disabilities, including those people with addiction and mental health disabilities must be provided by a qualified provider as described in OAR 411-034-0050.

In summary, the rule requires that a Qualified Provider:

- Is a person who, in the judgment of the Department or its designee, can demonstrate by background, skills and abilities the capability to safely and adequately provide the services authorized;
- Must maintain a drug-free work place and must be approved through the criminal history check process described in OAR chapter 407, division 007;
- Paid by the Department must not be the parent, or step-parent of an eligible minor child, the eligible individual's spouse or another legally responsible relative;
- Must be authorized to work in the United States, in accordance with U.S. Department of Homeland Security, Bureau of Citizenship and immigration rules;
- Must be 18 years of age or older. A Homecare Worker enrolled in the Client-Employed Provider Program who is at least sixteen years of age may be approved for limited enrollment as a qualified provider, as described in OAR 411-031-0040(8)(d);
- May be employed through a Contracted In-Home Care Agency or enrolled as a Homecare Worker or Personal Care Attendant under an individual provider number. Rates for these services are established by the Department; and
- Homecare Workers enrolled in the Client-Employed Provider Program providing State Plan Personal Care services must meet all of the standards in OAR chapter 411, division 031.

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24. f. Personal Care Services (42 CFR 440.167)

Qualified Provider (cont)

- **Criminal History Re-checks:**
 - Criminal history re-checks may be conducted at the discretion of the Department or designee, in accordance with OAR chapter 407, division 007.
 - Providers must comply with criminal history re-checks by completing a new criminal history authorization form when requested to do so by the Department.
 - The provider's failure to complete a new criminal history check authorization will result in the inactivation of the provider enrollment. Once inactivated, a provider must reapply and meet all of the standards described in this rule to have their provider enrollment reactivated.

For children receiving personal care services in a foster care setting:

- Provider qualifications are outlined in Oregon Administrative Rule 413-090-0110 (13) effective 12/29/09. "Qualified Provider" means an individual who:
 - Is authorized by the Department through the contract Registered Nurse of Personal Care RN Manager;
 - Demonstrates to the RN or Personal Care RN Manager their skills, abilities and capability to safely and adequately provide the authorized personal care services;
 - Maintains a drug-free household;
 - Has been approved through the background check process described in Child Welfare Policy I-G.1.4, "Oregon Computerized Criminal History Checks and Nationwide Criminal History Checks through the FBI for Relative Caregivers, Foster Parent, Other Persons in Household and Adoptive Parents for Children in the Care or Custody of DHS"; and
 - Is not a legally responsible relative of the child or young adult eligible for personal care services.
- The contract RN or Personal Care RN Manager makes the determination of whether the provider has the skills, abilities and capabilities to safely and adequately provide the authorized personal care services as described in the personal care services plan (OAR 413-090-0135).

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METHODS AND STANDARDS FOR ESTABLISHING PAYMENT RATES

Except as otherwise noted in the plan, the state developed fee schedule rates are determined by using the CMS RVU weights published in the Federal Register annually, times a conversion factor. The conversion factor was last set as of 1/1/09 and effective for services on or after that date. The fee schedule is the same for both governmental and private providers. The Oregon Administrative Rules with the rate schedule is published in the State Register by the Secretary of State.

Ophthalmic Materials. Payment for services is a state-wide fee schedule which utilizes Medicare's Resource Based Relative Value Scale with Oregon specific conversion factors as outlined above.

Medical Transportation. Payment for services is a state-wide fee schedule which utilizes Medicare's Resource Based Relative Value Scale with Oregon specific conversion factors as outlined above.

Medical Supplies and Equipment. Payment for services is a state-wide fee schedule which utilizes Medicare's Resource Based Relative Value Scale with Oregon specific conversion factors as outlined above.

Prosthetic Devices: Payment for services is a state-wide fee schedule which utilizes Medicare's Resource Based Relative Value Scale with Oregon specific conversion factors as outlined above.

Personal Care Services for Clients Served through Seniors and People with Disabilities and Addiction and Mental Health Divisions:

Payments are made to individual providers based on state-wide uniform hourly rates or individually negotiated rates. The state-wide uniform hourly rates are supported by a survey of Oregon wages in comparable work and payment history. Payments are also made to agencies under a contract obtained through negotiation.

Personal Care Services for Children in a Foster Care Setting:

Payments are made to individual providers (in accordance with a fee schedule for personal care services maintained in Chapter 413 of the Oregon Administrative Rules) based on the special needs of an individual child, identified through an assessment performed by an Registered Nurse and incorporated into an individual plan of care. Payment is only made for the days the child is eligible for and receives personal care services. The fees were last updated September 1, 2009.

There are four levels of care:

Level 1 - \$47.77 per week;

Level 2 - \$95.30 per week;

Level 3 - \$143.07 per week; and

Level 4 - In extraordinary situations where continuous observation and/or interventions may be required, individualized rates are developed based on the child's needs.

Occupational Therapy. Payment for services is a state-wide fee schedule which utilizes Medicare's Resource Based Relative Value Scale with Oregon specific conversion factors as outlined above.

Audiologist Services. Payment for services is a state-wide fee schedule which utilizes Medicare's Resource Based Relative Value Scale with Oregon specific conversion factors as outlined above.

Clinical Laboratory and Pathology Procedures. Payment will be based on the lesser of Medicare's fee schedule or the Division's state-wide fee schedule effective for services on or after 1/1/10.

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