

TEMPORARY ADMINISTRATIVE RULES

A Statement of Need and Justification accompanies this form.

FILED
7-1-14 4:55 PM
ARCHIVES DIVISION
SECRETARY OF STATE

I certify that the attached copies are true, full and correct copies of the TEMPORARY Rule(s) adopted on Upon filing, by the

<u>Department of Human Services, Aging and People with Disabilities and Developmental Disabilities</u>	<u>411</u>
Agency and Division	Administrative Rules Chapter Number
<u>Kimberly Colkitt-Hallman</u>	<u>(503) 945-6398</u>
Rules Coordinator	Telephone
<u>500 Summer St. NE, E48, Salem, OR 97301</u>	
Address	

To become effective 07/01/2014 through 12/28/2014.

RULE CAPTION

Agency Certification and Endorsement, 24-Hour Residential Services, and Supported Living Services

Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.

RULEMAKING ACTION

Secure approval of new rule numbers with the Administrative Rules Unit prior to filing.

ADOPT:

AMEND:

411-323-0010, 411-323-0020, 411-323-0030, 411-323-0035, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0110, 411-325-0120, 411-325-0300, 411-325-0390, 411-325-0430, 411-325-0460, 411-328-0560, 411-328-0700, 411-328-0720, 411-328-0750, 411-328-0760, 411-328-0770, 411-328-0790

SUSPEND:

411-325-0320, 411-325-0330, 411-325-0400, 411-328-0740, 411-328-0800

Statutory Authority:

ORS 409.050, 430.662, 443.450, 443.455

Other Authority:

Executive Order No.13-04, Senate Bill 22 (2013 Regular Session)

Statutes Implemented:

ORS 409.050, 430.610, 430.662, 430.670, 443.400-455

RULE SUMMARY

The Department of Human Services (Department) is immediately updating the rules in:

- OAR chapter 411, division 323 for agency certification and endorsement to provide program services to individuals with intellectual or developmental disabilities;
- OAR chapter 411, division 325 for 24-hour residential services for individuals with intellectual or developmental disabilities; and
- OAR chapter 411, division 328 for supported living services for individuals with intellectual or developmental disabilities.

These temporary rules:

- Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Implement Senate Bill 22 by updating the rights of individuals and providing a consistent dispute resolution process;
- Offer appropriate placement setting options upon a transfer as described in OAR 411-320-0110 and ORS 427.121;
- Incorporate the requirement for individuals of working age to have a Career Development Plan attached to their ISP, and replace references to alternatives to employment services with day support activities to align with waiver and state plan requirements;
- Align the supported living services rules for behavior support services with the rules for 24-hour residential services by updating the requirements for documenting and reporting occurrences of injury, accidents, acts of physical aggression, protective physical intervention, or unusual incidents;
- Incorporate the general definitions in OAR 411-317-0000, update the definitions to reflect correct terminology, and include definitions for terms created by the temporary rulemaking;
- Remove references to proctor care services; and

APD 24-2014(Temp)

- Update provider qualifications, personnel requirements, and the administrator review process.

Kimberly Colkitt-Hallman
Rules Coordinator Name

kimberly.colkitt-hallman@state.or.us
Email Address

Secretary of State
STATEMENT OF NEED AND JUSTIFICATION
A Certificate and Order for Filing Temporary Administrative Rules
accompanies this form.

FILED 7-1-14 4:55 PM ARCHIVES DIVISION SECRETARY OF STATE

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities

411

Agency and Division

Administrative Rules Chapter Number

Agency Certification and Endorsement, 24-Hour Residential Services, and Supported Living Services

Rule Caption (Not more than 15 words that reasonably identifies the subject matter of the agency's intended action.)

In the Matter of:

The temporary amendment of OAR 411-323-0010, 411-323-0020, 411-323-0030, 411-323-0035, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0110, 411-325-0120, 411-325-0300, 411-325-0390, 411-325-0430, 411-325-0460, 411-328-0560, 411-328-0700, 411-328-0720, 411-328-0750, 411-328-0760, 411-328-0770, and 411-328-0790; and the suspension of OAR 411-325-0320, 411-325-0330, 411-325-0400, 411-328-0740, and 411-328-0800 relating to agency certification and endorsement, 24-hour residential services, and supported living services.

Statutory Authority:

ORS 409.050, 430.662, 443.450, 443.455

Other Authority:

Executive Order No. 13-04, Senate Bill 22 (2013 Regular Session)

Statutes Implemented:

ORS 409.050, 430.610, 430.662, 430.670, 443.400-455

Need for the Temporary Rule(s):

The Department needs to immediately update the rules in OAR chapter 411, division 323 for agency certification and endorsement, OAR chapter 411, division 325 for 24-hour residential services, and OAR chapter 411, division 328 for supported living services to:

- Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Implement Senate Bill 22 and ORS 427. 121;
- Demonstrate compliance with Executive Order No. 13-04 and waiver and state plan requirements around employment services;
- Align the supported living services rules for behavior support services with the rules for 24-hour residential services by updating the requirements for documenting and reporting occurrences of injury, accidents, acts of physical aggression, protective physical intervention, or unusual incidents;
- Streamline definitions and incorporate definitions for terms created by the temporary rulemaking;
- Remove references to proctor care services because proctor care services ended on January 1, 2014 and are not included as a waiver or state plan option; and
- Update provider qualifications, personnel requirements, and the administrator review process to maintain consistency among program rules.

The temporary rules:

- Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
- Implement Senate Bill 22 by updating the rights of individuals receiving developmental disability services, and incorporating the uniform complaints and hearings process for individuals adopted in OAR chapter 411, division 318;
- Implement ORS 427.121 by offering appropriate placement setting options upon a transfer as described in OAR 411-320-0110;
- Demonstrate compliance with Executive Order No. 13-04 by incorporating the requirement for individuals of working age to have a Career Development Plan attached to their Individual Support Plan and replaces references to alternatives to employment services with day support activities;
- Align the supported living services rules for behavior support services with the rules for 24-hour residential services by updating the requirements for documenting and reporting occurrences of injury, accidents, acts of physical aggression, protective physical intervention, or unusual incidents;
- Streamline definitions by incorporating the general definitions in OAR 411-317-0000, updates the definitions to reflect correct terminology, and includes definitions for terms created by the temporary rulemaking;
- Remove references to proctor care services; and
- Update provider qualifications, personnel requirements, and the administrator review process.

Documents Relied Upon, and where they are available:

1. Executive Order No. 13-04
Available at: http://www.oregon.gov/gov/docs/executive_orders/eo_13-04.pdf
2. Senate Bill 22
Available at: <https://olis.leg.state.or.us/liz/2013R1/Measures/Text/SB22/Enrolled>
3. ORS 427.121

Justification of Temporary Rule(s):

Failure to act promptly and immediately to update the rules in OAR chapter 411, division 323 for agency certification and endorsement, OAR chapter 411, division 325 for 24-hour residential services, and OAR chapter 411, division 328 for supported living services will result in serious prejudice to the Department, agencies, service providers, individuals with intellectual or developmental disabilities applying for or receiving developmental disability services and the parents, family members, and representatives of those individuals.

The rules in OAR chapter 411, division 323, OAR chapter 411, division 325, and OAR chapter 411, division 328 need to be updated promptly to:

- Update the Medicaid eligibility criteria, remove crisis eligibility requirements, and incorporate service eligibility requirements related to the transfer of assets in accordance with OAR 461-140-0210 to 461-140-0300;
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- Remove references to proctor care services because proctor care services ended on January 1, 2014 and are not included as a waiver or state plan option; and
- Update provider qualifications, personnel requirements, and the administrator review process to maintain consistency among program rules.

Failure to immediately amend the rules in OAR chapter 411, division 323, OAR chapter 411, division 325, and OAR chapter 411, division 328:

- Prevents the Department from demonstrating compliance with Executive Order No. 13-014, Senate Bill 22, and ORS 427.121. Lack of compliance could result in legal action by stakeholders and the public, including Disability Rights Oregon; Developmental Disability Coalition, the Developmental Disabilities Council, service providers, individuals, and family members and representatives of individuals;
- Results in disparities among the program rules related to eligibility, individual rights, complaints, notification of planned actions, hearings, administrator reviews, incident reporting and emergency notifications, behavior support services, and protective physical intervention. Varied requirements among similar program rules increase the likelihood that service providers will not implement rules effectively which may pose risks to the health and safety of individuals. Not having consistency among program rules increases confusion for agencies, service providers, individuals, and families and representatives of individuals and may reduce access to due process; and

Kimberly Colkitt-Hallman

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Printed Name

Email Address

Authorization Page
Generated on June 24, 2014 1:17PM
TEMPORARY ADMINISTRATIVE RULES

Department of Human Services, Aging and People with Disabilities and Developmental Disabilities	411
Agency and Division	Administrative Rules Chapter Number
Kimberly Colkitt-Hallman	kimberly.colkitt-hallman@state.or
Rules Coordinator	Email Address
500 Summer St. NE, E48, Salem, OR 97301	503-945-6398
Address	Telephone
Upon filing.	
Adopted on	
07/01/2014 thru 12/28/2014	
Effective dates	

RULE CAPTION

Agency Certification and Endorsement, 24-Hour Residential Services, and Supported Living Services

Not more than 15 words

RULEMAKING ACTION

ADOPT:

AMEND:

411-323-0010, 411-323-0020, 411-323-0030, 411-323-0035, 411-323-0050, 411-323-0060, 411-323-0070, 411-325-0020, 411-325-0060, 411-325-0110, 411-325-0120, 411-325-0300, 411-325-0390, 411-325-0430, 411-325-0460, 411-328-0560, 411-328-0700, 411-328-0720, 411-328-0750, 411-328-0760, 411-328-0770, 411-328-0790

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Stat. Auth.: ORS 409.050, 430.662, 443.450, 443.455

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1. Executive Order No.13-04

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disabilities applying for or receiving developmental disability services and the parents, family members, and representatives of those individuals.

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Failure to immediately amend the rules in OAR chapter 411, division 323, OAR chapter 411, division 325, and OAR chapter 411, division 328:

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- Results in disparities among the program rules related to eligibility, individual rights, complaints, notification of planned actions, hearings, administrator reviews, incident reporting and emergency notifications, behavior support services, and protective physical intervention. Varied requirements among similar program rules increase the likelihood that service providers will not implement rules effectively which may pose risks to the health and safety of individuals. Not having consistency among program rules increases confusion for agencies, service providers, individuals, and families and representatives of individuals and may reduce access to due process; and
- Prevents the Department from implementing eligibility requirements. If eligibility is unclear, individuals that do not meet eligibility requirements may receive services, which would result in a potential loss of funding to support staffing, services, and systems to individuals with intellectual or developmental disabilities that meet eligibility requirements.

Lea Ann Stulheit

Authorized Signer

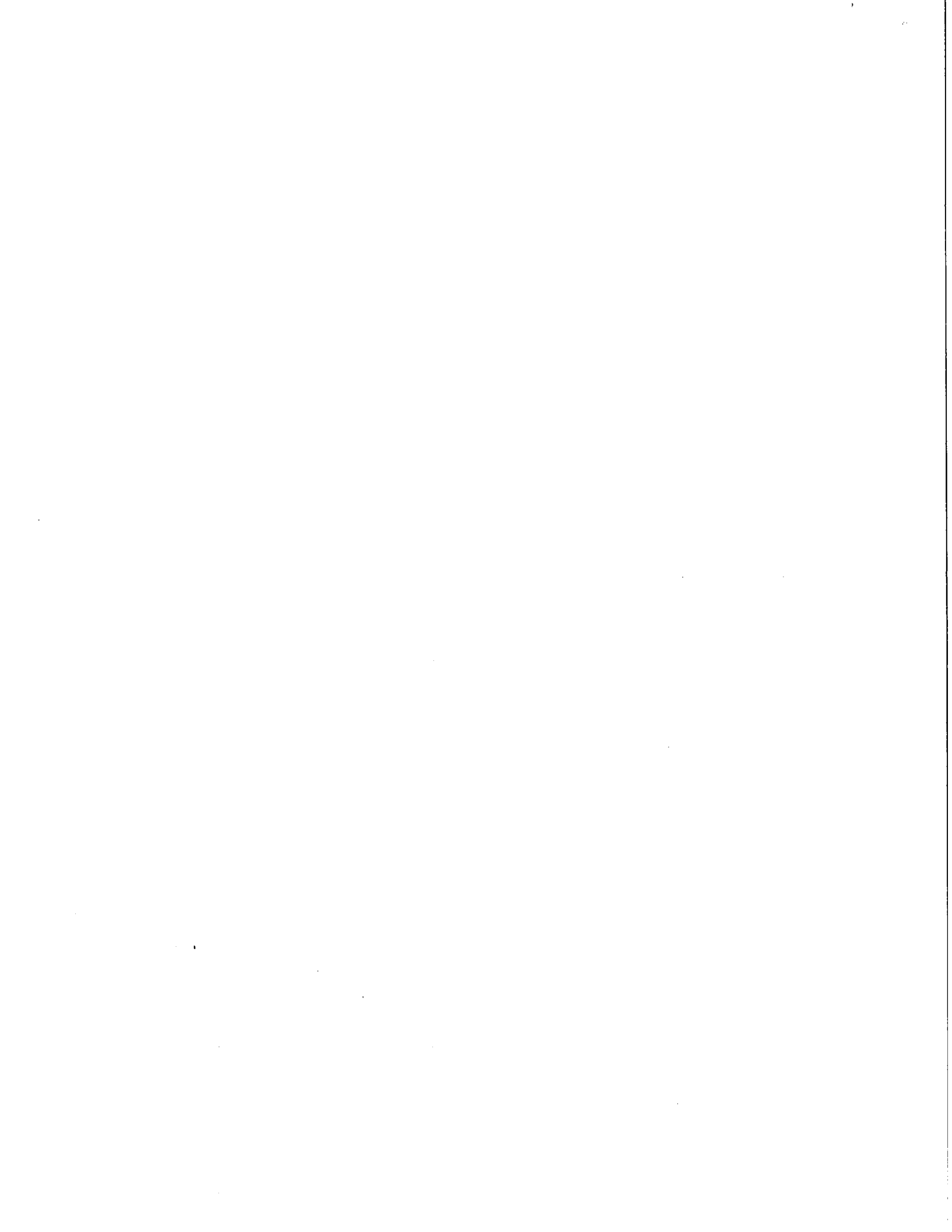
Lea Ann Stulheit

Printed Name

6/25/14

Date

Authorization Page replaces the ink signature on paper filings. Have your authorized signer sign and date, then scan and attach it to your filing. You must complete this step before submitting your Permanent and Temporary filings.



DIVISION 323
AGENCY CERTIFICATION AND ENDORSEMENT TO PROVIDE SERVICES TO INDIVIDUALS WITH
INTELLECTUAL OR DEVELOPMENTAL DISABILITIES
IN COMMUNITY-BASED SETTINGS

411-323-0010

Statement of Purpose

(1) The rules in OAR chapter 411, division 323 prescribe standards, responsibilities, and procedures for agencies to obtain a certificate and endorsement in order to provide person-centered services to individuals with intellectual or developmental disabilities in the following community-based settings:

- (a) 24-hour residential as described in OAR chapter 411, division 325;
- (b) Supported living as described in OAR chapter 411, division 328; or
- (c) Employment and day support as described in OAR chapter 411, division 345.

(2) To provide person-centered services to individuals with intellectual or developmental disabilities in community-based settings, agencies must have:

- (a) A certificate to provide Medicaid services in the state of Oregon as described in OAR 411-323-0030;
- (b) Endorsement to provide Medicaid services as described in OAR 411-323-0035;
- (c) A Medicaid Agency Identification Number assigned by the Department as described in OAR chapter 411, division 370; and
- (d) For each licensed site or geographic location where direct program services are to be delivered, a Medicaid Performing Provider Number assigned by the Department as described in OAR chapter 411, division 370.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0020

Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 323:

(1) "24-Hour Residential Services" mean the person-centered services provided in a comprehensive residential home licensed by the Department under ORS 443.410.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

(B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a home operated by an agency that is licensed to provide 24-hour residential services.

(b) For an adult, "abuse" as defined in OAR 407-045-0260.

(3) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required by OAR 407-045-0310.

(4) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.

(5) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.

(6) "Agency" means a public or private community agency or organization that is approved by the Department to provide program services.

(7) "Applicant" means a person, agency, corporation, or governmental unit who applies for certification and endorsement to operate an agency providing program services to individuals with intellectual or developmental disabilities.

(8) "Audit" means an inspection completed by a Certified Public Accountant using standards and accepted practices of accounting activities to ensure all state and federal funds are expended for the purpose the funds were contracted and intended for without fraudulent activity.

(9) "Audit Review" means a Certified Public Accountant, without applying comprehensive audit procedures, assesses the standards and accepted practices of accounting activities and ensures the accounting activities are in conformity with generally accepted accounting principles.

(10) "Board of Directors" means the group of people formed to set policy and give directions to an agency designed to provide program services to individuals with intellectual or developmental disabilities. A board of directors may include local advisory boards used by multi-state organizations.

(11) "Care" means "services" as defined in this rules.

(12) "CDDP" means "Community Developmental Disability Program" as defined in OAR 411-320-0020.

(13) "Certificate" means the document issued by the Department to an agency that certifies the agency is eligible to receive state funds for the provision of endorsed program services.

- (14) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.
- (15) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.
- (16) "Choice" means the expression of preference, opportunity for, and active role of the individual in decision-making related to the selection of assessments, services, service providers, goals and activities, and verification of satisfaction with these services. Choice may be communicated orally, through sign language, or by other communication methods.
- (17) "Complaint" means "complaint" as defined in OAR 411-318-0005.
- (18) "Complaint Investigation" means "complaint investigation" as defined in OAR 411-318-0005.
- (19) "Condition" means a provision attached to:
- (a) A new or existing certificate that limits or restricts the scope of the certificate or imposes additional requirements on the certified agency; or
- (b) A new or existing endorsement that limits or restricts the scope of the endorsement or imposes additional requirements on the certified agency or program services site.
- (20) "Denial" means the refusal of the Department to issue:
- (a) A certificate to operate an agency because the Department has determined the agency is not in compliance with these rules or the corresponding program rules; or
- (b) An endorsement for an agency to provide program services because the Department has determined the agency is not in compliance with these rules or the corresponding program rules.
- (21) "Department" means the Department of Human Services.
- (22) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid provider for the individual. An individual is not required to appoint a designated representative.
- (23) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (24) "Director" means the Director of the Department or the designee of the Director.
- (25) "Endorsement" means the authorization to provide program services issued by the Department to a certified agency that has met the qualification criteria outlined in these rules and the corresponding program rules.
- (26) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of program services.
- (27) "Founded Report" means the determination by the Department or Law Enforcement Authority, based on the evidence, that there is reasonable cause to believe that conduct in violation of the child abuse statutes or rules has occurred and such conduct is attributable to the person alleged to have engaged in the conduct.
- (28) "Guardian" means the parent for an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.
- (29) "Independence" means the extent to which an individual with an intellectual or developmental disability exerts control and choice over his or her own life.
- (30) "Individual" means an adult or a child with an intellectual or developmental disability who receives Department-funded services in accordance with an ISP.
- (31) "Informal Conference" means the discussion held prior to a hearing between the Department and an applicant or an agency to address any matters pertaining to the hearing. An administrative law judge does not participate in an informal conference. The informal conference may result in resolution of the issue.
- (32) "Integration" as defined in ORS 427.005 means:
- (a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;
- (b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and
- (c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.
- (33) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (34) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and the health and safety of the individual. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for the individual to meet the needs of the individual identified through a functional needs

assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(35) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as providers and family members.

(36) "Legal Representative" means a person who has the legal authority to act for an individual.

(a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.

(b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or the person or agency authorized by a court to make decisions about services for the adult.

(37) "Mandatory Reporter":

(a) Means any public or private official as defined in OAR 407-045-0260 who:

(A) Comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused a child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.

(B) While acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused an adult.

(b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(38) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around and that restricts freedom of movement or access to the body of the individual.

(39) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to an agency following the enrollment of the agency as described in OAR chapter 411, division 370.

(40) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering provider for identification and billing purposes associated with service authorizations and payments.

(41) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(42) "Ownership Interest" means, as defined in 42 CFR 455.101, the possession of equity in the capital, the stock, or the profits of the disclosing entity as determined by 42 CFR 455.102. A person with an ownership or control interest means a person or corporation that:

(a) Has an ownership interest totaling 5 percent or more in a disclosing entity;

(b) Has an indirect ownership interest equal to 5 percent or more in a disclosing entity;

(c) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a disclosing entity;

(d) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the disclosing entity if that interest equals at least 5 percent of the value of the property or assets of the disclosing entity;

(e) Is an officer or director of a disclosing entity that is organized as a corporation; or

(f) Is a partner in a disclosing entity that is organized as a partnership.

(43) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.

(b) Person centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, service providers, 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.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(44) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

- (c) Ensures that abusive or demeaning interventions are never used; and
 - (d) Evaluates the effectiveness of behavior interventions based on objective data.
 - (45) "Productivity" as defined in ORS 427.005 means:
 - (a) Engagement in income-producing work by an individual that is measured through improvements in income level, employment status, or job advancement; or
 - (b) Engagement by an individual in work contributing to a household or community.
 - (46) "Program" means "agency" as defined in these rules.
 - (47) "Program Services" mean the person-centered services provided in a community-based setting as described in:
 - (a) OAR chapter 411, division 325 for 24-hour residential;
 - (b) OAR chapter 411, division 328 for supported living; and
 - (c) OAR chapter 411, division 345 for employment and day support.
 - (48) "Program Rules" mean the rules in:
 - (a) OAR chapter 411, division 325 for 24-hour residential;
 - (b) OAR chapter 411, division 328 for supported living; and
 - (c) OAR chapter 411, division 345 for employment and day support.
 - (49) "Protection" means necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, and to safeguard the person, property, and funds of the individual.
 - (50) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.
 - (51) "Provider" means "agency" as defined in this rule.
 - (52) "Revocation" means the action taken by the Department to rescind:
 - (a) A certificate to operate an agency after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules; or
 - (b) An endorsement for an agency to provide program services after the Department has determined that the agency is not in compliance with these rules or the corresponding program rules.
 - (53) "Services" mean supportive services including, but not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.
 - (54) "Services Coordinator" means "Services Coordinator" as defined in OAR 411-320-0020.
 - (55) "Staff" means a paid employee responsible for providing services to an individual whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.
 - (56) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.
 - (57) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.
 - (58) "Suspension" means an immediate temporary withdrawal of the:
 - (a) Certificate to operate an agency after the Department determines that the agency is not in compliance with these rules or the corresponding program rules; or
 - (b) Endorsement for an agency to provide program services after the Department determines that the agency is not in compliance with these rules or the corresponding program rules.
 - (59) "These Rules" mean the rules in OAR chapter 411, division 323.
 - (60) "Unacceptable Background Check" means a check that precludes the agency from being certified or endorsed for the following reasons:
 - (a) The agency or any person holding 5 percent or greater ownership interest in the agency has been disqualified under OAR 407-007-0275; or
 - (b) A background check and fitness determination has been conducted resulting in a "denied" status as defined in OAR 407-007-0210.
 - (61) "Variance" means a temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by the agency.
- Stat. Auth. ORS 409.050
Stats. Implemented: ORS 409.050

411-323-0030
Certification

(1) CERTIFICATION. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be certified by the Department under these rules before establishing, conducting, maintaining, managing, or operating an agency.

(a) Certificates are not transferable.

(b) The Department issues or renews a certificate to an agency found to be in compliance with these rules and the corresponding program rules. The certificate is effective for five years from the date issued unless sooner revoked or suspended.

(c) If an agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial certification, deny the application, or revoke or refuse to renew the application for certification.

(d) For the purpose of certification, any applicant or person with an ownership interest in an agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(e) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew a certificate.

(f) A review of the agency is conducted by the Department prior to the issuance or renewal of a certificate.

(2) CURRENT AGENCY CERTIFICATION.

(a) All agencies providing program services as of July 1, 2011 are certified for five years unless the certification is sooner revoked or suspended.

(b) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential treatment facilities for people who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional certification as an agency under these rules to provide program services. Current license or certification is considered sufficient demonstration of ability to:

(A) Recruit, hire, supervise, and train qualified staff;

(B) Provide program services according to an ISP; and

(C) Develop and implement operating policies and procedures required for managing an agency and delivering program services, including provisions for safeguarding individuals receiving program services.

(3) INITIAL CERTIFICATION. Notwithstanding section (2) of this rule, an applicant intending to provide program services as defined in OAR 411-323-0020 must apply for an initial certificate and demonstrate to the satisfaction of the Department that the applicant is in compliance with these rules and the corresponding program rules.

(a) The applicant must submit an application to the Department at least 90 days prior to anticipated certification. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(b) At a minimum, the applicant must provide:

(A) A copy of any management agreements or contracts relative to the operation and ownership of the agency;

(B) A financial plan that includes financial statements indicating capital and the financial plan developed to assure sustainability, partnerships, loans, and any other financial assistance; or

(C) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.

(c) The applicant must develop a plan identifying the scope of program services the applicant intends to provide and request endorsement for each program service as described in OAR 411-323-0035.

(d) The applicant must demonstrate proof of liability and operational insurance coverage.

(A) The agency must, at the expense of the agency, maintain in effect with respect to all occurrences taking place during the certification period, liability and operational insurance as described in the contract the agency has with the Department including, but not limited to, automobile liability insurance, comprehensive or commercial general liability insurance, and workers' compensation coverage if required.

(B) The agency must name the State of Oregon, Department of Human Services and the divisions, officers, and employees of the Department as additionally insured on any insurance policies required by their contract with respect to agency activities being performed under the certification of the agency. Such insurance must be issued by an insurance company licensed to do business in the state of Oregon and must contain a 30 day notice of cancellation endorsement.

(C) The agency must forward certificates of insurance indicating coverage to the Department as required by this rule.

(D) In the event of unilateral cancellation or restriction by the insurance company of any insurance coverage required by the contract the agency has with the Department, the agency must immediately notify the Department orally of the cancellation or restriction and must confirm the cancellation or restriction in writing within three days of receiving notification from the insurance company.

(4) CERTIFICATE RENEWAL.

(a) To renew a certificate, the agency must:

(A) Submit an application to the Department at least 90 days prior to the expiration date of the existing certificate for the agency. The completed application must be on a form provided by the Department and must include all information requested by the Department. At a minimum, the agency must provide:

- (i) A copy of any management agreements or contracts relative to the operation and ownership of the agency;
 - (ii) A financial plan that includes financial audits for the last two years as described in section (5) of this rule; and
 - (iii) As required by 42 CFR 455.104, the name, date of birth, and social security number for each person currently serving as the Board of Directors for the agency, and as changes are made.
- (B) Identify the scope of program services the agency provides and provide proof of endorsement for each program service as described in OAR 411-323-0035;
- (C) Demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules; and
- (D) Demonstrate proof of continued liability and operational insurance coverage as described in section (3)(d) of this rule.
- (b) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing certificate until the Department takes action upon the application for renewal.
- (c) If the renewal application is not submitted to the Department prior to the date the certificate expires, the agency is considered a non-certified Medicaid agency and is subject to termination of their Medicaid Agency Identification Number.
- (5) FINANCIAL AUDITS. Agencies certified and endorsed to provide program services must obtain an audit at least once during the biennium. On alternating years, the agency may obtain an audit review as defined in OAR 411-323-0020 or another financial audit. The audit or the audit review must be submitted to the Department within 90 days of the end of the fiscal year.
- (6) CERTIFICATE EXPIRATION. Unless revoked, suspended, or terminated earlier, each certificate to operate as a Medicaid agency expires five years following the date of issuance.
- (7) CERTIFICATE TERMINATION. The certificate automatically terminates on the date agency operation is discontinued or if there is a change in ownership.
- (8) RETURN OF CERTIFICATE. The certificate must be returned to the Department immediately upon suspension or revocation of the certificate or when agency operation is discontinued.
- (9) CHANGE OF OWNERSHIP, LEGAL ENTITY, LEGAL STATUS, OR MANAGEMENT CORPORATION.
- (a) The agency must notify the Department in writing of any pending change in the ownership, legal entity, legal status, or management corporation of the agency.
- (b) A new certificate is required upon a change in the ownership, legal entity, legal status, or management corporation of the agency. The agency must submit an application as described in section (3) of this rule to the Department at least 30 days prior to a change in ownership, legal entity, legal status, or management corporation.
- (10) CERTIFICATE ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on a certificate includes one or more of the following actions:
- (a) A condition as described in section (11) of this rule;
 - (b) Denial, revocation, or refusal to renew a certificate as described in section (12) of this rule; or
 - (c) Immediate suspension of a certificate as described in section (13) of this rule.
- (11) CERTIFICATE CONDITIONS.
- (a) The Department may attach conditions to a certificate that limit, restrict, or specify other criteria for operation of the agency. The type of condition attached to a certificate must directly relate to the risk of harm or potential risk of harm to individuals. The Department may attach a condition to a certificate upon a finding that:
- (A) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of individuals;
 - (B) A threat to the health, safety, or welfare of an individual exists;
 - (C) There is reliable evidence of abuse, neglect, or exploitation; or
 - (D) The agency is not being operated in compliance with these rules or the corresponding program rules.
- (b) Conditions that the Department may impose on a certificate include, but are not limited to:
- (A) Restricting the total number of individuals to whom a program may provide services;
 - (B) Restricting the total number of individuals to whom a program may provide services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;
 - (C) Restricting the type of support and services the program may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;
 - (D) Requiring additional staff or staff qualifications;
 - (E) Requiring additional training;
 - (F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;
 - (G) Requiring additional documentation; or
 - (H) Restricting admissions.
- (c) NOTICE OF CERTIFICATE CONDITIONS. A written notice is issued to the agency by the Department when the Department imposes conditions on the certificate of the agency. The written notice of certificate conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of certificate conditions or at a later date as indicated on the notice and are a final order

of the Department unless later rescinded through the hearing process. The conditions imposed remain in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(d) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon receipt of written notice of certificate conditions.

(A) The agency must request a hearing in writing within 21 days from the receipt of the written notice of certificate conditions.

(B) In addition to, or in-lieu of a hearing, an agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(f) Conditions must be posted with the certificate in a prominent location and be available for inspection at all times.

(12) CERTIFICATE DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke a certificate when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days from the receipt of written notice of non-compliance;

(B) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(C) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of program services;

(D) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(E) Falsifies information required by the Department to be maintained or submitted regarding individual program services, agency finances, or funds belonging to the individuals;

(F) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(G) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF CERTIFICATE DENIAL, REVOCATION, OR REFUSAL TO RENEW. The Department may issue a notice of denial, refusal to renew, or revocation of a certificate following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for a certificate or a certified agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of a certificate.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew. The request for a hearing must be in writing.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing in writing within 21 days from the receipt of the written notice of revocation. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing. The request for a hearing or administrator review must be in writing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation. The request for a hearing must be in writing.

(13) IMMEDIATE SUSPENSION OF CERTIFICATE.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend a certificate without a pre-suspension hearing and the agency may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the certificate.

(A) Notwithstanding subsection (B) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (14) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(14) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, an agency may request an administrator review notwithstanding subsection (b) of this section.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrator review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrator review for imposition of conditions.

(c) The Department must receive a written request for an administrator review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrator review, any additional written materials the agency wishes to have considered during the review.

(d) The determination of the administrator review is issued in writing within 10 business days from the receipt of the written request for a review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation, or condition. The Department must receive a written request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(15) INFORMAL CONFERENCE. Unless an administrator review has been completed as described in section (14) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0035

Endorsement

(1) ENDORSEMENT REQUIRED. A person, agency, or governmental unit acting individually or jointly with any other person, agency, or governmental unit intending to provide program services as defined in OAR 411-323-0020 must be endorsed by the Department under these rules before establishing, conducting, maintaining, managing, or operating program services.

(a) Endorsements are not transferable or applicable to any other program services. Separate endorsements are required for each program service provided by a certified agency. A certified agency intending to provide additional program services once initial endorsement has been issued must apply for an additional endorsement as described in section (3) of this rule.

(b) A certified agency must report each geographic location where program services are provided to the Department and to the corresponding CDDP of the geographic location as described in this rule.

(c) The Department issues or renews an endorsement to a certified agency found to be in compliance with these rules and the corresponding program rules. The effective date for each endorsement corresponds with the effective date for the certification of the agency unless sooner revoked or suspended.

(d) If a certified agency fails to provide complete, accurate, and truthful information during the application or renewal process, the Department may delay initial endorsement, deny the application, or revoke or refuse to renew the endorsement for program services.

(e) For the purpose of endorsement, any applicant or person with an ownership interest in a certified agency is considered responsible for acts occurring during, and relating to, the operation of the agency.

(f) The Department may consider the background and operating history of the applicant and each person with an ownership interest when determining whether to issue or renew an endorsement.

(g) A review of the certified agency is conducted by the Department prior to the issuance or renewal of an endorsement.

(2) CURRENT AGENCY ENDORSEMENT.

(a) All certified agencies providing program services as of July 1, 2011 are endorsed for five years for the program services being provided as of July 1, 2011 unless the endorsement is sooner revoked or suspended.

(b) A certified agency intending to provide additional program services after July 1, 2011 must apply for endorsement as described in section (3) of this rule.

(c) Agencies licensed or certified under OAR chapter 411, division 054 for residential care and assisted living facilities, OAR chapter 309, division 035 for residential treatment facilities for individuals who are mentally or emotionally disturbed, OAR chapter 413, division 215 for child welfare private child caring agencies, or OAR chapter 416, division 550 for youth offender treatment foster care do not require additional endorsement as an agency under these rules to provide program services.

(3) INITIAL ENDORSEMENT.

(a) Notwithstanding section (2) of this rule, a certified agency intending to provide program services as defined in OAR 411-323-0020 must apply for initial endorsement and demonstrate to the satisfaction of the Department that the agency is in compliance with these rules and the corresponding program rules.

(b) The certified agency must submit an application to the Department at least 90 days prior to providing program services that identifies the program services that the certified agency intends to provide and all geographic locations where program services are to be provided.

(A) The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Each licensed site or geographic location where direct program services are to be delivered must be assigned a Medicaid Performing Provider Number by the Department as described in OAR chapter 411, division 370.

(4) ENDORSEMENT RENEWAL.

(a) To renew endorsement, the certified agency must:

(A) Submit an application prior to the expiration date of the existing endorsement for the certified agency. The completed application must identify the program services that the certified agency provides and all geographic locations that provide program services. The completed application must be on a form provided by the Department and must include all information requested by the Department.

(B) Demonstrate to the satisfaction of the Department that the certified agency is in compliance with these rules and the corresponding program rules.

(b) Additional program services are not endorsed on renewal unless specifically approved by the Department. A certified agency requesting to provide additional program services must reapply for initial endorsement as described in section (3) of this rule.

(c) An application for renewal filed with the Department before the date of expiration extends the effective date of the existing endorsement until the Department takes action upon the application for renewal.

(d) A certified agency may not provide program services if a renewal application is not submitted to the Department prior to the date the endorsement expires.

(e) Renewal of endorsements for program services is contingent upon the successful renewal of the certificate of the agency.

(5) EXISTING ENDORSEMENT - ADDING A GEOGRAPHIC LOCATION.

Adding a geographic location to an existing endorsement must be reported by the agency to the Department and to the corresponding CDDP of the geographic location. The agency must report the additional geographical location on a form provided by the Department at least 30 days prior to providing program services at the additional geographic location.

(6) ENDORSEMENT EXPIRATION. Unless revoked, suspended, or terminated earlier, the effective date of each endorsement corresponds with the effective date of the certification of the agency.

(7) ENDORSEMENT TERMINATION. Endorsement automatically terminates on the date program services are discontinued or agency certification is terminated.

(8) CHANGE OF CERTIFICATION. New endorsement is required upon a change of the certification of an agency. The recertified agency must submit an application for endorsement as described in section (3) of this rule to the Department at least 30 days prior to a change of the certification of the agency including, but not limited to, a change in ownership, legal entity, legal status, or management corporation.

(9) ENDORSEMENT ADMINISTRATIVE SANCTION. An administrative sanction may be imposed for non-compliance with these rules. An administrative sanction on an endorsement includes one or more of the following actions:

(a) A condition as described in section (10) of this rule;

(b) Denial, revocation, or refusal to renew an endorsement as described in section (11) of this rule; or

(c) Immediate suspension of an endorsement as described in section (12) of this rule.

(10) ENDORSEMENT CONDITIONS.

(a) The Department may attach conditions to an endorsement that limit, restrict, or specify other criteria for program services. The type of condition attached to an endorsement must directly relate to a risk of harm or potential risk of harm to individuals. The Department may attach a condition to an endorsement upon a finding that:

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

(B) A threat to the health, safety, or welfare of an individual exists;

(C) There is reliable evidence of abuse, neglect, or exploitation; or

(D) The agency is not being operated in compliance with these rules or the corresponding program rules.

(b) Conditions that the Department may impose on an endorsement include, but are not limited to:

(A) Restricting the total number of individuals to whom a program may provide services;

(B) Restricting the total number of individuals to whom a program may provide services based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(C) Restricting the type of support and services the program may provide to individuals based upon the capability and capacity of the agency and staff to meet the health and safety needs of all individuals;

(D) Requiring additional staff or staff qualifications;

(E) Requiring additional training;

(F) Restricting the agency from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;

(G) Requiring additional documentation; or

(H) Restricting admissions.

(c) NOTICE OF ENDORSEMENT CONDITIONS. A written notice is issued to an agency by the Department when the Department imposes a condition on the endorsement of program services. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions or at a later date as indicated on the notice and are a final order of the

Department unless later rescinded through the hearing process. The condition imposed remains in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(d) HEARING. The agency may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of endorsement conditions.

(A) The agency must request a hearing within 21 days from the receipt of the written notice of conditions.

(B) In addition to, or in lieu of a hearing, the agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(e) The agency may send a written request to the Department to remove a condition if the agency believes the situation that warranted the condition has been remedied.

(f) Conditions must be posted with the endorsement in a prominent location and be available for inspection at all times.

(11) ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION.

(a) The Department may deny, refuse to renew, or revoke an endorsement when the Department finds the agency or any person holding 5 percent or greater ownership interest in the agency:

(A) Fails to maintain agency certification as described in OAR 411-323-0030;

(B) Demonstrates substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized and the agency fails to correct the non-compliance within 30 calendar days from the receipt of the written notice of non-compliance;

(C) Has demonstrated a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized;

(D) Has been convicted of any crime that would have resulted in an unacceptable background check upon hiring or authorization of program services;

(E) Has been convicted of a misdemeanor associated with the operation of an agency or program services;

(F) Falsifies information required by the Department to be maintained or submitted regarding individual program services, agency finances, or funds belonging to the individuals;

(G) Has been found to have permitted, aided, or abetted any illegal act that has had significant adverse impact on individual health, safety, or welfare; or

(H) Has been placed on the list of excluded or debarred providers maintained by the Office of the Inspector General.

(b) NOTICE OF ENDORSEMENT DENIAL, REFUSAL TO RENEW, OR REVOCATION. The Department may issue a notice of denial, refusal to renew, or revocation of an endorsement following a Department finding that there is a substantial failure to comply with these rules or the corresponding program rules such that the health, safety, or welfare of individuals is jeopardized, or that one or more of the events listed in subsection (a) of this section has occurred.

(c) HEARING. An applicant for an endorsement or an endorsed agency, as applicable, may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of denial, refusal to renew, or revocation of an endorsement.

(A) DENIAL. The applicant must request a hearing within 60 days from the receipt of the written notice of denial.

(B) REFUSAL TO RENEW. The agency must request a hearing within 60 days from the receipt of the written notice of refusal to renew.

(C) REVOCATION.

(i) Notwithstanding subsection (ii) of this section, the agency must request a hearing within 21 days from the receipt of the written notice of revocation. In addition to, or in lieu of a hearing, an agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(ii) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of revocation.

(12) IMMEDIATE SUSPENSION OF ENDORSEMENT.

(a) When the Department finds a serious and immediate threat to individual health and safety and sets forth the specific reasons for such findings, the Department may, by written notice to the agency, immediately suspend an endorsement without a pre-suspension hearing and the program service may not continue operating.

(b) HEARING. The agency may request a hearing in accordance with ORS chapter 183, this rule, and ORS 443.440 for 24-hour residential services, upon written notice from the Department of the immediate suspension of the endorsement.

(A) Notwithstanding OAR subsection (B) of this section, the endorsed agency must request a hearing within 21 days from the receipt of the written notice of suspension. In addition to, or in-lieu of a hearing, the agency may request an administrator review as described in section (13) of this rule. The administrator review does not diminish the right of the agency to a hearing.

(B) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 must request a hearing within 10 days from the receipt of the written notice of suspension.

(13) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, an agency may request an administrator review notwithstanding subsection (b) of this section.

(b) 24-HOUR RESIDENTIAL SERVICES. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may not request an administrator review for revocation or suspension. An agency endorsed to provide 24-hour residential services as described in OAR chapter 411, division 325 may request an administrator review for imposition of conditions.

(c) The Department must receive a written request for an administrator review within 10 business days from the receipt of the notice of suspension, revocation, or imposition of conditions. The agency may submit, along with the written request for an administrator review, any additional written materials the agency wishes to have considered during the review.

(d) The determination of the administrator review is issued in writing within 10 business days from the receipt of the written request for a review, or by a later date as agreed to by the agency.

(e) The agency, notwithstanding subsection (b) of this section, may request a hearing if the decision of the Department is to affirm the suspension, revocation or condition. The Department must receive a request for a hearing within 21 days from the receipt of the original written notice of suspension, revocation, or imposition of conditions.

(14) INFORMAL CONFERENCE. Unless an administrator review has been completed as described in subsection (13) of this rule, an applicant or agency requesting a hearing may have an informal conference with the Department.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0050

Agency Management and Personnel Practices

(1) NON-DISCRIMINATION. The agency must comply with all applicable state and federal statutes, rules, and regulations in regard to non-discrimination in employment policies and practices.

(2) BASIC PERSONNEL POLICIES AND PROCEDURES. The agency must have in place and implement personnel policies and procedures that address suspension, increased supervision, or other appropriate disciplinary employment procedures when a staff member, program services provider, or subcontractor, including respite providers and volunteers, has been identified as an accused person in an abuse investigation or when the allegation of abuse has been substantiated.

(3) PROHIBITION AGAINST RETALIATION. The agency or program services provider may not retaliate against any staff member or subcontractor, including relief providers and volunteers, that report in good faith suspected abuse or retaliate against the individual receiving services with respect to any report. An accused person may not self-report solely for the purpose of claiming retaliation.

(a) Any agency, program services provider, or person that retaliates against any person because of a report of suspected abuse or neglect is liable according to ORS 430.755 in a private action to that person for actual damages and, in addition, is subject to a penalty up to \$1000, notwithstanding any other remedy provided by law.

(b) Any adverse action is evidence of retaliation if taken within 90 days of a report of abuse. For purposes of this section, "adverse action" means any action taken by an agency, program services provider, or person involved in a report against the person making the report or against the individual receiving services because of the report and includes, but is not limited to:

(A) Discharge or transfer from the agency, except for clinical reasons;

(B) Discharge from or termination of employment;

(C) Demotion or reduction in remuneration for program services; or

(D) Restriction or prohibition of access to the agency or the individuals served by the agency.

(4) MANDATORY ABUSE REPORTING PERSONNEL POLICIES AND PROCEDURES.

(a) Any staff, program services providers, substitute caregivers, independent contractors, and volunteers are mandatory reporters.

(b) The agency must notify all agency staff, program services providers, substitute caregivers, independent contractors, and volunteers of mandatory reporting status at least annually on forms provided by the Department.

(c) The agency must provide all agency staff, program services providers, substitute caregivers, independent contractors, and volunteers with a Department produced card regarding abuse reporting status and abuse reporting requirements.

(d) Agencies providing program services to adults must report suspected abuse to the CDDP where the adult resides. A report must also be made to law enforcement if there is reason to believe a crime has been committed.

(e) Agencies providing program services to children must report suspected abuse to the Department or law enforcement in the county where the child resides.

(5) APPLICATION FOR EMPLOYMENT. An application for employment at the agency must inquire whether an applicant has had any founded reports of child abuse or substantiated abuse.

(6) BACKGROUND CHECKS. Any staff, volunteer, program services provider, relief care provider, crisis provider, advisor, or any subject individual defined by OAR 407-007-0210, including staff who are not identified in this rule but use public funds intended for the operation of an agency, who has or shall have contact with an individual in program services, must have an approved background check in accordance with OAR 407-007-0200 to 407-007-0370 and ORS 181.534.

- (a) Effective July 28, 2009, the agency may not use public funds to support, in whole or in part, any person described above in section (6) of this rule in any capacity who has been convicted of any of the disqualifying crimes listed in OAR 407-007-0275.
- (b) Subsection (a) of this section does not apply to agency staff who were hired prior to July 28, 2009 that remain in the current position for which the staff member was hired.
- (c) Any person described above in section (6) of this rule must self-report any potentially disqualifying condition as described in OAR 407-007-0280 and OAR 407-007-0290. The person must notify the Department or the designee of the Department within 24 hours.
- (7) EXECUTIVE DIRECTOR QUALIFICATIONS. The agency must be operated under the supervision of an Executive Director who has a minimum of a bachelor's degree and two years of experience, including supervision, in intellectual or developmental disabilities, mental health, rehabilitation, social services, or a related field. Six years of experience in the identified fields may be substituted for a degree.
- (8) GENERAL STAFF QUALIFICATIONS. Any staff member providing program services to individuals must meet the following criteria:
- (a) Be at least 18 years of age;
 - (b) Have approval to work based on current Department policy and a background check completed by the Department in accordance with OAR 407-007-0200 to 407-007-0370 and section (6) of this rule;
 - (c) If hired on or after July 28, 2009, not have been convicted of any of the disqualifying crimes listed in OAR 407-007-0275;
 - (d) Be legally eligible to work in the United States;
 - (e) Hold a current, valid, and unrestricted professional license or certification where services and supervision requires specific professional education, training, and skill;
 - (f) Understand requirements of maintaining confidentiality and safeguarding individual information;
 - (g) Not be on the list of excluded or debarred providers maintained by the Office of the Inspector General;
 - (h) Be literate and capable of understanding written and oral orders;
 - (i) Be able to communicate with individuals, physicians, services coordinators, and appropriate others;
 - (j) Be able to respond appropriately to emergency situations at all times;
 - (k) Be certified in CPR and First Aid by a recognized training agency within 90 days of employment;
 - (l) Receive 12 hours of job-related in-service training annually;
 - (m) Have clear job responsibilities as described in a current signed and dated job description; and
 - (n) If transporting individuals, have a valid license to drive and vehicle insurance in compliance with the laws of the Department of Motor Vehicles.
- (9) PERSONNEL FILES AND QUALIFICATION RECORDS. The agency must maintain up-to-date written job descriptions for all staff as well as a file available to the Department or the designee of the Department for inspection that includes written documentation of the following for each staff member:
- (a) Written documentation that references and qualifications were checked;
 - (b) Written documentation by the Department of an approved background check as defined in OAR 407-007-0210;
 - (c) Written documentation of staff notification of mandatory abuse training and reporter status prior to supervising individuals and annually thereafter;
 - (d) Written documentation of any complaints filed against the staff member and the results of the complaint process, including, if any, disciplinary action;
 - (e) Written documentation of any founded report of child abuse or substantiated abuse;
 - (f) Written documentation of 12 hours of job-related in-service training annually;
 - (g) Documentation that the staff member has been certified in CPR and First Aid by a recognized training agency within 90 days of employment and that certification is kept current; and
 - (h) For staff operating vehicles that transport individuals, documentation of a valid license to drive and proof of vehicle insurance in compliance with the laws of the Department of Motor Vehicles.
- (10) DISSOLUTION OF AN AGENCY. Prior to the dissolution of an agency, a representative of the governing body or owner of the agency must notify the Department 30 days in advance in writing and make appropriate arrangements for the transfer of the records for the individuals.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0060

Policies and Procedures

(1) INDIVIDUAL RIGHTS.

- (a) The agency must have and implement written policies and procedures that protect the individual rights described in subsection (d) of this section.

- (b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.
- (c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.
- (d) While receiving developmental disability services, an individual has the right to:
- (A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;
 - (B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;
 - (C) Individual choice for an adult to consent to or refuse treatment, unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;
 - (D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;
 - (E) Informed, voluntary, written consent prior to participating in any experimental programs;
 - (F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;
 - (G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;
 - (H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;
 - (I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.
 - (J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;
 - (K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;
 - (L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;
 - (M) Adequate food, housing, clothing, medical and health care, supportive services, and training;
 - (N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:
 - (i) Services must promote independence and dignity and reflect the age and preferences of the individual; and
 - (ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;
 - (O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;
 - (P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;
 - (Q) Request a change in the plan for services;
 - (R) A timely decision upon request for a change in the plan for services;
 - (S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;
 - (T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;
 - (U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;
 - (V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule; the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;
 - (W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;
 - (X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

- (Y) Be informed of, and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and
- (Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.
- (e) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens, including but not limited to the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents, unless specifically prohibited by law in the case of children less than 18 years of age.
- (f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.
- (g) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.
- (h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.
- (i) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).
- (2) **HEALTH.** The agency must have and implement policies and procedures that maintain and protect the health of individuals.
- (3) **INDIVIDUAL AND FAMILY INVOLVEMENT.** The agency must have and implement a written policy that addresses:
- Opportunities for the individual to participate in decisions regarding the operations of the agency;
 - Opportunities for families, guardians, legal and designated representatives, and significant others of the individuals to interact; and
 - Opportunities for individuals, families, guardians, legal and designated representatives, and significant others to participate on the Board of Directors or on committees or to review policies of the agency that directly affect the individuals.
- (4) **INDEPENDENCE, PRODUCTIVITY, AND INTEGRATION.** As stated in ORS 427.007, the agency must have a written policy that states each ISP is developed to meet the level of independence, productivity, and integration into the local community.
- (5) **CONFIDENTIALITY OF RECORDS.** The agency must have and implement written policies and procedures that ensure all records for individuals are kept confidential except as otherwise provided by applicable state and federal rule or laws.
- For the purpose of disclosure from individual medical records under this rule, an agency is considered a "public provider" as defined in ORS 179.505.
 - Access to records by the Department does not require authorization by an individual or the legal or designated representative or family of the individual.
 - For the purpose of disclosure of non-medical individual records, all or portions of the information contained in the non-medical individual records may be exempt from public inspection under the personal privacy information exemption to the public records law set forth in ORS 192.502.
- (6) **BEHAVIOR SUPPORT.** The agency must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.
- (7) **PROTECTIVE PHYSICAL INTERVENTION.** The agency must have and implement written policies and procedures for protective physical interventions that address the following:
- Circumstances allowing the use of protective physical intervention. The agency must only employ protective physical intervention techniques that are included in the approved OIS curriculum or as approved by the OIS Steering Committee.
 - Protective physical intervention techniques must only be applied:
 - When the health and safety of an individual or others is at risk, the ISP team has authorized the procedures as documented by the decision of the ISP team, the procedures are documented in the ISP, and the procedures are intended to lead to less restrictive intervention strategies;
 - As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or
 - As a health related protection prescribed by a physician if absolutely necessary during the conduct of a specific medical or surgical procedure or for the protection of an individual during the time that a medical condition exists.
- (8) **HANDLING AND MANAGING INDIVIDUALS' MONEY.** The agency must have and implement written policies and procedures for the handling and management of individuals' money. Such policies and procedures must provide for:
- Financial planning and management of an individual's funds unless the ISP documents and justifies limitations to self-management;
 - Safeguarding of an individual's funds;
 - Individuals receiving and spending his or her money; and
 - Taking into account the interests and preferences of the individual.

(9) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) The agency must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.

(c) Upon enrollment, request, and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual.

(10) AGENCY DOCUMENTATION REQUIREMENTS. The agency must have and implement policies and procedures that address agency documentation requirements. Documentation must:

(a) Be prepared at the time or immediately following the event being recorded;

(b) Be accurate and contain no willful falsifications;

(c) Be legible, dated, and signed by the person making the entry; and

(d) Be maintained for no less than three years.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

411-323-0070

Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the agency that an alternative method or different approach provides equal or greater agency effectiveness and does not adversely impact the welfare, health, safety, or rights of individuals or violate federal Medicaid law.

(2) The agency requesting a variance must submit, in writing, an application to the Department that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to the program services for an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The request for a variance is approved or denied by the Department.

(4) The decision of the Department is sent to the agency, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(5) The agency may request an administrator review of the denial of a variance request. The Department must receive a written request for an administrator review within 10 business days from the receipt of the denial. The decision of the Director is the final response from the Department.

(6) The Department determines the duration of the variance.

(7) The agency may implement a variance only after written approval from the Department.

Stat. Auth. ORS 409.050

Stats. Implemented: ORS 409.050

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 325**

**24-HOUR RESIDENTIAL SERVICES FOR CHILDREN AND ADULTS
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

411-325-0020

Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 325:

(1) "24-Hour Residential Program" means a comprehensive residential home licensed by the Department under ORS 443.410 to provide residential care and training to individuals with intellectual or developmental disabilities.

(2) "Abuse" means:

(a) For a child:

(A) "Abuse" as defined in ORS 419B.005; and

- (B) "Abuse" as defined in OAR 407-045-0260 when a child resides in a home licensed to provide 24-hour residential services for children with intellectual or developmental disabilities.
- (b) For an adult, "abuse" as defined in OAR 407-045-0260.
- (3) "Abuse Investigation" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.
- (4) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.
- (5) "Adult" means an individual who is 18 years or older with an intellectual or developmental disability.
- (6) "Agency" means "service provider" as defined in this rule.
- (7) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the physical functioning of the individual.
- (8) "Apartment" means "24-hour residential program" as defined in this rule.
- (9) "Appeal" means the process under ORS chapter 183 that a service provider may use to petition a civil penalty.
- (10) "Applicant" means a person, agency, corporation, or governmental unit who applies for a license to operate a residential home providing 24-hour comprehensive residential services.
- (11) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at least yearly, at the time of an ISP team meeting.
- (12) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.
- (13) "Behavior Data Summary" means the document composed by a service provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.
- (14) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.
- (15) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.
- (16) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.
- (17) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed 24-hour residential services.
- (18) "Chemical Restraint" means the use of a psychotropic drug or other drugs for punishment or to modify behavior in place of a meaningful behavior or treatment plan.
- (19) "Child" means an individual who is less than 18 years of age that has a provisional determination of an intellectual or developmental disability.
- (20) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.
- (21) "Competency Based Training Plan" means the written description of the process of the service provider for providing training to newly hired staff. At a minimum, the Competency Based Training Plan:
- (a) Addresses health, safety, rights, values and personal regard, and the mission of the service provider; and
- (b) Describes competencies, training methods, timelines, how competencies of staff are determined and documented, including steps for remediation, and when a competency may be waived by a service provider to accommodate the specific circumstances of a staff member.
- (22) "Complaint" means "complaint" as defined in OAR 411-318-0005.
- (23) "Condition" means a provision attached to a new or existing certificate, endorsement, or license that limits or restricts the scope of the certificate, endorsement, or license or imposes additional requirements on the licensee.
- (24) "Crisis" means "crisis" as defined in OAR 411-320-0020.
- (25) "Denial" means the refusal of the Department to issue a certificate, endorsement, or license to operate a 24-hour residential home for individuals with intellectual or developmental disabilities because the Department has determined that the applicant or the home is not in compliance with these rules or the rules in OAR chapter 411, division 323.
- (26) "Department" means the Department of Human Services.

- (27) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.
- (28) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (29) "Direct Nursing Service" means the provision of individual-specific advice, plans, or interventions by a nurse at a home based on the nursing process as outlined by the Oregon State Board of Nursing. Direct nursing service differs from administrative nursing services. Administrative nursing services include non-individual-specific services, such as quality assurance reviews, authoring health related agency policies and procedures, or providing general training for staff.
- (30) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.
- (31) "Domestic Animals" mean the animals domesticated so as to live and breed in a tame condition, such as dogs, cats, and domesticated farm stock.
- (32) "Duplex" means "24-hour residential program" as defined in this rule.
- (33) "Educational Surrogate" means the person who acts in place of the parent of a child in safeguarding the rights of the child in the public education decision-making process:
- (a) When the parent of the child cannot be identified or located after reasonable efforts;
 - (b) When there is reasonable cause to believe that the child has a disability and is a ward of the state; or
 - (c) At the request of the parent of the child or young adult student.
- (34) "Endorsement" means the authorization to provide 24-hour residential services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.
- (35) "Entry" means admission to a Department-funded developmental disability service.
- (36) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of 24-hour residential services.
- (37) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified provider.
- (38) "Functional Needs Assessment":
- (a) Means the comprehensive assessment or re-assessment that:
 - (A) Documents physical, mental, and social functioning;
 - (B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and
 - (C) Determines the service level.
 - (b) The functional needs assessment for an individual less than 18 years of age receiving, or targeted to receive, 24-hour residential services is known as the Support Needs Assessment Profile (SNAP). The Department incorporates the SNAP into these rules by this reference. The SNAP is maintained by the Department at <http://www.oregon.gov/dhs/dd/rebar/pages/assess-afc.aspx>.
 - (c) The functional needs assessment for an individual 18 years of age and older receiving, or targeted to receive, 24-hour residential services is known as the Supports Intensity Scale (SIS). The Department incorporates the SIS into these rules by this reference.
 - (d) Printed copies may be obtained by calling (503) 945-6398 or writing the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.
- (39) "Guardian" means the parent of an individual less than 18 years of age or the person or agency appointed and authorized by a court to make decisions about services for an individual.
- (40) "Health Care Representative" means:
- (a) A health care representative as defined in ORS 127.505; or
 - (b) A person who has authority to make health care decisions for an individual under the provisions of OAR chapter 411, division 365.
- (41) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.
- (42) "Home" means "24-hour residential program" as defined in this rule.
- (43) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.
- (44) "Independence" means the extent to which an individual exerts control and choice over his or her own life.
- (45) "Individual" means an adult or a child with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.
- (46) "Individualized Education Plan" means the written plan of instructional goals and objectives developed in conference with an individual less than 21 years of age, the parent or legal representative of the individual (as applicable), teacher, and a representative of the public school district.
- (47) "Integration" as defined in ORS 427.005 means:
- (a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;

- (b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and
- (c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.
- (48) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (49) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.
- (50) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and supports. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.
- (51) "ISP Team" means a team composed of an individual receiving services, the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as service providers or family members.
- (52) "Legal Representative" means a person who has the legal authority to act for an individual.
- (a) For a child, the legal representative is the parent of the child unless a court appoints another person or agency to act as the guardian of the child.
- (b) For an adult, the legal representative is the attorney at law who has been retained by or for the adult, the power of attorney for the adult, or a person or agency authorized by a court to make decisions about services for the adult.
- (53) "License" means a document granted by the Department to an applicant who is in compliance with the requirements of these rules and the rules in OAR chapter 411, division 323.
- (54) "Licensee" means the person or organization to whom a certificate, endorsement, and license is granted.
- (55) "Mandatory Reporter":
- (a) Means any public or private official as defined in OAR 407-045-0260 who:
- (A) Is a staff or volunteer working with a child who comes in contact with a child with or without an intellectual or developmental disability and has reasonable cause to believe the child has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the child, regardless of whether or not the knowledge of the abuse was gained in the official capacity of the public or private official.
- (B) Is a staff or volunteer working who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult.
- (b) Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, attorney, or guardian ad litem appointed under ORS 419B.231 is not required to report if the communication is privileged under ORS 40.225 to 40.295.
- (56) "Mechanical Restraint" means any mechanical device, material, object, or equipment that is attached or adjacent to the body of an individual that the individual cannot easily remove or easily negotiate around that restricts freedom of movement or access to the body of the individual.
- (57) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the enrollment of the service provider as described in OAR chapter 411, division 370.
- (58) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by the rendering service provider for identification and billing purposes associated with service authorizations and payments.
- (59) "Modified Diet" means the texture or consistency of food or drink is altered or limited, such as no nuts or raw vegetables, thickened fluids, mechanical soft, finely chopped, pureed, or bread only soaked in milk.
- (60) "Natural Supports" means the parental responsibilities for a child and the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.
- (61) "Nursing Service Plan" means the plan that is developed by a registered nurse based on an initial nursing assessment, reassessment, or an update made to a nursing assessment as the result of a monitoring visit.
- (a) The Nursing Service Plan is specific to an individual and identifies the diagnoses and health needs of the individual and any service coordination, teaching, or delegation activities.
- (b) The Nursing Service Plan is separate from the ISP and any service plans developed by other health professionals.
- (62) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

- (63) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.
- (64) "Oregon Core Competencies" means:
- (a) The list of skills and knowledge required for newly hired staff in the areas of health, safety, rights, values and personal regard, and the mission of the service provider; and
 - (b) The associated timelines in which newly hired staff must demonstrate the competencies.
- (65) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.
- (66) "Person-Centered Planning":
- (a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.
 - (b) Person centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:
 - (A) Determine and describe choices about personal goals, activities, services, service providers, 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.
 - (c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.
- (67) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.
- (68) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.
- (69) "Protective Services" means "protection" as defined in this rule.
- (70) "Provider" means "service provider" as defined in this rule.
- (71) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.
- (72) "Relief Care" means the intermittent services that are provided on a periodic basis for the relief of, or due to the temporary absence of, a person normally providing supports to an individual.
- (73) "Revocation" means the action taken by the Department to rescind a certificate, endorsement, or license after the Department has determined that the service provider is not in compliance with these rules or the rules in OAR chapter 411, division 323.
- (74) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.
- (75) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.
- (76) "Services" mean supportive services including, but not limited to, supervision, protection, and assistance in bathing, dressing, grooming, eating, management of money, transportation, or recreation. Services also include being aware of the general whereabouts of an individual at all times and monitoring the activities of the individual to ensure the health, safety, and welfare of the individual.
- (77) "Services Coordinator" means an employee of the Department, CDDP, or other agency that contracts with the county or Department who provides case management services including, but not limited to, planning, procuring, coordinating, and monitoring services.
- (78) "Special Diet" means the specially prepared food or particular types of food that are specific to the medical condition or diagnosis of an individual and in support of an evidence-based treatment regimen.
- (79) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.
- (80) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.
- (81) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.
- (82) "Suspension" means an immediate temporary withdrawal of the approval to operate 24-hour residential services after the Department determines a service provider or 24-hour residential home is not in compliance with one or more of these rules or the rules in OAR chapter 411, division 323.

(83) "These Rules" mean the rules in OAR chapter 411, division 325.

(84) "Transfer" means movement of an individual from one home to another home administered or operated by the same service provider.

(85) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of an ISP for the individual. The Transition Plan is approved by a services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(86) "Unusual Incident" means any incident involving an individual that includes serious illness or an accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, an act of physical aggression, or any incident requiring an abuse investigation.

(87) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a service provider.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0060

Conditions on License

The Department may attach conditions to a license that limit, restrict, or specify other criteria for operation of a home. The type of condition attached to a license must directly relate to the risk of harm or potential risk of harm to individuals.

(1) The Department may attach a condition to a license upon a finding that:

- (a) Information on the application or initial inspection requires a condition to protect the health, safety, or welfare of 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 home is not being operated in compliance with these rules; or
- (e) The service provider is licensed to provide services for a specific person only and further placements may not be made into that home or facility.

(2) Conditions that the Department may impose on a license include, but are not limited to:

- (a) Restricting the total number of individuals that may be served;
- (b) Restricting the total number of individuals allowed within a licensed classification level based upon the capability and capacity of the service provider and staff to meet the health and safety needs of all individuals;
- (c) Restricting the support level of individuals allowed within a licensed classification level based upon the capability and capacity of the service provider and staff to meet the health and safety needs of all individuals;
- (d) Requiring additional staff or staff qualifications;
- (e) Requiring additional training;
- (f) Restricting the service provider from allowing a person on the premises who may be a threat to the health, safety, or welfare of an individual;
- (g) Requiring additional documentation; or
- (h) Restricting admissions.

(3) A written notice is issued to the service provider by the Department when the Department imposes a condition on the license. The written notice of conditions includes the conditions imposed by the Department, the reason for the conditions, and the opportunity to request a hearing under ORS chapter 183. Conditions take effect immediately upon issuance of the written notice of conditions, or at a later date as indicated on the notice and are a final order of the Department unless later rescinded through the hearing process. The condition imposed remains in effect until the Department has sufficient cause to believe the situation that warranted the condition has been remedied.

(4) The service provider may request a hearing in accordance with ORS chapter 183 and this rule upon written notice of conditions.

- (a) The service provider must request a hearing within 21 days from the receipt of the written notice of conditions.
- (b) In addition to, or in lieu of a hearing, a service provider may request an administrator review as described in section (5) of this rule. The administrator review does not diminish the right of the service provider to a hearing.

(5) ADMINISTRATOR REVIEW.

(a) In addition to the right to a contested case hearing, a service provider may request an administrator review by the Director of the Department for imposition of conditions.

(b) The Department must receive a written request for an administrator review within 10 days from the receipt of the notice of conditions. The service provider may submit, along with the written request for an administrator review, any additional written materials the service provider wishes to have considered during the review.

(c) The determination of the administrator review is issued in writing within 10 days from the receipt of the written request for review, or by a later date as agreed to by the service provider.

(d) The service provider may request a hearing if the decision of the Department is to affirm the condition. The Department must receive a request for a hearing within 21 days from the receipt of the original written notice of conditions.

(6) The service provider may send a written request to the Department to remove a condition if the service provider believes the situation that warranted the condition has been remedied.

(7) Conditions must be posted with the license in a prominent location and be available for inspection at all times.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0110

Variations

(1) The Department may grant a variance to these rules based upon a demonstration by the service provider that an alternative method or different approach provides equal or greater effectiveness and does not adversely impact the welfare, health, safety, or rights of the individuals or violate federal Medicaid law.

(2) The service provider requesting a variance must submit, in writing, an application to the CDDP that contains the following:

(a) The section of the rule from which the variance is sought;

(b) The reason for the proposed variance;

(c) The alternative practice, service, method, concept, or procedure proposed; and

(d) If the variance applies to the services of an individual, evidence that the variance is consistent with the currently authorized ISP for the individual.

(3) The CDDP must forward the signed variance request form to the Department within 30 days from the receipt of the request indicating the position of the CDDP on the proposed variance.

(4) The request for a variance is approved or denied by the Department.

(5) The decision of the Department is sent to the service provider, the CDDP, and to all relevant Department programs or offices within 30 calendar days from the receipt of the variance request.

(6) The service provider may request an administrator review of the denial of a variance request. The Department must receive a written request for an administrator review within 10 working days from the receipt of the denial. The service provider must send a copy of the written request for an administrator review to the CDDP. The decision of the Director is the final response from the Department.

(7) The duration of the variance is determined by the Department.

(8) The service provider may implement a variance only after written approval from the Department.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0120

Medical Services

(1) The service provider must have and implement policies and procedures that maintain and protect the physical health of individuals. Policies and procedures must address the following:

(a) Individual health care;

(b) Medication administration;

(c) Medication storage;

(d) Response to emergency medical situations;

(e) Nursing service provision, if provided;

(f) Disposal of medications; and

(g) Early detection and prevention of infectious disease.

(2) INDIVIDUAL HEALTH CARE.

(a) An individual must receive care that promotes the health and well-being of the individual as follows:

(A) The service provider must ensure each individual has a primary physician or primary health care provider whom the individual, or as applicable the parent or legal representative of the individual, has chosen from among qualified providers;

(B) The service provider must ensure each individual receives a medical evaluation by a qualified health care provider no fewer than every two years or as recommended by a physician;

(C) The service provider must monitor the health status and physical conditions of each individual and take action in a timely manner in response to identified changes or conditions that may lead to deterioration or harm;

(b) A written, signed order from a physician or qualified health care provider is required prior to the usage or implementation of all of the following:

(A) Prescription medications;

(B) Non prescription medications except over the counter topical;

(C) Treatments other than basic first aid;

- (D) Modified or special diets;
 - (E) Adaptive equipment; and
 - (F) Aids to physical functioning.
- (c) The service provider must implement the order of a physician or qualified health care provider.
- (d) The service provider must maintain records on each individual to aid physicians, licensed health professionals, and the service provider in understanding the medical history of the individual. Such documentation must include:
- (A) A list of known health conditions, medical diagnoses, known allergies, and immunizations;
 - (B) A record of visits to licensed health professionals that include documentation of the consultation and any therapy provided; and
 - (C) A record of known hospitalizations and surgeries.
- (3) MEDICATION.
- (a) All medications must be:
- (A) Kept in their original containers;
 - (B) Labeled by the dispensing pharmacy, product manufacturer, or physician, as specified per the written order of a physician or qualified health care provider; and
 - (C) Kept in a secured locked container and stored as indicated by the product manufacturer.
- (b) All medications and treatments must be recorded on an individualized medication administration record (MAR). The MAR must include:
- (A) The name of the individual;
 - (B) A transcription of the written order of a physician or qualified health care provider, including the brand or generic name of the medication, prescribed dosage, frequency, and method of administration;
 - (C) For topical medications and treatments without the order of a physician or qualified health care provider, a transcription of the printed instructions from the package;
 - (D) Times and dates of administration or self-administration of the medication;
 - (E) Signature of the person administering the medication or the person monitoring the self-administration of the medication;
 - (F) Method of administration;
 - (G) An explanation of why a PRN (i.e., as needed) medication was administered;
 - (H) Documented effectiveness of any PRN (i.e., as needed) medication administration;
 - (I) An explanation of any medication administration irregularity; and
 - (J) Documentation of any known allergy or adverse drug reaction.
- (c) Self-administration of medication.
- (A) For individuals who independently self-administer medications, the ISP team must determine a plan for the periodic monitoring and review of the self-administration of medications.
 - (B) The service provider must ensure that individuals able to self-administer medications keep the medications in a secure locked container unavailable to other individuals residing in the same residence and store them as recommended by the product manufacturer.
- (d) PRN (i.e., as needed) orders are not allowed for psychotropic medication.
- (e) Safeguards to prevent adverse effects or medication reactions must be utilized and include:
- (A) Whenever possible, obtaining all prescription medication for an individual, except samples provided by a health care provider, from a single pharmacy which maintains a medication profile for the individual;
 - (B) Maintaining information about the desired effects and side effects of each medication;
 - (C) Ensuring that medications prescribed for one individual are not administered to, or self-administered by, another individual or staff member; and
 - (D) Documentation in the record for an individual of the reason why all medications are not provided through a single pharmacy.
- (f) All unused, discontinued, outdated, recalled, and contaminated medications must be disposed of in a manner designed to prevent the illegal diversion of the medication. A written record of the disposal of the medication must be maintained and include documentation of:
- (A) Date of disposal;
 - (B) Description of the medication, including dosage strength and amount being disposed;
 - (C) Individual for whom the medication was prescribed;
 - (D) Reason for disposal;
 - (E) Method of disposal;
 - (F) Signature of the person disposing of the medication; and
 - (G) For controlled medications, the signature of a witness to the disposal.
- (4) DIRECT NURSING SERVICES. When direct nursing services are provided to an individual, the service provider must:
- (a) Coordinate with the registered nurse and the ISP team to ensure that the nursing services being provided are sufficient to meet the health needs of the individual; and
 - (b) Implement the Nursing Service Plan, or appropriate portions therein, as agreed upon by the ISP team and the registered nurse.

(5) DELEGATION AND SUPERVISION OF NURSING TASKS. Nursing tasks must be delegated by a registered nurse to a service provider in accordance with the rules of the Oregon State Board of Nursing in OAR chapter 851, division 047.

(a) The delegation process includes:

- (A) Assessing an individual in a specific situation;
- (B) Evaluating the ability of the service provider to perform the nursing task;
- (C) Teaching the nursing task;
- (D) Ensuring supervision of the service provider; and
- (E) Re-evaluating the nursing task at regular intervals.

(b) The service provider performs nursing tasks under the delegated authority of a registered nurse.

(6) When the medical, behavioral, or physical needs of an individual change to a point that they may not be met by the service provider, the services coordinator must be notified immediately and notification must be documented.

Stat. Auth.: ORS 409.050, 443.450, 443.455

Stats. Implemented: ORS 443.400-455

411-325-0300

Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL RIGHTS.

(a) The service provider must protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(d) While receiving developmental disability services, an individual has the right to:

- (A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;
- (B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;
- (C) Individual choice for an adult to consent to or refuse treatment, unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;
- (D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;
- (E) Informed, voluntary, written consent prior to participating in any experimental programs;
- (F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;
- (G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;
- (H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;
- (I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.
- (J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;
- (K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;
- (L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;
- (M) Adequate food, housing, clothing, medical and health care, supportive services, and training;
- (N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:
 - (i) Services must promote independence and dignity and reflect the age and preferences of the individual; and
 - (ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

- (O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;
- (P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;
- (Q) Request a change in the plan for services;
- (R) A timely decision upon request for a change in the plan for services;
- (S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;
- (T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;
- (U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;
- (V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;
- (W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;
- (X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;
- (Y) Be informed of, and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and
- (Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.
- (e) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens, including but not limited to the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents, unless specifically prohibited by law in the case of children less than 18 years of age.
- (f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.
- (g) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.
- (h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.
- (i) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).
- (2) COMPLAINTS.
 - (a) Complaints must be addressed in accordance with OAR 411-318-0015.
 - (b) The service provider must have and implement written policies and procedures for individual complaints in accordance with OAR 411-318-0015.
 - (c) Upon entry, request, and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).
- (3) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is involuntarily denied, reduced, suspended, or terminated, a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.
- (4) HEARINGS.
 - (a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.
 - (b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations or OAR 411-318-0030 for involuntary transfers or exits.
 - (c) Upon entry, request, and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

411-325-0390

Entry, Exit, and Transfer

- (1) **NON-DISCRIMINATION.** An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.
- (2) **QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES.** An individual who enters 24-hour residential services is subject to eligibility as described in this section.
- (a) To be eligible for 24-hour residential services, an individual must:
- (A) Be an Oregon resident;
 - (B) Be eligible for OHP Plus;
 - (C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;
 - (D) Meet the level of care as defined in OAR 411-320-0020; and
 - (E) Be an individual who is not receiving other Department-funded in-home or community living support.
- (b) To be eligible for Department-funded relief care, an individual must:
- (A) Meet the criteria in subsection (a)(A-D) of this section;
 - (B) Be referred by a CDDP or support services brokerage; and
 - (C) Not be receiving supported living services for adults with intellectual or developmental disabilities as described in OAR chapter 411, division 328.
- (c) **TRANSFER OF ASSETS.**
- (A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIP-M. This includes, but is not limited to, the following assets:
- (i) An annuity that is evaluated according to OAR 461-145-0022;
 - (ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;
 - (iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or
 - (iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;
- (B) When an individual is disqualified for a transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIP-M.
- (C) An individual found to have transferred assets is not eligible for 24-hour residential services.
- (3) **ENTRY.**
- (a) The Department authorizes entry into residential services for children and stabilization and crisis units.
- (b) The CDDP services coordinator authorizes entry into 24-hour residential programs, except in the cases of residential services for children and stabilization and crisis units.
- (4) **DOCUMENTATION UPON ENTRY.**
- (a) A service provider must acquire the following information prior to or upon an entry ISP team meeting:
- (A) A copy of the eligibility determination document for the individual;
 - (B) A statement indicating the safety skills of the individual including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;
 - (C) A brief written history of any behavioral challenges of the individual, including supervision and support needs;
 - (D) The medical history of the individual and information on health care supports that includes when available:
- (i) The results of a physical exam made within 90 days prior to entry;
 - (ii) The results of any dental evaluation;
 - (iii) A record of immunizations;
 - (iv) A record of known communicable diseases and allergies; and
 - (v) A record of major illnesses and hospitalizations.
- (E) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning for the individual;
- (F) Copies of documents relating to the guardianship or conservatorship of the individual, health care representative for the individual, or any other legal restrictions on the rights of the individual (if applicable);
- (G) Written documentation that the individual is participating in out of residence activities, including public school enrollment for individuals less than 21 years of age; and

- (H) A copy of the most recent Behavior Support Plan and assessment, ISP, Nursing Service Plan, and Individualized Education Plan (if applicable).
- (b) If an individual is being admitted from the family home of the individual and the information required in subsection (a) of this section is not available, the service provider must assess the individual upon entry for issues of immediate health or safety and document a plan to secure the remaining information no later than 30 days after entry. The plan must include a written justification as to why the information is not available.
- (5) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. Findings of the entry meeting must be recorded in the file for the individual and include at a minimum:
- (a) The name of the individual proposed for services;
 - (b) The date of the meeting;
 - (c) The date determined to be the date of entry of the individual;
 - (d) Documentation of the participants included in the meeting;
 - (e) Documentation of the pre-entry information required by section (4)(a) of this rule;
 - (f) Documentation of the decision to serve the individual requesting services; and
 - (g) A written Transition Plan for no longer than 60 days after entry that includes all medical, behavior, and safety supports needed by the individual.
- (6) VOLUNTARY TRANSFERS AND EXITS.
- (a) A service provider must promptly notify a services coordinator if an individual, or as applicable the legal or designated representative of the individual, gives notice of the intent of the individual to exit or the individual abruptly exits services.
 - (b) A service provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.
 - (c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.
 - (d) A service provider is responsible for the provision of services until an individual exits the home.
- (7) INVOLUNTARY TRANSFERS AND EXITS.
- (a) A service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:
 - (A) The behavior of the individual poses an imminent risk of danger to self or others;
 - (B) The individual experiences a medical emergency;
 - (C) The service needs of the individual exceed the ability of the service provider;
 - (D) The individual fails to pay for services; or
 - (E) The certification or endorsement for the service provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered or the license for the home is suspended, revoked, not renewed, or voluntarily surrendered.
 - (b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home as described in subsection (c) of this section.
 - (A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:
 - (i) The reason for the transfer or exit; and
 - (ii) The right of the individual to a hearing as described in subsection (e) of this section.
 - (B) A notice is not required when an individual, or as applicable the individual's legal or designated representative, requests a transfer or exit.
 - (c) A service provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others in the home. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a transfer or exit.
 - (d) A service provider is responsible for the provision of services until an individual exits the home.
 - (e) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If an individual or the legal or designated representative of an individual (as applicable) requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a transfer or exit as described in subsection (c) of this section and the individual or the legal or designated representative of the individual (as applicable) has requested a hearing, the service provider must reserve the room of the individual until receipt of the final order.
- (8) EXIT MEETING.
- (a) An ISP team must meet before any decision to exit is made. Findings of the exit meeting must be recorded in the file for the individual and include at a minimum:
 - (A) The name of the individual considered for exit;
 - (B) The date of the meeting;
 - (C) Documentation of the participants included in the meeting;

- (D) Documentation of the circumstances leading to the proposed exit;
 - (E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual, or as applicable the legal or designated representative of the individual, is requesting the exit);
 - (F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to exit or a copy of the Notice of Involuntary Transfer or Exit; and
 - (G) Documentation of the proposed plan for services for the individual after the exit.
- (b) Requirements for an exit meeting may be waived if an individual is immediately removed from the home under the following conditions:
- (A) The individual, or as applicable the legal or designated representative of the individual, requests an immediate move from the home; or
 - (B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings other than detention for an individual less than 18 years of age.
- (9) **TRANSFER MEETING.** An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of the transfer meeting must be recorded in the file for an individual and include at a minimum:
- (a) The name of the individual considered for transfer;
 - (b) The date of the meeting or telephone call;
 - (c) Documentation of the participants included in the meeting or telephone call;
 - (d) Documentation of the circumstances leading to the proposed transfer;
 - (e) Documentation of the alternatives considered instead of transfer;
 - (f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative of the individual, parent, or family members, may not be honored;
 - (g) Documentation of the decision regarding the transfer, including verification of the voluntary decision to transfer or a copy of the Notice of Involuntary Transfer or Exit; and
 - (h) The written plan for services for the individual after transfer.
- Stat. Auth.: ORS 409.050, 443.450, 443.455
 Stats. Implemented: ORS 443.400-455

411-325-0430

Individual Support Plan

- (1) A copy of each ISP for an individual and supporting documentation on the required Department forms must be available at the home within 60 days of entry and annually thereafter.
- (2) The following information must be collected and summarized prior to the ISP meeting:
 - (a) Personal Focus Worksheet;
 - (b) Risk Tracking Record;
 - (c) Necessary protocols or plans that address health, behavioral, safety, and financial supports as identified on the Risk Tracking Record;
 - (d) A Nursing Service Plan, if applicable, including but not limited to those tasks required by the Risk Tracking Record;
 - (e) Other documents required by the ISP team; and
 - (f) The functional needs assessment of an individual.
- (3) A completed ISP must be documented on the Department required form and include the following:
 - (a) The name of the individual and the name of the legal or designated representative of the individual (as applicable);
 - (b) A description of the supports required that is consistent with the functional needs assessment of the individual, including the reason the support is necessary;
 - (c) The projected dates of when specific supports are to begin and end;
 - (d) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;
 - (e) The manner in which services are delivered and the frequency of services;
 - (f) Service provider type for each person responsible for providing services and supports;
 - (g) The setting in which the individual resides as chosen by the individual;
 - (h) The strengths and preferences of the individual;
 - (i) The clinical and support needs as identified through the functional needs assessment;
 - (j) Individually identified goals and desired outcomes;
 - (k) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;
 - (l) The risk factors and the measures in place to minimize the risk factors, including back up plans;
 - (m) The identity of the person responsible for case management and monitoring the ISP;

- (n) A provision to prevent unnecessary or inappropriate care; and
 - (o) The alternative settings considered by the individual.
 - (4) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.
 - (5) The provider must maintain documentation of implementation of each support and services specified in sections (2)(c) to (2)(e) of this rule in the ISP for the individual. This documentation must be kept current and be available for review by the individual, the legal representative of the individual, CDDP, and Department representatives.
- Stat. Auth.: ORS 409.050, 443.450, 443.455
 Stats. Implemented: ORS 443.400-455

411-325-0460
Civil Penalties

- (1) For purposes of imposing civil penalties, 24-hour residential programs licensed under ORS 443.400 to 443.455 and ORS 443.991(2) are considered to be long-term care facilities subject to ORS 441.705 to 441.745.
- (2) The Department issues the following schedule of penalties applicable to 24-hour residential programs as provided for under ORS 441.705 to 441.745:
 - (a) Violations of any requirement within any part of the following rules may result in a civil penalty up to \$500 per day for each violation not to exceed \$6,000 for all violations for any licensed 24-hour residential program within a 90-day period:
 - (A) 411-325-0025(3), (4), (5), (6), and (7);
 - (B) 411-325-0120(2), and (4);
 - (C) 411-325-0130;
 - (D) 411-325-0140;
 - (E) 411-325-0150;
 - (F) 411-325-0170;
 - (G) 411-325-0190;
 - (H) 411-325-0200;
 - (I) 411-325-0220(1), and (2);
 - (J) 411-325-0230;
 - (K) 411-325-0240, 0250, 0260, 0270, 0280, and 0290;
 - (L) 411-325-0300, 0340, and 0350;
 - (M) 411-325-0360;
 - (N) 411-325-0380;
 - (O) 411-325-0430(3) and (4); and
 - (P) 411-325-0440.
 - (b) Civil penalties of up to \$300 per day per violation may be imposed for violations of any section of these rules not listed in subsection (a)(A) to (a)(N) of this section if a violation has been cited on two consecutive inspections or surveys of a 24-hour residential program where such surveys are conducted by an employee of the Department. Penalties assessed under this section of this rule may not exceed \$6,000 within a 90-day period.
- (3) Monitoring occurs when a 24-hour residential program is surveyed, inspected, or investigated by an employee or designee of the Department or an employee or designee of the Office of State Fire Marshal.
- (4) In imposing a civil penalty pursuant to the schedule published in section (2) of this rule, the Department considers the following factors:
 - (a) The past history of the service provider incurring a penalty in taking all feasible steps or procedures necessary or appropriate to correct any violation;
 - (b) Any prior violations of statutes or rules pertaining to 24-hour residential programs;
 - (c) The economic and financial conditions of the service provider incurring the penalty; and
 - (d) The immediacy and extent to which the violation threatens or threatened the health, safety, or well-being of individuals.
- (5) Any civil penalty imposed under ORS 443.455 and 441.710 becomes due and payable when the service provider incurring the penalty receives a notice in writing from the Director of the Department. The notice referred to in this section of this rule is sent by registered or certified mail and includes:
 - (a) A reference to the particular sections of the statute, rule, standard, or order involved;
 - (b) A short and plain statement of the matters asserted or charged;
 - (c) A statement of the amount of the penalty or penalties imposed; and
 - (d) A statement of the right of the services provider to request a hearing.
- (6) The person representing the service provider to whom the notice is addressed has 20 days from the date of mailing of the notice in which to make a written application for a hearing before the Department.
- (7) All hearings are conducted pursuant to the applicable provisions of ORS chapter 183.

- (8) If the service provider notified fails to request a hearing within 20 days, an order may be entered by the Department assessing a civil penalty.
- (9) If, after a hearing, the service provider is found to be in violation of a license, rule, or order listed in ORS 441.710(1), an order may be entered by the Department assessing a civil penalty.
- (10) A civil penalty imposed under ORS 443.455 or 441.710 may be remitted or reduced upon such terms and conditions as the Director of the Department considers proper and consistent with individual health and safety.
- (11) If the order is not appealed, the amount of the penalty is payable within 10 days after the order is entered. If the order is appealed and is sustained, the amount of the penalty is payable within 10 days after the court decision. The order, if not appealed or sustained on appeal, constitutes a judgment and may be filed in accordance with the provisions of ORS 183.745. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.
- (12) A violation of any general order or final order pertaining to a 24-hour residential program issued by the Department is subject to a civil penalty in the amount of not less than \$5 and not more than \$500 for each and every violation.
- (13) Judicial review of civil penalties imposed under ORS 441.710 are provided under ORS 183.480, except that the court may, in its discretion, reduce the amount of the penalty.
- (14) All penalties recovered under ORS 443.455 and 441.710 to 441.740 are paid into the State Treasury and credited to the General Fund.
- Stat. Auth.: ORS 409.050, 443.450, 443.455
Stats. Implemented: ORS 443.400-45

**DEPARTMENT OF HUMAN SERVICES
DEVELOPMENTAL DISABILITIES
OREGON ADMINISTRATIVE RULES**

**CHAPTER 411
DIVISION 328**

**SUPPORTED LIVING SERVICES FOR ADULTS
WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITIES**

411-328-0560

Definitions

Unless the context indicates otherwise, the following definitions and the definitions in OAR 411-317-0000 apply to the rules in OAR chapter 411, division 328:

- (1) "Abuse" means "abuse of an adult" as defined in OAR 407-045-0260.
- (2) "Abuse Investigation and Protective Services" means the reporting and investigation activities as required by OAR 407-045-0300 and any subsequent services or supports necessary to prevent further abuse as required in OAR 407-045-0310.
- (3) "Administrator Review" means the Director of the Department reviews a decision upon request, including the documentation related to the decision, and issues a determination.
- (4) "Adult" means an individual 18 years or older with an intellectual or developmental disability.
- (5) "Aids to Physical Functioning" means any special equipment prescribed for an individual by a physician, therapist, or dietician that maintains or enhances the individual's physical functioning.
- (6) "Baseline Level of Behavior" means the frequency, duration, or intensity of a behavior, objectively measured, described, and documented prior to the implementation of an initial or revised Behavior Support Plan. The baseline level of behavior serves as the reference point by which the ongoing efficacy of an ISP is to be assessed. A baseline level of behavior is reviewed and reestablished at minimum yearly, at the time of an ISP team meeting.
- (7) "Behavior Data Collection System" means the methodology specified within a Behavior Support Plan that directs the process for recording observations, interventions, and other support provision information critical to the analysis of the efficacy of the Behavior Support Plan.
- (8) "Behavior Data Summary" means the document composed by a service provider to summarize episodes of protective physical intervention. The behavior data summary serves as a substitution for the requirement of an incident report for each episode of protective physical intervention.
- (9) "Board of Directors" means "board of directors" as defined in OAR 411-323-0020.
- (10) "Career Development Plan" means the part of an ISP that identifies the employment goals and objectives for an individual, the services and supports needed to achieve those goals, the people, agencies, and providers assigned to assist the individual to attain those goals, the obstacles to the individual working in an individualized job in an integrated employment setting, and the services and supports necessary to overcome those obstacles.

- (11) "CDDP" means "community developmental disability program" as defined in OAR 411-320-0020.
- (12) "Certificate" means the document issued by the Department to a service provider that certifies the service provider is eligible under the rules in OAR chapter 411, division 323 to receive state funds for the provision of endorsed supported living services.
- (13) "Choice" means the expression of preference, opportunity for, and active role of an individual in decision-making related to services received and from whom including, but not limited to, case management, service providers, services, and service settings. Personal outcomes, goals, and activities are supported in the context of balancing the rights, risks, and personal choices of the individual. Individuals are supported in opportunities to make changes when so expressed. Choice may be communicated orally, through sign language, or by other communication methods.
- (14) "Complaint" means "complaint" as defined in OAR 411-318-0005.
- (15) "Department" means the Department of Human Services.
- (16) "Designated Representative" means any adult, such as a parent, family member, guardian, advocate, or other person, authorized in writing by an individual to serve as the representative of the individual in connection with the provision of funded supports, who is not also a paid service provider for the individual. An individual is not required to appoint a designated representative.
- (17) "Developmental Disability" means "developmental disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (18) "Director" means the Director of the Department of Human Services, Office of Developmental Disability Services or the designee of the Director.
- (19) "Endorsement" means the authorization to provide supported living services issued by the Department to a certified service provider that has met the qualification criteria outlined in these rules and the rules in OAR chapter 411, division 323.
- (20) "Entry" means admission to a Department-funded developmental disability service.
- (21) "Executive Director" means the person designated by a board of directors or corporate owner that is responsible for the administration of supported living services.
- (22) "Exit" means termination or discontinuance of a Department-funded developmental disability service by a Department licensed or certified service provider.
- (23) "Functional Needs Assessment":
- (a) Means the comprehensive assessment or re-assessment that:
- (A) Documents physical, mental, and social functioning;
- (B) Identifies risk factors, choices and preferences, service and support needs, strengths, and goals; and
- (C) Determines the service level.
- (b) The functional needs assessment for an adult is known as the Adult Needs Assessment. The Department incorporates Version B of the Adult Needs Assessment dated July 1, 2014 into these rules by this reference. The Adult Needs Assessment is maintained by the Department at: www.dhs.state.or.us/spd/tools/dd/cm/ANA_Adult_In-home.xls. Printed copies may be obtained by calling (503) 945-6398 or writing to the Department of Human Services, Developmental Disabilities, ATTN: Rule Coordinator, 500 Summer Street NE, Salem, OR 97301.
- (24) "Hearing" means a contested case hearing subject to OAR 137-003-0501 to 137-003-0070, which results in a final order.
- (25) "Incident Report" means the written report of any injury, accident, act of physical aggression, use of protective physical intervention, or unusual incident involving an individual.
- (26) "Independence" means the extent to which an individual exerts control and choice over his or her own life.
- (27) "Individual" means an adult with an intellectual or developmental disability applying for, or determined eligible for, developmental disability services.
- (28) "Individual Profile" means the written profile that describes an individual entering into supported living services. The profile may consist of materials or assessments generated by a service provider or other related agencies, consultants, family members, or the legal or designated representative of the individual.
- (29) "Integration" as defined in ORS 427.005 means:
- (a) The use by individuals with intellectual or developmental disabilities of the same community resources used by and available to other people;
- (b) Participation by individuals with intellectual or developmental disabilities in the same community activities in which people without an intellectual or developmental disability participate, together with regular contact with people without an intellectual or developmental disability; and
- (c) Individuals with intellectual or developmental disabilities reside in homes or home-like settings that are in proximity to community resources and foster contact with people in the community.
- (30) "Intellectual Disability" means "intellectual disability" as defined in OAR 411-320-0020 and described in OAR 411-320-0080.
- (31) "Involuntary Transfer" means a service provider has made the decision to transfer an individual and the individual, or as applicable the legal or designated representative of the individual, has not given prior approval.
- (32) "ISP" means "Individual Support Plan". An ISP includes the written details of the supports, activities, and resources required for an individual to achieve and maintain personal goals and health and safety. The ISP is developed at least annually to reflect decisions and

agreements made during a person-centered process of planning and information gathering. The ISP reflects the services and supports that are important for an individual to meet the needs of the individual identified through a functional needs assessment as well as the preferences of the individual for service providers, delivery, and frequency of services and support. The ISP is the plan of care for Medicaid purposes and reflects whether services are provided through a waiver, state plan, or natural supports.

(33) "ISP Team" means a team composed of an individual receiving services and the legal or designated representative of the individual (as applicable), services coordinator, and others chosen by the individual, or as applicable the legal or designated representative of the individual, such as service providers and family members.

(34) "Legal Representative" means an attorney at law who has been retained by or for an individual, a power of attorney for an individual, or a person or agency authorized by a court to make decisions about services for an individual.

(35) "Mandatory Reporter" means any public or private official as defined in OAR 407-045-0260 who, while acting in an official capacity, comes in contact with an adult with an intellectual or developmental disability and has reasonable cause to believe the adult individual has suffered abuse, or comes in contact with any person whom the public or private official has reasonable cause to believe abused the adult individual. Nothing contained in ORS 40.225 to 40.295 affects the duty to report imposed by this definition, except that a psychiatrist, psychologist, clergy, or attorney is not required to report if the communication is privileged under ORS 40.225 to 40.295.

(36) "Medicaid Agency Identification Number" means the numeric identifier assigned by the Department to a service provider following the enrollment of the service provider as described in OAR chapter 411, division 370.

(37) "Medicaid Performing Provider Number" means the numeric identifier assigned to an entity or person by the Department following the enrollment of the entity or person as described in OAR chapter 411, division 370. The Medicaid Performing Provider Number is used by a rendering service provider for identification and billing purposes associated with service authorizations and payments.

(38) "Natural Supports" means the voluntary resources available to an individual from the relatives, friends, significant others, neighbors, roommates, and the community of the individual that are not paid for by the Department.

(39) "Needs Meeting" means a process in which an ISP team identifies the services and supports an individual needs to live in his or her own home and makes a determination as to the feasibility of creating such services. The information generated in a needs meeting or discussion is used for completion of the functional needs assessment to develop the Transition Plan for the individual.

(40) "OHP Plus" means only the Medicaid benefit packages provided under OAR 410-120-1210(4)(a) and (b).

(41) "OIS" means "Oregon Intervention System". OIS is the system of providing training to people who work with designated individuals to provide elements of positive behavior support and non-aversive behavior intervention. OIS uses principles of pro-active support and describes approved protective physical intervention techniques that are used to maintain health and safety.

(42) "OSIP-M" means "Oregon Supplemental Income Program-Medical" as described in OAR 461-001-0030. OSIP-M is Oregon Medicaid insurance coverage for individuals who meet the eligibility criteria described in OAR chapter 461.

(43) "Person-Centered Planning":

(a) Means a timely and formal or informal process that is driven by an individual, includes people chosen by the individual, ensures that the individual directs the process to the maximum extent possible, and that the individual is enabled to make informed choices and decisions consistent with CFR 441.540.

(b) Person centered planning includes gathering and organizing information to reflect what is important to and for the individual and to help:

(A) Determine and describe choices about personal goals, activities, services, service providers, 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.

(c) The methods for gathering information vary, but all are consistent with the cultural considerations, needs, and preferences of the individual.

(44) "Positive Behavioral Theory and Practice" means a proactive approach to behavior and behavior interventions that:

(a) Emphasizes the development of functional alternative behavior and positive behavior intervention;

(b) Uses the least intervention possible;

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

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

(45) "Protection" means the necessary actions taken as soon as possible to prevent subsequent abuse or exploitation of an individual, to prevent self-destructive acts, or to safeguard the person, property, and funds of an individual.

(46) "Protective Physical Intervention" means any manual physical holding of, or contact with, an individual that restricts freedom of movement.

(47) "Protective Services" means "protection" as defined in this rule.

(48) "Psychotropic Medication" means a medication the prescribed intent of which is to affect or alter thought processes, mood, or behavior including, but not limited to, anti-psychotic, antidepressant, anxiolytic (anti-anxiety), and behavior medications. The classification of a medication depends upon its stated, intended effect when prescribed.

(49) "Program" means "service provider" as defined in this rule.

(50) "Service Level" means the amount of services determined necessary by a functional needs assessment and made available to meet the identified support needs of an individual.

(51) "Service Provider" means a public or private community agency or organization that provides recognized developmental disability services and is certified and endorsed by the Department to provide these services under these rules and the rules in OAR chapter 411, division 323.

(52) "Services Coordinator" means "services coordinator" as defined in OAR 411-320-0020.

(53) "Staff" means paid employees responsible for providing services to individuals whose wages are paid in part or in full with funds sub-contracted with the CDDP or contracted directly through the Department.

(54) "Substantiated" means an abuse investigation has been completed by the Department or the designee of the Department and the preponderance of the evidence establishes the abuse occurred.

(55) "Support" means the assistance that an individual requires, solely because of the affects of an intellectual or developmental disability, to maintain or increase independence, achieve community presence and participation, and improve productivity. Support is subject to change with time and circumstances.

(56) "Supported Living" means the endorsed service that provides the opportunity for individuals to live in a residence of their own choice within the community. Supported living is not grounded in the concept of "readiness" or in a "continuum of services model" but rather provides the opportunity for individuals to live where they want, with whom they want, for as long as they desire, with a recognition that needs and desires may change over time.

(57) "These Rules" mean the rules in OAR chapter 411, division 328.

(58) "Transfer" means movement of an individual from one type of service to another type of service administered or operated by the same service provider.

(59) "Transition Plan" means the written plan of services and supports for the period of time between the entry of an individual into a particular service and the development of the ISP for the individual. The Transition Plan is approved by the services coordinator and includes a summary of the services necessary to facilitate adjustment to the services offered, the supports necessary to ensure health and safety, and the assessments and consultations necessary for ISP development.

(60) "Unusual Incident" means any incident involving an individual that includes serious illness, accident, death, injury or illness requiring inpatient or emergency hospitalization, a suicide attempt, a fire requiring the services of a fire department, or any incident requiring an abuse investigation.

(61) "Variance" means the temporary exception from a regulation or provision of these rules that may be granted by the Department upon written application by a service provider.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0700

Incident Reports and Emergency Notifications

(1) An incident report, as defined in OAR 411-328-0560, must be placed in the record for an individual upon injury, accident, act of physical aggression, or unusual incident. The incident report must include:

- (a) Conditions prior to, or leading to, the incident;
- (b) A description of the incident;
- (c) Staff response at the time; and
- (d) Follow-up to be taken to prevent a recurrence of the incident.

(2) A copy of all incident reports must be sent to the services coordinator within five working days of the incident.

(a) Upon request of the legal representative of an individual, copies of incident reports must be sent to the legal representative within five working days of the incident.

(b) Copies sent to the legal representative of an individual must have any confidential information about other individuals removed or redacted as required by federal and state privacy laws.

(c) Copies of unusual incident reports may not be provided to the legal representative when the report is part of an abuse or neglect investigation.

(3) The service provider must notify the CDDP immediately if an incident or allegation falls within the scope of abuse as defined in OAR 407-045-0260. When an abuse investigation has been initiated, the CDDP must ensure that either the services coordinator or the service provider also immediately notifies the legal or designated representative of the individual (as applicable). The parent, next of kin, or other significant person of the individual may also be notified unless the individual requests the parent, next of kin, or other significant person not be notified about the abuse investigation or protective services, or notification has been specifically prohibited by law.

(4) In the case of a serious illness, injury, or death of an individual, the service provider must immediately notify:

- (a) The legal or designated representative, parent, next of kin, and other significant person of the individual (as applicable);
- (b) The CDDP; and

(c) Any other agency responsible for the individual.

(5) In the case of an individual who is missing beyond the timeframes established by the ISP team, the service provider must immediately notify:

(a) The designated representative of the individual;

(b) The legal representative of the individual, if any, or nearest responsible relative;

(c) The local police department; and

(d) The CDDP.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0720

Individual Rights, Complaints, Notification of Planned Action, and Hearings

(1) INDIVIDUAL RIGHTS.

(a) The service provider must protect the rights of individuals described in subsection (d) of this section and encourage and assist individuals to understand and exercise these rights.

(b) Upon enrollment, request, and annually thereafter, the individual rights described in subsection (d) of this section must be provided to an individual and the legal or designated representative of an individual.

(c) The individual rights described in this rule apply to all individuals eligible for or receiving developmental disability services. A parent or guardian may place reasonable limitations on the rights of a child.

(d) While receiving developmental disability services, an individual has the right to:

(A) Be free and protected from abuse or neglect and to report any incident of abuse or neglect without being subject to retaliation;

(B) Be free from seclusion, unauthorized training or treatment, protective physical intervention, chemical restraint, or mechanical restraint and assured that medication is administered only for the clinical needs of the individual as prescribed by a health care provider, unless an imminent risk of physical harm to the individual or others exists and only for as long as the imminent risk continues;

(C) Individual choice for an adult to consent to or refuse treatment, unless incapable and then an alternative decision maker must be allowed to consent to or refuse treatment for the adult. For a child, the parent or guardian of the child must be allowed to consent to or refuse treatment, except as described in ORS 109.610 or limited by court order;

(D) Informed, voluntary, written consent prior to receiving services, except in a medical emergency or as otherwise permitted by law;

(E) Informed, voluntary, written consent prior to participating in any experimental programs;

(F) A humane service environment that affords reasonable protection from harm, reasonable privacy in all matters that do not constitute a documented health and safety risk to the individual, and access and the ability to engage in private communications with any public or private rights protection program, services coordinator, and others chosen by the individual, through personal visits, mail, telephone, or electronic means;

(G) Contact and visits with legal and medical professionals, legal or designated representatives, family members, friends, advocates, and others chosen by the individual, except where prohibited by court order;

(H) Participate regularly in the community and use community resources, including recreation, developmental disability services, employment services and day support activities, school, educational opportunities, and health care resources;

(I) Access to a free and appropriate public education for children and adults less than 21 years of age, including a procedure for school attendance or refusal to attend.

(J) Reasonable and lawful compensation for performance of labor, except personal housekeeping duties;

(K) Manage the individual's own money and financial affairs unless the right has been taken away by court order or other legal procedure;

(L) Keep and use personal property, personal control and freedom regarding personal property, and a reasonable amount of personal storage space;

(M) Adequate food, housing, clothing, medical and health care, supportive services, and training;

(N) Seek a meaningful life by choosing from available services, service settings, and service providers consistent with the support needs of the individual identified through a functional needs assessment, and enjoying the benefits of community involvement and community integration:

(i) Services must promote independence and dignity and reflect the age and preferences of the individual; and

(ii) The services must be provided in a setting and under conditions that are most cost effective and least restrictive to the liberty of the individual, least intrusive to the individual, and that provide for self-directed decision-making and control of personal affairs appropriate to the preferences, age, and identified support needs of the individual;

(O) An individualized written plan for services created through a person-centered planning process, services based upon the plan, and periodic review and reassessment of service needs;

(P) Ongoing opportunity to participate in the planning of services in a manner appropriate to the capabilities of the individual, including the right to participate in the development and periodic revision of the plan for services, the right to be provided with a reasonable

explanation of all service considerations through choice advising, and the right to invite others chosen by the individual to participate in the plan for services;

(Q) Request a change in the plan for services;

(R) A timely decision upon request for a change in the plan for services;

(S) Advance written notice of any action that terminates, suspends, reduces, or denies a service or request for service, and notification of other available sources for necessary continued services;

(T) A hearing to challenge an action that terminates, suspends, reduces, or denies a service or request for service;

(U) Exercise all rights set forth in ORS 426.385 and 427.031 if the individual is committed to the Department;

(V) Be informed at the start of services and annually thereafter of the rights guaranteed by this rule, the contact information for the protection and advocacy system described in ORS 192.517(1), the procedures for reporting abuse, and the procedures for filing complaints, reviews, or requests for hearings if services have been or are proposed to be terminated, suspended, reduced, or denied;

(W) Have these rights and procedures prominently posted in a location readily accessible to individuals and made available to representatives of the individual;

(X) Be encouraged and assisted in exercising all legal, civil, and human rights accorded to other citizens of the same age, except when limited by a court order;

(Y) Be informed of, and have the opportunity to assert complaints as described in OAR 411-318-0015 with respect to infringement of the rights described in this rule, including the right to have such complaints considered in a fair, timely, and impartial complaint procedure without any form of retaliation or punishment; and

(Z) Freedom to exercise all rights described in this rule without any form of reprisal or punishment.

(e) The rights described in this rule are in addition to, and do not limit, all other statutory and constitutional rights that are afforded all citizens, including but not limited to the right to exercise religious freedom, vote, marry, have or not have children, own and dispose of property, and enter into contracts and execute documents, unless specifically prohibited by law in the case of children less than 18 years of age.

(f) An individual who is receiving developmental disability services, or as applicable a legal or designated representative of the individual, has the right under ORS 430.212 to be informed that a family member has contacted the Department to determine the location of the individual and to be informed of the name and contact information of the family member, if known.

(g) The rights described in this rule may be asserted and exercised by an individual, the legal representative of an individual, and any representative designated by an individual.

(h) Nothing in this rule may be construed to alter any legal rights and responsibilities between a parent and child.

(i) A guardian is appointed for an adult only as is necessary to promote and protect the well-being of the adult. A guardianship for an adult must be designed to encourage the development of maximum self-reliance and independence of the adult, and may be ordered only to the extent necessitated by the actual mental and physical limitations of the adult. An adult for whom a guardian has been appointed is not presumed to be incompetent. An adult with a guardian retains all legal and civil rights provided by law, except those that have been expressly limited by court order or specifically granted to the guardian by the court. Rights retained by the adult include, but are not limited to, the right to contact and retain counsel and to have access to personal records. (ORS 125.300).

(2) COMPLAINTS.

(a) Complaints must be addressed in accordance with OAR 411-318-0015.

(b) Upon entry, request, and annually thereafter, the policy and procedures for complaints must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

(3) NOTIFICATION OF PLANNED ACTION. In the event that a developmental disability service is involuntarily denied, reduced, suspended, or terminated a written advance Notification of Planned Action (form SDS 0947) must be provided as described in OAR 411-318-0020.

(4) HEARINGS.

(a) Hearings must be addressed in accordance with ORS chapter 183 and OAR 411-318-0025.

(b) An individual, or as applicable the legal or designated representative of the individual, may request a hearing as provided in ORS chapter 183 and OAR 411-318-0025 for involuntary denials, reductions, suspensions, or terminations or OAR 411-318-0030 for involuntary transfers or exits.

(c) Upon entry, request, and annually thereafter, a notice of hearing rights and the policy and procedures for hearings must be explained and provided to an individual and the legal or designated representative of the individual (as applicable).

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0750

Personalized Plans

(1) The decision to support an individual so that the individual may live in and maintain his or her own home requires significant involvement from the individual and the ISP team. In supported living, this process is characterized by a functional needs assessment

and a series of team meetings or discussions to determine what personalized supports the individual needs to live in his or her own home, a determination as to the feasibility of creating such supports, and the development of a written plan that describes services the individual must receive upon entry into supported living.

(2) **NEEDS MEETING.** Prior to an individual receiving supported living services, the ISP team must meet to discuss the projected service needs of the individual in a needs meeting. This meeting must:

- (a) Review information related to the health and medical, safety, dietary, financial, social, leisure, staff, mental health, and behavioral support needs and preferences of the individual;
- (b) Include any potential service providers, the individual, and other ISP team members;
- (c) As part of a functional needs assessment activity, identify the supports required for the individual to live in his or her own home; and
- (d) Discuss the selection of potential service providers based on the list of support and services needed.

(3) **TRANSITION PLAN.** The service provider must spend time getting to know the individual personally before the development of the Transition Plan for the individual. The individual, service provider, and other ISP team members must participate in an entry meeting prior to the initiation of services. The outcome of the entry meeting must be a written Transition Plan that takes effect upon entry. The Transition Plan must:

- (a) Address the health and medical, safety, dietary, financial, staffing, mental health, and behavioral support needs and preferences of the individual as required by the ISP team;
- (b) Indicate who is responsible for providing the supports described in the Transition Plan for the individual;
- (c) Be based on the list of supports identified in the functional needs assessment and consultation required by the ISP team; and
- (d) Be in effect and available at the site until the ISP for the individual is developed and approved by the ISP team.

(4) **INDIVIDUAL SUPPORT PLAN (ISP).**

(a) An ISP must be developed and approved by an ISP team, be available at the home of the individual within 30 days of development and approval, and updated at least annually or as changes occur.

(b) The ISP or attached documents must include:

- (A) The name of the individual and the name of the legal or designated representative of the individual (as applicable);
- (B) A description of the supports required that is consistent with the functional needs assessment of the individual, including the reason the support is necessary;
- (C) The projected dates of when specific supports are to begin and end;
- (D) A list of personal, community, and public resources that are available to the individual and how the resources may be applied to provide the required supports. Sources of support may include waiver services, state plan services, state general funds, or natural supports;
- (E) The manner in which services are delivered and the frequency of services;
- (F) Service provider type for each person responsible for providing services and supports;
- (G) The setting in which the individual resides as chosen by the individual;
- (H) The strengths and preferences of the individual;
- (I) The clinical and support needs of the individual as identified through a functional needs assessment;
- (J) Individually identified goals and desired outcomes;
- (K) The services and supports (paid and unpaid) to assist the individual to achieve identified goals and the providers of the services and supports, including voluntarily provided natural supports;
- (L) The risk factors and the measures in place to minimize the risk factors, including back up plans;
- (M) The identity of the person responsible for case management and monitoring the ISP;
- (N) A provision to prevent unnecessary or inappropriate care; and
- (O) The alternative settings considered by the individual.

(c) As of July 1, 2014, a Career Development Plan must be attached to the ISP of an adult in accordance with OAR 411-345-0160.

(d) The services coordinator must distribute a copy of the ISP to all ISP team members within 30 calendar days of the ISP team meeting.

(5) **INDIVIDUAL PROFILE.**

(a) The service provider must develop a written profile that describes the individual. This information is used in training new staff. The profile must be completed within 90 days of entry. The profile must include information related to the history or personal highlights of the individual, lifestyle and activity choices and preferences, social network and significant relationships, and other information that helps describe the individual.

(b) The profile must be composed of written information generated by the service provider. The profile may include:

- (A) Reports of assessments or consultations;
- (B) Historical or current materials developed by the CDDP or nursing facility;
- (C) Material and pictures from the family and friends of the individual;
- (D) Newspaper articles; and
- (E) Other relevant information.

(c) The profile must be maintained at the service site and updated as significant changes occur.

Stat. Auth.: ORS 409.050, 430.662
Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0760

Behavior Support

- (1) The service provider must have and implement a written policy for behavior support that utilizes individualized positive behavioral theory and practice and prohibits abusive practices.
- (2) The service provider must inform the individual, and as applicable the legal or designated representative of the individual, of the behavior support policy and procedures at the time of entry and as changes occur.
- (3) A decision to develop a plan to alter a behavior must be made by the ISP team. Documentation of the ISP team decision must be maintained by the service provider.
- (4) The behavior consultant or a trained staff member must conduct a functional behavioral assessment of the behavior that is based upon information provided by one or more people who know the individual. The functional behavioral assessment must include:
 - (a) A clear, measurable description of the behavior including frequency, duration, and intensity of the behavior (as applicable);
 - (b) A clear description and justification of the need to alter the behavior;
 - (c) An assessment of the meaning of the behavior, including the possibility that the behavior is one or more of the following:
 - (A) An effort to communicate;
 - (B) The result of a medical condition;
 - (C) The result of a psychiatric condition; or
 - (D) The result of environmental causes or other factors.
 - (d) A description of the context in which the behavior occurs; and
 - (e) A description of what currently maintains the behavior.
- (5) The Behavior Support Plan must include:
 - (a) An individualized summary of the needs, preferences, and relationships of the individual;
 - (b) A summary of the function of the behavior as derived from the functional behavioral assessment;
 - (c) Strategies that are related to the function of the behavior and are expected to be effective in reducing problem behaviors;
 - (d) Prevention strategies including environmental modifications and arrangements;
 - (e) Early warning signals or predictors that may indicate a potential behavioral episode and a clearly defined plan of response;
 - (f) A general crisis response plan that is consistent with OIS;
 - (g) A plan to address post crisis issues;
 - (h) A procedure for evaluating the effectiveness of the Behavior Support Plan including a method of collecting and reviewing data on frequency, duration, and intensity of the behavior;
 - (i) Specific instructions for staff who provide support to follow regarding the implementation of the Behavior Support Plan; and
 - (j) Positive behavior supports that includes the least intrusive intervention possible.
- (6) Providers must maintain the following additional documentation for implementation of a Behavior Support Plan:
 - (a) Written evidence that the individual, the legal representative of the individual (if applicable), and the ISP team are aware of the development of the Behavior Support Plan and any objections or concerns have been documented;
 - (b) Written evidence of the ISP team decision for approval of the implementation of the Behavior Support Plan; and
 - (c) Written evidence of all informal and positive strategies used to develop an alternative behavior.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0770

Protective Physical Intervention

- (1) The service provider must only employ protective physical intervention techniques that are included in the current approved OIS curriculum or as approved by the OIS Steering Committee. Protective physical intervention techniques must only be applied:
 - (a) When the health and safety of the individual and others are at risk and the ISP team has authorized the procedures in a documented ISP team decision that is included in the ISP and uses procedures that are intended to lead to less restrictive intervention strategies;
 - (b) As an emergency measure if absolutely necessary to protect the individual or others from immediate injury; or
 - (c) As a health related protection ordered by a licensed health care provider if absolutely necessary during the conduct of a specific medical or surgical procedure or for the protection of the individual during the time that a medical condition exists.
- (2) Staff supporting an individual must be trained by an instructor certified in OIS when the individual has a history of behavior requiring protective physical intervention and the ISP team has determined there is probable cause for future application of protective physical intervention. Documentation verifying OIS training must be maintained in the personnel file for the staff person.
- (3) The service provider must obtain the approval of the OIS Steering Committee for any modification of standard OIS protective physical intervention techniques. The request for modification of a protective physical intervention technique must be submitted to the

OIS Steering Committee and must be approved in writing by the OIS Steering Committee prior to the implementation of the modification. Documentation of the approval must be maintained in the record for the individual.

(4) Use of protective physical intervention techniques that are not part of an approved Behavior Support Plan in emergency situations must:

- (a) Be reviewed by the Executive Director or the designee of the Executive Director within one hour of application;
 - (b) Be only used until the individual is no longer an immediate threat to self or others;
 - (c) Result in the submission of an incident report to the services coordinator or other Department designee (if applicable) and the legal representative of the individual (if applicable), no later than one working day after the incident has occurred ; and
 - (d) Prompt an ISP meeting if emergency protective physical intervention is used more than three times in a six month period.
- (5) Any use of protective physical intervention must be documented in an incident report, excluding circumstances described in section (7) of this rule. The report must include:

- (a) The name of the individual to whom the protective physical intervention was applied;
- (b) The date, type, and length of time the protective physical intervention was applied;
- (c) A description of the incident precipitating the need for the use of protective physical intervention;
- (d) Documentation of any injury;
- (e) The name and the position of the staff member applying the protective physical intervention;
- (f) The name and position of any staff member witnessing the protective physical intervention;
- (g) The name and position of the person providing the initial review of the use of the protective physical intervention; and
- (h) Documentation of a review by the Executive Director or the designee of the Executive Director who is knowledgeable in OIS, as evident by a job description that reflects this responsibility. The review must include the follow-up to be taken to prevent a recurrence of the incident.

(6) A copy of the incident report must be forwarded within five working days of the incident to the services coordinator and the legal representative of the individual (when applicable).

- (a) The services coordinator or the Department designee (when applicable) must receive complete copies of incident reports.
- (b) Copies of incident reports may not be provided to a legal representative or other service provider when the report is part of an abuse or neglect investigation.
- (c) Copies provided to a legal representative or other service provider must have confidential information about other individuals removed or redacted as required by federal and state privacy laws.
- (d) All protective physical interventions resulting in injuries must be documented in an incident report and forwarded to the services coordinator or other Department designee (if applicable) within one working day of the incident.

(7) BEHAVIOR DATA SUMMARY.

(a) The service provider may substitute a behavior data summary in lieu of individual incident reports when:

- (A) There is no injury to the individual or others;
 - (B) The intervention utilized is not a protective physical intervention;
 - (C) There is a formal written functional behavioral assessment and a written Behavior Support Plan;
 - (D) The Behavior Support Plan of the individual defines and documents the parameters of the baseline level of behavior;
 - (E) The protective physical intervention techniques and the behavior for which the protective physical intervention techniques are applied remain within the parameters outlined in the Behavior Support Plan of the individual and OIS curriculum; and
 - (F) The behavior data collection system for recording observations, interventions, and other support information critical to the analysis of the efficacy of the Behavior Support Plan is also designed to record the items described in section (5) (a)-(c) and (e)-(h) of this rule.
- (b) A copy of the behavior data summary must be forwarded every 30 days to the services coordinator or other Department designee (if applicable) and the legal representative of the individual (if applicable).

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

411-328-0790

Entry, Exit, and Transfer

(1) **NON-DISCRIMINATION.** An individual considered for Department-funded services may not be discriminated against because of race, color, creed, age, disability, national origin, gender, religion, duration of Oregon residence, method of payment, or other forms of discrimination under applicable state or federal law.

(2) **QUALIFICATIONS FOR DEPARTMENT-FUNDED SERVICES.** An individual who enters supported living services is subject to eligibility as described in this section.

(a) To be eligible for supported living services, an individual must:

- (A) Be an Oregon resident;
- (B) Be eligible for OHP Plus;

(C) Be determined eligible for developmental disability services by the CDDP of the county of origin as described in OAR 411-320-0080;

(D) Meet the level of care defined in OAR 411-320-0020;

(E) Be an individual who is not receiving other Department-funded in-home or community living support;

(F) Have access to the financial resources to afford living expenses, such as food, utilities, rent and other housing expenses; and

(G) Be eligible for Community First Choice state plan services.

(b) TRANSFER OF ASSETS.

(A) As of October 1, 2014, an individual receiving medical benefits under OAR chapter 410, division 200 requesting Medicaid coverage for services in a nonstandard living arrangement (see OAR 461-001-0000) is subject to the rules regarding transfer of assets (see OAR 461-140-0210 to 461-140-0300) in the same manner as if the individual was requesting these services under OSIP-M. This includes, but is not limited to, the following assets:

(i) An annuity that is evaluated according to OAR 461-145-0022;

(ii) A transfer of property when an individual retains a life estate that is evaluated according to OAR 461-145-0310;

(iii) A loan made by an individual that is evaluated according to OAR 461-145-0330; or

(iv) An irrevocable trust that is evaluated according to OAR 461-145-0540;

(B) When an individual is disqualified for a transfer of assets, the individual must receive a notice meeting the requirements of OAR 461-175-0310 in the same manner as if the individual was requesting services under OSIP-M.

(C) An individual found to have transferred assets is not eligible for supported living services.

(3) ENTRY.

(a) A service provider must acquire the following information prior to or upon an entry ISP team meeting:

(A) A copy of the eligibility determination document for the individual;

(B) A statement indicating the safety skills of the individual including the ability of the individual to evacuate from a building when warned by a signal device and adjust water temperature for bathing and washing;

(C) A brief written history any behavioral challenges of the individual, including supervision and support needs;

(D) The medical history of the individual and information on health care supports that includes when available:

(i) The results of a physical exam made within 90 days prior to entry;

(ii) The results of any dental evaluation;

(iii) A record of immunizations;

(iv) A record of known communicable diseases and allergies; and

(v) A record of major illnesses and hospitalizations.

(E) Information related to the lifestyle, activities, and other choices and preferences of the individual;

(F) Documentation of the financial resources of the individual;

(G) A written record of any current or recommended medications, treatments, diets, and aids to physical functioning for the individual;

(H) Copies of protocols, risk tracking record, and any support documentation (if applicable);

(I) Copies of documents relating to the guardianship or conservatorship of the individual, health care representation of the individual, or any other legal restriction on the rights of the individual (if applicable); and

(J) A copy of the most recent ISP and Behavior Support Plan and assessment (if applicable).

(b) ENTRY MEETING. An entry ISP team meeting must be conducted prior to the onset of services to an individual. The findings of the entry meeting must be recorded in the file for the individual and include at a minimum:

(A) The name of the individual proposed for services;

(B) The date of the entry meeting;

(C) The date determined to be the date of entry of the individual;

(D) Documentation of the participants included in the entry meeting;

(E) Documentation of the pre-entry information required by subsection (a) of this section;

(F) Documentation of the decision to serve the individual requesting services; and

(G) A written Transition Plan for no longer than 60 days after entry that includes all medical, behavior, and safety supports needed by the individual.

(4) VOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must promptly notify a services coordinator if an individual, or as applicable the legal or designated representative of the individual, gives notice of the intent of the individual to exit or the individual abruptly exits services.

(b) A service provider must notify a services coordinator prior to the voluntary transfer or exit of an individual from services.

(c) Notification and authorization of the voluntary transfer or exit of the individual must be documented in the record for the individual.

(d) Before a transfer, an individual must be presented with at least three appropriate placement setting options, including at least two different types of residential settings, as described in OAR 411-320-0110.

(5) INVOLUNTARY TRANSFERS AND EXITS.

(a) A service provider must only transfer or exit an individual involuntarily for one or more of the following reasons:

- (A) The behavior of the individual poses an imminent risk of danger to self or others;
 - (B) The individual experiences a medical emergency;
 - (C) The service needs of the individual exceed the ability of the service provider;
 - (D) The individual fails to pay for services; or
 - (E) The certification or endorsement for the service provider described in OAR chapter 411, division 323 is suspended, revoked, not renewed, or voluntarily surrendered.
- (b) NOTICE OF INVOLUNTARY TRANSFER OR EXIT. A service provider must not transfer or exit an individual involuntarily without 30 days advance written notice to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator, except in the case of a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others as described in subsection (c) of this section.
- (A) The written notice must be provided on the Notice of Involuntary Transfer or Exit form approved by the Department and include:
- (i) The reason for the transfer or exit; and
 - (ii) The right of the individual to a hearing as described in subsection (d) of this section.
- (B) A notice is not required when an individual, or as applicable the legal or designated representative of the individual, requests a transfer or exit.
- (c) A service provider may give less than 30 days advance written notice only in a medical emergency or when an individual is engaging in behavior that poses an imminent danger to self or others. The notice must be provided to the individual, the legal or designated representative of the individual (as applicable), and the services coordinator immediately upon determination of the need for a transfer or exit.
- (d) HEARING RIGHTS. An individual must be given the opportunity for a hearing under ORS chapter 183 to dispute an involuntary transfer or exit as described in OAR 411-318-0030. If an individual or the legal or designated representative of the individual (as applicable) requests a hearing, the individual must receive the same services until the hearing is resolved. When an individual has been given less than 30 days advance written notice of a transfer or exit as described in subsection (c) of this section and the individual or the legal or designated representative of the individual (as applicable) has requested a hearing, the service provider must reserve service availability for the individual until receipt of the final order.
- (6) EXIT MEETING.
- (a) An ISP team must meet before any decision to exit is made. Findings of such a meeting must be recorded in the file for the individual and include at a minimum:
- (A) The name of the individual considered for exit;
 - (B) The date of the meeting;
 - (C) Documentation of the participants included in the meeting;
 - (D) Documentation of the circumstances leading to the proposed exit;
 - (E) Documentation of the discussion of the strategies to prevent the exit of the individual from services (unless the individual, or as applicable the legal or designated representative of the individual, is requesting the exit);
 - (F) Documentation of the decision regarding the exit of the individual, including verification of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and
 - (G) Documentation of the proposed plan for services for the individual after the exit.
- (b) Requirements for an exit meeting may be waived if an individual is immediately removed from services under the following conditions:
- (A) The individual, or as applicable the legal or designated representative of the individual, requests an immediate removal from services; or
 - (B) The individual is removed by legal authority acting pursuant to civil or criminal proceedings.
- (7) TRANSFER MEETING. An ISP team must meet to discuss any proposed transfer of an individual before any decision to transfer is made. Findings of such a meeting must be recorded in the file for the individual and include at a minimum:
- (a) The name of the individual considered for transfer;
 - (b) The date of the meeting or telephone call;
 - (c) Documentation of the participants included in the meeting or telephone call;
 - (d) Documentation of the circumstances leading to the proposed transfer;
 - (e) Documentation of the alternatives considered instead of transfer;
 - (f) Documentation of the reasons any preferences of the individual, or as applicable the legal or designated representative or family members of the individual, cannot be honored;
 - (g) Documentation of the voluntary decision to transfer or exit or a copy of the Notice of Involuntary Transfer or Exit; and
 - (h) The written plan of services for the individual after the transfer.

Stat. Auth.: ORS 409.050, 430.662

Stats. Implemented: ORS 430.610, 430.662, 430.670

